

## AGENDA - LPP

<b>Meeting:</b>	Georges River Local Planning Panel (LPP)
<b>Date:</b>	Thursday, 19 March 2020
<b>Time:</b>	4.00pm
<b>Venue:</b>	Council Chambers, Civic Centre, Hurstville
<b>Panel Members:</b>	Paul Vergoits (Chairperson) Michael Leavey (Expert Panel Member) John Brockhoff (Expert Panel Member) Cameron Jones (Community Representative)

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### **1. On Site Inspections - 1.00pm –3.30pm**

- a) 71-73 Jubilee Avenue Carlton
- b) 5/25 Kyle Parade Kyle Bay
- c) 33 Waitara Parade Hurstville Grove
- d) 66 Mulga Road Oatley
- e) 57-59 Clarke Street Peakhurst

**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

- LPP012-20 57-59 Clarke Street Peakhurst - DA2019/0433**  
(Report by Senior Development Assessment Officer)
- LPP013-20 5/25 Kyle Parade Kyle Bay - MOD2019/0208**  
(Report by Development Assessment Planner)
- LPP014-20 39 Waitara Parade Hurstville Grove - REV2020/0004**  
(Report by Senior Development Assessment Planner)
- LPP015-20 71-73 Jubilee Avenue Carlton - DA2018/0277**  
(Report by Senior Development Assessment Officer)
- LPP016-20 66 Mulga Road Oatley - MOD2020/0017**  
(Report by Senior Development Assessment Planner)

### 4. Confirmation of Minutes

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 19 MARCH 2020**

LPP012-20

<b>LPP Report No</b>	<b>LPP012-20</b>	<b>Development Application No</b>	<b>DA2019/0433</b>
<b>Site Address &amp; Ward Locality</b>	57-59 Clarke Street Peakhurst Peakhurst Ward		
<b>Proposed Development</b>	Demolition, lot consolidation and construction of a multi dwelling housing development, swimming pool over a car park and use of the completed dwellings as group homes		
<b>Owners</b>	Mr A Haidar and Mr L and Ms S Kaoutarani		
<b>Applicant</b>	Bruce Naghten		
<b>Planner/Architect</b>	Planner: Bruce Naghten, Architect: Bodesign		
<b>Date Of Lodgement</b>	23/09/2019		
<b>Submissions</b>	Twenty two (22) submissions received		
<b>Cost of Works</b>	\$2,605,751.68		
<b>Local Planning Panel Criteria</b>	More than ten (10) unique submissions objecting to the proposal and more than 10% variation to Development Standards regarding Height, Floor Space and Density		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy No. 55 Remediation of Land, State Environmental Planning Policy BASIX: 2004, State Environmental Planning Policy (Vegetation Non-Rural Areas) 2017, Greater Metropolitan Regional Environmental Plan No 2, Draft Georges River Local Environmental Plan 2020, Draft Environment SEPP, Draft Remediation of Land SEPP, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No 1, Interim Policy Georges River Development Control Plan 2020		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans		
<b>Report prepared by</b>	Senior Development Assessment Officer		

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

<p>the assessment report?</p>	
<p><b>Clause 4.6 Exceptions to development standards</b>                  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?</p>	<p><b>The application has sought a variation to Clause 4.1A 4.1 Minimum lot sizes for Dual Occupancies and Multi Dwelling Housing, Clause 4.3 Height of Building and 4.4 Floor Space Ratio of the HLEP 2012 however no Clause 4.6 Variation has been provided addressing this clause.</b></p>
<p><b>Special Infrastructure Contributions</b>                  Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p><b>Not Applicable</b></p>
<p><b>Conditions</b>                  Have draft conditions been provided to the applicant for comment?</p>	<p><b>No as the application is recommended for refusal. The refusal reasons will be available when the report is published.</b></p>

**Site Plan**



**Figure 1:** Aerial photograph of subject site (57-57 Clarke Street, Peakhurst) and surrounding area.

**Executive Summary**

**Proposal**

1. Council is in receipt of a development application for demolition, lot consolidation and construction of a multi dwelling housing development with a swimming pool over a car park, and use of the completed dwellings as group homes on land known as 57-59 Clarke Street, Peakhurst.
2. The proposal consists of six (6) dwellings, within three buildings, each containing an attached two (2) storey attached dwelling over a common carpark. A swimming pool is located being building two (2) and building three (3).
3. The proposal seeks to provide fourteen (14) car spaces of which four (4) car spaces are provided by outdoor car stackers accessed from the southern side boundary.
4. An assessment has been undertaken having regard to the development being a multi dwelling housing development with the dwellings being used as group homes.
5. The application seeks development consent for group homes. No particular or specific information has been provided regarding to the group home operation. The architectural plans make reference to a company called “*Dawa Health*”. A search of ASIC did not identify this company as existing or a registered business name. The applicant has not provided any details regarding registered housing provider under the National Disability Insurance Scheme (NDIS).

#### **Site and Locality**

6. The lots are legally identified as Lot A and B DP394348 known as 57-59 Clarke Street, Peakhurst. The site is generally rectangular consisting of a regular and battle-axe lot.
7. The plans nominate the site dimensions being 20.11m along the eastern frontage to Clarke Street, 88.5m along the northern side boundary, 22.006m along the western splayed boundary, 82.47m along the southern side boundary an approximate site area of 1,716.3sqm (as assessed by Council). The applicant’s Statement of Environmental Effects makes reference to a total site area of 1,720sqm. The site contains a steep slope which falls from front to rear of 16.31m.
8. The site contains a dwelling. A driveway on the northern side provides access to 57 Clarke Street, Peakhurst. A driveway along the southern side boundary provides access to a carport located within 59 Clarke Street, Peakhurst.
9. The site is located within the Hurstville Local Environmental Plan (HLEP) 2012 Foreshore Scenic Protection Area. A sewer line traverses through the centre of the site from north to south. The site is affected by Acid Sulfate Soils.
10. The visual catchment surrounding the subject site comprises single storey and double storey dwelling houses, dual occupancies and a seniors living development.
11. The site directly adjoins a nature reserve to the west which contains several trees. This reserve is zoned E1 National Parks and Nature Reserves which is Crown Land, a reserve is located beyond being RE1 Public Recreation with Salt Pan Creek zoned W2 Waterways under the HLEP 2012.

#### **State Environmental Planning Policy**

12. The proposal has been considered in regards to the following policies which have been considered in respect to the application:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2000.
- State Environmental Planning Policy (Affordable Rental Housing) 2009.
- State Environmental Planning Policy No. 55 Remediation of Land.
- State Environmental Planning Policy (Vegetation in non-rural areas) 2017.
- State Environmental Planning Policy (Building and Sustainability Index: 2004).
- State Environmental Planning Policy (Infrastructure) 2007.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- Draft Georges River Local Environmental Plan 2020.
- Draft Remediation of Land SEPP.
- Draft Environment SEPP.

## Background

The background of this application is provided in the table below.

**Table 1: Background**

Date	Event
2 March 2018	<p>PRE2017/0047 Pre-lodgement meeting for four (4) x two storey townhouses</p> <p>The pre-lodgement design was not supported for the following reasons:</p> <ul style="list-style-type: none"> <li>• Non-compliance on side setback</li> <li>• Insufficient landscaping</li> <li>• Number of storeys</li> <li>• Inadequate car parking manoeuvrability</li> </ul>
4 June 2019	<p>DA2019/0205 Demolish existing two houses and construction of access driveway in slope basement garage podium and construction of four dwellings and construction of stacker car garage for 4 cars, and landscaping with pool and construction 2 attached dwellings.</p> <p>The application was rejected for the following reasons;</p> <ul style="list-style-type: none"> <li>• no arborist report,</li> <li>• shadow diagrams,</li> <li>• acid sulphate report, and</li> <li>• inadequate drainage system.</li> </ul>
12 October 2019	<p>DA2019/0344 Tree removal, lot consolidation and construction of 6 dwellings with basement parking.</p> <p>The application was rejected for the following reasons;</p> <ul style="list-style-type: none"> <li>• Lack of compliance table against LEP ad DCP</li> <li>• Non-compliance of side setback of 3m</li> <li>• Non-compliance of single storey rear dwellings</li> <li>• Passing bay required</li> <li>• Impacts to trees on site</li> <li>• Drainage</li> </ul>
23 September 2019	<p>Current development application lodged DA2019/0433 Demolition, lot consolidation and construction of a multi dwelling</p>

	housing development, swimming pool over a car park and use of the completed dwellings as group homes.
6–23 October 2019	Notification period (extended).
27 October 2019	Site inspection of subject site and adjoining properties.
11 December 2019	Email to applicant identifying issues advising that application is not supported.
12 December 2019	Meeting at Council with applicant whereby applicant was advised of issues in detail. Applicant provided additional information in the form of justification of non-compliances and lift stacker mechanical specifications.
4 February 2020	Response to applicant advising that application is not supported.
27 February 20	Further email to applicant advising that the application is not supported and that Council will not accept any further amendments.

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13. The proposal does not adequately satisfy the Objects of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy No. 55 Remediation of Land, State Environmental Planning Policy (Vegetation in non-rural areas) 2017, State Environmental Planning Policy BASIX, Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment, Draft Remediation of Land SEPP and Draft Environment SEPP.

#### **Zoning and Hurstville LEP 2012 (HLEP 2012) Compliance**

14. The site is zoned R2 Low Density Residential in accordance with the Hurstville Local Environmental Plan 2012 (HLEP 2012). A ‘*group home*’ is a permissible use with Council consent pursuant to Clause 2.6 of the HLEP 2012. A group home is defined within the HLEP Dictionary as follows;

*“group home means a permanent group home or a transitional group home.*

**Note.**

*Group homes are a type of residential accommodation—see the definition of that term in this Dictionary.*

**group home (permanent) or permanent group home means a dwelling—**

*(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and*

*(b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,*

*but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies”.*

15. As a group home is required to be within “a dwelling”, and as the proposal seeks to redevelop the site (i.e. not retain any of the existing dwellings on the site), consent for a dwelling form permissible in the zone is also required.

16. The application proposes six (6) dwellings, each with separate entry points from the ground floor. Accordingly, the proposed dwellings are considered to best fit the definition of multi dwelling housing which is defined as follows:

*“Multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.”*

17. On 6 December 2019 the Georges River Local Environmental Plan Amendment (Miscellaneous) came into force, amending the R2 zone under the Hurstville Local Environmental Plan to remove multi dwelling housing as a permissible land use.

18. This notwithstanding, Clause 1.8A of the LEP was amended to state:

*“(2) If a development application has been made before the commencement of Georges River Local Environmental Plan Amendment (Miscellaneous) 2019 in relation to land to which that Plan applies and the application has not been finally determined before that commencement, the application must be determined as if that Plan had not commenced.”*

19. The subject application was lodged on 23 September 2019. At the time of lodgement, multi dwelling housing was permissible in the R2 zone with consent. Given the operation of Clause 1.8A of the LEP, multi dwelling housing is permissible in the zone for the purpose of this application given it was lodged prior to the amending instrument coming into force.

20. The proposal does not adequately satisfy Objects of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy Infrastructure, State Environmental Planning Policy No. 55 Remediation of Land, State Environmental Planning Policy (Vegetation in non-rural areas) 2017, State Environmental Planning Policy BASIX, Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment, Draft Remediation of Land State Environmental Planning Policy and Draft Environment State Environmental Planning Policy.

21. The application seeks a variation to Clause 4.3 Height of Building of the HLEP 2012. Council’s controls prescribe a height of 9m whereby the proposal seeks a maximum height of 10.88m. No clause 4.6 Exception to Development Standard has been submitted for consideration against this clause.

22. The application seeks a variation to Clause 4.4 Floor Space Ratio of the HLEP 2012. Council’s controls prescribe a maximum floor space ratio of 0.6:1 whereby the proposal seeks a floor space of 0.619:1. No clause 4.6 Exception to Development Standard has been submitted for consideration against this clause.

23. Whilst application seeks consent for the use for ‘group homes’. In relation to the physical built form, it is noted that a Clause 4.6 Objection has been submitted by the applicant in relation to density (which is now repealed); this development standard applies to the ‘multi dwelling housing’ built form within the Scenic Foreshore Protection Area.

24. The applicant has submitted a Clause 4.6 objection with respect to the Aims of the LEP and specifically to Clause PC3 of the DCP. It is noted that as the aims and DCP provisions do not meet the definition of Development Standards that this 4.6 is incorrectly lodged.



25. It is noted that the LEP as it applied at the time of lodgement included Clause 4.1A titled Minimum lot sizes for dual occupancies and multi dwelling housing which stated:
- “(3) Development consent may be granted for development on a lot identified as “K” on the Lot Size Map in Zone R2 Low Density Residential for the purpose of multi dwelling housing, if an area of at least 500 square metres is provided for each dwelling.”*
26. The site is in the area marked “K” and given the operation of Clause 1.8A as a savings provision, this requirement applies, however no 4.6 variation has been provided for consideration.
27. A merit based assessment has been undertaken having regard to the requirements for multi dwelling housing under the DCP.
28. The proposal is not considered to be consistent with the provisions within this subsection with regards to the Objectives of the zone R2 Low Density Residential Zone, Clause 1.2 Aims of the Plan, Clause 4.1A Minimum lot sizes for dual occupancies and multi dwelling housing, Clause 4.3 Height of Building, Clause 4.4 Floor Space Ratio, Clause 4.6 Exception to Development Standard, Clause 6.4 Foreshore Scenic Protection Area, Clause 6.7 Services of the HLEP 2012.

#### **Hurstville Development Control Plan No 1**

29. The proposal does not comply with Section 3.1 Vehicle Access, Parking and Manoeuvring, Section 3.2 Subdivision, Section 3.3 Access and Mobility, 3.4 Crime Prevention through Environmental Design, Section 3.5 Landscaping, Appendix 1: Energy Efficiency, Preservation of Trees and Vegetation and Building Heights and Indicative Storeys of the Hurstville Development Control Plan No 1 (HDCCP No.1).
30. The information provided supporting the proposal is insufficient and inadequate to enable Council to undertake an assessment, particularly with regard to the level of detail on the survey plan, accessibility, Building Code of Australia compliance, and tree impacts.
31. The applicant has provided additional justification in support of the application, however has not provided the detail requested by Council Officers to address the non-compliances.
32. The applicant had been previously advised that the proposal is not supported and is recommended for refusal for the reasons outlined at the end of this report.

#### **Submissions**

33. In accordance with the provisions of Councils Public Notification policy, the application was neighbour notified between 6 October and 23 October 2019. In response, twenty two (22) submissions were received objecting to the proposed development, this is addressed in detail further within this report.

#### **Level of Determination**

34. The application has received more than ten (10) unique submissions; the consent authority is the Georges River Local Planning Panel (LPP).

#### **Conclusion**

35. This application has been assessed having regard to the Matters for Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environment Planning Policies, Local Environmental Plan and

Development Control Plan. The application seeks approval for demolition, lot consolidation and construction of a multi dwelling housing development and swimming pool over a common car park, and use of the completed dwellings as group homes on land known as 57-59 Clarke Street, Peakhurst.

36. Following a detailed assessment, it is recommended that Development Application No. DA2019/0433 for demolition, lot consolidation and construction of a multi dwelling housing development and swimming pool over a common car park, and use of the completed dwellings as group homes on land known as 57-59 Clarke Street, Peakhurst be refused for the reasons contained at the end of this report.
37. The proposal in its current form results in adverse impacts on the locality, adjoining properties and the future occupants.
38. The proposal is not supported on the basis of occupant amenity and functionality, access and mobility and traffic impacts. It is also noted that the applicant has provided insufficient information in relation to trees, sewerage relocation, BASIX and Clause 4.6 Exception to Development Standards for Clause 4.3 Height of Building, Clause 4.4 Floor Space Ratio and Clause 4.1A Minimum lot sizes for dual occupancies and multi dwelling housing for Council to undertake an informed assessment regarding impacts under Section 4.15 of the Environmental Planning and Assessment Act 1979.

## Report in Full

### Proposal

39. Council is in receipt of a development application for demolition, lot consolidation and construction of a multi dwelling housing development with a swimming pool over a common carpark, and use of the completed dwellings as group homes on land known as 57-59 Clarke Street, Peakhurst.
40. In detail the proposal is described below.
41. The proposal seeks the removal of three (3) trees on site.
42. The proposal adopts a built form of two buildings each containing two (2) x two (2) storey attached dwellings over a common basement/semi basement podium, and a separate two (2) storey building containing two (2) attached dwellings at the rear of the site.
43. The siting of the dwellings are described as follows Units 1-2 - front, Unit 3-4 - middle and Units 5-6 are located at the rear.
44. Each dwelling contains a porch, dining/sitting, living, kitchen, panty, laundry, ground floor outdoor areas, internal stairs, three (3) bedrooms, bed 1 with an ensuite, bathroom and balconies and ground floor private open space. Units 1 and 2 are accessible via a lift at the front of the site; this lift also provides access from the common porch entry to the carpark basement below.
45. All units include ground level (or in the case of Units 3 and 4) podium level open space and rear first floor balconies.
46. Access to Units 1 and 2 is provided either via a lift linking to the car park in their lobby or via direct access from the street. Access to Units 3 and 4 is via side pathways immediately

adjacent to the side walls of the building containing Units 1 and 2, or via a stairway from the basement.

47. Access to Units 5 and 6 is via a connecting stair way and approximately 1.6m elevated bridge linking the rear of the podium on which Units 3 and 4 sit to the first floor (labelled 'ground floor' on the plans) of Units 5 and 6.
48. The proposal seeks to provide a total of fourteen (14) car spaces. Nine (9) of these spaces are provided within the basement/semi basement beneath Units 1 - 4, four (4) to be provided in outdoor mechanical car stackers at the terminating point of the side entry driveway, and the remaining space is proposed to be a stacked space in front of one of these mechanical car stackers. Of these spaces, two (2) are proposed to be visitor spaces.
49. Associated landscaping, engineering and building works.
50. A swimming pool dimensioned 4.0m x 7.5m centrally located on site along the northern side boundary with pump and equipment storage to the eastern side of the pool.
51. Access ramps, front fence and entry structure located along the frontage.

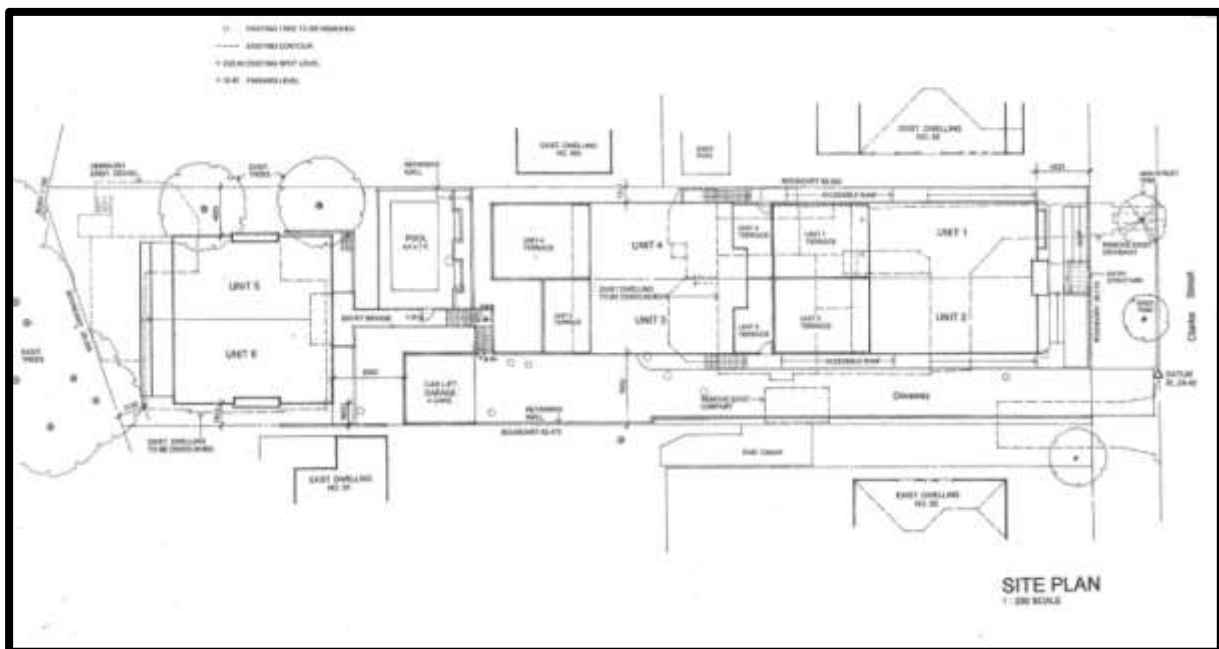
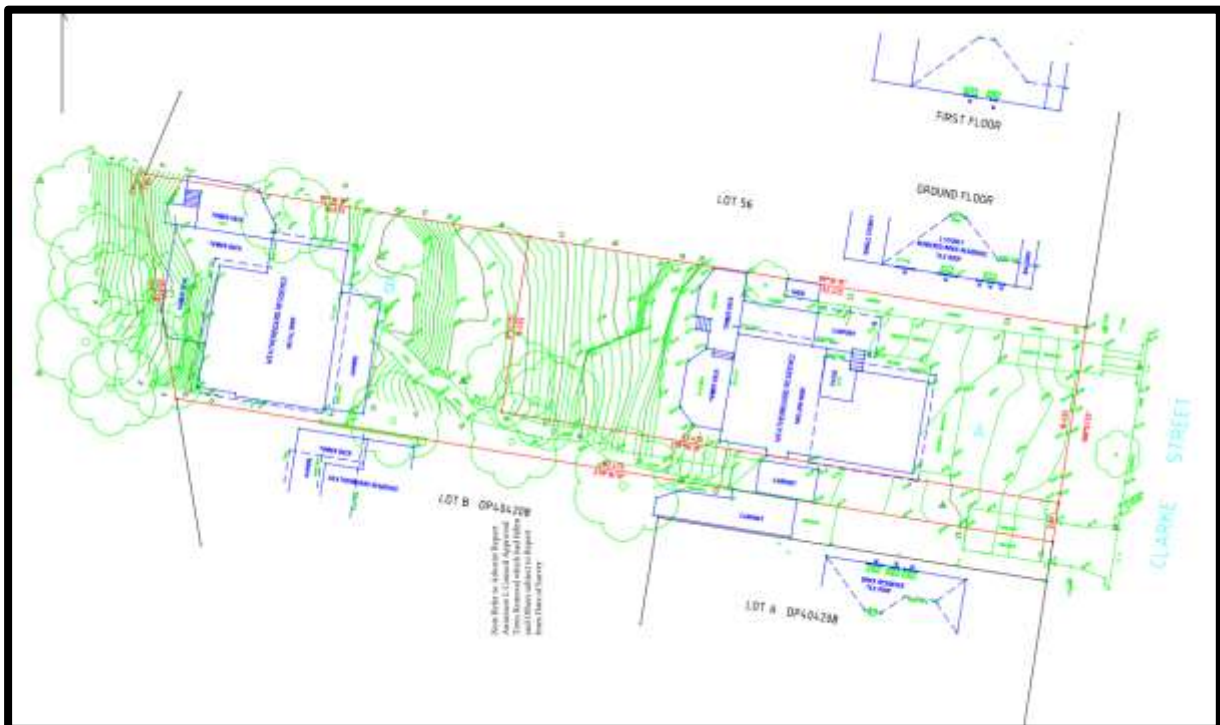


Figure 2: Site plan (57-59 Clarke Street, Peakhurst) (Source: Bodesign, 18)

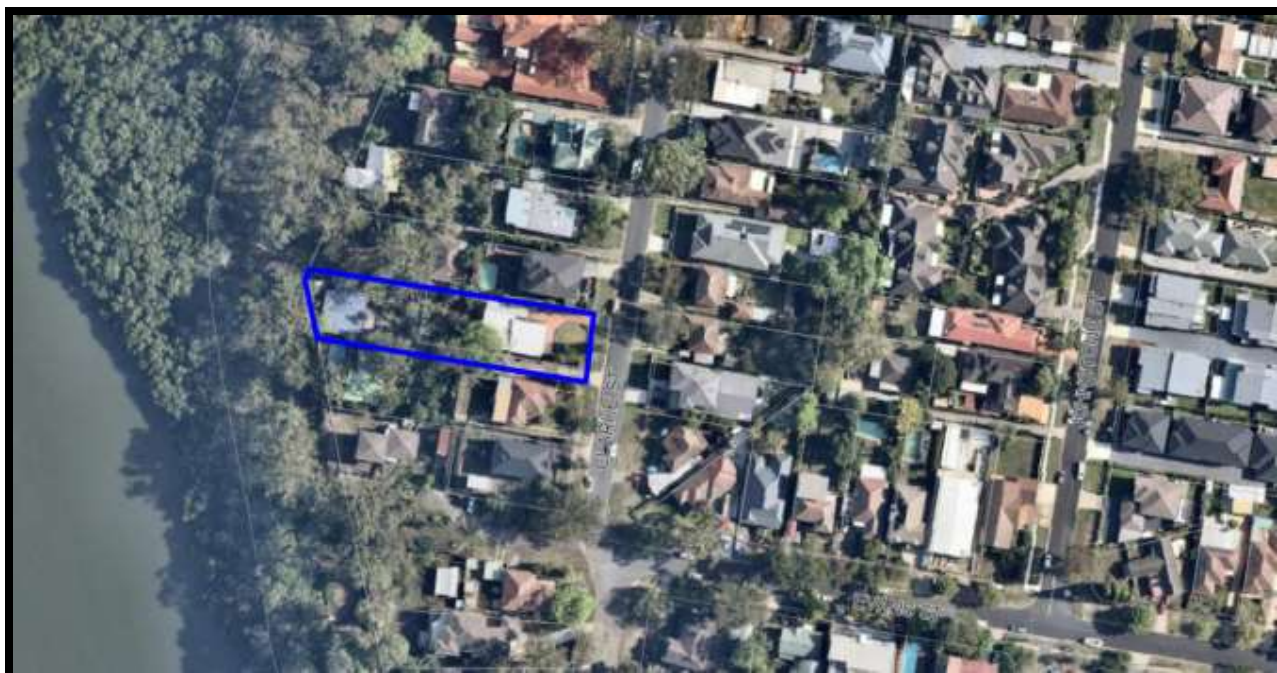
### The Site and Locality

52. The lots are legally identified as Lot A and B DP394348 known as 57-59 Clarke Street, Peakhurst. The site is described as generally forming a rectangular shaped block. It is noted that the submitted survey has not provided and registered surveyor details and no total site area has been provided on this plan.
53. The plans nominate the site dimensions being 20.11m along the eastern frontage to Clarke Street, 88.5m along the northern side boundary, 22.006m along the western splayed boundary, 82.47m along the southern side boundary an approximate site area of 1,716.3sqm (as assessed by Council). The applicant's Statement of Environmental Effects makes reference to a total site area of 1,720sqm. The site contains a steep slope which falls from front to rear of 16.31m.

54. The site contains a dwelling. A driveway on the northern side provides access to 57 Clarke Street, Peakhurst. A driveway along the southern side boundary provides access to a carport located within 59 Clarke Street, Peakhurst.
55. The site is located within the Hurstville Local Environmental Plan (HLEP) 2012 Foreshore Scenic Protection Area. A sewer line traverses through the centre of the site from north to south. The site is affected by Acid Sulfate Soils.
56. The visual catchment surrounding the subject site comprises single storey and double storey dwelling houses, dual occupancies and a seniors living development.
57. The site directly adjoins a nature reserve to the west which contains several trees. This reserve is zoned E1 National Parks and Nature Reserves which is Crown Land, a reserve is located beyond being RE1 Public Recreation with Salt Pan Creek zoned W2 Waterways under the HLEP 2012.



**Figure 3:** Survey (Source: Landmark Surveying Services P/L, No date)



**Figure 4:** Aerial extract of subject site (57-59 Clarke Street, Peakhurst) outlined in blue and the immediate surrounding area

**Table 2: Analysis of built forms in surrounding area**

Address	Built form
31 Evans Street, Peakhurst	Single storey dwelling house
65 Clarke Street, Peakhurst	Two storey dwelling house
63 Clarke Street, Peakhurst	Single storey dwelling house
61 Clarke Street, Peakhurst	Single storey dwelling house
<i>57 Clarke Street, Peakhurst (Subject site)</i>	<i>Single storey dwelling house</i>
<i>59 Clarke Street, Peakhurst (Subject site)</i>	<i>Single storey dwelling house</i>
55 Clarke Street, Peakhurst	Two storey dwelling house
55A Clarke Street, Peakhurst	Single storey dwelling house
53 Clarke Street, Peakhurst	Single storey dwelling house
51 Clarke Street, Peakhurst	Single storey dwelling house
49 Clarke Street, Peakhurst	Two storey dwelling House
49A – 43 Clarke Street, Peakhurst	Single storey seniors living
64 Clarke Street, Peakhurst	Single storey dwelling house
62 Clarke Street, Peakhurst	Two storey dwelling house
60 Clarke Street, Peakhurst	Single storey dwelling
58 Clarke Street, Peakhurst	Two storey dwelling house
56 Clarke Street, Peakhurst	Two storey dwelling house
54 Clarke Street, Peakhurst	Single storey dwelling house
52 Clarke Street, Peakhurst	Single storey dwelling house
50 Clarke Street, Peakhurst	Single storey dwelling house
48 Clarke Street, Peakhurst	Single storey dwelling house
48A Clarke Street, Peakhurst	Single storey dwelling house
46 Clarke Street, Peakhurst	Two storey detached dual occupancy



**Figure 5:** Photograph of subject site - western aspect (57-59 Clarke Street, Peakhurst) viewed from Clarke Street (Source: GRC, 2019)



**Figure 6:** Photograph of rear of subject site (57-59 Clarke Street, Peakhurst) along western aspect. (Source: GRC, 2019)



**Figure 7:** Photograph of centre of subject site (57-59 Clarke Street, Peakhurst) with an eastern aspect (Source: GRC, 2019)



**Figure 8:** Photograph of rear subject site (57-59 Clarke Street, Peakhurst) along north west aspect (Source: GRC, 2019)



**Figure 9:** Photograph of land adjoining site to the west (rear) along western aspect (Source: GRC, 2019)

## Background

**Table 3: Background**

Date	Event
2 March 2018	<p>PRE2017/0047 Pre-lodgement meeting for four (4) x two storey townhouses</p> <ul style="list-style-type: none"> <li>• The pre-lodgement design was not supported on the following basis</li> <li>• Non-compliance on side setback</li> <li>• Insufficient landscaping</li> <li>• Number of storeys</li> <li>• Inadequate car parking manoeuvrability</li> </ul>
4 June 2019	<p>DA2019/0205 Demolish existing two houses and construction of access driveway in slope basement garage podium and construction of four dwellings and construction of stacker car garage for 4 cars, and landscaping with pool and construction 2 attached dwellings.</p> <p>The application was rejected for the following reasons;</p> <ul style="list-style-type: none"> <li>• no arborist report,</li> <li>• shadow diagrams,</li> <li>• acid sulphate map plan,</li> <li>• inadequate drainage system</li> </ul>
12 October 2019	<p>DA2019/0344 Tree removal, lot consolidation and construction of 6 dwellings with basement parking.</p>



	The application was rejected for the following reasons; <ul style="list-style-type: none"> <li>• Lack of compliance table against LEP ad DCP</li> <li>• Non-compliance of side setback of 3m</li> <li>• Non-compliance of single storey rear dwellings</li> <li>• Passing bay required</li> <li>• Impacts to trees on site</li> <li>• Drainage impacts</li> </ul>
23 September 2019	Current development application lodged DA2019/0433 Demolition, lot consolidation and construction of a multi dwelling housing development, swimming pool over a car park and use of the completed dwellings as group homes and swimming pool
6–23 October 2019	Notification period (extended)
27 October 2019	Site inspection of subject site and adjoining properties
11 December 2019	Email to applicant identifying issues advising that application is not supported
12 December 2019	Meeting at Council with applicant whereby applicant was advised of issues in detail. Applicant provided additional information in the form of justification of non-compliances and lift stacker mechanical specifications.
4 February 20	Response to applicant advising that application is not supported
27 February 2020	Further email to applicant advising that the application is not supported and that Council will not accept any amendments

### Statutory framework

#### Environmental Planning and Assessment Act 1979 (EP&A) Act 1979

58. The proposal has been assessed and considered against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the objects of the EP&A Act, and the principles of ecologically sustainable development as follows.

#### Objects of the EP&A Act

59. Consent authority is required to consider the objects in Section 1.3 of the EP&A Act when making decisions under the Act. The proposal has been considered in accordance with the Objects as per below.

#### 60. Table 4: Objects of the Act Environmental Planning and Assessment Act 1979

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 the underlying intention of this clause.	Yes
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment	No valid BASIX certificate has been submitted as part of this application.	No
(c) to promote the orderly and	The proposal is not an orderly and	No

economic use and development of land	economic use of land and the development proposed will result in poor amenity for future residents and adverse impacts on adjoining properties and the broader locality.	
(d) to promote the delivery and maintenance of affordable housing.	The proposal does not incorporate an affordable rental housing component.	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 is not considered to be inconsistent with this objective.	Yes
(f) to promote the sustainable management of built and cultural heritage	The site is not a Heritage Item or within a Heritage Conservation Area.	N/A
(g) to promote good design and amenity of the built environment	The proposal is considered to result in a poor built form which does not sufficiently contextually respond to the site, adjoining and immediate surrounding area.	No
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	Appropriate construction requirements would be conditioned if the application as to be supported.	Yes
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	The proposal falls within the delegation of the Georges River Local Planning Panel.	Yes
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposal was notified in accordance with the provisions of the HDCP No.1.	Yes

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### Environmental Planning Instruments State Environmental Planning Policies

61. The proposal has been considered in regards to the following policies which have been considered in respect to the application:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2000.
- State Environmental Planning Policy (Affordable Rental Housing) 2009.
- State Environmental Planning Policy No. 55 Remediation of Land.
- State Environmental Planning Policy (Vegetation in non-rural areas) 2017.
- State Environmental Planning Policy (Building and Sustainability Index: 2004).
- State Environmental Planning Policy (Infrastructure) 2007.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.
- Draft Remediation of Land SEPP.
- Draft Environment SEPP.

**Environmental Planning and Assessment Regulations 2000 (EP&A) Regulations 2000**

62. The proposal has been considered in regards to the following policies which have been considered in respect to the application:

**63. State Environmental Planning Policy (Affordable Rental Housing) 2009**

The proposal has been considered in accordance with the following applicable provisions.

**Table 5: Division 7 Group Homes**

Clause	Control	Proposed	Complies
42 Definition	<p>(1) In this Division— group home means a permanent group home or a transitional group home. permanent group home means a dwelling—</p> <p>(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and</p> <p>(b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged, but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies. prescribed zone means—</p> <p>(a) any of the following land use zones or a land use zone that is equivalent</p>	<p>No supporting documentation has accompanied the application to confirm the future occupants of the group homes.</p> <p>In addition the application has not demonstrated if the proposal is a permanent or transitional group home.</p>	<p>Insufficient information provided.</p>

	<p>to any of those zones—</p> <p>(ii) Zone R2 Low Density Residential,</p> <p>transitional group home means a dwelling—</p> <p>(a) that is occupied by persons as single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and</p> <p>(b) that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people, but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.</p> <p>(2) In this clause—</p> <p>(a) a reference to people with a disability is a reference to</p>	<p>The site is zoned R2 Low Density Residential under HLEP 2012.</p>	
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	<p>people of any age who, as a result of having an intellectual, psychiatric, sensory, physical or similar impairment, or a combination of such impairments, either permanently or for an extended period, have substantially limited opportunities to enjoy full and active lives, and</p> <p>(b) a reference to people who are socially disadvantaged is a reference to—</p> <p>(i) people who are disadvantaged because of their alcohol or drug dependence, extreme poverty, psychological disorder or other similar disadvantage, or</p> <p>(ii) people who require protection because of domestic violence or upheaval.</p>		
<p><b>43 Development in prescribed zones</b></p>	<p>(1) Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out—</p> <p>(a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or</p>		

	(b) with consent in any other case.	Six (6) dwellings each being a group home and containing three (3) bedrooms.	Yes
<b>46 Determination of development applications</b>	(1) A consent authority must not— refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or	No social impact assessment or additional information has been provided to enable Council to undertake an assessment of the need for a group home in this precinct.	No – insufficient information provided.
	(b) impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.	As the application is recommended for refusal no conditions are imposed.	N/A
	(2) This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.	A group home is a permissible use under HLEP 2012.	Yes

64. In this regard, the proposal has not adequately provided documentation in the form of a social impact assessment or similar investigation regarding the community for a group home to satisfy Council under Clause 46(1) of the SEPP.

#### **State Environmental Planning Policy No 55 - Remediation of Land**

65. SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
66. Council records indicate that the subject site and immediate surrounding area have been historically used for residential purposes and have not identified any potential contaminating uses. Given the above the proposed use is considered to be suitable for the subject site.

#### **State Environmental Planning Policy (Vegetation in Non-rural areas) 2017**

67. The proposal seeks the removal of three (3) trees on site being a Jacaranda and two Eucalyptus trees which are located towards the front eastern portion of the site. An arborist

report prepared by Advanced Treescape Consulting has been provided in support of the removal of these trees.

68. Based on the submitted survey and Council's site inspection, there are seven (7) trees in on site which are affected by the proposal. The impact of the proposal on these trees has not been assessed as part of the submitted arborist report. It is further noted that trees on adjoining residential properties and within the rear reserve have not been addressed in terms of likely impacts given the extent of building works, cut and fill and drainage works.
69. Council's consulting arborist has identified that the submitted arborist report is inadequate as twelve (12) trees are likely to be affected by the proposal, being within the site and on adjoining properties; an assessment of the impacts on these trees has not been undertaken. Therefore, insufficient information on the status of these trees has been provided for Council to undertake an assessment in relation to impacts regarding the SEPP.

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

70. BASIX Certificate 944473M dated 17 August 2018 was submitted with the development application. The BASIX Certificate is invalid as this was not lodged within 3 months of the date of issue. This development application was lodged on 23 September 2019. In this regard, the proposal has not adequately satisfied the requirements of the SEPP.

#### **Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment**

71. The proposal provides OSD below the driveway along the southern side boundary and north west rear corner via a lateral spreader to the rear.
72. The proposal seeks to relocate a Sydney water sewer line which traverses the site and relocate it to be parallel to the southern side boundary. The proposal has provided a stormwater solution which conflicts with the trees located on site.

#### **State Environmental Planning Policy (Infrastructure) 2007**

73. Clause 45 of the SEPP required consideration of the application by the local Energy Provider. Council sent a referral to Ausgrid for consideration however no comments were received upon finalisation of this assessment report.

#### **Draft State Environmental Planning Policy - Remediation of Land**

74. The Department of Planning and Environment ('DPE') has announced a Draft Remediation of Land SEPP ('Draft SEPP') which will repeal and replace the current State Environmental Planning Policy No 55 — Remediation of Land ('SEPP 55').
75. 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.
76. 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.
77. Similarly, as addressed within State Environmental Planning Policy No. 55 – Remediation of Land, Council records indicate that the subject site and immediate surrounding area

have been historically used for residential purposes. In this regard, the proposal is considered to adequately satisfy the intention of the draft SEPP.

### **Draft Environment SEPP**

78. 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.

79. The proposal is inconsistent with the provisions of this Draft Instrument given the lack of information regarding trees for Council to undertake an informed assessment regarding impacts.

### **Draft Georges River Local Environmental Plan 2020**

80. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 as part of the assessment of this application.
81. In this regard, the provisions have no determining weight as a result of proposed operation of Clause “1.8A Savings provisions relating to development applications” of the Draft Plan which provides *“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”*
82. The current zoning under the HLEP 2012 and the future zoning is R2 Low Density Residential, multi dwelling housing is not permissible and therefore under this instrument this development will be prohibited.

### **Local Environmental Plan**

#### **Hurstville Local Environmental Plan 2012**

83. The provisions of this local environmental plan are relevant to the proposal. The extent to which the proposal complies with the relevant standards of the Hurstville Local Environmental Plan 2012 (HLEP 2012).

### **Zoning**

84. The subject site is zoned R2 - Low Density Residential and the proposed development is defined as a “group home” and “multi dwelling housing” within HLEP 2012, the proposal is a permissible form of development with Council’s consent.

85. The R2 - Low Density Residential objectives of the zone state;

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



86. Comment: The proposal is a multi dwelling housing development, however the density sought results in reduced levels of occupant amenity. With each dwelling being a group home, the development is not considered to provide appropriately levels of amenity for future occupants in relation to access and mobility, car parking, design and functionality given the sites sloping topography.
- *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*
87. Comment: The proposal seeks for each dwelling to be a group home, which does result in a new housing type however the proposal results in adverse impacts on the natural environment regarding loss of trees and unnecessary visual bulk which does not satisfy Clause 6.4 Foreshore Scenic Protection Area of the HLEP 2012.
88. The proposed group homes are not considered to provide appropriate levels of amenity for future occupants in relation to access and mobility, car parking, design and functionality given the sites sloping topography which the design has not sufficient addressed.
- *To ensure that a high level of residential amenity is achieved and maintained.*
89. Comment: The proposal results in poor levels of occupant amenity in terms of access, private open space, safety and adversely affects adjoining properties in regards to visual bulk, solar access and privacy.
- *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
90. Comment: The proposal seeks the removal of three (3) trees however as previously stated within this report; Council's Consultant Arborist has raised the concerns of the inadequacy of the submitted arborist report in relation to impacts on trees on site and on adjoining properties, whereby a more accurate figure would be 7 trees. Given the inadequate information provided; Council Officers are unable to undertake an informed assessment of the holistic impacts of the proposal. The landscaping plan contains adequate details for assessment.
- *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*
91. Comment: The proposal is not seeking any home business uses at this time.

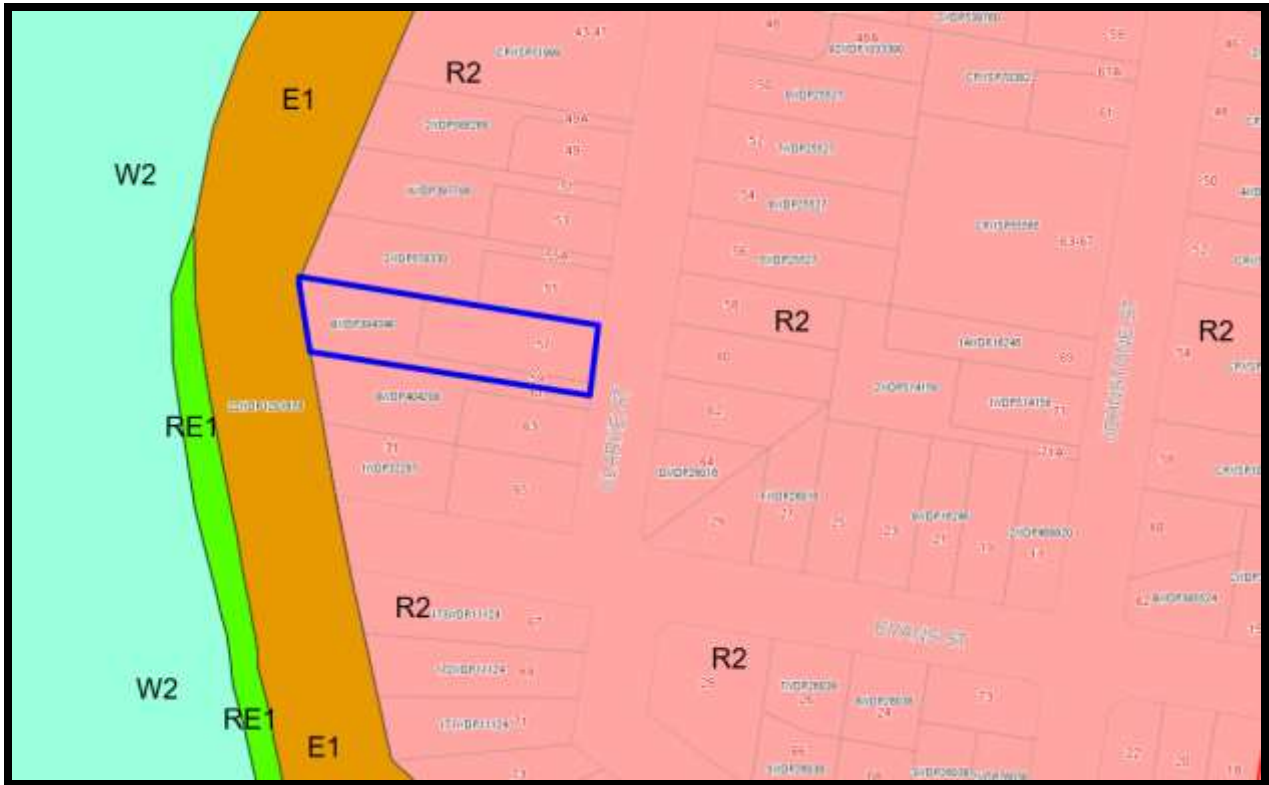


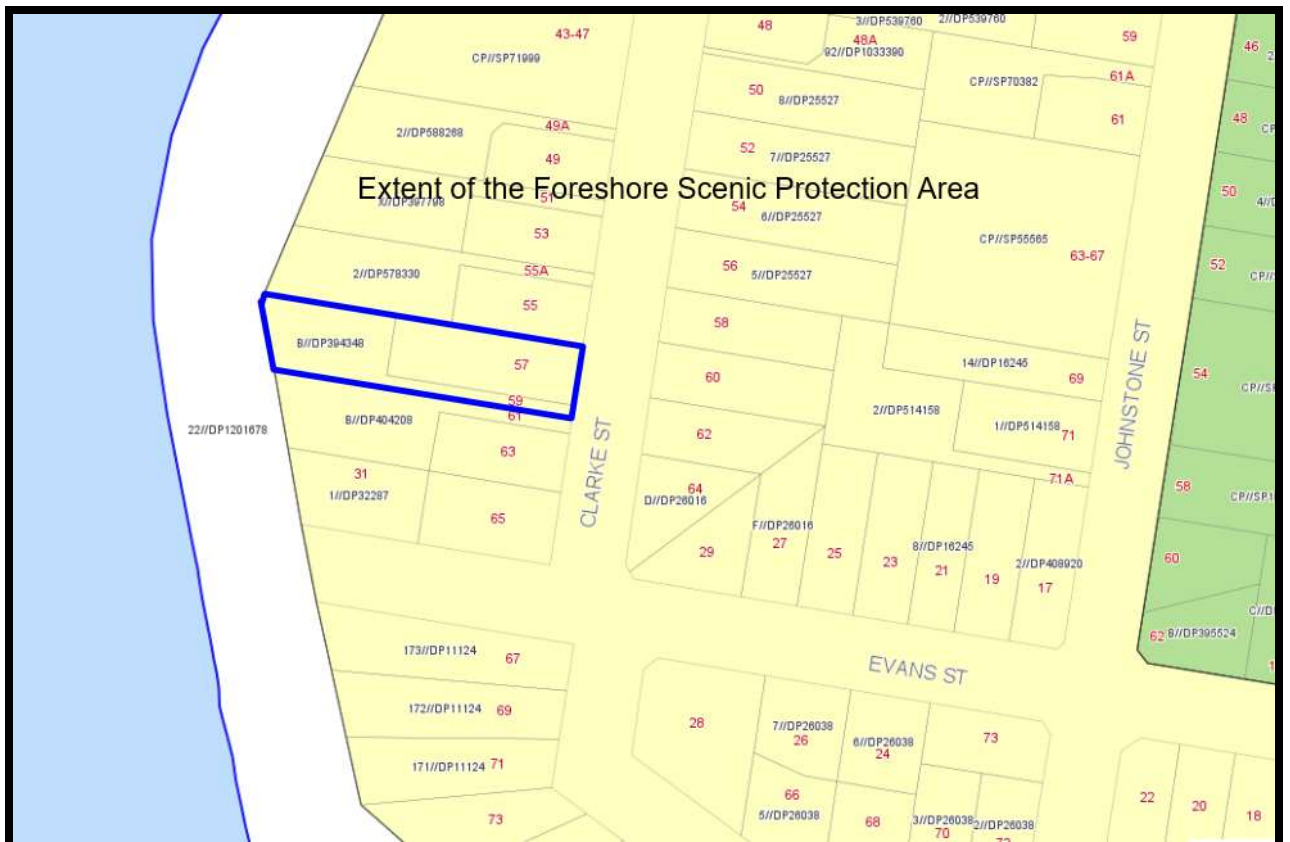
Figure 10: Zoning map – the site outlined in blue.

Table 6: Hurstville Local Environmental Plan 2012

Clause	Provision	Proposed	Complies
<b>Part 1 – Preliminary</b>			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is inconsistent with the aims of the plan as the proposal does not result in the orderly and economic development of land.	No
<b>Part 2 – Permitted or prohibited development</b>			
2.3 Zone objectives and Land Use Table	<p>The site is within the R2 Low Density Residential zone.</p> <p>The relevant objective of the zone is to provide for the housing needs of the community within a low density residential environment.</p>	<p>The proposal as a development form is not inconsistent with the zone objectives as previously addressed within this report. However the density and future occupant amenity is of concern.</p> <p>Multi-dwelling housing is now prohibited in the zone, however was permitted at the time of lodgment. Permissibility is preserved by virtue of the saving provision in</p>	No

		<p>Clause 1.8A.</p> <p>The use of the completed dwellings as group homes remains permitted in the zone.</p>	
<p><b>Part 4 – Principal development standards</b></p>			
<p><b>4.1A</b> Minimum lot sizes for dual occupancies and multi dwelling housing</p>	<p>(3) Development consent may be granted for development on a lot identified as “K” on the Lot Size Map in Zone R2 Low Density Residential for the purpose of multi dwelling housing, if an area of at least 500 square metres is provided for each dwelling.</p> <p>= 3,000sqm for six (6) dwellings</p>	<p>Site area = 1,720sqm</p> <p>6 dwelling proposed having a density of 286.6sqm per dwelling.</p> <p>No Clause 4.6 Objection to Clause 4.1A multi dwelling housing within Foreshore Scenic Protection Area has been provided for consideration.</p>	<p>No (1) - refer to discussion below.</p>

(1) Multi dwelling housing within Foreshore Scenic Protection Area



**Figure 11:** Foreshore Scenic Protection Area (white) – the site outlined in blue.

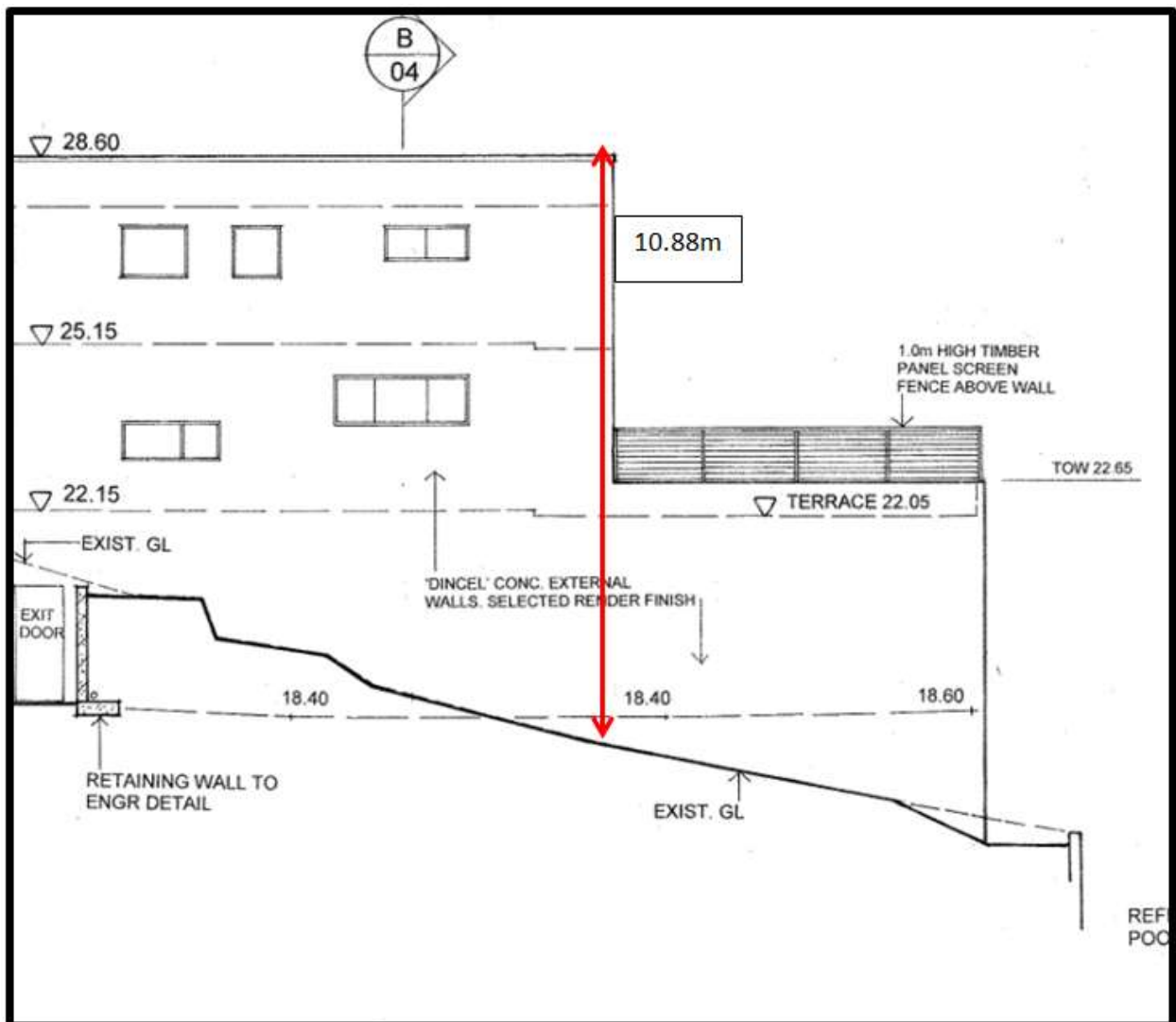
The subject site is located within Lot size ‘K’ whereby having a minimum density control of 500sqm for each dwelling within the Foreshore Scenic Protection Area. The proposal has not addressed this clause, however makes reference to the Hurstville Development

Control Plan No. 1 (HDCP) - Multi dwelling density control of 315sqm which does not apply to this site given it is in the Foreshore Scenic Protection area.

The proposed density results in deficiencies regarding setbacks, private open space, car parking and landscaping which results in adverse impacts in relation to privacy, solar access and visual impact.

<p><b>4.3 Height of Buildings</b></p>	<p>9.0m</p>	<p>Range: 9m - 10.88m maximum height measured along the northern side elevation and roofed rear balcony of Unit 4 at the centre of the site.</p>	<p>No (2) - refer to discussion below.</p>
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(2) Height of Building



**Figure 12:** Inset of extract of northern side elevation indicating maximum height of building (Source: BoDesign, 2019)

The proposal seeks an excessive built form with a maximum height of 10.88m which does not appropriately respond to the sloping topography of the site. This results in adverse visual bulk and unnecessary solar access impacts on adjoining southern properties.

<p><b>4.4 Floor Space Ratio</b></p>	<p>0.6:1</p>	<p>0.619:1</p>	<p>No</p>
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		No Clause 4.6 Objection to Clause 4.4 Floor Space Ratio has been provided for Council's consideration.	
<b>4.6</b> Exception to Development Standard	Exception to Development Standard to be provided.	No clause 4.6 Exception to Development Standard has been provided addressing Clause 4.1A Minimum lot sizes for dual occupancies and multi dwelling housing, Clause 4.3 Height of Building and Clause 4.4 Floor Space Ratio.	No
<b>Part 5 - Miscellaneous Provisions</b>			
<b>5.10</b> Heritage Conservation	Heritage Item and or Heritage Conservation Area.	Not identified as a heritage item or in a Conservation Area.	Yes
<b>Part 6 - Additional Local Provisions</b>			
<b>6.1</b> Acid Sulfate Soils	(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.	The site is identified as Class 5 Acid Sulfate Soils. An acid sulfate report has accompanied this development application which finds that the proposal will not result in any adverse impacts.	Yes
<b>6.4</b> Foreshore Scenic Protection Area (FSPA).	(2) This clause applies to land identified as "Foreshore scenic protection area" on the Foreshore Scenic Protection Area Map.	The site is located within the Hurstville Foreshore Scenic Protection Area.	No (3) refer to discussion below.
<b>(3) Foreshore Scenic Protection Area (FSPA)</b>			
<p>This clause states that;</p> <p><i>6.4 Foreshore scenic protection area</i></p> <p><i>(1) The objectives of this clause are—</i></p> <p><i>(a) to recognise, protect and enhance the natural, visual, environmental and heritage qualities of the scenic areas of Hurstville and the Georges River,</i></p> <p><i>(b) to protect significant views to and from the Georges River,</i></p> <p><i>(c) to reinforce the dominance of landscape over built form.</i></p> <p><i>(2) This clause applies to land identified as "Foreshore scenic protection area" on the Foreshore Scenic Protection Area Map.</i></p> <p><i>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered how the</i></p>			

*development would—*

- (a) affect the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation, and*
- (b) affect the visual environment, including the views to and from the Georges River, foreshore reserves, residential areas and public places, and*
- (c) affect the environmental heritage of Hurstville, and*
- (d) contribute to the scenic qualities of the residential areas and the Georges River by maintaining the dominance of landscape over built form.*

Comment: The proposal will result in adverse visual bulk and scale which is inconsistent with the future desired character of the area. The HDCP No.1 prescribes a maximum number of storeys being two (2) levels for multi dwelling at the front and middle of the site with a single storey built form at the rear.

The proposal seeks a three (3) storey built form at the centre of the site and a two (2) storey built form at the rear of the site which is contrary to the desired residential form resulting in substantial visual bulk at the rear which faces Salt Pan Creek.

Furthermore the proposal seeks a side setback of 1,310mm from the northern side boundary and 1,810mm along the southern side boundary whereby Council’s controls require a setback of 3m in order to allow views and outlook between buildings. No appropriate justification has been provided.

The proposal also provides deficient landscaped area of 17.9% of the site whereby 25% landscaped area applies within the Scenic Foreshore Protection Area. The application also proposes the removal of a number of existing trees, including canopy trees, and has potential to substantially impact on trees with the adjoining allotments. Insufficient information has been provided to demonstrate the need for the removal of these trees, or to establish that works can be carried out in a manner that will minimise impacts on any trees to be retained.

Due to the sites sloping topography the proposal results in excessive ramping within the front setback to provide appropriate grades to meet accessibility criterion. Whilst access for all is necessary for the intended use being group homes, the design, given the constrained frontage detracts from the landscape character of the area. The proposed building form does not respond appropriately to the site resulting in excessive bulk and prominence when compared to the existing landscape.

In this regard, the proposal is not considered to adequately satisfy the objectives and underlying intent of this clause.

<p><b>6.7 Essential services</b></p>	<p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:</p>		
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	(a) the supply of water,	Supply of water exists to the site and is considered capable of being extended to service this development.	Yes
	(b) the supply of electricity,	Supply of electricity exists to the site and is considered capable of being extended to service this development	Yes
	(c) the disposal and management of sewage,	The proposal has provided inadequate detailed information regarding location and sizing in regards to the proposed relocation of the sewer line. The proposal specified two potential locations being either parallel along the southern side boundary (of which conflicts with the driveway excavation and access gradients). Furthermore, the applicant has notated that the sewer is also to be relocated with 61 Clarke Street, Peakhurst. No owners consent has been provided from the owner of this property consenting to these works.	No
	(d) stormwater drainage or on-site conservation,	Inadequate stormwater disposal details provided.	No
	(e) suitable road and vehicular access.	Inadequate onsite vehicular access provided due to inadequate visitor parking space (referenced on the architectural plans as visitor parking space	No

		5/6) located forward of the outdoor car stackers due to inadequate functionality of the car parking layout.	
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## Development Control Plans

### Hurstville Development Control Plan No 1 – LGA Wide

92. The proposed development is subject to the provisions of the Hurstville Development Control Plan No.1 (HDCCP No.1). The following comments are made with respect to the proposal having regard to the objectives and controls contained within the HDCCP.

#### Section 3.1 Vehicle Access, Parking and Manoeuvring

93. The proposal has been considered in accordance with the provisions contained within in this subsection. The Hurstville Development Control Plan and the RTA Guide to Traffic Generating Developments 2002 do not prescribe any numerical controls regarding car parking for group homes; however the RMS Guide makes reference to 'Housing for aged and disabled persons', and the DCP has a car parking rate for multi-dwelling housing, this is the criterion used in the assessment of this application.

94. A comparison table has been prepared as follows.

**Table 7: Hurstville Development Control Plan No 1**

Control	Requirement
<b>HDCCP No .1:</b> Residential car parking for multi dwelling housing (3 bedroom dwellings x 6)	12
Visitor car parking	2
Total required	14
<b>Proposal</b>	
Residential	12
Visitor car parking	1

95. Given the above, the proposal numerically complies with the number of car parking spaces required under the HDCCP; however the access arrangements, functionality and serviceability are of concern.

96. The proposed layout is unsatisfactory for the following reasons:

- One (1) visitor space is located in a 'stacked' arrangement directly in front of the proposed mechanical stacker. The use of this space unreasonably conflicts with the operation of (at least) the two stacked spaces and has not been included within the calculation as an appropriate functional space.
- No detail is provided as to how the stacker system will operate and as to whether the system proposed is suitable for outdoor use.

97. In addition, the following concerns are raised with respect to the mechanical stacker operation in the proposed location:



- The site of the stackers is proposed to be set at RL18.4, 2.4m above the existing ground level.
  - The mechanical stacker system itself, when in its raised position, sits (at a minimum) 3.2m above the finished ground level of the site, being 5.6m above the existing ground level.
  - The position and location of the mechanical stacker will have an unreasonable visual amenity impact on the adjacent property.
  - No detail has been provided assessing the acoustic impact of the mechanical stacker operations. This is further required to demonstrate that the use of a mechanical stacker in the location proposed is can be suitable given the low density residential setting.
98. No traffic study has been provided in assessing the impacts of the development on the local road network.
99. Furthermore, the proposal does not provide a passing bay along driveway to allow vehicles to pass one another given the driveway has a length of 38.76m (as required under Australian Standards). The provision of a passing bay would require a significant redesign of the development. This criterion was provided to the applicant as part of the pre-lodgement meeting documentation and was also outlined in correspondence when the application was previously rejected to insufficient lodgement information.
100. In this regard, the proposal has not provided adequate functional car parking to accommodate the development.

### **Section 3.2 Subdivision**

101. The application has made reference to seeking Strata Title Subdivision within the Statement of Environmental Effects prepared by Monterey however no subdivision plan has been provided for consideration and assessment. Subdivision is not part of this assessment.

### **Section 3.3 Access and Mobility**

102. The proposal has not provided an access report to ensure appropriate and equitable access to and within the group homes and supporting infrastructure. Two (2) accessible units and car spaces are proposed in accordance with this subsection.
103. The proposal nominates one (1) accessible car space however the development includes two (2) accessible units, as a result an additional accessible car space is required.
104. The proposal has been reviewed by Council's Senior Building Surveyor providing the following comments.
105. *The design of the proposal is deficient having regard to the following:*
- *The proposal has provided a common staircase from the driveway which limits the sole access to the common swimming pool area. This element of the design limits access and mobility.*

- A common staircase with is also proposed along the southern side of the common driveway which limits access to the street. This element of the design limits access and mobility.
- The proposed car park level provides excessive travel distances to an exit, as such would require an additional exit which would have implications on the current design and layout.

106. The proposal has not adequately addressed the requirements of this subsection.

### Section 3.4 Crime Prevention Through Environmental Design

107. The proposed layout results in poor sight lines to areas within the property, in particular the car parking entry and areas adjoining the swimming pool and pool pump and equipment storage room. The proposal results in limited opportunities for passive natural surveillance due to the layout, topography and configuration of the proposal. In addition, the definition between common, public and private space is poorly expressed in the design of the development, particularly with regard to common access areas. The proposal has not reasonably satisfied the intent of this subsection.

### Section 3.5 Landscaping

108. As previously discussed within this report, the proposal has not provided a comprehensive arborist report to assess impacts on the trees within the site and trees on neighbouring properties which may be affected by the proposal. Furthermore, due to the topography of the site which falls from front to rear, the proposal incorporates significant ramping to access the group homes, the ramping within the front setback detracts from the landscape qualities of the area and could be more appropriately resolved. In this regard, the proposal has not satisfied the intention of this subsection.

### Section 3.7 Stormwater

109. The proposal has been considered in accordance with the provisions contained within this subsection. Council's Team Leader Development and Subdivision has raised the concern that the proposed relocation of the sewer line along the southern side boundary would conflict with the excavation and levels required for the driveway. Furthermore, the application has also made reference to the possible relocation of the sewer line on the adjoining property at 61 Clarke Street, Peakhurst, of which no owners consent has been provided.

### Section 4.2 Multi Dwelling Housing

**Table 8: Hurstville Development Control Plan No 1**

Clause	Control	Proposal	Complies
PC1 Neighbourhood Character	DS1.1. The development application is supported by a Statement of Environmental Effects that: a. includes a satisfactory neighbourhood and site description, including the	The proposal has provided a description of the surrounding area however the design is not considered to be appropriate in its current form having regard to its relationship to the surrounding area.	No

	<p>identification of the key features of the neighbourhood and site</p> <p>b. shows how the siting and design response derives from and responds to the key features identified in the neighbourhood and site description</p> <p>c. demonstrates that the residential development proposal respects the existing or desired neighbourhood character and satisfies objectives of the zone in the LEP</p>		
PC2 Site Frontage	DS2.1. The minimum street frontage is 15m.	20.113m.	Yes
PC3 Dwelling Density	DS3.1 Where on a lot identified as 'K' in the Lot Size Map under Hurstville LEP 2012, a minimum of 500sqm of site area is required per dwelling.	Site area 1,716sqm / 6 dwellings = 286sqm per dwelling density	No - previously discussed within this report under Clause 4.1A HLEP 2012.
PC4 Building Height	DS4.1. The maximum building height is in accordance with the Hurstville LEP 2012 and:  a. 2 storeys where in the R2 Low Density Residential zone	<p>Units 1 and 2 = 2 storeys</p> <p>Units 3 and 4 = 3 storeys (common car park below which protrudes out of the ground by up to 5.3m – 4m at the point beneath the building).</p>	<p>Yes</p> <p>No (1) refer to discussion below.</p>
<u>(1) Number of storey at front and centre of site</u>			

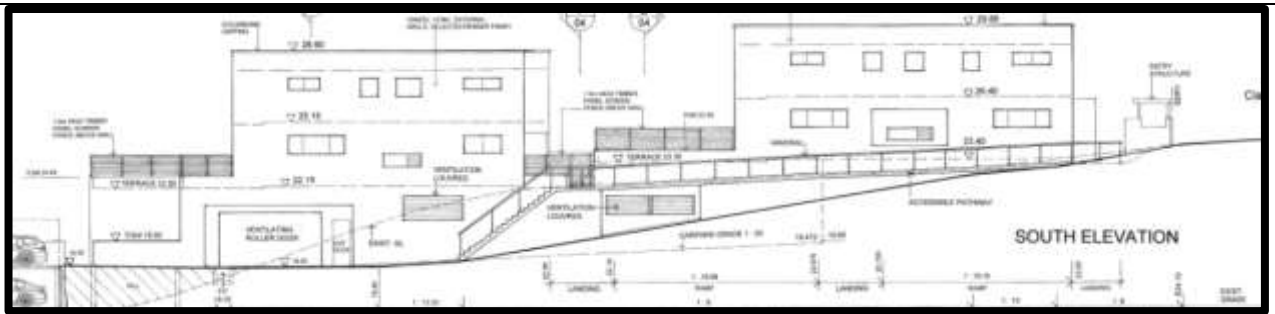


Figure 13: Extract of southern side elevation of Units 2 - 3 (Source: BoDesign, 18)

The proposal seeks a three storey element for Units 3-4 at the centre of the site which is not considered appropriate and results in adverse visual bulk and scale and unnecessary overshadowing impacts to the adjoining properties to the south.

	<p>DS4.2. In the R2 Low Density Residential zone, the maximum number of storeys is limited to 1 for the rear most dwelling.</p>	<p>Units 5 and 6 = 2 storey</p>	<p>No (2) refer to discussion below.</p>
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(2) Maximum number of storeys at the rear of site

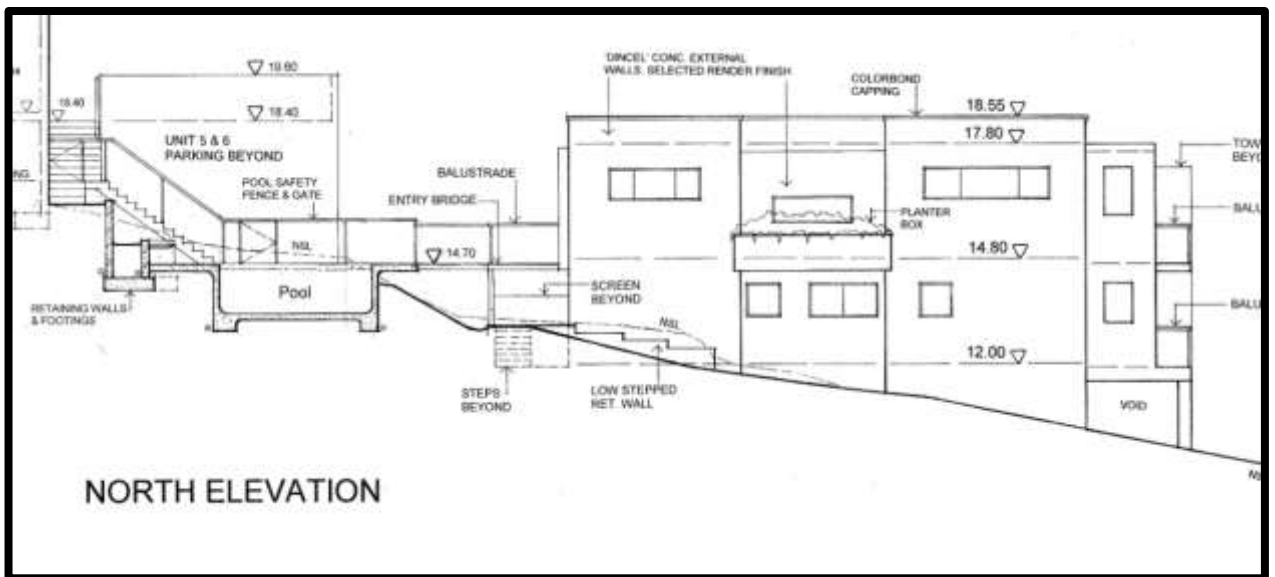


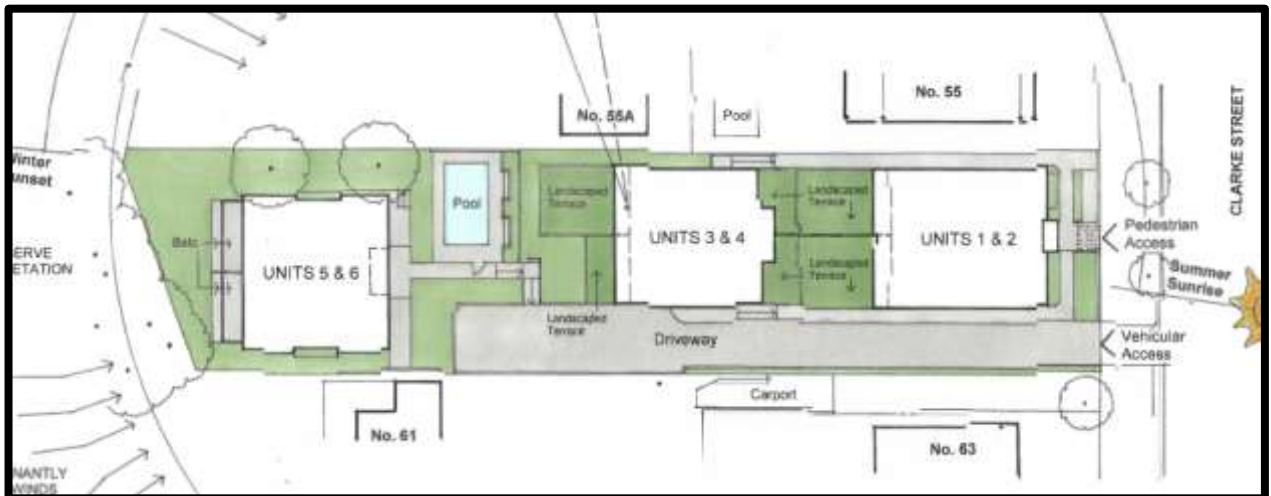
Figure 14: Extract of northern elevation of Unit 5 (Source: BoDesign, 18).

The proposal seeks a two storey built form at the rear of the site, which is not compatible with the surrounding area and results in substantial visual bulk adjacent to rear yards in a low density area. It is noted that the applicant has been advised in the form of a rejection letter to a previous application that a single storey built form would be required. The proposal results in unnecessary visual impacts and additional overshadowing impacts to adjoining properties to the south.

	<p>DS4.3. The minimum floor to ceiling height is 2.7m.</p>	<p>2.7 – 3.0m</p>	<p>Yes</p>
<p>PC5 Excavation</p>	<p>DS5.1. The natural ground level is not excavated more than 0.5m for</p>	<p>The development involves considerable excavation.</p>	<p>Yes</p>

	the finished ground floor level.		
	DS5.2. The maximum excavation for any building's finished ground floor level facing a public street is 0.5m below natural ground level.	The front ground floor of Units 1 and 2 are at natural ground level facing the street.	Yes
PC6 Setbacks and Building separation	DS6.1. Minimum side boundary setback is 3m Note: eaves and gutters may project within this setback up to a maximum distance of 450mm.	Unit 1 = 1,310mm (N) Unit 2 = 6,000mm (S) Unit 3 = 1,310mm (N) Unit 4 = 6,000mm (S) Unit 5 = 4,000mm Unit 6 = 1,813mm (S)	No Yes No Yes Yes No  No (3) refer to discussion below.

(3) Side setbacks

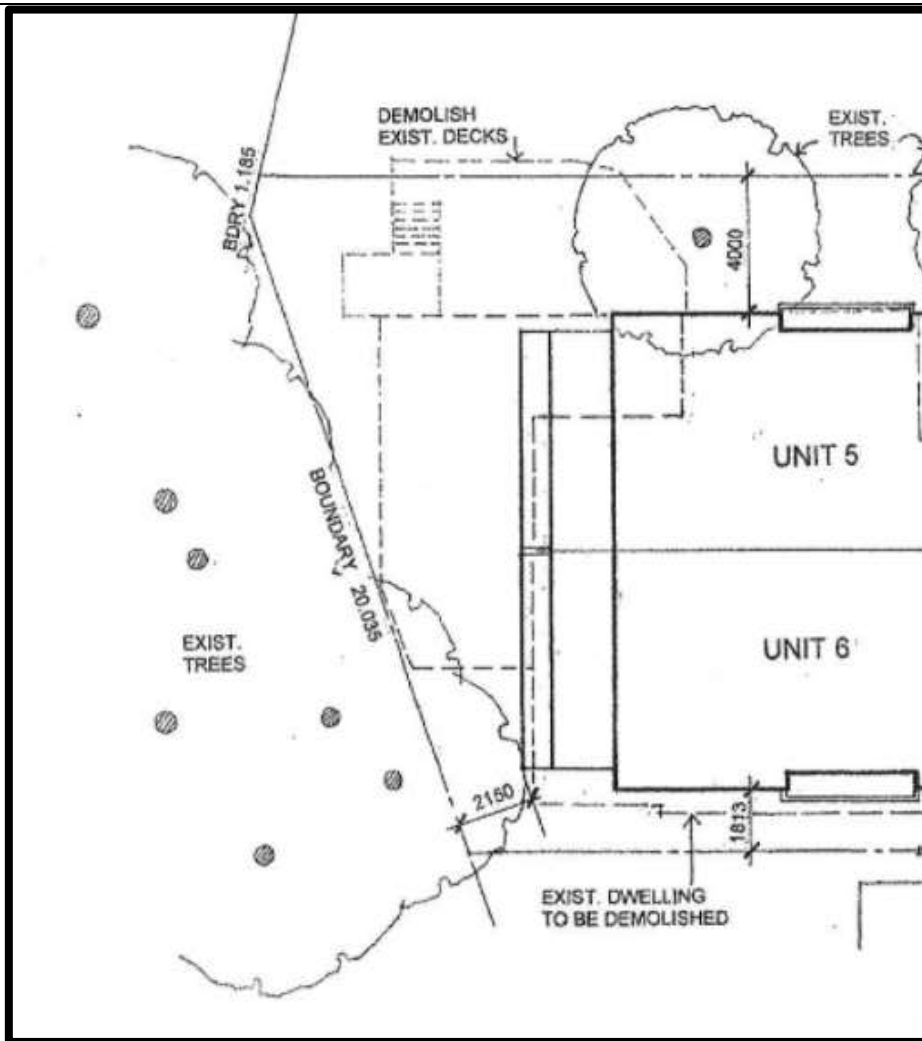


**Figure 15:** Extract of site Plan showing the location of Units 1-6 (Source: BoDesign, 18)

The proposal seeks variations to the side setbacks at numerous points along the elevation. This is considered to be due to a poor layout which is not responsive to the site and context. It is noted that the applicant had been advised on two (2) occasions that side setbacks less than 3m would not be supported by Council Officers through the pre-lodgement process and previously rejected application.

	DS6.2. The minimum setback to a primary street is 4.5m Note: balconies may project within this setback up to a maximum distance of 1m.	4.525m  Unit 1 = 750mm balcony encroachment on the first floor.	Yes  Yes
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	<p>DS6.4. An articulation zone allowing for lightweight elements such as eaves, sun-hoods, blade walls, battens and the like may intrude up to 1m within a road boundary setback for a maximum of 25% of the horizontal distance of the total facade.</p>	<p>A balcony and roofed porch provide sufficient articulation along the front façade. Planter boxes are also located within the front setback which provides landscaping relief. The plans also seen to show works within the public domain which is not permitted.</p>	<p>Yes</p>
	<p>DS6.6. The minimum separation distance between balconies and / or windows of different buildings located upon the same site is 5m.</p>	<p>Balconies and windows are separated by more than 5m between the dwellings on site.</p>	<p>Yes</p>
	<p>DS6.7. Minimum rear boundary setback is 6m. Note: eaves and gutters may project within this setback up to a maximum distance of 450mm.</p>	<p>Unit 5 = 5.3m Unit 6 = 2.15m Measured to the balcony.</p>	<p>No No (4) refer to discussion below.</p>
<p><u>(4) Rear setback</u></p>			



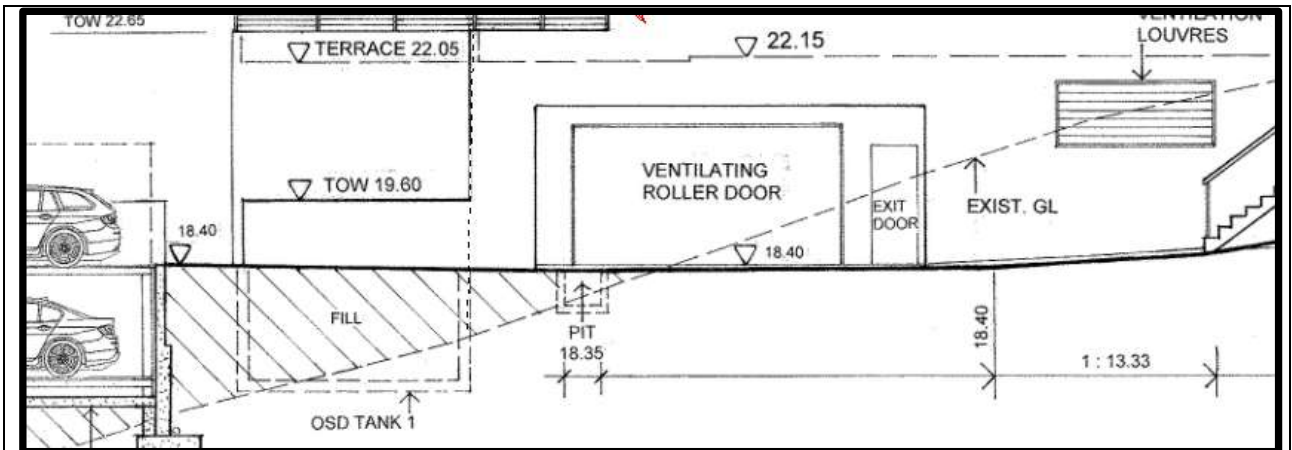
**Figure 16:** Extract of rear site plan of Units 5-6 (Source: Bo Design, 18) (Note - diagram reorientated to be consistent with site plan)

The proposal provides an insufficient rear setback of less than 6m. This also results in inadequate private open space for Unit 6 and unnecessary overshadowing impacts to the adjoining southern properties.

<p>PC7 Vehicle Access, Parking and Manoeuvring</p>	<p>DS7.1. Car parking is provided on site in accordance with the following rates: b. 2 resident spaces for every 3 or more bedroom dwelling  c. for developments of 4 dwellings or more, one visitor space per 4 dwellings or part thereof</p>	<p>12 residential spaces proposed.  1 visitor space proposed, two (2) required. Proposed visitor space 5/6 is non-functional and obstructs vehicular manoeuvrability and therefore is not included as a car space in this</p>	<p>Yes  No</p>
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		assessment.	
	DS7.2. Car parking is located behind the main building face fronting a primary and secondary street and is not visually prominent when viewed from the street.	The car parking is located behind the building line and will not be visually prominent when viewed from Clarke Street due the proposed sitting and fall from Clarke Street which slopes from front to rear.	Yes
	DS7.3. Vehicle access and manoeuvring does not occupy more than:  b. 33% of the frontage where the total site frontage to street is greater than 20m.	Site frontage = 20.11, 4.15m driveway width proposed.	Yes
	DS7.4. Garages and carports do not visually dominate the street façade and are compatible with the building design.	The basement car parking and outdoor car stacker do not visually dominate the streetscape and are not clearly visible directly from Clarke Street.	Yes
	DS7.5. The maximum height of a basement above natural ground level is 1m.	5.32m along the southern side boundary with proposed fill above natural ground level to facilitate the proposed driveway along the southern side boundary.	No (5) refer to discussion below.
<u>(5) Basement above natural ground level</u>			





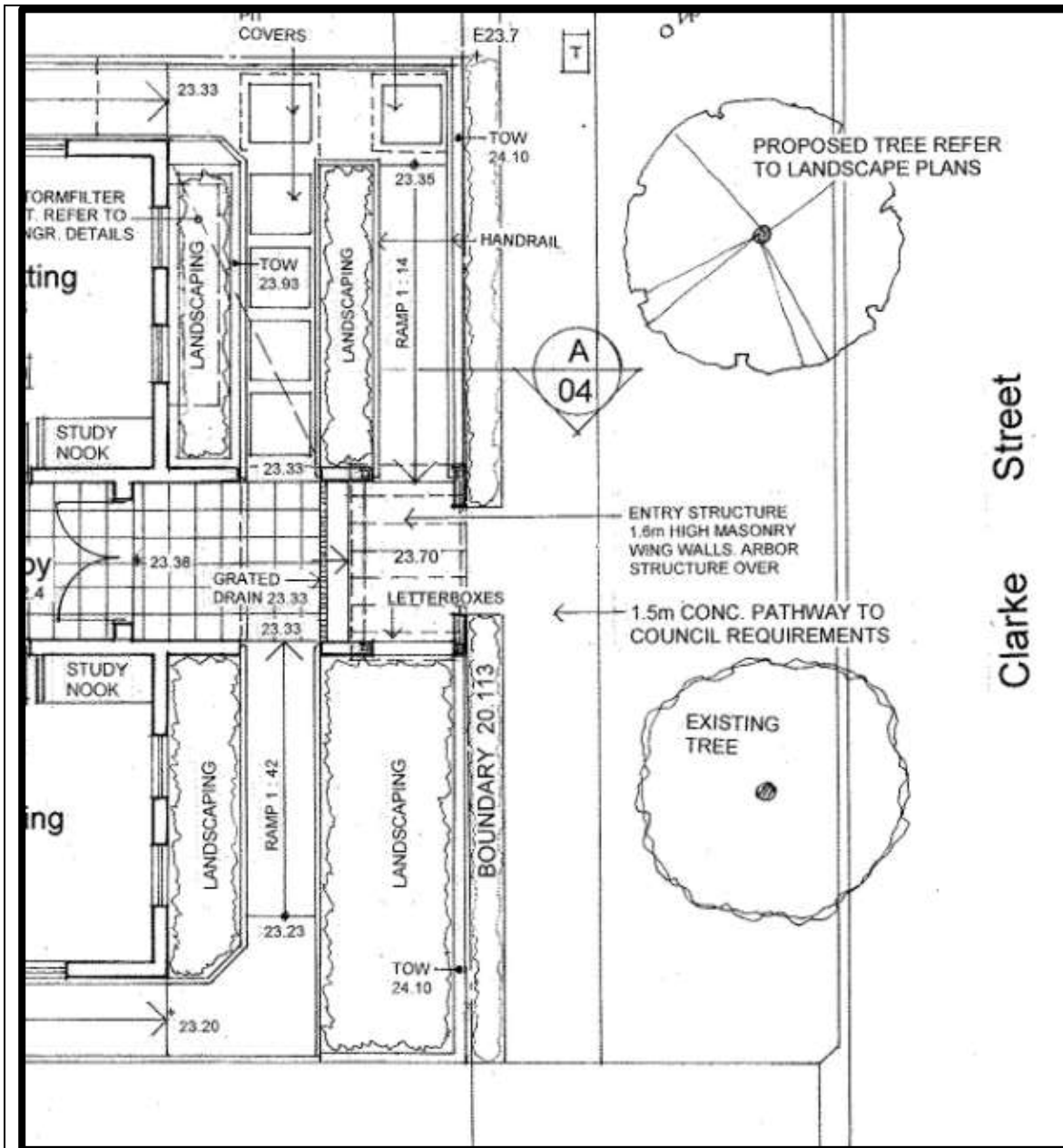
**Figure 17:** Inset of basement car park which is located above natural ground level along the southern side elevation (Source: Bo Design, 18)

As per the above extract, the proposal results in significant unnecessary visual bulk which seeks a significant departure from Council’s controls (at its rearmost point, the basement projects 5.3m above natural ground level).

This results in Units 3 and 4 adopting a built form of three (3) storeys, unreasonable visual bulk, and in addition results in additional solar access impacts to adjoining southern properties.

	DS7.6. Only the basement parking entry is visible as a separate level in a building.	Basement entry is separate to the main entry at the front of the site.	Yes
	DS7.7. Large exposed foundations, voids and walls are not used in relation to basements.	The proposed basement level below Units 3 and 4 results in an undesirable dominating built form.	No
	DS7.8. Basement car parking is adequately ventilated. Note: a development application that involves basement parking must be supported by details of the proposed method of ventilation, and where mechanical ventilation is proposed, this is to include details of the motor room and exhaust shaft.	The proposal is to be naturally ventilated with external louvers.	No
PC8 Landscaped Open Space	DS8.1. The minimum amount of landscaped open	Site area = 1,716.3sqm 19.9% (308sqm), the	No

	space is: b.25% where in the FSPA.	proposal has provided minimal landscaped area at the front and centre of the site. The landscaping is compromised by the design layout and unnecessary hard surfaces.  (minimum dimension of 2m landscaped area calculated).	
	DS8.2. The minimum dimension of landscaped open space is 2m in any direction.	Minimum dimensions assessed 2m.	Yes
	DS8.3. Landscaping between the front of buildings and the street boundary achieves a balance between reducing the visual impact of buildings when viewed from the street and facilitating passive casual surveillance of the street.	The proposal seeks excessive ramping within the front setback due to the topography of the site. This results in limited opportunities to provide substantial landscaping to complement the streetscape and built form.	No (6) refer to discussion below.
<u>(6) Landscaping within the front setback</u>			



**Figure 18:** Inset of proposed front setback (Source: Bo Design, 18) (Note - diagram reorientated to be consistent with site plan)

The proposal seeks excessive ramping to provide access. This is considered to result in an unnecessary design which provides multiple separate pathways to separate units due to an unresolved design.

	<p>DS8.4. A development application is to be supported by a landscape plan prepared by a qualified person addressing the performance criteria and design solutions and in particular addresses areas of</p>	<p>A landscape plan has been prepared by a qualified Landscape designer.</p>	<p>Yes</p>
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	communal open space and areas that are visible from the street.		
PC9 Private Open Space	<p>DS9.2. Each dwelling containing 3 or more bedrooms is provided with an area of private open space that:</p> <p>a. has a minimum area of 60sqm</p> <p>b. has a minimum dimension of 3m</p> <p>c. contains at least one area of principal private open space that has minimum dimensions of 6m x 4m, is not steeper than 1 in 20 and is directly accessible from a main living room.</p>	<p>Unit 1 = 52.16sqm Unit 2 = 52.16sqm Unit 3 = 64sqm Unit 4 = 40.08sqm Unit 5 = 145.6sqm Unit 6 = 17.35sqm (*ground levels counted only as per the control)</p> <p>Minimum dimension of 3m calculated.</p> <p>Unit 1 – 3</p> <p>Unit 4: insufficient dimension.</p> <p>Units 5 - 6: insufficient dimension and not directly accessible.</p>	<p>No No Yes No No No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p>
	<p>DS9.3. The principal private open space of any dwelling is not to be located forward of the front setback.</p>	<p>No principal private open space is located forward of the building line.</p>	<p>Yes</p>
PC10 Solar Access	<p>DS10.1. Main living areas and areas of principal private open space are oriented in accordance with Figure 1- Preferred Orientation Range Note: exceptions may be made where the site is subject to constraints such as existing lot layout and topography.</p>	<p>The site is east to west orientated, sloping from front to rear. The proposal seeks variations to the number of storeys and setbacks which unnecessarily reduces solar access to adjoining properties to the south.</p>	<p>No</p>
	<p>DS10.2. Development allows for at least 3 hours of</p>	<p>No vertical shadow diagrams provided</p>	<p>No - insufficient</p>

	<p>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>Note 1: development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design solution.</p> <p>Note2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation.</p>	<p>showing the impact onto the adjoining dwellings.</p>	<p>information to undertake and informed assessment.</p>
	<p>DS10.3. Development complies with the Energy Efficiency section in Appendix 1 of the DCP and BASIX requirements.</p>	<p>An invalid BASIX Certificate has been provided. The application was lodged with the BASIX been in excess of 3 month since it was generated.</p>	<p>No</p>
	<p>DS10.4. Buildings are encouraged to incorporate window shading devices where necessary to minimise exposure to direct summer sun. Alternatively, windows may be shaded by the planting of large trees, including deciduous species.</p>	<p>The proposal does not incorporate any window shading devices and contains no eave overhangs.</p>	<p>No</p>
PC11 Visual Privacy	<p>DS11.1. Habitable room windows of development with a direct outlook within</p>	<p>The proposal results in an outlook with less than 9m to adjoining neighbouring</p>	<p>No - insufficient information.</p>

	9m of the habitable room windows of an adjacent dwelling must be: a. offset by a minimum of 1m from the edge of the opposite window; or b. screened or oriented to ensure visual privacy.	dwellings. It is noted the submitted survey has not indicated the location and sill heights of the neighbouring dwelling at 55A Clarke Street, Peakhurst.	
PC12 Noise	DS12.1. Windows of adjacent dwellings are separated by a distance of at least 3m. Note: this can be achieved by an offset.	Unit 3 along the northern side boundary seeks a side setback of 900mm; this is within 3m from the dwelling at 55A Clarke Street, Peakhurst located to the north.	No
	DS12.2. Site layout separates active recreational areas, parking areas, vehicle access-ways and service equipment areas from bedroom areas.	The proposal separates from the communal swimming pool, parking areas and dwellings on site.	Yes
PC13 Streetscape	DS13.3. Roofs: a. have a pitch up to 35 degrees, b. are encouraged to have a varied shape with hips, gables or other forms c. mark the entrance to a building by the use of a porch, portico or similar element.	The proposal seeks a flat skillion roof for all units.  A portico along the front eastern elevation forms the main entrance for Units 1 and 2 and the entry to the car parking level below.	No
	DS13.5. The maximum wall length in one plane is 6m at the street frontage. Note: Lengths greater than this are supported where the elevation incorporates visually significant	5m maximum plane for Units 1 and 2 which face Clarke Street.	Yes

	changes in massing and form and the use of articulation such as recesses, projections, balconies, blade walls and similar.		
PC14 Fencing	DS14.1. Solid fences and walls fronting public space are no more than 1m in height.	No specific fencing details have been provided in relation to height. No fencing details provided along the front elevation. Minimum details have been indicated on the northern and southern elevations which demonstrate fencing is proposed.	No - insufficient information.
	DS14.2. Where private open space has a common boundary to a street, the maximum height of fences is 1.8m provided that the fence has openings which make it a minimum 50% transparent.	Private open space is proposed behind the front building line.	N/A
	DS14.4. Fencing at street frontages is constructed from high quality durable materials such as rendered concrete, stone or treated and painted timber. Note: Galvanised or aluminium sheeting or profiled fibro are not permitted as front fencing materials.	No details have been provided in relation to materials regarding the front fence on the architectural plans or materials board submitted.	No - insufficient information.
PC15 Site Facilities	DS15.1. Electricity and telephone lines are provided underground unless there is the connection of electricity and telephone lines	Can be conditioned accordingly if the application was to be approved.	Yes

	directly from the service pole to the fascia of the front dwelling.		
	DS15.2. Mail and garbage collection areas are integrated into the overall design of the development.	Letter boxes located within the front setback. Waste storage located within the entry of the car park.	Yes
	DS15.3. Development provides space for the storage of recyclable goods, either in the curtilage of each dwelling or in a central storage area in larger developments.	Waste storage area located within the entry of the car park.	Yes
	DS15.4. A master TV antenna is provided for any development of more than two dwellings.	Can be conditioned accordingly if the application was to be approved.	Yes
	DS15.5. A minimum area of 6m <sup>3</sup> per dwelling is provided for storage and is located as either an extension of a carport or garage or part of an attic.	Units 1- 4 contain storage within the garage greater than 6m <sup>3</sup> . No storage has been provided for Units 5 and 6.	No
	DS15.6 Communal outdoor clothes drying facilities must be visually screened from the street.	No communal outdoor clothes drying facilities provided.	No

## Section 5 Controls for Specific Non-Residential Development Types

### Section 5.6 Swimming Pools

**Table 9: Hurstville Development Control Plan No 1**

Applicable DCP Controls	DCP Provisions	Development Provisions	Complies
PC1 Pool Siting and Noise Control	DS1.1 Inground swimming pools shall be built so that the top of the swimming pool is as close to the existing ground level as possible. On sloping sites	The proposed swimming pool is located at the existing natural ground level of the site.	Yes



	this will often mean excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool at the low side.		
	DS1.4 On steeply sloping sites, Council may consider allowing the top of the swimming pool at one point or along one side to extend up to 1000mm above natural ground level, provided that the exposed face of the swimming pool wall is treated to minimise impact. The materials and design of the retaining wall should be integrated with, and compliment, the style of the swimming pool.	The swimming pool is proposed up to a maximum height of 700mm above ground level.	Yes
	DS1.5 Filling is not permitted between the swimming pool and the property boundary.	No filling proposed along the northern boundary.	Yes
	DS1.6 The drainage of spill water from a swimming pool shall be designed so that it does not affect the natural environment of the subject site or adjoining properties.	Can be conditioned accordingly if the application was to be approved.	Yes
	DS1.7 Swimming pools are to be constructed so that the top of the bond beam is as close to ground level as possible	The proposed swimming pool for the most part is located below the existing natural ground level.	Yes
	DS1.8 Spas and swimming pools proposed to be constructed between the dwelling and the street will be considered by Council if the amenity of the area is not adversely impacted and the other requirements in this DCP are met.	The proposed swimming pool is located behind units 1 and 2.	Yes
	DS1.9 Swimming pools are permitted on land affected by a foreshore building line subject to their design complementing the surrounding area and	The swimming pool is not affected by a foreshore building line.	Yes

	minimising visual impact from waterways.		
	DS1.10 The swimming pool edge must be at least 1.5 metres from side and rear property boundaries	900mm from the northern side boundary.	No
	DS1.11 The position of the swimming pool in relation to neighbours and other residents must be considered to reduce noise associated with activities carried out in the swimming pool or from associated the swimming pool equipment, such as cleaning equipment.	The pool pump equipment s located to the east of the swimming pool. If the proposal was to be supported acoustic treatment could be incorporated.	Yes
	DS1.12 Council may require mechanical equipment to be suitable acoustically treated so that noise to adjoining properties is reduced.	Standard conditions could be imposed if the application was to be supported.	Yes
	DS1.13 The construction, location and use of the swimming pool are to be such that no nuisance is caused to any neighbouring residents by reason of noise, drainage, illumination or for any other reason.	The location of the swimming pool is considered to be unreasonable. A compliant 1.5m setback would allow adequate spatial separation to neighbouring properties and allow for suitable screen planting around this common swimming pool.	Yes
	DS1.14 Heated swimming pools must utilise energy for heating from renewable energy sources, such as solar heating, heat pumps and gas heating. Swimming pool covers should be used when the swimming pool is not in use.	Standard conditions could be imposed if the application was to be supported.	Yes
PC2 Landscaping	DS2.1 Tree and shrub planting is to be provided along the adjoining property boundary lines to achieve a reasonable level of privacy. Refer to Appendix 1 for	No opportunities for screen planting exist along the northern side boundary due to the proposed 900mm setback.	No

	recommended species to use.		
	DS2.2 Paved and other impervious areas are to be minimised and designed to provide stormwater and swimming pool overflow infiltration.	Standard conditions could be imposed if the application was to be supported.	Yes
	D2.3 Swimming pools are to be designed to ensure the retention of existing trees.	The location of the swimming pool will result in the need for one (1) tree to be removed. As previously discussed, the proposal seeks the removal of one tree to accommodate the proposed swimming pool.	No
	DS2.4 Where a swimming pool is located close to an existing tree, elevated decks are preferred as the swimming pool coping to ensure minimal root damage.	The location of the swimming pool will result in the need for one (1) tree to be removed.	No
	DS2.5 Swimming pool water discharges must not in any circumstances be directed through bushland areas located on private or public land.	Standard conditions could be imposed if the application was to be supported.	Yes
	DS2.6 Council does not approve trees to be removed based upon leaf drop or lack of solar access to a swimming pool.	The location of the swimming pool will result in the need for one (1) tree to be removed.	No

**Table 10: Appendix 1**

<b>Applicable DCP Controls</b>	<b>DCP Provisions</b>	<b>Development Provisions</b>	<b>Complies</b>
7. Waste Management	Objectives regarding waste management to be satisfied	A waste management plan was submitted.	Yes
8. Energy Efficiency	Energy Efficiency objectives to be satisfied.	No valid BASIX Certificate provided, out of date at lodgement.	No
9. Preservation of Trees and Vegetation	Objectives to be satisfied	Insufficient information provided for Council to undertaken an assessment of impacts as not all trees have been assessed by the	No

		applicant's arborist.	
10. Building Heights and Indicative Storeys	Two storey built form R2 Low Density Residential	Part 2 part 3 storeys.	No

## Georges River (Interim Policy) Development Control Plan 2020

110. The proposal is not considered to be inconsistent with the provisions of the policy.

### IMPACTS

#### ***Natural Environment***

111. The proposed development is considered to have a significant impact on the natural environment in terms of impact on trees within the subject site and the adjoining properties, cut and fill, bulk and scale, stormwater and impacts on the desired character of the Foreshore Scenic Protection Area.

#### ***Built Environment***

112. The proposed development results in adverse impacts on the built environment as the proposal seeks a built form which is not considered to be compatible with the existing and the desired character of the area. The increase in levels for pathways along the northern side boundary result in unnecessary overlooking impacts onto adjoining residential properties. In addition, the extensive cut results in significant retaining wall and ramping which results in an undesirable built form outcome.

#### ***Social Environment***

113. The proposal is considered to result in adverse social impacts given the design, sitting and layout of the proposal for the occupants of the group homes.

#### ***Economic Impact***

114. The proposal is unlikely to generate any adverse economic impacts given the residential nature of the development.

#### ***The suitability of the site for the development***

115. It is considered that the proposed development is unsuitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments as demonstrated throughout this report.

### SUBMISSIONS AND THE PUBLIC INTEREST

116. In accordance with the provisions of Councils Public Notification process, the application was placed on neighbour notification between 6 and 23 October 2019. In response, twenty two (22) submissions were received against the proposed development. All received submissions have been taken into consideration as part of this assessment. A summary of the key issues are detailed below.

*The group home does not meet the needs of the community*

117. Officer Comment: As previously discussed within this report under State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPPARH), the submitted Statement of Environmental Effects states “the existing owners to stay and support their own well-being and to add integrational change within this locality” whereby the proposal has not demonstrated that future occupants would meet the definition of a group home. The proposal has not been accompanied by a social impact assessment or detailed information for Council to be satisfied the application meets the criterion outlined in Clause 43(1) of the SEPPARH.

*Location of the proposed group home is poorly serviced from amenities and transport*

118. Officer Comment: Whilst the intention of the group home is to provide housing for persons with special needs physically or economically. There are no prescriptive locational criteria with respect to group homes being located within a certain distance to public transport within any relevant planning legislation.

*Loss of trees and vegetation and impacts to trees on site and on adjoining properties,*

119. Officer Comment: As previously discussed within this report under State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2007, the proposal has not provided a comprehensive arborist report to assess the impacts on trees within the site and trees within neighbouring properties which may be affected by the proposal.

*Increase in traffic impacts to local area given there is an existing seniors living development and child care centre on Clarke Street, parking and traffic on site*

120. Officer Comment: As outlined in this report under HDCP No 1 Section 3.1 Vehicle Access, Parking and Manoeuvring the proposal has not provided a traffic study for consideration which factors in the existing traffic situation. Furthermore the proposal seeks to provide an inadequate car parking configuration and therefore is deficient in the number of parking spaces required. In addition the driveway does not comply with the Australian Standard for driveways as no passing bay has been incorporated into the design.

*Proposal is not in local character of area*

121. Officer Comment: A group home forms a permissible use on site and multi dwelling housing was permitted at the time of lodgement of this application. Council's assessment has taken into consideration the existing visual catchment and surrounding area and has considered such possible permissible uses within the R2 Low Density Residential Zone. The proposal adopts a built form similar to that of multi dwelling housing however has excessive bulk at the rear and response poorly to the slope of the site and is recommended for refusal. For more detail within this report, the proposal has been assessed under subsection HDCP No 1 Section 4.2 Multi Dwelling Housing.

*Impacts on bush outlook in the Foreshore Scenic Protection Area*

122. Officer Comment: The proposal seeks an excessive built form which is not consistent with the desired future character within the Scenic Foreshore Protection Area and based on the information provided to date. The proposal is consistent with the objectives of the Foreshore Scenic Protection Area under the HLEP which forms part of the reasons for refusal.

*Built form impacts, non-compliance with number of storeys at rear, side setbacks rear setbacks, visual bulk and scale, excavation and overdevelopment of site*

123. Officer Comment: As addressed within this report under subsection HDCP No 1 Section 4.2 Multi Dwelling Housing, the proposal adopts a built form which is not considered to be consistent with the desired future character of the area.

124. Furthermore, as the proposal results in a built form which detracts for the amenity of the Foreshore Scenic Protection Area as previously discussed within the report under HLEP 2012 Clause 6.4 Foreshore Scenic Protection Area.

125. It is considered that the proposed built form is not appropriate for the subject site, immediate context and does not respond to the sloping topography.

*Visual privacy*

126. Officer Comment: The proposal results in overlooking impacts onto adjoining properties due to the ramping along the northern side boundary, the provided rear first floor balconies throughout the site, the bridge linking Units 5 and 6 to the rest of the development, and the podium form of Units 3 and 4 (situated 5.3m above NGL at the highest point).
127. The proposal also results in adverse unnecessary overlooking impacts due to the elevated nature of the car parking in the middle of the site where Units 3 and 4 are located above. The proposal also results in unnecessary privacy impacts generated by the two storey built form at the rear being Units 5 and 6 in contrast to Council's controls which envisage a single storey built form.

*Acoustic amenity from proposed dwelling sitting, balconies and driveway along southern side boundary*

128. Officer Comment: The proposal results in adverse acoustic impacts generated by the 900mm side setback to the northern side boundary in contrast to the 3m prescribed within the HDCP No.1. This has been previously addressed under HDCP No 1 Section 4.2 Multi Dwelling Housing.

The reduced side setback involves openable windows of high and low habitable rooms on both the ground floor and first floor levels including rear balconies of Units 1 and 4. Noise concerns were raised in relation to the proposed car stacker along the southern side boundary which may affect adjoining neighbouring properties. No acoustic report or plan of management has been provided in relation to the noise likely to be generated for Council's consideration.

*Density*

129. Officer Comment: This has been previously addressed within the report under subsection HDCP No 1 Section 4.2 Multi Dwelling Housing. Whilst the density control does not apply to group homes, the number, size and configuration of group homes sought on site has resulted in reduced levels of amenity in relation to a functional car parking layout, envisaged built form, reduced opportunities for landscaping along the northern side boundary due to the sitting of Units 1 and 4 and has also resulted in reduced functional private open space for the rear Units being 5 and 6.

*Fire safety for future residents given the proposed use a group home*

130. Officers Comment: The adjoining reserve to the west is not mapped as fire risk. The proposal would be required to comply with the BCA with regards fire safety however is not supported for other reasons within as stated within this report.

*Clause 4.6 Variation*

131. Officers Comment: As previously addressed within this report under subsection HLEP 2012 Clause 4.3 Height of Building, Clause 4.4 Floor Space Ratio and Clause 4.1A Minimum Lot Size for Dual Occupancies and Multi Dwelling Housing. No Clause 4.6

Exception to this Standard has been provided for Council's consideration and this forms part of the reasons for refusal.

*Non-compliance with State Environmental Planning Policy Affordable Rental Housing 2009*

132. Comment: Concerns were raised that the proposal did not comply with SEPP (ARH) 2009 in relation to built form controls.

The proposal has been lodged under a development application. Built form controls within this legislation apply to complying development certificates. The relevant applicable provisions of this legislation have been addressed earlier within this report under State Environmental Planning Policy Affordable Rental Housing 2009.

*Increase in crime and anti-social behaviour*

133. Officer Comment: The proposal seeks development consent for a group home however the design and layout results in poor sight lines which may result in an increase in crime and anti-social behaviour as previously addressed within subsection HDCP No 1 Section 3.4 Crime Prevention Through Environmental Design.

*Accessibility Foreshore Accessibility*

134. Officer Comment: Concerns were raised that the proposal did not provide good levels of access to the foreshore area which adjoins the site to the rear (west). It is noted that this adjoining property is zoned E1 National Parks and Nature Reserves which is Crown Land. The proposal is not required to provide access to this adjoining property under the applicable planning controls.

## REFERRALS

### Council Referrals

Consultant Arborist

135. Council's Consultant Arborist has not supported the proposal and has raised concerns regarding the submitted arborist report has not addressed all trees affected by the proposal on the site and on the adjoining properties. In this regard, insufficient information has been provided to allow Council to undertake an informed assessment regarding impacts.

Consultant Senior Building Surveyor

136. Council's Consultant Senior Building Surveyor has commented that insufficient information has been provided for Council to undertake a full assessment. No access report has been provided for consideration.

Team Leader Development and Subdivision

137. Council's Team Leader Development and Subdivision raised no issues with the disposal of stormwater however has raised the concern that the proposed relocation of the sewer line along the southern side boundary would conflict with the excavation and levels required for the driveway. Furthermore, the application has also made reference to the possible relocation of the sewer line on the adjoining property at 61 Clarke Street, Peakhurst of which no owners consent has been provided.

Senior Traffic Engineer

138. Council's Senior Traffic Engineer has commented that no traffic study and no mechanical specifications for the mechanical stackers were provided in support of the application. Whilst mechanical specifications were subsequently provided by the applicant, insufficient information has been provided to Council to undertake an informed assessment regarding the specific traffic impacts and vehicular manoeuvrability on site.

### External Referrals

#### Ausgrid

139. The application was referred to Ausgrid for comment. In response, no comments were received upon finalisation of this assessment report.
140. It is noted that the proposal was not referred to Sydney Water in relation to the proposed relocation of the sewer line as the application is not supported for the reasons contained within this report.

### Development Contributions

141. As the application is not supported a development contribution does not apply. Contributions would be levied if the application was approved.

### CONCLUSION

142. The application has been assessed having regard to the Matters for Consideration under Section 4.15 (1) of the Environmental Planning and Assessment Act 1979, the provisions of the Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1.
143. Following a detailed assessment it is considered that Development Application No. DA2019/0433 for the demolition, lot consolidation and construction of a multi dwelling housing development and swimming pool over a common car park, and use of the completed dwellings as group homes on land known as 57-59 Clarke Street, Peakhurst be refused for the reasons contained within this report.

### DETERMINATION AND STATEMENT OF REASONS

#### 144. Statement of Reasons

- a) No Clause 4.6 Exception to Development Standard to Clause 4.1 Minimum Lot Minimum lot sizes for dual occupancies and multi dwelling housing of the Hurstville Local Environmental Plan 2012 (HLEP) has been provided for consideration.
- b) No Clause 4.6 Exception to Development Standard to Clause 4.3 Height of Building of the Hurstville Local Environmental Plan 2012 (HLEP) has been provided for consideration.
- c) No Clause 4.6 Exception to Development Standard to Clause 4.4 Floor Space Ratio of the Hurstville Local Environmental Plan 2012 (HLEP) has been provided for consideration.
- d) The unresolved design of the proposal results in poor levels of occupant amenity in terms of car parking and private open space and does not conform with the anticipated built form within the zone. Further that the proposal is not considered compatible with



the sloping topography of the site and the impact on the desired character particularly within the Foreshore Scenic Protection Area.

- e) The proposal does not comply with Section 3.1 Vehicle Access, Parking and Manoeuvring, Section 3.2 Subdivision, Section 3.3 Access and Mobility, 3.4 Crime Prevention through Environmental Design, Section 3.5 Landscaping, Appendix 1: Energy Efficiency, Preservation of Trees and Vegetation and Building Heights and Indicative Storeys of the Hurstville Development Control Plan No 1 (HDCCP No.1).
- f) The proposal results in unnecessary adverse overshadowing, privacy, acoustic and visual impacts to adjoining properties.
- g) Insufficient information has been provided such as a detailed survey which verifies the site area, the need for a group home, a comprehensive arborist report, traffic study, acoustic report, plan of management in relation to the car stacker, Building Code of Australia compliance, an access report, valid BASIX Certificate and details regarding fencing design.
- h) The proposal does not comply with the National Construction Code and Australian Standards regarding building and traffic, compliance would require substantial amendments therefore affecting the current proposed layout and configuration.
- i) For reasons (a)-(g) above, the proposal is not considered to be in the public interest.

#### 145. Determination

THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 that the Georges River Local Planning refuse Development Application DA2019/0433 for demolition, lot consolidation and construction of a multi dwelling housing development and swimming pool over a car park, and use of the completed dwellings as group homes on Lot A and B DP394348 and known as 57-59 Clarke Street, Peakhurst, the following reasons:

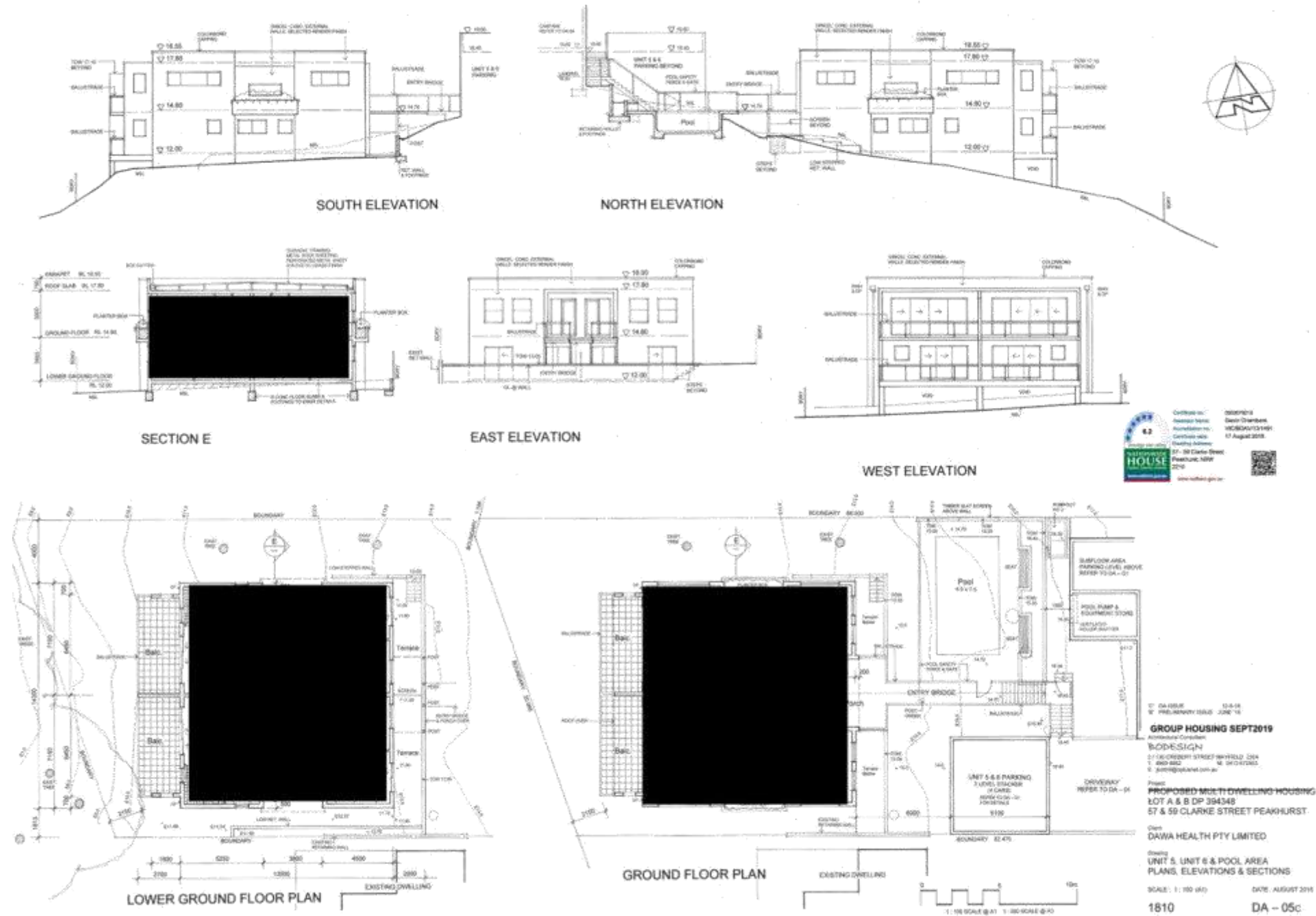
1. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposal has not satisfied Division 7 Group Homes Clause 43(1) where by the proposal has not demonstrated reasonable grounds for the need for a group home to the Consent authority.
2. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as proposal has provided an insufficient arborist report in relation to and assessment of all impacted trees on the site and on the neighbouring properties therefore not satisfying State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
3. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposal has not provided a valid BASIX Certificate consistent with the plans submitted for assessment and therefore does not satisfy State Environmental Planning Policy BASIX:2004
4. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposal has provided an insufficient arborist report in relation to and assessment of all trees on the site and on the neighbouring properties which are likely affected and therefore does not the therefore not satisfying Draft Environment State Environmental Planning Policy.

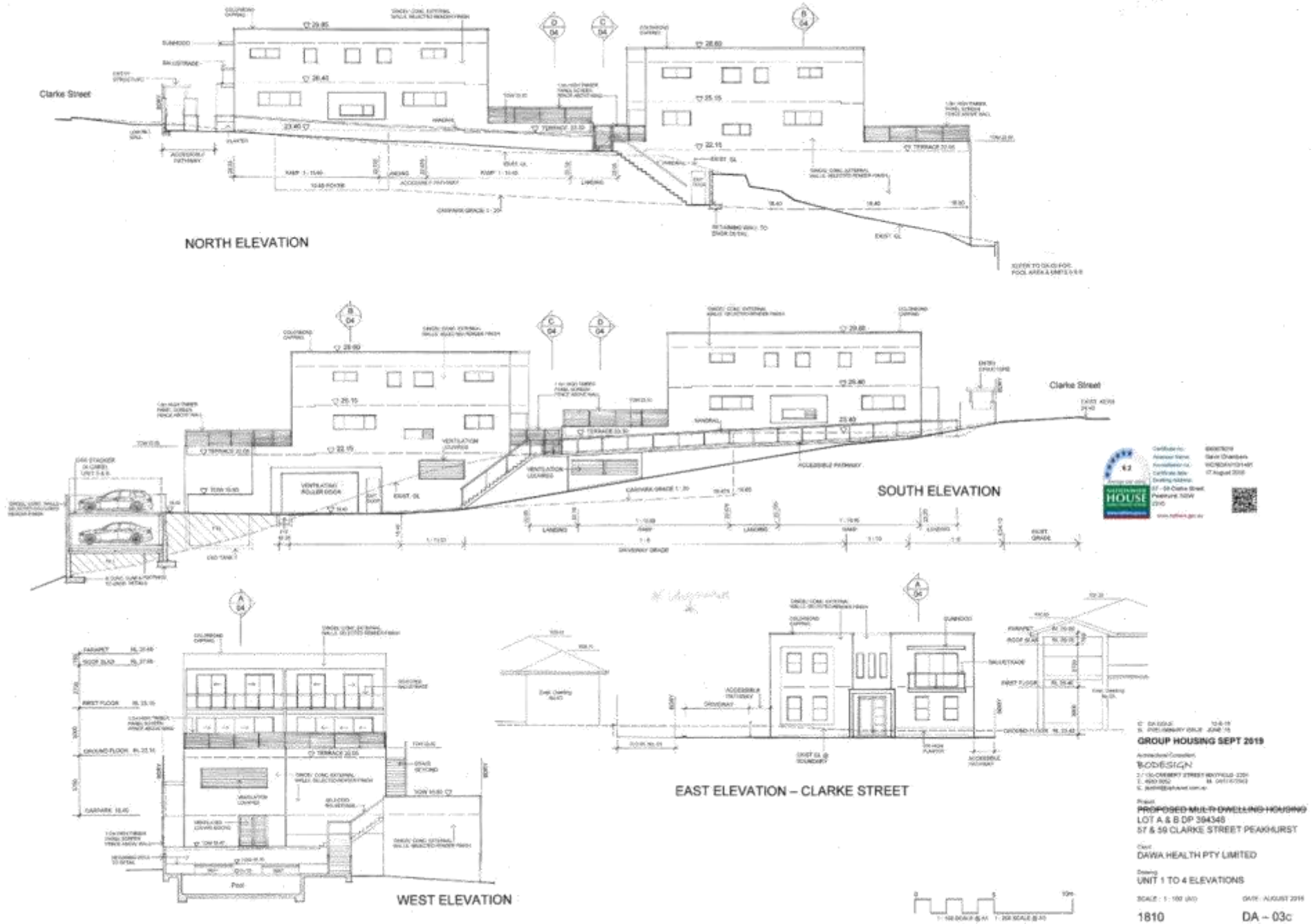
5. The proposal does not satisfy the following zone objectives as per Clause 2.3 – Zone Objectives and Land Use Table (R2 Low Density Residential) of Hurstville Local Environmental Plan 2012:
  - *To provide for the housing needs of the community within a low density residential environment.*
  - *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area*
  - *To ensure that a high level of residential amenity is achieved and maintained.*
  - *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
  - a. No Clause 4.6 Exception to Development Standard to Clause 4.1 Minimum Lot Minimum lot sizes for dual occupancies and multi dwelling housing of the Hurstville Local Environmental Plan 2012 has been provided for consideration.
6. No Clause 4.6 Exception to Development Standard to Clause 4.3 Height of Building of the Hurstville Local Environmental Plan 2012 has been provided for consideration.
7. No Clause 4.6 Exception to Development Standard to Clause 4.4 Floor Space Ratio of the Hurstville Local Environmental Plan 2012 has been provided for consideration.
8. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposal does not satisfy Clause 4.4 Floor Space of Hurstville Local Environmental Plan 2012. A Clause 4.6 Exception to Development Standard has not been submitted for the floor space sought.
9. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposal does not satisfy Clause 6.4 Scenic Foreshore Protection Area of the Hurstville Local Environmental Plan 2012.
10. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposal does not satisfy Clause 6.7 – Essential Services of the Hurstville Local Environmental Plan 2012.
11. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal fails to comply with the Hurstville Development Control Plan No. 1 in respect to; car parking and vehicular maneuverability, subdivision, access and mobility, crime prevention through environmental design, landscape, drainage, number of storeys, side and rear setbacks, landscape area, private open space, swimming pool and setbacks.
12. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the natural environment with respect the impact on trees on site and adjoining properties and disposal of stormwater.

13. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the built environment with respect the impact upon the amenity for future occupants and to adjoining properties.
14. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the proposed development in its current form is not suitable for the site.
15. Approval of the development would not be in the public interest and contrary to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.
16. The application has not provided owners consent for relocation of sewer line works on adjoining property at 61 Clarke Street, Peakhurst which is contrary to Schedule 1 Forms (1)(e) of the Environmental Planning and Regulation 2000.
17. The proposal is not complete and therefore a thorough detailed and informed comprehensive assessment of impacts cannot be undertaken.

## **ATTACHMENTS**

Attachment [↓](#)1 Elevations and Site Plan - 57-59 Clarke Street Peakhurst






 Certificate No: 8806709  
 Member Name: Steve Chambers  
 Membership No: W06040201407  
 Certificate Iss: 07 August 2018  
 Expiry Date: 07 August 2020  
 Driving Address:  
 57-59 Clarke Street  
 Peakhurst NSW  
 2210  


C:\DA\1810  
 S:\PROJECTS\012-20\1810-03C  
**GROUP HOUSING SEPT 2019**  
 Architect/Designer  
**B+D DESIGN**  
 2/110 CANNERY STREET WOODFIELD 2201  
 T: 4991 9500 F: 4911 0700  
 E: info@bplusd.com.au  
 Plot  
**PROPOSED MULTI-DWELLING HOUSING**  
 LOT A & B DP 394348  
 57 & 59 CLARKE STREET PEAKHURST  
 Client  
**DAWA HEALTH PTY LIMITED**  
 Drawing  
**UNIT 1 TO 4 ELEVATIONS**  
 SCALE: 1:100 (ELEV) DATE: AUGUST 2019  
**1810 DA - 03C**



SITE ANALYSIS PLAN

GROUP HOUSING  
 SEPT 2019

Architect/Designer  
 BOTHEBISHA  
 2/100 DUNLOP STREET PEAKHURST NSW 2200  
 T: 02 952 8122 M: 0412 02030  
 E: bothe@bothe.com.au

LOT A & B DP 2248  
 57 & 59 CLARKE STREET PEAKHURST

Client  
 DAWA HEALTH PTY LIMITED

Drawing  
 SITE ANALYSIS PLAN

SCALE: 1:100 (AS)

1810

DATE: JUN 2018

DA - 06c



**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 19 MARCH 2020**

LPP013-20

<b>LPP Report No</b>	<b>LPP013-20</b>	<b>Development Application No</b>	<b>MOD2019/0208</b>
<b>Site Address &amp; Ward Locality</b>	5/25 Kyle Parade Kyle Bay Blakehurst Ward		
<b>Proposed Development</b>	Modification to DA61/2014 for change of use to cafe including fit-out. The modification includes change to Condition 7 regarding operating hours (proposed hours of operation are 6:30am to 11:00pm, Monday to Sunday)		
<b>Owners</b>	Kathys Hostels		
<b>Applicant</b>	Matthew Oxenham		
<b>Planner/Architect</b>	(Author of Statement of Environmental Effects – CAE Architecture)		
<b>Date Of Lodgement</b>	1/11/2019		
<b>Submissions</b>	Fourteen (14) submissions – thirteen (13) submissions of objection, one (1) submission in support		
<b>Cost of Works</b>	Nil (no physical works proposed)		
<b>Local Planning Panel Criteria</b>	Manager Discretion to refer to Local Planning Panel for Determination in accordance with delegations issued by the General Manager on 3 February 2020		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy (Infrastructure) 2007, Draft Environment State Environmental Planning Policy, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Draft Georges River Local Environmental Plan 2020 Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013		
<b>List all documents submitted with this report for the Panel's consideration</b>	Statement of Environmental Effects Acoustic Report prepared by Koikas Acoustics Liquor Licence Submissions		
<b>Report prepared by</b>	Development Assessment Planner and Team Leader Development Assessment		

<b>Recommendation</b>	That the application be approved in accordance with the amended conditions included in this report.
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<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant	<b>Yes</b>

recommendations summarised, in the Executive Summary of the assessment report?	
<p><b>Clause 4.6 Exceptions to development standards</b>                  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?</p>	<b>Not Applicable</b>
<p><b>Special Infrastructure Contributions</b>                  Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<b>Not Applicable</b>
<p><b>Conditions</b>                  Have draft conditions been provided to the applicant for comment?</p>	<b>All previous conditions will remain as per the consent. The proposed change to Condition 7 is to be made available to the applicant at the time of report publishing</b>

**Air-Photo**



Figure 1: Aerial Plan of subject site (outlined in red)

**Executive Summary Proposal**

1. The proposal seeks approval for an extension to the hours of operation of an existing café development at Shop 5, 25 Kyle Parade, Kyle Bay.



2. The existing café development was approved on 17 June 2014 (DA61/2014), and the current Section 4.55 modification to consent application seeks to modify Condition 7 (hours of operation) in the following manner:
  - Existing hours of operation (as per condition 7 DA61/2014) are Monday – Sunday - 7:00am to 10:00pm;
  - Proposed modified operating hours are Monday – Sunday – 6:30am to 11:00pm.

### **Site and Locality**

3. The subject site is identified as Shop 5, 25 Kyle Parade, Kyle Bay and legally described as Lot 41 in DP 207268.
4. The site is located on the western side of Kyle Parade which is a corner site. Vehicular access to car parking is via Merriman Street and pedestrian access is gained via Kyle Parade.
5. The site contains a two storey commercial development with five (5) retail commercial shops fronting Kyle Parade. The existing building has not been strata-subdivided and this application only relates to the space known as Shop 5, which is at the southern end of the building.
6. Surrounding development generally consists of low density residential with the exception of the other attached commercial premises within the site and a park to the north. In particular, the nearest adjoining residential dwelling is within 10m to the south (45 Kyle Parade), and there are residential properties across Kyle Parade (to the west) and also to the east of the site.
7. The site is in close proximity to Kyle Bay.

### **Zoning and Permissibility**

8. The site is zoned B1 – Neighbourhood Centre Zone under Kogarah Local Environmental Plan 2012 (KLEP) and the proposed modification is permissible with Development Consent.

### **Submissions**

9. The application was neighbour notified in accordance with the provisions of Kogarah DCP and Council's Community Engagement and Participation Plan for a period from 20 November 2019 to 4 December 2019. In response a total of 14 submissions were received – one (1) submission in support and thirteen (13) submissions by way of objection. The issues of key issues raised in the submissions of objection included the following (summarised):
  - Existing development causes adverse amenity impacts to surrounding residential properties, and the proposed extension of hours will make these worse;
  - Delivery of goods, set up of café furniture etc is done outside the proposed opening hours, and causes amenity and noise impacts;
  - Additional noise impacts;
  - Additional traffic;
  - Existing development breaches their consent (eg delivery times, garbage collection etc) – the proposal for extended hours should not be supported;
  - Designated parking areas are used for storage of goods (contrary to the consent), which causes on-street parking by staff and customers;

- The existing café causes significant litter in the surrounding areas;
  - Friction between café operators/customers and local residents
10. It is generally considered that many of the above issues of concern relate to non-compliance with the existing conditions upon the consent, and therefore these could be able to be resolved via enforcement action by Council.
11. It is generally considered that the proposed extension to the hours in the morning is acceptable, because the location currently experiences a volume of through traffic (and associated impacts of noise etc) and pedestrian movements in the vicinity during the morning period. Further, the trade in the morning will involve generally only short stay purchases of coffee/ takeaway breakfast and the like. For these reasons, it is considered that a small extension to the hours in the morning (30 minute extension, opening at 6:30am) would have minimal adverse impact on the amenity of the local neighbourhood in the morning period.
12. However, the proposed extension to the hours in the evening is not acceptable. This is because the location generally experiences less traffic/noise impacts in the evening period, and so the surrounding ambient noise levels are lower during this time. Further, the trade in the evening would generally involve long stay patronage which involves customers consuming dinner and alcohol. This would result in an increase of noise during the late hours of the evening. The proposed extension to the hours of operation (one hour extension, closing at 11:00pm instead of 10:00pm) would therefore have a significant adverse impact on the amenity of the neighbourhood in the evening period.

#### **Reason for Referral to Local Planning Panel**

13. This application is referred to the Local Planning Panel for determination as a discretionary matter in accordance with the delegations issued by the General Manager on 3 February 2020 as in the opinion of the Manager Development & Building it is in the public interest to do so given the number of unique submission objecting to the proposal exceeds ten (10).

#### **Conclusion**

14. Having regard to the Heads of Consideration under Part 4.15 of the Environmental Planning and Assessment Act 1979, Modification Application No. MOD2019/0208 is recommended for approval subject to amended conditions. These amended conditions allow for the hours of operation to be amended to 6:30am to 10:00pm Monday to Sunday.

#### **Report in Full**

##### **Proposal**

15. The proposal is for a modification to an approved development which consisted of a change of use to cafe including fit-out. This modification seeks to amend Condition 7 of the original Development Consent.
16. Under Condition 7 of the consent, the existing hours of operation are Monday to Sunday: 7:00am to 10:00pm.
17. The proposed hours of operation are Monday to Sunday: 6:30am to 11:00pm.
18. There are no physical works proposed as part of the modification and only involves the amendment of Condition 7.

19. The applicant's Statement of Environmental Effects provides the following reasons why the extended hours of operation are sought as follows:

*The intention of the extension of hours is desired to cater to the varied needs of the customer base the local coffee shop services within the community. The commencement of trade at 6:30am will service the needs of trades and construction type workers before typical on site start time of 7:00am. The later open time to 11:00pm nightly is more suited to the families of the surrounding area that frequent the establishment who are often forcibly asked to vacate the premises due to the current close time. The current close time does not adequately service the needs of those who dine at the premises.*

*The extension of hours is supported by the majority of surrounding locals as the benefit of the extension of hours is of great interest that supports life style of their everyday lives. There is no foreseeable negative social, environmental or economic impact as a result of the proposed extension of hours.*

### The Site and Locality

20. The site is a rectangular shaped site with a frontage to Kyle Parade in an area with 5 attached shops.
21. The site is located on the eastern side of the street. Existing on the site is 5 attached shops with rear parking. The site adjoins residential premises to the south, east and west. There is a park to the north. The surrounding area is predominantly low density residential in nature, with the subject group of shops being a typical neighbourhood shopping centre set among one and two storey detached dwellings. The nearest residential dwelling is immediately to the south, within 10m of the subject café premises.
22. From Council's records the existing building has been in existence for over 25 years. The building has not been strata-subdivided and this application only relates to the space known as Shop 5, which is at the southern end of the building.

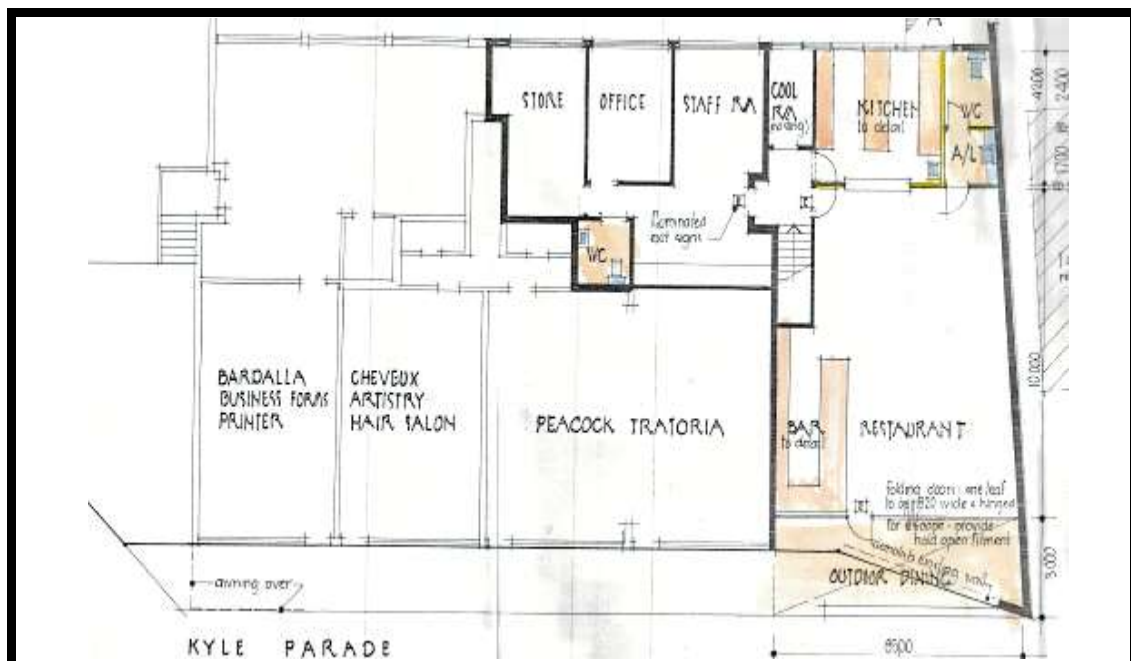


Figure 2 – Extract of Approved floor plans from under DA61/2014



Figure 3 – Access the the rear of the site from Merriman Street



Figure 4 – The Kyle Bay Commercial Precinct

**Background**  
Subject Site

23. Development consent was issued for the change of use to café including fitout on 17 June 2014 (via DA61/2014).
24. It should be noted that following a number of complaints in relation to noise, storage of garbage and breaches of conditions of the existing consent regarding deliveries occurring outside the hours the premises has been the subject of on-going review by Council's Environmental Health and Regulatory Services team since mid-2019 resulting in a Notice of Proposed Order (Compliance Order) being issued on 8 November 2019.

#### Current Modification Application

25. The application was lodged on 8 November 2019. Shortly after, it underwent a preliminary review, referral to a number of departments within Council (and also externally to the NSW Police Service), and neighbour notification for a period from 20 November to 4 December 2019. Further details on these processes are discussed later in this report.

### **APPLICABLE PLANNING CONTROLS**

#### **Statutory Consideration**

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

26. The following Environmental Planning Instruments are relevant to this application:
- State Environmental Planning Policy (Infrastructure) 2007;
  - Draft Environment State Environmental Planning Policy;
  - Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment;
  - State Environmental Planning Policy No 55 - Remediation of Land;
  - State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;
  - Kogarah Local Environmental Plan 2012; and
  - Kogarah Development Control Plan.
  - Draft Georges River Local Environmental Plan 2020.

#### Environmental Planning Instruments

#### **Deemed State Environmental Planning Policy – Georges River Catchment**

27. This application does not affect the existing stormwater disposal and no changes to the stormwater design are required as a result of change in operating hours. The proposal does not cause inconsistencies with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment

#### **State Environmental Planning Policy No 55 – Remediation of Land**

28. Council's records show that the existing structure on site has been existing for at least fifteen (15) years. This application seeks approval for amended operating hours, accordingly, there are no earthworks proposed. Therefore the provisions of this SEPP are not relevant to this proposal.

#### **State Environmental Planning Policy (Infrastructure) 2007**

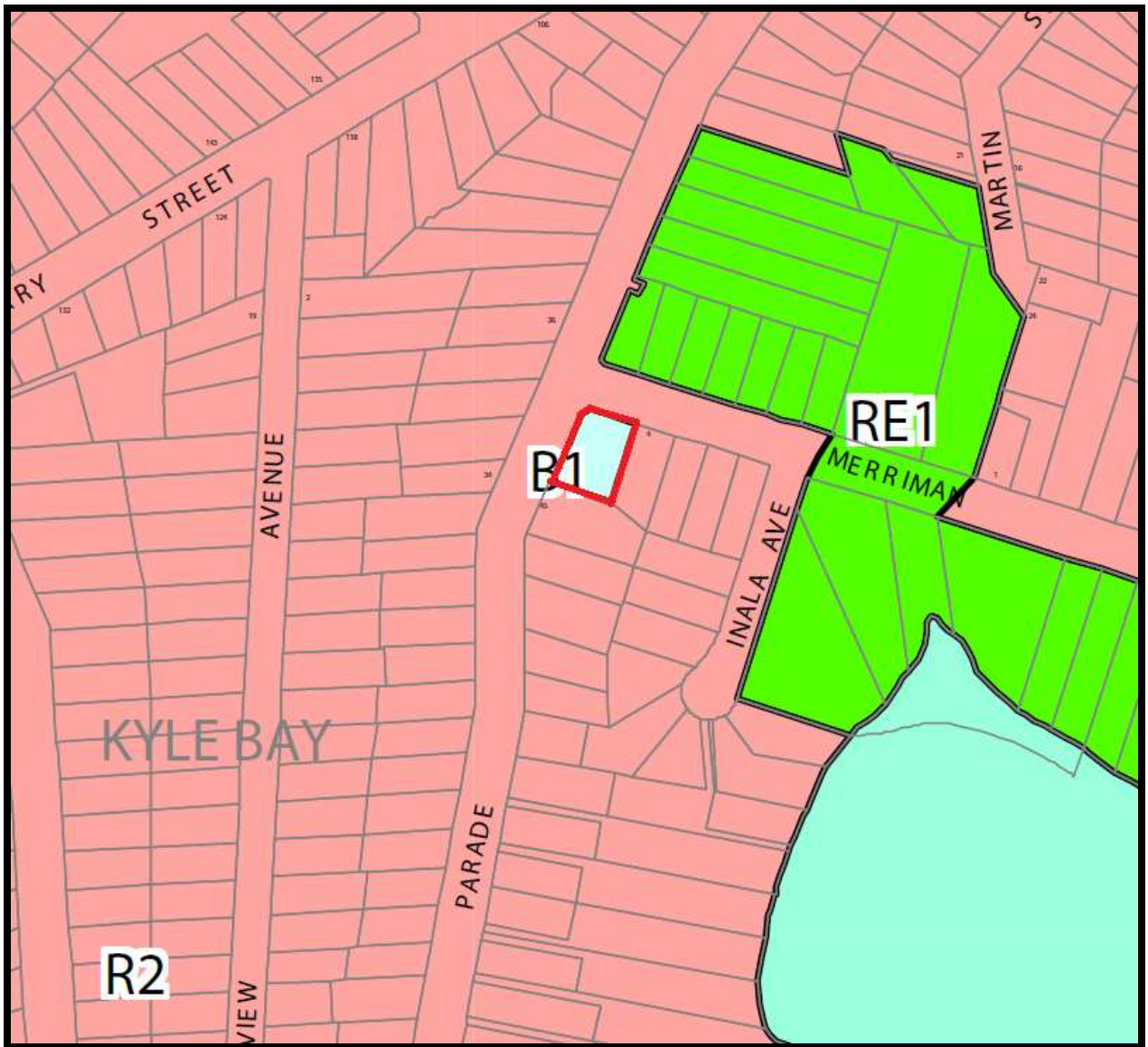
29. In accordance with Clauses 101 and 102 of the State Environmental Planning Policy (Infrastructure) 2007, the site is not in a location where it is deemed to be affected by Traffic Noise and the hours of operation do not conflict with the State Environmental Planning Policy (Infrastructure).

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

30. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
31. The Vegetation SEPP applies to clearing of:
- 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*
  - 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).*
32. The objectives of the SEPP is to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 5(1) of the SEPP as the site is within both Georges River Council and the R2 Low Density Residential zone.
33. Pursuant to Clause 8(1) of the SEPP, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
34. The proposal only involves a change to the hours of operation and therefore does not include the removal of any significant vegetation and as such the proposal is considered satisfactory against the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

### **Kogarah Local Environmental Plan (KLEP) 2012**

35. The site is zoned B1 – Neighbourhood Centre Zone under Kogarah Local Environmental Plan 2012 and the proposal is permissible form of development with Council's consent. The use is a restaurant/ café which is a retail premise and is more widely categorised to be a commercial premise. The modification does not conflict with the use assessed as per the original development application.
36. The objectives of the zone are as follows;
- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
  - To allow residential development that contributes to the social vitality of the neighbourhood centre and does not detract from the business function of the zone.*
37. The proposal is not considered to be inconsistent with the objectives of the zone as previously approved.



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Figure 5 – Zoning map, site outlined in red

38. The extent to which the proposal complies with the relevant standards of Local Environmental Plan is outlined in the table below.

KLEP Control	Standard	Proposed	Complies
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The proposed works do not alter the approved building height.	Yes (existing approved)
4.4 Floor Space Ratio	1.3:1 as identified on the Floor Space Ratio maps.	The modification does not involve the increase to floor space.	Yes (existing approved)
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and	The site is not a heritage item or located with a heritage conservation area.	N/A

	heritage conservation areas, including associated fabric, settings and views.		
6.1 – Acid Sulfate Soils	The site is identified as being Class 5 Acid Sulfate Soil and the objectives of this clause is to ensure that development does not disturb expose or drain acid sulfate soil and cause environmental damage.	As the application does not involve construction and only relates to the operation of the business this clause is not applicable.	N/A

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### **Section 4.55 Considerations**

39. The application has been made pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 to modify Development Consent DA 61/2014 determined on 17 June 2014. A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

*Is satisfied that the proposed modification is of minimal environmental impact?*

40. Comment: This proposed modification only relates to the operating hours with no building works. Given the scope of the original consent and the changes proposed, it is considered that the application satisfies the requirements to be considered as minimal environmental impact.

41. Note: Any identified or previously occurring non compliances with conditions of an approval are beyond the scope of consideration under this section and are a matter for consideration of regulatory enforcement under the provisions of the Environmental Planning and Assessment act 1979 or Local Government Act 1993 by Authorised Officers.

*Is satisfied the proposed development as modified is substantially the same development for which consent was originally granted?*

42. Comment: The proposed development as modified would represent substantially the same development for which consent was originally granted as no changes to the approval are proposed beyond the hours of operation of that original development.

*Has consulted with the relevant Minister, public authority or approval body with respect to a condition imposed on the consent or general terms of approval?*

43. Comment: Not applicable.

*Has advertised and or notified the application in accordance with the regulations or a development control plan?*

44. Comment: The application was neighbour notified in accordance with the provisions of KDCP between 20 November 2019 to 4 December 2019.

*Has considered any submissions made concerning the proposed modification?*



45. Comment: The application was subject to neighbour notification in accordance with the provisions of the KDCP. Fourteen (14) individual submissions were received, including thirteen (13) submissions of objection with one (1) submission in support. The issues of concern raised in the submissions of objection are summarised and discussed later in the report.

## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

### **Draft Environment SEPP**

46. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
47. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.
48. 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.
49. The proposal is not inconsistent with the provisions of this Draft Instrument.

### **Draft Georges River Local Environmental Plan 2020**

50. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
51. In this regard, the provisions have no determining weight as a result of proposed operation of Clause *“1.8A Savings provisions relating to development applications”* of the Draft Plan which provides *“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”*

## **DEVELOPMENT CONTROL PLAN**

52. The following Development Control Plan is relevant to this application.

### **Kogarah Development Control Plan 2013 - Part D - Commercial and Industrial - D2 – 13 Kyle Bay**

53. There are specific controls locality controls for the commercial precinct in Kyle Bay which apply to the development.
54. All the controls relate to build forms and in specifics about uses other than the kind of uses preferred. The use has already been approved and the modification relates purely to the operating hours.
55. The objectives of this section in the KDCP are the as follows;

- “(a) Encourage the continuation of the local shopping and service function.  
(b) Maintain an appropriate built form so as to not detract from the amenity of the surrounding residential area.  
(c) Permit residential development on the upper level, to the rear of the site.  
(d) Maintain off-street parking and vehicular access arrangement at the rear of the site, with access from Merriman Street.”*

56. Many of these objectives (eg objectives (b) to (d) regarding built form and parking arrangements) do not relate to the proposed extended hours of operation. The proposal is considered to be not inconsistent with objective (a), in the manner proposed in the recommendation to this report – which is that the hours of operation should only be permitted to extend to open from 6.30am (currently 7am).
57. The proposal to allow opening until 11pm would adversely impact on the amenity of nearby residential properties due to lower ambient noise levels at this time, and should not be supported.
58. It is noted that the zoning of the land is B1 – Neighbourhood Centre and it is in close proximity to low density residential development. It is also acknowledged that there are minimal applicable controls relating to nature of this modification. On merit, it is considered that the modification as proposed (to allow operation until 11pm) is not compatible with the surrounding area.
59. The extent of the B1 zone is considered minimal and as a result there are many residential properties surrounding the development. The proposed hours of operation are 6:30am – 11:00pm Monday to Sunday. Given that the subject site is a located in a mostly low residential area, and considering the existing operating hours are till 10pm, the proposed operating hours are not considered appropriate. This is due to the location of the subject site and the potential to have unreasonable impacts on the amenity of the neighbourhood.
60. The application is supported by an acoustic report which states within the ‘design scenarios and modelling assumptions that between 6:30am to 7:00am, that the outdoor dining area will not be used and that no more than 10 patrons are to on the premise at any one time during this period.
61. The modification is only pertaining to the operating hours condition (condition 7), and therefore Council has no ability to add additional conditions that are not related to this matter.

### **PROVISIONS OF REGULATIONS**

62. The provisions of the Regulations relating to this application have been taken into consideration during this assessment and have been discussed specifically throughout this report.

### **SUBMISSIONS**

63. The proposal as modified has been notified in accordance with the provision of KDCP and fourteen (14) submissions from eleven (11) different people. The issues of concern in the submissions of objection have been summarised and discussed below.

*The additional hours of operation will cause additional amenity impacts, noise impacts and the like.*

64. Officer Comment: It is generally considered that the proposed extension to the hours in the morning is acceptable, because the location currently experiences a volume of through traffic (and associated impacts of noise etc) and pedestrian movements in the vicinity during the morning period. Further, the trade in the morning will involve generally only short stay purchases of coffee/ takeaway breakfast and the like. For these reasons, it is considered that a small extension to the hours in the morning (30 minute extension, opening at 6:30am) would have minimal adverse impact on the amenity of the local neighbourhood in the morning period.
65. However, the proposed extension to the hours in the evening is not acceptable. This is because the location generally experiences less traffic/noise impacts in the evening period, and so the surrounding ambient noise levels are lower during this time. Further, the trade in the evening would generally involve long stay patronage which involves customers consuming dinner and alcohol. This would result in an increase of noise during the late hours of the evening. The proposed extension to the hours of operation (one hour extension, closing at 11:00pm instead of 10:00pm) would therefore have a significant adverse impact on the amenity of the neighbourhood in the evening period.

*Conflict between café operators/customers and local residents.*

66. Officer comment: Numerous submissions have raised concerns that the manner in which the development has previously operated has allegedly caused friction and anti-social behaviour between the proponents and adjoining residential neighbours. These matters are beyond the scope of the application assessment are issues to be reported and considered by NSW Police under separate legislation.

*Ancillary activities (eg café setup etc) occur well outside the actual opening hours. Concern is raised that these will also be made worse if the modified café opening hours are supported.*

67. Officer Comment: There are a number of conditions of consent relating to the operation of the development, which are not proposed to be modified under this application. These include the following conditions:

**(12) General Amenity**

*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, ash, dust, waste water, waste products, grit, oil or other harmful products.*

**(25) Deliveries**

*All deliveries and garbage collection are to be restricted between the hours of 7.00am and 6.00pm, Monday to Saturday, with deliveries or collection outside these times not permitted.*

**(26) Garbage Collection**

*All garbage is to be collected and stored within the garage area and is to be collected on a regular basis to avoid any overflow or odours emitting from the site.*

**(27) Staff Parking Spaces**

*A minimum of four parking spaces is to be made available for staff within the garage area and is to be kept free from the storage of goods.*

68. It is considered that the issues of concern relating to such ancillary activities could be resolved via Council's powers of enforcement under the Environmental Planning and Assessment Act 1979. It is noted that officers from Council's Environmental Health and Regulatory Services team have commenced enforcement actions, and this is an on-going matter.

*Designated parking spaces are used for storage of goods, which causes staff/customer parking to occur on-street.*

69. Officer Comment: This is a matter outside the scope of assessment of this modification, which only seeks to extend the hours of operation. It is noted that this would be a breach of condition 27 of the consent (as noted above), which could also be resolved via Council's powers of enforcement under the Environmental Planning and Assessment Act 1979. It is noted that officers from Council's Environmental Health and Regulatory Services team have commenced enforcement actions, and this is an on-going matter.

*Breaches of conditions of consent. Concern is raised in the submissions that the development as it currently operates breaches a number of conditions of consent, which causes amenity impacts for residential neighbours. Concern is raised that these impacts will be made worse if the operating hours are extended.*

70. Officer Comment: As briefly outlined in the Background section of this report, Council officers have commenced enforcement action in regard to the operation of this café, and this is an ongoing matter.

*Inconsistent with the zoning of the property.*

71. Officer Comment: Comments received regarding concern regarding the zoning and 'entertainment precinct'. The application does not relate to a change of use and the addition of operating hours do not change the use and therefore it is not a consideration of this application.

*The café causes significant litter in the surrounding areas*

72. Officer Comment: Littering is an offence under the Protection of the Environment Operations Act and is again a enforcement issue and beyond the scope of assessment associated with the proposed hours of operation.

## REFERRALS

73. This application was referred to the Crime Prevention Unit of the St George Police Area Command (Police) and Council's Environmental Health Officers and the following comments are made.

### Police Referral

74. The Modification Application was referred to the NSW Police Service. In response, the Police advised that no crimes have been reported within the last 12 months and that a risk assessment concluded that there is no adverse or external factors *"that may affect the amenity/café running as a service to the community."*
75. There have been recommendations provided by the Police that relate to Crime Prevention Through Environmental Design (CPTED), a Plan of Management (PoM), patrons leaving the premises in a quiet and orderly manner and Closed Circuit Television (CCTV). These

recommendations are noted but due to the nature of the application not all are able to be added as conditions, as it would be beyond the scope of assessment of this application which only relates to operating hours (condition 7).

#### Environmental Health Officer

76. Council's Environmental Health Officer has made an assessment of the application and raised no objection to change in operating hours and included recommended conditions. The recommended conditions that relate to the modification have been included, because it is considered that these reasonably relate to the proposed extension to trading hours.
77. Notwithstanding the non-objection to the proposal from Council's Environmental Health Officer, it is considered that from a planning and amenity perspective, that the proposed extension to evening trading hours (until 11:00pm) is unacceptable, and the evening trading hours should remain to close at 10:00pm. The small extension to trading hours in the morning (to open at 6:30am instead of 7:00am) is considered acceptable, as discussed throughout this report.

### **IMPACTS**

#### ***Likely Impacts of Development***

78. It is considered that the application that is proposed will have an unreasonable impact on the amenity of the surrounding area. The proposed operation until 11:00pm is not considered acceptable considering the location of the subject site. The opening time being 6:30am, with conditions around outdoor dining and patron numbers is considered acceptable.
79. The application as proposed to be amended will result in a scale and form being acceptable and consistent with the existing approval and not cause an unreasonable impact. The application is therefore recommended for approval subject to the attached conditions.

#### ***Suitability of the site***

80. As discussed throughout this report, the subject premises is set among a predominantly residential neighbourhood, with the nearest residential property located within 10m of the café (directly to the south). For this reason, an extension of trading hours until 11:00pm is considered to be unacceptable, however the extension of hours in the morning is considered to be reasonable.
81. Considerations regarding building design and scale etc are not relevant to this proposal which relates to the use of an existing building.

#### ***Public Interest***

82. The proposal as modified has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the application the proposal satisfies the criteria for this form of development.
83. The proposal as amended will not have unreasonable impacts on the surrounding properties. Therefore, the proposal as modified is in the public interest and will allow for the earlier opportunity for the public to gain access to a service with minimal changes in the impacts on the neighbours.
84. As discussed throughout this report, allowing trade to commence at 6.30am would not be contrary to the public interest. However, it would not be in the public interest to allow this

café to trade until 11pm given the predominantly residential environment in which it is located, and in particular the close proximity (within 10m) to the nearest neighbouring residence.

## **CONCLUSION**

85. This application has been assessed having regard to the matters for consideration under Section 4.15(1) and 4.55(1)(a) of the Environmental Planning and Assessment Act 1979, the provisions of the applicable SEPP's, KLEP 2012 and KDCP 2013.
86. Following a detailed assessment it is considered that on planning grounds Modification Application No. MOD2019/0208 is worthy of approval subject to modified conditions contained in Section A below.

## **DETERMINATION AND STATEMENT OF REASONS**

### **87. Statement of Reasons**

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

### **Determination**

88. That pursuant to Section 4.15(1) and 4.55(1)(a) of the Environmental Planning and Assessment Act 1979, the Council grants development consent to Modification Application MOD2019/0208 to extend the hours of operating to Lot 41, DP 207268 known as 5/25 Kyle Parade, Kyle Bay, in accordance with the following modified conditions:

## **SECTION A - General Conditions**

The conditions that follow in this Section A of the Notice of Determination are general conditions which are imposed to ensure that the development is carried out in accordance with the development consent.

### **(1) Approved Plans of Consent**

The development must be implemented in accordance with the approved plans, specifications and details listed below and any supporting information submitted with the Development Application except as amended by any conditions attached to the Development Consent:

- (i) Architectural Plans prepared by Phillip Huntington, Drawing No. 4 1000.1 and 4 1000.2 dated 17 March 2014.

## **SECTION B – Prior to the Issue of a Construction Certificate or Demolition Conditions**

The conditions that follow in this Section B of the Notice of Determination relate to the payment of fees, amendments being made to the proposal, further investigation being undertaken or the

preparation of documentation that must be complied with prior to the issue of a Construction Certificate or Demolition.

**Note:** A copy of the Construction Certificate shall be forwarded to Council prior to commencement of construction where Council is not the certifier who issued the Construction Certificate.

## (2) Asset & Building Fees

Payment of the following amounts as detailed below:

- \*Builders Long Service Levy of \$420.00

\*Note: The Builders Long Service Levy quoted is based on the market value of the proposed building works and the Levy Rate applicable at the time of assessing the Development Application and may be subject to change prior to payment.

## (3) Certification of Food Premises

To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas all building work in connection with the occupation or use of the premises intended for the preparation and storage of food shall be designed and implemented in accordance with the requirements of:-

- a) Food Act 2003;
- b) Food Regulation 2010;
- c) Food Safety Standards 3.1.1, 3.2.2 and 3.2.3;
- d) Australian Standard AS 4674 – 2004 (*Design, construction and fit-out of food premises*);
- e) Sydney Water Corporation;
- f) Australian Standard AS 1668 Part 1 – 1991;
- g) Australian Standard AS 1668 Part 2 – 1991;
- h) The Building Code of Australia.

Certification to this effect shall be provided by an appropriately qualified person.

## (4) Grease Trap

To ensure that adequate provision is made for the treatment of waste water from the premises, floor plans accompanying the Construction Certificate application shall include provision for a Sydney Water approved grease trap. The grease trap installation shall also comply with the requirements of Australian Standard AS 3500 National Plumbing & Drainage Code and be capable of servicing all commercial sections of the development.

Certification from Sydney Water granting approval to the connection shall also be provided.

## **SECTION C – Prior to Commencement of Construction Conditions**

The conditions that follow in this Section C of the Notice of Determination are specific to the proposed development and must be complied with prior to the commencement of construction on the site.

**(5) Use of Footpath - Licence Agreement**

Prior to occupying the footpath of the public road or installing any outdoor seating/display of goods, a “Licence Agreement” shall be entered into with Council. A copy of the “Licence Agreement” is then to be kept on the premises for inspection by authorised Council Officers. To arrange for a ‘Licence Agreement’ please contact Council’s Property Service Officer.

**SECTION D – Construction and Operational Conditions**

The conditions that follow in this Section D of the Notice of Determination are imposed to ensure the development is constructed and operates having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment during the construction phase or the operation of the use.

**(6) Inspections**

The following lists of inspections are the **MANDATORY CRITICAL STAGE INSPECTIONS** that **MUST** be carried out by the Principal Certifying Authority (PCA).

- (a) at the commencement of building works
- (b) prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
- (c) prior to covering any stormwater drainage connections, and
- (d) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Certificates from your engineer or subcontractor are **NOT** acceptable in the first instance for the above inspections. Failure to have your PCA carry out these inspections could result in a delay or refusal to issue an Occupation Certificate.

**(7) Hours of Operation**

The hours of operation shall be limited to the following:-

Monday to Sunday                      6:30am to 10:00pm

There is to be no outdoor seating prior to 7:00am and the maximum number of patrons at any one time shall not exceed ten (10) prior to 7:00am.

The premise is to only operate within the allocated business hours 6:30am – 10:00pm and ensure when the patrons leave the premise they do so in a quiet and orderly manner.

**(This condition is amended as part of MOD2019/0208 (DA61/2014))**

- (7A)** Sound attenuation must be maintained in accordance with the Acoustic Report submitted by Koikas Acoustics titled Acoustical report dated 23 October 2019.

**(This condition is added as part of MOD2019/0208 (DA61/2014))**

- (7B) Final Acoustic Report – Verification of Noise report**



Within six months from occupation of the premises, an acoustic assessment is to be carried out by an appropriately qualified acoustic consultant, in accordance with the NSW Environment Protection Authority's "[Noise Policy for Industry \(2017\)](#)" and submitted to Council for consideration. This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report (submitted by Koikas Acoustics, titled Acoustical Report and dated 23 October 2019 are effective in attenuating noise to an acceptable noise level and that the use is not calculated to give rise to 'offensive noise' as defined under the provision of the [Protection of the Environment Operation Act 1997](#) (as amended).

**(This condition is added as part of MOD2019/0208 (DA61/2014))**

**(8) No Offensive Noise**

To minimise the noise impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to "offensive noise" as defined under the provisions of the Protection of the Environment Operations Act 1997.

**(9) Hours of Construction**

Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.

**(10) Heart Healthy Oils**

To minimise the risk of cardiovascular disease to the community, cooking oils containing trans and saturated fats oils shall not be used when preparing or cooking food.

To verify that oils containing trans and saturated fats are not being used, Council Environmental Health Officers will conduct random inspections as part of their routine food inspection program, and sample cooking oils and other food products for testing purposes.

**(11) Avoid Annoyance from lighting**

Any lighting of the premises shall be installed in accordance with Australian Standard AS 4282 – 1997: Control of the Obtrusive Effects of Outdoor Lighting so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. Flashing, moving or intermittent lights or signs are prohibited. The intensity, colour or hours of illumination of the lights shall be varied at Council's discretion if Council considers there to be adverse affects on the amenity of the area.

**(12) General Amenity**

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, ash, dust, waste water, waste products, grit, oil or other harmful products.

**(13) Designated Parking Area**

The areas designated as parking areas, loading/unloading areas, and the access to such areas are not to be used at any time for the purposes of storage, or for other commercial uses, or leased to any person, company or organisation not directly associated with the subject site.

**(14) Alfresco/Outdoor Dining (Smoke Free)**

The alfresco/outdoor dining area shall maintain 50% of its area as smoke free.

**(15) Use of Footpath – Monitor**

Council shall monitor the use of the footway and if any nuisance is caused to the general public, Council may revoke the lease of the footway at any time informing the applicant in writing.

**(16) Use of Footpath – Placement of Furniture**

All street furniture shall be supplied by the licensee/lessee and the licensee/lessee shall be responsible for the placement and removal of all such furniture. Umbrellas must be fixed securely to tables and/or anchored in a manner acceptable to Council.

**(17) Use of Footpath – No Fixing to Pavement**

No furniture or other structures may be fixed to the footpath/pavement unless directed to do so by Council and then only in the manner stipulated.

**(18) Use of Footpath – Removal of Furniture & Pavement Clean**

The licensee/lessee will be responsible for keeping the area clean and free of food scraps, litter and other droppings and shall remove the furniture when the adjoining business is closed.

**(19) Use of Footpath – Display Units**

Display units shall be constructed of an aesthetic material approved by Council and be of a colour scheme compatible with the surrounding area (styrofoam or cardboard containers will not be permitted).

**(20) Use of Footpath – Licensed Area**

Outdoor furniture should be maintained within the leased area at all times kept in a physically sound and acceptable condition to the satisfaction of Council.

**(21) Licensed Premises – Noise Levels (12 midnight to 7.00am)**

The  $L_{A10}$  noise level emitted from the premises, measured between the hours of midnight and 7am, is not to exceed the background noise level in any octave band frequency (centred on 31.5Hz to 8 kHz inclusive), when measured at the boundary of any adjoining residence.

**(22) Use of Footpath – Traffic Safety**

The use of the footway must not interfere with the safe vision of drivers entering or leaving the premises and shall not obstruct the sight of drivers or obscure advisory and regulating signs or traffic control facilities or impede pedestrian traffic.

**(23) Liquor Licence**

Subject to obtaining a liquor licence, alcohol is only to be served in association with a meal purchased and consumed on the premises.

**(24) Signage**

Signage is to be prominently placed within the premises advising patrons to have consideration of the surrounding residential neighbourhood and leave quickly and quietly at the completion of their meal.

**(25) Deliveries**

All deliveries and garbage collection are to be restricted between the hours of 7.00am and 6.00pm, Monday to Saturday, with deliveries or collection outside these times not permitted.

**(26) Garbage Collection**

All garbage is to be collected and stored within the garage area and is to be collected on a regular basis to avoid any overflow or odours emitting from the site.

**(27) Staff Parking Spaces**

A minimum of four parking spaces is to be made available for staff within the garage area and is to be kept free from the storage of goods.

**SECTION E – Prior to Occupation or Subdivision Certificate Conditions**

The conditions that follow in this Section E of the Notice of Determination relate to conditions that ensure that the development is completed in accordance with the requirements of the Development Consent prior to the issue of either an Occupation Certificate or a Subdivision Certificate.

**(28) Food Business Registration**

The food business must be registered with Council's Environment Health Officers in accordance with the *Food Act 2003*.

**(29) Food Business Notification**

The NSW Food Authority must be notified of the food business in accordance with Food Safety Standard 3.2.2. Notification can be made on the following website [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

**SECTION F – Prescribed Conditions**

The following are prescribed conditions of development consent pursuant to s.80A(11) of the Environmental Planning and Assessment Act 1979 and cl.98 of the Environmental Planning and Assessment Regulation 2000.

**(30) Compliance with the Building Code of Australia**

The development must be carried out in accordance with the provisions of the Building Code of Australia.

**(31) Erection of Signs**

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

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

**(32) Notification Requirements (Other)**

In relation to non-residential work, prior to the commencement of construction the Principal Certifying Authority must be informed in writing of:-

- (i) the name and contractor licence number of the licensee who has contracted to do or intends to do the work;
- (ii) the name and permit number of the owner-builder who intends to do the work, with a copy of the permit submitted; and
- (iii) the date of their intention to commence the erection of the building.

Further, if a contract is entered into for the work to be done by a different licensee or arrangement for doing the work are otherwise changed, the Principal Certifying Authority is to be immediately informed in writing of sufficient particulars for it to update its records.

**(33) Shoring and Adequacy of Adjoining Property**

If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the adjoining premises from possible damage from the excavation, and
- (b) where necessary, underpin the adjoining premises to prevent any such damage.

The above condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

#### **(34) Council Notification of Construction**

The erection of a building which is the subject of a Development Consent must not be commenced until:

- a) Detailed plans and specifications of the building have been endorsed with a construction certificate by Council or an accredited certifier.
- b) the person having the benefit of the development consent has:
  - appointed a Principal Certifying Authority (PCA), and
  - notified Council (if Council is not the PCA) *in writing* of the appointment, and
  - given at least 2 days notice to Council of their intention to commence the erection of the building. The notice may be in writing or by phone.

#### **SECTION G – Demolition Conditions**

The following conditions are imposed to ensure the demolition associated with the proposed development is carried out having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment.

Nil

#### **END CONDITIONS**

#### **Advisory Notes**

##### **(i) Worksite Safety**

It is usually the owner/applicant's responsibility to ensure that the development site is a safe working environment. This may be by the engagement of an appropriately competent principal contractor. There are various legislative and WorkCover requirements with respect to maintaining a safe work-site. Details of these requirements and legislation, as well as, guidance and advisory material, can be found on the WorkCover Website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

##### **(ii) Kid Safe NSW**

Kidsafe NSW has produced Safer Homes for Children Design and Construction Guidelines for builders, renovators and home owners. The guidelines identify common hazards for children and recommended practical design applications to improve child safety for all areas of the home. Free copies of the Guidelines are available from Council's Customer Service Centre, or contact Kidsafe on (02) 9845 0890 or their website <http://www.kidsafensw.org/homesafety/index.htm> for more information.

##### **(iii) Dial Before You Dig**

Underground pipes and cables may exist in the area. In your own interest and for safety, telephone 1100 before excavation or erection of structures. Information on the location of underground pipes and cables can also be obtained by fax on 1300 652 077 or through the following website [www.dialbeforeyoudig.com.au](http://www.dialbeforeyoudig.com.au).

**(iv) Disability Discrimination Act**

This authorisation does not imply that the proposal complies with *Disability Discrimination Act 1992*. The Proponent 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 references AS 1428.1 – Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under *The Disability Discrimination Act 1992*.

**(v) Demolition Waste**

Sorting your construction and demolition waste will save you money. For pricing and disposal options for sorted loads of tiles, bricks, timber concrete or asphalt call Waste Service NSW on 1300 651 116.

**(vi) Noise**

Council will generally enforce noise related conditions in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nqlg.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](http://www.cjc.nsw.gov.au)).
- (b) Department of Environment and Conservation NSW, Noise Policy Section web page ([www.environment.nsw.gov.au/noise](http://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](http://www.legislation.nsw.gov.au)).
- (d) Australian Acoustical Society—professional society of noise-related professionals ([www.acoustics.asn.au /index.php](http://www.acoustics.asn.au/index.php)).
- (e) Association of Australian Acoustical Consultants—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).
- (f) Department of Gaming and Racing - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).

**(This advice is added as part of MOD2019/0208 (DA61/2014))**

**(vii) Acoustic 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](http://www.acoustics.asn.au))
- (b) Association of Australian Acoustical Consultants—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au))
- (c) NSW Noise Policy for Industry – Office of Environment & Heritage ([www.environment.nsw.gov.au](http://www.environment.nsw.gov.au))

**(This advice is added as part of MOD2019/0208 (DA61/2014))**

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 19 MARCH 2020**

LPP014-20

<b>LPP Report No</b>	<b>LPP014-20</b>	<b>Development Application No</b>	<b>REV2020/0004</b>
<b>Site Address &amp; Ward Locality</b>	39 Waitara Parade Hurstville Grove Blakehurst Ward		
<b>Proposed Development</b>	Review of DA2019/0356 for Demolition works, tree removal and construction of a two storey attached dual occupancy		
<b>Owners</b>	H Kabalan and A Issaoui		
<b>Applicant</b>	A Issaoui and H Kabalan		
<b>Planner/Architect</b>	Achitect: A3 Design Studio; Planner: GPL Planning		
<b>Date Of Lodgement</b>	23/01/2020		
<b>Submissions</b>	Nine (9)		
<b>Cost of Works</b>	\$850,000.00		
<b>Local Planning Panel Criteria</b>	More than 5 objections were received to the proposal in accordance with Council delegations.		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	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, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Draft Environment State Environmental Planning Policy, Draft Remediation of Land State Environmental Planning Policy, Draft Georges River Local Environmental Plan 2020 Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013		
<b>List all documents submitted with this report for the Panel's consideration</b>	Site Plan Elevations		
<b>Report prepared by</b>	Senior Development Assessment Planner		

<b>Recommendation</b>	That the application be refused for the reasons stated at the end of this report.
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<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> 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?	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b>	



<p>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?</p>	<p><b>Not Applicable</b></p>
<p><b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p><b>Not Applicable</b></p>
<p><b>Conditions</b> Have draft conditions been provided to the applicant for comment?</p>	<p><b>No – the application is recommended for refusal. The refusal reasons will be available when the report is published.</b></p>

**Site Plan**



The site is outlined in red

**Executive Summary  
Proposal**

1. Council is in receipt of a Section 8.2 Review application relating to a proposal for demolition works, tree removal and construction of a two storey attached dual occupancy development at 39 Waitara Parade, Hurstville Grove.

**Site and Locality**

2. The development site is located on the western side of Waitara Parade and is legally described as Lot 9 in DP1604.
3. The site has an area of 673.5sqm and is occupied by a single storey dwelling and a detached single garage and shed. The site slopes from the rear boundary to the street, with a gentle fall of 1m from the rear boundary to the front boundary.
4. There are two (2) trees located in the rear yard of the site. Both are English Oak trees (*Quercus robur*) and have been identified by Council's Consulting Arborist as being healthy, significant trees.
5. The neighbouring properties contain two storey dwelling houses.

### Zoning and Permissibility

6. The subject site is zoned R2 Low Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves demolition works, tree removal and construction of a two storey attached dual occupancy, which is permissible with consent.

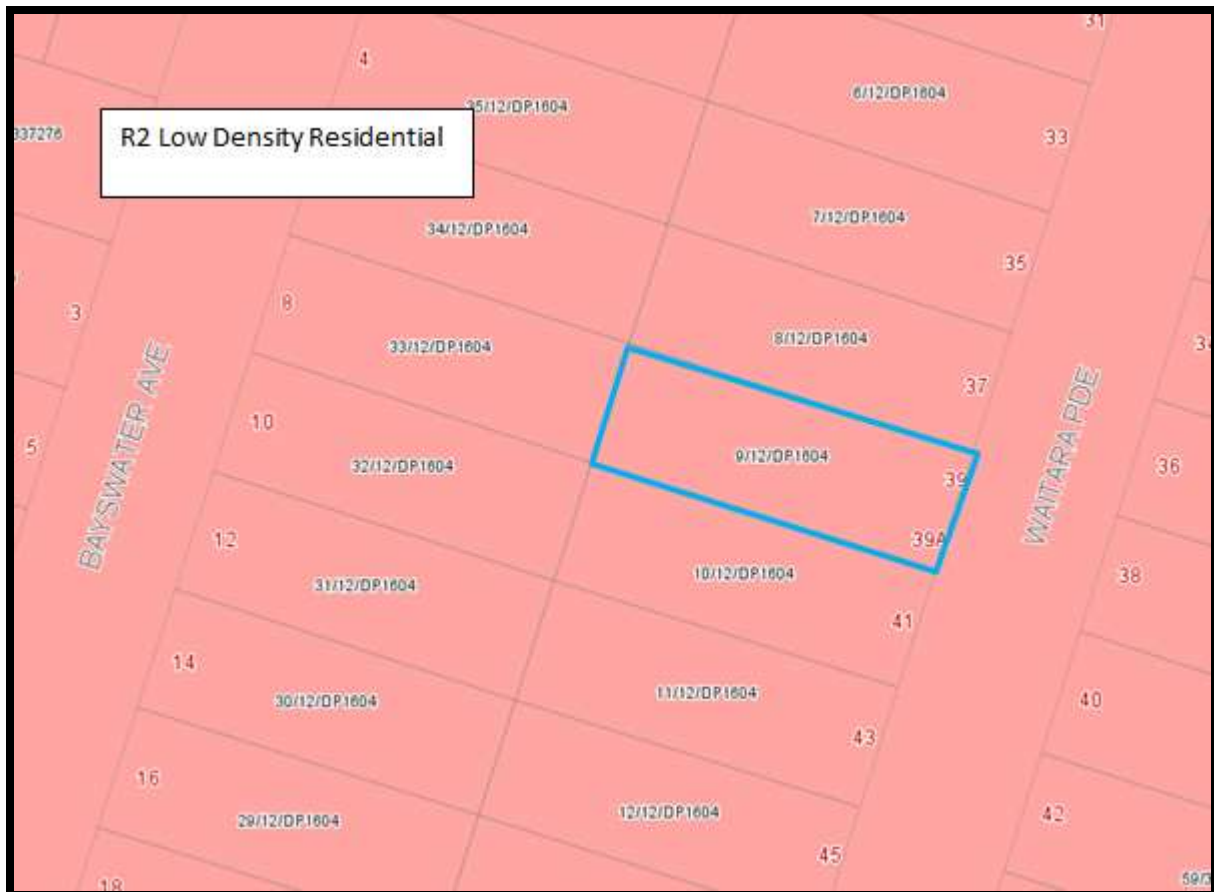


Figure 1 - Zoning map with the allotment outlined in blue

### Submissions

7. The application was placed on neighbour notification between 3 February 2020 and 17 February 2020. Nine (9) submissions were received.

### Referrals

8. The application was referred to Council's Development Engineer, who has not raised any issues with the proposal and could conditionally support the development if the application was recommended for approval.

9. Council's Consulting Arborist does not support the proposal as it encroaches the structural root zone of one of the Oak trees, which is required to be retained, to the extent to which the health and survival of the tree will be compromised.

### **Reasons for Referral to the Local Planning Panel**

10. The application is referred to the Georges River Local Planning Panel (LPP) as more than five (5) unique objections have been received for the application in accordance with Council delegations.

### **Conclusions**

11. REV2020/0004 (the current application) was lodged on 23 January 2020 and seeks consent for demolition works, tree removal and construction of a two (2) storey attached dual occupancy and associated works.
12. The Oak tree in the middle of the rear yard has been identified by Council's Consulting Arborist as healthy, significant and worthy of retention, however the proposal will encroach the structural root zone of the tree to the extent to which its health and survival will be compromised.
13. The excessively large master bedroom street-facing balconies, together with the dark colour of the first floor, results in an unacceptable built form that is unnecessarily bulky, dominates the streetscape and has an adverse visual impact on the streetscape and from neighbouring dwellings.
14. The application has been assessed having regard to the Matters for Consideration under Section 8.2 and Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, the Kogarah Local Environmental Plan (LEP) 2012 and Kogarah Development Control Plan (DCP) 2013. The proposal has not adequately addressed the reasons for refusal of the original Development Application in relation to impacts on the significant tree on the site and visual privacy, and is therefore recommended for refusal.

### **Report in Full Proposal**

15. Council is in receipt of a Section 8.2 Review application for demolition works, tree removal and construction of a two (2) storey attached dual occupancy and associated works at 39 Waitara Parade, Hurstville Grove.
16. Each dwelling within the proposed dual occupancy is described as follows:
- Ground floor - single garage, dwelling entry, side courtyard, bathroom, laundry, walk in pantry, kitchen, meals and living room, covered alfresco area with outdoor kitchen.
  - First Floor - four (4) bedrooms, the master with an ensuite and street facing balcony and a bathroom.
17. The proposal seeks consent to remove one (1) tree and retain one (1) tree, being the tree in the rear yard together with retaining the street tree on Waitara Parade. The proposed site plan is provided in Figure 2 and a street perspective in Figure 3.

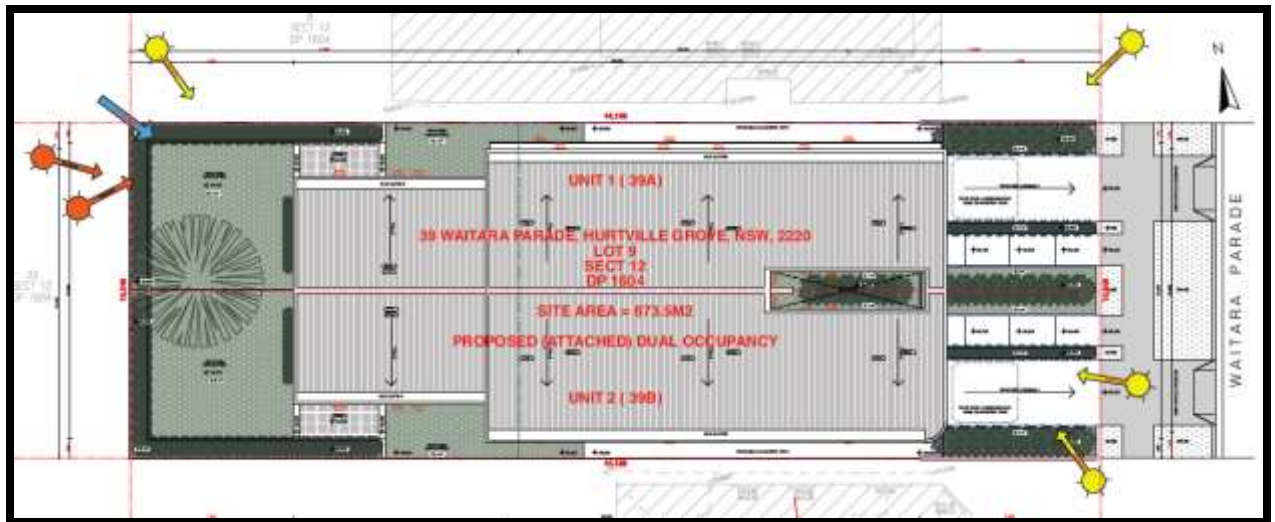


Figure 2 – Proposed site plan



Figure 3 – Street perspective

### The Site and Locality

18. The development site is located on the western side of Waitara Parade and is legally described as Lot 9 in DP1604.
19. The site has an area of 673.5sqm and is occupied by a single storey dwelling and a detached single garage and shed. The site slopes from the rear boundary to the street, with a gentle fall of 1m from the rear boundary to the front boundary (Figure 4).



**Figure 4** – Existing dwelling on the site

- 20. There are two (2) trees located in the rear yard of the site. Both are English Oak trees (*Quercus robur*) and have been identified as being healthy, significant trees.
- 21. The development on the neighbouring properties consists of two storey dwelling houses (Figures 5 and 6).



**Figure 5** – Dwelling at 37 Waitara Parade (north of the subject site)



Figure 6 – Dwelling at 41 Waitara Parade (south of the subject site)

LPP014-20

### Background

22. DA2019/0356 was lodged with Council on 15 August 2019 and sought consent for demolition works, tree removal and construction of a two (2) storey attached dual occupancy and swimming pools on the subject site.
23. The DA sought approval to remove two trees (English Oak trees).
24. On 22 August 2019 the applicant was requested to amend the design to:
  - Comply with the 60% lot depth control for the first floor;
  - Provide more accurate shadow diagrams to include elevational plans;
  - Provide a 1.2m side setback for walls having a height greater than 3.5m;
  - Set the garages behind the front building line; and
  - Increase the area of deep soil by relocating and redesigning the proposed pools.
25. The applicant was advised that the Officer had not yet received comments from Council's Consulting Arborist at the time of sending the letter.
26. The applicant responded to this request on 29 August 2019 as follows:
  - The first floor extending to 65% the depth of the lot;
  - Updated shadow diagrams;
  - Amended the setbacks to 1.2m where required;
  - No change made to the garage location as the applicant states the northern wall extends past the garage door; and
  - No change to pools or landscaping in the rear yard; additional landscaping provided along the inter allotment boundary.

27. Council's Consulting Arborist advised on 24 October 2019 that the two Oak trees were a significant species and support for their removal was not granted.
28. The application was refused under delegated authority on 6 November 2019.
29. The reasons for refusal were:
  1. *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 the following sections of Kogarah Development Control Plan 2013 (KDCP2013):*
    - (a) *1.2.1 Floor Space Requirements - Second Level*
    - (b) *1.5.1 Visual Privacy*
  2. *Impacts on the Environment - Pursuant to Section 4.15 (1)(b), the proposed development is likely to have an adverse impact on the following aspects of the environment:*
    - (a) *Natural environment - An adverse impact would result from the proposed development on the natural environment. The proposed tree removal is not supported. Those trees shall be protected to preserve the amenity of the area, including biodiversity values. A better design could be achieved to avoid the tree removal.*
    - (b) *The development does not comply with the second level controls, and as such does not meet the objectives underpinning the dwelling controls.*
      - *The overshadowing impact to the adjoining property could be reduced with a better and compliant design.*
      - *The extent of the second storey projecting further than 60% of the length of the allotment is unacceptable and will adversely impact on neighbouring properties through excessive visual bulk and scale. These adverse impacts could also be reduced with a better and compliant design.*
  3. *Suitability of Site - Pursuant to 4.15(1)(c), the site is not considered suitable for the proposed development for the following reasons:*
    - *The application has failed to provide a development that is suitable for the site having regard to the vegetation on the subject site.*
  4. *Public interest - Pursuant to Section 4.15 (1)(e), in the circumstances of the case, the proposed development is not in the public interest.*

### **Division 8.2 Reviews**

30. Division 8.2 of the Environmental Planning and Assessment Act requires the following provisions (section 8.3) to be considered in the assessment of an application to review a determination:
  - (1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*
  - (2) *A determination or decision cannot be reviewed under this Division:*

- (a) after the period within which any appeal may be made to the Court has expired if no appeal was made, or
- (b) after the Court has disposed of an appeal against the determination or decision.
- (3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

31. The statutory considerations pursuant to Division 8.2 Reviews have been met. The application has been lodged within an appropriate timeframe and is considered to be substantially the same as the original application (DA2019/0356).

### DISCUSSION ON REASONS FOR REFUSAL AND THE REVIEW APPLICATION

32. REV2020/0004 (the current application) was lodged on 23 January 2020. The application seeks consent for demolition works, tree removal and construction of a two (2) storey attached dual occupancy and associated works. The proposed swimming pools have been deleted from the proposal. The Oak tree in the middle of the rear yard is proposed to be retained, however as advised by Council's Consulting Arborist, the proposal will encroach the structural root zone of the tree to the extent that its health and survival will be compromised.
33. The written statement submitted by GPL Planning states:
- "In order to address the reasons of refusal, the accompanying plans have been amended by the following:*
- a reduction in the first-floor space so that it complies with the 60% length of the allotment rule specified in Part 1.2.1 of the DCP (Control (7));
  - the rear facing first floor balconies have been removed which inhibits any potential cross-viewing or overlooking;
  - the plunge pools have been removed; and
  - one of the 2 x trees identified for removal has been retained."
34. An assessment of how the review application has addressed the reasons for refusal is provided in the following table.

Reason for refusal	Review - applicant's comments	Comment
<b>1. 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 the following sections of Kogarah Development Control Plan 2013 (KDCP2013):</b>		
<b>(a) 1.2.1 Floor Space Requirements - Second Level</b>	<ul style="list-style-type: none"> <li>• a reduction in the first-floor space so that it complies with the 60% length of the allotment rule</li> </ul>	<p>60% of the depth of the lot is: 44.196m x 0.6m = 27.968m.</p> <p>The first floor (measured to the edge of the planter box) extends to 28.04m (exceeds the 60% lot depth by 0.072m).</p>



		<p>This planter serves no privacy or amenity purpose and extends the length of the first floor unnecessarily. It is also unclear how it would be serviced.</p> <p>If the application were to be approved a condition of consent would be imposed for the planter boxes to be deleted.</p>
<b>(b) 1.5.1 Visual Privacy</b>	<ul style="list-style-type: none"> <li>the rear facing first floor balconies have been removed which inhibits any potential cross-viewing or overlooking</li> </ul>	The rear facing balconies have been deleted.
<p><b>2. Impacts on the Environment - Pursuant to Section 4.15 (1)(b), the proposed development is likely to have an adverse impact on the following aspects of the environment:</b></p>		
<p><b>(a) Natural environment - An adverse impact would result from the proposed development on the natural environment. The proposed tree removal is not supported. Those trees shall be protected to preserve the amenity of the area, including biodiversity values. A better design could be achieved to avoid the tree removal.</b></p>	<ul style="list-style-type: none"> <li>one of the 2 x trees identified for removal has been retained</li> </ul>	<p>Council agreed during the assessment of DA2019/0356 that T2 could be removed as it was located within the building footprint and the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) significantly impact the footprint of the proposal and jeopardises the development as a whole. T1 was required to be retained. See Figure below.</p> <p>This application proposes to retain T1 and seeks to fence around the tree as it is located in the middle of the two rear yards where the dividing fence is located.</p> <p>Council's Consulting Arborist has reviewed the proposal and advised the ground floor</p>

encroaches the structural root zone of the tree by 18% which cannot be supported.

This forms one of the reasons for refusal.

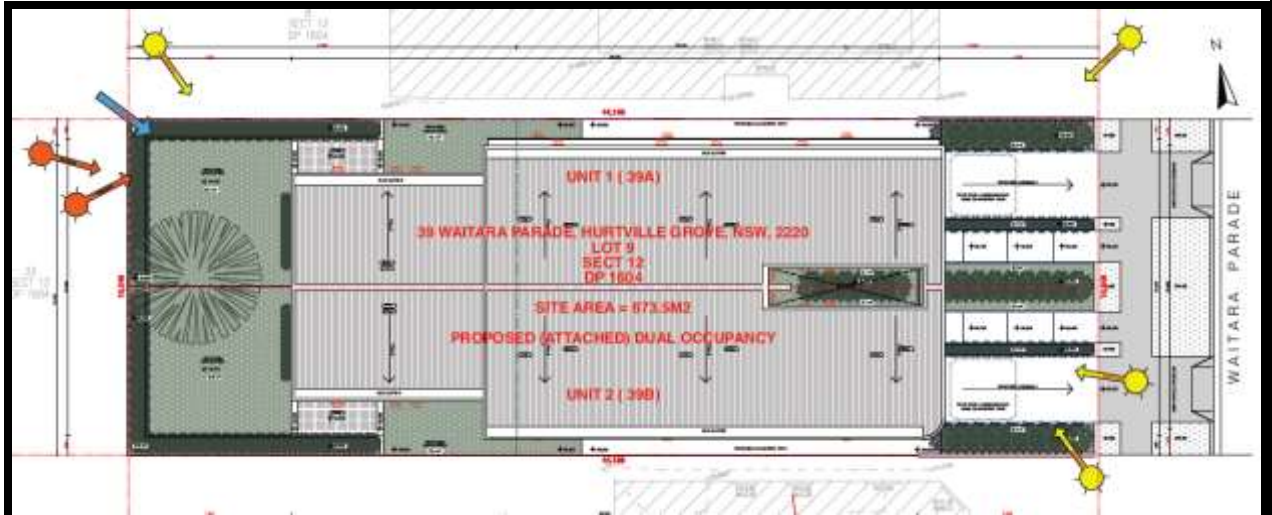


Figure 6 – Site plan showing T1 to be retained and location of ground floor

**(b) The development does not comply with the second level controls, and as such does not meet the objectives underpinning the dwelling controls.**

- **The overshadowing impact to the adjoining property could be reduced with a better and compliant design.**
- **The extent of the second storey projecting further than 60% of the length of the allotment is unacceptable and will adversely impact on neighbouring**

- *a reduction in the first floor space so that it complies with the 60% length of the allotment rule*

The proposal is compliant with the solar access controls and results in the adjoining properties receiving a minimum of 3 hours sunlight during midwinter to at least 50% of the private open space or windows to main living areas.

The first floor (measured to the edge of the planter box) extends to 28.04m (exceeds the 60% lot depth by 0.072m).

This planter serves no privacy or amenity

<p><b><i>properties through excessive visual bulk and scale. These adverse impacts could also be reduced with a better and compliant design.</i></b></p>		<p>purpose and extends the length of the first floor unnecessarily.</p> <p>If the application were to be approved a condition of consent would be imposed for the planter boxes to be deleted.</p>
<p><b>3. Suitability of Site - Pursuant to 4.15(1)(c), the site is not considered suitable for the proposed development for the following reasons:</b></p>		
<p><b><i>The application has failed to provide a development that is suitable for the site having regard to the vegetation on the subject site.</i></b></p>	<ul style="list-style-type: none"> <li><i>one of the 2 x trees identified for removal has been retained</i></li> </ul>	<p>Council Officers agreed during the assessment of DA2019/0356 that T2 could be removed as it was located within the building footprint and the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) significantly impact the footprint of the proposal and jeopardise the development as a whole. T1 was required to be retained.</p> <p>This application proposes to retain T1 and seeks to fence around the tree as is it located in the middle of the two rear yards where the dividing fence is located. See Figure 6.</p> <p>Council’s Consulting Arborist has reviewed the proposal and advised the ground floor encroaches the structural root zone of the tree to a degree which cannot be supported as the health and survival of the tree is unlikely.</p> <p>This forms one of the reasons for refusal.</p>
<p><b>4. Public interest - Pursuant to Section 4.15 (1)(e), in the circumstances of the case, the proposed development is not in the public interest.</b></p>		
	<p><i>In short, the amended</i></p>	<p>The proposal complies</p>

	<p><i>proposal is now entirely compliant with all of the prescriptive requirements of the LEP and DCP and fulfils all of the relevant objectives.</i></p> <p><i>In addition to the above, the amended proposal is considered to be compatible with existing surrounding development and will provide a balance between protecting both the residential amenity and the natural environment. It will also provide appropriate amenity to the future occupants.</i></p> <p><i>The proposed development will broaden type of housing accommodation available in the locality and will have minimal adverse impacts on the natural environment.</i></p> <p><i>Accordingly, the proposed development is considered to be in the public interest.</i></p>	<p>with the Kogarah Local Environmental Plan standards.</p> <p>The proposal does not comply with the visual privacy controls for balconies in relation to width and setbacks from side boundaries (further discussion in this report in the DCP section).</p> <p>The proposal is not compatible with the natural environment and will result in the survival of the Oak tree required to be retained (T1) being compromised due to encroachment of the ground floor into the structural root zone.</p> <p>The proposal will have an adverse impact on the health of the Oak tree required to be retained.</p> <p>The proposal is not in the public interest for the reasons discussed above and in the body of this report.</p>
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**Discussion**

35. The proposal submitted with this Review application has failed to adequately address the reasons for refusal of DA2019/0356 as follows:

- 60% lot depth – while it is acknowledged that the proposal exceeds the numerical depth by fails to comply by 0.072m, compliance could be achieved by the removal of the planter boxes as the serve no purpose for the development.
- Tree impacts – the proposal seeks to retain the English Oak tree in the middle of the rear yard (T1) (see Figure 6) and will install the dividing fence around the tree it to

separate the proposed areas of private open space. The ground floor however encroaches the structural root zone of the tree by 18%, which, as advised by Council's Consulting Arborist, will compromise the health and survival of the tree and therefore is not supported.

- Floor space – the applicant has incorrectly calculated the floor space of the proposal by excluding the area of the side courtyards. Each courtyard is enclosed by three walls and the first floor above, and should be included in the floor space calculations. When included, this additional floor area does not result in a numerical non-compliance with the maximum FSR for the site, however the side courtyards will offer no amenity to the dwelling (both being enclosed on three sides and roofed, and one located on the southern side of the dwelling), and are considered to unnecessarily extend the length of the dwelling.

Design changes to delete the courtyards would require structural and internal layout changes of the proposal, triggering changes to window locations requiring re-notification of the application to neighbours in accordance with Council's notification policy.

Amended plans were not requested as part of this application for the following reasons:

- The statutory timeframes within which this application is required to be assessed and determined would not be met if amended plans were requested and re-notification undertaken;
- The delegated authority for its determination rests with the Local Planning Panel due to the number of objections to the application (Council Delegations), and the application must be considered at the meeting of the Panel on 7 April 2020 in order to meet statutory determination timeframes; and
- The required changes to the design of the proposal should form part of new Development Application to Council.

### State Environmental Planning Policies

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

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
State Environmental Planning Policy (Infrastructure) 2007	Yes

### Deemed State Environmental Planning Policy – Georges River Catchment

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

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

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

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

39. The aim of the Infrastructure SEPP is to facilitate the effective delivery of infrastructure across the State.
40. The DA was referred to Ausgrid on 30 January 2020 in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid provided a response on 24 February 2020 and did not raise any objection to the proposal.
41. The provisions and requirements of the Infrastructure SEPP have been addressed and satisfied by the proposal.

**State Environmental Planning Policy No 55 - Remediation of Land**

42. 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.
43. 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.
44. The site has a history of residential uses and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regard to site contamination.

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

45. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
46. 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).
47. 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.
48. In relation to addressing the reasons for refusal of DA2019/0356, the second reason for refusal was:
- “2. Impacts on the Environment - Pursuant to Section 4.15 (1)(b), the proposed development is likely to have an adverse impact on the following aspects of the environment:*
- a. *Natural environment - An adverse impact would result from the proposed development on the natural environment. The proposed tree removal is not*

*supported. Those trees shall be protected to preserve the amenity of the area, including biodiversity values. A better design could be achieved to avoid the tree removal.*

49. The amended design of the proposed dual occupancy proposes the retention of one Oak tree (T1) and removal of one Oak tree (T2) see Figure 6. In order to retain the tree (T1) the consulting arborist has recommended a gap in the dividing fence that separates the private open spaces of each proposed dwelling.
50. Council's Consulting Arborist has undertaken an assessment of the proposal and cannot support the proposal as the ground floor will encroach into the structural root zone of the Oak tree by 18%, compromising its health and survival. The design submitted with this Review application does not adequately address the reason for refusal of the DA in relation to tree impacts, and this forms one of the reasons for refusal.

### **Draft State Environmental Planning Policies**

#### **Draft Environment SEPP**

51. 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.
52. The proposal is consistent with the provisions of this Draft Instrument given there is no significant vegetation impacted by the proposed development.

#### **Draft Remediation of Land SEPP**

53. 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.
54. 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.
55. 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.
56. The subject site has a history of residential use and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regards to site contamination.

## ENVIRONMENTAL PLANNING POLICIES

### Kogarah Local Environmental Plan 2012

57. The provisions of this local environmental plan are relevant to the proposal. The extent to which the proposal complies with the relevant standards of Kogarah Local Environmental Plan 2012 (KLEP2012) is outlined in the table below.

Clauses	Standard	Proposed	Complies
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	7.7m	Yes
4.4 – Floor Space Ratio	0.55:1 as identified on Floor Space Ratio Map	Applicants calculation (excludes side courtyards): 339.8sqm (0.505:1)  Calculation including side courtyards: 362.426sqm (0.538:1)	Incorrect calculation  Yes
4.4A - Exceptions to floor space ratio for residential accommodation in Zone R2	Site area 650sqm to 800sqm: (site area – 650) x 0.3 + 357.5 = 364.55sqm (0.54:1)	Applicants calculation (excludes side courtyards): 339.8sqm (0.505:1)  Calculation including side courtyards: 362.426sqm (0.538:1)	Incorrect calculation  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.	Minimal excavation is proposed commensurate with what would be expected for a development of this type and scale.	Yes

### Draft Georges River Local Environmental Plan 2020

58. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.

59. In this regard, the provisions have no determining weight as a result of proposed operation of Clause “1.8A Savings provisions relating to development applications” of the Draft Plan which provides “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

## DEVELOPMENT CONTROL PLANS

### Kogarah Development Control Plan 2013

60. The provisions of Chapter C1 of Kogarah Development Control Plan 2013 are relevant to the proposal. An assessment of the proposal against the key controls in the development control plan is tabled as follows.



Applicable DCP Controls	Standards	Proposal	Complies
1.2.1 Floor Space Requirements	<p>(5) Blank walls and flat facades should be avoided. Walls longer than 10m should be articulated by a minimum 300mm projection or indentation in the façade.</p> <p>(7) Where proposed development includes a two (2) residential level element, then the second level should not extend beyond 60% of the depth of the allotment measured from the street boundary. Where side boundaries are of varying length, the second level is limited to a line across the block between the points on both boundaries.</p>	<p>All walls include suitable fenestration and articulation.</p> <p>The first floor (measured to the edge of the planter box) extends to 28.04m (exceeds the 60% lot depth by 0.072m).</p>	<p>Yes</p> <p>No – refer to comments below</p>
<p><u>Comments on depth of the first floor:</u> 60% of the depth of the lot is: 44.196m x 0.6m = 27.968m.</p> <p>The first floor (measured to the edge of the planter box) extends to 28.04m, which exceeds the 60% lot depth by 0.072m.</p> <p>This planter serves no privacy or amenity purpose and extends the length of the first floor unnecessarily.</p> <p>If the application were to be approved a condition of consent would be imposed for the planter boxes to be deleted, and the resultant built form would be compliant with the 60% depth control.</p>			
1.2.2 Building Heights	<p>(1) 7.2m to the underside of the upper ceiling 7.8m to the top of the parapet</p> <p>(2) The maximum number of residential levels is two (2), except where the site has a</p>	<p>Max. 6.7m to ceiling Max. 7.8m to parapet</p> <p>Two levels proposed.</p>	<p>Yes</p> <p>Yes</p>

	slope exceeding 1:8 (12.5%), where the maximum number of residential levels is three (3).		
<b>1.2.3 Rhythm of the Built Elements in the Streetscape</b>	(1) The primary building façade should not exceed 40% of the overall width of the total frontage (Figure 6).	The façade is not separated into a primary and secondary façade.	No – refer to comments in the row below.
	(2) The secondary building façade should be set back a minimum of 1.5m from the primary building façade.  (3) Where the dominant built form in the streetscape provides for a pitched hip or gable ended presentation to the street, the new buildings and/or additions should reflect that roof form.	A flat roof is proposed which is consistent with newer development in the area.	Yes
<p><u>Comments on streetscape impacts:</u> Rather than a traditional front façade, a more modern design is proposed in keeping with recent construction in the area. The front façade of the proposal is articulated through variations in the setbacks to the entry doors and garage doors and the street-facing balconies, however the balconies are unnecessarily large and together with the dark colour proposed for the first floor result in the dwellings appearing as bulky and dominating the streetscape.</p> <p>The depth of the balconies and the dark colours of the first floor result in the street-facing glazing being difficult to be seen from the street, which has an impact on the streetscape in terms of the bulk of the dwellings being increased due to the lack of visible fenestration, and together with the solid balustrades limits the opportunity for casual surveillance of the street, particularly as there are no windows to active rooms facing the street.</p> <p>The recessed front door to each dwelling behind the garage and first floor above increases the dominance of the garage doors and balconies, which is out of character with existing development in the immediate locality.</p>			
<b>1.2.4.2 Front Setbacks</b>	Primary frontage setback: Minimum 5.5m	7.25m to the edge of the first floor balconies.  8.224m to the garage doors.  11.46m to the front doors.	Yes
<b>1.2.4.3 Side and Rear</b>	Rear - Buildings are to have a minimum rear	Rear setback – 7.44m	Yes

Setbacks	<p>setback of 15% of the average site length (6.629m), or 6m, whichever is greater.</p> <p>Side - For buildings having a wall height of greater than 3.5m, the minimum side boundary setback is 1200mm</p>	<p>Side setback – Ground – 0.9m First – 1.2m</p>	Yes
1.2.5 Fenestration and External Materials	<p>(1) New buildings and alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.</p> <p>(2) Garage doors should not dominate the street front elevation.</p> <p>(3) The roof should be similar to the angle of pitch, materials and colour of roofs in the streetscape.</p> <p>(4) The colours of garages, window frames, and balustrading on main facades and elevations are to be integrated with the external design of the building.</p> <p>(5) Glazing shall be limited to a maximum 35% of the total area of the overall street front façade. This includes both primary and secondary façade bays.</p> <p>(6) Where garaging is in the front façade it</p>	<p>The proposed dark colour of the first floor is unacceptable as it dominates the streetscape and increases the visual bulk of the building.</p> <p>One single garage door per dwelling is proposed.</p> <p>Flat roof is proposed which is consistent with more recent construction in the area.</p> <p>The proposed dark colour of the first floor is unacceptable as it dominates the streetscape and increases the visual bulk of the building.</p> <p>Less than 35% of the front façade is glazed.</p> <p>One single garage door is proposed per dwelling, being</p>	<p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	should be limited to a maximum of two garage bays, with separate garage door openings of a maximum width of 3m.	3m wide.	
<b>1.2.6</b> Street edge	(1) New developments should provide front fencing that complements fencing within the streetscape.  (2) Fencing is to be consistent with the requirements of Section 4.2.  (3) Existing vegetation in the front building line setback or on the street verge that contributes to the character of the streetscape should be preserved.  (4) The driveway location should not result in the removal of any street trees or removal of substantial trees on the site.	1.2m high rendered masonry fence is proposed.  1.2m high rendered masonry fence is proposed.  No street trees or significant trees in the front setback are required to be removed.  No street trees or significant trees in the front setback are required to be removed.	Yes  No – refer to comments in the row below  Yes  Yes
<p><u>Comments on proposed fence:</u> The plans submitted with the application propose a 1.2m high rendered masonry front fence and side fence between the street boundary and the building line of the proposed dwellings. The proposed side fence appears to extend past the existing boundary fence shared with 41 Waitara Parade, which would require negotiations with the property owners for the construction of a new fence. If the application were to be approved, a condition of consent would be recommended seeking design changes to the proposed masonry fence so that it did not extend beyond the existing side boundary fence.</p>			
<b>1.3</b> Open Space	(1) 15% of the site area must be deep soil landscaped area.  (2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.  (3) Garages should be	29% of the site is deep soil landscaping.  Private open spaces are directly adjacent to the living areas.	Yes  Yes

	accessed from a rear lane where this is available.		
<b>1.4 Vehicular access, parking and circulation</b>	(1) Car parking is to be provided in accordance with the requirements in Section B4.  KDCP B4: Dual occupancy: 1.5 spaces/dwelling	2 spaces per dwelling.	Yes
	(2) On corner sites with two street frontages vehicular access should be provided to the secondary frontage.	N/A	N/A
	(4) Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	N/A	N/A
	(5) Garaging should be setback behind the primary façade.	Separate crossings are proposed to retain the existing street tree.	Yes
	(6) The maximum driveway width between the street boundary and the primary building façade is 4m.	The garages are setback behind the façade of the first floor.	Yes
	(7) Where the dominant provision of garaging within the streetscape is provided to the rear or side of developments, new developments and additions to existing development should provide for a side driveway or garaging behind the main street front elevation of the building.	3m per driveway.	Yes
	(8) Basement parking is	N/A	N/A

	<p>not encouraged on flat sites. Garaging should be provided at ground level unless the slope of the site exceeds 1:8 (12.5%) in which case a basement or suspended garage may be acceptable.</p>	<p>Not proposed</p>	<p>N/A</p>
	<p>(9) Where a basement garage is proposed, the maximum height of the basement above ground level (existing) is 1m measured to the underside of the basement ceiling. Where the basement exceeds 1m above ground level (existing), the basement will be considered to be a floor. Note: Floor means the space within a building which is situated between one floor level and the floor level next above or if there is no floor above, the ceiling or roof above.</p>	<p>Not proposed</p>	<p>N/A</p>
	<p>(10) For basement garages the maximum amount of excavation is to be limited to required car parking and any manoeuvring areas, access stairwells, lift wells and storage areas.</p>	<p>Complies</p>	<p>Yes</p>
	<p>(11) Storage areas within basements or garages must not exceed 10sqm per dwelling (with a minimum width of 500mm).</p>	<p>Complies</p>	<p>Yes</p>
	<p>(12) Car parking layout and vehicular access requirements and</p>		

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	<p>design are to be in accordance with the Australian Standards, in particular AS 2890.1-2004.</p> <p>(13) Dual occupancy development must have only one single fronted garage per dwelling. Where garaging is required for 2 cars, this must be tandem parking.</p>	<p>One single garage door proposed per dwelling.</p>	<p>Yes</p>
<p><b>1.5.1 Visual Privacy</b></p>	<p>(1) Windows from active rooms are to be offset between adjacent dwellings so as to avoid direct overlooking onto neighbouring windows.</p> <p>(2) Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m from any adjoining property boundary.</p> <p>(3) The area of balconies or terraces greater than 1.5m above ground level is limited to a cumulative total of 40sqm per dwelling.</p> <p>(4) Council may consider a variation to the above requirements where it is considered that the terrace or balcony will not result in a loss of privacy to</p>	<p>Living area windows are located on the ground floor and are oriented to the rear yards, not to the side boundaries. The first floor, side-facing windows are to non-active rooms and have sill heights of 1.5m.</p> <p>Each dwelling has a street facing balcony (each 3.5m wide), setback 1.6m from the side boundary.</p> <p>The area of each first floor balcony is 13.9sqm (No.39A) and 14.9sqm (No. 39B).</p> <p>No variation proposed.</p>	<p>Yes</p> <p>No – refer to comments in the row below.</p> <p>Yes</p> <p>N/A</p>

	<p>neighbouring properties.</p> <p>(5) For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties.</p>	<p>The proposed first floor balcony of Unit 39B (the southern dwelling), will have direct views into a ground floor window of the adjoining property at 41 Waitara Parade.</p>	<p>No – refer to comments in the row below.</p>
<p><u>Comments on the street facing balconies:</u></p> <p>The controls for visual privacy seek to ensure windows and balconies at upper levels do not adversely impact on the privacy of adjoining neighbours by controlling the size and setbacks of balconies, and the placement of windows and balconies in relation to windows and areas of private open space of neighbouring properties.</p> <p>Each proposed balcony on the first floor must be setback 3m from the side boundary, be a maximum 2.5m in width and not have views into adjoining windows or balconies.</p> <p>Each dwelling has a street facing balcony (each 3.5m wide), setback 1.2m (northern side) and 1.6m from the southern side boundary. The northern dwelling has a full height wall on the northern edge of the balcony and the southern dwelling has a planter box along the southern edge of the balcony. The southern balcony overlooks a window in the northern elevation of the adjoining dwelling at 41 Waitara Parade.</p>			
<p><b>1.6 Solar Access</b></p>	<p>(1) At least 50% of the primary private open space of the proposed development should have access to a minimum of four hours of sunlight between 9am–3pm on 21 June.</p> <p>(2) Where private open space is proposed on the southern side of the building the distance from the southern boundary of the open space to the nearest wall to the north must be a minimum of 3m + h, where h is the height of the wall.</p> <p>(3) Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing</p>	<p>Each area of private open space will receive at least 4 hours during midwinter.</p> <p>Private open space is located to the west of the dwellings.</p> <p>Adjoining properties will receive sunlight to more than 50% of the private open space area for greater than 3 hours.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p>



	primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on 21 June.		
<b>2.1 Dual Occupancies</b>	Minimum frontage: 18m  Minimum site area: 850sqm	15.24m  673.5sqm	NA – Interim DCP permits 15m (see following section of this report) NA – LEP permits a site area of 650sqm.
<b>4.2.3 Retaining walls</b>	(1) Retaining walls over 600mm in height must be designed by a suitably qualified structural engineer.	Conditions would be imposed directing the construction of all retaining walls.	Condition if approved.

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### Georges River Development Control Plan 2020 (Interim Policy)

61. The Interim Policy is a supplementary document, meaning that current DCP controls continue to apply if a particular control is not specified in the Interim Policy, or if it is still considered best practice. All operative DCPs still legally apply. Whilst the Interim Policy has no statutory recognition in the assessment of a Development Applications pursuant to the Environmental Planning and Assessment Act 1979, the policy will be used as a guide as it is an endorsed position of the Council.
62. In relation to dual occupancy development, the Interim Policy states the minimum site width for an attached dual occupancy is 15m, with which the site complies.
63. In addition, in *Picciau v Georges River Council [2019] NSWLEC 1114*, Commissioner Dickson found that a flexible approach to the application of the lot width performance criteria was acceptable in the case (a proposal for a dual occupancy development on a 12m wide site) as the width of the site at the front façade of the dwelling(s) was 15m, and the proposal met the zone objectives and did not result in any unreasonable adverse impacts on the amenity of neighbouring properties.

### DEVELOPER CONTRIBUTIONS

64. The proposed development, if approved, would require the payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979. If the development was to be approved a condition outlining the required contributions will be imposed.

### IMPACTS

#### ***Natural Environment***

65. The proposal is likely to result in adverse impacts to the natural environment with respect to the existing tree in the middle of the rear yard of the site, which has been identified as a healthy significant tree. The ground floor encroaches the structural root zone of the significant Oak tree in the middle of the rear yard and cannot be supported. The proposal

has been reviewed by Council's Consultant Arborist and is deemed unacceptable for reasons discussed in this report.

### **Built Environment**

66. The proposal complies with the height of buildings and floor space ratio standards of the KLEP 2012, however the first floor balconies exceed the maximum width and encroach the minimum side setback controls and cannot be supported. The proposal is considered to be an inappropriate response to the context of the site and is not supported.

### **Social Impact**

67. No adverse social impacts have been identified as part of the assessment. The additional dwelling, should it be approved, will assist with providing additional housing in the area. The construction of a dual occupancy on the site is consistent with the residential zoning of the land.

### **Economic Impact**

68. There is no apparent adverse economic impact that is likely to result within the locality in relation to the construction of an additional dwelling.

### **Suitability of the site**

69. The site is zoned R2 Low Density Residential. The proposal is a permissible form of development in this zone. However the site is unsuitable for the dual occupancy in its current form due to the unacceptable impact on the existing tree in the rear yard of the site and the adverse visual impacts on neighbouring properties and the streetscape as a result of the depth, width, colour and lack of visible glazing of the proposed first floor balconies.

## **SUBMISSIONS**

70. The application was notified between 3 February 2020 and 17 February 2020 in accordance with the provisions within the Kogarah DCP 2013. In response, nine (9) submissions were received during or after the notification period. A response to the issues raised in the submissions is provided below.

### *Tree removal*

71. Comment: The ground floor of the proposed development encroaches the structural root zone of the Oak tree in the middle of the rear yard (which will compromise the survival of the tree), which is not supported by Council's Consulting Arborist. This forms one of the reasons for removal.

### *Bulk, scale, FSR and height of the proposal*

72. Comment: The proposal complies with the maximum height and FSR standards of the Kogarah Local Environmental Plan and wall height and setback controls in the Development Control Plan. Rather than a traditional front façade, a more modern design is proposed in keeping recent construction in the area, however the street-facing balconies are unnecessarily large and together with the dark colour proposed for the first floor results in the dwellings appearing as bulky and dominating the streetscape.

### *Privacy impacts*

73. Comment: The proposal is considered a better response to the surrounding properties in relation to visual privacy with the deletion of the rear-facing first floor balconies proposed

in DA2019/0356. However the design proposed in this application has relocated the first floor balconies to the front of each dwelling which does not comply with the required width and setback controls for first floor balconies and will result in adverse privacy impacts for the southern neighbour. This forms one of the reasons for refusal of the application.

*Overshadowing impacts*

74. Comment: The proposal meets the solar access controls of the Kogarah Development Control Plan 2013, which requires new development to ensure that adjoining areas of private open space or main living area windows receive a minimum of 3 hours sunlight during midwinter.

*60% depth compliance*

75. Comment: The proposal exceeds the maximum 60% lot depth by 0.072m measured to the edge of the proposed planter boxes. The application is recommended for refusal, however if it were to be approved a condition of consent would be recommended that the planter boxes be deleted to ensure full compliance with the control.

*Lack of open space and landscaping*

76. Comment: The proposal meets the planning controls for minimum areas of private open space and landscaped areas.

*Lack of parking*

77. Comment: The proposal meets the planning controls for car parking. Kogarah DCP 2013 requires dual occupancies to provide 1.5 spaces per dwelling. The proposal provides one single garage and one driveway parking space per dwelling.

*Non-compliant side setbacks*

78. Comment: The ground floor walls are setback the required 0.9m and the first floor walls are setback the required 1.2m.

*Parapet overhang and overshadowing impact*

79. Comment: The parapet roof may overhang the wall below; similar to the way the eave of a pitched roof does, as long as it is setback a minimum 450mm from the side boundary. In relation to the shadow cast by the building, it is noted that the overall wall height of the building complies with the DCP control of 7.8m for parapet roofs and the shadow cast by the proposal (with the parapet overhang) complies with the solar access of the DCP (a minimum of 3 hours sunlight is retained to the private open space area or main living windows of the adjacent dwellings).

80. Requiring the parapet to be setback 1.2m from the southern side boundary would not significantly reduce the extent of the shadow cast onto the southern adjoining property.

*Window locations in relation to adjoining properties*

81. Comment: A review of the plans indicates the proposed windows are offset from the windows of the dwellings on adjacent properties, with the exception of the eastern most

window in the southern elevation of the first floor. However, this window, and all windows on the side elevations of the development, relate to low-activity rooms, and have sill heights of 1.5m to reduce the opportunity for overlooking.

*Demolition and excavation impacts on neighbouring dwellings*

82. Comment: Should the application be approved, conditions of consent would be imposed in relation to demolition and excavation. It is noted that minimal excavation is proposed as part of this development.

*Proposed fill*

83. Comment: The extent of the fill is limited to a maximum depth of 0.48m at the front of the property, and reduces in depth to the natural ground level at the rear boundary of the site. The plans submitted with the application propose a 1.2m high rendered masonry front fence, and side fence between the street boundary and the building line of the proposed dwellings. The proposed fence appears to extend past the existing boundary fence shared with 41 Waitara Parade, which would require negotiations with the property owners for the construction of a new fence. If the application were to be approved, a condition of consent would be recommended seeking design changes to the proposed masonry fence so that it did not extend beyond the existing side boundary fence.

## **REFERRALS**

### **Council's Referrals**

#### Development Engineering

84. Council's Development Engineer has carried out an assessment of the proposed stormwater management system for the site and supports the proposal subject to conditions of consent, should it be approved.

#### Consulting Arborist

85. The amended design of the proposed dual occupancy proposes the retention of one Oak tree (T1) and removal of one Oak tree (T2). In order to retain the tree (T1) the Consulting Arborist has recommended a gap in the dividing fence that separates the private open spaces of each proposed dwelling.
86. Council's Consulting Arborist has undertaken an assessment of the proposal, specifically the retention of the Oak tree in the middle of the rear yard. The ground floor will encroach into the structural root zone of the Oak tree and compromise its survival. The design submitted with this Review application does not adequately address the reason for refusal of the DA in relation to tree impacts, and this forms one of the reasons the proposal cannot be supported.
87. The adverse impact of the proposal on the existing tree in the rear yard of the site forms a reason for refusal.

## **THE PUBLIC INTEREST**

88. The proposal is of a nature that will have adverse impacts on the natural and built environment and is not in the public interest.

## **CONCLUSION**

89. The application has been assessed having regard to the Matters for Consideration under Section 8.2 Review and Section 4.15 (1) of the Environmental Planning and Assessment

Act 1979 and relevant statutory provisions. The proposal is found to be unsuitable for the site having adverse impacts on the existing site trees and streetscape impacts.

90. The proposal fails to satisfy the aims and objectives of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 as the development will have adverse impacts on an existing site tree, which is identified as a healthy significant tree.
91. The proposal has been assessed against the provisions of both Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013. The proposal fails to comply with the visual privacy controls in the Kogarah Development Control Plan 2013 in relation to the first floor balcony widths and setbacks and results in unacceptable visual impacts on the streetscape.
92. For the above reasons, the proposal is recommended for refusal.

## **DETERMINATION AND STATEMENT OF REASONS**

### Statement of Reasons

93. The reasons for this recommendation are:

- The proposal fails to satisfy the aims and objectives of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 as the development will have adverse impacts on an existing site tree which has been identified as a significant tree.
- The proposal fails to comply with the visual privacy controls in the Kogarah Development Control Plan 2013 in relation to the first floor balcony widths and setbacks and will result in adverse privacy impacts for the southern adjoining neighbour.
- The proposal is unsuitable for the site and would establish an undesirable precedent in the area. Its approval is not in the public interest.

### Determination

94. 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 Review Application REV2020/0004 for demolition works, tree removal and construction of an attached two (2) storey dual occupancy and associated works at Lot 9 in DP1604 known as 39 Waitara Parade, Hurstville Grove, for the following reasons:

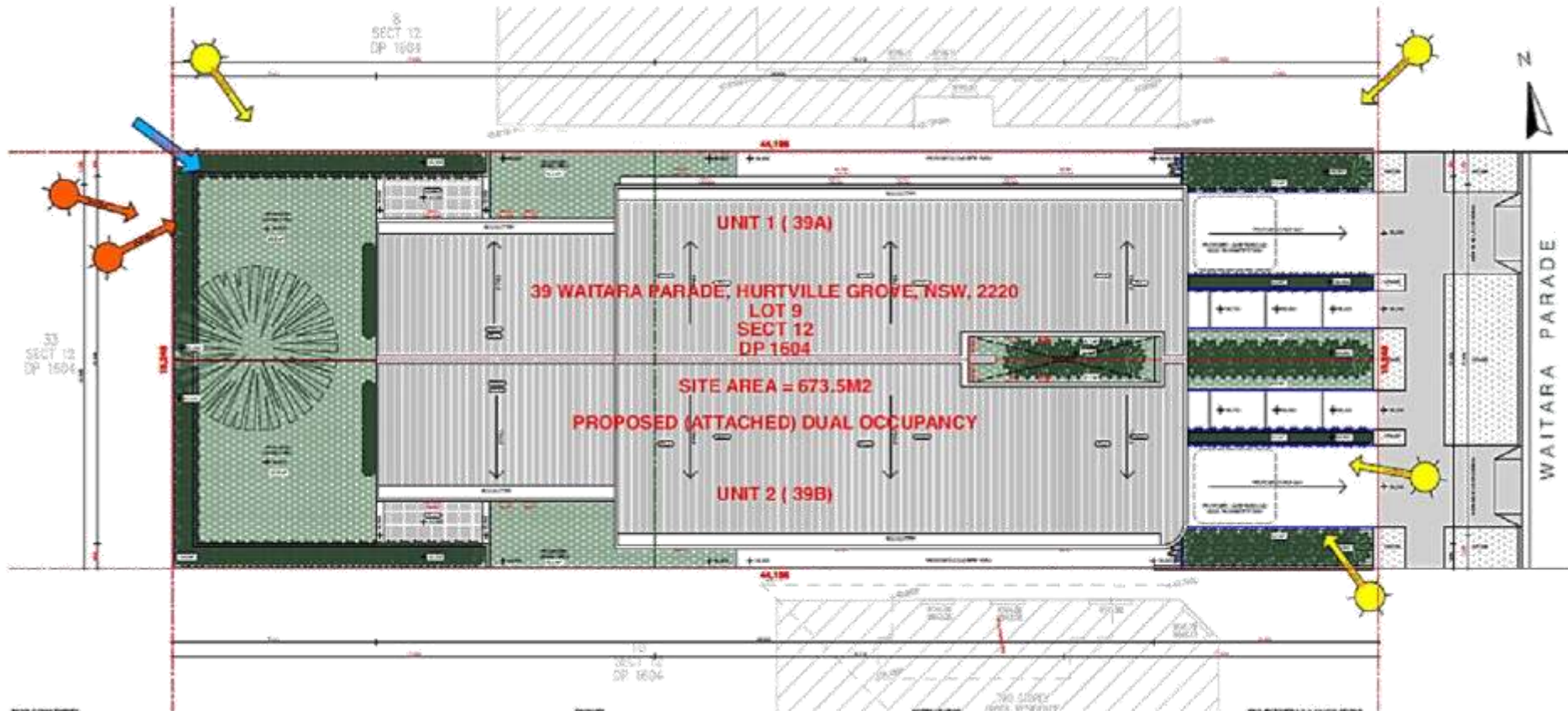
1. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the relevant environmental planning instruments in terms of the following:
  - (a) The proposal fails to satisfy the aims and objectives of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 as the ground floor will encroach into the structural root zone of the Oak tree required to be retained and compromise its survival. The design submitted with this Review application does not adequately address the reason for refusal of the DA in relation to tree impacts.
2. **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 the following sections Chapter C1 of the Kogarah Development Control Plan 2013:
  - (a) Section 1.2.3 – Rhythm of the Built Elements in the Streetscape: the front façade of the proposal is excessively bulky and out of character with the immediate locality

due to the dark coloured first floor balconies exceeding the maximum width permitted by the DCP and encroaching the minimum setback of 3m by 2.1m, the front doors being recessed behind the garage doors and balconies and lack of visible glazing from the street to encourage casual surveillance and activation of the façade.

3. **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 natural environment:
  - (a) The proposal fails to satisfy the aims and objectives of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 as the ground floor will encroach into the structural root zone of the Oak tree required to be retained and compromise its survival. The design submitted with this Review application does not adequately address the reason for refusal of the DA in relation to tree impacts.
4. **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 dwelling without significant adverse impacts on the tree proposed to be retained in the rear of the property, and without structural design changes to the proposal to reduce the bulk and scale of the dwellings through an increased setback of the ground floor to the tree to be retained and changes to the front façade of the dwellings to improve the visual appearance when viewed from neighbouring properties and the street.
5. **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 [↓](#) 1 Site plan - 39 Waitara Pde Hurstville Grove  
Attachment [↓](#) 2 Elevations - 39 Waitara Pde Hurstville Grove



NOTE COMMENTS	FINISHES	ITEMS	PROJECT DETAILS & CALCULATIONS
<p>FOR EACH ELEMENT:</p> <p>THE APPLICANT SHALL AT LEAST OBTAIN THE SERVICES OF ONE MEMBER OF THE PROFESSION OF ARCHITECTURE</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED STRUCTURAL ENGINEER TO DESIGN THE STRUCTURE AND TO CHECK THE DESIGN OF THE STRUCTURE</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED CIVIL ENGINEER TO DESIGN THE WATER AND SEWERAGE SYSTEMS</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED ELECTRICAL ENGINEER TO DESIGN THE ELECTRICAL SYSTEMS</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED MECHANICAL ENGINEER TO DESIGN THE MECHANICAL SYSTEMS</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED PLUMBER TO DESIGN THE PLUMBING SYSTEMS</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED LANDSCAPE ARCHITECT TO DESIGN THE LANDSCAPE</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED CIVIL ENGINEER TO DESIGN THE ROAD AND PAVEMENT SYSTEMS</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED CIVIL ENGINEER TO DESIGN THE WATER AND SEWERAGE SYSTEMS</p> <p>THE APPLICANT SHALL OBTAIN THE SERVICES OF A REGISTERED CIVIL ENGINEER TO DESIGN THE WATER AND SEWERAGE SYSTEMS</p>	<p>FINISHES</p> <p>1. FLOOR FINISHES</p> <p>2. WALL FINISHES</p> <p>3. CEILING FINISHES</p> <p>4. EXTERIOR WALL FINISHES</p> <p>5. EXTERIOR FLOOR FINISHES</p> <p>6. ROOF FINISHES</p> <p>7. PAINT FINISHES</p> <p>8. GLASS FINISHES</p> <p>9. METAL FINISHES</p> <p>10. WOOD FINISHES</p>	<p>ITEMS</p> <p>1. ROOFING</p> <p>2. WALLS</p> <p>3. FLOORS</p> <p>4. CEILING</p> <p>5. EXTERIOR WALLS</p> <p>6. EXTERIOR FLOORS</p> <p>7. ROOFING</p> <p>8. PAINT</p> <p>9. GLASS</p> <p>10. METAL</p> <p>11. WOOD</p> <p>12. CONCRETE</p> <p>13. BRICK</p> <p>14. STONE</p> <p>15. TERRAZZO</p> <p>16. POLISHED CONCRETE</p> <p>17. LAMINATE</p> <p>18. CARPET</p> <p>19. VINYL</p> <p>20. TILE</p> <p>21. PLASTER</p> <p>22. GYPSUM BOARD</p> <p>23. ACoustic PANELS</p> <p>24. LIGHTING</p> <p>25. SWITCHES</p> <p>26. OUTLETS</p> <p>27. TAPWARE</p> <p>28. SANITARYWARE</p> <p>29. RADIATORS</p> <p>30. AIR CONDITIONING</p> <p>31. HEATING</p> <p>32. COOLING</p> <p>33. EXHAUST</p> <p>34. VENTILATION</p> <p>35. DAMPERS</p> <p>36. VALVES</p> <p>37. FITTINGS</p> <p>38. PIPING</p> <p>39. DUCTWORK</p> <p>40. TRAYS</p> <p>41. CABLE TRAYS</p> <p>42. CONDUITS</p> <p>43. MANHOLES</p> <p>44. RISES</p> <p>45. FALLS</p> <p>46. CLEANOUTS</p> <p>47. CLEANERS</p> <p>48. ACCESSORIES</p> <p>49. FIXTURES</p> <p>50. FINISHES</p>	<p>PROJECT DETAILS &amp; CALCULATIONS</p> <p>PROPOSED DUAL OCCUPANCY</p> <p>PROPOSED FLOOR AREA</p> <p>PROPOSED VOLUME</p> <p>PROPOSED HEIGHT</p> <p>PROPOSED SETBACKS</p> <p>PROPOSED COVERAGES</p> <p>PROPOSED UTILITIES</p> <p>PROPOSED SERVICES</p> <p>PROPOSED MATERIALS</p> <p>PROPOSED FINISHES</p> <p>PROPOSED PAINTS</p> <p>PROPOSED GLASS</p> <p>PROPOSED METAL</p> <p>PROPOSED WOOD</p> <p>PROPOSED CONCRETE</p> <p>PROPOSED BRICK</p> <p>PROPOSED STONE</p> <p>PROPOSED TERRAZZO</p> <p>PROPOSED CARPET</p> <p>PROPOSED VINYL</p> <p>PROPOSED TILE</p> <p>PROPOSED PLASTER</p> <p>PROPOSED GYPSUM BOARD</p> <p>PROPOSED ACoustic PANELS</p> <p>PROPOSED LIGHTING</p> <p>PROPOSED SWITCHES</p> <p>PROPOSED OUTLETS</p> <p>PROPOSED TAPWARE</p> <p>PROPOSED SANITARYWARE</p> <p>PROPOSED RADIATORS</p> <p>PROPOSED AIR CONDITIONING</p> <p>PROPOSED HEATING</p> <p>PROPOSED COOLING</p> <p>PROPOSED EXHAUST</p> <p>PROPOSED VENTILATION</p> <p>PROPOSED DAMPERS</p> <p>PROPOSED VALVES</p> <p>PROPOSED FITTINGS</p> <p>PROPOSED PIPING</p> <p>PROPOSED DUCTWORK</p> <p>PROPOSED TRAYS</p> <p>PROPOSED CABLE TRAYS</p> <p>PROPOSED CONDUITS</p> <p>PROPOSED MANHOLES</p> <p>PROPOSED RISES</p> <p>PROPOSED FALLS</p> <p>PROPOSED CLEANOUTS</p> <p>PROPOSED CLEANERS</p> <p>PROPOSED ACCESSORIES</p> <p>PROPOSED FIXTURES</p> <p>PROPOSED FINISHES</p>

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PROPOSED FRONT ELEVATION (EASTERN)

1:100

**MAIN COMMENTARY**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS 2011 AND THE NATIONAL FIRE BRANCH REGULATIONS 2012.  
 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS 2011 AND THE NATIONAL FIRE BRANCH REGULATIONS 2012.  
 3. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS 2011 AND THE NATIONAL FIRE BRANCH REGULATIONS 2012.  
 4. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS 2011 AND THE NATIONAL FIRE BRANCH REGULATIONS 2012.  
 5. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS 2011 AND THE NATIONAL FIRE BRANCH REGULATIONS 2012.  
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 10. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS 2011 AND THE NATIONAL FIRE BRANCH REGULATIONS 2012.

**FINISHES**

<b>FIN</b>	<b>POWDER COATED ALUMINIUM WINDOW FRAMES</b>
<b>FIN</b>	<b>POWDER COATED ALUMINIUM WINDOW FRAMES</b>
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<b>FIN</b>	<b>POWDER COATED ALUMINIUM WINDOW FRAMES</b>

**NOTES LEGEND**

<b>N100</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N101</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N102</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N103</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N104</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N105</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N106</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N107</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N108</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N109</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.
<b>N110</b>	SEE ARCHITECTURAL DRAWINGS FOR MATERIALS AND FINISHES.

**PROJECT DETAILS & CALCULATIONS**

<b>ADDRESS</b>	39 WAITARA PARADE, HURSTVILLE NSW, NSW
<b>LOT/SECTION NUMBER</b>	LOT 101/SECTION 101
<b>ZONE</b>	R1 - RESIDENTIAL
<b>STORY AREA</b>	471.800
<b>FRONTAGE WIDTH</b>	8.500
<b>PROPOSED DRILLING A</b>	
<b>STORAGE</b>	7
<b>OFF COVERAGE</b>	140.800
<b>GROSS FLOOR AREA</b>	26 - 37.000 TOTAL - 140.800
<b>LANDSCAPE AREA</b>	140.800 - 37.000 = 103.800
<b>PRIVATE OPEN SPACE</b>	140.800 - 37.000 = 103.800
<b>RAIN WATER TANK</b>	0.000
<b>FRONT SETBACK</b>	20 - 0.000000 20 - 0.000000
<b>LEFT SIDE SETBACK</b>	20 - 0.000000 20 - 0.000000
<b>RIGHT SIDE SETBACK</b>	20 - 0.000000 20 - 0.000000
<b>REAR SETBACK</b>	20 - 0.000000 20 - 0.000000

<b>REVISION</b>	<b>DATE</b>	<b>BY</b>	<b>REASON</b>
1	19/03/2020	ABAS YOUSSEF	ISSUE FOR PERMIT



ALL DIMENSIONS MUST BE CHECKED AND VERIFIED ON SITE. ANY DIMENSIONS SHOWN ON THIS DRAWING ARE FOR INFORMATION ONLY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL DIMENSIONS AND VERIFY ALL WORKS AND CONDITIONS TO THE CONTRACT. DIMENSIONS SHALL NOT BE USED FOR CONSTRUCTION PURPOSES UNLESS SPECIFICALLY NOTED OTHERWISE. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED. FOR COLOURS AND FINISHES, SEE THE SUPPLIER'S COLOUR CHART AND SAMPLES.

**ABAS YOUSSEF**  
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 EMAIL: info@iin.com.au  
 WEBSITE: WWW.IIN.COM.AU

**MR AH SAAD & HASSAN KABLAN**  
 CONTACT NUMBER: +61 02 955 1234  
 EMAIL: info@iin.com.au  
 WEBSITE: WWW.IIN.COM.AU

**PROPOSED FRONT ELEVATION (EASTERN)**  
 PROJECT: PROPOSED ATTACHED DRILLING OCCUPANCY WITH-GROUND DRILLING POOLS  
 SITE ADDRESS: LOT 101/SECTION 101 39 WAITARA PARADE, HURSTVILLE GROVE NSW 1513

<b>SCALE</b>	1:100
<b>DATE</b>	19/03/2020
<b>PROJECT NUMBER</b>	001
<b>PROJECT TITLE</b>	PROPOSED ATTACHED DRILLING OCCUPANCY WITH-GROUND DRILLING POOLS
<b>DRAWING NUMBER</b>	001





REMARKS	REVISION	DATE	REVISION	DATE	REVISION	DATE	REVISION	DATE																							
<p><b>BASE COORDINATES</b></p> <p>1. ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METERS.</p> <p>2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p>																															
<p><b>FINISHES</b></p> <p><b>FIN</b>                  POINTE BRICKS MURRAY BLAND                  (SEE SPECIFICATION SHEET)</p> <p><b>FIN</b>                  GRABE PANELS VERTICAL SLAT CONCRETE WITH GLASS                  PAINTED STEEL SLAT GATE</p> <p><b>FIN</b>                  CONCRETE RENDER</p> <p><b>FIN</b>                  POLISHED BLACK SATIN POWDER COAT</p>																															
<p><b>NOTES LEGEND</b></p> <p>N100: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N101: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N102: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N103: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N104: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N105: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N106: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N107: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N108: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N109: 100% POLISHED BLACK SATIN POWDER COAT</p> <p>N110: 100% POLISHED BLACK SATIN POWDER COAT</p>																															
<p><b>PROJECT DETAILS &amp; CALCULATIONS</b></p> <p><b>ADDRESS</b>                  39 WAITARA PARADE HURSTVILLE GROVE NSW 1505</p> <p><b>LOT/SECTION NUMBER</b>                  L15/1505/1505</p> <p><b>ZONE</b>                  R15</p> <p><b>FRONTAGE WIDTH</b>                  10.50M</p> <p><b>PROPOSED BUILDING A</b></p> <table border="1"> <tr> <th>STORY</th> <th>AREA</th> <th>COMPLIANCE</th> </tr> <tr> <td>1</td> <td>100.00</td> <td>100%</td> </tr> <tr> <td>2</td> <td>100.00</td> <td>100%</td> </tr> <tr> <td><b>TOTAL</b></td> <td><b>200.00</b></td> <td><b>100%</b></td> </tr> </table> <p><b>PROPOSED BUILDING B</b></p> <table border="1"> <tr> <th>STORY</th> <th>AREA</th> <th>COMPLIANCE</th> </tr> <tr> <td>1</td> <td>100.00</td> <td>100%</td> </tr> <tr> <td>2</td> <td>100.00</td> <td>100%</td> </tr> <tr> <td><b>TOTAL</b></td> <td><b>200.00</b></td> <td><b>100%</b></td> </tr> </table>	STORY	AREA	COMPLIANCE	1	100.00	100%	2	100.00	100%	<b>TOTAL</b>	<b>200.00</b>	<b>100%</b>	STORY	AREA	COMPLIANCE	1	100.00	100%	2	100.00	100%	<b>TOTAL</b>	<b>200.00</b>	<b>100%</b>							
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<b>TOTAL</b>	<b>200.00</b>	<b>100%</b>																													





PROPOSED REAR ELEVATION (WEST SIDE)

1:100

**MAIN COMMENTS:**

- 1. ALL APPLICANT MUST OBTAIN A STATE OF WORKS ORDER FROM THE NSW STATE GOVERNMENT.
- 2. ALL APPLICANT MUST OBTAIN A STATE OF WORKS ORDER FROM THE NSW STATE GOVERNMENT.
- 3. ALL APPLICANT MUST OBTAIN A STATE OF WORKS ORDER FROM THE NSW STATE GOVERNMENT.
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- 10. ALL APPLICANT MUST OBTAIN A STATE OF WORKS ORDER FROM THE NSW STATE GOVERNMENT.

**FINISHES**

- 1. FINISHES AND ALL MATERIALS TO BE SUPPLIED BY THE APPLICANT.
- 2. FINISHES AND ALL MATERIALS TO BE SUPPLIED BY THE APPLICANT.
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- 10. FINISHES AND ALL MATERIALS TO BE SUPPLIED BY THE APPLICANT.

**NOTES LEGEND**

- 1. ALL APPLICANT MUST OBTAIN A STATE OF WORKS ORDER FROM THE NSW STATE GOVERNMENT.
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- 10. ALL APPLICANT MUST OBTAIN A STATE OF WORKS ORDER FROM THE NSW STATE GOVERNMENT.

**PROJECT DETAILS & CALCULATIONS**

ADDRESS	PROPOSED DWELLING A	PROPOSED DWELLING B	COMPLIANCE
39 WAITARA PARADE, HURSTVILLE NSW, NSW	2	2	90%
LOT/SECTION NUMBER	140,887	140,887	90%
DEVELOPER	28 - 37,887	28 - 37,887	90%
ZONE	28 - 37,887	28 - 37,887	90%
STYING CLASS	28 - 37,887	28 - 37,887	90%
STYING AREA	28 - 37,887	28 - 37,887	90%
FRONT SETBACK	28 - 37,887	28 - 37,887	90%
LEFT SIDE SETBACK	28 - 37,887	28 - 37,887	90%
RIGHT SIDE SETBACK	28 - 37,887	28 - 37,887	90%
REAR SETBACK	28 - 37,887	28 - 37,887	90%

REVISION	DATE	BY	REASON	APPROVED	DATE	BY	REASON
1	19/03/2020	ABAS YOUSSEF	INITIAL DESIGN	ABAS YOUSSEF	19/03/2020	ABAS YOUSSEF	INITIAL DESIGN
2	19/03/2020	ABAS YOUSSEF	REVISION 1	ABAS YOUSSEF	19/03/2020	ABAS YOUSSEF	REVISION 1
3	19/03/2020	ABAS YOUSSEF	REVISION 2	ABAS YOUSSEF	19/03/2020	ABAS YOUSSEF	REVISION 2



43 Bridge Road  
 Hurstville NSW 1513  
 Australia  
 Tel: 02 9550 1234  
 Email: info@iin.com.au

ALL DIMENSIONS MUST BE CHECKED AND VERIFIED ON SITE. ANY DIMENSIONS NOT AS SHOWN MUST BE REFERRED TO THE DESIGNER. ALL DIMENSIONS MUST BE CHECKED AGAINST THE ORIGINAL DRAWING. ALL DIMENSIONS MUST BE CHECKED AGAINST THE ORIGINAL DRAWING. ALL DIMENSIONS MUST BE CHECKED AGAINST THE ORIGINAL DRAWING.

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 EMAIL:  
 SAADI@DESIGNGROUP.COM.AU &  
 HASAN@DESIGNGROUP.COM.AU

THOMAS TULL  
 PROPOSED REAR ELEVATION (WESTERN)  
 PROJECT  
 PROPOSED ATTACHED DWELLING DEVELOPMENT WITH GARAGE  
 DRIVING POOL  
 SITE ADDRESS:  
 LOT 140/141 PARADE 39 WAITARA PARADE, HURSTVILLE GROVE NSW  
 1513

SCALE	DATE	REVISION	REASON
1:100	19/03/2020	A3	D
1:100	19/03/2020	A4	M130
1:100	19/03/2020	A5	M130
1:100	19/03/2020	A6	M130
1:100	19/03/2020	A7	M130
1:100	19/03/2020	A8	M130
1:100	19/03/2020	A9	M130
1:100	19/03/2020	A10	M130

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 19 MARCH 2020**

LPP015-20

<b>LPP Report No</b>	<b>LPP015-20</b>	<b>Development Application No</b>	<b>DA2018/0277</b>
<b>Site Address &amp; Ward Locality</b>	71-73 Jubilee Avenue Carlton Kogarah Bay Ward		
<b>Proposed Development</b>	Demolition of existing buildings and construction of five (5) storey shop top housing development containing twenty three (23) residential apartments, ground level commercial/retail space and basement parking mixed use development containing residential units and commercial/retail space		
<b>Owners</b>	N and D Sevastelis		
<b>Applicant</b>	AB Works		
<b>Planner/Architect</b>	Planner - City Plan Services, Architect - AB Works		
<b>Date Of Lodgement</b>	28/11/2018		
<b>Submissions</b>	N/A – the application was not renotified as the applicant did not submit amended plans.		
<b>Cost of Works</b>	\$7,372,620.00		
<b>Local Planning Panel Criteria</b>	The proposed development is a shop top housing development where the residential component is subject to the provisions of State Environmental Planning Policy No 65.		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	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 Environment State Environmental Planning Policy; Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans Statement of Environmental Effects Traffic and Parking Assessment Georges River Local Planning Panel Report 12 December 2019		
<b>Report prepared by</b>	Senior Development Assessment Officer		

<b>Recommendation</b>	That the application be refused in accordance with the reasons stated in this report
-----------------------	--

<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning	<b>Yes</b>

<p>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?</p>	
<p><b>Clause 4.6 Exceptions to development standards</b>                  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?</p>	<p><b>Yes - Clause 4.6 statement submitted in respect to non-compliance with Clause 6.9 of KLEP 2012.</b></p>
<p><b>Special Infrastructure Contributions</b>                  Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p><b>Not Applicable</b></p>
<p><b>Conditions</b>                  Have draft conditions been provided to the applicant for comment?</p>	<p><b>No, as the application is being recommended for refusal. The refusal reasons will be available when the report is published.</b></p>

**Site Plan**



Site outlined in blue

**Executive Summary**

1. This report has been prepared following the deferral of the subject development application (DA) (DA2018/0277). The application proposes demolition of the existing structures and the construction of a five (5) storey shop top housing development comprising twenty three (23) units (6 x 1 bedroom, 16 x 2 bedroom and 1 x 3 bedroom units), two (2) levels of basement car parking for a total of forty one (41) car parking spaces, new landscaping and associated site works. A commercial tenancy is to be

located on the ground floor with vehicular access and a loading bay proposed from Jubilee Avenue. Communal open space is provided on the rooftop.

2. The DA was considered by the Georges River Local Planning Panel (LPP) on 12 December 2019. The Panel resolved to defer consideration of the DA to enable the applicant sixty (60) days in which to submit amended plans to address the matters identified in the assessment report. Once the information was provided the application was to be referred back to a public meeting with the majority of the same Panel members for consideration and determination of the application.
3. The applicant, following this deferral, has failed to submit amended plans and supporting documentation in response to the Panel's deferral reasons. It is recommended that the application be determined by way of refusal in accordance with the reasons for refusal as recommended and referenced at the end of this report.

## BACKGROUND

4. At its meeting on 12 December 2019, the Local Planning Panel considered the subject Development Application (DA) and resolved the following:

### Deferral

*Pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979, as amended, Development Application No. DA2018/0277 for the demolition of existing buildings and construction of five (5) storey shop top housing development containing twenty three (23) residential apartments, ground level commercial/retail space and basement parking at 71-73 Jubilee Avenue, Carlton, be deferred and invites the applicant to submit an application under Clause 55 of the Environmental Planning and Assessment Regulation 2000 seeking to amend the development application with amended plans to address the matters identified in the assessment report. Such an application must be made within 60 days of the date of this determination.*

*The application is to be referred back to a public meeting with the majority of the same Panel members.*

### Strategic Comments by the Panel

*The Panel recommends that Council's Strategic Planning Team consider a review of the appropriateness of the current zone and controls in the context of consideration of the application for 71-73 Jubilee Avenue Carlton raised concerns with the B6 zoning controls as outlined in Clause 6.9 – Development in Zone B6 and the ability for the allotments within this zone, given the allotments sizes and depths and no amalgamation plan, for the current lot layouts to provide development designs that can meet the criterion outlined in the Kogarah Local Environmental Plan 2012, particularly in the ability to provide vehicle servicing and access arrangements.*

The applicant has failed to provide amended plans and supporting information within sixty (60) days of the date of determination in accordance with the resolution of the Local Planning Panel.

5. Given the development proposal has not been amended, there is no further assessment to be undertaken.
6. The assessment of the proposal as contained in the report presented to the Panel on 12 December 2019 is the basis on which the reasons for refusal have been derived.

7. It is recommended that the application now be determined by the Georges River Local Planning Panel by way of refusal in accordance with the reasons for refusal referenced at the end of this report.

## CONCLUSION

8. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The non-compliance with the minimum commercial area requirements for the B6 zone, pedestrian and vehicular concerns with the loading bay location, overlooking concerns from the balconies facing the adjoining school along with the adverse impact upon the trees on the school site, the proposed development is considered to be an unacceptable planning outcome.
9. The Clause 4.6 objection in relation to development in the B6 Zone justifying the non-compliances with the maximum gross floor area for shop top housing and minimum gross floor area for other land uses is not considered to be well founded in this instance. As a result the application is recommended for refusal.

## DETERMINATION AND STATEMENT OF REASONS

### Statement of Reasons

5 The reasons for this recommendation are:

- The proposal exceeds the maximum shop top housing component of 65% of the total floor area. The residential component of the proposed development is 1878sqm being 87.4% of the overall gross floor area being a breach of 22.4% of the permitted floor area as referenced by clause 6.9(3) of Kogarah Local Environmental Plan 2012.
- The proposal also fails to provide a minimum of 500sqm of a land use other than shop top housing. The commercial/retail component of the proposed development is 270sqm, which is 230sqm less than the minimum required under Clause 6.9(4) of KLEP 2012.
- This part of Carlton is undergoing transition to shop top housing with new controls allowing for a greater density and scale. However, the proposal fails to respond to the desired future character for development by not providing the minimum required commercial floor space which is the main objective of the B6 – Enterprise Corridor zoning.
- The proposed building design and siting, in particular the extent of excavation associated with the basement carpark will adversely affect the TPZ of the Broad Leaved Paperback (T2) located on the adjoining site and its longevity, hydrology and integrity will be severely impacted. More than 10% of encroachment on the TPZ is anticipated which is considered to be unacceptable.
- The proposal is deficient in the amount of commercial floor space required under the provisions of Clause 6.9 of Kogarah Local Environmental Plan 2012. This would create an undesirable precedent in the area. Its approval in its current form is not in the public interest.
- The proposed north-western facing balconies have the potential to overlook the school. These balconies need to be reorientated and the use of angled screening will assist to minimise this impact. There should not be any direct overlooking into the school.
- In consideration of the aforementioned reasons, the proposed development is recommended for refusal.

### Determination

- 6 THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning refuse development consent to Development Application DA2018/0277 for demolition of the existing structures on site and the construction of a five (5) storey shop top housing development comprising of twenty (23) units and two (2) levels of basement car parking for forty (40) vehicles and associated site works at Lot 10 and 11 DP625850 and known as 71-73 Jubilee Avenue, Carlton, for the following reasons:
1. The proposed development fails to satisfy the provisions of Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposal fails to meet the controls and objectives of Clause 6.9 (3) Development in Zone B6 of the Kogarah Local Environmental Plan 2012 which restricts the amount of gross floor area for shop top housing to a maximum of 65%. The proposed development provides 87.4% of residential gross floor area being a 22.4% breach.
  2. The proposed development fails to satisfy the provisions of Section 4.15 (1)(a)(i) in that the proposal fails to satisfy the control and objectives of Clause 6.9 (4) Development in Zone B6 of the Kogarah Local Environmental Plan 2012 requiring that a land use other than shop top housing be a minimum of 500sqm. The proposal development only provides for the other land use an area of 270sqm.
  3. The proposed development fails to satisfy the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in that the location of the ground floor loading bay does not permit vehicles to enter, manoeuvre and exit the site in a forward direction which fails to satisfy the provisions of Part B4 of KDCP 2013.
  4. The proposed development fails to satisfy the provisions of Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, in that the proposal does not satisfy the provisions of Part B2 of the Kogarah Development Control Plan as the proposed building design and siting, in particular the extent of excavation for the basement car park will adversely affect the Tree Protection Zone and canopy spread of the Broad Leaved Paperback and its longevity, hydrology and integrity will be severely impacted.
  5. The proposed development fails to satisfy the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed Clause 4.6 variations in respect to the Development in Zone B6 controls contained within Clause 6.9 of KLEP 2012 are not considered to be well founded in this case as the design of the development fails to satisfy the objectives of the planning controls therefore failing to satisfy the provisions of Clause 4.6.
  6. The proposal fails to satisfy the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, in that the additional residential floor space and lack of commercial floor space does not represent the desired future character for development in the street and the B6 Enterprise Corridor Zone and will adversely affect the nature of proposed development.
  7. The proposed development fails to satisfy the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, in that the development in its current form will establish an undesirable precedent for development in that the proposed development has failed to meet the minimum commercial/retail floor space requirements for the new B6 zoning and will not be in the public interest.



8. The proposal fails to satisfy the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to provide the minimum floor space or appropriate service areas for the non-residential component of the development, which will have an adverse impact upon the future economic viability of the zone. The scale and size of the commercial space provided is restricted and limited on its functionality and use. The proposal does not satisfy the objectives of the B6 zone which focus on the ability of the Enterprise Corridor zone to encourage appropriate businesses and offer a range of employment opportunities.
9. The proposal fails to satisfy the provisions of Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, in that the orientation of the north western facing balconies will have the potential to overlook the adjoining property which is considered to be inappropriate.

## ATTACHMENTS

- Attachment [↓](#)1 Site Plan- 71-73 Jubilee Ave Carlton
- Attachment [↓](#)2 South East Elevation Plan- 71-73 Jubilee Ave Carlton
- Attachment [↓](#)3 North East Elevation Plan- 71-73 Jubilee Ave Carlton
- Attachment [↓](#)4 North West Elevation Plan - 71-73 Jubilee Ave Carlton
- Attachment [↓](#)5 South West Elevation Plan- 71-73 Jubilee Ave Carlton





External finishes for 21.03.2020 (Rev. 04)

Code	Description	Material	Finish	Notes
01	ALUMINIUM FINISHING	Exterior window frames and air conditioning louvers		
02	RENDER AND PAINT 1	Render on brickwork with color		
03	RENDER AND PAINT 2	Render on plaster applications other		
04	RENDER AND PAINT 3	Render on concrete and pre-cast		
05	SANDSTONE CLADDING	Natural stone - applied over masonry		
06	OFF-FORM CONCRETE	Other natural stone/brick - apply		
07	METAL CLADDING 1	Metallic finish/panels		
08	METAL CLADDING 2	Metallic application materials		
09	GLASS BALUSTRADE	Tempered safety		

Scale: 1:200 (AS)

Date Printed: 05/02/2019  
 A:\prj\_14009\_71-73 jubilee ave carlton\pda-1500\_01.dwg

**ARCHITECTURE & BUILDING WORKS**  
 15 Jubilee Way  
 Carlton VIC 3171  
 Australia  
 Tel: (03) 9490 0000  
 Fax: (03) 9490 0001  
 Email: info@abw.com.au

**MIXED USE DEVELOPMENT**  
 71-73 JUBILEE AVE  
 CARLTON

Drawing No: **ELEVATION 01**  
 Project Name: **PRELIMINARY**  
 Project No: **Pr-14009**  
 Scale: **A-1500**



Scale: 1:200 (A3)

ARCHITECTURE & BUILDING WORKS  
 111 Jubilee Ave  
 Carlton VIC 3168  
 Tel: (03) 9397 1111  
 Fax: (03) 9397 1112  
 Email: info@abw.com.au

MIXED USE DEVELOPMENT  
 71-73 JUBILEE AVE  
 CARLTON

ELEVATION 02  
 PRELIMINARY  
 Pr-14009

DATE PLOTTED: 05/02/2019  
 FILE: H:\015-20-71-73 Jubilee Ave Carlton\015-20-71-73 Elevations\_02.dwg



Item	Description	Quantity	Unit	Value
1	ALUMINIUM FINISHING	1000	m <sup>2</sup>	1000
2	RENDER AND PAINT 1	2000	m <sup>2</sup>	2000
3	RENDER AND PAINT 2	1500	m <sup>2</sup>	1500
4	RENDER AND PAINT 3	1000	m <sup>2</sup>	1000
5	SANDSTONE CLADDING	500	m <sup>2</sup>	500
6	OFF-FORM CONCRETE	200	m <sup>2</sup>	200
7	METAL CLADDING 1	100	m <sup>2</sup>	100
8	METAL CLADDING 2	100	m <sup>2</sup>	100
9	GLASS BALUSTRADE	50	m	50

Scale: 1:200 (A3)

Date Printed: 05/02/2019

File: Lpp\_01502\_71-73 Jubilee Ave Carlton (A3) - 1502\_01.dwg

**ARCHITECTURE & BUILDING WORKS**

12 Jubilee St  
 Carlton VIC 3171  
 Australia  
 Tel: (03) 9397 0000  
 Fax: (03) 9397 0001

**MIXED USE DEVELOPMENT**

71-73 JUBILEE AVE  
 CARLTON

Client No: ELEVATION 03

Project Title: PRELIMINARY

Supervisor: Pr-14009

Scale: A-1502



Item	Description	Quantity	Unit	Value
1	ALUMINIUM FINISHING	1000	m <sup>2</sup>	1000
2	RENDER AND PAINT 1	2000	m <sup>2</sup>	2000
3	RENDER AND PAINT 2	2000	m <sup>2</sup>	2000
4	RENDER AND PAINT 3	2000	m <sup>2</sup>	2000
5	SLABSTONE CLADDING	1000	m <sup>2</sup>	1000
6	OFF-FORM CONCRETE	1000	m <sup>2</sup>	1000
7	METAL CLADDING 1	1000	m <sup>2</sup>	1000
8	METAL CLADDING 2	1000	m <sup>2</sup>	1000
9	GLASS BALUSTRADE	1000	m <sup>2</sup>	1000

Scale: 1:200 @ A3

**ARCHITECTURE & BUILDING WORKS**  
 120 Jubilee Ave, Carlton  
 Architecture & Building Works  
 120 Jubilee Ave, Carlton  
 Architecture & Building Works

**MIXED USE DEVELOPMENT**  
 71-73 JUBILEE AVE  
 CARLTON

Client No: ELEVATION 04  
 Project No: PRELIMINARY  
 Submission: Pr-14009

Date Printed: 05/02/2019  
 File: K:\pr\_14009\_71-73 jubilee ave carlton\pr\_14009\_71-73 jubilee ave carlton\_04.dwg

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 19 MARCH 2020**

LPP016-20

<b>LPP Report No</b>	<b>LPP016-20</b>	<b>Development Application No</b>	<b>MOD2020/0017</b>
<b>Site Address &amp; Ward Locality</b>	66 Mulga Road Oatley Mortdale Ward		
<b>Proposed Development</b>	Modification of DA2016/0035 to modify consent Condition 59 by increasing staff numbers from eleven (11) to fourteen (14)		
<b>Owners</b>	Georges River Council		
<b>Applicant</b>	Georges River Council		
<b>Planner/Architect</b>	SJB Town Planning		
<b>Date Of Lodgement</b>	24/01/2020		
<b>Submissions</b>	Nil		
<b>Cost of Works</b>	Nil		
<b>Local Planning Panel Criteria</b>	Georges River Council is the owner, applicant and future operator of the facility.		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 and the associated Guidelines Hurstville Local Environmental Plan 2012 Hurstville Development Control Plan 2013		
<b>List all documents submitted with this report for the Panel's consideration</b>	SJB Planning Statement dated 20 January 2020 Traffic and parking assessment prepared by GTA Consultants dated 23 January 2020		
<b>Report prepared by</b>	Senior Development Assessment Planner		

<b>Recommendation</b>	That the application be approved in accordance with the conditions included in the report.
-----------------------	--

<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> 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?	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b> 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?	<b>Not Applicable</b>
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	<b>Not Applicable</b>

**Conditions**

Have draft conditions been provided to the applicant for comment?

**No, condition No.59 has been amended as requested by the Applicant, which can be reviewed when the report is published.**

LPP016-20

**Site Plan**

The subject site is outlined in blue

**Executive Summary****Proposal**

1. This Section 4.56 Modification Application known as MOD2020/0017 is seeking to modify the original development consent DA2016/0035, as approved by the NSW Land and Environment Court on 3 April 2017, by increasing the number of staff at the centre from eleven (11) to fourteen (14).
2. The application is to be determined by the Georges River Local Planning Panel as Georges River Council owns the land, is building the centre and will run the facility when complete, which is in accordance with the 'Conflict of Interest' provisions of the Local Planning Panel delegations.
3. The originally approved application granted consent for the demolition of existing structures on the site and the construction of a part one, part two storey purpose built child care centre with one level of basement car parking catering for eleven (11) car parking spaces, associated landscaping and site works (refer to Figure 1 and 2 below). The centre was approved to accommodate a maximum of 49 children at any one time and cater for a total of eleven (11) staff. The approved hours of operation were 7.30pm to 6pm.



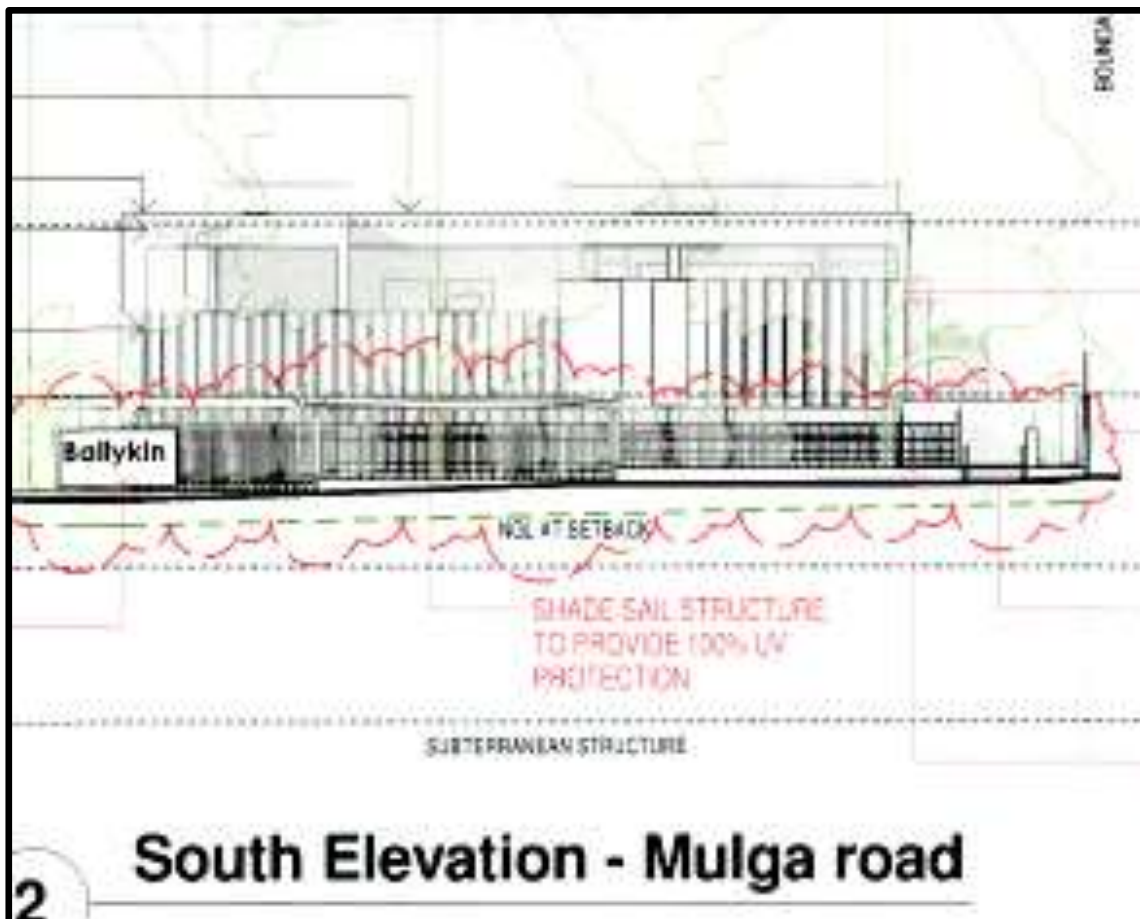


Figure 1: Southern elevation of the approved centre – Mulga Road frontage

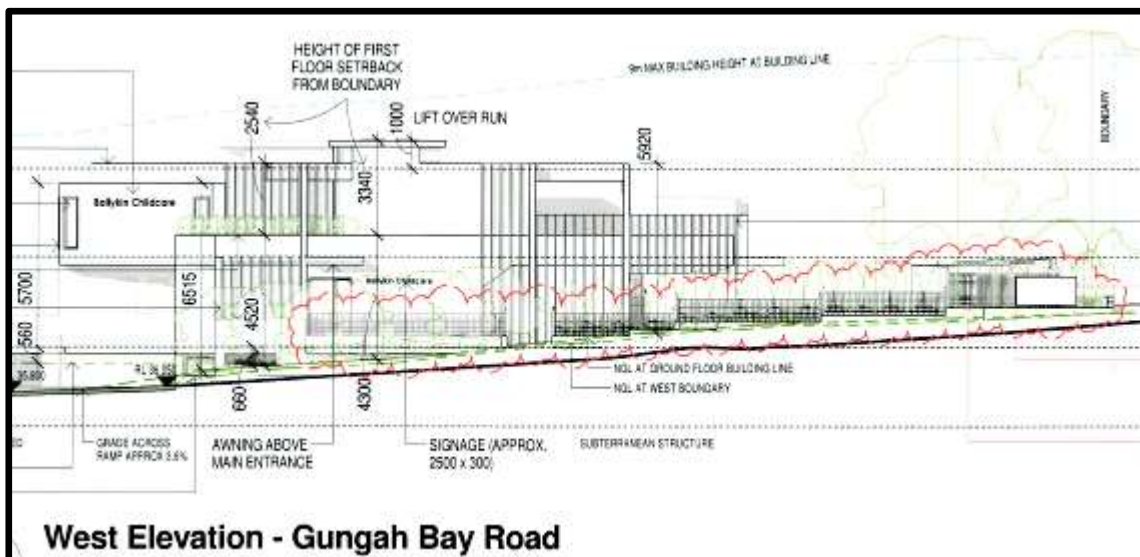


Figure 2: Western elevation of the approved centre – Gungah Bay Road frontage

4. A Section 4.56 Modification Application (MOD2019/0214) was submitted to Council on 21 November 2019 and requested the following variations:
  - i. Amend the hours of operation from the approved 7:30am to 6:00pm Monday to Fridays, being Condition 61 of the determination, to permit core child care hours of operation of 7:00am to 7:00pm Monday to Fridays.
  - ii. Clarification that the Hours of Operation relate to the Core Hours of Operation for the child care facility and does not restrict hours of attendance at the Centre by staff and administrators. In order to clarify this arrangement the Applicant proposes confirmation

that the staff/administrators can attend the premises 30 minutes either side of the approved core hours.

iii. Amendment of the Operational Plan of Management, required as per Condition 14 of the Court decision, to reflect the amendments at (i) and (ii) above.

5. This application was favourably determined by the Georges River Local Planning Panel (GRLPP) at their meeting of 20 February 2020 where they granted approval to the proposed changes sought.

### **Planning issues**

6. The main planning issue relating to the proposal is that the additional three (3) staff members create the need for one (1) additional onsite car parking space which cannot be accommodated and therefore a shortfall of one (1) car parking space will exist.

7. This non-compliance has been addressed in detail later in the assessment and it is considered to be acceptable given the location and siting of the centre within a residential precinct and its proximity to public transport facilities.

### **Site and Locality**

8. The site is rectangular in shape with a splay to its' south western corner. The site is located on the corner of Mulga Road and Gungah Bay Road Oatley. The Mulga Road frontage has a width of 15.329m with a splay of some 6.464m and a depth of the eastern boundary being is 40.235m. The allotment has an area of 780.88sqm.

9. The site presently contains a child care centre approved under DA2016/0035 which is currently under construction at the time of the inspection of the site.

10. The surrounding area is characterised primarily by single storey dwelling houses with some two storey dwelling houses and multi-unit residential development forms. Further to the east along Mulga Road are a series of local shops. The adjacent land to the north of the site, 87 Gungah Bay Road, is occupied by a two storey multi-dwelling development with private open space located alongside the common boundary with the subject site. Land to the east, 64 Mulga Road, is occupied by a single storey dwelling house with driveway access along the common boundary, providing access to a single storey freestanding garage located in the rear garden.

### **Zoning and Permissibility**

11. The Site is zoned R2 Low Density Residential under the Hurstville Local Environmental Plan 2012 ('LEP 2012'). Childcare centres are permissible development with consent.

### **Submissions**

12. The modification application was notified in accordance with the provisions contained within the Hurstville Development Control Plan for a fourteen (14) day period ending 17 February 2020. In response, no submissions were received.

### **Conclusion**

13. In accordance with Sections 4.56 and 4.15 of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies and the provisions of the Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No.1 the proposal considered to be a reasonable and adequate planning request and increasing staff numbers to a total of fourteen (14) is considered acceptable and the application is therefore recommended for approval.

## Report in Full Proposal

14. The Section 4.56 Modification Application seeks to modify the original development consent under DA2016/0035, as approved by the NSW Land and Environment Court on 3 April 2017, by the following variation:
- Increase the total number of staff at the facility from eleven (11) to fourteen (14) and amend Condition 59 accordingly.
15. It is proposed to alter the wording of Condition 59 in the following manner;

### **Condition 59**

**Development Assessment – Child and Staff Numbers** – *The child care centre is approved to have a maximum of eleven (11) staff members during the approved hours of operation.*

to

### **Condition 59**

**Development Assessment – Child and Staff Numbers** – *The child care centre is approved to have a maximum of **fourteen (14)** staff members during the approved hours of operation.*

16. The proposed increase in staffing numbers is required to ensure that the proposal complies with the Education and Care Service National Regulations which establishes the minimum operational requirements of Child Care centres including establishing a minimum ratio of staff to children which has been amended since the original application was lodged with Hurstville City Council in 2016. No change is proposed to the hours of operation or the maximum number of children or child age breakdown of the facility.

## The Site and Locality

17. The site is rectangular in shape with a splay to its' south western corner. The site is located on the corner of Mulga Road and Gungah Bay Road Oatley. Mulga Road comprises the southern frontage being 15.329m wide with a splay of 6.464m and a depth of the eastern boundary being is 40.235m. The allotment has an area of 780.88sqm.



**Photo 1:** Subject site – Child care Centre under construction. Building viewed from Mulga Road (photo taken 10 March 2020)



**Photo 2:** Residential dwelling houses on the opposite side (southern side) of Mulga Road (photo taken 10 March 2020)



**Photo 3:** Residential dwelling houses on the opposite side (western side) of Gungah Road (photo taken 10 March 2020)

18. The site presently contains a child care centre which is under construction approved via DA2016/0035 at the time the site was inspected.
19. The surrounding area is characterised primarily by single storey dwelling houses with some two storey dwelling houses/multi-unit residential development forms. Further to the east along Mulga Road are a series of local shops. The adjacent land to the north of the site, 87 Gungah Bay Road, is occupied by a two storey multi-dwelling development with private open space located alongside the common boundary with the subject site. Land to the east, 64 Mulga Road, is occupied by a single storey dwelling house with driveway access alongside the common boundary, providing access to a single storey freestanding garage located in the rear garden.

## Background

20. On 3 March 2016 development application DA2016/0035 was lodged with Hurstville City Council for the demolition of existing structures on the land and the erection of a two (2) storey, child care facility for 49 children and 11 employees to operate from 7:30am to 6:00pm Monday to Fridays only.
21. On 28 September 2016 the Applicant lodged a Class 1 Appeal with the NSW Land and Environment Court.
22. On 3 April 2017 the NSW Land and Environment Court (Appeal No. 2016/290679) determined the Appeal by the granting of development consent subject to conditions.
23. On 21 November 2019 a Modification Application (MOD2019/0214) was submitted to Council which sought to increase the hours of operation of the centre and alter the Plan of Management. This application was favourably determined by the GRLPP on 20 February 2020, with the Panel granting consent to the proposed changes. The approval of this modification does not affect the content of this application MOD2020/0017.

### PLANNING ASSESSMENT

24. The site has been inspected and the proposed development has been assessed under the provisions of Section 4.56 and 4.15 of the Environmental Planning and Assessment Act 1979.

### ENVIRONMENTAL PLANNING INSTRUMENTS

#### Environmental Planning and Assessment Act 1979

25. The proposal is considered to be consistent with the Objectives of the Act.

#### Section 4.56 Modification under Environmental Planning & Assessment Act, 1979

26. The proposal has been considered against relevant statutory provisions of Section 4.56 as follows;
  - (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—*
    - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
27. Comment: Applications under section 4.56 of the Act cannot be granted if the modified development is not substantially the same as that which the consent was originally granted.
28. The application seeks variation to the approved number of staff only. The built form remains consistent with that approved and there is no change to the maximum number of children or approved hours of operation. The proposed change in staff numbers is as a result in legislation change and is therefore considered to be minor in the scope of the originally approved works. The modification is considered to be 'substantially the same'.
  - (b) *it has notified the application in accordance with:*
    - (i) *the regulations, if the regulations so require, or*

- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
29. Comment: In accordance with the provisions of Councils Public Notification process, the application was placed on neighbour notification for 14 days between 3 February 2020 and 17 February 2020. During this time no submissions were received by Council.
30. As the original development application (DA2016/0035) was determined by the Land & Environment Court, it is required that all original objectors be notified of the Section 4.56 Modification Application. All the original submitters were renotified of this application. At the time of the original assessment a Town Planning Consultancy (Planning Approvals) prepared a submission on behalf of one (1) of the adjoining neighbours, this consultancy was also notified of the proposed change.
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*
31. Comment: The application was formally notified and no submissions were received.
- (1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*
32. Comment: The Modification Application does not result in any physical alteration to the approved child care centre, but relates only to an operational issue being the increasing in staffing numbers in order to comply with the national requirements for staff to child ratios. The primary issue for consideration associated with the modification is car parking. This issue is addressed in detail later in this Report.

### **Environmental Planning and Assessment Regulation 2000**

33. The proposal is considered to have met the statutory requirements under Schedule 1 of the Regulation.

### **STATE ENVIRONMENTAL PLANNING POLICIES**

#### **State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

34. State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education and Child Care SEPP) commenced on 1 September 2017 and aims to facilitate the effective delivery of educational establishments and early education and child care facilities across the State.
35. Clause 22 of the Education and Child Care SEPP indicates that the consent authority cannot grant consent to a development for the purpose of a centre-based child care facility

except with the concurrence of the Regulatory Authority. The child care facility has an existing approval for operation and was assessed at the time of approval against the applicable assessment criterion of the time. The proposal seeks to only to increase the staff numbers to satisfy statutory requirements. Despite the minor increase in staff numbers, the modification will still need to be considered against the provisions of the SEPP and Table No.1 below summarises compliance.

**Table 1: Compliance with State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education and Child Care SEPP)**

Clause	Control	Proposal	Complies
<b>Clause 22 Centre-based child care facility – concurrence of Regulatory Authority required for certain development</b>	(1) This clause applies to development for the purpose of a centre-based child care facility if— the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the <a href="#">Education and Care Services National Regulations</a> , or the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.	The minimum indoor and outdoor space requirements per child within a facility are stipulated in Clauses 107 and 108 of the Educational and Care Services National Requirements.  As there is no change to the number of children permitted at the facility and there is no change to the internal and external areas within the centre, these provisions are not applicable in this case. The original DA was also determined prior to these provisions.	N/A
<b>Clause 23 Matters for consideration</b>	Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.	Refer to Table 2 below for an assessment of the proposal against the provisions of the Child Care Planning Guideline	Yes (refer to Table 2 below)
<b>Clause 24 Child-based child care facility in Zone IN1 or IN2</b>	The object of this clause is to minimise land use conflicts with existing developments on surrounding land and to ensure the safety and health	The site is not located within the IN1 or IN2 zone as such these additional provisions are not applicable.	N/A

	of people using or visiting a centre-based child care facility on land in Zone IN1 General Industrial or Zone IN2 Light Industrial.		
<b>Clause 25 – Non-discretionary development standards</b>	These are a series of provisions relating to location, amount of indoor and outdoor space, site area and colour of building materials and structures that will not allow for refusal if these are met.	The development generally complies with this Clause as there is no change to the site characteristics and location or the area of indoor/outdoor space	Yes
<b>26 Centre-based child care facility – development control plans</b>	<p>(1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility:</p> <p>(a) operational or management plans or arrangements (including hours of operation),</p> <p>(b) demonstrated need or demand for child care services,</p> <p>(c) proximity of facility to other early education and care facilities,</p> <p>(d) any matter relating to development for the purpose of a centre-based child care facility contained in:</p> <p>(i) the design principles set out in Part 2 of the Child Care Planning Guideline,</p>	<p>The proposal seeks modification of conditions of the development consent for a Child Care Facility. This clause overrides any applicable control within the Hurstville instruments.</p> <p>A Plan of Management (POM) was required under Condition 14 of DA2016/0035 and changes were sought and approved via MOD2019/0214 by the Georges River Local Planning Panel on 20 February 2020.</p> <p>The development is under construction.</p> <p>See table below.</p> <p>See table below.</p>	<p>Yes</p> <p>No change to the POM is proposed.</p> <p>Yes</p> <p>See below</p> <p>See below</p>



	<p>or</p> <p>(ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).</p>		
	<p>(2) This clause applies regardless of when the development control plan was made.</p>	<p>The development has also been assessed against the Hurstville DCP provisions although many of the controls in this document are superseded by the Child Care Planning Guidelines - NSW 2017.</p>	<p>Noted</p>

LPP016-20

Table 2 below provides consideration of relevant matters identified under the Child Care Planning Guidelines NSW 2017, which came into effect after the determination of the original application DA2016/0035. The guidelines need to be considered in the determination of any application even though the proposal will not alter or affect the main controls.

**Table 2: Compliance with the provisions of the Child Care Planning Guidelines**

<b>Compliance Table - Child Care Planning Guidelines NSW 2017</b>			
<b>Controls</b>	<b>Requirement</b>	<b>Proposed</b>	<b>Complies</b>
<b>3.1 Site selection and location</b>	<b>C1- For proposed developments in or adjacent to a residential zone consider:</b>		
	<ul style="list-style-type: none"> <li>▪ the acoustic and privacy impacts of the proposed development on the residential properties</li> </ul>	<p>An acoustic statement prepared by Acoustic Logic, dated 18 November 2019 accompanied the application however this report focused on the proposed increase in operating hours as requested in MOD2019/0214.</p> <p>The proposed</p>	<p>Compliant and will not increase existing noise levels.</p>

		increase in three (3) additional staff members is not considered to affect the noise generated by the facility. An increase in adult staff is not considered to be a factor to alter or radically affect noise in the centre. The increase in numbers is to meet statutory criterion.	
	<ul style="list-style-type: none"> <li>▪ the setbacks and siting of buildings within the residential context</li> </ul>	Not applicable as the proposal does not propose building modifications.	Yes
	<ul style="list-style-type: none"> <li>▪ traffic and parking impacts of the proposal on residential amenity</li> </ul>	<p>The modification application was accompanied by a Traffic Report which justified that the deficiency of one car parking spaces is supported given the circumstances of the case.</p> <p>The DCP provisions for car parking override the provisions within the Guidelines and so this issue is addressed in greater detail later in this report.</p>	Yes
	<p><b>C2 - When selecting a site, ensure that:</b></p> <ul style="list-style-type: none"> <li>▪ the location and surrounding uses are compatible with the proposed development or use</li> </ul>	The location of the proposed child care centre has been approved by the Court and the modification application does not propose any changes to the siting, location or size of the centre.	Yes
	<ul style="list-style-type: none"> <li>▪ the sites environmentally safe including risks such</li> </ul>	The site is not impacted by any	Yes

	as flooding, land slip, bushfires, coastal hazards	affectations or constraints such as flooding, landslip, bushfire or coastal hazards.	
	<ul style="list-style-type: none"> <li>▪ there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed</li> </ul>	No site contamination is known on the land which has been used for residential and church activities over many years. In addition the approved earthworks have been completed and no unexpected finds were encountered.	Yes
	<ul style="list-style-type: none"> <li>▪ the characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> <li>- size of street frontage, lot configuration, dimensions and overall size</li> <li>- number of shared boundaries with residential properties.</li> <li>- the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas.</li> </ul> </li> </ul>	<p>The child care centre has been approved under DA2016/0035.</p> <p>The allotment is adequate for the proposal. No change is proposed.</p> <p>The property adjoins three (3) residential properties.</p> <p>There are no adverse amenity or environmental impacts envisaged by the proposed change in staffing numbers.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
	<ul style="list-style-type: none"> <li>▪ there are suitable drop off and pick up areas, and off and on street parking</li> </ul>	<p>The original Traffic Report and the L&amp;E Court were satisfied that access/egress and car parking was adequate for the child care centre.</p> <p>The increase in staffing numbers affects the onsite parking provisions as it generates the need for an additional off</p>	Yes – no change

		<p>street car parking space which cannot be accommodated onsite. It should be noted the change in staffing numbers relates to changes in legislation relating to staff to children ratios.</p> <p>The guidelines provide minimum car parking provisions only if a DCP does not specify minimum provisions. The Hurstville DCP includes car parking provisions that are applicable, the provision for car parking is provided in more detail later in this report.</p>	
	<ul style="list-style-type: none"> <li>the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use</li> </ul>	<p>Mulga Road and Gungah Bay Road are local roads. These roads are not identified as collector roads within the Hurstville DCP 2013.</p>	Yes
	<ul style="list-style-type: none"> <li>it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.</li> </ul>	<p>The subject site is located in a residential setting and is not impacted by any of the criterion listed within this clause.</p>	Yes
	<p><b>C3 - A child care facility should be located:</b></p>		
	<ul style="list-style-type: none"> <li>near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public</li> </ul>	<p>The subject site is surrounded by residential uses within the immediate vicinity and is within 200m) of a shopping precinct (Oatley</p>	Yes – no change proposed

	worship	West, parks and 400m of a school.	
	<ul style="list-style-type: none"> <li>▪ near or within employment areas, town centres, business centres, shops</li> </ul>	The subject site is within walking distance of the Oatley and Oatley West commercial precincts.	Yes
	<ul style="list-style-type: none"> <li>▪ with access to public transport including rail, buses, ferries</li> </ul>	Bus stops are located along Mulga Road and Gungah Bay Road.	Yes
	<ul style="list-style-type: none"> <li>▪ in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.</li> </ul>	The subject site has connectivity to the Mulga Road and Oatley commercial precincts.	Yes
	<b>C24- A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</b>	An Acoustic Statement has been prepared by Acoustic Logic dated 18 November 2019 supporting the proposal.	Yes
	<ul style="list-style-type: none"> <li>• identify an appropriate noise level for a child care facility located in residential and other zones</li> <li>• determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use</li> <li>• determine appropriate height of any acoustic fence to enable the noise criteria to be met.</li> </ul>	<p>The original report identified appropriate background noise levels as accepted by the Court.</p> <p>The application was referred to Council's Health Officer who raised no issues with the Acoustic Statement. In addition it is not considered that the increase in 3 additional staff members will not create any undue additional noise impacts.</p>	Yes
<b>3.6 Noise and air pollution</b>	<b>C25 Adopt design solutions to minimise the impacts of noise, such as:</b> <ul style="list-style-type: none"> <li>- creating physical separation between buildings and the noise source</li> <li>- orienting the facility perpendicular to the noise source and where possible buffered by other uses</li> </ul>	The proposed alteration does not affect the built form and approved building envelope. No adverse noise impact will be generated by the	Yes

	<ul style="list-style-type: none"> <li>- using landscaping to reduce the perception of noise</li> <li>- limiting the number and size of openings facing noise sources</li> <li>- using double or acoustic glazing, acoustic louvres or enclosed balconies (winter gardens)</li> <li>- using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits</li> <li>- locating cot rooms, sleeping areas and play areas away from external noise sources.</li> </ul>	proposed modification.	
<b>3.7 Hours of operation</b>	<b>C29- Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.</b>	No change is proposed to the hours of operation by this application.	Yes
<b>3.8 Traffic, parking and pedestrian circulation</b>	<b>C31 Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</b>	<p>The additional staff numbers generate the need for one (1) additional onsite car parking space, however the site cannot accommodate any additional car parking.</p> <p>Assessment against the provisions of the Hurstville Development Control Plan 2013 are provided in more detail later in this report.</p>	Yes
	<b>C33- A Traffic and Parking Study should be prepared</b>	A Traffic and Parking study was submitted	Yes

	<p><b>to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised.</b></p> <ul style="list-style-type: none"> <li>- the amenity of the surrounding area will not be affected</li> <li>- there will be no impacts on the safe operation of the surrounding road network</li> </ul>	<p>with the modification prepared by GTA consultants and is dated 23 January 2020. This report justifies the shortfall of one (1) onsite car parking space.</p> <p>This issue is discussed later in the report in accordance with the Hurstville DCP provisions.</p>	
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**Education and Care Services National Regulations**

36. The National Regulations govern the operation and minimum requirements for child care centres. These legislative and regulatory controls establish minimum provisions in relation to insurance, service agreements and approvals as well as establishing minimum operational requirements.
37. Table 2 above considered the proposal against the main provisions (Parts 1, 2 and 3) of the Child Care Centre Guidelines. Part 4 of the Guidelines relates to compliance with the National Regulations for development proposals and assists applicants and child care providers in applying the national regulations. This part covers minimum requirements for the internal physical environment, external physical environment, provides a best practice example and includes a checklist to assist with the planning, design and layout of purpose built child care centres or where significant changes are proposed.
38. The regulations provide minimum standards for the following elements of the centre;
  - Fencing and barriers that enclose outdoor spaces.
  - Laundry and hygiene facilities,
  - Minimum requirements for unencumbered indoor space,
  - Minimum requirements for unencumbered outdoor space,
  - Toilet and hygiene facilities,
  - Minimum standards for ventilation and natural light,
  - Provision of administration space,
  - Nappy change facilities,
  - Outdoor space and the natural environment,
  - Outdoor space and the provision of shade,
  - Premises designed to facilitate supervision.
39. The proposed modification does not affect any of these features of the centre as such these provisions have been considered and satisfied.
40. Of importance to this application is Clause 123 of the National regulations specifies minimum “*educator to child ratios*”. Subclause 1 establishes numerical requirements which require the following minimum provisions;
  - (1) *The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios—*
    - (a) *for children from birth to 24 months of age—1 educator to 4 children;*

- (b) for children over 24 months and less than 36 months of age—1 educator to 5 children;
- (c) for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;
- (d) for children over preschool age, 1 educator to 15 children.

(2) If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.

41. Part 7.3 of the regulations relates to specific provisions for development in New South Wales. Division 2 (Minimum number of educators and qualifications and training required) establishes Clause 271 which states that

*“Educator to child ratios – children aged 36 months or more but less than 6 years;*

*(1) Regulation 123 (1)(c) applies as modified by this section.*

*(2) The educator to child ratio for children aged 36 months or more but less than 6 years of age is 1 educator to 10 children”*

42. In this case, the following table summarises the number of children and the required staffing numbers.

Age of children	Number of children per age category	Staff levels required
0 - 24 months	16	1 educator per 4 children <b>4 staff required</b>
24 - 36 months	15	1 educator per 5 children <b>3 staff required</b>
36 months +	18	1 educator per 11 children <b>2 staff required</b>
Support/Admin staff	No minimum requirements for admin/support staff	<b>4 staff required</b> (this caters for trainees, cook, admin, accounts and office staff)
<b>Total</b>	<b>49</b> (as approved by the original consent)	<b>9 staff required to satisfy children numbers as a minimum</b> <b>13 staff requested which includes the 4 support/administration staff</b>

43. As noted in the table above the national regulations do not specify a minimum amount of support or administrative staff. The regulations focus on the education and care of the children and hence establish minimum standards for the number of educators per number of children. This is the critical component to ensure the minimum standards for the child's education and welfare are maintained. An “educator” as referred to in the regulations is a fully qualified Child Care professional. The regulations do not specify any minimum requirements for support and administrative staff. In this case the centre has specified that an additional 4 support staff are required to assist with the operation of the centre. The need for 4 additional support staff are required for the following reasons;



- The support and administrative staff assist with office duties and include the cook and any trainees.
- These staff will also assist in catering for shift changes and covering staff when they are on lunch breaks etc.
- This centre also works with an Inclusion Support Program which supports children with additional needs. To allow for an additional 4 support staff will provide for greater flexibility in the implementation of this program.

44. The proposed change is considered to be minor and will not adversely affect the provisions of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 and the proposal complies with the National Regulations.

#### **Draft Environmental Planning Instruments**

45. 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;

46. The proposal is consistent with the provisions of this Draft Instrument. The amended proposal does not alter aspects of the proposal to which the Draft SEPP provisions would apply.

#### **Draft Remediation of Land SEPP**

47. 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.

48. 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.

49. 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.

50. The proposed modification does not alter the site conditions as approved under DA2016/0035, and the earth works and construction has been completed, accordingly no further consideration of site contamination is required.

#### **Environmental Planning and Assessment Act, 1979 (as amended)**

51. Section 4.56(1) of the EP&A Act 1979 is applicable to this application as the original Development Application was determined by the Land and Environment Court. Like Section 4.55 of the Act the development needs to have minimal environmental impacts and pass the “substantially the same development” test.
52. Section 4.56 of the Act states that;
- (1) *A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if--*
    - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
    - (b) *it has notified the application in accordance with--*
      - (i) *the regulations, if the regulations so require, and*
      - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
    - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
    - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*
  - (1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*
  - (1C) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*
  - (2) *After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.*
  - (3) *The regulations may make provision for or with respect to the following-*
    - (a) *the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,*
    - (b) *the effect of any such deemed determination on the power of a consent authority to determine any such application,*
    - (c) *the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.*

53. The proposed modification is considered to be substantially the same development and consistent with the originally approved development. The application has been notified in accordance with the Act and as such satisfies all the provisions of Section 4.56 of the Act.

### Hurstville Local Environmental Plan 2012

54. The proposal generally complies with the relevant standards of the Hurstville Local Environmental Plan 2012 (HLEP 2012) and is a permissible development within the R2 Low Density Residential zone.

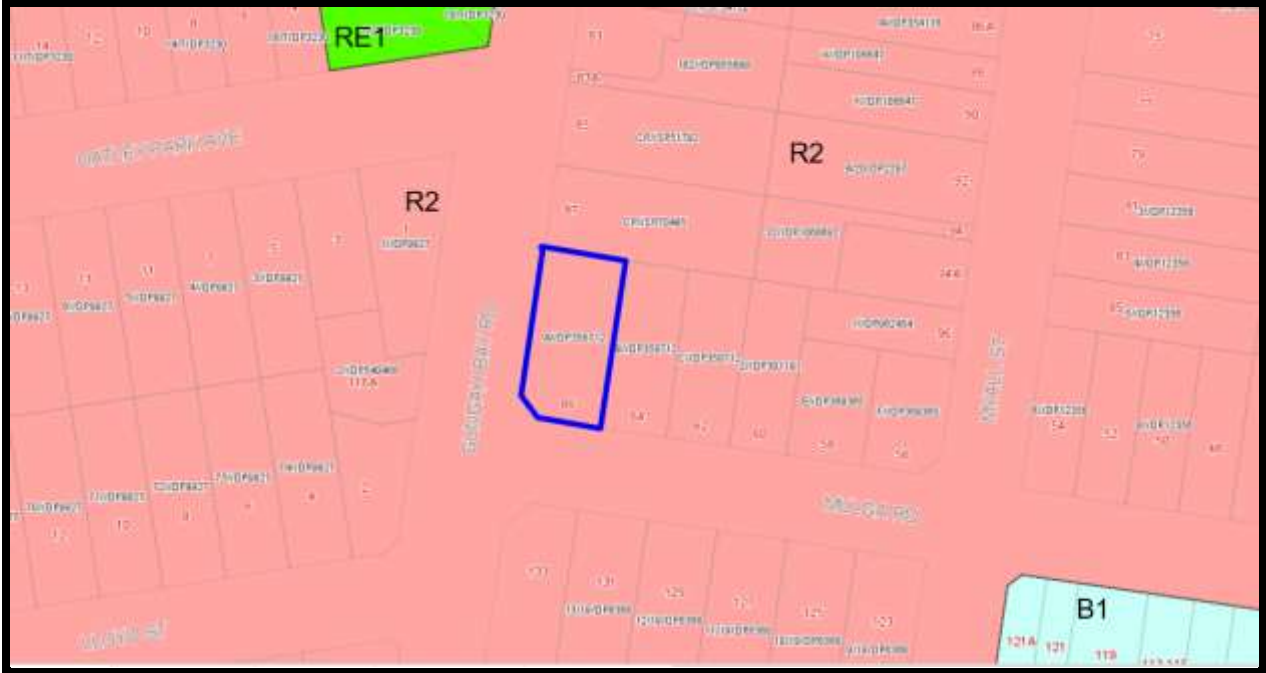


Figure 3: Zoning Map - Site outlined in blue

### Objectives of Zone

55. The proposal does not alter the approved use which is a child care centre and the proposed change maintains compliance with the R2 Low Density Residential zone objectives in particular the following objective;

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

56. A child care centre is a service that provides for the day to day needs of residents and the wider community. The originally approved plans were considered to demonstrate that the proposal will provide a satisfactory facility which can suitably accommodate the children and maintain reasonable neighbour amenity.

### Development Control Plans

#### Hurstville Development Control Plan 2013 (HDCP)

57. The proposal has been considered in accordance with the applicable sections and considerations below.

#### **DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.1 CAR PARKING**

58. Section 3.1 of the HDCP relates to provisions for car parking, access and manoeuvrability. There is no change proposed to the approved basement car parking

layout and access to this area. The design complies with AS2890.1 2004 and AS2890.2 Part 2 in respect to the design and layout of parking facilities.

59. Design Solution 1.3 of the DCP requires numeric compliance for specific land uses in accordance with Council's minimum requirements for each land use. The parking requirements for individual uses are stipulated in Table 1 and 2 of the DCP. In respect to child care centres the following provisions apply:

*1 space per 10 children for drop off and pick up and  
1 space per 2 staff*

60. The approved number of children remains unchanged which is 49 and this generates a need for 5 off street car parking spaces. The originally approved number of staff was 11 which generated a need for 6 spaces (rounded up). The total number of car parking spaces required was eleven (11). This was catered for in the basement car parking level of the approved scheme as shown in the diagram below (Figure 4). The additional 3 staff members will create the need for an additional car parking space. The 13 staff members as proposed by this application generates the need for seven (7) off street car parking spaces.

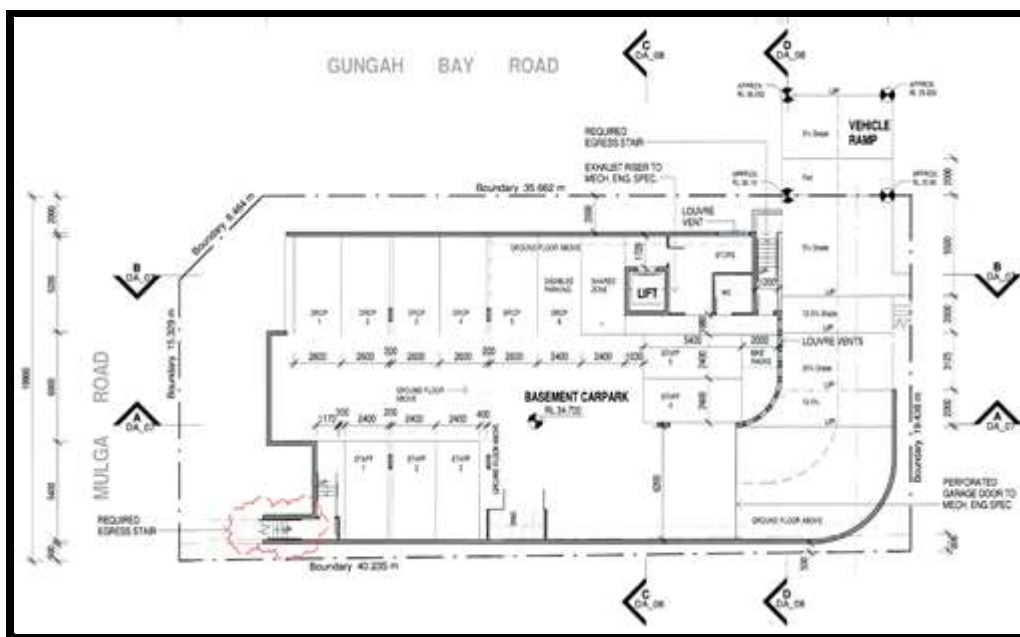


Figure 4: Approved basement car parking level and the layout

61. The basement car park shows 6 drop off spaces and 5 staff spaces however condition 58 rectifies the actual dedication of parking and states;

***“Development Assessment – Allocation of 11 required car parking spaces – car parking associated with the development is to be allocated as follows:***

- (a) *Staff: 6 spaces*
- (b) *Parents: 5 spaces*
- (c) *Accessible: 1 space (to be a parent space).”*

62. It is not proposed to alter this condition. The site can not physically accommodate the additional car parking space that is required due to the increase in staff numbers.

63. The applicant contends that the increase in staffing numbers by three (3) persons will not adversely intensify the use of the premises or the traffic/car parking generation requirements as the same number of children will be accommodated in the centre. Twelve (12) car parking spaces are required whilst eleven (11) are provided. An updated parking assessment was prepared by GTA Consultants and supports the modification. The Traffic Consultant's justification to support for the loss of one space at the site is based on the following information:
- The site is generally well located and quite accessible being located some 700m west of the Oatley Train station. A modal data survey regarding a similar development (Giraffe Early Learning Centre at Balgowlah) indicated that 80% of staff travelled by public transport.
  - The site is also located within 50m of a bus stop.
64. There are further justifications regarding parking at the centre that have not been addressed as part of the traffic and parking assessment. Design Solution 1.1 of the HDCP states that:
- “In determining the prescriptive parking requirements for each type of land use, Council has been informed by a range of technical studies and documents, including detailed review of car parking rates in business and industrial zoned land and the Roads and Traffic Authority Guide to Traffic Generating Developments, October 2002. **However, Council uses these prescriptive parking requirements on a discretionary basis only, and may be flexible in establishing parking conditions according to expert reports on the existing parking and traffic conditions in the vicinity of the subject site**”.*
65. Emphasis is placed on the later part of this solution. The subject land use is located within a residential precinct and there are no other intensive land uses within the vicinity of the site which may compete with on street parking. When conducting a site inspection the adjoining streets have ample opportunities for longer term parking with no restrictions placed on parking in this area. In addition, the Gungah Bay Road and Mulga Road intersection are operating an “A” rated level of service in accordance with SIDRA analysis which confirms that the general traffic conditions are well managed and the area can accommodate the additional car parking space within the street network without adversely affecting the amenity and exiting traffic conditions in the area.
66. Modification Application (MOD2019/0214) was approved which will improve traffic and parking conditions as an extension of hours to the centre will further disperse and distribute traffic and parking movements in and around the centre and alter the need for parking as less staff would be required at certain periods/shifts during the day.
67. It should also be noted that there is a slight discrepancy in the numerics stated as part of the Application. The supporting SEE states that the amended staffing numbers are proposed at 13 however the parking assessment prepared by GTA consultants refers to 14 staff members. Whether the centre caters for 13 or 14 staff is irrelevant as in both instances this generates the need for 7 car parking spaces for staff (based on 1 space per 2 staff members as part of HDCP).

#### **DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 5.3 CHILD CARE CENTRES**

68. The proposed child care centre has been assessed against relevant requirements of Section 5.3 of Council's Development Control Plan No 1 – LGA Wide as shown below.

<b>Section 5.3</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
DS2.1-DS2.13 Locational Criteria	Should be located close to community focal points	The Site is located within 200m of the Mulga Road commercial precinct.	Yes
	Minimum site area of 500sqm	780.88sqm	Yes
	Min. frontage of 18m where a separate entry and exit is provided	The site is a corner site with frontages of 15.329m to Mulga Road, of 35.662m to Gungah Bay Road, and a splay of 6.5m adjacent to the intersection between the two roads. The site dimensions are not proposed to be altered by this application.	No change proposed
	Sites must not have a property boundary to a state road	The site does not adjoin a state road.	Yes
	Site must be at least 300m away from telecommunications towers, large overhead power wires, any other inappropriate area	High tension power lines, telecommunications towers or other inappropriate structures or uses are not located within 300m of the site.	Yes
	Approval will not be given to sites which are less than 55m from an LPG above ground gas tank or tanker unloading position	The site is not located near an LPG tank or tanker unloading position.	Yes
	Analysis of existing and/or potential site contamination	No significant contamination is likely to be present on the site given previous uses of the site. The centre is currently being constructed with all earth works and construction above ground level is completed. No contamination was encountered.	Yes
	Approval will not be given to sites located within cul-de-sacs or closed roads	The site is not located within a cul-de-sac or closed road.	Yes
	Child care centres are not to be located on bushfire or flood prone land, or located adjoining drug clinics or other inappropriate land uses	The site is not identified as bushfire or flood prone land.	Yes
	Proposals must be	A traffic report has not been	Yes

	accompanied by a Traffic Impact Statement provided by a qualified Consultant	provided with the modification application, it deals solely with conditions modifying the number of staff within the centre. Car parking and access has been assessed against Section 3 of the HDCP. The shortfall of 1 space can be accommodated within the road network	
DS3.1-DS3.4 Cumulative Impacts from Centres within Residential Areas	Only one child care centre is permitted at an intersection	No other child care centres are located at the intersection.	Yes
	Child care centres will not be permitted on land adjoining any other existing or approved child care centre	The site does not adjoin any other existing or approved child care centres.	Yes
	Only one child care centre is permitted per street block	No other child care centre is located on the same block.	Yes
DS5.1-DS5.3 Size of Centres and Child Age Groups	Maximum 40 children within the R2 - Low Density Residential	A maximum 49 children approved by NSW Land & Environment Court.	No but acceptable
	Minimum number of places within the 0-2 year age group is to be the same as the % of 0-2 year olds in the under 5 years population at most recent census (which is 35% from the 2011 census) = 17 children	16 children = 32.65% This is as approved by Court and remains unchanged by this modification.	No. Number of 0-2 year old children is consistent with approval by Court.
DS6.1-DS6.3 Building Form	Height – Single storey in the R2 Low Density Residential Zone	A two storey building has been approved by the Court and the building envelope remains unchanged by this modification.	Yes
DS6.4 –DS6.6 Setbacks	Front Setback - 5.5m to primary front	13.3m to Mulga Road, remains unchanged.	Yes
	Side Setback - 0.9m	3.275m and 2.65m, remains unchanged.	Yes
	Rear Setback – 3m	3.0m setback remains unchanged.	Yes
DS6.7-DS6.12 Relationships to Adjoining Properties	Impacts of the following to be considered: <ul style="list-style-type: none"> <li>Play areas – indoor and outdoor</li> </ul>	2.1m acoustic barriers approved for the outdoor play area. Indoor play areas demonstrated to be capable of achieving appropriate acoustic amenity for	Yes

	<ul style="list-style-type: none"> <li>• Windows and doors (particularly those associated with indoor play areas)</li> <li>• Verandahs</li> <li>• Point of entry</li> <li>• Pick-up and drop-off points</li> <li>• Any plant equipment which may be required within the context of the centre</li> <li>• Openings such as windows and doors should not correspond with existing opening on adjoining properties</li> </ul>	<p>adjoining neighbours. Predominantly planters, high-light windows and positioning of staff/services rooms along neighbouring boundaries to buffer internal noise. No verandah play area is provided. Entry Point off Gungah Bay Road. Pick-up and drop-off is available from the basement car park. VRV condensing unit provided behind the parapet wall with a 1m setback to boundary.</p> <p>Positioning of windows and doors are as approved by the Court and is unchanged by the proposed Modification Application.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
DS6.13— DS6.15 Solar Design and Energy Efficiency	A minimum of 3 hours sunlight between 9am and 3pm is to be maintained to adjoining private open space, habitable rooms and solar collectors	The site has a north-south orientation and the approved development is two storeys. The property to the east will be overshadowed during the afternoon and thus should attain 3 hours solar access during mornings. The solar access available remains unchanged by this application.	Yes
DS6.16 Streetscape Assessment	Streetscape and the design principles used to improve the existing streetscape	The building remains unchanged from that approved by the Court.	Yes
DS6.17 Building Detail	The design of the centre must provide strong visual links between indoor and outdoor spaces	Provided through glazed double doors.	Yes
DS7.1— DS7.11 Parking and Driveway	1 space per 2 staff 10 staff = 5 spaces 1 space per 15 children 49 children = 4 spaces Total = 9 spaces	Due to the increase in staff numbers this generates the need for an additional car parking space which cannot be accommodated on site. A traffic and parking assessment accompanies the application, prepared by GTA Consultants has been provided and justifies	No this has been addressed in detail earlier in the report and is considered to be



		the minor non-compliance.	satisfactory.
	Vehicles must be able to enter and leave the site in a forward direction	Vehicles can enter and exit the site in a forward direction.	Yes
	Bike racks must be provided on site.	The bike racks are provided in the basement.	Yes
	Driveway crossing on corner allotments must not be located closer than 9m to the property alignment at the intersection	Approximately 30m from the intersection.	Yes
	Landscaping and paving design associated with driveways must achieve the following: <ul style="list-style-type: none"> <li>• Pedestrian safety and visibility</li> <li>• Level, hard surface from vehicles to entry point</li> <li>• Satisfactory manoeuvrability for disabled persons and/or prams</li> <li>• Clear delineation between driveway and yard areas</li> </ul>	The driveway and pedestrian access provides for appropriate pedestrian safety.	Yes
	A “Neighbourhood Parking Policy” and a “Motor Vehicle and Pedestrian Risk Assessment Report” must be submitted for Council’s consideration	The original Traffic Report considers pedestrian safety and on street parking. The basement remains unaltered by this proposal which was approved by Court.	Yes
	Physical demarcation is required to be provided between pedestrians and vehicular access ways to ensure pedestrian safety	Vehicular access is via a ramp to the basement car parking this remains unaltered by this proposal which was approved by the Court.	Yes
DS7.12- DS7. Traffic Considerations	Council to consider traffic and safety impacts	A Traffic Report was submitted with the original application and was considered acceptable by the Court as part of the approval.  Appropriate conditions were	Yes

		included which required an automated lit sign which manages the entry into the car park and notes that if the car park is full cars entering the site are aware of this situation and saves them entering.	
	Consideration of traffic impacts between 7:30am-9:00am and 3:30pm-6:00pm.	The original traffic report adequately considered traffic impacts during the allocated times.	Yes
DS7.15- DS7.16 Access for Persons with Limited Mobility	A 1m wide landscaped area is required to be provided along the front setback	A 2m - 2.6m landscaped area is provided along the primary frontage of Mulga Road.	Yes
	Disabled access is to be provided from the street to the main entrance	The original Accessibility Report considered by the Court indicated that the site will be suitably accessible. There are no physical changes to the development as approved.	Yes -
	Disabled access ramp is to be provided to the playground areas	An accessible ramp is provided to the outdoor play area and to the office.	Yes
DS8.1-DS8.8 Tree Preservation and Planting	A 1m wide landscaped area is required to be provided along the front setback. Screen planting is to be provided along the side boundaries.	A 2m - 2.6m landscape strip is provided along the Mulga Road frontage of the site. The application does not alter this.  Screen planting is provided along the side boundaries of the site.	Yes  Yes
	Tree retention where required by Council's Tree Officer/Arborist	No tree removal is proposed by this application.	Yes
	DS8.8.7 Drainage	Play areas must be capable of rapid clearance of surface water	The drainage plans remain unchanged from those approved by the Court.
DS11.1-11.3 Hours of Operation	Max. 7:00am – 7:00pm	Monday – Friday: 7:00am – 7:00pm.	Yes
DS12.1-12.2 Visual Privacy	Minimise overlooking through screening etc.	A 2.1m high acoustic barrier is approved along the eastern boundary of the outdoor play area (OPA).	Yes
	Play equipment to be setback 3m from boundaries adjoining residential	No details of play equipment provided but sufficient outdoor play space has been approved.	Yes
DS12.3-12.4 Acoustic	Acoustic Report by a suitably qualified	An Acoustic Report has been provided by Acoustic Logic	Yes

Amenity	consultant to be provided	Consultancy.	
DS12.5-12.6 Fencing	Where it is essential that side street boundaries be fully fenced, they are to be designed to allow landscaping along the boundary.	Fencing was approved along the Gungah Bay Road frontage of the site under the original application. The present modification does not alter the approved details.	No change proposed.

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## IMPACTS

### ***Built Environment***

69. The proposed modification of the approved development will not result in any adverse impacts upon the built environment as no physical work is proposed.

### ***Social and Economic Impact***

70. The proposed development will not result in unreasonable adverse social and economic impacts within the locality or for neighbouring lands.

### ***Suitability of the Site***

71. It is considered that the proposed modification of the approved development will not impact the approved building form and the development remains a suitable development for the site having regard to the land shape, topography, the built form and relationship to adjoining developments.

## SUBMISSIONS AND THE PUBLIC INTEREST

72. The proposal was notified to adjoining neighbours for a period of fourteen (14) days. No submissions in response were received.

## Council Referrals

### Building Referral

73. The application was referred to Council's Building Services Unit. No objection was raised in respect to the proposed changes. Building Services reviewed the documentation lodged with the application and noted that "*it relates to a proposed increase to the maximum staff members from 11 to 14. This increase to the number of occupants will have no material effect on NCC/BCA matters such as means of escape in case of fire or sanitary facility numbers.*"

### Traffic Referral

74. The application was referred to Council's Traffic Engineers for comment. No objection is raised in respect to the proposed modification.

## CONCLUSION

75. The application has been assessed having regard to Section 4.56 and Section 4.15 of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies and the provisions of the Hurstville Local Environmental Plan 2012 and Development Control Plan No.1.

76. The proposal has been considered on its merits and is considered to be acceptable in a modified form for the reasons outlined within this report. The proposal is reasonable given that the objectives of the controls have been reasonably satisfied and the modification

does not result in any physical alteration to the approved development form, and general operating environment.

77. Following a detailed assessment contained within this report, it is considered that MOD2020/0017 be approved subject to modified conditions of consent.

## **DETERMINATION AND STATEMENT OF REASONS**

### Statement of Reasons

78. The reasons for this recommendation are:

- The proposed development generally complies with the requirements of the relevant environmental planning instruments and development control plan;
- The proposed modification to increase staffing numbers to 14 does not result in any unreasonable impact on the natural and built environment.
- The proposal aims to provide a quality child care service that responds to community needs and demands and satisfies the minimal requirements of the SEPP and National Regulations for Child Care Centres.
- The modification remains consistent with the character of the locality.

### Determination

79. That the Georges River Council Local Planning Panel, as the consent authority, pursuant to Section 4.56 of the Environmental Planning and Assessment Act, 1979, grant approval to the requested modifications (MOD2020/0017) seeking to increase staffing numbers from the approved 11 to 14 and modify Condition 59 of Development Consent DA2016/0035 for demolition of existing structures and construction of a 2 storey child care centre approved by the Land and Environment Court dated 3 April 2017 at Lot A DP 358722 and known as 66 Mulga Road, Oatley.

#### **1. Condition 59 is to be modified as follows:**

##### **Condition 59 which currently reads:**

**Development Assessment – Child and Staff Numbers** – The child care centre is approved to have a maximum of eleven (11) staff members during the approved hours of operation.

##### **Condition 59 is to be amended to read as follows:**

**Development Assessment – Child and Staff Numbers** – The child care centre is approved to have a maximum of fourteen (14) staff members during the approved hours of operation.

### **Conditions endorsed by the Court including amendments approved MOD2019/0214 and those sought**

#### **Schedule A - Site Specific Conditions**

##### **GENERAL CONDITIONS**

These conditions have been imposed to ensure that the development is carried out in accordance with the approved plans and to ensure that the appropriate fees and bonds are paid in relation to the development.

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:

Reference No.	Date	Description	Revision	Prepared by
DA 01	01/03/2017	Site Plan	F	Laurie Liskowski Architect
DA_02	01/03/2017	Basement Floor Plan	F	Laurie Liskowski Architect
DA 03	01/03/2017	Ground Floor Plan and Kitchen Detail Plan	F	Laurie Liskowski Architect
DA 04	01/03/2017	First Floor Plan	F	Laurie Liskowski Architect
DA 05	01/03/2017	East and West Elevation	F	Laurie Liskowski Architect
DA_06	01/03/2017	North, South and South West Signage Elevation	F	Laurie Liskowski Architect
DA_07	01/03/2017	Long Sections	F	Laurie Liskowski Architect
DA 08	01/03/2017	Sections	F	Laurie Liskowski Architect
DA 22	01/03/2017	Fence Details	F	Laurie Liskowski Architect
LA-1591 s34_01	28/02/2017	Landscape Draft Plan	F	Greenscape Design and Associates
LA-1591 s34_014	28/02/2017	Landscape First Floor Plan	F	Greenscape Design and Associates
LA-1591 s34_03	28/02/2017	Landscape Section	F	Greenscape Design and Associates
LA-1591 s34_07	23/01/2017	Typical Details	D	Greenscape Design and Associates
-	01/03/2017	Acoustic Assessment	7	Acoustic LoQic
-	15/3/2017	Emergency Management Manual	1	First 5 Minutes
15767 coo 01	16/02/2016	General Notes	B	Engineering Studio Civil and Structural
15767 C01 01	16/02/2016	Sediment and Erosion Control Plan	B	Engineering Studio Civil and Structural
15767 C01 02	16/02/2016	Sediment and Erosion Details	B	Engineering Studio Civil and Structural
15767 CO2 01	16/02/2016	Roof Stormwater drainage plans	B	Engineering Studio Civil and Structural
15767 CO2 02	16/02/2016	Roof Stormwater Details Sheet 1	B	Engineering Studio Civil and Structural
15767 CO2 03	16/02/2016	Roof Stormwater Details Sheet 2	B	Engineering Studio Civil and Structural
15767 C03 01	16/02/2016	Basement Stormwater Drainage Plan	8	Engineering Studio Civil and Structural

15767 C03 02	16/02/2016	Basement Stormwater Details Sheet	B	Engineering Studio Civil and Structural
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## 2. Service Approval

- a. Service Approval from the relevant Regulatory Authority for NSW under Part 3 of the Children (Education and Care Services) national Law (NSW) for the approved development is to be obtained prior to the issue of the Occupation Certificate.
- b. Any design or operation amendment required by the Regulatory Authority for NSW, in order for Service Approval to be issued, is required to form the basis of a future section 96 application to the Council. The Occupation Certificate is not to be issued operational or design amendments to the approved development are required in order to achieve the issue of Service Approval, until such time as consent is obtained from the Council for those amendments.

3. **Fees to be paid to Council** - 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.**

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

**Please contact Council prior to the payment of Section 94 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.**

**Form of payment for transactions \$500,000 or over - 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) Fees to be paid:

### Fee types, bonds and contributions

<b>Fee Type</b>
Long Service Levy (to Long Service Corporation)
Builders Damage Deposit
Inspection Fee for Refund of Damage Deposit
Section 94(A)

**The following fees apply where you appoint Council as your Principal Certifying Authority (PCA). (If you appoint a private PCA, separate fees will apply),**

PCA Services Fee	\$2,629.38
Construction Certificate Application Fee	\$2,629.38
Construction Certificate Imaging Fee	\$236.00

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.

4. **Long Service Levy** - Submit evidence of payment of the Building and Construction Industry Long Service Leave Levy to the Principal Certifying Authority. Note this amount is based on the cost quoted in the Development Application, and same may increase with any variation to estimated cost which arises with the Construction Certificate application. To find out the amount payable go to [www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au) or call 131441. **Evidence of the payment of this levy must be submitted with the Construction Certificate application.**
5. **Damage Deposit - Minor Works** - In order to insure against damage to Council property the following is required:
  - (a) Payment to Council of a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$1,900.00.**
  - (b) Payment to Council of a non refundable inspection fee to enable assessment of any damage and repairs where required: **\$145.00.**
  - (c) 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.
  - (d) Prior to 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, shall be submitted to Council
  - (e) Payments pursuant to this condition are required to be made to Council before the issue of the Construction Certificate.
  - (f) 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.
6. **Section 94A Contributions** - As at the date of Development Consent a contribution of **\$17,270.00** has been levied on the subject development pursuant to Section 94A Contributions Plan. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Section 94A Development Contributions Plan.

**The contribution must be paid prior to the release of a Construction Certificate as specified in the development consent**

**Please contact Council prior to payment to determine whether the contribution amounts have been indexed from that indicated above in this consent and the form of payment that will be accepted by Council.**

**Form of payment for transactions \$500,000 or over - 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).**

Contributions must be received by Council before a Construction Certificate is issued.

The Section 94A Contributions Plan may be inspected at Council's Customer Service Centres or online at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).

**SEPARATE APPROVALS UNDER OTHER LEGISLATION**

These conditions have been imposed to ensure that the applicant is aware of any separate approvals required under other legislation, for example: approvals required under the Local Government Act 1993 or the Roads Act 1993.

**7. Engineering - Section 138 Roads Act 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.**

A separate approval is required to be lodged and approved 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):

- (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 and ancillary works in the road reserve; and
- (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 Certifying Authority prior to the issue of the **Construction Certificate**.

The relevant Application Forms for these activities can be downloaded from Georges River Council's website at: [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au)

For further information, please contact Council's Customer Service Centre on (02) 9330 6400.

**8. Engineering - 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:

The following road frontage works will be required to facilitate access to and from the proposed development site:



- (a) Construct a 1.50m wide x 80mm thick concrete path for the full length of the frontage of the site along Gungah Bay Road and Mulga Road, Oatley in accordance with Council's Specifications for footpaths.
- (b) Construct a 150mm thick concrete vehicular crossing reinforced with F72 fabric in accordance with Council's Specifications for vehicular crossings.

Constructing a vehicular crossing and/or footpath requires **separate approval** under **Section 138 of the Roads Act 1993, prior to the issue of the Construction Certificate.**

To apply for approval:

- (a) Complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Georges River Council's Website at: [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au)
- (b) In the Application Form, quote the Development Consent No. (eg DA2016/0134) and reference this condition number (eg Condition 23)
- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Section P1 and P2, in Council's adopted Fees and Charges for the administrative and inspection charges associated with Vehicular Crossing applications.

Please note, the application must accompanied with a detail design of vehicular crossing and footpath, and must satisfy following requirements:

- Driveway profile must comply with the Australian Standards AS2890.1:2004.
- Footpath cross-fall shall not exceed 3%.
- Footpath gradient (long section) shall not exceed 1:14.
- Retain the existing levels at the boundary between property and Council road reserve; the maximum allowable change is + or – 80mm.
- Proposed driveway shape and width should comply with Council's standard driveway shape as shown on Council's application form.

Once approved, all work shall be carried out by a private contractor in accordance with Council's Specification for Vehicular Crossings and Associated Works **prior to the issue of the Occupation Certificate.**

## REQUIREMENTS OF OTHER GOVERNMENT AGENCIES

These conditions have been imposed by other NSW Government agencies either through their role as referral bodies, concurrence authorities or by issuing General Terms of Approval under the Integrated provisions of the Environmental Planning and Assessment Act 1979.

9. **Sydney Water - Section 73 Certificate** - 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 Coordinator. Please refer to the Plumbing, Building and Developing section of Sydney Water's website to locate a Water Servicing Coordinator in your area. Visit: [www.sydneywater.com.au](http://www.sydneywater.com.au)

A "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, as it can take some

time to build water/sewer pipes and this may impact on other services and building, driveway or landscape design.

The “Notice of Requirements” must be submitted prior to the commencement of work.

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

### **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

These conditions either require modification to the development proposal or further investigation/information prior to the issue of the Construction Certificate to ensure that there is no adverse impact.

12. **Development Assessment - Erosion and Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
  - (a) Compliance with the approved Erosion and 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 run-off 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 before the commencement of work (including demolition and excavation) and must remain until the issue of the Occupation Certificate.

13. **Development Assessment - 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 approved concept stormwater plans shall be amended to:
    - (i) be in accordance with the development as depicted on the approved architectural and landscape plans, as modified by conditions of this consent;
    - (ii) ensure that no structures are place within the perimeter landscaped areas along the frontage of the land to either Mulga Road and Gungah Bay Road
    - (iii) include an On Site Detention system, and
    - (ii) indicate 150mm. (min.) diameter pipelines draining surface inlet pits and grated trench drains.

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

- (b) The approved landscape plan LA-1591 s34\_01 Rev F is to be amended to include a continuous dense hedge planting to the footway boundary to Mulga Road, to a maximum height of 1.2m, with the treatment of remaining depth of landscaped area be as per the submitted landscape plans.
  - (c) The surface treatment of the eastern side of the Ground Floor external play area, for a distance of 3m from the side boundary, is to be modified, to be suitable for 'quiet' passive play only. No play equipment is to be located in this area.
  - (d) Toilet and hand basin facilities shall be provided in accordance with ACECQA certification, or a minimum of eleven (11) toilets and basins, whichever is the lesser. These shall be incorporated into the plans, without any increase to the footprint of accommodation on either level of the approved development.
  - (e) All management controls and acoustic treatment recommendations in Sections 7 and 8 of the acoustic report, Childcare Centre Acoustic Assessment - 66 Mulga Road, Rev.7, dated 1 March 2017 and prepared by Acoustic Logic, are to be adopted and incorporated into the plans.
  - (f) All parking management measures as recommended are to be implement, including:
    - a. provision of an automated lit sign located at the entry of the car park at the frontage to Gungah Bay Road, to read "Car Park Full" identifying when the basement car park is available and/or full.
    - b. A sign to
      - i. encourage parent/carer use of the Basement Car Park at the driveway entry;
      - ii. use of spaces is for pick up and drop off only.
  - (g) All design and operational measures recommended in approved Emergency Management Manual for addressing the practical process of evacuation (in order to determine the minimum required number of staff to facilitate that event, and the provision of any required equipment/space to achieve that outcome) shall be incorporated into the plans, without any increase to the footprint of accommodation on either level of the approved development, along with
    - a. a requirement for a highlighted surface treatment of the floor of the identified evacuation staging areas in the Emergency Management Manual as indicated on the approved plans; and
    - b. provision of a wall mounted illuminated sign, to read '*emergency staging area*', adjacent to the location of each of the emergency staging areas.
  - (h) The evacuation staging areas, as identified on the plans for both floors, are to be internally identified with:
    - (i) colour on the floor, and
    - (ii) a wall sign.
14. **Development Assessment - Amendments to Operational Plan of Management -** The approved Operational Plan of Management dated **January 2020** is to be modified and reissued as follows:
- (a) to deter parking on street except during events (i.e. end of term gatherings/

- student shows); and to be specific to the subject car park (i.e., not generic) (Annexure C);
- (b) confirm operation is only 50 weeks per year - Section 3;
  - (c) staffing shall at all times be as required by the approved emergency plan for efficient evacuation and/ or Service Approval from the relevant Regulatory Authority for NSW under Part 3 of the Children (Education and Care Services) National Law (NSW) whichever is the greater number of staff, but not more than 11 staff in total;
  - (d) no events are permitted after 6pm externally, or use of external play areas during activities permitted in Section 9;
  - (e) section 15 shall be updated to reflect the recommendations of the emergency plan, including training for staff as per that report and/ or any trials or practise events;
  - (f) section 19: only signage is permitted as per the approved plans, ie. no banners; site advertising or physical site branding;
  - (g) incorporate all parking management measures required by the consent;
  - (h) the centre to ensure adequate provision of a minimum of six (6) evacuation cots and tie ropes as recommended.

(This condition is amended as part of MOD2019/0214 (DA2016/0035))

15. **Development Assessment - Signage** - Signage is not to be illuminated and limited to the word/s 'Ballykin' or 'Ballykin Child Care' only as nominated on the plan elevations, and of the size nominated.
16. **CC3002 - Development Engineering - Stormwater Systems with Basement -**

Reference No.	Date	Description	Revision	Prepared by
Job No. 15767 Drawing No. C02.01	16/2/16	Roof Stormwater Drainage Plan	B	Engineering Studio Civil and Structural
Job No. 15767 Drawing No. C03.01	16/2/16	Basement Stormwater Drainage Plan	B	Engineering Studio Civil and Structural

The above submitted stormwater plan, as amended by Condition 13(a) of this consent, has been assessed as a concept plan only and no detailed assessment of the design has been undertaken.

The underground basement car park must pump to and all other stormwater must drain by gravity to the street gutter in Gungah Bay Road.

The design of the proposed drainage system must be prepared by a qualified practising hydraulics engineer (with details of qualifications being provided) and be submitted for approval with the Construction Certificate application.

17. **Development Engineering - Stormwater - Protection of basement from inundation of stormwater waters -**

Reference No.	Date	Description	Revision	Prepared by
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Job No. 15767 Drawing No. C02.01	16/2/16	Roof Stormwater Drainage Plan	B	Engineering Studio Civil and Structural
Job No. 15767 Drawing No. C03.01	16/2/16	Basement Stormwater Drainage Plan	B	Engineering Studio Civil and Structural

LPP016-20

The above submitted stormwater plan as modified by Conditions 13(a) of this consent has been assessed as a concept plan only and no detailed assessment of the design has been undertaken.

A crest is to be provided in the driveway and driveway ramp retaining walls 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 an appropriately qualified person that this design requirement has been adhered to shall be submitted **with the Construction Certificate application**.

#### 18. Development Engineering - Stormwater System

Reference No.	Date	Description	Revision	Prepared by
Job No. 15767 Drawing No. C02.01	16/2/16	Roof Stormwater Drainage Plan	B	Engineering Studio Civil and Structural
Job No. 15767 Drawing No. C03.01	16/2/16	Basement Stormwater Drainage Plan	B	Engineering Studio Civil and Structural

The above submitted stormwater plan as modified by Condition 13(a) of this consent has been assessed as a concept plan only and no detailed assessment of the design has been undertaken.

- (a) All stormwater shall drain by gravity to Council's kerb and gutter directly in front of the Gungah Bay Road property boundary of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2003 (as amended).
- (b) All overflows of roof waters from any rainwater tank shall drain by gravity to Council's kerb and gutter directly in front of the Gungah Bay Road property boundary of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2003 (as amended).
- (c) 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 Gungah Bay Road property boundary of the development site.

The design of this proposed drainage system must be prepared by a qualified practising hydraulics engineer (with details of qualifications being provided) and be submitted for approval with the Construction Certificate application.

#### 19. Development Engineering - Stormwater Drainage Plans

Reference No.	Date	Description	Revision	Prepared by
Job No. 15767 Drawing No. C02.01	16/2/16	Roof Stormwater Drainage Plan	B	Engineering Studio Civil and Structural
Job No. 15767 Drawing No. C03.01	16/2/16	Basement Stormwater Drainage Plan	B	Engineering Studio Civil and Structural

The above submitted stormwater plan as modified by Condition 13(a) of this consent has been assessed as a concept plan only and no detailed assessment of the design has been undertaken.

Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a qualified practising hydraulics engineer (with details of qualifications being provided) 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. Development Engineering - On Site Detention

Reference No.	Date	Description	Revision	Prepared by
Job No. 15767 Drawing No. C02.01	16/2/16	Roof Stormwater Drainage Plan	B	Engineering Studio Civil and Structural
Job No. 15767 Drawing No. C03.01	16/2/16	Basement Stormwater Drainage Plan	B	Engineering Studio Civil and Structural

The above submitted stormwater plan as modified by Condition 13(a) of this consent has been assessed as a concept plan only and no detailed assessment of the design has been undertaken.

An on-site detention (OSD) facility designed by a professional hydrological/hydraulic engineer, shall be 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, at Annual Recurrence Intervals of 2 years and 100 years.

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

- (b) 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:

*"This is an on-site detention basin/tank and is subject to possible surface overflow during heavy storms."*

Full details shall accompany the application for the Construction Certificate

21. **Health - Food Premises - Plans and Specifications** - Details of the construction and fit out of food premises must be submitted to Council's Environmental Health Officer. The plans and specifications must demonstrate compliance with the:

- *Food Act 2003 (as amended);*
- *Food Regulation 2010 (as amended);*
- *Food Standards Code as published by Food Standards Australia;*
- *New Zealand and Australian Standard AS4674:2004 Design, Construction and fit out of food premises (as amended);*
- *Sydney Water - Trade Waste Section.*

Council's Environmental Health Officers' must advise in writing that the plans and specification are considered satisfactory prior to the issue of any Construction Certificate.

22. **Health - Food Premises - Waste Facility** - Details of the construction and fit out of the waste facility of the food premises must be submitted to Council's Environmental Health Officers for approval. Such details must demonstrate compliance with the *Food Act 2003 (as amended)*, *Food Regulation 2010 (as amended)*, the *Food Standards Code* as published by Food Standards Australia and New Zealand and Australian Standard AS 4674:2004 *Design, construction and fit out of food premises (as amended.)* and must be:

- (a) provided with a hose tap connected to the water supply;
- (b) paved with impervious floor materials;
- (c) covered at the intersection of the floor and the walls;
- (d) graded and drained to a waste disposal system in accordance with the requirements of the relevant regulatory authority (Sydney Water);
- (e) adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour as defined by the Protection of the Environment Operations Act 1997;
- (f) fitted with appropriate interventions to meet fire safety standards in accordance with the Building Code of Australia.

Council's Environmental Health Officers' must advise in writing that the plans and specification are considered satisfactory prior to the issue of any Construction Certificate.

23. **Health - Colour of finishes** - All walls, floor and ceiling in all food preparation, food

storage and waste storage areas shall be finished with a light colour. No black or dark colour surface finish is permitted in these areas.

Details of colour of finishes in the mentioned area must be submitted with the plans for satisfactory approval prior to the issue of any Construction Certificate.

24. **Health - Food Wash Sink** - In addition to the wash up sinks and hand wash basin, a designated food wash sink is to be provided in the food preparation area for the purpose of food preparation where foods are prepared by immersion in water.

Food wash sink must be provided with adjacent loading space to aid in the process of food preparation.

25. **Engineering - 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).

26. **Building - Fire Safety Measures prior to Construction Certificate** - Prior to the issue of a Construction Certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a Construction Certificate, which is required to be submitted to either Council or a Certifying Authority. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or Certifying Authority will then issue a Fire Safety Schedule for the building.

27. **Building - Structural details** - Structural plans, specifications and design statement prepared and endorsed by a suitably qualified practising structural engineer who holds the applicable Certificate of Accreditation as required under the Building Professionals Act 2005 shall be submitted along with the Construction Certificate application to the Certifying Authority for any of the following, as required by the building design:

- (a) piers
- (b) footings
- (c) slabs
- (d) columns
- (e) structural steel
- (f) reinforced building elements
- (g) swimming pool design
- (h) retaining walls
- (i) stabilizing works
- (j) structural framework

28. **Building - Access for Persons with a Disability** - Access and sanitary facilities for persons with disabilities must be provided to the premises/building 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.

29. **Building - Slip Resistance- Commercial, Retail and Residential Developments** - 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.

30. **Basement Car Park** - 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).
31. **Basement Car Park** - The basement car park must comply with Australian Standards, AS2890.1 (2004): Parking Facilities Part 1: Off- street car parking and AS2890.6:2009 Off Street parking for people with disabilities.
32. **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.
33. **Waste - 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 Principal Certifying Authority and copy provided to the Manager - Environmental Services, Georges River Council prior to the issue of any Construction Certificate.
34. **Waste - Waste Storage Containers - Commercial/Industrial** - Appropriate waste and recycling containers and facilities will need to be provided for all specific end use businesses in accordance with the following waste generation rates:-
  - (a) Retail Trading - shops, to 100 square metres - 0.1-0.2 cubic metres per 100 square metres of floor area per day;
  - (b) Restaurants and Food Shops - 0.3-0.6 square metres per 100 meals, plus up to 0.15 cubic metres of beverage containers per 100 meals; and,
  - (c) Office - 0.01-0.03 cubic metres per 100 square metres of floor area per day.

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

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

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

35. **Waste - Waste Storage Containers - Child Care Centre** - All waste and recycling containers shall be stored in an approved waste storage area, located in an area of the site that is satisfactory for these purposes. Facilities are to be provided in accordance with any requirements of the NSW Department of Community Services.

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

### **PRIOR TO THE COMMENCEMENT OF WORK (INCLUDING DEMOLITION AND EXCAVATION)**

These conditions have been imposed to ensure that all pre-commencement matters are dealt with and finalised prior to the commencement of work.

36. **Building regulation - Site sign - Soil and Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), the durable site sign issued by Georges River 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.
37. **Development Assessment - Demolition and Asbestos** - The demolition work shall comply with the provisions of Australian Standard AS2601:2011 - Demolition of Structures, NSW Work Health and Safety Act 2011 and the NSW Work Health and Safety Regulation 2011. The work plans required by AS2601-2001 shall be accompanied by a written statement by a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the safety statement shall be submitted to the Principal Certifying Authority prior to the commencement of works.

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

The asbestos removal work shall also be undertaken in accordance with the How to Safely Remove Asbestos: Code of Practice published by Work Cover NSW.

Copies of the Act, Regulation and Code of Practice can be downloaded free of charge from the Work Cover NSW website: [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

38. **Development Assessment - 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 Georges River Council advising of the demolition date, details of the WorkCover 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.

39. **Development Assessment - Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the Work Health and Safety Regulation 2011.
40. **Engineering - 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.
41. **Building - Registered Surveyor’s Report - During Development Work** - A report must be submitted to the Principal Certifying Authority at each of the following applicable stages of construction:
- (a) Set out before commencing excavation.
  - (b) Floor slabs or foundation wall, before formwork or commencing brickwork.
  - (c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
  - (d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
  - (e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
  - (f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
  - (g) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.
  - (h) Other.

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

42. **Building - 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 developer's expense.

#### **DURING WORK**

These conditions have been imposed to ensure that there is minimal impact on the adjoining development and surrounding locality during the construction phase of the development.

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

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

44. **Development Assessment - Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved separately by Council.
45. **Development Assessment - Removal and Filling of Swimming Pools**
- (a) The site of the swimming pool must be filled (if necessary) so as to restore the site to the ground level (existing) adjacent to the pool, taking into account any sloping of the site, and
  - (b) The swimming pool must not be filled with building demolition waste of any kind and if constructed as a concrete shell must be demolished so as to allow ground water to escape or drain to groundwater and
  - (c) The fill must be certified clean imported soil or virgin excavated material (VENM) and compacted, and
  - (d) Any piping or similar material must be removed from the site before the site is filled.
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 kerb and gutter in Gungah Bay Road
47. **Engineering - Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act and/or under Section 68 of the Local Government Act 1993. Penalty Infringement Notices may be issued for any offences and severe penalties apply.
48. **Building - Structural Engineer's Certification during construction** - The proposed structure 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.

49. **Waste - 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 whatsoever or in association with the work on site. Copies of all receipts for the disposal, or processing of all such materials shall be submitted to the Principal Certifying Authority and a copy provided to the Manager Environmental Services, Georges River Council.

#### **PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

These conditions have been imposed to ensure that all works have been completed in accordance with the Development Consent prior to the issue of the Occupation Certificate.

50. **Development Assessment - Completion of Landscape Works** - All landscape works must be completed before the issue of the Final Occupation Certificate.
51. **Development Engineering - Positive Covenant for On-site Detention Facility** - A Positive Covenant is to be created over any on-site detention facility.

This covenant is to be worded as follows:

*"It is the responsibility of the lots burdened to keep the "On-Site Detention" facilities, including any ancillary pumps, pipes, pits etc, clean at all times and maintained in an efficient working condition. The "On-Site Detention" facilities are not to be modified in any way without the prior approval of Council."*

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

The Positive Covenant shall be registered at the NSW Department of Lands prior to the issue of a Final Occupation Certificate.

52. **Development Engineering - Works as Executed and Certification of Stormwater works** - Prior to the issue of an Occupation Certificate, the Principal Certifying Authority 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 Principal Certifying Authority and Georges River Council, from a suitably qualified and experienced Hydraulic Consultant/Engineer.

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 Certifying Authority.

The works-as-executed drainage plan must be prepared by a suitably qualified and experienced Hydraulic Engineer in conjunction with a Registered Surveyor and the works-

as-executed plan must include the following details (as applicable):

- (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;
- (e) Details of any pumping systems installed (including wet well volumes).

53. **Health - Noise from Mechanical plant and equipment** - Noise from the operation of mechanical, equipment, ancillary fittings, machinery, mechanical ventilation system and/or refrigeration systems must not give rise to offensive noise as defined under the Protection of the Environment Operations Act 1997 (as amended) and will comply with the noise intrusion criteria as defined under the NSW Industrial Noise Policy published by the Environment Protection Authority.

A professional acoustic engineer shall be engaged to certify that the design and construction of all sound producing plants and equipment associated with the building complies with the above requirements. Certification shall be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

54. **Health - Food Premises - Inspection and Registration** - Prior to the issue of any Occupation Certificate or occupation or use of any food premises:
- (a) An inspection of the fit out of the Food Premises must be arranged with Council's Environmental Health Officer;
  - (b) a satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and
  - (c) the Food Premises must notify and register with Georges River Council of its business details.

55. **Engineering - 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 1.50m wide x 80mm thick concrete path for the full length of the frontage of the site in Gungah Bay Road and Mulga Road, Oatley in accordance with Council's Specifications for footpaths.
- (b) Construct a 150mm thick concrete vehicular crossing reinforced with F72 fabric in accordance with Council's Specifications for vehicular crossings.

A private contractor shall carry out the above work, at the expense of the beneficiary of this consent 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**.

56. **Building - Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000 (the Regulation), on completion of building works and prior to the issue of an Occupation

Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the Regulation. The Fire Safety Certificate must be in the form required by Clause 174 of the Regulation. In addition, each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate must state:

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

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

### **ONGOING CONDITIONS**

These conditions have been imposed to ensure that the use or operation of the development does not adversely impact on the amenity of the neighbourhood or environment.

57. The number of children is to be limited to a maximum of forty nine (49) children, or as determined by the Service Approval from the relevant Regulatory Authority for NSW under Part 3 of the Children (Education and Care Services) National Law (NSW), whichever is the lesser number.
58. **Development Assessment - Allocation of 11 required car parking spaces** - Car parking associated with the development is to be allocated as follows:
  - (a) Staff: 6 spaces
  - (b) Parents: 5 spaces
  - (c) Accessible: 1 space (to be a parent space)
59. **Development Assessment - Child and Staff Numbers** - The child care centre is approved to have a maximum of ~~eleven (11)~~ **fourteen (14)** staff members during the approved hours of operation.

**(This condition is amended as part of MOD2020/0017 (DA2016/0035))**

60. **Development Assessment - Child Care Centre - Staff to Child Ratios** - The licensee of a centre based or mobile children's service must ensure that the ratio of primary contact staff to children being provided with the service is:
  - (a) 1:4 in respect of all children who are under the age of 2 years, and,
  - (b) 1:5 in respect of all children who are 2 or more years of age but under 3 years of age, and
  - (c) 1:10 in respect of all children who are 3 or more years of age but under 6 years of age.

If a centre based or mobile children's service is being provided to a group of children who are not all in the same age bracket, the licensee of the service must ensure that the ratio

of primary contact staff to children in the group is the ratio specified in subclause (a)-(c) for the age bracket in which the youngest child in the group belongs.

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

**Monday to Friday 7:00am – 7:00pm, a maximum of 50 weeks per annum. Staff may vacate the property up until 7:30pm.**

(This condition is amended as part of MOD2019/0214 (DA2016/0035))

62. **Engineering - Entering and Exiting of vehicles** - All vehicles shall enter and exit the premises in a forward direction.

63. **Engineering - Car Park** - All allocated car parking spaces shall be freely available at all times for the parents/carers of children of the child care centre.

64. **Development Assessment - Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained on an ongoing basis. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control and any other operations required to maintain healthy trees, plants and turf areas.

65. **Development Assessment - Plan of Management** - The development is to operate at all times in accordance with the Operational Plan of Management dated **January 2020** as amended by Condition 14. No change is to be made to the Plan of Management without the prior written approval of the Council.

(This condition is amended as part of MOD2019/0214 (DA2016/0035))

66. **ONG4002 - Health - Final Acoustic Report - Verification of Noise report** - Within three (3) months from the issue of an Occupation Certificate, an acoustical assessment is to be carried out by an appropriately qualified person, in accordance with the EPA's Industrial Noise Policy and submitted to Council for consideration. This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report submitted with the application are effective in attenuating noise to an acceptable noise level and that the use of the does not give rise to "offensive noise" as defined under the provision of the Protection of the Environment Operation Act 1997 (as amended).

67. **Health - 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).

68. **Health - 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.

69. **Health - 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.



No vegetation, article, building material, waste or the like shall be ignited or burnt whatsoever or in association with the work on site.

70. **Health - Storage of goods outside buildings** - There shall be no storage of any goods external to the building with the exception of waste receptacles.
71. **Health - Food premises - Maintenance of food premises** - The food premises must be maintained in accordance with the Food Act 2003 (as amended), Food Regulation 2010 (as amended); the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004 - Construction and fit out of food premises (as amended).
72. **Health - Food premises - Final Acoustic Report Verification** - Within three (3) months from the issue of an Occupation Certificate, an acoustical assessment is to be carried out by acoustic engineer in accordance with the EPA's Industrial Noise Policy and submitted to Council for consideration. This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report submitted with the application are effective in attenuating noise to an acceptable noise level and that the use does not give rise to "offensive noise" as defined under the provision of the Protection of the Environment Operation Act 1997 (as amended).
73. **Health - Food premises - Garbage Odour** - A waste contractor shall be engaged to remove all waste from the garbage storage area on a regular basis so that no overflow of rubbish will occur. Practical measures are also to be taken to ensure that odour emission from the garbage storage area does not cause offensive odour as defined under the provision of the Protection of the Environment Operations Act, 1997 (as amended).
74. **Health - Smoke Free Legislation** - The premises must comply with the Smoke Free Environment Act 2000 (as amended).
75. **Health - Restricted use** - No amplified equipment or live bands permitted in the outdoor play area at any time.
76. **Health - Acoustic report** - Noise control measures must be adopted and maintained in accordance with the Acoustic report submitted by Acoustic Logic Consultancy Pty Ltd, Project No. 20151608 (as amended).
77. **Child Care Centre Use** - The proposal must adequately satisfy all legislative and industry requirements relating to the child care use at all times.
78. **Building - Annual Fire Safety Statement** - In accordance with Clause 177 of the Environmental Planning and Assessment Regulation, 2000 the owner of the building premises must cause the Council to be given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
  - (a) Within twelve (12) months after the date on which the fire safety certificate was received.
  - (b) Subsequent annual fire safety statements are to be given within twelve (12) months after the last such statement was given.
  - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation, 2000.

- (d) A copy of the statement is to be given to the Commissioner of Fire and Rescue NSW, and a further copy is to be prominently displayed in the building.

### ADVICE

This advice has been included to provide additional information and where available direct the applicant to additional sources of information based on the development type.

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

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

80. **Health - Food Premises - Advice -**

#### Copies of food related documents and Standards:

- Copies of the Australian Standards can be obtained from *Standards Australia Customer Service* on telephone 1300 654646 or by visiting the website: [www.standards.com.au](http://www.standards.com.au)
- Copies of the Food Safety Standards Code (Australia) may be obtained by contacting the Food Standards Australia New Zealand Authority on Telephone: (02) 6271-2222, e-mail: [info@foodstandards.gov.au](mailto:info@foodstandards.gov.au) or by visiting the website: [www.foodstandards.gov.au](http://www.foodstandards.gov.au) Copies of the NSW Stands for Construction & Hygienic Operation of Retail Meat Premises may be obtained by contacting the NSW Food Authority on 1300 552 406, e-mail: [contact@foodauthority.nsw.gov.au](mailto:contact@foodauthority.nsw.gov.au) or by visiting the website [www.foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au)

#### Notification of Food Business

Section 100 of the *Food Act* 2003 requires:

100 Notification of conduct of food business

*“(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation”*

**Notification** can be done on-line at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

The provisions of the Food Act 2003 may change over time and irrespective of the conditions of consent, compliance with this *Act*, regulations, food standards and other standards adopted under the Food Act (as amended) are mandatory. The *Food Act* and applicable regulations can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

81. **Health - Noise - Advice**

### Noise related conditions

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

### Useful links relating to Noise:

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

For more information visit [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

83. **Development Assessment - 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.

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.

### Schedule B – Prescribed Conditions

Prescribed conditions are those which are mandated under Division 8A of the *Environmental Planning and Assessment Regulation 2000* and given weight by Section 80A (11) of the *Environmental Planning and Assessment Act 1979*.

Detailed below is a **summary** of all the prescribed conditions which apply to development in New South Wales. Please refer to the full details of the prescribed conditions as in force, at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

It is the responsibility of the beneficiary of this consent to determine which prescribed conditions apply.

84. **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
85. **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.
86. **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.
87. **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.
88. **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.

### Schedule C – Operational & Statutory Conditions

These conditions comprise the operational and statutory conditions which must be satisfied under the Environmental Planning and Assessment Act 1979 and the Environmental Planning & Assessment Regulation 2000. Please refer to the full details of the Act and Regulations as in force, at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

It is the responsibility of the beneficiary of this consent to determine which operational and statutory conditions apply.

89. **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.

90. **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.

91. **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.
92. **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.

93. **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.
94. **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.

95. **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.