

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 04 July 2019
Time:	4.00pm
Venue:	Council Chambers, Civic Centre, Hurstville
Panel Members:	Paul Vergotis (Chairperson) John Brockhoff (Expert Panel Member) Michael Leavey (Expert Panel Member) Annette Ruhotas (Community Representative)
Council Staff:	Meryl Bishop (Director Environment and Planning) Nicole Askew (Coordinator Development Assessment) Cathy Mercer (PA to Manager Development and Building) Sue Matthew (Team Leader DA Admin) Monica Wernej (Admin Assistant)

1. On Site Inspections - 1.00pm –3.30pm

- a) 13-15 Gover Street Peakhurst
- b) 85-87 Railway Parade Mortdale
- c) 1 Barratt Street Hurstville

Break - 3.30pm

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

Public Meeting Session Closed - 6.00pm

(Break – Light Supper served to Panel Members)

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

- LPP017-19 85-87 Railway Parade Mortdale - DA2018/0547**
(Report by Senior Development Assessment Planner)
- LPP018-19 1 Barratt Street Hurstville - DA2019/0054**
(Report by Development Assessment Planner)
- LPP019-19 13-15 Gover Street Peakhurst - DA2018/0211**
(Report by Independent Assessment)

4. Confirmation of Minutes

LPP017-19

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 04 JULY 2019**

LPP017-19

LPP Report No	LPP017-19	Development Application No	DA2018/0547
Site Address & Ward Locality	85-87 Railway Parade Mortdale Mortdale Ward		
Proposed Development	Alterations and additions to the approved six (6) storey mixed use development to provide an additional level of residential accommodation to facilitate four (4) additional apartments, reconfiguration of the car park layout and changes to the rooftop area of communal open space		
Owners	Intra Developments Pty Ltd		
Applicant	CD Architects		
Planner/Architect	CD Architects/Planning Ingenuity		
Date Of Lodgement	13/12/2018		
Submissions	No submissions		
Cost of Works	\$131,203.00		
Local Planning Panel Criteria	The proposed works relate to a Residential Flat Building in accordance with the provisions of State Environmental Planning Policy No.65		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007 Kogarah Local Environmental Plan, 2012, Kogarah Development Control Plan 2013		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects BASIX Certificate Traffic and Parking Report Architectural Plans		
Report prepared by	Senior Development Assessment Planner		

Recommendation	That the application be refused in accordance with the conditions included in the report.
-----------------------	---

Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes

Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - Non-compliance with Clause 4.3 (Height) and Clause 4.4 (Floor Space Ratio) of the Kogarah LEP2012
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	Not Applicable

Site Plan



Allotment outlined in red

EXECUTIVE SUMMARY

Proposal

1. The development application (DA) seeks consent for the construction of an additional level above the approved six (6) storey mixed use building comprising of four (4) apartments (1 x 3 bedroom and 3 x 2 bedrooms), changes to the ground floor and basement car park layout by relocating car parking spaces and the car wash bay, and internal changes by reducing the commercial floor area from 212sqm to 193sqm. The form and location of the roof top communal open space has been redesigned.
2. On 16 August 2018, Georges River Local Planning Panel approved a Development Application (DA2017/0398) for the construction of a six (6) storey mixed use building containing forty (40) apartments, one commercial tenancy on the ground floor and basement car parking. The consent was "Deferred" in accordance with Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979 subject to the formal concurrence

being received by Sydney Trains in accordance with Clause 86 of the State Environmental Planning Policy (Infrastructure) 2007, with delegation being granted to the General Manager of Georges River Council.

3. On 14 November 2018, Sydney Trains granted formal concurrence to the proposal and on 5 December 2018 the consent was activated.



Figure 1: 3D Montage of the approved development (DA2017/0398)



Figure 2: Southern Elevation of the proposed development with the inclusion of the new level (as viewed from the Railway Parade frontage)

Site and Locality

4. This application applies to land known as 85-87 Railway Parade, Mortdale. 85 Railway Parade has a legal description of Lot 8 DP 456956 and 87 Railway Parade is legally identified as Lot 7 DP 1884. A third small triangular allotment also forms part of the site and is known as Lot 1 DP 171157 and has an area of 49sqm.
5. Combined the site has a frontage of 34.44m to Railway Parade and a secondary frontage of 44.86m in length to Ellen Subway. The total site area is 1,367.2sqm.
6. The site is located on the south eastern side of the rail corridor removed by just one property at the rear (1A Ellen Subway). The site is located within a small neighbourhood business precinct and is within close proximity to the Mortdale Railway Station and the Mortdale Town Centre.

Zoning and Permissibility

7. The subject site is zoned B2 Local Centre under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP2012). The proposal is part of a shop top housing (mixed use) development which is permissible with consent in the zone.

Submissions

8. The DA was notified to adjoining properties in accordance with the Kogarah Development Control Plan 2013 (DCP2013) for a statutory notification period of 14 days. No submissions were received.

Reason for Referral to the Local Planning Panel

9. This application is referred to the Georges River Local Planning Panel for consideration, as the proposal relates to a Residential Flat Building and the provisions of the State Environmental Planning Policy – Design Quality of Residential Flat Development is

applicable and the proposal exceeds the height control and floor space control by more than 10%.

10. Two (2) Clause 4.6 Statements have been submitted with the application seeking variations to the statutory height control (Clause 4.3) and floor space control (Clause 4.4) in accordance with the provisions of KLEP 2012 to justify and support the non-compliances.

Planning and Design Issues

11. The proposal exceeds the gross floor area and floor space ratio (FSR) of 2.5:1, proposing an FSR of 2.75:1 which creates an exceedance in the gross floor area of some 345sqm which amounts to a 10% non-compliance. The increase in the floor space increases the bulk and scale of the development and in turn creates an exceedance in the height. The justification for the additional floor space is not considered to be reasonable given the nature and intent of the control and its objectives which include to “*limit the bulk and scale of development*”. The proposal fails to satisfy the objectives of the floor space control and the Clause 4.6 Statement is not considered to be well founded in this instance.
12. The application exceeds the overall height control of 21m by a maximum of 2.975m which amounts to a variation of 14%. However the variation is considered to be more like 4.5m at the highest point going off the survey plan (variation of some 21%). The calculation of the exceedance is discussed in more detail later in the body of this report. In summary, the objectives of the height control include to “*minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas*”. The non-compliance adds to the visual bulk and scale of the development and by filling in this upper level the impact of overshadowing, and the visual impact of the development when viewed from the streetscape and surrounds is not minimised, but increased, so on this basis the proposed non-compliance with the height control does not adequately address the objectives of the height control and the Clause 4.6 Statement is not considered to be well founded or in the public interest.

Conclusion

13. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The proposed additional density, scale, form and bulk of the additional level is considered to be an unreasonable planning and urban design outcome, the Clause 4.6 Statements justifying the non-compliances with the height and floor space are not considered to be well founded in this instance. As a result the application is recommended for refusal.

Report in Full

DESCRIPTION OF THE PROPOSAL

14. The DA seeks consent for alterations and additions to the approved mixed use development defined as a shop top housing development. The proposed development seeks to provide for four (4) new apartments within the approved roof top level and the communal area of open space is relocated above this new level.
15. Further details of the proposal are as follows;

Basement 2 Plan

- The car wash bay has been relocated from Basement 2 to the ground floor.

Basement 1 Plan

- Visitor spaces have been relocated to the ground floor.
- Two (2) commercial spaces are located within this level.
- Four (4) additional bicycle parking spaces have been catered for in the designated bike storage area along the south western section of this level.

Ground Floor Plan

- The commercial tenancy has been reduced in size from 212sqm to 193sqm due to the provision of a fire hydrant pump room.
- The main lobby area has been decreased in size.
- Residential and commercial waste areas have been relocated and are reduced in size.

Levels 1-5

- No change proposed to the approved layout.

Level 6

- Approved roof terrace has been converted to apartments (refer to Figure 3 for the proposed plan layout).
- Apartment No.601 is a 2 bedroom apartment
- Apartment No.602 is a 2 bedroom apartment
- Apartment No.603 is a 2 bedroom apartment
- Apartment No.604 is a 3 bedroom apartment
- The apartments include balconies along the northern, eastern and southern sides of the building.

Level 7 – Roof Plan

- The roof top area of 346sqm is dedicated as communal open space including lift overrun, pergola and stair access. This space includes the provision of a substantial area dedicated as planter boxes located around its periphery.

DESCRIPTION OF THE SITE AND LOCALITY

16. The subject site comprises of three allotments with the following legal descriptions;

- Lot 8 DP 456956 (85 Railway Parade)
- Lot 1 DP 171157 (small triangular allotment that essentially forms part of 85 Railway Parade)
- Lot 7 Section 1 DP 1884 (87 Railway Parade)



Photo 1: Existing front view of the subject site



Photo 2: Existing view of the Railway Parade looking towards the west



Photo 3: Adjoining development to the east, 83 Railway Parade

17. The subject site is located on the northern side of Railway Parade and comprises of the two larger allotments and the smaller triangular lot. The site is located on the western side of Ellen Subway with its intersection with Railway Parade.
18. The site has a frontage of 34.44m to Railway Parade and secondary frontage to Ellen Subway of some 44.865m. The site is irregular in shape and has a combined site area of 1,367.2sqm.
19. The site falls from the north-western corner (rear) down towards Ellen Subway by over 3m and there is over 1m difference in the height along the front of the site along the Railway Parade frontage. The site is elevated and includes a substantial grassed public verge along the eastern boundary adjoining Ellen Subway. Site works in accordance with DA consent 2017/0398 have commenced and all structures on both sites have been demolished. At the time of preparing this report earthworks were occurring on site.
20. There is a White Cedar Tree located along the north-eastern side of the site within the embankment along Ellen Subway. Development Approval No.2017/0398 permitted the removal of a Jacaranda Tree which was located on site. This tree has subsequently been removed as construction works have commenced in accordance with the recent approval. The White Cedar Tree is located outside the property and situated on public land. This tree is being retained and protected in accordance with DA2017/0398 approval.
21. The site is located within an area comprising of lower scale dwelling houses and some larger medium density developments. Across the road to the south is a small neighbourhood shopping precinct, to the south west, 89 Railway Parade is a semi-detached brick dwelling and to the rear is 1 Ellen Subway which has been approved for redevelopment. On 21 February 2019 Council approved DA2017/0570 for the demolition and construction of a 7 storey mixed use development comprising of a ground floor commercial tenancies, thirty eight (38) apartments, basement car parking and associated works over Railcorp owned land at this site (refer to Figure 4). The approval was “deferred”

pending the provision of amended plans which satisfy a series of requirements from Sydney Trains.



Figure 3: Front elevation (3D montage) of the approved development at 1 Ellen Subway (DA2017/0570)

22. The site is located within a very convenient and accessible location within close proximity to Mortdale Town Centre, Mortdale Railway Station and other services and amenities such as Renown Reserve and Mortdale Public School.

State Environmental Planning Policies

23. 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 (Infrastructure) 2007	Yes
State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development	Partial non-compliance with some design standards

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

24. The main aims and objectives of this plan are (not limited to);

- *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,*
- *to protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*
- *to ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
- *to establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment,*

25. The proposed system and method of stormwater disposal proposed will be consistent with the approved stormwater drainage plan. There is no change proposed to the approved stormwater/drainage arrangement.

26. The application has been referred to Council's Engineering Section for comment, no objection was raised in respect to the proposed design and no additional requirements were imposed. The originally approved stormwater arrangement was designed in accordance with Council's Water Management Policy and satisfied the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

27. The proposal is not considered to have an adverse impact on the waterway and the Georges River catchment. The proposal aims to protect the existing water quality and use and functionality of the catchment.

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

28. A BASIX Certificate has been issued for the proposed additional apartments. The updated BASIX Certificate is dated 10 November 2018 and the proposal meets the provisions and minimum requirements of BASIX in terms of water, thermal comfort and Energy efficiency.

State Environmental Planning Policy No 55 - Remediation of Land

29. 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.

30. 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.

31. A review of the site history indicates that the site has been used for residential purposes for extended periods of time, and such uses and/or development are not typically associated with activities that would result in the contamination of the site. This was confirmed by the

original planning assessment report DA2017/0398 which stated that *“Further to the site review, submitted information and site inspections did not identify evidence of contamination. With consideration to the above, and assuming that recommended consent conditions are satisfied in the event of an approval, it is unlikely that the site is contaminated and the site would therefore be suitable for the proposed development.”*

32. The site conditions haven't altered since the determination of the original application and the site has been cleared and the consent (DA2017/0398) looks to have been taken up and construction works on site have physically commenced. The proposal therefore satisfies the provisions and requirements of SEPP 55.

State Environmental Planning Policy (Infrastructure) 2007

33. The aim of the Policy is to facilitate the effective delivery of infrastructure across the State. The Policy also examines and ensures that the acoustic performance of buildings adjoining the rail corridor or busy arterial roads is acceptable and internal amenity within apartments is reasonable given the impacts of adjoining infrastructure.

34. Clause 85 (Development adjoining a rail corridor) and Clause 87 (Impact of rail noise or vibration on non-rail development) of the SEPP are relevant and state that;

“If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.”*

35. A Noise and Vibration Report was submitted with the originally approved development (DA2017/0398). That report addressed the provisions of the Policy in respect to achieving acoustic compliance. The report suggested a series of construction methods and materials (ie double glazed windows) and confirms that windows along the southern elevation can be operable at any time but openings in habitable areas on other levels and along other orientations will need to be closed in order to satisfy the minimum requirements of Clause 87. Acoustic Logic consultants have confirmed that the provisions of the Infrastructure SEPP can be satisfied by the new apartments.

36. In accordance with the provisions of the Infrastructure SEPP the application was referred to Sydney Trains on 1 January 2019. As of the date of this report (23 June 2019) no formal response has been provided. Given that Sydney Trains provided concurrence to the approved development it can be assumed that this concurrence will be relevant for this proposal given that the proposed works do not alter the approved building footprint and the change is to the upper levels. The site is also removed from the Railway Line and Station by one property (1 Ellen Subway) and if the approved 7 storey development on this site is constructed it will act as a buffer for the subject site. If the application is approved the conditions or provisions of the original Sydney Trains concurrence will need to be incorporated.

Draft Remediation of Land SEPP

37. 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.

38. 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.
39. 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. The Draft SEPP will not alter or affect the findings in respect to contamination at the Site.

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

40. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
41. 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).*
42. 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.
43. The proposed development does not propose to change the approved situation and does not propose the removal of any vegetation on site.

Draft Environment SEPP

44. 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.
45. 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.
46. The proposal is consistent with the provisions of this Draft Instrument.

State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development

47. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three or more storeys in height and containing at least four dwellings. Amendment 3 to SEPP 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace

the Residential Flat Design Code. Given the nature of the development proposed, SEPP 65 applies.

48. Clause 28(2) of SEPP65 requires that the consent authority take into consideration the following as part of the determination of DAs to which SEPP 65 applies:

- a) the advice (if any) obtained from the design review panel, and
- b) the design quality of the development when evaluated in accordance with the design quality principles, and
- c) the Apartment Design Guide.

49. On the 14 February 2019 the proposal was referred to the Georges River Design Review Panel. The Panel considered the development against each of the nine (9) Design Quality Principles (refer to Table 1) and also considered the provisions of the Apartment Design Guide (ADG) which are summarised and addressed in Table 2 below.

50. In addition to satisfying the nine (9) design principles, the proposal generally satisfies the Apartment Design Guidelines in respect to the design quality and amenity of each new apartment. Despite a few areas of non-compliance which are detailed in this report the proposal generally satisfies the amenity and internal layout and design requirements within the ADG. The Tables below provide a comprehensive assessment against the principles, objectives and controls of SEPP 65 and the ADG.

Table 1: Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of "Residential Apartment Development" (RAD)	<p>Complies with the definition.</p> <p>Section 4 (1) (Application of Policy) of the SEPP 65 states that the policy <i>"applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:</i></p> <ul style="list-style-type: none"> <i>(a) the development consists of any of the following:</i> <i>(i) the erection of a new building,</i> <i>(ii) the substantial redevelopment or the substantial refurbishment of an existing building,</i> <i>(iii) the conversion of an existing building, and</i> 	Yes – the proposed mixed use development satisfies the definition of SEPP 65 as it is considered to be a substantial redevelopment of an approved building which is more than 3 storey's and applies to 4 or more dwellings.

		<p>(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and</p> <p>(c) the building concerned contains at least 4 or more dwellings.”</p>	
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the SEPP includes mixed use developments.	Erection of an RFB which satisfies the SEPP's definition of this residential land use. Refer to definition and explanation above in relation to the applicability of the Policy.	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect: Jacob Yammine (Registration No.8395)	Yes

Table 2: Part 2 Design Quality Principles under the SEPP

SEPP 65 – Design Quality of Residential Flat Buildings	DRP Comment	General comment
Context and Neighbouring Character Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves	<i>The site is located in an area recently rezoned B2 with a permissibly density of 2.5:1 and a height of 21m. It would be the first site to be redeveloped in the block bounded by Ellen Subway, Railway Parade and the railway to the north. Ellen Subway to the south of the railway underpass has wide nature strips on both sides with extensive planting and adjacent</i>	The existing approval on the site establishes the preferred design and planning outcome and what Council believes to be the optimal height, bulk and scale as it generally satisfies the key planning controls in terms of

<p>identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p><i>to the subject site is a very attractive and significant tree (Melia azederach – Native white cedar), which should be conserved.</i></p> <p><i>Vehicular access to the subject site and the adjoining site to the north is a critical issue and desirably both should be served by only a single cut through the existing embankment. Note that the ownership of the embankment is unclear and owners consent will be necessary.</i></p> <p>Vehicular access has been moved to the Railway Parade frontage (western boundary). This removes the need to cut through the Ellen Subway embankment.</p> <p><i>The site adjoins Railway Parade to the south which offers the potential for commercial frontages on this site and the adjoining sites in the block. This also appears to be the obviously desirable location for the pedestrian entrance.</i></p>	<p>height and floor space.</p> <p>It is one of the first redevelopments in the street and will establish a precedent for future development in the streetscape and immediate area.</p>
<p>Built Form and Scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p><i>The form and scale is generally appropriate for the new increased density development of the area. However the strong white horizontal bands of the lower three (3) storeys should be made less dominant and relate more sympathetically to this context.</i></p> <p>Done but dominant horizontal bands could be further de-emphasized.</p> <p><i>The following issues should be addressed:</i></p> <ul style="list-style-type: none"> <i>• Vehicular entry and basement construction should be located in a way which ensures that there be no adverse impact on the</i> 	<p>The panel do not raise any serious concerns with the proposed scale of the development as the new apartments will enclose the area which was previously approved as the roof top area of communal open space.</p> <p>The proposal however does not comply with the minimum separation distances for habitable areas. Council raises concerns regarding the scale of the development given</p>

important tree, and the attractive character of the landscaped public property.

Done

- *Future vehicular access to the adjacent site to the north must be resolved as part of this development, desirably with shared access through this site. Council should condition approval for the subject development to ensure that this access will be protected to serve the adjoining site as well.*

Not done and not required

- *Pedestrian entrance should be relocated to the Railway Parade frontage*

Done

- *The Panel recommends that amenities be provided to support the communal space on the roof garden. This should attempt to conform where possible with the height and floor space ratio.*

The application does raise some additional items:

- The proposed additional level now places the rooftop communal open space, including lift and lift overrun, fire stair, shade structure and planter walls above the 21m height standard.
- The additional level, which aligns with the lower levels, does not align with recommended ADG separation distances on the western boundary (minimum 6m). This should be amended to comply with minimum ADG requirements.
- Rooftop landscape plan

that a 21m height limit intends on a built form outcome of 6 storeys given that the proposal is in a mixed use zone and the ground floor commercial tenancy is required to have a floor to ceiling height of 3.5m in order to comply with the ADG and floor to floor heights of 3.1 for residential levels.

	<p>should be further development to clearly show intended function, design, landscape features and amenities including WC</p> <ul style="list-style-type: none"> Green roofs should be provided on roof top areas on Level 6. 	
<p>Density Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p><i>Compliant and acceptable</i> The permissible FSR 2.5:1 is exceeded by 10%. The proposed FSR is 2.75:1. The resulting building bulk and form does not cause any significant concerns from an urban design perspective. However the Council may have concerns about creation of a planning precedent.</p>	<p>The Panel do not raise an issue with the overall bulk, scale and density of the development however the proposal fails to comply with the key planning controls relating to height and floor space and the non-compliances are considered to be substantial in this case.</p>
<p>Sustainability Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p><i>Subject to BASIX</i></p>	<p>Complies</p>
<p>Landscape Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p>	<p><i>As mentioned above, the existing embankment and trees along Ellen Subway are a valuable landscape asset that should be retained, protected and enhanced. To this end, and as mentioned above, the existing landform and significant vegetation must be retained and protected, including from any constraint that this development places on</i></p>	<p>There is no change to the overall landscape plan apart from relocating the communal area of open space from Level 6 up to Level 7. The amount dedicated for this purpose is consistent with the approved plans.</p>

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

future development of adjoining sites. The tree protection zone for the existing Melia sp. should be calculated, mapped and protected.

A detailed landscape design for the embankment should be submitted to Council for implementation.

Any level changes between the development and the existing levels along Ellen Subway should be handled via thoughtful landscape initiatives in preference to built structures or retaining walls.

See above.

In addition, the street landscape in front of the adjacent site to the north must be conserved and therefore considered in the design of this site.

As part of above.

Street tree planting should be provided to Railway Parade and Ellen Subway.

To Council satisfaction (and included in landscape plan)

The proposed floor level of the commercial space is not apparent in the drawings provided however any grading required to ensure accessibility from the footpath must occur within the property boundary.

Done

A program of use that considers the likely recreational needs of residents should be developed for the roof top communal open space. This may include separate areas for group gatherings, solitary pursuits, or children's play. A small kitchenette and WC facilities should be provided. The design should eliminate any small, non-functional spaces.

To be done with landscape plan

Given that there is only one dedicated area of communal open space being located on the roof, the higher this area is positioned the more it is impacted by external factors such as weather and noise and it becomes more inconvenient to access etc. If there was a small secondary area of open space available at the ground floor level or at another point on/around the building this would reduce the reliance on this area. The quality of this area is reduced and its amenity reduced by repositioning a level higher.

In addition, the treatment of this area is not well defined as no landscape plan accompanied the application. The space is not considered to be inviting or functional.

Further discussion regarding the amount of the communal area of open space is discussed later in this report.

Considering a large proportion of the rooftop area is dedicated as planter boxes it is questionable that the actual useable area

	<p><i>Access must be provided to the 'pebble roof' on level 1 for maintenance. There may be opportunity to provide greening of the north facing wall in this area.</i></p> <p><i>Access provided</i></p> <p><i>The super-sized balconies require planter boxes to delineate private open space, provide an appropriate sense of scale, and screen along the property boundary.</i></p> <p><i>The reason for the 'nature strip' adjacent to the commercial frontage on Railway Parade is unclear – see architectural plan DA1103. The Railway Parade streetscape must be more fully resolved including levels, paving, landscape, any street furniture, lighting, etc.</i></p>	<p>complies with the ADG provisions in relation to its size.</p>
<p>Amenity</p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p><i>The following issues should be addressed:</i></p> <ul style="list-style-type: none"> <i>• The narrow natural light slot. See comments above under 'Landscape' – greening of this pebble roof might be considered.</i> <i>• Balconies should be provided with screening to ensure privacy and protection from strong winds, particularly corner balconies.</i> <i>• Provide screening and protection to bedroom windows.</i> <p>Garbage storage requires direct access to basement pick up</p>	<p>The general amenity and overall layout of the additional apartments is considered acceptable.</p> <p>The new apartments however will adversely affect the solar access provided to the southern facing apartments on Level 5 which relied on the provision of skylights in the approved development scheme to provide some additional light and solar access into the living spaces. These skylights have been removed by the new apartments.</p>
<p>Safety</p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined</p>	<p><i>Satisfactory</i></p>	<p>Complies – no change proposed.</p>

<p>and fit for the intended purpose.</p> <p>Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>		
<p>Housing Diversity and Social Interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p><i>Satisfactory</i></p> <p><i>Consider however proximity to the railway station and nearby schools.</i></p>	<p>Complies</p>
<p>Aesthetics</p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p><i>Requires further refinement to take into account the evolving context, preferably avoiding stark dark and white contrast.</i></p> <p>Further design and material consideration required.</p>	<p>The proposed architectural treatment and proposed materials and finishes in relation to the new apartments and associated structural and ancillary elements are consistent with the approved development scheme, however could be improved if the scheme is to be supported.</p>

51. Despite the DRP comments providing general positive direction and feedback, the Panel at the meeting did raise concerns that the new apartments were not setback the minimum 9m at the upper levels.
52. Having regard to the above, the Panel considers that the proposal generally satisfies the Design Principles of the ADG.
53. Clause 28 of SEPP65 requires the consent authority to take into consideration the provisions of the ADG. The Table below assesses the proposal against these provisions.

Table 3: Part 3 and Part 4 – Consideration of Residential Flat Design Code Design Controls

Clause	Standard	Proposal	Complies
3D - Communal open space	<p>1. Communal open space has a minimum area equal to 25% of the site.</p> <p>-Where it cannot be provided on ground level it should be provided on a podium or roof</p> <p>-Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space <p>2. Developments achieve a minimum of 50% direct sunlight to the</p>	<p>The proposal states that an area of 346sqm is to be dedicated as communal area to be located on the rooftop. This amounts to 25% of the site. The originally approved rooftop communal area was similar in size and area, however having a more detailed look at this area it is not considered that the whole area is “useable” in accordance with the intention of providing communal area (Part 3D of the ADG) and the area is actually less than what is indicated on the floor plans. The inclusion of the planter boxes which is a substantial area does not constitute “communal” area as these components are not “useable”.</p> <p>Council’s calculation believes that the “useable” area of open space on the roof amounts to approximately 290sqm which amounts to 21% of the site. This is below the 25% minimum.</p> <p>No Landscape Plan has been submitted with the application and the treatment of this space is considered to be unsatisfactory and lacks detail. This area requires substantial embellishment as this is the primary and only area of open space for the occupants.</p>	<p>No – see assessment below</p> <p>The treatment of the space is considered substandard and very basic. Given this is the only area of common open space within the development its treatment and design does not satisfy the objectives and design intent of Part 3D of the ADG.</p>

	principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Solar access to this space is considered to be compliant with the ADG given the orientation of the space.	
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>Where the site is greater than 1500sqm = 6m min dimension</p> <p>Min deep soil area of 7% (161sqm)</p>	There is no change proposed to the amount and area of dedicated deep soil planting. As approved the development caters for a 3m wide area of deep soil and there is also an area along the eastern side of the site which has been provided to allow for the APZ around the White Cedar Tree this also creates a landscaped buffer.	No however there is no change from the approved plans.
3F- Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys) Habitable - 6m Non-habitable – 3m</p> <p>Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m</p>	<p>Along the western side and south-western side the new units No.602 and 603 are setback a minimum of 9m from the boundary which complies.</p> <p>Along the northern and north western side the Units No.601 and 602 are setback 11.2m to the building wall and 9.2m to the balcony edge.</p> <p>The new units along the eastern side units No.601 and 604 are setback 6.2m to the building wall and only about 3m from the balcony to the boundary.</p> <p>The front boundary setback is governed by the provisions of the Kogarah DCP</p>	<p>Yes</p> <p>Yes</p> <p>No - See Note 1 for further discussion</p>
3G – Pedestrian Access and entries	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Multiple entries (including communal</p>	No change is proposed to the building in accordance with DA2017/0398 approval. Entry from Railway Parade is retained. The main lobby area has been reduced in size which is a negative design solution. The originally	Complies however the amended architectural treatment is considered to be poor given the main entry

	building entries and individual ground floor entries) should be provided to activate the street edge	approved main lobby was large and spacious and created a large, legible and attractive point of entry to the units above. The proposed reduction in this space creates a poor design outcome and reduces the internal amenity of this space.	and lobby space has been reduced in its size.
3H-Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	The vehicular access point is unchanged.	Acceptable.
3J-Bicycle and carparking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking</p>	<p>The site is located within 800m of the Mortdale Railway station as such the RMS provisions are applicable. The originally approved mixed use development was assessed against the provisions of the ADG requirements (RMS standards).</p> <p>Approved development relied on the following car parking provisions;</p> <p>7 x 1 bedroom units = 0.6 x 7 = 4.2 spaces</p> <p>30 x 2 bedroom units = 0.9 x 30 = 27 spaces</p> <p>3 x 3 bedroom = 1.4 x 3 = 4.2 spaces</p> <p>Residential spaces required = 36 spaces</p> <p>Visitor = 40/5 = 8 spaces 8 visitor spaces are provided Total = 45 spaces 59 Resident spaces were provided</p> <p>New Units generate the</p>	<p>The car parking arrangement and number of spaces provided complies with the ADG/RMS requirements. The proposal complies with the numerical requirements of the ADG given the accessible location of the site however Council's Traffic Engineer has raised concerns regarding the layout and configuration of some spaces and the design of the Loading Bay. See further discussion in</p>

	<p>requirement prescribed by the relevant council, whichever is less.</p> <p>In accordance with Section 5.4.3 (High Density Residential Flat Buildings) of the RMS Traffic Generating Guidelines. The site is located within the “Metropolitan Sub-Regional Centres” and the following provisions apply;</p> <p>0.6 spaces per 1 bedroom unit 0.9 spaces per 2 bedroom unit 1.4 spaces per 3 bedroom unit 1 space per 5 units (visitor parking)</p> <p>The provision of at least one loading dock for residential use is desirable, although a dock intended for commercial uses may be sufficient.</p> <p>The parking provisions for commercial use within a high density residential flat building should be separately established by referring to the relevant guidelines for those specific uses.</p>	<p>following requirements;</p> <p>Total required = 7 x 1 bedroom units = 4.2 spaces 33 x 2 bedroom units = 29.7 spaces 4 x 3 bedroom units = 5.6 spaces Subtotal = 40 spaces required for the residential component Visitor spaces = $44/5 = 8.8$ generates the need for 9 visitor spaces</p> <p>The proposal requires a total of 49 off street car parking spaces for residents and visitors</p> <p>Commercial parking in accordance with KDCP provisions which is 1 space per 40sqm but given this space is likely to be retail then the provision of 1 space per 25sqm of GFA should be applied. This amounts to 9 spaces Nine (9) dedicated commercial spaces are provided.</p> <p>A total required car parking spaces including commercial components amounts to a total of 58 spaces.</p> <p>The two (2) basement levels and ground floor area dedicated for car parking caters for the following; 59 dedicated resident spaces 9 dedicated commercial spaces 8 dedicated visitor spaces 1 x Loading Bay 1 x Car Wash Bay The off street car parking provision exceeds the requirements of RMS/ADG provisions.</p> <p>Bicycle parking</p>	<p>regards to this matter later in this report.</p>
--	--	---	---

		The approved development catered for 10 bicycle parking spaces and the additional 4 apartments has increased the bicycle parking by a further 4 bike spaces within the basement which is compliant.	
4A- Solar and daylight access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter	As there is no change to the layout and design of apartments at Levels 1 -5 these have been approved in accordance with DA2017/0398. The four new apartments on Level 6 will satisfy this provision apart from the south facing apartment No.603. In totality out of 44 apartments 6 apartments fail to comply, being 7% of the development. Units 504 and 505 which are orientated to the south were approved with skylights to both their living areas (skylights installed in the roof level). These skylights would have provided much needed additional solar access to these living spaces throughout the day. Given that the new apartments are now to be situated on Level 6 the skylights are no longer to be provided and this will adversely affect the internal amenity and solar access provision to these spaces. A total of eight (8) apartments out of 44 would now not comply with the minimum solar access provisions of the ADG and this equates to 18% of apartments not complying with the provisions.	Non-compliance – Solar access to units 504 and 505 has been decreased and the internal amenity of these apartments is compromised by the new apartments.
4B- Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-	The new apartments have been designed to comply with the minimum cross ventilation requirements of the ADG. The apartments do not exceed 18m in their depth.	Yes - complies

	through apartment does not exceed 18m, measured glass line to glass line The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths	All four new apartments have a dual aspect.	
4C-Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable rooms = 2.4m	The floor to floor height is 3m of the new level. This is consistent with the lower levels and as approved. Section 4C states that a minimum of 2.7m floor to ceiling height is required for habitable rooms and living spaces. The ADG specifies that to achieve this, a floor to floor height of 3.1m would be required. The originally approved development permitted the floor to floor height of 3m and also allowed for the first floor level to have a reduced floor to floor height as the ground and first floor level of mixed developments should have floor to ceiling heights of 3.3m. Given that the residential floors have been approved with floor to ceiling heights of 3m (in accordance with DA consent 2017/0398) the proposed floor to ceiling height is considered to be consistent with this approval. This is an issue that can also be easily conditioned if the application was to be supported.	No but consistent with DA approval 2017/0398
4D- Apartment size and layout	Apartments are required to have the following minimum internal areas: 1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm	Apartment 601 (2 bedroom) = gross floor area of 75sqm Apartment 602 (2 bedroom) = gross floor area of 75sqm Apartment 603 (2 bedroom) = gross floor area of 75sqm Apartment 604 (3 bedroom) = gross floor area of 95sqm	Complies

	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	<p>All four units have good amenity and access to a number of openings along several frontages.</p>	
4D-2 Apartment size and layout	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	Satisfactory	Complies
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> -3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow</p>	<p>All master bedrooms have a minimum internal size of 10sqm.</p> <p>Bedrooms have minimum dimensions of 3m.</p> <p>Living rooms have widths of 4m, 6m and 4.2m. There are no cross-over or cross-through apartments proposed.</p>	Complies

	apartment layouts		
4E- Private Open space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth -2 bedroom = 10sqm/2m depth</p> <p>-3+ bedroom = 12sqm/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m</p>	<p>The new apartments have the following balcony sizes;</p> <p>Apartment 601 = 41sqm Apartment 602 = 20sqm Apartment 603 = 18sqm Apartment 604 = 83sqm</p> <p>Each balcony has a minimum width of 2m.</p> <p>Not applicable - as there are no apartments on the ground floor.</p>	Complies
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	Maximum of 4 apartments have access to the lobby on Level 6	Complies
4G- Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m³ 2 bedroom – 8m³ 3 bedroom – 10m³</p> <p>At least 50% of storage is to be located within the apartment.</p>	<p>Each new apartment has dedicated internal storage space in the following configuration;</p> <p>Apartment 601 = 5.4 cubic metres Apartment 602 = 5 cubic metres Apartment 603 = 2 cubic metres Apartment 604 = 3.36 cubic metres.</p>	No – the proposal fails to provide the compliant amount of storage space for each apartment.
4H- Acoustic Privacy	Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.	The acoustic report that was prepared for the originally approved mixed use development prepared by Acoustic Logic and dated 28 August 2017 is relied upon as the recommendations in this	Satisfactory - Can comply if the proposal was to be supported.

	<p>Window and door openings are generally orientated away from noise sources</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas</p> <p>Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources</p>	<p>report are pertinent to the proposed new apartments. The same construction methods are proposed to be implemented in accordance as suggested by this report. The report suggests a series of construction mechanisms to be adopted to reduce noise and acoustic impacts. Also the acoustic report does not include the potential for the building at 1 Ellen Subway to be constructed and if this building is built it will act as an additional buffer and so it is considered that noise and acoustic impacts can be appropriately regulated and managed if the development was considered to be approved.</p>	
4J – Noise and Pollution	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 	<p>The development can comply with the provisions of 4J of the ADG if approval of the application is considered.</p>	Yes
4K – Apartment	A range of apartment	The development offers a mix	Yes

Mix	types and sizes is provided to cater for different household types now and into the future The apartment mix is distributed to suitable locations within the building	of 1, 2 and 3 bedroom apartments. This application seeks to provide 3 additional 2 bedroom units and 1 additional 3 bedroom unit.	
4L – Ground Floor Apartments	Street frontage activity is maximised where ground floor apartments are located. Design of ground floor apartments delivers amenity and safety for residents.	There are minor changes proposed at the ground floor level. These have been proposed as a result of a more detailed design and to cater for services. The commercial area has reduced in size from 212sqm to 193sqm to cater for a fire hydrant pump room. The reduction of this space by 19sqm is considered to be small and the use and functionality of this space remains satisfactory. The reduction in the main lobby is a poor design outcome as this space is important as a main entry and focal point for the residential component. Also the provision of commercial car spaces within the entry ramp is inappropriate and a concern. This issue is discussed later in this report as Council's Traffic Engineers do not support the provision and location of these spaces.	Complies
4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The treatment of the new level is generally consistent with the materials and finishes as approved (DA2017/0398) although the DRP suggested some improvements to the fenestration treatment and the materials and colours to soften the appearance of the building and remove the proposed banding along the lower levels.	Yes however the treatment and fenestration could be improved to soften the visual appearance of the building.

4N – roof design	Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.	Roof design is consistent with the approved development DA2017/0398 although the roof structure and its treatment are located at a higher level.	Yes - satisfactory
4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The proposed roof top landscape design aims to be consistent with the approved rooftop design although this application is not accompanied by a formal Landscape Plan. Therefore the roof top communal area of open space has not been designed or treated appropriately. This is an issue that needs further detailed attention and is considered to be unacceptable at this current time.	No
4P- Planting on Structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	This issue could be conditioned if approval was recommended. Access to the large amount of planting area proposed on Level 7 is not clearly detailed or articulated.	Not acceptable and lacking detail.
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory	Yes
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings- new additions are	Some apartments have been designed so they could be amalgamated, consolidated or reduced. There is some	Yes acceptable

	contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	general adaptability within the design.	
4U – Energy Efficiency.	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A compliant BASIX Certificate accompanies the application.	Yes
4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	No change proposed to the system, the originally approved design was considered satisfactory.	Yes
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The waste management arrangement has changed slightly. Originally the waste storage area on the ground floor was combined for both the residential and commercial component. This application creates two separate areas. The residential area now includes compactors which reduces the need for some bins. There is a separate room for commercial waste provided. This is considered to be acceptable and maintains compliance with Council's provisions for waste disposal.	Yes
4X – Building Maintenance	Building design provides protection from weathering Enables ease of	The proposed external materials, colours and finishes are generally in accordance with the originally	Yes – no change proposed

	maintenance, material selection reduces ongoing maintenance cost	approved development (DA2017/0398).	
--	---	--	--

Note (1) - Separation Distances

54. The building fails to comply with the minimum separation distances in accordance with the provisions of Part 3F of the Apartment Design Guide (ADG). Part 3F relates to “visual privacy” and establishes minimum or reasonable side setbacks for RFB’s which allow for adequate separation between buildings and therefore maintain privacy between properties.
55. The objective of the control is to provide “*Adequate building separation distances which are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy*”. The actual side setback should be 9m at this level. The building is setback 9m from the south western side and a minimum of 6m from the north eastern side. Parts of unit 604 are setback further than 6m. This section of the building adjoins Ellen Subway so the combined setback to the immediately adjoining property to the east, 83 Railway Parade is approximately 17m and comprises of 6m for the building at this level plus 3m for the Council verge plus 6m for the Ellen Subway roadway plus 2m setback of the Council verge to the south of 83 Railway Parade. The eastern facing balconies to units 601 and 604 are only setback some 3.5m-4m and this setback is considered to be unacceptable given that the balconies are substantial in size and will have the capacity to overlook properties to the east and north east. There is no privacy screening proposed and the fact the balconies are designed to align with the edge of the eastern building wall will emphasize the bulk, scale and height of the building. The siting and design of this section of the building is not considered to be consistent with the intent of the ADG.

Communal Open Space

56. The roof top area of communal open space has been relocated from Level 6 to the new roof level (Level 7). The proposal fails to comply with design criteria 3D-1 of the ADG in respect to the area and size of the proposed roof top area of communal open space. The proposed plans show that the communal space has a total area of 346sqm however this area includes a substantial area of planter boxes which are located around the periphery of the roof top and act as a border to the communal space. The central area on the roof is the only actual area that can be utilised physically for passive recreational and this area amounts to approximately 290sqm which comprises of 21% of the site area which is below the minimum 25% required in accordance with the ADG. The designated planter boxes on the roof level cannot be used for any form of recreational activities and simply act as a landscaped buffer. In accordance with 3D-1 of the ADG, the planter boxes do not form part of the “principle usable part of the communal open space” and therefore are not included in the calculation.
57. The area of communal open space will receive an adequate amount of solar access and comply with objective 3D-1(2) due to its orientation. However, the design and quality of the space is considered to be substandard and does not comply with the design guidance of Objective 3D-2 which states that “*communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting*”.
58. The application is not accompanied by a Landscape Plan and the space is considered to be poorly designed as it does not include any substantial planting or integrate specific landscape features. There is obvious landscaping proposed in the form of planter boxes etc but its treatment, type of species and design intent is not provided or detailed appropriately. The plans include substantial areas of planter boxes around the periphery of the roof top area. The lack of detailing of this area is considered to produce a substandard design

response and will not be an inviting or attractive space. There is a pergola proposed which will provide some protection but there are no other amenities or furniture included which would encourage the utilisation of the area for passive recreation purposes. The space is poorly treated and has not been designed to encourage its utilisation or promote an attractive and inviting green space for future tenants and visitors to the development.

Environmental Planning Instruments

Kogarah Local Environmental Plan 2012

Zoning

59. The subject site is zoned Zone B2 Local Centre zone under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP2012). Refer to zoning map below. The proposed development is part of an approved shop top housing development which is a permissible land use in the zone.

60. The objectives of the zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

61. The proposal has been designed to satisfy the objectives of the zone.

62. The extent to which the proposal complies with the relevant standards of Kogarah Local Environmental Plan 2012 (KLEP2012) is outlined in the table below.

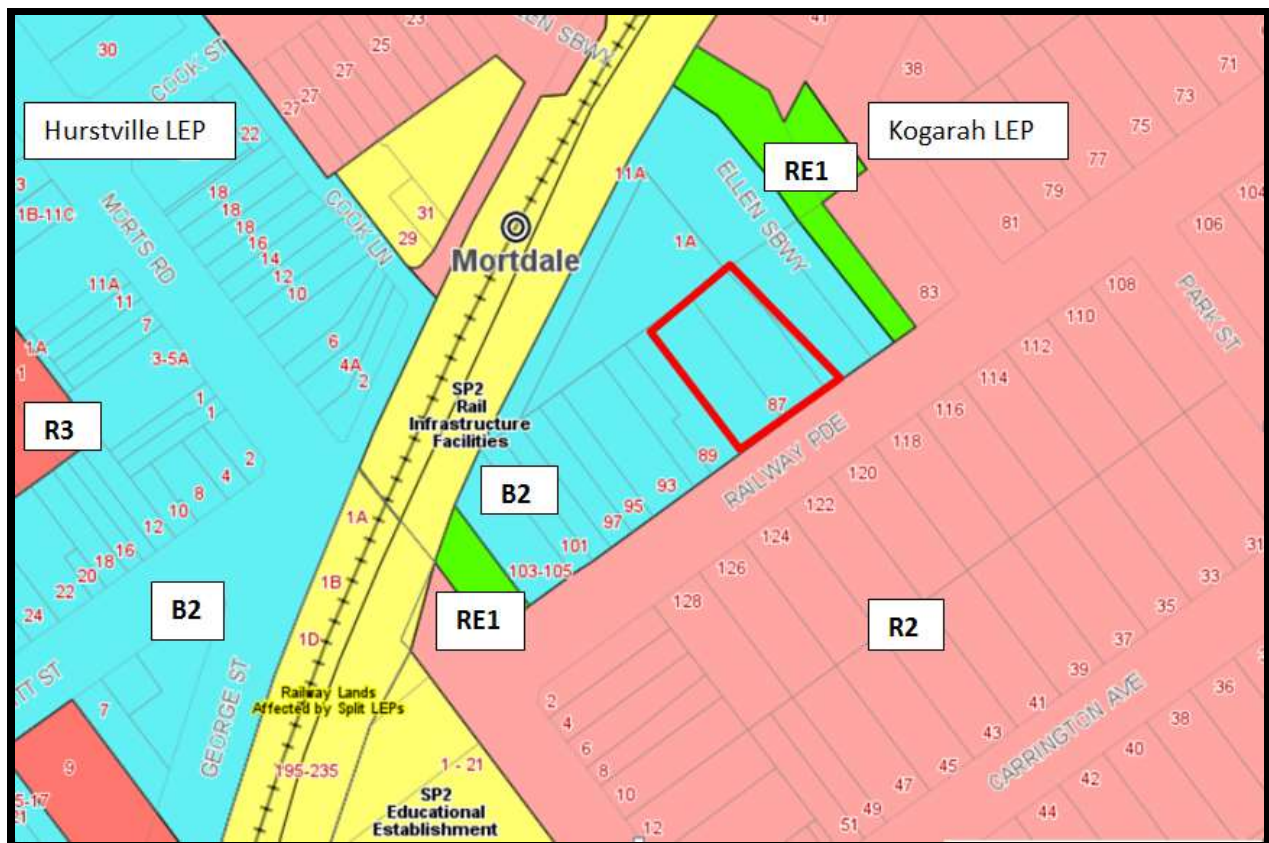


Figure 4: Zoning map – the site is outlined in red

Table 4: KLEP2012 Compliance Table

Clause	Standard	Proposed	Complies
--------	----------	----------	----------

2.2 Zone	B2 Local Centre zone	The proposal is defined as shop top housing which is a permissible use within the zone.	Yes
2.3 Objectives	Objectives of the Zone	Consistent with zone objectives	Yes
4.1A Minimum lot sizes for Residential Flat Buildings	Clause 4.1A requires a minimum site area of 1,000sqm for the purpose of RFB's in the R3 zone.	The total site area is 1,367sqm	Yes
4.3 – Height of Buildings	21m as identified on Height of Buildings Map	The building exceeds the 21m height limit and achieves an overall height at the highest point of 23.93m	No – see discussion below regarding Clause 4.6 Statement which has been submitted.
4.4 – Floor Space Ratio	2.5:1 as identified on Floor Space Ratio Map	The proposed FSR is 2.5:1. The proposal exceeds the FSR by 375sqm and achieves a total FSR of 2.75:1. The GFA proposed is 3,762.67sqm	No – see discussion below regarding Clause 4.6 Statement which has been submitted.
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The GFA calculations provided by the Applicant have been verified and is considered satisfactory.	Yes
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	The site is within the vicinity of the Mortdale Railway Station and car sheds, which is listed as an item (I71) of State significance within the Hurstville Local Environmental 2012. Council has not required a heritage impact assessment and considered that the proposal is unlikely to result in any undue impacts on the nearby item. Notably, a DA for a new 7 storey mixed use development at No.1 Ellen Subway has been determined and approved by the Georges River Local Planning Panel on 21 February 2019. The original DA was referred to	Yes

		Council's Heritage officer for comment who has recommended support of the proposed development. The proposed additional level will not alter the original comments made by Council's Heritage Officer given that the integrity and significance of the Item will remain unaffected. The property is also removed from curtilage of this item.	
6.1 Acid Sulphate Soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by any ASS.	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 the surrounding land	No additional earthworks are proposed as part of this application. Demolition and earthworks have commenced on site in accordance with DA Consent 2017/0398.	Yes
6.5 Airspace Operations	The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the <i>Airports Act 1996</i> of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.	The height of the proposed development is below the Obstacle Limitation Surface (OLS).	N/A

Clause 4.6 Exceptions to development standards

Detailed assessment of variation to Clause 4.3 Height of Buildings

63. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The LEP identifies a maximum height of 21m for the Site (refer to Figure 5 below) and the proposed development will exceed the height by 2.975m which comprises of the lift overrun, fire stairs and the pergola feature located on the new roof terrace. This is a 14% variation above the control. Any variation to the height can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP.
64. The originally approved building complied with the height control. The non-compliance is a result of the roof terrace area being filled in to accommodate 4 new apartments and the relocation of the communal area to the new level (6) above and the structures on the roof (pergola and lift overrun) now exceed the height standard.
65. Clause 4.6(1) outlines the objectives of the standard which are to “provide an appropriate degree of flexibility in applying certain development standards to particular development” and “to achieve better outcomes for and from development by allowing flexibility in particular circumstances”.

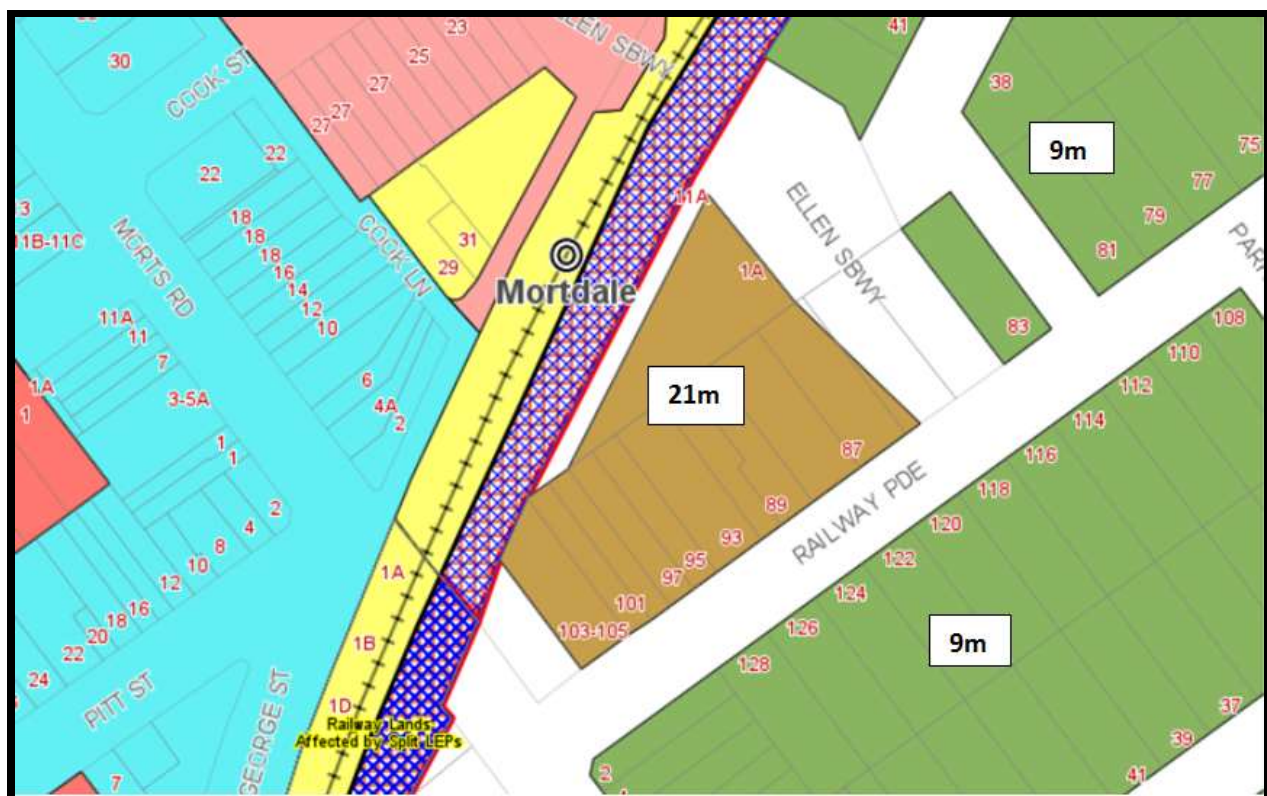


Figure 5: Extract from the KLP (Height Map_003) designated as “R” which notes a 21m height limit

66. The originally approved building achieved an overall height of RL67.80 which complied with the 21m height limit. The proposal is some 3m higher than the approved height. The non-compliance exceeds the control by some 14%. The non-compliance creates an additional storey and increases the scale of the building and its visual bulk.
67. Clause 4.6(3) states that:

“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:

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

- that there are sufficient environmental planning grounds to justify contravening the development standard”

68. 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 KLEP 2012. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

69. Height of Buildings limitation under Clause 4.3 of the KLEP 2012 is a development standard.

What are the underlying objectives of the development standard?

70. The objectives of Height of Buildings standard under Clause 4.3 of KLEP 2012 are:

- (a) to establish the maximum height for buildings,*
- (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,*
- (c) to provide appropriate scale and intensity of development through height controls.*

71. In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.3 are addressed in turn below.

1(a) To establish the maximum height for buildings

72. Applicants Comments: *“This objective articulates the ultimate function of the height of buildings development standard. The maximum height for buildings on land within the former Kogarah Local Government Area is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 21m and the maximum height of the proposal is 23.975m. The proposal contravenes the standard, which has prompted the preparation of this written variation request. Despite the nature and scale of development proposed by this Development Application, Clause 4.3 achieves the objective of establishing a maximum building height for the site, using the Height of Buildings Map as a mechanism to do so. This written request identifies the extent of variation proposed and explains why the variation is acceptable in the circumstances.*

73. The area and degree of non-compliance with the height is shown in Figures 6 and 7 below.

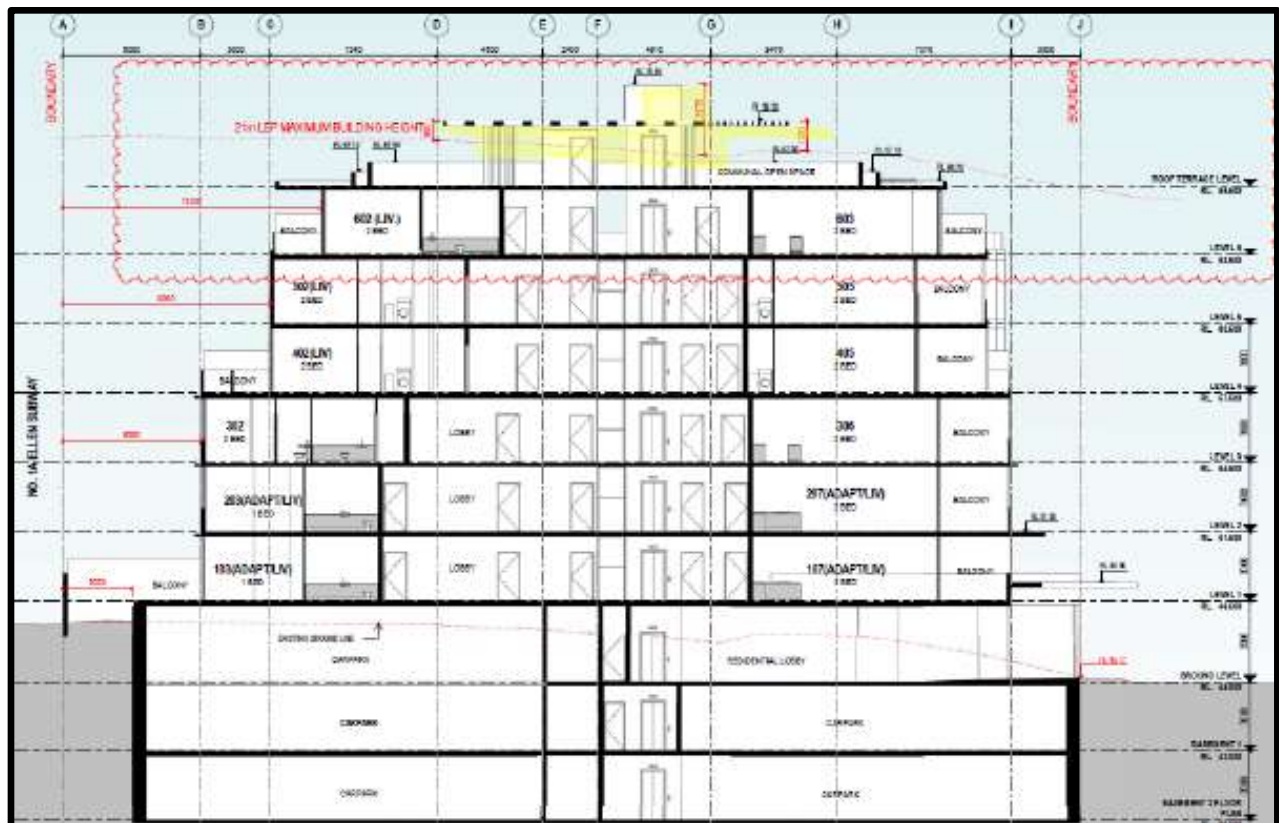


Figure 6: The extent of the variation shown in Section (courtesy of Planning Ingenuity)



Figure 7: Height exceedance shown in 3D (courtesy of Planning Ingenuity)

74. Officer's comment: Objective (a) is aimed at establishing a maximum height for buildings so that within a given zone there is consistency in the scale and built form of the building. It is accepted that the exceedance in the height is centrally located within the roof form however Level 6 has become a new level that includes structures that will be visible from the street

and immediate surrounds. The building is located on a prominent corner and any additional height will be more obvious and visible when looking at the site from the north, south and eastern side.

75. The non-compliance is not considered minor as it relies on the roof level area for its primary area of communal open space as this is the only area for passive recreation for the development. This development is the first in the immediate area to vary the height control by this amount. Council has on previous occasions permitted the exceedance in the height control of ancillary structures such as lift overruns, pergolas and areas of communal open space (similar to that proposed) as these are generally not adding to the bulk of the building and do not comprise of habitable areas. However given that the floor space is non-compliant the increase in the height and floor space combined creates a cumulative impact of increasing the bulk and scale of the building. The building envelope and built form, as proposed, is non-compliant with the ADG separation distances and does not comply with the maximum permitted gross floor area for the site and therefore the additional scale and height is not considered to reflect the desired future planning and design outcome that is sought for this precinct.

1(b) To minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas

76. Applicants Comment: *“The proposal is seven storeys and Level 6 provides a compliant setback to the northern and western site boundaries to ensure separation from the adjoining residential properties. The proposal does not overshadow any public parks and does not result in significant amounts of shadow cast over any adjoining residential development beyond the approved building. Given the location of the proposed lift overrun non-compliance centrally within the building and the architectural treatment of the building in terms of setbacks and materials and viewing points from which the non-compliance would be seen, visual impacts will not be created. The proposed development provides for building setbacks that comply with the controls of the ADG. The non-compliance cannot be seen from the street or adjoining residential properties. The proposal is consistent with objective (b).*
77. Officer’s Comment: Objective (b) relates to the amenity impacts that may be generated by the exceedance. In this case the amount and degree of overshadowing that is created by the variation, its visual impact and privacy impact need to be considered. In terms of overshadowing the non-compliance creates additional overshadowing so there is no “minimisation” in the impact of overshadowing in this case from the non-compliance (refer to Figure 9). At 9am and 12pm during mid-winter the shadows are increased but by 3pm there is also an increase in the extent of the shadow created but this is likely to be tempered by the existing development across the road (southern side) of Railway Parade. As such the additional shadow would more than likely be covered by the existing properties along the opposite side of the street (the shadow diagrams haven’t considered existing shadows).
78. In terms of visual impact the additional storey will be highly visible due to the prominent corner location of the site. The visual bulk of the development has increased due to the “filling in” of the sixth floor. As approved, Level 6 comprised of the area of communal open space and the associated structures, pergola, fire stairs and lift shaft are centrally located and generally small scale. These structures would have been visible however they were located within the maximum height control so there was no exceedance with the originally proposed development. This proposal seeks to enclose this area and extend it to accommodate additional floor space in the form of 4 new apartments. Although the apartments are recessed behind the lower levels reducing their visibility somewhat, the

utilisation of this level for floor space creates a non-compliance with both height and floor space, two principle planning controls. In terms of satisfying objective (b) it cannot be said that the proposal is “minimising” the visual impact as it is accentuating the height, bulk, scale and visual impact of the development simply given its location. The additional level is not hidden or obscured by any other elements or adjoining developments and it will establish a new precedent for future development in the area.

79. The proposed roof top terrace area has been designed to be viewed as a raised platform it is a large concrete structure that largely will float above Level 6 (as the building wall of the new units are recessed especially along the western side). The overhang of the roof top level over Level 6 is over 4m along the western side which is considered to be very visible and this protrusion is extensive and visually dominating and overbearing.
80. In terms of privacy, the new apartments have been designed to have their building wall recessed and setback from the edge of the building however the new balconies on this level are substantial in size and setback some 3m from the boundary. Their location and size will allow for overlooking to the north, east and south. In this case the proposal through its design fails to satisfy objective 1(b).



Figure 8: Shadow Diagrams of the proposed development showing the additional shadow cast by the variation

1(c) To provide appropriate scale and intensity of development through height controls

81. Applicants comment: *“The minor non-compliance of the height does not offend the objective of providing an appropriate scale and intensity of development at the site. The proposal is in keeping with the desired built form for the site and future development to be in accordance with the DCP controls. The built form, bulk and scale of is appropriate for the site and the proposed non-compliance with height will not be perceptible in the streetscape and character of the locality. The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.”*
82. Officer’s comment: This objective aims to create a consistent scale and form for development in the area and within this zone. The height control of 21m caters for a 5-6 storey building (by calculating the following floor to floor levels, commercial/ground floor 3.5m and 3.1m for all residential floors). The proposed 7 storey building is not consistent with the intention of the control and exceeds the height unnecessarily and the 7 storey proposed built form is establishing an undesirable precedent in street and within this precinct. The intended built form as approved, should be a maximum six (6) storey form.
83. The proposed additional level is not in keeping with the proposed built form approved and proposed developments within the vicinity of the site. Council is in receipt of a Development Application for 89 Railway Parade which is a six (6) storey mixed use development (not including the roof top level). This DA is currently under assessment and the proposed front elevation is shown in Figure 9 below. The form of this proposal is reflective of the approved built form for the subject site in accordance with DA consent 2017/0398.
84. The proposed development at 89 Railway Parade achieves a maximum height of RL69.85 (to the lift overrun), RL68.50 (to the top of the pergola on the roof top) and RL66.50 (to the parapet). In comparison the proposal has an overall height of RL70.8 (to the lift overrun), RL69.30 (to the top of the pergola on the roof level) and RL66.50 (to the parapet). The proposed development is higher than the adjoining proposed development at every point apart from the parapet. The approved development catered for the following lower heights of the building RL67.80 (to the lift overrun), RL66.30 (top of the pergola on the roof) and RL63.70 (to the parapet). The approved development has a better relationship to potential future development at 89-91 Railway Parade as the site slopes upwards from the west to the east. The fall in the land and natural slope dictates that development to the west of the site (89-103 Railway Parade) should step up from the corner (85 Railway Parade). The existing RL on the south eastern corner of the site is about RL44.90 where the building commences and the south eastern corner, existing ground level for 89 Railway parade is RL45.85 which is approximately 1m difference so future development should naturally step down from the west to the east. This would be the intended and preferred design and urban design outcome and the height and floor space control encourages this to occur through the controls. The proposed development will be higher than the proposal at 89-91 Railway Parade which is not the intended planning and design outcome for these sites due to the topographical features of the sites and their natural slope.
85. The preferred urban design outcome in terms of the anticipated height and built form for the sites is shown indicatively in Figure 9 below which shows the buildings responding to the natural fall of the land and the stepping of buildings from the west to the east.



Figure 9: Proposed front elevation of 89 Railway Parade (DA No.2018/0439) and its relationship to the proposed development

86. The proposal should also consider the height, bulk and scale of the approved building at the rear, 1 Ellen Subway. This seven (7) storey mixed use development was approved (DA2017/0570) with an overall height of RL67.6 and the lift overrun sitting at RL68.9. 1 Ellen Subway is generally level with 85-87 Railway Parade however both properties are elevated above Ellen Subway. This roadway is located below an existing elevated Council verge and embankment which has a height of over 3m from the kerb and gutter. This elevated embankment further accentuates the height of any proposed buildings located on 1 Ellen Subway and 85-87 Railway Parade when viewed from the east. The proposed development will be a level higher than the building approved at 1 Ellen subway which is again inconsistent with the scale of this adjoining development (refer to Figure 10 below).
87. In conclusion the proposed scale and intensity of the proposal is inconsistent with approved and proposed adjoining developments and the non-compliance will establish an undesirable precedent in the immediate locality. The approved development at the site satisfies the intended planning and design outcomes for this site and development in this zone.

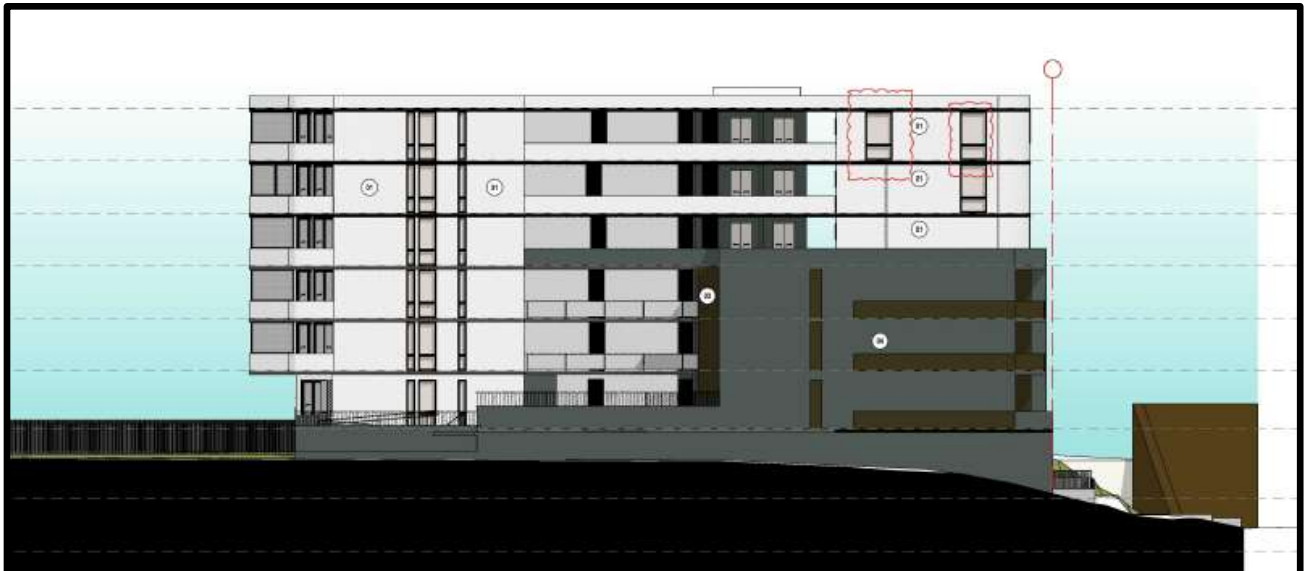


Figure 10: Eastern elevation of the approved building at 1 Ellen Subway.

Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))

88. Applicant's comments: "In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, *inter alia*:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 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;*

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone."

89. Officer's comment: In respect to Prestons CJ judgement the NSW Land and Environment Court has established the five part test (outlined above). In this case the development fails to satisfy the five part test for the following reasons;
- As previously discussed the objectives of the standard are not considered to be satisfied.
 - The underlying objective of the standard remains relevant and therefore compliance is necessary and warranted.
 - Also in this case the underlying objective has not been defeated or thwarted as the approved development at the Site and at 1 Ellen Subway have been designed to comply with the height standard. This further justifies that within the immediate vicinity of the site there have to date been no variations to the height control and as such the control has not been abandoned or destroyed.
 - The Local Centre zone is an appropriate zoning for the site and this parcel of land has been recently rezoned and up-scaled.

Clause 4.6(3)(b) are there sufficient environmental planning grounds to justify contravening the standard

90. Applicant's comments: *"Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character. Furthermore, the following are submitted as planning grounds to justify contravening the maximum building height:*

The building height non-compliance is limited to the top portion of the lift overrun and the communal open space shade structures. The structures are primarily located at the centre of the building. This location and the minimal bulk of these structures will ensure it will not be highly visible from the public domain, and the impacts to adjoining properties will be negligible. The portions of the building above the 21m height limit are not visual intrusive on the skyline nor do they add to the appearance of building bulk when viewed from the adjoining streets and public domain;

- Except for this minor area of non-compliance for the topmost portion of the lift shaft and roof top pergola, the building itself to the rooftop parapet complies with the height limit at 21m. The result of this is that the vast majority of the bulk of the building sits well below the height limit;*
- The rooftop provides high quality communal open space. In order to provide equitable access to this space the lift overrun must necessarily breach the height control, in this instance by 2.975m. Therefore, this non-compliance provides substantial benefits to the development without impacting neighbouring sites;*
- The additional shadowing that will be caused by the height non-compliance is negligible. The minor portion of shadows for the portion of the lift overrun over the height limit is insignificant and acceptable;*
- The breach will not result in any adverse impacts on neighbouring properties in relation to privacy as the portion of the building over the height limit will not enable overlooking;*

- The roof top communal open provides a consolidated open space with good solar access for future residents as encouraged by the Apartment Design Guide (Part 3D) and is Council's preferred location for the communal open space;
- The proposed roof form creates variety in the skyline and urban environment and contributes to the aesthetic and environmental design and performance of the building;
- The non-compliant portions contain no residential or habitable floor area; and
- Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated above.

91. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

92. The non-compliance will have no adverse impacts on adjoining properties with regard to visual, aural and privacy impacts or overshadowing, and to require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighbourhood character or amenity. The proposed height non-compliance will enable the orderly and economic redevelopment of the subject site in accordance with the intentions of the Environmental Planning and Assessment Act, 1979. There is no planning purpose to be served by limiting the height strictly to the maximum allowable, particularly when the proposed additional residential accommodation is provided in the absence of any amenity impacts and within the footprint of the approved development. In short, we consider that there are sufficient environmental planning grounds to justify the applicant's proposed variation to the height standard.
93. On "planning grounds" and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "a better outcome for and from development", we consider that strict compliance would be counterproductive in terms of additional opportunities for residential accommodation within an appropriate and accessible zone.

94. Clause 4.6(4) states that:

“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”

95. Officer’s Comment: It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 however the statement is not considered to be well founded and there are insufficient environmental planning grounds to justify contravening the standard given that in this case the proposal does not satisfy the objectives of the height control.

(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,

96. Applicant’s comment: *“Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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. Clause 4.6(4)(a)(ii). Clause 4.6(4) also requires consideration of the relevant ‘B2 Local Centre’ zone objectives which are provided below:*

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

Whilst the non-compliance with the height development standard does not, of itself, impact on the attainment of the zone objectives, the proposed development will satisfy the objectives for the following reasons:

- *The propose additional level will not detract from but complement the available commercial space at the ground floor;*
- *The development will continue provide commercial floor space which has the potential to be occupied by a range of commercial uses that serve the needs of the people living, working and visiting the local area.*
- *The site is proximate to Mortdale Railway Station and Mortdale Town Centre and is therefore accessible.*
- *The approved development will create employment opportunities in an accessible location and residents and staff will be inclined to opt for more sustainable methods of transport given the close proximity of the site to the railway station and town centre.*

The proposal is consistent with the zone objectives.”

97. Officer’s comment: The objectives of the B2 Local Centre zone are generally satisfied by the development as a whole despite the non-compliance. The amendment to the height control will not affect the outcome and intention of the zone objectives which are satisfied by the development as a whole since it is a mixed use development. The proposal however fails to

satisfy the “public interest” test as the variation does not comply with the objectives of the height standard.

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

98. Officer’s Comment: The concurrence of the Director-General is assumed and has been delegated to the determining authority which is the Georges River Local Planning Panel as the non-compliance exceeds 10%.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))

99. Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

The public benefit in maintaining the development standard (Clause 4.6(5)(b))

100. In this case the approved development establishes the preferred and appropriate design and built form outcome for this site with the building complying with the height standard. There is no adequate or reasonable justification to vary the height control as the new level of the building will not satisfy the objectives of the height standard and create an undesirable precedent in the streetscape. The proposed built form will be inconsistent with the approved development at the site and adjoining the site (1 Ellen Subway) and the proposed development at 89-91 Railway Parade (and potential future development to the west). The proposal is considered to be out of scale with these developments and will be a visible and dominating form at this prominent corner location.

2. Detailed assessment of variation to Clause 4.4 Floor Space Ratio

101. The proposed development seeks a variation to the development standard relating to floor space (Clause 4.4). The KLEP identifies a maximum Floor Space Ratio (FSR) of 2.5:1 for the Site (refer to Figure 11 below) and the proposed development will exceed the floor space by 344.62sqm which amounts to a 10% variation and creates a total FSR of 2.75:1. Any variation to the floor space can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP.
102. Clause 4.6(1) outlines the objectives of the standard which are to “*provide an appropriate degree of flexibility in applying certain development standards to particular development*” and “*to achieve better outcomes for and from development by allowing flexibility in particular circumstances*”.
103. The originally approved building exceeded the floor space control. The assessment report stated that “*the proposal has been assessed as being non-compliant with the FSR standard. It is estimated that the total proposed GFA is approximately 3,498sqm, which would equate to a non-compliant FSR of 2.558:1 and would represent a 2.32% variation to the FSR development standard under clause 4.4 of the KLEP2012.*” The original proposal exceeded the FSR control by a small amount and although the original proposal intended on complying with the control, there were a few areas within the building that were not included in the calculations but should have been in accordance with the GFA definition. The discrepancy amounted to approximately 80sqm of floor space and this included a waste room on the ground floor, pedestrian access to the WC on the ground floor and also an additional car parking space as this area exceeds the minimum requirements for car parking. The applicant submitted a Clause 4.6 Statement in respect to the non-compliance and this was supported given the small variation and the fact most of the exceedance is in the basement or ground floor levels.

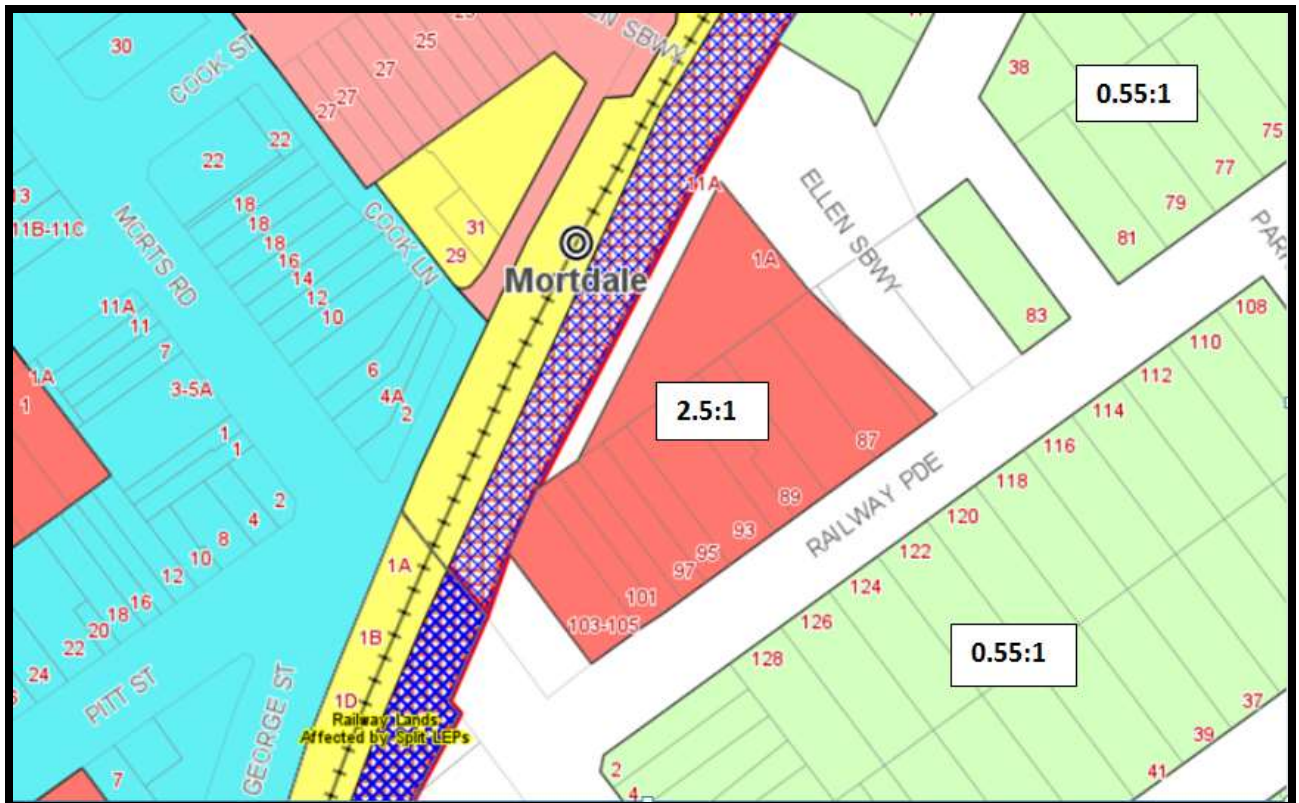


Figure 11: Zoning map - FSR of 2.5:1

104. Clause 4.6(3) states that:

“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:

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

that there are sufficient environmental planning grounds to justify contravening the development standard”

105. To support the non-compliance, the applicant has provided a formal request for a variation to Clause 4.4 in accordance with Clause 4.6 of KLEP 2012. This Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

106. Height of Buildings limitation under Clause 4.4 of the KLEP 2012 is a development standard.

What are the underlying objectives of the development standard?

107. The objectives of Floor Space Ratio standard under Clause 4.4 of KLEP 2012 are:

- (a) *to ensure the intensity of development is compatible with the desired future character and zone objectives for the land,*
- (b) *to limit the bulk and scale of development.*

108. In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.4 are addressed in turn below.

(a) To ensure the intensity of development is compatible with the desired future character and zone objectives for the land,

109. Applicants Comments: *"The proposed development adopts a suitable scale and massing arrangement in line with that envisaged by the KLEP 2012, as amended. Recent 'up-zoning' of land is anticipated to catalyse significant change in building form and typology as sites within the locality are redeveloped. The development (approved and subject proposal) represents the first major redevelopment of land in the Mortdale Precinct south of the rail corridor and will establish an appropriate pattern of development. The mixed-use development will have no significant adverse impact on the amenity of adjoining or nearby properties and will offer a substantial level of internal amenity for future residents in a highly accessible location.*

In our view, "compatible" does not promote "sameness" in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of Roseth SC in Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191:

"There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."

The existing built form character of the area does not accurately reflect the level of density afforded to the site under the applicable planning controls. Rather the subject controls would result in a form that exceeds the prevailing building density, however one that is entirely consistent with the desired future character for the locality reflected in the new suite of core controls under the LEP. Despite the proposal exceeding the applicable density by 10%, the scale of the proposal remains appropriate and is commensurate with a form of development that is reasonably expected under the applicable controls.

As such, the non-compliance is a negligible exceedance of the maximum permitted density and as the building has been massed on the site in a way that responds to the topography of the area, and provided appropriate setbacks to each boundary the development in its current form is entirely suitable, being compatible with the desired future character and zone objectives.

The proposal is consistent with objective (a)."

110. Officer's Comment: Objective (a) is aimed at establishing a consistent built form and massing for developments in the zone and immediate locality. The permitted 2.5:1 FSR is only applicable to a small proportion of properties located along the south eastern side of the railway line. These properties have been up-scaled to have heights of 21m and FSR's of 2.5:1. Immediately to the north east, east and south of the site are properties that are zoned R2 and the FSR and height limits are 0.55:1 and 9m respectively so the future redevelopment of these sites is limited and the scale and form will be substantially lower than what is permissible at the subject site.
111. It is important for the proposal to respect the potential redevelopment of adjoining sites and for the proposal to sit comfortably within the context of the streetscape and create an

sympathetic transition and interface to the adjoining, lower scale residential developments. The proposed additional level is considered to be incompatible with the desired future character for this precinct. The additional scale and bulk is not considered to be in keeping with existing development and potential future redevelopment in the streetscape. The building is situated on a prominent corner which is already in part naturally elevated due to the existing public verge and embankment located adjacent to Ellen Subway. The new apartments located within the originally approved roof top space will increase the visual bulk of the development and the development will no longer be read as a seven (7) storey building but rather an eight (8) storey development. The desired future character for development is envisaged through the controls and the exceedance of both the height and FSR control, creates a cumulative impact which is unacceptable and does not translate into what the implementation of these controls seeks to achieve in terms of creating an appropriate bulk and scale.

(b) To limit the bulk and scale of development

112. Applicants Comment: *“The additional level does not significantly change the approved bulk and scale of the development. The building will continue to read as a structure with a distinct podium base, a middle layer and a top layer. The proposed level is recessed from the approved lower levels to create a transition in height and appropriate spatial separation. The vertical recess at the eastern elevation is carried through to Level 6 from the levels below and serves to modulate the building volume while variations in materiality help to define the layers of the building and create visual interest. The departure from the FSR standard will have no material impact on the public domain or on the amenity of individual apartments. The additional floor space will not translate into any notable amenity related impacts on adjoining properties in terms of loss of privacy, view loss or overshadowing.*

The proposal is consistent with objective (b).

113. Officer’s Comment: Objective (b) seeks to restrict and “limit” the bulk and scale of the development. The proposed additional bulk and mass to the building is not considered to satisfy this objective. Some additional floor space within the basement or ground floor may be acceptable as it may not be visible and may be obscured or acceptable as the overall scale and form of the building is largely unaltered however the additional floor space will be highly visible and dominating. The originally approved development allowed for a rooftop terrace area that was setback from the edges (parapet) of the building and the new apartments have been located within this space by enclosing it and creating balconies that extend to the edge. Despite the recessed nature of the building wall to all the new units the bulk, form and mass is accentuated and will be highly visible given the prominent corner location. The relocation of the roof top terrace and open space to the new seventh level will create an exceedance in the height control and increase the scale of the development beyond what is permissible or envisaged by the primary planning controls. This roof top platform will also be very visible.
114. The massing and additional bulk of the development will be out of keeping with the approved development at 1 Ellen Subway and will establish an undesirable precedent as no new developments have exceeded the height or floor space controls in this precinct and the proposed exceedance of 10% is considered significant given the sites location, nature of adjoining development and the fact the variation is not satisfying the objectives of the development control. The nature, degree and extent of the variation is considered to be unreasonable and will result in an overdevelopment of the site.
115. The proposal is not considered to satisfy the objectives of the FSR control.

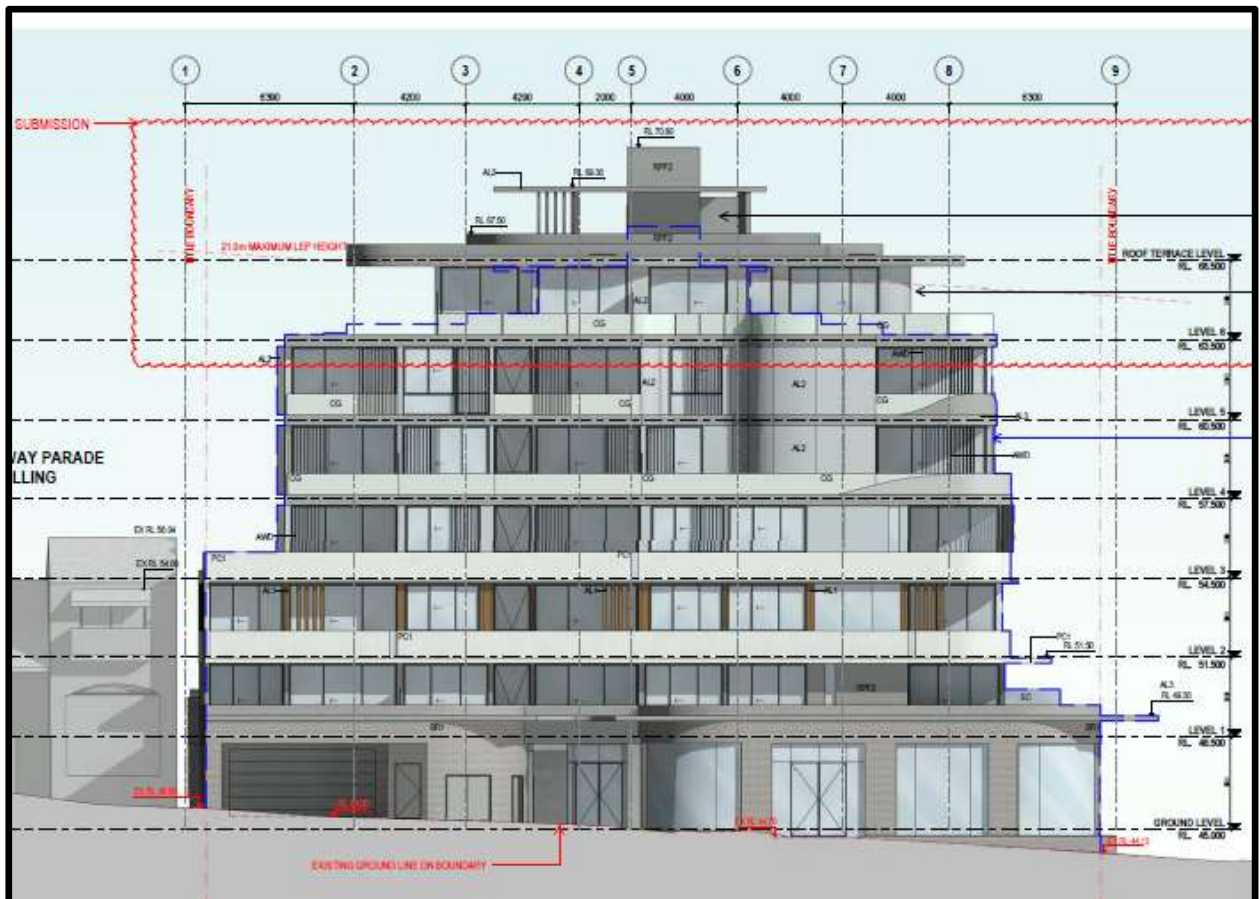


Figure 12: Southern elevation of the proposed development



Figure 13: Southern elevation of the development as “approved”**Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))**

116. Applicant’s Comment: *“In Wehbe V Pittwater Council (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:*

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).” Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 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;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Compliance with the floor space ratio development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.”

117. Officer’s Comment: In respect to Prestons CJ judgement the NSW Land and Environment Court has established the five part test (outlined above). In this case the development fails to satisfy the five part test for the following reasons;
- a. As previously discussed the objectives of the standard are not considered to be satisfied.

- b. The underlying objective of the standard remains relevant and therefore compliance is necessary and warranted.
- c. Also in this case the underlying objective has not been defeated or thwarted as the approved development at the Site and at No.1 Ellen Subway have been designed to comply with the floor space ratio standard. This further justifies that within the immediate vicinity of the site there have to date been no variations to the FSR control (apart from a minor exceedance for the originally approved proposal which comprised of some ancillary areas on lower levels which were not habitable) and as such the control has not been abandoned or destroyed.
- d. The Local Centre zone is an appropriate zoning for the site and this parcel of land has been recently rezoned and up-scaled to permit a higher density due to the close proximity of the site to the Railway Station.

Clause 4.6(3)(b) are there sufficient environmental planning grounds to justify contravening the standard;

118. Applicant's comment: *"Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character."*

It is noted that in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

The non-compliance will have no adverse impacts on adjoining properties with regard to visual, aural and privacy impacts or overshadowing, and to require strict compliance would mean removing parts of the building without resulting in a real planning benefit to neighbourhood character or amenity.

The proposed FSR non-compliance will enable the orderly and economic redevelopment of the subject site in accordance with the intentions of the Environmental Planning and

Assessment Act, 1979. There is no planning purpose to be served by limiting the FSR strictly to the maximum allowable, particularly when the proposed additional residential accommodation is provided in the absence of any amenity impacts and within the footprint of the approved development.

In short, we consider that there are sufficient environmental planning grounds to justify the applicant's proposed variation to the FSR standard.

On "planning grounds" and in order to satisfy that the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve "a better outcome for and from development", the non-compliance is minor and will not be noticeable from the street or surrounding properties.

Strict compliance would be counterproductive in terms of additional opportunities for residential accommodation within an appropriate and accessible zone.

The merits of the proposal on "environmental planning grounds" need to be balanced with the burden that strict compliance places on the site and whether strict compliance will result in a better or neutral outcome. The development has been designed to provide a high quality urban outcome, designed so as to not impact on the privacy and amenity of neighbouring properties.

The proposal will not undermine or dismiss the relevance of the density control. Nor will the proposed built form set an undesirable precedent for the locality currently undergoing change.

To require strict compliance would therefore result in an unreasonable burden on future occupiers of the development with no demonstrable built form or amenity benefits. The proposal results in additional units within an approved high quality mixed use development which is suited to the site, is consistent with the emerging character of the locality and will not have any significant adverse impact on the amenity of adjoining properties in terms of privacy, solar access, views and bulk and scale."

119. Officer's comment: In terms of the proposal providing sufficient planning grounds to justify contravention of the standard, the variation is considered to increase the bulk, scale and massing of the building. The visual dominance of the building will be increased and the scale of the building is larger, higher and inconsistent with approved developments in the immediate vicinity of the site. The proposed balconies will increase the potential for overlooking to the east, north west and north east. In addition to this the removal of the approved skylights on the roof level (level 6) by the proposal will adversely affect the internal amenity and solar access to the southern facing apartments (Units 504 and Unit 505). These apartments will now fail to comply with the minimum solar access requirements pursuant to Part 4A of the ADG. This will reduce the amenity of these "approved" apartments to an unacceptable level. This is an adverse environmental and planning outcome.

120. The proposal also fails to satisfy the objectives of the floor space control and is considered to be an overdevelopment of the site.

121. Clause 4.6(4) states that:

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

(c) *the consent authority is satisfied that:*

(iii) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and"*

122. Officers Comment: It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 however the statement is not considered to be well founded and there are insufficient environmental planning grounds to justify contravening the standard given that the proposal does not satisfy the objectives of the floor space ratio control in this case.

(iv) *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,*

123. Applicant's Comment: "Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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. Clause 4.6(4)(a)(ii). Clause 4.6(4) also requires consideration of the relevant 'B2 Local Centre' zone objectives which are provided below:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

Whilst the non-compliance with the FSR development standard does not, of itself, impact on the attainment of the zone objectives, the proposed development will satisfy the objectives for the following reasons:

- *The propose additional level will not detract from but complement the available commercial space at the ground floor;*
- *The approved development provide new commercial floor space which has the potential to be occupied by a range of commercial uses that serve the needs of the people living, working and visiting the local area.*
- *The site is proximate to Mortdale Railway Station and Mortdale Town Centre and is therefore accessible.*
- *The approved development will create employment opportunities in an accessible location and residents and staff will be inclined to opt for more sustainable methods of transport given the close proximity of the site to the railway station and town centre.*

The proposal is consistent with the zone objectives."

124. Officer's Comment: The objectives of the B2 Local Centre zone are generally satisfied by the development as a whole despite the non-compliance. The amendment to the floor space ratio control will not affect the outcome and intention of the zone objectives which are satisfied by the development as a whole since it is a mixed use development. Generally the objectives are not applicable to the proposal. The development, however fails to satisfy the "public interest" test as the variation does not satisfy the objectives of the floor space standard.

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

125. Officer's Comment: The concurrence of the Director-General is assumed and has been delegated to the determining authority which is the Georges River Local Planning Panel as the non-compliance exceeds 10%.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))

126. Contravention of the maximum floor space ratio development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

The public benefit in maintaining the development standard (Clause 4.6(5)(b))

127. In this case the originally approved development establishes the preferred and desired design, planning and built form outcome for this site with the building complying with the height standard with a small variation to the floor space being considered acceptable. There is no adequate or reasonable justification to vary the floor space ratio control as the new level of the building will not satisfy the objectives of the standard, will establish an undesirable precedent in the streetscape.
128. The proposed massing and built form will be inconsistent with the approved developments at the site and adjoining the site (1 Ellen Subway) and be out of scale with these as well as being a visible and dominating form at this prominent corner location. The proposal by way of the exceedance in the floor space control is considered to be an overdevelopment of the Site in this case.

Development Control Plans

KOGARAH DEVELOPMENT CONTROL PLAN NO 2013 (KDCP)

129. Following on from the original assessment of the development, the proposal needs to address and satisfy the provisions of Part B – General Controls and Part D1 – Development in the B1 Neighbourhood Centres and B2 Local Centre zones as part of the KDCP. These provisions are addressed in more detail below.

Part B – General Controls

130. **B1 Heritage** - In respect to the heritage provisions (Part B1) of the KDCP, the site is located within the vicinity of Heritage Item - Mortdale Railway Station and car sheds, which is listed as an item (I71) of State significance within the Hurstville Local Environmental 2012. Council has not required a heritage impact assessment and considered that the proposal is unlikely to result in any undue impacts on the nearby item.
131. The subject site is some distance from this site separated by the presence of 1 Ellen Subway and the Railway Line. The integrity and significance of the item will not be diminished or impacted upon negatively by the proposed development.
132. **B2 Tree Management and Greenweb** – The proposal does not seek to remove any trees or existing vegetation and therefore satisfies the provisions of this part of the KDCP.
133. **B3 Developments near busy roads and rail corridors** – This part of the KDCP is relevant as the density of the proposal is being increased and it will generate an increase in parking. The planning control in respect to this section of the DCP states that “*Acoustic assessments for noise sensitive developments as defined in clauses 87 and 102 of the Infrastructure SEPP may be required if located in the vicinity of a rail corridor or busy roads*”. The issue

of noise and potential acoustic impacts have been discussed earlier in this report and would comply if the proposal is supported. State Rail was notified of the proposal in accordance with the provisions of the Infrastructure SEPP due to the proximity of the development to the rail corridor. To date no response has been received although State Rail provided concurrence to the originally approved mixed use development. The development has been designed to satisfy the provisions and objectives of B3 of the KDCP.

134. **B4 Parking and Traffic** - The proposal seeks some changes to the parking layout and arrangement as originally approved. Spaces have been moved and relocated to other levels i.e visitor spaces have been moved from B1 to the ground floor and the car wash is also now to be located on the ground floor level.
135. In respect to the provision of parking and numbers, the application requires assessment and compliance against the RMS/ADG parking requirements given the proximity of the site to the Mortdale Train Station. As such the proposal does not need to comply with Council's car parking provisions. However the originally approved development (DA2017/0398) assessed the parking against the KDCP. In respect to car parking numbers the original assessment made the following assessment based on the residential component of the development (refer to Figure 14 below).

Type	Required Parking & Dwelling Mix	Number of Dwellings	Total Required Parking
1 Bed	1	7	7
2 Bed	1.5	30	45
3+ Bed	2	3	6
Total Parking			58
Visitor	1/5	40	8
Total Residential Parking			66

Figure 14: Car Parking Table required for the residential component of the development as approved

136. The originally approved development provided for 67 residential spaces as part of the development which satisfied the numeric requirements of Part 3.7 of the KDCP. The one additional space was included as gross floor area as it exceeded the requirement.
137. The four (4) new additional apartments generate the following car parking requirements;

Type	Required Parking & Dwelling Mix	Number of Dwellings	Total Required Parking
1 Bed	1	7	7
2 Bed	1.5	33	50
3+ Bed	2	4	8
Total Parking			65
Visitor	1/5	44	9
Total Residential Parking			74

138. The proposal provides for a total of 87 car parking spaces which will be able to cater for Council's requirements. The development generates the need for 9 visitor spaces however as there is an excess in residential parking numbers one of these spaces could be converted to a

visitor space to satisfy the visitor requirements. As such the residential component of the development satisfies the car parking requirements for the density proposed.

139. In respect to the commercial component the ground floor tenancy has been slightly reduced in its gross floor area from 212sqm to 193sqm due to the inclusion of the fire hydrant pump room which is located within this area. The originally approved development generated the need for 9 car parking spaces to service the commercial component.
140. Part B4 of the KDCP outlines the relevant car parking rates for commercial and retail developments. One (1) car parking space per 25sqm of gross floor area for retail development is required and/or one (1) space per 40sqm for commercial floor space. The originally approved development calculated the car parking based on the “retail” rates within the DCP as it is more likely that the use of this ground floor tenancy will be of a retail use and capacity given its location, size and design. As such it generated the need for 9 car parking spaces which were provided. The current proposal has reduced the commercial floor space slightly to 193sqm which generates the need for 8 off street car parking spaces rather than 9. However 9 spaces are provided which comply with the car parking requirements.
141. The proposal was referred to Council’s Traffic Engineers and there the amended car parking layout and arrangement fails to satisfy a number of Council’s minimum requirements in terms of the size and location of some facilities. Council’s Traffic Engineer has raised the following concerns;
 - *The Loading and unloading bay dimensions are too small. It needs to be minimum of 3.5m wide and 9.5m in length. Swept path diagram will be needed for the loading bay.*
 - *Spaces C01 and C02 and C08 and C09, are not in an acceptable location as they are located within the access ramp of the car park. Manoeuvring into and out of these car spaces will require turning and reversing movements along the ramp, which would cause congestion and possible safety issues. Ramps need to be clear of obstructions or congestion for efficient and safe flow of traffic at all times.*
 - *Elevation plan showing required minimum height needs to be provided, including for disabled spaces.*
142. The proposal includes a number of designated areas within the basement levels to accommodate bicycle parking with a total of 22 bicycle spaces. A separate loading bay and car wash bay are provided for on the ground floor.

Part D1 – Development in the B1 Neighbourhood Centres and B2 Local Centre zones

143. The objectives of Subsection 3.4 (Building Heights) includes “ensuring appropriate transition to lower scale residential development adjacent to the rear occurs and that building height is in accordance with the locality requirements”. Control 3.4.3 states that “where an allotment adjoins a low density residential area buildings should be reduced in height in accordance with the locality controls and setback from the adjoining property boundary”. The proposal fails to satisfy this control as the development is seeking greater height where it adjoins a low scale R2 zone to the south, east and north-east. The development is not considered to satisfy this control.
144. The proposal satisfies other provisions such as the active frontages controls (3.6.2), awning (3.6.3), materials and finishes (3.6.5) as there is no significant change to the treatment of the commercial component of the development and the external finishes and architectural treatment is not being varied by this proposal.

DEVELOPER CONTRIBUTIONS

145. The proposed development would require payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979 as the proposal is increasing the density of the development by the introduction of 4 new apartments. If the development is approved a condition outlining the required contributions will be imposed.

IMPACTS

Natural Environment

146. The proposed development is unlikely to result in adverse impacts to the natural environment as the proposal does not request the removal of any existing trees or vegetation. The original approval addressed this issue in detail and ensured, through conditions on the consent to improve landscaping within and around the site, in particular the landscaping treatment along the Ellen Subway frontage and also in respect to ensuring the retention of the White Cedar Tree. This requirement remains unchanged by this proposal.

Built Environment

147. The proposed development is considered to be excessive in terms of its built form, bulk and scale and is considered to be an overdevelopment of the site by the variation of the two key planning controls relating to height and floor space. The exceedance of these controls is considered to be unreasonable and unacceptable and the proposal does not reflect the desired future planning and design outcome for this site. The increased scale and bulk of the building will be visually dominating and will not have an appropriate relationship to the lower scaled residential properties to the south, east and north east and will not be consistent with the scale of the approved building at 1 Ellen Subway.

Social Impact

148. No adverse social impacts have been identified as part of the assessment. The additional dwellings, in principle, will cater for a cross-section of the community and could assist with providing for more housing in the area.

Economic Impact

149. The proposed development has no apparent adverse economic impact. There may be a small positive economic impact as a result of the construction of four (4) new apartments however the impact is considered negligible as the main larger scale “shop top” housing development has been approved and this development in its totality will have a more beneficial economic impact due to its scale.

Suitability of the site

150. The site is zoned B2 – Local Centre. The proposal is a permissible form of development in this zone. Although the site is suitable for this form of development as “shop top housing” is a permissible use within the zone. The additional density, scale and height that is proposed is not considered to be acceptable given the site considerations, context and nature of adjoining developments.

SUBMISSIONS AND THE PUBLIC INTEREST

151. The application was neighbour notified in accordance with Kogarah DCP 2013 for a period of 14 days. No submissions were received. However it should be noted that after the approval of 1 Ellen Subway and the original application for the subject Site, Council received a number of submissions from residents concerned about the proposed approvals and that the developments are considered to be out of context with the scale, form and bulk of existing development in the immediate locality and streetscape.

REFERRALS

Council Referrals

Development Engineer

152. The application was referred to Council's Engineers for comments. No objection was raised in respect to the design of the proposed stormwater/drainage plan.

Traffic Engineer

153. The application was referred to Council's Traffic Engineer for comment. A series of issues were raised by the Traffic Engineer as discussed in the car parking and traffic section of the report above.

Environmental Health Officer

154. Council's Environmental Health Officer has raised no objection subject to conditions of consent being attached if approval is granted.

External Referrals

Sydney Trains

155. The application was referred to Sydney Trains in accordance with Clause 85 and 87 of State Environmental Planning Policy (Infrastructure) 2007. To date (25 June 2019) no formal concurrence has been received however this could be assumed given that Sydney Trains provided concurrence to the originally approved mixed use development. If approval is granted the original terms of the concurrence will need to be included in the consent.

CONCLUSION

156. 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 an unreasonable intensification of site and the proposed additional scale, bulk and height is considered to be an unacceptable planning and design outcome for this site and will adversely affect the character of development in the street and immediate locality.

157. The proposal has been assessed against the provisions of the KLEP 2012 and KDCP 2013 and the proposal exceeds the key planning controls in this environmental planning instrument relating to height and floor space. Two Clause 4.6 Statements have been submitted with the application justifying the variation in this case.

158. The proposed development fails to satisfy the objectives of both the height and floor space control standards and in this case the Clause 4.6 Statements are not considered to be well founded and fail to satisfy the provisions and requirements of Clause 4.6 of the KLEP.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

159. The reasons for this recommendation are:

- The proposed development fails to satisfy the objectives of Clause 4.3 (Height of Buildings) control within the KLEP, the exceedance in the height of the building will adversely affect the character of the streetscape and will be inconsistent with development that has been approved within this precinct.
- The proposed development fails to satisfy the objectives of Clause 4.4 (Floor Space Ratio) control within the KLEP and the additional bulk and scale of the building will adversely affect the character of the streetscape and will be inconsistent with development that has been approved within this precinct.

- The additional mass will be a visually dominating element in the streetscape, especially as the building is located on a prominent corner and will not sit comfortably or create a sympathetic relationship with lower scale residential development to the east, south and north-east of the Site.
- The development fails to satisfy the solar access provisions of the ADG and the resultant impact will adversely affect the internal amenity of the southern orientated units on Level 5 (as approved).
- The car parking arrangement and the proposed size of the loading dock is considered to be substandard and fails to comply with the provisions of Kogarah Development Control Plan.
- The proposed development is considered to be an overdevelopment of the Site and will adversely affect adjoining developments, as the new units by way of their location and siting of their balconies will overlook immediately adjoining properties to the east and north-east.
- The proposal is considered to establish an undesirable precedent in the area and will not be in the public interest.
- In consideration of the aforementioned reasons, the proposed development is recommended for refusal.

Determination

- A. THAT the Georges River Local Planning Panel not support the request for variation under Clause 4.6 of Kogarah LEP 2012, in relation to the Height of Buildings (Clause 4.3) control as the variation is not considered to be well founded.
- B. THAT the Georges River Local Planning Panel not support the request for variation under Clause 4.4 of the Kogarah LEP 2012, in relation to the Floor Space Ratio (Clause 4.4) control as the variation is not considered to be well founded.
- C. THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) the Council refuse development consent to Development Application DA2018/0547 for alterations and additions to the approved mixed use development by providing for four (4) new apartments in the form of 3 x 2 bedroom apartments and 1 x 3 bedroom apartment, reduction in the commercial floor area and alterations to the basement car parking levels and relocation of the rooftop communal open space to Level 7 of the building at Lot 8, DP 456956, Lot 7 DP 1884, Lot 1 DP 171157 and known as 85-87 Railway Parade, Mortdale, for the following reasons:
1. The proposed development fails to satisfy the control and objectives of Clause 4.3 (Height of Buildings) of the KLEP 2012 as the additional height and scale of the building will adversely affect the character of development in the streetscape and the additional height is out of scale and inconsistent with the scale and form of approved developments in the area.
 2. The proposed increase in the scale of the building is considered to be inconsistent with the existing character of lower scale residential development located to the south, east and north east. The relationship of the proposed development to the existing residential development is considered to be poor and the transition is considered to be unacceptable given the context and character of development in the street.
 3. The proposed development fails to satisfy the control and objectives of Clause 4.4 (Floor Space Ratio) of the KLEP 2012 as the additional floor space, its bulk, scale and mass is inconsistent with recently approved development in the vicinity of the site. The additional



bulk and scale will be visually dominating given the prominent corner location of the site and its elevated position. The massing of the building, the elevated rooftop platform will be inconsistent with recently approved development in the B2 zone.

4. The proposed built form and the additional scale of the building will be out of character with existing and recently approved developments and does not reflect the desired future character for development in the street. The development fails to consider the topographical features of the site and does not step down to relate to the natural slope of the land. The transition and interface of the building to the lower scale residential developments to the east and south of the site is considered to be unacceptable and unsympathetic with the form of these neighbouring properties.
5. The proposed development fails to satisfy the design criteria of the SEPP 65, Part 4A-1 of the Apartment Design Guide in respect to the provision of an adequate amount of solar access to units. The provision of a new level will remove the skylights that included on Level 6 (rooftop) of the proposed development and their removal will adversely affect the internal amenity of the southern orientated living spaces of Units 504 and 504.
6. The proposed rooftop area of communal open space fails to satisfy the provisions of SEPP 65, Part 3D-1 of the Apartment Design Guide, in respect to the amount of communal open space and the quality of this space. The actual principle useable area of open space fails to satisfy the minimum 25% requirement as much of the area comprises of planter boxes which renders a large proportion of this space unusable and not functional for recreational purposes.
7. The design and treatment of the rooftop area of communal open space fails to satisfy the provisions of SEPP 65 and the design guidance of Part 4P (Planting on structures) of the ADG and space is considered to be poor and has not been appropriately documented or detailed.
8. The proposal fails to satisfy the provisions of to satisfy the provisions of SEPP 65, Part 4G of the Apartment Design Guide, in respect to the amount of storage provided for the new apartments.
9. The proposed loading bay does not satisfy the provisions of AS2890 and the KDCP as the space is too small. Manoeuvring into and out of this space is also awkward and no swept paths have been provided to ensure access to this space by vans and small rigid vehicles (SRV's) can be achieved.
10. Car parking spaces C01, C02 and C09 are poorly located as they are sited within the access ramp which is an unacceptable design solution.
11. The proposal fails to satisfy the objectives of Subsection 3.4 (Building Heights) of the KDCP 2013 as the building adjoins a low scale R2 zone to the south, east and north east and the scale of the proposal does not provide for an appropriate transition of development to the east.
12. The proposed Clause 4.6 variations in respect to the height and floor space controls are not considered to be well founded in this case as the design of the development fails to satisfy the objectives of the planning controls therefore failing to satisfy the provisions of Clause 4.6.

13. The additional height, scale and floor space proposed does not represent the desired future character for development in the street and precinct and will adversely affect the nature of existing development in the precinct.
14. The proposed additional floor space, scale, bulk and mass of the building is considered to be an overdevelopment of the site and will establish an undesirable precedent in the area and will not be in the public interest.

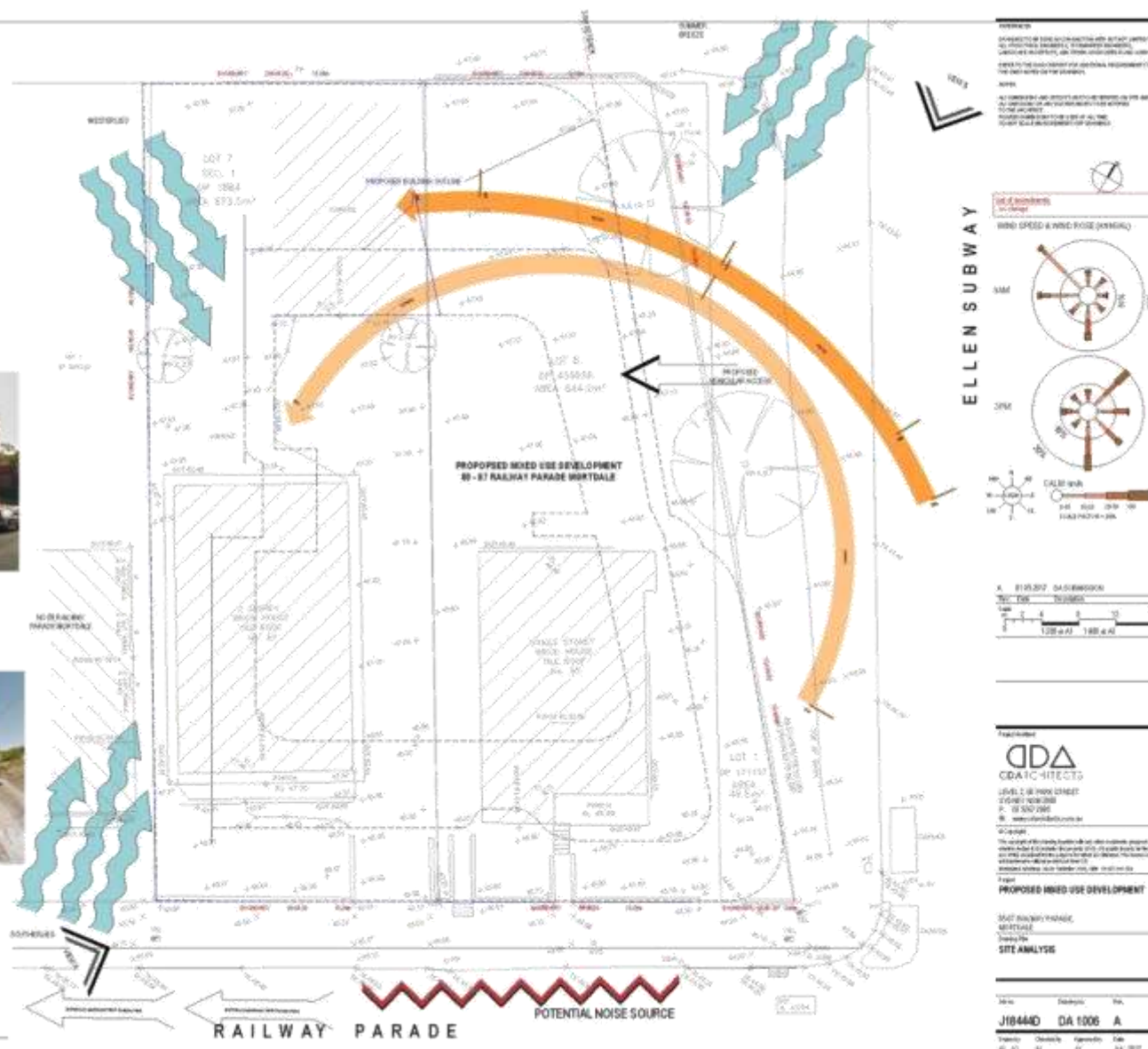
LPP017-19

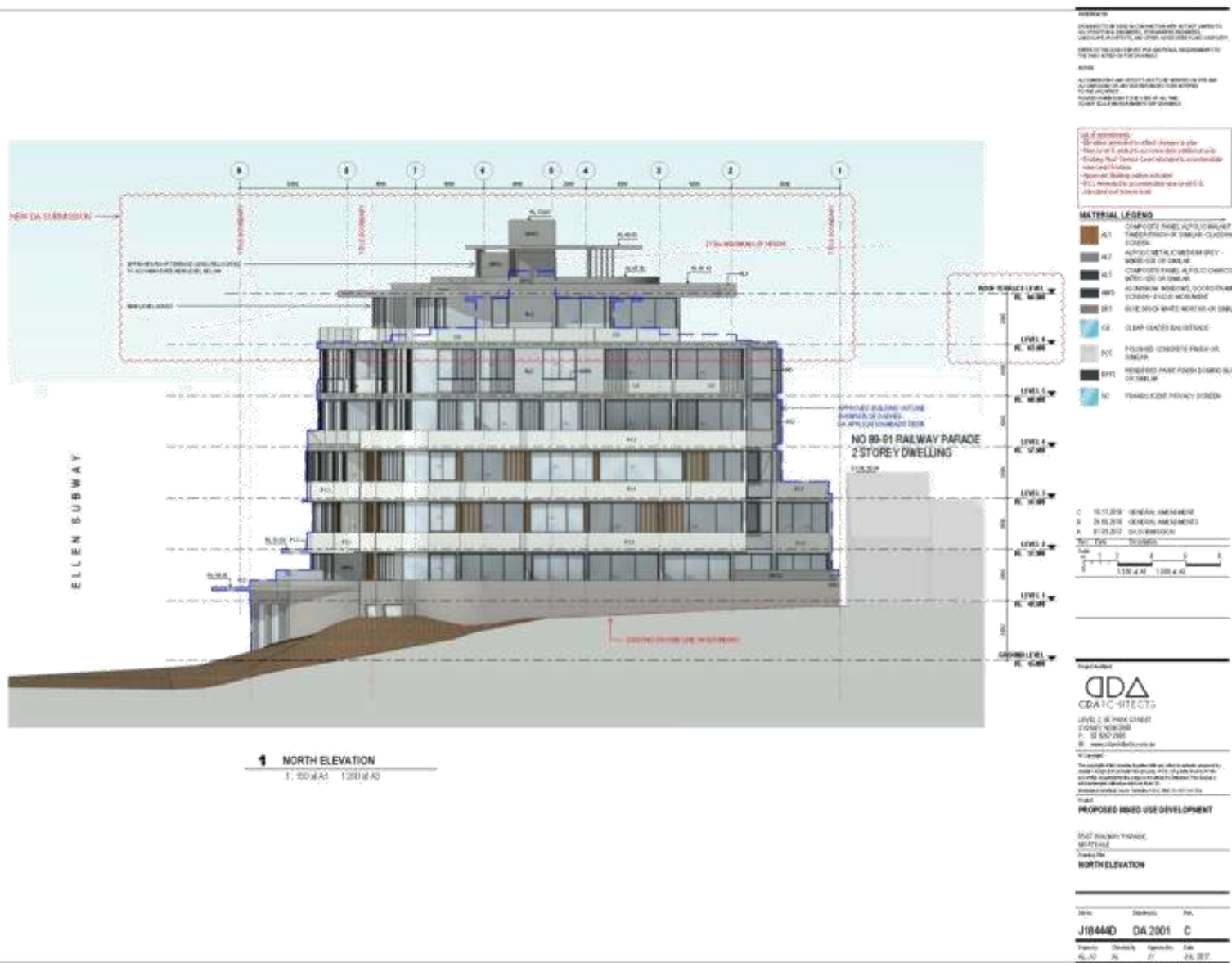
ATTACHMENTS

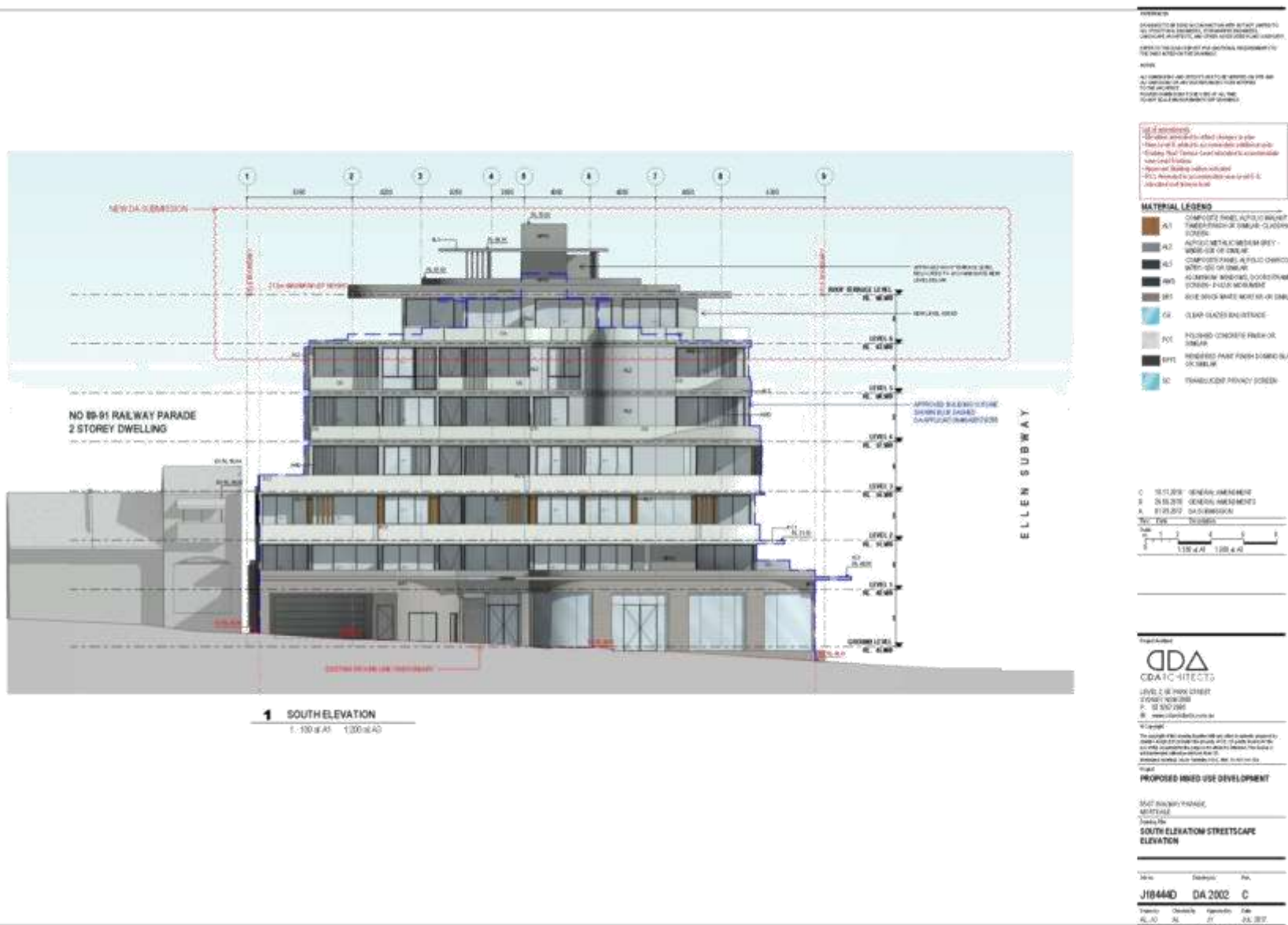
- Attachment [↓](#) 1  Site Analysis - 85-87 Railway Parade Mortdale
- Attachment [↓](#) 2  Elevations - 85-87 Railway Parade Mortdale

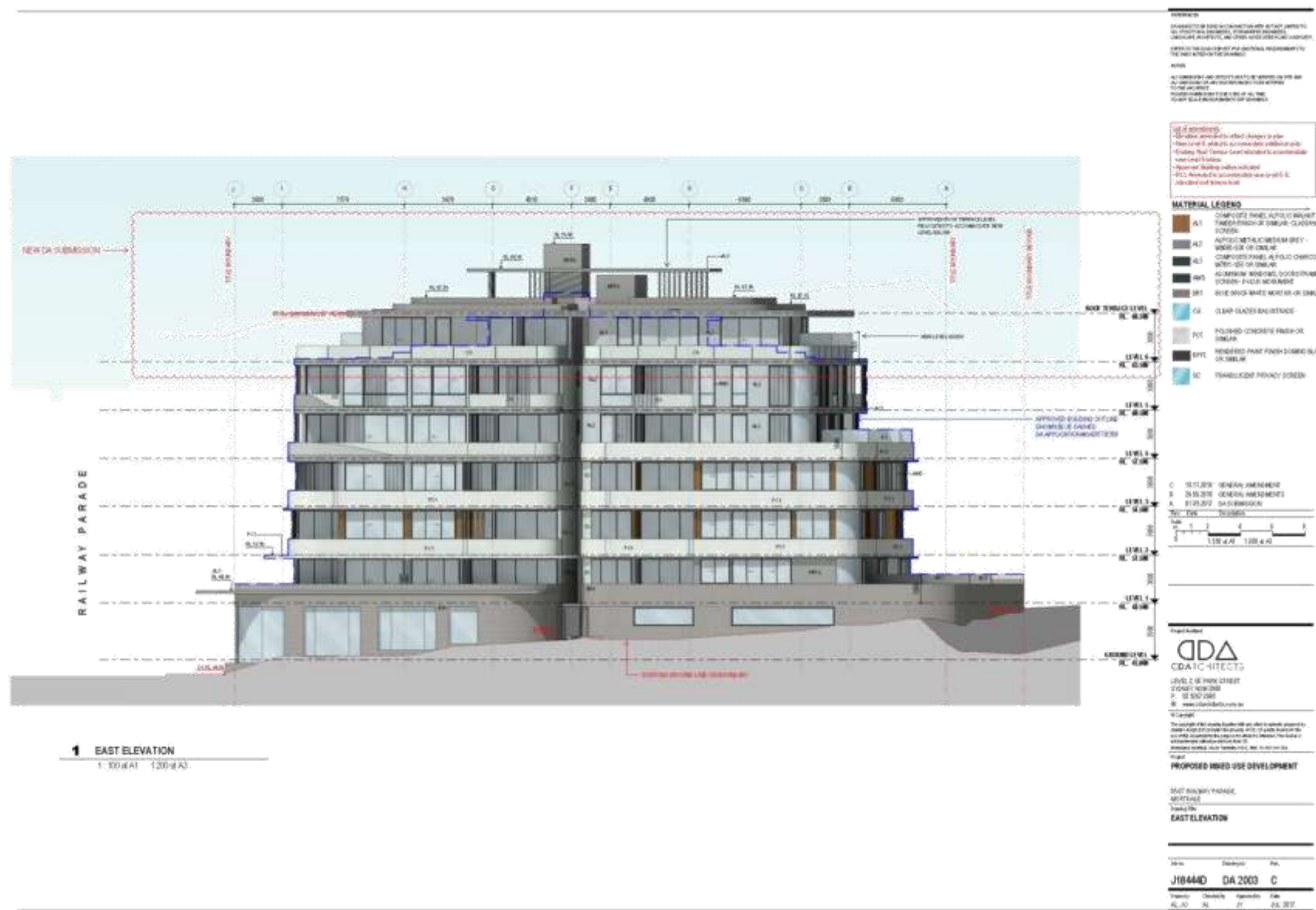


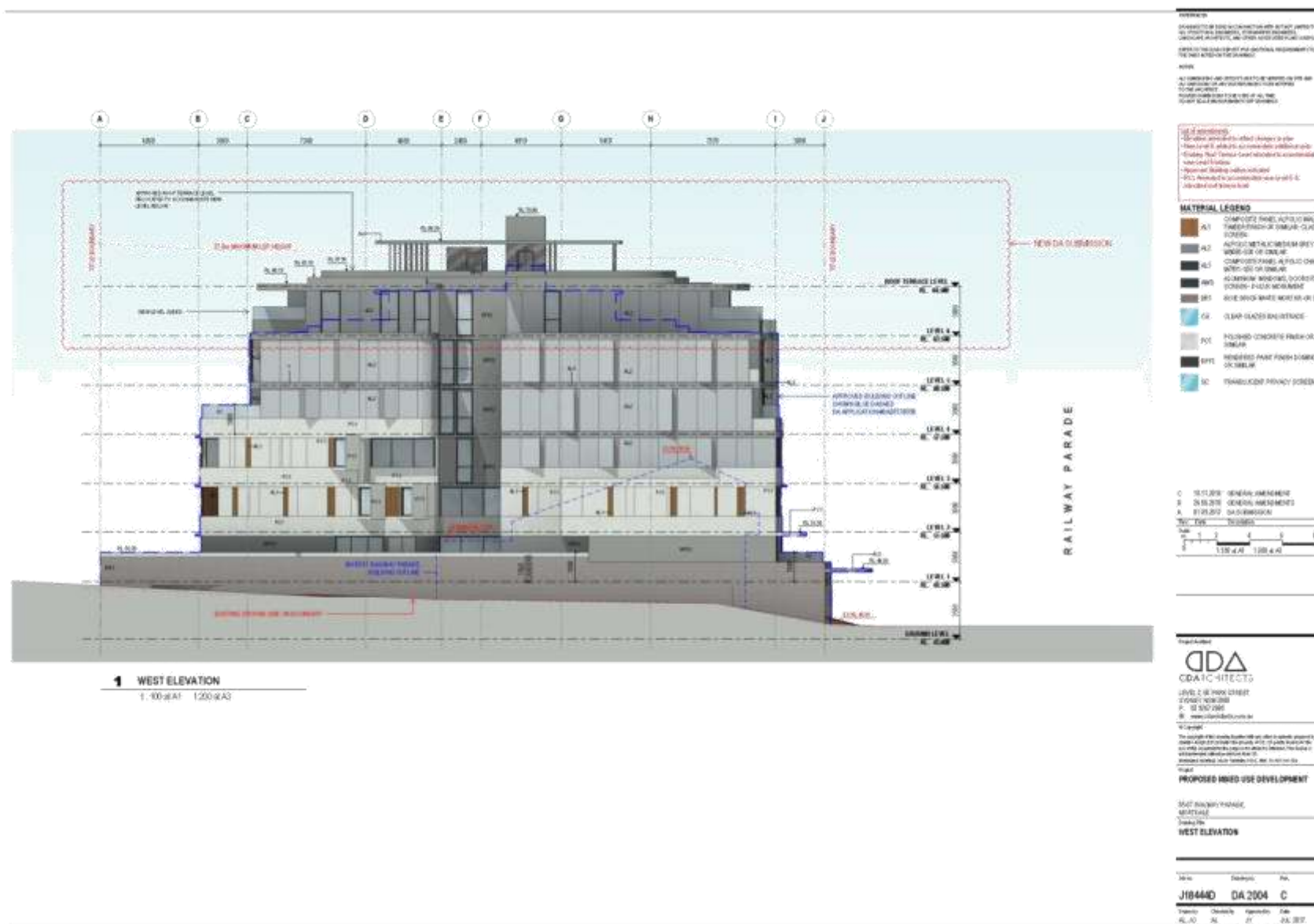
1: 120 厘米, 1200 厘米











**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 04 JULY 2019**

LPP018-19

LPP Report No	LPP018-19	Development Application No	DA2019/0054
Site Address & Ward Locality	1 Barratt Street Hurstville Hurstville Ward		
Proposed Development	Installation of buisness identification sign on building facade and building facade advertsing sign		
Owners	Georges River Council		
Applicant	Mr Winston Tang of Lati Studio Pty Ltd		
Planner/Architect	Mr Winston Tang of Lati Studio Pty Ltd		
Date Of Lodgement	19/02/2019		
Submissions	Zero (0) submissions		
Cost of Works	\$10,000.00		
Local Planning Panel Criteria	Council Owned Land		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 64 - Advertising and Signage, State Environmental Planning Policy No 55 - Remediation of Land Hurstville Local Environmental Plan 2012 Hurstville Development Control Plan No 2		
List all documents submitted with this report for the Panel's consideration	Architectural plans Heritage Impact Statement Statement of Envirnmental Effects		
Report prepared by	Development Assessment Planner		

Recommendation	That the application be approved in accordance with the conditions included in the report.
-----------------------	--

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

Have draft conditions been provided to the applicant for comment?

No, standard conditions have been attached with no design changes. The conditions will be available when the report is published.

LPP018-19

Site Plan



Subject site outlined in red

Executive Summary

Proposal

1. Council is in receipt of a Development Application (DA2019/0054) seeking consent for the installation of signage, specifically for the installation of two (2) business identification signs on the façade of an existing commercial building at Lot P and Q, DP 27426, 1 Barratt Street, Hurstville 2220. The building is in the ownership of Georges River Council. Owners consent was issued by Council for the lodgement of a Complying Development Certificate for the use of the first floor tenancy as a beauty salon (a Complying Development approval was granted by the Hendry Group on 5 December 2018 for the fitout as a beauty salon). Owners consent was also provided by Council for the lodgement of this application seeking consent for signage.

Site and Locality

2. The site is identified as Lot P and Q, DP 27426, 1 Barratt Street, Hurstville, 2220.

The site is located on the south western side of Barratt Street between MacMahon Street to the northwest and Woodville Street to the east.

The existing building is a two (2) storey masonry commercial building containing two (2) separate tenants, one (1) occupying the ground floor and the other the first floor. The two (2) tenants share the entrance from Barratt Street and the lobby on the ground floor. There is no other pedestrian access or vehicular access to the site. The signage is to support the tenancy operating on the first floor of the building.

The images below show the proposed location of the signage on the building facades.



Image 1 – Location of the wall sign location outlined in red



Image 2 – Location of façade signs outlined in red

The site is adjoining a commercial and retail premises which are identified heritage items I152, I153 and I154 – Building Facade and Hurstville Hotel in the Hurstville Local Environmental Plan 2012 (HLEP) which is to the west of the subject site.

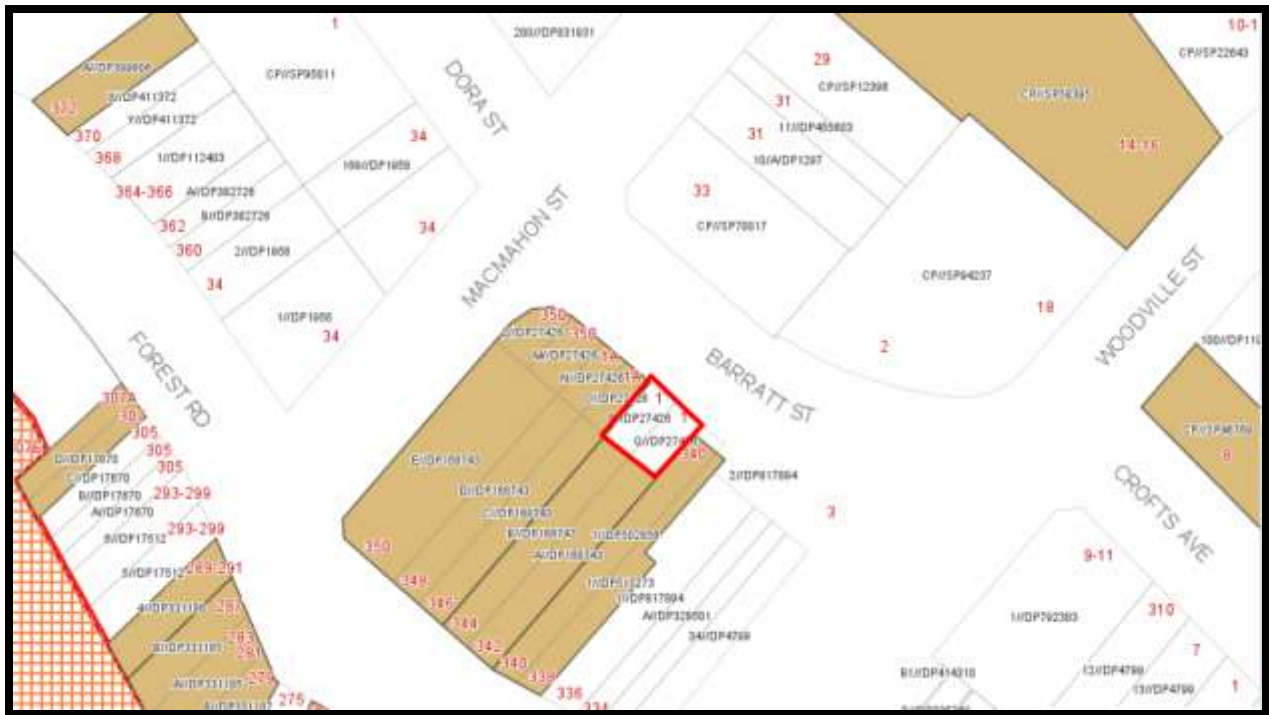


Figure 1 - Subject site in red – Surrounding Heritage Items

The site is within the Hurstville City Centre. There are a variety of commercial and retail uses in the area. The Hurstville Train Station is located approximately 180m to the south of the site with a bus interchange 40m to the south of the site.

Zoning and Permissibility

3. The subject site is zoned B3 – Commercial Core under the provisions of the Hurstville Local Environmental Plan 2012 (HLEP 2012). Identified as '*Permitted with consent*' within the B3 zone is '*Commercial Premise*' and '*Signage*'. The signage proposed is business identification signage. The proposed development is '*Permitted with consent*'.

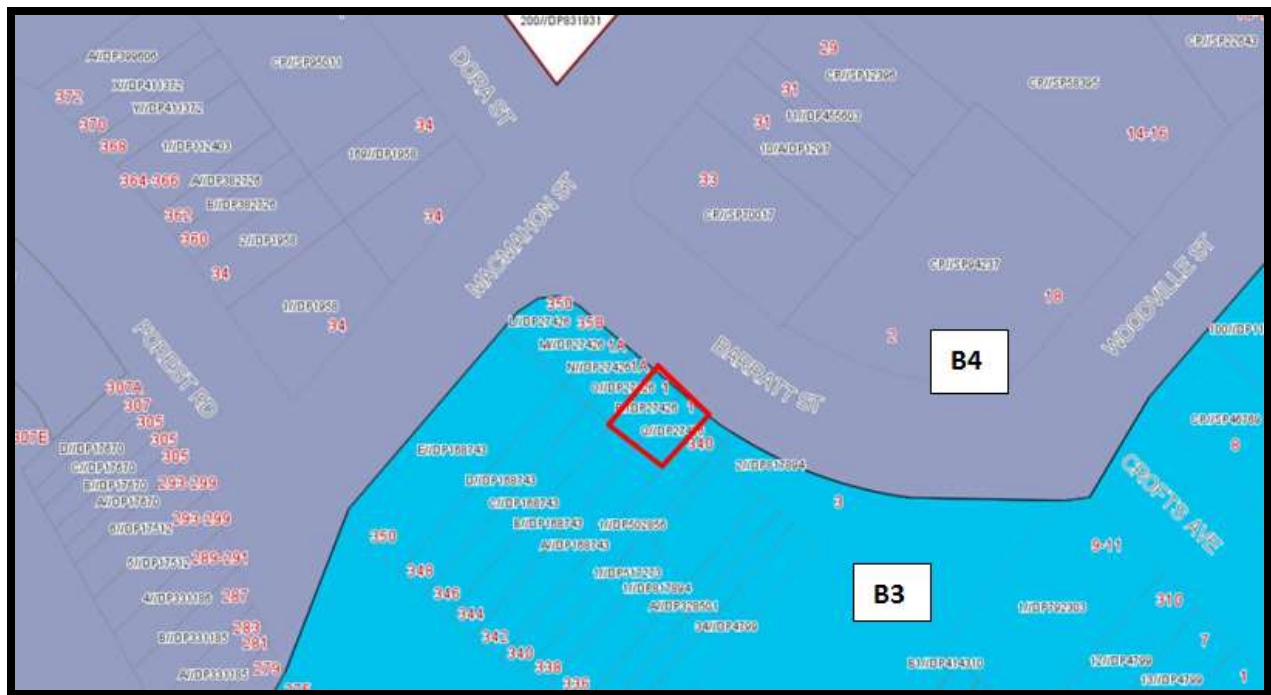


Figure 2 - Subject site in red – Zoning map

Submissions

4. In accordance with the provisions of Councils Public Notification DCP, the application was placed on neighbour notification for a period of fourteen (14) days between 1 March 2019 to 15 March 2019 where adjoining property owners were notified in writing of the proposal and invited to comment. No submissions were received.

Conclusion

5. The proposed development complies with the planning controls and objectives of the State Environmental Planning Policy No 64 and the Hurstville Local Environmental Plan 2012. The proposed development does not seek any variations to the provisions of the State Environmental Planning Policy No 64, Hurstville Local Environmental Plan (2012) and the Hurstville Development Control Plan (HDCP).

Council's Heritage Advisor has reviewed the application due to the relationship of the proposed works to a number of heritage items. Council's Heritage Advisor raises no concerns with the proposal from a heritage perspective.

The application is recommended for approval subject to the conditions at the end of this report.

Report in Full Proposal

6. Council is in receipt of a Development Application (DA2019/0054) seeking consent for the installation of signage, specifically for the installation of two (2) business identification signs on the façade of an existing commercial building at Lot P and Q, DP 27426, 1 Barratt Street, Hurstville 2220. The building is in the ownership of Georges River Council. Owners consent was issued by Council for the lodgement of a Complying Development Certificate for the use of the first floor tenancy as a beauty salon (a Complying Development approval was granted by the Hendry Group on 5 December 2018 for the fitout as a beauty salon). Owners consent was also provided by Council for the lodgement of this application seeking consent for signage. The proposed works are specifically outlined below.

Signage Works

- Two (2) business identification signs on the front façade,
 - One (1) English
 - One (1) Traditional Chinese
- One (1) advertising sign on the side façade (south eastern elevation).

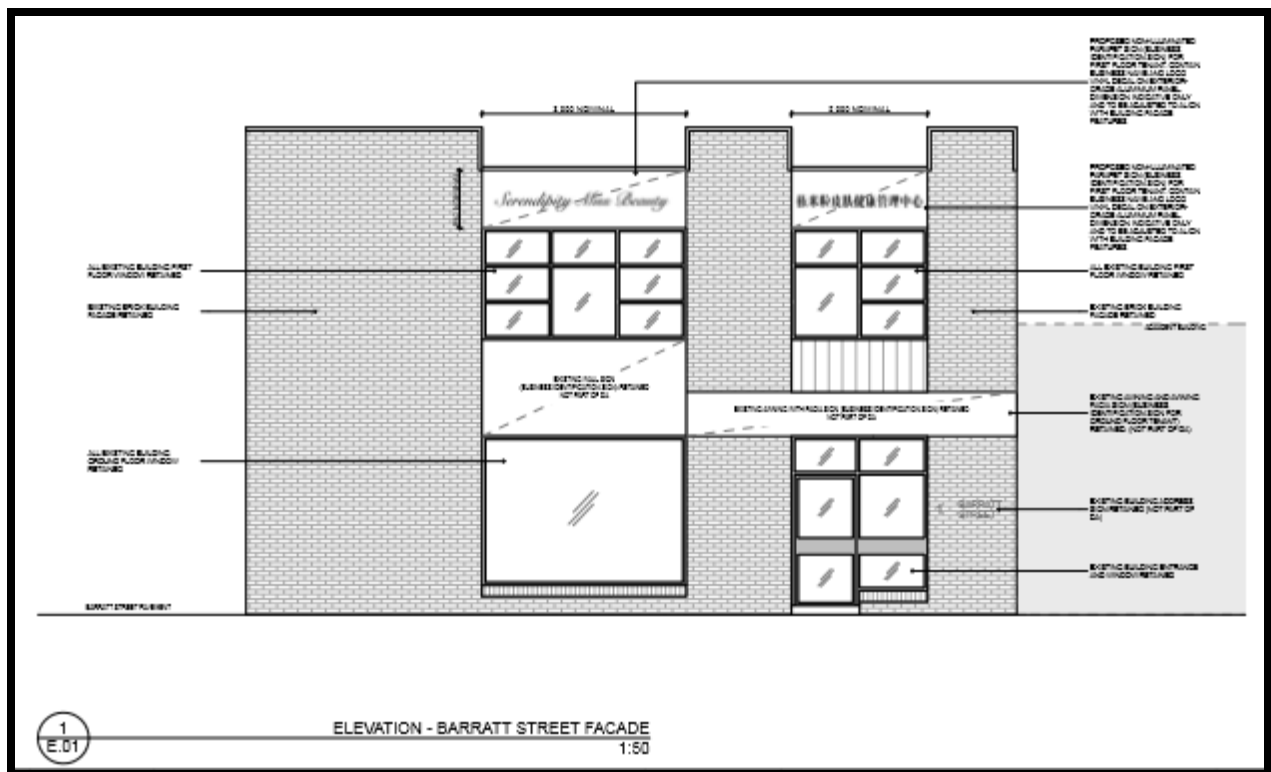


Figure 3 – Elevation from Barratt Street

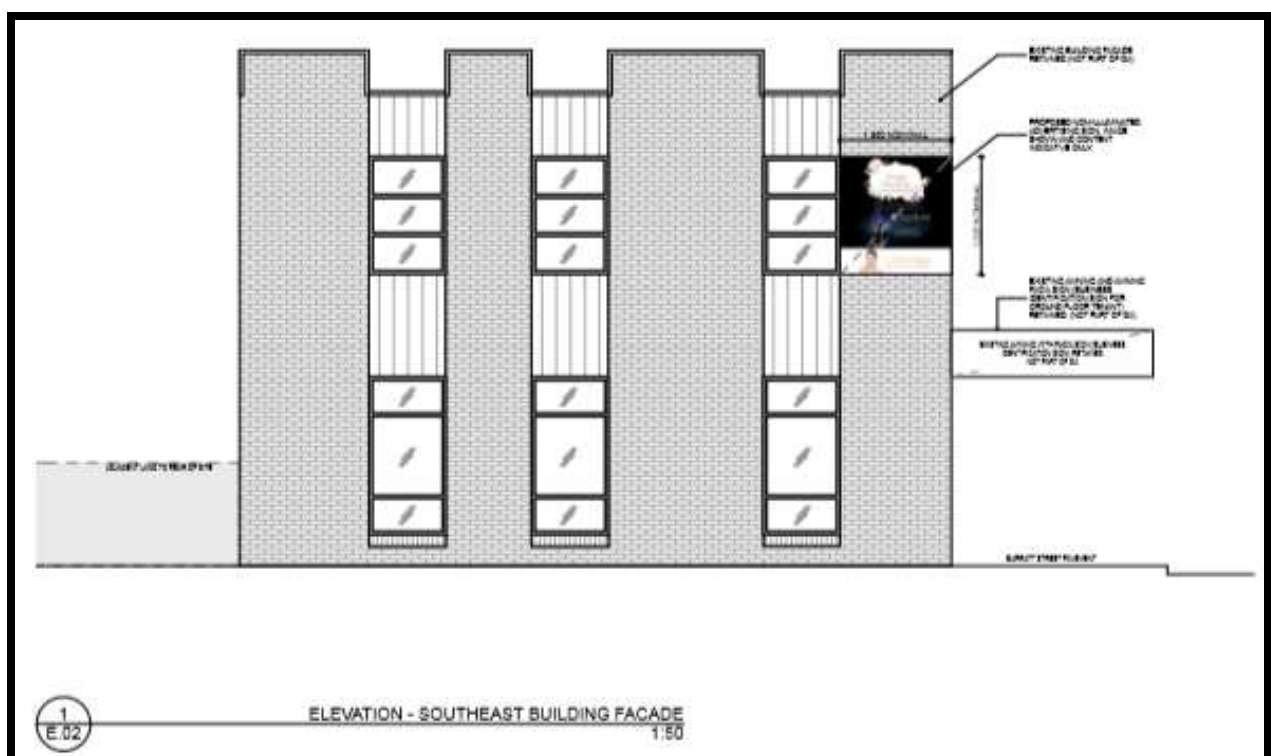


Figure 4 – Side elevation of the proposal

The Site and Locality

7. The site is identified as Lot P and Q, DP 27426 43, 1 Barratt Street, Hurstville, 2220.

The site is located on the south western side of Barratt Street between MacMahon Street to the north west and Woodville Street to the east.



Figure 5: Aerial view of subject site

The existing building is a two (2) storey masonry commercial building containing two (2) separate tenants, one (1) occupying the ground floor and the other the first floor. The two (2) tenants share the entrance from Barratt Street and the lobby on the ground floor. There is no other pedestrian access or vehicular access to the site.

The site is adjoining a commercial and retail premises which are identified heritage items I152, I153 and I154 – Building Facade and Hurstville Hotel in the Hurstville Local Environmental Plan 2012 (HLEP) which is to the west of the subject site.

The site is within the Hurstville City Centre. There are a variety of commercial and retail uses in the area. The Hurstville Train Station is located approximately 180m to the south of the site with a bus interchange 40m to the south of the site.

Background

8. The subject development application (DA2019/0054) was lodged 19 February, 2019. During the assessment of the application a heritage impact statement was provided to be assessed by Council's Heritage Advisor to ensure the proposed development did not adversely impact the heritage items.

The applicant of the development was changed 28 May 2019, from Revive Soul and Body Beauty Centre Pty Ltd to the architect Winston Tang from Lati Studio Pty Ltd.

The application has been amended to satisfy the relevant Development Control Plan criterion. The business identification signage on the Barrett Street elevation (frontage) was amended providing details of the English and Mandarin wording and symbols, given each sign is treated individually.

Council's Heritage Advisor reviewed the heritage impact statement and has considered the proposed works to be appropriate.

The building historically was Councils Baby Health Centre. In 2018 a Complying Development Certificate was approved by Hendry Group, on 5th December 2018 for the fitout and use of the first floor tenancy as a beauty salon. The proposed business identification signage is to support this business use.

Planning Assessment

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

Environmental Planning Instrument

State Environmental Planning Policy No 55 - Remediation of Land

10. Based on Council's records, the subject site has not been used for any potentially contaminating activities. As such, it is considered unlikely that the land is contaminated.

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has not been used for potentially contaminating purposes. The commercial building was constructed in the late 1970's. The proposed signage to be attached to the facades of the building, therefore not requiring the need to disturb foundation materials. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

Deemed State Environmental Planning Policy - Georges River Catchment

11. All stormwater connections remain unaltered. The signage is to be attached to the facades of the development not impacting the stormwater management system. The proposal is considered satisfactory with respect to the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment

State environmental Planning Policy No 64 – Advertising and Signage

12.

Schedule 1 Assessment Criteria	Proposal	Complies
i. Character of the area <ul style="list-style-type: none"> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? 	Yes, the proposed signage is compatible with the future character of the locality and is a business identification sign.	Yes
<ul style="list-style-type: none"> Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	Yes, the proposed signage is consistent with the outdoor advertising of the surrounding area which is generally business identification signage within the Commercial Core of Hurstville.	Yes
ii. Special areas <ul style="list-style-type: none"> Does the proposal detract 	No, the site is not within any	Yes

from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	conservation areas or open space areas, waterways, rural landscapes.	
iii. Views and vistas <ul style="list-style-type: none"> Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers? 	<p>The proposed signage will not be located within any important view corridors. By virtue of the nominated size, location and orientation the signs will not obscure or compromise any potential view. They are attached to the facade of the existing commercial building.</p> <p>No, the proposed signage will not dominate the streetscape nor does it reduce the quality of the potential views of Barratt Street.</p> <p>Yes, the proposed signage is flush with the façade of commercial building, therefore not impacting viewing rights.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
iv. Streetscape, setting or landscape <ul style="list-style-type: none"> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality? Does the proposal require 	<p>The form of the proposed signage is appropriate for the streetscape.</p> <p>The proposed signage will increase the visual interest of the local streetscape.</p> <p>The proposal is sympathetic to the façade of the building.</p> <p>The proposed signage does not screen unsightliness.</p> <p>No, the signage does not protrude above buildings, structures or tree canopies in the area or locality. The signage is affixed to the façade of the building,</p> <p>No, there is no vegetation located in the</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

ongoing vegetation management?	area of the signage.	
v. Site and building <ul style="list-style-type: none"> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? Does the proposal respect important features of the site or building, or both? Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<p>Yes, the proposed signage is of similar scale and size to that of the locality and does not dominate the façade of the building.</p> <p>Yes the design and position integrate with the building structure and context.</p> <p>The proposed signage serves as business identification signage and advertising signage for a beauty salon located on the first floor of the development.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
vi. Associated devices and logos with advertisements and advertising structures <ul style="list-style-type: none"> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? 	<p>The proposed signage is affixed to the façade of the building, no plant it is required to facilitate the signage</p>	<p>Yes</p>
vii. Illumination <ul style="list-style-type: none"> Would illumination result in unacceptable glare? Would illumination detract from the amenity of any residence or other form of accommodation? Would illumination affect safety for pedestrians, vehicles or aircraft? Is the illumination subject to a curfew? 	<p>No, the proposed signage is not illuminated.</p> <p>No, the proposed signage is not illuminated.</p> <p>No, the proposed signage is not illuminated.</p> <p>No, the proposed signage is not illuminated.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
viii. Safety <ul style="list-style-type: none"> Would the proposal reduce the safety for any public road? Would the proposal reduce the safety for pedestrians or bicyclists? 	<p>The signage is installed at a height which will allow safe travel for pedestrians, bicyclists and vehicle roads.</p> <p>No, the proposed signage is not located on an intersection, and will not reduce safety for pedestrians and children, or obscure sightlines.</p>	<p>Yes</p> <p>Yes</p>

<ul style="list-style-type: none"> Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? 	<p>No, the proposed sign will not reduce safety for pedestrians, particularly children, by obscuring sightlines from public areas.</p>	<p>Yes</p>
---	--	------------

LPP018-19

Draft Environmental Planning Instruments

13. 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.

Hurstville Local Environmental Plan

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

Development Control Plan

Hurstville Development Control Plan (DCP) No. 2 – Amendment No. 9

15. 6.1.5 Signage

Clause	Requirement	Proposed	Complies
6.1.5.2.1 All Signage Objectives: To ensure the design and siting of proposed signage complements the character of an area and the site or building on which it is located, and does not impact adversely on the amenity or safety of the community. To reduce the visual complexity	(a) Advertising on or attached to buildings should align and relate to the architectural design lines on a building facade or, in the absence of architectural detail or decoration, relate to the design lines of adjacent buildings.	The proposed signage will be affixed to the façade of the commercial building and is of a design that will satisfy this control.	Yes
	(b) Council discourages advertising signs on a building facade that are displayed on or above first floor level.	The proposed development includes an advertising sign located on the south eastern building façade at the level of the	Yes

of streetscapes by providing fewer, more effective signs.		first floor. This is considered satisfactory due to the locality and the location on a side façade. The signage proposed on the front façade is considered to be business identification and not advertising.	
	(c) The wording (or advertising content) on any sign should relate to the premises on which the sign is erected or the activities carried on or within the premises, except in the case of a Billboard Sign where it can be demonstrated that general advertising will have no detrimental impact on nearby residential areas or pedestrians, or cause a distraction to motorists.	The wording of the proposed signage is related to a business located within the commercial building.	Yes
General Appearance, Content and Maintenance	(a) Council discourages signs prone to deterioration and may request removal of redundant, unsafe, unsightly or objectionable signage.	The proposed signage is of a material that is designed to be placed externally.	Yes
Traffic and Pedestrian Safety	(a) The proposed advertising, whether illuminated or not, must not impact adversely on the safety for pedestrians, cyclists and on any public road.	The proposed signage is considered unlikely to detrimentally impact the safety for pedestrians, cyclists and on any public road.	Yes
	(b) Signage must be securely fastened to the structure or building to which it is attached, and must comply with all relevant Australian Standards and Building Code of Australia requirements.	The proposed signage will require standard conditions requiring prior to the release of Construction Certificate the proposal must demonstrate satisfactory compliance against the relevant Australian Standards and Building Code of Australia	Yes

	<p>(c) Free standing signboards must be located and designed so that they do not pose any safety risk to pedestrians or motorists</p> <p>(d) Signage must not be liable to interpretation as an official traffic sign or to be confused with instructions given by traffic signals or other devices, or block the view of traffic signals or signs.</p> <p>(e) Signs facing roads with high traffic volumes, traffic lights or major intersections may be referred to the Roads and Maritime Services (RMS) for comment.</p>	<p>requirements.</p> <p>Not applicable – Signage is not considered to be Free standing signboards.</p> <p>The proposed signage is affixed to the wall, is not illuminated or moving and does not impact on traffic management issues or signalised intersection. Barratt Street is not considered to trigger a referral to RMS.</p>	<p>N/A</p> <p>Yes</p>
Illumination and Electrical Wiring	(a) The lighting intensity and hours of illumination must not unreasonably impact on any residential properties, adjoining or within the locality.	The proposed signage is not illuminated.	N/A
Wording and Content	<p>(a) All signage must be displayed in English but may include a translation in another language. Any translated message must be accurate and complete, and using wording and/or numbering that is not larger than the English message.</p> <p>(b) Signs must be attractive and professionally sign written.</p> <p>(c) Changes in the content or message of an signage are allowed without the approval of Council provided that:</p> <ul style="list-style-type: none"> •The advertising structure 	<p>The proposed development is considered to be appropriate. The English and alternate language (mandarin) are the same in size.</p> <p>The proposed signs are professionally written.</p> <p>The proposed signage is considered to be appropriate; any changes will require further approval from Council.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>has been approved by Council;</p> <ul style="list-style-type: none"> •The size and dimensions of the sign remain as approved, or are reduced; •There is no change to the intensity of, or hours of illumination; •Moving or flashing messages or symbols are not proposed; and • The message is not likely to cause distraction to motorists. 		
	<p>(d) The name or logo of the person who owns or leases an advertisement or advertising structure must not be greater than 0.25sqm, and may appear only within the advertising display area.</p>	<p>The proposed signage is only advertising the business within the development.</p>	<p>Yes</p>
	<p>(e) Where a business or organisation offers a product or service, the name of the business or organisation should have greater dominance over the product or service advertising.</p>	<p>The proposed sign on the south eastern building façade is considered to promote a product; the logo of the company is greater in size than the product.</p>	<p>Yes</p>
	<p>(f) The wording and content of the advertising sign must not:</p> <ul style="list-style-type: none"> • Offend nearby sensitive land uses (churches, schools, day care centres); • Contain undesirable discriminatory advertising messages as specified in the Anti Discrimination Act 1977; • Encourage unlawful purchase, excessive consumption of alcohol; or • Promote anti-social behaviour. 	<p>The proposed signage is not considered to be offensive nor provide an undesirable finish to the building façade.</p>	<p>Yes</p>

Heritage Items	(b) Signage next to or in the vicinity of a heritage item should be designed and located in a manner which enhances and complements the item and streetscape, and does not dominate or detract from the heritage item.	The proposed application was accompanied by a heritage impact statement which identifies the proposal confirming there is no impact on the identified heritage items. The proposal was referred to council's heritage advisor of whom raised no objection to the application.	Yes
-----------------------	--	---	-----

The proposed development is considered to satisfy the objectives and numerical controls of the Development Control Plan, no variations have been sought.

Impacts

Natural Environment

16. The proposed signage is not anticipated to have any impacts on the natural environmental.

Built Environment

17. The proposed development will not result in any adverse impacts upon the built environment given there is no construction work proposed with the exception of the installation of the sign on the external façade.

Social and Economic Impact

18. The proposed development will not result in any adverse social and/or economic impacts on the locality subject to compliance the conditions of consent. The proposed advertising signage supports commercial development in the Hurstville City centre.

Suitability

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

Council Referrals

Heritage Advisor

20. The proposal is supported by Council's Heritage Advisor, the location, size and detailing of the signage is considered acceptable.

Development Contributions

21. The development is not subject to a Section 7.12 (former Section 94A Contribution) contribution as the proposed costs of works, registered with Council do not exceed \$100,000.00. Under the provisions of the Georges River Council Section 94A Contributions Plan 2017. No contributions have been levied.

CONCLUSIONS

22. The application has been assessed having regard to the matters for consideration under Section 4.15 (1) and 4.55 (1)(a) of the Environmental Planning and Assessment Act 1979, and the provisions of the relevant and applicable SEPP's, HLEP 2012 and HDCP No.2.

DETERMINATION AND STATEMENT OF REASONS

23. Statement of Reasons

- The proposed development complies with the requirements of the relevant environmental planning instruments and development control plan.
- The proposed development does not negatively impact the adjoining heritage items, being I152, I153 and I154 – Hurstville Hotel and the heritage façade of 338a, 340, 342a and 340 Forest Road identified in the Hurstville LEP 2012.
- The proposed development is considered to be appropriate for the site and the character of the locality. Subject to the implementation of the recommended conditions, the development will have no unacceptable adverse impacts upon the natural or built environment.
- The proposed signage adequately identifies the commercial use operating from the first floor of the building.
- In consideration of the aforementioned reasons, the proposed development is a suitable and planned use of the site and its approval is not inconsistent with the public interest.

Determination

24. THAT pursuant to Section 4.16 (1)(a) Environmental Planning and Assessment Act 1979, the Georges River Local Planning Panel approves Development Application No. DA2019/0054 for the installation of two (2) business identification signs on the building façade at Lot P and Q, DP 27426, and known as 1 Barratt Street, Hurstville, subject to the recommended conditions below:

Development Details

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

Description	Reference No.	Date	Revision	Prepared by
Site Plan	A.01	06/06/2019	B	Lati Studio
Façade Elevation A	E.01	06/06/2019	B	Lati Studio
Façade Elevation B	E.0	06/06/2019	B	Lati Studio

Separate Approvals Required Under Other Legislation

2. **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) Establishing a “works zone”;

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.

Prior to the Issue of a Construction Certificate

3. **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.

4. **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

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.

- Structural details** - Engineer's details prepared by a practising Structural Engineer being used to affix the signage to the façade of the building. 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.

- 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.

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

- 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.

- 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

9. **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.

10. **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.
11. **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.

Operational Conditions (Ongoing)

12. **Lighting** – No lighting is approved as part of this application.
13. **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.

Operational Requirements Under the Environmental Planning & Assessment Act 1979

14. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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

21. **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.

22. **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.

23. **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.

END CONDITIONS

NOTES/ADVICES

24. **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.

25. **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.
26. **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.
27. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

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

28. **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).

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

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

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

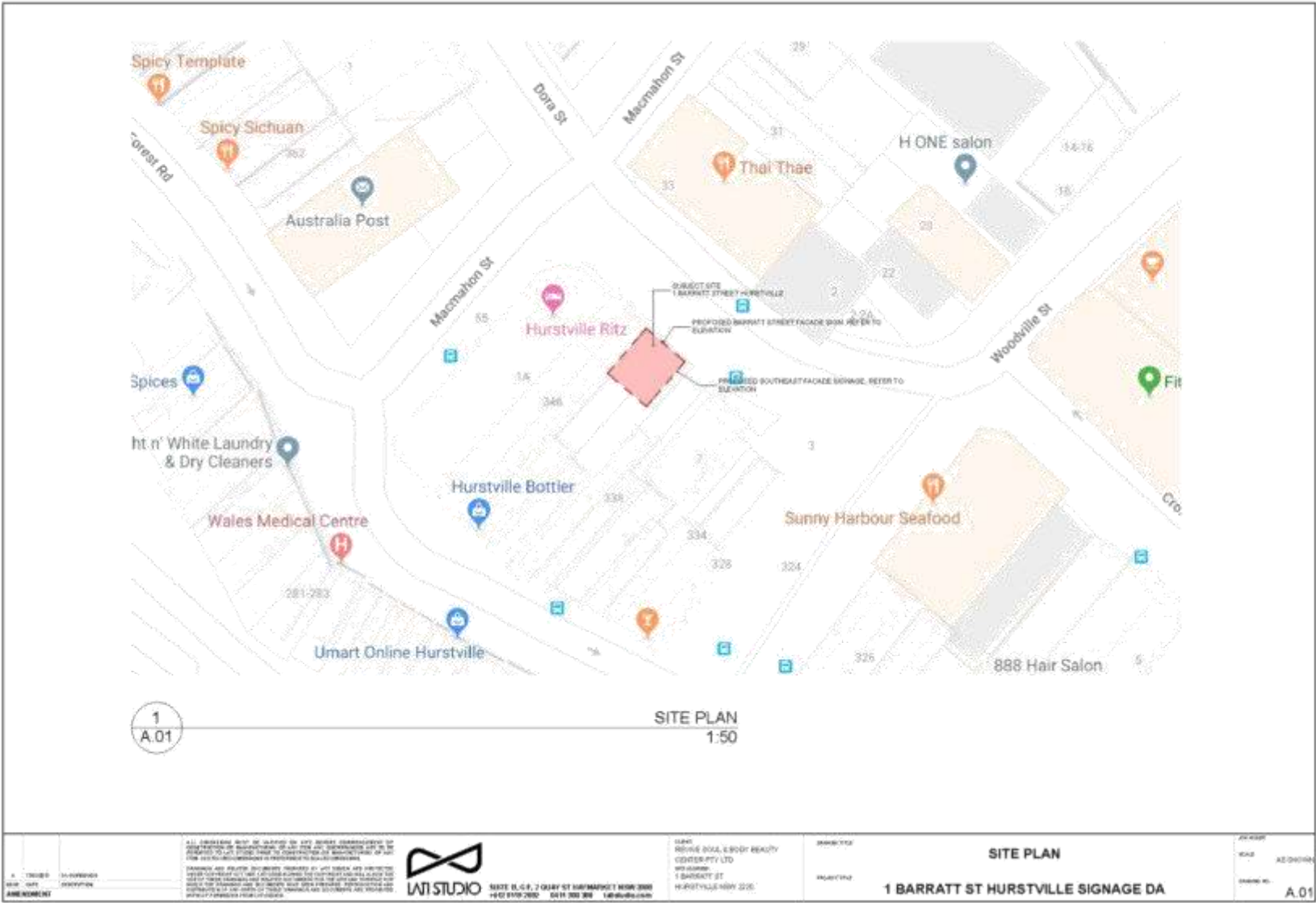
All interest earned on security deposits will be used to offset the Security Deposit Administration and Compliance fee. Where interest earned on a deposit is not sufficient to meet the fee, it will be accepted in full satisfaction of the fee.

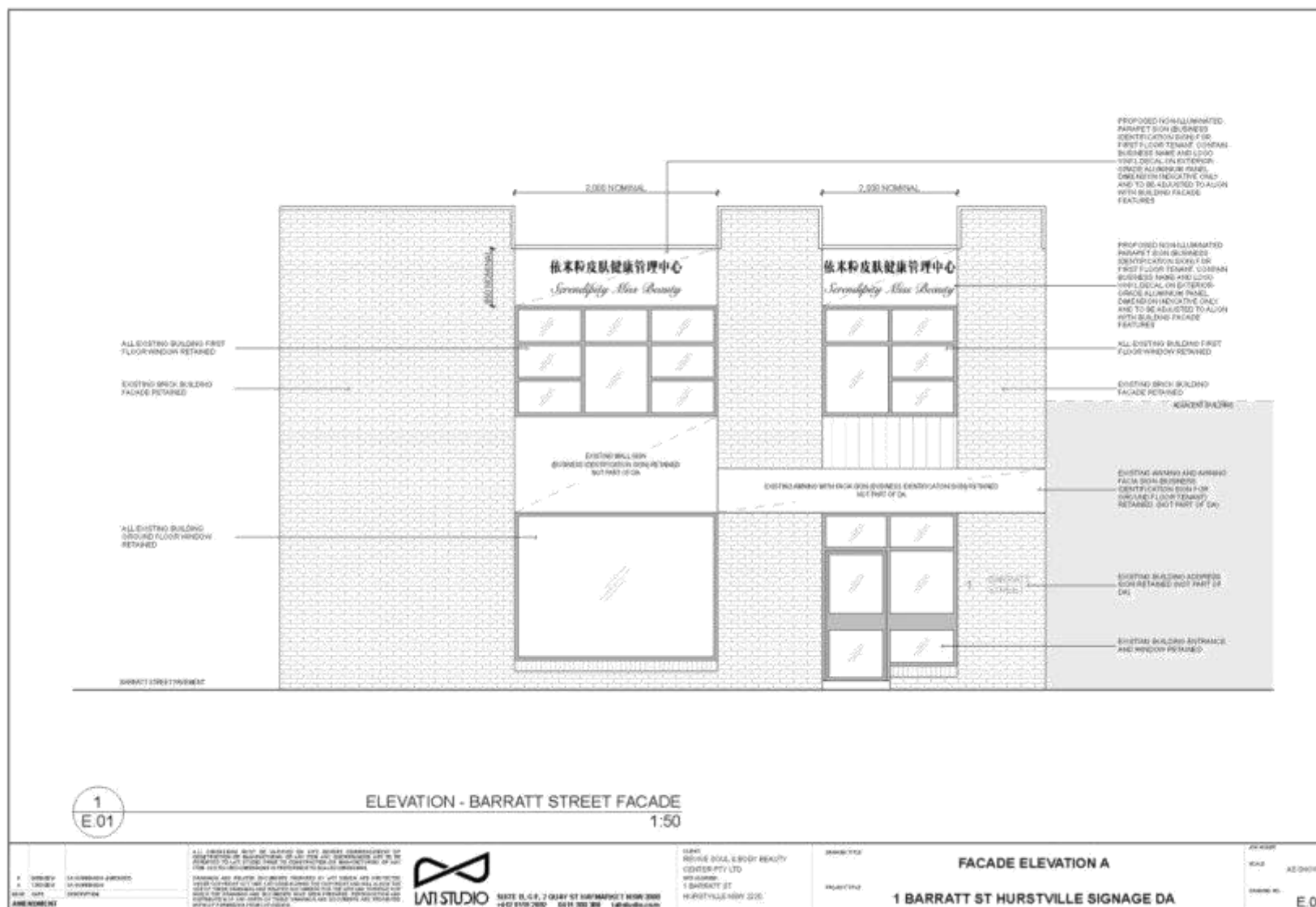
30. **Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must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

ATTACHMENTS

Attachment [↓](#) 1  Site Plan - 1 Barratt Street Hurstville

Attachment [↓](#) 2  Elevations - 1 Barratt Street Hurstville





**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 04 JULY 2019**

LPP019-19

LPP Report No	LPP019-19	Development Application No	DA2018/0211
Site Address & Ward Locality	13-15 Gover Street Peakhurst Peakhurst Ward		
Proposed Development	Demolition and construction of a three storey residential flat building containing fifteen (15) residential units		
Owners	J Younane, Baskal Pty Ltd, Bisa Group Pty Ltd, Nassif Family Holdings Pty Ltd		
Applicant	Cornerstone Design		
Planner/Architect	Planner – BMA Urban, Architect – Cornerstone Design		
Date Of Lodgement	30/05/2018		
Submissions	No submissions received to either the original or the amended DA plans		
Cost of Works	\$3,521,100		
Local Planning Panel Criteria	<i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development applies to the proposed development.</i>		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No 1, State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas), State Environmental planning Policy (Infrastructure), State Environmental Planning Policy 55 – Remediation of Land, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, Apartment Design Guide (ADG)		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Streetscape Drawing, Clause 4.6 Request for Variation under Clause 4.6 Hurstville LEP 2012		
Report prepared by	Independent Assessment		

Recommendation	That the application be approved in accordance with the conditions included in the report.
-----------------------	--

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	Yes

recommendations summarised, in the Executive Summary of the assessment report?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes – variation requested to the maximum 12m height control in clause 4.3 HLEP 2012. The development proposes a height of 13.85m which is a variation of 1.85m or 15.4%
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	Yes – draft conditions made available to the applicant when the report was published.

Aerial Photo



Site outlined in red

Executive Summary

Proposal

1. This development application (DA) proposes demolition works, and construction of a three (3) storey residential flat building containing five (5) units on each level (total 15 units), basement parking for 23 vehicles and a rooftop communal space area at 13-15 Gover Street, Peakhurst.

2. The development proposes three (3) x one (1) bedroom, eight (8) x two (2) bedroom and four (4) x three (3) bedroom units. Pedestrian and vehicular access to the site is provided from Gover Street. The single level basement will accommodate twenty three (23) car parking spaces (including four (4) visitor spaces), and racks for up to four (4) bicycles.

Site and Locality

3. The subject site has a street address of 13-15 Gover Street, Peakhurst, and is legally described as Lot 167 and 168 DP 36317. The property is located on the south western side of Gover Street.
4. The site has a total area of 1313.1sqm, with a 33.505m frontage to Gover Street. The land generally has a gentle slope from the rear towards the street.
5. The site contains two (2) dwelling houses (one on each lot), with a range of sheds and other outbuildings. There are also a number of trees within the site.
6. The locality generally contains a mixture of both older-style detached dwellings and dual occupancy developments, together with more modern residential flat buildings that have been constructed within the last 5-10 years as a result of zoning changes which have enabled such developments.
7. Having regard to the zoning of the site and surrounds, it is clear the future character is a higher density environment. This is apparent by the contemporary residential flat buildings existing and under construction on a number of sites within the surrounding R3 zoned land.

Zoning and Permissibility

8. The subject site is zoned R3 Medium Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HLEP). The proposed development is permissible with development consent within this zone.

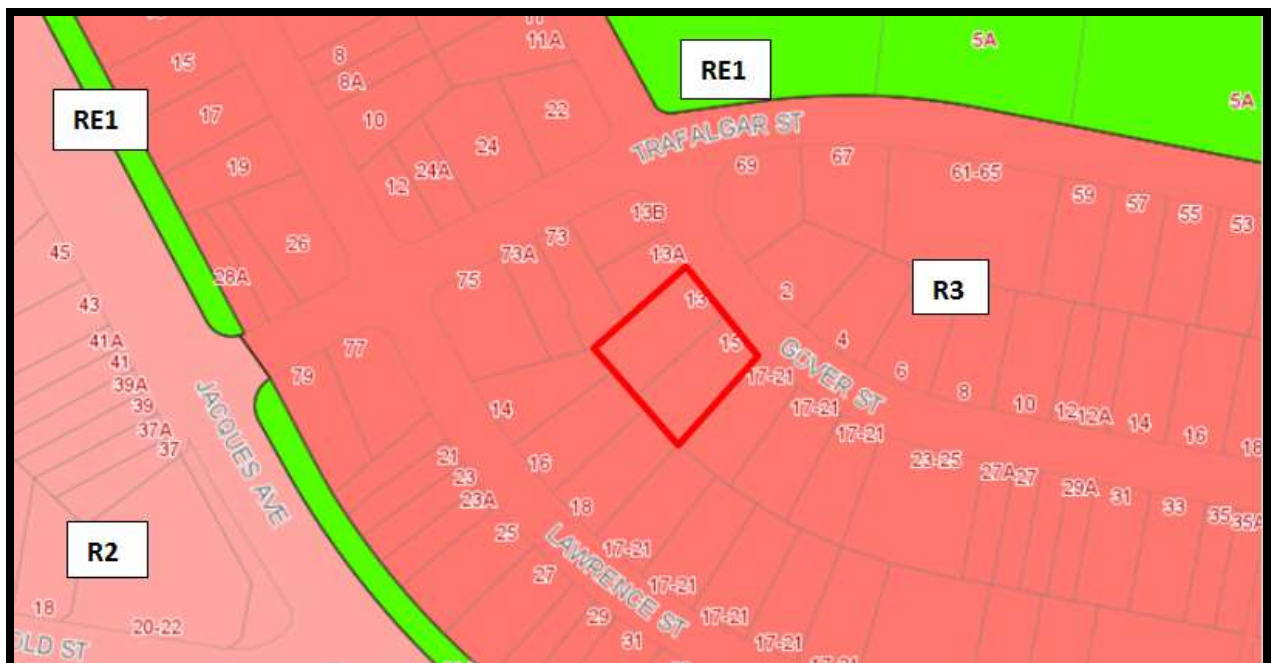


Figure 1 - Site outlined in red

Clause 4.6 variation – height

9. The development seeks a variation to Clause 4.3 Height of Buildings under the provisions of the Hurstville Local Environmental Plan 2012 (HLEP). Clause 4.3 of HLEP 2012 prescribes a maximum 12m height limit, and the development proposes a height of 13.85m which is a variation of 1.85m or 15.4% above the development standard. The applicant has submitted a written request seeking to justify the contravention of the height standard, the request is supported. This is discussed in detail within the body of the report.



Figure 2 – Site outlined in red

Submissions

10. The proposal has been notified to neighbours in accordance with the provisions of Hurstville DCP No 1. No submissions were received.
11. The DA was referred to a number of officers within Council, and the referral responses were generally supportive of the application as discussed in the body of this report.

Level of Determination

12. The DA is referred to the Local Planning Panel for consideration and determination as it involves a residential flat building affected by State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development.

Conclusion

13. The proposed development has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979, and in particular against the requirements of the relevant HLEP 2012 and Hurstville DCP No 1. The proposal generally complies, with sufficient justification provided for any variations.
14. The proposal is considered satisfactory when assessed against the applicable planning controls and it is recommended for approval subject to conditions.

REPORT IN FULL

Proposal

15. This development application (DA) proposes demolition works, and construction of a three (3) storey residential flat building containing five (5) units on each level (total 15 units), basement parking for 23 vehicles and a rooftop communal space area at 13-15 Gover Street, Peakhurst.

16. Further details of the proposal are as follows:

Demolition

17. The proposal involves demolition of all existing structures. The structures to be demolished include the detached single storey brick dwellings at 13 and 15 Gover Street and ancillary structures including retaining walls, decks, a shed and boundary fencing.

Residential Component

18. The proposal contains a total of fifteen (15) residential apartments, five (5) on each floor of the building. The apartment composition is provided as follows:

- Three (3) x single bedroom apartments;
- Eight (8) x two (2) bedroom apartments; and
- Four (4) x three (3) bedroom apartments.

19. Of the fifteen (15) apartments proposed, two (2) single bedroom apartments are nominated as 'liveable' or 'adaptable' dwellings and are located on the second and third floors. A lift connects all floors of the development. All apartments have an open plan living and dining arrangement and a private open space in the form of a terrace or balcony which is directly accessible from the open plan living areas.

Communal Open Space

20. The rooftop level of the residential flat building contains a communal open space area. This area would be enclosed on all sides by garden beds and planters. Included within the communal open space area are barbeque facilities, bench seating, outdoor lounge seating areas and communal clothes drying facilities. Access to this area will be obtained through a rooftop foyer that is accessed via stairs and the lift. Excluding the foyer and associated entry points, approximately 43sqm of the communal open space area is proposed to be roofed, with the remaining area open to the sky.

Access and Parking

21. The submitted plans indicate that vehicular and pedestrian access will be obtained from Gover Street. The single level basement car park contains twenty three (23) car parking spaces. Of these spaces, nineteen (19) will be allocated to the residential apartments, with the remaining four (4) as visitor parking spaces (one of which would also double as a car wash bay). Bicycle racks would also be included within the basement levels for a total of four (4) bicycles.

22. Pedestrian access from the parking area to the upper levels is provided via a stairwell and lift.

Landscaping

23. The proposal includes deep soil areas around the periphery of the site and primarily within the side and rear setbacks; such areas contain minimum dimensions.

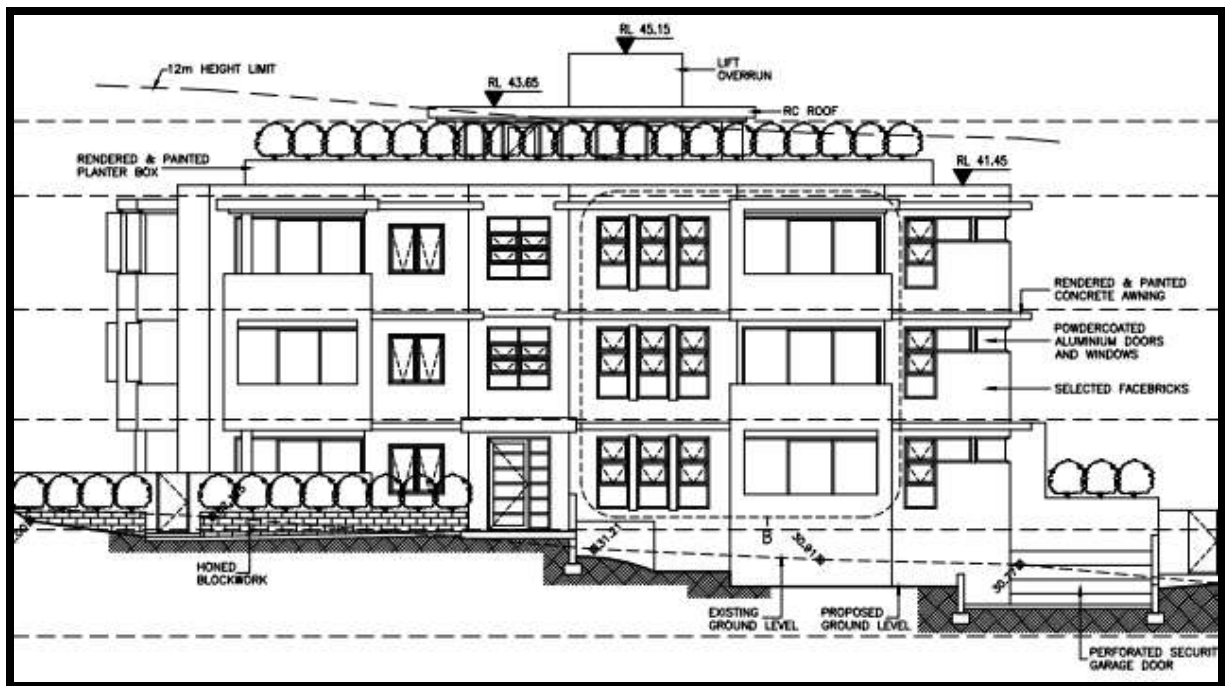


Figure 3 – An extract of the proposed development's primary (north east) elevation.

The Site and Locality

24. The subject site consists of two (2) allotments with street addresses of 13 and 15 Gover Street, Peakhurst; they are formally known as Lots 167 and 168 of DP 36317 respectively. The combined area and dimensions of the subject site are as follows:

Site Area:

- 13 Gover Street - 676.3sqm
- 15 Gover Street – 636.8sqm

Total Site area = 1,313.1sqm

The amalgamated allotment has dimensions of:

- Frontage – 33.505m
- Rear – 38.705m
- East – 36.885m
- West – 36.885m

25. The subject site is located on the south-western side of the Gover Street. Adjoining the site to the east is a large site (17 Gover Street) which contains a residential flat building complex consisting of one and two storey buildings, that were previously approved in 1992 pursuant to SEPP No. 5 Housing for Older People or People with a Disability (see above). Adjoining allotments to the south (rear) and western side boundaries each contain a single attached or detached dwellings.
26. Each allotment within the subject site contains a detached dwelling house and associated development (ie a shed, pet enclosures, decking, etc.). There are a number of significant trees on the subject site, though they are either dead or dying and an assessment by Council staff have found that the trees appear to have been poisoned.



Figure 4 – 13 Gover Street, as photographed from the northeast corner of that site on 20 July 2018



Figure 5 – 15 Gover Street, as photographed from the north west corner of that site on 20 July 2018



Figure 6 – A panoramic photo of the subject site (centre) and the adjoining allotments on both sides



Figure 7 – A panoramic photo from the western side of 15 Gover Street, which shows all allotments that adjoin the rear and western side of the subject site. The residential flat building in the centre of the photo is located at 75 Trafalgar Street, which does not adjoin the subject site.

27. On the northern side of Gover Street immediately opposite the subject site are a number of residential allotments that contain detached single storey dwelling houses.
28. The subject site is not affected by any identifiable hazards (ie flooding, acid sulphate soils, etc.). The subject site does not contain a heritage item and is not within a heritage conservation area; there are also no heritage items within the surrounding area.

Background

29. The following provides a brief outline as to the history of the subject DA:
 - 30 May 2018 - The subject DA was lodged with Council.
 - 13 June 2018 - Application notified for a period from 13 June 2018 until 6 July 2018. No submissions were received.
 - 2 August 2018 - Design Review Panel (DRP) meeting held. The recommendation from the meeting was that the application be supported, subject to a number of issues being resolved (refer to the discussion within this assessment report for more detail).
 - 3 December 2018 - Request for additional information sent to the applicant, which raised a number of issues which are outlined as follows:
 - Excessive Floor Space Ratio (FSR)
 - Internal solar access
 - Design and area of the Communal Open Space
 - Design of the waste storage facilities and ventilation
 - Landscaping design
 - Acoustic privacy
 - Design of Unit G.05
 - Submission of a traffic impact assessment and minor design changes to the layout of the basement carpark; and
 - Satisfaction of issues raised by the Design Review Panel (DRP)

- 22 March 2019 - Amended and additional information received in response to the additional information request. The following provides a response to the additional information request raised by Council:
 - The plans have been amended so that the FSR complies with the applicable development standard.
 - Amended information better demonstrates that internal solar access would comply with ADG requirements.
 - The design and layout of the communal open space area has been amended to increase the amount of communal open space area and to improve the amenity of this space.
 - The waste storage area has been enlarged to meet relevant requirements, though no bulk storage area has been included; this is consistent with sixteen (16) other examples provided by the applicant of developments that were approved without such facilities, thirteen (13) of which are within the Peakhurst area.
 - Changes have been made to the OSD basin so that it can be used as deep soil area and exceed minimum storage requirements.
 - It is not possible for physical separation to be achieved between the lift and the Units 1.05 and 2.05, and the applicant is accepting of a consent condition for acoustic treatments to ensure that acoustic amenity is maintained.
 - The internal design of Unit G.05 has been modified to address Council/DRP concerns. The excessively large storage area has been deleted and a new BASIX certificate prepared.
 - Amendments to the car park (including sight triangles) have been undertaken.

PLANNING ASSESSMENT

30. 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 & Assessment Act 1979.

Environmental Planning Instruments

State Environmental Planning Policies

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

31. The site is within the area affected by the Greater Metropolitan Regional Environmental Plan No 2 — Georges River Catchment. The proposal, including the disposal of stormwater, is considered to be consistent with Council's requirements for the disposal of stormwater in the catchment.
32. Stormwater associated with the proposed development will be managed by the proposed onsite stormwater system and will be treated in accordance with Council's Water Management Policy; it would therefore satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

State Environmental Planning Policy (Infrastructure) 2007

33. Divisions 5 (Electricity Transmission or Distribution) and 17 (Roads and Traffic) of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) are not applicable to the proposal. There is no information to indicate that an external referral to the relevant energy supply authority was required in accordance with clause 45 of the ISEPP. The proposal does not adjoin a classified road and does not constitute "Traffic generating

development” under Schedule 3 of the ISEPP; a referral to Roads and Maritime Services (RMS) was therefore not required.

State Environmental Planning Policy No 55 - Remediation of Land

34. Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

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

35. BASIX Certificate No. 909867M_02 dated 12 March 2019 has been issued for the proposed development. The issue of this certificate has been prepared in accordance with Clause 55A of the Environmental Planning and Assessment Regulation 2000, (which requires that an amended BASIX certificate be submitted with amended information). Compliance with the commitments of the BASIX Certificate (both prior to the issue of Construction and Occupation Certificates) would be subject to conditions in accordance with the Regulations. With regard to the above, the provisions of the SEPP have been satisfied.

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

36. The objectives of this SEPP are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy applies pursuant to Clause 5(1)(a) of the SEPP as the site is within both Georges River Council and the R3 Medium Density Residential zone. Pursuant to Clause 8(1) of the SEPP, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).

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

37. 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.
38. 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 consistent with the provisions of this Draft Instrument.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

39. State Environmental Planning Policy No.65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat buildings of three or more storeys in height and containing at least four dwellings. Amendment 3 to SEPP 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Pursuant to cl. 4(1) of the SEPP, this policy would apply to the subject application.
40. A detailed planning assessment of relevant provisions within the ADG is undertaken later in this report.
41. Clause 28(2) of SEPP65 requires that the consent authority take into consideration the following as part of the determination of DAs to which SEPP 65 applies:
- a) the advice (if any) obtained from the design review panel, and
 - b) the design quality of the development when evaluated in accordance with the design quality principles, and
 - c) the Apartment Design Guide.

As required by clause 28(2) of the SEPP 65, the Design Review Panel's review of the proposal is provided below. In addition, an assessment has also been undertaken in terms of the Apartment Design Guide (ADG), which is also undertaken as provided below.

Design Review Panel's Review of Proposal

42. The DA was assessed by the DRP at a meeting held on 13 October 2018 having regard to each of the nine (9) Design Quality Principles. In their Report, the DRP recommends support of the application, subject to the issues raised within their Report being resolved.
43. It is noted that the DRP indicates that the application satisfied the design quality principles contained within SEPP65.
44. The issues raised by the DRP are covered below, followed by a comment on how they have been resolved.

SEPP 65 – Design Quality of Residential Flat Buildings	DRP Comment	Planner Comment
Principle 1: Design quality principles Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.	The site is within an evolving medium density precinct at the north end of Gover Street. The site has a cross fall of approximately 1 metre and a slope from rear to front of about 1 metre and comprises two amalgamated residential lots. There are 3 very large trees on the site all of	The subject site and surrounding area were previously located within a low-density residential area. Changes to the zoning of the area as R3 Medium Density residential zone has resulted in the proliferation of higher-density residential development (including residential flat buildings) within the surrounding area. The proposed development

<p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>which are dying for causes unknown, potential poisoning. In this suspicious circumstance it is recommended that Council investigate the reasons for their demise. The loss of these trees makes it crucial to provide substantial large trees as part of this proposal.</p>	<p>is therefore considered to be consistent with the current/future character of the area. The Panel's comments regarding poisoned trees are noted and have been reviewed as part of the landscape officer's comments.</p>
<p>Principle 2: Built Form and Scale Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The built form comprises a 5 unit per floor footprint over 3 levels with communal facilities at rooftop. While the building is centralized in the site, privacy issues and impacts along all boundaries need to be carefully considered – see Landscape. The architect has assured the Panel that the single open stair is achievable as an alternative solution, and will be compliant with the BCA requirements. See further comments below under Amenity. Applicant is seeking variation to Clause 4.6 LEP Height Control of 12m. The excess height is due to the lift overrun and rooftop amenities, and the variation is supported.</p>	<p>Aside from the floor space ratio, there are no specific density controls which apply to the site. A variation to the building height standard under HLEP 2012 has been proposed; consideration of the variation is contained within the HLEP 2012 assessment, however the variation is considered to be both acceptable and supportable. Despite beaching the height standard, such a variation would not result in significant or unreasonable impacts on either the subject site or surrounding area. The variation would likely result in improved amenity to the communal open space areas and is consistent with the height and scale of higher-density residential development within the local area. The centrally located building would be highly articulated and would have an acceptable presentation to the public domain. Views and outlooks from surrounding areas would not be affected.</p>

<p>Principle 3: Density Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>Stated to being compliant with the 1:1 FSR control.</p>	<p>As indicated above, aside from the FSR standard there are no density requirements which apply to the site. The design of the building would afford a high level of internal amenity, with high levels of solar access and natural ventilation being proposed. The FSR being proposed by the applicant is considered to be consistent with that of newer/higher-density residential development within the surrounding area.</p>
<p>Principle 4: Sustainability Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>See notes above under Context regarding the poor condition of the existing site trees. This significantly impacts on local micro-climates and it is imperative that the design replaces these lost trees with trees of a similar scale. Highly desirable to introduce sustainability measures such as solar energy collection and rainwater recycling for irrigation.</p>	<p>High levels of natural solar access and ventilation are proposed. Proposed deep soil areas on the site will also be well in excess of minimum requirements. Further to the above, a compliant BASIX Certificate has been submitted with the subject application. The commitments will be reinforced by a condition of consent.</p>
<p>Principle 5: Landscape Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-</p>	<p>The following recommendations are made:</p> <ul style="list-style-type: none"> • Provide additional large trees in the rear boundary, minimum 3 extra. These should be greater than 10m at maturity and it is not recommended that the 	<p>The applicant proposes a good landscape design through the provision of large landscaped and deep soil areas, both around the periphery of the subject site and on the roof. The design of the landscape layout maximise both functionality and useability, and will</p>

<p>designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood. Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>scribbly gums are used as these will not provide adequate scale. These should be a minimum 400 litre at installation and should be fully irrigated. Documentation should be provided in the DA submission demonstrating irrigation design.</p> <ul style="list-style-type: none"> • Reconfigure the courtyard on the eastern boundary to pull back the stair access and provide additional space for planting. • Delete the stairs on the western boundary and provide new tree planting in this corner. • Replace the 3 small trees (water gums) proposed in the Gover Street setback with 1 large tree such as a gum that would provide appropriate scale and height to complement the streetscape. • Reconfigure the rooftop planters to create increase planting zones and define smaller external gathering spaces. • Relocate the OSD tank clear of deep soil zones. 	<p>contribute to maintenance of visual privacy, both within the proposed development and on surrounding sites. Further, the applicant has responded to the comments and requirements of the DRP as follows:</p> <ul style="list-style-type: none"> • Six large trees are proposed within the rear setback (which includes three Red Gums, three Scribbly Gums and a Blueberry Ash); which is an increase upon the three trees previously proposed. Five of the six trees within the setback would be capable of growing to heights of more than 10 metres. Four of the trees would have 400L pot sizes. Irrigation plans have also been submitted. • The courtyard on the eastern side of the site has not been pulled back, however the courtyard and associated stairs on the southwest side of the site have been reconfigured and reduced in size to provide additional planting areas. • A large Water Gum has been proposed within the front setback (in addition to a Scribbly Gum and Water gum) within the front setback. • The design of the rooftop planters (particularly those at the front/northern end of the roof) have been amended and increased in size. • The applicant has advised that the OSD system in the front of the
--	--	--

		site is a basin, and not a tank; the capacity of the basin is also oversized to allow for deep-soil planting in the area.
<p>Principle 6: Amenity Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>The amenity of the development is generally of good standard but the following detailed issues should be addressed:</p> <ul style="list-style-type: none"> • The entry doors should be moved closer to the street to avoid the deeply recessed space. • Unit G01 and units above are awkwardly planned with no entry lobby and poorly relating living and dining spaces. It is recommended that this apartment is redesigned so that a living / dining space can have a more cohesive arrangement and the defined entry to the apartment introduced. • Unit G05 has a large storeroom which appears to be a potentially habitable room without a window. This apartment should be redesigned so that such space has access to natural light and ventilation. • Notably the design achieves good compliance levels with solar access and natural ventilation. • The seat adjacent to the entry steps has poor outlook and could be better located. 	<p>The plans propose a high level of amenity. A variety of units and room sizes are proposed, all of which would have appropriate volumes of storage and visual privacy. The proposal also exceeds minimum requirements for solar access, cross ventilation, and indoor and outdoor space. Further, the applicant has responded to the comments and requirements of the DRP as follows:</p> <ul style="list-style-type: none"> • The depth of the entry's recess has been reduced by approximately 500mm; the design of the approaches to the entry have also been changed to improve view lines to the building's main entry. • The design of Units G.01, 1.01 and 2.01 have been altered to integrate the living and dining spaces. • Unit G.05 has been reconfigured to remove the aforementioned storage 'room' that was previously proposed. • High levels of solar access and ventilation are proposed. • The timber seating has been relocated adjacent to the new primary entrance point from the street on the amended plans.
<p>Principle 7: Safety Good design optimises</p>	See comment above relating to recessed main	All units on the northern elevation would feature

<p>safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>entrance doors which would be a potential security hazard.</p>	<p>internal and external living areas that would overlook the public domain, thereby maximising active and casual surveillance of the street. The main entry point to the building has been amended in response to the DRP's feedback so that it would be capable of being directly observed from the public domain and both internal and external approaches.</p>
<p>Principle 8: Housing Diversity and Social Interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The mix of apartments proposed is satisfactory. The rooftop terrace will provide an amenable place for gathering.</p>	<p>The proposed development mix is three (3) x one (1) bedroom, eight (8) x two (2) bedroom and four (4) x three (3) bedroom apartments which is considered to be an appropriate mix of dwellings that would meet a range of needs and budgets.</p> <p>As reflected by the DRP notes, the placement and design of the rooftop communal open space area and the high levels of amenity that would be afforded to such areas would enable communal facilities to provide opportunities for social interaction.</p>
<p>Principle 9: Aesthetics</p> <p>Good design achieves a built form that has good</p>	<p>The building fits well within the streetscape and substantial trees</p>	<p>The proposed development will be consistent with the existing and future character</p>

proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	along its frontage as noted above in Landscape would be valuable in enhancing the character of the street.	of the streetscape (noting that the future character envisions developments of a typology, scale and appearance similar to that of the proposal). The visual appearance of the building would respond well to the local context, noting the compatible scale, design and appearance of other contemporary residential flat buildings within the surrounding area.
--	--	---

Assessment under the Apartment Design Guide (ADG)

45. Clause 28(2) requires assessment under the Apartment Design Guide (ADG). This assessment has been undertaken below.

ADG Reference	Clause	Design Criteria	Complies
Part 3 Siting the Development			
3B Orientation	3B-1 - Building types and layouts respond to the streetscape and site while optimising solar access within the development	The building would be oriented to the north and would both address and access the street frontage. Overshadowing to the south would be minimised.	Yes
	3B-2 - Overshadowing of neighbouring properties is minimised during mid-winter	The proposal would enable adequate solar access of living areas and both private and communal open space (refer to assessments below). Buildings on surrounding sites would not be unreasonably overshadowed during mid-winter.	Yes
3C Public domain interface	3C-1 - Transition between private and public domain is achieved without compromising safety and security	Access to ground floor terraces (Unit G.02) has been provided where practical. All apartments on the northern side of the development overlook the adjoining road reserve.	Yes
	3C-2 - Amenity of the public domain is retained and enhanced	Planting is to be used in the front setback area to soften the appearance of the building. Apart from stormwater facilities (the prominence of which is to be reduced through the design of an open OSD basin, services are to be located within the basement, access to	Yes

		which is at the lowest side of the primary frontage.	
3D Communal and public open space	3D-1 - An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	<p>Required communal open space: Minimum 25% of the site area (328.3sqm, based on a site area of 1313.1sqm)</p> <p>Proposed communal open space: 328.4sqm (includes boundary planters and excludes access to the roof (i.e. stairs, lift, foyer etc.).</p> <p>The proposal would comply with minimum requirements; if it were however deemed that the planters should be excluded from the calculations (in that they do not contribute to a 'usable' space), then 232.7sqm of communal open space would be provided.</p> <p>Such a shortfall of communal open space is considered to be supportable in this instance. Due to the northern orientation of the site, the placement of additional communal open space at ground level would be unlikely to provide additional space that would be of high amenity (given the likely amount of overshadowing that would be associated with situating such areas to the rear (i.e. south) of the proposed RFB). Further, Peakhurst Park is located approximately 65 metres walking distance from the subject site. This location includes expansive open space in addition to a number of facilities that include two soccer fields, two mini soccer fields, a junior league field, a League/Touch field, a cricket wicket and cricket practice nets.</p> <p>With regard to the above any such noncompliance to the design criteria is considered to be supportable on merit.</p>	Yes
		A numerical breakdown has not been provided, however the shadow plans indicate that more than 50% of usable areas within the proposed communal area would be capable of receiving at least two hours of direct solar access in mid-winter.	Yes
	3D-2 - Communal	The proposed communal open space	Yes

	open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	areas would contain a variety of community facilities including group tables/seating areas, BBQ facilities and space for a variety of activities. Open and unshaded areas would be provided by a pergola roof that would cover part of the communal areas.	
	3D-3 - Communal open space is designed to maximise safety	The communal area would be on the rooftop, so the development would be technically non-compliant in that it could not be observed from units within the development. Other design guidance criteria would however be satisfied and is considered to be supportable.	Yes
3E Deep soil zones	3E-1 - Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	At least 7% of the site (i.e. 91.9sqm) shall comprise deep soil zones, with minimum dimensions of 3m. Proposed deep soil area: Approx. 225.3sqm, or 17.2% of the site area (inclusive of minimum dimensions)	Yes
3F Visual privacy	3F-1 - Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum setbacks between respective boundaries and habitable rooms/boundaries are to be as follows:</p> <ul style="list-style-type: none"> • Required Side/rear boundaries: <ul style="list-style-type: none"> ○ Habitable rooms and balconies: 6m ○ Non-habitable rooms: 3m • Proposed setbacks from side/rear boundaries: <ul style="list-style-type: none"> ○ South east (side) boundary: Minimum 6.04m ○ North west (side) boundary: Minimum 6m ○ South west (rear) boundary: Minimum 5.6m <p>As acknowledged by the applicant's Statement of Environmental Effects, parts of the development would not satisfy the minimum 6 metre setback to the rear boundary. The areas affected</p>	Yes

		<p>by the setback breaches include parts of the balconies on the southeast and southwest corners of the building (with minimum setbacks of 5.6m and 5.645m respectively), and parts of exterior walls adjacent to the balconies (with minimum setbacks of 5.8m and 5.9m respectively). The size and areas of the breaches are reflective of the irregular shape of the rear boundary (which increases the size of the rear setback towards the centre of the site, and reduces setbacks adjacent to the side boundaries), and the remainder of the rear setback complies with the 6m requirement.</p> <p>Elements of the exterior walls that would breach the rear setback area do not contain any windows, therefore the objective regarding separation and visual privacy would be satisfied. Only the edges of the balconies would breach the rear setback area, and from the balustrades the maximum depth of the noncompliance would be approximately 150-190mm (i.e. the vast majority of the balconies would be more than 6m from the rear boundary and would subsequently satisfy the objective regarding privacy). The unit 1.04 and 2.04 balconies i.e. those on the southwest side of the proposed RFB) would also include angled louvre screens that would direct views away from the subject site's rear setback.</p> <p>With regard to the above, it is considered unlikely that full compliance with the design criteria would have a discernible impact on building separation and subsequent visual privacy between adjoining sites. Further, Planning Circular PS 17-001 issued by the Department of Planning and Environment states that the ADG should not be applied as a set of strict development standards where the objectives of the criteria can be met.</p> <p>It is agreed with the applicant's planner that visual privacy between sites would be unlikely to be compromised as a</p>	
--	--	---	--

		<p>result of the proposed noncompliance.</p> <p>The minor building separation variations that are proposed on the rear elevation are therefore considered to be acceptable.</p>	
	3F-2 - Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space	Proposed privacy elements on side and rear-facing balconies would not adversely affect access to light and air. The louvered screens would be directed towards the northeast and northwest, thereby maximising solar access to such areas.	Yes
3G Pedestrian access and entries	3G-1 - Building entries and pedestrian access connects to and addresses the public domain	Multiple ground floor entrances proposed, with entries oriented towards the road frontage.	Yes
	3G-2 - Access, entries and pathways are accessible and easy to identify	Building access would be clearly identifiable from the adjoining road frontage. Entrances to the building and carpark are integrated into the building design.	Yes
3H Vehicle access	3H-1 - Vehicle access points are designed and located to achieve safety, minimise conflicts, between pedestrians and vehicles and create high quality streetscapes	The proposed single garage entrance would be located at the lowest point of the primary boundary. No parking or vehicle standing areas are proposed within the front setback.	Yes
3J Bicycle and car parking	3J-1 - Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas	<p>Proposed car parking rates are to be in accordance with the DCP, which for reference is as follows:</p> <p>Required parking:</p> <ul style="list-style-type: none"> 19 residential spaces (11 spaces for 1 and 2 bedroom apartments, and 8 spaces for 3 bedroom apartments) 3.75 visitor spaces (rounded up to 4) <p>Proposed parking:</p> <ul style="list-style-type: none"> 19 residential spaces 4 visitor spaces <p>Refer to the assessment of the DCP for</p>	Yes

		further information.	
	3J-2 - Parking and facilities are provided for other modes of transport	Racks for four bicycle parking spaces are located in a convenient location within the basement.	Yes
	3J-3 - Car park design and access is safe and secure	Secure access to the carpark is to be controlled by a security gate at the bottom of the driveway ramp.	Yes
	3J-4 - Visual and environmental impacts of underground car parking are minimised	The carpark would be both ventilated via natural (i.e. airflow through the garage security door) and mechanical (a riser through the centre of the building) means.	Yes

Part 4 Designing the building

Amenity

4A Solar and daylight access	4A-1 – to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	Required: <ul style="list-style-type: none"> Living room and Private Open Space areas within at least 70% of all apartments must receive at least 2 hours of direct sunlight between 9am and 3pm in mid-winter. Proposed: <ul style="list-style-type: none"> The internal solar access plans indicate that 12 of the 15 (i.e. 80%) of proposed apartments would receive at least 2 hours of direct solar access on June 21. 	Yes
		Required: <ul style="list-style-type: none"> A maximum of 15% of apartments receive no direct sunlight between 9am and 3pm in mid-winter. Proposed: <ul style="list-style-type: none"> All proposed apartments would receive solar access between 9:00am and 3:00pm in mid-winter. Three of the proposed apartments (i.e. 20%) would however receive less than two hours of solar access (with such access being obtained between approximately 2:00pm and 3:00pm in mid-winter). 	Yes
	4A-2 - Daylight access is maximised where sunlight is limited	Daylight is considered to be satisfactorily maximised; daylight access is not proposed primarily through highlight windows and ground level courtyards are mostly open to the sky.	Yes
	4A-3 - Design incorporates shading and glare	N/A - given orientation of the site and proposed adjoining development.	Yes

	control, particularly for warmer months		
4B Natural ventilation	4B-1 - All habitable rooms are naturally ventilated	The proposal demonstrates compliance.	Yes
	4B-2 - The layout and design of single aspect apartments maximises natural ventilation	The proposal would satisfy most requirements, however the 9m depths of Units G.01, 1.01 and 2.01 would all exceed maximum (ie 8m) depth requirements. The maximum 8m depth requirement would apply irrespective of the orientation of the apartment, however the apartments and the affected rooms within them would have large openings, and therefore be likely to be capable of being ventilated. As such, the variation to the design guidance is considered to be supportable.	Yes
	4B-3 - The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents	Required: At least 60% of all apartments are naturally cross ventilated. Proposed: 12 (80%) of the proposed apartments would be capable of being cross-ventilated.	Yes
4C Ceiling heights	4C-1 - Ceiling height achieves sufficient natural ventilation and daylight access	Required: <ul style="list-style-type: none"> Minimum ceiling height for a habitable room is 2.7m Minimum ceiling height for a habitable room is 2.4m Minimum 3.3m ceiling height required for commercial areas/ground floor in mixed use developments. Proposed: <ul style="list-style-type: none"> Minimum 2.7m ceiling heights for units 	Yes
	4C-2 - Ceiling height increases the sense of space in apartments and provides for well proportioned rooms	Proposal considered acceptable	Yes

4D Apartment size and layout	4D-1 - The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	<p>Apartments are required to have the following minimum internal areas:</p> <p>Studio – 35sqm 1 bedroom – 50sqm 2 bedroom – 70sqm 3 bedroom – 90sqm</p> <p>Additional requirements:</p> <ul style="list-style-type: none"> • These calculations only provide for 1 bathroom, and 5sqm is to be added for each additional bathroom. • A fourth bedroom and further additional bedrooms are to increase the internal floor area by 12sqm <p>Proposed development: Unit G.01 – 2br – 78sqm – complies Unit G.02 – 2br – 76.7sqm – complies Unit G.03 – 2br – 84.3sqm – complies Unit G.04 – 3br – 98.8sqm – complies Unit G.05 – 1br – 51.4sqm – complies Unit 1.01 – 2br – 78sqm – complies Unit 1.02 – 2br – 78sqm – complies Unit 1.03 – 2br – 84.6sqm – complies Unit 1.04 – 3br – 97.7sqm – complies Unit 1.05 – 1br – 51.5sqm – complies Unit 2.01 – 3br – 95sqm – complies Unit 2.02 – 2br – 77.2sqm – complies Unit 2.03 – 2br – 84.1sqm – complies Unit 2.04 – 3br – 97.5sqm – complies Unit 2.05 – 1br – 51.3sqm – complies</p>	Yes
		<p>Required: Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	Yes
	4D-2 - Environmental performance of the apartment is maximised	<p>Required: Habitable room depths are limited to a maximum of 2.5 x ceiling height.</p> <p>Proposed: Complies except for open plan layouts apply; refer to the assessment below.</p>	Yes
		<p>Required: In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Proposed: Complies, except for Units G.01, 1.01</p>	Yes

		<p>and 2.01.</p> <p>The proposal would satisfy most requirements, however the 9m depths of Units G.01, 1.01 and 2.01 would all exceed maximum (i.e. 8m) depth requirements. It is noted that the maximum 8m depth requirement would apply irrespective of the orientation of the apartment; however the apartments and the affected rooms within them that are subject to the noncompliance would all be oriented towards the north. Such areas would likely be subject to substantial and direct solar access; further, the open plan living areas of the affected apartments have substantial openings (both doors and windows) to facilitate ventilation. Despite the noncompliant room depths, amenity and environmental performance of such areas is expected to be maintained. The noncompliance is therefore considered to be supportable on merit.</p>	
	4D-3 - Apartment layouts are designed to accommodate a variety of household activities and needs	<p>Required: Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobes).</p>	Yes
		<p>Required: Bedrooms have a minimum dimension of 3m (excluding wardrobes).</p>	Yes
		<p>Required: Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 1-bedroom apartments: Minimum 3.6m • 2-bedroom apartments: Minimum 4m <p>Proposed:</p> <ul style="list-style-type: none"> • 1-bedroom apartments: Minimum 5.1m • 2-bedroom apartments: Minimum 4m 	Yes
4E Private open space and balconies	4E-1 - Apartments provide appropriately sized private open space and balconies to enhance residential amenity	<p>1 bedroom apartments are to have primary balconies with a minimum area of 8sqm and a minimum depth of 2m. 2 bedroom apartments are to have primary balconies with a minimum area of 10sqm and a minimum depth of 2m.</p> <p>Proposed development: Unit 1.01 – 2br – 14.47sqm – complies</p>	Yes

		Unit 1.02 – 2br – 10.97sqm – complies Unit 1.03 – 2br – 15.47sqm – complies Unit 1.04 – 3br – 13.25sqm – complies Unit 1.05 – 1br – 9.97sqm – complies Unit 2.01 – 3br – 14.47sqm – complies Unit 2.02 – 2br – 10.97sqm – complies Unit 2.03 – 2br – 15.47sqm – complies Unit 2.04 – 3br – 13.25sqm – complies Unit 2.05 – 1br – 9.29sqm – complies For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m. Proposed development: Unit G.01 – 2br – 20.67sqm – complies Unit G.02 – 2br – 60.9sqm – complies Unit G.03 – 2br – 65.6sqm – complies Unit G.04 – 3br – 115.98sqm – complies Unit G.05 – 1br – 26.76sqm - complies	
		4E-2 - Primary private open space and balconies are appropriately located to enhance liveability for residents With the exception of a secondary courtyard which would extend from Bedroom 1 of Unit G.01, all Private Open Space areas adjoin and form extensions of internal living room.	Yes
		4E-3 - Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building All balconies would be integrated into the building. Plant equipment and clothes drying facilities are not proposed on the balconies.	Yes
		4E-4 - Private open space and balcony design maximises safety Balustrading to balconies appears to be to compliant heights to promote safety. To comply with relevant AS if approved by way of condition.	Yes
4F Common circulation and spaces	4F-1 - Common circulation spaces achieve good amenity and properly service the number of apartments	Maximum number of dwellings off circulation core: 5	Yes
4G Storage	4G-1 - Adequate, well designed storage is provided in each apartment	In addition to storage in kitchens, bathrooms and bedrooms, 6m ³ of storage is to be provided for 1 bedroom apartments, 8m ³ for 2 bedroom	No to 3 units

		<p>apartments and 10m³ for three or more bedroom apartments. At least 50% is to be located within the apartment.</p> <p>Proposed minimum storage areas: Unit G.01 – 2br – 6.93sqm – complies Unit G.02 – 2br – 8.2sqm – complies Unit G.03 – 2br – 9.6sqm – complies Unit G.04 – 3br – 10.46sqm – complies Unit G.05 – 1br – 5.45sqm – does not comply Unit 1.01 – 2br – 6.93sqm – complies Unit 1.02 – 2br – 8.2sqm – complies Unit 1.03 – 2br – 9.6sqm – complies Unit 1.04 – 3br – 10.46sqm – complies Unit 1.05 – 1br – 5.45sqm – does not comply Unit 2.01 – 2br – 6.93sqm – complies Unit 2.02 – 2br – 8.2sqm – complies Unit 2.03 – 2br – 9.6sqm – complies Unit 2.04 – 3br – 10.46sqm – complies Unit 2.05 – 1br – 5.45sqm – does not comply.</p> <p>Note 1: The above calculations do not include built-in wardrobes. Note 2: The indicated storage volumes on the plans show the storage volumes of the development prior to the submission of amended information. These have been revised since amendments were made and have not be relied upon for the above assessment.</p> <p>The proposed development is unlikely to provide a sufficient amount of dedicated storage space for the one bedroom apartments. The shortfall of storage within affected apartments is not significant, and it is noted that the substantial size (ie 12sqm, excluding wardrobes) of the bedrooms within the noncompliant apartments are well in excess of minimum requirements (noting that they are accessible apartments). It is therefore considered likely that there would be sufficient space within the affected apartments to provide additional furniture and/or facilities that would provide necessary storage space in accordance with the design guidance. The noncompliance</p>	
--	--	--	--

		is therefore considered to be satisfactory.	
	4G-2 - Additional storage is conveniently located, accessible and nominated for individual apartments	The development has demonstrated compliance	Yes
4H Acoustic privacy	4H-1 - Noise transfer is minimised through the siting of buildings and building layout	<p>The design of most apartments would locate noise-sensitive areas (i.e. bedrooms) away from areas of acoustic intrusion. The following areas of concern are however noted:</p> <ul style="list-style-type: none"> • The bedrooms of Units G.05, 1.05 and 2.05 would adjoin the lift. It is noted that wardrobes are to be situated between the shaft and the bedroom in accordance with design guidance requirements. A condition is recommended to require that appropriate acoustic treatments is provided to ensure that acoustic amenity of the affected bedrooms are retained. • The northwest (ie side) facing windows of Bedroom 2 within Unit G.01 would directly overlook the driveway and basement security door beneath. While the basement entrance would be situated below the affected bedroom, it is recommended that a condition require that these windows be sealed (ie unopenable) to prevent acoustic disturbance of this area. 	Yes
	4H-2 - Noise impacts are mitigated within apartments through layout and acoustic treatments	The proposal is capable of satisfying design criteria/guidance.	Yes
4K Apartment Mix	4K-1 - A range of apartment types and sizes is provided to cater for different household types now and into the future	<p>The proposed development includes the following mix:</p> <ul style="list-style-type: none"> • One bedroom: 3 • Two bedrooms: 8 • Three bedrooms: 4 	Yes
	4K-2 - The apartment mix is	One, two and three bedroom apartments are to be situated on all	Yes

	distributed to suitable locations within the building	floors.	
4L Ground floor apartments	4L-1 - Street frontage activity is maximised where ground floor apartments are located	Direct access is to be provided to Unit G.02. The slope of the site and the locations of stormwater facilities and the driveway would preclude direct access to Unit G.01, however this unit would be designed to both overlook and activate the public domain.	Yes
	4L-2 - Design of ground floor apartments delivers amenity and safety for residents	Privacy and safety would be afforded to street-facing apartments in accordance with design guidance requirements. Solar access would be afforded to all ground floor apartments, with only Unit 2.03 not obtaining more than 2 hours of solar access between 9:00am to 3:00pm on June 21.	Yes
4M Facades	4M-1 - Building facades provide visual interest along the street while respecting the character of the local area	The development is considered acceptable in this regard.	Yes
	4M-2 - Building functions are expressed by the facade	The development is considered acceptable in this regard.	Yes
4N Roof design	4N-1 - Roof treatments are integrated into the building design and positively respond to the street	The development is considered acceptable in this regard.	Yes
	4N-3 - Roof design incorporates sustainability features	The development is considered acceptable in this regard.	Yes
4O Landscape design	4O-1 - Landscape design is viable and sustainable	The development is considered acceptable in this regard.	Yes
	4O-2 - Landscape design contributes to the streetscape and amenity	The development is considered acceptable in this regard.	Yes
4P Planting on structures	4P-1 – Appropriate soil profiles are provided	The development is considered acceptable in this regard.	Yes
	4P-2 - Plant growth is optimised with appropriate	The development is considered acceptable in this regard.	Yes

	selection and maintenance		
	4P-3 - Planting on structures contributes to the quality and amenity of communal and public open spaces	The development is considered acceptable in this regard.	Yes
4Q Universal design	4Q-1 - Universal design features are included in apartment design to promote flexible housing for all community members	Hurstville DCP No. 1 requires that RFBs containing five or more dwellings provide at least one adaptable dwelling, designed in accordance with relevant Australian Standards must be provided for every 10 dwellings. 15 dwellings are proposed, which includes two adaptable dwellings in accordance with this requirement.	Yes
	4Q-2 - A variety of apartments with adaptable designs are provided	Only one-bedroom apartments are proposed to be adaptable.	Yes
	4Q-3 – Apartment layouts are flexible and accommodate a range of lifestyle needs	The development is considered acceptable in this regard.	Yes
Performance			
4U Energy efficiency	4U-1 - Development incorporates passive environmental design	The proposal satisfies solar access requirements; refer to assessment above. Clothes drying facilities are to be provided on the rooftop level.	Yes
	4U-2 - Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	The development is considered acceptable in this regard.	Yes
	4U-3 - Adequate natural ventilation minimises the need for mechanical ventilation	The development is considered acceptable in this regard.	Yes
4V Water management and conservation	4V-1 - Potable water use is minimised	Complies, or is capable of satisfying design criteria/guidance.	Yes
	4V-2 - Urban stormwater is treated on site before being discharged to receiving waters	Complies, or is capable of satisfying design criteria/guidance.	Yes

4W Waste management	4W-1 - Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	<p>A waste storage area is to be located within the basement carpark adjacent to the carpark entrance. It would be screened from the public domain by the carpark security door and internal walls. The waste storage area would be ventilated via a riser space within the carpark that would be vented out to the roof.</p> <p>A bulk storage area is not proposed. In response to the noncompliance, the applicant has indicated that Georges River Council do typically not require that bulky storage areas be provided for developments with only a moderate housing yield; to support such a claim, they have provided a list of developments that have been approved within Peakhurst (including developments at 23-25 and 51-55 Gover Street) by Council without bulk waste storage areas.</p>	Yes
	4W-2 - Domestic waste is minimised by providing safe and convenient source separation and recycling	The proposed storage facilities to enable storage of 13 x 240L bins. Guidance requirements relating to commercial waste are not applicable to the proposal.	Yes
4X Building maintenance	4X-1 - Building design detail provides protection from weathering	Complies, or is capable of satisfying design criteria/guidance.	Yes
	4X-2 - Systems and access enable ease of maintenance	Complies, or is capable of satisfying design criteria/guidance.	Yes
	4X-3 - Material selection reduces ongoing maintenance costs	Complies, or is capable of satisfying design criteria/guidance.	Yes

Hurstville Local Environmental Plan 2012

Zoning

46. The subject site is zoned R3 Medium Density Residential under the provisions of the Hurstville Local Environmental Plan (HLEP) 2012.
47. The objectives of the R3 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.*

48. The proposed development is consistent with the objectives of the R3 zone as follows:

- The proposed design enables the development to provide for the housing needs of the locality in a manner that is consistent with that typically found within the R3 zone.
- A variety of housing types are proposed, in that one, two and three bedroom apartments are proposed with a variety of internal configurations.
- The proposal would not prevent surrounding sites from providing facilities or services that could meet the needs of local residents.
- A high level of residential amenity would be achieved and maintained, both for residents on the subject site and those within surrounding sites.
- While facilities have not been provided to accommodate home businesses, the configurations of the apartments could allow for some home business activities to occur (i.e. a home office) without disturbing surrounding residential amenity. The proposal does not prevent surrounding properties from accommodating home businesses.

49. The extent to which the proposal complies with the relevant standards of HLEP 2012 is outlined in the table below.

Clause	Standard	Proposed	Complies
Part 2 – Permitted or Prohibited Development	R3 Medium Density Residential	'Residential flat buildings' are permissible within the R3 zone.	Yes
	Objectives of the Zone	The proposal satisfies the objectives of the R3 zone.	Yes
4.3 – Height of Buildings	12m as identified on Height of Buildings Map	Maximum height: 13.85 metres (lift overrun)	No – see assessment below
4.4 – Floor Space Ratio	1:1 as identified on Floor Space Ratio Map	Proposed GFA: 1,316sqm Proposed FSR: 1:1	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	Noted	Noted
4.6 – Exceptions to development standards		Refer to separate assessment below.	Yes
5.10 – Heritage Conservation	The objectives of this clause are; (i.) to conserve the	The site does not contain a heritage item, nor is it within a heritage	N/A

	environmental heritage of Kogarah, (ii.) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	conservation area. There are also no heritage items within the surrounding area.	
6.1 – Acid Sulphate Soils		The site is not mapped as being potentially affected by acid sulphate soils on the ASS Map.	Yes
6.2 Riparian land and watercourses		The site is not identified as “Sensitive Land” on the Riparian Lands and Watercourses Map	Yes
6.7 Essential Services	The following services that are essential for the development are to be made available or that adequate arrangements have been made to make them available when required: (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable road and vehicular access.	The subject is connected to suitable water supply, power and sewage disposal systems. The proposed works would also provide suitable onsite stormwater and drainage infrastructure and vehicle access facilities.	Yes
6.9 – Airspace Operations		The proposed development will not penetrate the Limitation or Operations Surface Level for Sydney Airport	Yes

Clause 4.6 – Exceptions to Development Standards

50. Under Clause 4.3 of HLEP 2012, the site is subject to a height limit of 12m. The subject application proposes a maximum building height of 13.85m (ie a 1.85m or 15.4% variation to the standard).

51. As shown below, the variation affects part of the fourth storey being the communal open spaces area, the only parts of this level affected by the variation to the height standard includes the following:

- The semi-enclosed section that includes the access lift and stairs, the foyer, ventilation riser and BBQ facilities (7.39m x 8.13m);
- The roof, which projects beyond the aforementioned section and also covers a small section of the open areas at the northern end of the communal open space area (9.24m x 10.15m); and
- The lift overrun (2.73m x 3.19m).

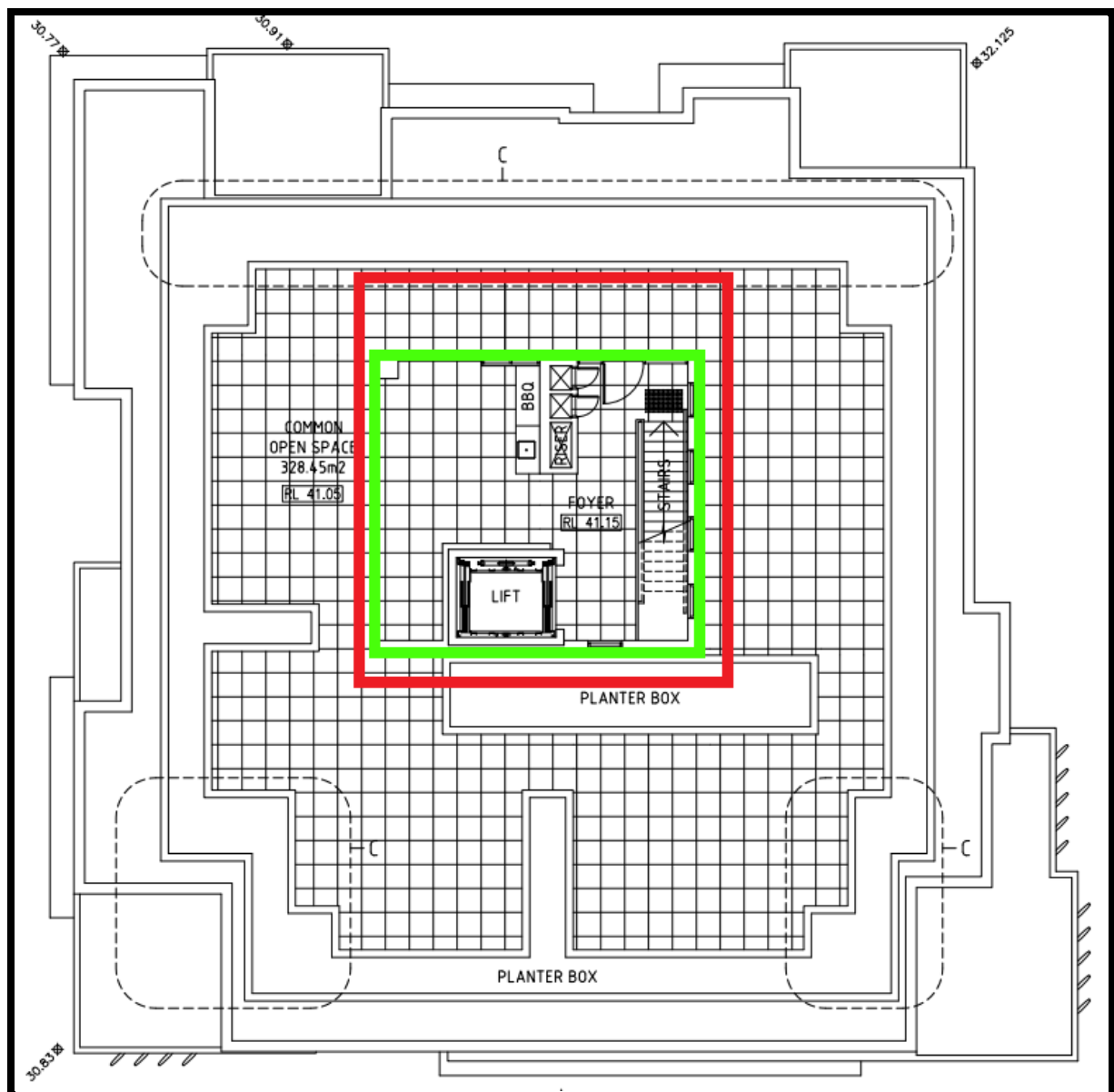


Figure 8 – An extract of the rooftop plan showing the communal open space area. The expanse of the roof on this level is indicated by the red border, while the area of the semi-enclosed section described above is indicated by the green border.

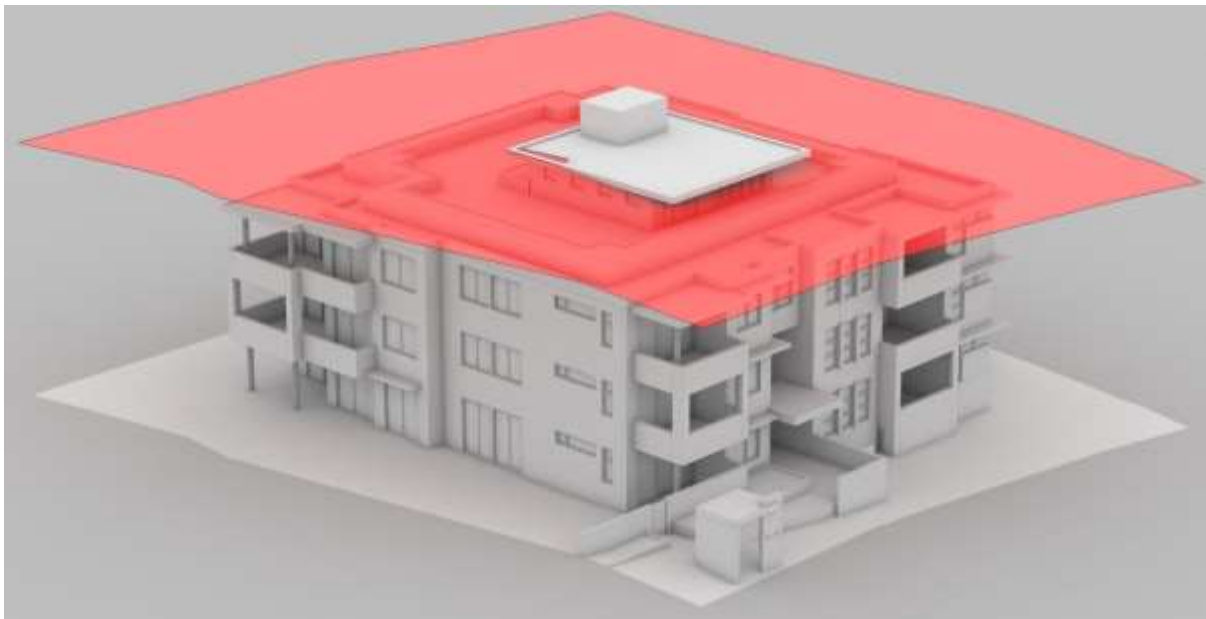


Figure 9 – An extract of the applicant's 3D model of the proposed building as viewed from the north east. The image shows the part of the building affected by the variation to the 12m height standard, which is denoted in red.

52. The maximum height of the building is associated with the lift overrun (RL 45.15). The remainder of the area affected by the height variation is less significant, as the height of the roof (RL 43.65) would be 1.5m lower than the overrun.
53. The variation to the standard is created by the applicant's decision to situate the development's communal open space on the roof, as opposed to at ground level. The areas which breach the standard are therefore required to both:
 - Provide access to the communal open space area; and
 - Provide shelter for certain areas and facilities within the communal open space area.
54. It is noted that the applicant's variation request indicates that the height of the building would be 13.58m (ie a 1.58m or a 13.2% variation to the standard), which is inconsistent with the 13.85m or 15.4% height identified by the Assessment Officer's assessment. It is considered likely that the inconsistency has come about as a result of which ground levels have been used to identify building height. Despite the inconsistency, the area affected by the height non-compliance (as shown below) would remain unchanged, it is considered unlikely that the extra 270mm identified in this assessment would result in additional and discernible impacts. Further, the difference would not change the level of determination (i.e. Council's Local Planning Panel) of the application. The submitted variation to the development standard (assessed below) is therefore considered acceptable.

Applicant's Request for Variation under Clause 4.6

55. A variation pursuant to clause 4.6 (Exceptions to development standards) has been submitted by the applicant, and is assessed below.
56. A variation to the standard (prepared by BMA Urban) was written with regard to case law established by the NSW Land and Environment Court (LEC) (which included *Winten Property Group v North Sydney Council*, *Wehbe v Pittwater Council* and *Four2Five Pty Ltd v Ashfield Council*) and the guidelines of the NSW Department of Planning and

Environment. This statement concluded that there are sufficient planning grounds to vary the building height standard.

57. The reasonableness of the proposed building height variation is considered with regard to clause 4.6 of HLEP 2012 below.

Development standard to be varied

58. The applicant seeks to vary the 12m height limit imposed by clause 4.3(2) of HLEP 2012; as building height is identified by the Environmental Planning and Assessment Act 1979 as a development standard, the provisions of clause 4.6 (Exceptions to Development Standards) are applicable.
59. The majority of the proposed building will comply with the standard, with the proposed breach to occur at the tallest points of the building, which includes part of the semi-enclosed structure on the top floor, the roof above that section and the lift overrun. As indicated above, the proposed development would breach the 12m building height standard. The maximum height of the breach (ie the lift overrun) would be 1.85m (ie a 15.4% variation to the standard), with the remainder of area affected by the variation (ie the enclosed rooftop section and associated roof breaching the standard by a maximum of 350mm).
60. Pursuant to clause 4.6(2) of HLEP 2012, consent may be granted for development even though the development would contravene a development standard prescribed by an environmental planning instrument. However, pursuant to clause 4.6(4), consent can only be granted if Council is satisfied that the applicant's written submission on the matter is well founded and if the proposal is in the public's interest by being consistent with the objectives of the specific development standard and the relevant zoning. With regard to 4.6(4)(b) of HLEP 2012, Planning Circular PS 18-003 (dated 21 February 2018), advises that the concurrence of the Secretary may not be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is greater than 10%.
61. ***Is compliance unreasonable or unnecessary in the circumstances of the case?***
62. Clause 4.6 – Exemptions to development standards
- In accordance with the NSWLEC decision in *Wehbe v Pittwater Council*, a way that strict compliance can be seen to be unreasonable and unnecessary is if it can be demonstrated that the objectives of the standard would be achieved, despite the proposed height non-compliance. The objectives of the building height development standard within clause 4.3(1) of HLEP 2012 are individually considered in respect of the proposed development, as follows:
63. ***(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality***
64. Comment: As indicated above, the subject site and surrounding area are located within an R3 Medium Density Residential zone; previously, this area was within a lower-density residential zone. While the earlier zoning only permitted lower-density residential development (ie dwelling houses dual occupancies, etc.), the current R3 zoning permits higher-density residential development (ie multi-dwelling housing, residential flat buildings (RFBs), etc.) and is reflected by a number of RFBs that have been recently constructed within the area; examples of such development include the following:

- 3-7 Gover Street, Peakhurst
- 23-25 Gover Street, Peakhurst
- 61 Trafalgar Street, Peakhurst
- 67 Trafalgar Street, Peakhurst
- 75 Trafalgar Street, Peakhurst
- 25-27 Lawrence Street, Peakhurst
- 47 Lawrence Street, Peakhurst
- 53 Lawrence Street, Peakhurst

65. The examples provided above are all three plus storey developments, a number of which contain rooftop communal open space areas. The height, bulk and scale of these developments is similar to that proposed by the subject application. With regard to the above and the planning principles regarding character within *Project Venture Developments Pty Ltd v Pittwater Council*, the height and scale of the development is considered to be consistent with the desired future character of the area.
66. ***(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,***
67. Comment: The area that is the subject of the height variation is a relatively small area on the top level; aside from being setback considerably (ie 4.75m) from the front building line, this section of the building would also be obscured by planters and associated vegetation that are to surround the rooftop communal area (unlike other similar and contemporary developments within the surrounding area, such as the RFB at 75 Trafalgar Street). It is therefore considered likely that the non-compliant section of the development would have a minimal impact when viewed from the adjoining public domain (i.e. the Gover Street road reserve). The development complies with the provisions relating to visual privacy (noting that the variation would have no impact on privacy) and solar access (both in terms of internal solar access and the overshadowing of adjoining sites). There are no significant views obtainable from surrounding sites and the public domain, therefore provisions relating to view sharing are considered to be irrelevant in this instance.
68. ***(c) to minimise the adverse impact of development on heritage items,***
69. Comment: The objective is not applicable to the proposal, as there are no heritage items on the subject site or within the surrounding area.
70. ***(d) to nominate heights that will provide a transition in built form and land use intensity,***
71. Comment: As indicated above, the height of the proposed development is consistent with, but not significantly greater than, other higher-density development within the surrounding area. The subject site is well within the R3 zone, and unlike development on the periphery of that zone, would therefore not be required to provide transition (in terms of height and density) to development in adjoining lower-density zones.
72. ***(e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre***
73. Comment: The objective is not applicable to the proposal, as the site is well outside of the Hurstville City Centre.

74. ***(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,***
75. Comment: The subject site and surrounding area were zoned R3 under HLEP 2012 when it was gazetted. It is therefore envisioned that development within this area would progressively transition from lower density to higher-density residential development, and current development within the area (examples of which are provided above) are reflective of this progressive change in character. The proposed development is considered to be in line with this transition.
76. With regard to this objective, it is agreed with the applicant's variation request that development on adjoining sites to the northwest (ie 13A and 13B Gover Street and 73 and 73A Trafalgar Street), while capable of potentially accommodating RFBs, would be of a scale smaller to that of the subject development.
77. As such, an acceptable level of transition between public areas to the north and the proposed development on the subject site would be achieved.
78. ***(g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.***
79. Comment: The height of the proposed development is unlikely to adversely affect the amenity of adjoining sites. While overshadowing associated with the proposed development is notable in mid-winter, it would quickly move across a number of adjoining sites and would fully comply with relevant requirements. The height variation would also not affect the visual privacy and amenity of surrounding sites.
80. As it is located on the south western side of Gover Street and nearby public parks, the proposed development would not have any foreseeable impacts on the amenity and use of the surrounding public domain by way of overshadowing.
81. With regard to the above, the proposed development is considered to be consistent with the objectives of the standard.
82. ***Are there sufficient environmental planning grounds to justify the proposed contravention of the development standard?***
83. The objectives of clause 4.6 of HLEP 2012 are to provide an appropriate degree of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development. It is agreed with the applicant's variation request that the non-compliance would affect a relatively small area of the development and would not result in adverse environmental impacts on the surrounding area. It is also agreed with the applicant that there is unlikely to be any significant public benefit in restricting the height of the building to the 12m standard. Further, enforcement of the height standard would likely require a relocation of the communal open space to ground level. However, given the orientation and dimensions of the subject site, it is unlikely that a communal open space area at ground level would receive sufficient solar access and would subsequently be subject to poor amenity.
84. ***Is the proposal in the public interest?***
85. A development is seen to be in the public's interest if it is consistent with the objectives of the development standard and the zone in which the particular development is carried out. The proposed development is seen to be consistent with the objectives of the building height development standard. The proposed development is also

considered to be consistent with the objectives of the R3 Medium Density Residential zone for the reasons covered earlier in this report.

86. ***Initial Action Pty Ltd vs Woollahra Council (2018) NSWLEC 118***

87. 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 in its consideration of a recent Land and Environment Court case – Initial Action Pty Ltd vs Woollahra Council [2018] NSWLEC 118 (“the five part test”). Councils may choose to not only use the principles of Clause 4.6 and SEPP1 but also this five part test.

88. 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 of these principles and extent of variation have been considered below.

1. the objectives of the standard are achieved notwithstanding non-compliance with the standard;	<u>Assessment Officer’s comment:</u> The preceding assessment has undertaken a full assessment in terms of the objectives of the height control standard under HLEP 2012. It is concluded that the proposal is consistent with the objectives of the height control under HLEP 2012 notwithstanding numerical non-compliance.
2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;	<u>Assessment Officer’s comment:</u> The underlying objective / purpose of the Standard is relevant to the development proposal. However, the nature and extent of the variation is considered to be acceptable in the circumstances. In particular, the variation is confined to a small portion at the centre of the building, which would have additional minimal impact upon neighbouring properties or when viewed from the public domain.
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;	<u>Assessment Officer’s Comment:</u> It is considered that the purpose of Clause 4.6 of HLEP 2012, which is to allow variations such as to the height control standard in this instance, would be thwarted if strict compliance was required. As mentioned, the development proposes a relatively minor variation to the height control only for the lift overrun and rooftop communal open space, with the habitable floor levels being fully compliant with the height controls.
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	<u>Assessing Officer’s comments:</u> Although the development standard has not been “abandoned or destroyed” in granting (previous) consents departing from the standard, Council (and the Land and Environment Court on appeal) has generally been consistent in only allowing variations to the height control for lift overruns and non-habitable space at the

<p>compliance with the standard is unnecessary and unreasonable;</p>	<p>upper level, such as rooftop common open space, with the remainder of the building (ie habitable floor space) being required to comply with the height control.</p> <p>Generally, the height control standard has been strictly applied, with variations only being permitted to minor components such as lift overruns and rooftop common open space.</p> <p>The variations to the height control in this development only relate to the lift overrun and rooftop communal open space, so therefore the variation to the height control would be similar to recent approvals, both within the immediate vicinity of this R3 zone in Peakhurst, as well as the City generally.</p>
<p>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>	<p><u>Assessment Officer's comment:</u> The subject site is within an area of Peakhurst that has recently been re-zoned to allow a higher density of residential development, including residential flats, under the new R3 zoning under HLEP 2012. The subject site is a mid-block property, surrounded on all sides by land also zoned R3 under HLEP 2012, and so the zoning of the subject site is considered to be appropriate.</p> <p>The variations to the height control are generally consistent with those approved for other residential flat developments in this locality. As mentioned above, these are generally only for lift overruns and rooftop communal open space.</p> <p>The proposed development is considered to be consistent with the desired future character of the immediate area of Peakhurst that has recently been re-zoned to R3 under HLEP 2012.</p>

89. In addition to the above, the Court decision in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 has 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.

Conclusion

90. Strict compliance with the 12m building height limit is seen to be both unreasonable and unnecessary in the circumstances of the subject application, and there are sufficient environmental planning grounds to justify contravention of the development standard.
91. The proposed development is seen to meet the objectives of the building height development standard, the R3 Medium Density Residential zone and both the existing and desired future character of the local area.

92. The applicant's submission pursuant to Clause 4.6 of HLEP 2012 is considered to be well-founded, and it is recommended that the proposed variation to the 12m height limit be supported in this particular instance.

Development Control Plans

Hurstville Development Control Plan

93. A detailed assessment of the development against the relevant sections of HDCP is contained in the DCP compliance table below. This assessment identifies a number of areas of non-compliance which are discussed below the table.

Compliance Table – Hurstville Development Control Plan No. 1

Performance Criteria	Design Solution	Proposal	Complies
3.1 Vehicle Access, Parking & Manoeuvring			
Car parking and service vehicle areas are: a. sufficient, safe and convenient and meets user requirements including pedestrians, cyclists and vehicles b. safe, easily accessible, does not obstruct the passage of vehicles or create traffic conflicts, impact pedestrians or cyclists and does not result in detrimental effects to adjoining or nearby properties c. provided according to projected needs and provide pleasant areas in which to park	DS1.1 In determining the prescriptive parking requirements for each type of land use, Council has been informed by a range of technical studies and documents	Noted	-
	DA1.2 In calculating the number of car spaces required, Council takes into consideration: a. the type of development (or land use) proposed b. the size and scale of the development c. the intensity of the development d. street hierarchy and existing traffic situation	Noted	-
	DS1.3 Required: 1-2 bedrooms: 1 space per dwelling 3 bedrooms and over: 2 spaces per dwelling Visitor spaces: 1 space per 4 dwellings	Minimum required number of residential spaces: 19 Proposed number of residential spaces: 19 Minimum required number of visitor spaces: 4 (rounded up from 3.75) Proposed number of visitor spaces: 4	Yes
	DS1.5 Refer to AS 2890 for the design and layout of parking facilities.	Compliance with the standard subject to conditions.	Yes

DS1.6 Stacked parking not encouraged; permitted where: a. No more than 2 cars in stacked arrangement b. Likely to maintain a low turnover c. Able to function easily in management of future operations	Not proposed.	N/A
DS1.7 All driveways to be finished in plain concrete	Compliance subject to conditions.	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.		N/A
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.	Conditions are recommended that would require Council's engineers to review driveway construction plans prior to the issue of the Construction Certificate.	Yes
DS10.10 The AS/NZS 2890.1 2004 Ground Clearance Template is to be used as follows: 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	Noted.	-
DS1.11 Basement car parks to be concentrated under building footprints to maximise deep soil landscaping.	Complies.	Yes
DS1.12 Design of basement car	The car park entrance is at the	Yes

parks to minimise visual impact and maximise pedestrian safety.	lowest point of the site; the entirety of the car park is defined as a basement, thereby minimising visual impact. Separate internal and external pedestrian access to the car park is proposed.	
DS1.13 Access to basement car parks to be located away from doors and windows of habitable rooms.	The bedroom windows of Unit G.01 (ie the dwelling closest to the car park entrance) will overlook the adjacent driveway entrance. A condition is recommended requiring the side facing windows to be sealed to prevent acoustic disturbance. Mechanical ventilation is required.	Yes
DS1.14 Basement car parks preferred for commercial and residential flat buildings.	A basement carpark is proposed.	Yes
DS1.15 All basement car parking to have security doors. Where mechanical ventilation proposed, details are to be shown.	A security door is proposed at the bottom of the car park ramp. The applicant has indicated that ventilation would occur via a riser space adjacent to the meter room; the void would exit via the roof adjacent to the lift, and would not be visible from surrounding public spaces.	Yes
DS1.16 Parking complies with AS 1428 & AS 2890	No objection raised by the engineer; compliance with the standard is subject to	Yes

		conditions.	
	DS1.17 Parking for people with disabilities beyond minimum standards encouraged.	Minimum requirements satisfied.	Yes
	DS1.19 A designated car washing area (which may also be a designated visitor car space) is required for residential developments of four or more dwellings.	A designated wash bay is proposed within the basement; within a designated 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	A connection to the sewer has been conditioned.	Yes
Parking areas: a. promote pleasant, safe car parking areas and protect the natural environment b. are designed to reflect the environmental conditions of the land c. incorporate measures to protect the natural environment	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.	A suitable landscape plan has been prepared screening the basement entry.	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.	Given that significant existing trees on site are in decline, they are proposed to be removed, and this removal is supported.	N/A
	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.	At grade parking not proposed; kerbing and bollards are not required, as the driveway is in a straight line and is ramped to separate it from adjacent landscaped areas.	N/A
	DS2.5 All parking areas are to	Appropriate conditions	N/A

<p>Car parking areas are designed to:</p> <ul style="list-style-type: none"> a. prevent crime through environmental design b. reduce conflict between vehicles and pedestrians c. include features which suggest to both residents and potential offenders that car parking areas are owned, cared for and not amenable to crime d. include features that minimise vehicular and pedestrian conflict e. be illuminated and provide users with a feeling of security and safety f. allow for drive by surveillance 	have adequate drainage for runoff and seepage. Council requires that minimum gradients be provided in car parks.	recommended.	
	DS2.6 Car parks may provide for temporary detention of water to a max. depth of 150mm, though pollutant traps are to be provided.	No part of the car park is acting as an open OSD.	Yes
	DS3.1 Onsite parking to be in areas clearly visible from habitable and public spaces	While secured, the carpark entrance is in a location that is visible from units addressing the street.	Yes
	DS3.2 Onsite driveways to provide an unobstructed view of passing vehicles and pedestrians.	Achieved.	Yes
	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.	A non-compliance is proposed, in that a 1:20 ramp is proposed within the first 6m to the site (i.e. the first car length would not be level). The gradient is not considered to be so steep as to inhibit view lines of the pathway or affect movement of vehicles from the basement carpark. The variation is considered to be acceptable on merit.	No – acceptable on merit.
	DS3.4 Entry to basement car parks, including pedestrian routes, are to be available only to residents through security access/egress routes via main buildings.	Secure gated access is proposed.	Yes
	D3.5 Visitor parking shall be provided in open unrestricted areas. If visitor parking is provided within a secure parking area (basement or otherwise)	All onsite visitor car parking is situated within the basement. Compliance with access provisions can however be attained through a	Yes

	suitable access provisions shall be made such as a security intercom	condition of consent.	
	<p>DS3.7</p> <p>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>	Compliance can be attained through a condition of consent.	Yes
	<p>DS3.8</p> <p>To minimise pedestrian and vehicular conflict:</p> <ol style="list-style-type: none"> parking design to prevent or manage through traffic. Pedestrian exits are to be separated. Where large volumes of pedestrian movements are proposed, clear and convenient pathways are to be provided. 	Two separate and secure pedestrian entrance/exit points, both from the public domain and through the building.	Yes
<p>3.2 Subdivision</p> <p>Section is not applicable; subdivision of the site/development is not proposed.</p>			
<p>3.3 Access & Mobility</p>			
<p>PC1. Development is designed for access and mobility and to:</p> <ol style="list-style-type: none"> provide information, awareness and understanding of access and mobility issues create appropriate levels of access and mobility for new developments, alterations and additions to 	<p>DS1.1</p> <p>Development is to comply with Table 1 – Assessment Criteria; relevant criteria is outlined as follows:</p> <p>Adaptable housing</p> <p>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.</p> <p>General access requirements</p> <p>Access for all persons through the principal</p>	<p>Required adaptable housing:</p> <p>Two adaptable dwellings (Units 1.05 and 2.05) are proposed.</p> <p>Access for all is available through the</p>	Yes

<p>existing buildings, public buildings and open space</p> <p>c. assist in providing a continuous path of travel throughout the City of Hurstville</p> <p>d. ensure compliance with the Disability Discrimination Act, 1992 (Commonwealth), as well as the relevant Australian Standards</p> <p>e. provide controls for adaptable housing which recognise the diverse accommodation needs of the community, particularly older persons and people with a disability</p>	<p>entrance and access to any common laundry, kitchen, sanitary or other common facilities in accordance with relevant Australian Standards.</p> <p>Parking One accessible parking space for every adaptable dwelling designed in accordance with Australian Standards.</p>	<p>principal entrance of the building. The nominated rooms will be in accordance with the relevant standards.</p> <p>Allocated accessible parking is proposed for each of the adaptable dwellings.</p>	
---	--	--	--

3.4 Crime Prevention Through Environmental Design

Note – this section of the DCP states that it applies to residential flat buildings and therefore an assessment has been undertaken in relation to the proposed development as follows:

<p>Site and building layout:</p> <p>a. ensures that the way in which the site, and the buildings within the site, are laid out enhance security and feelings of</p>	<p>DS1.1 Avoid blank walls fronting the street.</p>	<p>No blank walls are proposed which address the public domain.</p>	<p>Yes</p>
	<p>DS1.2 Offset windows, doors and balconies to allow for observation while protecting privacy.</p>	<p>Internal offsetting is not proposed. Appropriate visual privacy measures are proposed.</p>	<p>Yes</p>
	<p>DS1.4 Entrances to be located in prominent positions and be</p>	<p>The main building entrance and associated entry</p>	<p>Yes</p>

<p>safety.</p> <p>b. ensures that private and public spaces are clearly delineated</p> <p>c. ensures that the design of the development allows for natural surveillance to and from the street and between individual dwellings or commercial units within the site</p> <p>d. provides entries that are clearly visible and avoid confusion</p> <p>e. avoids blind corners in pathways, stairwells, hallways and car parks</p> <p>f. provides natural surveillance for communal and public areas</p> <p>g. ensures that design for natural surveillance also provides for a suitable streetscape appearance</p> <p>h. where permitted, provides appropriate mixed uses within buildings to increase</p>	easily recognisable.	features are clearly identifiable.	
	DS1.5 Pathways within and to the development should be direct and all barriers along the pathways should be permeable including landscaping and fencing.	Direct pathways are proposed; permeable landscaped barriers are proposed.	Yes
	DS1.7 Locate active uses and habitable rooms adjacent to communal or public areas.	A technical variation is proposed, in that that the communal open space area would be located on the roof, and as such habitable areas would not be located next to such a space. The performance criteria would be met in that the communal open space area would be secured and there would be suitable separation of private and communal areas. As such, the variation is considered to be supportable.	Yes
	DS1.8 Communal areas and utilities to be seen and well lit.	Communal areas would be well let, and access to such areas would be via highly visible areas.	Yes
	DS1.10 Waiting areas should be visible from the building entry.	Waiting areas would be located within or adjacent to building circulation and access areas; such areas would be visible from the building entry on the ground floor.	Yes
	DS1.11 Seating to be located in active use areas.	Outdoor seating is located adjacent to the main entrance.	Yes
	Multi-dwelling houses and Residential Flat Buildings.		
	DS1.12 Building is to address the street.	The main entrance and living areas within units will address the public	Yes

<p>opportunities for natural surveillance, while protecting amenity</p> <p>i. locates public services (ATMs, telephones, help points, bicycle storage etc) in areas of high activity</p> <p>j. designs car parks to allow for natural surveillance and ensure clear sight lines, ease of access and safety</p>			domain.	
	DS1.13	Habitable rooms to be located at the front of the dwelling.	Habitable rooms will be located around the periphery of the building.	Yes
	DS1.14	Parking structures should not dominate the streetscape.	Basement parking is proposed, with the entrance to be at the lowest point of the road frontage.	Yes
	DS1.27	Minimise the number of entry and exit points to car parks	One vehicular entry/exit point and two pedestrian entrance/exit points confirmed.	Yes
	DS1.28	Access to lifts, stairwells and pedestrian pathways should be clearly visible within the car parks.	Satisfied	Yes
	DS1.29	Car park design should avoid hidden recesses.	Satisfied	Yes
<p>Site and building layout:</p> <p>k. ensures that the way in which the site, and the buildings within the site, are laid out enhance security and feelings of safety.</p> <p>l. ensures that private and public spaces are clearly delineated</p> <p>m. ensures that the design of the development allows for natural surveillance to</p>	DS1.32	Locate disabled parking spaces in highly visible and convenient areas.	Satisfied	Yes
	Open Space			
	DS1.34	Open spaces should be clearly designated and situated at locations easily observed by people. Parks and playgrounds should be located in front of buildings; shopping centres etc and should face the street rather than back lanes.	A technical variation is proposed, in that that the communal open area would be located on the roof, and as such would not be observed from units within the development. The design and layout of the space would however permit observation by persons within the communal open space area.	Yes
	DS1.35	Seating, play equipment, BBQ areas etc should be provided to encourage the use of open spaces	Seating, BBQ and gathering facilities provided in the communal open space area.	Yes
	DS1.36	Seating should be conveniently located and	The main building entrance and associated entry	Yes

<p>and from the street and between individual dwellings or commercial units within the site</p> <p>n. provides entries that are clearly visible and avoid confusion</p> <p>o. avoids blind corners in pathways, stairwells, hallways and car parks</p> <p>p. provides natural surveillance for communal and public areas</p> <p>q. ensures that design for natural surveillance also provides for a suitable streetscape appearance</p> <p>r. where permitted, provides appropriate mixed uses within buildings to increase opportunities for natural surveillance, while protecting amenity</p> <p>s. locates public services (ATMs, telephones, help points, bicycle storage etc) in areas of</p>	easily seen.	features are clearly identifiable.	
	D1.38 Pathways should be direct, follow pedestrian desire lines and avoid blind corners.	The design of the communal open space areas will provide adequate sight lines.	Yes
	Lighting		
	DS1.8 Communal areas and utilities to be seen and well lit.	Communal areas will be well lit, and access to such areas will be via highly visible areas.	Yes
	DS1.10 Waiting areas should be visible from the building entry.	Waiting areas would be located within or adjacent to building circulation and access areas; such areas would be visible from the building entry on the ground floor.	Yes
	DS1.11 Seating to be located in active use areas.	Outdoor seating would be located adjacent to the main building entrance.	Yes
	Car Parks		
	D1.25 Avoid large expanses of car parks. Where large expanses of car parks are proposed, surveillance such as security cameras should be provided.		N/A
	DS1.26 Where possible, locate entry/exit points in close proximity and close to the car park operator or shops, cafes etc.		N/A
	DS1.27 Minimise the number of entry and exit points to car parks	One vehicular entry/exit point and two pedestrian entrance/exit points confirmed.	Yes
	DS1.28 Access to lifts, stairwells and pedestrian pathways should be clearly visible within the car parks.		Yes
	DS1.29 Car park design should		Yes

t. high activity designs car parks to allow for natural surveillance and ensure clear sight lines, ease of access and safety	avoid hidden recesses.		
	DS1.32 Locate disabled parking spaces in highly visible and convenient areas.		Yes
	DS1.33 Where staff car parking is provided it should be separate and secured from the public car park.		N/A
Lighting			
a. enhances the amenity and safety of a site after dark by increasing opportunities for casual surveillance, deterring unauthorised access and reducing feelings of fear and vulnerability of legitimate site user	DS1.2 Dwelling and commercial unit main entries should be well lit at night.	The main entry should be capable of being well illuminated by internal and external lighting.	Yes
	DS2.2 Use diffused lights and/or movement sensitive lights	Types of lighting would be subject to BASIX Commitments.	Yes
	DS2.3 All lighting must be vandal resistant and easy to maintain.	The design of the lights would be in accordance with relevant standards.	Yes
	DS2.4 Direct lights towards access/egress routes and possible hiding places to illuminate potential offenders, rather than towards buildings or resident observation points.	There is no information to indicate that lighting would be directed towards the building.	Yes
	DS2.5 Illuminate possible places for intruders to hide		Yes
	DS2.6 Lighting should have a wide beam of illumination, which reaches to the beam of the next light, or the perimeter of the site or area being traversed, thereby avoiding dark shadows	Noted.	-
	DS2.7 Generally areas should be lit to enable users to identify a face 15 metres away.	Noted	-
c. is provided to enable natural surveillance, particularly in entrances/exits, service areas, pathways and	DS2.8 Avoid light spillage onto neighbouring properties as this can cause nuisance and reduce opportunities for natural surveillance	Compliance subject to conditions.	Yes

<p>car parks</p> <p>d. be clearly identifies all exist and entries after dark</p> <p>e. ensures service areas such as garbage areas and loading bays are well lit</p> <p>is designed so it doesn't produce areas of glare and shadow</p>	<p>DS2.9</p> <p>Use energy efficient lamps/fittings/switches to save Energy.</p>	<p>Lighting efficiency would be subject to BASIX commitments.</p>	<p>Yes</p>
Landscaping			
<p>Lighting and fencing:</p> <p>a. does not reduce the security of a site</p> <p>b. where used to delineate private space, is used in a way which enhances safety</p> <p>c. does not obstruct casual surveillance and allows intruders to hide</p> <p>d. uses vegetation as barriers to deter unauthorised access avoids large trees/shrubs and buildings works that could enable an intruder to gain access</p>	<p>DS2.19</p> <p>Avoid medium height vegetation with concentrated top to bottom foliage. Plants such as low hedges and shrubs, creepers, ground covers and high canopied vegetation are good for natural surveillance.</p>	<p>Proposed shrubs would grow to a maximum height of approximately 1.2m, however the plant's ability to obscure view lines would be reduced by the sloped front setback.</p>	<p>Yes</p>
	<p>DS2.20</p> <p>Trees with dense low growth foliage should be spaced or crown raised to avoid a continuous barrier.</p>		<p>Yes</p>
	<p>DS2.21</p> <p>Use low ground cover or high canopied trees, clean trunks, to a height of 2m around children's play areas, car parks and along pedestrian pathways.</p>	<p>The proposal would comply with regard to landscaping around the driveway.</p>	<p>Yes</p>
	<p>DS2.22</p> <p>Avoid vegetation, which conceals the building entrance from the street.</p>		<p>Yes</p>
	<p>DS2.23</p> <p>Select planting species having regard to their type and location to minimise possible places for intruders to hide.</p>		<p>Yes</p>
	<p>DS2.24</p> <p>When planting is provided within 5m of a pedestrian pathway, it should be lower than 1 metre or thin trunked</p>		<p>N/A</p>

	with high canopy.		
	DS2.25 Planting should not prevent informal surveillance by adjacent residents.		Yes
	DS2.26 Prickly plants can be used as effective barriers. Species include bougainvilleas, roses, succulents, and berberis species.	Noted but not proposed.	N/A
	DS2.27 Avoid large trees, carports, skillion extensions, fences, and downpipes next to second storey windows or balconies that could provide a means of illegal access to the building.		Yes
	DS2.28 Ensure vegetation is maintained regularly.		
Fencing			
Fencing a. does not restrict casual surveillance between the site and the street due to its height, location and design b. where on the front boundary, should be designed to maximise opportunities for casual surveillance between the site and the street and minimise opportunities for concealment	DS4.1 Front fences are to be predominantly open in design to allow sight through the fences eg picket fences, wrought iron.	Front fencing is not proposed.	N/A
	DS4.2 If noise insulation is required, install double-glazing at the front of the building rather than a high solid fence (greater than 1 metre).		N/A
	DS4.3 Fences are not to inhibit surveillance of the communal areas, pathways, and footpath by occupants of the building. Both the height of the fence in relation to the building as well as the nature of the construction materials need to be considered.		Yes
Security and Operational Management			
Security and Operational Management	DS5.1 Locks are to be fitted on all doors and windows to the	Front fencing is not proposed.	N/A

<p>a. ensures an appropriate level of security is achieved</p> <p>b. provides an appropriate level of security for individual buildings and communal areas to reduce opportunity for unauthorised access</p> <p>c. ensures individual dwellings are equipped with appropriate security devices</p> <p>d. ensures an appropriate level of security is achieved in communal areas</p> <p>c. provides adequate security to commercial premises with extended hours of operation</p>	Australian Standard.		
	DS5.3 Install viewers on entry doors to allow building occupants to see who is at the door before it is opened.		Yes
	DS5.4 Install intercom, code or card locks or similar for main entries to residential flat buildings and commercial premises including car parks.		Yes
	DS5.5 Entry doors are to be self-closing and signs displayed requesting building occupants not to leave doors wedged open.	Subject to conditions	Yes
	DS5.6 Consider installing user/sensor electronic security gates at car park entrances, garbage areas and laundry areas etc., or provide alternative access controls.	Security gates proposed at the carpark entrance.	Yes
	DS5.7 Pedestrian entry to basement parking must be through secured access via the main building.	Pedestrian entry to the basement carpark is via secure entry points.	Yes
	DS5.9 If security grilles are used on windows they must be operable from inside in case of emergencies	Subject to conditions.	Yes
	DS5.13 Use security devices, such as an intercom or remote lock facility in multi-level car parks where appropriate	Subject to conditions.	Yes
Building Identification			
	DS6.3 Street numbers are to be at least 7cm high, and positioned between 1m and 1.5m above ground level on the street frontage.	Subject to conditions	Yes
	DS6.4 Street numbers should be made of durable materials	Subject to conditions	Yes

	preferably reflective or luminous, and should be unobstructed (e.g. by foliage).		
	DS6.6 Both directional and behavioural signage should be provided at entrances to open space areas and parks.	Subject to conditions.	Yes
Building Ownership			
Building Ownership: Development is: a. designed to promote a sense of site ownership and to encourage responsibility in making sure the site is well looked after and cared for b. designed to promotes pride and sense of place and ownership and reduce illegitimate use/entry.	DS7.1 Use psychological barriers such as fences, gardens, lawn strips, varied textured surfaces to define different spaces within a development	Barriers like those suggested are proposed on the primary frontage.	Yes
	DS7.3 Ensure the speedy repair or cleaning of damaged or vandalised property and the swift removal of graffiti.	Subject to conditions	Yes
	Open Space		
	DS7.5 Provide features that reflect the community's needs and that will consequently be well utilised (e.g. play equipment, seating areas etc).	BBQ, seating and planters are provided within the open space areas.	Yes
Building Maintenance			
Building Maintenance: Development is: a. creates the impression that the site is well looked after and well cared for b. uses materials that reduce the opportunity for vandalism.	DS9.1 Ensure the speedy repair or cleaning of damaged or vandalised property and the swift removal of graffiti.	Subject to conditions	Yes
	DS9.3 Strong, wear resistant laminate, impervious glazed ceramics, treated masonry products, stainless steel materials, anti-graffiti paints and clear over sprays will reduce the opportunity for vandalism. Flat or porous finishes should be avoided in areas where graffiti is likely to be a problem.	Subject to conditions	Yes
	DS9.5 External lighting should be		Yes

	vandal resistant. High mounted and/or protected lights are less susceptible to vandalism.		
	DS9.6 Communal/street furniture should be made of hardwearing vandal resistant materials and secured by sturdy anchor points or removed after hours.		Yes
3.5 Landscaping			
Street and Neighbourhood Landscaped Character Development contributes to the creation of a distinct, attractive landscape character for streets and neighbourhoods	DS1.1 Where the surrounding area has an existing desired landscape character, similar species are to be planted except where undesirable under DCP Appendix 1.	Given the variety of development within the local area, a demonstrated consistent and desired landscaped character has not been identified within the immediate surroundings. Regardless, the proposed landscape regime would utilise primarily native species which is consistent with the future character of the area.	Yes
	DS1.2 Where there is no existing desired character, a range of species are to be proposed that are consistent with DCP Appendix 1.	Proposed trees and large vegetation selections are consistent with Appendix 1. No issue has been raised with Council's landscape officer.	Yes
Landscaping Area and Dimensions The size and dimensions of landscaping areas are adequate to minimise the visual impact of buildings and structures and provides areas of a high level of utility and amenity	DS2.1 No design proposal is provided and each proposal is assessed on its own merits.	The proposed size and dimensions of landscaped areas meet minimum requirements. No issue has been raised by Council's Landscape Officer.	Yes
Significant Trees	DS3.1	Existing trees are to	Yes

and Vegetation Development protects existing significant trees and vegetation:	Site layout and design is to ensure long term retention and health of existing trees and vegetation.	be removed. The design of landscaped areas would however provide sufficient dimensions and space for the establishment of trees and vegetation.	
	DS3.2 Where significant trees or vegetation are removed to permit development, they are to be replaced with species capable of attaining similar size, coverage and maturity.	The large trees proposed on the landscape plans would consist of native species. No issue has been raised by Council staff with regard to species selection.	Yes
Front, Side and Rear Boundaries Landscaping in front setbacks: a. integrates the public and private domain b. is co-ordinated with the street planting pattern and species c. reduces the visual impact of buildings, structures and hardstand	DS4.1 Landscaping in front setbacks consists of: <ul style="list-style-type: none"> • Areas with sufficient to accommodate planting. • Shade trees that grow to an equal or greater height than that of the building. • Screening shrubs where required to reduce impacts of blank walls. • Low shrubs and ground covers to complete coverage. 	Sufficient unencumbered landscape area is proposed for a Sydney Red gum, a Scribbly gum and a variety of smaller landscaped areas; the former of these has a mature height of 10+m, which would enable a height similar to that of the roofline on Level 2. Low shrubs, ground covers and grass are proposed to complete coverage.	Yes
Landscaping alongside boundaries reduces the visual impact of buildings on adjoining premises	DS5.1 Landscaping is provided along the entire length of rear boundaries where buildings are located and consists of: <ul style="list-style-type: none"> a. an area of sufficient dimensions to accommodate planting Note: this area must be a minimum of 2m b. shade trees that grow to a height consistent with or greater than that of the building c. screening shrubs where required to mitigate the 	Landscaping is proposed along the rear boundary, with minimum dimensions in accordance with the ADG. Six large trees are proposed along the rear boundary, in addition to shrubs and plants with a mature height of 3+ metres.	Yes

	visual impact of blank walls d. low shrubs and ground covers to ensure complete coverage of planting area.		
Communal and private open space areas Landscaping in communal open space and private open space contributes to the their useability and amenity	DS6.1 A minimum of one shade tree is planted in each area of private open space.	The dimensions of the ground-level POS areas would not enable shade tree planting in the POS areas of Units G.01, G.02 or G.05. Whilst a technical variation, the landscaping treatments within these areas adjacent to the site boundary would satisfy other DCP requirements; planting of shade trees within these areas would also limit available solar access to the affected apartments. The variation is therefore considered to be satisfactory and supportable on merit.	Yes
	DS6.2 Trees in communal open areas are to provide shade to 25% of that area at maturity.	The limitations associated with soil depths of the roof top may limit the ability of the trees to cover 25% of the communal open space areas. The combined shaded area of both the trees and sheltered lobby would however likely provide sufficient shade for this area.	Yes
	DS6.3 Minimum of 50% of the communal open area shall be covered in turf/planting area.	The proportion of communal open space covered by planting: Approx. 115sqm, or 31.6%. Refer to the main body of the report for an assessment of this	No

		variation.	
	<p>DS6.4 Tree planting in communal and private open space areas will:</p> <ul style="list-style-type: none"> • Enable penetration of winter sun and mitigate penetration of afternoon summer sun. • Enable penetration of desirable cooling winds in summer and mitigate penetration of undesirable cold winter winds. 	<p>The design of the communal open space area would enable a range of climatic environments at varying times of the year (i.e. enabling direct sunlight during winter and penetrating cooling winds in summer).</p>	Yes
Landscaping Plans Development applications are supported by sufficient detail to demonstrate achievement of the objectives of this chapter	<p>DS8.1 Required documentation:</p> <ul style="list-style-type: none"> • Survey plans • Concept level landscaped plan • Detailed landscape plan 	<p>Survey plans and landscaped plans (supported by an Arboricultural Impact Assessment) submitted. No issue has been raised by Council's landscape officer.</p>	Yes
Landscaping Near Areas of Ecological Significance Landscaping that is located adjacent to areas of ecological significance protects and strengthens the ecological values of the area	<p>DS9.1 Landscaping comprises species that are consistent with the dominant species in the adjoining area of ecological significance</p>	<p>Site is not adjacent to areas of ecological significance.</p>	N/A
Stormwater Management Landscaping facilitates on site stormwater infiltration and does not result in significant adverse water quality impacts	<p>DS11.1 Opportunities for onsite stormwater infiltration are provided through</p> <ul style="list-style-type: none"> • Turf/raised planting beds • Minimising impervious areas 	<p>Pervious areas outside of the building/basement footprint would be maximised.</p>	Yes
	<p>DS11.2 Landscaped areas are suitably drained and ensure that soil/sediment does not leave the site.</p>	<p>The design the landscaped area would not foreseeably result in loss of soil and sediment from the site.</p>	Yes
Maintenance	DS12.1	The landscape plans	Yes

Landscaped areas are able to be easily maintained	Trees that have short lives, drop branches or that can damage underground pipes are to be avoided.	do not indicate that proposed trees and vegetation would have short life spans. No issue is raised with selected vegetation, subject to submissions.	
	DS12.2 Turfed areas are readily accessible for cutting devices.	Turfed areas would be capable of access for maintenance.	Yes
	DS12.3 Planting beds have a durable irrigation system.	Irrigation plans would be subject to conditions of consent.	Yes
	DS12.4 One house cock is provided for each communal or landscaped open area.	Subject to conditions.	Yes
Safety Landscaping provides for personal and property safety	DS13.1 Landscaping is in accordance with CTPED principles.	Refer to assessment above.	Yes
	DS13.2 Landscaping enables clear sight lines along pathways and minimises concealment.		Yes
	DS13.1 Front setbacks do not contain dense screening vegetation.		Yes
Utilities Landscaping does not interfere with the effective functioning of utilities	DS14.1 Landscaping does not interfere with the function of overhead or underground utilities.	There is no information to indicate that the proposed landscaping would affect surrounding utilities.	Yes
3.6 Public Domain			
General Development contributes to the creation of attractive, comfortable and safe streets that comprise consistent and high quality paving, street furniture and street tree plantings	DS1.1 Works in the public contain to obtain all necessary council and statutory approvals prior to commencement of works.	Can be satisfied through imposition of conditions.	Yes
	DS1.3 Construction activity that damages council assets in the public domain such as kerb and gutter is to replace the damaged asset to the same or an equivalent	Can be satisfied through conditions of consent.	Yes

	standard.		
	DS1.5 Footpath pavement width is to allow for comfortable walking, unimpeded by obstacles.	Can be satisfied through imposition of conditions.	Yes
	DS1.8 Street trees are to be provided on all streets to achieve the following outcomes: a. coordinated palette of climatically responsive species b. reinforce the street hierarchy and create distinct places c. be robust and low-maintenance d. be planted in a coordinated, regularly spaced and formalised manner e. increase the comfort of the public domain for pedestrians f. enhance the environmental performance of the precinct by increasing opportunities for energy efficiency, reducing the heat island effect and providing habitat for wildlife	Noted. Existing street trees are not proposed to be removed.	Yes

3.7 Stormwater**Part A – Residential Flat Buildings, Multi Dwelling Housing and Boarding Houses**

General Stormwater management is provided on site: a. to not increase the existing level of hazard to persons or property b. to ensure rainwater run-off and overland flow is directed into an	DS1.1 Stormwater flows are managed within the drainage sub-catchment the site is located.	Flows are managed within the subject site's sub catchment.	Yes
	DS1.2 Existing flow patterns are formalised and not significantly altered.		Yes
	DS1.3 Development does not concentrate, divert or increase overland flows onto adjoining properties. Where		Yes

<p>approved stormwater drainage system</p> <p>c. to reduce and control rainwater run-off in order to minimise overland flows, soil erosion and siltation in streams and water ways.</p> <p>d. to encourage an environmentally sustainable regime of stormwater management that achieves a balance between collecting and re-using rainwater, maintaining acceptable environmental flows in streams and allowing for on-site surface infiltration via landscaping</p>	overland flows are an issue, post-development flood analysis is to be provided.		
	DS1.4 Measures are implemented during construction to reduce soil erosion from development sites.	Erosion and sediment control measures are indicated on the engineering plans and are subject to conditions.	Yes
	DS1.5 A concept stormwater management plan is to be provided showing how waters are to be discharged.	Plans submitted. Council's development engineer has reviewed the information and has raised no submissions, subject to conditions.	Yes
	DS1.6 Onsite retention and roof runoff using detention tanks and storage/reuse must be provided.	Roof runoff and OSD are proposed.	Yes
	DS1.7 Runoff is discharged to the road kerb, easement or downstream, property.	The discharge site to the kerb is located on the northwest side of the site.	Yes
	DS1.8 Onsite infiltration is maximised.	Pervious surfaces are proposed outside of the building/basement footprint, maximising onsite infiltration.	Yes
	DS1.9 Overland flow paths are designed for the 100-year ARI event.	Considered	Yes
	DS1.10 Onsite stormwater and drainage is to be designed for the 20-year ARI event.	Council's development engineers have recommended conditions that would require engineering plans (which factor in rainfall and runoff) to be in accordance with Australian Institute of Engineers Australian Rainfall and Runoff requirements and Council's DCP.	Yes
	DS1.11	The site slopes to the	Yes

	Where the property falls to the street, the drainage system is to be gravity-fed.	street.	
	DS1.12 Discharge point to the gutter must not exceed 25L/sec.	Complies.	Yes
	DS1.13 Development on sites more than 700m ² must discharge into Council's drainage system. A gully pit with a 2400 lintel is to be constructed; a new pipe is required if no pipe exists.	Considered by the Development Engineers.	Yes
	DS1.14 All other impervious surface runoff is to drain by gravity to Council's drainage system.	Acknowledged in the design.	Yes
	DS1.18 Water runoff from impervious surfaces to be intercepted and gravity drained to Council's drainage system.		Yes
	DS1.19 Rate of discharge of room and pavement runoff to be controlled via an OSD system.		Yes
	DS1.20 OSD facilities shall be designed in accordance with Council's Drainage and OSD Policy.	Subject to conditions.	Yes
	DS1.21 Pump-out systems are only allowed to drain basements and driveway ramps.	A basement pump-out is proposed.	Yes
	DS1.22 For pump-out systems, discharge is to be to a harvest/reuse system of Council's drainage system.	Discharge to be sent to the proposed OSD system and discharged to Gover Street.	Yes
4 Specific Controls for Residential Development			
4.1 Residential Flat Buildings			
Neighbourhood Character Development is sited and designed to respect existing or desired future	DS1.1 The development application is supported by a Statement of Environmental Effects (SEE) that: a. includes a satisfactory	An SEE (prepared by BMA Urban) has been provided, and generally addresses relevant requirements of the DCP within	Yes

<p>neighbourhood and streetscape character, including:</p> <ul style="list-style-type: none"> a. the pattern of development of the neighbourhood, including elements that shape the streetscape such as the relationship and interface between the public and private domain b. the built form, scale and character of surrounding development including height, setbacks, front fencing, roofs and the location and proportions of private open space c. notable natural features of the site, including topography and vegetation 	<p>neighbourhood and site description, including identification of key features of the site and neighbourhood.</p> <ul style="list-style-type: none"> b. shows how the siting and design response derives from and responds to the key features identified in the neighbourhood and site description. c. demonstrates that the residential development proposal respects the existing or desired neighbourhood character and satisfies objectives of the zone in the LEP 	<p>Sections 1 and 2 of that document.</p>	
<p>Site Frontage Site frontage enables:</p> <ul style="list-style-type: none"> a. siting of a building and structures b. provision of adequate setbacks c. provision of adequate landscaped open space d. efficient vehicle access, parking and manoeuvring 	<p>DS1.2 The minimum street frontage is 24m Note: minimum street frontage may be reduced where development is proposed on an isolated site.</p>	<p>Proposed site frontage: 33.5m</p>	<p>Yes</p>

e. creation of high quality built form			
<p>Isolated Sites Development:</p> <p>a. enables suitable development of existing isolated sites in a manner which responds to the site context and constraints and maintains a high level of amenity for future occupants and neighbours.</p> <p>b. avoids the creation of isolated sites as a result of the development of adjoining lots</p>	<p>DS3.1</p> <p>Where a site is isolated, Council will consider on merit an application for an RFB which does not meet minimum frontage requirements.</p>	<p>Frontage complies (see DS1.2)</p>	N/A
	<p>DS3.2</p> <p>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.</p> <p>b. a schematic design which demonstrates how the isolated site may be developed</p>	<p>A review of surrounding sites indicates that the proposal would not result in site isolation. Details of surrounding sites are as follows:</p> <ul style="list-style-type: none"> • The site adjoining the southeast boundary (17-21 Gover Street) is a large seniors living development that has a site area capable of accommodating future large-scale residential development. • Sites adjoining the rear and northwest side boundaries contain individual dwellings that are adjoined by common boundaries. Council's website indicates that there are no current proposals or consents on these sites for high-density residential development. It is considered likely that these surrounding sites could be amalgamated, and thus would contain 	Yes

		areas capable of accommodating appropriate future residential development if proposed.	
Building height: a. is compatible with the existing or desired future character of the area b. creates human scale streetscapes c. creates functional and high amenity internal spaces d. enables adequate solar access to the main living areas and principal private open space e. facilitates penetration of desirable natural breezes f. facilitates view sharing	DS4.1 Maximum building height is in accordance with Hurstville LEP 2012 and three storeys.	Refer to the assessment of Clauses 4.3 and 4.6 of HLEP 2012. Refer to comments below regarding building height.	No
Excavation Excavation minimises disturbance of the existing landform and facilitates engagement between the public and private domains, including providing opportunities for direct overlooking of the street from the main living areas	DS5.1 Natural ground level is not to be excavated more than 500mm for the finished ground floor level.	Excluding cut required of the basement, a maximum of 375mm cut proposed for the ground floor.	Yes
	DS5.2 Maximum excavation for a finished floor level facing a public street is 500mm below natural ground level.	Maximum 375mm cut proposed for ground floor.	Yes
Setbacks: a. are compatible with predominant	DS6.1 The minimum setback to a primary or secondary street is 6m.	Minimum front setback - 6m	Yes

<p>patterns of buildings and gardens that define the existing and desired character of the neighbourhood</p> <p>b. engage with and activate the street</p> <p>c. reduce the appearance of building bulk</p> <p>d. enable adequate solar access to the main living areas and principal private open space</p> <p>e. facilitate penetration of desirable natural breezes</p> <p>f. facilitate view sharing</p> <p>g. minimise noise transmission</p>	<p>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.</p>		
	<p>D6.2</p> <p>An articulation zone allowing for lightweight elements (eaves, sunhoods, blade walls, battens, etc.) may intrude up to 1m within a road boundary setback for a maximum of 25% of the horizontal distance of the total façade.</p>	<p>Minimum proposed setback of articulation elements (balconies): 5.09mm</p>	Yes
<p>Vehicle access, parking and manoeuvring is provided on site and:</p> <p>a. caters for the needs of residents and visitors</p> <p>b. minimises visual impact on scenic quality or streetscapes</p> <p>c. ensures the safe movement of vehicles and pedestrians</p>	<p>DS7.1</p> <p>Carparking is to be provided as follows:</p> <ul style="list-style-type: none"> • 1 space per 1 or two bedroom dwelling • 2 spaces per 3 or more bedroom dwelling • For developments with more than 4 dwellings, 1 visitor space per 4 dwellings or part thereof. 	<p>Required parking:</p> <ul style="list-style-type: none"> • 19 residential spaces (11 spaces for 1 and 2 bedroom apartments, and 8 spaces for 3 bedroom apartments) • 3.75 visitor spaces (rounded up to 4) <p>Proposed parking:</p> <ul style="list-style-type: none"> • 19 residential spaces • 4 visitor spaces 	Yes
	<p>DS7.2</p> <p>Car parking is provided in basement form or provided behind the main building face and is not visually prominent from the street.</p>	<p>Basement parking proposed.</p>	Yes
	<p>DS7.3</p>	<p>Front setback area:</p>	Yes

	Vehicle access and manoeuvring space must not occupy more than: <ul style="list-style-type: none"> 40% of the frontage where street frontage is 20m or less 33% of the frontage where street frontage is more than 20m 	Approx. 188sqm 33% of front setback area: 62sqm Area of car parking facilities: Approx. 36.3sqm, or 19.3%	
	DS7.4 Maximum height of a basement above natural ground level: 1m	Maximum height of basement above ground level: Approx. 950mm	Yes
	DS7.5 Large exposed foundations, voids and walls facing street frontages are not created as part of basements.		Yes
	DS7.6 Basement parking is adequately ventilated.	Mechanical ventilation of the carpark is proposed.	Yes
Landscaped Open Space Landscaped open space is provided on site and: <ol style="list-style-type: none"> is useable for a range of passive recreation purposes is consistent with and enhances the existing landscape character of the area mitigates the visual impact on buildings and infrastructure achieves appropriate levels of amenity and safety for new dwellings facilitates activation of the street 	DS8.1 At least 20% of the site area is to consist of landscaped open space.	Site area: 1313.1sqm 20% of site area: 267sqm Proposed site area: Approx. 328sqm, or 25% (inclusive of minimum dimensions) Note: ADG requirements for deep soil space have also been met.	Yes
	DS8.2 Minimum dimensions of landscaped open space is 2m in any direction.		
	DS8.3 Landscaping between the street boundary and the front of the building shall maintain a balance between visual impact of the development and maintaining causal surveillance.		Yes
	DS8.4 A landscape plan is to be provided by a qualified person which addresses design solutions.	Refer to plans prepared by Zenith Landscape Designs (as amended).	Yes
Solar Access	DS9.1	Minimum criterion	Yes

Development ensures an appropriate amount of solar access to main living areas and areas of principal private open space of adjoining sites	Development must permit at least 3 hours of sunlight to the windows of living areas and adjoining principal private open space of adjacent dwellings between 9:00am and 3:00pm on June 21.	achieved.	
Noise Development is sited, designed and constructed to:	D10.1 Windows of adjacent dwellings are separated by at least 3m	Control satisfied.	Yes
a. minimise the intrusion of noise from external sources into habitable rooms, in particular bedrooms	D10.2 Site layout separates active recreation areas, parking areas, accessways and service equipment areas from bedroom areas.	Units G.05, 1.05 and 2.05 all feature bedrooms that directly adjoin the lift; these would be subject to a condition to ensure that appropriate acoustic attenuation is provided.	Yes
b. minimise noise transmission between dwellings within the development and from the development to adjoining dwelling houses	D10.3 Dwellings are designed so that the internal noise level from outside sources does not exceed the parameters established by the NSW Environment Protection Authority (EPA).	Will be reviewed as part of the Construction Certificate assessment.	Yes
Streetscape Development creates a high quality interface between the public and private domain that contributes to the creation of streetscapes that:	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. Note: Large expanses of blank, unarticulated walls on any street frontage is not supported.	Not a corner allotment.	N/A
a. are compatible with the existing or desired future scale and form of adjoining and surrounding development	DS11.2 In more urban streetscapes,		Yes
b. respond to			

<p>dominant architectural elements of existing housing that contributes to neighbourhood character, including roofs, windows, colours, materials and other details</p> <p>c. are compatible with the existing or desired future street rhythm established by elements such as topography, building width and building separation</p> <p>d. contribute to the creation of a public domain that is attractive, comfortable, safe and active</p>	<p>development emphasises corners by 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> <p>a. Have a pitch of 35° r up to 45° where an attic is involved.</p> <p>b. Provide a varied shape with hips, gables or other forms</p> <p>c. Mark the entrance to a building by the use of a porch, portico or similar element</p>	<p>Refer to the main report for an assessment regarding this non-compliance.</p> <p>The main entrance to the building is identified using a covered stairway and landing.</p>	No
	<p>DS11.5 To reduce building bulk and increase visual interest through articulation, maximum wall lengths on one plane shall be 6m.</p>	<p>Refer to the main report for an assessment regarding the non-compliance.</p>	No
<p>Stormwater Stormwater management is provided on site and:</p> <p>a. provides for the efficient and functional mitigation of stormwater impacts</p> <p>b. does not adversely affect other properties</p> <p>c. promotes on-site infiltration</p> <p>d. causes minimal change to existing ground levels</p> <p>e. does not detract from</p>	<p>DS12.1 Stormwater management is in accordance with Section 3.7 of this DCP.</p>	<p>Refer to separate assessments within this report.</p>	Yes

streetscape quality			
<p>Fencing</p> <p>Front fencing:</p> <p>a. provides appropriate levels of privacy, security and noise attenuation</p> <p>b. activates the street and provides opportunities for passive casual surveillance of the street</p> <p>c. contributes to a high level of visual streetscape quality</p>	<p>DS13.1</p> <p>Fencing is in accordance with Appendix 2.</p>	<p>No front fencing proposed.</p>	<p>N/A</p>
<p>Site Facilities</p> <p>Building services are provided on site that:</p> <p>a. cater for the needs of residents</p> <p>b. are integrated with the balance of the development</p> <p>c. do not detract from streetscape quality</p>	<p>DA14.1</p> <p>Electricity and phone lines are provided underground, unless there the connection of electricity and telephone lines directly from the service pole to the fascia of the front dwelling.</p>	<p>Underground services would be required, and is subject to conditions of consent.</p>	<p>Yes</p>
	<p>DS14.2</p> <p>Mail and garbage collection areas are integrated into the overall design of the development.</p>	<p>Garbage facilities are located within the basement and considered acceptable by Council's Waste Officer.</p>	<p>Yes</p>
	<p>DS14.3</p> <p>Development provides space for the storage of recyclable goods within each dwelling or in a central storage area.</p>	<p>While not specified, there is adequate space within each dwelling for the internal and temporary storage of waste.</p>	<p>Yes</p>
	<p>DS14.4</p> <p>A master TV antenna is required for development with more than two dwellings.</p>	<p>Can be achieved.</p>	<p>Yes</p>
	<p>DS14.5</p> <p>Storage is provided in accordance with the ADG</p>	<p>Refer to ADG assessment.</p>	<p>Yes</p>

	DS14.6 Communal outdoor clothes drying facilities must be screened from the street.	Facilities are to be located on the roof adjacent to the entry foyer; these would be sufficiently screened from the road reserve by planters and associated landscaping.	Yes
--	--	--	-----

LPP019-19

94. **Control: DS6.3 of Section 3 of the DCP - 50% of the communal open area is to consist of turf/planting area**

The proposal's communal open space area is to be located on the rooftop. As such, it is not practicable to provide such extensive areas as turf/planting. Nonetheless, the applicant's plans propose approximately 115sqm (ie 31.6%) of the proposed communal open space to be covered by planting.

95. Despite such a variation, all of the aforementioned planting would consist of planters accommodating plants/shrubs and medium-height trees. Such landscaping treatments would therefore contribute to amenity, privacy and shading.

96. With regard to the above and considering that the Performance Criteria would be satisfied, the variation is therefore considered to be supportable on merit.

97. **Control: DS4.1 of Section 4 of the DCP - Building height and number of storeys**

Note: This assessment relates to the number of storeys; refer to the assessment of Clauses 4.3 and 4.6 of HLEP 2012 for an assessment of 'building height'.

98. Three (3) residential levels are proposed in addition to a fourth level containing the communal open space area. While inconsistent with the three-storey control, the appearance of the top level would be filtered by virtue of its small area (and subsequently increased setbacks) and rooftop planting around the periphery of the top floor; as such, the fourth storey would be unlikely to substantially change the form and scale of the development when viewed from the streetscape. The rooftop location of the communal area would facilitate better amenity and solar access than if it were located at ground level due to the following considerations:

- The required locations of the driveway and OSD in addition to side and rear building setbacks would prevent a suitably sized and dimensioned communal open space from being placed within the front setback. Overlooking of a communal open area within the front setback would also likely reduce the privacy and amenity of residents;
- Due to the northeast-southwest orientation of the site, communal open space within the side and/or rear setbacks would be less likely to obtain sufficient solar access.

99. It is also noted that another RFB development at 75 Trafalgar Street (approximately 15m south west of the subject site) contains a similar site layout (ie three (3) residential storeys with a communal area above) therefore the current proposal – if approved – would not be inconsistent with the local area.

100. For the reasons outlined above, the non-compliance is considered to be acceptable on merit.
101. **Control: DS11.3 of Section 4 of the DCP - Roof Pitch**
The plans propose a technical non-compliance, in that a pitched and/or varied roof is not proposed. A pitched roof design would likely further increase the already non-compliant height of the building and may adversely affect solar access to surrounding sites. Further, it is noted that other contemporary RFBs (or similar such structures) within the surrounding area generally do not employ pitched roofs; therefore a flat roof design would not be inconsistent with the surrounding area. With regard to the above, the variation would not set a development precedent within the area, and the variation to the control is considered to be acceptable on merit.
102. **Control: DS11.5 of Section 4 of the DCP - Wall length**
A technical non-compliance is proposed, in that a number of walls would exceed the nominated 6m horizontal plane. The longest wall would be 11.48m (on the rear elevation).
103. Despite the inconsistency, the relevant performance criteria of the DCP will be satisfied. A high level of articulation is proposed on all elevations (particularly those visible from the public domain); walls that are subject to the non-compliance contain windows of varying shapes and sizes, therefore the walls would not be blank. Further, proposed landscaping treatments would further assist in reducing any visual impacts associated with the non-compliance; six large trees are proposed adjacent to the rear boundary, thereby filtering and minimising the impact of the variation.
104. With regard to the above, the variation is considered to be acceptable on merit.

Section 7.11 Contributions

105. The development requires payment of contributions under Section 7.11 of the Environmental Planning & Assessment Act 1979. These have been calculated and a condition of consent has been included in the recommendation.

IMPACTS

106. **Natural Environment**
The development is unlikely to have adverse impacts on the natural environment, Basement excavation is proposed, however the extent of the excavation is consistent with what would be expected for a residential flat development, and the development is unlikely to adversely affect the existing drainage systems and soil stability in the locality. The proposed tree removal has been assessed as satisfactory by Council's Landscape Officer subject to appropriate conditions.
107. **Built Environment**
The proposed development is unlikely to have adverse impacts on the built environment. The development achieves a bulk and scale suitable to the existing and desired future character of the locality, and provides a form with visual interest that responds to the slope of the land. Though the development varies from a number of controls in Hurstville LEP 2012 and DCP No 1, the extent of the variations are acceptable as discussed throughout this report.
108. **Social Impacts**

The development would contribute additional housing stock to the area and cater to the needs of families by providing a range of dwelling sizes through a mix of one bedroom, two bedroom and three bedroom units. There will be minimal adverse social impacts associated with this development.

109. **Economic Impacts**

The development will have positive short term economic benefit associated with construction employment and minimal adverse economic impacts over the longer term.

110. **Suitability of the Site**

Council's mapping system has been reviewed in terms of possible site constraints (such as flooding, land subsidence etc), and there are no constraints that would render the land as unsuitable for the proposed development.

SUBMISSIONS

111. The DA was advertised and notified to neighbours in accordance with Hurstville DCP 2013, for a period from 13 June to 6 July 2018. No submissions were received by Council as a result of this process. Note: Although amended plans were received during processing of this DA, as mentioned previously, these did not substantially alter the design of the building. Accordingly, re-notification to neighbours of the amended plans was not required.

REFERRALS

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

Council Referrals

Council's Landscape Officer

113. Council's Landscape Officer has undertaken an assessment of the proposal and raised no objections or concerns. Appropriate conditions have been issued and are included in the recommendation below.

Building Surveyor

114. Council's Building Surveyor has undertaken an assessment of the proposal. The proposal has been examined for general compliance with the Fire Safety and construction provisions of Clause 98 of the EP&A Regulation and with the Building Code of Australia. The proposal involves the demolition of existing dwellings, associated outbuildings and the construction a three storey residential flat building over basement car parking. The building will contain a total of fifteen apartments while the basement parking for twenty three vehicles, storage areas and lift access to the sole occupancy units above.

115. Appropriate conditions of consent have been provided which are included in the recommendation below.

Engineering (Stormwater)

116. Council's Stormwater Engineer has undertaken an assessment of the proposal in terms of stormwater considerations, and raised no objections subject to appropriate conditions, which are included in the recommendation below.

Waste Officer

117. Council's Waste Officer has undertaken an assessment of the proposal and advised that the original proposal was not suitable for waste requirements – in particular the waste bin storage area was not large enough for the proposed development.
118. The amended plans have enlarged the bin storage area to ensure that it can accommodate 14 x 240L bins as required.

Geographic Information Systems (GIS) Officer

119. Council's GIS Officer has undertaken a review of the proposal in terms of street numbering, and provided applicable conditions of consent for this development.

CONCLUSION

120. The application has been assessed having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The application seeks approval for the demolition of existing structures and the construction of a residential flat building with basement parking.
121. It is recommended that the development application be approved, subject to conditions attached to this report.

DETERMINATION AND STATEMENT OF REASONS

122. Statement of Reasons

- The proposed development is considered to be an appropriate scale and form for the site and the character of the locality
- The proposed development, subject to the recommended conditions, will have no unacceptable adverse impacts upon the natural or built environments
- In consideration of the aforementioned reasons, the proposed development is a suitable and planned use of the site and its approval is in the public interest

123. Determination

THAT Georges River Local Planning Panel supports the request for variation under Clause 4.6 of Hurstville LEP 2012, in relation to the height controls contained in Clause 4.3 of Hurstville LEP 2012.

124. FURTHER, THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, as amended, the Georges River Local Planning Panel **approve** development consent to Development Application DA2018/0211 for the demolition works and construction of a residential flat building at Lot 167, DP 36317 and Lot 168 of DP 36317 and known as 13-15 Gover Street, Peakhurst, subject to the following conditions of consent.

GENERAL CONDITIONS

Section A – List of Approved Plans

1. **Approved Plans** - The development will 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:

Plans:

Description	Reference No.	Date	Revision	Prepared by
Basement Plan	DA 02	16/01/2019	C	Cornerstone Design
Site/Ground Floor Plan	DA 03	16/01/2019	C	Cornerstone Design
First Floor Plan	DA 04	16/01/2019	C	Cornerstone Design
Second Floor Plan	DA 05	16/01/2019	C	Cornerstone Design
Rooftop Plan	DA 06	13/01/2019	C	Cornerstone Design
Elevations	DA 07	17/10/2018	B	Cornerstone Design
Elevations	DA 08	17/10/2018	B	Cornerstone Design
Section A-A & Streetscape Elevation	DA 09	17/10/2018	B	Cornerstone Design
Landscape Plan	18-3685 LO1	27/02/2019	B	Zenith Landscape Designs
Landscape Plan	18-3685 LO2	27/02/2019	B	Zenith Landscape Designs
Existing Tree Plan	18-3685 LO3	28/02/2019	B	Zenith Landscape Designs
Irrigation Plan	18-3685 LO4	28/02/2019	B	Zenith Landscape Designs
Stormwater Drainage/Sediment Control	1894-S1/3	08/03/2018	A	John Ramonous & Associates
Stormwater Drainage/Sediment Control	1894-S2/3	08/03/2018	A	John Ramonous & Associates
Stormwater Drainage/Sediment Control	1894-S3/3	08/03/2018	A	John Ramonous & Associates
Schedule of Finishes – 13-15 Gover Street, Peakhurst	-	-	-	-

Reports and Documents:

Description	Reference No.	Date	Prepared by
BASIX Certificate No. 909867M_02		12/03/2019	Max Brightwell
Statement of Compliance – BCA Access Provisions	218054	22/03/2018	Accessible Building Solutions
Geotechnical Desktop Study	21301/1352C	May 2018	STS Geotechnical
Arboricultural Assessment Report	4520	30/05/2018	Tree and Landscape Consultants
Site Waste Management Plan	-	-	-

Section B – Separate Approvals Required by 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 (e.g. Opening the road for the purpose of connections to utility providers);
- (j) Stormwater & ancillary works in the road reserve; and
- (k) Stormwater & ancillary to public infrastructure on private land
- (l) If any excavation is to be supported by the use of below ground (cable) anchors that are constructed under Council’s roadways/footways.

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

The relevant Application Forms for these activities can be downloaded from Council’s website www.georgesriver.nsw.gov.au. For further information, please contact Council’s Customer Service Centre on (02) 9330 6222.

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

The following details must be submitted:

- (i) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council;
- (ii) The applicant has indemnified council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of Council.
- (iii) Documentary evidence of such insurance cover to the value of \$20 million;
- (iv) The applicant must register a non-terminating bank guarantee in favour of

Council. An amount will be determined when the application is lodged;

- (v) The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
- (vi) In the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.

4. **Vehicular Crossing – Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:

- (a) Construct a 1.2m wide footpath for the full length of the frontage of the site on James Street and on Vaugh Street up to including the entry to Unit 4 of the building 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, prior to the commencement of those works.

5. **Road Opening Permit** - A Road Opening Permit must be obtained from Council 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.

Section C - Requirements of other Government Authorities

- 6. **Sydney Water – Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ 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™ agent has appropriately stamped the plans prior to the issue of the Construction Certificate.
- 7. **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.
- 8. 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 Coordinator, 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 Principal Certifier prior to the issue of the Occupation Certificate.
10. **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).

Section D – Prior to Issue of a Construction Certificate

11. **Fees to be paid** - The fees listed in the table below will 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 will be made prior to the issue of the Construction Certificate or prior to the commencement of work (if there is no associated Construction Certificate).

Council will only accept Bank Cheque or Electronic Funds Transfer (EFT) for transaction values of \$500,000 or over. Council will 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	\$41,412.18
Inspection Fee for Refund of Damage Deposit	\$310.00
Driveway and Restoration Works Design Inspection Fee (Multi-unit Development)	\$371.00 per inspection
DEVELOPMENT CONTRIBUTIONS	
Hurstville Section 94 Development Contributions Plan	\$23,673.83

2012 - Residential (Community Facilities)	
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Open Space, Recreation, Public Domain)	\$167,388.74
TOTAL CONTRIBUTIONS PAYABLE	\$191,062.57

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

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 will be paid and receipted by Council prior to the release of the Construction Certificate.

Further Information

A copy of all current Development Contributions Plans may be inspected at Council's offices or viewed on Council's website www.georgesriver.nsw.gov.au.

12. **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: **\$41,412.18**
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee (for two inspections) to enable assessment of any damage and repairs where required: **\$310.00**.
- (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.

13. The following changes are required to be made and shown on the **Construction Certificate** plans:

- (a) The windows addressing the north west (ie side) boundary within Bedroom 1 of Unit G.01 are to be modified so that they cannot be opened.

- (b) Provisions are to be made at the entrance to the basement carpark for visitor vehicles. Such measures are to include an intercom system within the entrance driveway that would enable visitors entering the car park to directly contact residents within the apartment to be visited.

14. **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 the Certifier. Such a list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Certifier will then issue a Fire Safety Schedule for the building.
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 Certifier for approval prior to construction of the specified works.

A copy will be forwarded to Council where Council is not the Principal Certifier.

16. **Access for Persons with Disabilities** - 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.

17. **Commonwealth Disability (Access to Premises) Standard** - The *Commonwealth Disability (Access to Premises - Buildings) Standards 2010* (the Premises Standards) applies to all applications (including a Construction Certificate). This requires any new building, part of a building and the affected part of the existing building to comply with the Premises Standards, the Building Code of Australia and AS 1428.
18. **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/stabilisation works and any excavations.
 - (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings

at those addresses and any external paths, grounds etc. This will be submitted to the Certifying Authority and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.

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

19. **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 must be submitted with the Construction Certificate application.**

20. **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 will 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, will comply with AS/NZS4586:2004 - Slip Resistance Classifications of New Pedestrian Materials and will be detailed on the plans lodged with the application for the Construction Certificate.

21. **Advice from Fire and Rescue 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.

22. **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 will be kept on site and is to be made available upon request.

23. **Driveway Construction Plan Details** 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.

24. **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).

25. **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 will specify in writing that they are satisfied with the Traffic Management Plan prior to the issue of the Construction Certificate.

26. **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 must be submitted to the Certifier prior to the issue of any Construction Certificate.

27. **Car Wash Bays** – Plans and specifications of the car washing system approved by Sydney Water must be submitted with the application for the Construction Certificate.

All car washing bays will 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.

28. **Design Quality Excellence** - In order to ensure the design quality excellence of the development is retained:

- (a) The design architect is to have direct involvement in the design documentation, contract documentation and construct stages of the project;
- (b) Evidence of the design architect's commission is to be provided to the Council prior to the issue of the Construction Certificate.

29. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by a qualified designer, must be submitted to the Certifier verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of *State Environmental Planning Policy No 65 -Design Quality of Residential Flat Development*.

30. **Council Property Shoring** - Prior to the issue of the Construction Certificate, plans and specifications prepared by a professional engineer specialising in practising structural engineering will detail how Council's property will 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, will be included on the plans. Where the shoring cannot be removed, the plans will detail that the shoring will be cut to 150mm below footpath level and the gap between the shoring and any building will be filled with a 5MPa lean concrete mix.

31. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate must be implemented on the plans lodged with the application for the Construction Certificate.

32. **Required design changes** - Referring to Stormwater Plans dated 8 March 2018 and prepared by John Romanous & Associates, design changes are required and shown on the Construction Certificate plans and submitted to Council for further assessment and approval.

- 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 13B Gover Street. 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.
- A new 375mm diameter RCP drainage line shall be designed and constructed along Gover Street from the site to the nearest kerb inlet pit (in front of 13B Gover Street). This is to ensure Council's requirements are met.

- The proposed drainage along Gover Street shall be documented on a detailed features survey plan that describes all existing structures, utility services, vegetation and other relevant information.
- The inlet pits shall be cast-in-situ and conforming to Council's standard drainage pit details.
- The minimum distance from the lintel to the near end of the splay of the driveway at kerb line shall be at least 500mm.
- A drainage system longitudinal section drawn at a scale of 1:100 or 1:200 horizontally and 1:10 or 1:20 vertically and showing crossing utility services, pipe size, class and type (minimum class 2), pipe support type in accordance with AS 125 or AS 2032 as appropriate, pipeline chainages, pipeline grade, hydraulic grade line and any other information necessary for the design and construction of the drainage system.
- The provided OSD volume of 8.5m³ is considered low volume for a site area of 1313sqm. The stormwater consultant is to revisit the OSD calculations and clarify.
- Orifice size calculation details are shown on the Stormwater Plan.
- Basement sub soil drainage details.

33. **Acoustic requirements for timber flooring** - If timber flooring is installed within the development, then appropriate insulation between floors shall achieve a minimum sound attenuation of (50Rw).

34. **Acoustic attenuation for apartments adjoining lift core** – Where bedrooms:

- (a) Within apartments adjoin the internal lift core; and
- (b) Within Unit G.01,

then appropriate noise attenuation measures are to be applied to prevent transmission of noise in accordance with the Building Code of Australia (BCA)

35. **Design of Waste Management facilities** - The design of the waste storage areas shall incorporate the following requirements:

- (a) Waste room floors are to be sealed;
- (b) Waste room walls and floors and surfaces shall be flat and even;
- (c) All walls are to be painted with light colour and washable paint;
- (d) Equipment electric outlets are to be installed 1700mm above floor levels;
- (e) The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
- (f) Light switches installed at a height of 1.6m;
- (g) Waste rooms must be well lit (sensor lighting recommended);
- (h) Optional automatic odour and pest control system installed to eliminate all pest types and assist with odour reduction (building management to decide at building handover)
- (i) All personnel doors are to be hinged and self-closing;
- (j) Waste collection area must hold all bins - bin movements should be undertaken with ease of access;
- (k) Conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.

This information shall be reflected on construction drawings submitted to the certifying authority.

36. **Landscape Plans** – All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Zenith Landscape Designs, reference numbers – 18 – 3685 L01. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following –

- Three (3) more native trees shall be planted for this proposal. Two (2) native trees shall be planted within the subject site at a minimum 75 litre bag size and be planted within the south western large lawn area, whilst a third street tree shall be planted by Council at the owners expense.
- The two trees nominated above to be added, shall be able to reach nine (9) metres at maturity and Species selected from Hurstville DCP, Appendix 1, 5 Recommended Species for Landscaping

General Landscape Requirements

- a) The proposed 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.

37. **Compliance with submitted Arborist Report** – The recommendations outlined in the Arborist's Report titled Arboricultural Assessment Report, prepared by TALC, dated 30th May, must be implemented throughout the relevant stages of construction. Details of tree protection measures to be implemented must be detailed and lodged with the Construction Certificate application for approval and shall be in accordance with Section 4 - Australian Standard AS 4970-2009: Protection of trees on development sites.

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) Fencing distance from trunk
<i>T7 – Lophostemon confertus</i>	Council street tree	7.0 metres radially
<i>T8 – Ceratopetalum gummiferum</i>	17 – 19 Gover, front side fence	3.0 metres radially
<i>T9 – Ceratopetalum gummiferum</i>	17 – 19 Gover, front side fence	3.0 metres radially

38. **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>T7 – Lophostemon confertus</i>	Council street tree	7.0 metres radially
<i>T8 – Ceratopetalum gummiferum</i>	17 – 19 Gover, front side fence	3.0 metres radially
<i>T9 – Ceratopetalum gummiferum</i>	17 – 19 Gover, front side fence	3.0 metres radially

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 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 and regularly to minimise the effects of construction works.
- (g) No building products/ materials or services shall be installed within the TPZ of the tree/s 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

- (a) 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.
- (b) 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.
- (c) Tree Protection Zone around the trees to be retained are not to have soil level changes, building product / materials stored 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.

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).

39. **Pre-Constructing Dilapidation Report** – A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises that shall be affected by the excavation as determined by the consulting engineer. The report shall be prepared at the expense of the applicant and submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

A copy of the pre-construction dilapidation report is to be provided to the adjoining properties (subject of the dilapidation report), a minimum of 5 working days prior to the commencement of work. Evidence confirming that a copy of the pre-construction dilapidation report was delivered to the adjoining properties must be provided to the PCA. Should the owners of properties (or their agents) refuse access to carry out inspections, after being given reasonable written notice, this shall be reported to Council to obtain Council's agreement to complete the report without access. Reasonable notice is a request for access in no sooner than 14 days between 8.00am-6.00pm.

40. **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.
41. **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.

Full details shall accompany the application for the Construction Certificate.

42. **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 stormwater pit shown in the Civil Engineering Plan prepared by WSP is acceptable to Council. 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 100 year storm.
 - (b) The pump system shall be regularly maintained and serviced, every six (6) months; and
 - (c) The drainage disposal shall be discharged to the OSD system. Details and certification of compliance from a professional engineer specialising in civil engineering shall be provided for approval with the Construction Certificate application.
43. **Stormwater Plans** - 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 (2005 or 2016) and Council's drainage guidelines in Appendix 2 of the Hurstville Development Control Plan 1.
44. **Intensity of carpark lighting** – Prior to occupation, the intensity of lighting at the entrance to the basement carpark is to be designed to allow for progressive adjustment of light.
45. **Erosion & Sedimentation Control** - Erosion and sediment controls must be in place prior to commencement of any work on the site. These measures include:
- (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 will remain until works are completed and all exposed surfaces are landscaped/sealed.

Section E – Prior to Commencement of Work

46. **Demolition & Asbestos** - The demolition work will 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 will 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 will be submitted to the Certifier prior to the commencement of works.
47. **Removal of asbestos** – For demolition work which involves the removal of asbestos, the asbestos removal work will 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* and the *Demolition Code of Practice (NSW Work Cover July 2015)*.
48. **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 the Principal Certifying Authority (PCA) and Council for their records.
49. **Dilapidation Report on Public Land** – Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site.
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) The full name and signature of the structural engineer.

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.

50. **Registered Surveyor's Report - During Development Work** - A report will be submitted to the Certifier 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 will be provided at each subsequent storey.

- (e) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
- (f) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey will indicate the reduced level of the main ridge.

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

51. **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.
52. **Structural Engineer's 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 will be submitted to the satisfaction of Council.
53. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
 - (a) The developer/builder will 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.
54. **Structural Engineer's Details - Supporting excavations and adjoining land** - Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer's details relating to the method of supporting the excavation will be submitted.
55. **Road Opening Permit** - A Road Opening Permit will 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.

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

Section F – During Construction

58. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifier. 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.
59. **Site sign** - A sign must be erected in a prominent position onsite only showing:
- (a) the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (b) the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
 - (c) that unauthorised entry to the work site is prohibited.

The sign must to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

60. **Site sign** - A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
- A. The builder's name, builder's telephone contact number both during work hours and after hours.
 - B. That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
 - C. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - D. That no skip bins or materials are to be stored on Council's Road Reserve.
 - E. That the contact number for Northern Beaches Council for permits is 9970 1111.
61. **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, will 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 will remain in a prominent location on site up until the completion of all site and building works.

62. **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.
63. **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.
64. **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 must 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.
65. **Hazardous or Intractable Waste – Removal and Disposal** – Hazardous or intractable waste arising from the demolition or construction process must be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and all applicable legislation.
66. **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, will be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate.
67. **Stormwater to Kerb** - Any stormwater connections to the kerb and gutter are to be in accordance with Council's *'Specification for Construction by Private Contractors'*.
- All roof water and surface water from paved or concreted areas are to be disposed of in accordance with the Stormwater Plan by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3:2015. The line will pass through a silt arrestor pit.
68. **Redundant Driveway** - All existing vehicular crossings adjacent to the subject premises that have become redundant will be removed and the footway and kerb and gutter reinstated at the developer/applicant's expense.
69. **Damage within Road Reserve & Council Assets** - The owner will bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.

70. **Public Utility & Telecommunication Assets** - The owner will bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
71. **Works Zone** - The installation of a "Works Zone" for the site will require the approval from the Traffic Advisory Committee. As a result, the applicant will provide a formal request to Council's Traffic Section with the duration and exact location of the required "Works Zone" at least 6 weeks prior to its required installation date. All costs associated with the installation of a "Works Zone" will be at the applicants expense.
72. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation will be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like will be ignited or burnt.

Copies of all receipts for the disposal, or processing of all such materials will be submitted to the Principal Certifier and Council, where Council is not the Principal Certifier.

73. **Site Safety Fencing** - Site fencing will 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 will be erected before the commencement of any work and maintained throughout any demolition and construction work.
74. A demolition licence and/or a high risk work license may be required from SafeWork NSW (see www.SafeWork.nsw.gov.au).
75. **General Tree Removal Requirements** – Tree removal shall be undertaken subject to the following 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.
76. **Tree removal** – Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
T1 – <i>Callistemon viminalis</i>	X1	Side fence of No 15 Gover
T2 – <i>Leptospermum petersonii</i>	X1	Front yard of No 13
T3 – <i>Acmena smithii</i> (poisoned)	X1	Side fence of No 13
T4 – <i>Lagerstroemia indica</i>	X1	Back corner of fence of No 13
T5 – <i>Eucalyptus nicholii</i> (poisoned)	X1	Back fence of No 15
T6 – <i>Cupressus sempervirens</i>	X1	Back yard of No 15

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.

Street Tree Removal / Replacement by Council –

- (a) .Three (3) street trees of species *Lophostemon confertus* and pot sizes 25 litre must be provided in the road reserve fronting the site.
- (b) 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.

Fee Type – Tree removal on public land	Amount
Administration Fee for Tree Removal	\$154.50
Replacement Tree Fee (per Tree) x3	\$185.40
Cost of tree removal	To be determined
Cost of Stump Grinding	To be determined

Tree Replacement within subject site

The following replacement trees are to be planted prior to the issue of either an Occupation Certificate or Subdivision Certificate (whichever is first). All replacement trees must be replanted a minimum of 3m away from any driveway, building or structure.

Tree Species	Number of trees	Location	Pot Size
Two trees selected by applicant as per Hurstville DCP – Recommended Species for Landscaping	X2	Within large grassed/ garden zone, south west area	Minimum 75 litre bag and to reach maturity of nine (9) metres in height
All nominated trees above shall be planted with the pot/bag removed, watered, staked and mulched at .500mm surrounding the base, away from stem.			

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.

77. **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 drainage system.

Utility Services

The applicant shall undertake and bear all costs associated with the liaison, approval and relocation of any utility services. All correspondence and approvals between the Applicant and utility authorities shall be provided to the Council in conjunction with engineering documentation for the stormwater drainage works.

Drainage Works

Construction inspections shall be required by Council's Asset Engineer for the Council stormwater drainage works on public roads at the following hold points: -

- Upon excavation of trenches shown on the approved drainage drawings.
- Upon installation of pipes and other drainage structures.
- Upon backfilling of excavated areas and prior to the construction of the final pavement surface.

An inspection fee is applicable for each visit, and at least 24 hours' notice will be required for the inspections.

Section G – Prior to Issue of Occupation Certificate

78. **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. Only the Principal Certifier appointed for the building work can issue the Occupation Certificate.
79. **SEPP 65 Design Verification Statement** - The Principal Certifier will not issue an Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the he/she 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*.
80. **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.*

81. **Structural Certificates** - The proposed building must be constructed in accordance with details designed and certified by a practising qualified structural engineer. In addition, Compliance or Structural Certificates to the effect that the building works have been carried out in accordance with the structural design, must be submitted to the Principal certifying Authority prior to issue of the Occupation Certificate.

82. **Consolidation of Site** - The site will be consolidated into one allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan will be registered at the NSW Land and Property Information prior to the issue of a final occupation certificate.

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

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

submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

84. **Completion of Major Works** - Prior to the issue of the Occupation Certificate, the following works will 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 if/where required;
- (f) Relocation/provision of street signs if/where required;
- (g) New or replacement street trees if/where required;
- (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 will be turfed. The grass verge will 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 will 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].

85. **Dilapidation Report on Public Land** - Upon completion of works, a follow up dilapidation report will be prepared for the items of Council infrastructure adjoining the development site. The dilapidation report will 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, and
- (d) The full name and signature of the professional engineer.

The report will be provided to the Principal Certifier 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.

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

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

86. **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 will advise in writing that they are satisfied with the Works-As-Executed prior to the issue of an Occupation Certificate.

A Works As Executed plan of Council's Stormwater system extension as constructed including all levels will be submitted and approved by Council.

87. **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 will cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate will 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.

88. **Acoustic Certification** - Prior to the issue of any Occupation Certificate, a suitably qualified acoustic consultant will certify that the operation of the premises and plant equipment will not give rise to a sound pressure level at any affected premises that exceeds the relevant acoustic criteria. The development will at all times comply with these noise levels post occupation.
89. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent, will be implemented before issue of any Occupation Certificate. A Compliance Certificate will be provided to the Principal Certifier regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.
90. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the *Building and Construction Industry Long Service Payments Act 1986*.

Payment of the required Long Service Levy payment must be made and proof of payment provided to the Principal Certifier prior to the issue of an Occupation Certificate.

91. **Allocation of Car Parking Spaces** – A total of twenty-three (23) car parking spaces, and a minimum of four (4) bicycle parking spaces associated with the development is to be allocated as follows:
- Nineteen (19) residential spaces, including two (2) accessible spaces.
 - Four (4) visitor spaces.
 - One (1) of the four visitor spaces is to also be shared as a wash bay.
 - Four (4) bicycle spaces.
92. **Signage for allocation of parking** - Prior to an occupation certificate, the allocation of all onsite parking shall be clearly indicated via signage and/or line-marking.
93. **Electricity Supply** - Evidence will be provided demonstrating that the development has been connected to the electricity network.
94. **Structural Certificates** - The proposed structure will 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, will be submitted to the Principal Certifier prior issue of the Occupation Certificate.
95. **Stormwater & Ancillary Works** - Applications under Section 138 of the *Roads Act* and/or Section 68 *Local Government Act 1993*, the applicant must obtain all necessary approvals. 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 will 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 if applicable) 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.

96. **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 Zenith Landscape Designs, reference numbers – 18 – 3685 L01 and subject to the following being completed:
- Three (3) more native trees must be planted for this proposal. Two (2) native trees shall be planted within the subject site at a minimum 75 litre bag size and be planted within the south western large lawn area, whilst a third street tree shall be planted by Council at the owners expense.
 - The two trees nominated above to be added, shall be able to reach nine (9) metres at maturity and species selected from Hurstville DCP, Appendix 1, 5 Recommended Species for Landscaping

97. **Allocation of street addresses** – In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing, the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street address for the subject development is allocated as follows:

Primary Address

- 15 Gover Street, Peakhurst NSW 2210

Unit Addresses

Unit description on DA plans	Proposed street address to comply with AS/NZS 4819:2011 and NSW Addressing Manual
Unit G.01	G01/15 Gover Street, Peakhurst NSW 2210
Unit G.02	G02/15 Gover Street, Peakhurst NSW 2210
Unit G.03	G03/15 Gover Street, Peakhurst NSW 2210
Unit G.04	G04/15 Gover Street, Peakhurst NSW 2210
Unit G.05	G05/15 Gover Street, Peakhurst NSW 2210
Unit 1.01	101/15 Gover Street, Peakhurst NSW 2210
Unit 1.02	102/15 Gover Street, Peakhurst NSW 2210
Unit 1.03	103/15 Gover Street, Peakhurst NSW 2210
Unit 1.04	104/15 Gover Street, Peakhurst NSW 2210
Unit 1.05	105/15 Gover Street, Peakhurst NSW 2210
Unit 2.01	201/15 Gover Street, Peakhurst NSW 2210
Unit 2.02	202/15 Gover Street, Peakhurst NSW 2210
Unit 2.03	203/15 Gover Street, Peakhurst NSW 2210
Unit 2.04	204/15 Gover Street, Peakhurst NSW 2210
Unit 2.05	205/15 Gover Street, Peakhurst NSW 2210

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

98. **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:

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

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

The above works shall be carried out 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.

100. **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) Driveways and vehicular crossings within the road related area;
- (b) Removal of redundant driveways and vehicular crossings;
- (c) New footpaths within the road related area;
- (d) Relocation of any existing above ground utility services
- (e) Relocation/provision of street signs
- (f) New or replacement street trees;
- (g) 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.
- (h) New or reinstated kerb and guttering within the road related area; and
- (i) 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

101. **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.

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

102. **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; and
- d. Pipe inverts levels and surface levels to Australian Height Datum.

Section H – Operational Conditions (Ongoing)

- 103. Any outdoor/security lighting must be located, designed, oriented and shielded in a manner that does not cause disturbance to surrounding premises and/or passing vehicular traffic. This requirement also applies to external lighting within the rooftop communal open space area.
- 104. Any new boundary fencing erected along the side and rear boundaries shall not exceed a height of 1.8m.
- 105. Any new electrical and telecommunication connections to the site are to be carried out using underground cabling.
- 106. Any materials or surfaces addressing the public domain on the ground and first floor (where accessible by members of the public) shall utilise graffiti-resistant materials.
- 107. All communal entrances for the building will be capable of being secured. Entry doors are to be self-closing and signs are to be displayed requesting that building occupants not wedge doors open.
- 108. If any security screens/grilles are installed, they are to be openable from within the building.
- 109. Building identification numbering that presents to public areas (ie the adjoining road reserve) are to be at least 7cm high and are to be situated 1-1.5m above ground level on the street frontage. The numbering is to be constructed from durable materials and shall not be obscured by vegetation.
- 110. At least one (1) hose cock is to be made available within the rooftop communal open space area.
- 111. **Noise Control** - The use of the premises will 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*.

112. **Amenity of the Neighbourhood** - The implementation of this development will 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.
113. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping will be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas.

The maintenance of the landscaping shall be undertaken in perpetuity. Should any plants or trees die, then they shall be replaced with the same species (i.e. like for like).

114. **Annual Fire Safety Statement** - The owner of the building premises will 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 will 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.
115. **Responsibility of Owners Corporation** - The Owners Corporation will be responsible for presenting all approved waste and recycling receptacles for collection, and returning all receptacles to the waste collection room, as soon as practicable after they have been serviced.
- The Owners Corporation will 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.
116. **Management of Waste Facilities** – The ongoing management of onsite waste facilities shall be undertaken in accordance with the following requirements:
- (a) Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.
 - (b) Any cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners.
117. The ongoing operation of recycling and waste management services is to be undertaken in accordance with the Waste Management Plan.
118. Any external plant/air-conditioning system must not exceed a noise level of 5dBA above the background noise level when measured at the boundaries of the property.
119. Any graffiti on the site is to be removed within forty-eight (48) hours.

Section I – Operational Requirements under the Environmental Planning & Assessment Act 1979

120. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.

Should Council be appointed as the Principal Certifying Authority, the Construction Certificate Application must be accompanied by details, with plans prepared and certified by an appropriately qualified person demonstrating compliance with 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.

121. **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.

122. **Notification Requirements of Principal Certifier** - No later than two days before the building work commences, the Principal Certifier 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.

123. **Notice of Commencement** - The applicant must give at least two days notice to the Council and the Principal Certifier of their intention to commence the erection of a building.
124. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifier. 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.
125. **Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the Principal Certifier at least 48 hours before each required inspection needs to be carried out. Where Georges River Council has been appointed as the Principal Certifier, 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.
126. **Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue the Occupation Certificate.

Section K Prescribed Conditions

127. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
128. **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.
129. **Clause 98A – Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifier and the Principal Contractor.
130. **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.
131. **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.
132. **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.

END CONDITIONS

NOTES/ADVICES

133. **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.
134. **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.
135. **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.
136. **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.
137. **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.

138. **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.
139. **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.

140. **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).

141. **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/nglg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the Protection of the Environment Operations Act 1997.

Useful links relating to Noise:

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

ATTACHMENTS

- Attachment [1](#)  Streetscape - Issue B - 13-15 Gover St Peakhurst
- Attachment [2](#)  07 Elevations - Issue B - 13-15 Gover St Peakhurst
- Attachment [3](#)  08 Elevations - Issue B - 13-15 Gover St Peakhurst



