

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 07 February 2019
Time:	4.00pm
Venue:	Council Chambers, Civic Centre, Hurstville
Panel Members:	Paul Vergotis (Chairperson) Michael Leavey (Expert Panel Member) Helen Deegan (Expert Panel Member) George Vardas (Community Representative)
Council Staff:	Meryl Bishop (Director Environment and Planning) Ryan Cole (Manager Development and Building) Nicole Askew (Coordinator Development Assessment) Cathy Mercer (PA to Manager Development and Building) Monica Wernej (Admin Assistant)

1. On Site Inspections - 2.00pm –3.30pm

- a) 13 Pearce Avenue Peakhurst
- b) 42 Herbert Street Oatley

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

LPP002-19 13 Pearce Avenue Peakhurst - DA2018/0154
(Report by Development Assessment Officer)

LPP003-19 42 Herbert Street Oatley - DA2018/0162
(Report by Team Leader Development Assessment)

4. Confirmation of Minutes

LPP002-19

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 07 FEBRUARY 2019**

LPP002-19

LPP Report No	LPP002-19	Development Application No	DA2018/0154
Site Address & Ward Locality	13 Pearce Avenue Peakhurst Peakhurst Ward		
Proposed Development	Demolition, construction of a residential flat building incorporating affordable rental housing, basement car parking, site and landscape works		
Owners	SSC Group Holdings		
Applicant	AB Works		
Planner/Architect	Rod Logan Planning (Planner) AB Works (Architect)		
Date Of Lodgement	19/04/2018		
Submissions	One (1) submission		
Cost of Works	\$3,211,531.00		
Local Planning Panel Criteria	State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy BASIX 2004, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Draft SEPP (Environment) 2017), Greater Metropolitan Regional Environmental Plan No 2 - Georges River Catchment, Hurstville Local Environmental Plan, Hurstville Development Control Plan No 1 - LGA Wide		
List all documents submitted with this report for the Panel's consideration	Survey Plan, Architectural Plans, Landscape Plan, Concept Stormwater Plan, Statement of Environmental Effects		
Report prepared by	Development Assessment Officer		

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	Yes - the development

<p>standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?</p>	<p>proposes a variation to the height of building contained within the Hurstville LEP 2012</p>
<p>Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p>Not Applicable</p>
<p>Conditions Have draft conditions been provided to the applicant for comment?</p>	<p>Yes, report and proposed conditions made publicly available on Council’s website prior to meeting</p>

Site Plan



Subject site 13 Peace Avenue, Peakhurst

EXECUTIVE SUMMARY

Proposal

1. Demolition, construction of a residential flat building incorporating affordable rental housing, basement car parking, site and landscape works

The proposal comprises of the construction of four (4) storey residential flat building incorporating affordable rental housing comprising of eleven (11) units and one (1) basement level on land known as 13 Peace Avenue, Peakhurst.

The proposal comprises of four (4) x one bedroom units, seven (7) x two bedrooms units and thirteen (13) car spaces within the basement, communal open space within the rear north east corner and roof top level.

Site and Locality

2. The subject site is legally identified as Lot 143 DP 36317 and is known as 13 Pearce Avenue, Peakhurst.

The site forms an irregular wedged shaped corner allotment and dimensioned as follows;

- 27.43m along the south-east frontage to Gover Street;
- 11.22m at the east arc;
- 11.58m along the north-east frontage to Pearce Avenue;
- 40.08m to the northern-west side boundary;
- 25.91m along the south-western side boundary; and
- total site area of 773.88sqm.

The site slopes from front south-west (high) to the rear south-west (low) by approximately 1m.

The site is in an area which is undergoing a transitional urban intensification from low density detached dwelling houses to low rise residential flat buildings.

The immediately adjoining site to the north-west (15-17 Pearce Avenue) forms a stepped three (3) storey residential flat building. To the north (4-8 Pearce Avenue) forms a three (3) storey residential flat building. Adjoining to the south-west (42 Gover Street) forms a single storey dwelling house with swimming pool on an allotment size of 593.62sqm. Further to the south-west (38-40 Gover Street) is occupied by a three (3) storey residential flat building. To the south-east (61-63 Gover Street, 11-9 Pearce Avenue) comprises of two (2) storey townhouses. Further to the east (2 Pearce Avenue and 20 Peake Parade) are occupied by detached dwellings. The immediate surrounding area is zoned R3 Medium Density Residential under the Hurstville Local Environmental Plan 2012.

It is noted that 42 Gover Street, Peakhurst is occupied by a single storey dwelling house. The applicant has attempted to acquire this site however negotiations between the parties have not resulted in any formal agreement. Further within this report, the applicant has demonstrated that a reasonable development could be achieved on 42 Gover Street if the development proposal of this application were to proceed.

Zoning and Permissibility

3. The site is zoned R3 Medium Density Residential under the Hurstville Local Environmental Plan 2012. The development is considered to meet the objectives of the zone and a residential flat building is permissible use with consent.

Clause 4.6 variation – height

4. The original proposal sought a maximum height of 12m. The amended proposal seeks a variation to Clause 4.3 Height of Buildings under the provisions of the Hurstville Local Environmental Plan (HLEP) at 12.93m for the lift overrun, by up to an additional 930mm which equates to (7.75%) over the maximum 12m height limit. The amended proposal does not result in any parapets or habitable floor space above the maximum prescribed

height limit. The applicant has submitted a written request seeking to justify the contravention of the height standard, and the request is supported as detailed within this report.

Submissions

5. The DA was advertised and notified to neighbours in accordance with provisions contained within the Hurstville DCP No 1. The amended plans did not require re-notification as the amended proposal did not generate a material greater impact than the original proposal. In response, one (1) submission was received from the adjoining – south-western property. The concerns raised within this submission have been considered and is addressed further within this report.

Referrals

6. The proposal was referred internally to the relevant departments. The proposal is supported from these departments subject to the imposition of conditions.

Level of Determination

7. The DA is referred to the Local Planning Panel for consideration and determination as the proposal involves the construction of a residential flat building to which State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development applies in accordance with the Section 9.1 (EPA Act) Ministerial Directions.

Conclusion

8. The proposed development has been assessed in accordance with the Matters for Consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal generally complies with the applicable controls, with sufficient justification provided for any variations provided within this report. Furthermore, it is considered that no adverse impact arises from the extent of the non-compliances sought whilst proposing good residential amenity for future occupants.

The proposal is considered to be satisfactory on planning merit when assessed against the applicable planning controls and accordingly is recommended for approval subject to conditions.

FULL REPORT

Description of Proposal

9. Demolition, construction of a residential flat building incorporating affordable rental housing, basement car parking, site and landscape works

The proposal comprises of the construction of four (4) storey residential flat building incorporating affordable rental housing comprising of eleven (11) units and one (1) basement level on land known as 13 Peace Avenue, Peakhurst.

The proposal comprises of four (4) x one (1) bedroom units, seven (7) x one (1) bedrooms units and thirteen (13) car spaces within the basement, communal open space within the rear north east corner and roof top level.

The proposal was amended throughout the assessment process and remains substantially the same to that which was lodged. For the purposes of assessment, the assessed amended proposal is described as follows;

- Basement Level: Eleven (11) residential car spaces of which two (2) form accessible car spaces, two (2) visitor spaces, storage areas, garbage room, lift and stair access, driveway ramp parallel with northern side boundary.
- Ground Floor: Entry from Gover Street, communal open space within the rear north- west setback, central corridor and circulation areas, 1 x 1 bedroom unit, 2 x 2 bedroom units;
- Level 01: Central corridor and circulation areas, 1 x 1 bedroom unit, 2 x 2 bedroom units;
- Level 02: Central corridor and circulation areas, 1 x 1 bedroom unit, 2 x 2 bedroom; units;
- Level 03: Central corridor and circulation areas rooftop communal open space at the rear north-west corner, 1 x 1 bedroom unit, 1 x 2 bedroom units;

Vehicular access is proposed from the north-east frontage of the site, via Pearce Avenue.

The proposal seeks the removal of ten (10) trees on site and protection of one Council one (1) Council tree on Gover Street.

Units 1.02 and 1.02 located on the first floor are nominated as Affordable Rental Housing.



Fig 1. Montage of proposed development viewed from the corner of Gover Street and Pearce Avenue

Description of the Site and Locality

10. The site is in an area undergoing urban transformation from generally established dwelling houses to modern contemporary low rise residential flat buildings. The site currently contains a single storey dwelling house.



Fig. 4 Photograph of rear south-west corner of subject site (13 Pearce Avenue, Peakhurst)



Fig. 5 Photograph from rear of subject site (13 Pearce Avenue, Peakhurst) to east aspect.



Fig. 6 Photograph of adjoining property to the south-west (42 Gover Street, Peakhurst) and 38-40 Gover Street, Peakhurst (background).



Fig .7 Photograph of adjoining north-west property (15-17 Pearce Avenue, Peakhurst).



Fig. 8 Photograph of residential flat buildings at 4-8 Pearce Avenue, Peakhurst located at the opposite side of Pearce Avenue located to the north-east.

Background

11. The key points of the applications background is detailed as follows:

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|--------------|---|
| 8 Feb 18 | (PRE2017/0050) Pre-lodgement meeting with Design Review Panel for demolition of existing, construction of four (4) storey residential flat building incorporating affordable rental housing comprising of eleven (11) units and one (1) basement level. |
| 19 Apr 18 | (DA2018/0154) Development application lodged for demolition of existing, construction of four (4) storey residential flat building incorporating affordable rental housing comprising of eleven (11) units and one (1) basement level. |
| 24 Apr 18 | Allocation of development application. |
| 26 Apr 18 | Council request for traffic study. |
| 11 May 18 | Traffic report provided by applicant. |
| 7 Jun 18 | Design Review Panel Meeting and site inspection. |
| 5 Jul 18 | Meeting with applicant discuss proposal. |
| 3 -17 Aug 18 | Notification Period. |
| 20 Aug 18 | Further meeting with to discuss proposed amendments. |
| 21 Sep 18 | Advice to applicant regarding amendments sought to application in relation to built form. |

- 30 Oct 18 Revised architectural plans provided by applicant which sought to reduce the parapets to comply to the 12m height of building, increase in setbacks, internal and external design changes.
- 3 Dec 18 Revised landscape plan and arborist report provided.

PLANNING ASSESSMENT

12. The subject site has been inspected and the 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 2012

Assessment Table – Hurstville LEP 2012 Development Standards

13. The extent to which the proposed development complies with the Hurstville Local Environmental Plan (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 proposal is considered to be consistent with the aims of the plan	Yes
1.4 - Definitions	<i>“Residential flat building”</i>	The proposed development meets definition of <i>“residential flat building”</i>	Yes
2.3 - Zone objectives and Land Use Table	Site is zoned R3 Medium Density Residential (see zoning map elsewhere in this report). Meets objectives of R3 Medium Density zone. Development must be permissible with consent.	The development meets the objectives and is permissible development with consent.	Yes
2.7 - Demolition	Demolition is permissible with consent	The application seeks development consent for demolition	Yes
4.3 – Height of Buildings (HOB Map tile_002)	“M” = 12m	12.93m for the lift overrun (RL48.95) Remainder of building below 12m	No – refer to the CL4.6 discussion below
4.4 – Floor Space Ratio (FSR Map Tile_002)	“N” = 1:1 (Site area = 773.8sqm)	0.1.20:1 (934.88sqm)	No, however additional floor space bonus applies under State Environmental Planning Policy

			(Affordable Rental Housing) 2009 applies and overrides the LEP provisions to the extent of the inconsistency
4.6 Exceptions to development standards	Written request for variation must be considered	Development seeks a variation to Clause 4.3 Height of Buildings. A request for the variation has been provided for Council's consideration and is discussed further in this report.	Yes
5.10 – Heritage Assessment	Objectives of clause to be satisfied	The site is not identified as a heritage item or within the vicinity to a heritage item or conservation area.	Yes
6.1 – Acid Sulphate Soils	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	Not affected by Acid Sulphate Soils.	Yes
6.3 – Flood Planning	Requires assessment to minimise the flood risk to life and property associated with the use of land; to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change; and to avoid significant adverse impacts on flood behaviour and the environment.	The site is not identified as a Flood Control Lot.	Yes
6.7 Essential Services	Essential services relating to water, electricity, sewerage, storm water or on site conservation and suitable road and	Essential services to be provided as part of construction certificate requirements.	Yes, subject to condition

	vehicular access to be provided		
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Fig 9. Extract of the Height of Building Map from Hurstville Local Environmental Plan 2012. The map references “M” which equates to a 12m height of building for the subject site and surrounding area.

Clause 4.6 – Exceptions to Development Standards

Detailed assessment of variation to Clause 4.3 Height of Buildings

13. The Height of Buildings Map (Map Tile_002) under Hurstville LEP 2012 prescribes a maximum building height of 12m.

It is noted that the original proposal sought a maximum height of 13.59m with greater height variation to the lift overrun and upper parapets. This proposal has since been amended to reduce the overall building height and was amended to provide residential floor areas of the development to comply.

The amended proposal seeks a height of 12.93m (measured to the top of the lift over-run at RL 48.95). This does not comply with the 12m height control of the Hurstville LEP 2012. The extent of the non-compliance, at the highest point being the top of the lift over-run equates to 930mm or 7.75% above the 12m height limit which is considered to be minimal.



Fig 10. Extracts from applicant demonstrating extent of non-compliance above 12m whereby the upper element of the lift overrun exceeds the height of building.

To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of HLEP 2012 for the original variation and

amended variation, of which points have been extracted justify the reasons in supporting the variation. This Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

14. Height of Buildings limitation under Clause 4.3 of the HLEP 2012 is a development standard.

What are the underlying objectives of the development standard?

15. The objectives of Height of Buildings standard under Clause 4.3 of HLEP 2012 are:

“(1) The objectives of this clause are as follows:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (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,*
- (c) to minimise the adverse impact of development on heritage items,*
- (d) to nominate heights that will provide a transition in built form and land use intensity,*
- (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,*
- (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,*
- (g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain”*

The applicant has provided the following justification regarding the development’s consistency with the above objectives.

Applicant’s Comments: The proposed development achieves the objectives of the standard notwithstanding non-compliance with the height of buildings control because:

“The proposed building largely complies with the statutory height limit, with the exception of a small portion of the stairwell, lift overrun and parapets along the Gover and Pearce Avenue frontages and is compatible with a number of recently constructed and approved developments in the locality.

The additional height of the lift overrun and parapet above the 12m standard will not cause any significantly greater overshadowing or a loss of sky exposure to the adjoining properties or surrounding public domain due to the orientation of the site, location and extent of non-compliance.

Further, the non-compliance with the height standard does not contribute to an unreasonable visual impact or loss of privacy to adjoining properties. As noted above, despite the non-compliance, the scale, form and intensity of the building is consistent with the intended potential of the land and the desired future character of the locality.”

Officer Comment: The applicant’s justification is supported. As shown on the building height blanket drawings (Fig 10), the extent of the height variation relates to the lift overrun

only which is centrally sited within the building footprint. The proposed variation does not comprise of floor space or area which could be readily converted into floor space.

The height of the building results in minimal additional impacts of overshadowing or visual bulk, when compared to that of a numerically compliant building, the additional shadowing will fall to the south of the site.

Given the above, the proposed variation is considered to be consistent with the objectives of Clause 4.3, and is acceptable despite the numerical non-compliance.

What are the underlying objectives of the zone?

16. The objectives of the R3 Medium Density Residential zone are as follows:

- *“To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To provide for a range of home business activities, where such activities are not likely to adversely affect the surrounding residential amenity”*

Officer Comment: The applicant has provided the following key points in addressing the above as follows;

“The development is of a form and scale that will provide for the housing needs of the community in a manner that is consistent with the medium density housing zoning of the land and anticipated building form for the locality, having regard to the height and floor space ratio provisions that apply; and

The locality is capable of supporting increased population within its catchment area and the proposed development provides for a range of unit types and sizes. The development also incorporates affordable housing dwellings which will be maintained for 10 years and managed by an approved community housing provider.

The design of the development ensures that a high level of amenity is achieved for the development and maintained to the surrounding residential properties as the increase in height”

Officer Comment: The applicant’s justification is considered to be reasonable and sound given the underlying zone objectives and height objectives of the Development Standard. The proposal is considered positively contribute to broadening of the variety of housing types within the Medium Density Residential zone.

The objectives for Clause 4.3 Height of Buildings development standard state the following:

“(1) The objectives of this clause are as follows:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,
- (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,
- (c) to minimise the adverse impact of development on heritage items,
- (d) to nominate heights that will provide a transition in built form and land use intensity,
- (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,
- (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,
- (g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain”.

The applicant has provided the following justification;

“The proposed development achieves the objectives of the standard notwithstanding non-compliance with the height of buildings control because:

The proposed building largely complies with the statutory height limit, with the exception of a small portion of the stairwell, lift overrun and parapets along the Gover and Pearce Avenue frontages and is compatible with a number of recently constructed and approved developments in the locality.

The additional height of the stair, lift overrun and parapet above the 12m standard will not cause any significantly greater overshadowing or a loss of sky exposure to the adjoining properties or surrounding public domain due to the orientation of the site, location and extent of non-compliance. Further, the non-compliance with the height standard does not contribute to an unreasonable visual impact or loss of privacy to adjoining properties.

As noted above, despite the non-compliance, the scale, form and intensity of the building is consistent with the intended potential of the land and the desired future character of the locality.”

Officer Comment: The variation in height is to a maximum point of 930mm or 7.75% which is considered minor. The applicant’s justification is considered to be reasonable and is commensurate of other lift overrun heights approved within the locality above the height of building limit. The extent of the variation is minor, inconsequential and of minor impact. Further consideration has been applied to the variation in consideration with principles established under the ‘Five Part Test’.

Written applications to vary development standards will not only address the above matters but may also address matters set out in the ‘five part test’ established by the NSW Land and Environment Court. Councils may choose to not only use the principles of Clause 4.6 and SEPP1 but also this five part test.

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the

development standards is well founded, consideration to these principles and extent of variation have been considered as per below.

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<p>1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;</p>	<p><u>Applicant's comment:</u> <i>"The development is of a form and scale that will provide for the housing needs of the community in a manner that is consistent with the medium density housing zoning of the land and anticipated building form".</i></p>
	<p><u>Officer Comment:</u> The applicant's justification is considered to be sound given that the underlying objectives have been satisfied.</p>
<p>2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;</p>	<p><u>Applicant's comment:</u> <i>"The purpose of the standard is still considered to be relevant to the development however 100% compliance with the standard in this circumstance is not considered necessary or reasonable. Despite the building height not complying with the standard a reasonably scaled and appropriate development of the site can be achieved that is consistent with the scale and character of anticipated future redevelopment in the immediate locality. The variation sought does not detract from the ability of the standard to be enforced on other development that may arise in the locality and therefore does not undermine the purpose of the standard".</i></p>
	<p><u>Officer Comment:</u> Given the above, the proposal is considered to be satisfactory which results in a built form which is generally consistent with the maximum height within the zone.</p>
<p>3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;</p>	<p><u>Applicant's comment:</u> <i>"The underlying purpose of the standard is to facilitate appropriately scaled residential flat development in a balanced manner within a locality that allows for adequate protection of amenity of adjoining lands. It is therefore considered unreasonable to require 100% compliance with the standard as the variation is acceptable based on merit. The objectives of the standards, as outlined above, will still be achieved despite the variation and it would not defeat the purposes of the standard."</i></p>
	<p><u>Officer Comment:</u> It is considered that strict numerical compliance would result in a negligible benefit and reduction of material impacts relating to overshadowing and bulk and scale given the central sitting of the lift overrun.</p>
<p>4. 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;</p>	<p><u>Applicant's comment:</u> <i>"Council has not generally abandoned this development standard by granting significant variations that would derogate from and undermine the objective of the development standard. However, having regard to the variation that is sought with this particular proposal and satisfaction of the objectives, it is considered that</i></p>

	<i>compliance with the standard would be unnecessary and unreasonable in this instance.”</i>
	<u>Officer Comment:</u> Council has previously supported variations to the height of building for lift overruns. The extent of the variation is considered to be similar to that of other approved residential flat buildings within the locality.
5. the 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.	<p>Applicant’s comment: In summary, the justification for the variation as follows;</p> <p><i>“Despite a portion of the stairwell, lift overrun and parapet exceeding the height of buildings principal development standard, the remainder of the building sits within and below the 12m height limit. As such, the overall bulk and scale of the building is considered to be acceptable in terms of its scale and built form and the relationship of the building to the adjoining residential development.</i></p> <p><i>The additional height of the stairwell, lift overrun and parapet does not constitute an additional storey and maintains a building of a scale and form that is appropriate for the location, providing visual interest and a varied building profile, and</i></p> <p><i>Despite the increased height of the stairwell, lift overrun and parapets above the statutory height limit, the proposed development will not have an unreasonable impact on adjoining sites in terms of significant additional overshadowing, loss of privacy or impact on views”</i></p>
	<u>Officer Comment:</u> The applicant’s justification is considered to be reasonable and sound given that the variation to the height of building satisfies the objectives of the development standard and is of a negligible impact.

Is the variation to the development standard consistent with Clause 4.6 of the Hurstville LEP 2012?

17. Clause 4.6(1):

The objectives of this clause are as follows:

- (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.*

Comment: Flexibility in applying the standard is appropriate and the requisite levels of satisfaction require by the controls have been achieved in this case, given the minor variation to the lift overrun only. The variation (at the highest point of the building being the lift over-run) is proposed to ensure appropriate access is available to the communal

rooftop area. It is also noted that communal open space is also located at the rear north west corner.

Clause 4.6(2):

“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”

Comment: Clause 4.3 Height of Buildings is not excluded from the operation of Clause 4.6.

Clause 4.6(3):

“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”*

Comment: The applicant has provided a written variation request prepared by Rod Logan Planning. A copy of this Clause 4.6 request for variation is provided for the Panel’s consideration.

Clause 4.6(4):

“Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and”*

Comment: The written request adequately addresses the matters in subclause (3). Strict compliance with the standard is unreasonable and unnecessary because the development remains consistent with the objectives of the R3 zone and height of building standard as described above. It is considered that sufficient environmental planning grounds to justify contravening the standard given that the non-compliance provides for an improved amenity outcome while resulting in no adverse environmental impacts. Furthermore, it is common that residential flat buildings within the surrounding Peakhurst contain communal open space on the roof top with lift access.

- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

Comment: For the reasons detailed above, the development is considered to be consistent with the objectives of Clause 4.3 Height of Buildings and the R3 Medium Density Residential zone.

(b) *the concurrence of the Director-General has been obtained.*

Comment: As the application seeks a variation to a Development Standard of over 10%. The proposed residential flat building must be determined by the Local Planning Panel.

Conclusion – Assessment of Clause 4.6 Request for Variation

18. The variation is considered minor in extent for 930mm or 7.75% above the 12m height of building control.

In a 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 clause 4.6 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. This is considered to be the case in this instance given the additional height sought and minimal impact generated.

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.

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.

The Clause 4.6 request has been considered and it concluded that overall, the non-compliance in this instance is acceptable and the applicant's request is well founded. The extent of the variation will does not offend the objectives of both the zone and development standard and is considered to be in the public interest.

State Environmental Planning Policies

Greater Metropolitan Regional Environmental Plan No 2 - Georges River Catchment (Deemed SEPP)

19. The Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment (deemed SEPP) applies to subject land.

The policy aims 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.

All stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and will satisfy the relevant provisions of the aforementioned deemed SEPP.

It is noted that the Department of Planning and Environment (DPE) is seeking to consolidate this SEPP along with several others and include relevant provisions within a new draft policy that was recently exhibited referred to as the new Draft State Environmental Planning Policy (Environment). Further details in relation to the new draft SEPP are provided under the relevant heading below.

Council’s Development Engineer has supported the proposal subject to conditions of consent.

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

20. 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.

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.



Fig. 10 Aerial extract of subject site and immediate surrounding area (Source: Nearmap, 14 Nov 2019)

Council records indicate that the subject site and adjoining uses have been used for residential purposes.

Date	Application / Development History
	The erection of the existing single storey dwelling house which pre dates Council’s available records.
5 Dec 17	PRE2017/0050 Demolition of existing and construction of demolition of existing, construction of four (4) storey residential flat building incorporating affordable rental housing comprising of eleven (11) units

	and one (1) basement level.
4 Apr 18	DA2018/0154 Demolition of existing and construction of demolition of existing, construction of four (4) storey residential flat building incorporating affordable rental housing comprising of eleven (11) units and one (1) basement level.

Given the above, no further assessment is warranted with regard to site contamination.

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

21. An amended compliant BASIX certificate (916440M_02 dated 30 November 2018) has been submitted with the DA. Conditions of consent have been included to ensure the commitments required under the certificate will be satisfied with the proposed development.

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

22. The Vegetation SEPP applies to land in the Sydney and Newcastle metropolitan areas, and all land that is zoned for urban purposes or environmental conservation/management under the Standard Instrument - Principal Local Environmental Plan.

The 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 P(DCP).

The proposal involves the removal of vegetation; the proposal has been assessed in accordance with this SEPP. The proposal seeks the removal of ten (10) trees on site and protection of one (1) tree on Gover Street. The application has been reviewed by Council's consulting arborist and is considered acceptable subject to suitable landscaping and tree replacement to replenish the landscape and tree canopy.

Draft State Environmental Planning Policy (Environment) (Environment SEPP)

23. The Department of Planning and Environment have been working to develop a new SEPP for the protection and management of our natural environment. The policy will replace seven (7) existing SEPPs including the Greater Metropolitan Regional Environmental Plan No 2 - Georges River Catchment by updating and consolidating relevant provisions.

The new Draft Environment SEPP was exhibited from 31 October 2017 until the 31 January 2018. Engagement is now closed and feedback is currently being considered.

As such, the draft plan is a consideration in the assessment of this application however given the timeframe for adoption is not yet imminent or certain, no further assessment is required. Irrespective of this, the proposed development has been assessed as not inconsistent with provisions of the Environmental SEPP.

State Environmental Planning Policy (Affordable Rental Housing) 2009

24. The proposal has been considered in accordance with the following.

Clause	Standard	Proposal	Complies
Clause 10 Development to which Division applies	(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:	The proposal seeks development consent for the erection of a residential flat building.	Yes
	(a) the development concerned is permitted with consent under another environmental planning instrument, and	The site is not identified as a Local or State heritage item or is subject to a interim heritage order.	Yes
	(b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the Heritage Act 1977.	The site is within an accessible area (within 400m from a regular bus service) along Forest Road to the south.	Yes
	(2) Despite sub clause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.	The whole site is located within an accessible area.	Yes
13 Floor space ratios	(1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent. (2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation	The maximum floor space under the Hurstville Local Environmental Plan is 1:1 which equates to maximum of 773.8sqm. The proposal seeks to utilise the floor space provisions of this clause and seeks to provide a minimum of 20% as Affordable Rental Housing. This equates to 1.20:1 which complies.	Yes

	<p>permitted on the land on which the development is to occur, plus:</p> <p>(a) if the existing maximum floor space ratio is 2.5:1 or less:</p> <p>(ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent, where:</p> <p>AH is the percentage of the gross floor area of the development that is used for affordable housing.</p> <p>$Y = AH \div 100$</p>	<p>161sqm proposed for the purposes of affordable rental housing units: Unit 1.01 = 79sqm, Unit 1.02 = 82sqm.</p>	<p>Yes</p>
<p>14 Standard that Cannot be used to refuse consent</p>	<p>(1) Site and solar access requirements A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(b) site area if the site area on which it is proposed to carry out the development is at least 450sqm,</p> <p>(c) landscaped area if:</p> <p>(ii) in any other case—at least 30 per cent of the site area is to be landscaped,</p> <p>(d) deep soil zones if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed:</p> <p>(i) there is soil of a sufficient depth to support</p>	<p>773.8sqm.</p> <p>233.1sqm (30.1%).</p> <p>More than 15% deep soil achieved located within the</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the deep soil zone), and</p> <p>(ii) each area forming part of the deep soil zone has a minimum dimension of 3m, and</p> <p>(iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,</p> <p>(e) solar access if living rooms and private open spaces for a minimum of 70 per cent of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.</p>	<p>rear north-west setback.</p> <p>Minimum dimension of 3m.</p> <p>Majority of deep soil located within rear north west corner.</p> <p>8 of 11 units (72.7%) receive compliant solar access due to the north facing aspect.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
(2)General			
(a)Parking	<p>if:</p> <p>(ii) in any other case—at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms,</p> <p>A minimum of (5.5 car spaces required)</p>	<p>13 car spaces provided in total located within basement car park</p>	<p>Yes</p>
(c) Dwelling size	<p>(b) dwelling size if each dwelling has a gross floor area of at least:</p> <p>(ii) 50sqm in the case of a dwelling having 1 bedroom, or</p> <p>(iii) 70sqm in the case of a</p>	<p>Range: 50-58sqm min for 1 bedroom units.</p> <p>Range: 79-93sqm for 2</p>	<p>Yes</p> <p>Yes</p>

	<p>dwelling having 2 bedrooms, or</p> <p>(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in sub clause (1) or (2).</p>	<p>bedroom units.</p> <p>The proposal is compliant with the minimum standards.</p>	<p>Yes</p>
15 Design Requirements	<p>(2) This clause does not apply to development to which clause 4 of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development applies.</p>	<p>The proposal has been considered the provisions of SEPP 65 as detailed further within this report.</p>	<p>Yes</p>
Clause 16 Continued application of SEPP 65	<p>Nothing in this Policy affects the application of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development to any development to which this Division applies.</p>	<p>As above</p>	<p>Yes</p>
16A Character of Local Area	<p>A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</p>	<p>The proposed development is considered to be compatible with the character of the local area. Refer to character test detailed further within this report.</p>	<p>Yes</p>
17 Must be used for affordable housing for 10 years	<p>(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:</p> <p>(a) for 10 years from the date of the issue of the occupation certificate:</p>	<p>2 of the 11 units are proposed to be used for the purposes of affordable rental housing. A condition of consent is to be imposed to this effect. Units 1.01 (79sqm) and 1.02 (82sqm) have been nominated as affordable rental housing units</p> <p>To be managed by a registered community housing provider as conditioned.</p>	<p>Yes</p> <p>Yes</p>

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	<p>(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and</p> <p>(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and</p> <p>(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.</p>	Restriction on title is to be conditioned.	Yes
Clause 10 Subdivision	Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.	Subdivision is not sought as part of this development application	Yes

(1) Local character

Under the provisions of Clause 16A of the ARHSEPP 2009, applications for in fill affordable rental housing must satisfy a local character test which seeks to ensure developments proposed under the ARH SEPP are consistent with the design of the area.

In summary, the applicant has provided the following key points in relation to satisfying the character test summarised below;

- The proposal is generally consistent with the provisions with the LEP and complies with the height of building of 12m with the exception of the lift overrun which is supported as addressed earlier within this report.
- The proposal provides setbacks which allow for deep soil planting and the design of the proposal takes advantage of the site slope to reduce the scale of the building.
- The proposal is considered fit within the context of the zone and remaining undeveloped properties are likely to be of a scale, height and density permitted within the zone. Therefore the proposal is considered to be consistent with the

existing and new development within the local area and is considered to satisfy the Character Test provisions of Clause 16A of ARHSEPP.

Comment: In *Redevelop Projects Pty Ltd v Parramatta City Council* [2013] NSWLEC 1029, Commissioner Morris concluded that the ‘local area’ includes both sides of the street and the ‘visual catchment’ as the minimum area to be considered in determining compatibility. Accordingly, with regard to the subject site, the ‘local area’ is taken to include both Gover Street and Pearce Avenue.

In *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 the Land and Environment Court specifically set out a relevant planning principle. Consideration has therefore been given to the two key questions identified in the L&E Court Planning Principles:

(a) Are the proposal’s physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment: The proposal is not considered to result in adverse impacts to adjoining properties and would not constrain the development potential of 42 Gover Street.

- The proposal does not result in any unacceptable privacy impacts to adjoining properties due to treatments and window and balcony offsets proposed.
- The proposal results in compliant levels of solar access to adjoining properties with the shadow of development falling to the south primarily on Gover Street.
- The proposal does not result in any unreasonable bulk and scale impacts when viewed from adjoining properties or the public domain.

(b) Is the proposal’s appearance in harmony with the buildings around it and the character of the street?

Comment: For the purposes of assessment the immediate visual catchment is described as follows.

Property	Development	Zoning
13 Pearce Avenue, Peakhurst (subject site)	Single storey dwelling house	R3 Medium Density Residential
38-40 Gover Street, Peakhurst	3 storey residential flat building	R3 Medium Density Residential
42 Gover Street, Peakhurst	Single storey dwelling with swimming pool	R3 Medium Density Residential
15-17 Pearce Avenue, Peakhurst	3 storey residential flat building	R3 Medium Density Residential
4-8 Pearce Avenue, Peakhurst	3 storey residential flat building	R3 Medium Density Residential
61-63, 11-9 Pearce Avenue, Peakhurst	Two storey town house	R3 Medium Density Residential
2 Pearce Avenue, Peakhurst	2 storey dwelling and secondary dwelling	R3 Medium Density Residential
20 Peake Parade, Peakhurst	Dwelling house	R3 Medium Density Residential



Fig.12 Aerial extract of subject site and immediate surrounding visual catchment December 2018 (boxed in blue)

The proposal results in a built form which is considered to be within the local character of the area for the following reasons;

The proposal adopts a built form which presents as a part four storey – three storey residential flat building whereby the proposal seeks variations to the ADG side and rear setbacks, variations to the DCP primary and secondary front setbacks.

Assessing ‘compatibility’ required both the existing and future character of the local area to be taken into account (*Sales Search Pty Ltd v The Hills Shire Council* [2013] NSWLEC 1052 and *Redevelop Projects Pty Ltd v Parramatta City Council* [2013] NSWLEC 1029). It is acknowledged that there are sites within Gover Street and Peake Parade within visual catchment that are yet to reach their maximum development potential, it is considered that the proposal is not the same as adjoining residential flat building but adopts a similar built form which is not considered to be the same however is considered to be compatible.

It is considered that the proposed development would co-exist in harmony with the existing development in the streetscape and does satisfy the character test within clause 16A of the ARHSEPP 2009 and is supported.

For the above reasons, the proposal is considered to be compatible with the character of the local area.

The proposal has been considered in accordance with the provisions of the above SEPP and is satisfactory.

State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

25. The proposed development is for a new building of at least 3 storeys, which meets the definition of “residential flat building”. Therefore, it must be assessed against SEPP 65 and the Apartment Design Guide (ADG). This assessment is provided below;

A design verification statement has been provided by the applicant, Registered Architect Jim Apostolou (7490) in accordance with Clause 50 of the Environmental Planning and Assessment Regulation 2000.

The applicant undertook a pre-lodgment meeting with the Design Review Panel. Upon DA lodgment the application was referred to the Design Review Panel (DRP). The comments of the DRP have been considered and the plans have been amended for lodgment with the DA. An assessment of the Design Quality Principles and the comments of the DRP are provided below.

It is noted that the amended proposal sought to reduce the overall height of the building and minimise impact to adjoining properties to which the amendments are considered to be satisfactory given the proposed use and immediate context.

CONTEXT AND NEIGHBOURHOOD CHARACTER

Panel’s Pre-DA comment: *“The site is a wedge-shaped corner parcel located in the evolving context of predominantly three (3) storey apartment buildings. The site to the north is a recent three (3) storey apartment development and site to the west is a modern large single dwelling which will be isolated by this development and is a challenging lot shape to redevelop on its own. The subject site is a single block of 897sqm with dual street frontage. The site falls 3m from the south west to the north east. It is important in the evolving context that the streetscape develop in a unified and complementary way. Attention should be paid to ensuring that landscape setbacks, fencing and ground floor apartment access are treated consistently. The proposal appears to be approximately one (1) storey in excess of the evolving context. The applicant is seeking additional floor space for two (2) affordable housing units”.*

Panel’s DA comment: *“No further comments”.*

Assessing Officer’s comment: Satisfactory.

BUILT FORM AND SCALE

Panel’s Pre-DA comment: *“The height of the building is excessive and presents as five (5) storeys along Pearce Avenue. The choice of ground floor level has resulted in a number of issues including:*

- *Projection of the basement by a storey above ground along Pearce Avenue*
- *The need for steps and ramps for circulation in communal open space*
- *Excessive breaching of the height limit*
- *Large expanses of blank walls along street frontages*
- *The height of the boundary wall impacts severely on the property to the north.*

The Panel recommends that:

- *Unit 3.01 is removed and replaced with a communal roof garden. As well as providing exemplary communal open space this will reduce the height of the building to Gover Street and Pearce Avenue and reduce the penetration into the building height plane*
- *The ground floor and basement levels be lowered by up to 1500mm. This will improve the frontage to the street on Pearce Avenue by reducing the level of prominent basement.*
- *The ramping on the western boundary be removed and the fire egress relocated. This area is then available for deep soil planting.*
- *The building entry should be further emphasised.*
- *Direct ground floor access from Gover Street be provided for units G01 and G02”*

Panel’s DA comment: *“The design has been adjusted so that the building no longer projects as far above the ground level, by way of stepping the building down from south to north as well as other measures. Unit 3.01 has been retained. However the roof terrace communal space has been increased and is satisfactory. Direct ground floor access is provided from Gover Street”.*

Assessing Officer’s comment: Satisfactory.

DENSITY

Panel’s Pre-DA comment: *“The density is appropriate for the context subject to the above comments”*

Panel’s DA comment: *“No further comment”.*

Assessing Officer’s comment: Satisfactory.

SUSTAINABILITY

Panel’s Pre-DA comment: *“Ensure that water collection or detention is in the basement and or beneath paved areas, rather than in the deep soil or soft landscape.*

Panel’s DA comment: *“Requires confirmation”.*

Assessing Officer’s comment: On site detention is located within basement.

LANDSCAPE

Panel’s Pre-DA comment: *“At pre-DA stage the landscape design has not yet been developed. The Panel recommends that the development of the landscape design address: The location of ground floor communal open space. This should not compromise the amenity of bedrooms or private open space. It should be easily accessible and visible from apartments and ideally the entry foyer. Selection of large tree species for deep soil areas including feature tree planting and substantive deep soil planting to support the development of the streetscape. Street tree planting to Gover Street. Planting along the western boundary to support separation between the development and the neighbouring single dwelling. Avoiding ‘weeds and walls’ in the streetscape by minimising level changes and isolated areas of soft landscape, instead incorporating into private open space. Appropriate fencing/hedging of front courtyards which provides screening and retains visual connection with the street. Footpaths to both street verges. Provision of a communal roof garden in lieu of Unit 3.01. This area must have a tangible program of use that provides recreational options and amenity for different user demographics including shade, bbq, seating and planting”.*

Panel's DA comment: *“Generally comments above have been addressed. Following changes should be made: Provide large trees on the southern boundary adjacent to the communal open space and in the lawn area (2 minimum in addition to trees already provided). Substitute Water Gums on front boundary with larger species with taller trunks to allow views and light under the canopy to courtyard and living spaces. Roof top communal space should be modified to allow for small enclosed area with kitchenette facilities, adjacent to the lift lobby/stair access”.*

Applicant's response: Amendments incorporated within the amended plans.

Assessing Officer's comment: Amendments undertaken to satisfy the Panels requirements.

AMENITY

Panel's Pre-DA comment: *“The applicant should refine the layout of Units G02 and 102 and 202 to improve furniture layout and circulation. This may require relocating media, study and laundry spaces. Unit G02 should be amended to include a window to improve solar access.”*

Panel's DA comment: *“It is recommended that the wall and door for Unit 3.01 be relocated to the east so that the corridor is extended to the front door and the blank wall adjacent to the communal open space becomes a glazed wall to allow for light into the corridor and borrowed light to Unit 3.02. The ceiling of the corridor to Unit 3.01 could be lowered to enable a highlight window into Unit 3.02. The window referred to above has not been provided in Unit G02.*

The extent of glazing to the small space in front of the lift on the south side at Levels 1 to 3 (inclusive) appears excessive”

Applicant's response: Minor amendments through amended proposal incorporating the above design changes.

Assessing Officer's comment: The applicant has undertaken design changes to satisfy the requirement of the panel and this principle.

SAFETY

Panel's Pre-DA comment: *“Extensive blank walls may attract graffiti. Otherwise no comments”.*

Panel's DA comment: *“satisfactory”*

Assessing Officer's comment: Satisfactory.

HOUSING DIVERSITY AND SOCIAL INTERACTION

Panel's Pre-DA comment: *“The Panel supports affordable housing ambition except in circumstances where this leads to exceedance of controls and impacts on the amenity of open space. Refer to comments above”*

Panel's DA comment: *“Satisfactory”*

Assessing Officer's comment: Satisfactory.

AESTHETICS

Panel’s Pre-DA comment: “Refer to comments under ‘built form’ above regarding the streetscape and basement protrusion. Otherwise acceptable”.

Panel’s DA comment: “Satisfactory”

Assessing Officer’s comment: Satisfactory.

The Panel commented that “The matters raised by the Panel at the Pre-DA meeting of 8 February 2018 have been satisfactorily resolved, leaving only a number of minor matters to be addressed. The Panel’s comments on the DA submission have been added to the previous report to assist in comparing the current design with the Pre-DA design”.

The Panel provided the following recommendation that “That Panel supports the application subject to the issues raised above being resolved. The application satisfies the design quality principles contained in SEPP 65”

Clause 28 – Consideration of Apartment Design Guide

26. The following table provides an assessment against the key design criteria of the Apartment Design Guide.

Clause	Standard	Proposal	Complies
Objective 3D-1	Communal open space has minimum area equal to 25% of site area	(24.3%) 188sqm communal open space provided on both the ground level (110sqm) and roof top (78sqm)	Yes (1), conditioned to comply with the increase of communal open space on the ground floor as part of design change prior to issue of Construction Certificate.
	50% direct sunlight to principal usable part of communal open space area for minimum of 2 hours between 9am and 3pm at mid-winter	More than 50% of the communal open space receives 2 hours solar access due to location and north west orientation aspect	Yes
Objective 3E-1	Minimum 7% deep soil zone	The proposal provides over 7% deep soil located within the rear north west corner (ground floor communal open space) and Pearce Avenue front setback.	Yes
	Deep soil zone to have minimum 3m dimension	Minimum dimension 3m	Yes
Objective	Up to 4 storeys: Minimum	4 storeys proposed	Yes

3F-1	<p>setback to adjoining allotment boundary:</p> <ul style="list-style-type: none"> Habitable rooms: 6m Non-habitable: 3m <p>Additional 3m separation required where sites adjoin a low density residential zone.</p>	<p>Variations to side setbacks proposed. Refer to discussion.</p> <p>The subject site is note located at a zone interface.</p>	<p>No (2)</p> <p>Yes</p>
Objective 3J-1	<p>For sites within 800m of a railway station in 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 prescribed by the relevant council, whichever is less.</p> <p>This results in a requirement of spaces (11 residential 3 visitor) as per HDCP No 1. (See detailed discussion under HDCP No1 assessment below).</p>	<p>The proposal provides compliant levels of on-site car parking as previously discussed within this report.</p>	<p>Yes</p>
Objective 4A-1	<p>Living rooms and private open spaces of at least 70% of dwellings to receive minimum of 2 hours of direct sunlight between 9am and 3pm at mid-winter</p>	<p>72.7% (8 of the 11) units compliant.</p>	<p>Yes</p>
	<p>Maximum 15% of apartments receive no direct sunlight between 9am and 3pm at mid-winter</p>	<p>27.27% (3 of the 11) units receive no direct sunlight between 9am and 3pm</p>	<p>No (3)</p>
Objective 4B-3	<p>60% of apartments to be naturally cross ventilated</p>	<p>63.63% (7 of the 11) units are naturally cross ventilated</p>	<p>Yes</p>
Objective 4C-1	<p>Minimum ceiling height of 2.7m for habitable rooms and 2.4m for non-habitable rooms</p>	<p>2.7m minimum achieved for all floors</p>	<p>Yes</p>
Objective 4D-1	<p>Apartments to have the following minimum internal areas:</p> <ul style="list-style-type: none"> 1-bed: 50sqm 2-bed: 70sqm 	<p>52-58sqm 78sqm – 93sqm</p>	<p>Yes</p>

	Additional bathrooms increase the requirement by 5sqm.		
Objective 4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height	Compliant room depths proposed.	Yes
	In open plan layouts the maximum habitable room depth is 8m from window	Maximum habitable room depth is 6.2m.	Yes
Objective 4D-3	Master bedrooms have minimum area of 10sqm and other bedrooms 9sqm excluding wardrobe space	More than 10sqm for master bedrooms and 9sqm for other rooms.	Yes
	Bedrooms have a minimum dimension of 3m excluding wardrobe space	Minimum dimensioned 3m.	Yes
	Living rooms or combined living/dining rooms have a minimum width of 4m for 2 and 3 bedroom apartments	Minimum width greater than 4m.	Yes
Objective 4E-1	All apartments are required to have primary balconies as follows: <ul style="list-style-type: none"> • 1 bedroom: 8sqm, min 2m min depth • 2-bed: 10sqm area and 2m depth 	More than 8sqm; min depth 2m; More than 10sqm ; Min depth 2m.	Yes Yes
	Ground level apartments to provide minimum private open space area of 15sqm with minimum depth of 3m	Unit G.01. G02 and G.03 contain private open space of more than 15sqm.	Yes
Objective 4F-1	Maximum number of apartments off circulation core on a single level is 8	Ground floor: 3 units; Level 01: 3 units; Level 02: 3 units; Level 03: 2 units;	Yes
Objective 4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: <ul style="list-style-type: none"> • 1-bed: 6 cubic metres • 2-bed: 8 cubic metres 	Storage provided within each unit in accordance with the provisions of the SEPP.	Yes

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(1) Communal Open Space

Objective 3D-1 states that Communal open space has minimum area equal to 25% of site area. The proposal seeks (24.3%) 188sqm communal open space provided on both the ground level (110sqm) and roof top (78sqm). It is considered that there is scope for increasing communal open space within the rear south-west corner to comply to 25%. A condition has been imposed to this effect to improve the residential amenity of future occupants on site.

(2) Setbacks

Objective 3F-1 states that Up to 4 storeys: Minimum setback to adjoining allotment boundary:

- Habitable rooms: 6m
- Non-habitable: 3m

The proposal for a four (4) storey residential flat building seeks variations to setbacks as detailed as per below;

Prescribed setback	Proposal
Western side boundary <ul style="list-style-type: none"> • Habitable rooms: 6m • Non-habitable: 3m 	4.54m – 5.38m 2.45m (fire stairs)
Northern side boundary <ul style="list-style-type: none"> • Habitable rooms: 6m • Non-habitable: 3m 	2.67m – 5.02m 4.7m

Despite the prescribed variations sought it is considered that the proposal incorporates; appropriate offsets, highlight windows and privacy screens to minimise impacts to adjoining properties. An additional condition is imposed for the kitchen windows along the south west side elevation are amended for highlight windows with a minimum sill height of 1.8m to protect the amenity of 42 Gover Street, Peakhurst.

(3) Solar access

Objective 4A-1 states that maximum 15% of apartments receive no direct sunlight between 9am and 3pm at mid-winter. The proposal seeks a variation to this by proposing 27.27% (3 of the 11 units) receive no direct sunlight between 9am and 3pm. This is considered to be reasonable given the east-west orientation of the site and relatively low number of units. The unit configuration and layout is considered to be appropriate given the site orientation and dimensions.

Comment: The amended proposal is considered to adequately satisfy the Design Quality Principles of the SEPP and achieves a reasonable built form given the site and immediate medium density residential context.

Draft Environmental Planning Instruments

27. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. 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.

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

Any other matters prescribed by the Regulations

28. The Regulations prescribe no other matters for consideration for the proposed development.

Development Control Plans

29. Hurstville Development Control Plan No.1 (HDCP) applies to the proposed development. The development's compliance with the numerical controls in HDCP No.1 is discussed in the following table.

Section 3.0 General Planning Consideration

Section 3.1 Vehicular Access and Parking and Manoeuvring

30.

Section 3.1	Requirements	Proposal	Complies
General			
Layout, Circulation, Access and Egress	DS1.5 Refer to AS 2890.1 2004 and AS2890.2 Part 2 for the design and layout of parking facilities.	Proposal meets Australian Standards.	Yes
	DS1.6 Council does not encourage, but may consider stacked parking for parking spaces in a controlled parking situation which: a. allows no more than two cars in the stacked parking arrangement; b. is likely to maintain a very low turnover; or c. is able to function easily within the management of the site's future operation.	No stacked car parking arrangement proposed.	Yes
Stencilling of Street and Driveways	DS1.7 All driveways in Hurstville are to be finished in plain concrete.	Driveway to be plain concrete.	Yes
	DS1.8 In streets which have brick paved surfaces, driveways are constructed to Council's Engineering Specification including a concrete base with matching brick paving surface.	Surrounding area generally comprises of concrete.	Yes
Ramps, Transitions and Driveways	DS1.9 Alignment levels for all points of vehicular access must be obtained prior to submission of a development application. These levels will be made available by Council's Engineering Department following the payment of the appropriate fee. Note: Ramp grades are to be designed in accordance with	Supported by Council's traffic section.	Yes

	AS/NZS 2890.2 2004 Part 2.		
	<p>DS1.10</p> <p>The AS/NZS 2890.1 2004 Ground Clearance Template is to be used as follows:</p> <p>a. prepare a longitudinal section of the grade change or irregularity to natural scale, and to the same scale as the template – scale to be 1:20</p>	Proposal complies with the Australian Standards.	Yes
Underground/Base ment Parking Areas	<p>DS1.11 D</p> <p>Underground parking areas are to be concentrated under building footprints so as to maximise deep soil landscaping.</p>	The proposal was amended to contain underground parking below building footprint to maximise deep soil.	Yes
	<p>DS1.12 S</p> <p>Driveways to underground car parks are to be designed so as to minimise the visual impact on the street, and to maximise pedestrian safety. Pedestrian access to the development should be separate and clearly defined.</p>	Driveway located parallel with north-west side boundary.	Yes
	<p>DS1.13 S</p> <p>Access ways to underground car parking areas is to be located away from doors and windows to habitable rooms wherever possible.</p>	Appropriate locations proposed which are located away from habitable spaces.	Yes
	<p>DS1.14</p> <p>Basement car parking is preferable in commercial and residential flat buildings.</p>	Amended basement car parking is located below residential flat building footprint.	Yes
	<p>DS1.15</p> <p>All underground parking areas are to have security doors. Where mechanical ventilation is proposed the motor room and exhaust shafts are to be shown on the development application plans.</p>	Security doors proposed and to be mechanically ventilated. Conditioned to comply with BCA.	Yes
Parking for People with a Disability	<p>DS1.16</p> <p>Parking complies with AS 1428 Design for access and mobility and AS/NZS 2890.6.</p>	Proposal complies with Australian Standards.	Yes
	<p>DS1.17</p> <p>The provision of parking areas for drivers with a disability is an</p>	Two (2) accessible spaces provided.	Yes

	important consideration in any development. Council encourages the provision of parking for those with a disability beyond the minimum requirements of the Australian Standards.		
Car Washing Area	DS1.19 A designated car washing area (which may also be a designated visitor car space) is required for service stations and residential developments of four or more dwellings.	Car wash bay provided within visitor space.	Yes
	DS1.20 Car wash bays which collect waste water must be covered and discharge the water to the sewer in accordance with the requirements of Sydney Water.	Standard conditions regarding car wash bays imposed.	Yes
Environmental Design	DS2.1 Proposals for parking areas are to be accompanied by a landscape plan, prepared by a qualified landscape architect or designer, illustrating means to soften the visual impact of parked cars and any associated structures, as per these landscaping controls.	Appropriate basement car parking provided/ Council's Consulting arborist has supported the proposal.	Yes
	DS2.2 Significant environmental features within the land such as rock outcrops, benches and trees are to be retained as a landscaped feature of the parking area.	As above.	Yes
	DS2.3 Council considers that landscaping needs to be included in every car parking design, within and on the perimeters of the car parking area. Accordingly, the following is required: a. planting beds fronting a street or public place are to have a minimum width of 1 metre b. shade trees are to be provided in open parking areas at the ratio of 1 shade tree for every 6 spaces	Landscaping proposed is supported by Council's Consulting arborist.	Yes

	c. plants to avoid are those which have a short life, drop branches, gum or fruit or those which interfere with underground pipes		
	DS2.4 Parking areas are to incorporate a 150mm concrete kerb or edge treatment to reduce the likelihood of vehicles damaging adjoining landscaped areas. The use of bollards should also be considered.	Can be conditioned.	Yes
Drainage	DS2.5 All parking areas are to have adequate drainage for runoff and seepage. Council requires that minimum gradients be provided in car parks.	Adequate drainage provided and is supported by Council's Development Engineer.	Yes
	DS2.6 A detention tank or pipe with reduced outlet should be offered, preferably integrated with a pollution trap. Parking areas may provide for temporary detention of water to a maximum depth of 150mm to reduce the velocity of stormwater run-off. Such parking areas are to be designed to provide pollution traps around the perimeter so as to reduce the impact of pollutants on the water quality of downstream watercourses. See Council's Drainage Code for further information.	On site detention located within basement. Council's Development Engineer supports the proposal.	Yes
Streetscape	DS2.7 Proposals for multi-level car parking areas are to provide a facade at the street frontage which is consistent with the streetscape and character of adjacent development.	Single level of basement car parking proposed.	Yes
	DS2.8 If a proposed parking area adjoins a residential property Council requires fencing and/or mounding to be included in the landscaping proposal to protect the privacy of the residential property and reduce noise.	Acceptable landscaping proposed.	Yes
Safer By Design			

	<p>DS3.1 On-site parking spaces are to be located in areas visible from nearby habitable windows, entrances, public spaces etc.</p>	<p>On site car parking layout is considered to be appropriately located and designed in relation to access points.</p>	<p>Yes</p>
	<p>DS3.2 On-site driveways are to provide an unobstructed view of passing pedestrians and vehicles.</p>	<p>Good sight lines provided to the street.</p>	<p>Yes</p>
Safety	<p>DS3.3 Sloping ramps from car parks, garages and other communal areas are to have at least one full car length of level driveway before they intersect pavements and carriageways.</p>	<p>Compliant car parking provided.</p>	<p>Yes</p>
Security	<p>DS3.7 The intensity of lighting in the entranceway to covered or underground car parks is to be graded from the most bright (at the entrance proper), to minimum levels of accepted illumination (away from entrances), to allow for the gradual adjustment of driver/pedestrian "light" vision.</p>	<p>Can be conditioned</p>	<p>Yes</p>
Pedestrians and Car Park Layouts	<p>DS3.8 To help minimise the likelihood of conflict when sites have both pedestrian and vehicular access, the following is required: a. parking areas are to be designed so that through traffic is either excluded or appropriately managed b. pedestrian entrances/exits are to be separated from the vehicular entrances/exits (parking spaces must not obstruct required exit doors) c. developments generating a significant amount of pedestrian movement throughout the car park (such as shopping centres or office parks) are to establish clear and convenient pedestrian routes. These routes should minimise the number of points which cross vehicle paths and be appropriately marked to heighten</p>	<p>Car parking design and pedestrian layout have been appropriately designed.</p>	<p>Yes</p>

	driver awareness (e.g. painting, use of contrasting materials, lighting and/or signage).		
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Section 3.3 Access and Mobility

31.

Section 3.3	Requirements	Proposal	Complies
Residential Flat Buildings including conversion of industrial buildings and shop top residential developments.	In developments containing five or more dwellings, a minimum of one adaptable dwelling, designed in accordance with relevant Australian Standards must be provided for every ten dwellings or part thereof.	Two adaptable units provided (G.03 and 3.01).	Yes
	Two accessible units required.		
	Access for all persons through the principal entrance and access to any common laundry, kitchen, sanitary or other common facilities in accordance with relevant Australian Standards.	Adequate access provided.	Yes
	One accessible parking space for every adaptable dwelling designed in accordance with Australian Standards.	Two accessible spaces provided within basement level.	Yes
	Two accessible spaces required.		

Section 3.4 Crime Prevention Through Environmental Design

32. The proposal is considered to satisfy the intent of this subsection by providing passive natural surveillance to and from the street by way of the window and balcony location and outlook. The ground floor units are located above natural ground level and semi-transparent front fencing is proposed to provide clear sight lines. The proposed vegetation is of an appropriate nature and maturity height to allow for casual surveillance opportunities. The proposed design and layout does not result in any adverse impacts given the siting of the communal open space on the ground floor and communal open space on the roof top. Given the above the proposal results in an acceptable built form in relation to crime prevention through environmental design principles.

Section 3.5 Landscaping

33. The proposal provides acceptable landscaping in accordance with the requirements of this subsection. The proposal is supported by Council's consulting arborist who has assessed the landscaping and tree impacts of the proposal.

Section 3.7 Stormwater

34. The proposal seeks to drain to the street with on-site detention proposed within the basement. Council's Development Engineer has reviewed the proposal and supports the proposal subject to conditions of consent. The amended plans sought to reduce the

building print of the basement towards the west corner however does not seek to increase the size of the original building footprint.

Section 4 Specific Controls for Residential Development

35.

Control	Provision	Proposal	Complies
GENERAL CONTROLS			
PC1 Neighbouring Character	DS1.1. The development application is supported by a Statement of Environmental Effects that:	Statement of Environmental Effects includes satisfactory neighbourhood and site description and context.	Yes
	a. includes a satisfactory neighbourhood and site description, including the identification of the key features of the neighbourhood and site.		
	b. shows how the siting and design response derives from and responds to the key features identified in the neighbourhood and site description.	The proposal has provided an analysis of the surrounding area.	Yes
	c. demonstrates that the residential development proposal respects the existing or desired neighbourhood character and satisfies objectives of the zone in the LEP.	Detailed within the SEE.	Yes
PC2 Site Frontage	DS2.1. The minimum street frontage is 24m Note: minimum street frontage may be reduced where development is proposed on an isolated site.	27.43m frontage to Gover Street.	Yes
PC3 Isolated Sites	DS3.1. Where a site is isolated (refer Figure 3 and Figure 4), Council will consider on merit an application for a Residential Flat Building which does not meet the minimum street frontage requirement contained in	The site is considered not considered to be isolated.	Yes

	<p>this DCP.</p> <p>DS3.2. Where an application for a Residential Flat Building will result in the creation of an isolated site, the applicant must show that reasonable efforts have been made to amalgamate the site. Where this has not been achieved, it must be shown that the isolated site is capable of accommodating a suitable development in the future. In order to satisfy this requirement the applicant must provide:</p> <p>a. evidence of offers made to acquire the site to be isolated (e.g. correspondence including responses to offers) based on at least two independent valuations. These valuations must be based on the site to be isolated forming part of the development site. b. a schematic design which demonstrates how the isolated site may be developed</p>	<p>As above, the applicant has provided a conceptual schematic diagram to illustrate that a residential flat building could be located on 42 Gover Street, Peakhurst.</p> <p>Evidence of offers and valuation provided to 42 Gover Street, Peakhurst with no response received.</p>	<p>Yes (1)</p> <p>Yes</p>
PC4 Building Height	<p>DS4.1. The maximum building height is in accordance with the Hurstville LEP 2012 and 3 storeys.</p>	<p>The proposal seeks a variation this clause by proposing a part 4 and part 3 storey building.</p>	<p>No (2)</p>
PC5 Excavation	<p>DS5.1. The natural ground level is not excavated more than 0.5m for the finished ground floor level.</p>	<p>Ground floor levels are located above natural ground level.</p>	<p>Yes</p>
PC6 Setbacks	<p>DS6.1. The minimum setback to a primary or secondary street is 6m. Note: Setbacks to the side and rear boundary and building separations are to</p>	<p>5.52m along Pearce Avenue, 5m to Gover Street.</p>	<p>No (3)</p>

	<p>be provided in accordance with the design criteria in the Visual Privacy section of the Apartment Design Guide (ADG).</p> <p>DS6.2. An articulation zone allowing for lightweight elements such as eaves, sun-hoods, blade walls, battens and the like may intrude up to 1m within a road boundary setback for a maximum of 25% of the horizontal distance of the total facade.</p>	<p>Articulation zone exceeds 1m and extends up to 3m to the Gover Street front setback and m to the Pearce Avenue front setback.</p>	<p>No (4)</p>
<p>PC7 Vehicle Access, Parking and Manoeuvring</p>	<p>DS7.1. Car parking is provided on site in accordance with the following rates:</p> <p>a. 1 resident space for every studio, 1 or 2 bedroom dwelling developments of 4 dwellings or more, one visitor space per 4 dwellings or part thereof</p>	<p>Thirteen (13) car parking spaces provided on site in the form of eleven (11) residential spaces and two (2) visitor spaces.</p>	<p>Yes, provisions of SEPP (ARH) 2009 prevail over Council's DCP</p>
<p>PC8 Landscape Open Space</p>	<p>DS8.1. The minimum amount of landscaped open space is 20% of the site area.</p> <p>DS8.2. The minimum dimension of landscaped open space is 2m in any direction.</p> <p>DS8.3. Landscaping between the front of buildings and the street boundary achieves a balance between reducing the visual impact of building when viewed from the street and facilitating passive casual surveillance of the street.</p> <p>DS8.4.</p>	<p>More than 20% landscaped area provided.</p> <p>2m minimum dimension.</p> <p>Appropriate landscaping provided in accordance with Clause.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	A development application is to be supported by a landscape plan prepared by a qualified person addressing the performance criteria and design solutions and in particular addressing areas of communal open space and areas that are visible from the street.	A landscape plan has been prepared by a Landscape Architect with good levels of planting proposed within the ground floor communal area, rooftop communal area and within the primary and secondary front setbacks.	Yes
PC9 Solar Access	<p>DS9.1. Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00 am and 3.00 pm on 22 June. Note 1: development applications are to be supported by shadow diagrams demonstrating compliance with this design solution. Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation.</p>	3 hours solar access achieved to neighbouring properties.	Yes
PC10 Noise	<p>DS10.1. Windows of adjacent dwellings are separated by a distance of at least 3m Note: this can be achieved by an offset.</p> <p>DS10.2. Site layout separates active recreation areas, parking areas, vehicle access-ways and service equipment areas from bedroom areas.</p> <p>DS10.3. Dwellings are designed so that the internal noise level from outside sources does</p>	<p>Windows are separated by at least 3m.</p> <p>Car parking layout and driveway are positioned to minimise impacts to bedrooms.</p> <p>Can be conditioned.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>not exceed the parameters established by the NSW Environment Protection Authority (EPA).</p> <p>DS10.4. Habitable rooms located within 60m of a railway or facing a classified major road satisfy the acoustic criteria contained within the NSW Government's Development Near Rail Corridors and Busy Roads – Interim Guideline (2008), or the most recent version</p> <p>DS10.5. Where development is likely to be subject to noise from a railway line, arterial or state road or Sydney airport flight path, council may require the submission of a report prepared by a qualified acoustic engineer to demonstrate that internal noise levels will be acceptable.</p>	<p>Located more than 60m away from a major classified Road.</p> <p>The site is not within close proximity to a railway line, arterial or state road or Sydney Airport flight path.</p>	<p>Yes</p> <p>Yes</p>
PC11 Streetscape	<p>DS11.1. Development on corner sites addresses both street frontages and provides opportunities for passive casual surveillance of the public domain from main living areas and principal private open space through the use of large transparent windows and other openings.</p> <p>Note: Large expanses of blank, unarticulated walls on any street frontage is not supported.</p> <p>DS11.2. In more urban streetscapes, development emphasises corners by</p>	<p>The proposal is considered to appropriately address both Gover Street and Pearce Avenue.</p> <p>All walls are appropriately modulated, articulated and detailed with contemporary design elements.</p> <p>The proposal has adopted a built form which reinforces the</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>increased scale or massing treatments compared to the remainder of the building.</p> <p>Note: compliance with maximum building height under the LEP must be achieved in these situations.</p> <p>DS11.3. Roofs:</p> <ol style="list-style-type: none"> have a pitch of up to 350, or up to 450 where an attic is involved provide a varied shape with hips, gables or other forms mark the entrance to a building by the use of a porch, portico or similar element. <p>DS11.5. To reduce the appearance of building bulk and provide visual interest through articulation, maximum wall length in one plane is 6m at the street frontage Note: Lengths greater than this may be acceptable where the elevation incorporates visually significant changes in massing and form and the use of articulation such as recesses, projections, balconies, blade walls and similar</p>	<p>corner adopting a 4 storey element along Gover Street and Pearce Avenue. As detailed earlier within this report, the proposal complies with the 12m height of building limit with the exception of the lift overrun only.</p> <p>The proposal seeks a flat contemporary roof design with design treatment to mark the entrance of the building from Gover Street.</p> <p>Unrelieved wall lengths do not exceed 6m as the proposal incorporates modulation to break up the visual bulk using contemporary architectural cues.</p>	<p>Yes</p> <p>Yes</p>
PC12 Stormwater	DS12.1. Stormwater management is in accordance with section 3.7 of this DCP	The proposal seeks to drain to Council's existing infrastructure and is supported by Council's development engineer subject to conditions of consent.	Yes
PC13 Front Fencing	DS13.1. Fencing is in accordance with Appendix 2 – Fences Adjacent to Public Roads	The front fences are located a minimum 2m from the front boundary. The design of the fences	Yes

		<p>comprise of bottom half masonry with semi-transparent horizontal timber slats to a maximum height of 1.8m. Significant landscaping and embellishment are located forward the proposed front fencing which provides a soft landscape transition within the front setbacks.</p>	
<p>PC14 Site facilities</p>	<p>DS14.1. Electricity and telephone lines are provided underground unless there is the connection of electricity and telephone lines directly from the service pole to the fascia of the front dwelling.</p> <p>DS14.2. Mail and garbage collection areas are integrated into the overall design of the development.</p> <p>DS14.3. Development provides space for the storage of recyclable goods, either in the curtilage of each dwelling or in a central storage area in larger developments.</p> <p>DS14.4. A master TV antenna is provided for any development of more than two dwellings.</p> <p>DS14.5. Storage is provided in accordance with the design criteria of the ADG. Note: Storage in a basement means all non-habitable, secure (i.e.</p>	<p>Services to be provided in accordance with utility provider requirements.</p> <p>Mail collection is located along Gover Street and is well integrated with the development. Waste collection and storage located within basement level.</p> <p>Storage areas located south east corner of basement and suitable storage within each unit.</p> <p>Can be provided.</p> <p>Storage areas provided within basement in the form of designated storage areas and over head storage above car spaces.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>lockable) space located in a basement or similar underground part of a building or structure that is used solely for the purposes of domestic storage. The extent of the area is measured from the boundaries of its enclosure to the top of the building or structural slab above.</p> <p>DS14.6. Communal outdoor clothes drying facilities must be visually screened from the street.</p>	<p>Communal outdoor clothes drying facilities are located within the communal open space on the ground floor within the rear-west corner. Clothes drying facilities are not visible from the street</p>	<p>Yes</p>
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(1) Isolation

36. DS3.2 states that *“Where an application for a Residential Flat Building will result in the creation of an isolated site, the applicant must show that reasonable efforts have been made to amalgamate the site. Where this has not been achieved, it must be shown that the isolated site is capable of accommodating a suitable development in the future. In order to satisfy this requirement the applicant must provide:*

- a. evidence of offers made to acquire the site to be isolated (e.g. correspondence including responses to offers) based on at least two independent valuations. These valuations must be based on the site to be isolated forming part of the development site.*
- b. a schematic design which demonstrates how the isolated site may be developed”*

The applicant has provided documentary evidence in attempting to acquire 42 Gover Street which is zoned R3 Medium Density Residential and comprises of 593.62sqm. It is noted that during the assessment of the application, a representative on behalf of the owner of this property contacted Council and advised that verbal discussions had taken place however no formal agreement had been made.

Documentation from the applicant has been prepared letters of offer in an attempt to acquire 42 Gover Street on three separated occasions as per below;

13/03/2018	\$1,250,000
24/08/2018	\$1,275,000
29/08/2018	\$1,325,000

An indicative building design has been provided for Council’s consideration to understand how 42 Gover Street could be developed in isolation which is considered to be reasonable.

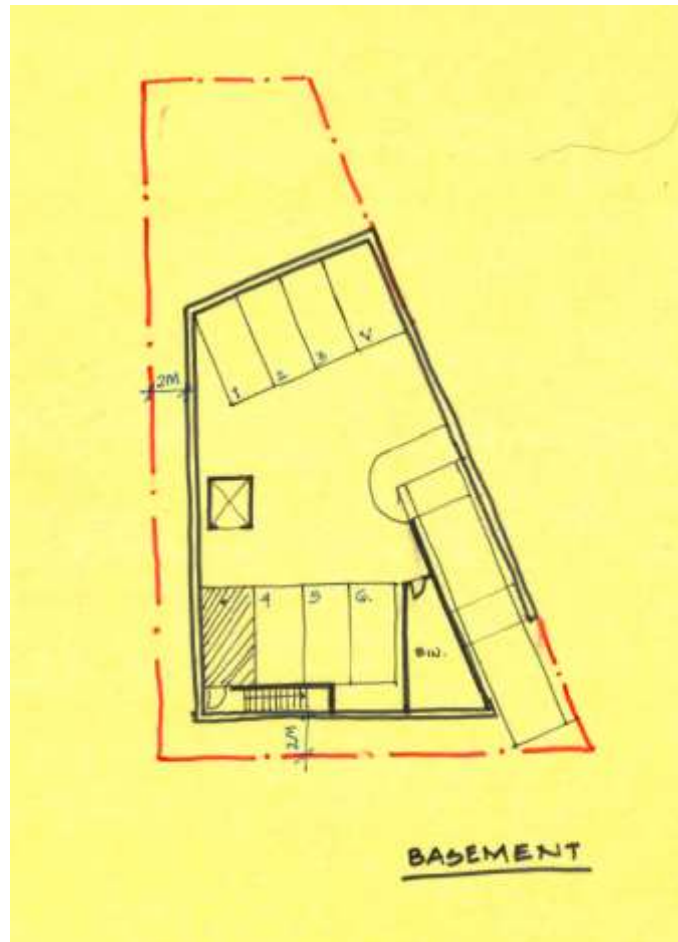


Fig 13. Image indicative basement layout of 42 Gover Street, Peakhurst

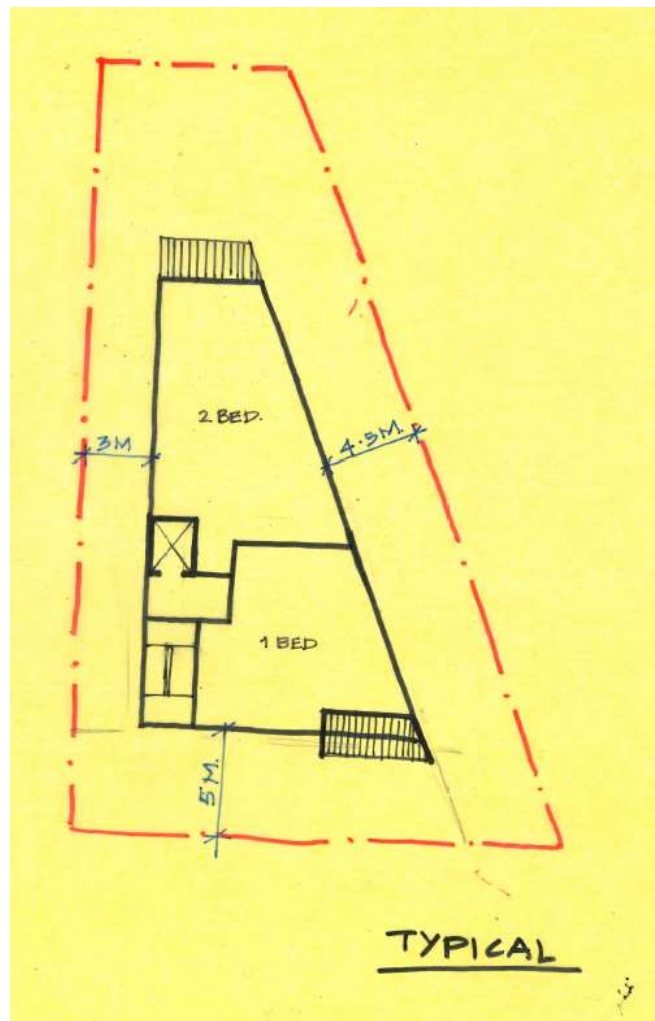


Fig 14. Indicative floor layout of 42 Gover Street, Peakhurst

Comment: The proposal will result in the isolation of 42 Gover Street which is located to the west. This forms a single storey dwelling house. Adjoining properties at 38-40 Gover Street and 15-17 Pearce Avenue contain recently constructed residential flat buildings. The applicant has provided a valuation to the owner at 42 Gover Street on three (3) separate occasions by registered post however no agreement has been made between the parties. It is noted that a submission was received by this adjoining property owner which raised the concern regarding “offers below market expectations” and “isolation” however no independent valuation has been provided to Council.

Notwithstanding the above, the applicant has produced an indicate scheme will illustrates the anticipated yield of what can be achieved next door resulting in a yield of six (2) units in the form over three floors with a composition of 3 x 1 bedroom and 3 x 2 bedroom units. This results in an FSR of 0.8:1 and would comfortably conform with the 12m height limit.

Additionally, the applicant has commented that an FSR of 0.94:1 could be achieved if four storeys were achieved which would comprise of 4 x 1 bedroom and 3 x 2 bedroom units, of this the top floor would consist of 1 bedroom.

Given the above, it is this is considered that 42 Gover Street could a reasonable development potential given its size and dimensions.

(2) Building heights

37. Clause DS4.1 states that “the maximum building height is in accordance with the Hurstville LEP 2012 and 3 storeys”. The proposal seeks a variation to this resulting in a built form of part 3 and part 4 storeys.

The applicant has provided the following justification as per below:

“The development generally satisfies the maximum height of 12m available under the LEP, with the exception of the lift overrun, stairs and parapet. The scale of the development is comparable to a range of 3-4 storey developments approved within the this located and the proposed built form will sit comfortably within the immediate context”

Comment: Council’s assessment indicates that the proposal complies with the maximum height of building of 12m with the exception of the lift overrun to which a Clause 4.6 Exception to Development Standard has been considered earlier within this report. The proposed built form, whilst adopting a built form of four storeys does not result in excessive cutting to accommodate the development, unreasonable overshadowing or amenity impacts and can comfortably be located on site. Council has previously approved part 4 storey built forms on sloping sites within the Peakhurst area to which share similar characteristics to the subject site. The extent of the variation is considered to result in a minor impact compared to strict numerical compliance. For the reasons above, the proposed variation is supported on planning merit.

(3) Setbacks

38. Clause DS6.1 states that “The minimum setback to a primary or secondary street is 6m. Note: Setbacks to the side and rear boundary and building separations are to be provided in accordance with the design criteria in the Visual Privacy section of the Apartment Design Guide (ADG).

The proposal seeks a 5.52m along Gover Street and 6m from Pearce Avenue. The applicant has provided the following justification;

“Setbacks along the Gover Street frontage are 5m, which is more in keeping with the setback of the adjoining dwelling at No. 42 and new development at 38-40 Gover Street.

The Pearce Avenue frontage has a 5m setback at the southern end which is a continuance of the Gover Street setback around the corner then steps back to approximately 6m for the remaining frontage of Pearce Avenue to complement the 6m setback of the adjoining development at 15-17 Pearce Avenue”.

Comment: The proposed front setback is considered to be compatible with the adjoining front setbacks within the visual catchment. The proposed variations to the prescribed minimum primary and secondary front setbacks are considered to be of a negligible impact.

(4) Articulation zone

39. DS6.2. states that “an articulation zone allowing for lightweight elements such as eaves, sun-hoods, blade walls, battens and the like may intrude up to 1m within a road boundary setback for a maximum of 25% of the horizontal distance of the total façade”.

Comment: The proposal seeks appropriate modulation, recesses and treatment along the vertical and horizontal planes which intrude up to 1.5m into the prescribed 6m front setbacks for the whole of the facade. This is not considered to result in any adverse visual bulk and scale but provide a distinctive character by reinforcing the corner of

Gover Street and Pearce Avenue. The proposal provides appropriate visual interest and avoid blank walls, the design and presentation to the street is considered to satisfy the intent of this clause. Good levels of landscaping are provided to embellish the front setbacks. It is noted that strict numerical compliance would result in a negligible material benefit, in the absence of significant material impacts, the proposal is supported on planning merit.

Given the above, variations sought to HDCP are not considered to be unreasonable given the negligible impact and the intention of the objectives has been satisfied.

IMPACTS

Natural Environment

40. The development is unlikely to have adverse impacts on the natural environment in relation to removal of trees, excavation and stormwater diversion.

Built Environment

41. The proposed development is unlikely to have adverse impacts on the built environment given the design and siting of the development on site and relationship to the adjoining residential built form context.

Social Impacts

42. The development would contribute additional housing stock within the locality in the form of 1 bedroom and 2 bedroom units. Furthermore two (2) units are proposed to be utilised for the purposes of affordable rental housing which is considered to result in a social benefit.

Economic Impacts

43. The proposal seeks development consent for a residential use, it is considered that the proposal will not result in any unacceptable economic impacts. The proposal does not result in an unreasonable isolation of No. 42 Gover Street, Peakhurst given that attempts to acquire this property by the applicant have been undertaken. Furthermore, it is considered that the applicant has demonstrated that a reasonable development could be achieved on this adjoining property.

Suitability of the Site

44. The proposal is considered to be suitable for the subject site for the reasons contained within this report.

Public Interest

45. The proposal is considered to be in the Public Interest for the reasons contained within this report.

SUBMISSIONS

46. The DA was advertised and notified to neighbours in accordance with Hurstville DCP No 1, for a period from 3–17 August 2018. In response, one (1) submission was received.

Note: Amended plans were received during processing of this DA, as mentioned previously, the extent of changes sought the reduction of building bulk and increasing of setbacks. This was not re-notified as this did not generate a greater impact than that of the original proposal.

Concerns within the submission have been addressed as per below;

Impact generated by privacy issues

Comment: General concerns were raised in relation to privacy issues generated by the proposal. The proposal seeks a south-west side boundary setback which ranges from 2.8m – 4.2m. The south-west elevation comprises of kitchen windows and screened balconies which are considered to be appropriate measures to minimise overlooking impacts to the adjoining western property. Furthermore, these kitchen windows are conditioned to form highlight windows to minimise impacts to adjoining No. 42 Gover Street.

Offer below market expectations

Comment: As previously addressed within this report, the applicant has provided documentation and a valuation in accordance with case law prior and during the assessment of the development application. It is noted that the objector has not provided a valuation in relation to relation to the value of their property.

Site isolation

Comment: As previously addressed within this report, the applicant has provided documentation through an indicative scheme to demonstrate that a residential flat building could be located on 42 Gover Street, Peakhurst.

REFERRALS

47. The DA was referred to a number of officers within Council. The comments of these officers are outlined as follows.

Council Referrals

48.

Environmental Health Officer

Council's Environmental Health Officer supports the proposal subject standard to conditions of consent.

Landscape Officer

Council's Consulting arborist supports the proposal subject to conditions of consent.

Traffic Engineer

Council's Traffic Engineer raises no objections to the proposal.

Stormwater

Council's Drainage Engineer supports the proposal subject to conditions of consent.

Building

Council's Building Officer supports the proposal subject to conditions of consent.

Section 94 Contributions

49. Section 94 Contributions have been applied to the development as per the corresponding table below.

Section 94 Contribution	Contribution
Open Space and Recreation	\$109,444.85
Community Facilities	\$15,478.36
Total	\$124,923.81

CONCLUSION

50. The proposal has been assessed using the matters for consideration listed in Section 4.15 and 4.16(1) (a) of the Environmental Planning and Assessment Act 1979.

Based on this assessment, the proposal is generally considered to be satisfactory for approval subject to appropriate conditions.

There are some areas of non-compliance with the applicable planning controls contained in Hurstville LEP 2012, Hurstville DCP No 1, as well as the Apartment Design Guide (ADG). However these areas of non-compliance are minor and justifiable as discussed throughout this report. The impact of these variations are considered to be minor.

DETERMINATION AND STATEMENT OF REASONS

51.

Statement of Reasons

- The proposed development is considered to be an appropriate scale and form for the site and is compatible with the local character.
- The proposed development, subject to the recommended conditions, will have no unacceptable adverse impacts upon the natural or built environments.
- The proposal will result in the provision of affordable rental housing in accordance with the objects of the Environmental Planning and Assessment Act 1979.
- 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

Determination

THAT:

- a) Georges River Local Planning Panel support the request for variation under Clause 4.6 of Hurstville LEP 2012, in relation to the Height of Building contained in Clause 4.3 of Hurstville LEP 2012.
- b) Pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979, Georges River Local Planning panel grant development consent to Development Application DA2018/0154 for demolition of existing, construction of four (4) storey residential flat building incorporating affordable rental housing comprising of eleven (11) units and one (1) basement level on Lot 143 DP 36317 and known as 13 Pearce Avenue, Peakhurst, subject to the following conditions of consent:

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
Demolition Plan	0100	18.4.18	01	Architecture and Building Works
Site Plan	1000	30.18.18	02	Architecture and Building Works
Basement Plan	1001	30.18.18	02	Architecture and Building Works

Level 01 and 02 Floor Plan	1002	30.18.18	02	Architecture and Building Works
Level 3 Floor Plan	1004	30.18.18	02	Architecture and Building Works
Roof Plan	1005	30.18.18	02	Architecture and Building Works
South East and North East Elevations	2001	30.18.18	02	Architecture and Building Works
North West and South West Elevations	2002	30.18.18	02	Architecture and Building Works
Post Adaptable Unit G.03	6001	30.18.18	02	Architecture and Building Works
Post Adaptable Unit G.03	6002	30.18.18	02	Architecture and Building Works
Material Sample	A-0002	Oct 2018		Architecture and Building Works
Landscape Plan	18-3696 L01-L02	22.11.18	A	Zenith
Waste Management Report				Architecture and Building Works
BASIX Certificate	916440M_02	30 November 2018		Max Brightwell

LPP002-19

SEPARATE APPROVALS REQUIRED UNDER OTHER LEGISLATION

2. **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 1.5m wide footpath for the full length of the frontage of the site in Pearce Avenue 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) 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.

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

3. **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) hoarding, in accordance with the requirements of Work Cover Authority of NSW, must be erected along that portion of property boundaries adjoining the footway. 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.
4. **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.

REQUIREMENTS OF CONCURRENCE, INTEGRATED & OTHER GOVERNMENT AUTHORITIES

5. **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.
6. **Electricity Supply** - An application is required to be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application being lodged with Ausgrid is required to be provided to the Certifying Authority prior to the issue of a Construction Certificate. For further details, you are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services).
7. **Sydney Water - Tap in TM** - The approved plans must be submitted to a Sydney Water Tap in TM to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in TM agent has appropriately stamped the plans prior to the issue of the Construction Certificate.
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/Subdivision Certificate.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

10. **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 Section 7.11 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	\$61,800.00
Inspection Fee for Refund of Damage Deposit	\$155.00
DEVELOPMENT CONTRIBUTIONS	
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Community Facilities)	\$15,478.36
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Open Space, Recreation, Public Domain)	\$109,444.85

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 7.11 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.

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.

11. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
12. **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 likely to 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.

13. **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) 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,

(b) 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.

14. **Pump-Out System Design for Stormwater Disposal** - The design of the pump-out system for storm water disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

(a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20 year storm;

(b) The pump system shall be regularly maintained and serviced, every six (6) months; and

(c) Any drainage disposal to the street gutter from a pump system must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Details and certification of compliance from a professional engineer specialising in civil engineering shall be provided for approval with the Construction Certificate application.

15. **Driveway Construction Plan Details** - Detailed engineering plans for the driveway shall be submitted with the Construction Certificate application for approval that show:

(a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.

(b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).

(c) The full length of the driveway designed with a minimum 150mm thick reinforced concrete and minimum of 2.7m wide pavement/kerb face to kerb face width, and a non-slip surface.

16. **Council Property Shoring** - Prior to the issue of the Construction Certificate, plans and specifications prepared by a professional engineer specialising in practising structural engineering must detail how Council's property shall be supported at all times.

Where any shoring is to be supporting, or located on Council's property, certified structural engineering drawings detailing; the extent of the encroachment, the type of shoring and the method of removal, shall be included on the plans. Where the shoring cannot be removed, the plans must detail that the shoring will be cut to 150mm below footpath level and the gap between the shoring and any building shall be filled with a 5MPa lean concrete mix.

17. **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.
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: **\$61,800.00**.
- (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: **\$150.00**
- (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. **Access for Persons with a Disability** - Access for persons with disabilities must be provided to the site, including to all foyer areas, basement carpark, required sanitary and kitchen facilities and allocated balconies 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.

In the event that full compliance cannot be achieved the services of an accredited access consultant is to be obtained to determine alternative methods of compliance, such a report must be submitted to and endorsed by the Principal Certifying Authority prior to issue of the Construction Certificate.

20. **Comment from FR NSW** - 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 hydrant facilities and any Fire Engineered Solution developed to meet the performance requirements under the Category 2 Fire Safety Provisions.

21. **Construction Traffic Management Plan** - A Construction Traffic Management Plan detailing:

- (a) construction vehicle routes;
- (b) anticipated number of trucks per day;
- (c) hours of construction;
- (d) Access arrangements; and
- (e) Proposed traffic measures to minimise impacts of construction vehicles

must be submitted for the approval of Council's Engineers. Council's Engineers must specify in writing that they are satisfied with the Traffic Management Plan prior to the issue of the Construction Certificate.

22. **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.

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.

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.

23. **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 1.0 metres wide and kept clear and unobstructed at all times.

Residential Waste

The development will require the provision of the following waste and recycling facilities:

- (a) Domestic Waste - 1 x 120 litre mobile bins per unit/dwelling. Usually provided as a 240 litre or 660 litre bin using this ratio.

(b) Domestic Recycling - 1 x 240 litre mobile bin per 3 units/dwellings.

(c) Green Waste - 1 to 2 x 240 litre mobile bins per unit block.

OR for Residential Flat Buildings and Mixed Use Developments only

Larger 1,100 litre mobile bins may be used as an alternative, but an equivalent amount of space will need to be provided. It is noted that the applicant intends to provide x 1100 litre mobile bins for domestic waste and x 1100 litre mobile bins for domestic recycling. These are considered to be adequate provided they are serviced in accordance with Council's current servicing requirements.

24. **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.

25. **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.

26. **Required design changes** - The following changes are required to be made and shown on the Construction Certificate plans:

Amendments made in red on approved plans	All changes made in red on the approved plans shall be updated and shown on the Construction Certificate plans.
Drainage	According to Hurstville DCP 1, Section 3.7.3, Part A for Development Requirements, development sites greater than 700sqm in area must discharge stormwater into Council's stormwater system. The site drainage shall be connected to Council's drainage kerb inlet pit located in front of the property. Please note that a drainage application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993 is required to get approval to connect to Council's drainage system. Stormwater connection details to the council's drainage kerb inlet pit. Rainwater tank, first flush device and water supply distribution details should be included in the stormwater plans. Basement sub soil drainage details. The plans shall show the correct street address and date of the plans.
Window Privacy	The kitchen windows along the south west side elevation are amended for highlight windows with a minimum sill height of 1.8m.
Communal Open Space	The ground floor communal open space within the rear north-west corner is to be increased in size to

27. **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 drainage kerb inlet pit 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) The underground basement car park must pump to and all other stormwater must drain by gravity to the OSD system.
- (d) 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.
- (e) 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.

28. **Stormwater Drainage Plan Details** - Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineering specialising in hydraulic engineering shall be submitted with the Construction Certificate application.

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's DCP.

29. **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.

30. **Geotechnical report** - 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 all 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 piered prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

31. **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.**

32. **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.
33. **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).
34. **Waste Management Plan** - A Waste Management Plan incorporating all 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.
35. **Landscape Plan** - A detailed landscape plan, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted prior to the issue of the Construction Certificate. The plan must include:
- (a) Location of existing and proposed structures, services and existing trees;
 - (b) Details of earthworks including mounding and retaining walls and planter boxes;
 - (c) Location of proposed plants and a plant schedule showing the plant symbol, botanical name/ common name; quantity; pot size/; and mature height x width.
 - (d) Details of planting procedure and maintenance;
 - (e) Landscape specification;
 - (f) Details of drainage and watering systems;
 - (g) Details of garden edging and turf; and
 - (h) Any required fencing, retaining walls and other structures not shown on other approved architectural and engineering plans.

36. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans. The landscaping shall be maintained in accordance with the approved plans in perpetuity.

37. **Tree Protection and Retention** - The following trees shall be retained and protected:

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres)
<i>Callistemon viminalis</i>	Council street tree fronting Gover Street	4 metres

General Tree Protection Measures

(a) All trees to be retained shall be protected before and maintained during demolition, excavation and construction of the site.

(b) The tree protection measures must be undertaken in accordance AS4970 -2009 Protection of trees on development sites.

(c) Details of the tree protection measures to be implemented, must be provided with the application for a Construction Certificate by a suitably qualified Arborist (AQF Level 5 or above in Arboriculture).

(d) The Arborist must be present on-site during the stages of construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone to implement the tree protection measures as required.

(e) Unless otherwise specified in AS 4970-2009 Protection of trees on development sites, a protective fence consisting of 1.8 metres high, fully supported chainmesh fence shall be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.

(f) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly, regularly, to minimise the effects of construction works.

(g) No services shall be installed within the TPZ of the tree unless approved by Council. This fence shall be kept in place during demolition, construction and also have a sign displaying 'Tree Protection Zone - DO NOT ENTER' attached to the fence and must also include the name and contact details of the Project Arborist.

Excavation works near tree to be retained

(h) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not adversely be affected.

(i) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

(j) Tree Protection Zone around the trees to be retained are not to have soil level changes or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

Details satisfying this condition shall be shown on the Construction Certificate plans.

Pier and Beams

(k) To preserve the *Callistemon viminalis*, the footings of the proposed front fence, shall be isolated pier and beam construction within a four (4) metre radius of the trunk. The piers shall be hand dug and located such that no roots of a diameter greater than 50mm are severed or injured in the process of any site works during the construction period. The beam shall be located on or above the existing soil levels.

Details of this construction method shall be shown on the Construction Certificate plans.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved. All pruning must be undertaken by a qualified Arborist in accordance with AS4373 -2007 Pruning of Amenity Trees and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).

38. Tree Removal & Replacement - Tree removal

Tree removal

Permission is granted for the removal of the following trees, in accordance with “Existing Tree Schedule”, upon Landscape Plan

Tree Species	Number of trees	Location
T2 - <i>Agonis flexuosa</i>	X1	Subject site, fronting Gover St
T3 - <i>Ficus elastic</i> (rubber tree)	X1	Back of existing dwelling
T4 - <i>Archontophoenix cunninghamiana</i> (Bangalow Palm)	X1	Back western fence of subject site
T5 - <i>Syagrus romanzoffiana</i>	X1	Northern fence line
T6 - <i>Casuarina Spp</i>	X1	Northern fence line
T7 - <i>Pittosporum undulatum</i>	X1	Northern fence line
T8 - <i>Cupressus sempervirens</i>	X1	Northern fence line
T9 - <i>Casuarina Spp</i>	X1	North east corner of existing dwelling
T10 - <i>Ceratopetalum gummiferum</i>	X1	Front lawn of property fronting Pearce St
T11 - <i>Chamaecyparis Spp</i>	X1	Boundary corner of subject site

General Tree Removal Requirements

(a) All tree removal shall be carried out by a certified Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - Pruning of Amenity Trees and Tree Works Industry Code of Practice (Work Cover NSW 1.8.98).

(b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

(c) Council shall be appointed to remove and plant all tree/s on public land. All costs associated with the removal of the tree/s and the planting of replacement trees shall be met by the applicant. Fees and charges outlined in the table below are subject to change and are set out in the current version of Council's 'Schedule of Fees and Charges', applicable at the time of payment.

A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy and Masterplan, can be downloaded from Council's website www.georgesriver.nsw.gov.au

PRIOR TO THE COMMENCEMENT OF WORK (INCLUDING DEMOLITION & EXCAVATION)

39. **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.

40. **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 carpark, structural engineer's details relating to the method of supporting Council's roadways/footways must be submitted to the satisfaction of Council.
41. **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.

42. **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.
43. **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.
44. **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 Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.

(f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.

(g) 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.

45. **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.

DURING CONSTRUCTION

46. **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
47. **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.
48. **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.
49. **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.

50. **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.
51. **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.
52. **Traffic Control Devices** – The internal road network, pedestrian facilities and parking facilities (including visitor parking and employee parking) shall be designed and link marked in accordance with Australian Standard – AS1742, Manual Uniform Traffic Control Devices.

If an existing from a car park utilises a pedestrian footpath, then a warning system such as flashing light and/or 'alarm sound' must be installed on the subject property to alert pedestrians of vehicles exiting the car park. The Alarm System must be designed and installed in accordance with AS2890.1-2004.

53. **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.

PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

54. **Use of Rooftop open space** – Prior to the issue of any occupation certificate a Plan of Management (POM) for use of rooftop open space must be submitted for approval of Council. The POM must outline the:
- (i) hours of use of the rooftop deck which shall be restricted from 8am until 10pm;
 - (ii) maximum number of users at any one time;
 - (iii) provisions for no amplified music to be played;

(iv) and identify other measures to ensure that the amenity of persons within the development and in nearby existing and future development is maintained.

(v) The approved POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision and a sign in the front entry of the building shall be included to ensure the use of this space is monitored and understood by all occupants.

55. **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.
56. **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 a qualified designer, 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](#).
57. **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:*

a) keep the system clean and free from silt, rubbish and debris

b) 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

c) 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

d) 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.

58. **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.

59. **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).
60. **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) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
 - (c) Construct any new vehicle crossings required.
 - (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
 - (e) 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.
 - (f) The construction of the driveway crossing shall be completed in accordance with the conditions and specifications of the Section 68 Activity Approval.
61. **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 [insert width or full width - boundary to kerb] metre wide footpath for the full length of the frontage of the site in 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 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.

62. **Completion of Major Works** - Prior to the issue of a Final Occupation Certificate, the following works must be completed at the applicant's expense to the satisfaction of Council's Engineering Services section:

(a) Stormwater pipes, pits and connections to public stormwater systems within the road related area;

(b) Driveways and vehicular crossings within the road related area;

(c) Removal of redundant driveways and vehicular crossings;

(d) New footpaths within the road related area;

(e) Relocation of existing power/light pole

(f) Relocation/provision of street signs

(g) New or replacement street trees;

(h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.

(i) New or reinstated kerb and guttering within the road related area; and

(j) New or reinstated road surface pavement within the road.

Council's Engineering Services Section must advise in writing that the works have been completed to their satisfaction prior to the issue of the Occupation Certificate. [Note: The damage deposit paid to Council will not be released until the works have been completed to Council's satisfaction.

63. **Restriction on use of land - Clause 17(1) SEPP (Affordable Rental Housing) - Infill Affordable Housing** - For ten (10) years from the date of the issue of the Occupation Certificate:

(a) The dwellings proposed to be used for the purposes of affordable housing, identified on the approved plans as Units G.01 and G.02, will be used for the purpose of affordable housing, and

(b) All accommodation that is used for affordable housing will be managed by a registered community housing provider.

A Restriction of Use of the Land is to be created using Section 88E of the Conveyancing Act 1919 over the subject property. This Restriction shall ensure that the requirements of Clause 17(1) of State Environmental Planning Policy (Affordable Rental Housing) 2009 are met and shall be worded as follows:

For a continuous period of ten (10) years from the date of issue of any occupation certificate (being an Interim or Final Occupation Certificate) the following Restrictions on the Use of the Land will apply:

- (i) The dwellings proposed to be used for the purposes of affordable housing, identified on the approved plans as Units, will be used for the purpose of affordable housing, and
- (ii) All accommodation that is used for affordable housing will be managed by a registered community housing provider.

This Restriction shall benefit Council and Council is to be nominated as the Authority to release, vary or modify this Restriction.

This Restriction on Use of Land shall be registered on the title of the land, prior to of the issue of any Occupation Certificate. Documentary evidence of the registration of this Restriction on title is to be supplied to the PCA with the application for any Occupation Certificate.

64. **Traffic Control Devices** - The internal road network, pedestrian facilities and parking facilities (including visitor parking and employee parking) shall be designated and line marked in accordance with Australian Standard - AS1742, Manual of Uniform Traffic Control Devices.

If an exit from car park utilises a pedestrian footpath, then a warning system such as flashing light and/or 'alarm sound' must be installed on the subject property to alert pedestrians of vehicles exiting the car park. The Alarm System must be designed and installed in accordance with AS2890.1 -2004.

65. **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.

66. **Stormwater drainage works - Works As Executed** - Prior to the issue of the Occupation Certificate, storm water 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;

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

(e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Council's Engineering Services section must advise in writing that they are satisfied with the Works-As-Executed prior to the issue of an Occupation Certificate.

67. **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.

68. **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 commercial/retail/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.
69. **Structural Certificates** -The proposed structure(s) 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.
70. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate (916440M_02 dated 30 November 2018) in the plans approved with the Development Consent, must be implemented before issue of any Occupation Certificate.
71. **Allocation of street addresses** - Prior to issue of an Occupation Certificate, All house numbering are to be allocated in accordance 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. Council must be contacted in relation to all specific requirements for street numbering.
72. **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 damaged 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.
73. **Allocation of car parking spaces** - Car parking associated with the development is to be allocated as follows:
- (a) Residential dwellings: 9
 - (b) Residential visitors: 2
 - (c) Car wash bay: 1 (shared with visitor space)
74. **BASIX Compliance Certificate** - A Compliance Certificate must be provided to the PCA regarding the implementation of all energy efficiency measures as detailed in the

approved BASIX Certificate (916440M_02 dated 30 November 2018) before any Occupation Certificate is issued.

75. **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 approved landscape plans and specifications, drawn By Zenith Landscape Designs, reference numbers - 18 - 3696, LO1 and LO2, in its entirety.

76. **Vehicular crossing - Minor development** - The vehicular crossing and/or footpath works shall be constructed by a private contractor at the expense of the applicant, in accordance with the Vehicular Crossing Approval issued by Council's Engineering Services Division and in accordance with Council's Specification for Vehicular Crossings and Associated Works and the issued.

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.

NOTE: No stencilled or coloured concrete may be used outside the boundary of the property.

The work must be completed before the issue of an Occupation Certificate.

OPERATIONAL CONDITIONS (ONGOING)

77. **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).

78. **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.

79. **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.

Flashing, moving or intermittent lights or signs are prohibited.

80. **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.

81. **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.
82. **Responsibility of Owners Corporation** - The Owners Corporation shall be responsible for presenting all approved waste and recycling receptacles for collection, and returning all receptacles to the Main Waste Collection Room, as soon as practicable after they have been serviced.
- The Owners Corporation shall also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory requirements, relevant health and environmental standards, and to the satisfaction of Council.
83. **Use of communal rooftop open space** – The use of rooftop communal space must not exceed 10.00pm seven (7) days a week in order to protect the residential amenity.
84. **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.

NOTES/ADVICES

85. **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.
86. **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.

87. **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.
88. **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 justify the non-compliances with a detailed report, suitable evidence and expert judgement.
89. **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.
90. **Noise - 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/nlg.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).
91. **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)

92. **Council as PCA - Total Conformity with BCA** - Should 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:

- a) Mechanical exhaust details for the carpark exhaust system.
- b) Fire-fighting services and equipment including hydrant services, fire doors, mechanical air handling system, portable fire extinguishers, emergency lights, exit signs and smoke hazard management systems.
- c) Fire resistance levels of all building elements including walls, floors, columns, top floor ceiling and roof, etc.
- d) Fire compartmentation and separation.
- e) The vertical separation of openings within external walls shall comply with the Spandrel requirements of Part C2.6(a)
- f) Provisions for escape from the residential unit levels shall be in accordance with Parts D1.4(a) of the BCA.

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.

ATTACHMENTS

Attachment [↓](#) 1  Revised Photomontage - 13 Pearce Avenue Peakhurst

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 07 FEBRUARY 2019**

LPP003-19

LPP Report No	LPP003-19	Development Application No	DA2018/0162
Site Address & Ward Locality	42 Herbert Street Oatley Blakehurst Ward		
Proposed Development	Demolition works, construction of a dwelling house and in-ground swimming pool		
Owners	Ms L Cordovado		
Applicant	Ms L Cordovado		
Planner/Architect	Planner: Planning Ingenuity (Author of Statement of Environmental Effects); Architect: Innovate Architects		
Date Of Lodgement	27/04/2018		
Submissions	A total of eleven (11) submissions have been received		
Cost of Works	\$2,548,000		
Local Planning Panel Criteria	Development 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))	Kogarah Local Environmental Plan 2012; Kogarah Development Control Plan 2013, State Environmental Planning Policy 55 – Remediation of Land, State Environmental Planning Policy (BASIX) 2004, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Coastal Protection) 2018, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, Draft State Environmental Planning Policy (Environment)		
List all documents submitted with this report for the Panel's consideration	Architectural Plans Clause 4.6 Request for Variation – Foreshore Building Line		
Report prepared by	Team Leader Development Assessment		

Recommendation	THAT the application be approved in accordance with the conditions included in this 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	Yes - the application has

<p>standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?</p>	<p>been accompanied by a request for variation of the Foreshore Building Line under Clause 6.4 of the Kogarah Local Environmental Plan.</p>
<p>Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p>Not Applicable</p>
<p>Conditions Have draft conditions been provided to the applicant for comment?</p>	<p>Yes – Report publicly available and published on Council website prior to meeting.</p>

Site Plan



Subject Site – 42 Herbert Street Oatley

EXECUTIVE SUMMARY

Proposal

1. The Development Application (DA) proposes demolition works and construction of a new dwelling house and in-ground swimming pool at 42 Herbert Street, Oatley.
2. The dwelling house is part two/three storeys in height, and it will present as single storey to the street (south elevation), and three levels to the north elevation (Oatley Bay), due to the steep slope of the site.

Site and Locality

3. The site has a street address of 42 Herbert Street, Oatley, and is legally described as Lot 2 DP557722. The property is located on the northern side of Herbert Street, and has a rear waterfront boundary to the Georges River (known as Oatley Bay).
4. The site has an area of 786.2sqm (by survey), and has a steep fall of approximately 14m from the front boundary (RL15.2) to the rear (RL1.29), with an average gradient of 1:4 or 25%.
5. The site currently contains a part one/two storey dwelling and carport (to be demolished as part of the current DA); and a detached fibro boat house to the rear of the site (to be retained as part of the proposal). There is also an existing timber jetty that provides access for the site to the Georges River.
6. The locality generally consists of detached dwelling houses in a low density residential setting, with steep topography and water views being typical of this location. Land immediately to the south (opposite Herbert Street) forms part of Oatley Bay Reserve which is public open space with a substantial coverage of vegetation.

Zoning and Permissibility

7. The subject site is zoned R2 Low Density Residential under Kogarah Local Environmental Plan 2012 (LEP 2012), with the proposed development being permissible with consent.

Submissions

8. The DA was notified to neighbours in accordance with the Kogarah Development Control Plan 2013 (DCP2013), a total of 11 submissions were received (two of which also had a separate submission from a Planning Consultant as an attachment).
9. In addition to notification of the original DA, amended plans have been re-notified throughout the DA processing. The number of submissions received for this DA are summarised as follows:
 - Original DA submission: three submissions;
 - Amended Plans (received August 2018): four submissions;
 - Amended Plans (received September 2018): four submissions.
 - Total submissions 11.
10. The following is a summary of the key points of objection raised in the submissions, and these will be discussed in more detail within the body of the report:
 - View loss impacts on 40 Herbert Street (to the west);
 - Compliance with Council's planning controls (in particular, height, floor space ratio and foreshore building line);
 - Lack of clause 4.6 requests for variation re the above controls;
 - Visual impact/visual bulk impacts on 40 Herbert Street;
 - Compliance with foreshore building line;
 - Concerns regarding the garage at front of the site;
 - Extent of earthworks; and
 - Tree removal.

Reason for Referral to the Local Planning Panel

11. The DA is referred to the Local Planning Panel for consideration, as the DA is subject to 10 or more unique submissions by way of objection as referenced in the s9.1 (EPA Act) Ministerial Direction of 23 February 2018.

Issues of Concern

12. The proposal has been assessed against the planning controls contained in Kogarah Local Environmental Plan (LEP) 2012 and Kogarah Development Control Plan (DCP) 2013. There are a number of areas of non-compliance with the planning controls:
- Minor encroachment to foreshore building line. This is supported by a clause 4.6 request for variation;
 - Requirement for second level not to extend beyond 60% of the depth of the allotment;
 - Maximum height (7.2m to underside of ceiling; 7.8m to parapet);
 - Primary building façade should not exceed 40%;
 - Minimum 1200mm side setback (to garage);
 - Garage dominance;
 - Driveway width;
 - Requirements for setbacks, width and area of proposed balconies/terraces;
 - Swimming pool requirements (including height out of ground).
13. Despite the areas of non-compliance, the proposal is considered to be acceptable as discussed within the body of the report. It is noted that under the provisions of the Environmental Planning and Assessment Act 1979 (Clause 4.15(3A)(b)) – the consent authority (Council) is required to be flexible in applying the provisions of a Development Control Plan, and allow reasonable alternative solutions that achieve the objects of those standards.
14. The areas of non-compliance are either justifiable having been resolved via amended plans throughout the DA process to date and/or can be addressed via conditions of consent for further amendments to be made.
15. The site has particular characteristics, namely a steep slope from the street to the rear boundary (Oatley Bay), and also this section of the Herbert Street frontage is unusual in so far as it is narrow in width servicing only properties 40-46 Herbert Street Oatley.
16. The numeric DCP non-compliances largely stem from the site characteristics, variations of the development controls contained in the Kogarah DCP 2013 are justifiable as the proposal generally meets the relevant objectives of the controls, and/or there is minimal impact on any neighbouring property or the public domain.

Conclusion

17. The proposal has been assessed against the Matters for Consideration under Part 4.15 of the Environmental Planning and Assessment Act 1979, and is recommended for approval subject to conditions.

REPORT IN FULL

Proposal

18. The DA proposes demolition works and construction of a new dwelling house and in-ground swimming pool.

19. The new development proposes a part two/part three storey development. In summary, the development proposes the following:
- Demolition of the existing dwelling and carport;
 - Upper level RL14.7: Double garage, carport (RL14.6), master bedroom with WIR and ensuite with north facing balcony (RL14.65);
 - Ground floor RL 10.95: Kitchen/dining/living/pantry, WC, lounge room, laundry and store with a north facing terrace;
 - Lower ground floor RL7.7: 3 bedrooms 2 with ensuites, bathroom, rumpus room and media room with a north facing terrace (RL7.65). The swimming pool is also access from this level (pool deck RL6.8);
 - External stairs and pathways provided throughout the site and
 - Lift access is provided to all levels of the development.

It is acknowledged the boatshed with terrace and jetty exist, no work proposed in this area of the site.

20. The site plan, front (south) elevation, and rear (north) elevation are provided below, to show the siting of the proposed building, it's appearance from the street, and from Oatley Bay.



Site Plan of proposed dwelling



South (street) elevation of proposed dwelling



North (Oatley Bay) elevation of proposed dwelling

The Site and Locality

21. The site has a street address of 42 Herbert Street, Oatley, and is legally described as Lot 2 in DP557722. The property is located on the northern side of Herbert Street, and has a rear waterfront boundary to the Georges River (Oatley Bay).
22. The site is slightly irregular in shape, with a southern boundary frontage to Herbert Street of 12.19m, an eastern side boundary length of 45.345m, a western side boundary length of 51.75m, and a northern boundary frontage of 20.955m to Oatley Bay. The site has an area of 786.2sqm (by survey).
23. The site has a steep fall of approximately 14m from the front boundary (RL15.2) to the rear (RL1.29), with an average gradient of 1:4 or 25%.
24. The site currently contains a part one/two storey dwelling house and carport (to be demolished as part of the proposal), and a detached fibro boat house to the rear of the site (to be retained as part of the proposal). There is also an existing timber jetty that provides access for the site to the Georges River which remains unaltered as part of this application.
25. Surrounding development on either side of the site consists of detached dwelling houses in a predominantly low density residential setting also cascading down steep sites. Land immediately to the south (opposite Herbert Street) forms part of Oatley Bay Reserve which is public open space with a substantial coverage of vegetation.
26. The subject site and the immediate adjoining properties are shown in the following photos.



Subject Site – 42 Herbert Street Oatley



Adjoining property to the east – 44 Herbert Street Oatley



Adjoining property to the west – 40 Herbert Street Oatley

Background

27. The following is a brief summary of the history of this DA.
28. The DA was lodged on 27 April 2018. The DA was neighbour notified between 18 May and 1 June 2018. Three (3) submissions were received objecting to the proposal.
29. The submissions included view loss, height, and privacy impacts, together with concerns regarding the proposal's compliance with Council's planning controls (including height, floor space ratio, and the foreshore building line). A site inspection was undertaken of one of the objector's property to discuss the concerns on 25 June 2018.
30. Details of the concerns raised were discussed with the applicant. Amended plans (Revision D) were received on 21 August 2018, amending the following:
 - Clarification on FSR calculations (to confirm compliance with Kogarah LEP 2012);
 - Increase of the setback from the rear (Oatley Bay);
 - Adjustments/reduction in size of rear balconies/terraces to address potential privacy concerns, amendments of privacy screening to address view loss concerns;
 - Various adjustments to window form, sizes and positioning; and
 - Various internal layout changes.
31. The amended plans were re-notified from 23 August to 6 September 2018. A further four (4) submissions were received, raising similar issues to the original notification.
32. Details of the concerns were again provided to the applicant. In response, further amended plans (Revision F) were submitted by the applicant on 24 September 2018, which include the following amendments:
 - Reduction in levels by 300mm;
 - Adjustment of the roof overhang;
 - Windows in western elevation changed to obscure glazing, and re-configuration of windows to bedrooms; and

- Re-configuration of internal stairs.
33. These amended plans were re-notified to neighbours from 11 October to 25 October 2018. A further four (4) submissions were received again raising similar issues to those previously raised.
 34. As a total of eleven (11) submissions have been received to this DA, referral of this DA to the Local Planning Panel is required (as the number of submissions exceeds ten (10)). This information was clarified with the applicant via several emails in December 2018 and a formal meeting in Council’s offices on 21 December 2018.
 35. This assessment report is based on the latest amended plans (Revision F) submitted by the applicant on 24 September 2018.

PLANNING ASSESSMENT

36. 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

37. The site is zoned R2 – Low Density Residential under *Kogarah Local Environmental Plan 2012* (KLEP2012). The following is a map illustrating the zoning of the subject site and surrounding properties.



Zoning Map

Relevant Planning Controls in Kogarah LEP 2012

38. 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 Development	Zoning: R2 Low Density Residential	The proposed development is permissible with consent in the zone.	Yes
	Objectives of the	The proposal is consistent with	Yes

	<p>Zone:</p> <ul style="list-style-type: none"> 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 residents 	the objectives of the zone.	
4.3 - Height of Buildings	9m as identified on Height of Buildings Map	<p>The height of the dwelling (as measured from highest point of the building to existing ground level below that point) varies due to the slope of the site, and ranges from:</p> <p>7.38m to 8.91m at the highest point.</p>	Yes
4.4A(2) Exceptions to floor space ratio for residential development in the zone R2.	<p>(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.</p> <p>For land with less than 800sqm but not less than 650sqm, the maximum FSR is obtained using the following formula:</p> $\frac{[(\text{lot area} - 650) \times 0.3 + 357.5]}{\text{lot area}}:1$ <p>The land has a site area of 786.2sqm. The maximum FSR and GFA (using the formula above) under this clause is:</p>	<p>The development has a FSR calculated as follows:</p> <p>Lower Ground Floor: 150.38sqm</p> <p>Ground Floor: 157.53sqm</p> <p>First Floor: 64.03sqm</p> <p>Boathouse (detached from dwelling, to be retained): 28sqm</p> <p>Total: 399.94sqm Site Area: 786.2sqm</p> <p>FSR: 0.508:1</p>	Yes

	FSR: 0.51:1 Maximum GFA 400.96sqm		
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 involves excavation of up to 4m for the lower ground floor. This excavation is considered to be appropriate for a dwelling on a site with a significant slope, as it will have minimal impact on the natural features of the land, on the environmental functionality of the site (such as drainage etc.), and also ensures that the dwelling can be reduced in height so as to minimise impacts of bulk/scale upon neighbouring properties. The earthworks associated with this dwelling are considered to be acceptable.	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 proposal will have minimal impact on the foreshore area given the dwelling is set above the existing boatshed which will remain on site.	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	The development proposes minimal impact in terms of the foreshore area. The dwelling is mostly located outside the foreshore area, except for a minor encroachment of the corners of the terraces (lower ground and ground floor) and the roofs over those terraces.	No - Acceptable see comment below

	wholly or partly in the foreshore area,	<p>The development also involves retention of an existing boathouse building which is located within the foreshore area.</p> <p>The development also proposes a swimming pool and terrace area within the foreshore area; however this is consistent with other dwelling houses in this location and is acceptable.</p>	
	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,	<p>The Site has a significant slope from the street to the Bay. The dwelling has largely been designed so as not to significantly encroach into the foreshore area.</p> <p>The development form is considered to have appropriately addressed this clause.</p>	Yes
	(c) boat sheds, sea retaining walls, wharves, slipways, jetties, works to enable pedestrian access to the waterway, swimming pools, fences, cycleways or walking trails.	<p>Apart from the existing boathouse structure and jetty, this development does not propose any additional structures of this type within the foreshore area.</p>	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;	<p>The development is consistent with the zone objectives and is representative of development form along the Bay.</p>	Yes
	(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be	<p>The development will have a satisfactory appearance from the waterway and adjacent foreshore areas, and will be compatible with existing development.</p>	Yes

	compatible with the surrounding area, and (iii) an adverse effect on drainage patterns, and	The drainage design is consistent with development on foreshore land.	
	(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,	Potential environmental harm has been considered and will be suitably managed via conditions of consent.	Yes
	(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 or conflict between persons using the waterway, as the site is private property and there is no public access in this location.	Yes
	(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and	The subject site is private property and the development will not compromise access to the waterway.	Yes
	(f) any historic, scientific, cultural, social, archaeological, 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	The subject land does not contain any historic, cultural, social, archaeologically significance forms.	Yes
	(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the	This application is for the removal of the existing dwelling and carport and the construction of a new dwelling, garage and associated works. The boatshed and jetty remain unaltered by this proposal.	Yes

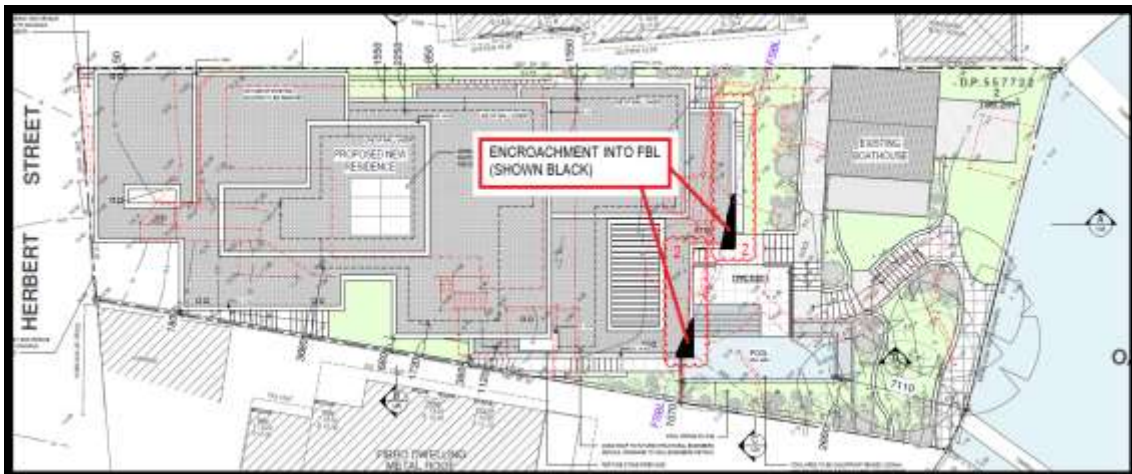
	alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and		
	(h) sea level rise or change of flooding patterns as a result of climate change has been considered.	Lowest level of the dwelling is RL7.7 which is significantly higher than existing sea level. Any potential sea level rise as a result of climate change would be unlikely to impact on the proposed dwelling.	Yes

Issues of Concern Regarding Compliance with Kogarah LEP 2012

Clause 4.6 – Exceptions to Development Standards

Detailed Assessment of Clause 6.4 – Limited Development on Foreshore Area

- 39. Clause 6.4 in Kogarah LEP 2012 aims to ensure that development in the “foreshore area” will not impact on natural foreshore processes or affect the significance and amenity of the area.
- 40. The preceding table (Kogarah LEP 2012 provisions) indicates that the proposal is acceptable in terms of the controls in Clause 6.4.
- 41. In the Maps under Kogarah LEP 2012, in regard to the subject site, a Foreshore Building Line (FBL) has been set at 15m from the mean high water mark in Oatley Bay.
- 42. The foreshore building line has been indicated on the DA plans, which acknowledges there will be a small encroachment into the FBL for the lower ground floor and ground floor terraces, and the roof over those terraces. Due to the angle of the rear boundary and the shape of the dwelling, the encroachment occurs in two locations on the dwelling being the eastern side and towards the centre of the dwelling. The extent of the encroachment is a maximum of 900mm (measured from the FBL to the roof) at the eastern end of the dwelling, and 740mm (to the roof) in the centre of the dwelling, as illustrated in the following diagram.



Marked-up site plan of proposed dwelling, showing extent of encroachment into the Foreshore Building Line

Request for Variation under Clause 4.6 Kogarah LEP 2012

43. The development seeks a non-compliance of the foreshore building line, the proposal has been accompanied by a request for variation under Clause 4.6 of Kogarah LEP 2012, which is assessed below.
44. In a recent decision (*Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118*), the NSW Land and Environment Court has established a “five part test” for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation. These are set out below, together with commentary in respect of the proposed development.
45. **1. The objectives of the standard are achieved notwithstanding non-compliance with the standard:**
46. Comment: Subclause (1) of Kogarah LEP 2012 states that: *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.*”
47. The applicant has provided the following response regarding the proposal’s compliance with the objectives of the development standard.

The proposed roof overhang will not impact upon the natural foreshore processes in any way, as it does physically not interact with the foreshore (i.e. it is raised and projects over the FBL).

The overhangs are set within the site away from side boundaries (in excess of any side setback requirements), and are north facing, therefore there will be no adverse effect on the amenity of adjoining neighbours in terms of loss of sunlight or outlook.

The roof encroachment into the FBL will be imperceptible when viewed from the water and in the context of wider development and neighbouring sites. The significance of the area will be undiminished as a result of the encroachment. Rather, a high quality contemporary building will replace a low quality building thereby enhancing the site’s significance. The minor encroachment beyond the FBL ensures that a coherent design is maintained.

The proposed development is therefore consistent with the objectives for development in the foreshore area, despite the non-compliance.

48. Officer Comment: The proposed development will sit behind the line of neighbouring dwellings, particular the 40 Herbert Street to the west of the site, so therefore the dwelling will have minimal impact on the significance and amenity of the area. Further, the dwelling and its related components are set well back from the shoreline and so it will have minimal impact on natural foreshore processes. The development generally satisfies the objectives of the foreshore building line control and is therefore satisfactory despite the numerical non-compliance.
49. **2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary:**

50. Officer Comment: As noted in the applicant's response above, the development will have no impact on natural foreshore processes, because the encroaching part of the building is raised and projects over the foreshore building line. It is agreed that the encroachment will also be imperceptible when viewed from the water, because the proposed dwelling will sit further within the site than the line of the rear of dwellings associated with recently approved dwellings in this location. Accordingly, it is considered that the proposal addresses the underlying objectives of the standard, and numeric compliance is not considered necessary.
51. **3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**
52. Officer Comment: The provisions of the Environmental Planning and Assessment Act 1979 require a degree of flexibility to be applied in assessment of development proposals. Whilst a dwelling fully compliant with the foreshore building line would not defeat or thwart the underlying objective/purpose of the control, it is considered that the objectives of the control can still be met by the proposal which involves a minor non-compliance to the control.
53. Compliance with the foreshore building line should be more strictly enforced in relation to the walls/floor space of a residential dwelling. However in this instance, the breach of the foreshore building line only occurs as a result of minor portions of the terraces and the roofs over those terraces.
54. **4. 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;**
55. Officer Comment: There have been other dwellings approved with encroachments into the FBL in the immediate vicinity of the site. In particular, the dwelling at 46 Herbert Street (approximately 25m to the east) was approved in 2015 with an encroachment into the foreshore building line (up to 3.4m) significantly greater than that proposed of the dwelling (up to 900mm). Other dwellings in this location have been approved with flexibility regarding the foreshore building line, and accordingly, strict compliance is not necessary in this instance.
56. Council generally strictly enforces compliance with the foreshore building line, and so it cannot be said that this control has been abandoned or destroyed. However in keeping with the intent of the Environmental Planning and Assessment Act 1979, variation to the foreshore building line generally only supported to a minor extent in development proposals, where it can be demonstrated that there will be no adverse impact. This is considered to be the case in this instance, where a small variation is warranted.
57. **5. The 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.**
58. Officer Comment: The existing use of this land and immediately adjoining land is for low density residential purposes in a waterfront location. Some of the immediately adjoining properties contain dwellings with encroachments into the foreshore building line to an extent greater than the proposed development.

59. **Conclusion – Assessment of Clause 4.6 Request for Variation:**

60. Despite the non-compliance in terms of the FBL, the proposal is considered to be acceptable for the following reasons:
- (a) The encroachment into the FBL occurs only at two “points” of the lower ground and ground floor terrace areas (and the roof over those terraces) rather than an entire section of wall. This is due to the angle of the rear boundary and the shape of the dwelling. The above diagram also shows that much of the dwelling, including terraces and roofs, will be well beyond the FBL.
 - (b) The extent of the encroachment being up to 900mm at the maximum point is visually negligible.
 - (c) The encroachment into the FBL does not give rise to any significant issues regarding impacts on neighbouring properties, such as visual bulk or view loss (such issues have been discussed at length throughout this report).
 - (d) There have been other dwellings approved with encroachment into the FBL in the immediate vicinity of the site. In particular, the dwelling at No 46 Herbert (approx. 25m to the east) was approved in 2015 with a significantly greater encroachment up to 3.4m than that proposed in this dwelling being up to 900mm).
 - (e) Generally, the position of the rear of the proposed dwelling will be compatible with the “rhythm” established by the immediate neighbours along this section of Herbert Street (refer to aerial photo earlier in this report). In particular, the rear of the dwelling will sit slightly behind the dwelling to the west (40 Herbert Street), and therefore the encroachment would be indiscernible when viewed from either the water or from any adjoining property.
 - (f) This is illustrated by the following drawing, being an air photo showing the position of the proposed dwelling relative to neighbouring dwellings:



Aerial photo of subject property showing rear setbacks of the proposed dwelling relative to neighbouring properties

State Environmental Planning Policies

61. 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
State Environmental Planning Policy (Coastal Management) 2018	Yes

Deemed State Environmental Planning Policy – Georges River Catchment

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

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

63. 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

64. 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.

65. 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.
66. 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 regard to site contamination.

Draft Remediation of Land SEPP

67. The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.
68. 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.
69. 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.
70. 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

71. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
72. 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).
73. 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.
74. 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.

State Environmental Planning Policy (Coastal Management) 2018

75. SEPP (Coastal Management) 2018 updates and consolidates three previous SEPPs (SEPP 14 Coastal Wetlands, SEPP 26 Littoral Rainforests, SEPP 71 Coastal Protection) into one new Policy and is a matter for consideration for the current DA.

76. Under SEPP (Coastal Management) 2018, the subject site is mapped as a Coastal Environment area and a Coastal Use area. These have the following management objectives under the SEPP:
77. **Coastal Environment Area:** The management objectives for the coastal environment area are as follows:
- (a) *to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,*
 - (b) *to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,*
 - (c) *to maintain and improve water quality and estuary health,*
 - (d) *to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,*
 - (e) *to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,*
 - (f) *to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.*
78. **Coastal Use Area:** The management objectives for the coastal use area are as follows:
- (a) *to protect and enhance the scenic, social and cultural values of the coast by ensuring that:*
 - (i) *the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and*
 - (ii) *adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and*
 - (iii) *urban design, including water sensitive urban design, is supported and incorporated into development activities, and*
 - (iv) *adequate public open space is provided, including for recreational activities and associated infrastructure, and*
 - (v) *the use of the surf zone is considered,*
 - (b) *to accommodate both urbanised and natural stretches of coastline.*
79. **Officer Comment:** Generally, the proposed development is consistent with the above management objectives. Many of these relate to areas of coastline, beaches, surf zone etc which are not applicable to the proposed development which is located on the frontage to a bay of the Georges River (Oatley Bay). Consistency with other management objectives is assessed in detail throughout this report and is captured by assessment under applicable provisions of Kogarah LEP 2012 and Kogarah DCP 2013.
80. The following is an assessment of the matters for consideration listed under the SEPP as applicable to the Coastal Environment Area and Coastal Use Area.

SEPP Control	Proposal	Complies
13. Development on land within the coastal environment area		
(1) Development consent must not be granted to development on land that is within the coastal environment area unless		

the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:		
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	Surface water runoff is to be managed in accordance with the approved stormwater management plan and relevant conditions imposed. The proposal is generally satisfactory subject to conditions.	Yes
(b) coastal environmental values and natural coastal processes,	The proposal is used for residential purposes and will unacceptably impact the coastal environmental values and there is not impact on coastal processes.	Yes
(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	Appropriate standard conditions to be imposed to ensure water quality is maintained. The site is not located on any of the sensitive coastal lakes identified in Schedule 1.	Yes
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	There will be no unreasonable impact upon these features. The site will be landscaped in accordance with the submitted landscape plan to replace and embellish existing vegetation along the foreshore.	Yes
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	Subject site and immediately adjoining sites are privately owned, with no public access to this part of the Oatley Bay foreshore.	Yes
(f) Aboriginal cultural heritage, practices and places,	The allotment is not known as a place of Aboriginal significance. There is no impact in terms of Aboriginal heritage.	Yes
(g) the use of the surf zone.	The development is not located near the surf zone.	NA
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:		
(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	The proposal is generally satisfactory in terms of impact as discussed throughout this report	Yes
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposal is generally satisfactory and has been designed to reduce impacts.	Yes
(c) if that impact cannot be minimised—the	The proposal is generally	Yes

development will be managed to mitigate that impact	satisfactory and has been designed to minimise impacts.	
14 Development on land within the coastal use area		
(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:		
(a) has considered whether the proposed development is likely to cause an adverse impact on the following:		
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	There is no public access in this location.	Yes
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	Property is on southern foreshore with no overshadowing impacts. There will be minimal impact in terms of wind tunnelling and loss of views from public places.	Yes
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	The proposal is a cascading development form following the topography of the site. This development form is no inconsistent with the development forms immediately adjoining and along the bay.	Yes
(iv) Aboriginal cultural heritage, practices and places,	The property is not a known site of Aboriginal heritage.	Yes
(v) cultural and built environment heritage, and	The site does not contain or adjoin any heritage items.	Yes
(b) is satisfied that:		
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or	Proposal is generally satisfactory in terms of impact as discussed throughout this report.	Yes
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The development does not result in any unreasonable impacts.	Yes
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	The development does not result in any unreasonable impacts.	Yes
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	Development is generally satisfactory in terms of the built form controls in Kogarah LEP 2012 and DCP 2013. The development form and scale is not inconsistent with the built form immediately adjoining and that of the visual catchment.	Yes

Draft Environment SEPP

81. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
82. 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.
83. The proposal is consistent with the provisions of this Draft Instrument.

Development Control PlansKogarah Development Control Plan 2013

84. The proposed 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 DA documentation has included a SCA, which includes a photographic analysis of the existing streetscape, as well as an assessment of how the development responds to the streetscape. When viewed from the street, the development proposes a single storey structure, with garage/carport area within the front of the site the with carport being forward of the dwelling. The existing site characteristics being steep topography and also a relatively narrow road carriageway has resulted in	Yes

		this form of development being the characteristic in this location. The development is considered to be satisfactory in terms of streetscape considerations – subject to conditions of consent including deletion of the covered area in front of the garage.	
1.2.1 Floor space Requirements	FSR to comply with the provisions of Kogarah LEP 2012, FSR for this site is a max 0.51:1.	FSR proposed is 0.508:1.	Yes
	(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 acceptable in terms of its height and bulk when viewed from the street and from adjoining properties. The dwelling has been designed to be sympathetic to its location and the topography of the site. The site will be appropriately landscaped for a foreshore development.	Yes
	(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.	The development proposes good articulation to all facades. No blank walls or flat facades proposed. No walls longer than 10m are proposed. Concern has been raised by the neighbour at No 40 regarding bulk and scale impacts from the garage/sub-floor area wall on the western side. Whilst this is 8.2m long (ie less than 10m), it would potentially have visual bulk impacts when viewed from the neighbour's side. It is recommended that the	Yes

		garage be shortened by 1m on the northern side of the garage so as to minimise visual bulk impacts from the neighbour’s side. This is addressed via a condition of consent.	
	(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 proposal presents a building mass that is in proportion with allotment size, and is compliant with the maximum FSR for the site and also building height. The building also fully complies with the DCP setback requirements, subject to conditions requiring deletion of the covered area in front of the garage and also increasing the side setback of the garage/sub-floor area on the western side.	Yes
	(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 development proposes a part two/part three level development. The rear part of the dwelling contains a small encroachment beyond the line of 60% of the length of the allotment. This is discussed in detail later in this report.	No
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	Ceiling height at clerestory ceiling: RL18.6 EGL below: RL10.4 (under existing dwelling) Ceiling height = 8.2m at clerestory ceiling. Ceiling height at top floor ceiling: RL17.5	No

		EGL below: RL9.04 Ceiling height = 8.44m at top floor ceiling	
	7.8m to the top of the parapet 9m to the top of the ridge (pitched roof)	The dwelling proposes a parapet roof. Height above clerestory: Parapet RL19.05 EGL below: RL 10.4 (under existing dwelling) Height above clerestory = 8.65m Height above topmost floor: Parapet RL17.95 EGL below: RL 10.4 (under existing dwelling) Height above topmost floor = 8.91m	No
	(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).	The site has an overall slope of approximately 1 in 4 or 25%. The sloping nature of the site exceeds 1 in 8 (12.5%) and therefore Council is able to consider a three level dwelling on this site. The proposed dwelling contains three residential levels, and will present as a three level dwelling when viewed from Oatley Bay. The dwelling presents as a single level dwelling from Herbert Street.	Yes
	(3) Regardless of the number of levels, the maximum height of the building must be consistent with the maximum height requirements.	The development is consistent with the maximum height requirement of 9m (as prescribed in Kogarah LEP 2012)	Yes
	(4) Foundation areas, garages, basements, storage rooms or the	The sub-floor area below the garage has an external wall height of some 3.75m	No

	like must not have an external wall height greater than 1m above ground level (existing) at any point on the building.	at the highest point.	
	(5) Where the dominant 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.	The dominant built form in the street is single storey, and in keeping with this existing streetscape, the proposed dwelling will be single storey when viewed from the street.	Yes
	(10) Rooftop terraces are prohibited in dwelling houses, dual occupancy development and secondary dwellings.	No rooftop terraces are proposed.	Yes
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	In this instance, the primary building façade (consisting of the garage) is 6.87m wide, or 55% of the width of the frontage.	No
	(2) The secondary building façade should be set back a minimum of 1.5 metres from the primary building façade	The secondary building façade (consisting of the entry door and the master bedroom beyond) is setback approx. 4.7m behind the primary façade.	Yes
	(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 roof form of the dwellings in the immediate vicinity contain both pitched roofs and also flat/parapet roofs. The proposal is considered to be not unreasonable given the streetscape forms.	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:	The setbacks of adjacent buildings are less than 5m – i.e. the garage on 40 Herbert St (to the west) and also the carport of 44 Herbert St (to the east) are built to the front boundary	N/A

	<p>(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.</p>	<p>(i.e. zero setback) in this instance.</p> <p>The development proposes a front setback of 6.06m to the front wall of the garage which is considered acceptable. It is noted that the development also proposes a covered area within this 6.06m front setback however this is proposed to be deleted as a condition of consent.</p>	
	<p>(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.</p>	<p>The existing setbacks of adjoining buildings would require the front setback of the proposal to be at the front boundary.</p> <p>The development proposes a front setback of 6.06m to the front wall of the garage, which strictly does not comply with the DCP requirement.</p> <p>As noted, the development proposes a covered area in front of the garage, which is not acceptable, and is proposed to be deleted via condition. The development already proposes a double garage with adjoining carport, and so a covered area in front of the garage is considered excessive in terms of structures in front of the building line, and therefore the covered area is proposed to be deleted via condition of consent.</p>	Yes
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</p>	<p>The site has a length of 51.75m, and therefore the minimum rear setback is 7.76m.</p> <p>However, in this instance as a waterfront property, there is a foreshore</p>	Yes

	<p>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>building line requirement of 15m.</p> <p>The development proposes a rear setback of 17.73m (to the closest point of the new dwelling), which complies with both the FSBL and also the rear setback requirement of the DCP.</p> <p>(It is noted that the subject site contains an existing/approved boathouse with a rear setback of approximately 5m)</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>The development proposes a part 2/part 3 storey dwelling with a total wall height greater than 3.5m.</p> <p>The proposed side setbacks are:</p> <p>Western side: ranging from 250mm (garage) to 2250mm.</p> <p>Eastern side: 1200mm (to the closest point)</p>	<p>No (proposed garage setback of 250mm does not comply)</p>
1.2.5 Fenestration and External Materials	<p>(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.</p>	<p>The proposed building materials are contemporary in nature, and will be of a colour and range of materials that is complementary with the existing/desired future character of the locality.</p>	<p>Yes</p>
	<p>(2) Garage doors should not dominate the street front elevation</p>	<p>The garage presents as the “primary frontage” of this dwelling, and exceeds the maximum 40% prescribed for primary frontages.</p>	<p>No</p>

		<p>The garage will therefore be a dominant feature of the proposed dwelling in the streetscape.</p> <p>However, the proposed garage arrangement is consistent with the streetscape established by immediately adjoining dwellings and is considered acceptable (subject to deletion of the covered area in front, as discussed throughout this report).</p>	
(3) The roof should be similar to the angle of pitch, materials and colour of roofs in the streetscape		The streetscape consists of predominantly pitched roofs; however flat/parapet roof forms also exist. The form of the proposed roof is compatible with the existing dwellings in the streetscape and considered to be acceptable.	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.		Contemporary in nature, well integrated into the design of the dwelling, and considered acceptable.	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.		Minimal glazing (less than 10%) to street front façade due to design which positions the garage and solid front door at the front of the dwelling.	Yes
(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.		<p>Garaging is in front façade, and has a double garage door 6.410m wide, rather than two single bays.</p> <p>The carport adjacent to the garage does not have any front garage door.</p>	No

1.2.6 Street Edge	(1) New developments should provide front fencing that complements fencing within the streetscape.	No new front fencing (ie along the frontage of the site) is proposed.	Yes
	(2) Fencing is to be consistent with the requirements of Section 4.2.	No new fencing (along the frontage of the site) is proposed.	Yes
	(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.	Subject site contains no existing vegetation within front setback area. A small amount of shrub planting is proposed as per the landscape plan	Yes
	(4) The driveway location should not result in the removal of any street trees or removal of substantial trees on the site.	Driveway does not involve tree removal	Yes
1.3 Open Space	(1) 15% of the site area must be deep soil landscaped area.	Deep soil landscaped area calculated at 136sqm or 17.3%.	Yes
	(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	Private open space areas are adjacent and visible from main living and dining rooms.	Yes
	(3) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year-round use.	Private open space is on the northern side of the dwelling.	Yes
	(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.	The development proposes a mix of paved and soft surface areas, and infiltration of stormwater will be maximised.	Yes
	(5) Existing significant trees and vegetation must be incorporated into proposed	Site contains very few existing trees. Development proposes removal of trees along the	Yes

	landscape treatment.	waterfront, which is supported by Council's Consultant Arborist due to their declining health subject to replacement planting of the same species as those existing.	
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 required.	Three (3) car parking spaces provided accordance with the requirements in Section B4 – in the form of the double garage and carport adjoining. The covered area in front of the garage is not supported and is proposed to be deleted as a condition of consent.	Yes
	(3) Garages should be accessed from a rear lane where this is available.	The site has no rear lane access.	Yes
	(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.	At the frontage of the subject site, Herbert Street is a single width carriageway, with minimal opportunity for on-street parking on this side of Herbert Street. The proposal does not involve removal of street trees.	Yes
	(5) Garaging should be setback behind the primary façade.	Garage is the primary façade of the dwelling, and is therefore not setback behind it.	No
	(6) The maximum driveway width between the street boundary and the primary building façade is 4m	Development proposes 6.41m and 5.5m, which does not comply with the DCP requirement.	No
	(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	The dominant position of garaging on immediately adjoining properties in this particular location is at the front boundary. The proposed garage is set back 6.06m.	Yes

	front elevation of the building.		
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.	<p>Adjacent neighbours are to the east and west.</p> <p>All windows in the west elevation are either obscure glass and/or have high sill height windows.</p> <p>On the east elevation, the internal layout of the dwelling has been designed so that the majority of rooms with east-facing windows are either bedrooms or windows to void spaces. There is a lounge room with an east-facing window, however it's placement is such that it is offset from the windows in the neighbouring property.</p> <p>The windows are designed so as to reduce the privacy impacts on the immediate neighbours.</p>	Yes
	(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.	<p>The development proposes a number of terrace areas elevated more than 1.5m above finished ground level:</p> <ul style="list-style-type: none"> • <u>Upper level</u>: Contains a 10.8sqm balcony (6.1m x 1.8m) off the master bedroom – and setback 2.55m from the eastern boundary, which is compliant. • <u>Ground level</u>: Contains a terrace 43.025sqm (dimensions 7.3m x 4.25m and 2.5m x 4.8m) off the living/dining rooms. The terrace has setbacks of 2.15m from the eastern boundary and 2.83m 	No

	<p>from the western boundary and is non-compliant in this location.</p> <ul style="list-style-type: none"> • <u>Lower ground level:</u> Contains a terrace 34.6sqm (dimensions 3m x 5.7m and 3.5m x 5m) off the rumpus room/bedrooms. The terrace has setbacks of 1.07m from the east boundary and 2.83m from the western boundary and is non-compliant in this location. 	
(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 GF terrace – 34.6sqm Ground Floor terrace – 43.025sqm First Floor Balcony – 10.8sqm</p> <p>Cumulative total: 88.425sqm</p>	No
(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.	<p>Despite numerical non-compliance, it is considered that a variation is justified, the terraces have been designed so as to not result in privacy impacts on neighbours. This is discussed in detail later in this report.</p>	Yes - see discussion below.
(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.	<p>The active rooms, and the balconies adjoining them, have been design to include sensitively designed windows and screening devices to minimise potential overlooking into neighbours.</p>	Yes
(6) Loss of privacy to neighbouring properties, as a result of a proposed development, will only be considered where a variation is sought to	<p>Whilst the proposal does involve a variation to the DCP in terms of ceiling height and top of parapet height, and area of terraces, it is not considered that these</p>	Yes

	the objective or the design solution for floor space ratio, building height, building envelope, side boundary setbacks, and extent of second level development or size of balcony/terrace.	areas of non-compliance result in unreasonable loss of privacy to neighbours. The proposal is considered to be acceptable in terms of this clause, and in terms of privacy impacts on neighbours.	
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.	The private open space is located on the northern side of the proposed dwelling, and the shadow diagrams indicate that the development will receive well over 4 hours of sunlight during the winter solstice.	Yes
	(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.	Not applicable – the private open space is on the northern side of the dwelling	Yes
	(3) Where the neighbouring properties are affected by overshadowing, at least 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.	Shadow diagrams have been submitted showing impacts on both neighbours. Given the orientation of the site, the development will impact on the property at 40 Herbert St (to the west) between 9am and 12noon; and the property at 44 Herbert St (to the east) after 12noon. The private open space of both adjoining properties is located to the north. The position of the proposed dwelling will ensure that the private open space areas of the neighbours both receive greater than 3 hours sunlight during the winter solstice, thus ensuring compliance with	Yes

		the DCP control.	
	(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.	Yes
	(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.	Shadow diagrams show the required detail in terms of neighbouring properties.	Yes
1.7 Views and View Sharing	(1) Development shall provide for the reasonable sharing of views. Assessment of applications shall refer to the L&E Court Planning Principle <i>Tenacity Consulting v Warringah Council (2004) NSWLEC140.</i>	A comprehensive assessment in terms of views/view sharing is made in the ‘Submissions’ section of this report. In summary, the proposal is acceptable in terms of views/view sharing considerations.	Yes
<p>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 be 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.</p>			
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.	<p>The proposed development has a frontage to the Georges River waterway (Oatley Bay).</p> <p>The subject site contains an existing boathouse on the northern side of the site, which is to be retained, and no works are proposed to this building as part of this DA.</p>	Yes
	(2) Where an existing allotment has a water frontage of less than 9 metres, Council will not	The site has a boundary to Oatley Bay of 20.12m. The development does not propose any new	Yes

	permit waterfront structures unless they are shared.	waterfront structures.	
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.	<p>A swimming pool is proposed, which is partly excavated below natural ground level. The level of the pool will be RL 6.8, with an “infinity edge” to the northern side.</p> <p>The site has a steep slope in this location, and existing ground level at the pool edge is RL4.5, for a coping level of up to 2.3m above existing ground level. This does not comply.</p>	No
	(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	The edge of the pool is an “infinity edge” with a small amount of pool tiles set against a background of feature sandstone panels. The landscape plan shows that the area between the pool and the boundary (to Oatley Bay) will be landscaped to minimise visual impact when viewed from the water, this is considered acceptable.	Yes
	(3) The construction of swimming pools and spa pools below the FBL and above MHW should 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	The pool is located mostly below the FBL; its design has had regard to minimising excavation, so that the natural features are retained where possible.	Yes

	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.	Pool fencing will be toughened glass panels to provide an open appearance when viewed from Oatley Bay.	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.	Proposal generally retains natural features along the foreshore. The proposal does involve removal of three x <i>Cupaniopsis anarcardiodes</i> (tuckeroo) trees along the water's edge, which have been identified as being dangerous/weight loaded. Replacement planting of the same species is proposed as per the landscape plan.	Yes
	(2) Natural ground levels are to be retained with minimal use of retaining walls.	The development proposes a retaining wall to a height of approximately 1m within the foreshore area; otherwise the natural ground levels are retained.	Yes
	(3) Endemic native species should be used in areas where native vegetation is present or has the potential to be regenerated.	The landscape plan has been assessed by Council's Consultant Arborist and is satisfactory subject to conditions.	Yes
	(4) Exotic species that have the potential to spread into surrounding bushland should be avoided.	As above, the submitted Landscape Plan has been assessed to be satisfactory by Council's Consultant Arborist. This assessment included the plant species to be incorporated in the landscaping embellishment.	Yes
	(5) Existing mature trees should be retained where possible and incorporated into the design of new developments.	As mentioned, the development does not comply with this part of the DCP, as it proposes removal of three x <i>Cupaniopsis anarcardiodes</i>	Yes

		(tuckeroo) trees along the water's edge, which have been identified as being dangerous/weight loaded. However, removal of these trees is supported as the landscape plan provides for adequate replacement planting.	
	(6) Vegetation along ridgelines and on hillsides should be retained and supplemented with additional planting to provide a backdrop to the waterway.	The site is mostly devoid of existing vegetation, the landscape plan provides for suitable replacement planting and site embellishment.	Yes
	(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.	The Landscape plan provided provides the required level of information.	Yes
<p>Part C4 Foreshore Locality Controls 9.0 Oatley Bay Poulton Park to Oatley Point Reserve</p>			



9.7 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>Boatsheds (single storey) In addition to controls contained in Part C3 Section 6.5, the following controls apply to boatsheds in this Locality: Boatsheds should be sited so as to minimise the removal of remnant native vegetation and the excavation of sandstone rock shelves and outcrops. Where the above cannot be achieved, Council may restrict the</p>	<p>No new boatshed proposed. The site has an existing boathouse to be retained, not works are proposed to this building.</p>	<p>Yes</p>
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	development of a boatshed in this locality.		
	Fencing (open form) Fencing should be no higher than 1200mm above natural or finished ground level Fences are to be constructed of open weave materials to enable vines, creepers or hedges to provide natural cover	Boundary fencing is to be 1800mm high outside the FBL, and up to 1200mm below the FBL	Yes
	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. Sites within area 9(e) are not subject to additional requirements.	Landscape plan submitted with the DA, which has been assessed by Council’s Consultant Arborist to be satisfactory.	Yes
B2 – Tree Management & 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.	The landscape plan submitted with the DA, which has been assessed to be satisfactory.	Yes
	(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

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	(c) design vegetation to enhance and link existing vegetation and habitat within the site and adjacent sites.	This site and adjoining sites are highly urbanised with very little existing vegetation. The proposal will enhance the existing landscaped setting through site embellishment.	Yes
	(d) design access to reduce pressures that have potential to cause degradation of vegetation, habitat, water quality and soil.	The landscaping provides for steps to access all parts of the site in a controlled manner.	Yes
	(e) use indigenous plant stock and, preferably, locally sourced plant material to preserve local genetic diversity.	The proposed landscape species have been assess and are acceptable.	Yes
	(f) maximise use of indigenous plant material and preferably use exclusively indigenous plants adjacent to remnants. Arrange plants to form plant associations based on the structure and distribution of indigenous plant communities using a diverse range or plants, including understory and groundcovers, to form a viable habitat for flora and fauna.	The proposed landscape species have been assess and are acceptable.	Yes
	(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 understory species.	The proposed landscape species have been assess and are acceptable.	Yes
	(ii) include and retain water holes, ponds,	The Site contains minimal natural features of this	Yes

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	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.	type.	
	(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 assist arboreal species and birds.	No such trees on site. The application is seeking removal of three x <i>Cupaniopsis anarcardiodes</i> (tuckeroo) trees along the water's edge, which have been identified as being dangerous/weight loaded.	Yes
	(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.	The proposed landscaping has been assessed as satisfactory by Council's Consultant Arborist.	Yes
	(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	The urbanised nature of this location has little potential for linkages to landscaping on neighbouring sites.	Yes

	<p>predators. Ropes and wires can be used as bridges for animals where tree canopies do not touch e.g. possums have frequently been observed using electricity supply wires for travelling in urban areas.</p>		
	<p>(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 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>The site is highly urbanised, and will be cleared of weeds when the development takes place.</p>	<p>Yes</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</p>	<p>Proposal involves use of sandstone for external wall edging which is considered satisfactory in terms of potential artificial shelter structures.</p>	<p>Yes</p>

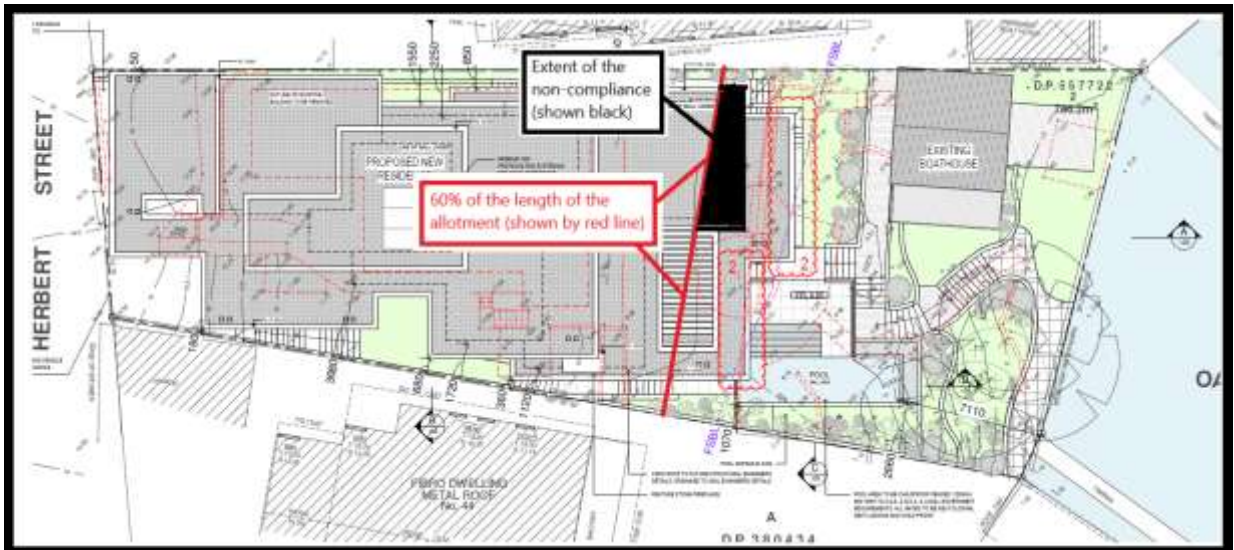
	densely branched shrubs or of pipes imitating hollow logs. These shelters may also act as nesting sites.		
	(viii) retain leaf litter and fallen branches. They provide an important habitat for reptiles and insects, foraging grounds and shelter against heat and predators.	This is a site maintenance matter.	Yes
	(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.	Landscaping has been assessed as satisfactory by Council's Consultant Arborist and addresses this criterion.	Yes
	(x) select plants with thick and furrowed bark, high foliage nutrient and different flowering and fruiting seasons to provide food throughout the whole year.	Landscaping has been assessed as satisfactory by Council's Consultant Arborist and addresses this criterion.	Yes
	(xi) minimise use of fertilisers and irrigation to prevent nitrification and invasive exotic plants destroying native bushland.	An on-going maintenance issue.	N/A

DEVELOPMENT CONTROL PLAN PART C1 – Low Density Housing

85. 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. There are a number of areas of non-compliance with DCP 2013, which are discussed in further detail below.

Extent of Second Level

86. The Floor Space Requirements (Clause 1.2.1) of Part C1 Kogarah DCP 2013 states that the second level of a residential dwelling should not extend beyond 60% of the depth of the allotment when measured from the street boundary.
87. The proposed development is a two (2) storey dwelling, which cascades down the site with the site topography; the second level extends slightly beyond 60% of the length of the allotment. The extent of the non-compliance is approximately 1.7m (on the western side) and 2.5m (centre) as shown in the following drawing (applicant's DA site plan, marked up).



Site Plan, showing the extent of the non-compliance with the extent of the second level

88. Despite the DCP non-compliances, the proposal is considered to be acceptable for the following reasons:
- The objectives of this Clause of the DCP include a requirement that the overall building floor space should present a building mass that is in scale with the allotment size. In this regard, the dwelling generally complies with the DCP controls which govern building mass and its scale relative to the allotment size, in particular the Kogarah LEP 2012 standards of floor space ratio and overall height.
 - The positioning of the second storey of this dwelling will still be behind the line of the rear wall of the adjoining dwelling to the west (40 Herbert Street).
 - The non-compliance does not result in unreasonable impacts on any neighbouring property. In particular, the positioning of the second storey does not result in unacceptable visual bulk or view loss (as discussed at length throughout this report).

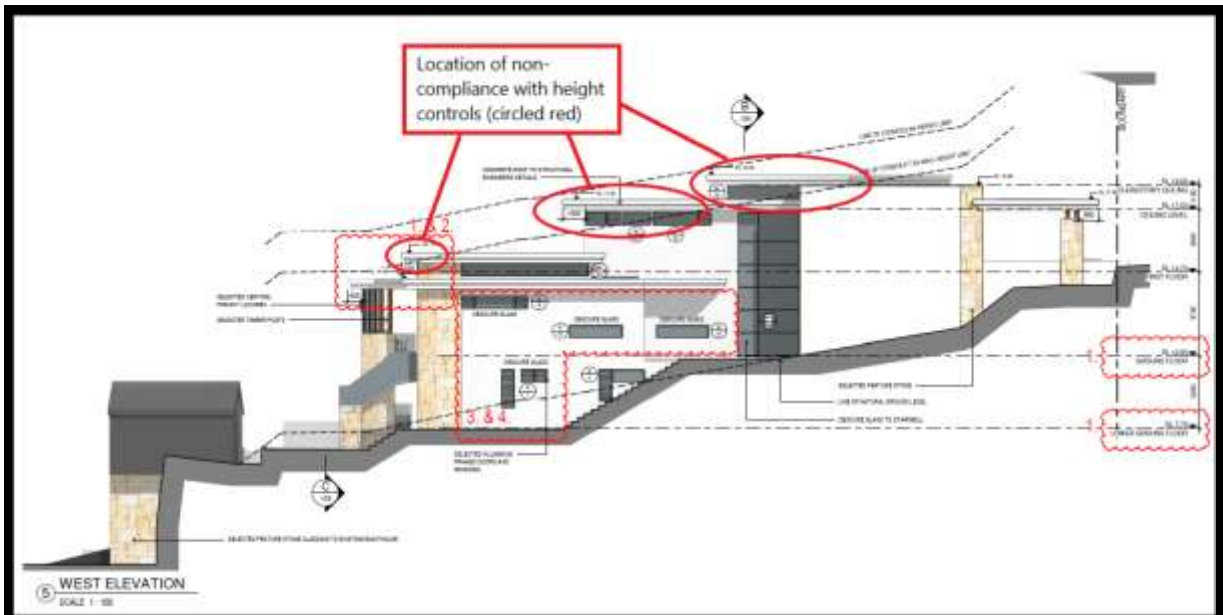
Building Heights

89. Clause 1.2.2 of Part C1 Kogarah DCP 2013 prescribes building height requirements of 7.2m (to the underside of the upper ceiling) and 7.8m (to the top of the parapet).
90. The proposed dwelling has heights measured as follows:
- To the underside of the ceiling, the height ranges from 8.2m to the clerestory ceiling, and 8.44m to the top floor ceiling;

- To the top of the parapet, the height ranges from 8.65m to the clerestory roof, and 8.91m to the topmost floor;

which does not comply with the DCP controls.

91. The location of the non-compliances in terms of these height controls is shown on the following drawing (west elevation):



West Elevation of proposed dwelling, showing non-compliance with ceiling and top of parapet controls in Kogarah DCP

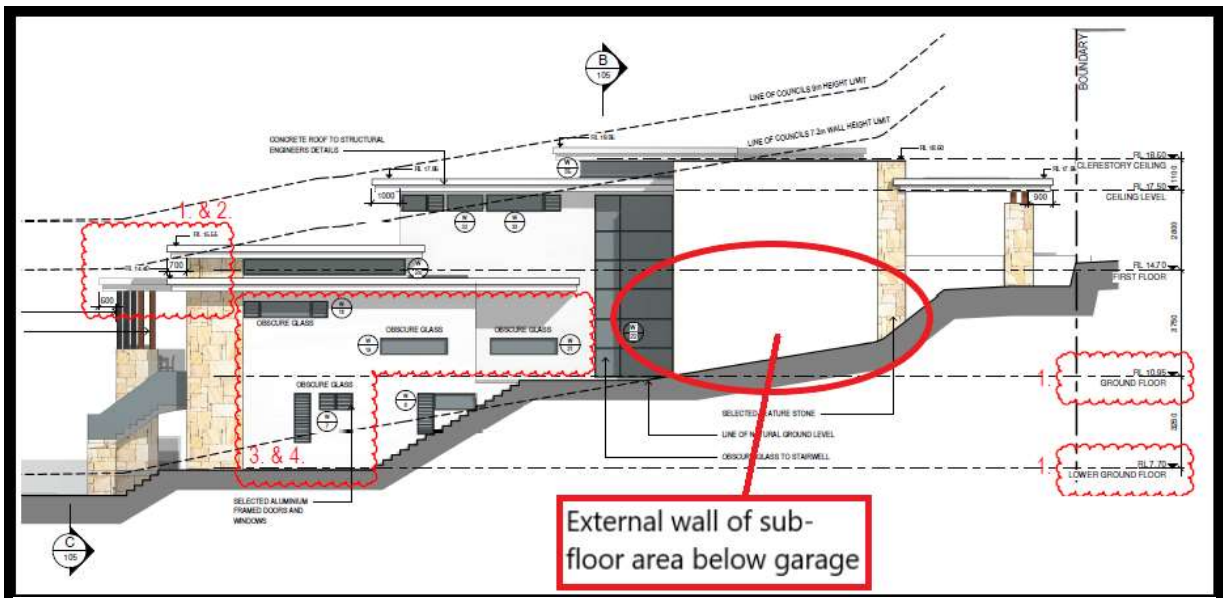
92. Despite the numerical non-compliance with the DCP controls, the proposal is considered acceptable for the following reasons:
- (a) The DCP cannot prescribe a more restrictive control than an LEP control. In this regard, Kogarah LEP 2012 prescribes a 9m height limit for the subject site, and the development fully complies with the LEP control.
 - (b) The non-compliance is related to the steep slope of the land, which results in non-compliance at various points on the ceiling/roof, rather than the entire length of wall.
 - (c) When viewed from the waterway, the proposed dwelling will appear as consistent/compatible with the established character of dwellings in this location. In this regard, the applicant has provided a montage with the original DA plans to illustrate how the proposed dwelling will appear when viewed from the water. This shows that the proposed dwelling will be generally consistent with recent residential developments in terms of height, number of residential levels, and overall massing:



Photomontage of proposed development, showing how the dwelling will appear from the waterway in relation to neighbouring properties

Foundation Height

- 93. The building height controls (Clause 1.2.2 of Part C1 Kogarah DCP 2013) contains a requirement that foundation areas, garages, basements, storage rooms or the like must not have an external wall height greater than 1m above ground level (existing).
- 94. The western wall of the sub-floor area has an external wall height of up to 3.7m at the highest point, and therefore non-compliant. This is illustrated in the drawing below.



- 95. Despite the numerical non-compliance, the proposed development is considered to be acceptable for the following reasons:
 - (a) The non-compliance is directly attributed to the slope of the site, where the site falls significantly over a relatively short distance within the front of the site. The location of the garage at the front of the site, due to the topography and transitions to the roadway result in its floor level being elevated above the existing ground level.

- (b) The slope of the land makes it unavoidable that there will be a non-compliant wall height of the sub-floor level below the garage.
- (c) There will be no privacy or amenity impacts upon the immediate neighbour to the west, as there are no windows in this wall. Subject to design amendments to reduce the length of the garage and to increase the side setback and relocate the northern wall of the garage 1.4m to the south to align with the southern wall of the stair (as discussed throughout this report). It is also considered there will not be an unreasonable impact in terms of bulk and scale when viewed from the neighbouring property.

Primary Building Facade

- 96. The controls regarding Rhythm of the Built Elements in the Streetscape (Clause 1.2.3 of Part C1 Kogarah DCP 2013) contains a requirement that the primary building façade of a dwelling should not exceed 40% of the overall width of the total frontage of the site.
- 97. The subject development has been designed so that the garage constitutes the dwelling's primary frontage, given the steep topography of the site. The dwelling will appear as single storey when viewed from the street, with the garage/carport and front entry of the dwelling being the design features of the dwelling presenting to the street. The width of the garage exceeds 40% which therefore does not comply with the DCP controls.
- 98. Despite the non-compliance with the DCP, the proposal is considered to be acceptable for the following reasons:
 - (a) This section of Herbert Street is unusual given the road is a single width access which ends at the adjoining property to the west (40 Herbert Street), and only services the properties from 40-46 Herbert Street. Vehicle access/manoeuvring to these properties is very limited, as a response to the street constrains these properties have garages/carports at or near the front boundary. This design in this unique location is not inconsistent with the streetscape.
 - (b) The proposed development seeks to be generally consistent with the established streetscape character in this location of Herbert Street, by positioning its garage at the top of the site.
 - (c) The objectives of this control in the DCP state that

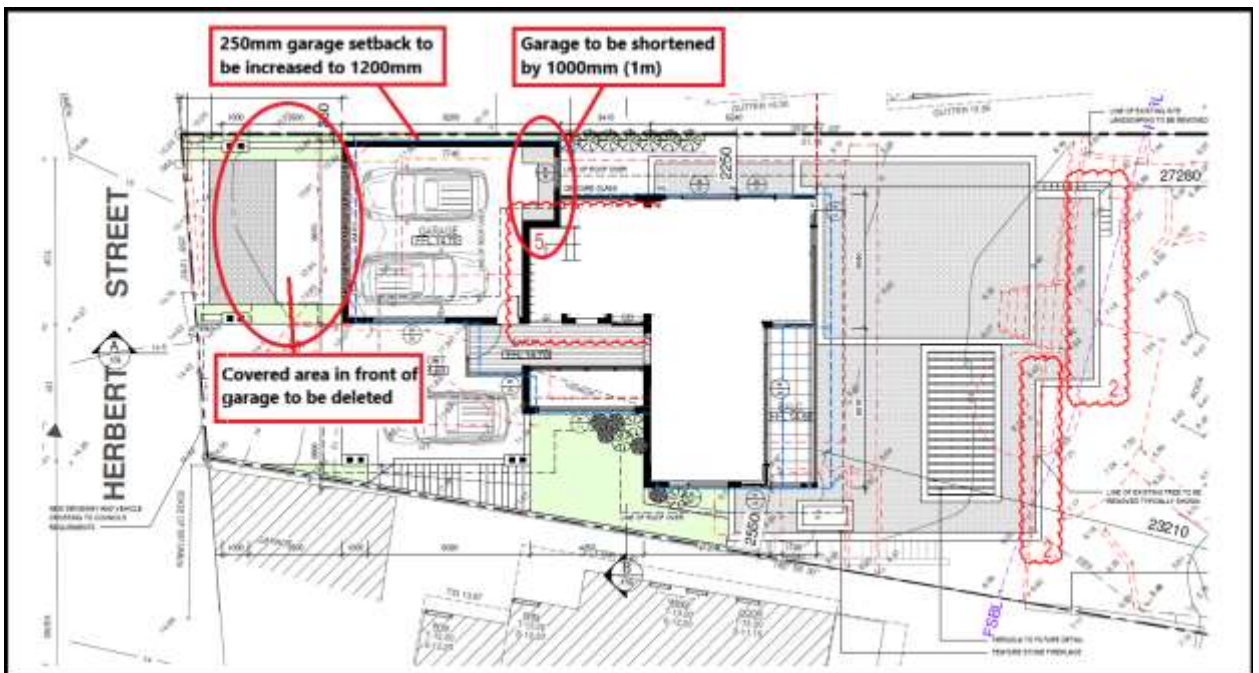
“new buildings and alterations and additions should reflect the dominant building rhythm of the streetscape with regard to the location, spacing and proportion of built elements in the street elevation”.

In this regard, it is considered that the design of the dwelling with its garage positioned at the top of the site and presenting to the street, is considered to be consistent with the established character in this unique part of Herbert Street. In this regard, particular reference is made to the immediate property to the west (40 Herbert Street), which has a three (3) car garage and vehicle turning area within the front setback area.
- 99. Notwithstanding the above, concern is raised regarding the provision of an additional covered area in front of the proposed garage, which is proposed in addition to the garage and carport. It is considered that this would result in excessive structures within

the front setback area. Accordingly, it is recommended that the covered area in front of the garage be deleted. This is addressed as a condition of consent.

Side Setbacks

- 100. Part C1 of Kogarah DCP 2013 (clause 1.2.4.3) prescribes a side setback control of 1200mm for buildings with a wall height of greater than 3.5m.
- 101. The garage which has a side setback of 250mm to the western boundary which is non-compliant. Apart from the garage, the proposal fully complies with the DCP requirement for side setbacks.
- 102. The 250mm western side setback of the garage wall is considered unacceptable. The garage wall has a height of 3.5m (measured from the paved vehicle turning area at the front of the site) or 7m when measured from the lower level paved courtyard at the front of the neighbouring property. The garage wall is considered to have an excessive height which would result in adverse impacts of bulk and scale; as a result the side setback is to be increased through a condition to be 1200mm from the western boundary. This increased side setback will assist with reducing the bulk presented to the western neighbour.
- 103. **NOTE:** The proposed design amendments of increased garage setback, shortening the length of the garage and deletion of the covered area in front of the garage are illustrated in the drawing below:



First floor plan, showing proposed design changes to increase the garage side setback to 1200mm, shorten the garage by 1000mm; and deletion of covered area in front of garage.

Garage Controls

- 104. In addition to the above controls regarding Primary Building Frontage (as discussed above), Kogarah DCP 2013 also contains various controls (clause 1.2.5) relating to garages. In particular, the DCP states that:
 - Subclause (2): states that garage doors should not dominate the front street elevation; and

- Subclause (6): states that 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.
105. The dwelling proposes a double-width garage door (rather than 2 x single width) facing the street. Further, the garage doors are the most dominant feature of the dwelling when viewed from the street and therefore non-compliant.
106. Despite the DCP non-compliance, the slope of the land and the narrow road carriageway, results in the established character of the streetscape consisting of garage/carport structures at or near the front boundary, the proposed development will not be inconsistent in terms of the unique streetscape character of this part of Herbert Street. The proposal is considered able to be modified to reduce the impact on the streetscape design through the deletion of the covered area in front of the garage which has been recommended as a condition of consent as discussed previously and illustrated in the above drawing.

Driveway Width

107. Part C1 of Kogarah DCP 2013 (clause 1.4) prescribes a maximum driveway width between the street boundary and the primary building façade of 4m. The development proposes two separate driveways with widths of 6.41m (to service the double garage) and 5.5m (to service the carport), which is non-compliant.
108. Despite the DCP non-compliance, the proposal is considered to be acceptable. The pertinent objective of the DCP is that *“Car access areas and garages/carports do not visually dominate either the development or the streetscape.* In this regard, the existing character of the streetscape of this unique part of Herbert Street is dominated by garages/carports and paved vehicle access to those structures.
109. This is well illustrated by the aerial photo (see earlier in this report), which shows that for each of the properties in this location (from 38 to 46 Herbert Street), the front setback area is dominated by garages/carports, and each of these properties contain driveways that take up most of the frontage of each lot, and which all exceed 4m in width.
110. In this regard, as noted throughout this report, it is considered that the double garage and carport adjoining are acceptable structures from a streetscape perspective, however the covered area in front of the garage is excessive and should be deleted.
111. In relation to the width of the driveway, it is considered that this is necessary to ensure safe and adequate vehicle manoeuvring area into/out of the site. In this regard, as mentioned, the width of the Herbert Street road carriageway is very narrow (single width) due to topography and vegetation.

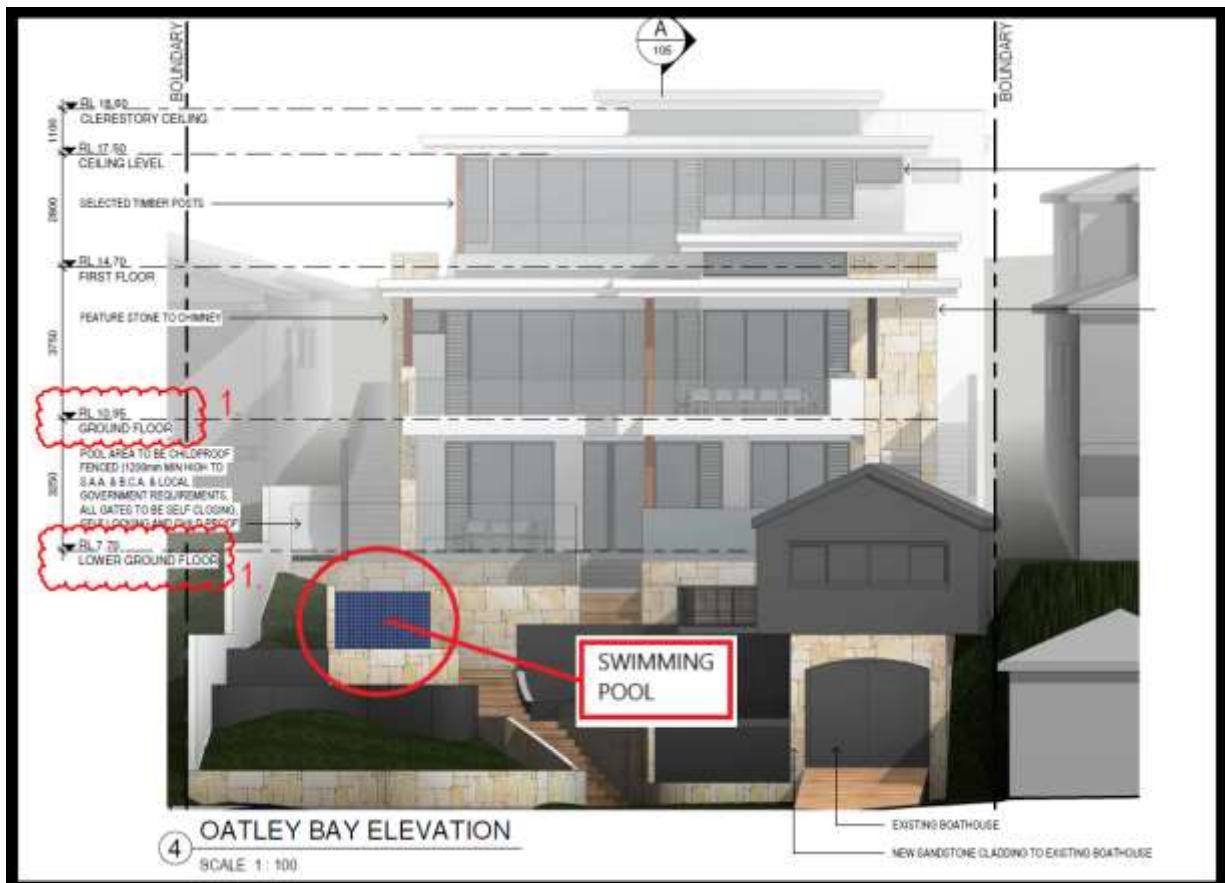
Terrace/Balcony Requirements

112. The Visual Privacy controls (Clause 1.5.1) of Part C1 Kogarah DCP 2013 contains the following requirements for terraces/balconies that are more than 1.5m above finished ground level:
- Subclause (2) prescribes a maximum width of terraces/balconies of 2.5m, and a minimum setback of 3m from any property boundary. The development proposes a ground floor terrace with a width up to 4.25m and a minimum setback of 2.15m (to the eastern boundary); and

- Subclause (3) prescribes a maximum cumulative total of 40sqm per dwelling for terraces/balconies. The development proposes a cumulative total of 88.425sqm.
113. The development does not comply with these numeric requirements, however, the proposal is considered acceptable for the following reasons:
- (a) Subclause (4) of this Part of the DCP states that Council may consider a variation to these requirements where the terrace or balcony will not result in a loss of privacy to neighbouring properties.
 - (b) The subject development has been designed to enjoy views of Oatley Bay which are obtained directly out towards the north and north east. Potential loss of privacy to/from neighbours to the east and west has been appropriately mitigated through positioning the terraces behind the side external walls of the dwelling.
 - (c) The larger area spaces of the proposed terraces which are to be used for entertaining are centrally located within the terraces, not to the sides. The fact that the larger spaces of the terraces are centrally located will also help to ensure privacy impacts to the neighbours are minimised.
 - (d) The balconies/terrace areas proposed in this dwelling are generally consistent with scale and form of those on adjoining properties.
 - (e) Accordingly, given that the balconies/terraces will not significantly impact on the privacy of neighbouring properties and are consistent with neighbouring properties in terms of area, it is considered that the proposal is acceptable.

Swimming Pool Controls

114. The Swimming Pool/Spa Pools controls (Clause 6.6) of Part C3 (Foreshore and Waterfront Controls) Kogarah DCP 2013 prescribes that the coping level of swimming pools is not to be elevated more than 500mm above natural/existing ground level.
115. The proposed swimming pool has a coping/deck level of RL6.8 which is 2.3m higher than existing ground level being RL4.5 which is non-compliant as referenced in the diagram below.



North elevation drawing of proposed development, showing location of the proposed swimming pool

116. Despite the non-compliance, the proposal is considered acceptable for the following reasons:
- The objective of this control is to “minimise the visual impact of pools when viewed from the waterway”. In this regard, the north elevation of the pool which faces Oatley Bay shows that the external materials of the pool will be a “infinity edge” with feature stone as the external materials, which is consistent with the elevation of the dwelling in this location. Such treatment of the external wall of the pool will ensure it has an acceptable visual presentation to the waterway
 - In this regard the pool will have a satisfactory appearance when viewed from the water, as it is integrated into the design of the dwelling.
 - The width of the pool facing Oatley Bay is narrow being 2.2m; this narrow width will assist in minimising the pool’s visual impact when viewed from the waterway.
 - The land has a steep slope, particularly in the location of the pool, with a fall of some 3m over a short distance where the pool is to be located. With such a steep slope, it is difficult to achieve full compliance.
 - Other properties in this location also have swimming pools that are elevated above natural ground level, often with large/wide expanses of the underside of the pool presenting to the waterway and screened only with landscaping. The proposed pool will have a superior presentation to the waterway given the combination of materials and landscape screening.

Section 7.12 Contributions

117. The proposed development would require payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979. An appropriate condition is included in the recommended conditions.

IMPACTS

Natural and Built Environment, Social and Economic Impacts

118. It is considered the proposal will not have an unreasonable impact on the character of the locality, and also the amenity of neighbouring residential properties.

Suitability of the site

119. The site is zoned R2 – Low Density Residential. The proposal is a permissible form of development in this zone. The proposal will not have an unreasonable impact on the adjoining properties and views from the waterway. The site is not subject to any natural constraints such as land slip or flooding that would render it as unsuitable for the proposed development.

SUBMISSIONS AND THE PUBLIC INTEREST

120. The DA was neighbour notified in accordance with Kogarah DCP 2013 for a period from 18 May to 1 June 2018. Three (3) submissions were received from and/or on behalf of adjoining owners.
121. Amended plans received August 2018 were re-notified to neighbours for a period from 23 August to 6 September 2018. A further four (4) submissions were received; raising similar issues to the original notification as an indication their issues of concern had not been resolved.
122. Subsequent amended plans dated September 2018 were re-notified to neighbours for a period from 11 to 25 October 2018. A further four (4) submissions were received to this re-notification process, again raising similar issues to those previously raised, and advising that the amended plans had not resolved previous concerns.
123. A total of eleven (11) submissions have been received to this DA. The issues of concern have been summarised and discussed as follows:
124. **View Loss**
Concern is raised from the neighbour at 40 Herbert Street that the proposal will cause unacceptable view loss.
125. Assessment Officer's Comment: This was raised as an issue regarding the original DA plans, and amended plans in the opinion of the neighbour, have not resolved the neighbour's concern regarding this issue.
126. It should be noted that the following view assessment is made in terms of impacts on the property at 40 Herbert Street, to the west, as this is the only property likely to be affected due to lot orientation.
127. The Land and Environment Court has considered view sharing/view impacts in development proposals and established a *Planning Principle* to assist in the consideration and assessment of these issues. This is known as the *Tenacity* principle following the Court's consideration of *Tenacity v Warringah Council (2004)*.

- 128. The *Tenacity* Principle is also referenced in Kogarah DCP 2013 as the criteria for assessment of Views/View Sharing. *Tenacity* contains four “steps” for assessment of view impacts, which are provided below, together with an assessment of the proposal against each principle.
- 129. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
- 130. Comment: The views in question are water views of Oatley Bay, generally looking to the north/north east. Further views from the neighbour’s property are also available towards the north west, which will be unaffected by the proposed development. The views are not “iconic” (i.e. there are no specific landmarks or features such as referenced in *Tenacity*), however it is a “whole” view because the neighbouring property (40 Herbert Street) has frontage to the waterway. Accordingly, such views would be valued very highly. Currently the view referenced by the submitter is largely across the subject property, with the only obstruction to this view being the vegetation located near the water’s edge (note – this is to be removed as part of the proposal, thus enhancing the views currently blocked by this vegetation).
- 131. The neighbour’s submission contains an aerial photo (provided below), as well as a number of photos from within the neighbouring property (one is also provided below). The assessment officer has conducted an inspection from the neighbour’s property to verify the views currently available.



Aerial Photo showing Oatley Bay water views available from properties in this location



Assessment Officer's site inspection photo, showing the view towards the north/east currently available from the northern most window (dining room) on ground floor of neighbour's dwelling



Assessment Officer's site inspection photo, showing the view directly to the east currently available from the northern most window (dining room) on ground floor of neighbour's dwelling



Photo from neighbour's submission, taken across the subject site towards the eastern side of the neighbour's property

132. *The **second step** is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
133. Comment: The northern/eastern side of the ground floor level of the neighbour's house contains the main living areas (lounge, dining room and kitchen). The northern side of these rooms contains large sliding doors and balconies, whilst the eastern side contains the windows shown in the above photo. Currently, the views to the north/east from these rooms are generally available from both sitting and standing positions.
134. *Tenacity* considers the relationship between a development site and neighbouring properties. In this regard, the subject site is to the eastern side of the neighbour most likely affected by view loss. Views from the neighbour's property to the east are across the subject site due to orientation.
135. Views from the rear of the dwelling to the north would therefore be unaffected by the proposed dwelling. However, views from the side of the dwelling towards the east would be partly affected. Referring again to the above photo, views from the two smaller windows (kitchen) on the eastern side would be affected by the proposal, whilst the larger window (dining) would be mostly unaffected. In this regard, the applicant has provided a drawing of the side elevation of the proposed development with the neighbour's dwelling superimposed thereon, to illustrate potential impacts of the proposal.



Side elevation of proposed development, with neighbour's elevation drawn in background

136. The vegetation on the water's edge, Tuckeroo Trees are proposed to be removed as part of this application. Whilst the proposed dwelling would result in some view loss, this is more than compensated by the improved view resulting from the removal of this vegetation.

In this regard, the replacement Tuckeroo trees are proposed to be in 45 litre pot sizes, which means that these trees will have a height of some 1m – 1.5m at the time of planting.

137. *The **third step** is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*
138. Comment: The extent of the impact varies depending on the rooms/windows of the neighbour's property. In this regard, views from the north facing windows of the neighbour's property are unaffected by proposed development.
139. Views from east facing windows are side views across the subject site, and *Tenacity* states that "*the expectation to retain side views ... is often unrealistic*". Even though the proposed dwelling would result in removal of some of the views currently available (looking directly east), angled views (looking towards the north/east) from the side windows would still be partly retained.
140. It should be noted that the rear setback of the proposed dwelling will not extend as far to the rear of the site as the existing dwelling at 40 Herbert Street, which will assist in preservation of views. This is illustrated in the following photo prepared by the applicant showing the rear setbacks of the proposed dwelling relative to the neighbouring properties.



Air photo of subject property showing rear setbacks of the proposed dwelling relative to neighbouring properties

141. Furthermore, it is noted that views towards the north/east will be vastly improved by removal of the trees along the water's edge (refer to Landscape Architect assessment later in this report).
142. Having regard to the qualitative terms referenced in *Tenacity*, it is considered that the proposal would have a *negligible to minor* impact on views currently available to the neighbour's property. Such impact would be restricted to side views from windows taking in views across the subject site. Any such impact to these side windows would be more than offset by removal of the vegetation on the water's edge.
143. *The **fourth step** is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*
144. Comment: The proposal is considered to be reasonable in terms of its view impact. Although the proposal has some areas of non-compliance with Kogarah DCP 2013, these are considered to be justifiable as discussed in the DCP compliance assessment earlier in this report. Even if the proposal did fully comply with the DCP controls, this would not improve the views available to the neighbour because of the positioning of the dwelling relative to the neighbour's house.

145. As noted in the third step of the *Tenacity* assessment above, the proposal would have a *negligible to minor* impact on the views available to the neighbour.
146. It should be noted that the applicant has submitted amended plans to reduce impacts and improve views from the eastern side living room windows of the neighbour's property. In particular, the privacy screen on the western side of the ground floor terrace has been shortened and moved further away from the boundary, so as to open up views from the neighbour's east-facing living room windows.
147. Conclusion – View Impacts: Overall, having regard to the preceding assessment, it is considered that the proposal will not have an unreasonable impact in terms of views from the neighbour at No 40 Herbert Street or any other property. The views from this property to be affected are side views which are recognised in *Tenacity* as being more difficult to protect. As mentioned, although the positioning of the dwelling would cause some view impact, this would be more than offset by the removal of vegetation on the water's edge which will open up more of the view currently blocked by such vegetation.
148. **Height**
Concern is raised that the proposal does not comply with the Kogarah LEP 2012 controls (9m overall height) or the Kogarah DCP 2013 controls (7.2m to underside of ceiling and 7.8m to the top of the parapet). In particular, concern is raised that the height of the development should be taken from existing ground level, much of which is beneath the existing dwelling and could be lower than that provided by the applicant.
149. Assessment Officer's Comment: These issues of concern relate to the original DA plans. The amended plans received during the processing of this DA have included a reduction in overall height by some 300mm. The amended proposal does not comply with the Kogarah DCP 2013 controls regarding ceiling and top of parapet height, however it does fully comply with the Kogarah LEP 2012 control (9m overall height). The proposal is considered to be satisfactory despite the non-compliance.
150. Issues regarding the height of the development have been discussed earlier in this report (see compliance assessment for Kogarah LEP 2012 and Kogarah DCP 2013).
151. In response to the neighbour's concerns regarding where "existing" ground level has been taken from, the Council officer's assessment has used survey levels provided with the applicant's DA submission. This has been provided in the form of both a survey plan, with such survey information included on the site plan and floor plans of the development. Based on this information, the assessment has concluded that the development is satisfactory in terms of the height controls in the Kogarah LEP 2012 and DCP 2013.
152. **Height of garage wall**
Specific concern is raised regarding the height of the garage wall to be built on the site boundary (western side); in particular it's apparent height when viewed from the neighbour's property (adjoining 40 Herbert Street) as well as resulting impacts of bulk and scale.
153. Assessment Officer's Comment: The development proposes construction of a garage wall 8.2m in length and setback 250mm from the western boundary adjoining 40 Herbert Street.

154. The garage has a height of 3.9m when viewed from the street. At the front of the neighbouring property (40 Herbert Street), adjacent to the subject site there is a large, elevated vehicle turning area accommodating their garage. The height of this turning area is approximately 3.5m, with a paved/landscaped area between it and the front setback of the dwelling on 40 Herbert Street (see photo below).



Photo of paved area within 40 Herbert Street, facing location of garage on 42 Herbert Street

155. When viewed from 40 Herbert Street, the apparent height of the proposed garage when viewed from 40 Herbert Street will be 3.5m where it adjoins the paved vehicle turning area, and approximately 7m where it adjoins the lower paved area.
156. It is considered that the western garage wall would have an excessive impact in terms of visual bulk and dominance when viewed from the lower paved area within 40 Herbert Street. As a solution, it is considered that the side setback of the garage (presently 250mm) be increased to 1200mm and comply with the DCP so as to minimise visual impact. This is a recommended condition of consent.
157. **Height**

Specific concern is raised that the height of the development is limited to two storeys under Part C4 Foreshore Locality Controls, with three storeys only being allowed so that a reduced building footprint can be achieved.

158. Assessment Officer's Comment: Kogarah DCP 2013 allow three (3) storey developments on allotments with a slope greater than 12.5% (or 1:8), such as the subject site. It is acknowledged that the DCP also contains specific Foreshore Locality Controls in Part C4 which generally limits developments to two (2) storeys so as to achieve a reduced building footprint.
159. It is considered the proposal is consistent with the existing neighbouring developments in this location, both in terms of its three (3) storey presentation to the north (Oatley Bay) and also the extent of the building footprint.
160. **Floor space ratio**
Concern is raised that the proposal does not comply with the Kogarah LEP 2012 control for floor space ratio (FSR), In particular, the sub-floor area should be included in FSR calculations due to its large size, its floor to ceiling height and doors both to the inside and outside the dwelling.
161. Assessment Officer's Comment: These issues of concern also related to the original DA plans. The applicant's amended DA plans have included FSR calculations which confirm compliance with the LEP control, and in particular the definition of "gross floor area" as defined in Kogarah LEP 2012.
162. The original DA plans did include a large sub-floor area with both internal and external entry doors. The applicant's amended plans have deleted the external entry door (that were previously located on the western side), however it is agreed that the large size of the sub-floor area could lend itself to potential use for a range of internal spaces that would add to the "gross floor area" of the dwelling.
163. To resolve this issue, it is recommended that a condition of consent be imposed to reduce both the floor to ceiling height to a maximum 1.8m.
164. **Over-Development of the Site**
Concerns is raised from the neighbours that the proposal is an over-development of the site, as it does not comply with a number of provisions including 60% of the length of the allotment, height, and setbacks.
165. Assessment Officer's Comment: These issues generally relate to the development's compliance with Kogarah DCP 2013. As indicated in the DCP compliance assessment earlier in this report, whilst the proposal has some areas of non-compliance with the DCP, these are justifiable in the circumstances, and/or they can be addressed as a condition of consent.
166. **Breach of the Foreshore Building Line**
Neighbours have concerns that the development proposes an unacceptable breach of the foreshore building line (under Kogarah LEP 2012).
167. Assessment Officer's Comment: This issue has been fully considered and addressed earlier in this report (see Kogarah LEP 2012 compliance assessment) and found to be satisfactory. The breach of the foreshore building line is minor and is less than what has

been approved for other nearby dwellings. The breach will also have minimal impact when viewed from the waterway.

168. **Privacy impacts on 44 Herbert Street**
169. Concern is raised that windows W11, W27, W28, W13, and W17 cause overlooking into the rear yard of the neighbour at 44 Herbert Street (to the east).
170. Assessment Officer's Comment: These were issues of concern raised from the original DA plans.
171. W11 is a large window designed to provide natural light into the entry corridor/void at the front of the dwelling. Although the window is very large (over two storeys of the elevation), it's position at the front means that any line of sight into the neighbour's rear yard will be obscured by other walls of the proposed dwelling.
172. W27 and W28 are windows to the master bedroom, and accordingly there would be minimal privacy impacts because this is not a primary living area of the house and will be used mostly at night for sleeping. It is noted that W27 has been reduced in size in response to the neighbour's concerns.
173. W13 is to a formal lounge room, positioned towards the centre of the house, and set behind the wall of the adjoining living room which will obscure any line of sight from this room to the neighbour's rear yard. Window W13 has also been reduced in size in response to neighbour's concerns.
174. W17 is to the dining room, and this window is some 10.19m from the boundary to the neighbour's property. This distance, together with the recommended privacy screen on the side of the ground floor terrace, will ensure that privacy impacts from this window are resolved.

On the basis of the above assessment, it is considered that the privacy impacts upon the neighbour at No 44 Herbert are not unreasonable.

175. **SEPP (Coastal Management) 2018**
The proposal is inconsistent with the provisions of this SEPP, which aims to protect and enhance the scenic, social, and cultural values of the coast by ensuring that the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast.
176. Assessment Officer's Comment: Assessment of the proposal against the provisions of the Coastal Management SEPP is provided earlier in this report. In summary, it is considered that the proposal is satisfactory when assessed against the provisions of the Coastal Management SEPP.
177. **Garage door width.**
Concern is raised that the width of the garage door is contrary to DCP controls and is inconsistent with the principles of Crime Prevention Through Environmental Design (CPTED) because it does not provide for casual surveillance of the public domain (street).
178. Assessment Officer's Comment: It is noted that the provisions of the Environmental Planning and Assessment Act requires Council to consider the principles of CPTED in the assessment of DAs. Generally, one of those principles is that developments should

enable/facilitate casual surveillance of the public domain. In residential developments, this is commonly achieved through siting of some living areas towards the front of the house to enable views to/from the street.

179. The subject site has a steep slope from the street to the rear (Oatley Bay), and the siting of the garage at the front of the site for vehicle access provides little opportunity for living areas at the front for such casual surveillance. This is a common situation on allotments with such a steep slope away from the street and a narrow frontage of 12.19m.
180. **Tree Removal**
Concern is raised that the proposal involves removal of three trees within the foreshore area, as such removal would be contrary to the DCP controls which require retention of natural foreshore features such as trees and exposed rock.
- Further, concern is also raised that the DA documentation is ambiguous, as the architectural plans show the retention of three *Cupaniopsis anarcardioides* (*Tuckeroo*) trees, whilst the landscape plans show these to be removed.
181. Assessment Officer's Comment: This has been clarified with the applicant who has requested that these be removed as part of the assessment of this DA. Council's Consultant Arborist has undertaken an assessment, and advised that the trees are in poor condition, dangerous and weight loaded. In this regard, the term "weight loaded" refers to partial fracture/failure of the tree branch/limb due to the weight of the limb itself, or by a particular event such as wind/storm damage. Appropriate conditions for replacement planting have been provided as part of the Consultant Arborist's assessment. This is considered to be a satisfactory outcome in this instance. In particular, the removal of these trees will provide additional water views until the replacement planting achieves full maturity.
182. **Earthworks**
Concern is raised that the proposal involves works including swimming pools and retaining walls and other landscaped features which cover large rock outcrops and other natural foreshore features such as trees and exposed rock in the foreshore area.
183. Assessment Officer's Comment: The residential properties in this location are generally considered to be highly urbanised. Many of the residential properties have been developed in a way which has left very little of the natural foreshore features that previously existed. An example of this is No 40 Herbert to the west, which has a seawall and levelled turfed area at the water's edge, with a swimming pool, steps and terraces between the dwelling and the water (this is illustrated in the montage of the subject site and surrounding properties, see earlier in this report).
184. Other properties have also altered the previous foreshore landscape with a series of landscaped retaining walls that follow the topography of the site, and the subject proposal seeks to replicate this arrangement in the area to the rear of the dwelling.
185. **Lack of requests for variation under Clause 4.6 Kogarah LEP 2012**
Concern is raised that the proposal breaches a number of planning controls which have not been supported by a clause 4.6 request for variation.

186. Assessment Officer's Comment: The provisions which the neighbour claims that the proposal breaches are listed below, together with a brief comment from the assessment officer:
- Construction within the FBL – this has been supported by a Clause 4.6 request, see discussion earlier in this report;
 - FSR non-compliance – the proposal complies with the FSR control, no clause 4.6 request required;
 - Exceed height limits – proposal does not breach the 9m LEP control, so no clause 4.6 required. The development proposes a variation to the ceiling height and parapet height controls as discussed elsewhere in this report, however these are DCP controls not requiring a clause 4.6 variation request;
 - Construct a 7.8m high wall 250mm from boundary – DCP control, no clause 4.6 required;
 - Contravene the 60% limit for the second storey – DCP control, no clause 4.6 required;
 - Installation of a pool within the FBL that sits 1.9m above ground – DCP control, no clause 4.6 required;
 - Remove 3 significant trees on the foreshore to allow construction of a pool and terraces – DCP control, no clause 4.6 required;
 - Non-compliance with front setbacks – DCP control, no clause 4.6 required; and
 - Facade to street in excess of 40% – DCP control, no clause 4.6 required.
187. In summary, the proposal has been supported by a request for variation as required by Kogarah LEP 2012 for the non-compliance to the foreshore building line. The proposal does not breach any other controls under Kogarah LEP 2012, whilst the other of the above stated breaches are to Kogarah DCP 2013 controls which do not require a clause 4.6 request.

REFERRALS

Council Referrals

188. Drainage Engineer
Council's Drainage Engineer has reviewed the proposal and raised no objection subject to appropriate conditions of consent.
189. Tree Management/Consultant Arborist: Council's Consultant Arborist has undertaken an assessment and advised that the proposal is satisfactory subject to appropriate conditions of consent. Note: Particular commentary has been provided in relation to the removal of the three *Cupaniopsis anarcardiodes* (Tuckeroo) trees near the foreshore, where it is advised that these trees are dangerous / weight loaded. In this regard, the term "weight loaded" refers to partial fracture/failure of the tree branch/limb due to the weight of the limb itself, or by a particular event such as wind/storm damage. Council's Consultant Arborist has undertaken an assessment and noted that the Tuckeroo trees on the shoreline exhibit such weight load damage and has supported the proposal to remove the trees.

CONCLUSION

190. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is

considered to be satisfactory and recommended for approval subject to conditions, as discussed throughout this report.

191. The DA has been notified to neighbours on three occasions throughout the processing. Submissions have been received from a number of adjoining owners, but in particular, several submissions have been received from the owners of 40 Herbert Street, immediately to the west. The main issues of concern related to view loss and their concerns regarding extent of non-compliance with Kogarah LEP 2012 and Kogarah DCP 2013.
192. In this regard, it is considered that the issues of concern that have been raised do not warrant refusal of the DA. Appropriate conditions of consent are recommended to address particular matters.
193. The proposal has been assessed against the provisions of Kogarah LEP 2012 and Kogarah DCP 2013, and a number of areas of non-compliance have been identified. The areas of non-compliance mainly relate to the slope of the land. There are also other areas of non-compliance specific to the garage, which in this instance is close to the front of the property which is common in this location of Herbert Street as reflected by other garages on adjoining properties.
194. The proposal is considered to be appropriate when assessed against the applicable planning controls, with some matters proposed to be addressed via conditions of consent.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

1. The proposed development is considered to be an appropriate scale and form for the site and the character of the locality.
2. The proposed development will not have an unreasonable or adverse impact upon the natural or built environments.
3. The issues of concern raised by the neighbours do not warrant refusal and/or can be ameliorated via conditions of consent.
4. In consideration of the aforementioned reasons, the proposed development is a suitable built form outcome for the site and its approval is not contrary to the public interest.

Determination

- A. THAT Georges River Council supports the request for variation under Clause 4.6 of Kogarah LEP 2012, in relation to the foreshore building line controls contained in Clause 6.4 of Kogarah LEP 2012.
- B. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Council approves Development Application DA2018/0162 for demolition works and construction of a new dwelling house and in-ground swimming pool at Lot 2 DP 557722 and known as 42 Herbert Street Oatley, subject to the following conditions:

GENERAL CONDITIONS

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	2544 Sheet 100	Sept 2018	F	Innovate Architects
Lower Ground Floor Plan	2544 Sheet 101	Sept 2018	F	Innovate Architects
Ground Floor Plan	2544 Sheet 102	Sept 2018	F	Innovate Architects
First Floor Plan	2544 Sheet 103	Sept 2018	F	Innovate Architects
Elevations	2544 Sheet 104	Sept 2018	F	Innovate Architects
Sections	2544 Sheet 105	Sept 2018	F	Innovate Architects
Landscape Plan	1811 Sheet L01B	18/4/18	A	Site Design + Studios

SEPARATE APPROVALS REQUIRED UNDER OTHER LEGISLATION

2. **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 (eg Opening the road for the purpose of connections to utility providers);
- (j) Stormwater and ancillary works in the road reserve;
- (k) Stormwater and ancillary to public infrastructure on private land; and

(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.

3. **Vehicular Crossing - Minor Development** - Constructing a vehicular crossing and/or footpath requires a separate approval under Section 138 of the Roads Act 1993 prior to the commencement of those works.

To apply for approval, 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. Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Section P1 and P2, in 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 in accordance with Council's specifications applicable at the time, prior to the issue of an Occupation Certificate.

4. **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.

REQUIREMENTS OF CONCURRENCE, INTEGRATED & OTHER GOVERNMENT AUTHORITIES

5. **Sydney Water - Tap in TM** - The approved plans must be submitted to a Sydney Water Tap in TM to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in TM agent has appropriately stamped the plans prior to the issue of the Construction Certificate.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. **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 Section 7.11 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	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$155.00
DEVELOPMENT CONTRIBUTIONS	
Georges River Council Section 94A Development Contributions Plan 2017	\$ 25,480

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 7.11 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 7.12 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.

7. Damage Deposit - Minor 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: **\$1,900.00**
- (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 photographic record 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 inspect the public works, and the damage deposit will be refunded in full upon completion of work where no damage occurs. Otherwise the amount will be either forfeited or partly refunded according to the amount of damage.

8. Site Management Plan - A Site Management Plan detailing all weather access control points, sedimentation controls, fencing, builder’s site sheds office, amenities, materials storage and unloading arrangements must be submitted with the application for the Construction Certificate.

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.

9. BASIX Commitments - All energy efficiency measures as detailed in the BASIX Certificate No. 918140S_02 must be implemented on the plans lodged with the application for the Construction Certificate.

10. Required design changes - Changes are required to be made and shown on the Construction Certificate plans to the satisfaction of the Certifying Authority as follows:

Amendments made in red on approved plans	All changes made in red on the approved plans shall be updated and shown on the Construction Certificate plans
Garage /sub-floor Setback	Amended plans and details are required to show a reduction in floor area through providing an increased setback only to the external wall of the garage, and the sub-floor area below. This setback shall be a minimum 1200mm to the western boundary (adjoining 40 Herbert Street). Variation to the location and other setbacks to boundaries of the garage are not permitted.
Garage/sub-floor length	Amended plans and details are required to show a reduction in floor area through providing an increased setback only to the northern external wall of the garage, and the sub-floor area (the area shown on the plans as workbench / storage) below by 1m to align with the southern wall of the internal stairs. Variation to the location and other setbacks to boundaries of the garage are not permitted.

Deletion of covered area	The covered area forward of the garage (between the southern elevation of the garage and the southern front boundary) shall be deleted. A 600mm architectural eave line only is permitted to be retained.
Privacy Screen	A privacy screen shall be provided to the entire eastern side of the ground floor terrace/balcony (shown on Plan No 2544 Sheet 102). The privacy screen is to be a minimum of 1.8m high measured from the finished floor level of the balcony and comprise of a material that cannot be seen through, such as translucent glazing. If louvres are to be used, they are to be fixed in a position that does not allow downward viewing of the adjoining property.
Privacy Screen	A privacy screen shall be provided to the entire eastern side of the first floor terrace/balcony (shown on Plan No 2544 Sheet 103). The privacy screen is to be a minimum of 1.8m high measured from the finished floor level of the balcony and comprise of a material that cannot be seen through, such as translucent glazing. If louvres are to be used, they are to be fixed in a position that does not allow downward viewing of the adjoining property.
Sub-floor area – use	The sub-floor area shall not be used or converted for use as habitable floor space. In this regard, the height sub floor area shall be reduced to a maximum 1.8m in height when measured from finished ground level to the underside of the slab of the garage above, to ensure that the sub-floor area cannot be used or converted for use as habitable floor space.

11. 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.

12. **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 the bay via a seawall as shown on the drainage plan located within the property boundary, with the provision of a pollution control pit.
 - (b) The PCA shall ensure that any structure or connection is to be located within the boundary of the site.
 - (c) The drainage engineer shall ensure that any surface runoff from the street shall not enter the garages or building and it is to be collected and diverted around the building to drain by gravity this matter is to be shown on plan.
13. **Driveway Construction Plan Details** - Detailed engineering plans for the driveway shall be submitted with the Construction Certificate application for approval that show:
- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004
14. **Compliance with Swimming Pool Act 1992** - The alterations and additions to the dwelling house and/or the construction of the new dwelling house subject of this consent must not generate any non-compliances with the Swimming Pools Act 1992, Swimming Pool Regulation 2008, Building Code of Australia and/or AS 1926.1-2007 - Swimming Pool Safety. Details of compliance to be illustrated on the plans lodged with the application for the Construction Certificate.
15. **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.
16. **Swimming Pools - Use and Maintenance** - The following apply to the construction, use and maintenance of swimming pools and spas:
- (a) no ground level may be raised or filled except where shown specifically on the approved plans;
 - (b) all pool/spa waste water is to be discharged to the sewer according to the requirements of Sydney Water;
 - (c) the swimming pool must not be used for commercial or professional purposes;
 - (d) drain paved areas to the landscaped areas or a suitable lawful drainage system; and
 - (e) arrange any external pool/spa lighting to minimise glare nuisance to adjoining owners.
17. **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).

- 18. **Waste Management Plan** - A Waste Management Plan incorporating all 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.
- 19. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Site Design and Studios, reference numbers - L01B. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following –
 - a) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
 - b) Tree/ s proposed upon the approved landscape plan shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003), and be planted and maintained in accordance with Councils standard specification.
- 20. **Tree Protection and Retention** - The following trees shall be retained and protected:

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) Fencing distance from trunk
<i>Magnolia stellata</i>	44 Herbert St, side fence	3.0 metres

Details of the trees to be retained must be included on the Construction Certificate plans.

General Tree Protection Measures

- (a) All trees to be retained shall be protected before and maintained during demolition, excavation and construction of the site.
- (b) The tree protection measures must be in undertaken in accordance *AS4970 -2009 Protection of trees on development sites*.
- (c) Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a suitably qualified Arborist (AQF Level 5 or above in Arboriculture).
- (d) The Project Arborist must be present on-site during the stages of excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
- (e) Unless otherwise specified in *AS 4970-2009 Protection of trees on development sites*, a protective fence consisting of 1.8 metres high, fully supported chainmesh fence shall be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.
- (f) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly, regularly to minimise the effects of construction works.
- (g) No services shall be installed within the TPZ of the tree unless approved by Council. This fence shall be kept in place during demolition, construction and also have a sign displaying ‘Tree Protection Zone – DO NOT ENTER’ attached to the

fence and must also include the name and contact details of the Project Arborist.

Excavation works near tree to be retained – *Magnolia stellata*

- (h) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not adversely be affected.
- (i) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.
- (j) Tree Protection Zone around the trees to be retained are not to have soil level changes or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

Details satisfying this condition shall be shown on the Construction Certificate plans.

Details of this construction method shall be shown on the Construction Certificate plans.

21. Tree Removal & Replacement

Tree removal

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
<i>Cupaniopsis anarcardiodes</i>	X3	42 Herbert St Oatley, waters edge, dangerous hazard beam/ weight loaded

General Tree Removal Requirements

- (a) All tree removal shall be carried out by a minimum certificate Level 3, Licenced and insured Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - *Pruning of Amenity Trees* and Tree Works Industry Code of Practice (Work Cover NSW 1.8.98).
- (b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

A copy of the Hurstville City Council’s Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy and Masterplan, can be downloaded from Council’s website www.georgesriver.nsw.gov.au.

22. Archaeological Investigation. Prior to the issue of a Construction Certificate:

- (a) The applicant must apply to the Heritage Division of the Department of Environment and Heritage for an excavation permit under Section 140 of the [Heritage Act 1977](#).
- (b) Should any potential archaeological deposit likely to contain Aboriginal objects be identified by any person during the planning or historical assessment stage, application must be made by a suitably qualified archaeologist to the NSW Government Office of Environment and Heritage for an excavation permit for Aboriginal objects.

- (c) The applicant must comply with the conditions and requirements of any excavation permit required, and are to ensure that allowance is made for compliance with these conditions and requirements into the development program.
- (d) General bulk excavation of the site is not to commence prior to compliance with the conditions and requirements of any excavation permit required.
- (e) Should any relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with section 146 of the [Heritage Act 1977](#).
- (f) Should any Aboriginal objects be unexpectedly discovered then all excavation or disturbance of the area is to stop immediately and NSW Government Office of Environment and Heritage is to be informed in accordance with Section 89A of the [National Parks and Wildlife Act 1974](#);
- (g) Should any archaeological remains or Aboriginal objects be discovered, a copy of recording of the finds and the final archaeological summary report is to be submitted to Council's Heritage Advisor prior to issue of an Occupation Certificate.

PRIOR TO THE COMMENCEMENT OF WORK (INCLUDING DEMOLITION & EXCAVATION)

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
- (f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
- (g) 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.

28. 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.

DURING CONSTRUCTION

29. **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.
30. **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.
31. **Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.
32. **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.
33. **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.
34. **Swimming Pools - Filling with water** - The pool/spa shall not be filled until the safety fences have been completed in accordance with the approved plans and specifications and inspected by the PCA.
35. **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.
36. **Tree Removal on Private Land** - The trees identified as 'to be removed/pruned' on the approved plans or by conditions of this consent shall be removed in accordance with AS4373 -2007 and the Amenity Tree Industry Code of Practice (SafeWork NSW, August 1998).

37. Excavation works near tree to be retained - Excavation around the tree/s to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not be adversely affected.

Where the Tree Protection Zone of trees on site or adjoining sites become compromised by any excavation works, the Project Arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

38. BASIX Compliance Certificate - A Compliance Certificate must be provided to the PCA regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.

39. Completion of Landscape Works - All landscape works must be completed before the issue of the Final Occupation Certificate in accordance with approved landscape plans and specifications, drawn by Site Design and Studios, reference numbers - L01B. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following –

(a) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.

(b) Tree/ s proposed upon the approved landscape plan shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003), and be planted and maintained in accordance with Councils standard specification.

40. Engineering 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) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (c) Construct any new vehicle crossings as required in this consent.
- (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf

41. Vehicular crossing - Minor development - The vehicular crossing and/or footpath works shall be constructed by a private contractor at the expense of the applicant, in accordance with the Vehicular Crossing Approval issued by Council's Engineering Services Division and in accordance with Council's Specification for Vehicular Crossings and Associated Works and the issued.

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.

NOTE: No stencilled or coloured concrete may be used outside the boundary of the property.

The work must be completed before the issue of an Occupation Certificate.

OPERATIONAL CONDITIONS (ONGOING)

42. **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.
43. **Swimming Pools - Resuscitation Notice** - An expired air resuscitation warning notice complying with the Swimming Pools Act 1992 must be affixed in a prominent position adjacent to the pool.
44. **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.
45. **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.
46. **Private Swimming Pools & Spas - Pump Noise** - The swimming pool/spa pump and associated equipment must be located so that the noise emitted does not exceed 5dB(A) above the background level. If this cannot be achieved, a ventilated and sound-proofed enclosure must enclose the pump to achieve the required noise levels.

Swimming pool is to be installed with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):

- (a) before 8 am or after 8 pm on any Sunday or public holiday, or
- (b) before 7 am or after 8 pm on any other day.

47. **Use of the Sub-Floor Area** - The sub-floor area shall not be used or converted for use as habitable floor space at any time.

OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

48. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
49. **Appointment of a PCA** - The erection of a building must not commence until the applicant has:

- (a) appointed a 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, the applicant must:

- (c) 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
- (d) notify the PCA of the details of any such appointment; and
- (e) 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 PCA for your development.

50. Notification Requirements of PCA - No later than two 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 applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

51. Notice of Commencement - The applicant must give at least two 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.

52. Critical Stage Inspections - The last critical stage inspection must be undertaken by the PCA. 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.

53. Notice to be given prior to critical stage inspections - The principal contractor for a building site, or the owner-builder, must notify the PCA at least 48 hours before each required inspection needs to be carried out.

Where Georges River Council has been appointed as the PCA, 48 hours notice in writing, or alternatively 24 hours notice by facsimile or telephone, must be given when specified work requiring inspection has been completed.

54. 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 PCA appointed for the building work can issue the Occupation Certificate.

An Occupation Certificate Application Form is attached for your convenience.

PRESCRIBED CONDITIONS

55. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
56. **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.
57. **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 PCA and the Principal Contractor.
58. **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.
59. **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.
60. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided and adequate provision shall be made for drainage.

NOTES/ADVICES

61. **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.

62. **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.
63. **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.
64. **Long Service Levy** - A Long Service Levy shall be paid in respect to this development. Details are provided below;
- a) 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>.
 - b) 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.
65. **Disability Discrimination Act** - This application has been assessed in accordance with the Environmental Planning and Assessment Act 1979. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992. The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.
66. **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.
- a) 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.
 - b) 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.
 - c) 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.
67. **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:

- (i) 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
- (ii) In the Application Form, quote the Development Consent No. (eg. 2017/DA/****)
- (iii) 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 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 storm water 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.

68. 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).

69. Noise - 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/nlgq.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](http://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).

LPP003-19

ATTACHMENTS

Attachment  1  Amended Plans - Revision F - Site Plan - 42 Herbert Street Oatley

Attachment  2  Amended Plans - Revision F - Elevations - 42 Herbert Street Oatley

