

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 19 September 2019
Time:	4.00pm
Venue:	Council Chambers, Civic Centre, Hurstville
Panel Members:	Adam Seton (Chairperson) Michael Leavey (Expert Panel Member) Helen Deegan (Expert Panel Member) Annette Ruhotas (Community Representative)

1. On Site Inspections - 1.00pm –3.30pm

- a)** 61-63 Lawrence Street, Peakhurst
- b)** 16 Peake Parade, Peakhurst
- c)** 2-6 Lacey Street, Kogarah Bay and 186-190 Princes Highway, Beverley Park

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

- LPP035-19 61-63 Lawrence Street, Peakhurst – DA2017/0584**
(Report by Development Assessment Planner)
- LPP036-19 16 Peake Parade, Peakhurst – DA2017/0627**
(Report by Senior Development Assessment Planner)
- LPP037-19 186-190 Princes Highway Beverley Park and 2-6 Lacey Street,
Kogarah Bay – DA2018/0513**
(Report by Senior Development Assessment Planner)

4. Confirmation of Minutes

MINUTES: Georges River Local Planning Panel (LPP) - 05 September 2019 (18/653)

LPP035-19

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 19 SEPTEMBER 2019**

LPP035-19

LPP Report No	LPP035-19	Development Application No	DA2017/0584
Site Address & Ward Locality	61-63 Lawrence Street, Peakhurst Peakhurst Ward		
Proposed Development	Lot consolidation, demolition of the existing structures and construction of three (3) storey residential flat building with basement parking.		
Owners	Younan Management Pty Ltd, CHY Holdings Pty Ltd, Maria A. Rasic		
Applicant	Cornerstone Design		
Planner/Architect	Cornerstone Design		
Date Of Lodgement	24/11/2017		
Submissions	Nil Submissions		
Cost of Works	\$3,390,000.00		
Local Planning Panel Criteria	Development is defined as a “Residential Flat Building” and is subject to SEPP 65. A Clause 4.6 variation in respect to exceedance of the height control		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy – Infrastructure, Draft Environmental State Environmental Planning Policy, Apartment Design Guide, Greater Metropolitan Regional Environmental Plan No 2 - Georges River Catchment, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No 1 - LGA Wide		
List all documents submitted with this report for the Panel’s consideration	Survey Plan, Architectural Plans, Landscape Plan, Concept Stormwater Plans, Statement of Environmental Effects,		
Report prepared by	Development Assessment Planner		

Recommendation	THAT the application be approved, in accordance with the conditions included within this report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction	Yes

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?	
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 - Clause 4.6 Statement submitted in respect to Height
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, however will be available when the report is published

Site Plan



Sites outlined in red

Executive Summary

Proposal

1. Council is in receipt of an application which proposes lot consolidation, demolition of all structures, tree removal and the construction a three (3) storey residential flat building containing fourteen (14) residential apartments and one (1) basement level accommodating twenty-two (22) parking spaces and associated landscaping works at 61-63 Lawrence Street, Peakhurst.

Specifically the development proposes fourteen (14) residential apartments with the following unit mix:

- 2 x 1 bedroom apartments
- 8 x 2 bedroom apartments; and
- 4 x 3 bedroom apartments.
(two (2) of the units are nominated as adaptable).
- One (1) basement level containing twenty-two (22) vehicle car parking spaces, two (2) being accessible and one (1) car wash bay.

Site and Locality

2. The development site involves the amalgamation of 61 and 63 Lawrence Street, Peakhurst.

The sites are rectangular in shape with No 61 Lawrence Street having a 15.24m arced front northern boundary, a 36.505m side eastern boundary, a 36.73m side western boundary, a 17.68m arced rear southern boundary and a total site area of 602.6sqm.

Number No 63 Lawrence Street has a 15.24m arced front northern boundary, a 36.32m side eastern boundary, a 36.505m side western boundary, a 17.68m arced rear southern boundary and a total site area of 599.1sqm.

The amalgamated allotments will result in a 30.48m arced front northern boundary, a 36.32m side eastern boundary, a 36.73m side western boundary, a 35.36m arced rear southern boundary and a total site area of 1,201.7sqm.

Zoning and Permissibility

3. The development site is zoned R3 Medium density residential under the provisions of the Hurstville Local Environmental Plan (HLEP) 2012. The proposed development is a '*Residential Flat Building*' and satisfies the objectives of the zone and is permissible with consent in the zone.

Clause 4.6 Variation - Height

4. The proposed development seeks a maximum height of 13.85 metres, a variation to clause 4.3 Height of Buildings under the provisions of the Hurstville Local Environmental Plan (HLEP) 2012. The maximum building height for the development is 12m; the proposed development seeks a 1.85m variation, equating to a 15.4% variation. The height breach is due to the proposed lift overrun and pergola/shade structure located on the Roof Top Level.

Submissions

5. The proposed development was notified and advertised to the surrounding residents/owners from 6 December 2017 to 5 January 2018. No submissions were received by Council.

Conclusion

6. This application has been assessed having regard to the matters for consideration under Section 4.15(1) and 4.15(3) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plans. The application seeks lot

consolidation, demolition of all structures, tree removal and the construction a three (3) storey residential flat building containing fourteen (14) residential apartments and one (1) basement level accommodating twenty-two (22) parking spaces and associated landscaping works.

Following a detailed assessment it is recommended that Development Application No. DA2017/0584 be approved subject to the recommended conditions at the end of this report.

Report in Full

Proposal

7. The proposed development seeks lot consolidation, demolition of all structures, tree removal and the construction of a three (3) storey residential flat building containing fourteen (14) residential apartments and one (1) basement level accommodating twenty-two (22) parking spaces and associated landscaping works. Specifically, the proposed development contains the following;

Basement:

- Parking for twenty-two (22) vehicles which includes two (2) accessible spaces and four (4) visitor spaces, one (1) doubles as a car wash bay;
- Individual storage spaces allocated to each unit;
- Garbage room;
- Access lift;
- Access stairs;
- Cleaner's room;
- Six (6) bicycle parking spaces;
- Store room; and
- Meter room.

Ground Floor – Total: Five (5) Units:

- One (1) by three (3) bedroom apartment;
- Three (3) by two (2) bedroom apartment;
- One (1) x one (1) bedroom apartment;
- Lift; and
- Access stairs.

First Floor – Total: Five (5) Units:

- One (1) x three (3) bedroom apartment;
- Three (3) x two (2) bedroom apartments;
- One (1) x one (1) bedroom apartment;
- Lift; and
- Access stairs.

Second Floor – Total: Four (4) Units:

- Two (2) x three (3) bedroom apartments;
- Two (2) x two (2) bedroom apartments;
- Lift; and
- Access stairs;

Unit	Number of Units
1 bedroom units	2
2 bedroom units	8
3 bedroom units	4
Total	14



Figure 1: Northern elevation (view from Lawrence Street) of the proposed development (Source: Cornerstone Design, 2018)

The Site and Locality

- The subject development site is identified as Lot 248, DP 36317, No. 61 Lawrence Street and Lot 249, DP 36317, No. 63 Lawrence Street, Peakhurst.

The allotment is located on the southern side of Lawrence Street, between Pearce Avenue to the east and Trafalgar Street to the west.

The site is generally rectangular in shape with No 61 Lawrence Street having a 15.24m arced front northern boundary, a 36.505m side eastern boundary, a 36.73m side western boundary, a 17.68m arced rear southern boundary and a total site area of 602.6sqm.

No 63 Lawrence Street has a 15.24m arced front northern boundary, a 36.32m side eastern boundary, a 36.505m side western boundary, a 17.68m arced rear southern boundary and a total site area of 599.1sqm.

The amalgamated allotments will result in a 30.48m arced front northern boundary, a 36.32m side eastern boundary, a 36.73m side western boundary, a 35.36 arced rear southern boundary and a total site area of 1,201.7sqm.

Existing on site are single storey residential dwellings and seven (7), trees which are the subject of removal.

Council's nature strip/verge (directly in front of 61-63 Lawrence Street) accommodates two (2) street trees, which are to remain and be protected throughout construction. An

electricity power pole, a Telstra pit and a drainage lintel for the purposes of stormwater drainage exist within the public domain.

The site has a fall of 5.65m measured from the rear south-eastern corner (RL43.69) to the front north-western corner (RL38.04).

The site is located within the R3 - Medium Density Residential Zone and is not affected by bushfire, acid sulfate soils, heritage, heritage conservation or flooding. The rear southern boundary adjoins land that is zoned RE1 - Public Recreation, which is located adjacent to the road reserve of Forest Road (State Classified Road).

The immediate surrounding environment is characterised by residential development with a mixture of single dwellings, attached dual occupancies and residential flat buildings consisting of three (3) storeys.

The site is located approximately 1.4km from Riverwood Station and is located 300m (east) and 450m (west) from bus stops on Forest Road. Bus routes 943 and M91 provide services from Forest Road to Hurstville Station. The site is also located within a bus stop on Trafalgar Street which services bus route 944 to Riverwood Station and Hurstville Station.

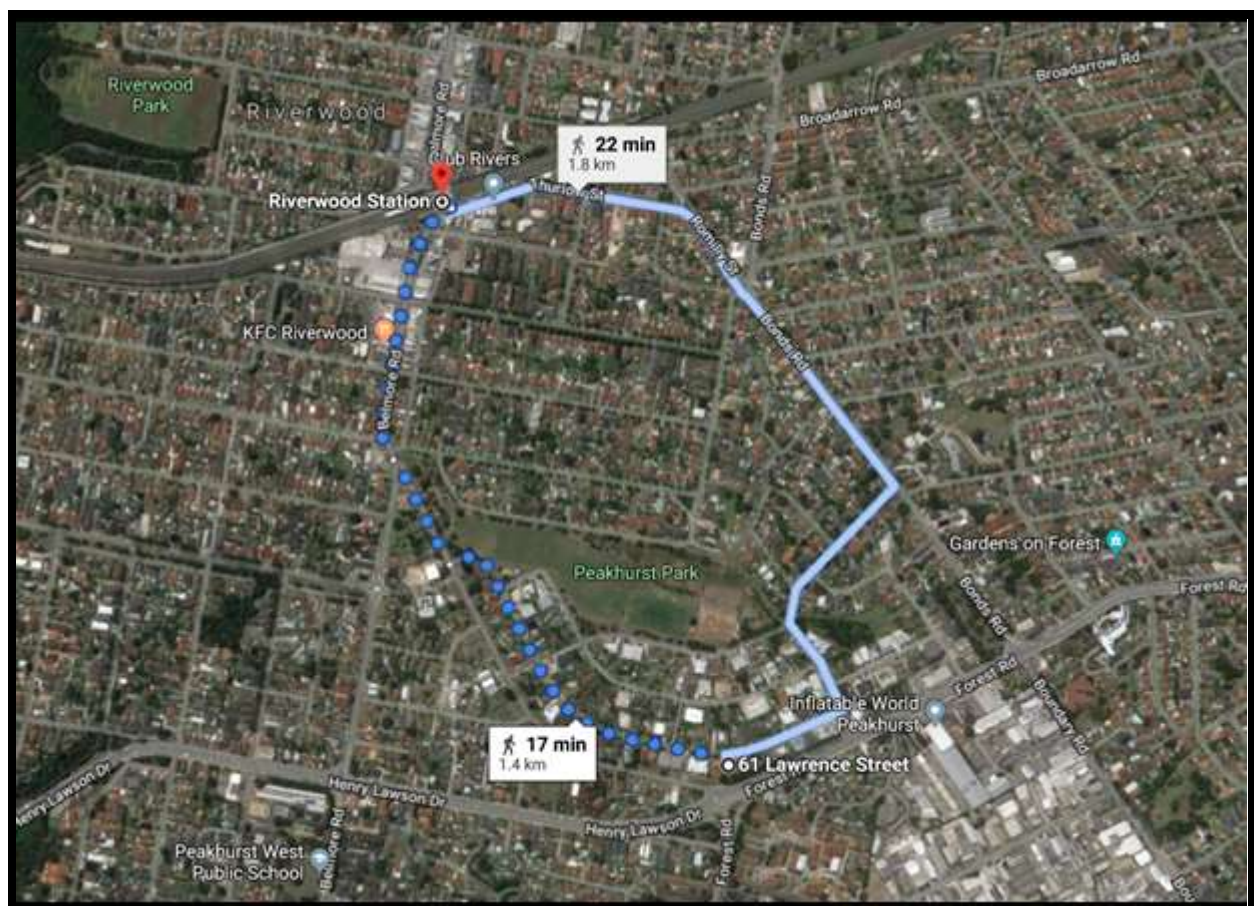


Figure 2: Locality map for 61 Lawrence Street, Peakhurst (Source: Google Maps, 2019)

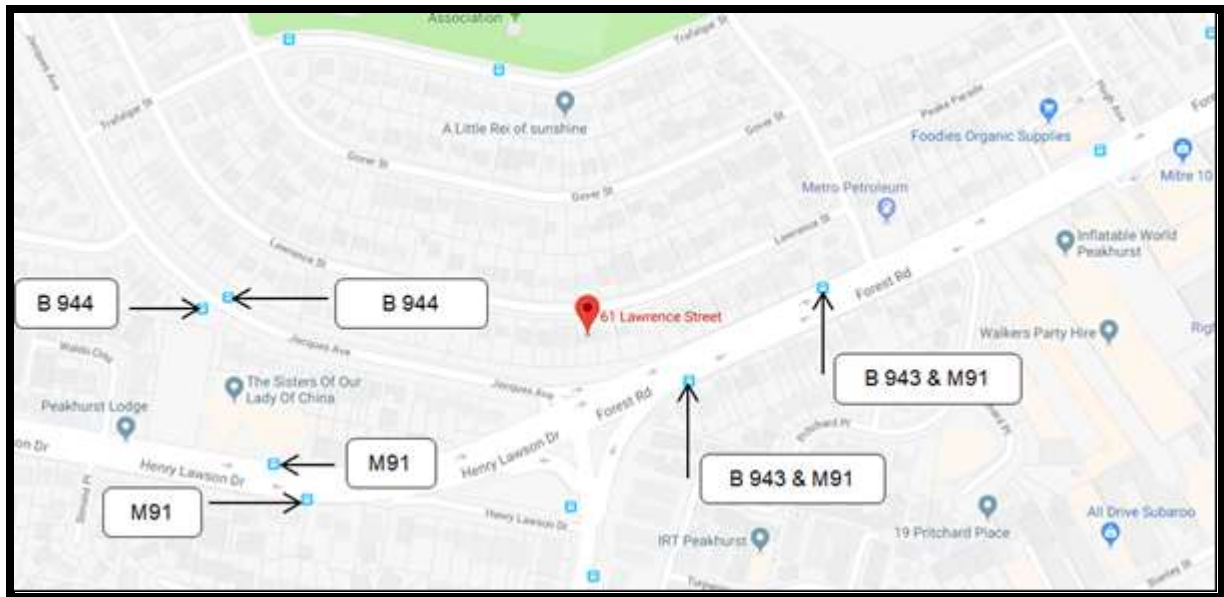


Figure 3: Bus routes from 61 Lawrence Street (Source: Google Maps, 2019)

Background

9. DA2004/0071 59-59A Lawrence Street, Peakhurst
Approved by Council on 21/04/2004
Construction of attached dual occupancy
- DA2013/0283 77-79 Lawrence Street, Peakhurst
Approved by NSW Land & Environment Court 15/10/2014
Demolition of existing structures and construction of a three (3) storey residential flat building comprising fifteen (15) units and basement carparking with nineteen (19) spaces.
- DA2014/1132 47-51 Lawrence Street, Peakhurst
Approved by JRPP on 07/05/2015
Affordable rental housing consisting of 3-4 storey residential flat building with 39 dwellings and basement car parking.
- DA2017/0000 53-57 Lawrence Street, Peakhurst
Approved by JRPP on 17/10/2016
Demolition of existing structures and construction of a residential flat building containing 21 dwellings with basement parking (Crown Application).
- DA2016/0276 1-3 Pearce Avenue & 83 Lawrence Street, Peakhurst
Approved by Delegated Authority on 13/06/2017
Demolition of existing structures and removal of trees, construction of a three (3) storey residential flat building with basement parking accessed from Lawrence Street and Strata subdivision.
- DA2016/0224 65-67 Lawrence Street, Peakhurst
Deffered by LPP on 03/12/2018
Construction of a part 3, part 4 storey residential flat building containing 13 apartments, basement car parking for 19 vehicles and associated landscaping and site works.

Zoning

10. The subject site is zoned R3 – Medium Density Residential under the Hurstville Local Environmental Plan (HLEP), the proposed 'Residential Flat Building' is permissible in the zone with the consent. The proposal satisfies the zone objectives which are:

- *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.*



Figure 4: Zoning Map for 61 and 63 Lawrence Street, Peakhurst outlined in blue

APPLICABLE PLANNING CONTROLS PLANNING ASSESSMENT

Environmental Planning Instruments

Hurstville Local Environmental Plan 2012

11. The provisions of the Hurstville Local Environmental Plan (HLEP) apply to the proposed development which complies with the relevant provisions as follows.

Clause	Standard	Proposal	Complies
2.3 – Zone objectives and	R3 – Medium Density Residential	The development is consistent with the zone	Yes

land use table		objectives and land use table.	
4.3 – Height of Buildings	12m as identified on Height of Buildings Map	13.85m.	No (1)
4.4 – Floor Space Ratio	1:1 as identified on Floor Space Ratio Map	FSR = 1:1.	Yes
4.6 – Exceptions to development standards	Formal written request required addressing provisions of Cl.4.6	Formal written request lodged and addressed in detail as part of this assessment	Yes - Clause 4.6 Statement addresses relevant provisions of Clause 4.6.
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	<p>The proposed earthworks involve excavation to accommodate one (1) level of basement car parking.</p> <p>The proposal is considered acceptable having regard to the provisions of this clause.</p> <p>The works are unlikely to have a detrimental impact on environmental functions and processes, neighbouring uses, or features of the surrounding land.</p> <p>The proposed basement is fully contained within the building footprint with soft landscaping and deep soil areas proposed along the side, rear and front boundaries.</p> <p>A condition has been recommended for dilapidation reports for the adjoining allotments and the excavation shall be undertaken using rock saws if required.</p>	Yes

12. Clause 4.3 - Height of Buildings – **(1)**

The proposed development seeks a variation to the development standard relating to height. Hurstville Local Environmental Plan 2012 identifies a maximum height of 12m. The proposed development will have a maximum height of 13.85m.

A variation to the height can be considered under Clause 4.6 – Exceptions to Development Standards in the Hurstville Local Environmental Plan. In assessing the variation, the provisions identified in Clause 4.6 have to be considered. The applicant's town planning consultant, Planning Principles has provided a response which is detailed and considered below.

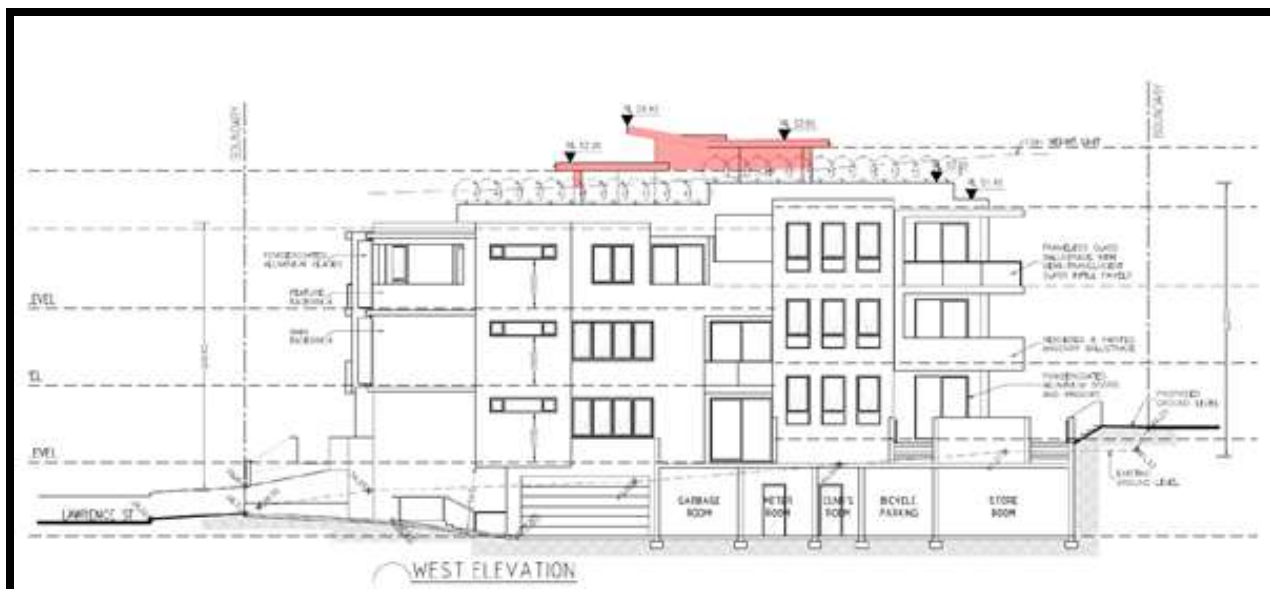


Figure 5: Western elevation of the building illustrating area of non-compliance with the height control in red (Source: Planning Ingenuity, 2018)

Clause 4.6 Exceptions to development standards

13. The objectives of Clause 4.6 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The Applicant has shown the elements which exceed the height control and Council has concluded with the following:

- The lift over run which reaches a RL of 54.0 and achieves an overall numerical height of 13.0m, amounting to 1.0m over the height control.
- A roof extension of 1.43m, which reaches a RL of 54.4 and achieves an overall numerical height of 13.85m.

The non-compliance amounts to 1.85m (breach to Clause 4.3 – Height of Buildings to the HELP, 2012) which equates to a 15.4% variation in the standard.

Is the planning control in question a development standard?

Comment: Yes Clause 4.3 - Height of buildings is a development standard.

What is the underlying objective or purpose of the standard?

Comment: The objectives of Clause 4.3 Height of buildings Standard are;

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,
- (c) to nominate heights that will provide a transition in built form and land use intensity,
- (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,
- (f) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,
- (g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.

14. Applicant's comment:

"Clause 4.3(2) of Hurstville Local Environmental Plan 2012 relates to the maximum height requirements and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 12m. Building height is defined as:

"Building height (or height of building) means:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

Figures 13, 14 and 15 of this report provide elevations and a sectional diagram indicating that due to the provision of a roof shading structure and the lift overrun when compared to the and the natural fall of the land, the building height exceeds the maximum permissible for the site. The height non-compliances are shaded in red".

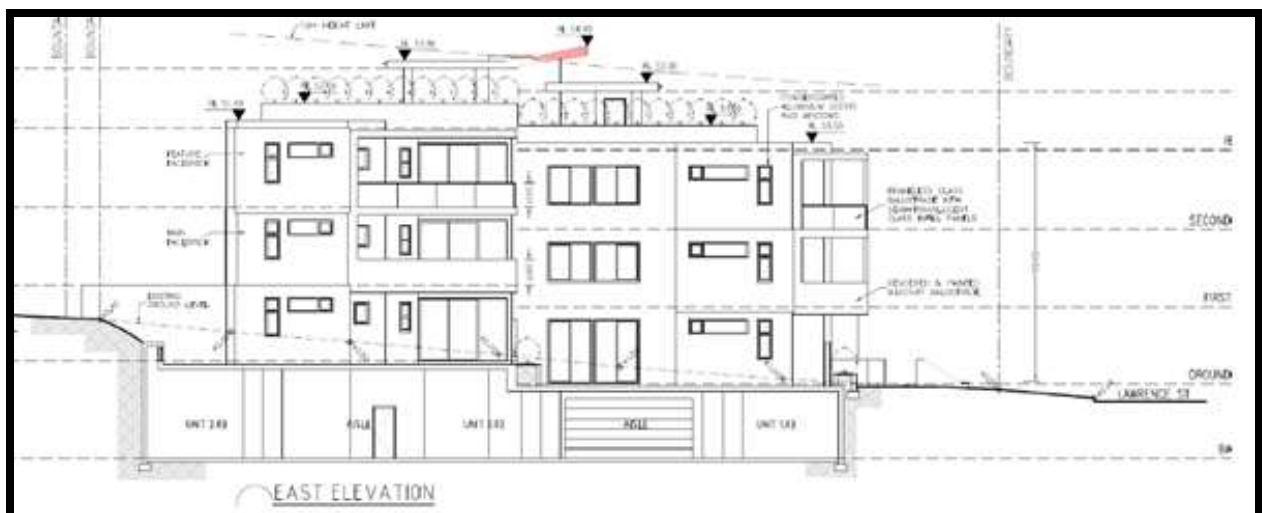


Figure 6: 'Figure 13' from the submitted Statement of Environmental Effects (SEE) Eastern Elevation (Source: Planning Ingenuity, 2018)

“As indicated in the eastern elevation, all residential floor space a significant amount of the building is located below the maximum height limit and the projecting elements are limited to the lift overrun and shading structure where the site falls away to the street frontage. In addition, the building is fully compliant with the height requirements at the street frontage to Lawrence Street”.

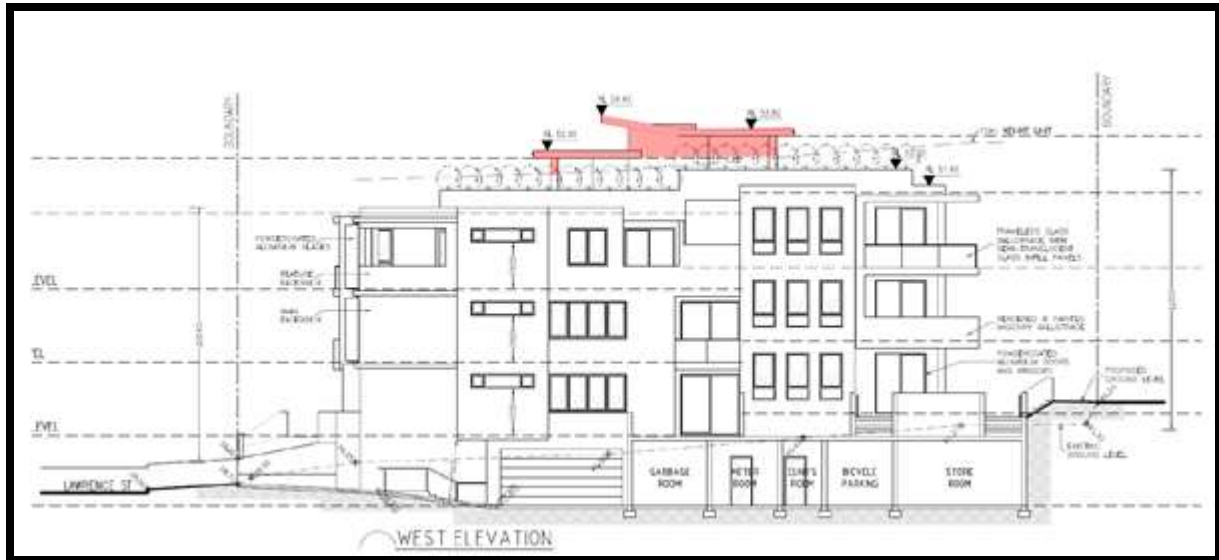


Figure 7: 'Figure 14' from the submitted Statement of Environmental Effects (SEE) Western Elevation (Source: Planning Ingenuity, 2018)

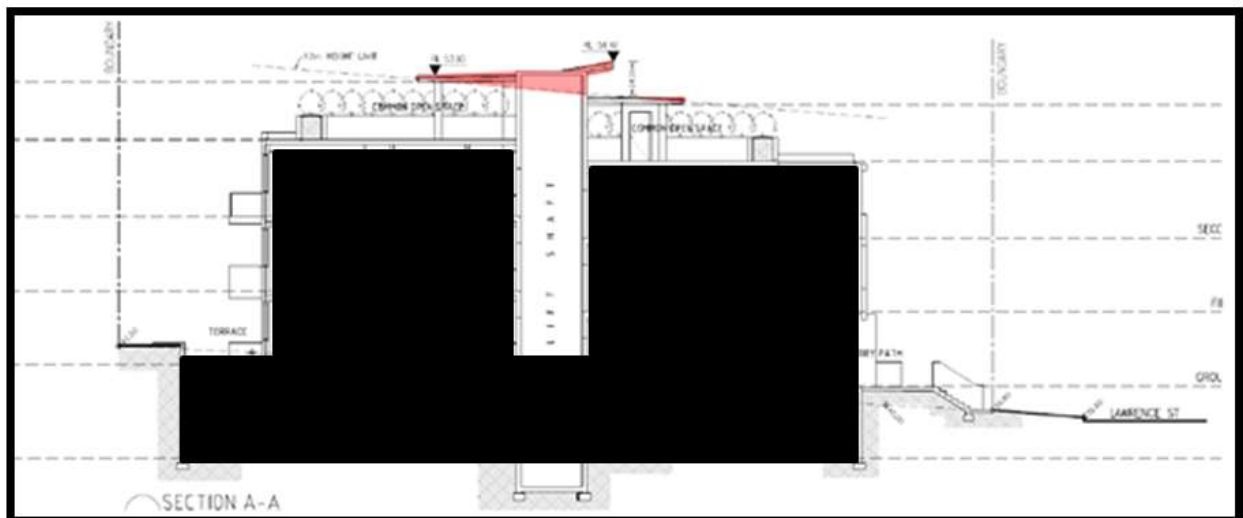


Figure 7: 'Figure 15' from the submitted Statement of Environmental Effects (SEE) Section Plan (Source: Planning Ingenuity, 2018)

“As indicated in Figure 14 the height non-compliance is limited to the centre of the building where access to the roof top terrace is achieved via lift and stair access and the shade structure is provided. The maximum extent of non-compliance is 1.85m above the 12m height plane, representing a variation of 15.4% of the standard”.

“The building has been designed to be below the height requirement at the street edge and results in a building that is consistent with the scale of development expected at the site. Maximum height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP”.

Officer Comment - The applicant's justification is supported. As identified in red, the extent of the height variation relates to the lift overrun and vergola which is centrally located within the building footprint. The proposed variation does not comprise of floor space or area which could be readily converted into floor space.

The height of the building results in minimal additional impacts of overshadowing or visual bulk when viewed from the adjoining allotments and the public domain, when compared to that of a numerically compliant building, the additional shadowing resulting from the additional height will fall within the allotment boundary and not adversely impact the southern allotment.

Given the above, the proposed variation is not inconsistent with the objectives of Clause 4.3, and is acceptable despite the numerical non-compliance.

15. **4.6 Exceptions to development standards**

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

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

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

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

- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note - When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*

(ca) clause 6.6.

Applicant's Comment: *"The development standards in clause 4.3 are not "expressly excluded" from the operation of clause 4.6.*

Objective 1(a) of clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8).

This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6)".

Objective 1(b) of clause 4.6 is addressed later in this request.

The balance of this request will be divided into the following sections, each dealing with the nominated aspect of Clause 4.6:

- *consistency with the development standard objectives and the zone objectives (Clause 4.6(4)(a)(ii));*
- *sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)); and*
- *that compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a)).*

Consistency with the Objectives (Clause 4.6(4)(A)(li))

16. The objectives and relevant provisions of clause 4.3 are as follows, inter alia:

4.3 Height of buildings

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

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,*
- (c) to minimise the adverse impact of development on heritage items,*
- (d) to nominate heights that will provide a transition in built form and land use intensity,*
- (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,*

- (f) *to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (g) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Applicant's Comment: *"The Height of Buildings Map nominates a maximum height of 12m for the site. It is hereby requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum height of 13.85m (RL54.4), excess of 1.85m to accommodate the lift overrun and a shade structure at the roof top of the building.*

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

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of clause 4.4 are addressed in turn below".

Objective (a):

"Objective (a) seeks to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality. The proposal is fully compliant at the Lawrence Street frontage and will be consistent with the height and scale of future residential flat building development. Due to the minor non-compliance being limited to the lift overrun and shade structure at the centre of the building, the development is generally indistinguishable from a fully compliant scheme when viewed from the public domain and the adjoining street frontage. As such, it cannot be said that the proposal by virtue of the minor height exceedance is incompatible with the desired future character of the surrounding properties".

Officer Comment - The locality during the up-zoning was considered capable of supporting increased population within this precinct. The proposed development provides for a range of unit types and sizes to meet the demand of the public.

Objective (b):

"Objective (b) seeks to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development and the adjoining public domain from buildings. As detailed at Section 4.3.5.1 of the Statement of Environmental Effects, the proposal has been designed to minimise loss of privacy and is of a contemporary aesthetic that will not give rise to visual impact. The portion of the building that exceeds the building height is minor and limited to the centre of the building. The proposal is fully compliant with the building height requirements for the remainder of the building and where it fronts Lawrence Street the building appears to be of a scale that is expected at the site.

The non-compliant parts of the building will not in itself create any amenity related impacts due to the centralised location of the non-compliance on the building. On this basis, the proposal is consistent with objective (b)".

Officer Comment - The design of the development providing the additional height centrally, ensures that a high level of amenity is achieved for the development and maintained to the surrounding residential properties.

Objective (c):

“There are no heritage items in the vicinity of the subject site and therefore objective (c) is met”.

Officer Comment – There are no heritage items in the visual catchment of this site.

Objective (d):

“Objective (d) seeks to nominate heights that will provide a transition in built form and land use intensity. As discussed, the site is located at the centre of the medium density area and would have no impact upon any nearby lower density residential zones. The minor height non-compliance would have no bearing on built form or land use intensity and is therefore entirely consistent with this objective”.

Officer Comment - The additional height is located centrally and does not adversely impact upon the public domain or the adjoining allotments. The breach in height is for the lift overrun and communal open space infrastructure is consistent with other developments within this precinct and does not undermine this objective.

Objective (e):

“The site is not located within Hurstville City Centre and is therefore not applicable to the subject site”.

Officer Comment - The applicant's justification is considered sound given that the underling objectives have been satisfied.

Objective (f):

“In relation to objective (f) the locality is undergoing a transition from low density to medium density development and therefore the existing character of the area will undergo change. The requirements of objective (f) are therefore not impacted by the proposed height non-compliance”.

Officer Comment - The additional height of the lift overrun and vergola above the 12m standard will not result in a visually dominant form and a scale not envisaged by the up-zoning. The additional overshadowing will fall upon itself and not cause any material impacts onto the adjoining allotments. The non-compliance with the height standard does not contribute to an unreasonable visual impact or loss of privacy to adjoining properties.

Objective (g):

“Due to its centralised location on the proposed building, the increased height of 1.85m to the lift overrun and shade structure will not result in any adverse environmental effects on the use or enjoyment of adjoining properties and the public domain. The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance”.

Officer Comment - Despite the height non-compliance of the lift overrun and the roof top communal open space infrastructure, the scale, form and intensity of the building is consistent with the intended character, scale and from of the uplift of the precinct.

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of the R3 – Medium Density Residential zone are as follows:

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

Applicant's Comment: "The proposal will provide a medium density residential development that provides a range of unit layouts, orientations, internal living arrangements as well as the required number of adaptable dwellings. The proposal is a well-designed and sited residential flat building that offers high levels of residential amenity and is entirely consistent with the intentions of the zone".

Officer Comment - The development is considered to observe the objectives of the height development standard. The proposal is considered to positively contribute to broadening of the variety of housing types within this Medium Density Residential zone.

Sufficient Environmental Planning Grounds (Clause 4.6(3)(b))

17. 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, as discussed above it is considered that there is an absence of significant impacts of the proposed non-compliance on the amenity of future building occupants, on area character and on neighbouring properties. The assessment of this numerical non-compliance is guided by the decision of the NSW LEC Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson.

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", it is considered that the current proposal will facilitate greater amenity for future residents on a site that is highly suited for such purposes and in a configuration that will not detract from the existing approved developments or future anticipated development on neighbouring properties.

The alternative would be to remove or relocate the communal open space to ground level adjacent to private open space within the site and on adjoining sites. This would significantly reduce the recreational amenity for future occupants which would be counterproductive as there is no adverse impact created by the non-compliance.

An alternative relocation would reintroduce visual and acoustic privacy conflicts and greatly reduce gross floor area, meaning that the allowable density could not be realised, contrary to the zoning objectives.

The height departure relates to encroachment of the lift over run and protruding shade structure, with the remainder of the building positioned below the maximum building height limit.

The lift over run is a core service element of the development and is setback significantly from the Lawrence Street facade and will not be readily visible from the street level. The shading device provides necessary amenity benefits to residents using the communal area.

There are sufficient environmental planning grounds to justify the variation of the height control, particularly given that:

- The development has been designed to minimise impacts where practicable on neighbouring properties and likely future adjoining properties;*
- Strict compliance with the building height standard would result in no material built form benefits and loss of resident amenity;*
- The proposed height non-compliance relates to parts of the building that will be imperceptible to the casual observer when viewed from the adjacent street frontage of from private properties;*
- The non-compliant sections of the building do not contribute to overshadowing or loss of privacy; and*
- The non-compliant sections of the building do not result in view loss*

The desire to achieve high amenity communal open space at the rooftop (as encouraged by Council) provides clear amenity benefits for the residents of the development, but not to detriment of the amenity of adjoining residents or to area character. For Council to insist on strict compliance in this instance would require relocation of the communal space and potentially the loss of habitable floor area. This would result in an unreasonable burden on the development that is to be balanced with the impacts, or lack thereof, resulting from the non-compliance”.

Officer Comment - Flexibility in applying the standard is appropriate and the requisite levels of satisfaction required by the controls have been achieved in this case, given the minor variation to the lift overrun and vergola. The variation, at the highest point of the building is the lift over-run to ensure appropriate access is available to the communal rooftop area.

Insistence on compliance is unreasonable and unnecessary (Clause 4.6(3)(a))

18. Applicant's Comment: *“Returning to Clause 4.6(3)(a), 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. It states, inter alia:*

“An objection under State Environmental Planning Policy (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).”

However, in Four2Five v Ashfield Council [2015] NSWLEC 90 the Land and Environment Court said that whether something was ‘unreasonable or unnecessary’ is now addressed specifically in Clause 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary. Accordingly, while the objectives of the standard are achieved despite non-compliance with the standard, this request goes further. It seeks to demonstrate that requiring strict adherence to the standard would be ‘unreasonable or unnecessary’ for reasons that are additional to mere consistency with the development standard.

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 of 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.*

Additionally, in an analogous context, in Botany Bay City Council v Saab Corp [2011] NSWCA 308 Court of Appeal said that a requirement may be unreasonable when ‘the severity of the burden placed on the applicant is disproportionate to the consequences attributable to the proposed development’. In support of this point:

- The proposed height variation will be visually imperceptible when viewed from the adjoining properties and public domain;*

- *The proposed development meets the objectives of the height control and strict compliance with the height control would undermine or thwart its objectives, or the zone's objectives (or both); and*
- *The burden placed on future residents (by relocating the communal open space area to ground level adjacent to private open space) would be disproportionate to any consequences that may arise from the proposed non-compliance with the height control.*

Given that compliance with the zone and development standard objectives is achieved and that the building complies with the overall height limit except for an overall encroachment of a lift over run and shade structure, insistence on strict compliance with the building height control is considered to be unreasonable and unnecessary in the circumstances.

The proposal is compliant with the relevant objectives and will have no adverse environmental or amenity impacts. The proposal is therefore justified on environmental planning grounds. For the reasons above, the proposed building height variation is consistent with the requirements of Clause 4.6(3) of the Local Environmental Plan (LEP).

On this basis, the requirements of Clause 4.6(3) are satisfied.

The proposal will provide a residential development with superior amenity and streetscape presentation. This is achieved by well-planned and functional built form. The non-compliance relates essentially to the provision of communal open space on the roof level. This will provide significant high quality amenity (views and solar access) to the future occupants of the building with minimal impact on surrounding development. There would be no broader environmental planning benefit achieved in requiring compliance.

Accordingly, for the reasons stated above, we respectfully request that Council permit the variation to the maximum building height development standard”.

Officer Comment - The applicant has provided a written variation request. A copy of this Clause 4.6 request for variation is provided for the Panel's consideration.

Environmental Planning and Assessment Regulations 2000

19. The proposed development satisfies the relevant matters for consideration for development under the regulations.
20. The consent authority is required to consider the objects in Section 1.3 of the EP&A Act when making decisions under the Act. Council has considered the objectives of the EP&A Act in the Table below and is satisfied that the proposal complies with all objects.

Objects of the EP&A Act	Proposal	Complies
a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposal is not considered to be inconsistent with this objective.	Yes
b) to facilitate ecologically	The proposal is accompanied by	Yes

sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment	a revised BASIX Certificate which satisfies the requirements under State Environmental Planning Policy (BASIX) 2004 and the Regulations.	
c) to promote the orderly and economic use and development of land	The proposal is considered to provide an orderly and economic development of the land given the recent up-zoning of the precinct.	Yes
d) to promote the delivery and maintenance of affordable housing	<p>The proposal seeks development consent for fourteen (14) units, being a combination of 1, 2 and 3 bedroom units.</p> <p>The proposal does not seek to provide or retain affordable housing.</p>	N/A
e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal does seek the removal four (4) trees on the site. The proposal is supported by Council's Landscape Officer; subject to conditions of consent.	Yes
f) to promote the sustainable management of built and cultural heritage	The proposal is not listed as a heritage item or within the immediate vicinity to a heritage item or conservation area within a Local or State Heritage register.	Yes
g) to promote good design and amenity of the built environment	The proposal is considered to result in a reasonable design.	Yes
h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposal is considered to satisfy the intent of this control, to ensure appropriate construction and maintenance which is supported by Council's Building Surveyor.	Yes
i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	<p>The Design Review Panel is a Council Panel.</p> <p>This application, being the subject of State Environmental Planning Policy 65 is required to be determined by the Georges River Local Planning Panel in accordance with the Ministerial Direction.</p>	Yes

j) to provide increased opportunity for community participation in environmental planning and assessment	The proposal was notified in accordance with the Hurstville Development Control Plan (HDCP). No submissions were received.	Yes
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LPP035-19

State Environmental Planning Policies (SEPP)

21. Compliance with the relevant State Environmental Planning Policies (SEPP) is detailed and discussed below.

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

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

Comment: The proposal generally satisfies the objectives and provisions of the Regional Environmental Plan (REP).

State Environmental Planning Policy 55 – Remediation of Land

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

Contamination and remediation to be considered in determining development application

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
 - (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital-land:*
 - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

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

The subject site contains an older style single storey dwelling house at 61 Lawrence Street and 63 Lawrence Street is currently vacant. A desktop review has been conducted and it is evident that both sites have been historically used for residential purposes for many decades.

Table 1 of the Contaminated Land Planning Guidelines identifies contaminating uses that would trigger the preparation of a preliminary site investigation plan to determine if and the extent of any contamination. The uses of the site identified in Council's records do not show any uses identified in Table 1. Council's records also do not show any action or information relating to contamination being identified on the site.

State Environmental Planning Policy (Infrastructure) 2007 (SEPP (Infrastructure))

24. Comment: Clause 101 of the State Environmental Planning Policy relates to development with frontage to a classified road. Forest Road is located at the rear of the Site. This roadway is a classified arterial road, however, there is no access from the site to this roadway. As such Clause 101 is not applicable in this case. Clause 102 of the State Environmental Planning Policy (Infrastructure) relates to the assessment and consideration of road noise or vibration on non-road development.

This clause is applicable to developments that are “on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average

daily traffic volume of more than 20,000 vehicles". The RMS website includes traffic volumes at various locations.

The corner of Forest Road and Stoney Creek Road which is noticeably 300m to the east of the site records traffic volumes in excess of 30,000 vehicles daily. The subject site does not address Forest Road and is screened and setback from the roadway by an existing vegetated verge however an acoustic report was prepared and accompanies the application.

In accordance with the State Environmental Planning Policy a condition is included to ensure that the recommendations of the acoustic report are integrated into the construction of the building and a condition is included to ensure that *"if the development is for the purposes of residential use, 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 10pm and 7 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time."*

The development will be constructed to satisfy the provisions of the State Environmental Planning Policy.

The recommendations within the acoustic report relate to installing appropriate double glazing to windows, insulation, minimum wall thicknesses being incorporated etc.

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

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

Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of "Residential Apartment Development" (RAD)	Complies with definition	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB	Comprises the erection of a new residential flat building	Yes

50(1a) – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect Mr. Nickolas Lycenko (Registration No.3010)	Yes
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LPP035-19

Part 2 Design Quality Principles under the SEPP

26. The original proposal was referred to the Design Review Panel (DRP) on 1 March 2018 and the Panel was critical of the design when assessed it against the nine (9) Design Quality Principles and ADG. The Design Review Panel (DRP) supported the application subject to amendments which are identified below. The Design Review Panel (DRP) concluded the meeting stating that the proposed application satisfies the design quality principles contained in State Environmental Planning Policy 65.

The table below highlights the comments in italics which are the original Design Review Panel (DRP) comments.

Clause	DRP Panel comments	Complies
1 – Context and neighbourhood character	<i>The context is one of evolving medium-density 3-4 storey apartment buildings, some on substantially sloping sites. The site falls 3m from the rear to the front (and the rear boundary is approximately 2m below Forest Road). There are three (3) substantial trees to the rear of the property which are on public land which make a positive contribution to the character of site and neighbourhood.</i>	Yes, contextually the development is consistent with the changing nature of the streetscape and the desired future character of this precinct.
2 – Built form and scale	<i>Built form is appropriate for the evolving context and complies with the Local Environmental Plan and Development Control Plan controls.</i>	Yes
3 - Density	<i>Appropriate</i>	Yes
4 – Sustainability	<i>Rainwater storage must be provided. The volume of storage must be sufficient to irrigate the soft landscape areas for a number of weeks without rain. Storage must be located under hardstand or out of deep soil areas.</i>	Yes, the proposed development is supported by a rainwater tank. Council's Land Development Engineers have reviewed the drainage design and have requested design changes prior to the issue of a Construction Certificate (CC).
5 - Landscape	<i>The large areas of paved surfaces at ground level should be broken up with planters and areas of soft landscape to create human-</i>	Yes, the proposed development is supported by

	<p><i>scale spaces suitable for multiple uses.</i></p> <p><i>The communal open space on the rooftop should, likewise, be designed with a variety of distinct components so as to be amenable for small groups and individuals rather than large gatherings only. A small amenities room should be included.</i></p> <p><i>The design must conserve the existing street and verge trees on Lawrence Street and Forest Road.</i></p> <p><i>A more attractive and convenient pedestrian access to the front of the site could be provided by deleting the stairs and designing an attractive, level landscaped pathway from the north east corner of the site to the front door.</i></p> <p><i>Direct ground floor access should be provided to Unit G.01 from Lawrence Street.</i></p> <p><i>The tree protection zones of trees to be retained must be identified, shown on plan and respected in the design of all disciplines including civil engineering, architecture and landscape architecture.</i></p>	<p>Council's Management Officer; conditions of consent.</p> <p>Tree with of</p>
6 - Amenity	<i>Satisfactory</i>	Yes
7 – Safety	<i>Acceptable</i>	Yes
8–Housing diversity and social interaction	<i>Acceptable</i>	Yes
9 - Aesthetics	<p><i>Further consideration should be given to the vertical blades on the street façade to resolve outlook, privacy and wind protection. Although as proposed they would be acceptable in appearance, their functional value is problematic.</i></p>	<p>Yes – the amendments are considered acceptable;</p>

27. Design Review Panel Recommendation

The final comments from the Design Review Panel stated “*The Panel supports the application subject to the issues raised above being resolved. The application satisfies the design quality principles contained in SEPP 65*”

The applicant provided amended plans addressing the above recommendations which were submitted to Council on 26 March 2018.

28. Clause 30 – Consideration of Apartment Design Guide

Clause	Standard	Proposal	Complies
2E – Building depth	12-18m	13.85m	Yes
2G – Street setbacks	Align street setbacks with building use. For example in mixed use buildings a zero street setback is appropriate	The proposal is forward of the existing building alignment of the adjoining properties, at present they are existing housing stock that have not been developed. HDCC suggests a front setback of 6m. The proposal is setback between 5.8m to 6m.	Yes; the proposed development will be consistent with other approved and constructed residential flat buildings within the precinct.
3D-Communal and Public 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>Site Area: 1,201.7sqm</p> <p>Required: 300.4sqm.</p> <p>Provided: 425sqm and 35.4%.</p> <p>The subject allotment is not located within a business zone; the proposal is located within an established medium density residential area.</p> <p>A communal rooftop area is provided as open space.</p> <p>Large balconies are provided on the southern and eastern facades of the proposed development.</p> <p>A Public recreational area zoned RE1 is provided directly south of the site; an access gate is provided for</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>	<p>residents to access the recreational area on the southern side of the site. No approval has been granted for this access by Council as a result this is to be deleted via a condition.</p> <p>The communal open space is provided in the form of a roof terrace. This space receives good access to sunlight all year round. A shade structure is provided over part of the roof terrace so that it is useable in all weather conditions.</p>	Yes
3E- Deep Soil Zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>-Where site area is between 650sqm and 1500sqm = 3m minimum dimension</p> <p>Deep soil = 7%</p>	<p>The site area is 1,207.1sqm therefore a deep soil zone equating to 7% of the site area is required.</p> <p>296.71sqm (24.69%) of the site is provided as deep soil landscaped area and the proposed deep soil area will allow for and support healthy plant and tree growth.</p>	Yes
3F- Visual Privacy	<p>1. 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)</p> <p>Habitable rooms and</p>	<p><u>Side (west)</u></p> <p>The proposal has a setback of 4.5m-6m to the western side boundary resulting in variation to the ADG of 1.5m for part of the elevation.</p> <p><u>Side (east)</u></p>	On merit – addressed in detail below.

	<p>balconies = 6m (12m separation distance)</p> <p>Non-habitable rooms = 3m (6m separation distance)</p>	<p>The proposal has a 5.64m-6.9m setback for the eastern side boundary with the majority of the side setback 6m and therefore seeks to vary the ADG standard by 0.36m for part of the elevation.</p> <p><u>Rear (south)</u> The proposal provides a setback of between 5m-6.2m to the rear boundary and therefore seeks to vary the ADG standard by 1m for part of the elevation.</p>	<p>On merit – addressed in detail below.</p> <p>On merit – addressed in detail below.</p>
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 driveway is located along the western side of the Site. A driveway width of 6m is proposed. The driveway grade is compliant with AS2890.1.	Yes
3J- Access and parking	<p>1. For development in the following locations:</p> <p>On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area;</p> <p>- The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant Council, whichever is less</p>	<p>The site is not within 800mm of a train station or light rail stop so Council's DCP provisions for Car Parking are applicable.</p> <p>A detailed assessment in conjunction with the HDCP is provided below.</p> <p>Twenty-two (22) car parking spaces are required; and the proposed application proposes twenty-two (22) car parking spaces;</p>	Yes

	The car parking needs for a development must be provided off street	The proposal is therefore compliant with this control.	
4A- Solar Access	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	<p>78.5% (11 of the 14) units comply. Units 1 – 3 on the lower ground floor do not achieve this criterion.</p> <p>7% (1 apartment) doesn't receive the minimum amount of solar access.</p>	<p>Yes</p> <p>Yes</p>
4B- Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	12 out of 14 units (86%) are designed and configured to permit natural cross ventilation. Specifically, window openings are provided on multiple elevations of each apartment to allow for the free movement of air through internal spaces.	Yes
4C – Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms = 2.7m</p> <p>Non-habitable rooms = 2.4m</p>	As per the submitted 'Section Plans' the proposed development provides floor to ceiling heights of 2.7m.	Yes
4D-Apartment size and layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm</p> <p>2 bedroom = 70sqm</p> <p>3 bedroom = 90sqm</p>	<p>1 – bed = 50sqm.</p> <p>2 – bed = 75.08sqm.</p> <p>3 – bed = 95.60sqm.</p>	Yes

	<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 units comply with the minimum internal areas. Where an additional bathroom is proposed an extra 5sqm has been provided to the dwelling.</p> <p>Within prescribed range.</p> <p>All windows meet the requirements of the NCC/BCA.</p>	Yes
4D-Apartment rooms, location and sizes	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Rooms are appropriately proportioned to comply with the numeric requirements of the ADG and to permit entry of sunlight and natural ventilation throughout habitable spaces.</p> <p>Each apartment has an open plan living, dining and kitchen area and the depth of these spaces is varied.</p> <p>Within prescribed range.</p>	<p>Yes</p> <p>Yes</p>
	<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>The proposed room areas comply with the relevant requirements.</p> <p>Each bedroom has a minimum dimension of 3m.</p>	<p>Yes</p> <p>Yes</p>

	<p>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 apartment layouts</p>	<p>Yes all apartments are compliant.</p> <p>No cross over or cross through apartments are proposed.</p>	<p>Yes</p> <p>Yes</p>
4E-Private Open Space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> - 1 bedroom = 8sqm/2m depth - 2 bedroom = 10sqm/2m depth - 3+ bedroom = 12sqm/2.4m depth <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 courtyard for the 1 bedroom apartment exceeds 2m in depth and 8sqm.</p> <p>All 2 bedroom apartment balconies exceed 2m in depth and 10sqm.</p> <p>All 3 bedroom apartment balconies exceed 2m in depth and 12sqm.</p> <p>Noted and used as part of the calculations.</p> <p>The units provided at ground level have generous terraces and landscaped private open space exceeding the minimum requirements.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4F-Circulation spaces	The maximum number of apartments off a circulation core on a single level	A maximum of 5 apartments off a single circulation space is provided.	Yes

	is eight		
4G- Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: 1 bedroom - 6m ³ 2 bedroom - 8m ³ 3 bedroom - 10m ³	All units have internal storage solutions in the form of cupboards, WIR and internal laundry's. The basement also includes allocated self-contained storage cages.	Yes
4K – Apartment Mix	A variety of apartment types is provided	4 x 3 bedroom apartments (28%) 8 x 2 bedroom apartments (57%) 2 x 1 bedroom apartments (14%)	Yes Appropriate mix of unit types is proposed.
4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The façade is well articulated and varied through the use of different materials and finishes.	Yes
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 appropriate and integrated as part of the design of the development. The provision of a large vergola at the roof level is considered compact and appropriate.	Yes
4O-Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The amount of landscaped area is considered satisfactory.	Yes
4P-Planting on structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance,	Landscaping of the site which includes planting on structures has been designed by a qualified landscape architect with details provided on species and soil	Yes

	contributes to the quality and amenity of communal and public open spaces.	depth. The Landscape Plan details the proposed planting arrangement and includes a series of larger trees and vegetation within the deep soil zones and retains some of the mature trees at the rear.	
4Q-Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Design and mix of apartments allows for different occupants with varying lifestyles from singles to families.	Yes
4R-Adaptive Reuse	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse	The proposed layouts and orientation of apartments allow for flexibility and the ability to facilitate a future adapted reuse.	Yes
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	Amended proposal incorporates an amended and compliant BASIX Certificate, with the commitments in the design to provide appropriate energy efficiency features.	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 site design	The development relies on an OSD basin/pump out tank with an overflow pit discharging to Lawrence Street.	Yes
4W-Waste Management	Waste management – storage facilities are	Waste facilities are provided which are	Yes

	appropriately designed, domestic waste is minimised by convenient source separation and recycling	accessible to all residents. The bins are to be stored within a separate bin storage room in the basement adjacent to the meter room.	
4X-Building Maintenance	Building maintenance – building design provides protection from weathering, enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates a mix of external finishes that require minimal maintenance such as face brick, timber and pre-fabricated coloured panels.	Yes

29. Justification for Clause 30 – Consideration of Apartment Design Guide in relation to Part 3F- Visual Privacy

Comment: The objective of the Design Criteria relating to visual privacy is as follows:

“Adequate building separation distances are shared equitably between neighbouring sites to achieve reasonable levels of external and internal visual privacy”.

30. In relation to the **western** side setback, the building length is 25.7m. The setback proposed ranges from a compliant 6m at the front and rear portion of the building (81.32% of elevation) and a non-compliant 4.5m towards the front portion of the elevation (18.68% of elevation). The proposed articulated elevation is depicted in Figure 8, where the non-compliance is highlighted orange.



Figure 8: Variation to setback on the western elevation.

The non-compliant portion of the building relates to bedrooms with habitable room windows and balconies complying with the setback control. In order to address this non-compliance, the openings to these rooms are highlight windows with sill heights of 2.0m. This prevents the ability to overlook the western allotment which currently contains an attached 2 storey dual occupancy.

The allotment to the west is zoned R3 also with a 12m height limit consistent with the subject site. The non-compliant setback has been mitigated though openings will not result in a reduced development potential for the western allotment. It is acknowledged that these bedrooms include an ensuite; as a result there is scope to remove this ensuite and relocate the bedroom further from the western boundary to achieve compliance with the setback control.

The setback non-compliance does not result in a significant increase in shadow cast onto the western allotment given the site orientation.

31. In relation to the eastern side setback, the building length is 25.2m and the setback proposed ranges from 5.64m to 6.9m along the length of the elevation. The proposed articulated elevation is depicted in Figure 9, where the non-compliance is highlighted orange.



Figure 9: Variation to setback on the eastern elevation.

The non-compliance along this elevation is to bedrooms. The encroachment is to part of the wall and is in an area where the site does narrow. The area where the encroachment occurs contains highlight windows to prevent the overlooking of the development site to the east. It is also acknowledged that this bedroom is serviced by an ensuite, if this was to be removed from the proposal the bedroom floor area at leach level could be reoriented with the development to set further from the eastern boundary achieving a compliant side setback.

It is further acknowledged the reduced setback will not result in a significant increase in overshadowing therefore not impacting the development potential of the allotment adjoining or adversely impact the amenity of the residential flat building approved in the site via DA2016/0224 on 3 May 2019, see image below.



Figure 10: Approved street elevation of 65-67 Lawrence Street Peakhurst

Of note Council has received DA2019/0340 on 8 August 2019 seeking a new residential flat building design for 65-67 Lawrence Street Peakhurst. Below is the street elevation and montage of the new design.



Figure 11: Northern elevation of the new development proposed on 65-67 Lawrence Street Peakhurst



Figure 12: Montage of the new development proposed on 65-67 Lawrence Street Peakhurst

32. In relation to the southern rear setback, the building length is 18.7m and the setback proposed ranges from 5m to 6.2m along the length of the elevation. The proposed articulated elevation is depicted in Figure 10 below, where non-compliances are highlighted orange.



Figure 13: Variation to setback on the southern elevation.

The non-compliances along this elevation are to bedrooms, bathrooms and balconies. The rear boundary of the site adjoins land zoned Public Recreation which sits between the subject site and Forest Road. The non-compliances are minor in the context of the development and not result in any adverse impact onto the allotments adjoining. Given the proposed building orientation and relationship to public land, there will not be any privacy impacts resulting from these specific non-compliances.

Despite not achieving strict compliance with the setback requirements to the side boundaries, the proposal is considered to be consistent with the intent of the control (being to maintain privacy whilst not undermining solar access) as detailed below:

- In relation to the side setback non-compliances the windows within the reduced setback are high level windows with a sill height of at least 2m to bedrooms;
- In terms of visual privacy within the site, adequate privacy measures have been incorporated into the detailed design, the layout of the apartments, and dimensions

and orientation of the windows and balconies, such that there will be an acceptable level of internal overlooking within the site;

- The proposed development complies with the maximum permitted density at the site and results in building height variation at the centre of the building to the lift overrun and shade structure to the communal open space. The proposal represents an efficient allocation of the permitted density at the site;
- The trafficable area of the communal open space area located on the roof top level is setback significantly as a result of the surrounding planter and increased upper setback; and

The commentary from the Panel in relation to reduced setbacks has also raised issues of restricting development on the adjoining allotment and the potential loss of solar access which is directly resulting from the reduced setbacks;

The proposal is therefore acceptable as it achieves the objectives of the setback control and provides for good levels of internal and external amenity.

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

The key objectives of this policy are;

- (a) *to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) *to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

Comment: Council's Landscape Officer has reviewed the application and concurs with the submitted Landscape Plan; prepared by Zenith Landscape Design, the application seeks the removal of four (4) trees, which are located within the middle of the site (the proposed trees set for removal are not considered endangered or native) the proposed application is considered to satisfy the provisions of the policy. A condition of consent will be implemented to ensure that Council's Street trees located on Lawrence Street and Forest Road will be retained and protected during construction.

34. **Draft Environmental Planning Instruments**

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.

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

35. **Draft Remediation SEPP**

The draft SEPP was exhibited from 31 January to 13 April 2018. The following are the aims of the SEPP as per below:

- Provide a state-wide planning framework for the remediation of land;
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well;
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land;
- Clearly list the remediation works that require development consent;
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent;

Comment: The proposal was considered acceptable considering that the site(s) are not identified as contaminated or affected by acid sulphate soils. In this regard, consideration has been applied to the draft SEPP; deeming the application as satisfactory.

36. **Development Control Plans**

Hurstville Development Control Plan No 1 - LGA Wide

The proposed development is subject to the provisions of the Hurstville Development Control Plan No.1. The extent to which the proposed development complies with the provisions of this DCP are outlined in the table below.

Development	Requirements	Proposed	Complies
3.1 Vehicle Access and Parking	DS1.5 Refer to AS 2890.1 2004 and AS2890.2 Part 2 for the design and layout of parking facilities. DS1.6	Turning and manoeuvring into and out of car spaces and isle widths are in accordance with Australian Standards.	Yes
	Council does not encourage, but may consider stacked parking for parking spaces in a controlled parking situation which: a. allows no more than two cars in the stacked parking arrangement; b. is likely to maintain a very low turnover; or c. is able to function easily within the management of the	There are no stacked parking spaces proposed.	Yes

	<p>site's future operation</p> <p>A designated car washing area (which may also be a designated visitor car space) is required for service stations and residential developments of four or more dwellings.</p>	<p>A car wash bay has been provided, within the proposed basement car parking area – visitor space 4.</p>	Yes
Numerical parking controls	<p><u>Residential Accommodation</u> Dwelling (1-2 bedrooms): 1 space per dwelling Dwelling (3 bedrooms and over): 2 spaces per dwelling Visitor spaces: 1 space per 4 dwellings (or part thereof)</p> <p><i>Note: Different rates may apply where within 800m of a railway station in accordance with the Apartment Design Guide and the RMS Guide to Traffic Generating Development (2002)</i></p>	<p>2 x 1 bedroom = 2 spaces 8 x 2 bedroom = 8 spaces 4 x 3 bedroom = 8 spaces Total required = 18 spaces Visitor spaces required 14/4 = 3.5 spaces</p> <p>Subtotal required = min 22 spaces (visitor space 4 doubles as a car wash bay)</p> <p>Provided = 22 residential spaces including 4 visitor spaces.</p>	Yes
3.3 Access and Mobility	<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>Access for all persons through the principal entrance and access to any common laundry, kitchen, sanitary or other common facilities in accordance with relevant Australian Standards.</p>	<p>Apartment Ground 0-05 and First Floor 1-05 are nominated as adaptable apartments.</p> <p>In general access through the building for people with a disability has been catered for and lift access has been provided to all levels including the roof communal open space.</p>	Yes

3.4 Crime Prevention through Environmental Design	<p>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>Ensures that private and public spaces are clearly delineated</p> <p>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>	The design of the building generally complies with the objectives and controls.	Yes
3.5 Landscaping	<p>Site layout and design, including buildings, structures and hardstand, ensures the long term retention and health of existing significant trees and vegetation.</p> <p>Where significant trees or vegetation are required to be removed to allow for site development, they are to be replaced with the same or similar species achieving the same coverage at maturity.</p>	The landscaping arrangement is considered to be satisfactory with a reasonable amount of open space and the provision of deep soil areas, trees, plants and denser vegetation has been catered for and assessed by Council's Landscape Officer; in which the application was deemed as satisfactory, subject to conditions.	Yes
3.6 Public Domain	Development contributes to the creation of attractive, comfortable and safe streets that comprise consistent and high quality paving, street furniture and street tree plantings.	The front façade and general scale of the building is considered to be an acceptable and reasonable design response for this site.	Yes – will be consistent with the character and form of development in the street.
3.7 Stormwater	A development application is supported by a concept stormwater management plan showing how surface	Council's Engineers have reviewed the proposed drainage and stormwater arrangement and have raised no objection subject to the imposition of conditions.	Yes

	and roof waters are to be discharged by gravity to the street or easement and the size of all pipes.		
4.1 Residential Flat Buildings			
Site Frontage	Min street frontage 24m	Street frontage 30.48m	Yes
Isolation	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.	Adjoining the site to the left (No. 59 and 59A) is a dual-occupancy development and adjoining the site to the right (No.63-65) is an approved 3-4 storey residential flat building.	Yes – Applicant has satisfied DCP provisions in relation to site isolation.
Height	In accordance with Hurstville Local Environmental Plan 2012 and 3 storeys.	A variation is requested to the 12m height control and Clause 4.6 Statement submitted and assessed above. The building is proposed to be three (3) storeys.	No, but the Clause 4.6 variation is considered acceptable and worthy of support.
Excavation	The maximum excavation for any building's finished ground floor level facing a public street is 0.5m below natural ground level.	Excavation exceeds the minimum controls but this is an anticipated design response given the site and the precedent that has been established for new medium density development in the street and the accommodation of vehicles within a basement.	Reads as a 3 storey building from the street and rear as it is appropriately stepped down into the site.
Front Setback	The minimum setback to a primary or secondary street is 6m.	Ground Floor = 5.22m - 6.2m. There is a slight encroachment within the front courtyards.	On merit – addressed in detail below.

Landscaping	<p>Minimum amount of landscaped area of open space is 20% of the Site area</p> <p>Min dimension of landscaped open space is 2m</p>	<p>Landscaped open space equates to 24.69% of the site.</p> <p>The minimum dimensions at the front are 4.8m and rear 6m in width. The rear is not a secondary street as it is separated by RE1 zoned land.</p>	<p>This control is superseded by the SEPP.</p>
Solar Access	<p>Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00 am and 3.00 pm on 22 June.</p>	<p>Complies.</p> <p>Due to the favourable orientation of the site, the proposal results in only minor shadow impacts as detailed on the shadow diagrams submitted with the application.</p> <p>The submitted architectural plans detail shadows cast by the proposal during mid-winter, 22 March and September and 22 December. The proposal complies with the above DCP requirement as shadows cast at 9.00am are limited to the rear portion of the subject site and the rear portion of the adjoining dwelling to the west and the associated rear yard.</p> <p>By 12 noon, the shadow has moved east and is confined to the subject site, the adjacent public recreation space and the road reserve immediately to the rear of the subject site.</p> <p>At 3pm the shadow again falls within the subject site and partly over the rear yard of the property to the east. The extent of overshadowing is minor and does not impact upon windows of main living areas or adjoining principal private open spaces. The proposal therefore achieves</p>	<p>Yes</p>

Noise	Windows of adjacent dwellings are separated by a distance of at least 3m	the numerical requirements of the DCP. Complies Windows of adjacent dwellings are separated by a distance of at least 3m.	Yes
Streetscape	Development creates a high quality interface between the public and private domain	The proposal 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.	Yes
Fencing	Provides appropriate levels of privacy, security and noise attenuation.	Appropriate fencing detail has been provided on the submitted architectural plans.	Yes
Site Facilities	Development provides space for the storage of recyclable goods, either in the curtilage of each dwelling or in a central storage area in larger developments.	The bin storage area accommodates bins for recycling.	Yes

LPP035-19

37. Front Setback Variation

PC6 of the DCP requires a 6m front setback and provides the following objectives to the setback control.

- *Are compatible with predominant patterns of buildings and gardens that define the existing and desired character of the neighbourhood.*
- *Engage with and activate the street.*
- *Reduce the appearance of building bulk.*
- *Enable adequate solar access to the main living areas and principal private open space.*
- *Facilitate penetration of desirable natural breezes.*
- *Facilitate view sharing.*
- *Minimise noise transmission.*

As such this variation to the front setback will not be at odds with the streetscape and will maintain consistency with the above stated objectives in that:

- Existing more recently constructed buildings on the southern side of Lawrence Street are constructed with a reduced front setback that typically ranges from 4.5m to 6m. The proposal will therefore be consistent with the emerging street setback;
- The site frontage will be landscaped and this will assist with softening the appearance of the building within the street and creating a landscaped setting;
- The proposed front setback will not result in any material adverse impacts on the adjoining properties;
- The street is activated by the introduction of primary living space with orientation to the Lawrence Street, providing excellent passive surveillance opportunities;
- The private open space and living areas of all street fronting units will receive uninterrupted solar access. Similarly, all street fronting units are naturally cross ventilated; and
- The proposed setback encroachment is minor and does not reduce access to views nor will it impact on noise transmission.

IMPACTS

Natural Environment

38. The proposed development is unlikely to generate adverse impacts on the natural environment.

Built Environment

39. The proposed development is unlikely to result in adverse impacts on the built environment

Social Impact

40. The proposal is unlikely to result in any adverse social impacts given the design and residential use of the site.

Economic Impact

41. The proposed development is unlikely to generate adverse economic impacts given the residential nature of the development.

Suitability of the site

42. It is considered that the proposed development is of a scale and density that is suitable for the site and is in accordance with the desired future character of development within Lawrence Street and the locality.

Public Interest

43. The proposal is considered to be in the public interest for the reasons contained within this report.

SUBMISSIONS AND THE PUBLIC INTEREST

44. The application was notified/advertised to residents/owners on the 06 December 2017 to 05 January 2018. No submissions were received by Council, during the notification/advertising period.

Development Contributions

45. The proposed development is the subject of Contribution(s). Contribution(s) have been levied on the subject development pursuant to the provisions of the Georges River Council - Contributions Plan.

Contribution(s) have been levied on the subject development by way of condition of consent, pursuant to the provisions of the Georges River Council - Contributions Plan with a total fee to paid – prior to the issue of a Construction Certificate of \$182,409.60.

REFERRALS

Council Referrals

46. ***Development Engineer***

Council's Development Engineer has raised no objection in relation to the stormwater drainage design subject to conditions of consent which are included in the recommended conditions below.

47. ***Waste Management Officer***

Council's Waste Management Officer examined the application and has raised no objection to the development.

48. ***Traffic Engineer***

Council's Traffic Engineer has examined the application and has raised no objection to the development.

49. ***Landscape and Tree Management Officer***

Council's Landscape and Tree Management Officer has raised no objection subject to conditions which are included in the recommended conditions below.

50. ***Building Officer***

Council's Surveyor has raised no objection subject to conditions which are included in the recommended conditions below.

CONCLUSION

51. This application has been assessed having regard to the matters for consideration under Section 4.15(1)(a) and 4.15(3) 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 proposal seeks consent for lot consolidation, demolition of all structures, tree removal and the construction a three (3) storey residential flat building containing fourteen (14) residential apartments and one (1) basement level accommodating twenty-two (22) parking spaces and associated landscaping works.

In summary, the development has been assessed against the requirements of the relevant planning instruments and development control plans. Following a detailed assessment it is considered that Development Application No DA2017/0584 should be approved subject to the imposition of Conditions.

STATEMENT OF REASONS

52. The reasons for this recommendation are:

- The proposal results in a built form which is consistent with the envisaged desired character of the R3 Medium Density Residential Zone.

- The proposal adopts a built form which is compatible with the immediate residential character.
- The proposal adopts a design which provides good levels of occupant amenity.

DETERMINATION

THAT Pursuant to Section 4.16(1a) of the Environmental Planning and Assessment Act 1979, as amended, the Georges River Local Planning Panel determine DA2017/0584 proposing lot consolidation, demolition of all structures, tree removal and the construction a three (3) storey residential flat building containing fourteen (14) residential apartments and one (1) basement level accommodating twenty-two (22) parking spaces and associated landscaping works on Lot 248, DP 36317, and Lot 249, DP 36317, and known as 61 and 63 Lawrence Street, Peakhurst, by way of approval subject to the conditions referenced below.

SPECIFIC DEVELOPMENT CONDITIONS

SCHEDULE A

Development Details

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

Description	Reference No.	Date	Revision	Prepared by
Site Analysis Plan	DA 01	17/10/2017	A	Cornerstone Design
Basement Plan	DA 02	19/08/2019	B	Cornerstone Design
Site / Ground Floor Plan	DA 03	12/03/2018	C	Cornerstone Design
First Floor Plan	DA 04	12/03/2018	C	Cornerstone Design
Second Floor Plan	DA 05	17/10/2017	A	Cornerstone Design
Rooftop Plan & Roof Plan	DA 06	12/03/2018	B	Cornerstone Design
Elevation – North and East	DA 07	12/03/2018	B	Cornerstone Design
Elevations – West and South	DA 08	12/03/2018	B	Cornerstone Design
Sections A-A Streetscape Elevation	DA 09	12/03/2018	B	Cornerstone Design
Schedule of Colours and Materials	N/A	N/A	N/A	Cornerstone Design
Drainage Cover Plan	A7231	06/10/2017	B	Alpha Engineering and Development
Sediment and Erosion Control	A7231-SW01	06/10/2017	B	Alpha Engineering and Development

Plan				
Basement Drainage Plan	A7231-SW02	13/03/2018	C	Alpha Engineering and Development
Ground Floor Drainage Plan	A7231-SW03	13/03/2018	C	Alpha Engineering and Development
OSD Basin Plan	A7231-SW04	13/03/2018	C	Alpha Engineering and Development
Survey Plan	178317	08/06/2017	N/A	S.J. Surveying Services Pty Ltd
Existing Tree Plan	17-3550 LO3	19/03/2018	N/A	Zenith Landscape Designs
Ground Floor Plan	17-3550 LO1	19/03/2018	N/A	Zenith Landscape Designs
Roof Top Plan	17-3550 LO2	19/03/2018	N/A	Zenith Landscape Designs
Waste Management Plan – Construction Stage	N/A	Undated	N/A	Cornerstone Design
Waste Management Plan – Demolition Stage	N/A	Undated	N/A	Cornerstone Design
Waste Management Plan – Ongoing Waste	N/A	Undated	N/A	Cornerstone Design
Statement of Compliance Access for people with a disability report	N/A	27/09/2017	N/A	Accessible Building Solutions
Road Traffic Noise Assessment	N/A	November 2017	N/A	Noise and Sound Services

Section B - Separate Approval Required Under Other Legislation

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

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

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

- a. Placing or storing materials or equipment;
- b. Placing or storing waste containers or skip bins;
- c. Erecting a structure or carrying out work;
- d. Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- e. Pumping concrete from a public road;

- f. Pumping water from the site into the public road;
- g. Constructing a vehicular crossing or footpath;
- h. Establishing a “works zone”;
- i. Digging up or disturbing the surface of a public road (eg Opening the road for the purpose of connections to utility providers);
- j. Stormwater and ancillary works in the road reserve;
- k. Stormwater and ancillary to public infrastructure on private land.
- 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 Certifier prior to the issue of the Construction Certificate.

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

3. **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.
4. **Building - Hoarding Application** - Prior to demolition of the buildings on the site or the commencement of work above ground level a separate application for the erection of an A class (fence type) or a B class hoarding or C type scaffold, in accordance with the requirements of Work Cover Authority of NSW, must be erected along that portion of the footway/road reserve, where the building is within 3.0 metres of the street boundary. An application for this work under Section 68 of the Local Government Act 1993 and the Roads Act 1993 must be submitted for approval to Council.

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

- a) A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and
- b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
- c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council’s Schedule of Fees and Charges (available on our website) before the commencement of work; and
- d) A Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council’s road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party.

Section C - Requirements of other Government Authorities

5. **Sydney Water – Tap in TM** - The approved plans must be submitted to a Sydney Water Tap in TM to determine whether the development application will affect Sydney Water’s

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

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

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

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

7. **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.

Section D Prior to the Issue of a Construction Certificate

8. **Amended Architectural Plans** - Amended architectural plans are to be submitted to the PCA, prior to the release of any Construction Certificate, clearly identifying the following:
 - a) Deletion of the 'Access Gate(s)' on the southern side of the allotment; as identified on the approved Landscape and Site Plan; Access cannot be granted to the RE1 - Zoned Land, unless approval from Council's Property Team has been lodged and approved.
9. **Electrical Infrastructure** – Prior to the issue of a Construction Certificate documentary evidence is to be provided to the PCA demonstrating approval has been granted by the energy provider to the relocation of the electricity power pole to accommodate the proposed driveway. A plan showing the location of the relocated power pole is to be provided. The relocation of this infrastructure is to be at the expense of the developer.
10. **Fire Safety Measures** - Prior to the issue of a Construction Certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a PCA. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or PCA will then issue a Fire Safety Schedule for the building.
11. **SEPP 65 Design Verification Statement** - SEPP 65 Design Verification Statement – A

design verification statement, prepared by a qualified designer, shall be submitted to the Certifying Authority verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of State Environmental Planning Policy No 65 –Design Quality of Residential Flat Development.

12. Use of rooftop open space

A Plan of Management (POM) for use of the roof top open space must be submitted for approval of Council's Manager Development and Building.

The POM must outline the:

- (i) Hours of use of the rooftop deck are not to be used between the hours of 10pm and 8am;
- (ii) Maximum number of users at any one time (suggest 10);
- (iii) Provisions for no amplified music to be played; and
- (iv) Identify any other measures to ensure that the amenity of persons within the development and in nearby existing and future developments is maintained.

The approval of the POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision.

Written evidence of the approval of the POM by Council's Manager Development and Building is to be provided to the satisfaction of the Principal Certifying Authority prior to the release of the Construction Certificate.

13. Access for Persons with a Disability - Access for persons with disabilities must be provided throughout the site, including to all common areas, lobby areas and all service areas of the development 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.

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

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

15. Slip Resistance - All pedestrian surfaces in areas such as foyers, public corridors/hallways, stairs and ramps as well as floor surfaces in the wet rooms in any commercial/retail/residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2004 - Slip Resistance

Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.

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

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

17. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).
18. **Drainage/Stormwater Design Changes** - The following design changes are required and are to be incorporated into the plans to be lodged with the Construction Certificate application.

- (a) The submitted concept hydraulic plan shall be amended to include the reconstruction of Council's existing gully pit directly in front of the development site. The reconstructed pit is to conform to Council's standard drawing for a kerb inlet pit with grates and 2.4m (min.) lintel and will be modified at full cost to the developer.
- (b) The invert level of the outlet pipeline from the receiving gully pit is to be confirmed by the Hydraulic Engineer and included in the *Ground Floor Drainage Plan Drawing A7231-SW03. REV C of 13/3/18*.

These design changes are to be incorporated into the Detailed Hydraulic Plans submitted for approval with the Construction Certificate Application.

19. **Stormwater System** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate
- a) All stormwater shall drain by gravity to the upper level of Council's stormwater pipe located under the kerb and gutter by constructing a gully pit with 2400 mm lintel, in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2003 (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.

20. **Stormwater Systems with Basement**

- (a) The underground basement car park and all other stormwater must drain by gravity to:
 - i. the upper level of the existing gully pit (to be reconstructed) located directly in front of the development site.

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

21. Protection of basement from inundation of stormwater waters

- (b) Alignment levels across the site are to be acquired from Council and compared to the 'water surface level' (as determined by a professional engineer who specialises in hydraulic engineering) in the street gutter during a 1:100yr ARI storm event. A minimum freeboard of 200mm is to exist between the gutter water surface level and corresponding vehicle crossing/internal driveway crest level to provide protection to the underground basement from possible inundation from surface waters.
- (c) Driveway retaining walls are to be constructed to levels that provide protection of the underground basement from the inundation of surface waters in a 1:100yr ARI storm event.

Evidence from a professional engineer who specialises in hydraulic engineering that this design requirement has been adhered to shall be submitted with the Construction Certificate application.

22. On Site Detention

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

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

- (a) peak flow rates from the site are to be restricted to a permissible site discharge (PSD) equivalent to the discharge when assuming the site contained a single dwelling, garage, lawn and garden,
- (b) at Annual Recurrence Intervals of 2 years and 100 years.

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

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

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

Full details shall accompany the application for the Construction Certificate.

23. **Detailed Stormwater Drainage Design**

The submitted stormwater plan has been assessed as a concept plan only. A detailed drainage design supported by a catchment area plan and drainage calculations (including a Hydraulic Grade Line Analysis) must be submitted with the Construction Certificate application.

24. **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: **\$1900.00**.
- (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: **\$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.

25. **Fees to be paid** - The fees listed in the table below must be paid in accordance with the conditions of this consent and Council's adopted Fees and Charges applicable at the time of payment (available at www.georgesriver.nsw.gov.au).

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

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

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1900.00

Inspection Fee for Refund of Damage Deposit	\$155.00
DEVELOPMENT CONTRIBUTIONS	
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Community Facilities)	\$22,601.84
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Open Space, Recreation, Public Domain)	\$159,807.76
Total Contributions	\$182,409.60

LPP035-19

General Fees

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

Development Contributions

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

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

Indexation

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

Timing of Payment

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

Further Information

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

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

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

The acoustic report must also ensure 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 pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.”

The recommendations suggested in the Acoustic Report submitted with the application shall be included in the Construction Certificate Plans.

27. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Zenith Landscape Design, reference numbers – 17 – 3550 L01 – L03, dated 22/09/17. The landscaping shall be maintained in accordance with the approved plans in perpetuity.

28. **General Landscape Requirements**

- a) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
- b) The eleven (11) Trees 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.

29. **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>T1 – Lophostemon confertus</i>	Council street tree	7.0 meters radially without blocking footpath
<i>T2 – Lophostemon confertus</i>	Council street tree	7.0 meters radially without blocking footpath
<i>T7 – Tristaniopsis laurina</i>	65 Lawrence St Peakhurst	4 metres radially
<i>T8 – Jacaranda mimosifolia</i>	65 Lawrence St Peakhurst	2.5 metres radially
<i>T9 – Eucalypt Spp</i>	RMS Road frontage, back fence	7.0 metres radially
<i>T10 - Eucalypt Spp</i>	RMS Road frontage, back fence	9.5 metres radially
<i>T11, Eucalypt Spp</i>	RMS Road frontage, back fence	9.5 metres radially

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

General Tree Protection Measures – the following measures are to be adhered to;

- (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 who holds an AQF Level 5 or above in Arboriculture and who is a current financial member of Arboriculture Australia – AA and or Institute of Australian Consulting Arboriculturists – IACA.**
- (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 2.4 x 1.8 metres high, fully supported chainmesh fence shall be used. 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 – the following measures are to be adhered to;

- 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).

30. **Tree Removal & Replacement** - Permission is granted for the removal of the following trees as illustrated, using reference locations **ONLY**

Tree Species	Number of trees	Location
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<i>T3 – Pittosporum undulatum</i>	X1	Front middle of site
<i>T4 – Tibouchina granulosa</i>	X1	Front middle of site
<i>T5 – Cypress pine</i>	X1	Front middle of site
<i>T6 – Brachychiton acerifolius</i>	X1	Middle of site
As per landscape plan – 17- 3550 L03 (page 3)		

LPP035-19

General Tree Removal Requirements

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

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

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

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

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

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

32. **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).
33. **Erosion & Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
- (a) Compliance with the approved Erosion & Sediment Control Plan
 - (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)

- (c) All clean water runoff is diverted around cleared or exposed areas
- (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
- (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
- (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

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

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

- (a) All stormwater shall drain by gravity to Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.
- (c) All stormwater shall drain by gravity to Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (d) The underground basement car park must pump to and all other stormwater must drain by gravity to the OSD system.
- (e) The construction of the building and driveway shall be designed to protect the underground basement from possible inundation by surface waters. The crest of the driveway shall be set least 150 mm above the top of the kerb levels.
- (f) The sub soil drainage for the below ground structures including basement car parks shall be designed in accordance with the findings and recommendations in the geotechnical report. The geotechnical report should assess any possible impact of the proposed development upon existing ground water table and surrounding land and buildings. Should the results of the report indicate that the site is likely to experience issues associated with groundwater management, a fully-tanked dry basement with no sub soil drainage collection or disposal and an allowance made for any hydrostatic pressures.
- (g) All roof water and surface water from paved or concreted areas are to be disposed of in accordance with the Stormwater Plan by means of a sealed pipeline constructed in

accordance with AS/NZS 3500.3:2015.

- (h) All overflows of roof waters from any rainwater tank shall drain by gravity to Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (i) All other impervious surface water runoff such as driveways and footpaths shall drain by gravity to Council's kerb and gutter directly in front of the development site.
- (j) All roof waters and all overflows from any rainwater tank shall drain to Council's kerb and gutter directly in front of the development site by a suitably designed charged system.

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

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

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

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

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

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

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

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

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

- (m) 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.

35. **Development Engineering - Driveway Construction Plan Details** - Engineer's details shall be submitted with the Construction Certificate application regarding the proposed construction of the driveway.

These details shall show longitudinal and cross sections, gradients, swept paths, type of construction materials and shall be designed in accordance with AS/NZS2890.1-2004.

The driveway shall be designed with a surface that shall be non-slip.

36. **On Site Detention** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional

engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

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

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

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

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

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

Full details shall accompany the application for the Construction Certificate.

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

- (i) provisions for temporary sanitary facilities;
- (j) location and size of waste containers/skip bins;
- (k) details of proposed sediment and erosion control measures;
- (l) method used to provide construction noise and vibration management;
- (m) construction and demolition traffic management details.

The site management measures are to be implemented prior to the commencement of any works including demolition and excavation. The site management measures are to be maintained throughout the works, to maintain reasonable levels of public health, safety and amenity. A copy of the Site Management Plan must be kept on site and is to be made available upon request.

40. **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.
41. **Waste Storage** - The plans shall include details of the waste storage area. The waste storage area shall not be visible from the street. The waste storage area shall be located within the lot/building in accordance with the approved plans.

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

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

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

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

42. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX

Certificate No. 863388M_02, dated 24 November 2017 must be implemented on the plans lodged with the application for the Construction Certificate.

43. **Consolidation of Site** - The site shall be consolidated into one allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan shall be registered at the NSW Land and Property Information prior to the issue of a final occupation certificate.
44. **Allocation of street addresses** - In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing & the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street addresses for the subject development must be allocated as advised by Georges River Council.

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

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

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

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

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

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

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

46. **Development Engineering – 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 network in Lawrence Road.

Stormwater drainage connection to Council's infrastructure shall be carried out to the satisfaction of the Council's engineering services unit.

47. **Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:

(a) Set out before commencing excavation.

(b) Floor slabs or foundation wall, before formwork or commencing brickwork.

- (c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
- (d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
- (e) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
- (f) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

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

- 48. **Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to Council’s Engineers for their records.
- 49. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
 - (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
 - (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
 - (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
- 50. **Structural Engineers Details - Supporting Council road/footway** - Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer’s details relating to the method of supporting the excavation must be submitted.
- 51. **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 invert levels and surface levels to Australian Height Datum.

52. **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) Existing stormwater drainage pipe
- (b) Existing kerb and gutter
- (c) Photographs showing the existing condition of the road pavement fronting the site
- (d) Photographs showing the existing condition of the kerb and gutter fronting the site
- (e) Photographs showing the existing condition of the footpath pavement fronting the site
- (f) Photographs showing the existing condition of any retaining walls within the footway or road,
- (g) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (h) The full name and signature of the structural engineer.

The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the Certifier and a copy provided to the Council.

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

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

Section F During Construction

53. **Engineering - Vehicular Crossing & Frontage work – 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 1.50 metre wide x 80mm thick concrete path for the full length of the frontage of the site in Lawrence Street in accordance with Council's Specifications for footpaths.
- (b) Construct a 150mm thick concrete vehicular crossing reinforced with F82 fabric 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 Lawrence 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 beneficiary of this consent and in accordance with Council's *Specification for Vehicular Crossings and Associated Works*. The work shall be carried out by a private contractor, subject to Council approval.

54. **Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.
55. **Physical connection to Stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's gully pit in Lawrence Street directly in front of the development site. Full cost for the reconstruction of the gully pit to an extended kerb inlet pit with grates is to borne by the developer.
56. **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.
57. **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.
58. **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.
59. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

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

60. **Building - Structural Certificate During Construction** - The proposed building must be constructed in accordance with details designed and certified by the practising qualified

structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate.

Section G Prior to the issue of the Occupation Certificate

61. **Development Engineering - 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.*

62. **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.
63. **Maintenance Schedule - On-site Stormwater Management** - A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule shall outline the required maintenance works, how and when these will be done and who will be carrying out these maintenance works.
64. **Works as Executed and Certification of Stormwater works** - Prior to the issue of an Occupation Certificate, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be forwarded to the PCA and Council, from a professional engineer specialising in hydraulic engineering.

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

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

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

65. **Vehicular crossing & Frontage work - Major development** - The following road frontage works shall be constructed in accordance with Council's Specification for Vehicular Crossings and Associated Works together with the Vehicular Crossing Approval issued by Council's Engineering Services Division:
- (a) Construct a 1.5 metre wide footpath for the full length of the frontage of the site in Lawrence Street in accordance with Council's Specifications for footpaths.

- (b) Construct the vehicular crossing in accordance with Council's Specifications for vehicular crossings.
- (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 and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

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

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

66. **Stormwater drainage works - Works As Executed** – Prior to the issue of the Occupation Certificate, storm water drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to Council detailing:

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) The structural adequacy of the On-Site Detention system (OSD);
- (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (d) Pipe invert levels and surface levels to Australian Height Datum;
- (e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Council's Engineering Services section must advise in writing that they are satisfied with the connection to Council's modified kerb inlet pit prior to the issue of an Occupation Certificate.

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

- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (b) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.
- (c) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (d) Construct any new vehicle crossings required.
- (e) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.

- (f) A Section 73 (Sydney Water) Compliance Certificate for the Subdivision shall be issued and submitted to the PCA prior to the issue of the Occupation Certificate.
- (g) The reconstruction of the gully pit in Lawrence Street to an extended kerb inlet pit with grates shall be completed in accordance with the conditions and specifications of the Section 68 Activity Approval.

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

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

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

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

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

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

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

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

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

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

- (a) Stormwater pipes, pits and connections to public stormwater systems within the road related area;
- (b) Driveways and vehicular crossings within the road related area;
- (c) Removal of redundant driveways and vehicular crossings;
- (d) New footpaths within the road related area;
- (e) Relocation of existing power/light pole
- (f) 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.
- (g) New or reinstated kerb and guttering within the road related area.

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.

71. **Allocation of street addresses** - Prior to issue of an Occupation Certificate, All house numbering are to be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing & the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements. Council must be contacted in relation to all specific requirements for street numbering.

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

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

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

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

the Principal Certifying Authority prior issue of the Occupation Certificate.

74. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.
75. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent, must be implemented before issue of any Occupation Certificate.
76. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to the Ausgrid, if required.
77. **Completion of Landscape Works** - All landscape works must be completed before the issue of the Final Occupation Certificate in accordance with approved landscape plans and specifications, drawn by Zenith Landscape Design, reference numbers – 17 – 3550 L01 – L03, dated 22/09/17. The landscaping shall be maintained in accordance with the approved plans in perpetuity.
78. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.

Section H Operational Conditions (Ongoing)

79. **No openable structures** – No accessible structures or gate(s) are to be installed or provided along the southern boundary of the site; – unless approval has been granted from Council's Property Department.
80. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
81. **Compliance with Plan of Management for use of rooftop open space**
The approved Plan of Management for use of the roof top open space shall be enforced by the Owners Corporation or building owner.
82. **Noise Control** - The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997 (as amended).
83. **Operation of Air Handling Systems** - The occupier must operate air handling systems in compliance with Part 2 of the Public Health Regulation 2012 (as amended).

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

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

84. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.
85. **Lighting – General Nuisance** - Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare. Flashing, moving or intermittent lights or signs are prohibited.
86. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
87. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas. The maintenance schedule shown on the approved landscape plan is to be undertaken in accordance with the details of that schedule. On the completion of the 12 month maintenance period, the landscape works shall be inspected and at the satisfaction of the landscape architect (PDS Paterson Design Studio), the responsibility will be signed over to the client.
88. **Annual Fire Safety Statement** - The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
 - (a) Within 12 months after the date on which the fire safety certificate was received.
 - (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
 - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
 - (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.
89. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
90. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited certifier.

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

Section I Operational Requirements Under The Environmental Planning And Assessment Act 1979

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

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

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

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

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

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

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

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

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

94. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifying Authority. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the Environmental Planning and Assessment Regulation 2000.

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

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

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

to the building or part.

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

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

Section J Prescribed Conditions

97. **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
98. **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.
99. **Clause 98A – Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifying Authority and the Principal Contractor.
100. **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.
101. **Clause 98E – Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.

END CONDITIONS

NOTES/ADVICES

102. **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.
103. **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.

104. **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.
105. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au
106. **Principal Certifier** - Should the Council be appointed as the Principal Certifier in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
107. **Energy Efficiency Provisions - Energy Efficiency Provisions** - Should Council be appointed as the Principal Certifier, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the Principal Certifier.
108. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.
109. **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).

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

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

111. **Strata Subdivisions**

- (a) Council will check the consent conditions on the relevant Strata Subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision.
- (b) Council will undertake the required inspections to satisfy the requirements of the Strata Schemes Development Regulation 2016 to determine the Strata Certificate.
- (c) Strata Plans, Administration Sheets, 88B Instruments and copies must not be folded.
- (d) All Strata Plans, Strata Plan Administration Sheets and 88B Instruments shall be submitted to Council enclosed in a protective cardboard tube (to prevent damage during transfer).

112. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.

113. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.

114. **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.

115. **Council as PCA - Total Conformity with BCA - Accompanying Information** - Should the Council be appointed as the Principal Certifier, the Construction Certificate

Application must be accompanied by the following details, with plans prepared and certified by an appropriately qualified person demonstrating compliance with the BCA:

- a) Mechanical ventilation to bathroom, laundry and basement areas not afforded natural ventilation.
- b) Fire-fighting services and equipment including hydrant systems and booster assembly location, sprinkler and valve room systems, hose reels, portable fire extinguishers, smoke hazard management systems, sound and warning systems.
- c) Emergency lighting and exit signs throughout, including communal open space areas, lobby/foyer and basement areas.
- d) Construction of all fire doors including warning and operational signage to required exit and exit door areas.
- e) Egress travel distances to exits and the discharge from fire isolated exits including the swing of exit doors.
- f) The spandrel protection of openings in external walls
- g) The protection of paths of travel from a fire isolated exit when passing within 6m of an opening within the external wall of the building.
- h) Fire compartmentation and fire wall separation details including all stairway, lift and service shaft areas.
- i) The location and construction of an electricity substation, including the location and smoke separation of electrical distribution boards.
- j) Sound transmission and insulation details.
- k) Window schedule is to include the protection of openable windows.

In this regard, detailed construction plans and specifications that demonstrate compliance with the above requirements of the BCA must be submitted to the Principal Certifier 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 Certifier prior to issue of the Construction Certificate.

116. **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.

117. **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.

118. **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).

119. **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. DA2018/0580)
- (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.

120. **Council as PCA - Compliance with the BCA** - Should the Council be appointed as the Principal Certifying Authority in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert

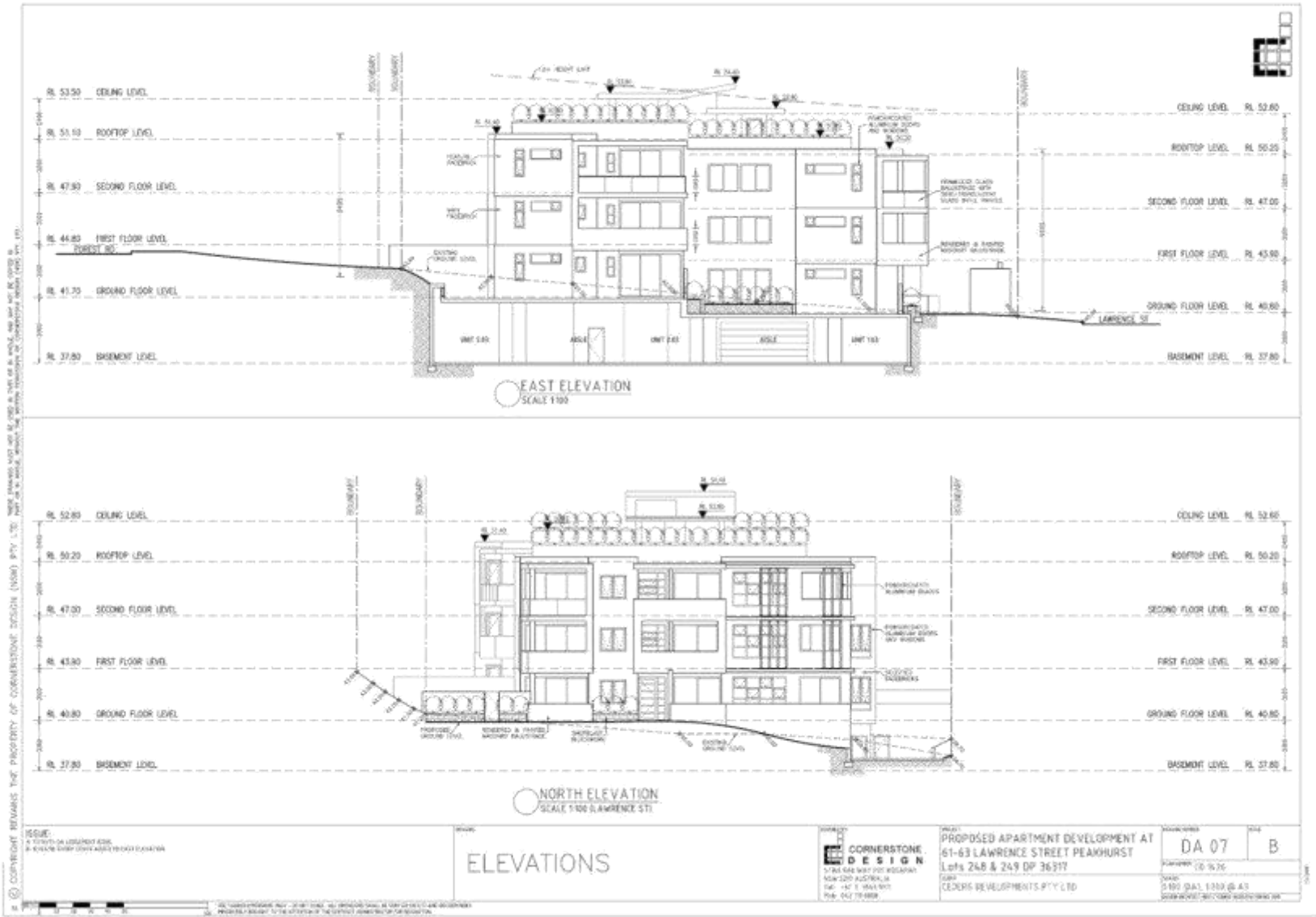
judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.

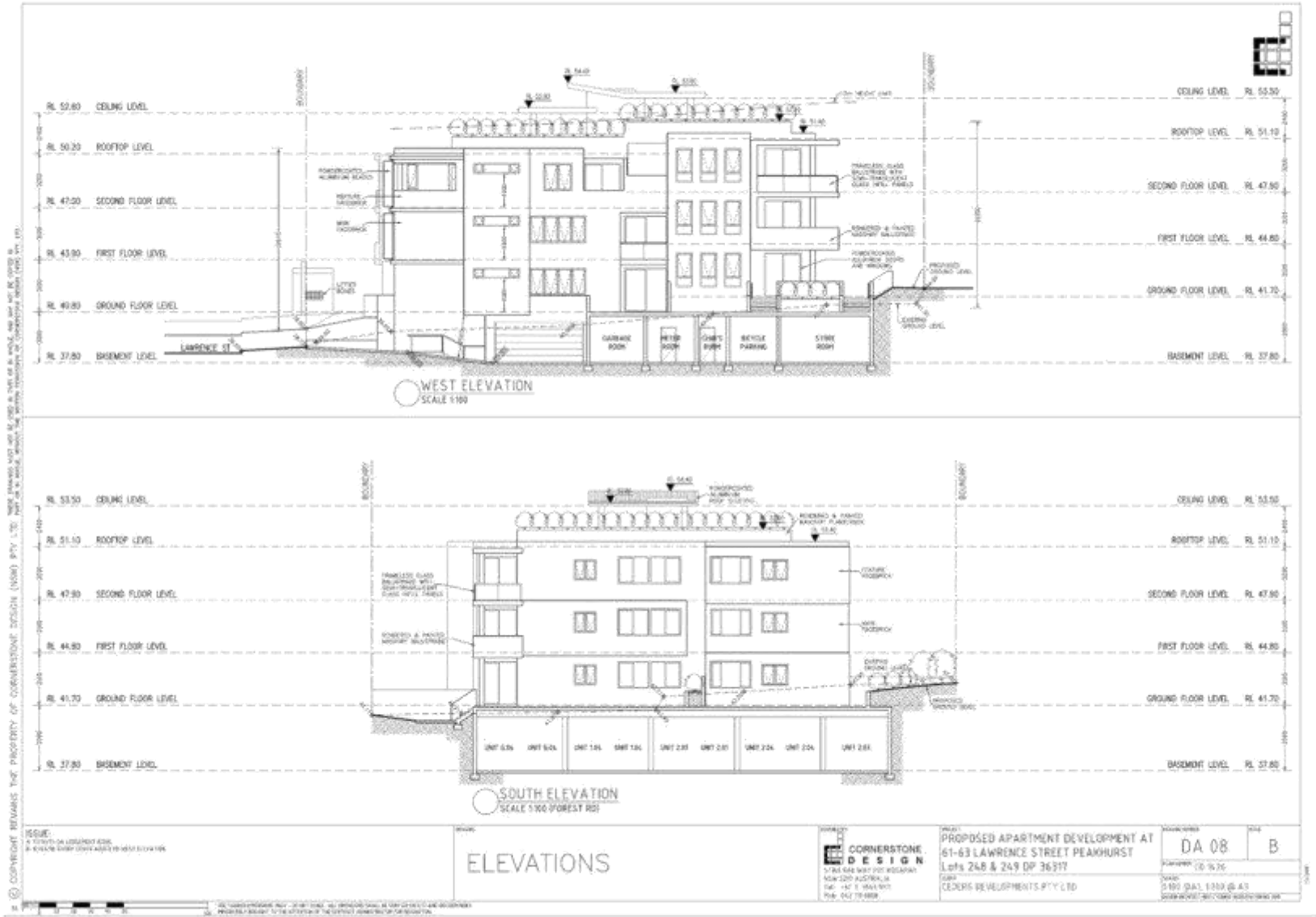
121. **Energy Efficiency Provisions** - Should Council be appointed as the Principal Certifying Authority, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the Principal Certifying Authority.
122. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.

ATTACHMENTS

- Attachment 03 Site-Ground Floor Plan - Issue C - 61-63 Lawrence St Peakhurst - Redacted -
[↓ 1](#)  Reduced
- Attachment 07 Elevations - Issue B - 61-63 Lawrence St Peakhurst - Reduced
[↓ 2](#) 
- Attachment 08 Elevations - Issue B - 61-63 Lawrence St Peakhurst - Reduced
[↓ 3](#) 







REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 19 SEPTEMBER 2019

LPP036-19

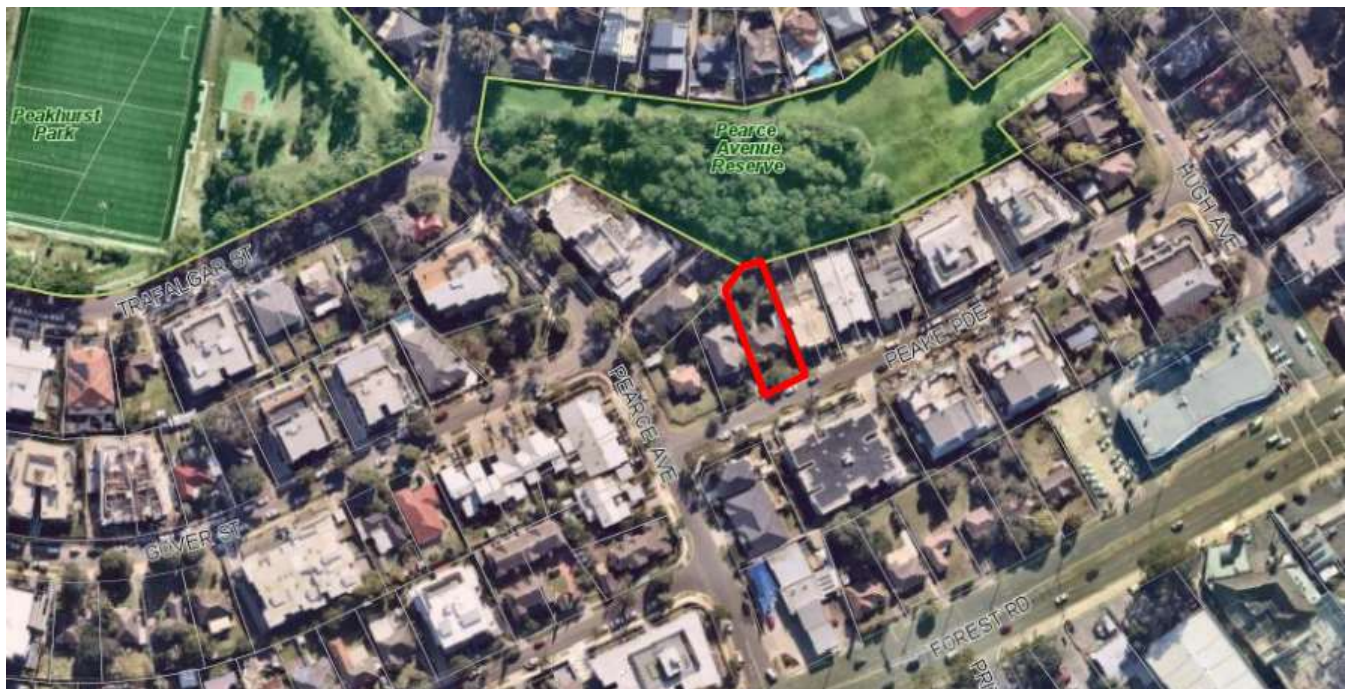
LPP Report No	LPP036-19	Development Application No	DA2017/0627
Site Address & Ward Locality	16 Peake Parade, Peakhurst Peakhurst Ward		
Proposed Development	Demolition of existing structures and construction of a three storey residential flat building with basement parking		
Owners	Mr J Staninovski, Mrs S Staninovski, Mr Z Kevilovski		
Applicant	Cornerstone Design		
Planner/Architect	Planner: Planning Ingenuity, Architect: Cornerstone Design		
Date Of Lodgement	13/12/2017		
Submissions	Four (unique submissions)		
Cost of Works	\$1,782,715.55		
Local Planning Panel Criteria	The proposed development is for a residential flat building in accordance with the provisions of State Environmental Planning Policy No 65 and a breach of a development standard exceeding 10%		
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 (BASIX) 2004, Greater Metropolitan Regional Environmental Planning Policy No 2- Georges River Catchment, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No. 1 Draft Environment State Environmental Planning Policy, Draft Remediation of Land State Environmental Planning Policy		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects Landscape Plans Architectural Plans		
Report prepared by	Senior Development Assessment Planner		

Recommendation	That the application be refused in accordance with the reasons stated in the report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction	Yes

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?	
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 - Clause 4.3 Height of buildings
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, the application is recommended for refusal. The refusal reasons can be viewed when the report is published.

Site Plan



Subject site outlined in red

Executive Summary

Proposal

- The development application (DA) seeks consent for the demolition of existing structures, tree removal and construction of a three storey residential flat building over a level of

basement parking, comprising six (6) units (3 x 2 bedroom units and 3 x 3 bedroom units) and eleven (11) car parking spaces within a semi-basement.



Figure 1: Photomontage of the proposed development

LPP036-19

Site and Locality

2. The application applies to land known as No. 16 Peake Parade, Peakhurst, and is legally described as Lot 292 in DP 36537.
3. The site has a boundary to Peake Parade of 15.85m, side boundary lengths of 40.845m and 43.54m, and a rear boundary length of 10.64m and 6.4m combined, giving a site area of 677.9sqm.
4. The land falls by 4.25m from the street to the rear boundary.
5. The site is located within an R3 Medium Density Residential precinct. A number of properties in the locality have been redeveloped from single dwelling houses to residential flat buildings and dual occupancies.

Zoning and Permissibility

6. The subject site is zoned R3 Medium Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HELP 2012). The proposal is for a residential flat building which is permissible with consent in the zone.

Submissions

7. The DA was notified to adjoining properties in accordance with the Hurstville Development Control Plan No. 1 (Hurstville Development Control Plan No. 1) for a statutory notification period of 14 days between:
 - Round 1: 23 January 2018 – 6 February 2018: Two submissions

- Round 2: 21 June 2018 – 5 July 2018: One submission
- Round 3: 24 August 2018 – 7 September 2018: Two submissions (one a copy of the submission in the first round)

Reason for Referral to the Local Planning Panel

8. This application is referred to the Georges River Local Planning Panel for consideration and determination, as the proposal relates to a residential flat building subject to the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development. The proposed development also exceeds the height control development standard by more than 10%.
9. A Clause 4.6 statement has been submitted with the application seeking a variation to the height control (Clause 4.3) in accordance with the provisions of the Hurstville Local Environmental Plan 2012 to justify and support the non-compliance.

Planning and Design Issues

10. The proposal fails to comply with the building height development standard of 12m that applies to the site under Hurstville Local Environmental Plan 2012. The lift overrun, communal WC and awning over the rooftop communal open space area exceed the height limit, with the top of the lift overrun having a height of 14.47m (20.5% variation). A variation request to the building height development standard has been submitted pursuant to clause 4.6 of Hurstville Local Environmental Plan 2012; however it has been assessed as being not-well founded, as discussed in this report.
11. The proposal fails to achieve the required setbacks pursuant to the Apartment Design Guide (ADG) and the design treatment of the side elevations will result in poor internal amenity for many of the units.
12. The proposal does not provide sufficiently dimensioned deep soil zones along any boundaries, which precludes the planting of canopy trees around the perimeter of the site that would reach a scale sufficient to ameliorate the scale of the building, provide a landscaped setting for the building and improve the environmental amenity of adjoining properties.
13. Insufficient communal open space is provided, and there is insufficient information provided to enable a proper assessment of the solar access and natural ventilation available to the proposed units.
14. The subject site is 15.85m wide and does not comply with the minimum 24m site width control in the Hurstville Development Control Plan (DCP), resulting in an unacceptable design outcome for the site. The justification for the proposed residential flat building on an under-width lot relies on the site being an isolated lot; this justification is not accepted by Council Assessment Staff.

Conclusion

15. 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 Plan and

Development Control Plans. The proposal is an unreasonable planning and urban design outcome in the context of the site and performs poorly against the design quality principles of State Environmental Planning Policy No 65. The Clause 4.6 Objection in relation to the building height development standard is considered to not be well-founded. As a result the application is recommended for refusal.

Report in Full

Description of the Proposal

16. The DA seeks consent for the demolition of one detached dwelling house and the construction of a three (3) storey Residential Flat Building containing 6 residential apartments. Car parking is contained within a semi-basement level containing 11 car parking spaces for residents and visitors.
17. A mix of apartments is proposed, consisting of three (3) x two (2) bedroom and three (3) x three (3) bedroom apartments. One apartment is nominated as adaptable.
18. Further details of the proposal are as follows:

Semi-basement

- Nine (9) residential car parking spaces (of which one is an accessible parking space) and two (2) visitor car parking spaces;
- Residential storage allocated to individual apartments;
- Bicycle parking for two (2) bikes;
- Service areas;
- Egress stairs; and
- Lift access to the upper levels.

Ground Floor

- Two (2) apartments (1 x 2B and 1 x 3B) of which one (1) is adaptable.
- Shared communal pedestrian access from the street is proposed along the south-western side boundary.
- Dual width driveway access from Peake Parade is located in the south-eastern corner of the site adjacent to No. 14A Peake Parade, with a nil side boundary setback for the first 6m of the driveway within the site.
- Bin store area adjacent to the entry foyer (western side).
- The service and circulation spaces of the building are centrally located, with the lift being to the eastern side of the building and the circulation stair to the western side.

First and Second Floors

- Two (2) apartments (1 x 2B and 1 x 3B)
- The service and circulation spaces of the building are centrally located, with the lift being to the eastern side of the building and the circulation stair to the western side.

Rooftop

- Rooftop area of communal open space (94.41sqm) with a shading device over the northern section, common WC, an enclosed kitchen and an enclosed BBQ area.
- Perimeter landscaping around the communal open space in planter boxes.

19. The proposal involves the removal of five (5) trees/shrubs from within the site.

The Site and Locality

20. The subject site is known as No. 16 Peake Parade, Peakhurst and is legally described as Lot 292 in DP36537. The site has a frontage to Peake Parade of 15.85m and a site area of 677.9sqm. The property shares a rear boundary with Peake Avenue Reserve, and the site has a fall of 4.25m from the street to the rear.



Figure 3: The site as viewed from Peake Parade

21. The site is currently occupied by a single storey dwelling house and scattered vegetation, none of which is significant.
22. The site is located in a residential neighbourhood characterised by recently constructed residential flat buildings and dual occupancy developments. The property to the east is occupied by a two storey attached dual occupancy development (Figure 4). The property to the west is currently occupied by dwelling houses, however approval has been granted for a three storey residential flat building on the corner of Peake Parade and Pearce Avenue (DA2016/0366) (Figure 5).



Figure 4: Dual occupancy at No. 14A and 14B Peake Parade (east of the site)

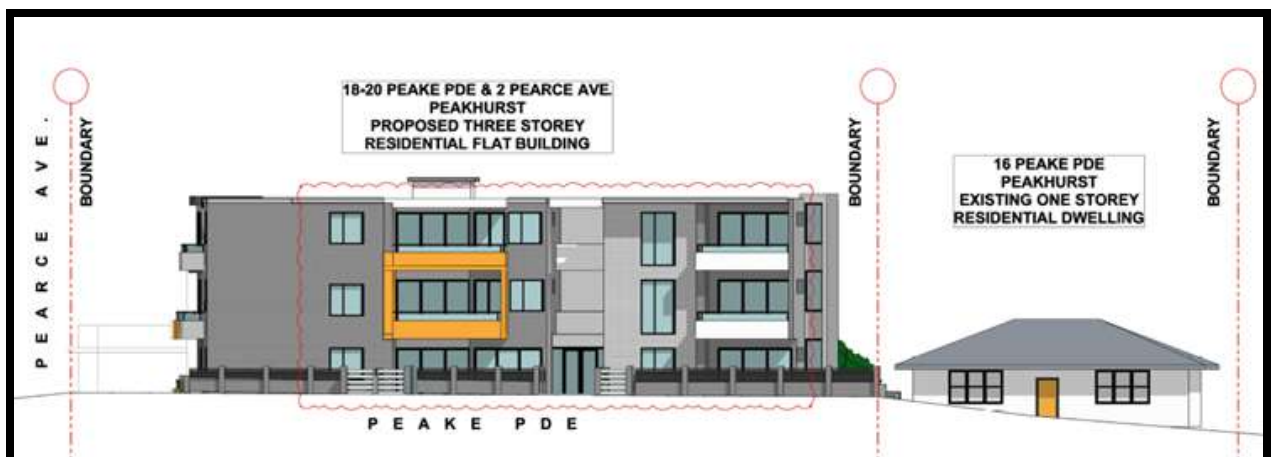


Figure 5: Approved residential flat building at Nos. 18-20 Peake Parade (west of the site)

State Environmental Planning Policies (SEPPs)

23. Compliance with the relevant State Environmental Planning Policies is summarised in the following table and discussed in further detail below it.

State Environmental Planning Policy Title	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 (Infrastructure) 2007	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	No – Non-compliance with respect to Design Quality Principles 1 and 2. Refer to State Environmental Planning Policy No 65 section below.
Draft Environment State Environmental Planning Policy	Yes
Draft Remediation of Land State Environmental Planning Policy	Yes

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

24. The primary relevant aims and objectives of this plan are:

- *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 stormwater design was referred to Council's Engineering Section for review. No objection was raised with respect to the management and disposal of stormwater subject to the imposition of deferred commencement conditions (for an easement to drain water from the site to the open drain in council's reserve to the north of the site) if consent was to be granted.

26. In summary, the proposal contravenes the aims, objectives or purpose of the Regional Plan if approved with appropriate conditions of consent.

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

27. BASIX Certificate No. 879258M was lodged with the DA and indicates that 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 (State Environmental Planning Policy 55)

28. State Environmental Planning Policy 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.
29. Clause 7 requires contamination and remediation to be considered in determining a DA. 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.
30. Though a Preliminary Investigation Assessment report was not submitted with the DA, a review of historic aerial photography indicates that the site has been used for residential purposes since at least 1943. Residential usage is not typically associated with activities that would result in the contamination of land. On this basis, the site is likely to be suitable for residential development in its current state for the development proposed with respect to contamination.

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

31. The Vegetation State Environmental Planning Policy aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
32. The Vegetation State Environment Planning Policy 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 (Development Control Plan).*
33. The Vegetation State Environmental Planning Policy repeals clauses 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 development control plan (Development Control Plan).
34. The proposal involves the removal of five (5) trees from the site. Council's Consultant Arborist has reviewed the proposed tree removal and raised no objection to the removal of the five (5) trees subject to appropriate replacement tree planting both on site and within the public domain should the application be supported. The recommended conditions provided by the arborist require one additional tree to be planted within deep soil areas of the site in addition to those shown on the submitted landscape plans, and one street tree to be planted within the road frontage.
35. On this basis, the proposal, should it be supported, is consistent with relevant provisions of the Vegetation State Environmental Planning Policy.

Draft Remediation of Land State Environmental Planning Policy

36. The Department of Planning and Environment has announced a Draft Remediation of Land State Environmental Planning Policy, which will eventually repeal and replace the current State Environmental Planning Policy No 55 — Remediation of Land.
37. 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.
38. Whilst the proposed State Environmental Planning Policy will retain the key operational framework of State Environmental Planning Policy 55, it will adopt a more modern approach to the management of contaminated land. The Draft State Environmental Planning Policy will not alter or affect the findings with respect to State Environmental Planning Policy 55 detailed above.

Draft Environment State Environmental Planning Policy

39. The Draft Environment State Environmental Planning Policy was exhibited from 31 October 2017 to 31 January 2018. This consolidated State Environmental Planning Policy proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.
40. Changes proposed include consolidating the following seven existing State Environmental Planning Policies:
- 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.
41. The proposal is consistent with the provisions of this Draft Instrument.

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

42. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (State Environmental Planning Policy 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 State Environmental Planning Policy 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, State Environmental Planning Policy 65 applies.

43. Clause 28(2) of State Environmental Planning Policy 65 requires that the consent authority take into consideration the following as part of the determination of DAs to which State Environmental Planning Policy 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.*
44. On 1 March 2018 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.
45. As detailed within the table earlier in this report, the proposal fails to satisfy various Design Quality Principles and provisions of the ADG, particularly where they relate to context and neighbourhood character, built form and scale, density and façade design. The proposal also fails to meet various design criteria of the ADG with respect to residential amenity of the apartments.
46. The Tables below provide a comprehensive assessment against the principles, objectives and controls of State Environmental Planning Policy 65 and the ADG.

Table 1: Application of State Environmental Planning Policy 65

Clause	Standard	Proposal	Complies
3 - Definitions	<p>Complies with definition of “Residential Apartment Development” (RAD) Section 4 (1) (Application of Policy) of the State Environmental Planning Policy 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> <p><i>(a) the development consists of any of the following:</i></p> <p><i>(i) the erection of a new building,</i></p> <p><i>(ii) the substantial redevelopment or the substantial refurbishment of</i></p>	The proposal is for a three storey flat building with basement parking and rooftop communal open space	Yes.

	<p><i>an existing building,</i></p> <p><i>(iii) the conversion of an existing building, and</i></p> <p><i>(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</i></p> <p><i>(c) the building concerned contains at least 4 or more dwellings.”</i></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 State Environmental Planning Policy includes mixed use developments.	This application is for the erection of an RFB which satisfies the State Environmental Planning Policy's definition.	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect: N Lychenko (Registration No.3010)	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	<i>The site is in a context which is rapidly evolving and increasing in density. It is an isolated site located on the low side of the street between a recently approved RFB containing</i>	A review of the proposal has identified that the site is not in fact an isolated site, as the form of development

<p>relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <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.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p><i>twenty five (25) units, and a dual occupancy development. On the opposite side of the road there are a number of recently completed RFBs extending almost for the full length of the block. In some cases, such as in the block immediately opposite, the street frontage is dominated by ramps, stairs, and associated building infrastructure, compromising the quality of the streetscape.</i></p> <p><i>The site has a fall of approximately 4m down to the public reserve at the rear. The applicant advised that access to the reserve is permitted.</i></p> <p><i>To the rear is an attractive public reserve to which access for the residents is possible and desirable. It would also be desirable for the proponent to produce fence forms to the reserve compatible with adjacent properties facing the reserve.</i></p>	<p>on the site to the east is substantially below the density and scale permitted in the zone as it is a dual occupancy development.</p> <p>The proposal fails to comply with a number of ADG controls (detailed later in this report) and it is considered given the present dimensions of the property, this allotment unconsolidated is more suited to a dual occupancy development.</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 is constrained by the narrow site and the existing and approved developments to the west and east adjoining sites. The height is compliant with the LEP height control with the exception of minor intrusion by the lift overrun and communal facilities, which is considered to be acceptable.</i></p> <p><i>The plan form has been articulated along the side boundaries with splayed walls which generally appear to resolve privacy issues in relation to the adjoining properties.</i></p> <p><i>Setback from the front boundary complies with the planning controls and is</i></p>	<p>The proposal fails to comply with the minimum separation distances for habitable areas, building height and deep soil area. It is not considered that the scale of development is appropriate for the site given its present width.</p>

	<i>marginally non-compliant to the rear because of the balconies on the north façade, but this minor non-compliance is also considered to be acceptable.</i>	
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.	<i>Compliant and acceptable.</i>	The Panel did not raise an issue with the overall bulk, scale and density of the development; however the site is constrained by its site width which imposes unreasonable compromises on the amenity within the development and to adjoining sites.
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.	<i>It is desirable that the stormwater regime be clearly articulated and not compete with deep soil areas.</i>	The development fails to provide the required amount of deep soil landscaped area, and fails to demonstrate compliance with the required solar access and cross ventilation standards.
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.	<ul style="list-style-type: none"> • <i>Poor interface to adjoining site (west) – planting should be provided</i> • <i>A functional, secure and engaging play area for children should be provided</i> • <i>Provide an all-weather surface to entry point rather than lawn</i> • <i>Need to further develop the design of the fence treatment facing the reserve at the rear. The Applicant should review other</i> 	The narrow width of the site results in limited separation between the site and its neighbours, and the required basement layout leaves little opportunity for high quality deep soil landscaping of the perimeter of the site. Accordingly, the proposal is not able

<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.</p> <p>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><i>treatments so that some consistency can be achieved.</i></p> <ul style="list-style-type: none"> • <i>Provide access from communal open space to public reserve at the rear</i> • <i>The ground floor communal open space should be designed to meet the play needs of children</i> • <i>There is the opportunity to enclose some area of communal open space, either at ground level (under the first level balcony) and on rooftop for amenities</i> • <i>The planter boxes on the rooftop communal open space could be enlarged by extending them to the edges of the roof</i> • <i>Rainwater storage should be provided for water collection and reuse in irrigation of soft landscape areas</i> 	<p>to provide landscaping compatible with that delivered by comparable surrounding development.</p>
<p>Amenity Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</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>Generally of good standard and accepted.</i></p> <p><i>There is potential to enclose the area under the balcony on the ground level as a communal room with seating and WC.</i></p> <p><i>The communal open space at rooftop should also be provided with an enclosed area.</i></p> <p><i>There is no bin storage provided in the basement and very limited bin storage provided adjacent to the front entry with a long and winding ramp to the street.</i></p> <p><i>Clear glass balustrades on first level balconies should be redesigned to provide adequate screening.</i></p>	<p>Not proposed.</p> <p>The kitchen and BBQ area are enclosed.</p> <p>A bin room has been provided in the semi-basement.</p> <p>A mix of solid, glass and semi-translucent balustrades are proposed.</p>
<p>Safety Good design optimises safety and security within the</p>	<p><i>Enabling access to the reserve at the rear will assist with safety and security of both the</i></p>	<p>Access to the reserve is provided via the rear</p>

<p>development and the public domain. It provides for quality public and private spaces that are clearly defined 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><i>development and the reserve by increasing the level of surveillance.</i></p>	<p>boundary fence/gate.</p> <p>It is noted that direct access from private properties into reserves is generally not supported by Council's open space section, and to this end, would be unlikely to be supported. A condition would be imposed to address this in the event the application was to be approved.</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>Acceptable</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.</p> <p>Good design uses a variety of materials, colours and textures.</p>	<p><i>The colour of brickwork should be reviewed to ensure that it complements existing and future adjoining properties.</i></p>	<p>The schedule of colours was amended and a range of grey, white and sandstone materials and finishes are proposed.</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.

LPP036-19

47. Having regard to the above, the Panel considers that the proposal generally satisfies the Design Principles of the ADG.
48. Clause 28 of State Environmental Planning Policy 65 requires the consent authority to take into consideration the provisions of the ADG. The Table below assesses the proposal against these provisions, with relevant assessment comments provided where non-compliances are proposed.

Table 3: Part 3 and Part 4 – Consideration of Apartment Design Guide

ADG Compliance Table		
Standard	Proposal	Complies
<i>3D – Communal Open Space (COS)</i>		
Provide COS at least 25% of the site area (411.6sqm)	13.7% (93sqm).	No
Located on a podium or roof if it can't be located on ground level	COS located on roof level.	Yes
At least 50% direct sunlight to the principal usable part of the COS for at least 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Complies for the COS provided, however the COS provide is substantially less than the COS required.	Yes
<i>Comment on Communal Open Space</i>		
The proposal does not provide the communal open space specified by the Apartment Design Guide. It is noted that the narrowness of the site and the scale of the building mean that there is little opportunity for the provision of compliant and quality areas of communal open space on the site.		
The units in the proposal do not benefit from larger balconies to compensate for the deficient COS, and the ground floor is heavily disrupted by the protruding basement and service/circulation areas, meaning there is no alternative location for additional open space.		
It is considered the failure to provide compliant deep soil area on the site is unacceptable and is a symptom of the inappropriateness of a site proposing this form and scale of development on a site with a narrow width such as this site.		
<i>3E – Deep Soil Zones</i>		
Site area is 650sqm - 1,500sqm = 3m min dimensions	No deep soil area proposed achieves the minimum 3m dimensions.	No
Min deep soil area of 7% (47sqm)	0% due to minimum dimensions not being met	No (100%)

Provide acceptable stormwater management and on-structure planting where min. deep soil area not achieved (e.g. CBD, constrained sites, high density areas or in centres or where there is 100% site coverage or non-residential uses at ground level)	[35sqm (5%) if all other deep soil areas included]	No
<p><u>Comment on Deep Soil Zones</u></p> <p>The building fails to provide sufficient deep soil zones with minimum dimensions of 3m and a minimum total area of 7% of the site area, as required by the ADG for a site of this size. The total deep soil area provided is 5% of the site area, proposed in small, irregular pockets within the site, with these areas not meeting the minimum dimensions nominated by the ADG.</p> <p>This precludes the planting of canopy trees that would improve residential amenity both within the site and for adjoining properties, ameliorate the scale of the building when viewed from both the public domain and from adjoining and nearby properties.</p> <p>Insufficient justification has been provided to demonstrate why compliance with this ADG design criteria is not achievable on the site, however the lack of deep soil area appears to be a result of the extensive area occupied by the semi-basement footprint beneath relative to the width of the site. Accordingly, the inability to deliver appropriate landscaping indicates that the development proposed is not suitable for the subject site.</p>		
<u>3F – Visual Privacy</u>		
Minimum separation to side and rear boundaries:	<u>Levels G – 2</u>	
Up to 12m (4 storeys): 3m non-habitable rooms 6m habitable rooms & balconies	<p><u>NE Elevation:</u></p> <ul style="list-style-type: none"> Min. 3m to habitable/balcony <p><u>SW Elevation:</u></p> <ul style="list-style-type: none"> Min. 3m to habitable rooms 	<p>No (50%)</p> <p>No (however highlight window proposed)</p>
<p><u>Comment on Visual Privacy</u></p> <p>The proposed development fails to achieve the required separation distances to adjoining properties, and seeks to use ungainly angled windows to manage privacy impacts.</p> <p>The inadequate separations will impose unreasonable impacts on the developments either side of the site, and accordingly will form part of the reasons for refusal.</p> <p>It is noted that the failure to provide separation is a result of the narrow width of the site in its present form.</p>		
<u>3G – Pedestrian Access and Entries</u>		
Building entries and pedestrian	One entry provided (western	Yes

access connects to and addresses the public domain	side) with access from Peake Parade.	
Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge	One communal entry (western side) and one entry to Unit G.01 via a terrace.	Yes
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 driveway has a nil setback from the south eastern boundary for a length of 6m, insufficient landscaping between the driveway and the boundary shared with 14A Peake Parade, will be visually dominant in the streetscape relative to the development.	No – see comment below
<p><u>Comment on Vehicle Access:</u></p> <p>The proposed driveway off Peake Parade has a nil setback from the south-eastern boundary and occupies 34% of the site frontage thereby forming a dominant feature with respect to the streetscape character of the development.</p> <p>The failure to provide a strip of landscaping (e.g. 1.5m) to enable a softening of the harshness and sterile nature of the driveway, and the dominance of the driveway with respect to the site width both indicate that the proposed driveway design will not deliver a sufficiently high quality streetscape.</p> <p>As the driveway is not able to be reduced for reasons of satisfying Australian Standards of design, this indicates that the site is not wide enough to accommodate the development as proposed, and forms part of the refusal reasons.</p>		
3J – Bicycle and Car Parking		
Car parking provided in accordance with RMS GTTGD	Not applicable – site is more than 1km from Riverwood Station and therefore the Development Control Plan (DCP) rates apply to the proposal.	NA
(Applies to sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area)	<p>Required:</p> <p>1 space/1B or 2B = 3 spaces</p> <p>2 spaces/3B= 6 spaces</p> <p>1 visitor space/4 units = 2 spaces</p> <p>Proposed:</p> <p>9 resident spaces</p> <p>2 visitor spaces</p>	<p>Yes</p> <p>Yes</p>
4A – Solar and Daylight Access		

Living rooms and private open space receive 2 hours direct sunlight between 9am and 3pm in midwinter for 70% of apartments	Inadequate information provided to confirm compliance – unlikely to achieve solar penetration into living rooms of street facing units given this is the southern side of the development.	No – see comment below
Max. 15% of apartments receive no direct sunlight between 9am and 3pm in midwinter	3 / 6 apartments = 50%	No

Comment on Solar and Daylight Access

The shadow diagrams submitted with the application fail to provide solar access diagrams for the proposed units and do not show the penetration of direct sunlight into the units. It is likely that the living rooms of the street facing units will not receive 2 hours of sunlight in winter as required by the ADG, particularly if the site to the east is developed in a similar manner into the future. On this basis, compliance with the Solar and Daylight Access design criteria has not been demonstrated and the proposal is deemed unacceptable.

It is noted that although the ADG requires provision of separation distances primarily for reasons of privacy in Part 3, Part 2F (which relates to preparation of building controls) notes that separation is also important to assist in providing residential amenity with respect to sunlight and daylight access. Given the proposal is on a site that is below the required site width, it is relevant to note that the inability to deliver solar access to the required number of units is a direct symptom of the inadequate width of the site.

This matter forms part of the reasons for refusal.

4B – Natural Ventilation

At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	Inadequate information provided to make a proper assessment. 13m max.	The proposal appears to comply, however further information is required to confirm this criterion given the insufficient setbacks.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	Achieved	Yes
The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths		Yes

Comment on natural ventilation

The SEE submitted with the application states all units are designed and configured to

permit natural cross ventilation, and the layout of the units appear to comply, however no ventilation diagrams were provided with the architectural plans to demonstrate compliance with the control, given the compromised design to address the inadequate setbacks provided.

This forms part of the reasons for refusal.

4C – Ceiling Heights

Minimum ceiling heights measured from FFL to finished ceiling level: Habitable rooms = 2.7m Non-habitable rooms = 2.4m	All rooms have 2.7m internal ceiling height.	Yes
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4D – Apartment Size and Layout

Minimum internal areas: 1br: 50sqm 2br: 70sqm 3br: 90sqm	All apartments meet minimum internal sizes	Yes
(Add 5sqm if second bathroom proposed)	Calculated accordingly	Yes
Each habitable room must have a window in an external wall with a total minimum glass area of at least 10% of the floor area of the room.	Each habitable room has a suitably sized window.	Yes
Habitable room depths are limited to a maximum of 2.5 x the ceiling height	All rooms compliant.	Yes
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Street facing units measure depth from balcony door to “front” of kitchen (7.4m) while rear facing units are measured to the rear wall of the kitchen (8m).	Yes
Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)	All bedrooms meet minimum internal sizes (excluding wardrobe space).	Yes
Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	All bedrooms meet minimum dimensions excluding wardrobe space as specified.	Yes
Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments	All living rooms comply.	Yes
Internal width of cross-over or cross-through apartments are at least 4m	All such apartments meet the minimum width requirement.	Yes

Comment on Apartment Size and Layout

To overcome the width of the site being 37% below the required 24m site frontage for RFBs under the Hurstville Development Control Plan (DCP), and the inability of the proposed building to achieve the required setbacks to the side boundaries for visual privacy, the design treatment of the side elevations of the building includes 'hooded' windows facing the rear of the site. This results in poor internal amenity for most bedrooms, and the living and dining rooms of the street-facing units, in terms of solar access, ventilation and outlook.

This will form part of the reasons for refusal.

4E – Private Open Space and Balconies

Minimum primary balcony sizes: 1br: 8sqm area, 2m depth 2br: 10sqm area, 2m depth 3+br: 12sqm area, 2.4m depth	All 1br units compliant All 2br units compliant All 3br units compliant	Yes Yes Yes
The minimum balcony depth to be counted as contributing to the balcony area is 1m	Calculated accordingly	Yes
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	G.01 complies	Yes

4F – Common Circulation Areas

Maximum 8 apartments off a circulation core on a single level	2 units per level	Yes
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4G – Storage

In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: 1br: 6m ³ 2br: 8m ³ 3+br: 10m ³	All units comply	Yes
At least 50% of storage is located within the apartment	All units comply	Yes

4H – Acoustic Privacy

Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.	Refer to 3F – Visual Privacy.	No
Window and door openings are generally orientated away from noise sources	Bedrooms generally oriented away from the street.	Yes
Noisy areas within buildings including	Achieved	Yes

building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas		
Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	Generally achieved where practicable.	Yes
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 	The site is not located in close proximity to any noise or pollution sources.	Yes
4K – Apartment Mix		
<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building.</p>	Each floor contains 1 x 2B and 1 x 3B unit.	Yes
4L – Ground Floor Apartments		
<p>Street frontage activity is maximised where ground floor apartments are located</p> <p>Design of ground floor apartments delivers amenity and safety for residents</p>	<p>Unit G.01 has direct access from Peake Parade however the courtyard is almost 1m below the street level on the southern side of the building, and is located between the driveway and communal pedestrian access for the building.</p> <p>Accordingly it is considered this is a poor design outcome and is not appropriate and this forms part of the reasons for</p>	No

	refusal.	
4M – Facades		
Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale	<p>The bulk of the building is too large for a site having a width of 15.85m, and the inability to achieve suitable setbacks to the side boundaries further exacerbates the scale of the building being out of character for the site and locality.</p> <p>This forms part of the refusal reasons for the application.</p>	No
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	<p>Clean, simple roof form, lift overruns centralised over the building, open space on rooftop achieved.</p> <p>Acceptable shading to apartment openings.</p>	<p>Yes</p> <p>Yes</p>
4O – Landscape Design		
Landscape design is viable and sustainable, contributes to the streetscape and amenity	Insufficient room for canopy trees along the perimeter of the site.	No – see comment below
<p><u>Comment on Landscape Design</u> As stated under State Environmental Planning Policy Principle 5 – Landscape, above, the proposal does not meet the deep soil zone requirements of the ADG. This provides limited opportunities for significant canopy tree planting to ameliorate the scale of the building regulate the local microclimate and contribute to a landscaped setting in the locality.</p>		
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	Planter boxes would need to be of appropriate depth by condition of consent if approved	Achievable by a condition of consent if approved.
4Q – Universal Design		
Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs. Benchmark of 20% liveable dwellings.	No liveable dwellings proposed.	No
4R – Adaptive Reuse		
Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary,	N/A – not an adaptive re-use as the building is new.	N/A

provide residential amenity while not precluding future adaptive reuse.		
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	Appropriate building orientation, natural ventilation, passive solar design, exceeds BASIX target for energy efficiency.	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	Suitable.	Yes
4W – Waste Management		
Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	Can be addressed through conditions of consent if approved.	Achievable
4X – Building Maintenance		
Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	Suitable.	Yes

The proposal therefore is unsatisfactory with regards building separation, solar access, site landscaping, provision of communal open space, driveway dominance and other amenity matters.

The majority of these issues are driven by the narrow width of the site. In the context that the site fails to achieve an acceptable level of design with regards to the matters identified in Apartment Design Guide for a site that is not isolated. Accordingly the design issues outlined above will form part of the reasons for refusal of the application.

Environmental Planning Instruments **Hurstville Local Environmental Plan 2012**

Zoning

49. The subject site is zoned R3 Medium Density Residential under the provisions of the Hurstville Local Environmental Plan 2012 (HLEP2012) (See zoning map below). The proposed development is for a residential flat building which is a permissible land use in the zone.



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

50. The objectives of the 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.*
51. The proposal does not contravene the objectives of the R3 zone as it would provide for a variety of residential apartments in a medium density residential environment. However, the proposal's built form and envelope is not as envisioned by the New City Plan and is not supported for reasons as detailed within other relevant parts of this report.
52. The extent to which the proposal complies with the relevant standards of Hurstville Local Environmental Plan 2012 (HLEP2012) is outlined in the table below.

Table 4: HLEP2012 Compliance Table

Clause	Standard	Proposed	Complies
2.2 Zone	R3 Medium Density Residential	The proposal is defined as a residential flat building which is a permissible use within the zone.	Yes
2.3 Objectives	Objectives of the Zone	Consistent with zone objectives	Yes
4.3 – Height of Buildings	12m as identified on Height of Buildings Map	The building exceeds the 12m height limit and proposes an overall height at the highest point of 14.47m.	No – see discussion below regarding Clause 4.6 Statement which has been

			submitted.
4.4 – Floor Space Ratio	1:1 as identified on Floor Space Ratio Map	The proposed FSR is 0.94:1.	Yes
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 are considered satisfactory.	Yes
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	Excavation for the semi-basement parking level is proposed. Suitable conditions of consent could be imposed to protect neighbouring properties during construction should the application be approved.	Yes

LPP036-19

Clause 4.6 Exceptions to development standards

Detailed assessment of variation to Clause 4.3 Height of Buildings

53. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Local Environmental Plan identifies a maximum height of 12m for the Site (refer to Figure 5 below) and the proposed development will exceed the height by 2.47m which comprises of the lift overrun, fire stairs and the pergola over the rooftop communal open space area. This is a 20.6% variation above the control. Any variation to the height can only be considered under Clause 4.6 – Exceptions to Development Standards of the Hurstville Local Environmental Plan 2012.
54. 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*”.
55. **Is the planning control in question a development standard?**
The Height of Buildings control under Clause 4.3 of the Hurstville Local Environment Plan 2012 is a development standard.



Figure 5: Extract from the HLEP (Height Map_005) designated as "M" which notes a 12m height limit

56. 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"*

57. 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 Hurstville Local Environmental Plan 2012. The Clause 4.6 request for variation is assessed as follows:

What are the underlying objectives of the development standard?

58. The objectives of Height of Buildings standard under Clause 4.3 of Hurstville Local Environmental Plan 2012 are:

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,*
- (c) *to minimise the adverse impact of development on heritage items,*
- (d) *to nominate heights that will provide a transition in built form and land use intensity,*
- (e) *to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,*
- (f) *to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,*

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

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

59. There have been several Court cases that have established provisions in which to assess Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6.

60. 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 State Environmental Planning Policy 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):

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.”

The statement was prepared in consideration of the recent court cases and their judgements.

Applicants comment:

“Returning to Clause 4.6(3)(a) 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. It states, inter alia:

"An objection under State Environmental Planning Policy 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 noncompliance 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) "

However, in Four2Five v Ashfield Council [2015] NSWLEC 90 the Land and Environment Court said that whether something was ‘unreasonable or unnecessary’ is now addressed specifically in Clause 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary. Accordingly, while the objectives of the standard are achieved despite non-compliance with the standard, this request goes further. It seeks to demonstrate that requiring strict adherence to the standard would be unreasonable or unnecessary’ for reasons that are additional to mere consistency with the development standard.

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 of purpose would be defeated or thwarted if compliance v/as 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*

Additionally, in an analogous context, in Botany Bay City Council v Saab Corp [2011] NSWCA 308 Court of Appeal said that a requirement may be unreasonable when 'the severity of the burden placed on the applicant is disproportionate to the consequences attributable to the proposed development'. In support of this point

- *The proposed height variation will be visually imperceptible when viewed from the adjoining properties and public domain:*
- *The proposed development meets the objectives of the height control and strict compliance with the height control would undermine or thwart its objectives, or the zone's objectives (or both); and*
- *The burden placed on future residents (by relocating the communal open space area to ground level adjacent to private open space) would be disproportionate to any consequences that may arise from the proposed noncompliance with the height control.*

Given that compliance with the zone and development standard objectives is achieved and that the building complies with the overall height limit, particularly at the street frontage, insistence on strict compliance with the building height control is considered to be unreasonable and unnecessary in the circumstances.

The proposal is compliant with the relevant objectives and will have no adverse environmental or amenity impacts. The proposal is therefore justified on environmental planning grounds. For the reasons above, the proposed building height variation is consistent with the requirements of Cause 4 6(3) of the LEP."

61. Officer Comment: The proposed development is seeking approval for a residential flat building on a site that is 15.85m wide, considerably below the minimum 24m site width nominated within the Hurstville Development Control Plan (DCP). The proposal is an overdevelopment of the site and the design does not respond appropriately to the topography of the land and the slope of the site to the rear, resulting in the non-compliance with the 12m height limit.
62. The proposal fails to satisfy the objectives of the development standard as follows:
 - (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
Officer Comment: The proposal is not compatible with the height, bulk or scale of the desired future character of the locality. The adjoining buildings (existing and approved) comply with the height limit and are a suitable response to their respective sites. The site fails to achieve the minimum site width required for residential flat buildings, as such the development proposed is constrained when attempting to satisfy the provisions of State Environmental Planning Policy 65/ADG results in a compromised built form providing reduced amenity to the future occupants and an undesirable built form outcome presenting to the street. The proposal is not suitable for the site.
 - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes*
Officer Comment: This objective relates to the amenity impacts generated by the exceedance in the height control. The non-compliance will not result in any adverse overlooking, overshadowing (lift core is centralised so the lift overrun will overshadow the building itself), view loss or outlook generated by the variation and it will not adversely affect the public domain.
 - (c) *to minimise the adverse impact of development on heritage items,*
Officer Comment: The site is not located within proximity of any heritage items so this objective is not considered to be applicable in this case.

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

Officer Comment: Objective (d) 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 at its worst point is centrally located within the roof form however the design of the building fails to respond appropriately to the slope of the site to the rear and is an overdevelopment on an undersized (narrow) allotment, rendering it unsuitable for the proposed development.

The non-compliance is not considered minor as it relies on the roof level area for its only area of communal open space as this is the only area for passive recreation for the development. The building envelope and built form, as proposed, is non-compliant with the ADG separation distances and therefore the additional scale and height is not considered to reflect the desired future planning and design outcome that is sought/envisaged for this precinct.

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

Officer Comment: The site is not located within the Hurstville City Centre so this objective is not considered to be applicable in this case.

- (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,*

Officer Comment: Given the non-compliant width of the site, the proposed development does not provide an appropriate transition between the approved residential flat building to the west (which complies with the height control) and the existing two storey dual occupancy to the east. A more appropriate development for the site would be a dual occupancy as a compliant built form could be achieved and the amenity afforded to the future occupant's would greatly improve.

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

Officer Comment: The non-compliance will not result in any adverse overlooking, overshadowing (lift core is centralised so the lift overrun will overshadow the building itself), view loss or loss of outlook generated by the variation and it will not adversely affect the public domain.

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

63. 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 the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded and there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the height control.

64. 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"*
- (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,*

65. Applicant's comment:

"Additionally, in an analogous context, in Botany Bay City Council v Saab Corp [2011] NSWCA 308 Court of Appeal said that a requirement may be unreasonable when 'the severity of the burden placed on the applicant is disproportionate to the consequences attributable to the proposed development'. In support of this point

- The proposed height variation will be visually imperceptible when viewed from the adjoining properties and public domain:*
- The proposed development meets the objectives of the height control and strict compliance with the height control would undermine or thwart its objectives, or the zone's objectives (or both); and*
- The burden placed on future residents (by relocating the communal open space area to ground level adjacent to private open space) would be disproportionate to any consequences that may arise from the proposed noncompliance with the height control.*

Given that compliance with the zone and development standard objectives is achieved and that the building complies with the overall height limit, particularly at the street frontage, insistence on strict compliance with the building height control is considered to be unreasonable and unnecessary in the circumstances.

The proposal is compliant with the relevant objectives and will have no adverse environmental or amenity impacts The proposal is therefore justified on environmental planning grounds. For the reasons above, the proposed building height variation is consistent with the requirements of Cause 4 6(3) of the LEP.

On this basis, the requirements of Clause 4.6(3) are satisfied.

The proposal provides a residential development with superior amenity and streetscape presentation, while also dealing with the complexities of site isolation. This is achieved by well-planned and functional built form The non-compliance relates essentially to the provision of communal open space on the roof level. This will provide significant high quality amenity (views and solar access) to the future occupants of the building with minimal impact on surrounding development. There would be no broader environmental planning benefit achieved in requiring compliance."

66. Officers comment: The objectives of the R3 Medium Density Residential zone are:

- 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.*

67. The height non-compliance does not undermine the objectives of the zone. The development on an undersized allotment is the reason for the poor amenity outcomes and the compromised built form which results in the development not satisfying the residential amenity objective of the zone.
68. The proposal however fails to satisfy the “public interest” test as the exceedance of the control does not meet the objectives of the zone which include the following:

- *To provide for the housing needs of the community within a medium density residential environment.*

Officer Comment: The redevelopment of this site would contribute to the housing needs of the community. However it is the scale, form and density of the development proposed that is unsuitable for the site. The compromised built form directly results from the narrow width of the allotment with the built form attempting to ameliorate the non-compliances of the design having regard to State Environmental Planning Policy 65/ADG compliance. It is considered the proposal is an overdevelopment of the site, resulting in adverse impacts on neighbouring properties and the public domain.

- *To provide a variety of housing types within a medium density residential environment.*

Officer Comment: The development incorporates two and three bedroom apartments.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The development is residential in nature and does not include any additional land uses. This objective is offering some greater flexibility in the provision of land uses within this zone and is not a mandatory requirement.

- *To ensure that a high level of residential amenity is achieved and maintained.*

Officer Comment: The development fails to demonstrate compliance with a number of State Environmental Planning Policy 65/ADG controls, including solar access and natural ventilation, resulting in poor internal amenity for future occupants.

- *To provide for a range of home business activities, where such activities are not likely to adversely affect the surrounding residential amenity*

Officer Comment: This development does not include any additional business activities or land uses. Again this objective is not considered to be a mandatory requirement.

69. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6. If the development was of a scale, form, density that was able to be supported, the clause 4.6 is considered acceptable.

70. However, the proposal fails to achieve the minimum site width required for residential flat buildings. The undersized allotment therefore fails to comply with the State Environmental Planning Policy 65/ADG criterion in relation to communal open space, deep soil provision, building separation, solar access or internal apartment amenity. In addition, the proposal fails to meet a number of Development Control Plan controls, including landscaped area, streetscape presentation, built form and scale.

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

71. 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))

72. 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 resulting from the non-compliance.
73. 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.
74. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development result in a "better environmental planning outcome for the site" relative to a compliant development. 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.
75. The proposal generates adverse bulk, scale and streetscape impacts and fails to satisfy the objectives of the zone and a number of SEPP65/ADG and Development Control Plan controls.

Development Control Plans

HURSTVILLE DEVELOPMENT CONTROL PLAN NO. 1 (HDCP)

76. The proposal is subject to the provision of Hurstville Development Control Plan No.1 Chapter 3 and Chapter 4.1. These provisions are addressed in more detail below.

Development	Requirements	Proposed	Complies
3.1 Vehicle Access and Parking	DS1.5 Refer to AS 2890.1 2004 and AS2890.2 Part 2 for the design and layout of parking facilities. DS1.6	Turning and manoeuvring into and out of car spaces and isle widths are in accordance with Australian Standards	Yes
	Council does not encourage, but may consider stacked	The proposal includes 6 car parking spaces, which are in the form of 3 staked	Yes

	<p>parking for parking spaces in a controlled parking situation which:</p> <p>a. allows no more than two cars in the stacked parking arrangement;</p> <p>b. is likely to maintain a very low turnover; or</p> <p>c. is able to function easily within the management of the site's future operation</p> <p>A designated car washing area (which may also be a designated visitor car space) is required for service stations and residential developments of four or more dwellings.</p>	<p>spaces (residents) and five single spaces (three resident and two visitor spaces).</p> <p>A car wash bay has not been provided.</p>	<p>No – could be conditioned if the proposal was to be supported as a visitor space can double as a car wash bay.</p>
Numerical parking controls	<p><u>Residential Accommodation</u></p> <p>Dwelling (1-2 bedrooms):</p> <p>1 space per dwelling</p> <p>Dwelling (3 bedrooms and over):</p> <p>2 spaces per dwelling</p> <p>Visitor spaces:</p> <p>1 space per 4 dwellings (or part thereof)</p>	<p>3 x 2B = 3 spaces</p> <p>3 x 3B = 6 spaces</p> <p>2 visitors spaces</p> <p>11 spaces required</p> <p>11 spaces proposed</p>	Yes
3.3 Access and Mobility	<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>Access for all persons through the principal entrance and access to any common laundry, kitchen, sanitary or other common facilities in accordance with relevant Australian</p>	<p>Unit G-02 is nominated as an adaptable apartment.</p> <p>In general, access through the building for people with a disability has been catered for and lift access has been provided to all levels including the roof communal open space.</p>	Yes (pre and post development plans not provided and were not pursued given the application was being recommended for refusal).

	Standards.		
3.4 Crime Prevention through Environmental Design	<p>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>Ensures that private and public spaces are clearly delineated</p> <p>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>	The design of the building generally complies with the objectives and controls.	Yes
3.5 Landscaping	<p>Site layout and design, including buildings, structures and hardstand, ensures the long term retention and health of existing significant trees and vegetation.</p> <p>Where significant trees or vegetation are required to be removed to allow for site development, they are to be replaced with the same or similar species achieving the same coverage at maturity.</p>	5% of the site is deep soil area and is located in small, irregular pockets along the site boundaries resulting in an inability to appropriately landscape the site.	No
3.6 Public Domain	Development contributes to the creation of attractive, comfortable and safe streets that comprise consistent and high quality paving, street furniture and street tree plantings.	The front setback is predominantly hard surface area with the small pocket of deep soil area unable to support significant landscaping to soften the built form of the building.	No – forms part of reasons for refusal.
3.7 Stormwater	A development application is supported by a concept stormwater management plan	Council's Engineers have reviewed the proposed drainage and stormwater arrangement and have	Yes

	showing how surface and roof waters are to be discharged by gravity to the street or easement and the size of all pipes.	raised no objection subject to the imposition of conditions.	
4.1 Residential Flat Buildings			
Site Frontage	Min street frontage 24m	Street frontage 15.85m	No
Isolation	<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.</p> <p>In order to satisfy this requirement the applicant must provide:</p> <ol style="list-style-type: none"> 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. a schematic design which demonstrates how the isolated site may be developed. 	The Applicant has not provided documentation relating to offers presented to the neighbours and claims the site is isolated due to the approval for an RFB to the west and an existing dual occupancy to the east.	<p>No – council officers are not satisfied that the site is isolated. The assessment of the adjoining RFB DA2016/0366 states that the subject site is not in fact isolated as consolidation with No. 14A and 14B remains possible in order for the sites to achieve their highest and best use development potential.</p>
<p>The site width of the subject allotment is substantially below the 24m width required under the Development Control Plan applying to the site.</p> <p>The site does not meet the minimum site frontage nominated in the Development Control Plan, the lack of width leads to issues with the character of the locality (given</p>			

the inadequate space provided between buildings), amenity, privacy, a compromised basement arrangement, a lack of communal open space and a lack of deep soil area for planting, as such there are no grounds under which a variation to the frontage required could be supported.

The non-compliance with site frontage therefore forms part of the reasons of refusal.

In addition, the Interim Georges River Development Control Plan came into effect in July 2019. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current Development Control Plan controls will prevail if they are considered best practice. The Interim Development Control Plan still requires a 24m site frontage for residential flat buildings and notes that the control will not be varied unless the development site is an isolated site.

Height	In accordance with HLEP 2012 and 3 storeys.	A variation is requested to the 12m height control and is not supported (see Clause 4.6 assessment in this report)	No
Excavation	The maximum excavation for any building's finished ground floor level facing a public street is 0.5m below natural ground level.	The building is 4 storeys. Excavation exceeds the minimum controls but this is an anticipated design response given the site and the precedent that has been established for new medium density development in the street and the accommodation of vehicles within a basement.	No Acceptable on merit
Front Setback	The minimum setback to a primary or secondary street is 6m.	6m to building façade. 5.2m to balcony edge.	Yes Yes
Landscaping	Minimum amount of landscaped area of open space is 20% of the Site area Min dimension of landscaped open space is 2m Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of	5% of the site is deep soil area and is located in small, irregular pockets along the site boundaries resulting in an inability to appropriately landscape the site. Complies	No – forms part of reasons for refusal Yes

Solar Access	adjacent dwellings between 9.00 am and 3.00 pm on 22 June.		
	Windows of adjacent dwellings are separated by a distance of at least 3m	Complies	Yes
Noise	Development creates a high quality interface between the public and private domain	The building is generally well articulated however is an overdevelopment of the site as it is unable to achieve the required setbacks and deep soil areas due to its width.	Yes
Streetscape		The narrow width of the site imposes a relatively tall and narrow building that will be out of character with regards the prevailing streetscape.	No – forms reasons for refusal.
Fencing	Provides appropriate levels of privacy, security and noise attenuation	Front fencing between 1m and 1.8m is proposed.	Yes
Site Facilities	Development provides space for the storage of recyclable goods, either in the curtilage of each dwelling or in a central storage area in larger developments.	Storage is provided within the units and in the basement.	Yes Yes compliant with ADG provisions

Interim Policy – Georges River Development Control Plan 2020

77. Council at its Environment and Planning Committee Meeting dated Council at its Environment and Planning Committee Meeting dated 24 June 2019 resolved to adopt the Georges River Interim Policy Development Control Plan which became effective on 22 July 2019.
78. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current Development Control Plan controls will prevail if they are considered best practice. The Interim Policy has no statutory recognition in the assessment of DAs pursuant to the Environmental Planning and Assessment Act, 1979 (EP&A Act).

79. An assessment of the proposal has been carried out against the provisions of the Interim Policy as set out in the following table:

Interim Policy – Georges River Development Control Plan 2020		
Standard	Proposed	Complies
Site Frontage		
24m	Peake Parade – 15.24m	No – see Hurstville Development Control Plan compliance table above for discussion.
Building Height		
The relevant LEP controls relating to building height will prevail over Development Control Plan controls that relate to height in storeys	The proposal has been assessed against the Hurstville Local Environmental Plan 2012 height standard. The proposal does not currently comply.	No – See Hurstville Local Environmental Plan 2012 Compliance Table above for further details.
Private Open Space		
The ADG requirements prevail over the Development Control Plan controls for private open space	The proposal is fully compliant with the ADG's private open space requirements. Refer to "4E – Private Open Space and Balconies" within the ADG Compliance Table above.	Yes
Communal Open Space		
The ADG requirements prevail over the Development Control Plan controls for COS under the Interim Policy	No – the proposal is substantially short of providing the required COS.	No – forms part of the reasons for refusal.
Parking		
In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment): <ul style="list-style-type: none"> If located in a strategic centre (i.e. Kogarah CBD and Hurstville CBD) and within 800m of a Railway, the "Metropolitan Regional Centre (CBD)" rates apply. If located within 800m of a railway and outside the strategic centres the "Metropolitan 	The site is located more than 800m away from a railway station and is not within a strategic centre. The proposal has been assessed against the Development Control Plan controls and is fully compliant. Refer to the Hurstville Development Control Plan No. 1 compliance table above.	N/A

Subregional Centre” rates apply. • If located outside of 800m of a Railway, the relevant Development Control Plan applies.		
Solar Access		
The ADG requirements prevail over the Development Control Plan controls for solar access under the Development Control Plan	The proposal is deemed to be non-compliant with the solar access provisions of the ADG. Refer to “4A – Solar and Daylight Access” within the ADG Compliance Table above.	No – see ADG compliance table for discussion.

DEVELOPER CONTRIBUTIONS

80. The proposed development if approved would require the 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 locality by the construction of six new apartments. If the development was to be approved a condition outlining the required contributions will be imposed.

IMPACTS

Natural Environment

81. The proposed tree removal has been assessed by Council’s Consultant Arborist as being acceptable subject to appropriate conditions of consent requiring replacement tree planting both within the site and in the public domain adjacent to the site. However, the absence of ADG compliant deep soil zones with minimum 6m dimensions and insufficient building setbacks precludes the planting of significant canopy trees within the site itself to ameliorate the scale of the building and reduce its visual impact.

Accordingly the application is recommended for refusal.

Built Environment

82. The proposal exceeds the building height development standard of Hurstville Local Environmental Plan 2012. A Clause 4.6 Objection has been submitted in support of the non-compliance.
83. The exceedance of this standard is unreasonable and unacceptable in the site’s context and the neighbourhood’s character. The proposal is inconsistent with various State Environmental Planning Policy 65 Design Quality Principles (as detailed above) and does not reflect the desired future planning and design outcome for the site. The bulk of the building, its inadequate setbacks, deep soil areas and communal open space area result in an unacceptable outcome for the site and will set an undesirable precedent.

It is further noted that the narrow, tall form of the building provides proportions that are not anticipated by the Development Control Plan that applies to the locality, and accordingly the proposal is inconsistent with the existing and future desired character of the precinct and is thus recommended for refusal.

Social Impact

84. No adverse social impacts have been identified as part of the assessment. The provision of additional dwellings would in principle provide for additional housing in close proximity to a local centre for a cross-section of the community. However, the built form is not an appropriate outcome for the site.

Economic Impact

85. The proposed development has no apparent adverse economic impact. There may be a small positive economic impact as a result of the construction of the development.

Suitability of the site

86. The site is zoned R3 Medium Density Residential. The proposal is a permissible land use within the zone, subject to development consent.
87. The subject site in isolation is not suitable for the construction of an RFB within a medium density environment as the site does not meet the minimum site width control and therefore cannot achieve suitable setbacks to neighbouring properties.
88. This RFB has not been sensitively designed to respond to the constraints of the site, in particular the land's dimensions, area and context, as evidenced by its various non-compliances with relevant building envelope controls as detailed previously within this report.

SUBMISSIONS AND THE PUBLIC INTEREST

89. The application was neighbour notified in accordance with Hurstville Development Control Plan on three occasions between January 2018 and September 2018, in response to amended plans submitted by the applicant. Four (4) submissions were received over the course of the three periods (two duplicate submissions) however the issues remained the same in each submission.
90. The issues raised in the submissions are summarised as follows, with a response provided to each.
91. *Non-compliance with the building height*
Concern is raised with the non-compliance with the building height.

Planner's Comment: The proposal does not comply with the maximum building height standard of the LEP and the request to vary the control is considered acceptable should the development be supported. However for a number of other non-compliances with the relevant planning controls, the application is not supported.

92. *Overdevelopment in the area*
Concern was raised with regard to the number of residential flat buildings in Peake Parade and the wider locality in general.

Planner's Comment: The site is located within a Zone R3 Medium Density Residential area that has received an uplift with respect to FSR and building heights under the Hurstville LEP 2012. As such, the area is likely to undergo a transition over time in the form of additional residential flat buildings. However, this particular proposal represents a poor outcome for the site as the site does not meet the minimum 24m site width control and as such cannot achieve compliance with a number of other controls including setbacks deep soil. The proposal is recommended for refusal.

93. *Noise Pollution*

Concern is raised that the proposal will increase noise pollution in the area.

Planner's Comment: If it were approved, the proposal would be unlikely to create excessive noise. A condition would be imposed to control the hours of use and noise emitted from the roof top communal open space.

94. *Parking Impacts*

Concern is raised that the proposal will exacerbate the already crowded street with regard to cars parked on the street.

Planner's Comment: The proposal fully complies with relevant off street car parking requirements of the Development Control Plan. This does not constitute a reason for refusal in this instance.

95. *Privacy Impacts*

The proposed development will have adverse privacy impacts on neighbours.

Planner's Comment: The proposal fails to meet the required setbacks to the side boundaries and council considers the privacy of neighbouring properties will be adversely impacted. The application is recommended for refusal.

96. *Overshadowing*

Concern is raised that the proposal will unreasonably overshadow nearby properties.

Planner's Comment: The shadow diagrams submitted with the DA have been assessed as being reliable for the purposes of assessment and the proposal complies with the Development Control Plan control that requires development to ensure neighbouring properties will continue to receive 3 hours of sunlight to the windows of the main living areas and private open space of adjoining dwellings during midwinter.

REFERRALS

Council Referrals

Development Engineer

97. Council's Development Engineer reviewed the proposal. No objection was raised with respect to the proposed stormwater drainage design, subject to conditions of consent being imposed. Deferred commencement conditions were recommended in relation to the applicant obtaining an easement to drain water into the open drain in the council reserve at the rear of the subject site.

Traffic Engineer

98. The DA was referred to Council's Traffic Engineer. No objection was raised to the proposal subject to appropriate conditions of consent if approved.

Consultant Arborist

99. Council's Consultant Arborist reviewed existing tree conditions and raised no objection to the removal of the existing trees subject to conditions of consent if approval is granted. Those conditions require replacement tree planting on site and within the street to offset the loss of existing trees.

Waste Officer

100. The DA was referred to Council's Waste Officer for review. The Waste Officer advised that the proposal would require 4 x 240L waste bins (2 x waste and 2 x recycling), all

collected twice a week. A bin store area is located adjacent to the walkway from the street and the common building entry foyer. A garbage store room is also indicated in the basement. Council's waste officer requires a dedicated bin store room to meet certain design and operational criteria. Conditions of consent could be included should the application be approved to delete the ground level bin store room and include the design requirements for the basement bin store room.

Building Surveyor

101. Council's Building Surveyor raised no objection subject to conditions of consent if approval is granted.

External Referrals

Ausgrid

102. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. At the time of writing, no response has been received. Notwithstanding, the DA is recommended for refusal due to significant built form issues.

CONCLUSION

103. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the EP&A Act. The proposal is found to be an unreasonable overdevelopment of the site, with excessive visual bulk and unmitigated scale, inadequately proportioned deep soil zones and communal open space areas and encroachment on required setbacks (from adjoining properties). As such, it represents an unacceptable planning and design outcome for this site and would adversely affect both the character of development in the street and the immediate locality and the residential amenity of the area.
104. The proposal is inconsistent with various design quality principles of State Environmental Planning Policy 65 including context and neighbourhood character, built form and scale, landscape, amenity and aesthetics.
105. The proposal has been assessed against the provisions of both Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1. The proposal exceeds the building height development standard of Hurstville Local Environmental Plan 2012. The Clause 4.6 Objection submitted in support of this variation is not supported as the development is recommended for refusal.
106. The proposal also fails to comply with various built form controls of Hurstville Development Control Plan No. 1 including the site frontage and landscaped area controls.
107. For the above reasons, the proposal is recommended for refusal.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

108. The reasons for this recommendation are:
- The proposal also fails to meet the maximum building height permitted on the site pursuant to Clause 4.3 (Height of Buildings) of Hurstville Local Environmental Plan 2012 and the Clause 4.6 Objection submitted is not supported.

- The proposal does not achieve the minimum side and rear setbacks required by the ADG and would encroach unacceptably on the adjoining properties.
- The proposal fails to achieve the minimum deep soil and communal open space requirements of the ADG.
- The development is also found to be deficient with a number of residential amenity requirements of the ADG and is deemed to fail to meet the ADG's solar access and cross ventilation criteria on the basis that insufficient information has been received to confirm compliance.
- The proposal represents an overdevelopment of the site and would establish an undesirable precedent in the area. Its approval is not in the public interest.


Determination

109. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel refuse development consent to Development Application DA2017/0627 for demolition of existing structures, tree removal and construction of a three (3) storey residential flat building with basement parking at Lot 292 in DP36537 known as 16 Peake Parade, Peakhurst, for the following reasons:

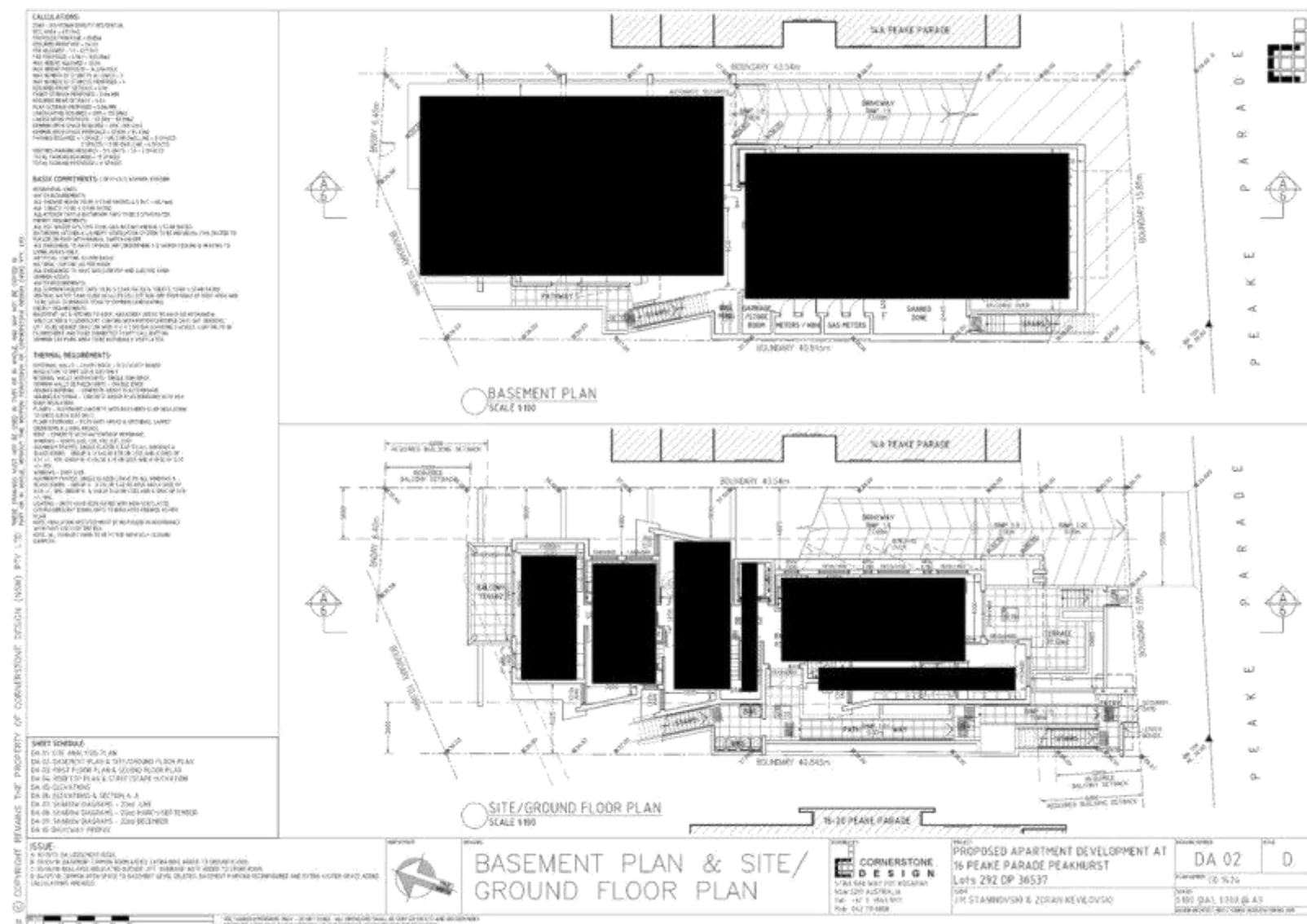
1. **Refusal Reason – Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the relevant environmental planning instruments in terms of the following:
 - (a) The proposal fails to satisfy Part 4 of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development as it is inconsistent with various design quality principles of State Environmental Planning Policy No 65 with respect to its response to the site's context and neighbourhood character and its built form and scale, density, landscape and aesthetics, and fails to comply with the corresponding design criteria of the Apartment Design Guide. The proposal does not achieve an acceptable built form with insufficient setbacks and separation to minimise the visual dominance of the building when viewed from both the public domain and adjoining properties. In addition, the proposal fails to provide any 6m wide deep soil landscaped area on the site.
 - (b) The proposal fails to satisfy Part 4 of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development on the basis that it fails to either achieve or adequately demonstrate compliance with the design criteria of the Apartment Design Guide with respect to internal solar access, cross ventilation and the minimum area of communal open space.
2. **Refusal Reason - Development Control Plan** - Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Hurstville Development Control Plan No. 1, Chapter 4.1 Residential Flat Buildings, Section DS2.1 Site Frontage or Section DS3.1 Isolated Sites. The site has a frontage of 15.8m, which fails to comply with the minimum 24m required by the Development Control Plan. The site is not deemed to be an isolated site and no evidence has been provided from the applicant to indicate attempts have been made to purchase adjoining sites for amalgamation with the subject site. Together these non-compliances result in the site being unsuitable for the proposed development and it having unreasonable adverse impacts on neighbouring properties.

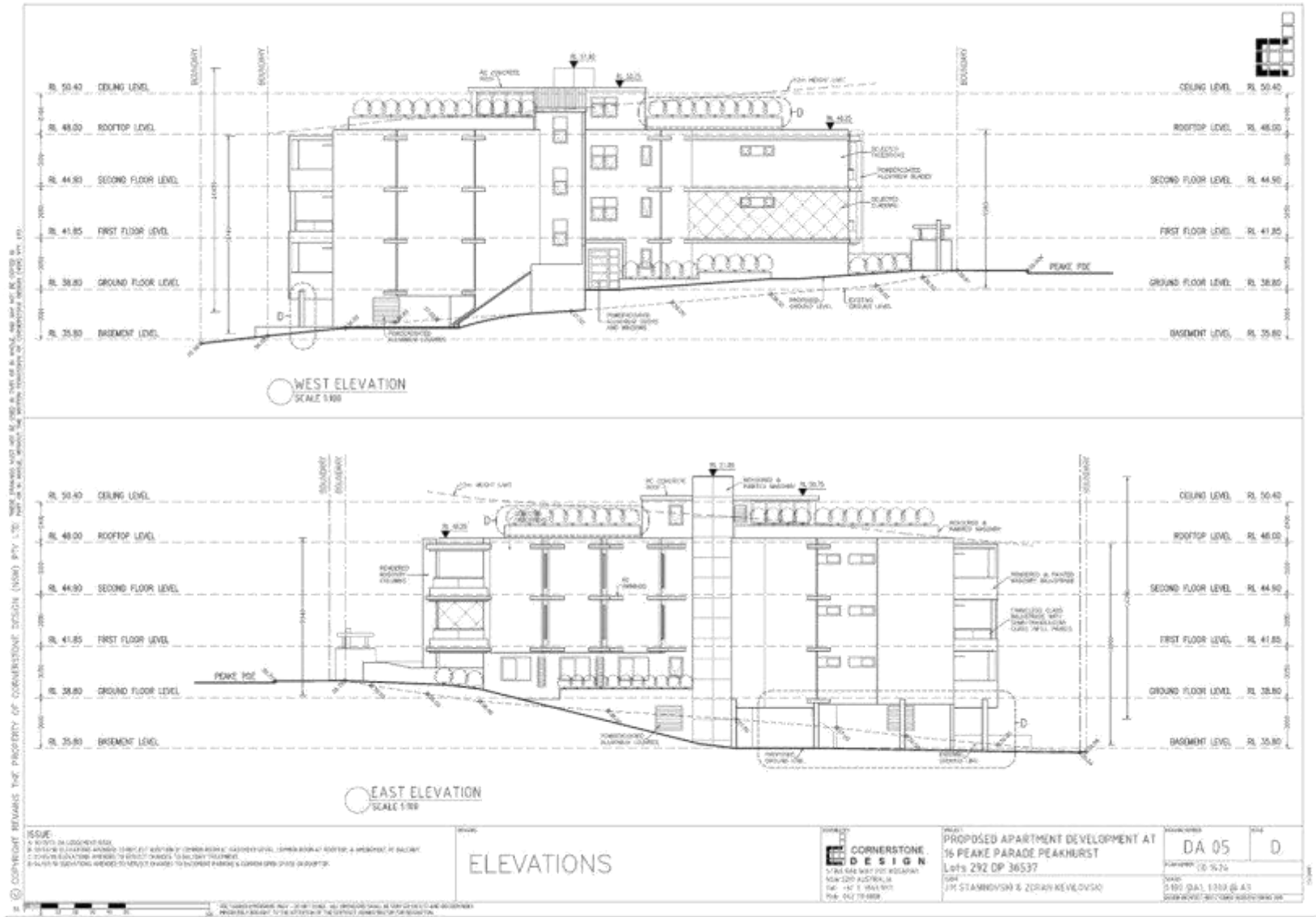
3. **Refusal Reason – Impacts on the Environment** - Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:
- (a) Natural environment – The proposal does not meet the deep soil zones design criteria of the Apartment Design Guide nor provide sufficient front or side setbacks which precludes the planting of canopy trees around the perimeter of the site to provide a landscaped setting for the proposal and ameliorate the scale of the building. Furthermore, no landscaped boundary setback is provided on the north eastern side of the vehicle driveway.
 - (b) Built environment – The proposal does not respond to the context of the site nor the neighbourhood's character on the basis that it exceeds the maximum building height that applies to the site, encroaches on the minimum required side and rear setbacks expected on the site, and fails to demonstrate a suitable level of internal amenity for the proposed apartments.
4. **Refusal Reason – Suitability of Site** - Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development for the following reasons:
- (a) The site cannot adequately accommodate the proposed built form without significant adverse impacts on the amenity of adjacent and nearby properties with respect to built form, visual dominance, bulk and scale.
5. **Refusal Reason – Public interest** - Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent within the locality.

ATTACHMENTS

Attachment 02 Basement Plan and Ground Floor Plan - Issue D - 16 Peake Pde
[↓ 1](#)  Peakhurst_Redacted - Reduced

Attachment Revised Elevations - Issue D - 16 Peake Pde Peakhurst - Reduced
[↓ 2](#) 





REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 19 SEPTEMBER 2019

LPP037-19

LPP Report No	LPP037-19	Development Application No	DA2018/0513
Site Address & Ward Locality	186-190 Princes Highway and 2-6 Lacey Street, Kogarah Bay Kogarah Bay Ward		
Proposed Development	Demolition of the existing structures and outbuildings and the construction of a seven (7) storey Residential Flat Building containing fifty (50) apartments, two (2) levels of basement parking, the retention and conservation of the existing Heritage Item (McWilliam House also known as Sunnyside) and associated landscaping and site works		
Owners	Mr.G.W Evans, Ms.R.M.Smith, Mr and Mrs Vais, Mr.P.A. Andrews and Ms.J.A.Brown, Mr and Mrs Darwiche		
Applicant	Truland Developments Pty Ltd		
Planner/Architect	PBD Architects – Architects and Planning Ingenuity – Town Planners		
Date Of Lodgement	28/11/2018		
Submissions	Fourteen (14) written submissions		
Cost of Works	\$17,550,000		
Local Planning Panel Criteria	New RFB where the provisions of SEPP 65 are applicable and the height of the proposal exceeds 10% and a Clause 4.6 Statement has been submitted in support of the non-compliance and over 10 unique submissions were received and the application involves demolition works associated with a heritage item.		
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, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, 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 – Planning Ingenuity Traffic and parking Assessment – Varga Traffic Planning Noise Impact Assessment – Rodney Stevens Acoustics BCA Report – AED Group		
Report prepared by	Senior Development Assessment Planner		

Recommendation	Approval
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes- Clause 4.6 Statement submitted in respect to non-compliance with the height control.
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 some design changes, which can be reviewed when the report is published.

Site Plan



Site outlined in blue

Executive Summary

Proposal

1. The development application (DA) seeks consent for the demolition of existing structures across five (5) sites, lot consolidation and the construction of a seven (7) storey Residential Flat Building (RFB) comprising of a total of fifty (50) apartments including two (2) levels of basement car parking catering for a total of ninety-three (93) car parking spaces. The proposal also includes alterations and restoration works to the existing Heritage Item to retain a two storey dwelling and convert the rear of the ground floor spaces into communal areas in association with the development. The proposal includes extensive landscaping and site works.
2. The proposal was the subject of a formal Pre-lodgement Application (PRE2018/0020) for a scheme that was significantly larger than what has been proposed as part of this DA. The issues raised in the pre-lodgement advice included the overall height and scale, setback and visual relationship of the proposed building to the heritage item and the height of the building and its interface to the residential properties to the rear located along Wyuna Street. The proposal was modified to address these issues.
3. The proposed development works include alterations and renovations to the existing heritage item by retaining a substantial curtilage around this building to allow for the visual appearance and integrity of this property to be maintained. The new building is setback from the item and the design includes a three storey podium along Princes Highway and the Wyuna Street frontage with upper levels being stepped back behind this element.
4. The proposal has been amended on two occasions, the first on 30 May 2019 to address outstanding design issues raised by the Design Review Panel (DRP) and address Council's Heritage Advisor's concerns. The recent architectural amendments are Revision C received by Council 9 August 2019 and addresses Council Officers concerns

regarding the height and scale of the development when viewed from Wyuna Street and to address a series of internal amenity, appearance and general functional issues. The most recent amended plans (Issue C) are relied on in the assessment of this application.

5. The proposed development, in its amended form, still exceeds the height control but has been amended to ensure that the non-compliance is related only to the lift core and roof top terrace area and does not affect any habitable areas. An amended Clause 4.6 Statement has been submitted which has been assessed in detail later in this report and is considered to be well founded and in this case can be supported given the nature and degree of variation that has been applied for. Also Subclause 5.10 (10) of the Kogarah Local Environmental Plan provides the opportunity to utilise conservation incentives for new development and works that will not adversely affect the integrity of a Heritage Item. In this case the Applicant is not relying on the conservation incentives to justify the non-compliance; however it is a unique site and a development that is integrating the Heritage Item and conserving its historic and architectural importance.
6. It is considered that the amended plans and details provided to Council are comprehensive and well considered given the particular site constraints. The Applicant has on balance addressed all the outstanding issues and the proposed development is considered to be a reasonable planning and design outcome for this site and will be consistent with the desired future character for this precinct. Figure 1 below is a photomontage of the proposed development as originally proposed and viewed from Princes Highway (front elevation).



Figure 1: Photomontage of the proposed development as originally designed and viewed from the Princes Highway frontage

Site and Locality

7. This application applies to land known as 2-6 Lacey Street, Kogarah Bay and 186-190 Princes Highway, Beverley Park. The development will consolidate the five (5) existing sites into one integrated development site.

8. The site is irregular in shape and has a frontage of approximately 76m to Lacey Street, 39m frontage to Princes Highway and width of some 31m to Wyuna Street at the rear. The total combined site area is 3,078sqm. Existing on site are a series of four (4) older style dwelling houses and an old Victorian style sandstone cottage that is a designated heritage item (noted as I3 in Schedule 5 of the Kogarah Local Environmental Plan). The heritage home is described as *“house and garden “McWilliam House”* and sits on land known as Lots 5 and 6 DP17522 and is also referred to as “Sunnyside”.
9. The site is located within a precinct that is currently transitioning from lower scale residential properties to larger, medium density developments. The subject site like many adjoining the Princes Highway have been upzoned to allow for a greater intensity of development given their location. The site is located within a generally residential precinct however the north-eastern side of Princes Highway (across the road) includes a series of mixed uses and smaller scale retail and commercial uses. To the south and south-east of the site the land uses comprise of smaller scale, low density residential dwelling houses which is an established housing environment not projected to change in the immediate future.
10. The site is located within close proximity to amenities such as St George Leagues Club, Carss Park and Kogarah (Netastrata) Oval.

Zoning and Permissibility

11. The subject site is zoned R3 Medium Density Residential under the provisions of the *Kogarah Local Environmental Plan 2012* (KLEP2012). The proposed Residential Flat Building is permissible with consent. The existing heritage property is a dwelling house which is also permissible with consent in this zone.

Submissions

12. The DA was notified to neighbours in accordance with the Kogarah Development Control Plan 2013 (KDCP). Fourteen (14) submissions were received. The issues raised include concerns regarding additional construction noise, an increase in parking and traffic congestion, privacy, design, concerns regarding the height, scale and bulk of the scheme and overlooking issues. A few submissions were concerned about the relationship of the proposal to the integrity of the heritage item. These issues are discussed in greater detail later in this report.
13. The two amended versions of the original scheme were lodged but not renotified as the changes were improvements in the design and were in accordance with the provisions of Part A2 (Public Notification), section 2.5 of the KDCP which stipulates that *“Where Council receives amended plans prior to determination, Council will notify as follows: a) If an application is amended prior to determination, it will be renotified if, in the opinion of the Council officer, the amendments are considered to result in significant additional environmental impacts.”* The changes proposed did not create any additional impacts and sought to improve the visual appearance of the development and improve the relationship of the new works to the heritage item.

Reason for Referral to the Local Planning Panel

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

and over ten (10) unique submissions were received in response to the original application and the statutory non-compliance exceeds 10% and the works involve demolition associated with a heritage item.

Planning and Design Issues

15. Council's Heritage Officer reviewed the proposal on two occasions (original scheme and the final amended design). Concern was raised in respect to the three storey podium section of the development facing Princes Highway and that this element needed to be setback further so that the visual prominence of the Heritage Item and its veranda would be maintained. This required a reduction in the floor space and subsequent reconfiguration of the front units. Originally the new development and three storey podium section was aligned with the front veranda of the heritage item and setback some 12.5m from the street. The proposal was amended so that this element is now setback further and sits 14.5m from Princes Highway. The new podium structure is setback behind the veranda of the item so that the visual significance of this stately home is retained when travelling up and down Princes Highway. This will open up views to and from the item and retain the visual and historical integrity of this building. Council's Heritage Officer also wanted some updated information regarding the excavation of the car park along the eastern side and the method of excavation in order to ensure structural stability of the Heritage home would be maintained. In response to the design changes the Heritage Impact Statement was updated.
16. The latest comments provided by Council's Heritage Advisor still raises concerns regarding the siting of the RFB and would like the new building and the podium pulled back. *The proposed development will unquestionably alter the visual backdrop and setting to the heritage item, with the proposed built form resulting in a visually prominent structure that is significantly larger in scale and form compared to the existing built forms of the streetscape. The proposed oversized two-storey podium at the front of the building projects forward of the front façade of the heritage item and with the proposed setback to the tower above, the overall scale of the development competes with the visual prominence of the heritage item. As previously recommended to the applicant, the podium level should be revised to incorporate a deeper front setback, so that no part of any blade wall or balcony projects beyond the front façade of the building rather than the alignment of the front verandah".* In relation to the upper levels it is suggested that *"the tower structure should be revised to also incorporate a deeper front setback, so that it sits (at a minimum) behind the ridgeline of the roof to the heritage item. The setbacks of the built form when viewed from Princes Highway and Lacey Street are critical to ensuring the proposed building does not visually obscure key sight lines to the heritage item, but also to ensure it retains visual prominence within the streetscape as being clearly distinguished as sitting further forward towards Princes Highway."*
17. A condition has been imposed which seeks modification to the front podium design in accordance with the heritage advice received and for this element (including the balconies) to align with the front facade. Council Officers believe the upper levels have been setback to be generally aligned with the ridge of the Heritage Building and this setback is considered to be satisfactory. Any further setback would translate the bulk further to the rear which is undesirable and the mass would be incongruent when viewed from Lacey Street.
18. Originally the development exceeded the 21m height limit with parts of the habitable areas encroaching within the height limit. Council expressed concern and stated that support would not be provided for any habitable spaces exceeding the control. Only

ancillary structures could be considered. The development has been amended to reduce the height of the building and step its form a little more so that it is slightly lower at the rear (Wyuna Street) by 1.6m. This will break up the scale and form to some degree but it also allows for an additional communal rooftop area for the rear building which will improve its functionality and overall amenity for these units. The lift overrun and associated ancillary structures exceed the height control however these are considered to be acceptable and will not adversely affect the amenity of adjoining properties or the streetscape. The Applicant has submitted a Clause 4.6 Statement which has been assessed in detail as part of this report and is considered to be well founded.

19. Council Officers also expressed concern regarding the relationship of the rear of the building along Wyuna Street. It is appreciated that the proposed three (3) storey podium provides a better human scale relationship to this streetscape given the southern side of the street is zoned R2 with a maximum height limit of 9m and comprises mainly of lower scale residential dwelling houses. It was recommended that the seven-storey component be lower at the rear so that it steps down and creates a slightly better relationship with the lower scaled properties to the south.
20. Detailed Design Review Panel comments have been included later within this report. In essence the DRP were not satisfied with the pre-lodgement development scheme and the main issues with the original design lodged with the DA was that the building setback from Princes Highway was still insufficient to provide adequate sight lines through to the heritage item. The Panel also wanted to see a distinct three storey base accentuated along all four elevations of the building. The recommendations of the DRP have largely been integrated into the amended designs and the design intent is now considered to be satisfactory.
21. The issues raised by the DRP have been resolved by the latest set of amended plans as the Panel believed that the site planning and built form and overall massing of the building is appropriate and a reasonable planning and design response for the site.
22. The amended plans have created a larger deep soil area as the basement car park has been setback further from the western side, Lacey Street. Originally the basement was setback 1.2m from this side boundary and the amended design has increased this setback to 2.2m allowing for some more deep soil area. The majority of the landscaped area and deep soil area has been retained around the periphery and curtilage of the heritage item which is beneficial and maintains the original context and setting of this building.

Conclusion

23. The application has been assessed having regard to the Matter 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 siting, design scale, form and bulk of the building is considered to be a reasonable planning and urban design response for the site.

Report in Full

DESCRIPTION OF THE PROPOSAL

24. The original development proposed the demolition of existing structures and the construction of a seven (7) storey RFB containing fifty (50) apartments and two (2) levels of basement car parking for ninety-three (93) vehicles including the restoration and readaptation of the existing heritage item. The final amended plans (Issue C) have altered the configuration of some apartments and their layout but have retained the proposed density.
25. In summary the main design changes that have evolved into the final set of plans include the following changes;
- The basement level has been setback from the south-western side from 1.2m to 2.2m.
 - Storage spaces have been moved from the north-western to the north-eastern side to provide for more deep soil areas along the Lacey Street frontage.
 - The new podium level at the front facing Princes Highway has been setback further from the street frontage to be setback 14.5m from the front boundary and the front façade and design element is aligned with the front verandah of the heritage item.
 - The first floor layout has been reconfigured for apartments BG05 and BG06 to allow for a greater front setback.
 - Building A has been redesigned so that the main lobby area which was off Lacey Street has been relocated off Wyuna Street. The internal layout of some apartments has been altered to reduce the height of the building along this side.
 - As there is no direct formal access from Building A through to the area of communal open space, the design has introduced a communal area of open space on the roof for this part of the development accessed via the lift.
 - The overall parapet height of the new building has been reduced and Building A at the rear is now stepped and 1.6m lower than that part of the building (Building B) facing Princes Highway.
 - The three (3) storey podium along Wyuna Street includes a small recess where the lobby has been relocated.
 - The overall floor space has been reduced from 1.85:1 to 1.80:1.
 - The height non-compliance comprises of rooftop ancillary structures (lift overrun, stairs and WC) with minimal parapet and roof features. Along the eastern side (central area) there is a small encroachment of the window glazing on the upper level.
26. The proposal includes the demolition of four (4) freestanding dwelling houses (No.190 Princes Highway and No.s 2, 4 and 6 Lacey Street) and their associated ancillary structures.
27. Further details of the proposed design and layout of the development are as follows;
- Basement 2 Plan
- Fifty-five (55) resident car parking spaces.
 - Two Lift and stair lobbies
 - Sixteen (16) bicycle parking.
 - Fire stairs
- Basement 1 Plan
- Thirty-eight (38) car parking spaces comprising of the following;
 - Six (6) accessible spaces with shared zones
 - Eleven (11) visitor spaces (one spaces doubles up as a car wash bay)
 - Twenty-one (21) residents spaces
 - One designated turning bay located along the north-western side.
 - One (1) designated Loading Bay
 - Six (6) bicycle parking

- Designated storage spaces to most resident spaces
- Fire access stairs
- Hydrant booster and pump room
- Two (2) lift and stair lobbies
- Two (2) separate bin storage rooms
- WC and associated ancillary services and plant rooms

Ground Floor Plan

- Alterations and additions to the Heritage Item (“McWilliams House”) capturing the following works;
 - Internal works that will create a two storey, four (4) bedroom apartment.
 - Rear section of the building is converted to communal spaces including storage, gym, WC and communal kitchen with access to a large communal deck and entertaining area.
 - Landscaping works around the periphery of the heritage item.
- The new building is divided into two (2) distinct lobbies, Lobby B (that part of the development facing Princes Highway and Lacey Street) and Lobby A (the rear part of the building with main pedestrian access off Wyuna Street).
- Main vehicular access off the rear, Wyuna Street.
- Building A – comprises of the following;
 - 2 x 2 bedroom apartments
 - 1 x 1 bedroom apartment
 - 3 x 3 bedroom apartments
- Building B – comprises of the following;
 - 3 x 3 bedroom apartments
 - 1 x 4 bedroom apartment
 - 1 x 1 bedroom apartment
 - 1 x 2 bedroom apartment
- Substation located along the south-western corner of the site, adjoining the fire stair access.
- Private courtyards located on the outer edge of the new building along all street elevations.

Level 1 Plan

- 2 x 2 bedroom apartment to Building B
- 1 x 1 bedroom apartment to Building A
- 1 x 3 bedroom apartment to Building A
- Two (2) lift lobbies
- Balconies to apartments

Level 2 Plan

- 2 x 2 bedroom apartments (Building B)
- 1 x 3 bedroom apartment (Building A)
- 1 x 1 bedroom apartment (Building A)
- Two (2) main lift lobbies
- Balconies to all apartments

Level 3 Plan

- 1 x 1 bedroom apartment (Building B)
- 2 x 2 bedroom apartments (Building B)
- 1 x 3 bedroom apartment (Building B)
- 3 x 2 bedroom apartments (Building A)
- 1 x 1 bedroom apartment (Building A)

- Both parts of the building along the north-western and south-eastern have been setback behind the podium.
- Two (2) main lift lobbies

Level 4-6 Plan (at each level)

- 1 x 1 bedroom apartment (Building B)
- 2 x 2 bedroom apartments (Building B)
- 1 x 3 bedroom apartment (Building B)
- 2 x 3 bedroom apartments (Building A)
- 1 x 2 bedroom apartment (Building A)
- Two (2) main lift lobbies and stair access

Roof Plan

- Roof top area of communal open space catering for approximately 100sqm in area located along the southern side of the building.

28. The proposal will require the removal of a Jacarandah Tree, a street tree, two (2) palm trees on site and two trees on the adjoining site at No. 21 Wyuna Street will require removal as they will be affected by the development. The proposal also intends on consolidating the development site. Formal permission has been granted by the owners of No.21 Wyuna Street for the removal of these trees and a condition relating to these works is included.

BACKGROUND

29. On 16 April 2018 the Applicant's submitted a Pre-lodgement application (PRE2018/0020) to Council. The development scheme was analysed and formal comments and a response provided on 20 July 2018. The letter acknowledged that the Heritage Item located on the site constrained future development and that the development potential in terms of achieving the maximum floor space may not be achieved given the item and its setting will have to be conserved.
30. In summary the following planning, heritage and urban design issues were raised;
- The development needs to be sensitively designed and sited so that the proposed development does not impede on the views to and from the heritage building.
 - The height of the new works needs to respect the location and siting of the existing dwelling houses located to the south which are of a low scale and are zoned R2 with their development potential limited to a 9m height limit.
 - The height of the new works needs to respect the location and siting of the existing dwelling houses located to the south which are of a low scale and are zoned R2 with their development potential limited to a 9m height limit.
 - Front setback and height to Wyuna Street to be consistent with existing buildings and to harmonise with the character of development in this residential street.
 - Vehicular access off Lacey Street was preferred.
 - The Heritage Advisor at this stage could not support the proposal given its visual dominance and scale which will severely impact on the significance and integrity of the item.
 - Proposed materials, colours and finishes will need to be reconsidered and be more sympathetic with the item.
 - Council will not support any variations above the height limit if they affect habitable areas.
 - The preliminary design was referred to the Design Review Panel for review. Their comments are addressed later in this report but in summary they raised concern regarding the varying scale of the proposal, two storey podium rising to three storey's

then to six and then eight storey's. This design approach was not supported by the Panel. They emphasised the need to ensure the visual catchment of the heritage item is maintained and its general curtilage. They suggested a series of changes be implemented.

31. The Applicant has amended the design to address the DRP and Heritage Advisors comments and the scheme is now considered to be a suitable design and planning response for this Site.

DESCRIPTION OF THE SITE AND LOCALITY

32. The subject site comprises of five (5) allotments with the following legal descriptions;
 - *186-188 Princes Highway (legally known as Lot 5 and 6 DP 17522)*
33. This property contains the designated Heritage Item of local significance (McWilliams House) and associated outbuildings which comprise of a timber gazebo and metal sheds at the rear (Photo1). The heritage home is a fine example of Victorian Architecture as it has retained many of its original materials (sandstone) and features which include intact window and door openings and also the characteristic element of the wide verandah wrapping around the building. Alterations to the original home have occurred at the rear in the form of a single and two storey wing. The heritage status covers the two allotments as the existing sandstone front fencing and main entry encroach and are located on No.188. Combined the site area of these two lots is some 1,200sqm.
- *No.190 Princes Highway (legally known as Lot 7 DP17522)*
34. This property includes a single storey, detached dark brick dwelling house with a separate garage structure located off Lacey Street (Photo 7). The site area of this property is 605sqm and it is generally a regular rectangular shaped allotment. It is characterised by a series of Pine Trees located along the perimeter of the site.
- *No.2 Lacey Street (legally known as Lot 8 DP17618)*
35. Existing on site is a single storey detached dwelling house with a separate carport structure at the rear with a vehicular driveway located along the south-eastern side of the site. The site area of this property is approximately 405sqm.
- *No.4 Lacey Street (legally known as Lot 9 DP 17618)*
36. Similar site characteristics to No.2 Lacey Street are exemplified. The site area of this property is approximately 405sqm and existing on site is a single storey detached rendered cottage with a separate garage structure at the rear. Main access is off Lacey Street (Photo 5).
- *No.6 Lacey Street (legally known as Lot 10 DP 17618)*
37. This property has its main frontage to Wyuna Street with a detached garage located along the northern side. Existing on site is a single storey, rendered dwelling house. The site is generally regular in its shape and has a total site area of some 400sqm (Photo 2).
38. Combined, the five (5) allotments have the following characteristics;
 - Frontage width to Princes Highway of 38.785m
 - Frontage width to Lacey Street of 75.885m
 - Frontage width to Wyuna Street of 31.775m
 - Total site area of 3,078sqm



Photo 1: Existing front view of of the Heritage Item at 186 Princes Highway



Photo 2: Southern elevation of No.6 Lacey Street



Photo 3: No.21 Wyuna Street to the south-east of the site



Photo 4: Properties on the opposite (western side) of Lacey Street



Photo 5: No. 2-4 Lacey Street (part of the subject site)



Photo 6: Redevelopment site (313-323 Princes Highway) on the opposite (northern side) of the subject site



Photo 7: No.190 Princes Highway



Photo 8: Eastern neighbour No.184 Princes Highway

39. Immediately to the north of the site, across the road, there are a variety of mixed land uses along Princes Highway. These properties are zoned B2 which encourages mixed land uses. Most recently a mixed use development was approved at No.325-329 Princes Highway (DA2017/0491) (refer to Figure 2 below) located across the road.



Figure 2: Front elevation of the approved development at No.325-329 Princes Highway

40. Also No.313-323 Princes Highway is currently under construction (refer to Photo 6) and the Land and Environment Court approved a six storey mixed use development with commercial premises on the ground floor (refer to Figure 3 below) at this site.



Figure 3: Front elevation of the approved development at No.313-323 Princes Highway

41. Immediately to the south-east, south and south-west of the site are a variety of lower scale residential dwelling houses of a single and two storey scale (refer to Photo 6). This area is residential in nature and low scale in its character.
42. To the east, No.184 Princes Highway is a single storey dwelling house with a vehicular driveway off Princes Highway (refer to Photo 8). No.21 Wyuna Street is a single storey dwelling house with its main access off Wyuna Street (refer to Photo 3). Further to the east are similar smaller scale residential properties which have not been redeveloped despite this block being upzoned. Currently Council has a development application (DA2018/0516) for the redevelopment of No.5-11 Wyuna Street for a seven (7) storey RFB. This application is currently under assessment. Figure 4 below shows the montage of the proposed front façade when viewed from Wyuna Street.



Figure 4: Front elevation of the proposed development at No.5-11 Wyuna Street, Beverley Park (courtesy Council records)

43. Council received a pre-lodgement application (Pre2018/058) for the potential redevelopment of No.13-21 Wyuna Street in November 2018. The pre-lodgement advice provided to the Applicant suggested a major redesign was required to achieve a more sympathetic scale and form at the front of the property. It was suggested that a maximum four (4) storey podium section of the building be provided to Wyuna Street with the upper levels be stepped back. This would achieve a better human scale transition to the lower scaled residential dwelling houses across the road to the south of the site. Figure 5 below shows the front elevation as proposed by the pre-lodgement application.



Figure 5: Front elevation of the proposed development at 5-21 Wyuna Street (Pre2018/058) (courtesy Council records)

44. Properties immediately to the west of the site are generally undeveloped and contain single and two-storey detached dwelling houses. The Land and Environment Court has recently approved two development applications for new six (6) and seven (7) storey RFB's along John Street. Figure 6 and 7 below show the front façade of the approved developments within this precinct. A new seven (7) storey RFB has also been approved for No.198-200 Princes Highway (DA2017/0655). The block bounded by John Street, Princes Highway, Lacey Street and Park Road has experienced some more developments when compared to this block.



Figure 6: Front elevation of the approved development at No.1-3 John Street, Beverley Park (DA2017/0218) (courtesy Council records)

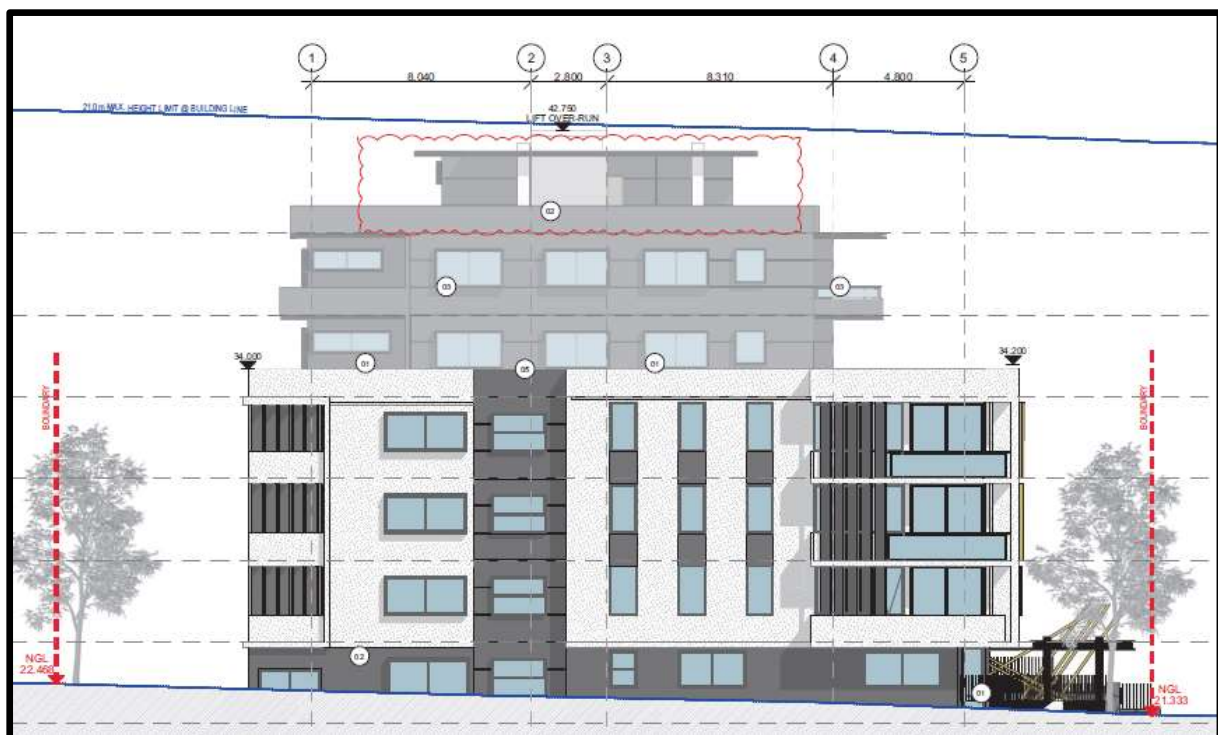


Figure 7: Front elevation of the approved RFB at No.5-9 John Street, Beverley Park (DA2017/0663) (courtesy Council records)

45. The site is not located within close proximity to a major commercial centre; there are local retail and commercial properties along Princes Highway which will be able to service the development including the Shell Petrol Station, Red Rooster and other smaller scale commercial/retail shops and restaurants. It is understood that the development currently under construction at 313-323 Princes Highway is proposed to include an Aldi Supermarket.

46. The immediate precinct is undergoing a process of transition and transformation to larger scale medium density residential developments and larger scale mixed use developments along Princes Highway.

State Environmental Planning Policies

47. Compliance with the relevant state environmental planning policies is summarised in table 1, and discussed in more detail below.

Table 1: Compliance with State Planning Policies

State Environmental Planning Policy	Compliance
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	Yes – there are a non-compliances with the ADG provisions but these are considered acceptable and are detailed in the body of this report.

Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment

48. 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,*

49. The originally proposed stormwater and drainage arrangement was referred to Council's Engineers who raised concerns with the proposed design. Their comments stated;

"After an engineering review, the submitted drainage plans are not found to be adequate and are not supported. As a result, the following engineering issues are to be addressed:

- *It is consistently required to submit the stormwater Web-base calculator summary sheet for the proposed development's site.*
<http://www.georgesriver.nsw.gov.au/Development/Planning-Controls/Development-Policies>
- *It is required for the concept drainage plan with the OSD system to be prepared in accordance with the results and the requirements of Council's stormwater web-base calculator after generating the site Stormwater Management Report.*
- *Any proposed location of an OSD tank shall not be within a habitable space and the headroom clearance shall be indicated on the plan.*
- *The basement tank shall be designed to accommodate a minimum 6.0m3 to accommodate the seepage.*

Unsustainable Connection into Street System

- *The connection of the proposed site stormwater discharge pipe into Council's pit in Lacey Street is not possible and is not feasible. The depth of the pit was measured on site to be 480mm, meanwhile the plans are assuming the pit depth (19.30-18.05= 1.25m) which cannot be achieved and the proposed drainage system cannot drain by gravity. It is required for the invert level of the street pit to be surveyed by a registered surveyor and the length of the proposed pipe in the road to be accurate."*

50. Amended hydraulic plans were submitted to Council in August 2019 and referred to Council's Engineers for comment. They are now satisfied with the stormwater drainage arrangement subject to the imposition of conditions.

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

51. The original BASIX Certificate was updated to reflect the latest amended plans (Issue C) and is No.974294M_04 dated 2019. The development 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

52. 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.
53. 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.
54. A review of the site history indicates that the site has been used for residential purposes for extended periods of time. A Geotechnical Report was prepared by Morrow Geotechnical Consultants dated 9 October 2018. The Morrow assessment relied on finding from four (4) boreholes across the site. The report found that the subsurface conditions include *"generally fine to coarse grained clayey sand or sand with clay, silt and gravel... and generally fine to coarse grained sand with clay and traces of sandstone gravel"*.

55. A Preliminary Site Investigation report was prepared by Dirt Doctors dated 5 November 2018. The report relies on historical data and photographic observations which indicate that the sites have been used for residential purposes since 1947 (and earlier given the development and construction of the Heritage property dating back to before 1870. The preliminary assessment has not found any evidence of the properties being used for any other land uses.
56. There are two areas of potential concern which could give rise to some form of contamination. These being leaks from car parking areas and potential spills and uncontrolled fill beneath existing driveways and structures.
57. The report concludes that *“based on the findings of the investigation it is considered that the risk to human health and environment associated with soil and groundwater contamination is low to moderate in relation to the proposed development for the subject site. The subject site is therefore suitable for the proposed development in its current state and no further investigation is recommended or required”*.
58. The report recommends that if the application is approved the following measures are to be conducted to ensure the site is suitable for the redevelopment;
 - *Site investigation by Dirt Doctors post demolition, to identify any potential areas of contamination;*
 - *Preparation of a clearance certificate if asbestos is identified.*
59. The report and its recommendations will be conditioned as part of the consent is granted. A standard condition relating to unexpected finds is also included as part of the consent.

State Environmental Planning Policy (Infrastructure) 2007

60. 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 a rail corridor or busy arterial road is acceptable and internal amenity within apartments is reasonable given the impacts of adjoining infrastructure development.
61. Clauses 101 (Development with a frontage to a classified road), 102 (Impact of road noise or vibration on non-road development) and 103 (Excavation in or immediately adjacent to corridors) of the SEPP, are relevant to this DA on the basis that the proposal involves the construction of residential accommodation on land adjacent to the road corridor of Princes Highway (having an annual average daily traffic volume exceeding 20,000 vehicles) and is likely to be adversely affected by road noise and/or vibration.
62. The application was referred to Roads and Maritime Services (RMS) for comment as Princes Highway is an arterial road under their jurisdiction and RMS concurrence is required in accordance with Clause 101 of the Infrastructure SEPP. On 20 December 2018, RMS provided a formal response and raised no objection to the proposed development subject to the imposition of standard conditions which are included as part of the consent if approval is granted.
63. Clause 102 of the SEPP is relevant and states:
 - (3) *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 pm and 7 am,*
- (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

64. An Acoustic report was submitted with the application prepared by Rodney Stevens Acoustics, dated 26 October 2018. The report addresses traffic noise impact from Princes Highway in addition to any potential noise intrusion from the other neighbouring roads to the east and west on the amenity of the proposed residential development. The acoustic assessment was based on the results from one (1) logger located at the corner of Lacey Street and the Pacific Highway. This intersection is considered to be the noisiest part of the Site. Although the Infrastructure SEPP stipulates minimum noise standards but only focuses on bedroom areas. The Draft Guidelines (*Development near Rail Corridors and Busy Roads – Interim Guideline*) include noise levels to be achieved for other habitable areas (living and dining spaces, excluding kitchens, garages, hallways etc) of 40dB(A) at anytime.
65. The noise results at the logger were 68dB(A) between 7:00 to 22:00 and 65dB(A) from 22:00 to 7:00. In order to achieve the 35dB(A) requirement for bedrooms and 40dB(A) requirement for other habitable areas, a series of noise attenuation treatments are required. The acoustic report recommends the following treatments;
 - Bedrooms to include carpet and underlay
 - Living rooms could have hard floors
 - Kitchens and wet areas could be tiled.
 - Glazing will vary from room to room and Building B which faces Princes Highway will require double glazing and a higher rating of glazing as the elevations will be exposed to more noise than Building A which faces Lacey and Wyuna Streets and is setback from the main noise source (Princes Highway)
 - Framing treatments are also proposed and timber frames are not encouraged as these have low acoustic performance.
 - Mechanical ventilation will be required to be installed.
 - Well detailed construction and installation will be required.
66. Mechanical Plant has not been selected or identified on the plans in terms of its type, form and location. It is likely that mechanical plant servicing the development will consist of residential condenser units for the air conditioning system and ventilation fans for the basement car park and garbage exhaust. The proposed system will need to satisfy Council's requirements and those stipulated by the National Construction Code and AS1668.2-2002 (The use of ventilation and air conditioning).
67. If the development is approved a condition on the consent will require the recommendations of the acoustic report to be implemented during the construction of the building and appropriately certified to be consistent with the recommendations of the acoustic report after installation and prior to occupation. Relevant conditions are imposed to ensure this occurs if approval is granted.
68. When considering the impact of the development on the Princes Highway, the generation of traffic onto this roadway is important to consider the general traffic movements. The development proposes a driveway along the eastern boundary with driveway access

from Wyuna Street. This arrangement removes a total of three (3) driveway crossovers along Lacey Street making these redundant and creating a minimum of two (2) on street car parking spaces. In addition the driveway access to the heritage home off Princes Highway will be made redundant (but maintained as a main entrance). When considering the traffic that is generated by the development, a Traffic and Parking Assessment Report has been prepared by Varga Traffic Planning, dated 5 November 2018. The assessment determines and considers traffic generation produced by the development and bases its assessment on the RMS Guidelines for Traffic Generating Developments. In accordance with Section 3 of the guidelines, the development is classed as a “high density residential flat building” and based on the density proposed it will generate 10 vehicular trips per hour (vph) during the AM peak and 8 vph in the PM peak. When an offset is applied for the existing dwellings that generate traffic movements, the actual increase is 6 vph in the morning and 4vph in the afternoon. The traffic generation proposed is considered reasonable and will not have any adverse impacts on adjoining streets.

69. The provisions and requirements of the Infrastructure SEPP have been addressed and satisfied by the proposal.

Draft Remediation of Land SEPP

70. 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.
71. 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.
72. 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 as previously discussed.

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

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

75. 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.
76. An Arboricultural Impact Appraisal was prepared by Naturally Trees dated 5 October 2018. This report considers the importance of all trees existing on site. There are a total of some twenty-six (26) trees scattered across the development site with four (4) trees outside the site boundaries. Many of the trees are exotic, introduced species and are smaller and not significant from a visual or environmental perspective. A total of twenty-five (25) trees are proposed to be removed and five (5) important trees are to be retained. Figure 8 below shows the trees that are scattered across the site and identifies whether the tree is to be retained or removed. A detailed schedule within the report assesses each tree individually.

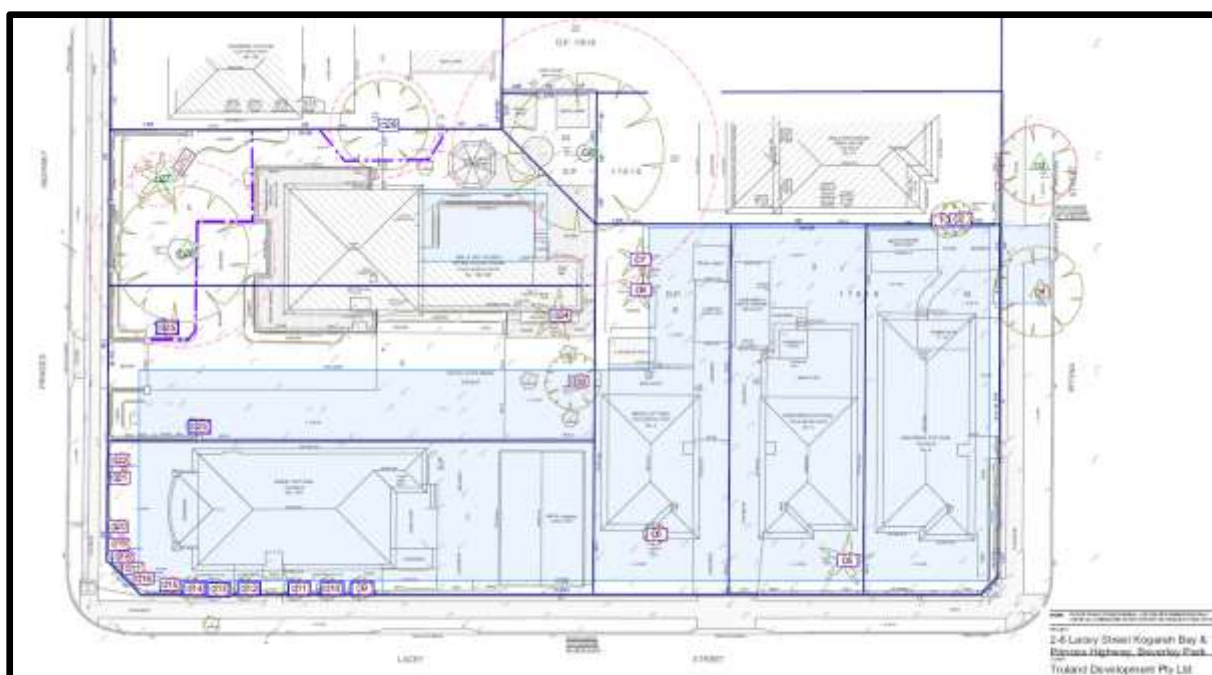


Figure 8: Shows the location of all trees on site, those in red are proposed to be removed and those in green are to be retained and a TPZ included. (courtesy Arborist report by Naturally Trees, 2018)

77. The species of greatest significance and importance are located adjacent to the Heritage Item which enhance the garden setting and context of this property. The following trees adjoining the item that will be retained include;
- Tree 26 Narrow leaved peppermint (*Eucalyptus nicholii*) which is mature and established tree which has a height of 18m and is rated of “high” significance
 - Tree 27 Palm Tree (*Phoenix sp.*) This is an established palm tree reaching a height of some 9m and is rated of medium significance.
 - Tree 28 Weeping Fig Tree (*Ficus benjamina*) which has an overall height of 8m and has been rated of medium significance.
 - Tree 29 Camphor Laurel Tree (*Cinnamomum camphora*) which has an overall height of 15m and is classified as medium significance.
78. These trees are important and create the visual context and landscape setting that the heritage item is located within. The formal garden setting includes a distinct hedge and sandstone fencing. There is a palm tree (*Phoenix sp*) located within the front yard of the

heritage item that is proposed to be removed. This tree is rated of low significance and does not contribute highly to the quality and scenic value of the established garden. It is also located within close proximity to the Peppermint Tree and could affect the integrity and longevity of this tree.

79. The other trees to be removed include a Jacaranda tree which is centrally located and its integrity will be affected by the footprint of the building. It is rated of low significance. Along the perimeter of No.190 Princes Highway along the front and western side of the Site there are a series of fourteen (14) Pine Trees (*Cupressus sp*) which are mature and vary in height from 3-9m. The trees have been planted in a row and are visually characteristic features of this property when considered in isolation. In totality the Pine Trees are of low significance and are uncharacteristic landscape elements. The street tree along Wynua Street a Bottlebrush (*Callistemon sp*) will require removal to cater for the new driveway. It is proposed to be replaced with a new street tree in accordance with Council's requirements and has been addressed by way of a condition if consent is imposed. The three (3) other Palm Trees located within the development site and the Pine tree at the front of No.2 Lacey Street are proposed to be removed as they will be affected by the building footprint. They are not important trees and will be compensated by more attractive trees to be planted in a consolidated manner along the Lacey Street frontage within the development site. Trees No.1 and 2 which are Pines (*Cupressus sp*) are located within the boundary of No.21 Wyuna Street. They have been assessed as having dieback, an infection which affects some 40% of native plant species. The building footprint will further affect the livelihood of these trees. The owners of No.21 Wyuna accept and grant permission for the removal of the trees and provided formal written permission for the removal of these trees with correspondence dated 16 April 2019.
80. Taylor Brammer Landscape Architects have prepared a consolidated landscape design for the proposal. The plan proposes a substantial number of new trees to be planted around the periphery of the building. There are a total of five (5) new large trees (Sydney Red Gum and Scribbly Gum) which will achieve heights of between 12m-15m. Three (3) Scribbly gums are proposed at the front adjoining Princes Highway to assist in screening the building and creating a green tree lined development.
81. The Landscape Plan intends or largely retaining the existing garden setting around the heritage item but enhancing and creating a more formalised and attractive garden. The existing front fence and associated hedges will be retained and a new hedge planted along the north-eastern side of the dwelling. Other landscaping and planting aims to fill in spaces where smaller, formal plants could be introduced.
82. The focus of new planting is predominantly centrally within the site and the Lacey and Wyuna Street frontages. Along Lacey Street the private courtyards will be softly landscaped with a variety of lawn, paving and planter boxes and there will be a row of sixteen (16) cabbage palms which reach a mature height of 12m generally consistent with the three storey podium section along this side. A total of six (6) Water Gums are proposed on the street. Currently there are no street trees so the development will improve the streetscape appearance. Along Wyuna Street three (3) new Sydney Red Gums are proposed along the street and a further five (5) Cabbage Palms are proposed within the site. Centrally apart from a series of planter boxes with varying shrubs and ground covers, three (3) Tupelo Trees are proposed which grow to 11m. The proposed landscape plan is shown in Figure 9 below and is a well-considered and designed scheme.

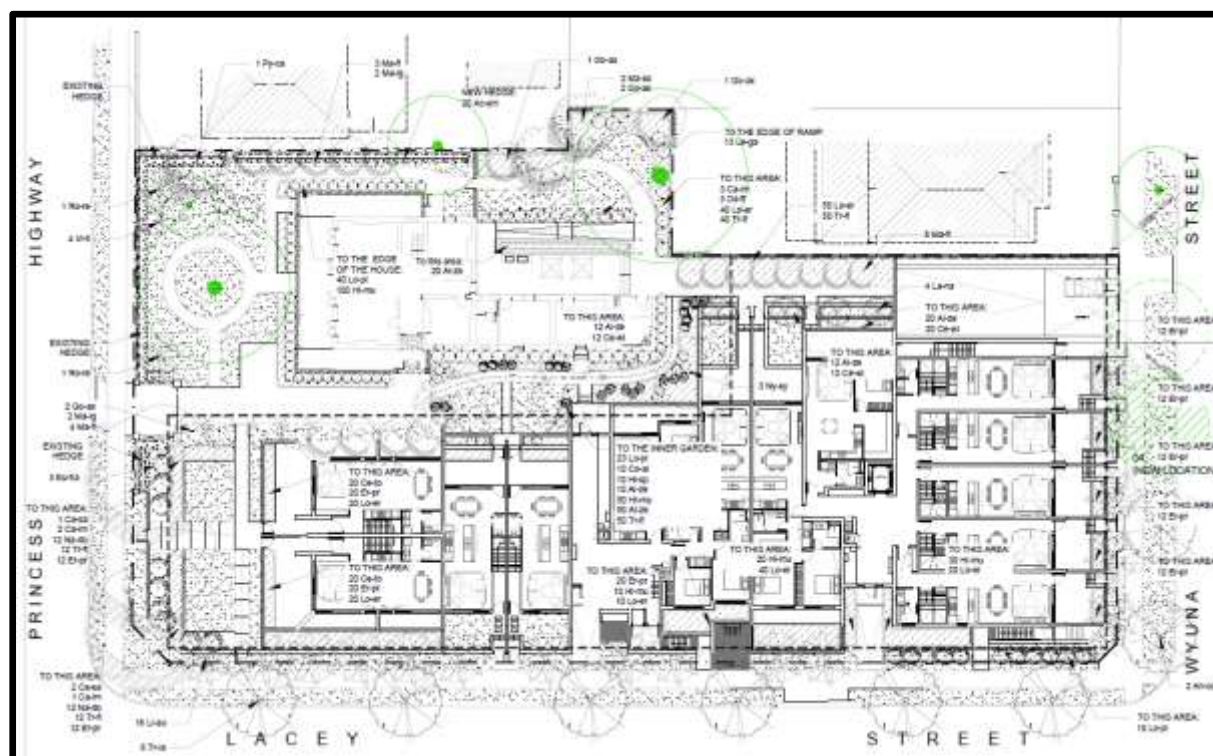


Figure 9: The proposed landscape plan showing the existing trees and new plantings which are focused around the periphery of the site (*courtesy TaylorBrammer, 2018*)

Draft Environment SEPP

83. 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.
84. 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.
85. Subject to the resolution of stormwater/drainage issues and the design, the proposal is not inconsistent with the provisions of this Draft Instrument.

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

86. *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.

87. 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.*
88. The proposal was referred to the Georges River Design Review Panel (DRP) on two (2) occasions. The pre-lodgement application was reviewed by the DRP on 5 July 2018 whereby the Panel suggested the overall modelling and built form be amended and the prominence of the Heritage Item be enhanced by the scale and siting of the new works and a better transition in scale provided to the rear. The panel did not support an exceedance in the height based on the heritage item being retained. Comments were also made about the landscaping response and the provision of planting and greenery to distinguish between the established garden setting and the new landscaping works. These issues were considered when preparing the Development Application and the proposal modified. Pre-lodgement comments are included in italics in Table 3 below.
89. The DRP Panel considered the development application proposal on 14 February 2019 and the Panel assessed the development against each of the nine (9) Design Quality Principles and also considered the provisions within the Apartment Design Guide (ADG). The Panels comments are summarised and addressed in Table 3 below (in bold). The recommendation from the meeting was that *“The Panel supports the application subject to the issues raised above being resolved. The application satisfies the design quality principles contained in SEPP 65.”* The plans have been subsequently amended on two occasions to address the Panels, Heritage Advisor’s and Council’ Officers concerns.

Table 2: Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of “Residential Apartment Development” (RAD)	Complies with definition	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the SEPP includes mixed use developments.	Erection of an RFB which satisfies the SEPP’s definition of this residential land use.	Yes
Design Verification	Design verification statement provided by qualified designer Registered Architect Name	Design Verification Statement provided by Registered Architect: Paul Buljevic (Registration No.7768)	Yes

	and Registration No.		
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Table 3: Part 2 Design Quality Principles under the SEPP

SEPP 65 – Design Quality of Residential Flat Buildings	DRP Comment	Planners comment
<p>Context and Neighbouring Character</p> <p>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.</p> <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.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p><i>The site is located on the corner of the Princes Highway, Lacey Street and Wyuna Street. It has a local listed heritage item - 'The Sunnyside' residence and associated gardens. The site has a modest fall from the rear eastern corner and is a very large land holding of over 3000sqm.</i></p> <p><i>The site is zoned R3 and is adjacent to R2 zoned areas on the other side of Wyuna Street. Although the site is generous in scale the significant heritage item has to be carefully considered to provide an appropriate curtilage. Furthermore the development has to consider the transition in height and scale between zones.</i></p> <p><i>There are a number of established trees on the site primarily within the Sunnyside gardens. There are no street trees on Princes Highway or Lacey Street frontage and there are overhead power lines located on all three (3) frontages.</i></p> <p>It is noted that Council's Heritage Planner has provided additional advice to the applicant in regard to the setback and relationship of the proposed development on the Princes Highway</p>	<p>The proposal has been amended on two occasions after advice received by the Panel. On the first occasion the three storey podium element to Princes Highway has been modified and the "angled" structural wings have been reduced and the front setback of the building is now located behind the front verandah of the heritage building. This opens up more views to and from the home and reinstates its visual prominence to a large degree. The amended design satisfies the Panel's and Heritage Advisors request.</p> <p>Council Officers raised further concern regarding the transition of the built form and scale to the rear and requested the upper level which exceeded the height will need to be reduced and the height is to comply. It was requested that the building step up to Princes Highway. The Applicant amended the design to address this</p>

	frontage.	issue.
<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 proposal provides for a two (2) storey element at the corner of Princes Highway and Lacey Street to recognise the scale and presence of the heritage item, then steps up to three (3) storeys, then six (6) storeys, then eight (8) storeys creating an unyielding built form. The Panel is of the view that it is more important to respect the visual curtilage of the heritage item than to have a two (2) storey element at the north end of the building. It was suggested that a greater setback from Princes Highway would achieve better visibility to the heritage item and that the lowest element of the building should be entirely three (3) storeys. The Panel recommends that there be a building alignment setback of 9m from the Princes Highway boundary to provide a line of sight to the front facade of the heritage item from the footpath at the corner of Princes Highway and Lacey Street.</i></p> <p>The design has been adjusted to provide an increased setback from Princes Highway of 13m from the site boundary, which is satisfactory. The proposal includes two (2) x three (3) storey townhouses which then transition into a seven (7) storey building with the upper level setback another 4m. The Panel believes this setback is insufficient and should be increased to a line corresponding to the position of the party wall on the south east side between the terraces and Unit BG04 which is approximately 25m from the front boundary. This</p>	<p>The building has been setback even further than the 13m, up to 14.5m at the front to open up the view lines through to the heritage property.</p> <p>The Panel also wanted a greater setback from the upper levels to the street. The upper levels have been setback so that Level 4 and above is setback over 25m from the Princes Highway street frontage.</p>

advice is consistent the last sentence of the second paragraph of the Panel's previous minutes which has been highlighted below. The consequence would be a reduction in GFA but not a reduction in the number of units, simply unit area.

The Panel concurs with the recommendation by James Stephany in a memo to Council on 4 June 2018 that the building be remodeled to break up the treatment of the elevations with a distinct base, body and parapet roof line element. The three (3) storey component as suggested would establish the base for the northern part of the building. The taller part of the building to the south has a four (4) storey base element on its north east side which could be carried around the Wyuna and Lacey Street frontages. The three (3) storey element adjacent to the heritage item needs to be articulated to complement with the lightness of the heritage items balconies.

The Panel reiterates its support for James Stephany's recommendation above to achieve a distinct three (3) storey base on all four (4) elevations.

The applicant proposes an exceedance of the height control to compensate for providing a lower scale building adjacent to the heritage item. While the Panel applauds the response to the heritage item, exceedance of the height control would have significant impacts on the adjacent R2 zoned properties due to a bulk and scale that would be in excess of the permissible

	<p><i>controls. The permissible controls would already be of concern in this regard. The Panel does not support any argument for exceeding the height control to maintain the full extent of the permissible FSR.</i></p> <p>The applicant's tabled drawings comparing the impacts of their envelope height (which exceeds the permissible height of 21m). The amendments to the building envelope have improved this marginally. Adopting the recommendations above would further improve this condition. The Panel accepts the exceedance of height to the south of the building on the <u>proviso</u> that the amendments to the building envelope at the northern end are adopted as noted above.</p>	
<p>Density</p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>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>Refer comments above under 'Built Form'.</i></p> <p>Acceptable based on comments above.</p>	<p>The proposal is well within the maximum GFA and FSR of 1.5:1 that is allowable for this site.</p>
<p>Sustainability</p> <p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross</p>	<p><i>Not discussed at this time.</i></p> <p><i>Solar access and cross ventilation to units appears to be satisfactory.</i></p> <p>Remains satisfactory. However</p>	<p>Alterations to the basement design which include relocating the storage spaces from the western side to the eastern side have increased the amount of deep soil area</p>

<p>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>redistributing deep soil would improve streetscape, microclimate and amenity.</p>	<p>from 1.2m originally proposed to 2.2m along this side (Lacey Street frontage). This will allow for better plantings and landscape treatment to be introduced. As previously mentioned a series of Cabbage Palms are proposed along this side and a series of street trees will also be introduced which will improve the visual appearance of the development.</p>
<p>Landscape</p> <p>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>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.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for</p>	<p><i>The design proposes a retention of the landscape space to the heritage item which is critical to maintaining the context of this building as well as providing amenity for the proposed development. The landscape should consider providing trees as an interface in the space between the heritage item and proposed units. These trees should setback from the front corner of the building to maintain sight lines.</i></p> <p>This requires further review. While the building has been setback the landscape has not adequately addressed the condition of the adjacent landscape to the Heritage Item.</p> <p>Furthermore the basement configuration has not consolidated deep soil in the appropriate location – on the Princes Highway frontage and the Lacey Street frontage. There is potential to redesign the basement to reduce deep soil in areas that are less significant, such as in the</p>	<p>Refer to notes above.</p> <p>Whilst the Panel raised concern regarding the installation of Scribbly Gums and Cabbage Palms as they wanted larger trees however Council's Landscape Officer is satisfied with the plant species proposed. The above ground power lines will severely restrict street trees reaching their full potential and it is recommended by way of a condition that the services be located below ground that way the trees will not be obstructed and a better streetscape outcome will occur.</p> <p>Rooftop communal open space has been included in Building A as access to the ground floor area of communal open space is convoluted. This satisfies the DRPs comments.</p> <p>Although the KDCP does not include</p>

<p>practical establishment and long term management.</p>	<p>middle section of the site directly behind the Heritage Item, in order to provide more deep soil in the Princes Highway 9m setback and along sections of Lacey Street. The minimum width of 3m should be provided at multiple locations to provide capacity for tall trees.</p> <p><i>Roof top communal open space is also supported. Detailed design development needs to consider the functionality of this facility including provision of a WC, effective landscaping, shade and shelter.</i></p> <p>Communal open spaces have not been provided on the roof but have been proposed at ground level behind the heritage building. The applicant is proposing that the heritage building be occupied by a private dwelling with the rear wing of the building to accommodate communal facilities including kitchen, toilets, gym, BBQ area. Whilst this use is commendable, this still would provide insufficient space for residents. It is recommended that the setback along the Princes Highway frontage be sensitively designed to accommodate more space for residents to use. This may be for quiet activities, such as bench seating, gardens, etc. Private open space should be carefully integrated to provide appropriate privacy between communal and private external spaces.</p> <p><i>The site benefits significantly from three (3) street frontages. However the overhead power</i></p>	<p>controls regulating the removal of telecommunication lines and placing them below ground a standard condition is imposed which requires the applicant to consider their relocation. This would create a substantial improvement in the appearance of the development of the streetscape and ensure street trees can reach optimal heights without pruning.</p>
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	<p><i>lines significantly impact on the capacity to provide appropriate scale trees. The design should include streetscape upgrades and substantial tree planting within the site boundary adjacent to the street. This tree planting should be of an appropriate scale (over 10m high) to mitigate the height of the development and to provide an attractive landscape edge.</i></p> <p>Refer comments above. The current proposals of Palm trees and Scribbly gums would not be of an appropriate scale or canopy for this built form and wide street. Alternate tree species should be proposed (tall trees with wide canopies).</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>It was noted that some units are lacking in storage. The application should be accompanied by a table showing compliance with the ADG requirements for each unit. The Panel notes that a single lift serves 55 units. Although the ADG guidelines require more than one (1) lift for ten (10) storeys and over serving 40 units, the Panel believes that in practical terms the number of units is a more critical measure than the number of storeys. One (1) lift is insufficient in circumstances where it is out of action and disabled people live in adaptable units above ground floor level. It is strongly urged that two (2) lifts be provided.</i></p> <p>Storage is now provided in all units. There are two (2) lifts in the amended proposal.</p>	<p>Satisfactory and DRP comments addressed through amended plans.</p>
<p>Safety</p> <p>Good design optimises</p>	<p><i>Generally satisfactorily.</i></p>	<p>Issues raised by the DRP have been addressed with</p>

<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.</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><i>Bollards should be provided to protect the basement lift lobbies.</i></p> <p><i>Acceptable.</i> The lifts have been rearranged and do not require bollards.</p>	<p>amended plans.</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>Acceptable</i></p> <p>No further comment</p>	<p>Satisfactory</p>
<p>Aesthetics</p>	<p><i>See comments above</i></p>	<p>The proposed modern detailing respects the</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>The Panel recommends that the three (3) storey elements should complement the Heritage Item and its surrounding context. This would suggest painted render with timber and/or iron balustrades and trim.</p>	<p>proportions of the item and the proposed materials, finishes and colours are considered to be sympathetic to the Heritage item and blend in with this building.</p>
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90. The amended plans have addressed the DRP comments and the development is considered to be a suitable and acceptable design response for the Site.
91. Clause 28 of SEPP65 requires the consent authority to take into consideration the provisions of the Apartment Design Guide. The Table below assesses the proposal against these provisions.

Table 4: Part 3 and Part 4 – Compliance with the ADG

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>Minimum 770sqm</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 	<p>The Applicants calculation indicates the total area of communal open space amounts to 1,096sqm (over 35% of the site). There are two distinct areas of communal open space provided as part of the development.</p> <p>1. <u>Ground Floor Area</u>. The calculations by the Applicant amounts to an area of 1029sqm. However their area included in the calculations spaces which are not “communal open space” in nature. The areas of private open space along the front of Lacey Street and Wyuna Street have been included and the gym, kitchen, storage and communal kitchen have also been included. These areas</p>	Yes

	<p>terrace or a common room</p> <ul style="list-style-type: none"> • 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>need to be excluded. Taking this into account Council's recalculation has the ground floor area of communal open space amounting to 710sqm.</p> <p>2. <u>Roof top</u> which amounts to 67sqm however the Applicant's calculation excludes the planter boxes around the perimeter of this area which technically should be included and as such a further 20sqm should be included, the roof top area is therefore approximately 87sqm in area.</p> <p>The total amount of communal open space is 797sqm which amounts to 26% of the site complying with the requirement.</p> <p>The quality of spaces and their design is well considered and there are large expanses of landscaped area that is functional and useable within the site i.e. a private area of communal open space at the rear of the heritage dwelling comprising of a large deck which adjoins a kitchen, storage area and gym, this area can be used for entertaining purposes. The front area of private open space off Princes Highway is also a large area for occupants to enjoy both passively and actively. The rooftop area of open space is another option for occupants and their visitors which is well located and private.</p>	<p>Yes</p>
	<p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm</p>	<p>Well over 50% of the area of communal open space will allow for over 2hours of solar access during midwinter.</p>	

	on 21 June (mid-winter)		
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>Min deep soil area of 7% (215sqm)</p> <p>Minimum dimension of 6m</p>	<p>Applicants calculation = 439.1sqm (14%)</p> <p>The Applicants calculation relies on three areas of deep soil and these have been confirmed to be correct. As the site area exceeds 1,500sqm, the only parts of the site considered to be deep soil areas need to exceed 6m in width. It should be noted that there are other substantial areas of deep soil where the width is less than 6m but have not been included i.e. the central area of the development adjoining the basement to the east. Although the width of this area is less than 6m it allows for a generous amount of deep soil and permits substantial planting to occur. There are also generous pockets of deep soil around the periphery of the site.</p>	Yes
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><u>Up to 12m (4 storeys)</u></p> <p>Habitable - 6m</p> <p>Non-habitable – 3m</p> <p><u>Up to 25m (5-8 storeys)</u></p> <p>Habitable – 9m</p> <p>Non-habitable – 4.5m</p>	<p><i>Eastern side</i> – Given that the Heritage Item is being conserved its existing scale and height is being maintained. The existing side setback will be retained, there is no change. The separation distances between the heritage item and the new building varies between 8m and 4.3m as it narrows towards the rear. This is considered acceptable as the smaller setback is located well behind the sandstone two storey main portion of the house and is towards the rear where the modified and less important heritage element being the single storey rear wing is located. Given this is an integrated development and the rear wing is dedicated as common areas for use by</p>	Yes

		<p>occupants, the separation distances between the two properties is considered to be acceptable and the main curtilage of the heritage item on the site is maintained.</p> <p>The new building is setback 6m from the boundary of No.21 Wyuna Street for the ground level, Level 1 and 2. The upper levels 4 - 6 are setback 9m which complies with the nominated separation distances.</p> <p><i>Western side</i> – the building is setback a minimum of 2.8m to the boundary with recessed sections of the building setback up to 4.4m. This elevation to Lacey Street requires a minimum setback of 6m. Given the existence of the roadway which in itself has a width of 8m the minimum separation distances will be easily met to the centre of the road even if the sites on the western side of Lacey Street are redeveloped in the future.</p> <p>The existing physical separation of properties on the eastern and western side of Lacey Street when taken from each street boundary is calculated to over 12m in itself so the separation distances suggested by the ADG will be achieved given the siting of the building.</p> <p>Some balconies on the upper levels along this elevation are setback 2.8m however these are secondary, small balconies which address bedrooms not living spaces and therefore unlikely to be heavily utilised.</p>	<p>No but given the siting of the roadway the combined separation distances are considered to be extensive.</p>
3G – Pedestrian Access and entries	Building entries and pedestrian access connects to and addresses the public	Separate front entries to the ground floor apartments off Lacey and Wyuna Street are provided.	Yes

	<p>domain.</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>Separate and independent access is also provided for the new terraces facing Princes Highway. The main, formal entry to the Heritage House is also being maintained and enhanced.</p>	Yes
3H-Vehicle Access	<p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>	<p>The main driveway access to the basement has been provided off Wyuna Street where the existing driveway is located. The driveway width is 5.5m but excludes an 800mm wide planter box located along the eastern edge of the driveway to soften the appearance of this area.</p> <p>The size and location of the driveway is considered satisfactory and no conflicts are anticipated.</p>	Yes
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</p> <p>Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p>The subject site is not within an “accessible location, pursuant to the ADG and as such compliance with parking provisions in the KDCP are applicable in this case.</p> <p>Compliance with the car parking provisions in the KDCP are discussed later in this report.</p>	N/A

4A- Solar and daylight access	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter</p>	<p>Solar access diagrams have been submitted with the application breaking down the units and the amount of solar access they obtain.</p> <p>The development is generally well orientated with most apartments having a dual aspect. All units along the eastern side of the development will obtain more than 2 hours of solar access between 9am and 12pm. From 12pm to 3pm in midwinter. The units facing Princes Highway will receive over 2hours of solar access during the day. The solar access diagrams have been confirmed and are considered compliant.</p> <p>Forty-two (42) units will have more than two hours of solar access in midwinter which amounts to 82% of the development. One apartment receives 1 hour of solar access (BG04) and a total of eight (8) apartments receive no solar access which amounts to 15% of the development.</p> <p>The building has been designed so that most apartments are dual aspect and their main living spaces are orientated to the north and north-east with bedrooms located towards the west and south-west were possible.</p>	<p>Yes</p> <p>Yes</p>
4B- Natural Ventilation	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	<p>Most apartments are orientated and designed to have a dual aspect so cross ventilation will be achieved. A total of 35 apartments (70%) will be naturally ventilated. This proportion may be affected by the fact that the apartments facing Princes Highway may need to rely on mechanical ventilation during the night to satisfy the provisions of the</p>	<p>Yes</p>

	The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths	<p>Infrastructure SEPP and to ensure noise from the roadway is appropriately managed. Where bedrooms face noises sources they only need to be mechanically ventilated at night and during the day where they are not in high use, the windows can remain open and achieve cross ventilation requirements. The ADG recognises that where there are external factors at play (like noise from roads etc.) conflicts in achieving all design requirements may not be achieved (cross ventilation and minimising acoustic impacts).</p> <p>The development has been designed to comply with the ADG in that the depth of cross over apartments does not exceed 18m and the design has sensitively considered the location.</p>	
4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms = 2.7m</p> <p>Non-habitable rooms = 2.4m</p>	The floor to floor heights at each level are 3.05m which are below the 3.1m as specified and preferred by the ADG in order to cater for slabs, servicing and ducting, however, floor to ceiling heights of 2.7m can be achieved at each level.	Yes
4D-1 Apartment size and layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm</p> <p>2 bedroom = 70sqm</p> <p>3 bedroom = 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a</p>	<p>The internal floor areas of each apartment satisfy the requirements of the ADG.</p> <p>Given that the building satisfies the minimum separation</p>	<p>Yes</p> <p>Yes</p>

	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	distance required window openings are generous and standard sizes which are greater than 10% of the floor area of the room.	
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>	<p>The minimum internal ceiling heights will be 2.7m which creates maximum habitable room depths of 6.75m.</p> <p>The design relies on an open plan arrangement and the depths of most of the living/dining/kitchen areas of all apartments have been designed not to exceed 8m in depth. Some of the central, internalised apartments are slightly deeper having depths of 8.5m i.e. A101 and B101, however given their orientation is north-east the internal living spaces will receive ample solar access.</p>	Yes
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>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 apartment layouts</p>	<p>All master bedrooms have internal areas with a minimum of 10sqm.</p> <p>Minimum dimension of 3m is achieved</p> <p>Living spaces have a minimum width of 4m. Most apartments are wider especially the corner dual aspect apartments.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4E- Private	All apartments are	Ground floor apartments have	Yes –

<p>Open space and balconies</p>	<p>required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth</p> <p>-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>generous sized private open space courtyards with the following areas;</p> <p>BG06 – 40sqm</p> <p>BG05 – 57sqm</p> <p>BG04 – Main courtyard 16sqm, secondary courtyard 8sqm.</p> <p>BG03 – Main courtyard 16sqm, secondary courtyard 8sqmm</p> <p>BG03 – 12sqm (a condition will require this space to be increased to 15sqm to comply which can be easily achieved)</p> <p>BG01 – 27sqm</p> <p>AG01 – 27sqm</p> <p>AG02 – 23sqm</p> <p>AG03, AG04, AG05, AG06 – have front courtyards to Wyuna Street with minimum areas of 16sqm.</p> <p>1 bedroom units have minimum areas for their balconies of 8sqm</p> <p>2 bedroom units have minimum balcony areas of 10sqm</p> <p>3 and 4 bedroom units have minimum balcony or ground floor courtyards with minimum areas of 12sqm</p> <p>All balconies have the required minimum depths.</p>	<p>Ground floor courtyard to BG03 currently has an area of 12sqm on the ground floor. A condition will require this space to be increased to a minimum area of 15sqm to comply.</p> <p>All balconies to all units satisfy the minimum sizes and depths.</p>
<p>4F- Common circulation areas</p>	<p>The maximum number of apartments off a circulation core on a single level is eight</p>	<p>The development has been broken up into two forms Building A (south) and Building B (north).</p> <p>The main lobby to Building B is located centrally within the Lacey Street frontage. This lobby services 2 apartments on the ground, first, second and third levels and four apartments at each of the upper levels fourth, fifth and sixth levels.</p>	<p>Complies</p>

		<p>The main lobby to Building A is located centrally within the Wyuna Street frontage and provides access to 6 apartments on the ground floor level, 4 apartments on the first floor level, 2 apartments on the second floor, 4 apartments off the third floor and 3 apartments and access lobby on levels 4, 5 and 6.</p>	
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>The basement has been designed to provide for individual storage spaces for apartments with a volume of 2.5cubic metres to 3 cubic metres. Every apartment includes additional storage areas above the provision of wardrobes in bedrooms.</p> <p>The Applicant has submitted storage plans which designate the storage spaces and show general compliance with the ADG.</p>	<p>Yes</p> <p>Yes</p>
4H- Acoustic Privacy	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.</p> <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</p>	<p>A detailed assessment in respect to the acoustic compliance of the scheme has been discussed in detail earlier. Some additional construction methods will need to be implemented to improve acoustic amenity internally within the apartments. These measures are standard for developments adjoining a noisy roadway. They relate to specific materials (glazing, sealing areas, types of finishes, implementing mechanical ventilation to some habitable areas, flooring finishes etc.).</p> <p>There are only a few centrally located apartments where bedrooms adjoin living spaces (such as BG01 and BG02, B101 and B102, A103) there are only a few of these and</p>	<p>Yes</p>

	external sources	given the implementation of acoustic measures in accordance with the acoustic report it is unlikely that noise will be unreasonably transmitted between apartments. A condition will require a construction methodology statement be prepared to ensure that walls are appropriately insulated and will mitigate these impacts. Otherwise all other apartments are designed so that key habitable spaces or secondary spaces (bedrooms) adjoin services and non-habitable spaces.	
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 	The design solutions within the ADG which seeks to minimise noise and acoustic impacts have been considered through the design and layout of apartments.	Yes
4K – Apartment Mix	A range of apartment types and sizes is provided to cater for different household	The development offers a mix of 1, 2, 3 and 4 bedroom apartments in the following manner;	Yes

	<p>types now and into the future</p> <p>The apartment mix is distributed to suitable locations within the building</p>	<p>10 x 1 bedroom apartments = 20%</p> <p>22 x 2 bedroom apartments = 43%</p> <p>17 x 3 bedroom apartments (including the Heritage Item) = 33%</p> <p>2 x 4 bedroom apartment (including the heritage home) = 4%</p>	
4L – Ground Floor Apartments	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	<p>The proposed design aims to create a three storey podium level to Princes Highway and to Wyuna Street with the upper levels recessed further to create a more sympathetic transition to the R2 zone to the south and to protect and enhance the view lines to and from the heritage item.</p> <p>Within these podiums, the design creates larger three storey cross over apartments which provide variety and diversity to the available new housing stock in the immediate area. These apartments address Wyuna Street and Princes Highway. They also aim to address Lacey Street with the main lobby to Building B provided centrally off Lacey Street. The design encourages activation through the provision of ground floor functional courtyards, upper level balconies and by the design of the main entrance lobby.</p>	Yes
4M - Facades	<p>Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.</p>	<p>Through the evolution of the built form the building has been amended to create distinct bays and wings to break up the bulk and dominance of the elevations. Particular concern was initially raised in respect to the treatment of the eastern elevation, given it will be dominating and viewed above</p>	Yes

		<p>the heritage item. It was recommended that bays be broken up and better defined. The fenestration of the building has been improved and the podium and the part four storey elements of the building have been more distinctly defined and independently treated so to differentiate the upper levels.</p> <p>The reduction in the height of Building A at the rear creates a step in the built form which improves its treatment when viewed from the eastern side by breaking up the built form and mass.</p> <p>The integration of planter boxes, irregular use of materials i.e. palisade open style balustrade fencing, glass balustrade and solid elements will further break up the form of the building.</p>	
4N – roof design	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.</p>	<p>The roof design is a standard flat roof form which is consistent with the general character and form of the building.</p> <p>The roof includes communal open space which complies with the intention of the ADG.</p>	Yes
4O – Landscape Design	<p>Landscape design is viable and sustainable, contributes to the streetscape and amenity</p>	<p>The Landscape Design has been discussed in detail earlier in this report. The concept is considered to be well designed with an integrated landscape plan which will improve landscaping across the site and will improve the visual appearance of the development and general nature of the streetscapes that the development adjoins as</p>	Yes

		currently there is limited planting on the street.	
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	The design includes a series of planter boxes on structures, adjacent to balconies and bedrooms. This should enhance the elevations by introducing green walls to the built form.	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory – the design offers a wide variety of apartment styles and forms many of which can be integrated and amalgamated in the future.	Yes
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	Some apartments have been designed so they could be amalgamated, consolidated or reduced. There is some general adaptability within the design.	Yes acceptable
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 and updated 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	The stormwater and drainage design was amended to address Council's Engineering concerns and is now considered to be satisfactory and compliant subject to conditions.	Yes

	site design		
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The waste management arrangement is satisfactory. The design relies on two separate garbage areas within the basement. The Waste Management Plan outlines the disposal of waste during construction and for the longevity of the development. The design includes a loading bay for an SUV to be able to access the basement to remove waste on site or alternatively if an arrangement with a private contractor cannot be arranged then waste bins will be taken out onto Wyuna Street and/or Lacey Street.	Yes
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	Contextually the proposed materials are considered to be satisfactory and rely on earthy tones and colours which are reflective of the general environment and consistent with the character and materiality of the Heritage Item. Although the colour scheme is suitable and finishes include timber and sandstone elements reminiscent of the heritage item, large expanses of the building are to be rendered. This isn't the best or ideal solution for future maintenance of the building and face brick finishes to larger sections would be preferable. The ADG only provides advice in relation to this matter and does state that <i>"Building facades should use materials that are long lasting and weather well over time, such as brickwork, tiles and glass"</i> . In general cladding that is proposed, window openings and the balustrade details won't require significant maintenance, it is the rendered	Yes

		parts that will require painting over time.	
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LPP037-19

Environmental Planning Instruments

Kogarah Local Environmental Plan 2012

Zoning

92. The subject site is zoned Zone R3 Medium Density Residential under the provisions of the *Kogarah Local Environmental Plan 2012* (KLEP2012). Refer to zoning map below. The proposed development is defined as a Residential Flat Building which is a permissible land use in the zone. The existing heritage item is classified as a dwelling house and will be renovated and retained as a dwelling. A dwelling house is permissible in the zone.
93. The objectives of the 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.*
94. The proposal has been designed to satisfy the objectives of the zone.
95. The extent to which the proposal complies with the relevant standards of Kogarah Local Environmental Plan 2012 (KLEP2012) is outlined in Table No.5 below.

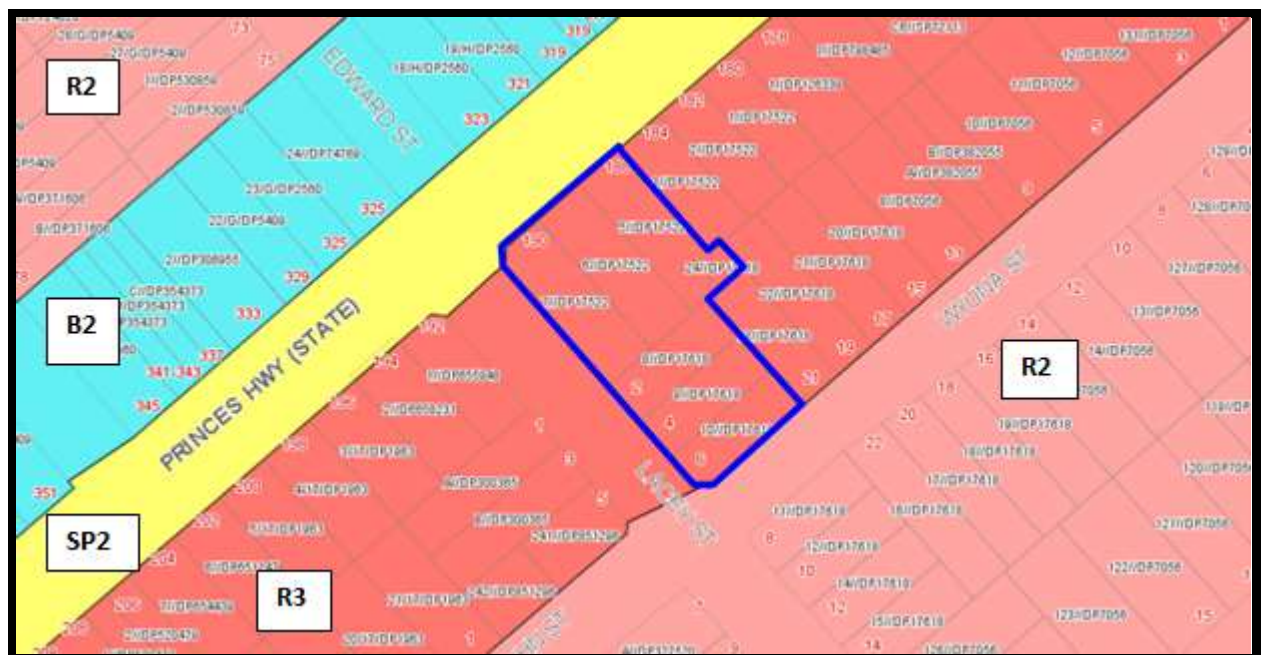


Figure 10: Zoning map extract from the KLEP2012 (Map Extract_007)

Table 5: KLEP2012 Compliance Table

Clause	Standard	Proposed	Complies
2.2 Zone	R3 Medium Density Residential	The proposal is defined as a Residential Flat Building (RFB) 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 3,078sqm.	Yes
4.3 – Height of Buildings	21m as identified on Height of Buildings Map	<p>The building has been amended so that no habitable area exceeds the 21m height limit. Originally larger parts of the roof and ceilings encroached. The final modified scheme only has the lift overrun and communal roof space exceeding the height control.</p> <p>An amended Clause 4.6 Statement has been submitted and is addressed in detail later in this report.</p>	No
4.4 – Floor Space Ratio	2.0:1 as identified on Floor Space Ratio Map	The proposed FSR was originally proposed at 1.85:1. The latest amended design has reduced the gross floor area of the proposal down to 1.80:1 which is below the maximum floor space ratio.	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	<p>The original gross floor area (GFA) calculation was considered to be accurate as it included all areas apart from the stairs, lift and services. The original GFA amounted to 5,701sqm.</p> <p>The GFA of the development has been reduced and amended to 5535sqm. The reduction in 166sqm of gross floor area is a result of Council's concern regarding the bulk, scale and form of the building along the southern side and its</p>	Yes

		relationship to the lower scale residential properties to the south. The upper levels of the building have been redesigned to be set back further and a new roof terrace included as access from Building A through to the area of communal open space on the ground floor is not easily accessible.	
4.6 – Exceptions to Development Standards	<p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> - <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i> - <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i> 	<p>The proposal originally exceeded the height control pursuant to Clause 4.3 of the KLEP and therefore a Clause 4.6 Statement was submitted to justify the non-compliance with the control.</p> <p>The Applicant has amended the design to ensure that no habitable spaces encroach on the height limit however the introduction of a roof terrace now exceeds the height control for the terrace and the associated ancillary services (lifts and stairs). An updated Clause 4.6 Statement has been provided to justify the variation and the non-compliance is considered to be reasonable and is well founded. A detailed discussion in regards to this issue is provided below.</p>	Not required
5.10 – Heritage Conservation	<p>The objectives of this clause are;</p> <ul style="list-style-type: none"> (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. 	<p>No.186-190 Princes Highway is a classified Heritage Item listed in accordance with Schedule 5 of the KLEP identified as I3 “McWilliam House” house and garden and the property is of local significance.</p> <p>The property is also known as “Sunnyside”. The Application is supported by a Statement of Heritage Impact prepared by Heritage 21 (dated November 2018) and includes a Heritage Management Document – Schedule of Conservation Works also prepared by</p>	Yes

Heritage 21. The application on 3 occasions has been referred to Council's Heritage Advisor for comment. Substantial works are proposed to the heritage item however the scale, form and overall design of the building is to be retained and conserved with it adaptively converted to a more functional use. The amended design is considered to be acceptable from a heritage and conservation perspective. A detailed assessment of the proposed works is provided below.

Subclause 5.10 (10) provides concessions and incentives for certain conservation and development works. The purpose is to encourage the adaptive reuse or protection/conservation of heritage items to ensure they are maintained and managed appropriately in perpetuity.

Clause 5.10(10) states that;

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and

(b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and

		<p><i>(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and</i></p> <p><i>(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and</i></p> <p><i>(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.</i></p> <p>As the proposal integrates the Heritage Item into the proposed scheme, and aims to protect and upgrade the item, the use of the Conservation Incentives could be considered however the Applicant has not relied on these and is seeking consent for a generally compliant proposal.</p>	
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 ASS.	Yes
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	<p>The proposed development includes excavation and associated earthworks to accommodate two (2) levels of basement car parking.</p> <p>The location and siting of the basement car park has been amended and setback further from the western boundary and is setback from the heritage item in order not to undermine the structural integrity and stability of the heritage item.</p>	Yes subject to conditions.

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
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LPP037-19

Heritage Conservation – Clause 5.10

96. No.186-190 Princes Highway is a designated heritage Item in accordance with Schedule 5 of the KLEP as identified as I3 and as shown on the heritage map provided in Figure 11 below;

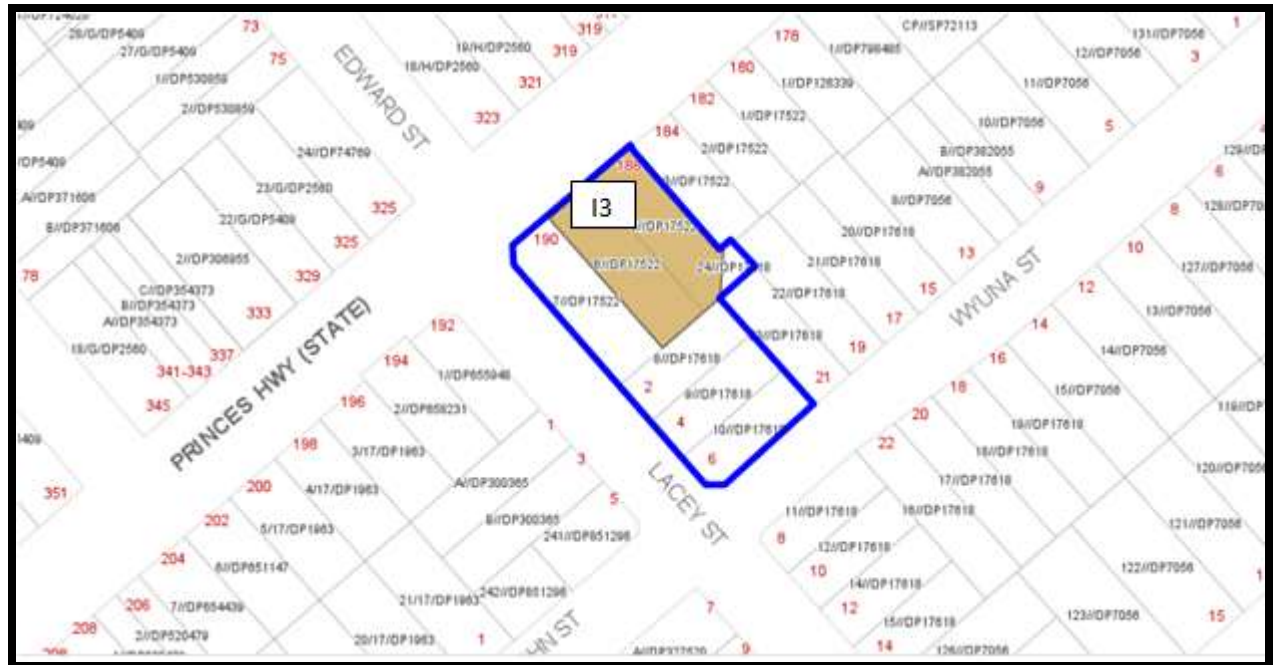


Figure 11: Location and siting of the heritage item (I3) as depicted on the heritage mapping HER_007 in KLEP.

97. The objectives of Clause 5.10 are;
- (a) to conserve the environmental heritage of Kogarah,
 - (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,

(c) to conserve archaeological sites,

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

98. The proposal has been designed to satisfy the objectives of the Clause. The proposal seeks to conserve and maintain the existing Heritage Item on the site and skilfully readapt its use to make it more functional and to integrate the building and its garden as part of the broader development. The intention is to retain the proportions, finishes and materials of the building and enhance the traditional architectural elements and to retain and improve the garden and landscape setting of the dwelling house which is an integral and important feature of the item.
99. In accordance with Clause 5.10(4) a Statement of Heritage Impact has been prepared by Heritage 21 dated November 2018. This report was amended and updated in May 2019 to reflect the first set of proposed changes which were made to respond to the original issues raised by Council's Heritage Advisor. The updated Statement of Significance supports the proposed works and provides a detailed Heritage Assessment.

(i) Significance of the Item and proposed works

100. No.186-190 Princes Highway consists of a two storey sandstone dwelling with a ground floor rear addition. One of the key features of the building is the large and traditional veranda (refer to Figure 12).



Figure 12: Front façade of the local Heritage item on site known as “Sunnyside” and “McWilliam” House.

101. The property is known as “McWilliam House” or “Sunnyside” which is one of the oldest houses in Kogarah. Subdivision in this part of Kogarah known as Beverley Park began in about 1848 and it seems this property was constructed some time before 1870. The property is described as a “grand old mansion”. It was built with a slate roof, French

doors opening up to wide verandas which are enhanced by iron lace railings. A grand cedar staircase led to bedrooms upstairs. A coach house was attached to the rear of the building. The former Mayor of Kogarah (a prominent businessman), Patrick Joseph Lacey resided at the property until about 1906. In summary the following significant events occurred at the property since that time;

- Maude McWilliam and her family resided at the home until 1923 and during this time the front balcony was extended and glass panels installed. The garden was extended towards Lacey Street and used for Charity events a small equestrian centre for children was established and the property included a tennis court and croquet lawn. The name of the property is also referred to as “McWilliam House” which is assumed to have derived from these previous owners.
- From 1923 the impact of the Great Depression required the subdivision of the property into smaller lots and was sold in 1937 and converted into two flats.
- WWII resulted in the iron railings of the balconies to be removed to be used for armaments and replaced with sheets of corrugated fibro.
- In 1943 the property was converted and used by Sherwood Private School.
- In 1959 the property was sold and converted into men’s rooming houses with the wide verandas being filled in and rooms were portioned off accordingly. The property remained as a Boarding House for over 30years.
- In 1993 McDonalds wanted to convert the property to a restaurant but the application was rejected due to strong community opposition.
- In 1995 the property was bought by Neil Brown and for the following decade was tastefully and sympathetically restored both externally and internally.
- In 2014 the new owner Judith Brown continued the restoration process and adapted its use into a sewing and tea rooms.

102. The key elements and significance of the property include the following;

- Prime example of a two-storey Victorian Federation style.
- Constructed of sandstone exterior.
- French doors open up onto a wide detailed veranda.
- The rear non-original single storey extension adjoins the sandstone wing and is constructed of timber, plasterboard and face brickwork.

103. The heritage assessment details the interior of the building and the key external elements. The current form of the building retains legibility of the original scale and character of the dwelling. The Statement of Significance on the State Heritage Inventory describes the property as;

“This substantial 2 storey sandstone residence is historically significant as it is representative of the establishments which developed along the main transport routes. With the removal of the infilled verandas this residence is a rare, good example of a grand Victorian Regency residence.”

104. The heritage assessment of the proposal considered the significance of the item in accordance with the Office of Environment and Heritage Criteria rating the property in terms of its historical, associative, aesthetic, social, technical/research, rarity and representativeness level of importance. In respect to the seven identified characteristics the property is significant and important in respect to each category. It also exemplifies cultural significance as it is a prominent residence and is representative of the development of this suburb.
105. In summary the proposed works to the item include the following;
- Demolition of the non-original fabric to the rear addition to the item;
 - Change of use of one room (bedroom to communal gymnasium) at the rear of the original wing however the configuration and size of the space is retained as it exists;
 - Partial removal of non-original existing young landscape and landscape structures;
 - Introduction of metal hood awnings to openings;
 - Partial modifications to three rear awnings and as requested by Council's Heritage Advisor replacement of the non-original veranda, reinstatement of three windows, and works to the non-original ceilings (internally) cornices and flooring and repointing to mortar joints.
 - Convert the original ground and first floor part of the house to a dwelling or retain this as a dwelling without any significant changes to the existing walls and rooms.
106. These works are within the wider scope of works which includes demolishing the adjoining properties and the construction of a new seven (7) story RFB. The heritage assessment makes the following conclusion "*The impact of the proposed works on these view lines is assessed as follows:*
- *The proposed works would improve the visual relationship between the heritage item from the primary streetscape of Princes Highway by increasing the setback of the proposed development from the corner of Princes Highway and Lacey Street;*
 - *The proposed works retain a legible distance from the heritage-listed item;*
 - *The proposed works would not affect the non-original yet mature landscape to the Princes Highway frontage; and*
 - *While the scale and form of the proposed built forms to the south-west and south-east of the site would generate an impact on the secondary view lines from Lacey Street and Wyuna Street, Heritage 21 has found the combination of the surrounding topography, siting of the item, and the existing built forms already display a limited visual relationship to the heritage item (refer to Figures 9 to 11). As such, we assess that the proposed works would have a neutral impact upon the already obstructed secondary view lines.*
- In our view, the following aspects of the proposal would respect the heritage significance of the subject site:*
- *The proposed works would continue the legibility of the site by enhancing the significant view line from Princes Highway and introducing a considerable side and rear setback to the new development;*

- *The proposal would not entail the demolition of any whole element which have been assessed as demonstrating heritage significance;*
- *The positive impact the proposed re-instatement of an earlier, period-appropriate veranda would provide upon the site's legibility from the public domain as an early sandstone building along a main transport route;*
- *The reinstatement of the early façade and internal elements of the site, including the original openings, in order to further reflect the external sympathetic yet authentic response to the original façade of the subject dwelling and view the internal changes as a complimentary response to the site's origins;*
- *The proposed works would reintroduce the original rear envelope of the heritage item by demolishing intrusive non-original elements;*
- *The proposed works to the heritage item would be reversible and/or removable;*
- *The proposed works to the rear of the heritage item would not be seen from the significant view line of Princes Highway and as such would not alter the site's legibility from this viewpoint;*
- *The proposed works would increase the longevity of the heritage item through its ongoing future use within a large residential development;*
- *The proposed works are seen as a contemporary response to the significance of the site, and do not seek to replicate or dominate the character of the heritage item;*
- *The existing frontage to Princes Highway has been increased to align with the setback of the heritage items form and scale;*
- *The step back effect of the bulk from the significant Princes Highway view line are sympathetic to the form and scale of the heritage item and do not wish to dominate the surrounding setting from this view point;"*



Figure 13: Existing and proposed view analysis of the existing heritage item and its relationship with the proposed new building.

(ii) Heritage Officer comments

107. The proposed works were referred to Council's Heritage Advisor on a number of occasions. The Applicant received Heritage advice after submitting the Pre-lodgement Application which were finalised on 4 June 2018. The design was amended to consider the issues raised and the Development Application was referred for comment. The Heritage Officer analysed the plans and made the following comments were made in respect to works to the heritage item;

"Proposed works to the heritage item:-

- a) *The proposed demolition of the non-original Federation Period rear addition and replacement with a new single-storey addition would have minimal impact on heritage values and is acceptable.*

- b) *The proposed continued use of the heritage item as a part dwelling and the adaptation of rear ground floor spaces for communal use are acceptable given the place has been adapted to a variety of uses throughout its historical development.*
- c) *The proposed removal of recent intrusive landscape features in the front and rear garden is supported. As a landscape plan was not able to be reviewed with this referral, there can be no further comment on proposed landscape changes and potential impacts on the heritage item.*
- d) *The existing Post War Period verandah is of minimal heritage value and its demolition is acceptable. However, the proposed double-storey verandah to the street facing elevation is not supported. The SoHI notes (page 45) that:*

...the proposed veranda responds to the documented earlier veranda (refer to Figures 4 & 5) and was influenced by Council's Heritage Advisor's comments.

Close perusal of Figure 4 shows the veranda is original and has five evenly spaced columns across the facade. On close analysis of Figure 5, it shows a grouped column set-out and an indented configuration of the street facing veranda which strongly indicates it to be non-original and possibly the same veranda shown in Figure 6. From the above analysis, I do not understand the methodology which informed the design of the proposed veranda. My pre DA advice recommended:

... it would be appropriate to maintain the current configuration of the verandah. However, the inappropriate detailing of the existing verandah has a discordant and adverse impact on the heritage item, and should be rebuilt to an approved design and to a configuration to match existing.

- e) *The proposed window hoods do not appear to be a reconstruction and without credible discussion in the SoHI for the installation of this element, there is no support.*
- f) *Pre DA advice made no mention of replacing non-original plasterboard ceilings as scheduled and there is no requirement to do so.*
- g) *The proposed conservation works as documented on the Plans and Schedule of Conservation Works is generally supported apart from the following:*
 - i) *All maintenance works are to be separated from the Schedule and included in a separate document;*
 - ii) *All doors and windows (including all operable sashes) are to be eased, repaired where damaged or mutilated, and included in the Immediate Conservation Action sections of the Schedule;*
 - iii) *Amend Schedule to note: all stonework (including chimneys) is to be: repointed where joints are deteriorated or mortar missing; all cementitious mortar is to be removed and joints repointed; all damaged, missing and mutilated sandstone is to be repaired in an approved manner; all salt-damaged sandstone is to be repaired in an approved manner; mortar for repointing is to be to an approved mix similar to the original; all non-original ferrous fixings are to be removed and stone repaired; stonework physically impacted by the removal of services scheduled to be removed including wiring and AC units etc is to be repaired to match sound stonework. The above is to be documented in the Schedule.*
 - iv) *All damaged or missing slate to the roof is to be replaced and all loose tiles re-fixed. New slate is to match existing. All flashings are to be inspected to ensure*

same are properly seated and weathertight. Point-up where mortar is missing or deteriorated. The above is to be documented in the Schedule.

- h) *Proposed preservation of significant trees and removal of trees of little significance as noted in the arborist's report is supported. Proposed landscape works within the grounds of the heritage item including preservation of the existing hedge along the front boundary, proposed paving in the front garden and planting scheme are supported.*

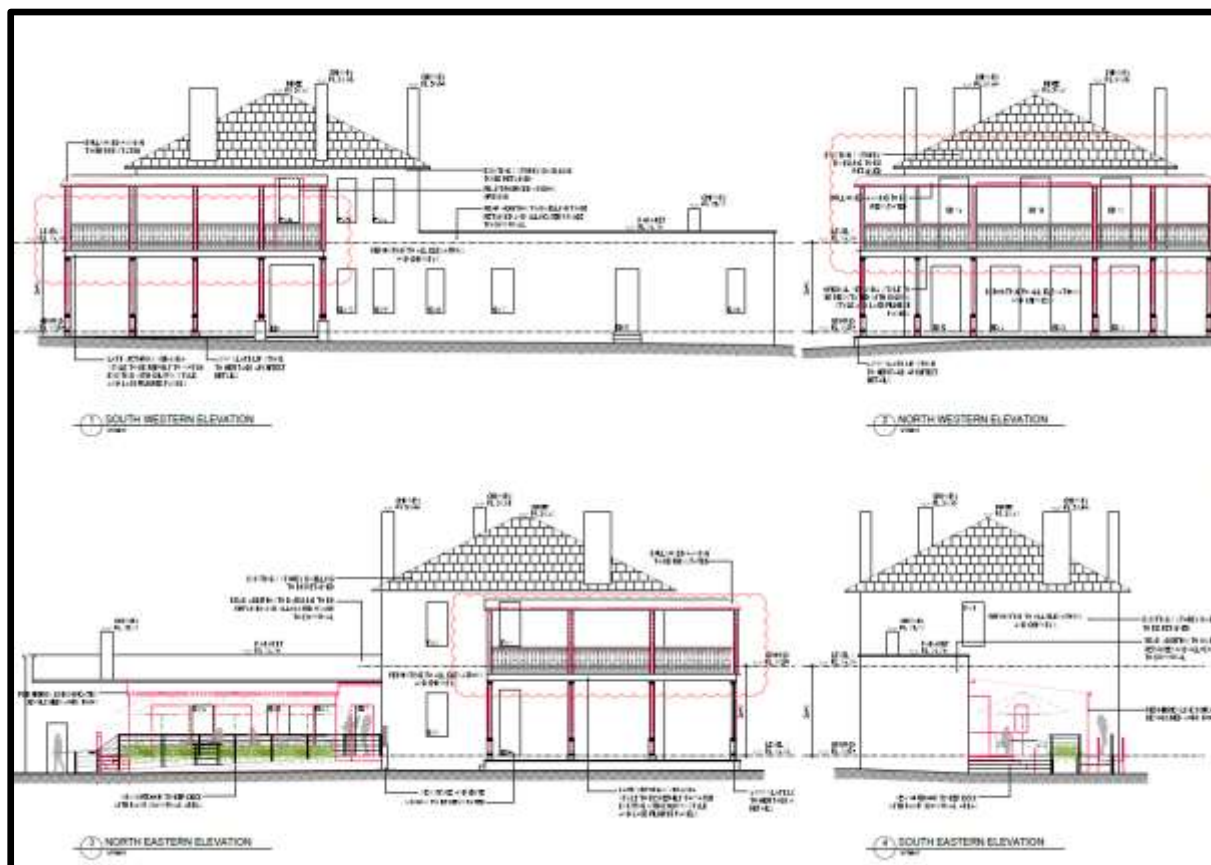


Figure 14: Detailed works proposed to “Sunnyside” (courtesy PBD Architects, DA200 Rev B, 2019)

108. In respect to the new development proposed the Heritage Advisor believed that the setting of the heritage item will be compromised by the new RFB and the scale disparity alone will have an adverse impact on the heritage item which cannot be compensated for by the built form, design and scale however it was also acknowledged that the existing setting has been diminished by the subdivision and residential development pattern. The advice did acknowledge that *“there has been some improvement to the design of the proposed residential flat building from the pre DA proposal reviewed with respect to compatibility with the heritage item. This includes the siting of the proposed building and greater setback from the Princes Highway boundary which will improve the visual appreciation of the heritage item in views from the south along the Princes Highway. The scale disparity of the proposed multi-storey building with the heritage item can be mitigated by extending the three-storey portion of the building further back... and There is general support for the proposed conservation works and adaptation of the heritage item, subject to recommended changes in this advice, and implementation of heritage-related conditions to come should this development be approved..”* Council’s Heritage Advisor still had concerns regarding the siting and setback of the proposed RFB, the Schedule of Conservation Works and maintenance works requires further refinement and additional conservation works in relation to particular features and elements of the existing item

(windows, doors, stonework, roofs). Subject to further design changes the application was recommended for approval subject to the imposition of conditions.

109. In accordance with this initial advice, the Applicant met with Council Officers and the Heritage Advisor to discuss the issues and amended the design and documentation dated 8 May 2019 (Revision B). Final amended plans were received dated 10 July 2019 (Revision C) which addressed additional design concerns raised by Council Officers. The main design change included setting the new 3 storey podium section of the RFB back further from the front boundary to expose more of the front façade and veranda element of the item.
110. Council's Heritage Officer was referred the final set of amendments (Revision C) and the key concerns still reflected the siting of the building and the podium. In summary the following comments have been made;
111. *"The proposed development will unquestionably alter the visual backdrop and setting to the heritage item, with the proposed built form resulting in a visually prominent structure that is significantly larger in scale and form compared to the existing built forms of the streetscape. The proposed oversized two-storey podium at the front of the building projects forward of the front façade of the heritage item and with the proposed setback to the tower above, the overall scale of the development competes with the visual prominence of the heritage item. As previously recommended to the applicant, the podium level should be revised to incorporate a deeper front setback, so that no part of any blade wall or balcony projects beyond the front façade of the building rather than the alignment of the front verandah. Similarly, the tower structure should be revised to also incorporate a deeper front setback, so that it sits (at a minimum) behind the ridgeline of the roof to the heritage item. The setbacks of the built form when viewed from Princes Highway and Lacey Street are critical to ensuring the proposed building does not visually obscure key sight lines to the heritage item, but also to ensure it retains visual prominence within the streetscape as being clearly distinguished as sitting further forward towards Princes Highway."*
112. A condition has been imposed to ensure the three storey podium structure be redesigned so that this structure including balconies will be setback and aligned with the front façade of the Heritage Item as requested by Council's Heritage Advisor.
113. Further concerns have been raised regarding maintain the structural integrity of the Item whilst construction is occurring given the proximity of excavation works." *The proposed development involves substantial excavation works within close proximity to the heritage item and has the very high potential to result in adverse material affectation to the heritage item through ground subsidence and vibrational movement from excavation. Detailed engineering plans and specifications have not been provided for review and comment, whereby the suitability of the basement level excavation cannot be ascertained in terms of what impact those works may have on the heritage item. In this regard, a Structural Engineer's report is required that provides an assessment of the existing structural integrity of the heritage item and provides an engineered solution to ensure the structural integrity of the heritage item will not be adversely impacted from excavation works. Detailed engineering plans and specifications are also required showing the proposed treatment of any shoring, piling or the like".* This has been conditioned accordingly. In addition standard heritage conditions have been imposed to ensure compliance with the BCA and archaeological and an archival recording occurs.

114. As part of Council's Historical Markers Program "Sunnyside" has been nominated as a culturally and historically important site within Kogarah and should be acknowledged by the provision of a Marker on site. It is considered that the marker should be included on the front fence of the property (or an alternate location) which is considered to be a prominent and visible location. This has been addressed and included as a condition if consent is to be issued.

Exception to Development Standards – Clause 4.6

Detailed assessment of variation to Clause 4.3 Height of Buildings

115. The objectives of Clause 4.6 are as follows:
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
116. Originally the proposal exceeded the 21m height limit with habitable spaces and parts of the ceiling encroaching on the height limit as seen in Figure 15 below. The height to the roof was RL41.75 and RL42.40 to services on the roof and RL42.90 to the lift overrun. Council raised concerns with the nature and degree of non-compliance. Council does not support the non-compliance where it affects habitable spaces and has been consistent in the application of this standard. In addition the main area of non-compliance is at the rear (southern side) where the development adjoins the lower scaled residential area. The Applicant was requested to reconsider the design and lower the rear of the building so that the transition and interface to the rear is more sympathetic and in keeping and it was imperative that the building complied with the height and stepped down the site.
117. The application was amended so that no habitable areas or spaces encroach on the height limit in response to Council's concerns. Figure 16 below shows the amended eastern elevation which shows a larger step in the built form at the rear. The roof level at the rear now sits at RL40.15. There is a minimal change to the front of the building as it generally complied originally and sits at RL41.65.



Figure 15: Eastern elevation as originally designed and proposed (courtesy PBD Architects, 2018)



Figure 16: Eastern elevation amended design (courtesy PBD Architects, 2019)

118. Despite the habitable areas and roof level designed to comply with the height limit the amended design has included a rooftop terrace area and this area and its services and access (lift overrun) which exceed the height control. In general Council has accepted that roof terraces and their associated services and amenities may exceed the height control within reason and if there are no environmental or amenity impacts and that the design satisfies the provisions of Clause 4.6 and the objectives of the zone and height control.
119. 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 15 below) and the proposed development will exceed the height by 3.5m which comprises of the stair and lift overrun which reach RL44.35. This amounts to a 16% variation to the control. This is the worst case and only affects the lift overrun on the roof at the rear above Building A. The other structures which exceed the height are the balustrade although this is only some 699mm (3% variation) and the parapet exceeds the height by some 299mm (1% variation). There is a small encroachment by a small section of the glazed element (upper section of the window to the living room to apartment A601). This is in the central location to the building just before it steps down to the rear. It also affects a very minor part of the glazing to the living room to apartment B601 and bedroom No.1 of apartment B602. This variation is very small and due to the slope of the site not affecting the western elevation. This non-compliance is largely due to the topography of the site being slightly lower along this section.
120. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the HLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.



Figure 17: Extract taken from the KLEP 2012 (Map_007) showing the permissible height.

LPP037-19

Is the planning control in question a development standard?

121. Height of Buildings control under Clause 4.3 of the KLEP 2012 is a development standard. The maximum permissible height is 21m (refer to Figure 17 above)
122. In more detail, Building B that part of the building at facing Princes Highway has a flat roof but includes a lift overrun and a section of the roof is designated for ancillary services (i.e. mechanical ventilation etc.) which will be screened with louvres. The lift overrun reaches RL42.80 and the screen has a height of RL43.25. The non-compliance at the front section of the building amounts to 1.6m (height of the screen) and this equates to an 8% variation. These elements are centrally located and substantially setback from Princes Highway. The lift overrun is located closer to the Lacey Street frontage but it only exceeds the height by some 1.15m which is considered a small protruding element.
123. 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”*
124. 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 and has updated the Clause 4.6 Statement to reflect the latest amended plans which is dated 24 July 2019. The Clause 4.6 request for variation is assessed as follows:

What are the underlying objectives of the development standard?

125. 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.*

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

126. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.

127. 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:

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.

128. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.

129. Applicants 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).



Figure 18: 3D Height diagram showing the sections of the building roof that exceed the height control (courtesy Architects, 2018).

130. Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

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

131. 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 negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overshadowing, overlooking or view loss.
132. Applicants 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 significant impacts of the proposed non-compliance on the amenity of future building occupants, on area character and on neighbouring properties. The non-compliance is exacerbated by the slope of the site away from Princes Highway and the building has been stepped towards Wyuna Street to reduce the non-compliance. In addition, future redevelopment of lots on the opposite site of Lacey Street will result in even greater separation between the proposed residential flat building and any future development, resulting in lesser shadow impacts.*
133. *On "planning grounds" the proposal successfully retains and integrates the heritage item on the site, and achieves better views of the heritage item from Princes Highway than a compliant building envelope would. In accordance with Clause 5.10 (10) of KLEP 2012 Council can arguably therefore grant consent notwithstanding the height non-compliance. The development also provides a significant setback for levels 3-6 on the Princes Highway and Wyuna Street frontages to reduce the impacts of the proposal. The non-compliance can be largely attributed to the provision of an accessible rooftop communal open space that will provide significant amenity for future residents.*
134. *The variation to building height does not meaningfully impact on solar access, views or outlook and the streetscape appearance is not impacted by the variation. As indicated, the proposal provides for a floor space ratio which complies with (and is 621m² less than) the maximum permitted and accordingly, the height breach is not associated with additional density beyond what is expected by the controls or planned for the locality."*

Clause 4.6(4)(a)(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

135. 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"*
- (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,*

136. **Applicants Comments:** *The Height of Buildings Map nominates a maximum height of 21m for the site. It is requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum height of 24.531m to the lift overrun of Lift A.*
137. *In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below.*
138. **Objective (a)** – *The maximum height has been established at 21m for the site. The proposed development provides a residential development and meets the objectives of the R3 Medium Density Residential zone objectives. The proposed development is in line with the type of development envisaged for the site. The degree to which the proposal exceeds the maximum height is relatively minor and importantly the development complies with and is 621m² less than the maximum FSR for the site. For these reasons the proposed height meets Objective (a).*
139. **Objective (b)** *relates to minimising shadows on adjoining buildings and open space areas, visual impact and loss of privacy. A comparative shadow study has been prepared comparing the proposed building envelope to a complying building envelope. The diagrams indicate that the proposed building envelope only generates a minor increase in shadow impacts that will have a negligible impact on neighbouring amenity (i.e. shadows on roof), and that a compliant building envelope would in fact have a greater shadow impact on dwellings across Lacey Street at 9am on the winter solstice. Since the proposal is significantly setback from Princes Highway it lessens the overshadowing impact. The visual impact of the proposal is considered to be virtually imperceptible from that of a compliant building height. The proposal is setback at Levels 4-6 by 4.19m from the levels below on the Wyuna Street frontage, and by 5.05m from the level below on the Princes Highway frontage. The visual impact of the development is therefore reduced at key sensitive locations being the heritage dwelling and the R2 zone interface. No significant loss of privacy of adjoining residents are anticipated given the compliant side setbacks to the north-east, and the significant setbacks afforded by the Princes Highway, Lacey Street and Wyuna Street. The proposed rooftop communal open space is setback from each elevation, and incorporates edge planters for privacy. The proposal will have no adverse impacts on nearby open space areas. For these reasons the proposed height meets Objective (b).*
140. **Objective (c)** *seeks to ensure development provides a suitable scale and intensity. The non-compliance of the height does not offend the objective of providing an appropriate scale and intensity of development at the site. The proposal provides a compliant FSR (1.80:1) that is significantly (621m²) below the maximum permissible of 2:1 and is therefore demonstrably within the intensity of development intended for the site. The built form, bulk and scale is appropriate for the site and the proposed non-compliance with height will not be perceptible in the streetscape and character of the locality. In particular, the proposal gives a high level of respect to the heritage item and refrains from utilising significant part of the site for apartment floor space. The scale of the building (7 storeys)*

is consistent with what is generally accepted within a 21m height limit. The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

141. *The proposed height non-compliance does not impact upon the achievement of the zone objectives. The proposed development will provide increased housing supply for the community within a medium density residential environment. The proposal also provides a variety of housing types ranging from one bedroom apartments to four bedroom terraces, within a large variety of configurations. The height variation does not contravene any objectives for the zone and for that reason the proposed variation is acceptable."*
142. Officer Comment: The proposed development has been designed to ensure all habitable areas are located within the height limit and the only protrusions are in relation to the roof terrace balustrade, services, stairs and screening which are generally small in nature. The lift overrun at the rear is the highest structure that exceeds the height control. The proposal generally satisfies the objectives of the development standard in the following ways;
 - (a) *to establish the maximum height for buildings,*
143. Officer Comment: The site and its immediately adjoining properties have been up scaled to allow for medium to larger scaled development. In part this is due to the location of the sites adjoining a busy roadway as these conditions cater for larger scaled developments. Figure 15 shows the extent of the immediate precinct which allows for a maximum height of 21m.
 - (b) *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,*
144. Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. In terms of visual impact the structures are generally centrally located which reduces their visual appearance from the immediately adjoining streetscapes, however, the screening that is proposed along the front of the building takes up a large proportion of the roof and a condition will require this element to be recessed and setback from the edge of the roof to further minimise its visual appearance.
145. The objective seeks to "minimise" the visual impact, it is not requiring it to be eliminated or totally negated, and as such seeing the structure is not a reason for refusal, it's the impact of the visual interference of this structure that is to be controlled. It can be said that in this case it is a small scale ancillary structure which will not be highly visible or an intrusive element given the scale and proportions of the building. In respect to the more dominant elements like the lift overrun accessing the roof terrace at the rear, this will be a visible element when viewed from a distance. It will not be visible from immediately adjoining properties and streetscapes given that it is centrally located, but will be visible when travelling along the Pacific Highway from either side. A condition will require that these structures be painted and treated in a way that makes them visually recessive elements. The roof top terrace area and much of its balustrade is located within the height limit so the use of that area is within the height control so that ancillary services which exceed the height control namely the WC, lift overrun and staircase will not contribute to any overlooking and the shadowing they create will be within the confines of the roof space and unfortunately largely overshadow the rooftop terrace area. There will be no adverse impacts in terms of overshadowing or overlooking to adjoining properties.

(c) to provide appropriate scale and intensity of development through height controls.

146. Officer Comment: New developments of a similar nature have been approved along John Street and Princes Highway (these developments have been considered and included earlier in this report) and have established a precedent for development in the street and immediate precinct. The proposed development is consistent with the pattern of development that is slowly being established in the precinct.
147. The proposed increase in the overall height of the building's which only relates to certain sections of the roof form can be catered for in this location given the siting, orientation and the fact the buildings comply with the anticipated building envelope which is largely compliant with the ADG and KDCP in terms of the separation distances, landscaped area requirements, front setback control etc. The proposed development is considered to satisfy the objectives of the development standard.
148. Officers comment: The exceedance in the control generally satisfies the objectives of the zone for the following reasons;
 - *To provide for the housing needs of the community within a medium density residential environment.*
149. The development is providing for the housing needs within a medium density residential environment with a mix of apartment choices.
 - *To provide a variety of housing types within a medium density residential environment.*
150. The development incorporates a diversity of apartment types (offering 1, 2, 3 and 4 bedroom units). The proposal is also adaptively reusing the Heritage Item for largely residential use with ancillary communal uses at the rear of this property. The refurbishment and long term conservation of this property is a benefit of the scheme as its historical, cultural and aesthetic importance will largely be preserved and maintained.
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
151. The development is residential in nature and does not include any additional land uses. This objective is offering some greater flexibility in the provision of land uses within this zone and is not a mandatory requirement. It has been raised by some in the community through written submissions that the heritage item should be adapted for a use that can be enjoyed by the community at large given the significance of the property. Clause 5.10 (10) which encourages the ongoing use and adaptive reuse of these types of buildings by providing conservation incentives and permitting non-conforming uses to occupy these sites subject to the proposal not generating unreasonable environmental impacts. The Applicant is not taking up the benefit of this clause and has decided to maintain the residential nature of the building. This Clause can be enacted at any point in time (unless the LEP is amended) and the opportunity may be taken up in the future. At this stage it is not viable for the Applicant to readapt this use to another non-conforming use that may be more functional and widely utilised by the community. The residential nature of the building is considered suitable and reflects its original use which was a residence.
152. The area of non-compliance is not considered to be unreasonable and will not establish an undesirable precedent. It will not have any adverse effect on the surrounding locality,

which is emerging to be characterised by residential development of comparable character. The proposal promotes the economic use and development of the land consistent with its zone and purpose. The Panel is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

153. The public benefit of the variation is that it will appropriately facilitate the provision of medium density housing on a R3 zoned site and provide for a range of housing stock. 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 resulting from the non-compliance.
154. The second matter was in cl 4.6(3)(b), where 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.
155. The roof top area and its associated ancillary structures could be deleted and the building largely compliant however this space will add value and provide greater functionality for the development. The ADG encourages the use of rooftop spaces.
156. In this case the proposal seeks to establish the preferred and appropriate design and built form outcome for this site with the building complying in large with the height standard. There will be no adverse amenity or visual impacts generated by the variation and the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request.

Clause 4.6(b) the concurrence of the Secretary has been obtained.

157. Concurrence from the Secretary has been obtained and can be assumed in this case.
158. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).

Development Control Plans

KOGARAH DEVELOPMENT CONTROL PLAN NO 2013 (KDCP)

159. Apart from satisfying some of the provisions of the ADG and SEPP 65 the controls within the KDCP are applicable. Part B, General Controls, Part C2 Medium Density, controls in Appendix 4 relating to residential development in the R3 zone are required to be considered in the design of the proposal.

160. Table 6 below summarises the compliance of the scheme in relation to these controls.


Table 6: KDCP2013 Compliance Table

KDCP 2013 Compliance Table		
PART B – GENERAL CONTROLS		
Required	Proposed	Complies
<i>B1 – Heritage and conservation areas</i>		
<p><i>Objectives</i></p> <p>(a) New development, including development on sites adjacent to heritage items must respect the architectural character of a heritage item and complement and enhance their significance and setting.</p> <p>(b) Landscape features are to be retained where they contribute to the heritage significance of the item</p> <p><i>Planning controls</i></p> <p>(1) The relevant requirements of Clause 5.10 of KLEP 2012 are to be addressed for any development relating to a heritage item.</p> <p>(2) Where a heritage management document and/or heritage conservation management plan is required to be submitted to Council, this is to be prepared by an appropriately qualified professional.</p>	<p>The proposed development seeks to retain and conserve the Heritage Item onsite and adaptively reuse the building. The proposed renovations and works to this building have been comprehensively assessed against the provisions of Clause 5.10 of the KLEP.</p> <p>The proposed development and heritage works satisfy the objectives of the DCP as the development intends on retaining and improving the landscape setting around the curtilage of the item and aims to create a traditional formal landscape design to enhance the existing garden.</p> <p>The proposal has been assessed and considered by Council's Heritage Officer and the proposal is considered to be satisfactory subject to the imposition of a series of heritage conditions, the works will improve the visual appearance of the building and its garden setting.</p>	Yes
<i>B2 Tree Management and Greenweb</i>		
Compliance with provisions of Clause 5.9 Preservation of Trees or Vegetation of KLEP 2012 must be	The issue of tree retention and removal has been addressed in detail earlier in this report. In short, the significant trees and vegetation	Yes

achieved.	around the Heritage Item will be retained as part of its setting and a series of new trees and plantings have been integrated into the landscape design and will include a series of compensatory trees around the periphery of the site and along all street frontages. Council's Landscape Officer is satisfied with the Landscape Design and the proposal satisfies the DCP provisions.	
<i>B3 – Development near busy roads and rail corridors</i>		
Acoustic assessment for noise sensitive development may be required if located in the vicinity of a rail corridor or busy roads	<p>An Acoustic report was prepared by Rodney Stevens and assessed the development against the provisions of Clause 102 of the Infrastructure SEPP.</p> <p>The acoustic report provided a series of recommendations in the form of implementing construction techniques and materials that will assist in ameliorating acoustic impacts of the Princes Highway on the internal areas of the building. A detailed discussion regarding the acoustic compliance was conducted earlier in this report.</p>	No
<i>B4 Parking and Traffic</i>		
<u>Residential parking:</u> 10 x 1br units @ 1 space per unit = 10 spaces required 22 x 2 br units @ 1.5 spaces per unit = 33 spaces required. 17 x 3 bedroom units @ 2 spaces per unit = 34 spaces required 2 x 4 br units @ 2 spaces per unit = 4 spaces required earlier in the report we say only 1 x 4 bedroom is provided Total required resident parking = 81 spaces	82 resident spaces are provided A total of 92 spaces are required (which including the 11 visitor car spaces) The development provides for 93 spaces in total which satisfies Council's requirement. Basement 1 has 38 spaces and Basement 2 has a total of 55 spaces.	Yes
<u>Visitor parking:</u>	11 visitor spaces are provided with	Yes

51 total units @ 1 space per 5 units = 11 (10.2) spaces required	one space doubling up as a car wash bay	
<u>Car wash bay:</u> 1 bay, which can also function as a visitor space	1 car wash bay is provided which doubles as a visitor space	Yes
<u>Bicycle Parking:</u> 1 space per 3 dwellings = 17 1 space per 10 dwellings for visitors = 5 spaces Total = 22 spaces required	5 bicycle parking spaces in the Basement No.1 14 bicycle parking spaces in Basement No.2 5 visitor bicycle parking spaces provided at the front accessed off Lacey Street Total = 24 spaces provided	Yes The 5 bicycle spaces along Lacey Street impact on the size of the ground floor courtyard to BG01 and it is recommended by way of a condition to move these further to the southern side so that this area of private open space can be slightly larger.
Loading Bays	One loading bay provided although not required for purely residential developments. This will assist with waste removal but also with respect to removalists, deliveries etc.	Yes
Car park access and layout to comply with relevant Australian Standards	Ramps, parking, aisle widths and parking spaces satisfy the provisions of AS2890.	Yes
<i>B5 – Waste Management and Minimisation</i>		
Submit Waste Management Plan (WMP) Provide a dedicated caged area within the bin room for the storage of discarded bulky items.	WMP was prepared by PBD Architects and dated October 2018. The development includes two designated waste storage rooms on Basement Level 1. One room is located adjacent to Lift A and the other adjoining Lift B. In each room 6 x 660L bins are proposed and 17 x 240L recycling bins. The development includes a loading area which will facilitate an 6.4m long Small Rigid Vehicle (SRV truck) which can	Yes

	<p>accommodate a garbage truck to access the garbage storage area directly, however bins can also be collected from the street. On this basis a Private collection or Council collection is available to this development. A bulky goods area is designated and adjoins the loading area where larger pieces of furniture or waste can be stored for removal.</p> <p>The waste disposal area and arrangement is considered to be satisfactory and in accordance with Council's requirements.</p>	
B6 – Water Management		
All developments require consideration of Council's Water Management Policy	The proposed method of stormwater management is considered satisfactory. Updated stormwater drainage plans have been submitted to address Council's initial concerns and are now compliant with Council's requirements subject to conditions.	Yes
B7 – Environmental Management		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	<p>Design, materials, siting and orientation generally optimise solar efficiency, with a high proportion of north-facing window openings. Although there are still openings along the western side main living areas which are orientated to face east with secondary spaces to face west i.e. bedrooms. As these are secondary habitable areas that will not be intensively utilised internal blinds and curtains will assist in reducing heat loads and minimising heating into these rooms.</p> <p>The development is BASIX-compliant and a revised BASIX Certificate was provided to ensure the amended internal design was compliant.</p>	Yes
PART C2 – MEDIUM DENSITY HOUSING		
1. Site isolation and amalgamation for medium density development		
Adjoining sites not to be left	The proposal does not cause any	Yes

isolated. Site amalgamation requirements apply for specific sites.	site isolation. The site is not subject to any amalgamation requirement.	N/A
2. Specific precinct controls – residential flat buildings		
Specific precinct controls apply to various sites and locations	The site is not located in a specific precinct nominated in the DCP	N/A
<p>Map 7: Kogarah Bay</p> 		
Area highlighted green in Map 7 above permits RFB's but with a maximum of 2 storey's	The development exceeds 2 storeys. The proposal does not comply with this provision as the DCP has not been updated in line with the amendments to the KLEP which permits a 21m height limit and a 2:1 FSR control.	No however the proposal is compliant with the KLEP controls for height and gross floor area.
4. Medium site and density requirements		
20m minimum frontage for residential flat building	38.79m to Princes Highway 75.89m to Lacey Street 31.78m to Wyuna Street	Yes
1.1sqm of site area per square metre of dwelling NOTE: The above DCP control is over-riden by KLEP 2012 minimum lot size requirement which is 1000sqm.	Site Area = 3,078sqm which complies with the LEP requirement.	Yes
5. Height and building envelope requirements		
2-storey RFBs have a "H1" height control of 7.4m; and a	No, the development has a maximum height of 21m with some	No –see comment below

<p>“H2” height control of 9m. (method for calculating these heights are discussed in detail in KDCP 2013)</p>	<p>ancillary structures on the roof exceeding this height.</p> <p>The proposal generally satisfies the statutory height and FSR provisions within the KLEP.</p> <p>The KDCP has not been updated to reflect the LEP changes.</p>	
<p><u>Comment on Building Height:</u></p> <p>There is incongruence between the KLEP 2012 and the KDCP 2013 building height limits, and the KLEP 2012 heights prevail. The proposal is generally compliant with the maximum LEP height. Refer to KLEP 2012 discussion on building height.</p>		
<p><u>6. Building setbacks</u></p>		
<p>Front setbacks:</p> <p>Maximum 75% of width of building to be setback minimum 5m, remainder 25% being setback minimum 7m</p>	<p>The site has three road frontages. The Lacey Street frontage is classified as a side elevation and the ADG separation distances have been applied to this frontage.</p> <p>The two key streets where the front setbacks will apply are to Wyuna Street and Princes Highway.</p> <p><u>Princes Highway</u></p> <p>There is no change to the front setback to “Sunnyside” and the building setback exceeds 7m.</p> <p>The new three storey podium section of the new development which faces Princes Highway is setback over 12.5m from the front boundary. Council’s Heritage Advisor requests this element to be setback further and the upper levels to also be recessed further front Princes Highway.</p> <p><u>Wyuna Street</u></p> <p>The three-storey podium along Wyuna Street is setback over 5m with small blade walls encroaching on the setback but these are considered to be minor elements which will provide some articulation and enhance privacy between dwellings.</p>	<p>Yes</p> <p>Yes complies with the front setback requirements along Princes Highway</p> <p>Partial non-compliance. The building complies with the 5.5m minimum but doesn’t comply with the 25% of</p>

		the frontage being setback 7m. The setback in this case is considered satisfactory as it is generally in context with the front setbacks of the existing dwelling houses and will be generally consistent with the front setback for No.21 Wyuna Street. Wyuna Street is also a secondary frontage it's not considered to be the primary street frontage of the site.
<p>Side/rear setbacks: 3m + one quarter of the amount that the wall height exceeds 3m.</p> <p>$[3m + (\frac{1}{4} \times 12m)] = 6m$ required.</p>	<p>Given that the site adjoins three (3) road frontages there is no traditional rear yard area. The heritage property will retain its rear yard area and create a communal space by removing the unsympathetic additions along the south-eastern side with the original ground floor additions (south-western side) being maintained and adapted to communal uses. The removal of the uncharacteristic addition to this property will create an attractive courtyard space at ground floor level and will provide greater separation between the subject site and No.21 Wyuna Street than what currently exists.</p>	<p>No – the proposal fails to comply with the side and rear setback requirements within the KDCP as these have been prepared with the expectation of a two storey development on the subject sites. The provisions have not been updated to align with the height and FSR changes that have occurred as part of the LEP uplift. With respect to side setbacks the</p>

		development generally complies with the SEPP 65 separation distances which are considered to be satisfactory. SEPP 65/ADG prevails over the DCP provisions for a residential flat building.
7. Site coverage		
Maximum 45% (1,385sqm)	Site coverage amounts to 44% (1,346sqm)	Yes
8. Open space		
Private open space (POS) – 35sqm with min. 3m dimension for ground level dwellings and 12sqm with min. 3m dimension for other dwellings (This control superseded by ADG Requirements)	Most ground floor courtyards have minimum areas of 15sqm in accordance with the provisions of SEPP 65/ADG. Some central courtyards are larger having areas of 23sqm and 27sqm. There are a few dwellings which have smaller courtyards i.e. 12sqm but this is to a one bedroom apartment. Again the provisions of SEPP 65 override the DCP provisions.	No (for some ground floor units) – but generally ground floor courtyards meet the SEPP65/ADG private open space requirements.
Common open space – 30sqm per dwelling with min. overall area of 75sqm and min. dimension of 5m. i.e. 30sqm x 51 units = 1,530sqm (This control is superseded by ADG Requirements)	Total area of open space that is provided is 1096sqm this is some 400sqm short of the requirement. The DCP provision is more onerous than the SEPP65/ADG provisions. The SEPP65/ADG provisions prevail.	No but SEPP 65 compliant.
Maximum 55% impervious area amounting to 1,385sqm	The development has a total area of some 3,078sqm	No however the development provides for more than the required amount of deep soil area and communal open space in accordance with SEPP 65/ADG which prevails.

9. Vehicular access, parking and circulation		
Car parking to be provided in accordance with Part B4	Development complies with the KDCP numerical parking requirements.	Yes
Garages to be accessed from rear lane where available	Access is located off a secondary roadway, Wyuna Street and is in keeping with a current driveway access point only widened for the proposed use.	Yes
All residential flat buildings to provide car wash bay	There is no designated car wash bay however the KDCP allows for a visitor space to double as a car wash bay.	No but a condition is included in order to satisfy the standard.
11. Solar access		
Primary open space to achieve 4 hours of direct sunlight between 9am and 3pm at mid-winter	The shadow diagrams indicate that the principle area of open space located along the front of the site (Princes Highway) will receive in excess of 4 hours of direct sunlight due to its orientation. The communal open space and deck located to the south of the heritage property will receive less equating to approximately 3 hours of direct sunlight during the day in midwinter. From 10am until 1pm which is the prime time of the day. The majority of the rooftop terrace area will receive a minimum of 4 hours, as this space is only slightly obstructed by the lift overrun and ancillary structures located to the north.	Yes – generally compliant.
Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June)	From 9am until 12noon the development will overshadow the front and rear yards of No's 1, 3 and 5 Lacey Street with the worst affectation at 9am. By 12noon these properties are unaffected. From 1pm until 3pm the development will overshadow the side and rear yard of No.8 and 10 Lacey Street. From 9am until 1pm this property is unaffected by the building.	Yes
12. Views and view sharing		
Provide for reasonable	The location does not have	Yes

sharing of views	significant views. The development generally complies with height requirements and is reasonable in terms of view sharing.	
13. Adaptable and accessible housing		
3-10 units – 1 adaptable unit 11-20 units – 2 adaptable units 21-30 – 3 adaptable units 30-40 units – 4 adaptable units	Five (5) adaptable units are required as the Heritage House will remain as an existing residential dwelling so the calculation is based on the 50 new residential apartments that are proposed. Five (5) adaptable units are proposed.	Yes

Setback to Wyuna Street

161. After reviewing the original plans the Applicant was requested to reconsider the design and siting of the building and its relationship to the lower scaled residential dwelling houses to the south along Wyuna Street. The subject site has a height limit of 21m across the whole of the site. When Council amended the height and FSR controls for this precinct they did not create or amend any DCP or planning controls around the siting. The main issue is creating a balanced transition from a higher scaled development through to the 9m R2 zoned dwellings to the south.
162. Council's Housing strategy 2031 encourages a stepping down of development at the rear to better relate to lower scale residential properties along the southern side of Wyuna Street (refer to Figure 19). The development includes a three storey podium which achieves a height of some 9m in accordance with the intentions of the Housing Strategy. This is a smaller podium when considering the siting and design of the approved developments along John Street. These developments have a four storey podiums to John Street with the upper levels stepped back further than what is proposed at the subject site.

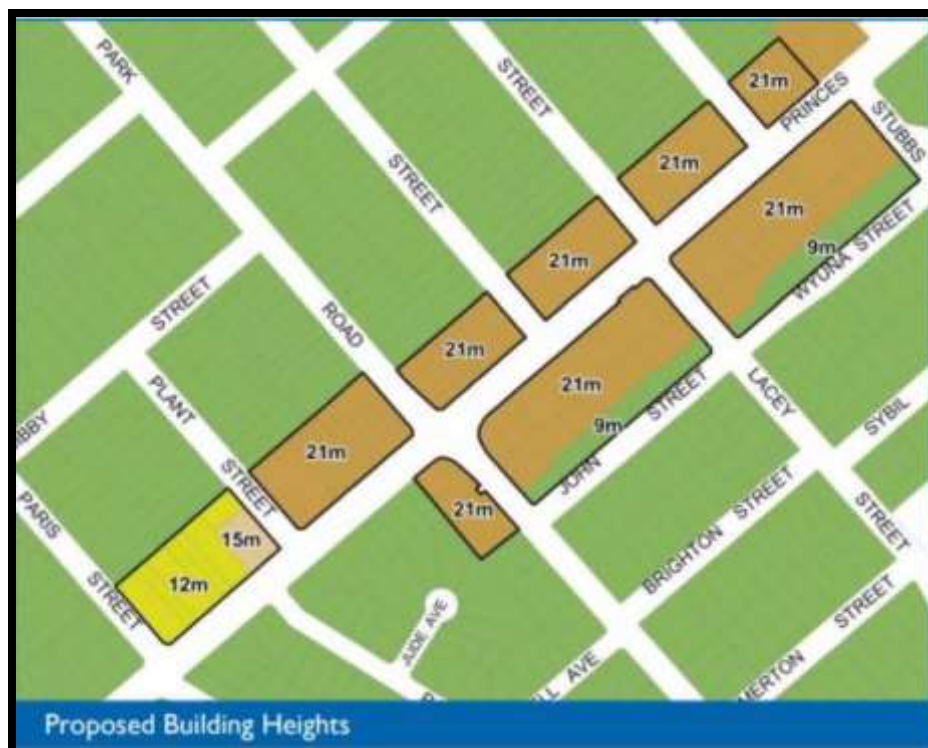


Figure 19: Extract from Georges River Housing Strategy

163. The pre-lodgement advice made the following comments “*Appropriate front boundary setbacks to Wyuna Street are essential in order to demonstrate that the proposal is responding appropriately to the existing rhythm of the street and providing an appropriate transition between the existing low density residential and the subject site. The proposal must provide a reasonable level of amenity and solar access provision to the adjacent low density residential area on the south-eastern side of Wyuna Street*”.
164. The setback of the upper levels of the building (Levels 4-7) are varied and stepped, being setback over 6m to the balcony at Level 3 and 8m to the balcony along Levels 4-6. The building wall for levels 3-6 is setback up to 10m from the street boundary. Setting the upper levels back any further will compromise the design as the front of the building has had to be setback substantially to accommodate the views, vistas and setting of the Heritage Item. The three storey podium will create a human scale to the development when viewed from Wyuna Street and will create and establish a better human scale and relationship to adjoining developments.

Interim Policy – Georges River Development Control Plan 2020

165. Council at its Environment and Planning Committee Meeting dated 11 June 2019 resolved to adopt the Georges River Interim Policy DCP.
166. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current DCP controls will prevail if they are considered best practice. The Interim Policy has no statutory recognition in the assessment of DAs pursuant to the Environmental Planning and Assessment Act, 1979 (EP&A Act).
167. An assessment of the proposal has been carried out against the provisions of the Interim Policy as set out in the following table.

Table 7: Interim Policy Compliance Table

Interim Policy – Georges River DCP 2020		
Standard	Proposed	Complies
<i>Site Frontage</i>		
20m	38.79m to Princes Highway 75.89m to Lacey Street 31.78m to Wyuna Street	Yes
<i>Building Height</i>		
The relevant LEP controls relating to building height will prevail over DCP controls that relate to height in storeys	The proposal exceeds the height control but is supported by the provision of a Clause 4.6 Statement. This statement is considered to be well founded and discussed in detail earlier in this report.	Yes
<i>Private Open Space</i>		
The ADG requirements prevail over the DCP controls for private open space	The proposal is fully compliant with the ADG's private open space requirements. Refer to "4E – Private Open Space and Balconies" within the ADG Compliance Table above.	Yes
<i>Communal Open Space</i>		
The ADG requirements prevail over the DCP controls for COS	The proposal is not considered to comply with the requirements of the ADG with respect to COS. Refer to "3D – Communal Open Space" within the ADG Compliance Table above.	No
<i>Parking</i>		
In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment): <ul style="list-style-type: none"> If located in a strategic centre (i.e. Kogarah CBD and Hurstville CBD) and within 800m of a Railway, the "Metropolitan Regional Centre (CBD)" rates apply. If located within 800m of a railway and outside the strategic centres the 	The KDCP parking requirements need to be satisfied as the site is not located near a railway station or close to a commercial centre in accordance with the ADG provisions.	Proposal satisfies the numerical requirements of the KDCP

<p>“Metropolitan Subregional Centre” rates apply.</p> <ul style="list-style-type: none"> If located outside of 800m of a Railway, the relevant DCP applies. 		
Solar Access		
The ADG requirements prevail over the DCP controls for solar access	<p>The proposal is acceptable on merit with the ADG Solar Access requirements as detailed within the ADG Compliance Table above.</p> <p>Refer to “4A – Solar and Daylight Access” within the ADG Compliance Table.</p>	Yes

DEVELOPER CONTRIBUTIONS

168. The proposed development would require payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979 is applicable. If the development consent is granted a condition outlining the required contributions will be imposed.

169. The table below shows the contributions which are applicable for this development. A condition is imposed if consent is issued that reflects the contributions as stated.

Contribution Plan	Description	Section 94 contributions assessed	No. of existing lots (credit)	Section 94 contributions payable
Plan No. 1	Road and traffic management - residential	12,045.60	(1,462.68)	10,582.92
Plan No. 5	Open Space - 2006	596,390.26	(73,342.43)	523,047.83
Plan No. 9	Kogarah libraries - buildings component	13,798.86	(1,465.80)	12,333.06
Plan No. 9	Kogarah libraries - books component	9,838.42	(1,045.12)	8,793.30
Total Section 94 Contributions Currently Payable				554,757.11

Figure 18: Section 7.11 Contributions as calculated by Council for this development and included as a condition of consent.

IMPACTS

Natural Environment

170. The proposed development will not adversely affect the natural environment. It has been designed to respect the historically significant site characteristics and will retain, restore and conserve the Heritage Item and improve its garden setting. The key trees existing on site will be retained and a substantial amount of compensatory planting will occur with new larger trees planted around the periphery of the development site including a series of new street trees.

Built Environment

171. The proposed development in its amended form is considered to be more respectful and sensitive to the siting of “Sunnyside” and the immediately adjoining residential developments. The proposal is a large integrated development that is including the item rather than isolating it and the consolidated nature of the proposed works will ensure the long term integrity and sustainability of this important building as a conservation

management plan which includes a comprehensive maintenance schedule. This dwelling will be a central element of this larger development.

Social Impact

172. No adverse social impacts have been identified as part of the assessment. The proposed development, in principle, will cater for a cross-section of the community and could assist with providing for additional housing in the area whilst at the same time retaining and conserving the existing Heritage Item on site.

Economic Impact

173. The proposed development will have no adverse economic impact. It is likely there will be a small positive economic impact as a result of the construction of the development.

Suitability of the site

174. The site is zoned R3 – Medium Density Residential. The proposal is a permissible form of development in this zone and has been designed to fit into the context of the area as it evolves and as it exists. This immediate precinct is going through a process of change and transition and the proposal is in line with the intentions of Council's recent up-zoning of these sites.

SUBMISSIONS AND THE PUBLIC INTEREST

175. The application was neighbour notified in accordance with Kogarah DCP 2013 for an extended period between 12 December 2018 until 13 February 2019 to cater for the Christmas and public holiday period. The proposal was also advertised in the Local Newspaper. Fourteen (14) submissions were received. In summary the following issues and concerns were raised;

- **Noise and inconvenience from construction activity (increased traffic, limited car parking and pressure on existing services)**

Officer Comment:

If consent is granted a condition will require the Developer/Builder to prepare a detailed Construction Management Plan (CMP) to ensure Construction vehicles and associated building activity and works are planned and managed appropriately to minimise noise, pollution and environmental impacts from construction. This is a standard condition and as much as it is expected that some building and construction activity will cause a neighbourhood inconvenience, if well managed the impacts are reduced. The benefit of this development is that it takes up three road frontages. It is more than likely that the Lacey Street frontage will be more intensively utilised for construction activity as Princes Highway is access denied for this purpose.

- **Non-compliance with the height limit**

Officer Comment:

The amended design reduces the overall height of the development apart from the ancillary rooftop structures including the lift overrun, staircase and WC which exceed the height control. The introduction of the rooftop terrace is consistent with the character of new larger scale developments in the area as these spaces are centralised and reduce any potential for

overlooking. View lines were submitted with the amended application to show that there is no potential for overlooking from this roof space to the east, south and west.

Council has allowed for exceedances in the height control for ancillary rooftop structures as these are not habitable areas and often are centralised and will not create any adverse environmental impacts to adjoining properties. The hours of usage and the method of usage of this space is controlled by a condition of consent. The exceedance in the height control is considered to be consistent with the precedent established by new developments within the immediate vicinity of the site and new developments i.e. 5-9 John Street and 198-200 Princes Highway (DA2017/0655).

As previously mentioned this site is unique and captures the Heritage Item which in accordance with Subclause 5.10(10) allows for concessions and incentives for certain land uses and conservation works. The Applicant has not relied on utilising these planning provisions and incentives for this scheme and has tried to work with Council in designing a largely compliant scheme. An exceedance in the floor space or height could potentially be argued and offset against the provisions of Clause 5.10(10) as the Heritage Item is genuinely being maintained, conserved and restored as part of this proposal and the new development has had to compromise its siting, location, scale and setback to accommodate the item and its general setting. The proposal is now well within the floor space control of 2:1.

- ***Out of character with the existing locality and existing smaller scale adjoining developments***

Officer Comment:

Although it is recognised that this development will be taller than the existing residential developments to the south which are zoned R2 and have a maximum height of 9m. The development has been amended a number of times to provide a better and more sympathetic scale and relationship with the lower scale heritage item on site and also a better interface at the rear to the lower scale properties located along Wyuna Street. The provision of a three storey podium facing Wyuna Street with the upper levels setback a further 2m to the balconies (total setback of 7m from the street boundary) and 8.5m-9.5m to the building wall has reduced the bulk presented to the R2 land. Council's up zoning of this precinct has not included any real provisions or development controls when considering the relationship of the smaller scale adjoining properties to the rear as no transition provisions exist.

- ***Overshadowing created to properties to the south***

Officer Comment:

This issue has been addressed in detail earlier in this report. The proposal complies with the minimum solar access provisions of the KDCP. The development affects the properties to the south No.8 and 10 Lacey Street however they are only impacted after 1pm and are not affected in the morning as shadows are cast to the west.

- ***Increased traffic generation from the cumulative impact of larger scale developments.***

Officer Comment:

The application was accompanied by a Traffic assessment report prepared by Varga Traffic Planning. Traffic generation caused by the development has been considered in accordance with the provisions of RMS Guide to Traffic Generating Developments, Section 3 – Land Use Traffic Generation and based the calculations on a high density residential flat development.

This issue was discussed in greater detail earlier in this report. In summary the development will generate a potential of approximately 6vph (vehicles per hour) during the AM (morning) peak and 4vph in the PM (evening) peak. The report concludes that *“the projected increase in traffic activity, as a consequence of the development proposal, is minimal and will clearly not have any unacceptable traffic implications in terms of road network capacity”*.

It is recognised the development will generate some additional pressure on the local road network, however the impact is not considered to be adverse or detrimental to warrant the refusal of the application.

- ***Adverse impact on street parking.***

Officer Comment:

There will be an increase in the demand for on-street parking however this is public parking and is available for the community at large. The benefit the development will have is by making three (3) driveway crossovers along Lacey Street redundant and reinstating 2-3 on-street car parking spaces. This may not totally compensate for the demand, but it will increase on street carparking nonetheless. The development also has the benefit of a very long street frontage to Lacey Street.

- ***Increased and undue pressure on existing services such as schools and associated local amenities and infrastructure***

Officer Comment:

Council identified the subject sites to be up-zoned and recognised that given the sites location adjoining a busy arterial road more density can be accommodated within these sites. Princes Highway is changing and new larger scale developments are being constructed in accordance with the updated planning controls. The proposal is in keeping with the intended scale and form of future development and this proposal has been sensitively designed to respect the siting, scale and location of the heritage item. There is no primary evidence to suggest that local amenities such as schools etc. are at capacity and will not be able to cater for additional/new residents.

Conditions have been imposed for utilities to be consulted as part of the Construction certificate preparation.

- ***New development is too close to the exiting heritage item “Sunnyside”.***

Officer Comment:

The proposal has been amended a number of times to create a respectful and the most appropriate transition, setback and relationship with the Heritage Item. The latest amended plans have been designed to the satisfaction of the Design Review Panel and Council’s Heritage Officer.

- ***Use of Sunnyside as gymnasium is not appropriate and should be utilised by the community i.e. community or cultural centre***

Officer Comment:

The rear single storey wing will be utilised for communal amenities and these will adjoin a new deck and courtyard space at ground level. The proposed design is a much better use of space at the rear. The main part of the item will be a residence which is appropriate and retains the original intent of the building. Conditions are included that will restrict the use of

these spaces so that noise and associated impacts to adjoining properties are minimised. The communal areas are to be used between the hours of 8am and 10pm seven days a week and a limit of 15 persons are to use this space at any one time. A detailed plan of management will be required to be prepared prior to the issuing of the Construction Certificate to establish general house rules around using these facilities by all future occupants and their visitors.

It should be acknowledged the heritage item is in private ownership.

- ***Increase traffic congestion off Princes Highway – written by resident located off the highway***

Officer Comment:

The application was referred to RMS for comment and they did not object to the proposed development subject to the imposition of standard conditions.

- ***One driveway exit/entry point will create traffic issues onto Wyuna Street.***

Officer Comment:

The assessment undertaken revealing it is unlikely that the development will create any adverse impacts on Wyuna Street as vehicles leaving the site will have many options to disperse i.e. vehicles can turn right or left and take a number of different routes. The driveway is wide enough, approximately 6m, to allow for two cars to pass each other and therefore no queuing along the street should occur due to the vehicular arrangement proposed.

- ***Increased overlooking from the rooftop terrace area***

Officer Comment:

The original design made access from Building A to the communal area of open space along Princes Highway and at the rear of Sunnyside quite convoluted and internal access to these spaces could not be achieved. Occupants from Building A would have to go out on Lacey Street and have to access the lobby of Building B to obtain access. This is impractical and the provision of a small rooftop area above Building A would make communal open space more convenient and accessible for these residents in this part of the development. The ADG also encourages the use of rooftops for communal open space in medium to larger scale developments as these spaces offer another option for passive recreational areas which are private and minimise impacts if they are small spaces and centrally located.

- ***Inadequate local services (only 1 bus services the area).***

Officer Comment:

The fact the site may not be located in an accessible location is not a reason for refusal of the application.

- ***Inappropriate bulk and scale of the development will dominate the lower scale developments along Wyuna Street.***

Officer Comment:

The proposed development is well within the maximum FSR and gross floor area that is permitted on such a larger integrated site. The site is constrained given that it includes a

Heritage Item that needs to be sensitively treated and its proportions, scale, form and materiality is respected.

The issue of transition to the rear has been discussed and the setback of the upper levels of the building will be generally consistent with recently approved developments along John Street. These developments have established a future direction and precedent for development in the immediate area. The three storey podium element along Wyuna Street is consistent with the design intent of Council's Housing Strategy 2031.

- ***Uncertain as to the use of the space around "Sunnyside"***

Officer Comment:

The spaces surrounding the heritage item will be used for open space and communal facilities which are only restricted to the ground floor rear wing addition which is the traditional addition and the unsympathetic addition to the north-east will be removed and replaced with a ground floor deck and ramp to allow for passive recreational space and improve this rear area. The principle house will be adapted to a residence which is considered to be an appropriate land use.

- ***The predictions made in the Traffic and Parking Assessment report are uncertain and doubtful.***

Officer Comment:

The Traffic Report has been prepared by a Qualified Traffic Consultant and calculations are based on the RMS Guide to Traffic Generating developments in respect to traffic generation which are the standards which are required to be used for this form of development. Parking numbers are compliant with the KDCP provisions and the car parking arrangement and design has been considered by Council's Traffic Engineer who does not raise any objection to the proposed works and states that the proposed development is generally compliant with AS2890.

- ***Against the design quality principles of the SEPP 65.***

Officer Comment:

The development generally complies with the provisions of the ADG. Table 3 within this report outlines compliance with the key provisions and controls.

- ***Poorly designed and will create overlooking from balconies and internal spaces.***

Officer Comment:

The main areas of concern for overlooking are to the east, west and south. The separation distances along the eastern side are compliant having a minimum of 6m and 9m at upper levels. It is likely adjoining properties to the east will be redeveloped and they will also include separation distances of a minimum of 6m creating a 12m separation between buildings. Along the western side Lacey Street assists and increases separation between properties. Many apartments along this side have their bedrooms located to face west and as these spaces are not as intensively utilised as living spaces it is unlikely that they will generate detrimental amounts of direct overlooking. In addition, new street trees and landscaping along this edge will reduce the potential for overlooking at lower levels and will assist in screening these levels. Along the southern side, the building is setback over 5m and then 8m to 8.5m at the upper levels and combined with the roadway (Wyuna Street) separation between properties is considered acceptable exceeding the 12m separation distance.

- ***Depreciation in property values***

Officer Comment:

This is not a matter for consideration.

- ***Viewlines through to the Heritage Item “McWilliam House” will be severely obscured.***

Officer Comment:

The Applicant has worked closely with Council's Heritage Consultant to ensure that view lines are opened up and the proposed three storey podium fronting Princes Highway is setback behind the veranda of the of “McWilliam House”/”Sunnyside” and seeks to retain the main view lines when travelling east and west along the Princes Highway. The upper levels of the residential flat building have been setback further and sit behind the ridgeline of “McWilliam House”/”Sunnyside”. Council's Heritage Officer considers the application to be acceptable subject to conditions.

- ***DA deferred until a separate DCP is prepared for the site and adjoining properties that have been upscaled.***

Officer Comment:

Council is in the process of updating its Local Environmental Plans and associated planning controls (DCP's) however this could take some time and Council has a statutory timeframe in which to assess applications. Council can only “defer” applications if they require further information or inadequate details are provided. In this case the Applicant has worked with Council for over a year to negotiate a planning and urban design outcome within the current applicable planning controls that retains, restores and protects the heritage item and its setting. The new building is sited in a way that generally satisfies SEPP65/ADG and seeks to minimise environmental concerns for immediately adjoining developments. It is considered to be a reasonable planning and design outcome.

- ***Noise from the use of external spaces including balconies at upper levels.***

Officer Comment:

It is unlikely that there will be adverse and unreasonable acoustic impacts from upper level balconies. These spaces are secondary to key habitable areas. They have been sited and located to comply with separation distances as stipulated in by SEPP65/ADG (6m and 9m respectively). The fact that the development is bounded by three roadways provides an additional buffer and setback.

- ***Heritage significance of “Sunnyside” will be diminished***

Officer Comment:

The development will improve the visual appearance and integrity of the item and the preparation of a Conservation Management and Maintenance Plan will ensure the property is maintained in perpetuity. Given that the building is part of an integrated development it contributes to the development and enhances its attractiveness and uniqueness. The sensitive integration and conservation of the item and its setting is a benefit to this development. It should improve the historic and visual importance of the building and the

main elements associated with the building will be retained i.e. existing fencing, detailing, features, planting and the garden setting will be enhanced and formalised.

Conditions have been recommended to control the basement excavation to protect the integrity of the item.

REFERRALS

Council Referrals

Development Engineer

176. The application was originally referred to Council's Engineering Services for comment. There were concerns raised in respect to the stormwater and drainage arrangement. The following comments were made;

"After an engineering review, the submitted drainage plans are not found to be adequate and are not supported. As a result, the following engineering issues are to be addressed:

- It is consistently required to submit the stormwater Web-base calculator summary sheet for the proposed development's site.
<http://www.georgesriver.nsw.gov.au/Development/Planning-Controls/Development-Policies>*
- It is required for the concept drainage plan with the OSD system to be prepared in accordance with the results and the requirements of Council's stormwater web-base calculator after generating the site Stormwater Management Report.*
- Any proposed location of an OSD tank shall not be within a habitable space and the headroom clearance shall be indicated on the plan.*
- The basement tank shall be designed to accommodate a minimum 6.0m³ to accommodate the seepage.*

Unsustainable Connection into Street System

- The connection of the proposed site stormwater discharge pipe into Council's pit in Lacey Street is not possible and is not feasible. The depth of the pit was measured on site to be 480mm, meanwhile the plans are assuming the pit depth (19.30-18.05= 1.25m) which cannot be achieved and the proposed drainage system cannot drain by gravity. It is required for the invert level of the street pit to be surveyed by a registered surveyor and the length of the proposed pipe in the road to be accurate."*

177. Amended hydraulic plans were submitted to Council in August 2019 and referred back to Council's Engineers for comment. They are now satisfied with the stormwater drainage arrangement subject to the imposition of conditions requiring sections of the proposal nominating the levels to ensure the developments drainage proposal works.

Traffic Engineer

178. The application was referred to Council's Traffic Engineer for comment. The proposed car parking and access arrangements are considered to be compliant with Council's controls and are satisfactory. Standard conditions are included to ensure compliance will be achieved with Australian Standards during and after construction.

Environmental Health Officer

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

Waste Services

180. The application was referred to Council's Waste Manager for comment. No objection was raised in respect to the proposed waste arrangement subject to the imposition of standard conditions.

Heritage Consultant

181. Council's heritage consultant has supported much of the proposal, however has requested elements of the new development be further setback from the alignments of the frontage of the heritage item on site.
182. In this regard the amendments to the podium level; fronting Princes Highway have been conditioned to be recessed further behind the façade of the heritage dwelling. However the elevated form beyond the podium is not being requested to be setback further as this would result in an adverse visual appearance of the development and would result in the development bulk being relocated to the rear of the site adversely impacting the R2 zoned land on the opposite side of Wyuna Road.
183. The requested conditions have been included in the recommended conditions at the end of this report.

External Referrals***Roads and Maritime Services***

184. The application was referred to RMS in accordance with Clause 101 and 102 of State Environmental Planning Policy (Infrastructure) 2007. A formal response was provided and concurrence was obtained subject to the imposition of conditions.

CONCLUSION

185. 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 a reasonable intensification of site and the proposed additional scale, bulk and height is considered to be an acceptable planning and design outcome for this site and will be consistent with the desired future character of development in the R3 zoned land in this location and immediate locality.
186. The proposal has been assessed against the provisions of the KLEP 2012 and KDCP 2013. The proposal satisfies the key planning controls in the KLEP apart from exceeding the height limit. A Clause 4.6 Statement has been submitted with the application justifying the variation in this case.
187. The proposed development design satisfies the objectives of both the height control and the zone and the Clause 4.6 Statement is considered to be well founded as there will not be any direct or adverse environmental impacts generated, the proposal satisfies the requirements of Clause 4.6 of the KLEP.

DETERMINATION AND STATEMENT OF REASONS

The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and development control plan except in the height of the development which is considered acceptable having regard to the justification provided in the report above.
- In this case the Clause 4.6 Statement is considered to be well founded and the non-compliance with the height control is reasonable in the circumstances of the case.
- The proposal has been designed to generally satisfy the key provisions of the apartment design guide (ADG) in terms of meeting separation distances, the

provision of landscaping and area of communal open space. The design fails to fully comply and satisfy the cross ventilation requirements when the openings to habitable areas facing Princes Highway need to be closed and mechanically ventilated for acoustic reasons, however this may not occur all day only when these spaces are in use as most are bedrooms. This non-compliance is acknowledged by the ADG. Despite this, the development has been designed to comply.

- The proposed design has been sensitively considered to be consistent with the anticipated desired future character for development in this area.
- The proposal aims to provide a high-quality building that will establish a positive urban design outcome, setting the architectural and planning precedent in the area.
- The proposal is carefully restoring and preserving the existing Heritage Item and this property will be maintained for perpetuity as it forms part of this larger development. An easement on title will require ongoing maintenance works to occur in accordance with the Conservation Management Plan. By integrating the heritage item into the development, not isolating it, this gives this item a greater chance for survival, retention and maintenance, as it forms a very important role in the built form and overall design intent.

THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, grants development consent to Development Application DA2018/0513 for site consolidation, tree removal and construction of seven (7) storey Residential Flat Building development comprising fifty (50) residential units, basement car parking for ninety-two (92) vehicles and conservation works to the Heritage Item known as “McWilliam House” and “Sunnyside” and associated landscaping and site works on Lots 5 and 6 DP 17522 and Lots 7 to 10 DP17618 and known as 2-6 Lacey Street, Kogarah Bay and 186 and 190 Princes Highway, Blakehurst subject to the following conditions of consent:

GENERAL CONDITIONS

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:

Description	Reference No.	Date	Revision	Prepared by
Cover Page	DA000	26/10/2018	A	PBD Architects
Project Summary	DA001	10/7/2019	C	PBD Architects
Street Context Plan	DA002	26/10/2018	A	PBD Architects
Site Analysis Plan	DA003	8/5/2019	B	PBD Architects
Demolition Plan	DA004	8/5/2019	B	PBD Architects
Site Plan	DA005	10/7/2019	C	PBD Architects
Basement No.1	DA102	10/7/2019	C	PBD Architects

Basement No.2	DA101	10/7/2019	C	PBD Architects
Ground Level Plan	DA103	10/7/2019	C	PBD Architects
Level 1 Plan	DA104	10/7/2019	C	PBD Architects
Level 2 Plan	DA105	10/7/2019	C	PBD Architects
Level 3 Plan	DA106	10/7/2019	C	PBD Architects
Level 4 -6 Plan	DA107	10/7/2019	C	PBD Architects
Roof Plan	DA108	10/7/2019	C	PBD Architects
Heritage House Elevations	DA200	10/7/2019	C	PBD Architects
North and South Elevations	DA201	10/7/2019	C	PBD Architects
East and West Elevations	DA201	10/7/2019	C	PBD Architects
Sections	DA301	10/7/2019	C	PBD Architects
Driveway Section	DA302	8/5/2019	B	PBD Architects
Storage Diagram B	DA560	10/7/2019	C	PBD Architects
Storage Diagram B	DA561	10/7/2019	C	PBD Architects
Communal Open Space	DA530	10/7/2019	C	PBD Architects
Height Plane Diagram	DA510	10/7/2019	C	PBD Architects
Material Schedule	DA400	10/7/2019	C	PBD Architects
Private Open Space B	DA530	10/7/2019	C	PBD Architects
Deep Soil Diagram	DA580	10/7/2019	C	PBD Architects
Shadow Impact Study (June)	DA613	10/7/2019	C	PBD Architects
Shadow Diagram (December)	DA612	10/7/2019	C	PBD Architects
Landscape Plans	LA00-LA11	11/4/2019	A	Taylor Brammer
Survey Plan	20870	20/02/2018	00	Bee and Lethbridge
Heritage Elevations	20870	26/03/2018	00	Bee and Lethbridge
Heritage Plans	20870A	20/02/2018	00	Bee and Lethbridge

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. This approval is to be obtained from RMS.

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 or RMS roadways/footways, an application must be lodged with Council or RMS 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 Princes Highway, Lacey Street and Wyuna Street 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 and/or RMS 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. **Roads and Maritime Services (RMS)** – RMS has reviewed the submitted application and provide concurrence under Section 138 of the Roads Act 1993 subject to the following conditions;
- i) All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Princes Highway boundary.
 - ii) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Please send all documentation development.sydney@rms.nsw.gov.au A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.
 - iii) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.
 - iv) A construction zone will not be permitted on the Princes Highway.

7. **Parking and layout** - The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2 – 2002 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway.
8. **Sydney Water – Tap in TM** - The approved plans must be submitted to a Sydney Water Tap inTM 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 inTM agent has appropriately stamped the plans prior to the issue of the Construction Certificate.
9. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site www.sydneywater.com.au then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

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 issuing the 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 (footpaths and roadworks)	\$93,936.00 (calculation based on \$1,236.00 per metre of street frontage, only Lacey Street so 76m)
Inspection Fee for Refund of Damage Deposit (minimum of two (2) inspections at \$371 per inspection)	\$742.00
DEVELOPMENT CONTRIBUTIONS	
Kogarah Section 94 Development Contributions Plan No.1 - Roads and Traffic Management - Residential	\$10,582.92
Kogarah Section 94 Development Contributions Plan No.5 – Open Space	\$523,047.83
Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries - Books	\$8793.30
Kogarah Section 94 Development Contributions Plan No.9 – Kogarah Libraries - Building	\$12,333.06
Total S94 Contribution	\$554,757.11

General Fees

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

Development Contributions

The Section 7.11 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

A Section 7.12 contribution has been levied on the subject development pursuant to the Georges River Council Section 94A Contributions Plan.

Indexation

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

Timing of Payment

The contribution 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. **Building services** - 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 Fire and Rescue (FR) NSW about the location of water storage tanks, construction of hydrant/booster pump and valve rooms, and any Fire Engineered Solution developed to meet the performance requirements under the Category 2 Fire Safety Provisions.

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

13. **Above ground power lines** – Where practicable, all existing overhead power lines within or adjacent to the development site shall be relocated underground to Energy Australia standards and specifications. If not practicable to relocate the power line underground, arrangements shall be made with Energy Australia to place the conduit to carry those power lines underground so that they can be utilised at a later date by Energy Australia. In this regard all associated costs shall be borne by the applicant.

Written compliance with this condition is required to be provided prior to the issuing of the Construction Certificate.

14. **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: **\$93,936.00**
 - (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee (for three inspections) to enable assessment of any damage and repairs where required: **\$742.00 per inspection.**
 - (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.

15. **Design changes** - The following changes are required to be made and shown on the **Construction Certificate** plans:
- (a) Where possible the applicant is to redesign the internal layout of apartments within each floor to minimise the number of bedrooms sharing a common wall with the living areas of adjoining units. In the event that a redesign of any particular unit is not practicable then the applicant is to submit a construction methodology statement demonstrating how noise transfer from living area to the bedroom/s is to be controlled. Noise separation between spaces and uses within the development shall comply with the provisions of the BCA.
 - (b) The bicycle racks located at the front of Apartment BG01 along Lacey Street shall be

relocated further south-eastern to adjoin the fire stairs to increase the size of the courtyard in front of BG01.

- (c) The northern facing blade wall adjoining the balconies of apartments B101, B201, B301, B401, B501 and B601 shall be amended and the wall opened up to include a standard solid balustrade or louvred openings similar to the treatment for the northern wall balconies of units B403, 503, 603 etc.
- (d) Planter boxes with a minimum width of 700mm and depth of 600mm shall be installed at the front of each of the ground floor courtyards located off Wyuna Street adjoining the entry stairs.
- (e) The roller door to the basement car parking level shall be installed for security but shall be recessed and located at the bottom of the ramp to reduce its visibility. The proposed garage door materials shall be either transparent or constructed of timber panels to soften the visual appearance of this element.
- (f) Fencing to the central courtyards shall reflect the palisade style fence proposed along Lacey Street and shall be low scale and be of open style materials.
- (g) Door Viewers (peep holes) shall be installed on all entry doors and within every unit to allow building occupants to see who is at the door before it is opened.
- (h) The acoustic screen/wall proposed on the roof plant for Building B, along the western side shall be setback from the parapet and shall be aligned with the eastern wall of the lift overrun to reduce its visibility. The acoustic screen/wall located on the roof of both buildings shall be constructed of light coloured materials to be visually recessive.
- (i) The lift overruns on both buildings shall be rendered and painted a recessive colour to reduce the visibility of this element.
- (j) The designated 'Bulky Good' storeroom in Basement No.1 shall be increased in size extending to the west to align with the closest column adjacent to the stairwell. This space shall be appropriately enclosed and signposted.
- (k) The non-trafficable area identified along the north-eastern side, adjacent to the balcony to Unit A303 shall be converted to a planter box consistent with the planters located along the southern side of the building.
- (l) The balustrade to the rooftop terrace area shall be constructed of glass to be a light and transparent element.
- (m) The ground floor courtyard of apartment BG03 shall be increased to a minimum area of 15sqm.
- (n) The fencing to courtyard areas and private spaces located centrally and internally shall be low scale having a maximum height of 1.2m with 60% of the fence being constructed of open style materials, ideally palisade similar to the front fencing materials proposed.
- (o) The balustrades to all balconies to all upper levels of the building facing Princes highway shall be constructed of glass.
- (p) An updated Landscape Plan shall be provided to address the changes to the design i.e. reflect the new entry to Wyuna Street and to reflect any changes required by the conditions as part of this consent.

Amended plans detailing compliance with the above specifications shall be submitted to Council and shall be to the satisfaction of the Manager of Development and Building.

16. **Use of Rooftop open space** - A Plan of Management (POM) for use of rooftop open space must be submitted for approval of Council. The POM must outline the following:
- (i) hours of use of the rooftop deck which shall be restricted from 8am until 10pm;
 - (ii) maximum number of users at any one time shall be specified (for this development a maximum of 20 at any one time is recommended) given the size of the space;
 - (iii) Outline provisions to maximise the safety (fire safety and general safety) for users of this area.
 - (iv) no amplified music to be played;
 - (v) identify other measures to ensure that the amenity and safety of persons within the development and in nearby existing and future development is maintained.
 - (vi) Location and type of signage to be installed in the building to notify residents and visitors in respect to the use of this space.
 - (vii) The approved POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision and a sign in the front entry of the building shall be included to ensure the use of this space is monitored and understood by all occupants.

The POM shall be prepared and shall be to the satisfaction of Council's Manager of Building and Development.

17. **Heritage** – The development shall comply with the following requirements;

Front setback

- i. Prior to the issue of any Construction Certificate, amended plans shall be submitted to the satisfaction of Council which incorporate the following design changes:
 - a) The alignment of the two-storey podium level of the building shall be set behind the front façade of the heritage item. No part of any blade or feature wall, balcony or the like, shall extend beyond the front façade of the heritage item.

Heritage Impact Statement

- ii. The recommendations within the Statement of Heritage Impact prepared by Heritage 21 and dated November 2018 and as amended by the report dated May 2019 shall be implemented (where applicable) as part of the Construction Certificate plans.

Schedule of Heritage Works

- iii. The recommendations of the Heritage Management Document – Schedule of Heritage Works prepared by Heritage 21 and dated May 2019 shall be implemented as part of the Construction Certificate plans (where applicable) and this document will be included on the title prior to issuing the Consolidation/Strata Plan.

Building Works to comply with BCA – Heritage Buildings or Buildings within a conservation area

- iv. Any building works required to ensure compliance with the BCA or new building standards not specified in the submitted/approved plan must not damage existing fabric and building features. If such upgrading works will potentially impact on

existing fabric and features, details of the works must be submitted and approved by Council's Heritage Advisor prior to issue of a Construction Certificate.

Structural Engineers Report

- v. Prior to the issue of any Construction Certificate, a Structural Report of the heritage item at 186-188 Princes Highway, Beverley Park and prepared by a suitably qualified Structural Engineer with demonstrated experience in dealing with heritage fabric, shall be submitted to the satisfaction of Council.

The Structural Report shall provide an assessment of the existing structural integrity and condition of the heritage item and must also certify that the excavation and construction associated with the basement level carparking will not result in any impacts on the structural integrity of the heritage item.

Detailed engineering drawings and specifications of the basement level carpark and details of excavation methodology and process shall also be submitted to the satisfaction of Council.

Archaeology

- vi. As required by the *National Parks and Wildlife Service Act 1974* and the *Heritage Act 1977*, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and the Heritage Division of the Office of Environment and Heritage (OEH) must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the Heritage Act 1977 to obtain the necessary approvals/permits from the Heritage Division of the OEH.

Note: The *National Parks and Wildlife Service Act 1974* and the *Heritage Act 1977* impose substantial penalty infringements and / or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

No painting or rendering of masonry or stone

- vii. No painting or rendering shall be permitted to masonry or stone surfaces which have not previously been painted or rendered.

Photographic Archival Recording

- viii. Prior to the commencement of any works, including the dismantling of fabric or demolition, a Photographic Archival Recording shall be undertaken of 'McWilliam House' at 186-188 Princes Highway and submitted to Council.

Written confirmation must also be obtained from Council's Heritage Advisor, confirming that the Photographic Archival Recording is of an acceptable quality that satisfies the requirements of this condition.

The Photographic Archival Recording shall be prepared in accordance with the guidelines "*Archival Recording of Heritage Items Using Film or Digital Capture*" published by the Heritage Division of the Office of Environment and Heritage.

One complete copy of the Photographic Archival Recording shall be submitted to Council and should contain (for digital projects):

- A brief report or introduction which explains the purposes of the Photographic Archival Recording and gives a brief description of the subject site, as well as details of the sequence in which images were taken. The report may also address the limitations of the photographic record and may make recommendations for future work;
- Plans of the building marked up to indicate where the photographs were taken and the direction of the photograph;
- The report should include all technical details including camera and lenses, image file size and format, technical metadata associated with the images, and colour information;
- Catalogue sheets, photographic plan, supplementary maps;
- Colour thumbnail image sheets (e.g. A4 page with six images by six images) showing images and reference numbers. The thumbnail sheets should be processed with archivally stable inks on archivally acceptable photographic paper and cross referenced to catalogue sheets;
- One full set of 10.5x14.8cm (A6) colour prints OR, if a large project, a representative set of selected images processed with archivally stable inks on archivally acceptable photographic paper.
- A CD or DVD containing electronic image files saved as RAW and JPEG files with associated metadata, and cross-referenced to catalogue sheets.

The report should be presented on archival quality paper in a suitable archival binder and slipcase, and all storage of individual components must be in archival quality packaging suitable for long term storage.

Heritage site induction ('toolbox talks')

- ix. Prior to the commencement of any works involving demolition, excavation works or any works associated with the heritage item, all contractors, tradesmen and the like, shall be given a heritage site induction ('toolbox talk') by a suitably qualified Heritage Consultant.

The heritage site induction shall ensure that all contractors, tradesmen and the like, are made aware that:

- (a) The site is identified as a listed item of heritage significance.
- (b) The reasons why the heritage item is of heritage significance and what fabric is of significance.
- (c) All conservation works to the heritage item are to be undertaken in accordance with the Australia ICOMOS Burra Charter and the Schedule of Conservation Works (Heritage 21, May 2019) and undertaken by suitably qualified tradesmen with relevant experience.
- (d) There are statutory obligations under the *National Parks and Wildlife Act 1974* and *Heritage Act 1977* for all works to cease and the Council and the Heritage Division of the Department of Premier and Cabinet notified of any unexpected

built archaeological or Aboriginal archaeological finds during works. Significant penalties apply for failure to notify of any unexpected archaeological finds.

Heritage Works Methodology

- x. All conservation, restorative and maintenance works to the heritage item, shall be undertaken in accordance with the specific conditions of this consent and the heritage works methodology as detailed in '*Schedule of Conservation Works – 186- 188 Princes Highway Beverley Park*' (prepared by Heritage 21 and dated May 2019).

Works to be undertaken by suitably qualified trades

- xi. All conservation, restorative and maintenance works to the heritage item, shall be undertaken by suitably qualified tradesmen / specialists, with demonstrated practical experience in dealing with heritage fabric and good practice heritage methodology.

All such works shall be undertaken under the supervision of a suitably qualified heritage specialist who shall provide advice as necessary to ensure the works are undertaken in accordance with the '*Schedule of Conservation Works – 186- 188 Princes Highway Beverley Park*' (prepared by Heritage 21 and dated May 2019).

Excavation works

- xii. Excavation works shall not involve any vibrational movement.

Heritage guidance

- xiii. The proposed development and all construction works shall be under the guidance of a fully qualified Heritage Consultant who shall sign off all the works in accordance with the conditions in this determination and to ensure that the recommendations of the Statement of Heritage Impact and Schedule of Heritage works have been implemented.

Existing structures

- xiv. The existing sandstone fence at the front and the iron gates shall be retained including the ornate letterbox existing on one of the front columns. The iron gates are to be cleaned and upgraded to improve the visual appearance of this element. The proposed method/s to improve this element shall be to the satisfaction of Council's Heritage Advisor.

18. **Storage of materials** - There shall be no storage of any construction materials, equipment, vehicles or the like on or within the immediate curtilage of the heritage property. The heritage home and its garden should be appropriately fenced off so that it is protected during the major works.
19. **Parking and Layout** – The development shall comply with the following requirements;
- The layout of the proposed car parking and loading areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) shall be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2002 for heavy vehicle usage.
 - Bicycle parking associated with the subject development shall be in accordance with AS 2890.3 (Bicycle Parking Facilities).

- Driveway access is to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.
 - Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distance requirements stipulated in the *Australian Standards AS2890.1*.
 - The maximum size of truck/service vehicle using the proposed development shall be restricted to Medium Rigid Vehicle with a maximum length of 7.2 metres.
 - All vehicles shall enter and exit the premises in a forward direction.
 - No deliveries to the premises shall be made direct from a public place or street inclusive of footpaths, nature strip, roadway.
 - All loading and unloading of vehicles in relation to the use of the premises shall take place wholly within the dedicated loading/unloading areas, which is wholly within the site.
20. **Traffic Control Devices** - The internal road network, pedestrian facilities and parking facilities (including visitor parking) shall be designated and line marked in accordance with Australian Standard - AS1742, Manual of Uniform Traffic Control Devices.
21. **Larger vehicles** - The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
22. **Lot Consolidation** – The individual lots comprising of 2-6 Lacey Street and 186-190 Princes Highway are to be consolidated into a single lot. Written evidence of registration of the plan of consolidation by NSW Land and Registry Service is to be submitted to Council prior to the issue of the Construction Certificate.
23. **Materials and finishes** - The proposed materials and finishes selected shall be non-reflective and shall be of the highest quality minimising the need for regular maintenance.
24. **Mechanical ventilation** – Any proposed mechanical ventilation system will need to satisfy Council's requirements and those stipulated by the National Construction Code and AS1668.2-2002.
25. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
26. **Road Noise attenuation** - The site is affected by noise from the Princes Highway. The construction certificate plans shall show that the development has been designed in accordance with the measures of acoustic attenuation to meet the internal noise levels specified in Clause 102 of [State Environmental Planning Policy \(Infrastructure\) 2007](#), as recommended in the Acoustic Report prepared by Acoustic Vibration and Noise P/L, dated 16 August 2018.

The findings and recommendations of the Acoustic Report prepared by Rodney Stevens

Acoustics and dated 12 April 2019 shall be implemented in the Construction Certificate plans and documents.

27. **Fire Safety Measures** - Prior to the issue of a Construction Certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a PCA. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or PCA will then issue a Fire Safety Schedule for the building.

28. **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 activity;
 - (d) Access arrangements; and
 - (e) Proposed traffic measures to minimise impacts of construction vehicles must be submitted for the approval of Council's Engineers. Council's Engineers must specify in writing that they are satisfied with the Traffic Management Plan prior to the issue of the Construction Certificate.
 - (f) The traffic management plans shall ensure that vehicles avoid the heritage item.

The Construction Traffic Management Plan may require approval from RMS.

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

- Cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners.

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

30. **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.

31. **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.

All design works associated with development around the heritage item is to be endorsed by a Geotechnical Engineer to ensure the preservation of the heritage item.

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

32. **Access for Persons with Disabilities** - Access for persons with disabilities must be provided to and within the site, including to all foyer areas, basement carpark, required communal areas including the 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.

33. **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.

34. **Access** - The recommendations of the Access Report prepared by Vista Access Architects Reference No. 18217 shall be implemented in the Construction Certificate Plans and Documents.

35. **BCA Report** - The recommendations within the BCA Report prepared by AED Group and dated 20 May 2019 shall be incorporated within the Construction Certificate Plans and Documents.

36. **Contamination Report** - The recommendations of the Contamination Report prepared by Dirt Doctors and dated 5 November 2018 shall be included within the Construction

Certificate Plans and Documents.

37. **Traffic** – The recommendations included within the Traffic and parking assessment report prepared by Varga Traffic Planning and dated 2 May 2019 shall be incorporated into the Construction Certificate Plans and Documents.
38. **Geotechnical** – The recommendations included within the Geotechnical report prepared by Morrow Consultants and dated 9 October 2018 shall be incorporated into the Construction Certificate Plans and Documents.
39. **Waste Management** - The recommendations included within the Waste Minimisation and Management Plan prepared by PBD Architects and dated October 2018 shall be included as part of the Construction Certificate Plans and Documents.
40. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development especially the Heritage Item, 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.
41. **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.
42. **Advice from Fire and Rescue (FR) NSW** - Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation, 2000 to seek written comment from FR NSW about the location of hydrant facilities and any Fire Engineered Solution developed to meet the performance requirements under the Category 2 Fire Safety Provisions.
43. **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, not within the curtilage of the heritage item;
 - (c) location of building materials for construction, e.g. stockpiles not within the curtilage of the heritage item
 - (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 any materials off site;
- (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, not within the curtilage of the heritage item;
- (k) details of proposed sediment and erosion control measures;
- (l) method used to provide construction noise and vibration management;
- (m) traffic management details during construction.

The site management measures are to be implemented prior to the commencement of construction works. 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.

44. **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.
45. **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. One visitor space shall be designated as a Car wash bay and this space shall be conveniently located in order to serve this purpose.
- 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 by Council's Environmental Health Officers.
46. **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*.

47. **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. Roads and Maritime Service (RMS) approval may also be required.

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.

48. **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 in accordance with the BASIX Certificate No.974294M_02 and dated 20 May 2019.

49. **Acoustic requirements for timber flooring** - If timber flooring is installed within the development, then appropriate insulation between floors shall be implemented to exceed the minimum sound attenuation.

50. **Acoustic attenuation for apartments adjoining lift core** – Where bedrooms:
(a) Within apartments that adjoin the internal lift core; appropriate noise attenuation measures are to be applied to prevent transmission of noise in accordance with the Building Code of Australia (BCA)

51. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Taylor Brammer, reference numbers – LA 00 – LA 07 and reflect the additional setback as annotated on the Architectural Plans being 2.2m (Issue C). The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -

- a) The Proposed trees – *Angophora costata* x 2 upon the landscape plans, be replaced with tree species – *Callistemon viminalis* x 2 at 45 litre pot/ bag size
- b) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
- c) All sixty four (64) trees proposed by 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.
- d) If any plants and trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.

52. **General Landscape Requirements**- the following requirements will need to be satisfied;

- a) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule nominated in the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
- b) All thirty (30) trees proposed upon the approved landscape plan shall comply with *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)* and AS2303 – 2018, *Tree Stock for landscape use* and be planted and maintained in accordance with Councils standard specification.
- c) If the planted trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
- d) A certificate of compliance for the planting of all trees and shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA – Principal Certifying Authority.

53. **Compliance with submitted Arborist Report** - The recommendations outlined in the Arborist's Report titled Arboricultural Impact Appraisal prepared by Naturally Trees, dated 5th October 2018, 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*.

- e) The tree/s to be retained and protected are listed in the table below.

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) Fencing distance from trunk
<i>T3 – Callistemon viminalis</i>	Councils street tree within Wyuna Street	3.6 metres radially
<i>T26 – Eucalyptus nicholii</i>	Front yard of 186 – 190 Princes Hwy	8.4 metres radially
<i>T27 – Phoenix canariensis</i>	Front yard of 186 – 190 Princes Hwy	2.4 metres radially
<i>T28 – Ficus benjamina</i>	Side fence of 184 Princes Hwy	4.8 metres radially
<i>T29 – Cinnamomum camphora</i>	Within backyard of 186 – 190 Princes Hwy	12.0 metres radially

54. **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
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<i>T3 – Callistemon viminalis</i>	Councils street tree within Wyuna Street	3.6 metres radially
<i>T26 – Eucalyptus nicholii</i>	Front yard of 186 – 190 Princes Hwy	8.4 metres radially
<i>T27 – Phoenix canariensis</i>	Front yard of 186 – 190 Princes Hwy	2.4 metres radially
<i>T28 – Ficus benjamina</i>	Side fence of 184 Princes Hwy	4.8 metres radially
<i>T29 – Cinnamomum camphora</i>	Within backyard of 186 – 190 Princes Hwy	12.0 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 who holds an AQF Level 5 or above in Arboriculture and who is a current financial member of Arboriculture Australia – AA and or Institute of Australian Consulting Arboriculturists – IACA**.
- (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 2.4 x 1.8 metres high, fully supported chainmesh fence shall be used. 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.
- (h) 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)*.

55. **Tree Removal & Replacement** - Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
<i>T4 – Callistemon viminalis</i>	X1	Councils street tree within Wyuna St
<i>T5 – Syagrus romanzoffiana</i>	X1	Within 4 Lacey St front yard
<i>T1 – Cupressus Spp</i>	No 21 Wyuna front side fence	2.4 metres radially
<i>T2 – Cupressus Spp</i>	No 21 Wyuna front side fence	2.4 metres radially
<i>T6 – Cupressus Sp</i>	X1	Within 2 Lacey St front yard
<i>T7/8 – Syagrus romanzoffiana</i>	X2	Within backyard of 2 Lacey St
<i>T9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22.</i>	X14	Within front fence of 190 Princes Hwy
<i>T23 – Viburnum tinus</i>	X1	Within 186- 188 Princes Hwy, side fence
<i>T24 - Syagrus romanzoffiana</i>	X1	Within 186- 188 Princes Hwy, backyard
<i>T25 – Phoenix canariensis - dead</i>	X1	Within 186- 188 Princes Hwy, front yard
<i>T30 – Jacaranda mimosifolia</i>	X1	Within 186- 188 Princes Hwy, backyard

General Tree Removal Requirements

- (a) All tree removals 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) The two trees to be removed at No.21 Wyuna Street will need to be replaced with suitable landscaping that is agreed to with the owners of No.21 Wyuna Street and all costs associated with the removal and replacement planting will be borne by the Applicant. Any damages or costs arising from the removal of the trees will be borne by the Applicant.
- (c) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

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

specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:

- (a) All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.
- (b) The Heritage Item located within the site.

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

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

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

57. **Drainage** – Prior to the issuing of the Construction Certificate, the following requirements are to be satisfied and amended plans submitted to address the following details:

- The applicant must submit a longitudinal section of the new proposed Ø375mm RCP pipe within the road showing: grade, surface levels, invert levels and public utility services. The plan shall be submitted to Council's drainage engineer in the 'Infrastructure and Asset Engineering' unit for approval in writing and to the officers satisfaction and specifications for the proposed drainage pipe in the road.
- The applicant shall ensure that the all existing surface and invert levels in the road and for Council's existing pit, are surveyed by a registered surveyor and the survey plan is accompanying the above submission.

The Plans shall be to the satisfaction of the Manager of Development and Building.

58. **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) Prior to the issue of a Construction Certificate, for the proposed connection into Council's existing drainage pit in the road, a longitudinal section of the new proposed Ø375mm RCP pipe in the road showing surface levels, invert levels, grade and public utility services must have been approved by Council's drainage engineer in the 'Infrastructure and Asset Engineering' unit and to his satisfaction and specifications for the proposed pipe in the road. All existing surface and invert levels of the pit in the road shall be surveyed by a registered surveyor and accompanying the submission.
- (b) All stormwater shall drain by gravity to Council's stormwater system in the street as indicated in the supported drainage plan Dwg (C202), revision (03), dated 19/07/2019; in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).

- (c) For the second proposed connection into the street kerb and gutter and prior to the commencement of works, the registered surveyor shall ensure to the PCA that the stormwater discharge pipe across the footpath shall be RHS at an angle and is laid with minimum disturbance at a minimum 1% grade to the kerb and gutter in the street and is made in good working condition.
- (d) The PCA shall ensure that the approved drainage design levels are surveyed during construction by a registered surveyor.
- (e) The PCA shall ensure that a drainage engineer shall supervise the construction of the OSD stormwater system on site and certify his supervision in writing and state his satisfaction of the constructed site stormwater system is built as intended in this consent.
- (f) A longitudinal section of the site stormwater discharge pipe across the footpath reserve shall be prepared showing the public utility services particularly those may encroach the above proposed stormwater pipe.
- (g) The RHS galvanised pipe must have a minimum of 50mm of cover along its length through the road reserve. A detailed section of the connection through the road reserve is to be prepared and shown on the drainage plan prior to the commencement of works.
- (h) There shall be no damage to the adjoining driveway crossing. All damages are to be rectified to its original condition at the cost of the applicant.
- (i) The 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.

59. **Stormwater Systems with Basement** - The underground basement car park must pump to and all other stormwater must drain by gravity to:

- i. the drainage system within the site via a silt trap pit .

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

60. **Protection of basement from inundation of stormwater waters** – the following measures will need to be implemented;

- (a) The protection of the underground basement shall be protected from possible inundation by surface waters from the street.

Evidence from a professional engineer who specialises in hydraulic engineering that this design requirement has been adhered to shall be submitted with the Construction Certificate application.

61. **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.
- (c) The proposed arrangement of the OSD system shall discharge by gravity using the minimum allowable size of an orifice plate Ø25mm to the street kerb and gutter.
- (d) Provide sufficient ventilation to the OSD tank.
- (e) Provide a silt trap in a boundary pit prior to discharge the flow into the kerb and gutter.
- (f) The design and structural adequacy of the OSD tank system shall be certified by a practicing drainage engineer to the satisfaction of the PCA.

62. **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.

63. **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 excavation and construction 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 excavation) and will remain until works are completed and all exposed surfaces are landscaped/sealed.

Section E – Prior to Commencement of Work

64. The site management measures are to be implemented prior to the commencement of construction works. 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.

65. **Site Safety Fencing** - Site fencing will be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the 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 all construction work.

A high risk work license may be required from SafeWork NSW (see www.SafeWork.nsw.gov.au).

66. **Dilapidation Report on Public Land** – Prior to the commencement of works (including 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.
- (f) The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the PCA and a copy provided to the Council.

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

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

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

67. **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.

- 68. **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.
- 69. **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 and the Heritage Item on site will be submitted to the satisfaction of Council.
- 70. **Notification Requirements** - The following notification requirements apply to this consent:
 - (a) The developer/builder will notify adjoining residents five (5) working days prior to excavation. Such notification is to be a clearly written note giving the date works will commence, contact details of the developer/builder 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 site.
 - (b) Five (5) working days prior to excavation, the developer/builder is to provide written notification to Council advising of the commencement date, and details of the list of residents advised of the works.
- 71. **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.
- 72. **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.
- 73. **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.

74. **Development Engineering – 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 network in Lawrence Road.

Stormwater drainage connection to Council's infrastructure shall be carried out to the satisfaction of the Council's engineering services unit.

75. **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

76. **Hazardous or Intractable Waste – Removal and Disposal** - Hazardous or intractable waste arising from the excavation or construction process shall be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and with the provision of:
- Work Health and Safety Act 2011 (NSW) (as amended);
 - Work Health and Safety Regulation 2011 (as amended);
 - Protection Of the Environment Operations Act 1997 (NSW) (as amended); and
 - Protection of the Environment Operations (Waste) Regulation 2014 (as amended)
77. **Site Contamination – Additional Information** - Any new information that comes to light during construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
78. **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.
79. **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 Council for permits is 9970 1111.

80. **Soil & Erosion Control Measures** - Prior to the commencement of works (including 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.
81. **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.
82. **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.
83. **Hours of Construction 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.
84. **Hazardous or Intractable Waste – Removal and Disposal** – Hazardous or intractable waste arising from the excavation 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.
85. **Structural Certificate During Construction** – The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer and endorsed by the Geotechnical 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.
86. **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 public drainage system.

87. **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.

88. **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.
89. **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.
90. **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.
91. **Works Zone** - The installation of a "Works Zone" for the site will require the approval from the Traffic Advisory Committee and/or RMS. 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 applicant's expense.
92. **Waste Management Facility** - All materials removed from the site as a result of 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.
93. **Site Safety Fencing** - Site fencing will be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the excavation and 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 building work.

Section G – Prior to Issue of Occupation Certificate

94. **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 Taylor Brammer, reference numbers – LA 00 – LA 07 (Revision A). The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -

- (a) The Proposed trees – *Angophora costata* x 2 upon the landscape plans, be replaced with tree species – *Callistemon viminalis* x 2 at 45 litre pot/ bag size.
- (b) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
- (c) All sixty four (64) trees 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.
- (d) If any plants and trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.

95. **Parking spaces** - Parking spaces shall be clearly designated (sign posted and marked on ground) and line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with *Australian Standards, AS1742, Manual of Uniform Traffic Control Devices* and *NSW Road Transport (Safety and Traffic Management) Regulations 1999*.

96. **Restriction on use of land** – A Restriction of Use and positive covenant shall be placed on the property to ensure the implementation of the Schedule of Management works as outlined in the Conservation Management Statement is to occur and is to be tied to the land in perpetuity in accordance with the provisions of Section 88E of the [Conveyancing Act 1919](#) over the subject property.

This Restriction shall ensure that the requirements of the Conservation Management Plan are tied to the property in perpetuity. The proposed wording of the restriction will need to be provided to Council's satisfaction prior to the issue of any Occupation Certificate. Documentary evidence of the registration of this Restriction on title is to be supplied to the PCA with the application for any Occupation Certificate.

97. **Historic marker** – A plaque shall be installed on the property to denote the historical significance of the heritage item on site. To obtain the plaque and details of its placement, consultation with Council's Cultural Services Section is required. The plaque should be located at the front of the site in a visible section of the site such as on one of the existing original sandstone columns on the front fence, on the ground in front of the iron gates or where considered to be most appropriate. Council will prepare and produce the plaque and the Applicant will ensure it is erected in accordance with Council's requirements.

98. **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.

99. **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.

100. **Acoustic Compliance – General Operation of Premises** - The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive

noise' as defined in the [Protection of the Environment Operations Act 1997](#) (as amended) and [Regulations](#).

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

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

101. **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.
102. **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*.
103. **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.*

104. **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.

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

106. **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.

107. **Development Engineering - Conditions relating to future Strata Subdivision of Buildings** - No approval is expressed or implied for the subdivision of the subject building(s). For any future Strata subdivision, a separate Development Application or Complying Development Certificate shall be approved by Council or an Accredited Certifier.

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

(a) **Unit Numbering**

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

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

(b) **Car Parking Space Marking and Numbering**

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

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

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

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

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

- i. All car parking spaces shall be created as a part lot of the individual strata's unit lot in any Strata Plan of the subject building.
- ii. All storage areas shall be created as a part lot of the individual strata's unit lot or a separate Utility Lot (if practical) in any Strata Plan of the subject building.
- iii. The minimum number of parking spaces required to be allocated as a part lot to each individual strata's unit lot shall be in accordance with the car parking requirements of Council's Development Control Plan and as required by the relative development consent for the building construction.
- iv. No parking spaces shall be created as an individual strata allotment on any Strata Plan of the subject building unless these spaces are surplus to the minimum number of parking spaces required.

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

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

- (e) **On Site Detention Requirements** - The location any on-site detention facility shall be shown on the strata plan and suitably denoted.

(f) Creation of Positive Covenant – Detention Basin

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

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

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

(g) Creation of Positive Covenant – Heritage Item

A Positive Covenant shall be created over the Heritage Item by an Instrument pursuant to Section 88E of the Conveyancing Act 1919, with the covenant including the following wording (can be altered if more appropriate wording is formulated):

"It is the responsibility of the Owner's Corporation to keep the Heritage Item in good condition and to follow all the recommendations of the Schedule of Conservation Works prepared by Heritage 21 and dated May 2019 in perpetuity. The Schedule of Conservation Works shall not be modified in any way without the prior approval of Georges River Council."

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

108. **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 where required;
- (f) Relocation/provision of street signs where required;
- (g) New or replacement street trees 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].

109. **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;

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

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.

110. **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.

111. **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.
112. **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.

113. **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.

114. **Allocation of Car Parking Spaces** – A total of ninety-three (93) car parking spaces, and a minimum of twenty-two (22) bicycle parking spaces associated with the development is to be allocated as follows, sign posted and/or linemarked accordingly:
- Eighty-two (82) residential spaces, including six (6) accessible spaces.
 - Eleven (11) dedicated visitor spaces.
 - One (1) of the visitor spaces is to also be a shared as a wash bay.
 - Twenty-two (22) bicycle spaces.
 - One Loading bay marked and signposted accordingly
 - The turning bay shall be signposted and remain free at all times.
115. **Electricity Supply** - Evidence will be provided demonstrating that the development has been connected to the electricity network.
116. **Structural Certificates** - The proposed structure will be constructed in accordance with details designed and certified by the practising qualified structural and geotechnical 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.
117. **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.

118. **Completion of Landscape Works** – All landscape works must be completed before the issue of the Final Occupation Certificate in accordance with approved landscape plans.
119. **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

- 2 Lacey Street Kogarah bay

Unit Addresses

- Refer to the attached list of unit addresses for the subject development

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

Additional comments

Please note that the allocated unit addresses are different to what was on the plan.

If there are modifications or changes to the number of units during the DA process, please advise the GIS team before the final approval. Otherwise, please ensure the list of unit addresses (TRIM No. D19/135631) is attached to the consent.

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

120. **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:

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

121. **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.

122. **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 Photographs showing the condition of retaining walls within the footway or road
- (d) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (e) The full name and signature of the professional engineer.

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

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

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

123. **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)

124. **Lighting** - 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.
125. **Activities and Storage of Goods Outside Buildings** - There will be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
126. **Boundary fencing** - Any new boundary fencing erected along the side and rear boundaries shall not exceed a height of 1.8m unless specified by any other conditions.
127. **Disability Discrimination Act** – The applicant is responsible to ensure compliance with this and other anti-discrimination legislation.
128. **Electrical connection** - Any new electrical and telecommunication connections to the site are to be carried out using underground cabling.
129. **Finishes** - 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.
130. **Safety** - 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.
131. **Security** - If any security screens/grilles are installed, they are to be openable from within the building.
132. **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.
133. **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*.
134. **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.
135. **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 turf 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).

136. **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.

137. **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.

138. **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.

139. **Waste** - The ongoing operation of recycling and waste management services is to be undertaken in accordance with the Waste Management Plan.

140. **Air conditioning** - 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. Any proposed air conditioning systems or mechanical ventilation shall be appropriately screened from view and not located so that it can be seen from the street.

141. **Graffiti** - 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

142. **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.

143. **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.

144. **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.

145. **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.

146. **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.

147. **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 J Prescribed Conditions

148. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
149. **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.
150. **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.
151. **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.
152. **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.
153. **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 of a building must be executed safely and in accordance with appropriate professional standards.

All excavations associated with the erection 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 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

154. **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.

155. **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.
156. **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.
157. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au
158. **Principal Certifier** - Should the Council be appointed as the Principal Certifier in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
159. **Energy Efficiency Provisions - Energy Efficiency Provisions** - Should Council be appointed as the Principal Certifier, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the Principal Certifier.
160. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.
161. **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).

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

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

163. **Strata Subdivisions**

- (a) Council will check the consent conditions on the relevant Strata Subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision.
- (b) Council will undertake the required inspections to satisfy the requirements of the Strata Schemes Development Regulation 2016 to determine the Strata Certificate.
- (c) Strata Plans, Administration Sheets, 88B Instruments and copies must not be folded.
- (d) All Strata Plans, Strata Plan Administration Sheets and 88B Instruments shall be submitted to Council enclosed in a protective cardboard tube (to prevent damage during transfer).

163. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.

164. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.

165. **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.

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

- a) Mechanical ventilation to bathroom, laundry and basement areas not afforded natural ventilation.
- b) Fire-fighting services and equipment including hydrant systems and booster assembly location, sprinkler and valve room systems, hose reels, portable fire extinguishers, smoke hazard management systems, sound and warning systems.
- c) Emergency lighting and exit signs throughout, including communal open space areas, lobby/foyer and basement areas.
- d) Construction of all fire doors including warning and operational signage to required exit and exit door areas.
- e) Egress travel distances to exits and the discharge from fire isolated exits including the swing of exit doors.
- f) The spandrel protection of openings in external walls
- g) The protection of paths of travel from a fire isolated exit when passing within 6m of an opening within the external wall of the building.
- h) Fire compartmentation and fire wall separation details including all stairway, lift and service shaft areas.
- i) The location and construction of an electricity substation, including the location and smoke separation of electrical distribution boards.
- j) Sound transmission and insulation details.
- k) Window schedule is to include the protection of openable windows.

In this regard, detailed construction plans and specifications that demonstrate compliance with the above requirements of the BCA must be submitted to the Principal Certifier 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 Certifier prior to issue of the Construction Certificate.

167. **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.

168. **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.

169. **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).

170. **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. DA2018/0580)
- (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.

171. **Council as PCA - Compliance with the BCA** - Should the Council be appointed as the Principal Certifying Authority in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
172. **Energy Efficiency Provisions** - Should Council be appointed as the Principal Certifying Authority, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the Principal Certifying Authority.
173. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.

ATTACHMENTS

- | | |
|---|---|
| Attachment
 1  | Site Plan_A2-C_2-6 Lacey St, Kogarah Bay & 186-190 Princes Hwy, Beverley Park - Reduced |
| Attachment
 2  | East & West Elevation_2-6 Lacey St, Kogarah Bay & 186-190 Princes Hwy, Beverley Park - Reduced |
| Attachment
 3  | North & South Elevation_A2-C_2-6 Lacey St, Kogarah Bay & 186-190 Princes Hwy, Beverley Park - Reduced |



