

## AGENDA - LPP

<b>Meeting:</b>	Georges River Local Planning Panel (LPP)
<b>Date:</b>	Thursday, 6 August 2020
<b>Time:</b>	4.00pm
<b>Venue:</b>	Council Chambers, Civic Centre, Hurstville
<b>Panel Members:</b>	Sue Francis (Chairperson) John Brockhoff (Expert Panel Member) Jason Perica (Exper Panel Member) Cameron Jones (Community Representative)

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

- a) 18-24 Victoria Street Kogarah
- b) 248 Railway Parade Kogarah
- c) 13-21 Wyuna Street Beverley Park

### **Break - 3.30pm**

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

#### **Public Meeting Session Closed - 6.00pm**

**(Break – Light Supper served to Panel Members)**

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

- LPP032-20      13-21 Wyuna Street Beverley Park – DA2019/0439**  
(Report by Senior Development Assessment Planner)
- LPP033-20      248 Railway Parade Kogarah – REV2020/0013**  
(Report by Senior Development Assessment Planner)
- LPP034-20      18-24 Victoria Street Kogarah – REV2020/0011**  
(Report by Senior Development Assessment Officer)

**4. Confirmation of Minutes**

LPP032-20

# REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 06 AUGUST 2020

LPP032-20

<b>LPP Report No</b>	<b>LPP032-20</b>	<b>Development Application No</b>	<b>DA2019/0439</b>
<b>Site Address &amp; Ward Locality</b>	13-21 Wyuna Street Beverley Park Kogarah Bay Ward		
<b>Proposed Development</b>	Demolition works, lot consolidation and construction of a 7 storey residential flat building over 2 levels of basement parking, landscaping and site works		
<b>Owners</b>	Mr and Mrs Coplin		
<b>Applicant</b>	Wyuna Group Pty Ltd		
<b>Planner/Architect</b>	Architect: Shiro Architects Planner: Think Planners		
<b>Date Of Lodgement</b>	26/09/2019		
<b>Submissions</b>	Thirty three (33)		
<b>Cost of Works</b>	\$16,421,429.00		
<b>Local Planning Panel Criteria</b>	The application relates to development to which the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies, and more than 10 unique submissions were received.		
<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 Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Draft Amendment to Section C2 – Medium Density Development of Kogarah DCP 2013 and Draft Georges River Local Environmental Plan 2020.		
<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 approved in accordance with the 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	<b>Yes</b>

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>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>Yes - Clause 4.3 Height of buildings</b>
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	<b>Not Applicable</b>
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	<b>No, standard conditions have been attached with no design changes. The conditions can be reviewed when the report has been published.</b>

### Site Plan



The site is outlined in blue

### Executive Summary Proposal

1. This development application (DA) seeks consent for the demolition of existing structures across five (5) sites, lot consolidation and the construction of a seven (7) storey Residential Flat Building (RFB) comprising a total of sixty four (64) apartments including two (2) levels of basement car parking catering for a total of 109 car parking spaces, landscaping and site works.

2. The proposal has two (2) basement car parking levels accommodating one hundred and nine (109) residential car parking spaces including thirteen (13) residential visitor spaces. Vehicle access is provided via a two-way driveway from Wyuna Street along the eastern side of the site.
3. The proposed development complies with the maximum floor space ratio (FSR), however the development exceeds the height control with the non-compliance relating only to the lift overrun. A Clause 4.6 Statement has been submitted which has been assessed in detail later in this report, however it is considered to be well founded and in this individual case is recommended for supported given the nature and degree of variation that has been applied for.

### **Site and Locality**

4. The development site is located on the north western side of Wyuna Street, approximately 100m from its intersection with Stubbs Street. It consists of five (5) existing allotments known as 13, 15, 17, 19 and 21 Wyuna Street, Beverley Park. These sites are legally identified as Lots 8, 20, 21, 22 and 23 in DP 7056.
5. The consolidated site is irregular in shape. It has a total frontage to Wyuna Street of 62.43m and a total site area of 2,675.91sqm. The land falls gently to the street from the rear boundary.
6. Presently situated on the site are five (5) residential dwellings, consisting of one (1) single storey house and four (4) two storey houses with ancillary structures including detached garages, sheds, garden beds and an in-ground swimming pool.
7. This entire block (surrounded by Princes Highway to the north west, Stubbs Street to the north east, Lacey Street to the south west and Wyuna Street to the south east) has been “up-zoned” to R3 Medium Density Residential with a maximum height of 21m and a maximum Floor Space Ratio (FSR) of 2:1.
8. The adjacent residential block to the west, bounded by Princes Highway, Lacey Street, John Street and Park Road, has also been up-zoned in the same manner.
9. On the northern side of the Princes Highway to the aforementioned two (2) blocks is the Carlton strip shopping centre zoned B2 Local Centre.
10. Land on the opposite side of Wyuna Street is zoned R2 Low Density Residential and is characterised by single dwelling houses.

### **Zoning and Permissibility**

11. The subject site is zoned R3 Medium Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves the construction of a residential flat building which is a permissible use in the zone with development consent.

### **Submissions**

12. The DA was publicly notified to neighbours for a period of fourteen (14) days in accordance with the Kogarah Development Control Plan 2013 (KDCP 2013). A total of thirty three (33) submissions were received raising concerns with parking and traffic congestion, privacy, design, concerns regarding the height, scale and bulk of the scheme and overlooking issues. These issues are discussed in greater detail in the body of this report. Amended plans were submitted to Council in February 2020 however the changes

did not warrant re-notification as referenced in the Kogarah Development Control Plan 2013.

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

13. This application is referred to the Georges River Local Planning Panel for determination as the proposal relates to a Residential Flat Building and the provisions of the State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development apply. It is also referred as over ten (10) unique submissions were received in response to the application.

### **Planning and Design Issues**

14. The proposal is an appropriate response to the site when considered against the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. Its bulk and scale is consistent with the desired future character of the area as established by the Kogarah Local Environment Plan 2012 (KLEP) development standards for FSR and height.
15. The proposal exceeds the building height development standard of 21m that applies to the site under KLEP 2012 with a small section of the top of the lift overrun encroaching the height limit by a maximum of 1.5m over the 21m height limit. The applicant has submitted a Clause 4.6 Statement which has been assessed in detail as part of this report and is considered to be well founded and is recommended that the height breach be supported.
16. The proposal is fully compliant with the maximum FSR development standard that applies to the site under KLEP 2012. The proposal is therefore consistent with the desired future building density for the site.

### **Conclusion**

17. 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 proposal is an appropriate response to the up-zoning of the land in an area that is undergoing a transition to medium density housing including Residential Flat Buildings (RFB). The bulk and scale of the building has satisfactorily been resolved via good articulation, appropriate building setbacks and a mix of materiality and textures. As a result the application is recommended for approval subject to conditions of consent.

### **Report in Full**

#### **DESCRIPTION OF THE PROPOSAL**

18. The proposal seeks consent for the demolition of all existing structures and the construction of a seven (7) storey Residential Flat Building (RFB) containing sixty four (64) apartments over two (2) levels of basement car parking for one hundred and nine (109) vehicles, landscaping and site works.





**Figure 1:** Proposed development

19. A detailed description of the proposal is as follows:

#### Basement 2

- Fifty eight (58) residential car parking spaces, three (3) being accessible
- Two lift and stair lobbies
- Forty two (42) residential bicycle parking spaces
- Twelve (12) motorbike spaces

#### Mezzanine Basement

- Secure storage area that will be allocated to individual apartments
- Plant room
- Two lift and stair lobbies

#### Basement 1

- Fifty one (51) car parking spaces comprising of the following:
  - Thirteen (13) visitors car parking spaces (one space doubles up as a car wash bay).
  - Thirty eight (38) residential car parking spaces, 4 being accessible
- Bin store room
- Garbage chute compactor and bin store room
- Two (2) lift and stair lobbies.

#### Ground Floor Plan

- Eleven (11) apartments comprising:
  - 3 x 1 bedroom apartments (two of which are adaptable apartments)
  - 7 x 2 bedroom apartments
  - 1 x 3 bedroom apartment
- Dual lane vehicular access from Wyuna Street located on the eastern side of the site.
- Landscaped front setback with a centrally located building entry
- Three apartments have direct access to Wyuna Street

Levels 1 – 3

- Eleven (11) apartments on each level as follows:
  - 10 x 2 bedroom apartments (one of which is an adaptable apartment)
  - 1 x 3 bedroom apartment
  - Two (2) lift lobbies and fire stairs.

Levels 4 – 5

- Eight (8) apartments on each level as follows:
  - 1 x 1 bedroom apartments (each being an adaptable apartment)
  - 6 x 2 bedroom apartments
  - 1 x 3 bedroom apartment
  - Two (2) lift lobbies and fire stairs.

Level 6

- Four (4) apartments as follows:
  - 2 x 1 bedroom apartments
  - 1 x 2 bedroom apartment
  - 1 x 3 bedroom apartment
  - Two (2) lift lobbies and fire stairs
- Communal roof top open space area comprising of the following:
  - Approximately 185sqm of communal open space area in three (3) separate locations
  - Multiple seating and outdoor eating areas both covered and uncovered.
  - BBQ facilities. (no WC is proposed, and cannot be conditioned as the floor space ratio is at its maximum)

20. The proposal involves the removal of the fourteen (14) trees from the site and the retention of eleven trees on site.

**DESCRIPTION OF THE SITE AND LOCALITY**

21. The subject site is located on the north western side of Wyuna Street. The site is located approximately 100m from the intersection of Wyuna Street and Stubbs Street.
22. The subject site consists of five (5) allotments with the following legal descriptions:
  - Lot 8 DP7056 (13 Wyuna Street)
  - Lot 20 DP7056 (15 Wyuna Street)
  - Lot 21 DP7056 (17 Wyuna Street)
  - Lot 22 DP7056 (19 Wyuna Street)
  - Lot 23 DP7056 (21 Wyuna Street)
23. The consolidated site is an irregular shape. It has a total combined frontage width of 62.43m and a total site area of 2,675.91sqm.
24. The land falls gently from the rear boundary to the street.
25. The sites are currently occupied by one and two storey dwelling houses with driveways and various ancillary outbuildings and a swimming pool. Refer figures 2 and 3 below.





**Figure 2:** 13, 15 and 17 Wyuna Street, Beverley Park



**Figure 3:** 7 Wyuna Street, Beverley Park

26. Land on the opposite (south and south eastern side of Wyuna Street is zoned R2 Low Density Residential and is characterised by single dwelling houses. This area is residential in nature and largely low scale in its character.
27. This entire block (surrounded by Princes Highway to the north and north west, Stubbs Street to the east, Lacey Street to the west and the northern side of Wyuna Street) has been “up-zoned” to R3 Medium Density Residential in which residential flat buildings (RFB) are permitted to a maximum height of 21m and a maximum Floor Space Ratio (FSR) of 2:1. The adjacent block to the west, surrounded by Princes Highway, Lacey Street, John Street and Park Road, has also been up-zoned in the same manner and contains a heritage item which is the subject of an appeal in the Land and Environment Court.
28. The Georges River Local Planning Panel recently determined (12 December 2019) by way of approval a development application for the redevelopment of the site adjacent to the subject site to the east, known as 5-11A Wyuna Street, Beverley Park (DA2018/0516) for a six (6) storey RFB. Figure 4 shows the approved elevation to Wyuna Street.



**Figure 4:** Front elevation of approved development at 5-11A Wyuna Street (Source PDB Architects, 2019)

29. On the opposite side of the Princes Highway to the rear of the proposed development is the Carlton strip shopping centre zoned B2 Local Centre.
30. These B2 properties encourage mixed land uses. Most recently a mixed use development was approved at 325-329 Princes Highway (DA2017/0491) (refer to figure 5 below).





Figure 5: Front elevation of the approved development at 325-329 Princes Highway

31. Also 313-323 Princes Highway is currently under construction where the Land and Environment Court approved a six storey mixed use development with commercial premises on the ground floor (refer to figure 6 below) at this site.



Figure 6: Front elevation of the approved development at 313-323 Princes Highway

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

### State Environmental Planning Policies (SEPPs)

33. Compliance with the relevant SEPPs is summarised in the following table and discussed in further detail below it.

#### Compliance with State Planning Policies

SEPP Title	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
State Environmental Planning Policy (Infrastructure) 2007	Yes
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	Yes

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

34. 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 subject to conditions.

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

35. A BASIX Certificate has been issued for the proposed development and the commitments required under the certificate have been satisfied. Conditions of consent imposed.

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

36. 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.
37. 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.
38. The site has a history of residential uses and as such, site contamination is not suspected. A Preliminary Site Investigation (PSI) Report No E24014.E01 dated 15 October 2018 prepared by eiaustralia was submitted with the application, which concludes *the site is suitable for its intended use* (refer page ii).
39. Based on the information provided, a contingency condition has been included in the recommended conditions detailing what is required to take place should unexpected contamination be found during demolition, excavation and construction.

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

40. The aim of the Infrastructure SEPP is to facilitate the effective delivery of infrastructure across the State. The Infrastructure SEPP also examines and ensures that the acoustic performance of buildings adjoining the rail corridor or busy arterial roads is acceptable and internal amenity within apartments is reasonable given the impacts of adjoining infrastructure.
41. Clause 102 of the SEPP, "Impact of road noise or vibration on non-road development", is relevant to this DA on the basis that the proposal involves the construction of residential accommodation on land that is generally adjacent to the road corridor of Princes Highway (having an annual average daily traffic volume exceeding 20,000 vehicles) and is likely to be adversely affected by road noise or vibration. As a result, the following provisions of Clause 102 of the SEPP are relevant:
  - (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
    - (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
    - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

42. An Acoustic Report (Traffic and Environmental Noise Assessment) was submitted with the DA, dated 8 May 2020 and prepared by Acoustic Logic. The report addresses the provisions of the Policy with respect to achieving acoustic compliance. Council's Environmental Health Officer has reviewed the report and provided conditions of consent.
43. The DA was also referred to Ausgrid on 2 October 2018 in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. No objection to the proposal was raised by Ausgrid and no conditions recommended.
44. The provisions and requirements of the Infrastructure SEPP have been addressed and satisfied by the proposal.

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

45. The Vegetation SEPP aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
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 clauses 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable DCP.
48. The proposal involves the removal of fourteen (14) trees from the site and the retention of eleven (11) trees on the site. Council's Consultant Arborist has reviewed the proposed tree removal and raised no objection to approval of the trees on the basis that for every tree to be removed, two (2) are to be planted, plus the planting of three (3) street trees. These new trees will satisfactorily offset the loss of the existing trees with quality native replacement plantings.
49. On this basis, the proposal is consistent with relevant provisions of the Vegetation SEPP.

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

#### **Draft Environment SEPP**

50. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
51. 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 not inconsistent with the provisions of this Draft Instrument.

### **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 site has a history of residential uses and as such, site contamination is not suspected. A Preliminary Site Investigation (PSI) Report No E24014.E01 dated 15 October 2018 prepared by eiaustralia was submitted with the application, which concludes the site is suitable for its intended use.
57. Based on the information provided, a contingency condition has been included in the recommended conditions detailing what is required to take place should unexpected contamination be found during demolition, excavation and construction.

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

58. State Environmental Planning Policy No.65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for RFBs of three or more storeys in height (excluding car parking levels) and containing at least four dwellings. Amendment 3 to SEPP 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, SEPP 65 applies.
59. The proposal involves the erection of a new 7 storey RFB (excluding basement car parking) containing 64 apartments and is therefore affected by the SEPP.
60. In determining DAs to which SEPP 65 relates, Clause 28(2) of the SEPP requires that the consent authority take into consideration:
- a) the advice (if any) obtained from the design review panel, and*
  - b) the design quality of the development when evaluated in accordance with the design quality principles, and*
  - c) the Apartment Design Guide.*



61. The proposal was considered by the Georges River Design Review Panel (DRP) on 13 June 2019. The DRP assessed the merits of the development against each of the nine (9) Design Quality Principles and the provisions of the Apartment Design Guide (ADG). The DRP's comments are included and addressed within the table below, along with further comment from Council's Planner.
62. In addition to satisfying the Design Quality Principles, the proposal generally satisfies relevant requirements of the ADG pertaining to design quality and amenity of the apartments. The proposal satisfies the amenity, internal layout and design requirements of the ADG. The Panels comments are summarised and addressed in the table below.

#### Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of "Residential Apartment Development" (RAD)	Complies with definition	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the SEPP includes mixed use developments.	The erection of an RFB satisfies the SEPP's definition of this residential land use.	Yes
Design Verification	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect: Hiromi Lauren (Registration No.8848)	Yes

#### Part 2 Design Quality Principles under the SEPP

SEPP 65 – Design Quality of Residential Flat Buildings	DRP Comment ( <i>italic text are comments from the Pre DA design</i> )	Planners comment
<b>Context and Neighbouring Character</b> Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond	<i>The site consolidates five properties in an area zoned R3 Medium Density Residential. To date there has been no change within the locality that disrupts the existing pattern of development, which consists of single storey detached dwellings. Development on the subject site will introduce a structure of radically different bulk and scale. It is essential that "the first cab off the rank" should establish a very good precedent that will set a high standard for future development. In this regard it</i>	The proposal is compatible with the context of the site and the neighbourhood character in a transitioning area. The proposal is an appropriate response to the site that is consistent with the desired future character of the locality and will enhance the streetscape. The built form is generally compliant with the ADG. These will ensure

<p>to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p><i>is considered that the proposal in its present form is not responsive to the existing context or desired future character.</i></p> <p><i>A heritage item is located to the north west at 188 Princes Highway. Care is necessary to ensure that the visual impact of any developments within the visual catchment of the late Victorian House does not detrimentally impact on its setting. The Panel believes that the application documentation demonstrates that this important contextual issue has not been addressed.</i></p> <p><i>It is acknowledged that the submission is meant for a Pre DA discussion. Nevertheless, the Panel found the drawings unresolved and confusing. For instance, the incomplete cross sections are not keyed to the plans and are taken through parts of the proposed building that do little to explain it, in particular the internal courtyard is not shown.</i></p> <p>Of note is the very large <i>Camphor Laurel</i> tree which is immediately adjacent to the subject site within the heritage lot at 118 Princes Highway. This is a landmark tree and requires careful consideration and protection. An arborist should be engaged to assess the tree and its tree protection zones. This information should be incorporated into the critical site characteristics and accommodated in the design.</p> <p>Wyuna Street is the key interface between two zones (B2 to adjacent low density residential). It is important for any new developments to</p>	<p>ample separation of the building from both existing and future built form on adjacent sites to the front and rear. The proposal's bulk and scale is an appropriate response to the up-zoning of the site under the New City Plan (KLEP 2012 Amendment No. 2). Its street façade is well articulated with a variety of appropriately sized openings and protruding balconies. All other facades are well modulated with various inset portions and balconies serving to break up the length of the side walls and an interesting variation in materiality on each external wall.</p> <p>The design has been amended to ensure protection of the <i>Camphor Laurel</i> tree and Council's Arborist raises no concern with the proposed development.</p>
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	improve the streetscape. The Panel recommends the Council and applicants pursue undergrounding of power lines along the full length of the street thereby providing space for large street trees to complement existing street trees on the adjacent verge.	
<p><b>Built Form and Scale</b></p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p><i>There are several aspects of the proposed built form and scale of the preliminary design the Panel found to be unsatisfactory:</i></p> <p>The basic built form and planning remain problematic and it had been hoped that the applicant would adopt a different approach to the design, however this has not been done and the following detailed comments are made:</p> <p><i>The internal courtyard is intended to be a key element of the concept. However it will have no winter solstice solar access and would create privacy conflicts between the communal space and adjacent units;</i></p> <p>Detailed planning has mitigated some of the privacy conflicts; however the 'courtyard' would remain more of a light-well and not an attractive entrance to the building.</p> <p><i>The main entrance is through an extremely narrow, 6 storey high, space of oppressive proportions and most unwelcoming;</i></p> <p>This is now better resolved, however the configuration of doors is awkward and the entrance semi enclosed courtyard lobby is of poor amenity.</p>	<p>The courtyard has been deleted and a simplified building entry is now proposed.</p> <p>The courtyard has been deleted.</p> <p>The courtyard has been deleted</p>

*The second entrance/egress route is a long narrow tunnel;  
Both these spaces scale 1000mm wide, which is accessibility non-compliant;*

The main entrance has been modified as noted above, however the amenity of this entrance layout is still problematic.

*Functionality of the internal courtyard is poor;  
Noise emanating from the courtyard would be unacceptable to residents;  
The internal circulation in courtyard passes by the windows, courtyards and habitable areas of ground floor apartments;*

The internal courtyard has been modified to provide an open slot to the rear garden; however the functionality of this space is still problematic. It would also receive very little sunlight and would present privacy and noise issues for adjacent residents.

*Access to both lift lobbies is indirect and has major amenity impact on adjoining units;*

This remains an issue in relation to the eastern lift, which should face towards the main lobby, as does the other lift.

*The corridors serve as the lift lobbies providing a confined space where people will congregate;*

See above.

*Fire egress compliance needs to be confirmed – the pathways*

The internal courtyard has been deleted.

The eastern lift services the 'eastern' building and therefore the door faces east.

	<p><i>are not fire isolated?</i></p> <p>No comment at this stage.</p> <p><i>Communal open space at ground floor is not functional;</i></p> <p>The design has slightly changed to create an approximately 3m wide gap between the rear wing of the building to access a communal open space at the rear boundary. This location would generate privacy issues to both the immediately adjacent apartments and residents in the adjoining properties to the north. A communal open space has been provided at roof level, which is in principle a satisfactory location, but further consideration needs to be given to resolving privacy issues with the adjacent apartments.</p> <p><i>There is no evidence of sensitivity or transition of scale to heritage items;</i></p> <p>This remains an issue.</p> <p><i>Given the absence of a suitable location at ground level the communal space should be placed at rooftop;</i></p> <p>Refer comments above.</p> <p><i>Unit layouts are poor, eg there are snorkel bedrooms, living areas of apartments face south into the central space; long corridors within bedrooms waste floor area;</i></p> <p>Generally now acceptable</p> <p><i>Both lifts should access the roof serving a roof top communal open space with</i></p>	<p>The courtyard has been deleted and now the communal open space at ground level is provided as landscaped gardens along all site boundaries.</p> <p>A Heritage Impact Statement was submitted and reviewed by council's Heritage Advisor who supports the proposal.</p>
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	<p><i>interconnection in case of breakdown;</i></p> <p>This has been provided.</p> <p><i>Ground floor units with street address should have separate entry from street to activate street;</i></p> <p>Three (3) of the apartments have been provided with separate entry but this should also be provided to apartment on the south eastern corner.</p> <p><i>The 3D presentation showed an achromatic palette of materials which is unsympathetic to the context.</i></p> <p>See further comments under 'Aesthetics'.</p>	<p>The four street facing apartments each have individual entries from Wyuna Street.</p>
<p><b>Density</b> Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p><i>Complies in this proposal, may not be able to achieve full FSR in a better resolved design.</i></p> <p>Compliance requires confirmation by Council.</p> <p>It is noted that the height is exceeded marginally although this could be accepted based on the provision of communal roof top space.</p>	<p>The proposal complies with the maximum FSR for the site, and a minor height variation is proposed to the lift overrun, which is supported by a Clause 4.6 Statement and is discussed later in this report.</p> <p>The proposal is very similar in height and FSR to that recently approved at 5-11A Wyuna Street, and is consistent with the desired built form for future development on this side of Wyuna Street.</p>
<p><b>Sustainability</b> Good design combines positive environmental, social and economic outcomes.  Good sustainable design includes use of natural cross</p>	<p><i>Not discussed at the meeting.</i></p> <p>The application is a large development and requires comprehensive investigation of sustainability measures such as rainwater recycling, solar generation of power, etc. It is</p>	<p>The proposal provides 15% of the site as deep soil area.</p> <p>The proposal is BASIX compliant.</p>



<p>ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p>unclear how much deep soil area has been provided. Given the lot scale of this size (greater than 1500sqm) there is capacity to provide at least 15% deep soil. This is critical to provide adequate capacity for substantial trees that can mitigate urban heat.</p>	
<p><b>Landscape</b> Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p><i>The landscape drawings presented do not identify the species in detail on plan making it difficult to assess. The Panel's comments are as follows:</i></p> <p><i>The potential of the deep soil areas should be exploited to place large trees;</i>  <i>Deep soil along the east and west sides of the site is too narrow to sustain large trees;</i>  <i>The viability of green walls is dubious and requires high levels of maintenance;</i>  <i>Revisions to built form layout to consolidate the building footprint and eliminate the internal courtyard could substantially improve ground level landscape spaces, deep soil and contribute to neighbourhood amenity.</i></p> <p>Whilst minor changes have been made to the internal courtyard this is still a poor landscape space. Furthermore the deep soil on the eastern and western boundaries is inadequate and would not provide capacity for trees. This requires changes to the building footprint.</p> <p><i>Priority should be given to the following;</i></p>	<p>Council's Consulting Arborist has reviewed the proposal and supports the landscape design.</p> <p>The basement design was amended to protect the Camphor Laurel tree on the adjacent site and substantial ground level and podium planting is proposed.</p> <p>The internal courtyard has been deleted.</p>

	<p><i>Providing usable well-designed communal open space at roof level. This should include smaller spaces or varying scales, planters with appropriate soil and irrigation, as well as other amenities such as BBQ's seating shade etc. Provision of large shade trees (greater than 10m height) to front, rear and side setbacks Plantings to provide privacy between private gardens and adjacent properties</i></p> <p>The revised scheme proposes a combination of private and communal open space adjacent to residential apartments Level 6, however the layout and configuration requires further review particularly in regard to privacy impacts for adjacent apartments. The applicant should re-plan Level 6 apartments to provide a communal open space clear of adjoining apartments. The design should avoid long narrow corridors of communal open space.</p> <p>Additional comments:</p> <p>The proposal should underground power lines and provide new street tree planting on the verge The front landscape zone should include an avenue of large trees to complement existing street trees Synthetic turf is not supported and should be replaced either planted zones on deep soil or with planting on podium</p>	<p>The rooftop communal open space has been redesigned and provides suitable separation between communal and private areas. Three (3) separate areas are proposed on the rooftop for use by residents which will assist in reducing noise impacts to the rooftop apartments as the areas can accommodate people in separate areas rather than one large consolidated area.</p> <p>A condition of consent has been recommended to underground power lines.</p> <p>The street and front setback are suitably landscaped and no synthetic turf is proposed.</p>
<p><b>Amenity</b> Good design positively influences internal and</p>	<p><i>The Panel's comments on amenity shortcomings are as follows:</i></p>	

<p>external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p><i>Cross ventilation is questionable;</i></p> <p>Now satisfactory</p> <p><i>In unit storage and basement storage is deficient;</i></p> <p>Appears satisfactory subject to Council verification.</p> <p><i>Snorkel bedrooms have poor outlook;</i></p> <p>These should be improved by reducing the depth of snorkel and including small space for desk or seat.</p> <p><i>Poor quality circulation spaces at upper floors</i></p> <p>Now acceptable</p> <p><i>Basement – no indication of garbage arrangements;</i></p> <p>Subject to Council approval</p> <p><i>Disabled person car spaces are not considered;</i></p> <p>Now provided subject to Council check</p> <p><i>Lift waiting areas in basements must be away from the traffic aisle or have bollards;</i></p> <p>Now acceptable</p> <p><i>Solar access to apartments does not meet ADG guideline of 70%;</i></p> <p>Claimed to now comply. This appears to rely on solar access only to kitchen and dining rooms in several apartments which is less than desirable.</p>	<p>Complies with ADG.</p> <p>Storage cages provided in basement mezzanine level.</p> <p>Snorkel bedrooms removed.</p> <p>Bin store areas shown in basement level 1.</p> <p>Compliant.</p> <p>Suitable.</p> <p>Compliant with ADG.</p>
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	<p><i>Poor amenity of ground level communal open space and associated privacy issues for ground floor units;</i></p> <p>Refer comments above under 'Built Form' and 'Landscape'.</p> <p><i>Poor amenity of central courtyard.</i></p> <p>This remains a concern.</p>	<p>Suitable – refer comments above.</p> <p>Central courtyard has been deleted.</p>
<p><b>Safety</b></p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p><i>Building access provides places of concealment. Otherwise the design is not sufficiently developed to comment.</i></p> <p>The entry has awkward configuration of doors, recessed in different configurations which would present safety issues. These could readily be simplified.</p>	<p>The entry has been redesigned to provide a single central pedestrian entry that is easily identifiable from the street.</p>
<p><b>Housing Diversity and Social Interaction</b></p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible</p>	<p><i>The unit mix is unsatisfactory at 81% two (2) bedrooms. No indication of adaptable units at this stage – desirably located at ground level.</i></p> <p>Remains problematic. It is noted that 'dual key' is proposed for three apartments, but this does not address the basic issue. A development of this scale should be provided for a broad social mix for the long term future, not a mix which seeks only maximum financial yield at a particular time.</p>	<p>All apartments are now single key. A suitable mix of 1B, 2B and 3B apartments are proposed and adaptable apartments have been suitably annotated.</p>

features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.		
<p><b>Aesthetics</b> Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p><i>Refer to 'Built Form and Scale' comments.</i></p> <p><i>There is insufficient information to enable a proper assessment.</i></p> <p>The street façade is over complex and over assertive given its interface with low scale residential on the immediate opposite side of the road. It is recommended that the architect simplify the projecting balconies and reduce the strong contrast of dark and light tones. There are too many contrasting materials that make the building feel visually cluttered.</p>	<p>The façade has been simplified and the amended design is a more suitable response to the context of the site. Horizontal and vertical elements, including a mix of rendered masonry, glass and metal balustrades, with a dark colour for the recessed areas and rooftop apartments is proposed.</p>

63. The amended plans have addressed the DRP comments and the development is considered to be a suitable and acceptable design response for the site.
64. Clause 28 of SEPP 65 requires the consent authority to take into consideration the provisions of the Apartment Design Code. The table below assesses the proposal against these provisions.

### Part 3 and Part 4 – Compliance with the ADG

Clause	Standard	Proposal	Complies
3D - Communal open space	1. Communal open space has a minimum area equal to 25% of the site. Minimum 668sqm	The calculations indicate the total area of communal open space amounts to 669sqm (25% of the site). There are two areas of communal open space provided as part of the development:  Ground floor – 481sqm Rooftop – 185sqm within three (3) separate areas	Yes
	2. Developments achieve a minimum of 50% direct	Well over 50% of the area of communal open space will achieve in excess of 2 hours of	Yes

	sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	solar access during midwinter.	
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements: Min deep soil area of 7% (187.31sqm)</p> <p>Minimum dimension of 6m</p>	<p>Deep Soil Zone (DSZ) calculation = 401sqm (15%)</p> <p>As the site area exceeds 1,500sqm, the only parts of the site considered to be deep soil areas need to exceed 6m in width.</p>	<p>Yes</p> <p>Yes</p>
3F- Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p><u>Up to 12m (4 storeys)</u> Habitable - 6m Non-habitable – 3m</p> <p><u>Up to 25m (5-8 storeys)</u> Habitable – 9m Non-habitable – 4.5m</p>	<p>Ground: Minimum - 6m</p> <p>Levels 1-3: Minimum - 6m with the exception of the balcony corner of apartments 108, 208 and 308 which are setback 5.916m.</p> <p>Levels 4: Minimum - 9m</p> <p>Levels 5 and 6: Minimum - 9m</p>	<p>Yes</p> <p>Yes On merit (0.084m encroachment)</p> <p>Yes</p> <p>Yes</p>
3G – Pedestrian Access and entries	<p>Building entries and pedestrian access connects to and addresses the public domain.</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>The building entry is clearly identifiable from Wyuna Street.</p> <p>Separate front entries to the ground floor apartments 101, 102 and 111 off Wyuna Street are provided.</p>	<p>Yes</p> <p>Yes</p>



3H-Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	<p>The dual driveway access to the basement has been provided off Wyuna Street (eastern side of the development site).</p> <p>The size and location of the driveway is considered satisfactory and no conflicts are anticipated with the adjoining development approved next door.</p>	Yes
3J-Bicycle and car parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>- On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>- On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	The subject site is not within an “accessible location, pursuant to the ADG and as such compliance with the parking provisions of Part B4 of the Kogarah Development Control Plan 2013 (KDCP) are applicable in this assessment. See below.	N/A
B4 Parking and Traffic Controls of KDCP 2013	<p><u>Residential parking:</u> 7 x 1 bedroom units @ 1 space per unit = <b>7 spaces</b> required</p> <p>50 x 2 bedroom units @ 1.5 spaces per unit = <b>75 spaces</b> required.</p> <p>7 x 3 bedroom units @ 2 spaces per unit = <b>14</b></p>	96 resident spaces are proposed. 7 of which are accessible.	Yes

	<b>spaces required</b>  Total required resident parking = <b>96 spaces</b>		
	<u>Visitor parking:</u> 64 total units @ 1 space per 5 units = <b>13 (12.8) spaces</b> required	13 visitor spaces are provided with one space doubling up as a car wash bay.	Yes
	<u>Car wash bay:</u> 1 bay, which can also function as a visitor space	1 car wash bay is provided which doubles as a visitor space, nominated as space 1.	Yes
	<u>Bicycle Parking:</u> 1 space per 3 dwellings = 22  1 space per 10 dwellings for visitors = 8 spaces  Total = 30 spaces required	Forty two (42) residential bicycle parking spaces are provided in Basement No 2.	Yes
4A- Solar and daylight access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area.	70% (48 apartments) achieve a minimum of 2 hours sunlight in midwinter.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter	12.5% (8 apartments) receive no sunlight due to their location on the southern/street side of the building.	Yes
4B- Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	60% (46 apartments) are cross ventilated.	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	The development has been designed to comply with the ADG in that the depth of cross over apartments does not exceed 18m and the design has sensitively considered the location.	Yes

	The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths	The development provides dual aspect apartments, cross through and corner apartments.	Yes
4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms = 2.7m</p> <p>Non-habitable rooms = 2.4m</p>	The floor to floor heights at each level are 3m in order to cater for slabs, servicing and ducting, however, floor to ceiling heights of 2.7m can be achieved at each level.	Yes
4D-1 Apartment size and layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	<p>The internal floor areas of each apartment satisfy the requirements of the ADG.</p> <p>1 bedroom = Min. 50sqm 2 bedroom = Min. 75sqm 3 bedroom = Min. 95sqm</p> <p>Calculated accordingly.</p> <p>Given that the building satisfies the minimum separation distance required window openings are generous and standard sizes which are greater than 10% of the floor area of the room.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4D-2 Apartment size and layout	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Within prescribed range.</p> <p>Within prescribed range.</p>	<p>Yes</p> <p>Yes</p>

	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>All master bedrooms have internal areas with a minimum of 10sqm.</p> <p>A minimum dimension of 3m is achieved.</p> <p>Living spaces have a minimum width of 4m.</p> <p>The minimum width of 4m has been achieved.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
4E- Private Open space and balconies	<p>All apartments are required to have primary balconies as follows: - 1 bedroom = 8sqm/2m depth</p> <p>- 2 bedroom = 10sqm/2m depth</p> <p>- 3+ bedroom = 12sqm/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided</p>	<p>1 bedroom apartments have minimum areas for their balconies of 8sqm depth criterion met.</p> <p>2 bedroom apartments have minimum balcony areas of 10sqm depth criterion met.</p> <p>3 bedroom apartments have minimum balcony areas of 12sqm depth criterion met.</p> <p>All balconies exceed 1m in the area calculated.</p> <p>Ground floor apartments comply with minimum area and dimensions.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m		
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	Two (2) lifts service each floor as the floor plates are split. The maximum number of apartments serviced by one lift is five (5).	Yes
4G- Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m<sup>3</sup>  2 bedroom – 8m<sup>3</sup>  3 bedroom – 10m<sup>3</sup></p> <p>At least 50% of storage is to be located within the apartment.</p>	<p>The basement has been designed to provide for individual storage spaces for apartments. Every apartment includes additional storage areas above the provision of wardrobes in bedrooms.</p> <p>1 bedroom = Minimum 6m<sup>3</sup>  2 bedroom = Minimum 8m<sup>3</sup>  3 bedroom = Minimum 10m<sup>3</sup></p>	Yes - Storage areas are indicated on the floor plans for each apartment which are at least 50% of the total storage provided.
4H- Acoustic Privacy	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. Window and door openings are generally orientated away from noise sources</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter</p>	<p>A detailed assessment in respect to the acoustic compliance of the scheme has been discussed in detail earlier. Some additional construction methods will need to be implemented to improve acoustic amenity internally within the apartments. These measures are standard for developments adjoining a noisy roadway. They relate to specific materials (glazing, sealing areas, types of finishes, implementing mechanical ventilation to some habitable areas, flooring finishes etc.). These requirements will not significantly impact on the built form of the proposal.</p> <p>Achieved</p>	<p>Yes</p> <p>Yes</p>

	<p>areas next to or above quieter areas</p> <p>Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources</p>	Generally acceptable	Yes
4J – Noise and Pollution	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> <li>• physical separation between buildings and the noise or pollution source</li> <li>• residential uses are located perpendicular to the noise source and where possible buffered by other uses</li> <li>• buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer</li> <li>• landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry</li> </ul>	The design solutions within the ADG which seeks to minimise noise and acoustic impacts have been considered through the design and layout of apartments.	Yes
4K – Apartment Mix	<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building</p>	<p>The development offers a mix of 1, 2, and 3 bedroom apartments in the following manner:</p> <p>7 x 1 bedroom apartments = 10.9%</p> <p>50 x 2 bedroom apartments = 78.1%</p> <p>7 x 3 bedroom apartments = 10.9%</p>	Yes
4L – Ground Floor Apartments	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers</p>	Four (4) apartments directly address the street and have been designed to provide casual surveillance of the street and privacy for residents.	Yes



	amenity and safety for residents.		
4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The facades of the building are well resolved with an appropriate level of articulation including to the street. The proposal adequately addresses Objective 4M-1 of the ADG, which states <i>“Building Facades provide visual interest along the street while respecting the character of the local area.”</i> There is an appropriate degree of expression of vertical scale and modulation within the facades to respect and respond to the existing and future desired streetscape character. The fenestration of the building has been improved and the podium and the part four (4) storey elements of the building have been more distinctly defined and independently treated so to differentiate the recessed upper levels.	Yes
4N – roof design	Roof treatments are integrated into the building design and positively respond to the street.  Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.	The roof design is a standard flat roof form which is consistent with the general character and form of the building.  The roof includes three (3) areas of communal open space which complies with the intention of the ADG.	Yes
4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The landscape design has been discussed in detail earlier in this report. The concept is considered to be well designed with an integrated landscape plan which will improve landscaping across the site and will improve the visual appearance of the development and general nature of the streetscapes that	Yes

		the development adjoins as currently there is limited planting on the street. The proposed landscape plan includes the planting of three (3) street trees to Wyuna Street.	
4P- Planting on Structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	The design includes a series of planter boxes on structures, adjacent to balconies and bedrooms and the ground floor communal open space. This will enhance the elevations by introducing green walls to the built form.	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory – the design offers a wide variety of apartment styles and forms many of which can be integrated and amalgamated in the future where necessary. Adaptable apartments have been nominated on levels 1 through 5 inclusive.	Yes
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings - new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	Some apartments have been designed so they could be amalgamated, consolidated or reduced. There is some general adaptability within the design.	Yes acceptable
4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A compliant BASIX Certificate accompanies the application.	Yes
4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems	The stormwater and drainage design is considered to be satisfactory and compliant subject to conditions.	Yes

	are integrated into the site design		
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The waste management arrangement is satisfactory. The design relies on two (2) separate garbage areas within the basement. The Waste Management Plan outlines the disposal of waste during construction and for when the development is occupied. Waste bins will be taken out onto Wyuna Street for collection.	Yes
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	Suitable materials have been selected for the building finishes.	Yes

LPP032-20

### Environmental Planning Instruments

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

#### Zoning

65. The subject site is zoned Zone R3 Medium Density Residential under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP2012). Refer to zoning map below. The proposed development is defined as a Residential Flat Building which is a permissible land use in the zone.

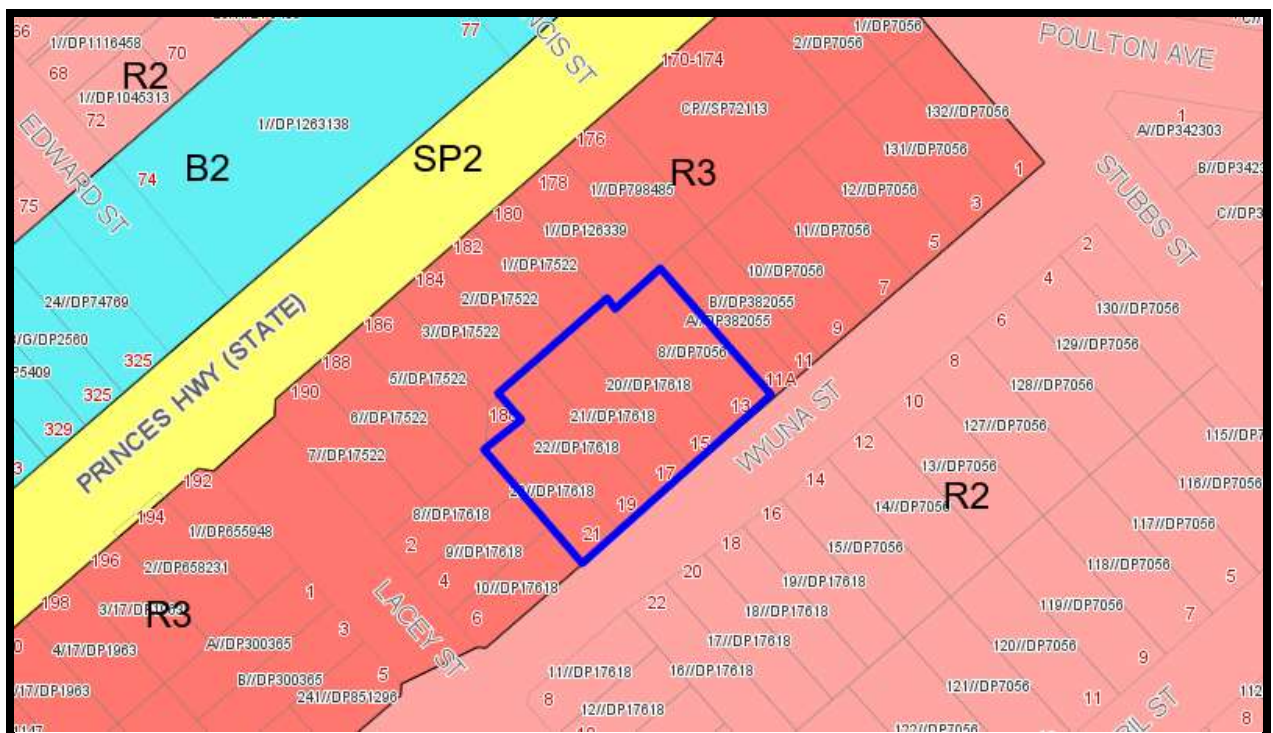


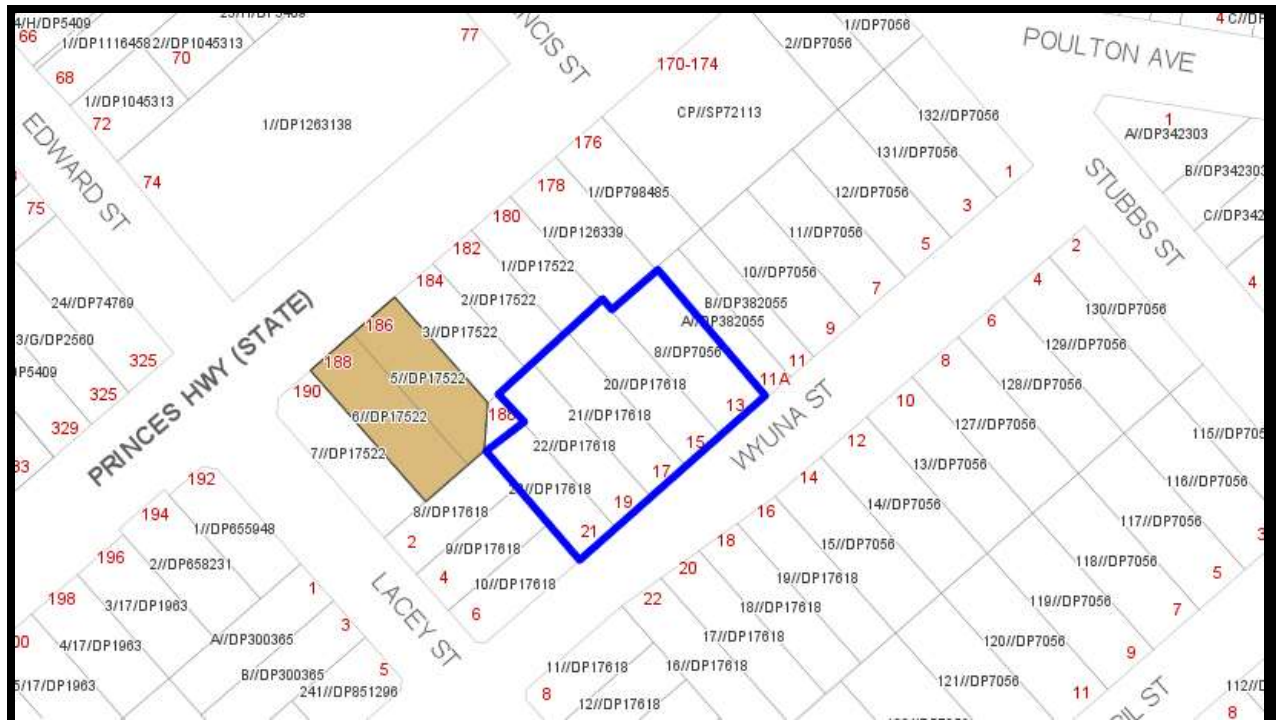
Figure 6: Zoning map the site is outlined in blue

66. The objectives of the zone are as follows:
- To provide for the housing needs of the community within a medium density residential environment.*
  - To provide a variety of housing types within a medium density residential environment.*
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
67. The proposal satisfies the objectives of the R3 Zone as it will provide for a variety of residential apartments in a medium density residential environment.
68. The extent to which the proposal complies with the relevant standards of Kogarah Local Environmental Plan 2012 (KLEP2012) is outlined in Table 5 below.

**KLEP2012 Compliance Table**

Clause	Standard	Proposed	Complies
2.2 Zone	R3 Medium Density Residential	The proposal is defined as a Residential Flat Building (RFB) which is a permissible use within the zone.	Yes
2.3 Objectives	Objectives of the Zone	Consistent with zone objectives.	Yes
4.1A Minimum lot sizes for Residential Flat Buildings	Clause 4.1A requires a minimum site area of 1,000sqm for the purpose of RFB's in the R3 zone	The total site area is 2,675.91sqm.	Yes
4.3 – Height of Buildings	21m as identified on Height of Buildings Map	The building exceeds the 21m height limit. The encroachment includes only the lift overrun which reaches a maximum height of 22.15m.  A Clause 4.6 Statement has been submitted and is addressed in detail later in this report.	No
4.4 – Floor Space Ratio	2:1 as identified on Floor Space Ratio Map	2:1 – there is no WC in the roof top communal area, this is desirable for functionality but cannot	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The GFA has been calculated correctly.	Yes
4.6 – Exceptions to Development Standards	The objectives of this clause are as follows: <i>- to provide an appropriate degree</i>	The proposal exceeds the height control pursuant to Clause 4.3 of the KLEP and therefore a Clause 4.6 Statement was submitted to	No - A Clause 4.6 Statement has been submitted for the height

	<i>of flexibility in applying certain development standards to particular development, - to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i>	justify the non-compliance with the control.	variation. See the assessment below.
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	<p>The proposal does not adjoin any environmental heritage item nominated under KLEP 2012.</p> <p>There is a Heritage item located at 186-190 Princes Highway identified as 13 “McWilliam House”, a house and garden and the property is of local significance.</p> <p>Council’s Heritage Advisor has reviewed the proposal and raises no concern with the development, subject to a condition in relation to any archaeological finds uncovered during demolition and excavation of the site. This site is subject to an appeal in the Land and Environment Court for a residential flat building with basement parking incorporating the heritage item.</p>	Yes



**Figure 7:** Zoning map the site is outlined in blue

6.1 Acid Sulphate Soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by Acid Sulfate Soils under KLEP 2012.	N/A
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	The proposed development includes excavation and associated earthworks to accommodate two (2) levels of basement car parking.	Yes subject to conditions.
6.5 Airspace Operations	The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained	CASA provided comment on the proposal on 16 October 2019 and advised the height of the proposed development is below the Obstacle Limitation Surface (OLS).	N/A



	approval for the controlled activity under regulations made for the purposes of that Division.	
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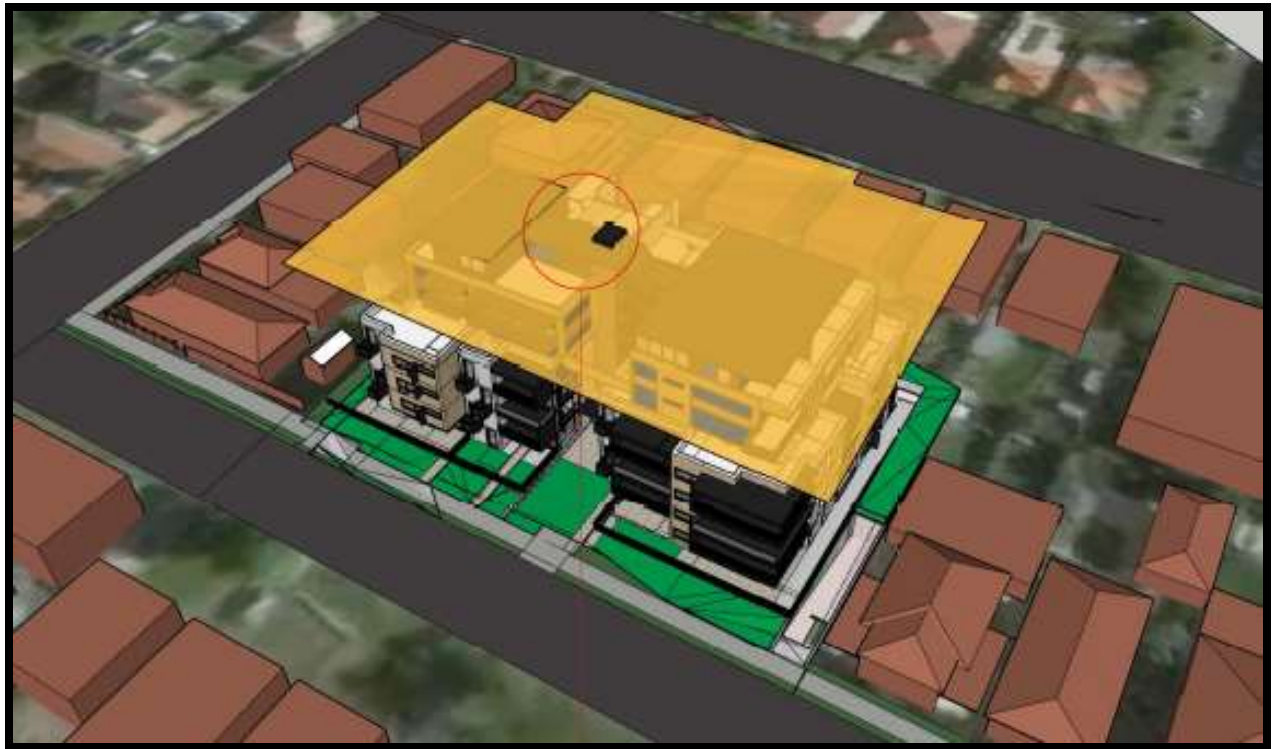
### Exception to Development Standards

#### Detailed assessment of variation to Clause 4.3 Height of Buildings

69. The objectives of Clause 4.6 are as follows
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
70. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Kogarah Local Environmental Plan 2012 (KLEP) identifies a maximum height of 21m for the site (refer to Figure 8 below) and the proposed development will exceed the height by 1.15m which comprises the lift overrun (Figure 9). This amounts to a 5.5% variation to the control. This extent of non-compliance occurs at the lift overrun centrally located within the building. The remainder of the building is below the 21m height limit.
71. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.



Figure 8: Height of buildings map the site is outlined in blue



**Figure 9:** Height blanket diagram

72. Clause 4.6(3) states that:  
*“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - *that there are sufficient environmental planning grounds to justify contravening the development standard”*
73. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of KLEP. The Clause 4.6 request for variation is assessed as follows.

***Is the planning control in question a development standard?***

74. Height of Buildings control under Clause 4.3 of the KLEP 2012 is a development standard. The maximum permissible height is 21m.

***What are the underlying objectives of the development standard?***

75. The objectives of Height of Buildings standard under Clause 4.3 of KLEP 2012 are:
- (a) *to establish the maximum height for buildings,*
  - (b) *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,*
  - (c) *to provide appropriate scale and intensity of development through height controls.*

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

76. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ



set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.

77. Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation:
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
  2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
  3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
  4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
  5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.
78. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.
79. Applicants comment: *"Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control, and the objectives of the zone, are achieved despite the non-compliance to the numerical development standard as set out above, which satisfies Wehbe Test 1.*

*The objectives of the building height development standard are stated as:*

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

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

*The current development proposal, despite the numerical non-compliance, remains consistent with the objectives, which are identified accordingly, based on the following:*

- The proposal will not result in any additional overshadowing impacts to adjoining properties as compared to a compliant form given the structures are recessed and the shadow is cast from the level below this and the minor departure to the height does not increase the overshadowing.*
- The design of the building ensures that all of the habitable floor space is contained below the maximum building height line which indicates that the variation is not simply a means of achieving additional development yield on the site, but a site specific design response.*

- *In this case the variation partially stems from the provision of communal open space and associated structures on the roof top level which provides for an improved planning outcome to maximise amenity for residents without unreasonable impacts to adjoining properties;*
- *The development does not result in unacceptable loss of views to adjoining properties given the modulation in form, and generous setbacks.*
- *It should be noted, the proposal will incorporate appropriate finishes, fencing, feature walls and landscaping that will all positively contribute to the public domain areas and visual appreciation of the streetscape and overall development.*
- *The overall height of the development presents as a compatible form of development to the anticipated high density residential development that are emerging in the locality, including the two applications on adjoining properties that are also lodged with minor height departures.*
- *The proposed development incorporates a complying floor space ratio as per the provisions of the KLEP 2012, which will ensure that the scale of the proposed development will be appropriate and will be visually consistent with the permitted building height with the variation relating to the rooftop common open space area and lift overrun.*
- *The additional height does not generate any additional amenity impacts given the location of the site and the surrounding site context; and*
- *The proposal will provide for a number of distinct public benefits:*
  - o *Delivery of additional housing in an accessible location;*
  - o *Creation of jobs during the construction stage;*
  - o *The traffic modelling concludes that the impact of the development on the surrounding traffic network is acceptable.*
  - o *The scale and intensity of the development is appropriate noting that the proposal complies with the maximum height, majority of setbacks and DCP prescriptive controls, which demonstrate an appropriate development outcome.*

*As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control. This also satisfies Wehbe Test 1."*

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

80. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overshadowing, overlooking or view loss.
81. Applicants Comment: *"As outlined above the proposal remains consistent with the underlying objectives of the control. In addition to the above it is noted that the development, including the departure to the height control enables the following to occur*

*which demonstrates environmental planning grounds to support the numerical non-compliance.*

- *Adopt an appropriate Urban Form: The proposal provides for a variety of building heights and building modulations, with the development to be viewed within a high density urban setting at the front of the site and a landscaped setting at the rear that exceeds the required levels of landscaped area, deep soil, and common open space.*
- *Articulate / Undulated Roof Form: The roof form has been revised to incorporate an articulated/undulated roof form to reflect the emerging rhythm in this high density precinct. The roof form will provide visual interest to the proposal whilst having negligible impact on the amenity of neighbouring properties in terms of overshadowing or privacy.*

*The demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.”*

***Clause 4.6(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out***

82. Clause 4.6(4) states that:

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

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

- (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,”*

83. Applicants Comment: *“In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).*

*As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control and the objectives of the R3 zone.*

*The objectives of the R3 zone are:*

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

*The proposal is consistent with the objectives of the R3 zone, insofar as the development is not antipathetic to the zone objectives (per Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21).*

*The development is consistent with the zone objectives noting that:*

- *The development will provide for the housing needs of the community within a medium density environment;*
- *The development contributes to a variety of housing types in a medium density environment;*
- *The development will maximise public transport patronage by providing residential accommodation in an accessible location;*
- *The development is designed to respond to the context and setting of the locality and the development is consistent with the desired future character of the locality; and*
- *The development is designed to minimise impact on the amenity of the area and adjoining properties.”*

*(a) to establish the maximum height for buildings,*

84. Officer Comment: The site and its immediately adjoining properties have been recently up scaled to allow for medium to larger scaled development. In part this is due to the location of the sites adjoining a busy roadway as these conditions cater for larger scaled developments. Figure 7 shows the extent of the immediate precinct which allows for a maximum height of 21m.

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

85. Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. In terms of visual impact the structure is centrally located which reduces its visual appearance from the immediately adjoining streetscapes.

86. The objective seeks to “minimise” the visual impact, it is not requiring it to be eliminated or totally negated, and as such seeing the structure is not a reason for refusal, it’s the impact of the visual interference of this structure that is to be controlled. It can be said that in this case it is a small scale ancillary structure which will not be highly visible or an intrusive element given the scale and proportions of the building. It will not be visible from immediately adjoining properties and streetscapes given that it is centrally located. The roof top terrace area is located within the height limit so the use of that area is within the height control. There will be no adverse impacts in terms of overshadowing or overlooking to adjoining properties from the encroaching element.

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

87. Officer Comment: New developments of a similar nature have been approved along John Street, Wyuna Street and Princes Highway (these developments have been considered and included earlier in this report) and have established a precedent for development in the street and immediate precinct. The proposed development is consistent with the pattern of development that is slowly being established in the up-zoned precinct.

88. The proposed encroachment on the maximum height of the building which only relates to the lift overrun can be catered for in this location given the siting, orientation and the fact the buildings comply with the anticipated building envelope which is largely compliant with the ADG and KDCP in terms of the separation distances, landscaped area requirements, front setback control etc. The proposed development is considered to satisfy the objectives of the development standard.

89. Officers comment: The exceedance of the control generally satisfies the objectives of the zone for the following reasons:

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

90. The development is providing for the housing needs within a medium density residential environment with a mix of apartment choices and layouts.
- *To provide a variety of housing types within a medium density residential environment.*
91. The development incorporates a diversity of apartment types (offering 1, 2, and 3 bedroom apartments, including adaptable and liveable apartments).
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
92. The development is residential in nature and does not include any additional land uses. This objective is offering some greater flexibility in the provision of land uses within this zone and is not a mandatory requirement.
93. The area of non-compliance is considered to be reasonable and will not establish an undesirable precedent. It will not have any adverse effect on the surrounding locality, which is emerging to be characterised by residential development of comparable character. The proposal promotes the economic use and development of the land consistent with its zone and purpose. The Panel is requested to invoke its powers under Clause 4.6 to permit the variation proposed.
94. The public benefit of the variation is that it will appropriately facilitate the provision of medium density housing on a R3 zoned site and provide for a range of housing stock. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.
95. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.
96. The roof top area and its associated ancillary structures could be deleted and the building largely compliant however this space will add value and provide greater functionality and amenity for the future occupants. The ADG encourages the use of rooftop spaces.
97. The shadow diagrams submitted with the architectural plans demonstrate the non-compliance does not result in any additional shadow beyond a compliant built form due to the central location of the lift overrun and the shadow being cast from the topmost wall on the south eastern elevation of the building.
98. In this case the proposal seeks to establish the preferred and appropriate design and built form outcome for this site with the building complying in large with the height

standard. There will be no adverse amenity or visual impacts generated by the variation and the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request.

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

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

**Draft Georges River Local Environmental Plan 2020**

101. The Local Planning Panel considered the report on the outcomes of the Public Exhibition and Finalisation of Georges River Local Environmental Plan 2020 (DLEP2020) on 25 and 26 June 2020. In relation to this development site the zoning, height and floor space ratio remain unchanged.
102. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
103. 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 NO 2013 (KDCP)**

104. The following compliance table is an assessment of the proposal against the Chapter B controls.

<b>KDCP 2013 Compliance Table</b>		
<b>PART B – GENERAL CONTROLS</b>		
<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
<b><i>B2 Tree Management and Greenweb</i></b>		
Compliance with provisions of Clause 5.9 Preservation of Trees or Vegetation of KLEP 2012 must be achieved.	The proposal meets the requirements of SEPP (Vegetation in non-rural areas) 2017.	Yes
<b><i>B3 – Development near busy roads and rail corridors</i></b>		
Acoustic assessment for noise sensitive development may be required if located in the vicinity of a rail corridor or busy roads	An Acoustic report was prepared by Acoustic Logic and assessed the development against the provisions of Clause 102 of the Infrastructure SEPP. The acoustic report provided a series of recommendations in the form of implementing construction techniques	Yes

	and materials that will assist in ameliorating acoustic impacts on the internal areas of the building. A detailed discussion regarding the acoustic compliance was conducted earlier in this report and considered adequate subject to conditions.	
<b><i>B4 Parking and Traffic</i></b>		
<u>Residential parking:</u> 7 x 1 bedroom units @ 1 space per unit = <b>7 spaces</b> required 50 x 2 bedroom units @ 1.5 spaces per unit = <b>75 spaces</b> required. 7 x 3 bedroom units @ 2 spaces per unit = <b>14 spaces</b> required Total required resident parking = <b>96 spaces</b>	A total of 109 spaces are required (which include the 13 visitor car spaces and 7 accessible spaces). The development provides for 109 spaces in total which satisfies Council's requirement.	Yes
<u>Visitor parking:</u> 64 total units @ 1 space per 5 units = <b>13 (12.8) spaces</b> required	13 visitor spaces are provided with one space doubling as a car wash bay (nominated as space 1).	Yes
<u>Car wash bay:</u> 1 bay, which can also function as a visitor space	1 car wash bay is provided which doubles as a visitor space.	Yes
<u>Bicycle Parking:</u> 1 space per 3 dwellings = 22 1 space per 10 dwellings for visitors = 8 spaces Total = 30 <b>spaces</b> required	Forty two (42) residential bicycle parking spaces are provided in Basement 1.  Total = 42 spaces provided	Yes
Car park access and layout to comply with relevant Australian Standards	Ramps, parking, aisle widths and parking spaces satisfy the provisions of AS2890.	Yes
<b><i>B5 – Waste Management and Minimisation</i></b>		
Submit Waste Management Plan (WMP) Provide a dedicated caged area within the bin room for the storage of discarded bulky items.	WMP was submitted with the DA.  The building contains a waste chute, two bin store rooms and a bulky waste store area in Basement Level 1.	Yes
<b><i>B6 – Water Management</i></b>		
All developments require consideration of Council's Water Management Policy	The proposed method of stormwater management is considered satisfactory subject to conditions.	Yes
<b><i>B7 – Environmental Management</i></b>		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	Design, materials, siting and orientation generally optimise solar efficiency, with a high proportion of north facing window openings. The development is BASIX-compliant.	Yes

**Recent Amendment to Part C2 – Medium Density Development of Kogarah DCP 2013**

105. Arising from the significant increase in development activity as a result of the New City Plan (Amendment No 2) to the Kogarah Local Environmental Plan gazetted in May 2017 which permitted greater density (2.5:1 and 2:1) and height (21m), Council immediately proceeded to prepare an amendment to Part C of the Kogarah Development Control Plan for the area generally bounded by the Princes Highway, Stubbs Street/Poulton Avenue and Wyuna Street, Beverley Park, and Park Road and John Street, Kogarah Bay as a first priority and as a second priority, the west side of the Princes Highway from Jubilee Avenue to Park Road which is in part High Density B6 zone and in part High Density B2 zone. The report is to address, but not limited to the following matters:

- “(a) i. *Site isolation and amalgamation*
- ii. *Vehicular access, parking and circulation*
- iii. *Traffic impact*
- iv. *Landscape character*
- v. *Proposed building envelopes that provide a transition/interface to the land zoned R2 at the rear of these high density zones, which allow for a stepping down to a 9m height limit to the rear of developments that back onto R2 residential zones.*
- vi. *Impact on Heritage Item I3 “Sunnyside” at 186-188 Princes Highway*
- (b) *That prior to the report being presented to Council that a briefing be provided to Councillors.*
- (c) *That the General Manager prepare a report on the outcomes of the traffic assessment that is currently underway for the areas that were up-zoned under the New City Plan (Amendment No 2) to the Kogarah Local Environmental Plan gazetted in May 2017.”*

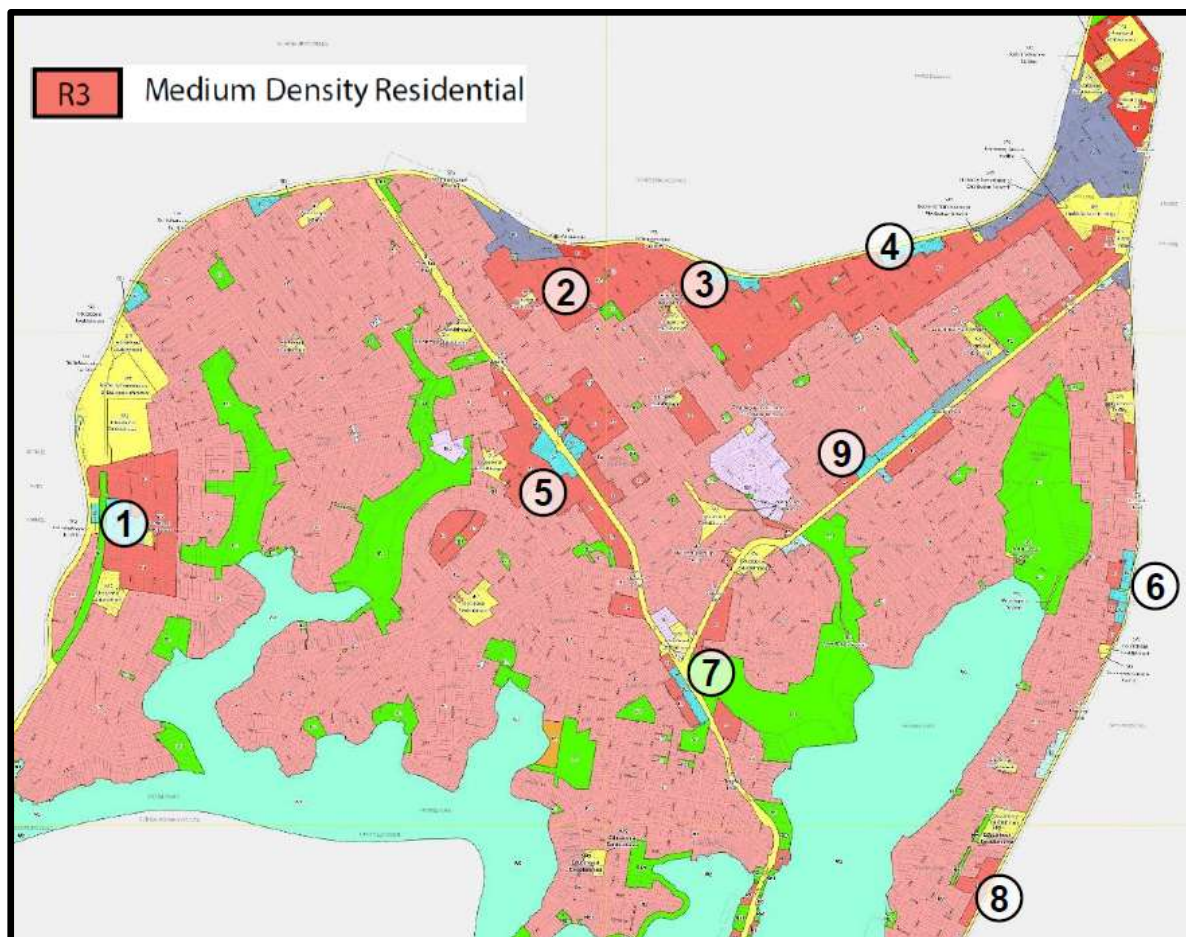
106. Council has engaged Consultants to prepare a new Development Control Plan 2020 which will consolidate and harmonise existing controls and establish appropriate new controls to assist with redevelopment for up zoned sites.

In summary the development of the DCP will involve five (5) stages;

- Stage 1 Community Participation Plan
- Stage 2 General and Industrial
- Stage 3 Residential Precincts
- Stage 4 Business Precincts
- Stage 5 Specific Sites and Localities

107. Stage 3 aims to review and establish controls across different precincts and categories of residential developments (residential flat building's, multi-dwelling housing, dwelling houses, dual occupancy's etc). The first task within this stage is to look at medium density development within R3 zoned areas. Nine (9) precincts have been identified for specific attention, as they have been up zoned and the current controls in the Development Control Plans are outdated and not reflective of the scale and form that is permitted under the Local Environmental Plans. The subject site falls within the Kogarah Bay Precinct (No.9) refer to Figure 10 below.





**Figure 10:** Map highlighting the nine (9) R3 precincts within the LGA that are being considered in accordance with the DCP review

108. One of the key identified areas of concern relate to there being no current controls which consider the interface of new larger developments and their treatment and transition to lower scale residential zones, that adjoin these area, predominantly zoned R2 having 9m and 12m height limits.
109. This DA was lodged on 26 September 2019 before the introduction of the latest controls in Chapter C2 of the KDCP, however at its meeting on 25 May 2020, Council adopted Part C2 - Medium Density Housing; with amendments as a result of submissions received; and review by the Design Review Panel and Council officers. The adopted Part C2 DCP has replaced the current Part C2 - Medium Density Housing and repealed Appendices 2, 3 and 4 of the Kogarah DCP 2013.
110. The following compliance table is an assessment of the proposal against the current C2 controls that came into effect in June 2020.

<b>Part C2- Medium Density Housing – Kogarah DCP 2013</b>		
<b>Part 1 Residential Flat Buildings</b>		
<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
<b>1. Minimum site requirements</b>		
1000sqm minimum lot size	2,675sqm	Yes
24m minimum frontage	62.43m	Yes
<b>2. Site isolation and amalgamation</b>		
Adjoining sites not to be left isolated.	The proposal does not cause any site isolation.	Yes

Site amalgamation requirements apply for specific sites.	The site is not subject to any amalgamation requirement.	N/A
<b>3. Building Setbacks</b>		
<u>Front setbacks</u> Up to four (4) storeys – 5m Above four (4) storeys – 8m (increased setback may be required if street is <20m wide)	Minimum - 4.9m Minimum - 9m	Yes Yes
<u>Side boundary setbacks</u> Up to four (4) storeys – 6m Above four (4) storeys – 9m	Minimum - 6m Minimum - 9m	Yes Yes
<u>Rear boundary setbacks</u> Up to four (4) storeys – 6m Above four (4) storeys – 12m	Minimum - 6m Minimum - 9m	Yes No – however complies with the ADG which is a higher order instrument and takes precent.
<u>Encroachments into boundary setbacks:</u> Ground floor private open space may encroach up to 2m into the 5m front setback leaving a min 3m of landscaped area to the street.  Ground floor private open space may encroach up to 3m into the side setback leaving a min 3m of landscaped area to the street.	Maximum of 3m of landscaped area.  Maximum of 3m of landscaped area.	Yes  Yes
Setbacks are to be landscaped	All setbacks are landscaped.	Yes
Powerlines to be underground	Standard condition imposed.	Yes
Sub-stations, fire booster valves and waste bin storage structures need to be integrated into the development and identified at the DA stage.	Indicated on the plans in a suitable location.	Yes
<b>4. Basement Setbacks</b>		
3m from site boundaries South West North	3m Min. 3m 3m	Yes Yes Yes

East	Nil – to provide separation from the tree on the adjoining site to the north-west.	Acceptable in order to retain a large tree that provides amenity to the locality.
Basement setback areas are to be deep soil areas as defined in the ADG	The basement setback areas provided are deep soil.	Yes
Driveways and crossings are to be located a minimum of 1.5m from a side boundary	2m setback within the front setback	Yes
<b>5. Façade Treatment and Street Corners</b>		
Building facades to be clearly articulated with high quality materials and finishes.	Satisfactory – a mix of rendered masonry, face brick, metal, timber look cladding and glass.	Yes
Modulation and articulation in the building form to be explored.	Satisfactory – the facades are well articulated through different finishes, balconies and setbacks.	Yes
Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding and green walls should be considered as alternatives.	Satisfactory - a mix of materials and finishes are proposed.	Yes
Clear glazing balustrades to be avoided where they are visible from the public domain.	Satisfactory – a mix of glass and metal balustrades are proposed.	Yes
<b>6. Landscaped area and Private Open Space</b>		
A minimum 10% of the site is to be landscaped area that is not impeded by buildings or structures above or below ground level with a minimum dimension of 2m on two axes.	15% and compliant widths achieved.	Yes
Private open space to be adjacent to and visible from the main living area/dining rooms and be accessible	Provided for each apartment.	Yes
Private open space and balconies must comply with Part 4E of the ADG	All apartments comply.	Yes
<b>7. Common Open space</b>		
Common Open Space to be	Communal open space provided is	Yes

a minimum of 25% of the site area with a minimum dimension of 5m.	669sqm (25%) with a minimum 5m dimension.	
A maximum of 50% of common open space may be provided above ground level.	Less than 50% COS is provided on the rooftop.	Yes
At least 50% of the required common open space area is to receive 2 hours of direct sunlight between 9am and 3pm on 21 June.	Greater than 50% of the rooftop communal areas will receive more than 2 hours direct sunlight during midwinter.	Yes
A minimum of 50% of the total area of common open space provided at ground level is to comprise unpaved landscape area.	Complies as this area is deep soil landscaping.	Yes
The useable and trafficable area of any rooftop common open space is to be setback a minimum of 2.5m from the edge of the roof of the floor below with landscape planters to prevent overlooking.	Complies – setbacks achieved.	Yes
Roof top open space areas should include equitable access.	Equitable access via lifts and ramps have been provided throughout the development.	Yes
Ancillary structures such as lift overruns and staircases should be centralised to reduce their visual dominance.	Fire stairs and lift over runs are centrally located.	Yes
<b>8. Solar Access</b>		
Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June)	Given the lot orientation and the nature of the development approved on the adjoining allotments the minimum solar access can be achieved.	Yes
<b>9. Vehicular access, parking and circulation</b>		
Car parking to be provided in accordance with Part B4 unless objective 3J-1 of the ADG applies.	The development complies with the KDCP numerical parking requirements.	Yes
Car parking layout and vehicular access complies with AS2890.1-2004	Complies – will be reinforced via conditions of consent.	Yes
All residential flat buildings	A visitor car wash bay has been	Yes

to provide car wash bay	provided (car space 1). The KDCP allows for a visitor space to double as a car wash bay.	
<b>10. Views and view sharing</b>		
Provide for reasonable sharing of views	The location does not have significant views. The development generally complies with height requirements and is reasonable in terms of view sharing.	Yes
<b>11. Dwelling Mix</b>		
Dwellings that propose more than 10 dwellings are to provide a mix of dwellings as follows: Studio apartments and 1 bed apartments - 20% min 2 bed apartments – 30% max 3 bed apartments – 15% min	The proposal includes the following apartments mix: 7 x 1 bedroom apartments = 11% 50 x 2 bedroom apartments = 78% 7 x 3 bedroom apartments = 11%	No however the proposal provides a suitable mix of 1, 2 & 3 bedroom apartments.
<b>12. Adaptable and accessible housing</b>		
51+ units – 6 adaptable units + 10% of additional units beyond 60 (rounded up to the nearest whole number 64 units proposed – 7 adaptable units required Every adaptable unit needs to have an accessible car space.	Sixty four (64) apartments are proposed which requires that seven (7) adaptable apartments are provided.  Seven (7) adaptable apartments are proposed with provision for accessible parking.	Yes  Yes

111. Where a non-compliance has been identified in the table above, the proposal is considered acceptable on merit as the application was lodged well before the exhibition and adoption of the latest DCP controls for this type of development.

### Interim Policy – Georges River Development Control Plan 2020

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

<b>Interim Policy – Georges River DCP 2020</b>		
<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>Site Frontage</b>		
20m	62.43m to Wyuna Street.	Yes

<b>Building Height</b>		
The relevant LEP controls relating to building height will prevail over DCP controls that relate to height in storeys	The proposal exceeds the height control but is supported by the provision of a Clause 4.6 Statement. This statement is considered to be well founded as discussed in detail earlier in this report.	Yes
<b>Private Open Space</b>		
The ADG requirements prevail over the DCP controls for private open space	The proposal is fully compliant with the ADG's private open space requirements. Refer to "4E – Private Open Space and Balconies" within the ADG Compliance Table above.	Yes
<b>Communal Open Space</b>		
The ADG requirements prevail over the DCP controls for COS	The proposal is considered to comply with the requirements of the ADG with respect to COS.  Refer to "3D – Communal Open Space" within the ADG Compliance Table above.	Yes
<b>Parking</b>		
In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment): <ul style="list-style-type: none"> <li>• If located in a strategic centre (ie Kogarah CBD and Hurstville CBD) and within 800m of a Railway, the "Metropolitan Regional Centre (CBD)" rates apply.</li> <li>• If located within 800m of a railway and outside the strategic centres the "Metropolitan Subregional Centre" rates apply.</li> <li>• If located outside of 800m of a Railway, the relevant DCP applies.</li> </ul>	The KDCP parking requirements need to be satisfied as the site is not located near a railway station or close to a commercial centre in accordance with the ADG provisions.	The proposal satisfies the numerical requirements of the KDCP.
<b>Solar Access</b>		
The ADG requirements prevail over the DCP controls for solar access	The proposal is acceptable on merit as the development meets the ADG Solar Access requirements as detailed within the ADG Compliance Table above. Refer to "4A – Solar and Daylight	Yes

	Access” within the ADG Compliance Table.	
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## DEVELOPER CONTRIBUTIONS

115. The proposed development would require payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979. If the development consent is granted a condition outlining the required contributions will be imposed.
116. The table below shows the contributions which are applicable for this development. A condition is imposed if consent is issued that reflects the contributions as stated.

Kogarah Section 94 Contribution Plan No.1 – Road and Traffic Management – Residential	\$12,397.97
Kogarah Section 94 Contribution Plan No.5 – Open Space	\$647,480.62
Kogarah Section 94 Contribution Plan No.9 – Kogarah Libraries – Books	\$10,428.87
Kogarah Section 94 Contribution Plan No.9 – Kogarah Libraries – Building	\$14,27.25
<b>Total Development Contributions payable</b>	<b>\$684,934.71</b>

## IMPACTS

### *Natural Environment*

117. The proposed development will not adversely affect the natural environment subject to the site being planted with replacement trees as shown on the approved landscape plan. The removal of existing trees has been reviewed by Council's Consultant Arborist and is deemed acceptable subject to conditions.
118. The proposal includes excavation that has been assessed as being reasonable in the context of the site and consistent with the extent of excavation expected in an R3 Medium area that has seen uplift in building height and FSR to permit the construction of basement car parking. Excavation impacts will be managed through standard conditions of consent that have been imposed to protect the environment with respect to contamination and impact onto adjoining allotments and the public domain.

### *Built Environment*

119. The proposal represents an appropriate planning outcome for the site with respect to its bulk, scale and density, façade articulation and expression and is an appropriate response to the context of the site and its R3 Medium Density Residential zoning.
120. The buildings four (4) storey podium with recessed upper levels will also ensure that it has an appropriate relationship with the lower scaled R2 zoned residential properties on the opposite side of Wyuna Street, and will provide a reasonable transition between those R2 zoned dwelling houses and future six (6) and seven (7) storey mixed use development fronting Princes Highway which is to the north of the site.

### *Social Impact*

121. No adverse social impacts have been identified as part of the assessment. The proposed development, in principle, will cater for a cross-section of the community and will assist with providing for additional housing in the area. The construction of residential apartments on the site is consistent with the residential zoning of the land.

**Economic Impact**

122. There is no apparent adverse economic impact that is likely to result within the locality due to the construction of additional apartments. The construction of these apartments was to be reasonably expected as a result of the New City Plan's gazettal. The impact of new development on nearby property values is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. It is likely there will be a small positive economic impact as a result of the construction of the development.

**Suitability of the site**

123. The site is zoned R3 – Medium Density Residential. The proposal is a permissible form of development in this zone and has been designed to reflect the context of the area as it evolves and as it exists. This immediate precinct is going through a process of change and transition and the proposal is in line with the intentions of Council's recent up-zoning of these sites.

**SUBMISSIONS AND THE PUBLIC INTEREST**

124. The application was neighbour notified in accordance with Kogarah DCP 2013 for a period of fourteen (14) days between 8 October 2019 and 22 October 2019. A total of thirty three (33) submissions were received. Amended plans were received in February 2020 however the changes did not warrant re-notification as outlined in the Development Control Plan. In summary the following issues and concerns were raised.

Non-compliance with the height limit

125. Officer Comment: The proposal complies with the height limit with the exception of the top of the lift overrun. The applicant has submitted a request to vary the height standard which has been assessed as worthy of support as the building is predominantly below the maximum height of 21m and the impacts of the height. The height breach does not result in any adverse impacts on the amenity of the surrounding allotments and is not inconsistent with the objectives of the height controls or the zoning of the land.

Out of character with the existing locality and existing smaller scale adjoining developments

126. Officer Comment: The up-zoning of this precinct did not include a transition between the 21m height control and the 9m height control on the opposite site of Wyuna Street. The heights and floor space ratio together with the setbacks of the DCP and the ADG have set the envelope of this scale of development. The draft amendment to Part C2 of Kogarah DCP 2013 has been publicly exhibited and recently endorsed by Council. The proposed development has been assessed against these draft controls and is generally consistent with the intent and objectives of these draft controls.

Overshadowing of adjoining properties

127. Officer Comment: The proposal complies with the DCP solar access provisions for neighbouring properties. The development affects the properties to the west up until 12pm whilst the properties to the south across the street are only impacted after 1pm and are not affected in the morning as shadows are cast to the west.

Increased traffic generation

128. Officer Comment: The locality has been up-zoned and permits this form of development and the anticipated vehicle movements were envisaged. The application was accompanied by a Traffic assessment report and reviewed by Council's Traffic Engineer. It is acknowledged that the development will generate some additional pressure on the local road network; however the impact is not considered to be adverse or detrimental to warrant the refusal of the application.



Adverse impact on street parking

129. Officer Comment: The proposal complies with the number of required resident and visitor parking spaces. The development of the five properties will remove four driveways which will allow for additional on street parking as there is one point of access and egress from the carpark which is located to the eastern side of the development site.

Impacts on heritage item “Sunnyside” located at 184 Princes Highway

130. Officer Comment: A Heritage Impact Statement was submitted by the applicant and reviewed by council’s Heritage Advisor who supports the proposal.

Increased overlooking and noise from the rooftop terrace area

131. Officer Comment: The rooftop communal open space areas are separated into two sitting areas and a vegetable garden. Each area is located centrally on the rooftop level and are setback from the site boundaries in accordance with the ADG separation requirements. In addition, a condition of consent will be imposed, if the development is approved, a Plan of Management will be required to be prepared to control the use of the rooftop communal areas to control the number of people using the area at the times in which it is permitted to be accessed.

Against the design quality principles of the SEPP 65

132. Officer Comment: The development complies with the provisions of the ADG as detailed in the assessment table of this report.

Depreciation in property values

133. Officer Comment: This is not a matter for consideration under the Environmental Planning and Assessment Act 1979.

The proposed development is not cheap/affordable housing

134. Officer Comment: There is no requirement for a development to provide affordable housing. The application has not been proposed under the provisions of State Environmental Planning Policy (Affordable Rental housing) 2009.

**REFERRALS****Council Referrals**Development Engineer

135. The application was referred to Council’s Development Engineers for comment, they are satisfied with the stormwater drainage arrangement subject to the imposition of conditions of consent should the application be approved.

Traffic Engineer

136. The application was referred to Council’s Traffic Engineer for comment. The proposed car parking and access arrangements are considered to be compliant with Council’s controls and are satisfactory. Standard conditions are recommended to ensure compliance will be achieved with Australian Standards during and after construction should the application be approved.

Environmental Health Officer

137. Council’s Environmental Health Officer has raised no objection to the proposal subject to conditions of consent should the application be approved.

Consultant Arborist

138. Council’s Consultant Arborist has raised no objection subject to conditions of consent.

## External Referrals

### Ausgrid

139. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid did not raise any objection to the proposal, no conditions recommended.

### Sydney Airport

140. The application was referred to Sydney Airport. A formal response was provided and concurrence was obtained.

## CONCLUSION

141. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is considered to be a reasonable development form given the intensification of site and the proposed additional scale, bulk and height is considered to be an acceptable planning and design outcome for this site and will be consistent with the desired future character of development in the R3 zoned land in this location and immediate locality.
142. The proposal has been assessed against the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013. The proposal satisfies the key planning controls in the Kogarah Local Environmental Plan apart from exceeding the height limit for the lift overrun only. A Clause 4.6 Statement has been submitted with the application justifying the variation in this case.
143. The proposed development design satisfies the objectives of both the height control and the zone and the Clause 4.6 Statement is considered to be well founded as there will not be any direct or adverse environmental impacts generated, the proposal satisfies the requirements of Clause 4.6 of the Kogarah Local Environmental Plan 2012.

## DETERMINATION AND STATEMENT OF REASONS

### Statement of Reasons

144. The reasons for this recommendation are:
- The proposal is an appropriate response to the “up-zoning” of the site (including increased Floor Space Ratio and height limits) afforded by the Kogarah “New City Plan”. The seven (7) storey building will provide an effective transition between future six (6) and seven (7) storey development facing the Princes Highway and two (2) storey low density residential on the opposite side of Wyuna Street.
  - The proposed development complies with the requirements of the relevant environmental planning instruments and development control plan except with the building height of the development which is considered acceptable having regard to the justification provided in the report above.
  - In this case the Clause 4.6 Statement is considered to be well founded and the non-compliance with the height control is reasonable in the circumstances of the case.
  - The proposal generally achieves compliance with the Apartment Design Guide with respect to both internal and external amenity.
  - The proposed design has been sensitively considered to be consistent with the anticipated desired future character for development in this area.
  - The proposal has effective façade modulation and wall articulation that will serve to provide visual interest and reduce the bulk of the building.
  - The proposal aims to provide a high-quality building that will establish a positive urban design outcome, setting the architectural and planning precedent in the area.

**Determination**

145. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, grants development consent to Development Application DA2019/0439 for site consolidation, tree removal demolition of existing structures and construction of a seven (7) storey Residential Flat Building development comprising sixty four (64) residential apartments with basement car parking for one hundred and nine (109) vehicles including landscaping and site works on Lots 8, 20, 21, 22 and 23 in DP 7056 known as 13-21 Wyuna Street, Beverley Park, subject to the following conditions of consent:

**GENERAL CONDITIONS**

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

<b>Description</b>	<b>Reference No.</b>	<b>Date</b>	<b>Revision</b>	<b>Prepared by</b>
Demolition Plan	DA 03	04.02.20	P9	shiro architects
Site Plan/Roof Plan	DA 04	04.02.20	P12	shiro architects
Ground Floor Plan	DA 05	19.05.20	P13	shiro architects
Basement 1	DA 06B	19.05.20	P13	shiro architects
Mezzanine Basement 1	DA 06A	19.05.20	P13	shiro architects
Basement 2	DA 07	19.05.20	P13	shiro architects
Level 1	DA 08	04.02.20	P12	shiro architects
Level 2	DA 09	04.02.20	P12	shiro architects
Level 3	DA 10	04.02.20	P12	shiro architects
Level 4	DA 11	04.02.20	P12	shiro architects
Level 5	DA 11	04.02.20	P12	shiro architects
Level 6	DA 13	04.02.20	P12	shiro architects
Section A-A	DA 14A	04.02.20	P12	shiro architects
Section B-B C-C	DA 14B	04.02.20	P12	shiro architects
Section D-D	DA 14C	04.02.20	P12	shiro architects
Street Elevation	DA 16A	04.02.20	P12	shiro architects
Elevations	DA 16B	04.02.20	P12	shiro architects
Landscape Plans	117-L01 to L05	03.06.20	D	Andrew Prowse Landscape Architect
Arboricultural Impact Assessment and Tree Management Plan	5560.1	03.02.20		Redgum Horticultural
Preliminary Site Investigation	E24383.E01_R ev0	23.10.19		EIAustralia
Geotechnical Report	P1563_01	15.11.19		Morrow

**SEPARATE APPROVALS REQUIRED BY OTHER LEGISLATION**

2. **Section 138 Roads Act 1993 and Section 68 Local Government Act 1993** – Unless otherwise specified by a condition of this consent, this Development Consent does not

give any approval to undertake works on public infrastructure.

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

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

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

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

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

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

The following details must be submitted:

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

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

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

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

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

The application must be endorsement by the Roads & Maritime Services (RMS) as the hoarding is located within 100m of an intersection with traffic lights. For assistance you should contact the DA unit at RMS and speak to Hans on 88492076. Or email [hans.pilly.mootanah@rms.nsw.gov.au](mailto:hans.pilly.mootanah@rms.nsw.gov.au) to obtain concurrence for the hoarding structure.

5. **Vehicular Crossing** – The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:
- (a) Construct a 1.2m wide footpath for the full length of the frontage of the site in accordance with Council's Specifications applying at the time construction approval is sought.
  - (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
  - (c) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

6. **Road Opening Permit** - A Road Opening Permit must be obtained from Council and/or RMS for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.

## **REQUIREMENTS OF CONCURRENCE, INTEGRATED AND OTHER GOVERNMENT AUTHORITIES**

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

8. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

9. **Electricity Supply** - An application is required to be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application being lodged with Ausgrid is required to be provided to the Certifying Authority prior to the issue of a Construction Certificate. For further details, you are advised to contact Ausgrid on 13 13 65 or [www.ausgrid.com.au](http://www.ausgrid.com.au) (Business and Commercial Services).
10. **Electricity Supply to Development** – The electricity supply to the development must be underground.

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

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

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

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

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

Fee Type	Fee
<b>GENERAL FEES</b>	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://portal.longservice.nsw.gov.au/bci/levy/">https://portal.longservice.nsw.gov.au/bci/levy/</a>	
Builders Damage Deposit (footpaths and roadworks) (calculation based on \$1,236.00 per metre of street frontage, Wyuna Street of 62.43m)	\$77,163.48
Inspection Fee for Refund of Damage Deposit (minimum of two (2) inspections at \$371 per inspection)	\$742.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Kogarah Section 94 Development Contributions Plan No.1 - Roads and Traffic Management - Residential	\$12,397.97
Kogarah Section 94 Development Contributions Plan No.5 – Open Space	\$647,480.62
Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries - Books	\$10,428.87
Kogarah Section 94 Development Contributions Plan No.9 – Kogarah Libraries - Building	\$14,27.25
<b>Total S94 Contribution</b>	<b>\$684,934.71</b>

### General Fees

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

### Development Contributions

The Section 7.11 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

#### Indexation

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

#### Timing of Payment

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



### Further Information

A copy of all current Development Contributions Plans may be inspected at Council's offices or viewed on Council's website [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).

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

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

13. **Above ground power lines** – Where practicable, all existing overhead power lines within or adjacent to the development site shall be relocated underground to Energy Australia standards and specifications. If not practicable to relocate the power line underground, arrangements shall be made with Energy Australia to place the conduit to carry those power lines underground so that they can be utilised at a later date by Energy Australia. In this regard all associated costs shall be borne by the applicant.

Written compliance with this condition is required to be provided prior to the issuing of the Construction Certificate.

14. **NBN Connection** - Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

(i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and

(ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note real estate development project has the meanings given in section 372Q of the Telecommunications Act).

15. **Damage Deposit - Major Works** - In order to insure against damage to Council property the following is required:
- (a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$77,163.48**
  - (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee (for two inspections) to enable assessment of any damage and repairs where required: **\$742.00.**
  - (c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area



likely to be affected by the proposal.

At the completion of work Council will inspect the public works, and the damage deposit will be refunded in full upon completion of work where no damage occurs. Otherwise the amount will be either forfeited or partly refunded according to the amount of damage.

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

- (a) The height of the front fence along Wyuna Street shall not exceed 1.2m and shall be designed so that it is 50% transparent.

17. **Use of Rooftop Open Space** - A Plan of Management (POM) for use of rooftop open space must be submitted for approval of Council prior to the issuing of the Construction Certificate. The POM must outline the following:

- (i) hours of use of the rooftop deck which shall be restricted from 8am until 10pm;
- (ii) maximum number of users at any one time shall be specified (for this development a maximum of 25 at any one time is recommended) given the size of the space;
- (iii) Outline provisions to maximise the safety (fire safety and general safety) for users of this area.
- (iv) no amplified music to be played;
- (v) identify other measures to ensure that the amenity and safety of persons within the development and in nearby existing and future development is maintained.
- (vi) Location and type of signage to be installed in the building to notify residents and visitors in respect to the use of this space.
- (vii) The approved POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision and a sign in the front entry of the building shall be included to ensure the use of this space is monitored and understood by all occupants.

The POM shall be prepared and shall be to the satisfaction of Council's delegate.

18. **Parking and Layout** – The development shall comply with the following requirements:

- Barriers are to be installed in accordance to AS2890.1:2004 section 2.4.5.3.
- 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*.
- Driveway access to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.
- All allocated car parking spaces shall be freely available for the visitors of the proposed development.
- 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*.
- All vehicles shall enter and exit the premises in a forward direction.

- No deliveries to the premises shall be made direct from a public place or street inclusive of footpaths, nature strip, roadway and car parks.
19. **Materials and finishes** - The proposed materials and finishes selected shall be non-reflective and shall be of the highest quality minimising the need for regular maintenance.
  20. **Construction materials** - Any proposed cladding to the building shall be constructed of fire resistant materials which comply with the requirements of the National Construction Code (NCC) 2019 Volume (1) One Building Code of Australia (BCA). Details of the proposed materials and finishes are to be detailed on the construction certificate drawings and shall be to the satisfaction of the PCA.
  21. **Mechanical ventilation** – Any proposed mechanical ventilation system will need to satisfy Council's requirements and those stipulated by the National Construction Code and AS1668.2-2002 and shall be in accordance with the plans and details lodged with the application and prepared by RMJ Engineering and dated 26 August 2019.
  22. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
  23. **Fire Safety Measures** - Prior to the issue of a Construction Certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a PCA. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or PCA will then issue a Fire Safety Schedule for the building.
  24. **Construction Traffic Management Plan** - A Construction Traffic Management Plan detailing:
    - (a) construction vehicle routes;
    - (b) anticipated number of trucks per day;
    - (c) hours of construction activity;
    - (d) Access arrangements; and
    - (e) Proposed traffic measures to minimise impacts of construction vehicles must be submitted for the approval of Council's Engineers. Council's Engineers must specify in writing that they are satisfied with the Traffic Management Plan prior to the issue of the Construction Certificate.

The Construction Traffic Management Plan may require approval from RMS.

25. **Geotechnical report** - The applicant must submit a Geotechnical Report, prepared by a professional engineer specialising in geotechnical engineering who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted before the issue of the Construction Certificate and is to include:
  - (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.

- (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the PCA and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
- (c) On-site guidance by a vibration specialist during the early part of excavation.
- (d) Measures to minimise vibration damage and loss of support to other buildings. Where possible any excavation into rock is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures. Where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) the report shall detail the maximum size of hammer to be used and provide all reasonable recommendations to manage impacts.
- (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

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

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

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

#### Residential Waste

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

- 11 x 660L litre mobile bins per apartment/dwelling. Domestic Recycling
- 11 x 240 litre mobile bin per 3 apartments/dwellings.
- Green Waste – 1 to 2 x 240 litre mobile bins per apartment block.

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

- waste room floor to be sealed;
- waste room walls and floor surface is flat and even;
- all walls painted with light colour and washable paint;
- equipment electric outlets to be installed 1700mm above floor levels;
- The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
- light switch installed at height of 1.6m;
- waste rooms must be well lit (sensor lighting recommended);
- optional automatic odour and pest control system installed to eliminate all pest types and assist with odour reduction - this process generally takes place at

- building handover - building management make the decision to install;
- all personnel doors are hinged and self-closing;
- waste collection area must hold all bins - bin movements should be with ease of access;
- Conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.
- Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.
- Cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners.

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

28. **Dial before your dig** – The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.
29. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted with the construction certificate to the Certifier for approval prior to construction of the specified works.

A copy will be forwarded to Council where Council is not the Certifying Authority.

30. **Access for Persons with Disabilities** - Access for persons with disabilities must be provided to and within the site, including to all foyer areas, basement carpark, required communal areas including the sanitary and kitchen facilities and allocated balconies in accordance with the requirements of the Premises Standards, the Building Code of Australia and AS 1428.1. Details must be submitted with the Construction Certificate Application.

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

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

31. **Commonwealth Disability (Access to Premises) Standard** - The Commonwealth Disability (Access to Premises - Buildings) Standards 2010 (the Premises Standards) applies to all applications (including a Construction Certificate). This requires any new building, part of a building and the affected part of the existing building to comply with the Premises Standards, the Building Code of Australia and AS 1428.
32. **Access** - The recommendations of the Access Report prepared by Vista Access Architects Reference No. 18216 shall be implemented in the Construction Certificate Plans and Documents.
33. **BCA Assessment** - The recommendations in the Assessment of BCA Compliance

Capability prepared by Certified Building Specialists and dated 26 November 2018 shall be incorporated within the Construction Certificate Plans and relevant documents.

34. **Contamination Report** - The recommendations of the Preliminary Site Investigation prepared by EI Australia dated 23 October 2019 shall be included within the Construction Certificate Plans and relevant documents.
35. **Acoustic Requirements** – The Construction Certificate plans shall demonstrate compliance with the Acoustic Assessment submitted to Council, titled *“Traffic Noise Intrusion Assessment – for proposed development at No. 13 - 21 Wyuna Street, Beverley Park.” Reference No. 20200206.1/0805A/R0/AS prepared by Acoustic Logic and dated 8 May 2020.*

This means that a review of glazing design and mechanical plant must be undertaken to ensure that acoustic objectives will be met. Written verification from a suitably qualified acoustic consultant must be submitted to Council validating that the acoustic objectives contained within the aforementioned report will be met, must be submitted to Council for approval. The Construction Certificate will not be issued until Council approves this validation.

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

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

The report must be submitted with the Construction Certificate application.

37. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors/hallways, stairs and ramps as well as floor surfaces in the wet rooms in any commercial/retail/residential apartments will have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, will comply with AS4586:2013 - Slip Resistance Classifications of New Pedestrian Surface Materials and will be detailed on the plans lodged with the application for the Construction Certificate.
38. **Advice from Fire and Rescue (FR) NSW** - Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation, 2000 to seek written comment from FR NSW about the location of hydrant facilities and any Fire Engineered Solution developed to meet the performance requirements under the Category 2 Fire Safety Provisions.
39. **Site Management Plan** - A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:
- (a) location of protective site fencing;
  - (b) location of site storage areas/sheds/equipment, not within the curtilage of the heritage item;



- (c) location of building materials for construction, e.g. stockpiles not within the curtilage of the heritage item
- (d) provisions for public safety;
- (e) dust control measures;
- (f) method used to provide site access location and materials used;
- (g) details of methods of disposal of any materials off site;
- (h) method used to provide protective measures for tree preservation;
- (i) provisions for temporary sanitary facilities;
- (j) location and size of waste containers/skip bins, not within the curtilage of the heritage item;
- (k) details of proposed sediment and erosion control measures;
- (l) method used to provide construction noise and vibration management;
- (m) traffic management details during construction.

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

40. **Car Wash Bay** – Plans and specifications of the car washing system approved by Sydney Water must be submitted with the application for the Construction Certificate. One visitor space shall be designated as a Car wash bay and this space shall be conveniently located in order to serve this purpose.

All car washing bays will be contained within a roofed and bunded car wash bay with pre-treatment approved by Sydney Water. The water from the car wash bay must be graded to a drainage point and connected to sewer.

If alternative water management and disposal options are proposed (i.e. where water is recycled, minimised or reused on the site), detailed plans and specifications of the water recycling system must be submitted with the application for the Construction Certificate for approval by Council's Environmental Health Officers.

41. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by a qualified designer, must be submitted to the Certifier verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development.
42. **Council Property Shoring** - Prior to the issue of the Construction Certificate, plans and specifications prepared by a professional engineer specialising in practising structural engineering will detail how Council's property will be supported at all times.

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

43. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1037318M\_02 and dated 21 February 2020 must be implemented on the

plans lodged with the application for the Construction Certificate.

44. **Acoustic requirements for timber flooring** - If timber flooring is installed within the development, then appropriate insulation between floors shall be implemented to exceed the minimum sound attenuation.
45. **Acoustic attenuation for apartments adjoining lift core** – Where bedrooms within apartments that adjoin the internal lift core appropriate noise attenuation measures are to be applied to prevent transmission of noise in accordance with the Building Code of Australia (BCA).
46. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Andrew Prouse Landscape Architecture, Ref No Dwg No 117, Issue D, and dated 3 June 2020. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -
  - a) Prior to the issue of a Construction Certificate, the total number, quantities of all trees and plants shall be forwarded as per landscape plans – Ground floor plan, level 4 landscape plan, level 6 landscape plan, including all landscape plans for this proposal.
  - b) The proposed trees and plant species, pot/ bag size of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives;
  - c) All trees proposed upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification;
  - d) If the planted trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size;
  - e) A certificate of compliance for the planting of all trees and shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA – Principal Certifying Authority.
47. **Compliance with submitted Arborist Report** – The recommendations outlined in the Arborist's Report titled Arboricultural Impact Assessment prepared by Redgum Horticultural dated 3 February, 2020 must be implemented throughout the relevant stages of construction. Details of tree protection measures to be implemented must be detailed and lodged with the Construction Certificate application for approval and shall be in accordance with *Section 4 - Australian Standard AS 4970-2009: Protection of trees on development sites*.

The tree/s to be retained and protected are listed in the table below.

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) TPZ as per AS4970 - 2009
Trees 6, 7 and 8 - <i>Callistemon citrinus</i>	Council's street trees	Trunk wrapping and ground protection as per AS4970 -2009

T15 - Persea Americana	Neighbours tree at rear back fence 182 Princes Highway	4.0 metres radially out from its trunk
T19 – Syagrus romanzoffiana	Rear of 2 Lacey Street Beverley Park	4.0 metres radially out from its trunk
T20 – Cinnamomum camphora	188 Princes Highway Beverley Park	12.0 Metres radially out from its trunk

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- (a) The client shall engage a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation.
- (b) A certificate of compliance letter for tree protection measures shall be completed and forwarded to the PCA – Principal Certifying Authority, at three (3) stages being before works, during works and once all building works have been completed, that tree protection measures have been installed and maintained during the building process.

### Tree Protection Measures

- (a) The Tree Protection Zone of Tree 20 **must not be** used for any storage of materials, building products or preparation of any building products for the entirety of the project.
- (b) The Tree Protection Plan, Part B within the Arboricultural Impact Assessment completed by Redgum Horticultural shall be overseen by the project Arborist, re - Tree 20 – *Cinnamomum camphora*. The project Arborist shall complete written certificates that all protection measures have been completed and witnessed and forwarded to the PCA, for compliance.
- (c) All trees on Council property, subject site and adjacent sites, to be retained shall be protected before and maintained during demolition, excavation and construction of the site.
- (d) Although trees may be on adjacent sites, the tree protection fencing must be placed on the nominated distances as per table above, out from the trees trunk, within the subject site to minimise impacts to neighbours trees and kept for the entirety of the project.
- (e) The tree protection measures must be undertaken in accordance AS4970 -2009 Protection of trees on development sites.
- (f) Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation.
- (g) The engaged AQF 5 Consulting Project Arborist must be present on-site during the stages of excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
- (h) In accordance with AS 4970-2009 *Protection of trees on development sites*, a protective fence consisting of 2.4 x 1.8 metres high, fully supported chainmesh fence shall be used. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.
- (i) To preserve the Councils street trees – Trees 6, 7 and 8, no work shall commence nor shall a Construction Certificate be issued (whichever occurs first) until the



trunk/ branches are protected, in accordance with AS4970 - 2009, *Protection of trees on development sites*, by the wrapping of geo woven fabric around the trunk 4 / 5 times and the placement of two metre long, lengths of 50mm x 100mm timber battens vertically arranged around the trunk, with 100mm spacing's. The timber battens shall be secured by wire/ hoop straps but not secured into the tree itself. The trunk/ branch protection shall be maintained intact until the completion of all works upon the site

Or

In the case of horizontal branching, tree protection fencing shall encompass the tree, without interfering with pedestrian access.

- (j) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
- (k) No building products/ materials or services shall be installed within the TPZ of the tree/s unless approved by Council. This fence shall be kept in place during demolition, construction and also have a sign displaying 'Tree Protection Zone – DO NOT ENTER' attached to the fence and must also include the name and contact details of the Project Arborist.

#### **Excavation works near tree to be retained – Tree 20 – *Cinnamomum camphora***

- (l) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the AQF 5 Project Arborist to ensure that the root system will not adversely be affected.
- (m) All stormwater piping and pit installations must be completed by hand or pneumatic air spade type of excavations. No machine excavator bucket type excavations are allowed within the TPZ of Tree 20.
- (n) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the AQF 5 Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.
- (o) Tree Protection Zones around the trees to be retained are not to have soil level changes, building product / materials stored or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

#### **Pier and Beam/ Cantilever type –**

- (a) To preserve Tree 20 – *Cinnamomum camphora*, the footings of the proposed patio of apartments 8, shall be isolated pier and beam/ cantilever type construction within the TPZ of 12 metre radius of the trunk. The piers shall be hand dug and located such that no roots of a diameter greater than 50mm are severed or injured in the process of any site works during the construction period. The beam shall be located on or above the existing soil levels.
- (b) Removal or pruning of any other tree (that would require consent of Council) on the site is not approved. All pruning must be undertaken by a qualified Arborist in accordance with AS4373 -2007 Pruning of Amenity Trees and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).

48. **Tree Removal & Replacement** - Permission is granted for the removal of the following trees:

Tree removal

In accordance with Georges River Tree Management Policy 2019, a 2:1 Policy is to be implemented. For every one (1) tree to be removed, two (2) trees shall be planted on the subject site to compensate for the loss of each tree, with exempt Species replacement being 1:1. If Council finds that locations within the site cannot be found for the trees viability, an offset fee shall be forwarded to Council to plant the tree/s elsewhere, within the municipality.

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
Tree 1- <i>Callistemon citrinus</i>	X1	Councils street tree (removed by Council only)
Tree 2/3 – <i>Citrus Spp</i>	X2	Rear of 13 Wyuna Street
Tree 4 – <i>Plumeria rubrum</i>	X1	Rear side fence of 13 Wyuna Street
Tree 5 – <i>Melaleuca bracteata</i>	X1	Rear side fence of 13 Wyuna Street
Tree 9 – <i>Howea forsteriana</i>	X1	Front yard of No 17 Wyuna Street
Tree 10 – <i>Phoenix canariensis</i>	X1	Front yard of No 17 Wyuna Street
Tree 11 – <i>Howea forsteriana</i>	X1	Front yard of No 11 Wyuna Street
Tree 12 – <i>Sedum Spp</i>	X1	Front yard of No 11 Wyuna Street
Tree 13/14 – <i>Citrus Spp</i>	X2	Rear yard of No 17 Wyuna Street
Tree 16 – <i>Persea americana</i>	X1	Rear yard of No 19 Wyuna Street
Tree 17 - <i>Howea forsteriana</i>	X1	Front yard of No 19 Wyuna Street
Tree 18 – <i>Citrus Spp</i>	X1	Rear yard of No 21 Wyuna Street
Tree 21 – <i>Cactus Spp</i>	X1	Rear yard of No 19 Wyuna Street
Tree 22 – <i>Persea Americana</i>	X1	Rear yard of No 19 Wyuna Street
Tree 23 – <i>Howea forsteriana</i>	X1	Rear yard of No 19 Wyuna Street
Tree 24 – <i>Cupressus sempervirens</i>	X2	Front yard of No 21 Wyuna Street

**General Tree Removal Requirements**

- a) All tree removal shall be carried out by a minimum certificate Level 3, Licenced and insured Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - Pruning of Amenity Trees and Tree Works Industry Code of Practice (Work Cover NSW 1.8.98).
  - b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.
49. **Street Tree Removal / Replacement by Council –**
- a) Three (3) street trees of species to be determined must be provided in the road reserve fronting the site.
  - b) Council shall be appointed to remove and plant all tree/s on public land. All costs associated with the removal of the tree/s and the planting of replacement trees shall be met by the applicant. Fees and charges outlined in the table below are subject to change and are set out in the current version of Council's 'Schedule of Fees and Charges', applicable at the time of payment.

- c) The fees must be paid in accordance with the conditions of this consent. The fee payable is to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.
- d) The fees payable will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant conditions set out in this consent.

Fee Type – Tree planting/ removal on public land	Number of trees	Amount per tree
Administration Fee, tree planting and maintenance	X3	\$452.00, prior to Construction Certificate
Cost of tree removal – T1 – Callistemon Spp	X1	To be determined by Council, prior to Construction Certificate.
Cost of Stump Grinding	X1	To be determined by Council, prior to Construction Certificate

50. **Pre-Construction Dilapidation Report – Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises.

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

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

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

51. **Stormwater System** –The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.
- (a) All stormwater shall drain by gravity to Council's kerb and gutter in the street as indicated on the approved plan in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
  - (b) The PCA shall ensure that the approved drainage design levels are to be surveyed during construction by a registered surveyor.
  - (c) Prior to the commencement of works, the registered surveyor shall ensure to the PCA that the stormwater discharge pipe across the footpath shall be RHS at an angle and is laid with minimum disturbance at a minimum 1% grade to the kerb and gutter in the street and is made in good working condition.

- (d) The RHS galvanised pipe must have a minimum of 50mm of cover along its length through the road reserve. A detailed section of the connection through the road reserve is to be prepared and shown on the drainage plan prior to the commencement of works.
- (e) There shall be no damage to the adjoining driveway crossing. All damages are to be rectified to its original condition at the cost of the applicant.
- (f) The stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.

### **Stormwater Systems with Basement**

- (a) The underground basement car park must pump to and all other stormwater must drain by gravity to:
  - i. the drainage system within the site via a silt trap pit .

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

### **Protection of basement from inundation of stormwater waters**

- (b) The protection of the underground basement shall be protected from possible inundation by surface waters from the street.

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

52. **On Site Detention** – The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering is to be constructed with capacity as shown on the approved plan in this case.

- (a) Provide the OSD system with at least one access for future maintenance and show on plan.
- (b) Provide the OSD system with sufficient ventilation and show on plan.
- (c) The OSD tank shall be certified to be structurally adequate to carry the designated loads to the satisfaction of the PCA.

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

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

Full details shall accompany the application for the Construction Certificate.

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

- (a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20 year storm;
- (b) The pump system shall be regularly maintained and serviced, every six (6) months; and
- (c) Any drainage disposal to the street gutter from a pump system must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

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

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

- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
- (b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).
- (c) The full length of the driveway designed with a minimum 150mm thick reinforced concrete and minimum of 2.7m wide pavement/kerb face to kerb face width, and a non-slip surface.

## **PRIOR TO COMMENCEMENT OF WORKS**

55. **Erosion & Sedimentation Control** - Erosion and sediment controls must be in place prior to commencement of any work on the site. These measures include:

- (a) Compliance with the approved Erosion & Sediment Control Plan
- (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
- (c) All clean water runoff is diverted around cleared or exposed areas
- (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
- (e) All erosion and sediment controls are fully maintained for the duration of excavation and construction works
- (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

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

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

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

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

**Note:** Copies of the Act, Regulation and Code of Practice can be downloaded free of charge from the SafeWork NSW website: [www.SafeWork.nsw.gov.au](http://www.SafeWork.nsw.gov.au).

57. **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 apartments, if any) either side and immediately at the rear of the demolition site.
  - (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
  - (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
58. **Site Management** - The site management measures are to be implemented prior to the commencement of construction works. The site management measures are to be maintained throughout the works, to maintain reasonable levels of public health, safety and amenity. A copy of the Site Management Plan will be kept on site and is to be made available upon request.
59. **Site Safety Fencing** - Site fencing will be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the construction work, except in the case of alterations to an occupied dwelling. The fencing will be erected before the commencement of any work and maintained throughout all construction work.



A high risk work license may be required from SafeWork NSW (see [www.SafeWork.nsw.gov.au](http://www.SafeWork.nsw.gov.au)).

60. **Dilapidation Report on Public Land** – Prior to the commencement of works (including excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site.

The report must include the following:

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

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

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

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

61. **Registered Surveyor's Report - During Development Work** - A report will be submitted to the Certifier at each of the following applicable stages of construction:

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

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

62. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to

the services supplied by those authorities to the development. The cost associated with the provision or adjustment of services within the road and footway areas is to be at the applicant's expense.

63. **Structural Engineer's Details - Supporting Council road/footway** - Prior to the commencement of work in connection with the excavation of the site associated with the basement carpark, structural engineer's details relating to the method of supporting Council's roadways/footways and the Heritage Item on site will be submitted to the satisfaction of Council.
64. **Notification Requirements** - The following notification requirements apply to this consent:
- (a) The developer/builder will notify adjoining residents five (5) working days prior to excavation. Such notification is to be a clearly written note giving the date works will commence, contact details of the developer/builder and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or apartment, if any) either side and immediately at the rear of the site.
  - (b) Five (5) working days prior to excavation, the developer/builder is to provide written notification to Council advising of the commencement date, and details of the list of residents advised of the works.
65. **Notice of Commencement** - The beneficiary of the development consent must give at least two (2) days' notice to the Council and the Principal Certifier of their intention to commence the erection of a building.
66. **Notification of Critical Stage Inspections** - No later than two (2) days before the building work commences, the Principal Certifier must notify:
- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
  - (b) the beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the building work.
67. **Structural Engineer's Details - Supporting excavations and adjoining land** - Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer's details relating to the method of supporting the excavation will be submitted.

## DURING CONSTRUCTION

68. **Archaeology** - As required by the National Parks and Wildlife Service Act 1974 and the Heritage Act 1977, in the event that Aboriginal cultural heritage or historical cultural fabric or deposits are encountered/discovered where they are not expected, works must cease immediately and Council and Heritage NSW must be notified of the discovery.

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the Heritage Act 1977 to obtain the necessary approvals/permits from Heritage NSW. Note: The National Parks and Wildlife Service Act 1974 and the Heritage Act 1977 impose substantial penalty infringements and / or imprisonment for the unauthorised



destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

69. **Hazardous or Intractable Waste – Removal and Disposal** - Hazardous or intractable waste arising from the excavation or construction process shall be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and with the provision of:

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

70. **Site Contamination – During Construction** - Any new information that identified during demolition, excavation or construction which has the potential to alter previous conclusions about site contamination and remediation, must be notified to the Principal Certifying Authority (and Council if Council is not the principal certifying authority) immediately.

All works must cease and a qualified Land Contamination Consultant, certified under the consultant certification schemes recognised by the NSW EPA, is engaged to assess and provide documentation on the management of the contamination in accordance with any relevant NSW EPA adopted guidelines.

Works on site must not recommence until such time as Council has reviewed the documentation and has accepted the contamination management in writing to the applicant.

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

72. **Site sign** - A clearly legible Site Management Sign is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:

- a) The builder's name, builder's telephone contact number both during work hours and after hours.
- b) That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
- c) That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
- d) That no skip bins or materials are to be stored on Council's Road Reserve.
- e) That the contact number for Council for permits is 9970 1111.

73. **Soil & Erosion Control Measures** - Prior to the commencement of works (including excavation), a durable site sign, issued by Council in conjunction with this consent, will be erected in a prominent location on site. The site sign warns of the penalties which

apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign will remain in a prominent location on site up until the completion of all site and building works.

74. **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 street kerb and gutter as indicated on the approved plan. The site stormwater discharge pipes across the footpath shall be RHS type, laid at minimum 1% grade as reflected on the drainage plan.
75. **Cost of work to be borne by the applicant** – The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends.
- This construction shall be maintained in a state of good repair and condition throughout the course of construction.
76. **Obstruction of Road or Footpath** – The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act 1993 and/or under Section 68 of the Local Government Act 1993. Penalty infringement Notices may be issued for any offences and severe penalties apply.
77. **Hours of Construction and Building Work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery must not be performed, or permitted to be performed, except between the hours of 7.00am to 5.00pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.
78. **Hazardous or Intractable Waste – Removal and Disposal** – Hazardous or intractable waste arising from the excavation or construction process must be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and all applicable legislation.
79. **Structural Certificate During Construction** – The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer and endorsed by the Geotechnical Engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition, a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design; will be submitted to the Principal Certifying Authority at each stage of Construction.
80. **Redundant Driveway** - All existing vehicular crossings adjacent to the subject premises that have become redundant will be removed and the footway and kerb and gutter reinstated at the developer/applicant's expense.
81. **Damage within Road Reserve & Council Assets** - The owner will bear the cost of

restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.

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

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

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

## PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

86. **Section 73 Compliance Certificate** – A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the Certifier prior to the issue of the Occupation Certificate.
87. **Completion of Landscape Works** - All landscape works and Street tree (3) planting fees must be completed before the issue of the Final Occupation Certificate and to the satisfaction of Councils Tree Management Officers. In accordance with approved landscape plans and specifications, drawn by Andrew Prouse Landscape Architecture, Ref No Dwg No 117, Issue D, and dated 3 June 2020. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -
  - a) Prior to the issue of a Construction Certificate, the total number, quantities of all trees and plants shall be forwarded as per landscape plans – Ground floor plan, level 4 landscape plan, level 6 landscape plan, including all landscape plans for this proposal.
  - b) The proposed trees and plant species, pot/ bag size of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives;

- c) All trees proposed upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification;
- d) If the planted trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size;
- e) A certificate of compliance for the planting of all trees and shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA – Principal Certifying Authority.

88. **Tree Protection Measures** - A final certificate of compliance letter, once all building and landscape works have been completed, from the engaged AQF 5 Consulting Arborist, that tree protection measures have been installed and maintained for the entirety of the project and report on the condition of the trees that as part of this Consent, were to be protected and retained.

89. **Tree Replacement within subject site**

- a) The required number of trees and plants must be planted as requested prior to the Construction Certificate upon the plan view of the proposed landscape plans. All trees must attain a minimum mature height of nine (9) metres and shall be planted within the property. The trees are to conform to AS2303 – 2018, *Tree stock for landscape use*.
- b) If the planted trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
- c) A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy, Masterplan, and Tree Management Policy 2019, can be downloaded from Council's website [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).

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

91. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent must be implemented before issue of any Occupation Certificate.

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

93. **Post Construction Dilapidation report (Private Land)** - At the completion of the construction works, a suitably qualified person is to be engaged to prepare a post-

construction dilapidation report. This report is to ascertain whether the construction works associated with the subject development created any structural damage to the adjoining premises.

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

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

94. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.

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

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

96. **Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building. Only the Principal Certifier appointed for the building work can issue the Occupation Certificate.
97. **SEPP 65 Design Verification Statement** - The Principal Certifier will not issue an Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the he/she has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No 65 Design Quality of Residential Flat Development.
98. **Requirements prior to the issue of the Occupation Certificate** - The following will be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:
- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
  - (b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.



- (c) Construct any new vehicle crossings required.
- (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
- (f) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.

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

- (a) If applicable Stormwater pipes, pits and connections to public stormwater systems within the road related area;
- (b) Driveways and vehicular crossings within the road related area;
- (c) Removal of redundant driveways and vehicular crossings;
- (d) New footpaths within the road related area;
- (e) Relocation of existing power/light pole if applicable
- (f) Relocation/provision of street signs
- (g) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- (h) New or reinstated kerb and guttering within the road related area and New or reinstated road surface pavement within the road where it is applicable.

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

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

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

The above works shall be carried out at the expense of the applicant and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

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

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

### **Restrictions on Use of Land**

*The registered proprietor shall not make or permit or suffer the making of any alterations to any on-site stormwater management system which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of Georges River Council. The expression "on-site stormwater management system" shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to manage stormwater quantity or quality including the temporary detention or permanent retention of stormwater storages. Any on-site stormwater management system constructed on the lot(s) burdened is hereafter referred to as "the system."*

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

### **Positive Covenants**

1. *The registered proprietor of the lot(s) hereby burdened will in respect of the system:*
  - (a) *keep the system clean and free from silt, rubbish and debris*
  - (b) *maintain and repair at the sole expense of the registered proprietors the whole of the system so that it functions in a safe and efficient manner*
  - (c) *permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant*
  - (d) *comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.*
2. *Pursuant to Section 88F(3) of the Conveyancing Act 1919 the Council shall have the following additional powers:*
  - (a) *in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above*
  - (b) *the Council may recover from the registered proprietor in a Court of competent jurisdiction:*
    - (i.) *any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (i) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.*
    - (ii.) *legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of*



*the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.*

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

- a) If applicable Stormwater pipes, pits and connections to public stormwater systems within the road related area;
- b) Driveways and vehicular crossings within the road related area;
- c) Removal of redundant driveways and vehicular crossings;
- d) New footpaths within the road related area;
- e) Relocation of existing power/light pole if applicable
- f) Relocation/provision of street signs
- g) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- h) New or reinstated kerb and guttering within the road related area and new or reinstated road surface pavement within the road where it is applicable.

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

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

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) The structural adequacy of the On-Site Detention system (OSD);
- (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (d) Pipe invert levels and surface levels to Australian Height Datum;

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

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

104. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000, on completion of building works and prior to the issue of an Occupation Certificate, the owner will cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate will be in the form or to the effect of Clause 174 of the Environmental Planning and Assessment Regulation, 2000. In addition, in relation to

each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:

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

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

## OPERATIONAL CONDITIONS (ONGOING)

- 105. **Intensity of car park lighting** – Prior to occupation, the intensity of lighting at the entrance to the basement carpark is to be designed to allow for progressive adjustment of light.
- 106. **Removal and collection** – Bins are to be taken to the kerbside for collection and garbage bins and recycling bins are to be collected on a weekly basis. They are to be collected from the kerbside and removed from the kerbside as soon as possible after collection.
- 107. **Acoustic Compliance – General Operation of Premises** - The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the [Protection of the Environment Operations Act 1997](#) (as amended) and [Regulations](#).

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

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

- 108. **Acoustic Certification** - Prior to the issue of any Occupation Certificate, a suitably qualified acoustic consultant will certify that the operation of the premises and plant equipment will not give rise to a sound pressure level at any affected premises that exceeds the relevant acoustic criteria. The development will at all times comply with these noise levels post occupation.
- 109. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent will be implemented before issue of any Occupation Certificate. A Compliance Certificate will be provided to the Principal Certifier regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.
- 110. **Allocation of Car Parking Spaces** – A total of 109 car parking spaces, and a minimum of thirty (30) bicycle parking spaces associated with the development is to be allocated as follows, sign posted and/or line marked accordingly:

- Ninety six (96) residential spaces, including eight (8) accessible spaces.
- Thirteen (13) dedicated visitor spaces.
- One (1) of the visitor spaces is to also be a shared as a wash bay.
- Twenty two (22) bicycle spaces for residents.
- Eight (8) bicycle spaces for visitors.

111. **Electricity Supply** - Evidence will be provided demonstrating that the development has been connected to the electricity network.
112. **Structural Certificates** - The proposed structure will be constructed in accordance with details designed and certified by the practising qualified structural and geotechnical engineer. In addition, Compliance or Structural Certificates, to the effect that the building works have been carried in accordance with the structural design; will be submitted to the PCA prior to the issue of the Occupation Certificate.
113. **Stormwater & Ancillary Works** - Applications under Section 138 of the Roads Act and/or Section 68 Local Government Act 1993, the applicant must obtain all necessary approvals. An approval for a new or modified vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work will be carried out by a private contractor in accordance with Council's specifications prior to the issue of an Occupation Certificate.

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

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

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

114. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas.
115. **Allocation of street addresses** – In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing, the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street address for the subject development is allocated as follows:

**Primary Address**

- 17 Wyuna Street, Beverley Park NSW 2217

**Apartments Addresses**

- Refer to the list of apartment addresses for the subject development:

Unit Addresses at 17 Wyuna Street BEVERLEY PARK NSW 2217						
Unit numbers on DA Plans		Floor Number	Unit numbers and addresses allocated by Council			
Level	Unit No.		Unit No	Street No	Street Name	COMPLETE ADDRESS
Basement 1	-	B1	Basement Carpark - B1			
Basement 2	-	B2	Basement Carpark - B2			
Ground floor	6	G	G01	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	5	G	G02	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	4	G	G03	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	3	G	G04	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	5	G	G05	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	1	G	G06	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	11	G	G07	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	10	G	G08	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	9	G	G09	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	8	G	G10	17	Wyuna Street	BEVERLEY PARK NSW 2217
Ground floor	7	G	G11	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	106	1	101	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	105	1	102	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	104	1	103	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	103	1	104	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	102	1	105	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	101	1	106	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	111	1	107	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	110	1	108	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	109	1	109	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 1 Plan	108	1	110	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	107	1	111	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	206	2	201	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	205	2	202	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	204	2	203	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	203	2	204	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	202	2	205	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	201	2	206	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	211	2	207	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	210	2	208	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	209	2	209	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	208	2	210	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 2 Plan	207	2	211	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	306	3	301	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	305	3	302	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	304	3	303	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	303	3	304	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	302	3	305	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	301	3	306	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	311	3	307	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	310	3	308	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	309	3	309	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	308	3	310	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 3 Plan	307	3	311	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 4 Plan	404	4	401	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 4 Plan	403	4	402	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 4 Plan	402	4	403	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 4 Plan	401	4	404	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 4 Plan	408	4	405	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 4 Plan	407	4	406	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 4 Plan	406	4	407	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 4 Plan	405	4	408	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 5 Plan	504	5	501	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 5 Plan	503	5	502	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 5 Plan	502	5	503	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 5 Plan	501	5	504	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 5 Plan	508	5	505	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 5 Plan	507	5	506	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 5 Plan	506	5	507	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 6 Plan	603	6	601	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 6 Plan	602	6	602	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 6 Plan	601	6	603	17	Wyuna Street	BEVERLEY PARK NSW 2217
Level 6 Plan	604	6	604	17	Wyuna Street	BEVERLEY PARK NSW 2217

NOTE: Unit numbers on plan are not the same order as units allocated by council

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

### Additional comments

Please note that the allocated apartment addresses are different to what was on the plan.

If there are modifications or changes to the number of apartments during the DA process, please advise the GIS team before the final approval. The list is attached to the consent. Apartments Address Table is provided at the end of the set of conditions.

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



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

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

- a) Photographs showing the condition of the road pavement fronting the site
- b) Photographs showing the condition of the kerb and gutter fronting the site
- c) Photographs showing the condition of the footway including footpath pavement fronting the site
- d) Photographs showing the condition of retaining walls within the footway or road
- e) The full name and signature of the professional engineer.

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

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

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

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

- a. Compliance with conditions of development consent relating to stormwater;
- b. The structural adequacy of the On-Site Detention system (OSD);
- c. That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations; and
- d. Pipe inverts levels and surface levels to Australian Height Datum.

118. **Lighting** - Any outdoor/security lighting must be located, designed, oriented and shielded in a manner that does not cause disturbance to surrounding premises and/or passing vehicular traffic. This requirement also applies to external lighting within the rooftop communal open space area.

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare.

Flashing, moving or intermittent lights or signs are prohibited.

119. **Activities and Storage of Goods Outside Buildings** - There will be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.

120. **Boundary fencing** - Any new boundary fencing erected along the side and rear boundaries shall not exceed a height of 1.8m unless specified by any other conditions.

121. **Disability Discrimination Act** – The applicant is responsible to ensure compliance with this and other anti-discrimination legislation.
122. **Electrical connection** - Any new electrical and telecommunication connections to the site are to be carried out using underground cabling.
123. **Finishes** - Any materials or surfaces addressing the public domain on the ground and first floor (where accessible by members of the public) shall utilise graffiti-resistant materials.
124. **Safety** - All communal entrances for the building will be capable of being secured. Entry doors are to be self-closing and signs are to be displayed requesting that building occupants not wedge doors open.
125. **Security** - If any security screens/grilles are installed, they are to be openable from within the building.
126. **Building identification** numbering that presents to public areas (ie the adjoining road reserve) are to be at least 7cm high and are to be situated 1-1.5m above ground level on the street frontage. The numbering is to be constructed from durable materials and shall not be obscured by vegetation.
127. **Noise Control** - The use of the premises will not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997 (as amended).
128. **Amenity of the Neighbourhood** - The implementation of this development will not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
129. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping will be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turf areas.

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

130. **Annual Fire Safety Statement** - The owner of the building premises will ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement will be given:
  - (a) Within 12 months after the date on which the fire safety certificate was received.
  - (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
  - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
  - (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.
131. **Responsibility of Owners Corporation** - The Owners Corporation will be responsible

for presenting all approved waste and recycling receptacles for collection, and returning all receptacles to the waste collection room, as soon as practicable after they have been serviced.

The Owners Corporation will also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory requirements, relevant health and environmental standards, and to the satisfaction of Council.

132. **Management of Waste Facilities** – The ongoing management of onsite waste facilities shall be undertaken in accordance with the following requirements:

- (a) Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.
- (b) Any cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners.

133. **Waste** - The ongoing operation of recycling and waste management services is to be undertaken in accordance with the Waste Management Plan.

134. **Air conditioning** - Any external plant/air-conditioning system must not exceed a noise level of 5dBA above the background noise level when measured at the boundaries of the property. Any proposed air conditioning systems or mechanical ventilation shall be appropriately screened from view and not located so that it can be seen from the street.

135. **Graffiti** - Any graffiti on the site is to be removed within forty eight (48) hours.

## **OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

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

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

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

Should there be any non-compliance, an alternative method of fire protection and structural capacity must be submitted, with all supporting documents prepared by a suitably qualified person.

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

137. **Appointment of a PCA** - The erection of a building must not commence until the applicant has:



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

If the work is not going to be undertaken by an Owner - Builder, the applicant must:

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

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

138. **Notification Requirements of Principal Certifier** - No later than two days before the building work commences, the Principal Certifier must notify:
- a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
  - b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.
139. **Notice of Commencement** - The applicant must give at least two days notice to the Council and the Principal Certifier of their intention to commence the erection of a building.
140. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifier. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the Environmental Planning and Assessment Regulation 2000.
141. **Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue the Occupation Certificate.

## **PRESCRIBED CONDITIONS**

142. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
143. **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.
144. **Clause 98A – Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifier and the Principal Contractor.
145. **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.

146. **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.
147. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

## END CONDITIONS

## NOTES/ADVICES

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

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

149. **Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
150. **Lapsing of Consent** - This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.
151. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

152. **Principal Certifier** - Should the Council be appointed as the Principal Certifier in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
153. **Fire and Rescue NSW comments.** Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation 2000 to seek written comment from FR NSW about any Fire Engineered Solution developed to meet the performance requirements under Category 2 Fire Safety Provisions.
154. **Referral to Fire and Rescue NSW** - Prior to the issue of an Occupation Certificate the applicant may be required, under Clause 152A of the Environmental Planning & Assessment Regulation, 2000 to seek written comment from FR NSW about the construction and location of any hydrant/booster system, developed to meet the performance requirements of the Building Code of Australia.
155. **Building - Energy Efficiency Provisions** - Should Council be appointed as the Principal Certifying Authority, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and **before the issue of an Occupation Certificate**, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the Certifying Authority.
156. **Land Contamination** - Note: A Certified Contaminated Land Consultant is a Certified Environmental Practitioner (Site Contamination) (CENVP(SC)) or certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM)
- Information relating to certified contaminated land consultant or accredited site auditors can be found in EPA webpage: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/>
157. **Energy Efficiency Provisions - Energy Efficiency Provisions** - Should Council be appointed as the Principal Certifier, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the Principal Certifier.
158. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be

accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable apartments complies with Council's DCP and AS 4299 Adaptable Housing.

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

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](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)).
160. **Acoustical Engineer Contacts & Reference Material** - Further information including lists of Acoustic Engineers can be obtained from:
- (a) Australian Acoustical Society - professional society of noise-related professionals ([www.acoustics.asn.au](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 Industrial Noise Policy - Office of Environment & Heritage ([www.environment.nsw.gov.au](http://www.environment.nsw.gov.au))
163. **Strata Subdivisions**
- (a) Council will check the consent conditions on the relevant Strata Subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision.
  - (b) Council will undertake the required inspections to satisfy the requirements of the Strata Schemes Development Regulation 2016 to determine the Strata Certificate.
  - (c) Strata Plans, Administration Sheets, 88B Instruments and copies must not be folded.
  - (d) All Strata Plans, Strata Plan Administration Sheets and 88B Instruments shall be submitted to Council enclosed in a protective cardboard tube (to prevent damage during transfer).
161. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for

the construction of the building that is subject to a different development consent will not suffice.

162. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or [www.ausgrid.com.au](http://www.ausgrid.com.au) (Business and Commercial Services) for further details and information on lodging your application to connect to the network.
163. **Disability Discrimination Act** - This application has been assessed in accordance with the Environmental Planning and Assessment Act 1979. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992. The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.
164. **Council as PCA - Total Conformity with BCA - Accompanying Information** - Should the Council be appointed as the Principal Certifier, the Construction Certificate Application must be accompanied by the following details, with plans prepared and certified by an appropriately qualified person demonstrating compliance with the BCA:
  - a) Mechanical ventilation to bathroom, laundry and basement areas not afforded natural ventilation.
  - b) Fire-fighting services and equipment including hydrant systems and booster assembly location, sprinkler and valve room systems, hose reels, portable fire extinguishers, smoke hazard management systems, sound and warning systems.
  - c) Emergency lighting and exit signs throughout, including communal open space areas, lobby/foyer and basement areas.
  - d) Construction of all fire doors including warning and operational signage to required exit and exit door areas.
  - e) Egress travel distances to exits and the discharge from fire isolated exits including the swing of exit doors.
  - f) The spandrel protection of openings in external walls
  - g) The protection of paths of travel from a fire isolated exit when passing within 6m of an opening within the external wall of the building.
  - h) Fire compartmentation and fire wall separation details including all stairway, lift and service shaft areas.
  - i) The location and construction of an electricity substation, including the location and smoke separation of electrical distribution boards.
  - j) Sound transmission and insulation details.
  - k) Window schedule is to include the protection of openable windows.

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

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



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

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

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

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

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

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

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

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

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

- (i) Complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Georges River Council's Website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au)
- (ii) In the Application Form, quote the Development Consent No. (eg. DA2018/0580)
- (iii) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with Vehicular Crossing applications.

An approval for a new vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once

approved, all work shall be carried out by a private contractor in accordance with Council's specifications prior to the issue of an Occupation Certificate.

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

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

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

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

In this regard, detailed construction plans and specifications that demonstrate compliance with the above requirements of the BCA, must be submitted to the Certifying Authority **with the Construction Certificate Application.**

Should there be any non-compliance, an alternative method of fire protection and structural capacity must be submitted, with all supporting documents prepared by a suitably qualified person.

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

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

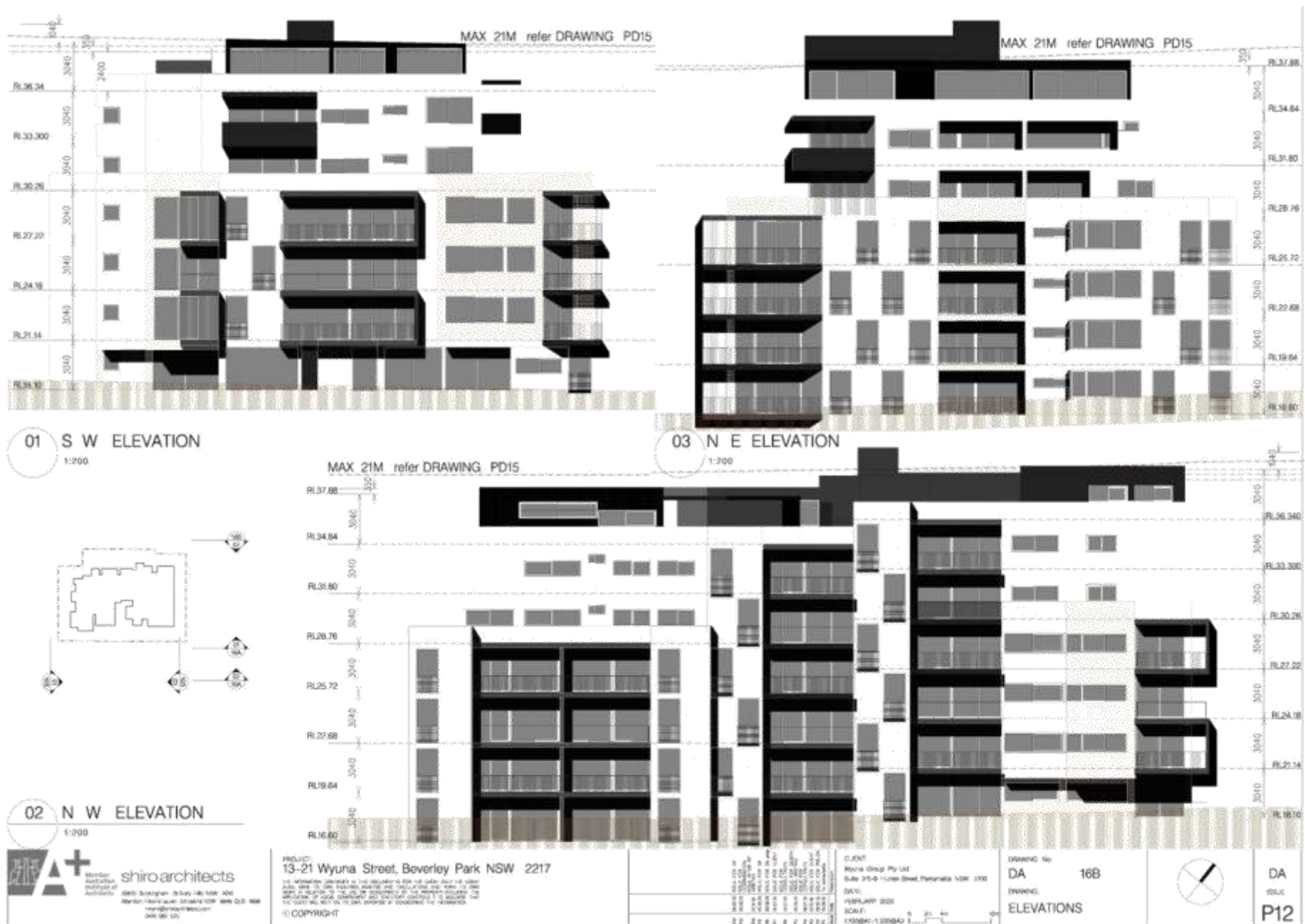


Attachment [!\[\]\(919a2cb85b99741a73c0c31a427236a8\_img.jpg\) 1 !\[\]\(c9cd5a1c35167a83f09a35036fe5dcbd\_img.jpg\)](#) Site Plans and Elevations - 13-21 Wyuna St Beverley Park

LPP032-20







**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 06 AUGUST 2020**

LPP033-20

<b>LPP Report No</b>	<b>LPP033-20</b>	<b>Development Application No</b>	<b>REV2020/0013</b>
<b>Site Address &amp; Ward Locality</b>	248 Railway Parade Kogarah Kogarah Bay Ward		
<b>Proposed Development</b>	Review of Determination - Consent No: DA2019/0232 for site remediation, demolition works and construction of a mixed use building containing 3 levels of basement car parking, ground floor commercial and 5 levels of boarding house accommodating 43 rooms inclusive of the caretakers room		
<b>Owners</b>	Mr and Ms Toskas		
<b>Applicant</b>	Moderinn Pty Ltd		
<b>Planner/Architect</b>	Planning Direction Pty Ltd; Moderinn Pty Ltd		
<b>Date Of Lodgement</b>	1/05/2020		
<b>Submissions</b>	Two (2)		
<b>Cost of Works</b>	\$8,253,821.00		
<b>Local Planning Panel Criteria</b>	The proposal contains commercial development on the ground floor and a boarding house above where the original Development Application was refused by the Local Planning Panel on 20 February 2020		
<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 No 55 – Remediation of Land, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy (Building and Sustainability Index: 2004, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment, Draft State Environmental Planning Policy – Environment, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Draft Georges River Local Environmental Plan 2020, Kogarah Development Control Plan 2013		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans, Stormwater Plan, Landscape Plan, Design Response, Parking Design Review, Detailed Site Investigation Report, Acoustic Report, Geotechnical Report, Waste Management Plan, Statement of Environmental Effects		
<b>Report prepared by</b>	Senior Development Assessment Planner		

<b>Recommendation</b>	That the application be approved in accordance with the deferred commencement conditions of consent 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>
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<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?	Yes
<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?	Not Applicable
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	No, a deferred commencement approval is recommended and the conditions can be reviewed when the report is published.

### Site Plan



The site is outlined in blue

### Executive Summary Proposal

1. Council is in receipt of a Section 8.2 Review application relating to a proposal for site remediation, demolition works and construction of a mixed use building comprising a commercial space beneath a boarding house with basement car parking, landscaping and site works at 248 Railway Parade, Kogarah.

2. Development Application DA2019/0232 was refused by the Local Planning Panel on 20 February 2020 for reasons including stormwater management, built form and parking.

### Site and Locality

3. The development site is located on the corner of Blake Street and Railway Parade in Kogarah and is legally described as Lot 48 in DP2013.
4. The site is rectangular in shape with an 11.35m frontage to Railway Parade, 35.2m along the eastern secondary frontage to Blake Street, 11.27m along the southern rear boundary and 38.02m along the western side boundary and an area of 411sqm. The site slopes from the front north western corner RL 29.24 to the rear north eastern corner RL 29.83 with a level change of 590mm.
5. A sewer main traverses the site toward the rear portion of the site.
6. A single storey masonry building with a pitched roof currently occupies the site and is being used as an automotive repair business trading as “Toskas Automotive”. Vehicular access is via Blake Street,
7. The site is zoned B4 - Mixed Use under the Kogarah Local Environmental Plan 2012 (KLEP 2012). Commercial development and boarding houses are permissible land uses with consent in the zone.
8. The surrounding area comprises generally of mixed use developments. A shop top housing development at 250-258 Railway Parade, Kogarah, known as “Veridian” adjoins the site directly to the west and south. This building contains the Kogarah RSL with a podium level and two (2) residential towers above. Communal open space is provided on the podium level and a second area of communal open space exists on the rooftop. This is referred to in the report as the “Kogarah RSL site”.
9. A four (4) storey shop top housing development is located on the opposite side of Blake Street to the east. Further to the east along Blake Street are 2 and 3 storey residential flat buildings. Wesley Hospital is located to the south with an electrical substation to the west on the corner of Railway Parade and English Street.
10. The Illawarra Railway line is located to the north of the site. Carlton Railway Station is approximately 411m to the west; Kogarah Railway Station is located 671sqm to the east. An underpass which connects Railway Parade to Railway Street (within Bayside Council) is opposite which is accessed to the west of the site.

### Zoning and Permissibility

11. The subject site is zoned B4 Mixed Use under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves site remediation, demolition works and construction of a mixed use development comprising of a commercial space on the ground floor with five (5) levels of boarding house above containing forty three (43) rooms inclusive of the caretaker’s room. The development is serviced by three (3) levels of basement car parking with the levels serviced by a car lift. Landscape and site works are proposed to support the development.
12. The proposal meets the definition of “*commercial premises*” which means:



*“(a) business premises, (b) office premises and (c) retail premises” and “shop top housing” which means “one or more dwellings located above ground floor retail premises or business premises”.*

13. A “boarding house” is defined as:

*“boarding house means a building that—*

- (a) is wholly or partly let in lodgings, and*
- (b) provides lodgers with a principal place of residence for 3 months or more, and*
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers, but does not include backpackers’ accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment”.*

14. Commercial development and a boarding house are both permissible uses with consent in the zone.

### **Submissions**

15. The application was placed on neighbour notification between 13 May 2020 and 10 June 2020. Two (2) submissions were received.

### **Referrals**

16. The application was referred to the following Council staff for comment on the proposal:

- a. Development Engineer
- b. Traffic Engineer
- c. Consulting Arborist
- d. Drainage Engineer
- e. Waste Officer
- f. Design Engineer and
- g. Urban Designer.

17. All referral officers were satisfied with the proposal and have provided conditions of consent should the application be approved.

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

18. The application is referred to the Georges River Local Planning Panel (LPP) as the DA was refused by the LPP on 20 February 2020, and the proposal includes a boarding house (Council delegations require this development form to be determined by the LPP), and as such the Panel is the consent authority to determine the Review application.

### **Conclusions**

19. REV2020/0013 (the current application) was lodged on 1 May 2020 and seeks consent for site remediation, demolition works and construction of a mixed use building comprising of three (3) levels of basement parking, a ground floor commercial space with a forty three (43) room boarding house over, inclusive of the caretakers room, landscaping and site works.
20. The proposed scale and general layout of the proposal as amended is now considered to be a generally appropriate design response to the constraints of the site, particularly with respect to the street address, vehicular access and streetscape.

21. The applicant has provided correspondence from Ausgrid confirming that a substation is not required.
22. A BCA Statement was submitted with the application which indicates that at the Construction Certificate stage the non-compliances with the Deemed to Satisfy (DTS) provisions of the Building Code of Australia will be addressed via alternate solutions and fire engineered solutions for the egress, fire resisting construction and protection of openings. In addition the statement details that BCA compliance can be achieved in relation to light and ventilation. A deferred commencement condition of consent is recommended in this regard.
23. The current plans raise concerns with the amenity of Suite 1 with respect to outlook and internal amenity given the relationship of the openings to the wall of the adjoining development which is on the boundary. This development is new and is not going to alter in the near future. In this regard this suite is not supported, as a result the development is recommended via a deferred commencement condition to be modified to remove a suite and rework the layout of suites. The following deferred commencement condition is recommended.

The development is to be amended in the following way in order to provide an acceptable level of amenity for future occupants as well as ensuring compliance with State Environmental Planning Policy (Affordable Rental Housing) 2009

- a. Combine Suite 1 and Suite 2, which will result in the loss of one (1) suite, enlarging the Blake Street balcony to a minimum 8sqm and nominating the suite as the Manager's Room.
- b. Nominating Suite 7 (previously the Managers Room) as a boarding room.
24. In addition, a deferred commencement condition is recommended for plans to be provided demonstrating the location of the necessary building services and infrastructure including the hydrant booster assembly. It is considered the main entry, being the lobby servicing the boarding house is to be relocated towards Railway Parade, the colonnade and column supports amended to provide a location for the hydrants booster assembly to the located adjacent to the wall which surrounds car waiting bay associated with the car lift.
25. 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 adequately addressed the reasons for refusal of the original Development Application. The application, with the incorporation is additional modifications is considered to be acceptable and is therefore recommended for approval subject to deferred commencement conditions.

## **Report in Full Proposal**

26. Council is in receipt of a Section 8.2 Review application for demolition, site remediation works, construction of a mixed use development comprising three (3) levels of basement car parking, a ground floor commercial space and services for the development, with five (5) levels of boarding house above accommodating forty three (43) rooms inclusive of the caretakers room, landscaping and site works at 248 Railway Parade, Kogarah.
27. The proposal is described as follows:

**Basement Levels (1-3)**

- There are three (3) basement levels proposed, each having eight (8) parking spaces, including one accessible space on each level, three (3) motorbike spaces, lift and stair access to the level above.
- Basement Level 1 also provides 9 bicycle spaces.
- Retail parking spaces are provided on Level 1 and 2 (one space on each level), and a space for the boarding house manager is proposed on Level 1.

**Ground Level**

- The ground level contains vehicular access from Blake Street to the vehicle lift which takes cars to the basement parking levels, two (2) waiting bays, bin store room with pedestrian circulation area and a loading bay to service the retail tenancy.
- The retail tenancy is 72.7sqm in area with frontage to Railway Parade and Blake Street.
- The main entry lobby to the boarding house is accessed from Blake Street.
- A colonnade is proposed around the perimeter of the commercial and lobby entrance.

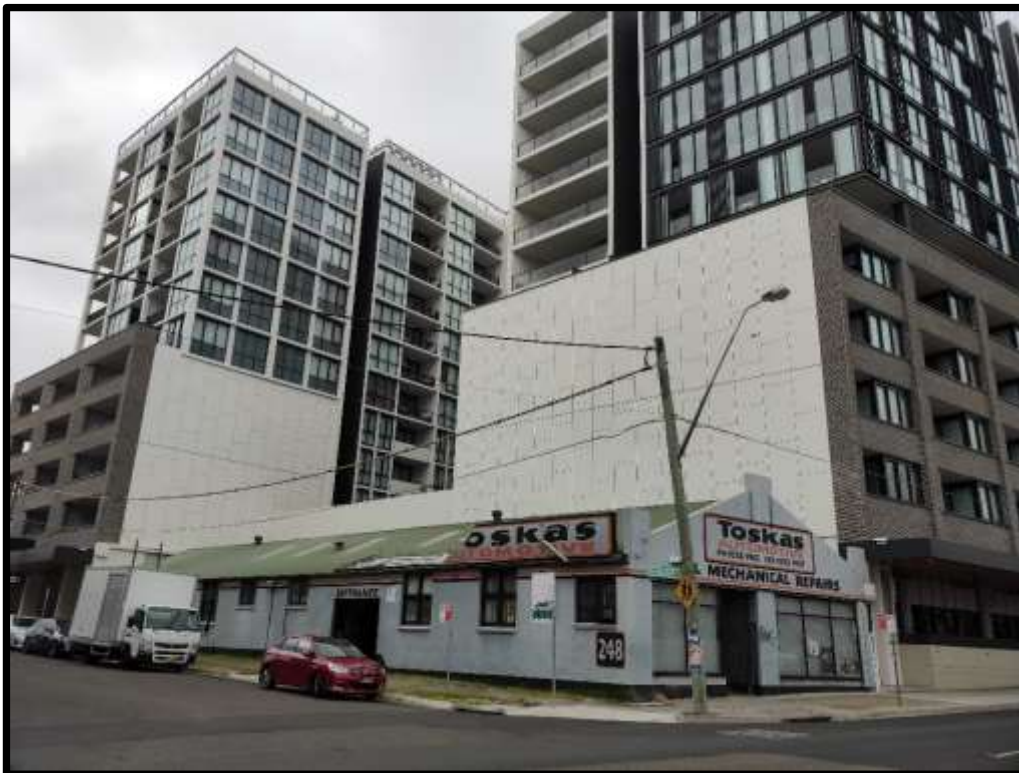
**Levels 1 to 5 – Boarding Rooms**

- Level 1 contains six (6) boarding rooms, the Manager's room (suite 7) and the communal room with an adjacent open space balcony. Each room has a private balcony with bathroom and kitchen facilities and can accommodate two boarders. The communal room contains sitting, dining and kitchen areas.
- Levels 2 and 3 contains nine (9) rooms, each with a private balcony, and an accessible room on each level.
- Levels 4 and 5 contain nine (9) rooms, each with a private balcony.

**The Site and Locality**

28. The subject site is legally described as Lot 48 in DP2013 and is known as 248 Railway Parade, Kogarah. The site forms a rectangular shaped corner allotment with an 11.34m primary frontage to Railway Parade, 35.2m along the eastern secondary frontage to Blake Street, 11.27m along the southern rear boundary and 38.02m along the western side boundary having a total site area of 411sqm. The site slopes from the front north western corner RL 29.24 to the rear north eastern corner RL 29.83 with a level change of 590mm.
29. A sewer main traverses the rear portion of the site.
30. A single storey masonry building with a pitched roof currently occupies the site and is currently an automotive repair business trading as "Toscas Automotive". Vehicle access to the site is via Blake Street.
31. The surrounding area comprises of mixed use developments. A shop top housing development at 250-258 Railway Parade, Kogarah, known as "Veridian" adjoins the site directly to the west and south. This building contains the Kogarah RSL with a podium level and two (2) residential towers above. Communal open space areas exist to the podium level and roof top of the development. This is referred to in the report as the "Kogarah RSL site".
32. A four (4) storey shop top housing development is located on the opposite side of Blake Street to the east. Further to the east along Blake Street are 2 and 3 storey residential flat buildings.

33. Wesley Hospital is located to the south and an electrical substation to the west on the corner of Railway Parade and English Street, Kogarah.
34. The podium wall, which is on the boundary, of the Kogarah RSL development site has a height of approximately RL35.24, with level one (1) of the subject development proposing a level of RL33.2).
35. The Illawarra Railway line is located to the north of the site. Carlton Railway Station is approximately 411m to the west; Kogarah Railway Station is located 671sqm to the east. An underpass which connects Railway Parade to Railway Street (Bayside Council) is opposite, however this is accessed further the west of the site.



**Figure 1** Photograph of primary frontage of subject site (248 Railway Parade, Kogarah) viewed from the intersection of Railway Parade and Blake Street, Kogarah (Source: GRC, 2020).



**Figure 2** Photograph of primary frontage of subject site (248 Railway Parade, Kogarah) viewed from Railway Parade, Kogarah (Source: GRC, 2020).



**Figure 3** Photograph of subject site (248 Railway Parade, Kogarah) viewed secondary frontage from Blake Street, Kogarah (Source: GRC, 2019).





**Figure 4** Photograph with an western aspect of subject site (248 Railway Parade, Kogarah) viewed from level 1 podium level Kogarah RSL site (Source: GRC, 2020).



**Figure 5** Photograph of Railway Parade, Kogarah opposite the site to the north (source: GRC, 2020).



**Figure 6** Photograph viewed from the rooftop of the Viridian, Kogarah of the subject site (248 Railway Parade, Kogarah) (Source: GRC, 2020).



**Figure 7** Photograph of Blake Street, Kogarah looking north. Subject site located to left (Source: GRC, 2019).





**Figure 8** Photograph of Kogarah RSL site 5 Blake Street and adjoining Wesley Hospital (Source: GRC, 2020).



**Figure 9** Photograph of nearby residential flat buildings to the south-east (Source: GRC, 2020).

### Background

36. DA2019/0232 was lodged with Council on 14 June 2019 and sought consent for demolition of existing structures, remediation of the site, construction of an eight (8) storey mixed use building comprising of one (1) commercial tenancy at ground level, seven (7) levels of boarding rooms totalling forty nine (49) double rooms and one (1) manager's room over four (4) levels of basement parking accessed via a vehicle lift from Blake Street on the subject site.

37. The application was refused by the Georges River Local Planning Panel on 20 February 2020. The reasons for refusal were:

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 does not satisfy Clause 29 (2)(ii)(e) of State Environmental Planning Policy (Affordable Rental Housing) 2009 in that the development does not provided sufficient car parking to accommodate the number of boarding rooms, and the lift access to and manoeuvring within the basement levels is unresolved.*
2. *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 Stage 2 Intrusive Investigation and therefore does not satisfy State Environmental Planning Policy No 55 - Remediation of Land.*
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 does not provide adequate stormwater disposal therefore not satisfying Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.*
4. *The proposal does not satisfy the following zone objectives as per Clause 2.3 – Zone Objectives and Land Use Table (B4 Mixed Use) of Kogarah Local Environmental Plan 2012:*
  - *To provide a mixture of compatible land uses.*
  - *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
  - *To encourage development that contributes to economic growth and employment opportunities.*
  - *To encourage development that contributes to an active, vibrant and sustainable town centre.*
  - *To provide opportunities for residential development, where appropriate.*

*Whereby the proposed built form results in adverse visual massing which is not considered to be contextually appropriate given established built form in the immediate vicinity. The design results in poor amenity, outlook, privacy and solar access impacts upon adjoining residential properties to the west and south.*

5. *The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in regards to Draft State Environmental Planning Policy – Environment.*
6. *The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in regards to Draft State Environmental Planning Policy – Remediation of Land.*
7. *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 Kogarah Development Control Plan 2013 in respect to amenity and built form controls.*

8. *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 to the impact regarding the disposal of stormwater.*
9. *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 to the impact upon the streetscape, view loss and amenity to adjoining properties.*
10. *The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the site is not suitable for the development in its present form.*
11. *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.*
12. *The proposal has provided inadequate and inconsistent information.*

### **Division 8.2 Reviews**

38. Division 8.2 of the Environmental Planning and Assessment Act (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.*
39. The statutory considerations pursuant to Division 8.2 Reviews of the Act have been met. The application has been lodged within an appropriate timeframe to be assessed, report and determined within 6 months of the application determination and is considered to be substantially the same development as the original application (DA2019/0232) albeit reduced in scale.

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

40. REV2020/0013 (the current application) was lodged on 1 May 2020. The application seeks consent for site remediation, demolition works, construction of a mixed use development comprising three (3) levels of basement car parking, ground floor commercial and service areas, five (5) levels of board house containing forty three (43) rooms inclusive of the caretakers room, landscaping and site works. The development has been amended as follows:
  - Reduction in the number of storeys from eight (8) to six (6) storeys;

- Reduction in the number of boarding rooms from 49 rooms plus a manager's room to 42 rooms plus a managers room;
- Reduction in the number of basement parking levels from 4 levels to 3 levels; and
- Reduction in the number of parking spaces from 27 spaces to 24 spaces.

41. Below is a montage of the development form refused by the LPP and the montage of the revised form the subject of this Review application.



Montage (refused application DA2019/0232)



Proposed Montage (Review application)

42. 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. 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 29 (2)(ii)(e) of State Environmental Planning Policy (Affordable Rental Housing) 2009 in that the development does not provided sufficient car parking to accommodate the number of boarding rooms, and the lift access to and maneuvering within the basement levels is unresolved.</b>		
The applicant submitted a Parking Design Review Report in support of the proposal, which included specifications on the car lift that provides access from the ground level to the basement parking levels.	Council's Traffic Engineer has reviewed the proposal and the supporting documentation and raises no concern with the development, subject to conditions of consent should the application be supported which include that the car lift operate at a minimum speed of 0.3m/s. Conditions of consent have been recommended should the application be supported.	
<b>2. 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 Stage 2 Intrusive Investigation and therefore does not satisfy State Environmental Planning Policy No 55 - Remediation of Land.</b>		
The applicant submitted a Detailed Site Investigation Report with this application. The report concludes:	Council's Environmental Health Officer has reviewed the report and raises no objection to the proposal. The report concludes the site is suitable for the proposed use. The report is listed	

<i>"It is considered that this investigation area is no longer of potential contamination concern and suitable to the intended development works."</i>	in the conditions of consent.
<b>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 does not provide adequate stormwater disposal therefore not satisfying Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.</b>	
The applicant submitted amended stormwater management plans that propose onsite detention and drainage to Railway Parade.	Council's Development Engineer has reviewed the amended plans and raises no objection. Conditions of consent have been recommended should the application be supported.
<b>4. The proposal does not satisfy the following zone objectives as per Clause 2.3 – Zone Objectives and Land Use Table (B4 Mixed Use) of Kogarah Local Environmental Plan 2012:</b>	
<ul style="list-style-type: none"> <li><i>To provide a mixture of compatible land uses.</i></li> <li><i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i></li> <li><i>To encourage development that contributes to economic growth and employment opportunities.</i></li> <li><i>To encourage development that contributes to an active, vibrant and sustainable town centre.</i></li> <li><i>To provide opportunities for residential development, where appropriate.</i></li> </ul> <p><i>Whereby the proposed built form results in adverse visual massing which is not considered to be contextually appropriate given established built form in the immediate vicinity. The design results in poor amenity, outlook, privacy and solar access impacts upon adjoining residential properties to the west and south.</i></p>	
The applicant has submitted amended plans that have reduced the height of the building by two (2) storeys to align with the podium of the adjacent buildings at 254 Railway Parade and 3 Blake Street.	The reduction in height results in a built form that is suitable for the site and no longer impacts outlook, views, solar access or privacy of neighbouring residential units. The form aligns with the adjacent podium and therefore provides consistency form the streetscape.
<b>5. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in regards to Draft State Environmental Planning Policy – Environment.</b>	
The applicant submitted amended stormwater management plans that propose onsite detention and drainage to Railway Parade.	Council's Development Engineer has reviewed the amended plans and raises no objection. Conditions of consent have been recommended should the application be supported.
<b>6. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in regards to Draft State Environmental Planning Policy – Remediation of Land.</b>	
The applicant submitted a Detailed Site Investigation Report with this application. The report concludes:	Council's Environmental Health Officer has reviewed the report and raises no objection to the proposal subject to conditions of

<i>"It is considered that this investigation area is no longer of potential contamination concern and suitable to the intended development works."</i>	consent. The report concludes the site is suitable for the proposed use. The conditions of consent reference the report.
<b>7. 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 Kogarah Development Control Plan 2013 in respect to amenity and built form controls.</b>	
The applicant has submitted amended plans that have reduced the height of the building by two storeys to align with the podium of the adjacent buildings at 254 Railway Parade and 3 Blake Street.	The reduction in height results in a built form that is suitable for the site and no longer impacts outlook, views, solar access or privacy of neighbouring residential units. The streetscape presentation also aligns with the podium of the adjoining allotment providing consistency.
<b>8. 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 to the impact regarding the disposal of stormwater.</b>	
The applicant submitted amended stormwater management plans that propose onsite detention and drainage to Railway Parade.	Council's Development Engineer has reviewed the amended plans and raises no objection. Conditions of consent have been recommended should the application be supported.
<b>9. 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 to the impact upon the streetscape, view loss and amenity to adjoining properties.</b>	
The applicant has submitted amended plans that have reduced the height of the building by two storeys to align with the podium of the adjacent buildings at 254 Railway Parade and 3 Blake Street.	The reduction in height results in a built form that is suitable for the site and no longer impacts outlook, views, solar access or privacy of neighbouring residential units.
<b>10. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the site is not suitable for the development in its present form.</b>	
The amended proposal is considered suitable development for the site for the reasons outlined within this report.	
<b>11. 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.</b>	
The amended proposal is considered suitable development for the site and not inconsistent with the public interest for the reasons outlined within this report.	
<b>12. The proposal has provided inadequate and inconsistent information.</b>	
The amended proposal has provided consistent and adequate information to enable a full and proper assessment of the application, and is recommended for approval for the reasons outlined in this report.	

## Discussion

43. The proposal submitted with this Review application has adequately addressed all reasons for refusal and no objection has been raised by any staff or external government agencies to the amended proposal.



**Statutory Framework****Environmental Planning and Assessment Act 1979 (EP&A) Act 1979**

44. 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**

45. 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 below.

**Object of the Act Compliance Table**

<b>Objects of the EP&amp;A Act</b>	<b>Proposal</b>	<b>Complies</b>
<i>(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</i>	The proposed development type is not considered to be inconsistent with this objective.	Yes
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment</i>	The design considers the principles of ESD. The proposal satisfies SEPP – BASIX.	Yes
<i>(c) to promote the orderly and economic use and development of land</i>	The design of this proposal is considered an orderly and economical use and development of the land.	Yes
<i>(d) to promote the delivery and maintenance of affordable housing.</i>	The proposal is not considered to be inconsistent with this objective.	Yes
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</i>	The proposal does not seek the removal of any trees and is unlikely to result in any known ecological impact.	Yes
<i>(f) to promote the sustainable management of built and cultural heritage</i>	The site is not a Heritage Item nor is it located within a Heritage Conservation Area.	Yes

<p><i>(g) to promote good design and amenity of the built environment</i></p> <p><i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i></p>	<p>The proposal in its current form is considered to result in a suitable built form outcome. Some amendments to the design are considered necessary to provide a development that provides an appropriate level of amenity for the future occupants and comply with State Environmental Planning Policy (Affordable Rental Housing) 2009. Deferred commencement conditions addressing BCA compliance, provision of required building services and infrastructure, and design changes to Suites 1 and 2 to accommodate the Manager's Room.</p>	<p>No</p>
<p><i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</i></p>	<p>The proposal falls within the delegations for the Local Planning Panel (LPP) to be the consent authority.</p>	<p>Yes</p>
<p><i>(j) to provide increased opportunity for community participation in environmental planning and assessment</i></p>	<p>The application was notified and to surrounding owners and occupiers, in response a total of two (2) submissions were received. The content of these submissions is discussed in detail later in this report.</p>	<p>Yes</p>

## Environmental Planning Instruments

### State Planning Policies

46. The proposal has been considered under the relevant statutory provisions as per below:
- Environmental Planning and Assessment Act 1979;
  - Environmental Planning and Assessment Regulation 2000;
  - State Environmental Planning Policy No 55 – Remediation of Land;
  - State Environmental Planning Policy (Affordable Rental Housing) 2009;
  - State Environmental Planning Policy (Building and Sustainability Index: 2004);
  - State Environmental Planning Policy (Infrastructure) 2007;
  - State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;
  - Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment;
  - Draft State Environmental Planning Policy – Remediation of Land;
  - Draft Environment State Environmental Planning Policy;
  - Kogarah Local Environmental Plan 2012;
  - Draft Georges River Local Environmental Plan 2020;
  - Kogarah Development Control Plan 2013.

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

47. The proposed development has been considered under the relevant matters for consideration for development under the Regulations.

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

48. The site is within the area affected by the Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment.
49. The proposed disposal of stormwater has been assessed by Council's Development Engineer and is considered to be consistent with the requirements for the disposal of stormwater within the catchment.
50. Conditions have been recommended should the application be supported.

**State Environmental Planning Policy No. 55 – Contamination of Land (SEPP 55)**

51. SEPP 55 applies to the land and Clause 7 stipulates that a consent authority must not consent to the carrying out of any development on land unless it has considered matters for consideration contained in Clause 7.
52. The application is accompanied by a Detailed Environmental Site Assessment prepared by Broadcrest Consulting Pty Ltd dated March 2020. The report concludes:  
  
*"It is considered that this investigation area is no longer of potential contamination concern and suitable to the intended development works."*
53. Council's Environmental Health Officer has reviewed the report and raises no objection to the proposal. The report concludes the site is suitable for the proposed use. The report will be referenced in the conditions of consent.
54. In this regard the proposal is considered to have satisfied the requirements of SEPP55.

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

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

**SEPP (Affordable Rental Housing) 2009 Compliance Table**

Clause	Standard	Proposal	Complies
26 Land to which Division applies	This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones - Zone B4 Mixed Use	The site is zoned B4 Mixed Use pursuant to Kogarah Local Environmental Plan 2012.	Yes
27 Development to which Division applies	(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.	The proposal meets the definition of a "boarding house" under the Standard Instrument.	Yes
28 Development may be carried out with consent	Development to which this Division applies may be carried out with consent.	Development consent sought under Part 4 of the Act.	Yes
29 Standards that cannot be used to refuse consent	(1) A consent authority must not refuse consent to development to which this Division applies on the		

	<p>grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</p> <p>(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</p> <p>(b) if the development is on land within a zone in which no residential accommodation is permitted — the existing maximum floor space ratio for any form of development permitted on the land, or</p> <p>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>	<p><i>A “boarding house” is a subcategory of “residential accommodation”</i></p> <p>The proposal seeks to utilise the additional 20% floor space bonus as the KLEP 2012 prescribes a maximum floor space of 4.1:1. Under this clause the maximum floor space permissible is 4.8:1. The proposal seeks a floor space of 4.112:1 which complies.</p>	<p>Yes</p> <p>Yes</p>
(2) A consent authority must not refuse consent to	(a) building height if the building height of all proposed buildings is not	The maximum building height which applies to the	Yes

development to which this Division applies on any of the following grounds:	more than the maximum building height permitted under another environmental planning instrument for any building on the land,	site is 39m. The proposal seeks a maximum building height of 20.4m to the top of the lift overrun.	
	(b) landscaped area if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The site is located in an area where medium to high density mixed use developments are the predominant building form, this locality is not characterised by landscaped front setbacks.	Yes
	(c) solar access where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The communal living room receives in excess of 3 hours solar access between 9am – 3pm given the north - facing orientation and spatial separation provided by Blake Street and Railway Parade to surrounding built forms.	Yes
	(d) private open space of at least the following private open space areas are provided (other than the front setback area):  (i) one area of at least 20sqm with a minimum dimension of 3m is provided for the use of the lodgers,  (ii) if accommodation is provided on site for a boarding house manager— one area of at least 8sqm with a minimum dimension of 2.5m is provided adjacent to that accommodation,	  A 20sqm communal balcony is proposed adjacent to the communal room.  An 8sqm balcony with suitable dimensions is adjacent to the Manager's room.	  Yes  Yes
	(e) parking if:  (ii) in the case of	  21 spaces provided.	  Yes

	<p>development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and = 21 car spaces required based on 42 boarding rooms</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site, = 1 space required per employee</p>	1 Manager space provided.	Yes
	<p>(f) accommodation size if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(ii) 16sqm in any other case (2 boarders)</p>	All boarding rooms which can accommodate two (2) persons range in size from 16.3sqm – 23.2sqm.	Yes
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room	Each boarding room including the manager's suite includes a private kitchen and bathroom.	Yes
30 Standards for boarding houses	<p>(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:</p> <p>(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,</p> <p>(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom</p>	<p>The boarding house proposes 42 rooms and one communal room is proposed.</p> <p>The largest room is 23.2sqm.</p>	<p>Yes</p> <p>Yes</p>



	<p>facilities) of more than 25sqm,</p> <p>(c) no boarding room will be occupied by more than 2 adult lodgers,</p> <p>(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,</p> <p>(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,</p> <p>(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,</p> <p>(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</p>	<p>Two lodgers per room will be reinforced by a condition of consent.</p> <p>Each room has kitchen and bathroom facilities.</p> <p>A manager's room is proposed.</p> <p>No boarding rooms are located at ground level.</p> <p>9 bicycle and 9 motorbike spaces are proposed.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
30A Character of local area	A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	The proposal seeks a built form which is considered to be compatible with the character of the local area.	Yes – see discussion below.

#### Clause 30A – Character of local area

56. Clause 30A states that Council cannot grant consent to a boarding house unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

Case law has held that the test in Clause 30A is “one of compatibility not sameness” (Gow v Warringah Council [2013] NSWLEC 1093 (15 March 2013)). Compatibility is widely accepted to mean “capable of existing together in harmony” (Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191).

57. It has also been held that in assessing ‘compatibility’ both the existing and future character of the local area needs to be taken into account (Sales Search Pty Ltd v The Hills Shire Council [2013] NSWLEC 1052 (2 April 2013) and Revelop Projects Pty Ltd v Parramatta City Council [2013] NSWLEC 1029).

### **Relationship to the Existing and Future Character of the Local Area**

58. In Revelop Projects Pty Ltd v Parramatta City Council [2013] NSW LEC 1029, Commissioner Morris concluded that the ‘local area’ includes both sides of the street and the ‘visual catchment’ as the minimum area to be considered in determining compatibility.
59. The ‘local area’ in this case is taken to include development on the southern side of Railway Parade and the immediate surrounding streets. Within this local area, development is primarily characterised by shop top developments on Railway Parade with heights of up to 12 storeys, and residential flat buildings in Blake Street between three and five storeys in height.
60. In Project Venture Developments v Pittwater Council [2005] NSWLEC 191 the Land and Environment Court specifically set out a relevant planning principle. Consideration has therefore been given to the two key questions identified in the Land and Environment Court Planning Principles:

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

61. Comment: It is acknowledged this development typology is permissible in this zone and the up-zoning of property in this location, with the increase in permissible height and density, evident within the visual catchment.
62. The proposal in its current form is considered to result in a built form that is consistent with more recent development in this area, particularly having regard to the scale of development immediately adjoining the site on Railway Parade and Blake Street.
63. The proposal adopts a modern architectural form and materiality which is consistent with surrounding development. The proposed building is of a scale, height and overall bulk that will generally maintain consistency with the established pattern of development in the streetscape.
64. For the reasons stated above, it is considered that the proposed development will not result in an unreasonable impact upon surrounding residential development and would not constrain the development potential of adjoining sites.
65. The development is considered to be acceptable in this location.

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

66. Comment: The existing streetscape is characterised by shop top housing on Railway Parade and residential flat building developments in Blake Street. The proposal respects the surrounding development and is of a height that will not result in adverse impacts on adjoining development.
67. The proposed height and floor space is consistent with development in the B4 Mixed Use zone and the built form is therefore considered to be of an appropriate scale and character within the streetscape.
68. The built form is consistent with the existing character and not inconsistent with the future character given the Draft Georges River Local Environmental Plan 2020 retains the current zoning, height and floor space controls.
69. Assessing 'compatibility' requires both the existing and future character of the local area to be taken into account (*Sales Search Pty Ltd v The Hills Shire Council* [2013] NSWLEC 1052 and *Revelop Projects Pty Ltd v Parramatta City Council* [2013] NSWLEC 1029). The proposed development has been designed to respect the existing built form of neighbouring developments and the design and streetscape presentation of future development in the locality is likely to resemble that of the proposed development.

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

70. The objectives of this Policy ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.
71. A valid BASIX (Building Sustainability Index) certificate No. 1009898M\_02 was prepared on 9 April 2020 and assessed the proposal against the provisions of BASIX and found the proposal to be compliant. The BASIX commitments are shown on the architectural plans.

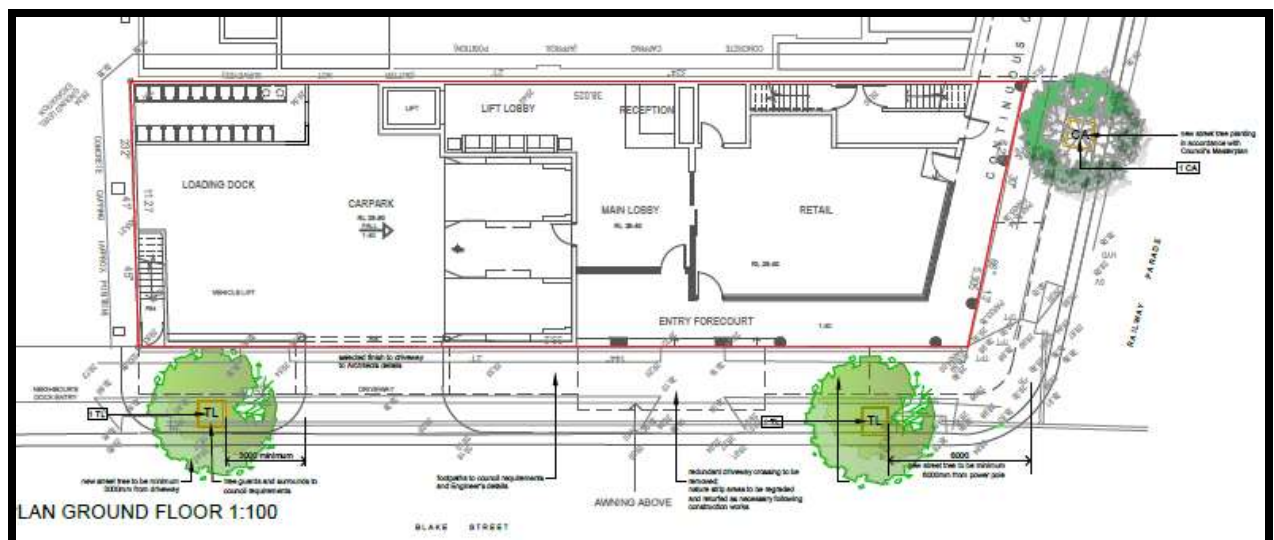
#### **State Environmental Planning Policy (Infrastructure) 2007**

72. The site is located more than 25m away from Sydney Trains Infrastructure. The proposal has been considered in accordance with the applicable provisions of the SEPP.
73. The proposal was referred to Ausgrid (Clause 45 – Determination of development applications – other development) and Sydney Trains with twenty-one (21) days to respond.
74. Ausgrid provided conditions of consent on 4 May 2020.
75. In addition, the applicant has sought advice from Ausgrid on the requirement for a substation. Ausgrid have advised a substation is not required for the proposal and have provided an offer to provide basic connection services.
76. Sydney Trains have provided concurrence subject to conditions of consent.

Given the above, appropriate consideration has been afforded to the criterion of this SEPP.

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

77. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
78. 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).
79. 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.
80. There are no existing trees on site or within the Council's reserves along Railway Parade and Blake Street, Kogarah.
81. The proposal seeks landscaping works as identified within the submitted Landscape Plan prepared by Zenith Landscape Designs dated 27 March 2020. Within the scheme the proposal seeks the following:



**Figure 10** Landscape Plan (Source: Zenith: Landscape Designs).

82. Council's consulting arborist supports the proposal subject to an additional tree planted in the Blake Street verge. In this regard, the proposal adequately satisfies the provisions of the SEPP.

## Draft State Environmental Planning Policies

### Draft State Environmental Planning Policy – Remediation of Land

83. 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').
84. 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.

85. 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.
86. The application is accompanied by a Detailed Environmental Site Assessment prepared by Broadcrest Consulting Pty Ltd dated March 2020. The report concludes:
 

*"It is considered that this investigation area is no longer of potential contamination concern and suitable to the intended development works."*
87. Council's Environmental Health Officer has reviewed the report and raises no objection to the proposal. The report concludes the site is suitable for the proposed use. The report will be referenced in the conditions of consent.
88. In this regard the proposal is considered to have satisfied the requirements of the SEPP.

#### **Draft Environment SEPP**

89. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
90. 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.

91. The proposal is not inconsistent with this policy.

### **ENVIRONMENTAL PLANNING POLICIES**

#### **Kogarah Local Environmental Plan 2012**

##### **Zoning**

92. The subject site is zoned B4 - Mixed Use under the provisions of the Kogarah Local Environmental Plan (KLEP) 2012.
93. The zone objectives are listed per below;
  - *To provide a mixture of compatible land uses.*
  - *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
  - *To encourage development that contributes to economic growth and employment opportunities.*

- To encourage development that contributes to an active, vibrant and sustainable town centre.
- To provide opportunities for residential development, where appropriate.

94. The proposed development is consistent with the objectives of the B4 zone as follows:

- The proposal provides for a ground floor commercial tenancy and residential development above in the form of a boarding house which has been designed to be respectful of the site and its context and will not result in adverse impacts on neighbouring properties or the streetscape.
- The proposal is a compatible land use with that of the adjoining developments.

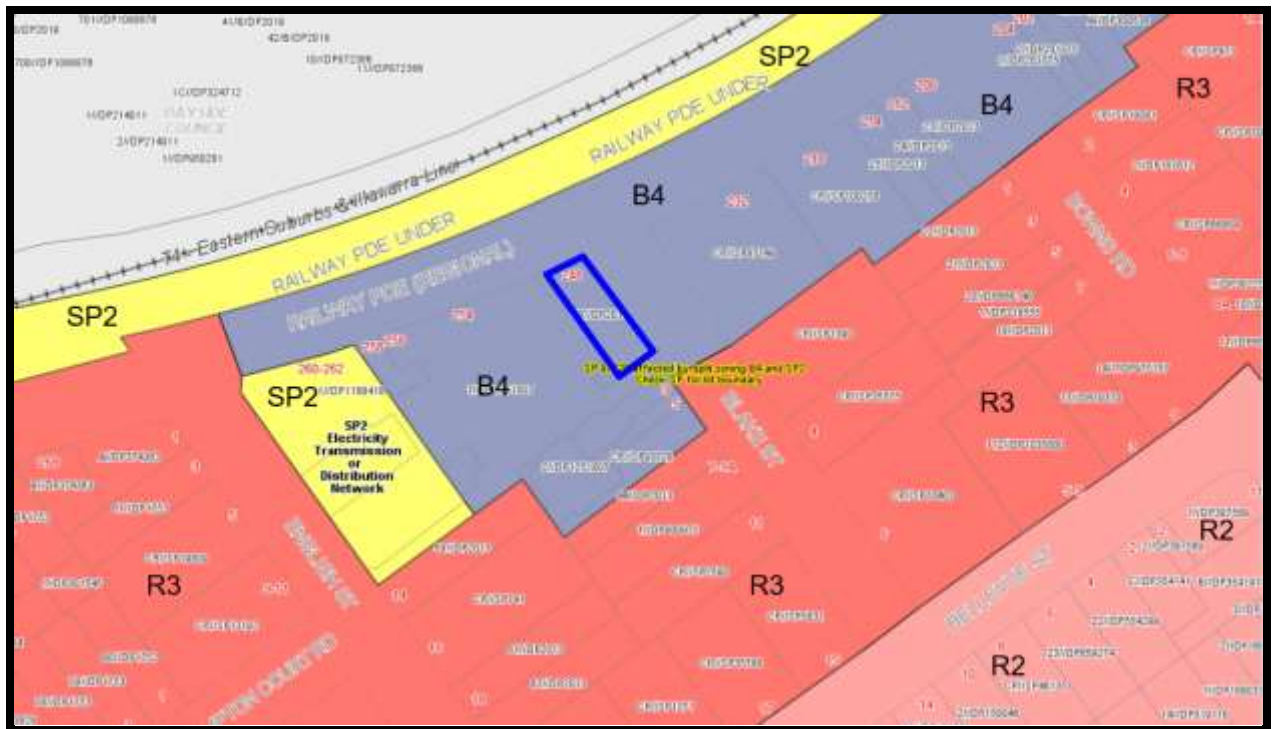


Figure 11 Zoning map – site outlined in blue

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

#### KLEP 2012 Compliance Table

Clause	Standard	Proposal	Complies
2.2 Zoning of Land to which Plan applies	B4 Mixed Use Zone	The missed use development in the form of a ground floor commercial tenancy and upper level boarding house is permissible with consent.	Yes
2.3 Zone objectives and Land use table	‘Commercial’ and ‘boarding house’ uses are permissible in the zone.  Objectives of zone to be satisfied	The proposed development meets the definition of a boarding house and commercial premises.	Yes
2.7 Demolition	Demolition requires	Consent for	Yes



	development consent.	demolition of existing structure sought.	
4.3 Height of Buildings	Maximum permitted height of 39m	20.4m (lift overrun)	Yes
4.4 Floor Space Ratio	Maximum FSR of 4:1 Site area: 411sqm  Maximum of 1,644sqm of Gross Floor Area permitted (FSR bonus of 0.8 permitted under SEPP (Affordable Rental Housing) 2009)	4.113:1	Yes, given that additional floor space permitted under SEPP (ARH) 2009.
4.5 Calculations of Floor space and Site area	Floor space to be calculated in accordance with Clause.	Floor space calculated in accordance with this clause.	Yes
4.6 Exceptions to Development Standards	Not applicable.	N/A	N/A
5.10 Heritage Conservation	Not identified as a heritage item and not located within a Heritage Conservation Area.	Satisfactory - no local heritage items or conservation areas are within the vicinity of the Site.	Yes
6.1 Acid Sulfate Soils (ASS)	The site is not affected by acid sulfate soils.	N/A	N/A
6.2 Earthworks	Development consent sought for excavation requires development consent. Considerations to apply include impact on drainage patterns, fill, effect on land and fill, impact to waterways.	A geotechnical report was submitted as part of this application and the extent of excavation is suitable for the proposed development and can be designed to protect the adjoining development.	Yes
6.5 Airspace Operations	Development Consent must not be granted to controlled activity within Division 4 Part 12 of the Airports Act 1996.	Referrals sent. No objections raised by CASA or Sydney Airports.	Yes
6.6 Development in Areas subject to aircraft noise	Acoustic considerations to be satisfied.	An acoustic report was submitted with the application which is supported by Council's Environmental	Yes

		Health Officer.	
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### **Draft Georges River Local Environmental Plan 2020**

96. Consideration has been given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
97. 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.”
98. The zoning, height and floor space remains unaltered by Draft LEP2020.

### **Development Control Plan**

#### **Kogarah Development Control Plan 2013**

99. A detailed assessment of the development against the relevant sections of KDCP 2013 has been considered below.

#### **Section B3 – Developments near busy roads and corridors**

100. The proposal has been supported by an acoustic report which satisfies the requirements under State Environmental Planning Policy (Infrastructure) 2007. In this regard, the proposal adequately satisfies the intent of this subsection and could be conditioned for the design elements to be incorporated into the development if the proposal was to be supported.

#### **Section B4 – Parking**

101. The proposal complies with the required car, motorcycle and bicycle parking requirements under State Environmental Planning Policy (Affordable Rental Housing) 2009, which prevails over Council’s Development Control Plan criterion.

#### **Section B5 – Waste Management**

102. Council’s Coordinator of Environment Sustainability and Waste has provided conditions of consent in relation to waste management of the development.

#### **Section B7 – Environmental Management**

103. The proposal is not inconsistent with the provisions contained within this subsection.

### **Kogarah Town Centre**


104. The provisions of the Kogarah Development Control Plan 2013 (KDCP 2013) are relevant to the proposed development. Several controls within the KDCP 2013 do not align and significantly conflict with the scale of development now permitted under the Kogarah Local Environmental Plan 2012 (KLEP) (as amended on 26 May 2017). As a consequence, the proposed development will contravene a number of the controls including significant variations to the height and floor space ratio criterion.
105. The significant variations to KDCP 2013 have resulted from the subsequent amendments to KLEP 2012 which allows a higher density/scale of development. The approach to support the development with significant variations to KDCP 2013 (but compliant with KLEP 2012) is consistent with recent judgements in the NSW Land and Environment Court. In particular, in *Michael Murr v Georges River Council [2017] NSWLEC1369*.

106. It is also noted that in the hierarchy of planning controls, Development Control Plans cannot prescribe more onerous corresponding controls than those in a Local Environmental Plan.
107. An assessment of the proposed development against the relevant controls in the KDCP 2013 is detailed in the compliance table below.

**Part E Town Centres Kogarah Development Control Plan 2013 Compliance Table**

Clause	Standard	Proposal	Complies
2.9 Railway Parade Local Precinct Character Streetscapes: South Precinct	<b>Land Uses</b>		
2.9.2 Desired Future Character Principles	(a) Increase the diversity of uses to include residential uses.	The proposal incorporates a residential “boarding house component”.	Yes
	(b) Provide for commercial uses such as small offices and specialist retail on the ground floor fronting Railway Parade.	One (1) retail commercial tenancy of 65.9sqm is proposed fronting Railway Parade and extending around into Blake Street.	Yes
	(c) Encourage the continuation of the RSL use and the provision of community related uses within the block between Blake Street and English Street.	The subject allotment is a constrained site. In the determination of the DA2015/97 at 250-258 Railway Parade, Kogarah, (RSL Development) offers were made to acquire the subject site prior to determination. These efforts were unsuccessful.	N/A
Street Frontage	(d) Address Railway Parade with active street frontages, awnings and street trees to increase pedestrian amenity.	The proposal activates Railway Parade with the provision of a commercial tenancy fronting Railway Parade and extending around into Blake Street, this includes an extension of the colonnade that exists	Yes

	(e) Set buildings back from Railway Parade to allow for widened footpath areas and improved public domain.	on the adjoining development and street planting.  The ground floor of the proposal along Railway Parade aligns with the adjoining building being the Kogarah RSL. The height also aligns with the podium level of this development.	Yes
Built Form	(f) Reinforce the two storey street wall height by setting back upper levels of the buildings.	Due to the uplift following the KLEP 2012 amendment (2017), the two (2) storey control is no longer considered relevant. However the proposal aligns with the adjoining Kogarah RSL development which has a podium of 5 storeys. This is considered to be acceptable.	Yes
	(g) Introduce breaks in the building massing at upper levels to reduce the buildings' apparent scale.	The proposed aligns with the adjoining Kogarah RSL which has a podium of 5 storeys. This is considered to be acceptable.	Yes
	(h) Establish a consistent 'build to' line along a 2m front setback on Railway Parade to create a consistent edge to the street.	The proposal provides a 2m front building line setback along Railway Parade.	Yes
	(i) Emphasise the block between Blake Street and English Street with taller buildings that create a landmark entry to the Kogarah Centre.	The proposed aligns with the adjoining Kogarah RSL which has a podium of 5 storeys. This is considered to be acceptable.	Yes
Pedestrian Movement	(l) Enhance the pedestrian amenity of Railway Parade with awnings, street tree	The proposal provides a colonnade, street tree plantings and	Yes

	planting and upgraded footpaths.	upgraded footpaths.	
3.4 Building Heights	(1) Maximum building heights are shown in Figure 1 – Building Heights Plan.	The proposal does not exceed the 39m Height of building control as prescribed within the KLEP 2012. The proposal seeks a maximum height of 20.4m which complies with the KLEP2012.	Yes
3.4.2 Roof Top Development	(1) Roof top developments are permitted in some circumstances. Roof top developments are only permitted on 18.0m high buildings or in the case of a fully commercial building on 21.6m buildings and on those sites nominated in Figure 3.0 – Building Heights Plan by “R”.	Rooftop development is not proposed.	NA
3.4.5 Building Height and Articulation	(1) Where buildings are greater than four storeys, strong articulation should be provided in the form of a setback at the 5th and 6th storey, a strongly marked balcony cornice line (projection) and modulation in roof form.	The proposal is six (6) storeys in height and aligns with the Kogarah RSL which is 5 storeys in height.	Yes
3.5 Building Density	<p>(1) The maximum floor space ratios for the Kogarah Centre are specified in the Floor Space Ratio Plan (Figure 4 below).</p>  <p>Note: no prescribed floor space indicated within figure.</p> <p>H = Railway Parade South precinct</p>	No prescribed floor space within diagram however the proposal complies with the KLEP 2012. Additional floor space is sought under the provisions of State Environmental Planning Policy (ARH) 2009.	Yes
3.6 Building Alignment	(2) Buildings require highly articulated facades with many projections such as	The facades are well articulated through the use of balconies and	Yes

	stepped facades, entry porches, bay windows and balconies to provide vertical subdivisions and visual interest in the streetscape.	a variety of materials and finishes.	
3.7 Building Depth	(1) New buildings are to provide operable windows to all living and working environments.	The proposal incorporates a streetscape outlook to the north being Railway Parade and to the east being Blake Street.	Yes
	(2) Articulate buildings using courtyards, atria and the like to achieve substantial day lighting, cross ventilation and/or stack ventilation.	The proposal uses balconies as recesses to provide lighting and ventilation along the facades.	Yes
3.8 Floor to Ceiling Heights	(1) Floor to ceiling heights should be a minimum of 3m at ground floor level, to allow for a range of uses including retail, commercial offices and home offices.	Commercial – 3.5m	Yes
	(2) Floor to ceiling heights should be a minimum of 2.7m at upper storeys of buildings, to all habitable rooms to allow for a range of uses, and to improve the environmental performance and amenity of the building.	Boarding rooms – 2.8m	Yes
3.9.1 Car parking	(4) For commercial/retail development and other land uses parking is to be provided at the following rate:  (i) 1 space per 40sqm for any floor space at ground floor level.	Retail – 65.9sqm Two (2) spaces required Two (2) spaces proposed.	Yes
	(5) 1% of all car parking spaces are to be designated “accessible” spaces for people with mobility impairments, with a minimum of 1 space for facilities such as medical suites.	24 spaces = 3 accessible spaces required.  3 accessible spaces proposed.	Yes
	(6) For car parks between 10 to 99 spaces at least one “accessible” space must be	3 accessible spaces proposed.	Yes



	provided.		
	(7) Designated “accessible” car spaces are to be treated as resident car spaces in the calculation of the parking requirement.	Noted.	Yes
3.9.2 Bicycle Parking	(1) Bicycle storage is to be provided at the rate of:  (i) 1 secure bicycle storage facility per 2 residential units (ii) 1 bike space per 10 car spaces for the first 200 spaces then 1 space per 20 car spaces thereafter, for commercial and retail land uses.	The proposal has provided bicycle storage under the provisions of SEPP (ARH) 2009 which overrides Council’s DCP. Nine (9) bicycle spaces are proposed which complies.	Yes
	(2) Bicycle parking and facilities should be designed in accordance with the relevant Australian Standards.	Bicycle spaces provided in accordance with Australian Standards. Bicycle spaces are provided on basement level 1.	Yes
	(3) Showers and lockers should be incorporated into developments for bicycle users.	No showers or lockers have been provided however this is considered to be acceptable given that each boarding room is self contained.	On merit
3.9.3 Loading Bay Facilities	(1) Loading bay facilities are to be provided at the following rates: Retail • floor area 15sqm to 500sqm - 1 bay required	One (1) loading bay provided on the ground floor to service the single 65.9sqm commercial tenancy.	Yes
	(2) Loading bay facilities are to be designed as follows • minimum bay width - 3.5m • minimum bay length for Bay 1 - 9.5m	Loading bay is 6.662m long which does not meet minimum dimensions for a bay length of 9.5m. However the bay is considered a size that will suit the typical vehicle that would service a retail tenancy of 65.9sqm.	On merit
3.9.4 Specific Requirements for the Railway Parade South Precinct	All residential parking must be provided on site. Where a commercial development is proposed, all the parking should be provided on site.	All parking is proposed on site.	Yes

	Where there is a deficit with respect to the provision of commercial parking on site, the residual may be provided by the way of contribution under the section 94 plan.		
4. Urban Design 4.1 Address and Active Street Frontages	(1) Buildings on the street frontage are to provide pedestrian amenity in the form of active street frontages, building entrances and awnings.	The proposal provides a street frontage to Railway Parade and part frontage to Blake Street where there are pedestrian entry points to the development.	Yes
	(2) Buildings setback from the street frontage, are to address the street with major facades, entrances, stairs, low fences, substantial planting and other streetscapes.	The proposal addresses both street frontages.	Yes
	(3) In predominantly residential areas, strengthen the interaction between the public and private domain by providing multiple entrances for large developments, locate shops where they will be most visible and minimise the vehicular entrance width.	The proposal provides a residential lobby from Blake Street, with the commercial tenancy having access from both the Blake Street and Railway Parade frontages.	Yes
4.2 Corners	(1) Buildings are to be sited on the street frontages at corners, addressing the corner.	The proposal is located on the street corner, while providing the required setbacks where necessary and therefore appropriately addresses the corner.	Yes
	(2) The street intersection is to be addressed with splays, curves, building entries and other special architectural elements.	The ground floor tenancy has been designed to address both frontages and the entry to the boarding house at ground floor is identifiable from Blake Street by the main lobby area.	Yes
	(3) Architectural corner elements may be slightly higher than the rest of the	The proposal maintains a six (6) storey height and	Yes

	building. They must not exceed 4.0m above the average street wall height. The floor space they contain will be part of the total gross floor area of the building.	provides articulation on the corner through a variety of balcony sizes and façade treatments.	
4.3 Architectural articulation	(1) Large areas of flat facade are to be avoided. Facades should be articulated into separate sections, using steps in the facade, expressed entries, panels, bay windows, balconies, pergolas and other architectural elements.	The flat façade walls (north west and north east elevations) will not be seen from the street as they meet the existing buildings on adjacent sites. The street facades are well articulated.	Yes
	(2) Articulation elements must be integral with the building design and should consider the whole building - not just the street facade.	The flat façade walls (north west and north east elevations) will not be seen from the street as they meet the existing buildings on adjacent sites. The street facades are well articulated.	Yes
	(3) Changes of texture and colour should complement facade articulation.	The proposal nominates a mixture of contemporary finishes and tones.	Yes
	(4) Appropriate security (if required) can be provided through security grilles on the inside of the shop windows that are retractable to create an open shopfront/window display area. Roller shutter doors facing onto the street are not permitted.	No grilles proposed.	Yes
	(5) Provide solar protection elements as integral with the building design and massing.	Eaves, awnings and a colonnade are integrated into the design.	Yes
4.4 Façade Composition	(1) Provide a balance of horizontal and vertical facade elements to relate to adjacent facades in the streetscape. Avoid simple facade designs containing only horizontal or vertical elements.	The proposal incorporates horizontal and vertical elements.	Yes
	(2) Subdivide long facades with columns, windows and	Vertical elements incorporated within	Yes

	other vertical elements to provide a vertical emphasis.	the design.	
	(3) Provide substantial cornices, balconies and other horizontal elements to subdivide the facade into a base, middle and top.	Recesses, and balconies provided on each level.	Yes
4.5 private open space and balconies	(1) Every apartment is to have at least one balcony directly accessible from the main living area, of minimum size 10sqm.	The proposal meets the provisions of the SEPP ARH 2009.	Yes
	(2) The minimum dimension in any direction is to be 2.5m.	The proposal meets the provisions of the SEPP ARH 2009.	Yes
	(3) There is no minimum size for a bedroom balcony (eg Juliet balconies).	The proposal meets the provisions of the SEPP ARH 2009.	Yes
	(4) Design balconies which are recessed into the wall or enclosed with walls, columns or roofs to provide sufficient enclosure and visual firmness.	The proposal meets the provisions of the SEPP ARH 2009.	Yes
	(5) Design balustrades which allow for views into, and along the street but, avoid all-glass and all-brick balustrades.	The proposal meets the provisions of the SEPP ARH 2009.	Yes
	(7) Include sunscreens, pergolas, shutters, operable walls to control sunlight, wind and harsh environmental effects.	The proposal is BASIX compliant.	Yes
4.6 Awnings	(1) Step awnings and other weather protection devices in relation to street level changes and building entrances.	Entries to the residential lobby and commercial tenancy are provided with weather protection through the colonnade.	Yes
	(2) Avoid steeply pitched awnings which break the general alignment of awnings in the street.	A flat awning proposed which aligns with the Kogarah RSL development.	Yes
	(3) Provide architectural detail in the form of: (i) Posts (ii) exposed structures and joints	The proposal provides columns along Railway Parade and Blake Street.	Yes

	(iii) fascia motifs, patterns		
	(4) Provide under-awning lighting to enhance safety.	Lighting can be accommodated below colonnade.	Yes
4.7 Roof Designs	(1) Articulate roofs to provide a varied and interesting roof-scape.	Flat roofing proposed.	Yes
	(2) Design large projections, shade structures and pavilions to enhance the appearance of flat roofed buildings.	Flat roof proposed.	Yes
	(3) Conceal lift over-runs and plant equipment (incl. satellite dishes) within well designed roof forms.	Lift overrun integrated into the building.	Yes
	(4) Design steep pitched roofs with strong roof forms. Roofs should be integral part of the design of the building.	Flat roofing proposed.	Yes
	(5) Penthouses are encouraged in residential developments, to create interesting skylines using set back upper storeys, special fenestration and roof decks.	No penthouses proposed.	Yes
4.8 Visual and Acoustic Privacy	(1) Buildings are to be sited so that walls containing windows to habitable rooms are a minimum of 6m from a side or rear boundary. This will ensure a minimum distance of 12m is achieved between windows of habitable rooms.	A deferred commencement condition is recommended to combine Suite 1 and 2 to provide acceptable levels of amenity for the future occupants.	Yes
	(2) Separation for balconies and terraces is to be a minimum 8m balcony to another balcony, or 7m balcony to a window of a non-habitable room. (This assumes that only habitable rooms will have balconies).  (3) Overlooking should be minimised by:  (i) building on the perimeter of the block and building to the side boundaries of sites, with blank walls, to avoid overlooking;	All balconies face the street with the exception of Suites 1, 8, 17, 26 and 35 which are oriented to the west to the RSL building/communal courtyard. The balconies facing the RSL site are located greater than 8m to any balcony within the RSL site.	Yes

	(ii) locating habitable rooms within buildings away from privacy sensitive areas.		
	<p>(4) Screen views from windows and balconies by:</p> <p>(i) using screens in front of windows and balconies to cut out direct views;</p> <p>(ii) offsetting windows opposite each other in neighbouring walls;</p> <p>(iii) using horizontal and vertical projecting screens above, below and to the side of windows, to reduce overlooking;</p>	All balconies face the street with the exception of Suites 1, 8, 17, 26 and 35 which are oriented to the west to the RSL building/communal courtyard. The balconies facing the RSL site are located greater than 8m to any balcony within the RSL site.	Yes
	(5) Development is to meet or exceed the sound insulation requirements for separating walls and floors of adjoining dwellings of the Building Code of Australia.	Deferred commencement conditions are recommended to address BCA compliance.	Yes
	(6) With particular regard to timber flooring in residential developments, appropriate insulation between floors is to achieve minimum sound attenuation of (50Rw).	Sound attenuation is addressed in the acoustic report submitted with the application.	Yes
	(7) Submit an acoustic report demonstrating the method and acoustic rating achieved for the development with the Development Application. Issues to address include, but are not limited to, party walls, storeys, different uses and traffic noise.	An acoustic report was submitted for consideration with the application. This is supported by Council's Environmental Health Officer and the recommendations of the report would be conditioned to be included in the development if the application was to be supported.	Yes
	(8) Site buildings and design internal layouts of rooms, courtyards, terraces, to minimise acoustic problems. The use of openings,	All balconies face the street with the exception of Suites 1, 8, 17, 26 and 35 which are oriented to	Yes



	screens and blade walls can reduce acoustic problems.	the west to the RSL building/communal courtyard. The balconies facing the RSL site are located greater than 8m to any balcony within the RSL site.	
	(10) Blank walls are not desirable however blank walls may be built on the property boundary in certain circumstances. They should be articulated, patterned or contain appropriate public art.	Blank walls are only proposed to the south and west where the building adjoins the neighbouring properties that are built to the boundaries.	Yes
	(11) For development adjacent to the railway line or with frontage to a classified road, the requirements of the ISEPP apply. Developments are to be designed to take into account the requirements of the ISEPP and any other applicable policies or guidelines.	An acoustic report was submitted with the development application. ISEPP requirements have been satisfied and supported by Council's Environmental Health Officer. If the application was to be supported the recommendations of the report would be conditioned.	Yes
4.9 Landscape and Deep Soil Planting	(1) Deep soil landscaping areas are to be provided where possible within the side boundary setback area and to the front and rear setback areas, where more than one building is located on the site, landscaping and deep soil planting should be provided to assist in privacy screening.	No deep soil planting proposed as the building is proposed to be built to the boundaries. Additional street trees are proposed and reinforced by conditions.	N/A
	(2) Landscaping should be of native species and should include species that are drought resistant and require minimal watering once established, or plants that match the rainfall and drainage conditions.	The proposal is supported by Council's consulting arborist subject to additional planting in Blake Street.	Yes
	(3) Limit turf to usable outdoor spaces.	Not proposed.	N/A

4.0 Location of Car Parking Areas	(1) Car parking should be provided below ground.	Car parking located below ground.	Yes
	(3) Like other buildings, above ground car parks should fit within and complement the existing streetscape.	Basement parking is proposed.	N/A
	(4) Car park entrances should: <ul style="list-style-type: none"> <li>• be shared with adjoining properties where possible;</li> <li>• incorporate other facade elements such as overhanging balconies or side planter boxes in the composition of the façade;</li> <li>• contain doors with a minimum recess into the wall of 300mm;</li> <li>• contain doors of a minimum width to allow the passage of vehicles.</li> </ul>	The proposal seeks vehicular access from Blake Street. The car park entrance is 5.8m in width which allows two vehicles to pass simultaneously.	Yes
4.11 Safety and Security	(1) Orient buildings towards the street, such that building frontages and entries overlook and are clearly visible from the street and provide a sense of address and visual interest.	The proposal is orientated to both Railway Parade and Blake Street.	Yes
	(2) Avoid blank walls addressing streets and any other public spaces.	Blank walls are proposed on either side of the car park entry but with the vehicle lift and waiting bay located behind the walls are service areas. The walls will be suitably finished with stone panel for visual interest.	On merit
	(3) Clearly design buildings and spaces, and the entries to buildings, delineate public, semi public and private space through the use of symbolic or actual barriers, such as low fences or landscaping, post boxes, lighting and signage.	The proposal delineates public, semi private and private spaces through the building entry on Blake Street. Acceptable way finding is demonstrated.	Yes
	(4) Avoid building recess,	The design avoids	Yes

	alcoves or dense landscaping in places where concealment is possible.	areas capable of concealment.	
	(5) Design and place lighting to ensure visibility of streets, public places and entrances while not intruding on the amenity of residents.	Lighting can reasonably be incorporated within the design. If the application was supportable this could be achieved by conditions.	Yes
	(6) Where developments have a car park or access laneway to a car park, provide windows, lighting or secondary access doors that address the car park.	Not proposed.	N/A
	(8) Solid roller shutters are not permitted as security devices on shop fronts (windows and doors). Open grille security devices may be used on shop fronts if such devices are necessary but should be unobtrusive and sympathetic to the character of the building and the streetscape, with minimum transparency of 65% to provide light spill to the pavement and create a sense of openness to the street.	No solid roller shutters proposed.	Yes
4.13 Housing Choice and Ancillary Requirements	(1) To achieve a mix of living styles, sizes and layouts, all residential development (or residential component within a mixed development must provide a mix of one bedroom, two bedroom and three bedroom apartments.	Whilst the proposal comprises a boarding house and not a residential flat building, the proposal provides a mixture of boarding room layouts, orientation and sizes which adds to the variety of housing stock.	Yes
	(3) External clothes drying facilities are encouraged. These should be provided in the form of a screened balcony or terrace area.	Laundry facilities are provided within the boarding house.	Yes
	(4) All developments must provide a designated secure storage space (in addition to	Not applicable.	N/A

	any areas set aside for off-street parking) to a minimum floor area of 4sqm for each dwelling or unit. The storage space could be incorporated as part of the garage.		
<b>5. Specific Precinct Requirements (5.6 Railway Parade South)</b>			
5.1.7 Performance Criteria and Design Solutions	<b>Land Use</b> (1) Encourage mixed use developments with active uses at the ground floor (commercial, specialist retail, community facilities), commercial at the first floor and residential above.	The proposal comprises a commercial tenancy and a boarding house (43 rooms)	Yes
	(2) Commercial uses only are permitted on the ground floor of buildings fronting Railway Parade and in the building return to side streets.	One (1) commercial tenancy proposed along Railway Parade which also presents to Blake Street.	Yes
	(3) Residential uses at the ground floor on Railway Parade or in the building return to side streets are not permitted.	No residential uses proposed on the ground floor fronting Railway Parade. The main lobby is accessed via Blake Street.	Yes
	(4) Residential uses are permitted at the ground floor of side streets in the residue of the study area where there is a minimum 3m setback.	All boarding rooms are located on the first floor and above with the exception of the residential lobby which is accessed from Blake Street.	Yes
	(5) Promote the expansion and development of community facilities.	The proposal does not seek consent for a community facility.	N/A
Building Heights	(6) Establish a two (2) storey street wall height that relates to the scale of the traditional strip retail buildings in the retail precinct of Railway Parade, with the third and fourth storey set back from the Railway Parade frontage.	The uplift of the KLEP 2012 results in this clause no longer being relevant as the KLEP has precedent.	On merit

	(7) Provide an appropriate transition to existing lower scale residential development adjacent on side streets and to the rear by permitting a maximum building height of three (3) storeys.	The proposal is a suitable transition between existing development on Railway Parade and Blake Street.	Yes
Floor to Ceiling Heights	(9) Allow for a range of uses including retail, commercial and home offices, at ground level.	The proposal seeks commercial/retail use on the ground floor.	Yes
	(10) Increase the sense of space in apartments and provide well proportioned rooms.	The proposed boarding rooms meet the minimum size requirements under SEPP (ARH) 2009.	Yes
	(11) Promote the penetration of day lighting into interior spaces.	Reasonable levels of solar penetration achieved for the development.	Yes
	(12) At ground level, floor to ceiling heights should be not less than 3m and not greater than 4m.	3.5m	Yes
	(13) At upper levels, floor to ceiling heights should be not less than 2.7m and not greater than 3m to all habitable rooms.	2.8m	Yes
Building Setbacks	(14) Create a consistent street edge to Railway Parade by aligning all new development to the same front building line, with the exception of heritage items and the significant façade	Consistent street edge provided with adjacent development and the colonnade.	Yes
	(15) Provide a 2m front building line setback to visually extend and enhance the public domain and building setting.	2m front setback provided from Railway Parade.	Yes
	(16) Provide a 3m setback on side streets to enable landscaping in front gardens consistent with residential	No residential proposed on the ground floor.	Yes

	<p>character.</p> <p>(17) Provide a minimum 3m setback from rear boundaries to protect the amenity of neighbouring residential uses.</p>	<p>Nil boundary setback to the adjacent buildings to the south west and south east built to the boundary.</p>	<p>Yes</p>
Densities	<p>(18) Provide appropriate densities for development whose bulk and scale is consistent with the desired future character of the precinct.</p>	<p>Appropriate as the proposal is consistent with the relevant provisions of SEPP ARH and the KLEP.</p>	<p>Yes</p>
	<p>(20) Facilitate appropriate development through encouraging amalgamation of lots to achieve the floor space ratios.</p>	<p>The site is an isolated site.</p>	<p>N/A</p>
	<p>(21) Where sites are not amalgamated as per the preferred amalgamation pattern (refer to Figure 2) the maximum allowable FSR is reduced by 0.5:1.</p>	<p>The amalgamation pattern has not been followed in this location and cannot be remedied as the allotments have been development adjoining this allotment. Council Officers are advised an offer to purchase this site was made at the time of the assessment of the RSL development; an agreement was not reached in this regard.</p>	<p>Yes</p>
Façade Composition	<p>(22) Break down the scale of large buildings.</p>	<p>The proposal is considered to be contextually appropriate for the subject site as discussed earlier within this report.</p>	<p>Yes</p>
	<p>(23) Reinforce a desired pattern characterised by simple, rectilinear building forms, a consistent street wall height, and a balance of horizontal elements (parapet, central area, below-awning</p>	<p>The built form is consistent with existing development on adjacent sites.</p>	<p>Yes</p>

	area) and vertical elements (subdivision patterns, building bays).		
	(24) Create harmonious, well balanced facades that reflect building uses and activities.	The built form appropriately reflects the proposed uses.	Yes
	(25) Retain the pedestrian scale and give continuity to the 'base' of the built form.	The pedestrian scale is maintained at street level.	Yes
	(26) Optimise environmental sustainability and minimise energy consumption through the placement and design of openings and shade systems.	The proposal seeks the utilisation of openings and shading devices.	Yes
	(27) On Railway Parade, the building mass should be broken up both vertically and horizontally, for example with building bays, openings and entries.	Complies.	Yes
	(28) Strongly model the facades using recessed balconies, projecting bay windows, deeply recessed windows and projecting panels.	The proposal incorporates balcony recesses.	Yes
	(29) Design building facades to optimise environmental amenity through sun shading devices, privacy screens and noise barriers combined with useable outdoor areas.	The proposal incorporates eaves and recesses.	Yes
	(30) Avoid large expanses of blank walls or glass curtain walls.	Two (2) blank walls to Blake Street are finished with stone as the areas behind these walls are service areas.	Yes Yes
	(31) Conceal meter boxes, fire hydrant boosters, sprinkler valves and the like so that they are not visible from the street.	A deferred commencement condition is recommended for plans to demonstrate the location of the	



		booster arrangement given no substation is required.	
Awnings and Verandahs	(32) Enhance pedestrian amenity by providing shade and weather protection.	The proposal provides a wrap around colonnade from Railway Parade to halfway along the Blake Street frontage terminating at the entrance to the main lobby being the boarding house entry.	Yes
	(33) Contribute to a sense of safety and security in the public domain.	The proposal provides an outlook to the public domain.	Yes
	(34) Provide awnings along Railway Parade, projecting beyond the front setback over the public footpath where possible.	Continuous colonnade provided to Railway Parade and returns along Blake Street.	Yes
	(35) Step awnings and other weather protection devices in relation to street level changes and building entrances, and to achieve an appropriate transition to the awnings of any heritage facades.	Proposed colonnade provides continuation of the colonnade from the Kogarah RSL site.	Yes
	(36) Design awnings in the range of 3.6 - 4m and no higher or lower by 600mm than adjoining awnings.	3.8m	Yes
	(37) Provide awnings flat or near-flat in shape, with traditional fascia and profile.	The colonnade has a flat roof.	Yes
	(38) Provide under awning lighting to enhance safety.	Under colonnade lighting can be provided. If the proposal was to be supported a condition could be imposed.	Yes
Built Form	(39) Break down the bulk and scale of buildings fronting Railway Parade South by introducing breaks	The built form is suitably massed and is consistent with adjoining	Yes

	<p>in the building massing.</p> <p>(40) Optimise residential amenity for new development and existing neighbours through building orientation, setbacks and apartment design.</p> <p>(42) Design building depths to optimise natural ventilation and daylight, solar penetration, and visual and acoustic amenity, and to enable buildings to be adapted to different uses over time.</p>	<p>development.</p> <p>The proposal will achieve suitable levels of amenity for future residents subject to the deferred commencement conditions.</p> <p>The proposal will achieve suitable levels of amenity for future residents subject to the deferred commencement conditions.</p>	Yes
Commercial and Retail Frontages	<p>(51) Enable active street frontages.</p> <p>(52) Ensure buildings are of high visual quality, by providing shopfronts and openings that relate in scale and proportion to the overall building massing and height.</p> <p>(55) Design building fronts and entries to be readily apparent from the street and to convey a sense of address.</p> <p>(56) Recess entries to commercial uses a minimum 450mm from the main façade of the building.</p> <p>(57) Roller shutters are not permitted on the exterior of the building.</p> <p>(58) Security screens, grilles</p>	<p>The proposal provides an active street frontage to Railway Parade and along Blake Street where the commercial component and the residential entry to the development.</p> <p>The proposal provides a shopfront which is considered to be reasonable.</p> <p>Shop front entry is accessed from Railway Parade and Blake Street.</p> <p>The commercial tenancy is recessed into the façade with a pedestrian pathway in front and a colonnade over.</p> <p>No roller shutters proposed.</p> <p>No security devices</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

Roofs	and bars are to provide a minimum 60% transparency.	proposed.	
	(59) Shop fronts must be provided with windows that have a sill a minimum of 600mm above finished ground level.	The proposal provides windows in accordance with this clause.	Yes
	(60) Ensure that new development contributes positively to the streetscape.	The proposal positively contributes to the streetscape.	Yes
	(62) Ensure that roof fixtures for new development do not detract from appreciation of significant features of existing heritage buildings.	No details of exhaust or plant machinery have been indicated on the plans however the site is not within the visual catchment of any heritage buildings.	Yes
	(63) Design upper level residential storeys to create interesting roof lines and interesting silhouettes. Penthouses are encouraged, using set back upper levels with special fenestration, balconies and pergolas and roof terraces.	Not proposed.	Yes
	(64) Roof fixtures are not permitted where they are visible from the street. Fixtures include aerials, vents, chimneys, solar collectors and mobile phone transmitters.	Not proposed.	Yes
	(65) Conceal lift over-runs and plant equipment, including satellite dishes, within well designed roof forms.	Complies.	Yes
	(67) No development will be permitted within the roof void.	No roof void proposed.	Yes
Parking	(68) Encourage the use of public transport, to reduce reliance on private cars for transportation.	Parking complies with Kogarah Development Control Plan 2013 and State Environmental	Yes

		Planning and Policy parking rates.	
	(69) Provide adequate facilities for parking for building users and residents.	Complies.	Yes
	(70) Minimise the environmental and visual impacts of parking and driveways by integrating them with the building design.	The facade is suitably treated on Blake Street.	Yes
	(71) Minimise the potential for vehicle/pedestrian conflict.	The conflict has been minimised.	Yes
	(72) Provide bicycle access and bicycle parking facilities which are consistent with the requirements of Part 3.9.2.	The proposal has provided bicycle parking in accordance with State Environmental Planning Policy (ARH) 2009.	Yes
	(73) Where possible, parking is to be located below ground.	All car parking spaces are located below ground with the exception of the vehicular access lift, loading bay and two waiting bays.	Yes
	(74) Car parking may project above ground level where car park ventilation and ground floor privacy are adequate and must be screened with landscaping	Not proposed.	NA
	(75) Car parking may not project above ground on Railway Parade.	No car parking above ground level fronting Railway Parade. All access is via Blake Street.	Yes
	(76) Parking is to be provided in accordance with the requirements the DCP	Complies.	Yes
Vehicular Access and Driveways	(77) Driveways from Railway Parade are discouraged. Access to car parking is to	Two-way driveway access proposed from Blake Street.	Yes

	<p>be from secondary streets or right of ways/access ways.</p> <p>(78) Where vehicular access is proposed from Railway Parade, this must be a temporary vehicular access.</p> <p>(79) 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.</p> <p>(80) Front entrances and front porches to residential buildings should take advantage of the 1m change of level, with well-designed front steps, handrails, balustrades and ramps.</p>	<p>Not proposed to Railway Parade.</p> <p>The proposed vehicular crossing does not result in the removal of any street trees as none exist within the Council reserves.</p> <p>The proposal incorporates a ramped entry into the residential lobby which is accessed from Blake Street.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Traffic Movement	<p>(83) Provide vehicular access to parking and service areas from side streets or rear lanes where possible. Where rear laneway access cannot be achieved in the short term, temporary vehicular access may be provided from Railway Parade but should be consolidated and minimised.</p> <p>(84) Provide easements for 'rights of access to sites that could be isolated. These easements are to take the form of laneways of minimum width 6m to accommodate vehicle passing.</p> <p>(85) Provide an appropriate level of parking facilities, both public and private, within new developments.</p>	<p>The proposal provides vehicular access from Blake Street which is the secondary site frontage.</p> <p>Not required.</p> <p>Complies with the required car parking.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Private Open Space and Balconies	<p>(88) Provide a high standard of outdoor living to residential apartments.</p>	<p>Balconies are proposed for each room.</p>	<p>Yes</p>

	(89) Design building facades and apartment layout so that balconies are functional and responsive to environmental conditions.	The balconies are roofed to provide weather protection and allow for natural ventilation.	Yes
	(90) Integrate balconies into the overall building form and to enhance the articulation of facades.	The balconies are integrated into the façade design.	Yes
	(91) Balconies on the floor above ground level should appear as recessed spaces behind 'holes' in the façade, with solid balustrades provided, to strengthen the consistent two (2) storey street edge.	The balconies are recessed into the façade at each level.	Yes
	(92) Balustrades above the 1st floor (Level 3 and above) can be a combination of solid and transparent materials.	A mix of solid and glass balustrades are proposed.	Yes
	(93) Create an active interface between the public and private domain, to encourage casual overlooking and surveillance of the street.	Majority of balconies overlook the street.	Yes
	(94) Provide opportunities for external clothes drying facilities.	Drying facilities are provided within each room, the balcony could be used for external drying.	Yes
	(95) Design balconies fronting Railway Parade which are recessed into the façade or enclosed with walls, columns or roofs, to provide sufficient enclosure to protect the amenity of their users.	All balconies are recessed into the façade.	Yes
	(96) Rooftop terraces are permitted where they are the primary open space areas associated with a rooftop development (for example a	Not proposed.	N/A

	penthouse apartment). Where proposed, they must have direct access to a living area and be level with that living area.		
Public Domain, Landscaping and Communal Open Space	(97) Integrate new development with the surrounding environment by extending paving treatments into the required 2m front setback.	The proposal incorporates a front setback of 2m to Railway Parade.	Yes
	(98) Select tree and plant species appropriate to soil and microclimate, in particular local indigenous or Australian native plant species.	The proposal is supported by Council's consulting arborist subject to additional planting in Blake Street.	Yes
	(99) Where appropriate, incorporate deep soil areas within the development to accommodate large trees and provide for stormwater infiltration.	Given that the site is zoned B4 Mixed Use, no deep soil planting has been proposed as the development is built to the boundary and is the redevelopment of an isolated lot so there are considerable site constraints.	N/A
	(100) Design podium areas to sustain planting for communal open spaces.	Not applicable.	N/A
Services Infrastructure and Stormwater Management	(101) Reduce visual intrusion and enhance amenity by integrating undergrounding of services and infrastructure in new development.	Services are to be located below ground. This would be reinforced by conditions of consent should the application be supported.	Yes
	(102) Provide adequate drainage, services and facilities to new development.	Provided and will be reinforced by conditions of consent of the application was to be supported.	Yes
Block 4 – Block bounded by Blake Street, Railway Parade and English Street, including	Controls for this precinct have been deferred from Consideration.	The proposal is considered to appropriately respond to the site and immediate context as	Yes



the Kogarah RSL Site		addressed within this report.	
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### Development Contributions

108. Section 7.11 development contributions are applicable to the proposed development. Conditions of consent have been recommended should the application be supported.

### Georges River Interim Policy Development Control Plan 2020

109. Council has implemented the Georges River Interim Policy DCP. The aim of the Interim Policy is to address current inconsistencies in development controls. The Interim Policy will give certainty to the community that Development Applications are being assessed on a more consistent basis. The Interim Policy came into effect on 22 July 2019 and shall be considered in the assessment of all applications for dwelling houses, dual occupancies, multi dwelling housing and residential flat buildings from this date.

### IMPACTS

#### *Natural Environment*

110. The proposal includes excavation that has been assessed as being reasonable in the context of the site and consistent with the extent of excavation expected in the zone that has seen uplift in building height and FSR, to permit construction of basement car parking. Excavation impacts will be managed with standard conditions of consent should the application be supported to protect the environment with respect to contamination and impact onto adjoining allotments and the public domain.

111. The proposed development will not adversely affect the natural environment.

#### *Built Environment*

112. The proposed development is of a design which is contextually appropriate for the site and is harmonious with the immediate context. The proposal in its current form will not result in adverse privacy, amenity, solar access, view loss impacts to adjoining properties and is worthy of support.
113. The proposed volume and general layout of the proposal as amended is now considered to be a generally appropriate design response to the constraints of the site, particularly with respect to street address, vehicular access and streetscape.
114. The applicant has provided correspondence from Ausgrid confirming that a substation is not required.
115. A BCA Statement was submitted with the application which indicates that at the Construction Certificate stage the non-compliances with the Deemed to Satisfy (DTS) provisions of the Building Code of Australia will be addressed via alternate solutions and fire engineered solutions for the egress, fire resisting construction and protection of openings. In addition the statement details that BCA compliance can be achieved in relation to light and ventilation. A deferred commencement condition of consent is recommended in this regard.
116. The current plans raise concerns with the amenity of Suite 1 with respect to outlook and internal amenity given the relationship of the openings to the wall of the adjoining development which is on the boundary. This development is new and is not going to alter in the near future. In this regard this suite is not supported, as a result the development is recommended via a deferred commencement condition to be modified to remove a suite

and rework the layout of suites. The following deferred commencement condition is recommended.

117. The development is to be amended in the following way in order to provide an acceptable level of amenity for future occupants as well as ensuring compliance with State Environmental Planning Policy (Affordable Rental Housing) 2009
  - a. Combine Suite 1 and Suite 2, which will result in the loss of one (1) suite, enlarging the Blake Street balcony to a minimum 8sqm and nominating the suite as the Manager's Room.
  - b. Nominating Suite 7 (previously the Managers Room) as a boarding room.
118. In addition, a deferred commencement condition is recommended for plans to be provided demonstrating the location of the necessary building services and infrastructure including the hydrant booster assembly. It is considered the main entry, being the lobby servicing the boarding house is to be relocated towards Railway Parade, the colonnade and column supports amended to provide a location for the hydrants booster assembly to the located adjacent to the wall which surrounds car waiting bay associated with the car lift.

### ***Social Impact***

119. The proposal is not considered to result in any adverse social impact. The proposal meets the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 and provides an affordable housing option for the community. A Plan of Management has been provided, reviewed and is considered as acceptable. The Plan of Management is conditioned to be complied with as part of the development consent.

### ***Economic Impact***

120. The proposal is not considered to result in unreasonable material economic impact given that the boarding house provides affordable housing opportunities within the locality and the commercial tenancy will introduce new employment opportunities to the area.

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

121. The site is zoned B4 Mixed Use, and boarding houses and commercial development are permissible forms of development in this zone. It is considered the proposal will not result in an adverse impact on the adjoining properties or the streetscape.

## **SUBMISSIONS AND THE PUBLIC INTEREST**

### **Submissions**

122. The application was notified between 13 May 2020 and 10 June 2020 to owners and occupiers in the immediate locality in accordance with the provisions of the Kogarah Development Control Plan. In response, two (2) submissions were received which raised the following concerns.

#### Too many boarding houses in the neighbourhood

123. Comment: A boarding house is a permissible land use within the B4 Mixed Use Zone with development consent.

#### Traffic impacts from more development

124. Comment: The proposal provides the required number of parking spaces and the site is located within walking distance of public transport options.

#### Noise impacts from more development

125. Comment: A Plan of Management will be enforced to manage to use of the communal room and communal balcony via conditions of consent should the application be supported.

The building should be no higher than 4 storeys

126. Comment: The proposal is six storeys high and is 19m lower in height than the maximum permitted height of a building on the site. The applicant has not been requested to reduce the development scale.

City views are blocked by the building

127. Comment: The retention of existing views across the subject site is difficult and cannot be avoided due to the orientation of the site and the height and density permitted on the site. The proposed building reaches a height that is consistent with the podium height of the adjacent buildings and does not extend above the height of the residential units on the adjacent sites.

Property values are decreased

128. Comment: Property values are not a 'Matter for Consideration' under the Environmental Planning and Assessment Act 1979.

Objection to basement parking

129. Comment: The proposal is required to provide parking on site and basements are permitted to provide the required parking.

Damage to neighbouring buildings during construction

130. Comment: These matters would be controlled as part of the construction and completion phase of the development. Conditions of consent are recommended for pre and post construction dilapidation reports to be submitted.

Noise impacts during construction

131. Comment: These matters would be controlled as part of the construction and completion phase of the development. Hours of construction activity are limited to 7am to 5pm, Monday to Saturday. A condition of consent is recommended in this regard.

## Public Interest

132. Having regard to its size, shape, topography, vegetation and relationship to adjoining developments, the proposal is considered to result in an appropriate built form and approval of the development is in the public interest.

## REFERRALS

### Council Referrals

Development Engineer

133. No objections were raised, and specific conditions of consent have been recommended and included in the conditions referenced at the end of this report.

Environmental Health Officer

134. No objections were raised, and specific conditions of consent have been recommended and included in the conditions referenced at the end of this report.

Environmental Services Team (Waste)

135. Conditions of consent have been recommended and included in the conditions referenced at the end of this report.

Traffic Engineer

136. No objections were raised, and specific conditions of consent have been recommended and included in the conditions referenced at the end of this report. The Traffic Team reviewed the submitted swept path diagrams and are satisfied in relation to access to and from the basement, and sightlines when leaving the basement.

Consultant Arborist

137. No objections were raised, and specific conditions of consent have been recommended and included in the conditions referenced at the end of this report.

Strategic Planner Urban Designer

138. Council's Strategic Planner has reviewed the proposal in its current form and supports the proposal.

**External Referrals**Ausgrid

139. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. Ausgrid have raised no objection to the proposal subject to conditions of consent.
140. In addition, the applicant has sought advice from Ausgrid on the requirement for a substation. Ausgrid have advised a substation is not required for the proposal and have provided an offer to provide basic connection services.

Sydney Trains

141. The application was referred to Sydney Trains on 1 May 2020. Conditions of consent were received on 22 June 2020.

Sydney Airport

142. The application was referred to Sydney Airport on 1 May 2020. A response was received on 18 May 2020 and no objection is raised to the proposal.

WaterNSW

143. The application was referred to WaterNSW on 1 May 2020. In response, no comments were received upon finalisation of this assessment report (21 July 2020).

NSW Police

144. The application was referred to NSW Police on 1 May 2020. In response, no comments were received upon finalisation of this assessment report (21 July 2020).

CASA

145. The application was referred to CASA on 1 May 2020. CASA responded on 7 May 2020 to advise there was no objection to the proposal.

Natural Resources Access Regulator

146. The application was referred to NRAR on 1 May 2020. In response, no objection was raised to the proposal.

**CONCLUSION**

147. Development consent is sought for the demolition of existing structures and construction of a mixed use building comprising of commercial space beneath a boarding house.

148. The proposal has been assessed in accordance with Section 4.15 (1) and 8.2 of the Environmental Planning and Assessment Act, 1979. As discussed throughout this report, the proposal is considered to be compatible with the character of the local area and complies with the boarding house standards of State Environment Planning Policy (Affordable Rental Housing) 2009. The proposal also satisfies the B4 Mixed Use zone objectives, in addition to complying with the relevant Local Environmental Plan and Development Control Plan requirements. The proposed development is considered to be suitable for the site and the locality and is appropriately located within an accessible distance from local public transport and commercial centre.
149. The proposal has adequately addressed the reasons for refusal of the original Development Application, subject to some further amendments to the proposal which are include as deferred commencement conditions, the application is acceptable and is recommended for approval, subject to conditions of consent.

## **DETERMINATION AND STATEMENT OF REASONS**

### **150. Statement of Reasons:**

- The Review application has adequately responded to the reasons for refusal and proposes a development suitable for the site and the surrounding context.
- The proposal is an appropriate response to the site and is consistent with the desired future character of the B4 Mixed Use zone and existing developments in the locality.
- The proposal is compliant with the boarding house standards and the character test as outlined in State Environment Planning Policy (Affordable Rental Housing) 2009.
- The boarding house is located in an accessible location as defined in the State Environment Planning Policy (Affordable Rental Housing) 2009.
- The proposal is fully compliant with the maximum height of building and floor space ratio permitted for the site under the Kogarah Local Environmental Plan 2012.
- The proposal's bulk and scale is appropriately contained within a compliant building envelope that is respectful of the established character of the area in relation to built form, bulk and scale.
- The proposal has sufficient façade modulation and wall articulation that will serve to provide visual interest and is proportioned not dissimilar to the adjoining RSL development.

### **Determination**

151. THAT pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979 (as amended) Georges River Local Planning Panel grant deferred commencement consent to REV2020/0013 for demolition of existing structures and construction of a mixed use development comprising a commercial tenancy on the ground floor and a boarding house over containing forty two (42) rooms inclusive of the Managers Room, over three (3) levels of basement carpark including landscaping and site works at Lot 48 in DP 2013 and known as 248 Railway Parade, Kogarah, subject to the following conditions:

This Development Application is a Deferred Commencement Consent under Section 4.16(3) of the Environmental Planning and Assessment Act (as amended) 1979. Strict compliance is required with **all conditions appearing in Section A** within **thirty six (36) months from the Determination Date of this consent**. Upon confirmation in writing from Georges River Council that the Section A Conditions have been satisfied, the consent shall commence to operate as a Development Consent for a period of five (5) years from the **Determination Date of this consent**.

Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, this consent will not operate until the following requirements are satisfied:

## **SECTION A – DEFERRED COMMENCEMENT CONDITIONS**

A. **Deferred Commencement** – Pursuant to Section 4.16(3) of the [Environmental Planning and Assessment Act 1979](#), this consent will not operate until such time as the following requirements are met to the satisfaction in writing of an appropriate Council delegate.

1. Details are to be annotated on a plan showing the location of the booster assemblies to comply with the National Construction Code (Building Code of Australia). It is acknowledged that the location where the assembly can be accommodated in the area adjacent to the main entry and the wall surrounding the car waiting bay servicing the car lift with amendments to the columns supporting the colonnade. In order to provide sufficient space for the booster assembly and other fire safety equipment, the entry door to the main lobby servicing the lifts to the boarding house is to be relocated toward Railway Parade. The location is to be provided to ensure that the façade of the building remains as proposed and is complimentary within the streetscape.
2. The current plans raise concerns with the amenity of Suite 1 with respect to outlook and internal amenity given the relationship of the openings to the wall of the adjoining development which is on the boundary. In order to improve occupant amenity the following design changes are to be made to the plans:

The development is to be amended in the following way in order to provide an acceptable level of amenity for future occupants as well as ensuring compliance with State Environmental Planning Policy (Affordable Rental Housing) 2009

- a. Combine Suite 1 and Suite 2, which will result in the loss of one (1) suite, enlarging the Blake Street balcony to a minimum 8sqm and nominating the suite as the Manager's Room.
- b. Nominating Suite 7 (previously the Managers Room) as a boarding room.
3. The following information is to be submitted in addition to the requirements outlined in 1 and 2 above:
  - a. Submission of a profile (longitudinal section) demonstrating access clearance by the B85 Design Vehicle (85% percentile vehicle in accordance with AS2890.1 2004)" for the entry.
  - b. This profile (scale 1:20) is to show levels and grades from road centreline to the proposed internal garage floor level including but not limited to levels of, road centreline, changes of grade on road surface, lip of gutter, invert of gutter, back of vehicular crossing(gutter layback), front of path, back of path and boundary. The profiles provided are to also include the natural surface of the land as well as the proposed design including cut and fill dimensions.

- c. Additional profiles are to be provided on either side of driveway when longitudinal grade of road exceeds 8%.
- d. The profile will be used to assess suitability of proposed internal driveway levels and does not represent final footpath or road levels. The levels on Councils road related area including boundary level will be provided follow the submission of an “Application for Driveway Crossing and Associated Works on Council Road Reserve” issued under Section 138 Roads Act.
- e. The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.

Documentary evidence as requested or the above information must be submitted within **thirty six (36) months** of the granting of this deferred commencement consent.

Commencement of the consent cannot occur until written approval of the submitted information has been given to Council.

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

## **SECTION B – GENERAL DEVELOPMENT CONDITIONS**

### **Development Details**

1. **Fit-out of retail premises** - No approval is granted for the use or fit-out of the retail premises. Separate Development Consent for the use and fit-out is required prior to the occupation of the retail component of the development.
2. **Approved Plans** - The development must be implemented in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where marked up on the plans and/or amended by conditions of this consent:

Description	Reference No.	Date	Rev	Prepared by
Roof/Site Plan	AP_1000	31/3/2020	B	Moderinn Pty Ltd
Basement 1,2,3	AP_1001	31/3/2020	B	Moderinn Pty Ltd
Ground Level Floor Plan	AP_1002	31/3/2020	B	Moderinn Pty Ltd
Level 1 Floor Plan	AP_1003	31/3/2020	B	Moderinn Pty Ltd
Levels 2 & 3 Floor Plan	AP_1004	31/3/2020	B	Moderinn Pty Ltd
Levels 4 & 5 Floor Plan	AP_1005	31/3/2020	B	Moderinn Pty Ltd
Section A-A	AP_2000	31/3/2020	B	Moderinn Pty Ltd
NW Elevation	AP_3000	31/3/2020	B	Moderinn Pty Ltd
NE Elevation	AP_3001	31/3/2020	B	Moderinn Pty Ltd
SW Elevation	AP_3002	31/3/2020	B	Moderinn Pty Ltd
SE Elevation	AP_3003	31/3/2020	B	Moderinn Pty Ltd
Finishes Schedule	AP_7000	31/3/2020	B	Moderinn Pty Ltd
Landscape Plan	18/3890 L01	27/3/2020	A	Zenith Landscape Designs



Acoustic Assessment	0249-AC-02-A	March 2020		Broadcrest Consulting Pty Ltd.
Detailed Environmental Site Assessment	REF-0249-ESA	July 2020		Broadcrest Consulting Pty Ltd.

LPP033-20

### Separate Approvals Required Under Other Legislation

3. **Vehicular Crossing - Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:
  - (a) Construct a full width (boundary to kerb) footpath area in paving material for the full length of the frontage of the site in Railway Parade and Blake Street in accordance with Council's Specifications applying at the time construction approval is sought.
  - (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
  - (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
  - (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.
4. **Building - Hoarding Application** - Prior to demolition of the buildings on the site, or the commencement of work above ground level, a separate application for the erection of an 'A class' (fence type) or a 'B class' (overhead type) hoarding or 'C type' scaffold, in accordance with the requirements of SafeWork NSW, must be erected along that portion of the footways/roadway where the building is within 3 metres of the street boundary.

An application for this work under Section 68 of the [Local Government Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>> and the Roads Act 1993 must be submitted for approval to Council.

The following information is to be submitted with a Hoarding Application under Section 68 of the [Local Government Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>> and Section 138 of the [Roads Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>>:

- a) A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and
- b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
- c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au) <<http://www.georgesriver.nsw.gov.au>>) before the commencement of work; and
- d) Public Risk Insurance Policy with a minimum cover of \$20 million in relation to the occupation of and works within Council's road reserve, for the full duration of the

proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party.

5. **Below ground anchors - Information to be submitted with S68 Application under LGA 1993 and S138 Application under Roads Act 1993** - In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application must be lodged with Council under Section 68 of the [Local Government Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>> and the [Roads Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>> for approval, prior to commencement of those works. The following details must be submitted.
- a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.
  - b) The applicant has indemnified Council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of Council.
  - c) Documentary evidence of such insurance cover to the value of \$20 million.
  - d) The applicant must register a non-terminating bank guarantee in favour of Council for the amount of **\$50,000.00**.  
The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
  - e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.
6. **Section 138 Roads Act 1993 and Section 68 Local Government Act 1993** - Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

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

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

- (a) Placing or storing materials or equipment;
- (b) Placing or storing waste containers or skip bins;
- (c) Erecting a structure or carrying out work
- (d) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- (e) Pumping concrete from a public road;
- (f) Pumping water from the site into the public road;
- (g) Constructing a vehicular crossing or footpath;

- (h) Establishing a “works zone”;
- (i) Digging up or disturbing the surface of a public road (eg Opening the road for the purpose of connections to utility providers);
- (j) Stormwater and ancillary works in the road reserve;
- (k) Stormwater and ancillary to public infrastructure on private land; and
- (l) If any excavation is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways.

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

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

7. **Road Opening Permit** - A Road Opening Permit must be obtained from Council, in the case of local or regional roads, or from the RMS, in the case of State roads, for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.

### **Requirements of Concurrence, Integrated & Other Government Authorities**

8. **Sydney Trains** - Prior to the issuing of a Construction Certificate, the Applicant shall consult with Sydney Trains regarding the provisions of either:
  - Certification from a qualified Geotechnical and Structural Engineer stating that the proposed works are to have no negative impact on the rail corridor and associated rail infrastructure, or
  - A Geotechnical Engineering report, Structural Report and Drawing for review by Sydney Trains. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by Sydney Trains. The report shall include the potential impact of demolition and excavation, and demolition - and excavation - induced vibration in rail facilities, and loadings imposed on Sydney Trains Facilities by the development.

The Applicant shall prepare an acoustic assessment demonstrating how the proposed development will comply with the Department of Planning's document titled “Development Near Rail Corridors and Busy Roads- Interim Guidelines”. The Applicant must incorporate in the development all the measures recommended in the report. A copy of the report is to be provided to the Principal Certifying Authority and Council prior to the issuing of a Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the acoustic assessment are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.

Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents.

The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate. Sydney Trains is a NSW Government agency Ground Floor - East, 36-46 George Street, Burwood NSW 2134 - PO Box 459 Burwood NSW 1805 Phone 8575 0780 Email [DA\\_sydneytrains@transport.nsw.gov.au](mailto:DA_sydneytrains@transport.nsw.gov.au) [www.transport.nsw.gov.au/sydneytrains](http://www.transport.nsw.gov.au/sydneytrains) ABN 38 284 779 682

If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects and who holds current professional indemnity insurance.

Prior to the issuing of a Construction Certificate the Applicant must submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:

- oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
- acts as the authorised representative of the Applicant; and
- is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.

Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.

Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains external party interface team. In this instance the relevant interface team is Central and they can be contacted via email on [Illawarra\\_Interface@transport.nsw.gov.au](mailto:Illawarra_Interface@transport.nsw.gov.au). Sydney Trains is a NSW Government agency Ground Floor - East, 36-46 George Street, Burwood NSW 2134 - PO Box 459 Burwood NSW 1805 Phone 8575 0780 Email [DA\\_sydneytrains@transport.nsw.gov.au](mailto:DA_sydneytrains@transport.nsw.gov.au) [www.transport.nsw.gov.au/sydneytrains](http://www.transport.nsw.gov.au/sydneytrains) ABN 38 284 779 682

Where a condition of consent requires Sydney Trains or Transport for NSW endorsement the Principal Certifying Authority is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.

## 9. **AUSGRID**

### **Conduit Installation**

The need for additional electricity conduits in the footway adjacent to the development will be assessed and documented in Ausgrid's Design Information, used to prepare the connection project design.

### **Street lighting**

The developer is to consider the impact that existing street lighting and any future replacement street lighting and maintenance may have on the development. Should the developer determine that any existing street lighting may impact the development, the developer should either review the development design, particular the placement of windows, or discuss with Ausgrid the options for relocating the street lighting. The relocating of any street lighting will generally be at the developers cost. In many cases is not possible to relocate street lighting due to its strategic positioning.

### **Proximity to Existing Network Assets**

#### **Overhead Powerlines**

There are existing overhead electricity network assets in Blake Street, KOGARAH.

Safework NSW Document - Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, [www.ausgrid.com.au](http://www.ausgrid.com.au)

Based on the design of the development provided, it is expected that the "as constructed" minimum clearances will not be encroached by the building development. However it remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site.

### **Underground Cables**

There are existing underground electricity network assets in RAILWAY PARADE,



**KOGARAH.**

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia - Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

Please do not hesitate to contact Wei Yao on Ph: (02) 9394 6932 (please quote our ref: Trim 2017/18/66) should you require any further information.

10. **Electricity Supply** - An application is required to be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application being lodged with Ausgrid is required to be provided to the Certifying Authority prior to the issue of a Construction Certificate. For further details, you are advised to contact Ausgrid on 13 13 65 or [www.ausgrid.com.au](http://www.ausgrid.com.au) (Business and Commercial Services).
11. **Connection to the network will be required prior to the release of any Occupation Certificate** - Where works within the road reserve are to be carried out by the developer, a Road Opening Permit must be obtained from Council's Customer Service Centre before commencement of work.
12. **Electricity Supply to Development** - The electricity supply to the Development must be underground.
13. **Above ground power lines** - All existing overhead power lines within or adjacent to the development site shall be relocated underground to Energy Australia standards and specifications. If not practicable to relocate the power line underground, arrangements shall be made with Energy Australia to place the conduit to carry those power lines underground so that they can be utilised at a later date by Energy Australia. In this regard all associated costs shall be borne by the applicant.
14. **Geotechnical Report** - Prior to the issue of a Construction Certificate the Applicant shall provide Sydney Trains with a Geotechnical Report and structural drawings/report. These reports shall provide confirmation that there will be no negative impact on Sydney Trains infrastructure and land. Written confirmation shall be provided from Sydney Trains to the Certifying Authority confirming this condition has been satisfied.
15. **Sydney Water - Tap in<sup>TM</sup>** - The approved plans must be submitted to a Sydney Water Tap in<sup>TM</sup> to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in<sup>TM</sup> agent has appropriately stamped the plans prior to the issue of the Construction Certificate.

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

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

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

17. **WaterNSW**

Condition Number		Details
<b>Dewatering</b>		
GT0062-00001		Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application.
GT0063-00001		An authorisation under the relevant water legislation, such as a Water Access Licence (WAL), shall be obtained for the take of groundwater as part of the activity. For avoidance of doubt, these terms do not represent any authorisation for the take of groundwater, nor do they constitute the grant, or the indication of an intention to grant, any required WAL.
GT0064-00001		An authorisation under the relevant water legislation, such as an Approval, is also required for the works involved in extracting the groundwater. For avoidance of doubt, these terms do not represent any authorisation for the construction or installation of such works.
GT0065-00001		The relevant works must not be carried out, installed or operated until a specialist hydrogeological assessment has been completed by the Department of Planning Industry and Environment, which concludes that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the construction or use of the proposed water management work.
GT0066-00001		The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.
GT0067-00001		Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and: a. any groundwater mounding



	at the edge of the structure shall be at a level not greater than 10% above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and b. any elevated water table is more than 1.0m below the natural ground surface existent at the location immediately prior to the construction of the structure; and c. where the habitable part of the structure (not being footings or foundations) is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.
GT0068-00001	Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.
GT0069-00001	The Applicant is bound by the above terms and any other terms and conditions of the subsequent authorisation(s) required for the extraction of groundwater and the associated works under the relevant water legislation.
GT0070-00001	Measurement and monitoring arrangements to the satisfaction of WaterNSW are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.
GT0071-00001	Following cessation of the dewatering operations and prior to the surrender of any associated authorisation, the applicant shall submit to WaterNSW the completion report which shall include: a. detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and b. The location and construction of groundwater extraction works that are decommissioned c. a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and d. a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.

### Prior to the Issue of a Construction Certificate

18. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
19. **Pre-Construction Dilapidation Report - Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises.

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

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

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

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

An on-site detention (OSD) facility designed by a professional engineer who specialises in Hydraulic Engineering must be designed and certified. The design must comply with the results of the generated stormwater management report regarding the OSD storage volume and the stormwater permissible site discharge.

- (a) Provide at least one grated access and sufficient ventilation to the OSD tank.
- (b) Provide sealed access for future maintenance.
- (c) The PCA shall ensure that the proposed high level overflow pipe of 225mm diameter is properly installed as shown on the plan Dwg No. (404-06 ) and is functioning as intended to avoid flooding the building once the OSD tank is full.
- (d) The PCA shall ensure that a drainage engineer shall supervise the construction of the OSD stormwater system and certify his supervision in writing and state his satisfaction of the constructed stormwater system on site that it is built as intended in this consent.
- (e) The design and structural adequacy of the OSD tank system shall be certified by a practicing structural engineer to the satisfaction of the PCA.

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

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

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

Full details shall accompany the application for the Construction Certificate.

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

Where any shoring is to be supporting, or located on Council's property, certified structural engineering drawings detailing; the extent of the encroachment, the type of shoring and the method of removal, shall be included on the plans. Where the shoring

cannot be removed, the plans must detail that the shoring will be cut to 150mm below footpath level and the gap between the shoring and any building shall be filled with a 5MPa lean concrete mix.

22. **Damage Deposit - Major Works** - In order to insure against damage to Council property the following is required:

- (a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$57,758.28** (Not inclusive of drainage works)
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$742.00.**
- (c) Submit to Council, before the commencement of work, a dilapidation report of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

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

23. **Geotechnical report** - The applicant must submit a Geotechnical Report, prepared by a professional engineer specialising in geotechnical engineering who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted before the issue of the Construction Certificate and is to include:

- (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
- (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the PCA and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
- (c) On-site guidance by a vibration specialist during the early part of excavation.
- (d) Measures to minimise vibration damage and loss of support to other buildings. Where possible any excavation into rock is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures. Where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) the report shall detail the maximum size of hammer to be used and provide all reasonable recommendations to manage impacts.
- (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

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

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

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

25. **Engineering** – The following conditions relate to design and operation of the car park and driveway access:

- 1) Driveway access to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.
- 2) In the instance of multi storey car park and to prevent vehicles from running over the edge of a raised platform or deck of a multi-story car park, barriers in accordance to AS2890.1:2004 section 2.4.5.3 need to be installed.
- 3) 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*.
- 4) The proposed car lift should be sign posted to alert the drivers entering the car lift is by reversing in only.
- 5) The proposed car lift should include a warning light at each level, which will turn on when the lift mechanism is in operation.
- 6) A convex safety mirror can be provided at a the location, so that vehicles exiting the car lift at the ground level can perceive any vehicles entering the site through the crossover and any pedestrians walking along the footpath.
- 7) That the car lift to be installed and used for access to the basement parking to have a minimum speed of **0.3m/s**.

26. **Acoustic Requirements - Compliance with submitted Acoustic Report** - The Construction Certificate plans shall demonstrate compliance with the Acoustic Assessment submitted to Council, titled *the "Acoustic Assessment" dated March 2020; File Reference: 0249-AC-02-A by Broadcrest Consulting Pty Ltd*.

This means that a review of glazing design and mechanical plant must be undertaken to ensure that acoustic objectives will be met. It is also imperative that section 6.4.3 of *the "Acoustic Assessment" dated March 2020; File Reference: 0249-AC-02-A by Broadcrest Consulting Pty Ltd* is addressed. Written verification from a suitably qualified acoustic consultant must be submitted to Council validating that the acoustic objectives contained within the aforementioned report will be met, must be submitted to Council for approval.

The Construction Certificate will not be issued until Council approves this validation.

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

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

The path to the bin room is to be at least 1 metre wide and kept clear and unobstructed at all times.

#### Residential Waste

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

- (a) Domestic Waste - 1 x 240 litre mobile garbage bin per 2 units/dwellings, collected weekly.
- (b) Domestic Recycling - 1 x 240 litre mobile garbage bin per 2 units/dwellings, collected weekly.
- (c) Green Waste - 1 to 2 x 240 litre mobile bins per development.

Larger 1,100 litre mobile bins may be used as an alternative, but an equivalent amount of space will need to be provided and door widths reconsidered if larger bins are used.

It is required that either a chute system be used or storage space be provided on each occupied storage (to store at least two days' worth of waste) in 240L bins, to be rotated by a building manager for collection for servicing from the bin room on the ground floor.

28. **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:

#### Commercial Waste

- (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 for the number of units and intended uses of the building.

Bins shall be stored 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.

29. **Waste Handling Systems** - All waste handling equipment and systems used in

conjunction with the provision of waste and recycling services shall be manufactured, installed and maintained in accordance with any applicable regulatory requirements, relevant Australian Standards, and relevant manufacturer's specifications.

30. **Public Domain Plan** - The Applicant is required to submit Public Domain Plans which are to consist of full civil engineering drawings to Australian Standards. Inclusive of new kerbing long sections, cross sections, driveway, drainage, paved footpath, landscape and tree pits, and in accordance with Councils "Public Domain Streetscape Works Specification".

The public domain works shall be constructed in accordance with the approvals and specifications issued under the "Application for Driveway Crossing and Associated Works on Council Road Reserve" Roads Act 1993 Section 138 Approval issued by Council's Assets and Infrastructure Division.

Applications to be made at Georges River Council Customer Service Centre.

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

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

Please contact Council prior to the payment of Section 7.11 Contributions to determine whether the amounts have been indexed from that indicated below in this consent and the form of payment that will be accepted by Council.

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

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

Fee Type	Fee
<b>GENERAL FEES</b>	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://portal.longservice.nsw.gov.au/bci/levy/">https://portal.longservice.nsw.gov.au/bci/levy/</a>	
Builders Damage Deposit (footpaths and roadworks) Calculation based on \$1,236.00 per metre of street frontage: Railway Parade 11.53m Blake Street 35.2m	\$57,758.28
Inspection Fee for Refund of Damage Deposit (minimum of two (2) inspections at \$371 per inspection)	\$742.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Kogarah Section 94 Development Contributions Plan No.8 - Kogarah Town Centre - Streetscape, Open Space & Public Domain	\$482,682.90
Kogarah Section 94 Development Contributions Plan No.8 - Kogarah Town Centre - Traffic Facilities	\$12,667.62
Kogarah Section 94 Development Contributions Plan No.8 - Kogarah Town Centre - Community Facilities	\$8,604.54

Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries – Buildings	\$8,019.48
Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries – Books	\$5,717.88
<b>Total</b>	<b>\$517,692.42</b>

### General Fees

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

### Development Contributions

The Section 7.11 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

#### Indexation

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

#### Timing of Payment

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

#### Further Information

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

32. **Site Management Plan** - A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:

- a) location of protective site fencing;
- b) location of site storage areas/sheds/equipment;
- c) location of building materials for construction, e.g. stockpiles
- d) provisions for public safety;
- e) dust control measures;
- f) method used to provide site access location and materials used;
- g) details of methods of disposal of demolition materials;
- h) method used to provide protective measures for tree preservation;
- i) provisions for temporary sanitary facilities;
- j) location and size of waste containers/skip bins;
- k) details of proposed sediment and erosion control measures;
- l) method used to provide construction noise and vibration management;
- m) construction and demolition traffic management details.

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



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

33. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1009898M\_02 dated 9 April 2020 must be implemented on the plans lodged with the application for the Construction Certificate.
34. **Required design changes** - The following changes are required to be made and shown on the Construction Certificate plans:
- a) The drainage engineer shall show on an amended drainage plan, that the headroom clearance under the suspended OSD tank is complying with the requirement of the relevant AS(2890.1) and AS(2890.2). If required the architectural plan shall also be amended accordingly.
  - b) Lighting is to be provided on the underside of the colonnade.
35. **Erosion & Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
- (a) Compliance with the approved Erosion & Sediment Control Plan
  - (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
  - (c) All clean water runoff is diverted around cleared or exposed areas
  - (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
  - (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
  - (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
  - (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
  - (h) Compliance with [Managing Urban Stormwater - Soils and Construction \(Blue Book\) produced by Landcom 2004](#).

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

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

- (a) All stormwater shall drain by gravity to the upper level of Council's kerb inlet pit located in Railway Parade as shown on the drainage plan in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.
- (c) The PCA shall ensure that the approved drainage design levels are to be surveyed during construction by a registered surveyor.

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

- 37. **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).
- 38. **Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage areas, transfer of waste around the development once operational and collection/removal of all materials from the site once operational (both residential and commercial wastes) shall be submitted to the Certifying Authority/Council prior to the issue of any Construction Certificate.

The WMP should also outline considerations for commercial waste to be generated during on-going operations of the development, enabling separate storage of residential and commercial wastes.

- 39. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Zenith Landscape Designs, Ref 18 - 3890 LO1, REV A and dated 27/3/20. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following;
  - a) An additional one (1) tree shall be planted within Councils street verge in the location of the right side of driveway, fronting Blake St and species selection being *Tristaniopsis laurina*, be of minimum 75 litre pot/ bag size.
  - b) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
  - c) All trees proposed upon the approved landscape plan shall comply with AS 2303 - 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification.
  - d) If the planted four (4) trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.

- e) A certificate of compliance for the planting of all four (4) trees proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA - Principal Certifying Authority.

#### Street Tree planting

Fee Type - Tree planting on public land	Number of trees	Amount per tree
Administration Fee, tree planting and maintenance	X4	\$452.00
Cost of tree removal		N/A
Cost of Stump Grinding		N/A

#### Street Tree planting by Council -

- a) A total of four (4) trees must be provided in the road reserve fronting the site.
- b) Council shall be appointed to remove and plant all tree/s on public land. All costs associated with the removal of the tree/s and the planting of replacement trees shall be met by the applicant. Fees and charges outlined in the table below are subject to change and are set out in the current version of Council's 'Schedule of Fees and Charges', applicable at the time of payment.
- c) The fees must be paid in accordance with the conditions of this consent. The fee payable is to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.
- d) The fees payable will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant conditions set out in this consent.
40. **Allocation of street addresses** - In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing & the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street addresses for the subject development must be allocated as follows:

**New Primary Address:** 1 Blake Street KOGARAH NSW 2217

**Secondary Address:** 248 Railway Parade KOGARAH NSW 2217

**Unit Addresses:** Refer to table below.

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

Unit Addresses at 1 Blake Street KOGARAH NSW 2217							
Unit numbers on DA Plans		Floor Number	Unit numbers and addresses allocated by Council				
Level	Unit No.		Unit No	Street No	Street Name	Suburb	COMPLETE ADDRESS
Basement 1	-	B1	Basement Carpark - B1				
Basement 2	-	B2	Basement Carpark - B2				
Basement 3	-	B3	Basement Carpark - B3				
Ground Floor	Retail	G		248	Railway Parade	KOGARAH NSW 2217	248 Railway Parade KOGARAH NSW 2217
Level 1 plan	Suite 1	1	101	1	Blake Street	KOGARAH NSW 2218	101/1 Blake Street KOGARAH NSW 2218
Level 1 plan	Suite 2	1	102	1	Blake Street	KOGARAH NSW 2219	102/1 Blake Street KOGARAH NSW 2219
Level 1 plan	Suite 3	1	103	1	Blake Street	KOGARAH NSW 2220	103/1 Blake Street KOGARAH NSW 2220
Level 1 plan	Suite 4	1	104	1	Blake Street	KOGARAH NSW 2221	104/1 Blake Street KOGARAH NSW 2221
Level 1 plan	Suite 5	1	105	1	Blake Street	KOGARAH NSW 2222	105/1 Blake Street KOGARAH NSW 2222
Level 1 plan	Suite 6	1	106	1	Blake Street	KOGARAH NSW 2223	106/1 Blake Street KOGARAH NSW 2223
Level 1 plan	Manager Suite 7	1	107	1	Blake Street	KOGARAH NSW 2224	107/1 Blake Street KOGARAH NSW 2224
Level 2 Plan	Suite 8	2	201	1	Blake Street	KOGARAH NSW 2225	201/1 Blake Street KOGARAH NSW 2225
Level 2 Plan	Suite 9	2	202	1	Blake Street	KOGARAH NSW 2226	202/1 Blake Street KOGARAH NSW 2226
Level 2 Plan	Suite 10	2	203	1	Blake Street	KOGARAH NSW 2227	203/1 Blake Street KOGARAH NSW 2227
Level 2 Plan	Suite 11	2	204	1	Blake Street	KOGARAH NSW 2228	204/1 Blake Street KOGARAH NSW 2228
Level 2 Plan	Suite 12	2	205	1	Blake Street	KOGARAH NSW 2229	205/1 Blake Street KOGARAH NSW 2229
Level 2 Plan	Suite 13	2	206	1	Blake Street	KOGARAH NSW 2230	206/1 Blake Street KOGARAH NSW 2230
Level 2 Plan	Suite 14	2	207	1	Blake Street	KOGARAH NSW 2231	207/1 Blake Street KOGARAH NSW 2231
Level 2 Plan	Suite 15	2	208	1	Blake Street	KOGARAH NSW 2232	208/1 Blake Street KOGARAH NSW 2232
Level 2 Plan	Accessible Suite 16	2	209	1	Blake Street	KOGARAH NSW 2233	209/1 Blake Street KOGARAH NSW 2233
Level 3 Plan	Suite 17	3	301	1	Blake Street	KOGARAH NSW 2234	301/1 Blake Street KOGARAH NSW 2234
Level 3 Plan	Suite 18	3	302	1	Blake Street	KOGARAH NSW 2235	302/1 Blake Street KOGARAH NSW 2235
Level 3 Plan	Suite 19	3	303	1	Blake Street	KOGARAH NSW 2236	303/1 Blake Street KOGARAH NSW 2236
Level 3 Plan	Suite 20	3	304	1	Blake Street	KOGARAH NSW 2237	304/1 Blake Street KOGARAH NSW 2237
Level 3 Plan	Suite 21	3	305	1	Blake Street	KOGARAH NSW 2238	305/1 Blake Street KOGARAH NSW 2238
Level 3 Plan	Suite 22	3	306	1	Blake Street	KOGARAH NSW 2239	306/1 Blake Street KOGARAH NSW 2239
Level 3 Plan	Suite 23	3	307	1	Blake Street	KOGARAH NSW 2240	307/1 Blake Street KOGARAH NSW 2240
Level 3 Plan	Suite 24	3	308	1	Blake Street	KOGARAH NSW 2241	308/1 Blake Street KOGARAH NSW 2241
Level 3 Plan	Accessible Suite 25	3	309	1	Blake Street	KOGARAH NSW 2242	309/1 Blake Street KOGARAH NSW 2242
Level 4 Plan	Suite 26	4	401	1	Blake Street	KOGARAH NSW 2243	401/1 Blake Street KOGARAH NSW 2243
Level 4 Plan	Suite 27	4	402	1	Blake Street	KOGARAH NSW 2244	402/1 Blake Street KOGARAH NSW 2244
Level 4 Plan	Suite 28	4	403	1	Blake Street	KOGARAH NSW 2245	403/1 Blake Street KOGARAH NSW 2245
Level 4 Plan	Suite 29	4	404	1	Blake Street	KOGARAH NSW 2246	404/1 Blake Street KOGARAH NSW 2246
Level 4 Plan	Suite 30	4	405	1	Blake Street	KOGARAH NSW 2247	405/1 Blake Street KOGARAH NSW 2247
Level 4 Plan	Suite 31	4	406	1	Blake Street	KOGARAH NSW 2248	406/1 Blake Street KOGARAH NSW 2248
Level 4 Plan	Suite 32	4	407	1	Blake Street	KOGARAH NSW 2249	407/1 Blake Street KOGARAH NSW 2249
Level 4 Plan	Suite 33	4	408	1	Blake Street	KOGARAH NSW 2250	408/1 Blake Street KOGARAH NSW 2250
Level 4 Plan	34	4	409	1	Blake Street	KOGARAH NSW 2251	409/1 Blake Street KOGARAH NSW 2251
Level 5 Plan	Suite 35	5	501	1	Blake Street	KOGARAH NSW 2252	501/1 Blake Street KOGARAH NSW 2252
Level 5 Plan	Suite 36	5	502	1	Blake Street	KOGARAH NSW 2253	502/1 Blake Street KOGARAH NSW 2253
Level 5 Plan	Suite 37	5	503	1	Blake Street	KOGARAH NSW 2254	503/1 Blake Street KOGARAH NSW 2254
Level 5 Plan	Suite 38	5	504	1	Blake Street	KOGARAH NSW 2255	504/1 Blake Street KOGARAH NSW 2255
Level 5 Plan	Suite 39	5	505	1	Blake Street	KOGARAH NSW 2256	505/1 Blake Street KOGARAH NSW 2256
Level 5 Plan	Suite 40	5	506	1	Blake Street	KOGARAH NSW 2257	506/1 Blake Street KOGARAH NSW 2257
Level 5 Plan	Suite 41	5	507	1	Blake Street	KOGARAH NSW 2258	507/1 Blake Street KOGARAH NSW 2258
Level 5 Plan	Suite 42	5	508	1	Blake Street	KOGARAH NSW 2259	508/1 Blake Street KOGARAH NSW 2259
Level 5 Plan	43	5	509	1	Blake Street	KOGARAH NSW 2260	509/1 Blake Street KOGARAH NSW 2260

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

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

The report must include the following:

- Photographs showing the existing condition of the road pavement fronting the site,
- Photographs showing the existing condition of the kerb and gutter fronting the site,
- Photographs showing the existing condition of the footpath pavement fronting the site,
- Photographs showing the existing condition of any retaining walls within the footway or road, and
- The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the PCA and a copy provided to the Council.

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

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

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

42. **Site contamination - Additional information** - Any new information that comes to light during excavation (after demolition of the onsite structures and the conclusion of the detailed site investigation) which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.

The following steps must then be taken before any further works proceed onsite:

A further detailed investigation of the site should then be prepared by a suitably qualified contaminated land consultant and submitted to Council.

This report must consider whether the land is contaminated, and

- if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

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

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

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

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

44. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
- (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.



- (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
  - (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
45. **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](#).
46. **Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.
47. **Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:
- a) Set out before commencing excavation.
  - b) Floor slabs or foundation wall, before formwork or commencing brickwork.
  - c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
  - d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
  - e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
  - f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
  - g) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

Work must not proceed beyond each stage until the PCA is satisfied that the height and

location of the building is proceeding in accordance with the approved plans.

48. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The cost associated with the provision or adjustment of services within the road and footway areas is to be at the applicant's expense.

### **During Construction**

49. **Development Engineering - Damage within Road Reserve and Council Assets** - The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.
50. **Development Engineering - Public Utility and Telecommunication Assets** - The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines and cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
51. **Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.
52. **Hours of construction for demolition and building work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.

Note: A penalty infringement notice may be issued for any offence.

53. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.
54. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the [Roads Act 1993](#) and/or under Section 68 of the [Local Government Act 1993](#). Penalty infringement Notices may be issued for any offences and severe penalties apply.
55. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a



suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

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

### **Prior to the issue of the Occupation Certificate**

56. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the [Sydney Water Act 1994 <http://legislation.nsw.gov.au/>](http://legislation.nsw.gov.au/) must be submitted to the PCA prior to the issue of the Occupation/Subdivision Certificate.
57. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.
58. **Restriction to User and Positive Covenant for On-Site Detention Facility** - A Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owners of the land. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

### **Restrictions on Use of Land**

*The registered proprietor shall not make or permit or suffer the making of any alterations to any on-site stormwater management system which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of Georges River Council. The expression "on-site stormwater management system" shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to manage stormwater quantity or quality including the temporary detention or permanent retention of stormwater storages. Any on-site stormwater management system constructed on the lot(s) burdened is hereafter referred to as "the system".*

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

### **Positive Covenants**

1. *The registered proprietor of the lot(s) hereby burdened will in respect of the system:*
  - a) *keep the system clean and free from silt, rubbish and debris*
  - b) *maintain and repair at the sole expense of the registered proprietors the whole of the system so that it functions in a safe and efficient manner*
  - c) *permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant*

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

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

- a) *in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above*
- b) *the Council may recover from the registered proprietor in a Court of competent jurisdiction:*
- i. *any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (i) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.*
  - ii. *legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.*

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

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

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

61. **Vehicular crossing & Frontage work - Major development** - The following road

frontage works shall be constructed in accordance with the specifications issued under the 'Application for Driveway Crossing and Associated Works on Council Road Reserve' approval issued by Council's Assets and Infrastructure Division:

- (a) Construct a full width (boundary to kerb) footpath area in paving material for the full length of the frontage of the site in Railway Parade and Blake Street in accordance with Council's Specifications
- (b) Construct the driveway crossing in accordance with Council's specifications for vehicular crossings.
- (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering.
- (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant and in accordance with Council's Specification for Driveway Crossings and Associated Works.

A private contractor shall carry out the above work, at the expense of the applicant and in accordance with Council's Specification for Driveway Crossings and Associated Works. The driveway and road frontage works are to be completed before the issue of the Occupation Certificate.

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

- (a) If applicable Stormwater pipes, pits and connections to public stormwater systems within the road related area;
- (b) Driveways and vehicular crossings within the road related area;
- (c) Removal of redundant driveways and vehicular crossings;
- (d) New footpaths within the road related area;
- (e) Relocation of existing power/light pole if applicable
- (f) Relocation/provision of street signs
- (g) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- (h) New or reinstated kerb and guttering within the road related area and new or reinstated road surface pavement within the road where it is applicable.

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

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

If an exit from car park utilises a pedestrian footpath, then a warning system such as flashing light and/or 'alarm sound' must be installed on the subject property to alert

pedestrians of vehicles exiting the car park. The Alarm System must be designed and installed in accordance with AS2890.1 -2004.

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

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

- (a) Photographs showing the condition of the road pavement fronting the site
- (b) Photographs showing the condition of the kerb and gutter fronting the site
- (c) Photographs showing the condition of the footway including footpath pavement fronting the site
- (d) Photographs showing the condition of retaining walls within the footway or road
- (e) The full name and signature of the professional engineer.

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

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

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

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

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) The structural adequacy of the On-Site Detention system (OSD);
- (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (d) Pipe invert levels and surface levels to Australian Height Datum;

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

66. **Acoustic Compliance** - Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report titled *the "Acoustic Assessment" dated March 2020; File Reference: 0249-AC-02-A by Broadcrest Consulting Pty Ltd.*

67. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to the Ausgrid, if required.

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

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

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

69. **Completion of Landscape Works** - All landscape works and the planting of four (4) must be completed **before** the issue of the Final Occupation Certificate in accordance with approved landscape plans and specifications, drawn by Zenith Landscape Designs, Ref 18 - 3890 LO1, Rev A and dated 27/3/20. The landscaping shall be maintained in accordance with the approved plans in perpetuity,
- a) A total of four (4) trees shall be planted within Council's street verge in the location of the right side of driveway fronting Blake St and species selection being *Tristaniopsis laurina*, be of minimum 75 litre pot/ bag size.
  - b) All four (4) trees proposed shall comply with AS 2303 - 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Council's standard specification.
  - c) If the planted four (4) trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Council's Tree Management Controls, they must be replaced with the same species and pot/bag size.

A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy, Masterplan, and Tree Management Policy 2019, can be downloaded from Council's website [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).

70. **Notice to Council - Allocation of street addresses** - Prior to the issue of any Occupation Certificate, 'as-built' drawings detailing the installed and allocated street/unit address and numbering must be submitted to the satisfaction of Council.

### Operational Conditions (Ongoing)

71. **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).
72. **Lighting - General Nuisance** - Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to

ensure no adverse impact on the amenity of the surrounding area by light overspill or glare.

Flashing, moving or intermittent lights or signs are prohibited.

73. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
74. **Loading & Unloading of vehicles** - All loading and unloading of vehicles in relation to the use of the premises shall take place wholly within a dedicated loading dock/area.
75. **Entering & Exiting of vehicles** - All vehicles shall enter and exit the premises in a forward direction.
76. **Maximum Vehicle Size - Small Rigid Vehicle** - The maximum size of truck/service vehicle using the proposed development shall be limited to Small Rigid Vehicle with a maximum length of 6.4m.
77. **Responsibility of Owners Corporation** - The Owners Corporation shall be responsible for presenting all approved waste and recycling receptacles for collection, and returning all receptacles to the Main Waste Collection Room, as soon as practicable after they have been serviced.

The Owners Corporation shall also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory requirements, relevant health and environmental standards, and to the satisfaction of Council.

78. **Boarding House Operation** - The following restrictions apply to the approved development:
  - (a) The development approved under this consent constitutes a 'Boarding House' as defined under [State Environmental Planning Policy \(Affordable Rental Housing\) 2009](#) and shall not be used for the purposes of permanent residential accommodation nor hotel, motel, serviced apartments, private hotel, tourist accommodation or the like.
  - (b) Not more than two lodgers shall occupy the boarding rooms which are to contain no more than two beds.
  - (d) The total number of lodgers residing in the boarding house at any one time shall not exceed 82 lodgers.
  - (e) The lodgers must be subject to an occupancy agreement for a term of no less than three (3) months.
  - (f) The boarding house must always be operated and managed in accordance with the provisions contained within the Plan of Management, prepared by Planning Direction Pty Ltd and dated 15 March 2020.
  - (g) The use and operation of the premises must comply with the requirements of Schedule 2 (Standards for Places of Shared Accommodation) of the [Local](#)

[Government \(General\) Regulation, 2005](#) under the [Local Government Act 1993](#), the [Public Health Act, 2010](#) and Regulations thereunder.

- (h) The operation of the Boarding House shall be in accordance with the [Boarding Houses Act 2012](#) at all times. This includes the registration of the Boarding House, as required by the Act.

Subdivision of the boarding house is not permitted in accordance with the provisions of the [State Environmental Planning Policy \(Affordable Rental Housing\) 2009](#).

79. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.
80. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.

#### **Operational Requirements Under the Environmental Planning & Assessment Act 1979**

81. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
82. **Appointment of a PCA** - The erection of a building must not commence until the applicant has:
- (a) appointed a PCA for the building work; and
  - (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

If the work is not going to be undertaken by an Owner - Builder, the applicant must:

- (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 PCA for your development.

83. **Notification Requirements of PCA** - No later than two days before the building work commences, the PCA must notify:
- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
  - (b) the applicant of the critical stage inspections and other inspections that are to be



carried out with respect to the building work.

84. **Notice of Commencement** - The applicant must give at least two days notice to the Council and the PCA of their intention to commence the erection of a building.

A Notice of Commencement Form is attached for your convenience.

85. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the PCA. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the [Environmental Planning and Assessment Regulation 2000](#).

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

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

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

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

An Occupation Certificate Application Form is attached for your convenience.

### Prescribed Conditions

88. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
89. **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.
90. **Clause 98A - Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the PCA and the Principal Contractor.
91. **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](#).
92. **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.

93. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

### Advice

94. **Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
95. **Lapsing of Consent** - This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.
96. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)
97. **Energy Efficiency Provisions** - Should Council be appointed as the PCA, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the PCA.
- Energy efficiency provisions relate only to new building work or the installation of new measure. Existing building fabric and measures may not be upgraded.
98. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.
99. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or [www.ausgrid.com.au](http://www.ausgrid.com.au) (Business and Commercial Services) for further details and information on lodging your application to connect to the network.

100. **Access for persons with disabilities** - Should the Council be appointed as the PCA, an Access report prepared by an Accredited Access Consultant may be required to be submitted with the Construction Certificate Application, detailing the existing level of compliance in the building with the above requirements, and to provide details of proposed upgrading work necessary to bring the building into conformity with the Premises Standards and the BCA. All recommendations of the accredited access consultant must be incorporated in the plans to be submitted with the Construction Certificate application.
101. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

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

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

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

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

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

103. **Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
104. **Site Safety Fencing** - Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing

must be erected before the commencement of any work and maintained throughout any demolition and construction work.

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

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

- (a) Complete the Stormwater Drainage 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. DA2018/0\*\*\*) and reference this condition number (e.g. Condition 23)
- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.




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

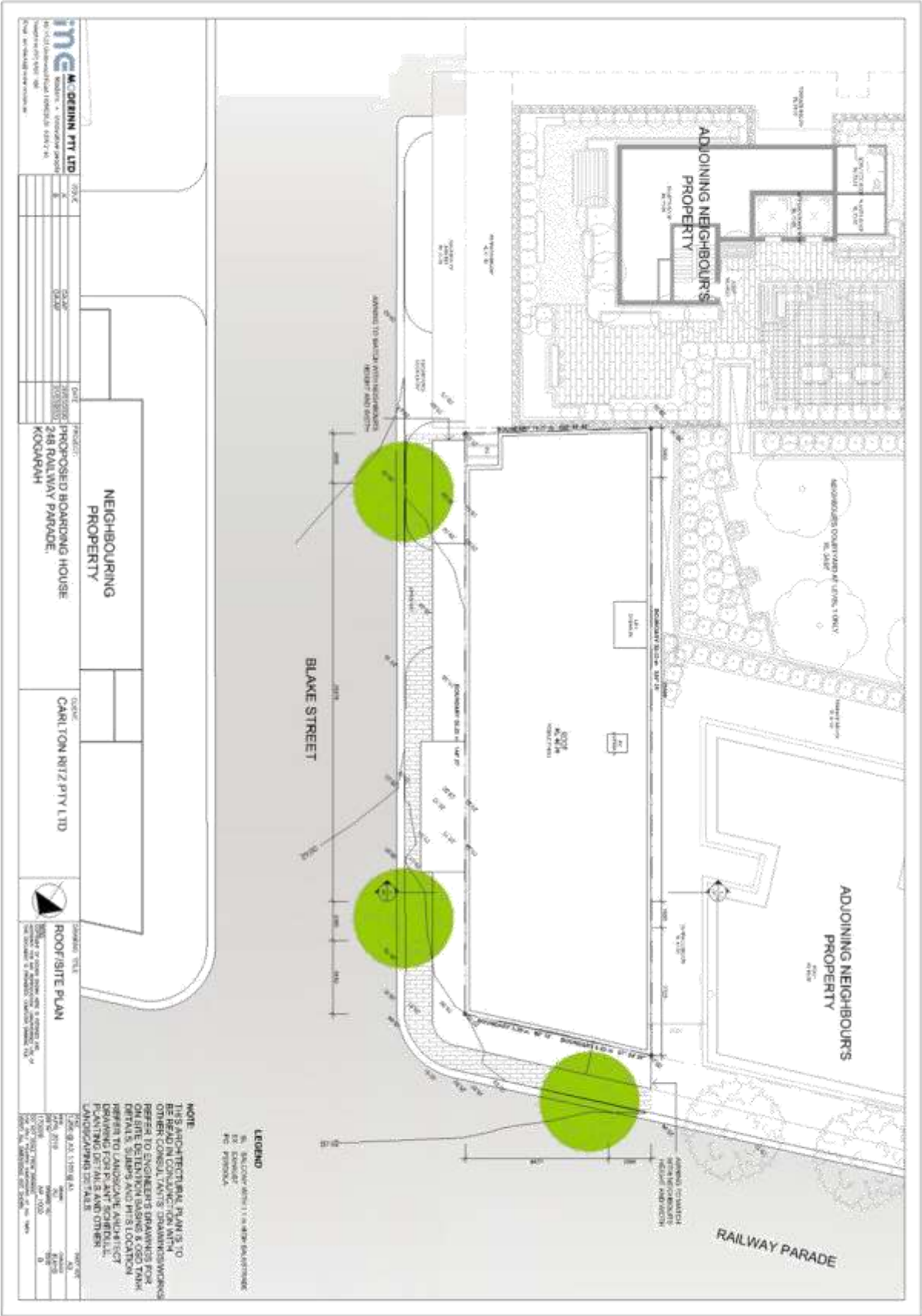
The preparation of all engineering drawings (site layout plans, cross sections, longitudinal sections, elevation views together with a hydraulic grade analysis) and specifications for the new stormwater drainage system to be arranged by the applicant. The design plans must be lodged and approved by Council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

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

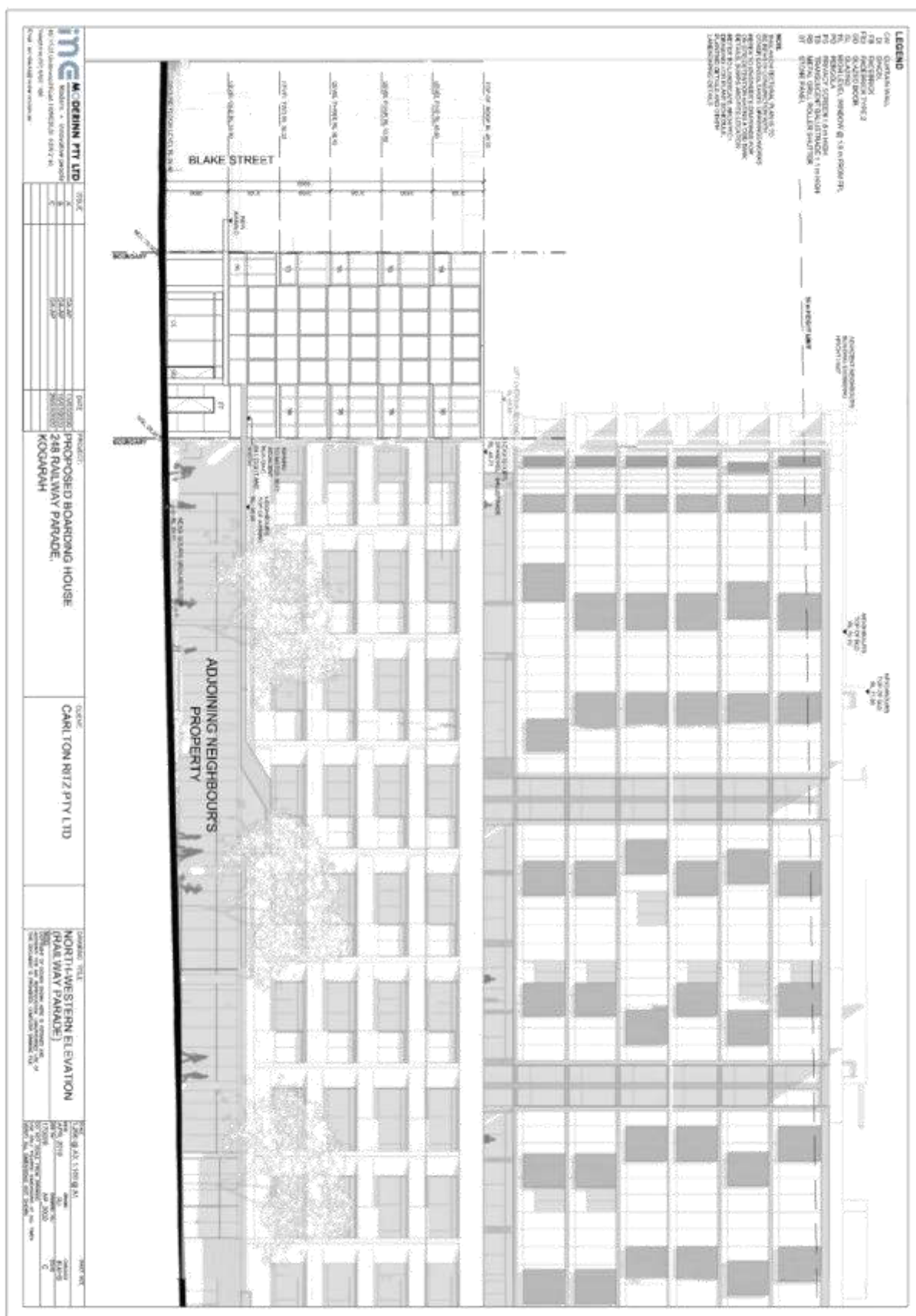
106. **Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must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

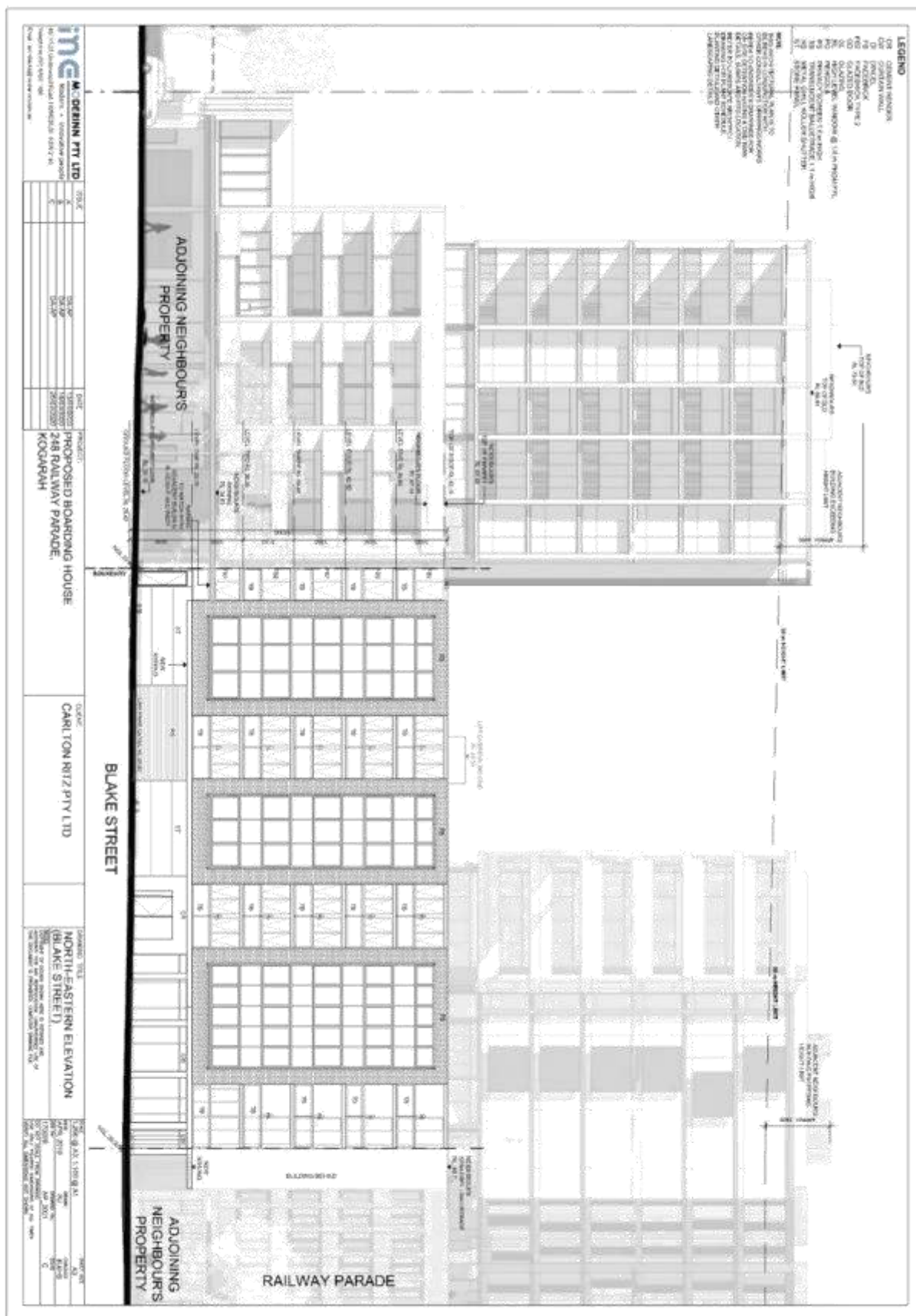
## ATTACHMENTS

- Attachment [1](#)  Site Plan - 248 Railway Pde Kogarah
- Attachment [2](#)  Railway Parade Elevation - 248 Railway Pde Kogarah
- Attachment [3](#)  Blake Street Elevation - 248 Railway Pde Kogarah











**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 06 AUGUST 2020**

LPP034-20

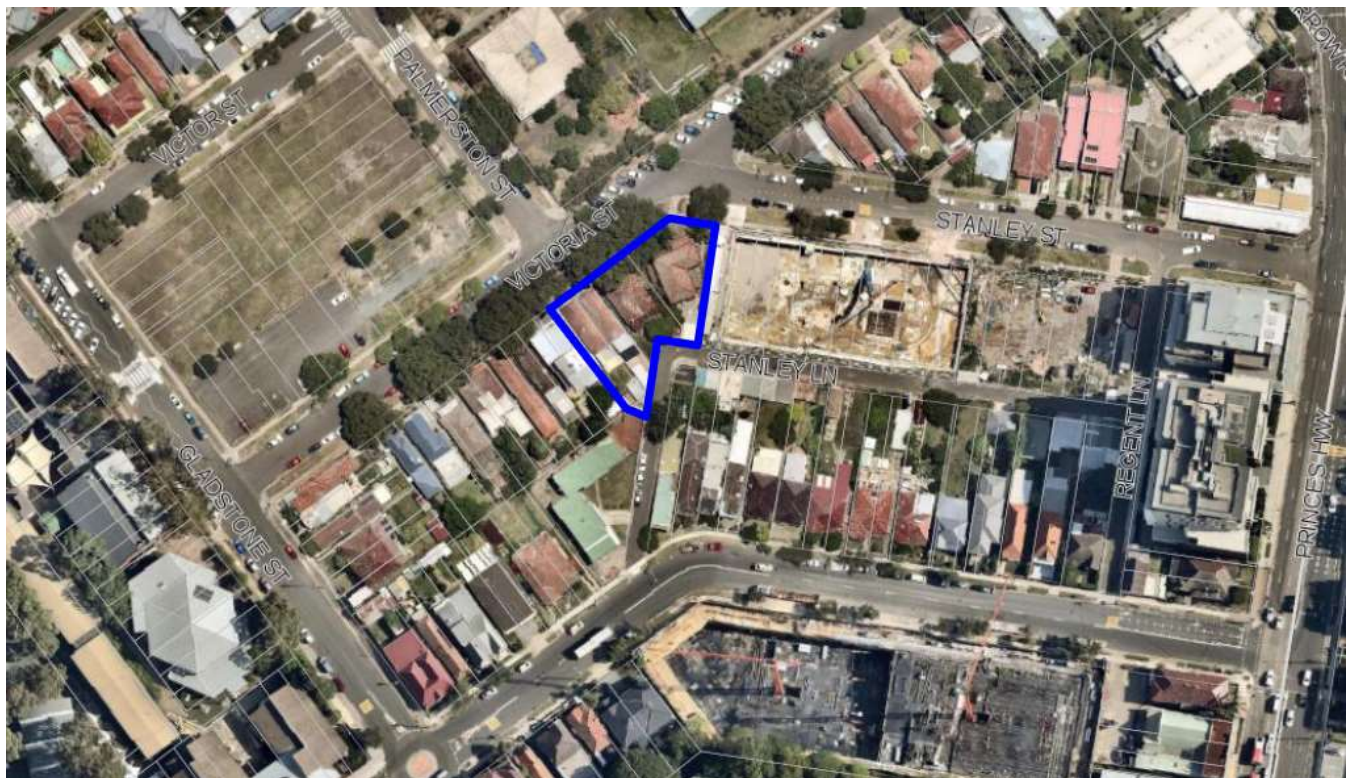
<b>LPP Report No</b>	<b>LPP034-20</b>	<b>Development Application No</b>	<b>REV2020/0011</b>
<b>Site Address &amp; Ward Locality</b>	18-24 Victoria Street Kogarah Kogarah Bay Ward		
<b>Proposed Development</b>	Review of Determination of Application No: DA2017/0597 the application is seeking consent for demolition works, lot consolidation and construction of a mixed use development comprising a residential flat building and a shop over a basement including landscaping and site works		
<b>Owners</b>	Kai-Tian Group Kogarah Pty Ltd		
<b>Applicant</b>	Kai-Tian Group Kogarah Pty Ltd		
<b>Planner/Architect</b>	Planner: Planning Ingenuity, Architect:a.Bastas Architects		
<b>Date Of Lodgement</b>	15/04/2020		
<b>Submissions</b>	One (1) unique submission		
<b>Cost of Works</b>	\$21,481,365.00		
<b>Local Planning Panel Criteria</b>	The original development application was refused by the Georges River Local Planning Panel (LPP) on 20 February 2020. Pursuant to S8.3 (5) of the Environmental Planning and Assessment Act 1979, the S8.2 Review is to be determined by the Georges River Local Planning Panel.		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy BASIX 2004, State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy – Infrastructure, Draft SEPP (Environment) 2017, Draft Remediation SEPP, Greater Metropolitan Regional Environmental Plan No 2 - Georges River Catchment, Apartment Design Guide, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Georges River Council Interim Development Control Plan 2020 and Draft Georges River Local Environmental Plan 2020		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans Statement of Environmental Effects Clause 4.6 Statement for Clause 4.3 Height of Buildings		
<b>Report prepared by</b>	Senior Development Assessment Officer		

<b>Recommendation</b>	That the application be refused in accordance with the reasons 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</b>	

<b>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?	Yes
<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?	Yes - Building exceeds Clause 4.3 Height of Building standard
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	No, as the application is recommended for refusal. The refusal reasons will be available when the report is published.

### Site Plan



**Figure 1:** Aerial photo showing the site outlined in blue

### Executive Summary Proposal

- Council is in receipt of an application to Review a Determination in accordance with the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979. Development Application DA2017/0597 was refused by the Local Planning Panel on 20 February 2020.

2. This application proposed the demolition of existing structures, and construction of a ten (10) storey mixed use development comprising sixty eight (68) apartments and two (2) neighbourhood shops. Three (3) levels of basement parking and a pedestrian through connection along the western boundary. The proposal provided a total of fifty seven (57) car spaces of which eight (8) of these spaces form accessible car spaces, four (4) motorcycle spaces and twenty eight (28) bicycle spaces. The application was refused by the Local Planning Panel for the following grounds:
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 provides poor amenity in relation to spatial separation, solar access, balcony sizes and deep soil in regards the Apartment Design Guide (ADG) to State Environmental Planning Policy No. 65 Design Quality of Residential Flat Buildings.*
  2. *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 Stage 2 Intrusive Investigation relating to contamination impacts and therefore does not satisfy State Environmental Planning Policy No. 55 Remediation of Land.*
  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 Stage 2 Intrusive Investigation and therefore does not satisfy State Environmental Planning Policy No. 55 Remediation of Land.*
  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 not provided a Revised BASIX Certificate consistent with the plans submitted for assessment and therefore does not satisfy State Environmental Planning Policy BASIX:2004.*
  5. *The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposed stormwater discharge design is inadequate therefore not satisfying the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment and Council's Stormwater Management Policy.*
  6. *The proposal does not satisfy the following zone objectives as per Clause 2.3 – Zone Objectives and Land Use Table (R4 High Density Residential) of Kogarah Local Environmental Plan 2012:*
    - *To provide for the housing needs of the community within a high density residential environment.*
    - *To provide a variety of housing types within a high density residential environment.*
    - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  7. *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 4.3 Height of Building of the Kogarah Local Environmental Plan 2012. A Clause 4.6 Exception to Development Standard has not been submitted for the additional height sought.*

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 Ratio of the Kogarah Local Environmental Plan 2012. A Clause 4.6 Exception to Development Standard has not been submitted for the additional 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 5.10 - Heritage Conservation of the Kogarah 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 in regards to Draft State Environmental Planning Policy – Remediation of Land.*
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 Kogarah Development Control Plan 2013 in respect to car parking, bicycle parking, solar access, landscape, drainage and built form controls.*
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 inadequate 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 streetscape, 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 amended proposal is not complete and therefore a thorough detailed comprehensive assessment of impacts cannot be undertaken.*
17. *The proposal is unsatisfactory in regards Part 15, Division 1 Clause 256 (3) of the Regulation 2000 as applicant has not provided payment for the referral to Sydney Airport.*





**Figure 2:** Photomontage of proposed development from Victoria Street looking south



**Figure 3:** Photomontage of proposed development from Victoria Street looking south west



**Figure 4:** Photomontage of proposed development from Stanley Lane looking north

### Site and Locality

3. The site is located on the south western side of Victoria Street at its junction with Stanley Street, Kogarah.
4. The subject site is legally described as 18-24 Victoria Street, Kogarah and consists of the following allotments:



- No 18 Victoria Street – Lot 71 Section B DP 1397 and Lot B DP 383744.
- No 20 Victoria Street – Lot 70 Section B DP 1397.
- No 22 Victoria Street – Lot B DP 398263.
- No 24 Victoria Street – Lot A DP 398263.

5. The site forms an irregular shaped allotment with the following dimensions:

**Table 1: Site Dimensions**

Boundary	Dimension
Front: North West (fronting Victoria Street), North East (fronting Stanley Street)	40.15m 14.08m
Rear: South (fronting Stanley Lane) 21.825m + 11.0m	32.82m
Side: East	33.53m
Side: West - 5.22m + 36.375m	41.59m

6. The site has a total area of 1,320.5sqm and slopes from west to east by 1.28m. The site is currently occupied by four (4) dwelling houses. A sewer line traverses the site along the south west corner of the site.
7. The site is zoned R4 High Density Residential under the Kogarah Local Environmental Plan 2012 (KLEP 2012). The site is located within the Kogarah North precinct which is currently undergoing transitional change from detached dwelling houses, semi-detached dwellings, to in-fill residential flat buildings.

### **Zoning and Permissibility**

8. The subject site is zoned R4 High Density Residential under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposed development is for a residential flat building with a neighbourhood shop which are permissible land uses in the zone.

### **Submissions**

9. The application was notified to adjoining properties in accordance with the Kogarah Development Control Plan 2013 (KDCP 2013) for a statutory notification period of 14 days between 6 May and 5 June 2020. One (1) submission was received.

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

10. This application is referred to the Georges River Local Planning Panel (LPP) for consideration and determination, as the original application was refused by the LPP on 20 February 2020. Pursuant to Section 8.3(5) of the Environmental Planning and Assessment Act 1979, the Section 8.2 Review is to be determined by the Georges River Local Planning Panel.
11. A new Clause 4.6 statement has been submitted with the Section 8.2 Review application seeking a variation to the height control (Clause 4.3) in accordance with the provisions of the Kogarah Local Environmental Plan 2012 to justify and support the non-compliance.

### **Planning and Design Issues**

12. The proposal fails to comply with the building height development standard of 33m that applies to the site under Kogarah Local Environmental Plan 2012. The lift overrun, fire stairs and awning over the rooftop communal open space area exceeds the height limit, with the top of the lift overrun having a height of 36.3m equating to a 10% variation of the height control. A variation request to the building height development standard has been

submitted pursuant to Clause 4.6 of Kogarah Local Environmental Plan 2012. In principle the variation relating to non-habitable structures could be considered acceptable, however the development as a whole cannot be supported in its current form and therefore the Clause 4.6 is not supported in this circumstance.

13. The proposal fails to achieve the required setbacks pursuant to the Apartment Design Guide (ADG) which result in an adverse impact upon the heritage buildings. The design treatment of the side elevations will result in poor internal amenity for many of the apartments. The proposed setbacks to the adjoining heritage item are insufficient and do not meet the required minimum as set out by the ADG. The setback to the south western boundary (adjoining the heritage item) must be increased above Level 3 and for all subsequent levels.
14. The spire like rectangular frame incorporated into the development as an architectural roof feature protrudes from the overall envelope of the development and is visually prominent. This feature is not considered to be appropriate or necessary given its location within a transition area of the building where the built form should be stepping down the building in scale not rising.
15. The proposal fails to provide adequate building modulation and articulation to the Victoria Street façade. The continuous unarticulated street wall generated by the solid, masonry balcony balustrades, combined with the height of the 4 storey podium results in a bulky and 'boxy' streetscape that does not respond to human scale and it does not complement the proposed terrace style building typology proposed on the adjacent property.
16. The operational Waste Management Plan has significantly underestimated the volumes of putrescible and recycling waste generation from the development, as a result the development has failed to provide a sufficient area for the storage of the required bins within the building.
17. Although generally compliant with the apartment size and layout criteria of the ADG, the functionality and useability is questionable in some apartments. The dining area within apartments 207, 307, 407, 506, 606, 706, 806, 906 and 1006 is located within the corridor/hallway, access to the main bedroom is via a long and winding corridor and the second bedroom's only light and ventilation source is via a small snorkle window resulting in poor amenity.
18. The primary balcony for the 3 bedroom apartments 206, 306 and 406 located to the north is 8.3sqm. They propose an additional south facing balcony also located off the living dining area in combination achieves the required 12sqm. The primary balcony for apartments 205, 305 and 405 do not achieve the minimum balcony dimension of 2m, whereby only 4sqm of the 10sqm proposed meets this requirement. The shortfall of these dimensions impacts the useability and functionality of these balconies which are the private open space for the apartments. Apartments 207, 307, 407, 506, 606, 706, 806, 906 and 1006 (all 2 bedroom apartments) have south west facing balconies with a total area of 6.2sqm. Although they provide an additional balcony to achieve the minimum 10sqm required for two bedroom apartments, this additional balcony is located off a bedroom which is not the most desirable design outcome.
19. The proposed design, mass and form of the building is considered inconsistent with the established and future form of RFB's in the precinct, the proposed development will not be sympathetic with development in the street and immediate locality. The proposal is

considered to establish an undesirable design precedent in the area and is not considered to be in the public interest

## Conclusion

20. The application has been assessed having regard to the Matters for Consideration under Section 4.15 and Section 8.2 of the Environmental Planning and Assessment Act, 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plans. The proposal is an unreasonable planning and urban design outcome in the context of the site and performs poorly against the design quality principles of State Environmental Planning Policy No 65. As a result the Section 8.2 Review application is recommended for refusal.

## Report in Full

### Description of the Proposal

21. Council is in receipt of a Section 8.2 Review application relating to a development application (DA) that sought consent for the demolition of existing structures and construction of a ten (10) storey mixed use development comprising sixty eight (68) units and two (2) neighbourhood shops. Three (3) levels of basement parking and a pedestrian thoroughfare connection along the western boundary. A rooftop communal open space area is proposed.
22. The amended proposal now seeks consent for the demolition of existing structures, lot consolidation and construction of a ten (10) storey mixed use development comprising sixty three (63) residential apartments and one (1) neighbourhood shop. Three (3) levels of basement parking and a 6m wide through site link (thoroughfare) along the western boundary. A rooftop communal open space area has been proposed which contains a BBQ area, seating and playground area. It is noted that no WC has been proposed and should approval be granted, it is recommended that a WC be provided.
23. Further details of the amended proposal are as follows:

#### Basement Level 3

- Twenty (20) residential car parking spaces (of which one is an accessible parking space – Parking space No 14)
- Residential storage allocated to individual apartments
- Sixteen (16) bicycle parking spaces
- Two (2) motorcycle spaces
- Plant rooms, hydrant tank and drainage pit
- Egress stairs
- Lift and lift lobby providing access to the upper levels

#### Basement Level 2

- Fourteen (14) residential car parking spaces (of which five (5) are accessible parking spaces)
- Residential storage allocated to individual apartments
- Sixteen (16) bicycle parking spaces
- Two (2) motorcycle spaces
- Hydrant tank
- Plant rooms
- Egress stairs
- Lift and lift lobby providing access to the upper levels

### Basement Level 1

- Fifteen (15) car parking spaces including the following:
  - Five (5) residential car parking spaces including two (2) accessible car spaces
  - One (1) commercial car parking spaces
  - Nine (9) visitors car parking spaces (including a combined visitors/car wash bay)
- Residential storage allocated to individual apartments
- Plant room and switch room
- Garbage Room B (Garbage and recycling room)
- Garbage Room A (Bulky storage room)
- Disabled WC
- Egress stairs
- Lift and lift lobby providing access to the upper levels

### Ground Floor

- One (1) neighbourhood shop (32.3sqm) including WC
- One (1) studio apartment (apartment 106)
- Three (3) x one (1) bedroom apartments. The ground floor apartments with their own direct access to Victoria Street are proposed to be SOHO apartments.
- One (1) x two (2) bedroom apartment
- One (1) x three (3) bedroom apartment. This is a ground floor apartment with its own direct access to Victoria Street and is proposed to be SOHO apartment.
- Pedestrian through link along the western side boundary
- Services and common bathroom
- Lift and lift lobby foyer area providing access to upper level apartments and down to basement car parking
- Open communal courtyard (30.5sqm) located between apartments 105 and 106
- One (1) loading bay accessed via Stanley Lane, including bin holding area
- Ten (10) bicycle spaces located in the through link
- Fire stairs providing egress from the building via Stanley Lane
- Entry foyers located in the northern and western elevations of the building. Entry A is accessed from the through site link extending between Victoria Street and Stanley Street. The main entry is accessed via Victoria Street only.

### Levels 2, 3 and 4 (replicated floor plate)

- Three (3) x one (1) bedroom apartments – one nominated as adaptable
- Three (3) x two (2) bedroom apartments
- One (1) x three (3) bedroom apartment
- Lift and lift lobby foyer area providing access to upper level apartments and down to basement car parking
- Services
- Fire stairs

### Levels 5, 6, 7 and 8 (replicated floor plate)

- Three (3) x one (1) bedroom apartments
- Three (3) x two (2) bedroom apartments
- Lift and lift lobby foyer area providing access to upper level apartments and down to basement car parking
- Services
- Fire stairs

Levels 9 and 10 (replicated floor plate)

- Four (4) x one (1) bedroom apartments
- Two (2) x two (2) bedroom apartments
- Lift and lift lobby foyer area providing access to upper level apartments and down to basement car parking
- Services
- Fire stairs

Level 11 (Rooftop)

- Rooftop area of communal open space (331.5sqm) with a shading device over the BBQ, seating area and playground centrally located on the rooftop. It is noted that the communal open space does not provided a WC, should approval be granted a WC should be provided. Perimeter landscaping around the communal open space within planter boxes.
- Lift and lift lobby area providing egress to the apartments below and down to the basement car parking.
- Plant room and car park exhaust.

**The Site and Locality**

24. The site is located on the south western side of Victoria Street at its junction with Stanley Street, Kogarah.
25. The subject site is legally described as 18-24 Victoria Street, Kogarah and consists of the following allotments:
- No 18 Victoria Street – Lot 71 Section B DP 1397 and Lot B DP 383744.
  - No 20 Victoria Street – Lot 70 Section B DP 1397.
  - No 22 Victoria Street – Lot B DP 398263.
  - No 24 Victoria Street – Lot A DP 398263.
26. The site forms an irregular shaped allotment with the following dimensions:

**Table 2: Site Dimensions**

Boundary	Dimension
Front: North West (fronting Victoria Street), North East (fronting Stanley Street)	40.15m 14.08m
Rear: South (fronting Stanley Lane) 21.825m + 11.0m	32.82m
Side: East	33.53m
Side: West - 5.22m + 36.375m	41.59m

27. The site has a total area of 1,320.5sqm and slopes from west to east by 1.28m. The site is currently occupied by four (4) dwelling houses. A sewer line traverses the site along the south west corner of the site.
28. The site is zoned R4 High Density Residential under the Kogarah Local Environmental Plan 2012 (KLEP 2012). The site is located within the Kogarah North precinct which is currently undergoing transitional change from detached dwelling houses, semi-detached dwellings, into infill residential flat buildings

29. The site is located within the Kogarah North Precinct and is located north-east of Kogarah Town Centre and approximately 300m from Kogarah Railway Station. Open space and Kogarah Girls High School is located to the north west of the site.
30. Adjoining the site to the west are two (2) by two (2) storey attached terrace dwellings known as 14-16 Victoria Street Kogarah. The terraces and gardens are Local Heritage Items, known as "Beatrice" and "Lillyville". These heritage buildings are included in a current DA seeking consent for the adaptive reuse of the two (2) heritage buildings and the construction of a 12 storey residential flat building. This application is currently before the Land and Environment Court appealing Council's deemed refusal of the DA.
31. Further to the south west of the site are single dwelling houses with a recent approval issued by the Land and Environment Court in *Kogarah Investments No 1 Pty Ltd v Georges River Council* [2020] NSWLEC 1214 for an 11 storey residential flat building located at 16-22 Gladstone and 2 Victoria Street Kogarah.
32. The Kogarah North Precinct is undergoing transition to higher densities, with a number of similar scale residential flat developments approved in the area since the rezoning. Recent development applications approved within the immediate vicinity include; :
  - 41–47 Princes Highway, Kogarah. 10 storey mixed use development with basement parking. Approved by the Land and Environment Court on 5 July 2018 by way of Section 34 Agreement in *GCK Investments Pty Ltd v Georges River Council* [2018] NSWLEC 1343 on 5 July 2018;
  - 70–78 Regent Street, Kogarah. 10 storey residential flat building with basement car parking. Approved by the Land and Environment Court in *Regent Land Pty Ltd ATF Regent Land Unit Trust v Georges River Council* [2018] NSWLEC 1370 on 24 July 2018 following a hearing;
  - 2–10 Palmerston Street, Kogarah. 10 storey residential flat building with three levels of basement car parking. Approved by the Land and Environment Court in *Palmerston Dragon No 1 Pty Ltd v Georges River Council* [2018] NSWLEC 1499 on 20 September 2018 by way of Section 34 Agreement;
  - 11 Stanley Street and 28–36 Victoria Street, Kogarah. 9 storey residential flat building with three levels of basement parking approved by the Land and Environment Court in *No 1 Victoria Dragons Pty Limited v Georges River Council* [2018] NSWLEC 1559 on 23 October 2018 by way of Section 34 Agreement;
  - 2-10 Stanley Street Kogarah. 10 storey residential flat building with basement parking. Approved by the Sydney South Planning Panel on 11 December 2018;
  - 12-24 Stanley Street, Kogarah. 11 storey residential flat building with 4 levels of basement car parking. Approved by the Sydney South Planning Panel on 9 April 2019;
  - 2-4 Gladstone Street and 10 Victor Street, Kogarah. 9 and 10 storey residential flat building with ground level retail space and basement car parking. Approved by the Land and Environment Court in *Vortex Property Group (NSW) Pty Ltd v Georges River Council* [2019] NSWLEC 1153 on 11 April 2019 following a hearing;
  - 71-97 Regent Street, Kogarah. 10 storey residential flat building with 3 levels of basement car parking. Approved by the Land and Environment Court in *95 Regent Street Pty Ltd v Georges River Council* [2019] NSWLEC 1206 on 14 May 2019 by way of Section 34 Agreement;
  - 80-84 Regent Street, Kogarah. 11 Storey residential flat building with basement car parking. Approved by the Georges River Council Local Planning Panel on 11 June 2019;

- 16-22A Gladstone Street and 2 Victoria Street Kogarah. 11 storey residential flat building with basement car parking, and restoration and retention of a heritage building. Approved by the Land and Environment Court in *Kogarah Investments No. 1 Pty Ltd v Georges River Council* [2020] NSWLEC 1214 by way of Section 34 Agreement on 15 May 2020.

## Background

33. DA2017/0597 sought consent for the demolition of existing structures, and construction of a ten storey mixed use development comprising sixty eight (68) units and two (2) neighbourhood shops. Three levels of basement parking and a pedestrian through connection along the western boundary. The proposal provided a total of fifty seven (57) car spaces of which eight (8) of these spaces form accessible car spaces, four (4) motorcycle spaces and twenty eight (28) bicycle spaces. The application was refused by the Local Planning Panel at its meeting held on 20 February 2020 for 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 provides poor amenity in relation to spatial separation, solar access, balcony sizes and deep soil in regards the Apartment Design Guide (ADG) to State Environmental Planning Policy No. 65 Design Quality of Residential Flat Buildings.*
  2. *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 Stage 2 Intrusive Investigation relating to contamination impacts and therefore does not satisfy State Environmental Planning Policy No. 55 Remediation of Land.*
  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 Stage 2 Intrusive Investigation and therefore does not satisfy State Environmental Planning Policy No. 55 Remediation of Land.*
  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 not provided a Revised BASIX Certificate consistent with the plans submitted for assessment and therefore does not satisfy State Environmental Planning Policy BASIX:2004.*
  5. *The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposed stormwater discharge design is inadequate therefore not satisfying the Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment and Council's Stormwater Management Policy.*
  6. *The proposal does not satisfy the following zone objectives as per Clause 2.3 – Zone Objectives and Land Use Table (R4 High Density Residential) of Kogarah Local Environmental Plan 2012:*
    - *To provide for the housing needs of the community within a high density residential environment.*
    - *To provide a variety of housing types within a high density residential environment.*
    - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*



7. *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 4.3 Height of Building of the Kogarah Local Environmental Plan 2012. A Clause 4.6 Exception to Development Standard has not been submitted for the additional height sought.*
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 Ratio of the Kogarah Local Environmental Plan 2012. A Clause 4.6 Exception to Development Standard has not been submitted for the additional 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 5.10 - Heritage Conservation of the Kogarah 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 in regards to Draft State Environmental Planning Policy – Remediation of Land.*
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 Kogarah Development Control Plan 2013 in respect to car parking, bicycle parking, solar access, landscape, drainage and built form controls.*
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 inadequate 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 streetscape, 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 amended proposal is not complete and therefore a thorough detailed comprehensive assessment of impacts cannot be undertaken.*
17. *The proposal is unsatisfactory in regards Part 15, Division 1 Clause 256 (3) of the Regulation 2000 as applicant has not provided payment for the referral to Sydney Airport.*

## Division 8.2 Reviews

34. 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.*
35. 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 (DA2017/0597).

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

36. The Applicant has made the following amendments to the design and lodged the modified plans on 15 April 2020 in conjunction with the Section 8.2 review application. The changes made include;
- Reduction in total floor area to 3.684:1, which is now compliant with the maximum of 4:1.
  - The total number of apartments has been reduced from sixty eight (68) to sixty three (63) apartments.
  - Building setbacks have been increased on the north, east and west boundaries.
  - Deep soil zones have been increased to 136sqm (10.36%).

### Basement Level 3

- Car parking spaces reduced from twenty three (23) to twenty (20).

### Basement Level 2

- Car parking spaces reduced from sixteen (16) to fourteen (14).
- Sixteen (16) bicycle parking spaces have been provided.

### Basement Level 1

- Car parking spaces have been reduced from eighteen (18) to fifteen (15).

### Ground Floor

- Neighbourhood shops reduced from two (2) to one (1).
- One (1) bedroom apartments increased from two (2) to four (4).
- Two (2) bedroom apartments reduced from two (2) to one (1).

### Levels 2, 3 and 4 (replicated floor plate)

- One (1) bedroom apartments reduced from four (4) to two (2).

- Three (3) x two (2) bedroom apartments.

Levels 5, 6, 7 and 8 (replicated floor plate)

- One (1) bedroom apartments increased from two (2) to three (3).

Levels 9 and 10 (replicated floor plate)

- One (1) bedroom apartments increased from three (3) to four (4).
- Two (2) bedroom apartments reduced from three (3) to two (2).

**Table 3: Comments on reasons for refusal**

Reason for refusal	Applicants comments	Officer comment
<b>Refusal Reason - 1.</b> <i>The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposal provides poor amenity in relation to spatial separation, solar access, balcony sizes and deep soil in regards the Apartment Design Guide (ADG) to State Environmental Planning Policy No. 65 Design Quality of Residential Flat Buildings.</i>	<p>The reason for refusal has been resolved by revising the scheme to ensure the amenity of the building satisfies the provisions of SEPP 65. A detailed compliance table is provided at Annexure A and specific comments addressing the reasons cited are addressed below:</p> <p><u>Spatial Separation</u>  In regards to spatial separation, the building setbacks have been increased to achieve, where possible, those set out in the ADG and where impractical or unattainable the reduced setbacks are justified. Up to 12m (4 storeys) the western side setback has been increased to achieve the 6m requirement which has been increased by an additional 1m (totalling 7m) adjoining the heritage building. The nil setback to the eastern boundary is acceptable considering the external wall on the setback is a blank façade with no windows provided.</p> <p>Up to 25m (5-8 storeys) the</p>	<p>The proposal improves the application previously refused by the LPP, however there are still areas of the building that fail to satisfy the requirements of the ADG and SEPP 65. The built form is still considered inappropriate for the site.</p> <p>Part 3F of the ADG relates to “visual privacy” and establishes minimum or reasonable side setbacks for developments which allows for adequate separation distances between buildings and therefore maintain privacy between properties. The building still fails to comply with the minimum separation distances in accordance with the provisions of Part 3F of the Apartment Design Guide (ADG) for most part of the Building above 5 storeys. Up to 4 storeys the eastern setback has been increased to 6m with angled blank walls to the rear part of the buildings setback 4.8m. There is a nil boundary setback on the western side up to 4 storeys. The nil setback is acceptable given the wall contains a blank façade and there are not visual impacts.</p>

	<p>required setbacks to habitable rooms and non-habitable rooms are 9m and 4.5m, respectively. At this height the setback has been increased on the western side from 4.5m -6m to 7.5m (plus an additional 1m where the heritage building is concerned) and on the eastern side from 3.41 – 4.67m to 6m. Additionally, habitable rooms on the northern side are provided with privacy screens.</p> <p>That part of the building over 25m in height are setback 9m (to the west, with an additional 1m to the heritage building) and 6m (to the east), with privacy louvres also provided for habitable rooms on the northern side . These setbacks satisfy the requirements of the ADG.</p> <p><u>Solar Access</u> The proposed development provides adequate solar access in terms of the ADG requirements. An updated solar analysis diagram has been prepared and is submitted with this application. The analysis demonstrates compliance with the solar access provisions in that 76% of units receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area (more than the 70% required). Furthermore, the development proposes that only 3 units or 5% receive no direct sunlight between 9am and 3pm at mid-winter which far exceeds the maximum of 15%.</p>	<p>The setbacks to levels 5 – 8 have been increased however are still non-compliant. The eastern setback is 6m and the western between 6m and 7.5m where a 9m setback is required for habitable rooms.</p> <p>The proposed setbacks to levels 9 and 10 have also been increased to 6m from the eastern boundary and between 4.8m - 9m to the western boundary which fails to meet the control.</p> <p>Solar access The amended plans and reconfiguration of apartments its and layouts now results in 76% of apartments receiving a minimum of 2 hours direct sunlight between 9am and 3pm mid-winter in the Sydney Metropolitan Area.</p> <p>In addition only 5% of apartments receive no direct sunlight between 9am and 3pm.</p>
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	<p><u>Balcony size</u></p> <p>The size of balconies provided are considered acceptable in terms of balcony functionality. A number of balconies have been identified by Council as having insufficient dimensions, however throughout a private open space analysis, the proposal is consistent with the ADG requirements in terms of balcony size.</p> <p>For apartments 207, 307 and 407, two balconies are provided adding up to 12.4sqm with a minimum width of 2m. The primary balcony of these units is 6.2sqm with enough space for tables and chairs at a minimum width of 2m. The secondary balcony provided has an area of 6.2sqm and a minimum width of 1m to provide extra outdoor area.</p> <p>For apartments 205, 305 and 405, the primary balcony is 10sqm with a 1m minimum width due to the shape of the balcony. The maximum width of the balcony exceeds 2m and therefore provides enough space for tables and chairs.</p>	<p><u>Balcony sizes</u></p> <p>The size and configuration of some of the primary balconies are not considered to provide a balcony that is both functional and useable, given its location, orientation, size and shape.</p> <p><u>Insufficient primary balcony area.</u></p> <p>Two (2) bedroom apartments 207, 307, 407, 506, 606, 706, 806, 906 and 1006 have south-west facing apartments with a total area of 6.2sqm. Although an additional balcony is provided to achieve the minimum 10sqm required for two bedroom apartments, this additional balcony is located off a bedroom and is not a desirable outcome for occupant amenity.</p> <p>The primary balcony for the 3 bedroom apartments 206, 306 and 406 located to the north is 8.3sqm. They propose an additional south facing balcony also located off the living dining area to achieve the 12sqm required, the orientation results in this not being a desirable amenity outcome.</p> <p>The primary balcony for 2 bedroom apartments 205, 305 and 405 do not achieve the minimum balcony dimension of 2m, only 4sqm of the 10sqm proposed meets this requirement. The shortfall of these dimensions impacts the useability and functionality of this balcony</p>
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		<p>and results in a poor amenity outcome for the future occupants.</p> <p>Although generally compliant with the apartment size and layout criteria of the ADG, the functionality and useability is questionable in some apartments. The dining area within apartments 207,307, 407, 506, 606, 706, 806, 906 and 1006 is located within the corridor/hallway, access to the main bedroom is via a long and winding corridor and the second bedroom's only source of light and ventilation is via a small window (snorkel) resulting in poor amenity.</p>
	<p><u>Deep Soil Zone</u> The deep soil zone (&gt;3m) now consists of 19.36% (255.6sqm) of the total site area, which is almost three times the minimum required by the ADG (7%). The deep soil areas are indicated on the Landscape plans submitted with this application.</p>	<p>The deep soil zone located at the front of the allotment in Victoria Street provides a 3m width with a minimum area of 136.85sqm (10.36%) as required by the ADG for a site of this size. There are other areas along the western boundary that provide an area for landscaping, however given this is the location of the through link it is paved. The width of these areas of landscaping are less than the 3m.</p>
<p><b>Refusal Reason - 2.</b> <i>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 Stage 2 Intrusive Investigation relating to contamination impacts and therefore does not satisfy State</i></p>	<p>A Stage 2 Intrusive Investigation relating to contamination impacts has been prepared and is submitted with the application. The investigation concludes that:</p> <p>“The general soil profile in the accessible open area of the site comprised topsoil/fill overlying natural sandy soil. The boreholes did not reveal</p>	<p>A Stage 2 Contamination Assessment Report was submitted with the S8.2 Review application. This was assessed by Council's Environmental Health Officer subject to suitable conditions of consent.</p>

<i>Environmental Planning Policy No. 55 Remediation of Land.</i>	<p>any visual evidence of asbestos or other indicators of significant contamination, such as staining, odours or significant foreign matter.”</p> <p>The submission of the Stage 2 Report thus satisfies State Environmental Planning Policy No 55 Remediation of Land. As such this reason for refusal has been addressed.</p>	
<p><b>Refusal Reason - 3</b></p> <p><i>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 Stage 2 Intrusive Investigation and therefore does not satisfy State Environmental Planning Policy No. 55 Remediation of Land</i></p>	This reason for refusal has been repeated from reason for refusal (2). Refer to the discussion above.	See comments in Refusal reason 2.
<p><b>Refusal Reason - 4</b></p> <p><i>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 Revised BASIX Certificate consistent with the plans submitted for assessment and therefore does not satisfy State Environmental Planning Policy BASIX:2004.</i></p>	An updated BASIX certificate has been submitted with this application and acknowledges that this application satisfies State Environmental Planning Policy BASIX: 2004. As such this reason of refusal has been addressed.	An amended and updated BASIX certificate has been provided.
<p><b>Refusal Reason - 5</b></p> <p><i>The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposed stormwater discharge design is inadequate therefore not satisfying the</i></p>	A revised stormwater plan has been prepared which includes the redesign of the proposed stormwater discharge. The revised plan is submitted with this application and therefore this reason for refusal has been addressed.	The revised stormwater plans were referred to Council's Drainage Engineer. Although not satisfactory, a design change condition could be imposed requiring modification to the drainage design prior to the issue of the Construction Certificate.



<p><i>Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment and Council's Stormwater Management Policy.</i></p>		
<p><b>Refusal Reason - 6</b>  <i>The proposal does not satisfy the following zone objectives as per Clause 2.3 – Zone Objectives and Land Use Table (R4 High Density Residential) of Kogarah Local Environmental Plan 2012:</i></p> <ul style="list-style-type: none"> <li><i>To provide for the housing needs of the community within a high density residential environment.</i></li> <li><i>To provide a variety of housing types within a high density residential environment.</i></li> <li><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> </ul>	<p>The proposal is consistent with the zone objectives of the R4 High Density Residential Zone as follows:</p> <ul style="list-style-type: none"> <li>The site is zoned for high density residential development which is provided by the proposed development. The proposal consists of a 10 storey residential flat building which provides a good containing a total of 63 residential units. The development contributes to the housing provisions with the locality and provides a density reflective of the zoning and built form controls which is compatible with the high density character of the area.</li> <li>The development contains a good unit mix consisting of one, two and three bedroom apartments. The proposed residential flat building also provides 5 different adaptable unit types at units 101, 102, 103, 104, 203, 303 and 403 which can be utilised as adaptable living units where necessary.</li> <li>The development will have no adverse impact on the surrounding facilities and services that currently meet the needs of residents within the area. The application proposes the construction of a neighbourhood shop on the ground floor of the</li> </ul>	<p>The amended plans are consistent with and satisfy the zone objectives of the R4 High Density Residential zone.</p> <p>The mix of apartments has slightly altered from the original design given the reduction in apartments and in an effort to meet certain aspects of the ADG but still maintains a mix of 1, 2 and 3 bedroom apartments which is considered acceptable and consistent with the objectives and intentions of the ADG.</p> <p>The development also includes a neighbourhood shop located on the western side of the building along the through link.</p>

	<p>residential flat building. This shop will not only service the residents of the proposed building but further assist in meeting the needs of residents within the surrounding locality.</p> <p>As per above, the proposal satisfies the zone objectives as per Clause 2.3 – Zone objectives and Land use Table (R4 High Density Residential) of Kogarah Local Environmental Plan 2012 and thus, this reason for refusal has been addressed.</p>	
<p><b>Refusal Reason - 7</b>  <i>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 4.3 Height of Building of the Kogarah Local Environmental Plan 2012. A Clause 4.6 Exception to Development Standard has not been submitted for the additional height sought.</i></p>	<p>The design of the proposed development has been updated to significantly improve compliance with Clause 4.3 Height of Building of the Kogarah Local Environmental Plan 2012. The main building form (RL52.460) is within the 33m height limit plane with the exception of the stair tower and lift overrun which are a maximum of 3.3m above the height plane. As a result of this a Clause 4.6 Exception to Development Standard is submitted with this application to account for the variation of the lift overrun. It is noted that the adjoining approved building at 12-24 Stanley Street, Kogarah also required a Clause 4.6 variation for the maximum height of building. Furthermore, at the northern corner of the building an architectural roof feature (RL 57.76) sits above the height limit plane. Being an architectural roof feature it is excluded from the above variation.</p>	<p>The plans submitted with the review application have been lodged with a Clause 4.6 Statement in support of the variation to the height development standard. The variation to the height standard does not include any habitable space and is only for the lift overrun, fire stairs and other ancillary structures. In principle this variation could be supported subject to the built form addressing all the other non-compliances.</p> <p>The building proposes a rectangular architectural roof feature which is permitted under Clause 5.4 of the KLEP and is not required to be considered as a height breach under Clause 4.6. This roof feature is highly visible and prominent given its location at the intersection of Stanley Street and Victoria Street and does not positively contribute to the streetscape character and development form within the immediate</p>

		vicinity.
<b>Refusal Reason - 8</b> <i>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 Ratio of the Kogarah Local Environmental Plan 2012. A Clause 4.6 Exception to Development Standard has not been submitted for the additional floor space sought.</i>	<p>The design of the proposed development has been updated to achieve compliance with Clause 4.4 Floor Space Ratio of the Kogarah Local Environmental Plan 2012. As a result of changes to the built form and design of the building, the proposed FSR has decreased from 4.12:1 to 3.684:1 as per the updated area schedule submitted with this application. As a result of this, there is no longer a 3% variation proposed to the permitted FSR of 4:1 and therefore a Clause 4.6 Exception to Development Standard is not required (notably the GFA calculation above includes the residential access corridors on each level).</p>	<p>The plans have been amended resulting in a reduction in floor space to comply with the maximum FSR of 4:1. The proposal as amended has reduced the FSR from 4.12: 1 to 3.684:1 (reduced apartment numbers from 68 to 63). As such no Clause 4.6 is required.</p>
<b>Refusal Reason - 9</b> <i>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 5.10 - Heritage Conservation of the Kogarah Local Environmental Plan 2012:</i>	<p>The proposed building has been designed with appropriate setbacks to the heritage building which exceed the required building setbacks set out in the ADG. A heritage consultant report is submitted with this application and supports the proposal in regards to heritage conservation.</p>	<p>The revised plans were referred to Council's Heritage Advisor who does not support the proposal in its current form. This is further discussed under the Heritage advisors comments.</p>
<b>Refusal Reason - 10</b> <i>The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 in regards to Draft State Environmental Planning Policy – Remediation of Land.</i>	<p>As per refusal (2), a Stage 2 Intrusive Investigation relating to contamination impacts has been prepared and is submitted with this application. The provision of this report satisfies the State Environmental Planning Policy No 55 Remediation of Land. As such this reason for refusal has been addressed.</p>	<p>This has been addressed through the submission of the Stage 2 Report, which has been reviewed by Council's Environmental Health Officer and found to be satisfactory</p>
<b>Refusal Reason - 11</b> <i>The proposal is unsatisfactory having</i>	<p>The design of the development has been updated to achieve</p>	<p>The proposed development has been amended and compliance</p>

<p><i>regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 as the proposal fails to comply with the Kogarah Development Control Plan 2013 in respect to car parking, bicycle parking, solar access, landscape, drainage and built form controls.</i></p>	<p>compliance with the Kogarah Development Control Plan 2013.</p> <p><u>Car Parking</u> The proposal has provided car parking which complies with the RMS and Council's requirements.</p> <p><u>Bicycle Parking</u> According to the requirements bicycle parking provision is calculated at 1 space per 3 residential units (21 bicycle spaces) and 1 visitor space per 10 units (6.3 bicycle spaces). The proposal satisfies the requirement in providing 42 bicycle spaces, which far exceeds the required 28.</p> <p><u>Solar access</u> The proposed development provides adequate solar access in terms of the ADG requirements. An updated solar analysis diagram and window schedule have been prepared and are submitted with this application. The analysis demonstrates compliance with the solar access provisions in that 76% of units receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area (more than the 70% required). Furthermore, the development proposes that only 3 units or 5% receive no direct sunlight between 9am and 3pm at mid-winter, which far exceeds the maximum of 15%.</p> <p><u>Landscape</u> A revised landscape plan is submitted with this application. The updated plans incorporate landscaping at the frontage of the site including planting along the front boundary</p>	<p>has now been achieved with the relevant provisions of KDCP 2013.</p> <p>Car parking and bicycle parking has been provided in accordance with the RMS requirements.</p> <p><u>Solar access</u> The amended plans and reconfiguration of apartments and layouts now results in 76% of apartments receiving a minimum of 2 hours direct sunlight between 9am and 3pm mid-winter in the Sydney Metropolitan Area.</p> <p>In the revised design 5% of apartments receive no direct sunlight between 9am and 3pm which complies with the ADG.</p> <p>A revised landscape plan has been provided with the Section 8.2 Review application. This has been reviewed by Council's Consulting Arborist and is generally satisfactory</p>
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	<p>which is broken up where concrete paths are proposed to access the building from the street. The proposed landscaping at the front of the site compliments the large existing street trees along Victoria Road which re to be retained. Council has advised that a communal rooftop area at the site would not result in any adverse amenity impacts to adjoining properties and as such a communal rooftop area is proposed. The rooftop will include a barbecue and seating area, a playground and substantial landscaping. Deep soil zones within the site have a minimum dimension of 3m and are scattered throughout the ground floor landscape scheme, in particular along the front and west side boundary which is a key communal outdoor space.</p> <p><u>Drainage</u> A revised drainage plan has been prepared and is submitted with this application.</p> <p><u>Built form</u> The built form of the site has been altered to improve compliance with the relevant controls on the site. The setbacks on the site have been increased as far possible to satisfy the setback controls under the Kogarah Development Control Plan 2013. A discussion of the setbacks of the development is provided</p>	<p>subject to conditions if the application was to be supported.</p> <p><u>Drainage</u> The revised drainage plan has been reviewed by Council's drainage engineer; the proposed is unsatisfactory however the non-compliances can be addressed through design change conditions if the proposed was to be supported.</p> <p>The built form and in particular the setbacks have been discussed in the refusal reason (1) above.</p>
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	under reason of refusal (2).	
<b>Refusal Reason - 12</b> <i>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 inadequate disposal of stormwater.</i>	<p>The proposed stormwater disposal has been updated to satisfy requirements and prevent any adverse impacts on the surrounding natural environment. Updated plans indicate the new proposed disposal of stormwater, therefore this reason for refusal has been addressed.</p>	<p>Amended stormwater plans have been submitted and can be supported subject to design change conditions if the application was to be supported.</p>
<b>Refusal Reason - 13</b> <i>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 streetscape, amenity for future occupants and to adjoining properties.</i>	<p>The proposed development is consistent with what is expected on the site in terms of the land zoning, surrounding development and desired future character of the area. The site is situated within an R4 High density Residential zone which has undergone and will continue to undergo development characterised by high density residential flat buildings. Indeed, the adjoining site at 12-24 Stanley Street has been approved for an 11 storey residential development. Furthermore, as per the site analysis plan submitted with this application, the remaining sites within the immediate vicinity are identified as future redevelopment sites as a result of the permissible built form envisioned for the zone. Therefore, considering the proposed development is largely consistent with the permitted built form of the site and consistent with the future development of the adjoining properties, the development will have no adverse impacts on the streetscape of the area and rather contribute to a</p>	<p>Concern has been raised that the building has failed to provide adequate separation from the heritage item at 14-16 Victoria Street Kogarah. Council's heritage advisor recommends that the setback to the south western boundary be increased to a minimum of 12m above level 3 and for all subsequent levels. The building provides insufficient transition in scale and height as it relates to adjoining heritage items and must provide a greater setback to levels 3 and above. The internal apartment layouts and balcony configurations and dimensions do not provide suitable amenity for occupants with the long and winding corridors, small irregular shaped balconies and small windows which provide minimal light and ventilation. In addition the communal open space area located between apartments 105 and 106 is not desirable as it results in privacy impacts upon all apartments within</p>

	consistent streetscape character reflective of a R4 High Density Residential zone.	this area extending up the building.
<b>Refusal Reason - 14</b> <i>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.</i>	<p>The design and form of the proposed residential flat building has been updated to improve compliance with the relevant planning controls and provisions, and better achieve the objectives of the R4 zone. The development is a highly suitable form of development on the site as it provides increased residential housing density which is desired within the R4 high density residential zone.</p> <p>The proposal is fully compliant with LEP controls, with the exception of a small variation to the building height relating to the proposed lift over run. In terms of the ADG requirements, the development is consistent with the provisions as far as practicable considering the odd shape of the site and constraints to the western side of the site due to the heritage building. Overall, the built form of the development is reflective of a form permissible under the planning controls and is not unlike current residential development, nor the future character of residential development within the area. As such this reason for refusal has been addressed.</p>	<p>The proposed use as a residential flat building is permissible. The mix of apartment typology provides housing diversity in the high density zone.</p> <p>The proposal does not achieve an acceptable built form outcome with insufficient setbacks and separation to minimise the visual dominance of the building when viewed from both the public domain and the adjoining properties, in particular the heritage buildings at 14-16 Victoria Street.</p> <p>The internal apartment layouts and balcony configurations do not provide suitable amenity for occupants with the long and winding corridors, small irregular shaped balconies and small windows which provide minimal light and ventilation.</p>
<b>Refusal Reason - 15</b> <i>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</i>	<p>The proposed development has been designed to relate to the size, shape and context of the site and has been designed to be consistent with the character for development in the area. The proposal will provide</p>	<p>The proposed siting, location, design and massing of the development will establish an undesirable urban design and built form outcome for this streetscape and create an</p>



1979.	high quality residential accommodation and has been designed to minimise as far as practicable any adverse effects on existing and future neighbouring properties. The proposal is consistent with the intent of the applicable LEP, DCP and Apartment Design Guide provisions except where identified and justified in this Statement. Accordingly, the proposed development is considered to be in the public interest. As such this reason for refusal has been addressed.	undesirable precedent for the locality. The proposed development is therefore not considered to be in the public interest.
<b>Refusal Reason - 16</b> <i>The amended proposal is not complete and therefore a thorough detailed comprehensive assessment of impacts cannot be undertaken.</i>	The amended proposal is submitted complete with a full set of plans and supporting documentation to allow for the comprehensive assessment of potential impacts.	The review application submitted contained suitable documentation to enable a full and proper assessment of the proposal.
<b>Refusal Reason - 17</b> <i>The proposal is unsatisfactory in regards Part 15, Division 1 Clause 256 (3) of the Regulation 2000 as applicant has not provided payment for the referral to Sydney Airport.</i>	The required fee under Part 15, Division 1 of the Regulation 2000 will be paid once Council have advised the actual referral fee after lodgement of this review.	Comments and conditions have been received from Sydney Airport.

### State Environmental Planning Policies (SEPPs)

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

**Table 4: Compliance with State Planning Policies**

State Environmental Planning Policy Title	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy No 55 – Remediation of Land	Yes
State Environmental Planning Policy (Infrastructure) 2007	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development	No – Refer to State Environmental Planning Policy No 65

	section below.
Draft Environment State Environmental Planning Policy	Yes
Draft Remediation of Land State Environmental Planning Policy	Yes

LPP034-20

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

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

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

39. The stormwater design was referred to Council's Development Engineer for review. The drainage plans were unsatisfactory however, a design change condition could be imposed requiring modification of the drainage design prior to the issue of the construction certificate should the application be supported.

40. In summary, the proposal is consistent with the aims, objectives or purpose of the Regional Plan if approved with appropriate conditions of consent.

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

41. BASIX Certificate No. 879105M\_02 dated 26 March 2020 was lodged with the Section 8.2 Review application and indicates that the proposal meets the provisions and minimum requirements of BASIX in terms of water, thermal comfort and Energy efficiency.

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

42. State Environmental Planning Policy No 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 DA. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.

44. Based on the information provided a Detailed Site Investigation Report was required and submitted to Council as part of this review application.

45. The Detailed Site Investigation Report No prepared by Geotechnique Pty Ltd was submitted to Council on which stated:

*“The general soil profile in the accessible open area of the site comprised topsoil/fill overlying natural sandy soil. The boreholes did not reveal any visual evidence of asbestos or other indicators of significant contamination, such as staining, odours or significant foreign matter.*

*All the laboratory test results satisfied the criteria for stating that the analytes selected are either not present i.e. concentrations less than laboratory limits of reporting, or present in the sampled soil at concentrations that do not pose a risk of hazard to human health or the environment under a “residential with minimal opportunities for soil access” form of development with the exception of detection of elevated concentrations of metals at two locations (BH4 and BH6), as shown on Drawing No 14613/2-AA2. Elevated copper and zinc concentrations might impact on terrestrial ecosystems but would not present a risk of harm to human health”.*

46. Based on the information provided, a contingency condition has been included in the recommended conditions detailing what is required to take place should unexpected contamination be found during demolition, excavation and construction.

The report concludes that the site is considered suitable for the proposed residential apartment development and the continued residential use of the land. This conclusion is supported by Council's Environmental Health Section who recommended appropriate conditions of consent relating to any contamination findings during demolition, excavation or construction should the application be supported.

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

47. The Vegetation State Environmental Planning Policy aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
48. The Vegetation State Environment Planning Policy applies to clearing of:
- (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
  - (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).*
49. The Vegetation State Environmental Planning Policy repeals clauses 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable development control plan (Development Control Plan).
50. The proposal involves the removal of a number of trees from the site. Council's Consultant Arborist has reviewed the proposed tree removal and raised no objection to the removal of the trees as there is none of significance located on the site. The street trees are worthy of retention and should be retained and protected. Appropriate replacement tree planting both on site and within the public domain should be provided should the application be supported.

51. On this basis, the proposal, should it be supported, is consistent with relevant provisions of the Vegetation State Environmental Planning Policy.

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

52. The Department of Planning and Environment has announced a Draft Remediation of Land State Environmental Planning Policy, which will eventually repeal and replace the current State Environmental Planning Policy No 55 — Remediation of Land.
53. 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.
54. Whilst the proposed State Environmental Planning Policy will retain the key operational framework of State Environmental Planning Policy 55, it will adopt a more modern approach to the management of contaminated land. The Draft State Environmental Planning Policy will not alter or affect the findings with respect to State Environmental Planning Policy 55 detailed above.

#### **Draft Environment State Environmental Planning Policy**

55. The Draft Environment State Environmental Planning Policy was exhibited from 31 October 2017 to 31 January 2018. This consolidated State Environmental Planning Policy proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.
56. Changes proposed include consolidating the following seven existing State Environmental Planning Policies:
- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
  - State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
  - State Environmental Planning Policy No. 50 – Canal Estate Development
  - Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
  - Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
  - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
  - Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.
57. The proposal is consistent with the provisions of this Draft Instrument.

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

58. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (State Environmental Planning Policy 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three (3) or more storeys in height and containing at least four (4) dwellings. Amendment 3 to State Environmental Planning Policy 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, State Environmental Planning Policy 65 applies.

59. Clause 28(2) of State Environmental Planning Policy 65 requires that the consent authority take into consideration the following as part of the determination of DAs to which State Environmental Planning Policy 65 applies:
- a) *the advice (if any) obtained from the design review panel, and*
  - b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
  - c) *the Apartment Design Guide.*
60. The review application was not referred to the DRP given the application did not substantially change and the application that was lodged with insufficient time for the matter to be reviewed by the DRP again prior to the expiry of the review period.
61. The application has been reviewed having regard to the criterion of the ADG as well as the reasons for refusal which was based on the advice previously received.
62. The proposal fails to satisfy various Design Quality Principles and provisions of the ADG, particularly where they relate to context and neighbourhood character, built form and scale, and façade design. The proposal also fails to meet various design criteria of the ADG with respect to residential amenity for the future occupants of the apartments.
63. The tables below provide a comprehensive assessment against the principles, objectives and controls of State Environmental Planning Policy 65 and the ADG.

**Table 5: Application of State Environmental Planning Policy 65**

Clause	Standard	Proposal	Complies
3 - Definitions	<p>Complies with definition of “Residential Apartment Development” (RAD) Section 4 (1) (Application of Policy) of the State Environmental Planning Policy 65 states that the policy “<i>applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:</i></p> <p><i>(a) the development consists of any of the following:</i></p> <p><i>(i) the erection of a new building,</i></p> <p><i>(ii) the substantial redevelopment or the substantial refurbishment of an existing building,</i></p>	The proposal is ten (10) storeys, with three (3) levels of basement parking with a rooftop communal open space area.	Yes

	<p>(iii) the conversion of an existing building, and</p> <p>(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and</p> <p>(c) the building concerned contains at least 4 or more dwellings.”</p>		
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the State Environmental Planning Policy includes mixed use developments.	This application is for the erection of a Residential Flat Building which satisfies the State Environmental Planning Policy's definition.	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect: Anastasios Bastas (Registration No.4816)	Yes

64. Clause 28 of State Environmental Planning Policy 65 requires the consent authority to take into consideration the provisions of the ADG. The Table below assesses the proposal against these provisions, with relevant assessment comments provided where non-compliances are proposed.

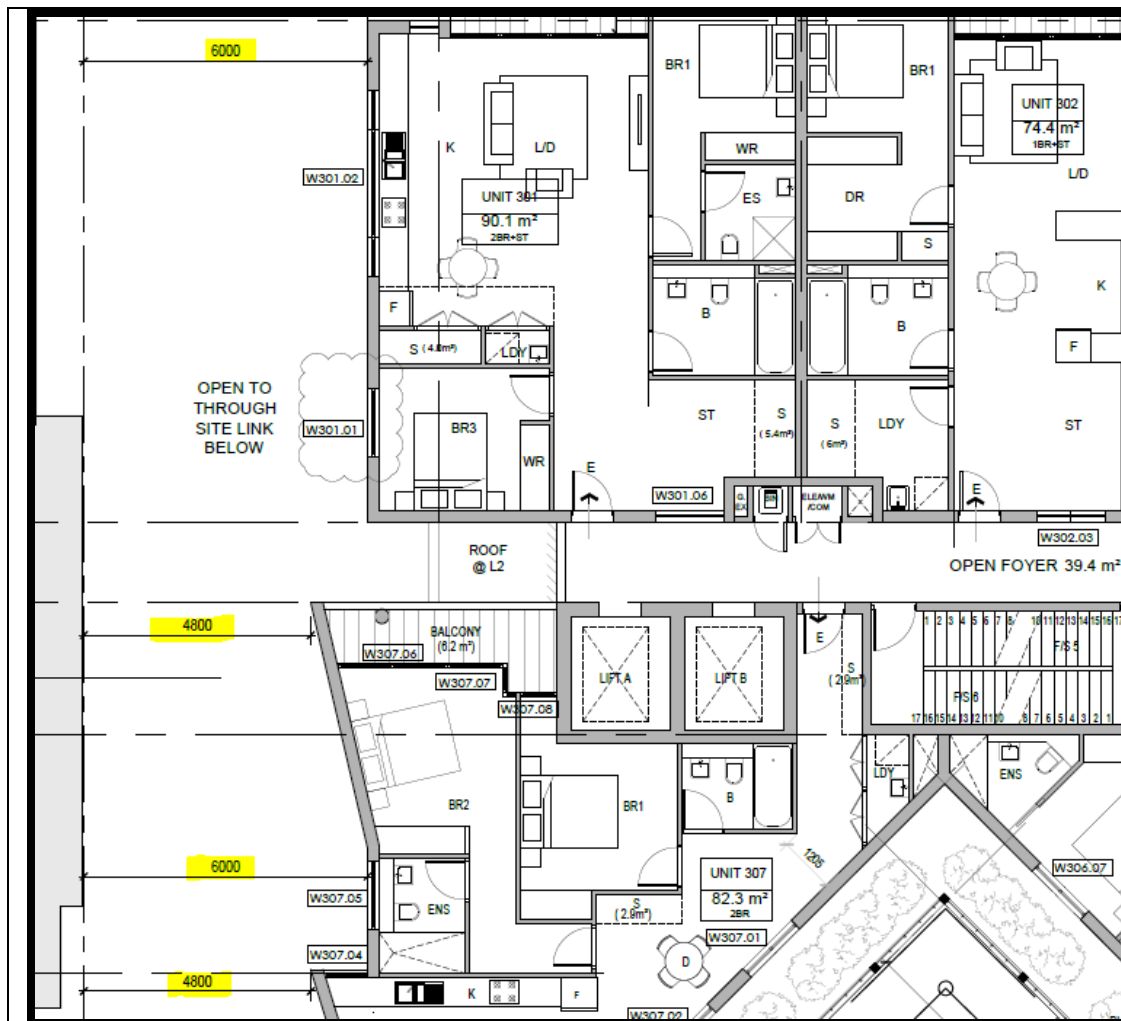
**Table 6: Part 3 and Part 4 – Consideration of Apartment Design Guide**

<b>ADG Compliance Table</b>		
<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
<b>3D – Communal Open Space (COS)</b>		
<p>1. Communal Open Space has an area equal to 25% of the site.</p> <p>Site area of 1320.5sqm</p> <ul style="list-style-type: none"> <li>Where communal open space cannot be provided at ground level, it should be provided on a podium or roof.</li> <li>Where developments are unable</li> </ul>	<p>Roof terrace = 331.5sqm (25.1%)</p> <p>Ground Floor = 278.5sqm (21.1%)</p> <p>Total = 46.2% (610sqm)</p> <p>It is noted however the proposed ground floor courtyard is considered to result in adverse</p>	Yes

<p>to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> <li>• Provide communal spaces elsewhere such as a landscaped roof top terrace or a common room.</li> <li>• Provide larger balconies or increased private open space for apartments.</li> <li>• Demonstrate good proximity to public open space and facilities and/or provide contributions to public open space.</li> </ul>	<p>direct privacy impacts upon bedroom 2 of apartment 105 due to poor window placement and ineffective screening.</p>	
<p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter)</p>	<p>Yes the communal open space on the rooftop being the principle usable part will achieve a minimum of 2 hours of solar access throughout the day in mid-winter.</p>	<p>Yes</p>
<p><b>Communal Open Space</b>  The proposal provides two (2) distinct areas of communal open space, the first located on the ground floor along the western boundary within an area adjacent to the through link and the second area of communal open space located on the roof top. (A small courtyard exists to the eastern side of the development on the ground floor.)</p> <p>To make the roof top open space area more functional and useable, it should be amended to accommodate a greater range of facilities within the communal open space including an accessible toilet, vegetable gardens and other facilities. The additional floor space area created by the provision of a WC will not result in the total floor space of the development exceeding the maximum 4:1.</p>		
<p><b>3E – Deep Soil Zones</b></p>		
<p>Site area is 1320.5sqm  Sites between 650sqm - 1,500sqm = 3m min dimensions</p>	<p>Amended plans show that the deep soil area proposed achieves the minimum 3m dimensions at the front of the allotment.</p>	<p>Yes</p>
<p>Min deep soil area of 7% (92.44sqm)</p>	<p>136.85sqm (10.36%)</p>	<p>Yes</p>
<p><b>Comment on Deep Soil Zones</b>  The building has been redesigned and now provides sufficient deep soil zones with minimum dimensions of 3m and a minimum total area of 10.36% of the site area, as required by the ADG for a site of this area. There are other areas along the western boundary that provide an area for landscaping, however the width of these areas are less than 3m.</p>		
<p><b>3F – Visual Privacy</b></p>		
<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p>		
<p>Minimum required separation</p>		



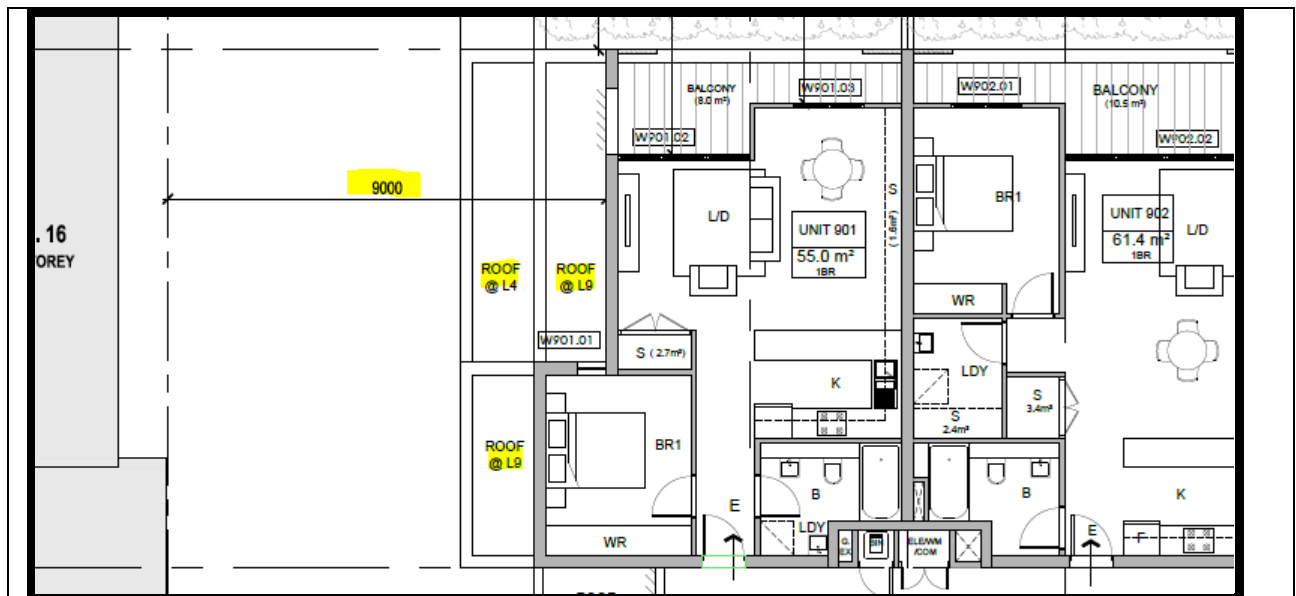
<p>distances from buildings to the side and rear boundaries</p> <p>No separation is required between blank walls</p> <p>Up to 12m (4 storeys) Non habitable – 3m</p> <p>Habitable – 6m</p>	<p><u>Levels 1 - 4</u> East – Nil boundary setback West – 4.8m to 6m</p> <p>East – Nil boundary setback</p> <p>West – 4.8m to 6m</p>	<p>Yes Yes</p> <p>Yes, no separation required for blank walls</p> <p>No. The walls that are 4.8m from the boundary are angled blank walls. See discussion below.</p>
<p>Up to 25m (5 - 8 storeys): Non-habitable – 4.5m</p> <p>Habitable – 9m</p>	<p><u>Levels 5 – 8</u> East – 6m West – 4.8m -7.5m</p> <p>East – 6m West – 4.8m to 7.5m</p>	<p>Yes Yes</p> <p>No No</p>
<p>Over 25m (9+ storeys) Non habitable – 6m</p> <p>Habitable – 12m</p>	<p><u>Levels 9 - 10</u> East - 6m West – 6m to 8m</p> <p>East – 6m West – 4.8m to 8m</p>	<p>Yes Yes</p> <p>No No</p>
<p><u>Separation Distances (3F Visual Privacy)</u> The building fails to comply with the minimum separation distances in accordance with the provisions of Part 3F of the Apartment Design Guide (ADG) for most part of the building above 4 storeys.</p>		



**Figure 5:** Floor plan showing the setbacks of the standard floor plate up to and including level 4 on the western side of the building.

The building is proposed to be setback between 4.8m and 6m up to and including level 4, with all non-habitable spaces being setback a minimum of 6m. The habitable spaces located within the required 6m setback have angled blank walls to assist in minimising privacy impacts.

These setbacks are continued through to the upper levels of the building to the apartments in the south western corner. The apartments located at the front of the site in the north western corner have increased parts of the building as they ascend. At level 4 to level 8, the bedroom on the western side of apartments 401, 501, 601, 701 and 801 maintain a 6m setback with the living room setback increased from 6m to 7.5m. At levels 9 and 10 the western bedroom is setback 7.5m with the setback to the living room being increased from 7.5m to 9m.



**Figure 6:** Floor plan showing apartment 901 and setbacks from the western boundary

Part 3F of the ADG relates to “*visual privacy*” and establishes minimum or reasonable side setbacks for developments which allows for adequate separation distances between buildings and therefore maintain privacy between properties.

The objective of the control is to provide “*Adequate building separation distances which are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy*”.

The lack of separation along the western boundary will create adverse amenity impacts, to adjoining properties and the lack of compliant separation distances in this case will not satisfy the objectives of the ADG which aim to achieve to an “equitable” distribution of separation between properties. The ADG seeks to create minimum separation distances of some 12m between properties (best case). Some encroachments are permitted subject to no overlooking being generated. If encroachments occur, other sensitive design elements need to be employed including variations to the facades through improved articulation, consideration of the placement of window openings, smart materials and finishes and the use of landscaping to soften and green spaces. The proposed design falls short of achieving the intentions and purpose of the ADG as the proposed setbacks are considered to be insufficient and the building given its scale and form will impose upon the allotments adjoining and how the development will be viewed from the public domain.

The eastern side of the building is located on a nil boundary setback with a green wall centrally located to provide screening and privacy within the ground floor communal open space area between apartments 105 and 106 and also where the ascending apartments (206, 306 and 406) have their primary balconies. From level 5 and above the building is setback 6m from the boundary. The apartments located in the south eastern corner have a blank wall to habitable spaces and balconies. Towards the front of the allotment in the north eastern corner, habitable rooms are located 6m from the boundary although angled screens are proposed to minimise overlooking. Adjoining the property to the east is 12-24 Stanley Street which provides a landscape buffer along their western boundary adjoining the subject site which assist in minimising privacy impacts and as such these setbacks to the eastern side are considered appropriate and acceptable.

### **3G – Pedestrian Access and Entries**

Multiple entries (including communal	The main entry to the	Yes
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building entries and individual ground floor entries) should be provided to activate the street edge	development is from Victoria Street with an additional entry from the western side via the through link. All ground floor apartments have separate access from Victoria Street and one apartment via Stanley Lane.	
Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries.	Achieved	Yes
<b>3H – Vehicle Access</b>		
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	The driveway access to the basement has been provided off Stanley Lane to the rear. The driveway width is 5.5m. Councils DCP requires that the laneway be widened by 1.2m to assist in addressing pedestrian and vehicular conflict given the provision of the publicly accessible pedestrian through link from Victoria Street to Stanley Lane. It is also noted that the laneway will only operate in a one way direction. The development would need to ensure that all vehicles shall enter and exit the premises in a forward direction. In addition, the maximum size of a truck/service vehicle using the proposed development shall be restricted to Small Rigid Vehicle with a maximum length of 6.4 metres.	Yes
<b>3J – Bicycle and Car Parking</b>		
<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>- On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>- On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic</p>	<p>The site is located within 800m of Kogarah Railway Station; as such the RMS provisions are the criterion for the assessment of this application.</p> <p>The proposal relies on the following car parking provisions:</p> <p><u>Residential parking:</u> 33 x 1bedroom apartments @ 0.4 spaces per unit = <b>13.2 spaces</b></p> <p>26 x 2 bedroom apartments @ 0.7 spaces per apartment = <b>18.2</b></p>	<p>The car parking arrangement and number of car spaces provided complies with the ADG/RMS requirements</p> <p>The proposal complies with the numerical</p>

<p>Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>In accordance with Section 5.4.3 (High Density Residential Flat Buildings) of the RMS Traffic Generating Guidelines. The site is located within the “Strategic Centres” and the following provisions apply;</p> <p>0.4 spaces per 1 bedroom unit 0.7 spaces per 2 bedroom unit 1.2 spaces per 3 bedroom unit 1 space per 7 units (visitors parking)</p>	<p><b>spaces</b></p> <p>4 x 3 bedroom apartments @ 1.2 spaces per unit = <b>4.8 spaces</b></p> <p>Visitors - 63 apartments (1 per 7) = <b>9 spaces</b></p> <p>The proposal requires a minimum total of <b>46</b> off street car parking spaces for residents and visitors.</p> <p>A total of 49 car parking spaces are provided which are broken down into one (1) for the neighbourhood shop, nine (9) visitor’s spaces and 39 resident spaces which include seven (7) accessible spaces.</p> <p>A dual carwash bay/visitor space known as space 13 on basement level 1 has been provided.</p>	<p>requirements of the ADG given the accessible location of the site.</p>
<b>4A – Solar and Daylight Access</b>		
Living rooms and private open spaces of at least 70% of apartments receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter in the Sydney Metropolitan Area.	76%	Yes
Max. 15% of apartments receive no direct sunlight between 9am and 3pm in midwinter	5% (3/63) (apartments 207, 307 and 407)	Yes
<b>4B – Natural Ventilation</b>		
At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	A total of 38 apartments have been designed to comply with minimum cross ventilation requirements which amounts to 60.3% of the development.	Yes
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	No apartment exceeds 18m in depth, measured glass line to glass line and is therefore compliant.	Yes
The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths	The criterion has been achieved.	Yes
<p><b>Natural ventilation - Cross ventilation</b></p> <p>The plans indicate that 40 apartments provide cross ventilation however apartments 104</p>		

and 501 are single aspect apartments and do not provide cross ventilation and are excluded from compliance with this standard.

#### **4C – Ceiling Heights**

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

Minimum internal areas:  1br: 50sqm 2br: 70sqm 3br: 90sqm  (Add 5sqm if second bathroom proposed)	All apartments meet minimum internal sizes. 50sqm -74.4sqm 70sqm – 90.1sqm 99.8sqm – 104.4sqm  Calculated accordingly.	Yes Yes Yes Yes
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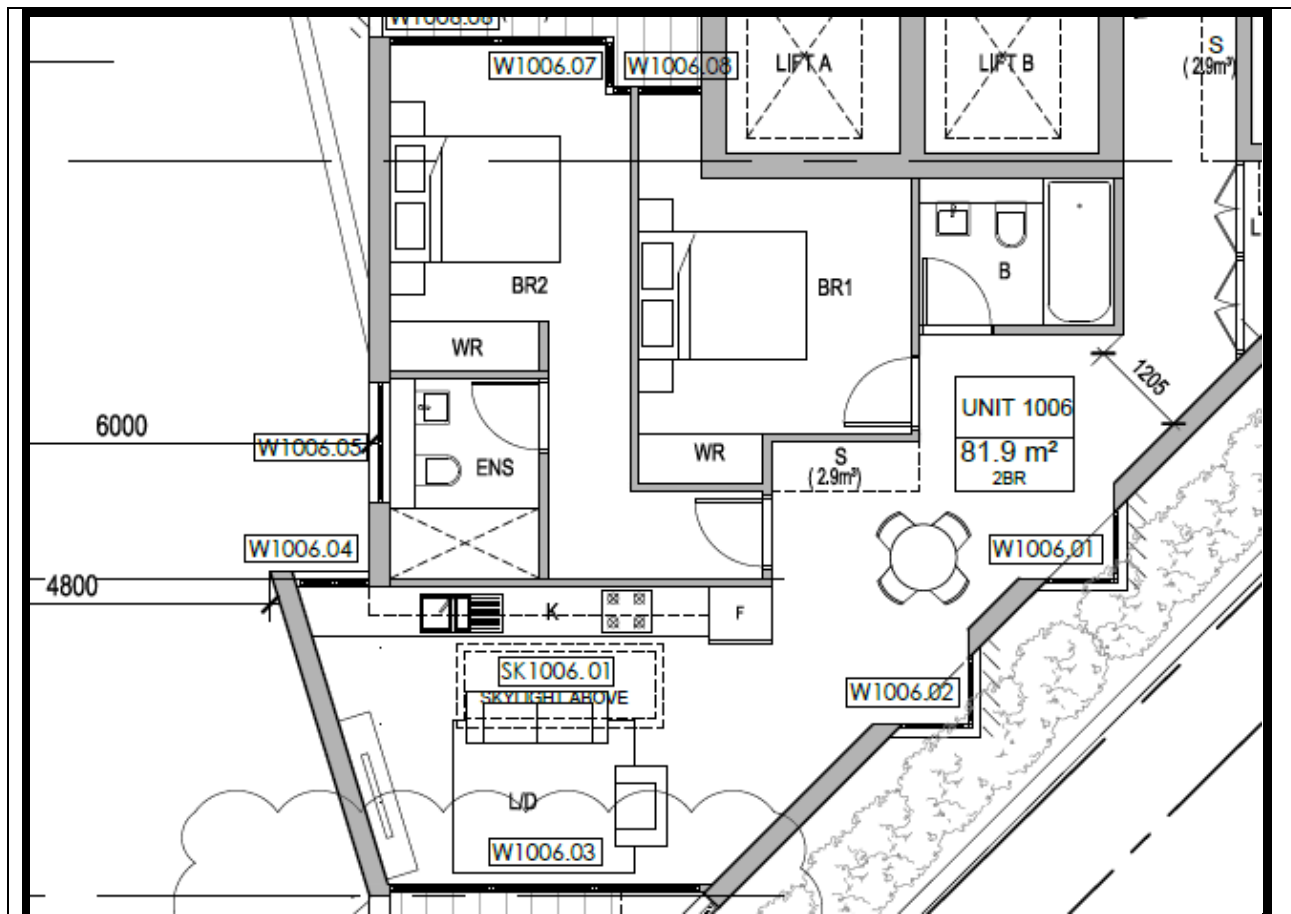
Each habitable room must have a window in an external wall with a total minimum glass area of at least 10% of the floor area of the room.	Each habitable room has a suitably sized window.	Yes
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Habitable room depths are limited to a maximum of 2.5 x the ceiling height	All rooms compliant.	Yes
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Open plan layouts proposed for all apartments and have a maximum room depth of 8m.	Yes

Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)	All bedrooms meet minimum internal sizes (excluding wardrobe space).	Yes
Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	All bedrooms meet minimum dimensions excluding wardrobe space as specified.	Yes
Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments	All living rooms comply.	Yes
Internal width of cross-over or cross-through apartments are at least 4m	All such apartments meet the minimum width requirement.	Yes

#### **Apartment Size and Layout**

Although generally compliant with the apartment size and layout criteria of the ADG, the functionality and useability of spaces is questionable in some apartments. The dining area within apartments 207,307, 407, 506, 606, 706, 806, 906 and 1006 is located within the corridor/hallway/thoroughfare providing access to the main bedroom. In addition this access is a long and winding corridor, with the second bedroom's only light and ventilation being via a small window resulting in poor amenity.



**Figure 7:** Floor plan showing the internal configuration of apartments as described above.

#### **4E – Private Open Space and Balconies**

Minimum primary balcony sizes:

Studio: 4sqm area

1br: 8sqm area, 2m depth

2br: 10sqm area, 2m depth

3br+: 12sqm area, 2.4m depth

The minimum balcony depth to be counted as contributing to the balcony area is 1m

For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m.

Exceeds 4sqm (Ground floor apartment 106).

Exceed 8sqm and 2m in depth.

Some primary balconies exceed 10sqm and 2m in depth.

Some primary balconies exceed 12sqm and 2.4m in depth.

Calculated accordingly.

The apartments located on the ground floor all have a minimum private open space area of 15sqm and a minimum depth of 3m.

Yes

Yes

No, see below

No, see below

Yes

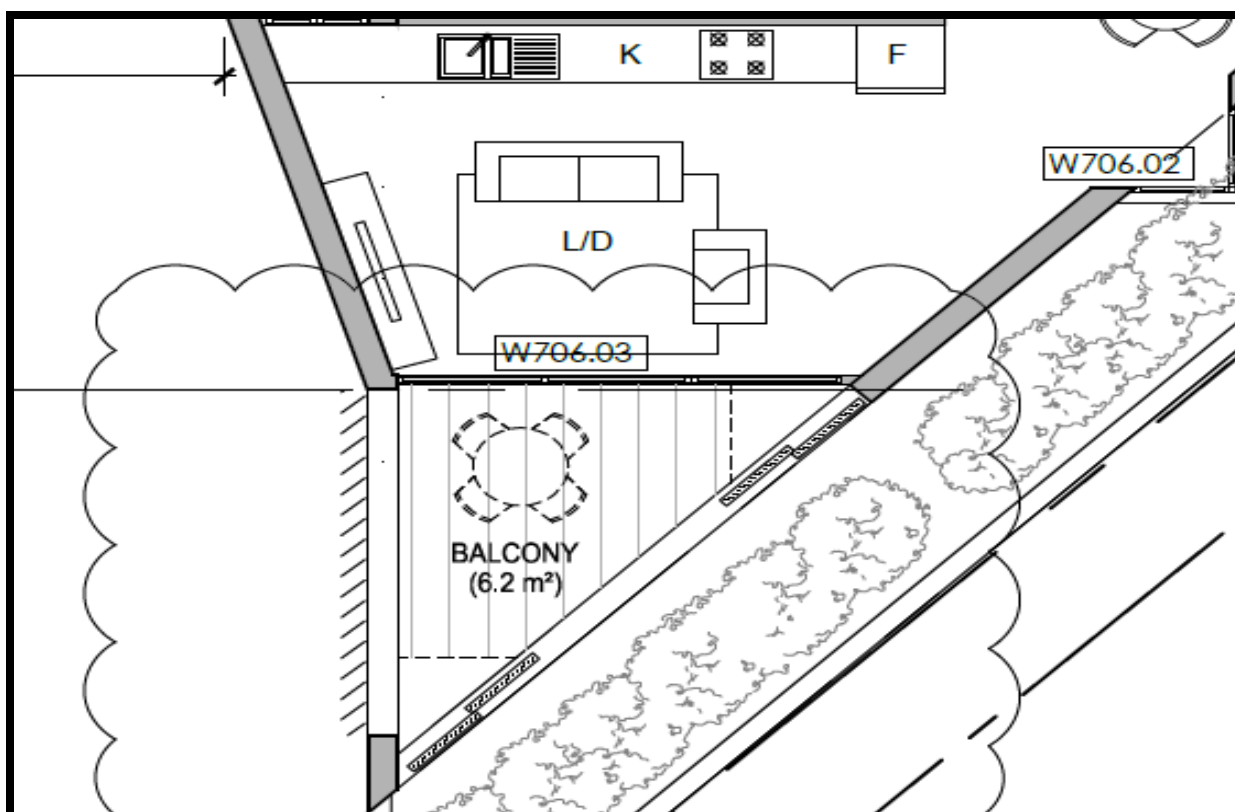
Yes

#### **Insufficient primary balcony area.**

Two bedroom apartments 207, 307, 407, 506, 606, 706, 806, 906 and 1006 have south west facing apartments with a total area of 6.2sqm. Although they do provide an additional balcony to achieve the minimum 10sqm required for two bedroom apartments, this additional balcony is located off a bedroom and the dimensions to provide a

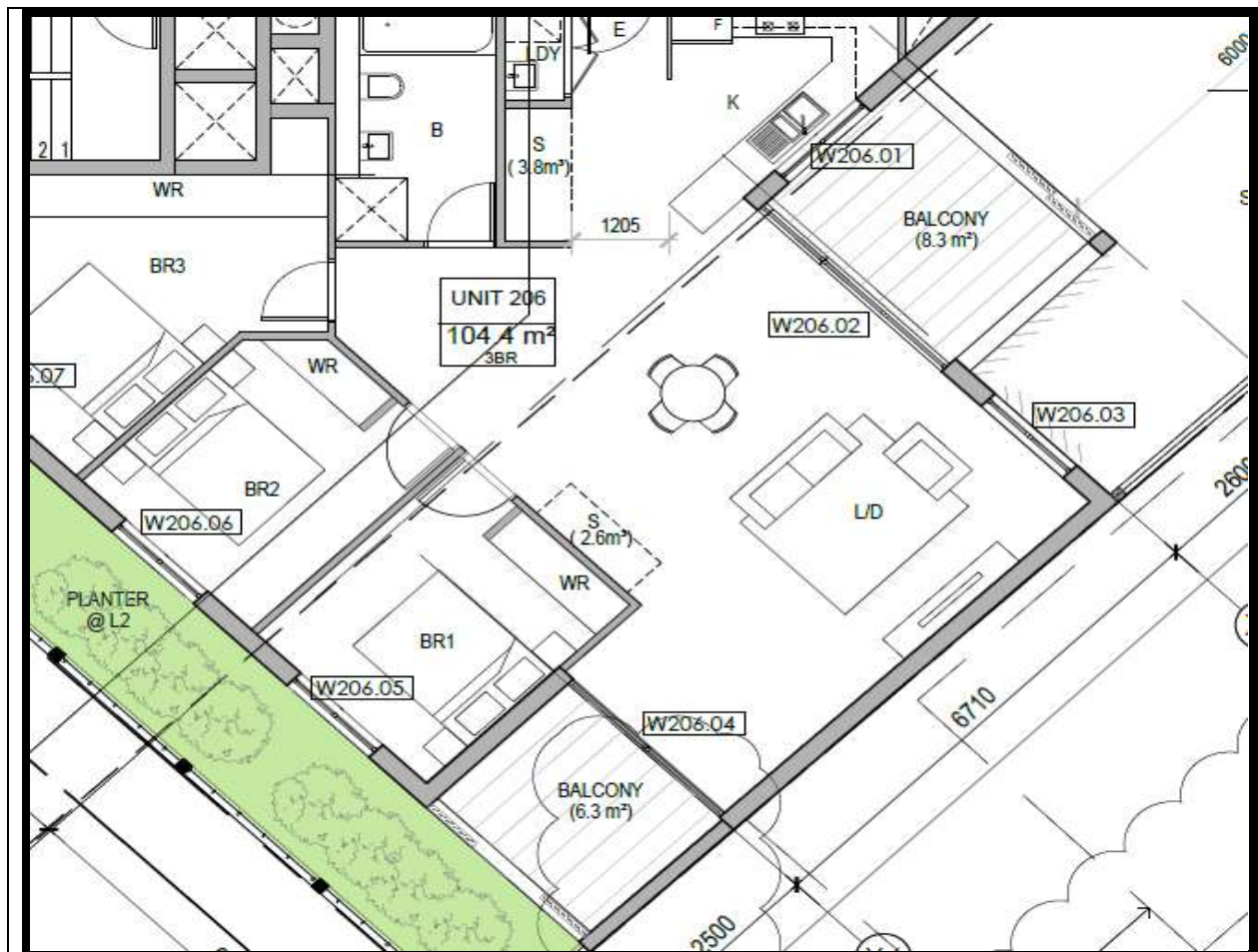


functional and useable space have not been achieved.



**Figure 8:** Floor plan showing primary balcony of 2 bedroom apartments as described above

The primary balcony for the 3 bedroom apartments 206, 306 and 406 located on the northern side of the apartment is 8.3sqm. The application proposes an additional south facing balcony located off the living dining area to achieve the 12sqm required.



**Figure 9:** Floor plan showing primary balcony of 3 bedroom apartments as described above

The primary balcony for the 2 bedroom apartments 205, 305 and 405 are triangular in form and do not achieve the minimum balcony dimension of 2m, only 4sqm of the 10sqm proposed meets the criterion. The inadequate dimensions impact the useability and functionality of this space therefore compromising the amenity of the future occupants of the apartments.

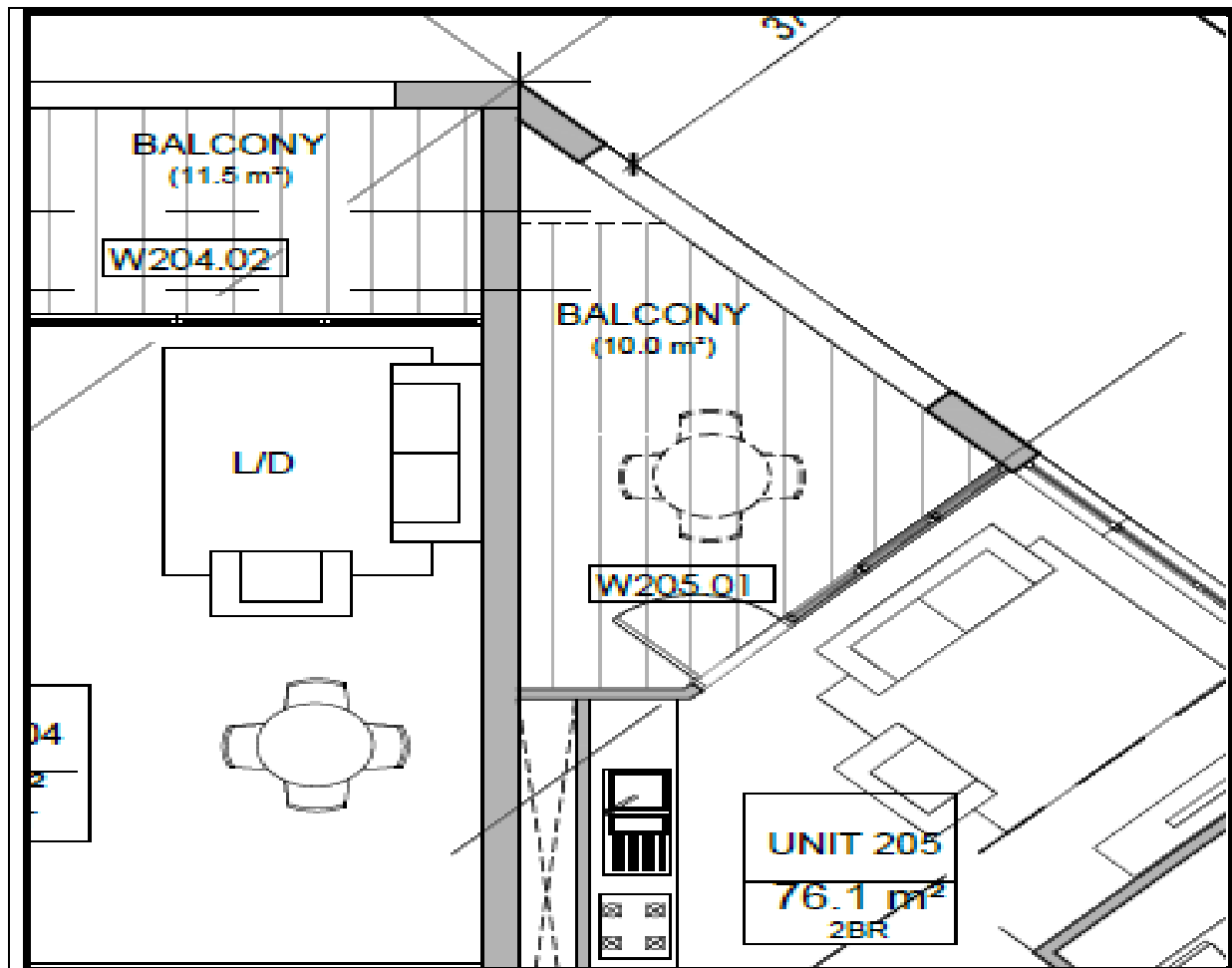


Figure 10: Floor plan showing primary balcony of 2 bedroom apartments as described above

#### 4F – Common Circulation Areas

Maximum 8 apartments off a circulation core on a single level

Two lift cores per level, together servicing 6 - 7 apartments per level.

Yes

#### 4G – Storage

In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

1br: 6m<sup>3</sup>

2br: 8m<sup>3</sup>

3+br: 10m<sup>3</sup>

At least 50% of storage is located within the apartment

1br > 6m<sup>3</sup>

2br > 8m<sup>3</sup>

3br > 10m<sup>3</sup>

At least 50% of the storage is located within the apartment; the remainder is located in the basement levels.

Yes

Yes

Yes

Yes

#### 4H – Acoustic Privacy

Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.

Window and door openings are generally orientated away from noise sources

Refer to 3F – Visual Privacy.

Generally acceptable. The ground floor apartment adjacent to the thoroughfare contains

No

Yes

Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas	windows that have been softened through planter boxes which will contain tree planting that will achieve a height of between 0.9 to 1.5m to minimise noise from the thoroughfare.  Achieved.	Yes
Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	Generally achieved where practicable.	Yes
<b>4J – Noise and Pollution</b>		
To minimise impacts the following design solutions may be used: <ul style="list-style-type: none"> <li>physical separation between buildings and the noise or pollution source</li> <li>residential uses are located perpendicular to the noise source and where possible buffered by other uses</li> <li>buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer</li> <li>landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry</li> </ul>	The design solutions within the ADG which seek to minimise noise and acoustic impacts have been considered through the design and layout of apartments, however it is acknowledged that further design changes would improve the amenity.	Yes
<b>4K – Apartment Mix</b>		
A range of apartment types and sizes is provided to cater for different household types now and into the future.  The apartment mix is distributed to suitable locations within the building.	The development offers a mix of studio, 1, 2, and 3 bedroom apartments in the following manner;  1 x studio apartment = 1.6% 32 x 1 bedroom apartments = 50.8% 26 x 2 bedroom apartments = 41.3% 4 x 3 bedroom apartments = 6.3%	Yes
<b>4L – Ground Floor Apartments</b>		
Street frontage activity is maximised where ground floor apartments are located	Apartments 101, 102, 103, 104 and 105 have direct street access to Victoria Street.	Yes

Design of ground floor apartments delivers amenity and safety for residents	Apartment 106 has direct street access to Stanley Lane.	
<b>4M – Facades</b>		
Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale	The proposal fails to provide adequate building modulation and articulation to the Victoria Street façade. The continuous unarticulated street wall generated by the solid masonry balustrades combined with the height of the 4 storey podium results in a bulky and ‘boxy’ and dominant streetscape that does not respond to human scale. The removal of the “L shaped leg” of the balconies at the podium level will create formal indentations and assist in establishing a continuous vertical rhythm when viewed in context with the Victoria Street streetscape to complement the proposed terrace style building typology proposed on the adjacent property. The building has not been successfully resolved in this regard.	No
<b>4N – Roof Design</b>		
Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features	The roof includes communal open space which complies with the intention of the ADG. The architectural roof feature, which extends above the building is not considered appropriate and inconsistent with the built form and is not supported.	Yes
<b>4O – Landscape Design</b>		
Landscape design is viable and sustainable, contributes to the streetscape and amenity	The landscape design has been reviewed by Council’s Consultant Arborist and is generally acceptable. Street trees are to be retained to contribute to the streetscape character.	Yes
<b>4P – Planting on Structures</b>		
Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity	Generally acceptable. The design includes a series of planter boxes on structures, adjacent to balconies and bedrooms.	Yes

of communal and public open spaces		
<b>4Q – Universal Design</b>		
Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs. Benchmark of 20% liveable dwellings.	Satisfactory – the design offers a wide variety of apartment styles and forms many of which can be integrated and amalgamated in the future where necessary.	Yes
<b>4R – Adaptive Reuse</b>		
Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	N/A – not an adaptive re-reuse as the building is new.	N/A
<b>4U – Energy Efficiency</b>		
Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	Appropriate building orientation, natural ventilation, passive solar design and the proposal exceeds BASIX target for energy efficiency.	Yes
<b>4V – Water Management and Conservation</b>		
Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The stormwater design is considered acceptable and in accordance with Council Policy.	Yes
<b>4W – Waste Management</b>		
Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The proposed bin storage areas do not provide sufficient space to cater for the required number of putrescible and recycling bins. Additional area within the development is required to be made available to satisfy the waste management of the development.	No
<b>4X – Building Maintenance</b>		
Building design provides protection from weathering  Enables ease of maintenance, material selection reduces ongoing maintenance cost	The materials nominated would satisfy this criterion.	Yes

## Environmental Planning Instruments

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

#### Zoning

65. The subject site is zoned R4 High Density Residential under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposed development is for

a residential flat building and a neighbourhood shop which are permissible land uses in the zone.



Figure 11: Zoning map site outlined in blue.

66. The objectives of the zone are as follows:
- To provide for the housing needs of the community within a high density residential environment.
  - To provide a variety of housing types within a high density residential environment.
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
67. The amended proposal now complies with the requirements of Clause 4.4 of KLEP 2012, through the reduction of residential floor space. It is noted that the amended proposal still fails to meet the requirements of Clause 4.3 Building Height of KLEP 2012.
68. An assessment with the KLEP 2012 provisions relevant to the amended plans is detailed within the following table.

Table 7: KLEP 2012 Compliance Table

Clause	Objectives/Provisions	Comment	Complies
2.2 Zone	R4 High Density Residential	The proposal is for a residential flat building and neighbourhood shop which are permissible land uses in the zone.	Yes
2.3 Zone Objectives	Objectives of the zone To provide for the housing needs of the community within a high density residential environment.	The proposed development generally satisfies the objectives of the R4 High Density Residential zone.	Yes



	<p>To provide a variety of housing types within a high density residential environment.</p> <p>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</p>		
2.7 Demolition	Demolition requires development consent	The application seeks consent for demolition.	Yes
4.3 Height of Buildings	33m as identified on Height of Buildings Map	The building exceeds the 33m height limit by 3.3m to a height of 36.3m. (10% variation)	No - A Clause 4.6 Statement has been submitted requesting a variation to the development standard see discussion below.
4.4 - Floor space ratio	The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. In this case, the relevant map limits the floor space ratio for buildings on the subject site to 4:1.	The revised proposal has a floor space ratio of 3.684:1.	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with CI 4.5	Calculated accordingly.	Yes
4.6 Exceptions to Development Standards	<p>The objectives of this clause are as follows:</p> <p><i>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i></p> <p><i>(b) to achieve better outcomes for and from development by allowing flexibility in</i></p>	<p>The proposal originally exceeded the height control pursuant to Clause 4.3 of the KLEP; however no Clause 4.6 was submitted to support the non-compliance with the control.</p> <p>The applicant has submitted a Clause 4.6 Statement with the S8.2 Review application</p>	A Clause 4.6 Statement has been submitted for the height variation see discussion below.

	<i>particular circumstances.</i>	justifying the variation and the non-compliance is considered to be reasonable and is well founded. A detailed discussion is provided in the “Exception to Development Standards” section below.	
5.4 Controls relating to miscellaneous permissible uses	(7) Neighbourhood shops – If development for the purposes of a neighbourhood shop is permitted under this plan, the retail floor area must not exceed 80 square metres.	The neighbourhood shop is proposed to be 32.3sqm.	Yes
5.6 Architectural Roof Feature	The architectural feature, is to form a decorative element, not an advertising structure, cannot be reasonably capable of being modified into floor space area, will cause minimal overshadowing and is not signage or plant equipment.	The proposed architectural roof feature has a height of 38.39m (RL 57.79) which comprises of open formwork which generally satisfies the objectives of this control.	Yes, however the roof feature does not integrate satisfactorily into the building and it should be deleted from the proposal.
5.10 Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	The subject site is not identified as a heritage item.  There is a heritage item located on the adjoining site to the west known as 14-16 Victoria Street Kogarah. The proposal was referred to Council’s Heritage Advisor who has advised that the proposal does not satisfy the objectives of Clause 5.10 KLEP in its current form.	No - a detailed assessment has been provided in the referral section of this report.
6.1 Acid sulfate soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by acid sulfate soils.	Yes
6.2 Earthworks	To ensure that earthworks do not have	The proposed development includes	Yes

	a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	excavation and associated earthworks to accommodate three (3) levels of basement car parking. The extent of works is considered to be consistent with that of other approved built forms within the locality.	
6.3 - Flood planning	<p>The objectives of this clause are as follows:</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p>	The subject land is not identified as being affected by flood.	Yes
6.5 Airspace Operations	The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.	The Inner horizontal Surface of the Obstacle Limitation Surface (OLS) above this site is at a height of 51 metres above the Australian Height Datum (AHD) and the prescribed airspace limit above the site commences at 51 metres AHD. The development proposes a maximum height of 57.76 metres AHD; penetrating the OLS by 6.76m. Approval has been provided permitting the building to be at a maximum height of 57.76m (AHD).	Yes

#### Clause 4.6 Exceptions to development standards

##### Detailed assessment of variation to Clause 4.3 Height of Buildings

69. Clause 4.3 of the Kogarah Local Environmental Plan 2012 (KLEP) relates to the maximum permitted building height for a site and refers to the Height of Buildings Map.

The relevant map identifies the subject site as having a maximum height of 33m. Building Height is defined as:

*“Building height (or height of building) means:*

- (a) In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) In relation to the RL of a building the vertical distance from the Australian Height Datum to the highest point of the building*

*Including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”*



**Figure 12:** Maximum Height of building map of the subject site outlined in blue. The red colour equates to 33m.

70. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The KLEP identifies a maximum height of 33m for the site (refer to Figure 12 above), the proposed development will exceed the height by 3.3m. The height breach relates to the stair and lift overrun having an RL of 36.3m, being a 10% variation of the control. This extent of non-compliance which occurs at the western lift overrun which is centrally located above Building B. The other structures which exceed the height are the fire stairs and roof awnings associated with the communal open space. An architectural roof feature also exceeds the 33m height limit, however is not required to comply with the maximum building height limit by virtue of Clause 5.6 of the KLEP.
71. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.

72. Clause 4.6(1) outlines the objectives of the standard which are to “provide an appropriate degree of flexibility in applying certain development standards to particular development” and “to achieve better outcomes for and from development by allowing flexibility in particular circumstances”.

73. Clause 4.6(3) states that:

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

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

74. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of KLEP2012. The Clause 4.6 request for variation is assessed as follows:

***Is the planning control in question a development standard?***

75. The Height of Buildings control under Clause 4.3 of the Kogarah Local Environment Plan 2012 is a development standard.

***What are the underlying objectives of the development standard?***

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

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

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

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

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

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

79. The judgment goes on to state that:

*“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental*

*or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

80. Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation):
  1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
  2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
  3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
  4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
  5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone."*
81. The Clause 4.6 statement was prepared having regard to recent court cases and their judgements.
82. Applicants comment: *"In Wehbe V Pittwater Council (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:*

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

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

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
  2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
  3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
  4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
  5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*
85. *Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in this statement. For the same reasons, the objection is considered to be well founded as per the first method underlined above.*
86. *Notably under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*
87. Preston CJ identifies 5 options in *Wehbe v Pittwater Council* (2007) NSW LEC 827 which can be used to analyse whether the application of the standard to a particular building is unreasonable or unnecessary in the circumstances of the case.

*Preston CJ at [16] states as follows:*

*“As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42] – [51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”*

*In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, his Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.*

*The five methods outlined in *Wehbe* are:*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First method).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second method).*
3. *The underlying object of purpose would be defeated or thwarted if compliance v/as required and therefore compliance is unreasonable (Third method).*



4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth method).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth method).*

88. Officer's comment: In respect to Prestons CJ judgement the NSW Land and Environment Court has established the five part test (outlined above). In this case the development satisfies the five part test for the following reasons;

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

89. Applicants Comment: *Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any material impacts of the proposed non-compliance on the amenity of the environmental values of the locality, the amenity of future building occupants and on area character.*
90. *Furthermore the following planning grounds are submitted as planning grounds to justify contravening the maximum building height.*
- *The building height non-compliance is limited to the top portion of the lift over run and the tower for the stair access. The structures are primarily located at the centre of the building. The location and minimal bulk of the structure will ensure they will not be highly visible from the public domain, and the impacts to adjoining properties will be negligible.*
  - *The rooftop provides high quality communal open space. In order to provide equitable access to this space the lift over run must necessarily breach the height control, in this instance by 3.3m. Therefore this non-compliance provides substantial benefits to the development without impacting neighbouring sites;*
  - *The additional shadowing that will be caused by the height non-compliance is negligible. The minor portion of shadows for the portion of the lift overrun over the height limit is insignificant and acceptable. The shadow diagrams submitted with this application, clearly show there is minimal additional overshadowing by the lift overrun and stair access tower.*
  - *The breach will not result in any adverse impacts on neighbouring properties in relation to privacy as the portion of the building over the height limit will not enable overshadowing;*
  - *The roof top communal open space provides a consolidated open space with good solar access for future residents as encouraged by the Apartment Design Guide (Part 3D) and is Council's preferred location for the communal open space*
  - *The proposed roof form creates variety in the skyline and urban environment and contributes to the aesthetic and environmental design and performance of the building.*
  - *The non-compliant portion contains no residential or habitable floor area.*
  - *Despite the minor non-compliance, the objectives of the building height clause have been achieved as demonstrated above.*

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

***Clause 4.6(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out***

92. Clause 4.6(4) states that:

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

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

- (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,”*

93. Applicants comment: *In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of clause 4.3 are addressed in turn below:*

***Objective (a) – to establish the maximum height for buildings:***

94. *This objective articulates the ultimate function of the height of buildings development standard. The maximum height for buildings on land within the former Kogarah Local Government Area is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 33m and the maximum height of the proposal is 36.3m. The proposal contravenes the standard, which has prompted the preparation of this written variation request. Despite the nature and scale of development proposed by this development application, Clause 4.3 achieves the objective of establishing a maximum building height for the site, using the Height of Buildings Map as a mechanism to do so. This written request identifies the extent of variation proposed and explains why the variation is acceptable in the circumstances.*

***Objective (b) – to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.***

95. *The non-compliant portion of the development is the central lift core and stair access which will have minimal shadow impacts (see shadow diagrams) and cannot be readily seen from any public place, since it is located towards the central portion of the top of the building. The communal open space on the rooftop is setback from all edges of the building and will therefore result in no visual impact or loss of privacy*
96. *Additionally it is a better privacy outcome to utilise the roof top for communal open space then if it were located at ground level abutting habitable areas of adjoining buildings.*

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

97. *The extent of building height non-compliance is a result of the massing arrangement that has been adopted, which is ultimately considered to be superior in terms of urban form and appearance when compared to alternative, potentially compliant, arrangements. It is important to note that the building height variation is not a by-product of non-compliant*

*development density and that scale and intensity of development from a building density perspective is consistent with that of a compliant development.*

98. *As previously described, with exception of the lift core and stair tower, the building is otherwise compliant with the maximum height limit and provides a 10 storey development as an expected outcome of the development standard. The roof structure will have no adverse impacts since it is located centrally within the development and does not increase the scale or intensity of development when viewed by the casual observer. The non-compliant portion of the development does not add to the intensity of development on the site. The building height breach allows for an improved outcome in this regard, and therefore the proposal aligns with this objective despite the non-compliance.*
99. *Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The proposed development is consistent with the objectives of Zone R4 in that it will result in the development of 63 apartments in a residential tower format and will thus provide for the housing needs of the community in a high density residential environment. The development will provide for a range of dwelling sizes and accessible and adaptable accommodation types and will therefore align with the objective to provide a variety of housing types.*
100. *For these reasons the development proposal meets the objectives for development in Zone R4, despite the non-compliance with the building height development standard.*

101. Officer's comment: The proposed development has been designed to ensure all habitable areas are located within the height limit and the only protrusions are in relation to the roof terrace, services, lifts and fire stairs which are generally recessive in nature. The lift overrun is the highest structure that exceeds the height control. The proposal generally satisfies the objectives of the development standard in the following ways:

**(a) To establish the maximum height for buildings**

102. Officer Comment: The site and its immediately adjoining properties have been up scaled to allow for increased density. In part this is due to the location of the sites adjoining a busy roadway as these conditions cater for larger scaled developments. The Height of Building Map as shown in Figure 5 shows the extent of the immediate precinct which allows for a maximum height of 33m.

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

103. Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. In terms of visual impact the structures are generally centrally located which reduces their visual appearance from the immediately adjoining streetscapes. The screening for air conditioning condensers is also recessed and setback from the edge of the roof to further minimise its visual appearance.

The objective seeks to "minimise" the visual impact, it is not requiring it to be eliminated or totally negated, and as such seeing the structure is not a reason for refusal, it's the impact of the visual interference of this structure that is to be controlled. It can be said that in this case it is a small scale ancillary structure which will not be highly visible or an intrusive element given the scale and proportions of the building. In respect to the more dominant elements like the lift overrun accessing the roof terrace at the rear, this will be a visible element when viewed from a distance. It will not be readily visible from immediately adjoining properties and streetscapes given that it is centrally located. The

roof top terrace area is located within the height limit so the use of that area is within the height control so that ancillary services which exceed the height control namely the lift overrun, fire stairs and shade structures will not contribute to any overlooking and the shadowing they create will be within the confines of the roof space and unfortunately overshadow the southern portions of the rooftop terrace area. There will be no significant adverse impacts in terms of overshadowing or overlooking to adjoining properties.

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

104. Officer Comment: New developments of a similar nature have been approved along Regent Street, Stanley Street and the Princes Highway (these developments have been considered and included earlier in this report) and have established a precedent for development in the street and immediate precinct. The proposed development is consistent with the pattern of development that emerging in the precinct.
105. The proposed increase in the overall height of the building, which only relates to certain sections of the roof form, can be catered for in this location. The proposed development is considered to satisfy the objectives of the building height development standard.
106. The R4 High Density Residential zone objectives require the development to:
  - *To provide for the housing needs of the community within a medium density residential environment.*
  - *To provide a variety of housing types within a medium density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
107. The exceedance in the building height control generally satisfies the objectives of the zone for the following reasons:
  - The development is providing for the housing needs within a medium density residential environment with a mix of apartment choices and layouts.
  - The development incorporates a diversity of apartment types (offering studio, 1, 2, and 3 bedroom apartments, including adaptable and liveable apartments).
  - The development is predominantly residential in nature, however does provide a neighbourhood shop.
108. The area of non-compliance is considered not to be unreasonable and will not establish an undesirable precedent. It will not have any adverse effect on the surrounding locality, which is emerging as a high density residential location. The proposal promotes the economic use and development of the land consistent with zone and its purpose.
109. The public benefit of the variation is that it will appropriately facilitate the provision of high density housing on R4 zoned land and provide for a range of housing stock. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.
110. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site"

relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard.

111. The roof top area and its associated ancillary structures could be deleted and the building largely compliant however this space adds value and provides greater functionality and amenity for the future occupants. The ADG encourages the use of rooftop spaces for communal open space and supporting ancillary development.
112. In this case the proposal seeks to establish the preferred and appropriate design and built form outcome for this site with the building complying in large with the height standard. There will be no adverse amenity or visual impacts generated by the variation, the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request.

**Clause 4.6(4)(b) the concurrence of the Director-General has been obtained.**

113. In accordance with clause 64 of the Environmental Planning and Assessment Regulation 2000, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

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

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

**Conclusion – Assessment of Clause 4.6 Request for Variation**

115. Despite the non-compliance in terms of the height, the proposed variation is considered to be acceptable and satisfies the provisions of Clause 4.6.
116. The proposed variation satisfies the objectives of the height control as the non-compliant structures, being the lift overrun, stairs and pergola will not be visually dominating. The additional height is considered to be consistent with other developments in the immediate locality and the scale of the development is sympathetic with the existing scale and form of existing adjoining developments.
117. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).
118. For these reasons the Clause 4.6 Statement is considered to be well-founded and could be supported if the development as a whole was consistent with the assessment criterion and was of a form that could be supported.

**Draft Georges River Local Environmental Plan 2020**

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

120. 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

#### Kogarah Development Control Plan 2013 (KDCP 2013)

121. A detailed assessment of the development against the relevant key sections of KDCP 2013 have been considered below.
122. Apart from satisfying some of the provisions of the ADG and SEPP 65 the controls within the KDCP are applicable. Part B, General Controls and Part E4 Kogarah North Precinct are required to be considered in the design of this proposal.

**Table 8: Kogarah Development Control Plan 2013**

<b>KDCP 2013 Compliance Table</b>			
<b>PART B – GENERAL CONTROLS</b>			
<b>Clause</b>	<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
B1 – Heritage Items and Heritage Conservation Areas	Heritage considerations	The subject site is not listed as a heritage item or within a conservation area. The closest heritage items are located at 14 and 16 Victoria Street Kogarah to the west. As assessment in this regard is detailed in the referral section below.	No, see comments made by Council’s Heritage Advisor
B4 – Parking and Traffic	<p>The site is located within 800m of Kogarah Railway Station and is located in the “Strategic Centre”. As such the “Metropolitan Regional Centre” rates apply. The following is based on 63 units, see below:</p> <p><u>Residential parking:</u> 33 x 1bedroom units @ 0.4 spaces per unit = <b>13.2 spaces</b> required</p>	<p>Given this development is within an accessible area under SEPP 65 and the ADG, the requirements of the RMS Guide for Traffic Generating Development outlines the assessment criterion.</p> <p>The proposal relies on the following car parking provisions:</p> <p><u>Residential parking:</u> 33 x 1bedroom apartments @ 0.4 spaces per unit = <b>13.2 spaces</b></p>	Yes, as the total overall number of car parking spaces complies with the RMS car parking rates.

	<p>26 x 2 bedroom units @ 0.7 spaces per unit = <b>18.2 spaces</b></p> <p>4 x 3 bedroom units @ 1.2 spaces per unit = <b>4.8 spaces</b></p> <p>Visitors 63 units (1 per 7) = <b>9</b> (includes a dual visitor/car wash bay)</p> <p>Total required resident parking = <b>46 spaces (minimum)</b></p>	<p>26 x 2 bedroom apartments @ 0.7 spaces per unit = <b>18.2 spaces</b></p> <p>4 x 3 bedroom apartments @ 1.2 spaces per unit = <b>4.8 spaces</b></p> <p>Visitors - 63 apartments (1 per 7) = <b>9 spaces</b></p> <p>The proposal requires a minimum total of <b>46</b> off street car parking spaces for residents and visitors.</p> <p>48 Residential parking spaces provided.</p> <p>A total of 49 car parking spaces are provided which are broken down into one (1) for the neighbourhood shop, nine (9) visitor's spaces and 39 resident spaces which include seven (7) accessible spaces.</p> <p>A dual carwash bay/visitor space known as space 13 on basement level 1 has been provided.</p>	
	<p><u>Car wash Bay</u> One (1) bay, which can also function as a visitor space</p>	One (1) dual car wash bay/visitor space has been provided on basement level B1 nominated as space 13.	Yes
	<p><u>Bicycle Parking - Residential</u> One (1) space per 3 dwellings = 21 (23 bicycle spaces)</p>	32 residential bicycle parking spaces provided 16 on each level - basement levels B3 and B2.	Yes
	<u>Bicycle parking – Visitors</u>	10 visitor bicycle	Yes



	One (1) space per 10 dwellings for visitors = 6.3 (7) required	parking spaces are provided in the through site link.	
	<u>Commercial car parking rate</u> One (1) space per 40sqm – 32.3sqm tenancy – One (1) space required	One (1) space provided.	Yes
	<u>Loading bay</u> Retail area between 15sm and 500sqm – One (1) loading bay required	One (1) loading bay provided.	Yes
B5 – Waste Management and Minimisation	Waste management and minimisation to be in accordance with Council's requirements	The proposal is considered to be unacceptable in relation to waste management.	No, see comments made by Council's Waste Coordinator in the referrals section of this report.
B6 – Water Management	Water management and disposal to be in accordance with Council's requirements	The proposed stormwater/drainage design was referred to Council's Development Engineers. Comments were provided advising that subject to conditions, including design change conditions, the proposal could be supported.	Yes, subject to conditions if the proposal was to be supported.
B7 – Environmental Management	Orientation, building, siting and design, energy efficiency, materials	Design, materials, siting and orientation generally optimise solar efficiency, with Victoria Street being to the north. Glazing is minimised on the southern and western elevations where possible. The development is BASIX compliant.	Yes

#### E4 – Kogarah North Precinct

123. The proposal has been considered in relation to the key provisions of the development control plan as follows.

**Table 9: E4 Kogarah North Precinct Kogarah Development Control Plan 2013**

Clause	Control	Proposed	Complies
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7. Siting and consolidation of development sites	(i) The siting of a building is to respond to the requirements of the Apartment Design Guide.	The proposal results in variations to setbacks prescribed by the ADG.	No, see comments in the ADG compliance table.
	(ii) The maximum floor space ratio (FSR) is set by clause 4.4 of Kogarah LEP 2012 and the FSR Map (4:1 maximum) Note: The FSR expressed in Kogarah LEP 2012 is a maximum	3.684:1	Yes
	(iii) Sites must be of a sufficient width to accommodate development. For development sites to optimise yield and public domain amenity development sites a minimum site frontage of 60m. Where sites do not have a minimum site frontage of 60m the development would need to ensure the design outcomes/built form which meets the Vision and the Desired Future Urban Design Principles for the Precinct as well as the built form objectives outlined in this Part of the DCP. In considering the development Council will take into account the proportions of the building – the podium width compared to the width of the tower and the appearance from the public domain.	The site has a frontage of 40.15m to Victoria Street and 14.08m to Stanley Street, Kogarah. This equates to a site frontage of 54.23m. See comments above in relation to non compliance with ADG and comments below in relation to street frontage.	No - refer to discussion below.

**Frontage**

It is noted that approvals have been granted within the Kogarah North Precinct with frontages less than the prescribed 60m frontage. Whilst the subject site contains a frontage of less than 60m, it is considered a suitable width to enable a residential flat building to be developed. The overall design however is not considered suitable or appropriate given the sitting and setbacks proposed. Design changes are considered necessary to provide a compliant development form and a development that provides an acceptable level of amenity to the future occupants of this development and the adjoining allotments and consistency when viewed from the public domain.

	(iv) Development is not to result in the creation of an isolated site that could not be developed in compliance with the relevant planning controls, including the Kogarah LEP 2012, SEPP 65 and the ADG	The proposal does not result in an isolated allotment. An application for the sites adjoining to the west and south-west (which	Yes
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		includes the adjoining heritage items at 14-16 Victoria Street Kogarah) is currently before the Land and Environment Court.	
	(v) Development of land identified in Table 1 below is subject to an amalgamation requirement	Not applicable.	N/A
	(vi) If an application proposes a redevelopment that does not comply with the amalgamation pattern identified in Table 1 above, or where the proposal would result in an isolated site with a minimum site frontage of less than 60m, the applicant must submit to Council with the Development Application justification to vary the amalgamation pattern requirements.	N/A	Yes
	(vii) Council will require appropriate documentary evidence to demonstrate that a genuine and reasonable attempt has been made to purchase an isolated site based on a fair market value. At least two independent valuations (reports and valuations must be undertaken within 3 months of the date of the DA lodgement) are to be submitted as part of that evidence and these are to account for reasonable expenses likely to be incurred by the owner of the isolated site in the sale of the property.  The documentation must include copies of correspondence between parties and any formal financial offers and responses to offers.	No isolated sites	Yes
	(viii) Where amalgamation of the isolated site is not feasible,	N/A	Yes

	<p>applicants will be required to demonstrate that an orderly and economic use and development of the separate sites can be achieved. In this regard, applicants will be required to submit with the DA a DA Concept Plan that provides the following:</p> <ul style="list-style-type: none"> <li>- Details an envelope for the isolated site, indicating height, setbacks, resultant site coverage (building and basement), sufficient to understand the relationship between the application and the isolated site.</li> <li>- The likely impacts the developments will have on each other, such as solar access, visual and acoustic privacy and the impact of development of the isolated site on the streetscape must also be addressed.</li> </ul>		
Section 8: Heritage	<p>(i) Where development is proposed within the vicinity of a heritage item identified in the Kogarah LEP 2012, the building height and setbacks must have regard to and respect the value of that heritage item and its setting.</p> <p>(ii) Where a development incorporates or is within the vicinity of a heritage item, the new development is to provide an appropriate transition in height and adequate curtilage and side setbacks from the heritage item.</p>	<p>The subject site adjoins Heritage Item I111 – Terraces and Garden “Beatrice and Lillyville” at 14 - 16 Victoria Street, Kogarah. The proposal in its current form is not supported by Council’s Heritage Consultant.</p> <p>As above in (i)</p>	<p>No – see discussion in the referrals section below.</p> <p>No</p>
Section 9: Building Heights	(i) The maximum building height provisions are contained in	The proposal seeks a	No, see Clause 4.6

	<p>Clause 4.3 of the Kogarah LEP 2012 which indicates the maximum building height of 33m for the Precinct.</p> <p>(ii) Taller buildings must consider the shape, location and height of buildings to satisfy wind measurements for public safety and comfort at ground level. In addition, open terraces and balconies must not be detrimentally affected by wind.</p> <p>(iii) The Kogarah North Precinct is affected by the Obstacle Limitation Surface. The maximum height of the inner horizontal surface is 51m AHD. All applications within the Kogarah North Precinct must provide information on the maximum RLs in AHD at all levels across the site.</p> <p>All applications for development within the Precinct will be referred to Civil Aviation Safety Authority and Air Services Australia for assessment. Developments must consider the operating heights of all construction cranes or machinery (short-term controlled activities) that may exceed the OLS height limits thereby penetrating the prescribed airspace.</p> <p>Consideration should be given</p>	<p>maximum height of 36.3m.</p> <p>The extent of departure is limited to the lift overrun, fire stairs and associated communal open structures.</p> <p>A Clause 4.6 statement has been submitted in support of the proposal.</p> <p>Generally acceptable.</p> <p>Addressed within this report under Clause 6.5 – Airspace Operations.</p>	<p>Statement assessment above.</p> <p>Yes</p> <p>Yes</p>
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	<p>to the timing and location for the proposed controlled activity on site for referral to Civil Aviation Safety Authority and Air Services Australia.</p> <p>(iv) Approval to operate construction equipment (ie cranes) shall be obtained prior to any commencement of construction, where the prescribed airspace is affected.</p>	Noted.	Yes
Section 10: Street Frontage Height, and Front, Rear and Side Setbacks	<p>(i) Setbacks are to maximise the retention of existing trees and their root systems (including those on adjoining properties and in the street).</p> <p>(ii) Setbacks are to include the planting of canopy trees, both small and large varieties. Developments are not to rely solely on street trees to ameliorate buildings.</p> <p>(iii) All property boundary front setbacks must be deep soil and landscaped and must not have any underground intrusions such as underground car parking or on site detention.</p> <p>(iv) Development is to establish a four storey street wall height to provide human scale and set back taller elements above the four storey street wall height.</p> <p>(v) One step in the built form as the height increases due to building separations is required. Additional steps should be careful not to cause a 'ziggurat' appearance.</p> <p>(vi) No ground floor apartments are to be below the adjacent</p>	<p>The proposal adopts appropriate setbacks to result in the protection of street trees within the Council reserve along Victoria Street and Stanley Street.</p> <p>Revised plans provide an increase in the width of the deep soil zone within the front setback to 3m.</p> <p>The proposal adopts a podium built form for levels 1- 4.</p> <p>The proposal does not provide sufficient setbacks to provide adequate articulation and acceptable occupant amenity.</p> <p>Ground floor apartments are</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>footpath level.</p> <p>(vii) Ground floor residential with a street frontage must incorporate landscaping, ideally as part of the common area/setback, with such landscaping to provide for privacy as well as for a consistent, attractive and well maintained landscape frontage. The private terraces should also contain some landscaping.</p> <p>(viii) The primary area of outdoor private open space must not be located on the street frontage.</p> <p>(ix) Blank walls are to be avoided fronting principal streets and the public domain.</p> <p>(x) Development must be designed so that it has a clearly definable entry and addresses the street.</p> <p>(xi) Side or rear boundary fencing is not permitted fronting the public domain except where appropriate landscaping is located in front of the fence.</p>	<p>above the footpath level.</p> <p>The landscape plan provided with the review application is generally acceptable. If the proposal was to be supported conditions would be imposed.</p> <p>Ground floor apartments 101-105 contain private courtyards within the front setback. However there are communal areas of open space not located on the street frontage.</p> <p>No blank walls front the streets or public domain.</p> <p>The proposal has been designed with a clear main entrance from Victoria Street.</p> <p>No side or rear boundary fencing proposed.</p>	<p>Yes</p> <p>No, generally acceptable given the site constraints.</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
(xiii) Front setback controls – Sites with frontage to streets other than the Princes	<p><b>Level 1 (Ground Floor)</b></p> <ul style="list-style-type: none"> <li>Minimum 2m setback from the property boundary. This 2m setback is to form an extension to the public</li> </ul>	The front setback at 3m generally aligns with the existing setback of 14–16 Victoria	Yes, the front setbacks at ground level are considered appropriate in the context.



<p>Highway and Railway Parade North and with frontage to a major or secondary corner.</p>	<p>domain to provide for an increased footpath and deep soil landscaping.</p> <ul style="list-style-type: none"> <li>Any basement parking must be located fully under the building footprint – no encroachment of the basement will be permitted within the setback</li> <li>Residential development is discouraged at the ground floor.</li> <li>The fencing height is to be no greater than 1m and the style is to be open in format.</li> <li>Neighbourhood shops or home offices are encouraged.</li> </ul>	<p>Street, Kogarah, and is compatible with the approved development adjoining to the east being the residential flat building at 12-24 Stanley Street, Kogarah. It is noted that the ADG does not apply to front setbacks, in this instance the proposal seeks a front setback of 3m to Victoria Street and 3.54m as the site extends around the corner to Stanley Street which increases from level 5 and above. The proposal seeks a front setback of 1.8m to Stanley Lane from the ground floor to the upper levels. The exit from fire stairs 5 and 6 which discharge to Stanley Lane are located on the boundary.</p>	<p>The proposal provides a deep soil area of 3m width consistent with the 2m strip extension as required by the DCP. In addition the basement is located predominantly within the building footprint, permitting deep soil planting.</p>
	<p><b>Level 2,3,4</b></p> <ul style="list-style-type: none"> <li>Minimum 4m setback from the property boundary.</li> <li>Balconies may encroach up to 2m into the 4m setback.</li> <li>Balconies on the lower levels should be in the form of wintergardens to improve</li> </ul>	<p>3m to balconies.</p> <p>4.25 - 5m.</p> <p>Winter gardens are not provided.</p>	<p>No</p> <p>Yes</p> <p>No</p>

	acoustic amenity to the apartments.		
	<b>Level 5 and above</b> <ul style="list-style-type: none"> <li>Minimum 5m setback from the property boundary. Balconies/ wintergardens must not encroach into the setback.</li> <li>Balconies must be set behind the 5m setback</li> </ul>	5m to balconies  5m to balconies	Yes  Yes
Controls for Side and Rear Setbacks			
(xiv) Side and rear setbacks objectives	Side and rear setbacks must result in development that: (a) Provides resident amenity, including landscaping and deep soil planting protection of large established trees.  (b) Responds to the local context and provides streetscape amenity, including providing adequate separation from existing and future development and  (c) Does not prevent a neighbouring site from achieving its full development potential.	Complies  The development fails to provide adequate separation from the heritage dwellings.  The eastern lot has the benefit of an approval and the western lot is the subject of an appeal to the Land and Environment Court for a residential flat building.	Yes  No  Yes
(xv) Setbacks to ensure retention of existing trees	Setbacks are to maximise the retention of existing trees and their root systems and may need to be variable to achieve this (includes trees on adjoining properties).	Significant street trees can be retained. If the application was to be supported conditions would be imposed in this regard.	Yes
(xvi) Setbacks to consider	Side and rear setbacks to heritage buildings are to	Heritage advisor does not	No

heritage buildings	consider the need for an appropriate curtilage which is to be set by a heritage assessment required under Part 8 of this DCP.	support building in its current form, see comments below in the referrals section of this report.	
Section 11: Trees and Landscape	(i) All development is to be designed to eliminate the impact upon significant trees on site, street trees and trees on adjoining land including public open space and educational establishments. Existing mature trees in good health and condition are to be retained through the appropriate siting of buildings, car parks, basements, pools, ancillary buildings, driveways and hard stand areas.	The proposal seeks to protect four (4) trees within the public domain on Victoria and Stanley Streets which is considered to be acceptable.	Yes
	(ii) Landscaped areas must be effectively distributed on the site to minimise the dominance of buildings, structures and paving when viewed from the street, public places and surrounding properties.	The location of the landscaped areas is considered to be reasonable.	Yes
	(iii) Where appropriate, additional street trees are to be incorporated into the overall design of the development – refer to Figure 8).	Retention of existing street trees is sufficient.	Yes
	(iv) Common open space/courtyards are to be located, designed and landscaped to: <ul style="list-style-type: none"> <li>• enhance views from dwellings and create recreational opportunities;</li> <li>• be the focal point for residents and incorporate public art and water features where appropriate, and</li> <li>• achieve good amenity in terms of solar access and natural air flow.</li> </ul>	The landscape plans provided are acceptable.	Yes
	(v) Additional communal open	Communal rooftop area is	Yes

	<p>space on roof tops is encouraged in locations where it does not adversely impact on the residential amenity of surrounding residents.</p> <p>(vi) Deep soil zones are to be of dimensions that achieve their function as planting space for large trees.</p> <p>(vii) Where possible, deep soil zones are to be located within key communal outdoor space areas or elsewhere where large trees will benefit the maximum number of residents or contribute to the public domain.</p> <p>(viii) Landscaping should give precedence to species with low water needs, include native plant species and select and position trees to maximise control of sun and winds</p> <p>(ix) Landscape design is to be integrated with water and stormwater management.</p>	<p>not considered to result in any adverse amenity impacts on adjoining properties.</p> <p>Deep soil zones are a minimum of 3m.</p> <p>The amended proposal provides sufficient deep soil zones.</p> <p>The landscaping proposed is considered to be appropriate.</p> <p>As above</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Section 12: Dedication of Land to Council for Road/Lane Widening and Splays	<p>(i) Approval for development listed in Table 4 below will be subject to the dedication of land (for road/lane widening) without cost to Council. The area of the land to be dedicated will be taken into account in calculating the permitted density of development.</p> <p>(ii) No permanent structure may be built above or below this area of land.</p> <p>(iii) All building setbacks are to be measured from the relocated boundary and the laneway dedication is to be clearly identified on the plans lodged with the Development</p>	<p>The proposal is affected by lane widening (1200mm) at the rear along Stanley Lane (south). Annotated on the plan.</p> <p>No permanent structures proposed.</p> <p>Setbacks are measured from the lane way dedication.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	Application.		
Section 13 – Creation of through site pedestrian links and additional open space	<p>(i) A public through site pedestrian link is to be provided as part of the development sites identified in Table 5 (see below). This public through site connection is to form part of the development but is to allow public access through the site.</p> <p><b>Through Site Link #2 – Creation of pedestrian link from Stanley Lane to Victoria Street</b></p> <p>A public through site pedestrian link – minimum 3m wide - is to be provided which creates a pedestrian connection between Stanley Lane and Victoria Street. The preferred location for the through site pedestrian link is through 22 Victoria Street. Where a development site includes or is adjacent to 22 Victoria Street, Council will require the identification of a through site pedestrian link as part of any development application.</p> <p>(ii) The area of the land will be taken into account in calculating the permitted density of development.</p> <p>(iii) The location of the through site links/pocket parks (outlined in Figure 9) may be amended through negotiations with Council Officers but must meet the desired future urban design principles for the Precinct and the objectives of this clause.</p>	<p>A public through site pedestrian link – minimum 3m wide is proposed along the western boundary of the subject development site (through the lot known as 18 Victoria Street), which creates a pedestrian connection between Stanley Lane and Victoria Street.</p> <p>The preferred location for the through link under the DCP was through 22 Victoria Street, the proposal seeks to alter the location of the through site link to be along the western boundary. This achieves the objective in providing a through site link between Victoria Street and Stanley Lane and also a greater separation between the built form on this site and the adjoining heritage items at 14-16 Victoria Street. This location is considered to</p>	Yes

		satisfy the objectives of the requirement for the through site link and is therefore considered acceptable.	
Section 14: Housing Choice	(i) All residential development (or residential component within a mixed development must provide a mix of studio, one bedroom, two bedroom and three bedroom apartments of a range of sizes and layouts so as to meet the needs of residents and accommodate a range of household types.	The proposal provides an apartment mix of studio, 1 bedroom, 2 bedroom and 3 bedroom apartments.	Yes
	(ii) An apartment mix is to be provided, taking into consideration: a. the distance to public transport, employment and education centres b. the current market demands and projected future demographic trends c. the demand for social and affordable housing d. different cultural and socioeconomic groups	Reasonable apartment composition proposed.	Yes
	(iii) Apartment configurations are to support diverse household types and stages of life including single person households, families, multi-generational families and group households.	The proposal provides a mix of apartment types which include SOHO's (small office/home office) within some apartments, including ground floor courtyards and balconies.	Yes
Section 15: Addressing the Street and Public Domain	(i) Landscaping in the public domain is to enhance, complement and reinforce existing streetscape planting themes and patterns. Council may require street tree planting,	The landscaping proposed is considered to be acceptable subject to conditions if the	Yes

	landscaping and paving of the public footway, this must be included in the Landscape Plan.	application was to be supported.	
	(ii) Development is to be consistent with the Street Tree Management Strategy and Master Plan.	The proposal seeks to retain four (4) street trees.	Yes
	(iii) The need for additional building services must be resolved at design stage (e.g. electricity kiosk/substation & fire services facilities) and must be co-ordinated and integrated with the overall design of the development without compromising building or landscape design.	The proposal proposes a hydrant booster in an appropriate location for fire servicing.	Yes
	(iv) Buildings must be sited to address the street and relate to neighbouring buildings. Developments on sites with two or more frontages are to address both frontages. Buildings that are oriented contrary to the established development pattern are intrusive and are not permitted	The site is identified as a secondary street corner (within the Kogarah North Urban Design Strategy). The proposal fails to appropriately relate to the immediate context, in particular the adjoining properties and adjoining heritage items.	No
	(v) Buildings are to be designed to maximise the number of entries, visible internal uses at ground level, and include high quality finishes to enhance the public domain.	The proposal provides multiple entries from the northern, western and southern elevations.	Yes
	(vi) Development that exposes the blank side of an adjoining building or has a party wall to the public domain is to be	The proposal provides green wall screen with steel frame with	Yes



	<p>designed with a visually interesting treatment of high quality design applied to that wall.</p> <p>(vii) Street corners must be addressed by giving visual prominence to parts of the building façade, such as a change in building articulation, materials, colour, roof form or height.</p> <p>(viii) Reduce visual intrusion and enhance amenity by integrating undergrounding of services and infrastructure in new development (Refer to Section 25 of this Part).</p> <p>Note: A public domain plan is required to be submitted with the Development Application detailing the upgrading works to the public domain area fronting the site boundaries.</p>	<p>a privacy louvre screen above the green wall.</p> <p>The proposal adopts heavy visual tones and cues which detract from the adjoining heritage item at 14 - 16 Victoria Street.</p> <p>Infrastructure can be located below ground and would be conditioned if the application was to be supported.</p> <p>No public domain plan has been provided which can be assessed against the Kogarah North Public Domain Plan.</p>	<p>No</p> <p>Yes can be conditioned if the proposed is to be supported.</p> <p>No</p>
Section 16: Impact of Development on the Road/Pedestrian Network	<p>(i) A Transport Impact Study (TIS) is required to address the potential impact of the development on surrounding movement systems where the proposed development is for 25 or more dwellings; or in the opinion of the consent authority, likely to generate significant traffic impacts.</p> <p>(ii) A Transport Impact Study (TIS) is a technical investigation into the transport and safety issues that might arise from a development, and may form part of a Traffic Report. The TIS includes the transport impacts on the surrounding transport</p>	<p>A revised traffic impact study has been prepared and Council's Traffic Engineer has raised no objection to the proposal. A condition would be imposed to ensure that all vehicles to leave the site in a forward direction.</p>	Yes

	network generated by a development and how those impacts are to be managed.		
Section 18: Vehicular Access and Car Parking	(i) Residential parking is to be provided in accordance with the Apartment Design Guidelines and SEPP 65.	Car parking has been provided in accordance with the RMS requirements as per the Apartment Design Guidelines and SEPP 65.	Yes
	(ii) For commercial /retail development and other land uses parking is to be provided at the following rate: <ul style="list-style-type: none"> <li>1 space per 40sqm floor space at ground level.</li> <li>1 space per 50sqm for all other floor space above ground floor level</li> </ul>	One (1) space provided for the 32.3sqm neighbourhood shop space on the ground floor.	Yes
Section 19: Architectural Articulation – façade, roof and wall design and private open space	<u>Facades &amp; articulation</u> (i) Large areas of flat facade are to be avoided. Facades should be articulated into separate sections, using steps in the facade, expressed entries, panels, bay windows, balconies, pergolas and other architectural elements.  Design elements to be incorporated within the design.	The proposal does not present to the streetscape with any significant flat facade. Each floor contains articulation and modulation.	Yes
Section 22: Solar Access	(iv) Maintain solar access to existing apartment buildings and public open space  (vi) Living rooms and private open spaces for at least 70% of residential units in a development should receive a minimum of 2 hours direct sunlight between 9am and 3pm in midwinter.  (vii) New development is to be	The proposal provides adequate solar access in excess of the specified 2 hours to 76% of the proposal.  The DCP provides specific minimum controls to ensure key areas of open space and public facilities	Yes  Yes

	<p>designed to ensure direct daylight access to communal open space between March and September and provide appropriate shading in summer.</p> <p>(ix) Skylights and light wells must not be used as the primary source of daylight in habitable rooms.</p> <p>For neighbouring dwellings: (x) Direct sunlight to north facing windows of habitable rooms and 10m<sup>2</sup> of useable private open space areas of adjacent dwellings should not be reduced to less than 2 hours between 9.00am and 3.00pm on 21 June.</p> <p>(xi) Consideration will be given to reduced solar access where the proposed dwelling is generally compliant with all development standards and controls, and the extent of impact is the result of orientation, site constraints, and or existing built forms.</p>	<p>obtain ample solar access throughout the day.</p> <p>No skylights are proposed as a primary source of daylight.</p> <p>Complies.</p> <p>N/A</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p>
Section 23: Safety and Security	<p>(i) The design of development is to incorporate Crime Prevention Through Environmental Design (CPTD) principles.</p> <p>(ii) Development is to be designed to incorporate and/or enhance opportunities for effective natural surveillance by providing clear sight lines between public and private places, installation of effective lighting, and the appropriate</p>	<p>The proposal contains windows and sight lines along the ground floor which present to the public domain and common communal areas providing surveillance to and from the development.</p> <p>Natural surveillance of the internal common areas and the public domain is achieved by the proposal.</p>	<p>Yes</p> <p>Yes</p>

	landscaping of public areas.		
Section 24: Waste Management	(i) A space is to be provided inside each dwelling for separate storage of at least one day's volume of general waste, recyclables and compostable materials.	Adequate storage is provided for each apartment.	Yes
Section 25: Site Facilities	(i) Development must not be carried out on the land until arrangements satisfactory to Sydney Water have been made for the provision to the land of water and sewerage services.	The proposal can be serviced by Sydney Water for potable water and sewerage disposal.	Yes
	(ii) Mailboxes will be located indoors in accordance with Australia Post's requirements.	Mailboxes are located outdoors within the front setback.	Yes
	(iii) Adequate and appropriate unit numbering is to be provided. The name and address of the premises will be displayed in a position that is clearly visible from the street and / or service lane to assist identification and deliveries.	Numbering would be provided if the application was to be supported.	Yes
	(vi) The existing above ground electricity and telecommunication cables within the road reserve and within the site will be replaced, at the applicant's expense, by underground cable and appropriate street light standards, in accordance with the Energy and Communication Provider's guidelines. The applicant will bear the cost of the new installation and the first 12 months of additional street light charges.	These requirements can be accommodated and conditioned should the application be supported.	Yes
	(vii) Roller type security shutters on windows and doors are not suitable.	Not proposed.	Yes
	(viii) Where security devices are required they will be integrated	Not proposed.	Yes

	<p>into the overall design.</p> <p>(ix) Any electrical kiosk, fire booster assembly or similar utilities will be in a location that is visible from the main entrance of the development, unable to be obstructed, and readily accessible to vehicles and service staff. Fire booster assemblies are to be a minimum of 10m distance to an electrical kiosk, and housed within the external face of the building structure or in a built enclosure with screen doors. The enclosure is to be integrated with the architectural design of the development and compliant with AS2419. Applicants are encouraged to provide landscaping that will not impede access to, and effective use of, the utilities to reduce the visual impact of the utilities on the streetscape and public domain.</p>	Services are located within the front setback fronting Victoria Street.	Yes
Section 26: Maintenance	(i) Windows are to be designed to enable cleaning from inside the building, where possible.	Appropriate window design is commensurate with other contemporary residential flat buildings in the precinct.	Yes
	(ii) Buildings must incorporate and integrate building maintenance systems into the design of the building form, roof and facade.	Contemporary materials proposed achieving this criterion.	Yes
	(iii) Materials must be durable and can be easily cleaned and are graffiti resistant.	The proposal seeks a mixture of render and contemporary materials which are durable.	Yes
	(iv) Appropriate landscape elements and vegetation must be chosen along with suitable	The landscape plans are considered	Yes

	<p>irrigation systems.</p> <p>(v) A maintenance schedule of works is to be included in all landscape plans to be lodged with any development application to ensure landscape works will be maintained at all times to Council's satisfaction.</p>	<p>acceptable.</p> <p>Complies.</p>	<p>Yes</p>
Section 27: Acoustic Privacy	<p>(i) The location of driveways, open space and recreation areas and ancillary facilities external to the dwelling must be carefully planned to ensure minimal noise impact on adjoining residential properties.</p> <p>(ii) Bedrooms of one dwelling should not share walls with living rooms or garages of adjacent dwellings. Bedrooms of one dwelling may share walls with living rooms of adjacent dwellings provided appropriate acoustic measures are documented.</p> <p>(iii) Where party walls are provided they must be carried to the underside of the roof.</p> <p>(iv) All residential development except dwelling houses are to be insulated and to have an Impact Isolation between floors to achieve an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants (AAAC). An Acoustic Report is to be submitted at Development Application stage &amp; post construction stage to ensure that the above standards have been achieved.</p>	<p>The proposed driveway and communal open space are considered to be reasonably sited.</p> <p>No bedrooms share walls with garages.</p> <p>Party walls can be constructed in accordance with this control.</p> <p>The proposal can be insulated in accordance with this clause. Acoustic certification can be provided post construction as a condition if the application was to be supported.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

#### Interim Policy – Georges River Development Control Plan 2020

124. Council at its Environment and Planning Committee Meeting dated Council at its Environment and Planning Committee Meeting dated 24 June 2019 resolved to adopt the Georges River Interim Policy Development Control Plan which became effective on 22 July 2019.

125. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current Development Control Plan controls will prevail if they are considered best practice. The Interim Policy has no statutory recognition in the assessment of DAs pursuant to the Environmental Planning and Assessment Act, 1979 (EP&A Act).
126. An assessment of the proposal has been carried out against the provisions of the Interim Policy as set out in the following table.

**Table 10: Interim Policy Compliance Table**

<b>Interim Policy – Georges River Development Control Plan 2020</b>		
<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
<b><i>Site Frontage</i></b>		
20m	54.23m	Yes
<b><i>Building Height</i></b>		
The relevant LEP controls relating to building height will prevail over DCP controls that relate to height in storeys	The proposal exceeds the height control but is supported by the provision of a Clause 4.6 Statement. This statement can be supported in principle.	No, Clause 4.6 statement lodged in support of proposal.
<b><i>Private Open Space</i></b>		
The ADG requirements prevail over the DCP controls for private open space	The proposal is fully compliant with the ADG's private open space requirements. Refer to "4E – Private Open Space and Balconies" within the ADG Compliance Table above.	Yes
<b><i>Communal Open Space (COS)</i></b>		
The ADG requirements prevail over the DCP controls for COS under the Interim Policy	The proposal is considered to comply with the requirements of the ADG with respect to COS. Refer to "3D – Communal Open Space" within the ADG Compliance Table above.	Yes
<b><i>Parking</i></b>		
In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment): <ul style="list-style-type: none"> <li>If located in a strategic centre (i.e. Kogarah CBD and Hurstville CBD) and within 800m of a Railway, the "Metropolitan Regional</li> </ul>	The site is located within 800m of Kogarah Railway Station and is located in the Strategic Centre. The proposal exceeds the minimum requirements of the Strategic Centres parking rates (see below).	Yes



<p>Centre (CBD)” rates apply.</p> <ul style="list-style-type: none"> <li>• If located within 800m of a railway and outside the strategic centres the “Metropolitan Subregional Centre” rates apply.</li> <li>• If located outside of 800m of a Railway, the relevant Development Control Plan applies.</li> </ul>		
<p><u>Residential parking:</u> 33 x 1bedroom units @ 0.4 spaces per unit = <b>13.2 spaces</b> required</p> <p>26 x 2 bedroom units @ 0.7 spaces per unit = <b>18.2 spaces</b></p> <p>4 x 3 bedroom units @ 1.2 spaces per unit = <b>4.8 spaces</b></p> <p>Visitors 63 units (1 per 7) = <b>9</b> (includes a dual visitor/car wash bay)</p> <p>Total required resident parking = <b>46 spaces (minimum)</b></p>	<p>Given this development is within an accessible area under SEPP 65 and the ADG, the requirements of the RMS Guide for Traffic Generating Development are triggered by SEPP 65 and the Apartment Design Guide.</p> <p>A total of 46 residential spaces are required.</p> <p>48 Residential parking spaces provided.</p>	Yes
<p><u>Bicycle Parking - Residential</u> One (1) space per 3 dwellings = 21 (23 bicycle spaces)</p>	32 residential bicycle parking spaces are provided in the basement levels B3 & B2	Yes
<p><u>Bicycle parking – Visitors</u> One (1) space per 10 dwellings for visitors = 6.3 (7) required</p>	10 visitor bicycle parking spaces are provided	Yes
<b><u>Solar Access</u></b>		
The ADG requirements prevail over the Development Control Plan controls for solar access under the DCP	The proposal is acceptable with the solar access provisions of the ADG. Refer to “4A – Solar and Daylight Access” within the ADG Compliance Table above.	Yes

## DEVELOPER CONTRIBUTIONS

127. The proposed development if approved would require the payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act

1979 as the proposal is increasing the density of the locality. If the development was to be approved a condition outlining the required contributions will be imposed.

## **IMPACTS**

### ***Natural Environment***

128. The proposed tree removal has been assessed by Council's Consulting Arborist as being acceptable subject to appropriate conditions of consent requiring replacement tree planting. The deep soil proposed along the northern and western boundaries of the site now provides a minimum 3m width and the landscape plan shows several good sized trees allocated for these zones.

### ***Built Environment***

129. The proposal exceeds the building height development standard of Kogarah Local Environmental Plan 2012. A Clause 4.6 Objection has been submitted in support of the non-compliance.
130. Although in principle the variation to the building height could be supported, in this circumstance, the development as a whole cannot be supported. The proposal is inconsistent with State Environmental Planning Policy 65 Design Quality Principles and does not reflect the desired future planning and design outcome for the site in its current form. The separation between buildings and streetscape impacts are not consistent within the immediate context and have an adverse impact upon the heritage fabric of the adjoining heritage item at 14 - 16 Victoria Street, Kogarah.

Accordingly the proposal is inconsistent with the existing and future desired character of the precinct and is recommended for refusal.

### ***Social Impact***

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

### ***Economic Impact***

132. The proposed development has no apparent adverse economic impact. It would be expected that it will benefit in the longer term the sustainability of the Kogarah Town Centre and will in the immediate term contribute to maintaining jobs in the construction industry as this is a large and integrated project that requires coordination of many trades.

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

133. The site is zoned R4 High Density Residential. The proposal is a permissible land use within the zone, subject to development consent.
134. This RFB has not been designed to respond to the constraints of the site, in particular the land's irregular shape, area and context, as evidenced by its various non-compliances with relevant building envelope controls as detailed previously within this report.

## **SUBMISSIONS AND THE PUBLIC INTEREST**

135. The application was neighbour notified in accordance with Kogarah Development Control Plan 2013 between 6 May and 5 June 2020. One (1) submission was received as a result. The issue raised in the submission is summarised below.

Isolation of lot at 4 Victoria Street, Kogarah

136. Concern has been raised by the property owner of 4 Victoria Street that due to this and a number of residential flat buildings proposed in Victoria Street and the wider locality in general, that his property will be isolated if this and other developments are approved.

Officer Comment: The site is located within a R4 High Density Residential Zone that has received an uplift with respect to Floor Space Ratio and building heights under the Kogarah Local Environmental Plan 2012. The subject development site does not adjoin 4 Victoria Street and will not have an impact on it in terms of isolation as amalgamation cannot be achieved.

**REFERRALS****Council Referrals**Development Engineer

137. Council's Development Engineer reviewed the amended proposal. If the application were to be approved, conditions of development consent could be imposed. These conditions would include design changes to meet Council requirements.

Traffic Engineer

138. The DA was referred to Council's Traffic Engineer. Council's Traffic Engineer has raised no objection to the proposal subject to suitable conditions of development consent. If the application was to be approved there would be a conditions imposed that a vehicle is to enter and exit the development in a forward direction.

Assets and Infrastructure

139. Council's Assets and Infrastructure Section reviewed the proposed development in relation to public domain works and raised no objection to the proposal subject to suitable conditions of development consent. The condition would require a public domain plan to be lodged and approved by Council's Assets and Infrastructure Division prior to the issue of the Construction Certificate and that the applicant discuss the layout for public domain works with Council's Assets and Infrastructure staff prior to preparing designs.

Consultant Arborist

140. Council's Consultant Arborist has reviewed the landscape plan and arborist report submitted with the application. The following comments were provided:

- *Deep soil has been allocated along the northern and western boundaries at approximately 3.0 metres. The landscape plans do show several good sized trees allocated for these zones.*
- *The size of tree pots/ bags are shown as being 45 litre and with this size development they are recommended to be a minimum 100 litre size and contract grown with a nursery to ensure availability at time of landscaping commencement.*
- *No entry or exit is proposed from Victoria St, which is a good outcome with the ramp to the basement from the laneway only.*
- *I do have a concern regarding the deep soil zone fronting Victoria Street. From the Ground Floor drainage plans by John Ramanous, the plans are showing stormwater piping all through the deep soil zones, with pits as well, all connecting to a long pipe extending parallel to Victoria St and out to the street pit in Stanley St. The excavations needed and impacts to street trees, as well as the possibility of tree roots damaging piping is an issue. I have spoken to Elie, Councils stormwater Engineer and he has, like me, recommended it be kept within the building footprint, possibly under the building, to minimise any piping within the front deep soil zone.*

- *I have no problem with the Arboricultural report. To mention the only trees worthy of retention are Councils street trees that need protecting.*

141. Should the proposal be supported, conditions of development consent would be imposed to address the above.

#### Consultant Heritage Advisor

142. The Review application was referred to Council's Consultant Heritage Advisor for comment. Their comments and objection to the proposal were received on 6 May 2020 as follows:

- *The proposed setbacks to the adjoining heritage item are insufficient and do not meet the required minimum as set out by the ADG. The setback to the southwestern boundary (adjoining the heritage item) must be increased to a minimum of 12m above Level 3 and for subsequent levels.*
- *The building provides insufficient transition in the scale and height as a relationship to the adjoining heritage item and must provide greater setback to Levels 3 and above.*
- *A geotechnical assessment must be provided together with the necessary engineering specifications to show that the basement level excavation will not result in any detrimental impacts to the structural integrity of the adjoining heritage item.*
- *The deep-soil landscaped area running along the southwestern boundary needs to accommodate a more substantial planting regime, with a variety of mass plantings that will achieve a density and height that will provide a screening effect to the adjoining heritage item. This will aid in softening the visual backdrop of the heritage item as well as contribute to occupant amenity.*

#### Urban Designer

143. Council's Urban Designer has reviewed the proposal and provided detailed comments on the revised proposal. In summary the main concerns with the proposal are as follows:

- *The proposal fails to provide adequate building modulation and articulation to the Victoria Street façade. The continuous, unarticulated street wall generated by the solid, masonry balcony balustrades combined with the height of the 4 storey podium results in a bulky and boxy streetscape that does not respond to the human scale.*
- *It is recommended that the 'L-shaped leg' of the balconies on the podium levels be removed to create formal indentations. This will assist in establishing a continuous vertical rhythm on the Victoria Street streetscape to complement the proposed terrace-style building typology proposed at the adjacent No.6-16 Victoria Street*
- *The proposed design incorporates a spire-like rectangular frame as an architectural roof feature that significantly protrudes from the overall envelope of the proposed development. This frame is visually prominent due to its location at the intersection of the two converging streets (Victoria and Stanley Streets), almost appearing to signify this development as a 'landmark' within the context of the Kogarah North Precinct. this architectural roof feature is not considered to be appropriate given this is a critical area where transition should be provided through a 'step down' in the building envelope – from the 10 storey tower to the 4 storey podium to the at-grade pedestrian through-site link provided at No. 12-24 Stanley Street*
- *On ground floor, there is a small entry to the south of Unit 106 which is labelled as "Unit 105 garden", which should be amended to Unit 106 as it appears to be the thoroughfare for an alternative entry into Unit 106. There is concern that the cross ventilation of this apartment relies on air intake / outlet via this external door.*

*Adequate security measures needs to be demonstrated to ensure this door can safely remain open for the purpose of enabling natural cross ventilation*

- *The use of clear glass balustrade should be minimised, especially at the front façade, due to the common usage of balconies as storage and clothes drying areas. Frosted glass should also be avoided. It is recommended that semi-permeable screening / battens may be used as a substitute.*

#### Coordinator of Environment Sustainability and Waste

144. The Review application was referred to Council's Coordinator of Environment Sustainability and Waste for assessment and review. The Waste Officer has advised that the proposed arrangements for ongoing waste management are not acceptable.
145. The applicant must demonstrate how bins will be moved from the basement to the ground floor to be serviced from the bin holding area – bins cannot be transported up/down stairs and it is not desirable to transport in residential lifts. Additionally, the applicant should demonstrate that all the (serviceable) bins required for the site can be effectively stored in the bin holding area to enable servicing, ensuring that commercial and residential bins are stored separately.
146. It is not clear whether or not the required bins can be stored within the designated bin holding area on ground floor. The applicant should confirm on the drawings that the required bin numbers (for the following calculations) can be stored at the collection point, as waste contractors will not travel to Basement levels to enable collection.
147. The applicant has significantly underestimated the generation volumes to be produced at the site. To use the Council waste collection service, the development needs to cater for:
  - 32 x 240L waste bins, serviced once weekly
  - 32 x 240L recycling bins, serviced once weekly.
148. Council would permit the use of 660L or 1100L bins for general waste (Council provides SULO bins), as follows:
  - 12 x 660L waste bins, OR
  - 7 x 1100L waste bins.
149. The applicant must demonstrate that at least two days' worth of comingled recycling to be produced on each floor in 240L MGB's can be stored on each level of the development (i.e. recycling generated at 17.14L per apartment, per day).
150. Additionally, green waste has not been allowed for at the proposed development, despite common and landscaped grounds. Council can provide optional green waste bins, or garden organic waste can be managed by landscape contractors at cost to the managing body.
151. **Commercial waste and recycling** must be separated from residential waste volumes – commercial tenants are not entitled to use residential waste/recycling allocations.
152. The applicant should recalculate retail waste/recycling generation based on the *Better practice guide for resource recovery in residential developments* (2019) which outlines non-food retail to generate 50L/100sqm of floor area per day of waste and 100L/100sqm of floor area per day of recycling. This would equate to:
  - 113.05L of waste per week (1 x 240L general waste serviced once weekly)
  - 226.1L of recycling per week (1 x 240L recycling bin, serviced once weekly)

Environmental Health Officer

153. Council's Environmental Health Officer has reviewed the Phase 2 Contamination Assessment Report and the Noise Impact Assessment Report and raised no objection to the proposal subject to conditions of consent if approval is granted.

**External Referrals**Ausgrid

154. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Comments were received from Ausgrid on 13 May 2020 and they have raised no objection to the proposed development. No conditions were recommended.

Department of Infrastructure Regional Development and Communications

155. The proposed development was referred on 27 April 2020, with comments in response received on 10 June 2020. Comments and a decision for approval of a controlled activity under the Airports (Protection of Airspace) Regulation 1996 was as follows:

*"The Inner horizontal Surface of the Obstacle Limitation Surface (OLS) above this site is at a height of 51 metres above the Australian Height Datum (AHD) and hence prescribed airspace above the site commences at 51 metres AHD. At a maximum height of 57.76m metres AHD, the building will penetrate the OLS by 6.76m.*

*They advised that approval for the controlled activity for the construction of the building at 18-24 Victoria Street Kogarah into prescribed airspace for Sydney Airport to a maximum height of 57.76 metres AHD.*

*The building must not exceed a maximum height of 57.76 metres AHD, inclusive of all lift over runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc."*

This developed was previously approved by the Department on 25 March 2020 to a maximum height of RL 57.66m AHD. This application seeks to vary the approval although a minor increase from DA2017/0597 shows the maximum building height at RL 57.76m AHD. The Department have updated and reissued their approval to restrict the maximum height to RL 57.76m AHD consistent with the maximum height shown under the review application (REV2020/0011).

Natural Resources Access Regulator

156. The proposal was referred to the Natural Resources Access Regulator on 27 April 2020.
157. The Natural Resources Access Regulator (NRAR) has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), a controlled activity approval is not required and no further assessment by this agency is necessary.

NSW Ambulance

158. The proposal was referred to NSW Ambulance on 27 April 2020. NSW Ambulance provided comments on 2 June 2020 and advised the following:

*"The developer must obtain an Aviation Risk Assessment statement from an accredited Aviation Risk and Safety Consultant and submit this as part of the documentation required under the development proposal. This is particularly essential where that*

*development threatens the critical health infrastructure that is an emergency helicopter landing site.*

*As this information is unavailable, my reply to any high rise development within a 5 km radius of St George Hospital helipad would be to state that it is inappropriate and threatens the continued safe operation of our aircraft and also poses a threat to the health, safety and wellbeing of the public due to lack of access to essential health facilities. Accordingly, we would not be able support, or endorse any such development proposal until an Aviation Risk Assessment is completed, submitted and considered.*

*The precinct around the St George Hospital helipad is under considerable stress from high rise development both during construction (cranes) and after that construction is finalised. The St George Hospital pad is the destination for hundreds of critically ill patients from across the state each year and is one of the busiest Major Trauma Centres in the NSW Health referral network. As part of NSW Health & NSW Ambulance, our helicopter network must continue to have unfettered access to the pad to facilitate timely and appropriate critical care transfers. My teams and the patients we transport are at extreme risk due to the hazards that the construction phase and development of high rise developments present.”*

## CONCLUSION

159. The proposal 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 proposal is considered to be an unreasonable intensification of the site. It represents an unacceptable planning and design outcome for this site and will adversely affect both the character of development in the street, the immediate locality and the residential amenity of the area.
160. The proposal has been assessed against the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plane 2013. The proposal satisfies the key planning controls in the Kogarah Local Environmental Plan apart from exceeding the building height development standard and the objectives of Clause 5.10 in relation to heritage. A Clause 4.6 Statement has been submitted with the application justifying the variation in relation to the building height development standard.
161. The proposed development design satisfies the objectives of the height control and the Clause 4.6 Statement is considered to be well founded as there will not be any direct or adverse environmental impacts generated, the proposal satisfies the requirements of Clause 4.6 of the Kogarah Local Environmental Plan. The Clause 4.6 however cannot be supported in this circumstance as the proposal as a whole is not supportable.
162. The proposal is inconsistent with various design quality principles of State Environmental Planning Policy 65 including context and neighbourhood character, built form and scale, amenity and aesthetics.
163. The proposal also fails to comply with various built form controls of Kogarah Development Control Plan 2013 including the site frontage, siting of the building with respect to providing an appropriate transition in height, curtilage and side setbacks from the heritage item.
164. For the above reasons, the proposal is recommended for refusal.

## DETERMINATION AND STATEMENT OF REASONS



Statement of Reasons

165. The reasons for this recommendation are:

- This part of Kogarah is undergoing transition to high density residential flat buildings with new controls allowing for a greater density and scale. However, the proposal fails to respond to both the existing context of the streetscape and the desired future character for development.
- The spire like rectangular frame incorporated into the development as an architectural roof feature protrudes from the overall envelope of the development and is visually prominent due to its location. This feature is not considered to be appropriate given its location within a transitional area of the building, where the built form should be stepping down the building.
- The Clause 4.6 Exception to Development Standard for the variation for Clause 4.3 Height of Building development standard is in principle an acceptable outcome however holistically the development cannot be supported in its current form.
- The proposed setbacks to the adjoining heritage item are insufficient and do not meet the required minimum as set out by the Apartment Design Guide (ADG) creating unacceptable impacts upon the adjoining property. The setback to the south western boundary (adjoining the heritage item) must be increased above Level 3 and for subsequent levels.
- The building provides insufficient transition in the scale and height as a relationship to the adjoining heritage item and must provide greater setback to Levels 3 and above.
- A geotechnical assessment must be provided together with the necessary engineering specifications to show that the basement level excavation will not result in any detrimental impacts to the structural integrity of the adjoining heritage item.
- The proposal does not achieve the minimum side and rear setbacks required by the Apartment Design Guide and creates unacceptable amenity impacts upon the adjoining properties in particular the heritage buildings to the west at 14-16 Victoria Street.
- The proposal fails to provide adequate building modulation and articulation to the Victoria Street façade. The continuous unarticulated street wall generated by the solid, masonry balcony balustrades combined with the height of the 4 storey podium results in a bulky and boxy streetscape that does not respond to human scale and does it complement the proposed terrace style building typology proposed on the adjacent property.
- Although generally compliant with the apartment size and layout criteria of the Apartment Design Guide, the functionality and useability is questionable in some apartments. The dining area within apartments 207, 307, 407, 506, 606, 706, 806, 906 and 1006 is located within the corridor/hallway, access to the main bedroom is via a long and winding corridor and the second bedroom's only light and ventilation is via a small window resulting in poor amenity.
- The primary balcony for the 3 bedroom apartments 206, 306 and 406 located to the north is 8.3sqm. They propose an additional south facing balcony also located off the living dining area to achieve the 12sqm required.
- The primary balcony for apartments 205, 305 and 405 do not provide a sufficient minimum balcony dimension of 2m whereby only 4sqm of the 10sqm proposed meets this requirement. The shortfall of these dimensions impacts the useability and functionality of these balconies.
- Apartments 207, 307, 407, 506, 606, 706, 806, 906 and 1006 (all 2 bedroom apartments) have south west facing balconies with a total area of 6.2sqm. Although

they do provide an additional balcony to achieve the minimum 10sqm required for two (2) bedroom apartments, this additional balcony is located off a bedroom.

- The operational Waste Management Plan has significantly under estimated the generation volumes produced at the site and as such insufficient bins and storage areas for the bins has been provided.
- The proposal is considered to establish an undesirable precedent in the area and will not be in the public interest.

#### Determination

166. THAT pursuant to Section 4.16(1) (b) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Planning Panel refuse consent to Review Application REV2020/0011 (DA2017/0597) for demolition of existing structures, lot consolidation and construction of a ten (10) storey mixed use development comprising sixty three (63) apartments and one (1) neighbourhood shop over three (3) levels of basement parking and a pedestrian through connection along the western boundary, landscaping and site works on Lots 70 and 71, Section B, DP 1397, Lots A and B DP 398263 and Lot B DP383744 and known as 18-24 Victoria Street, Kogarah, for 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 provides poor amenity in relation to spatial separation, balcony sizes and general functionality of apartments having regard to the Apartment Design Guide (ADG) and State Environmental Planning Policy No. 65 Design Quality of Residential Flat Buildings.
2. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 as the proposed development as a whole does not ensure that a high level of amenity is achieved and maintained. The Clause 4.6 Statement in respect to the non-compliance with Clause 4.3 Height of Building standard is not considered to be well founded or in the public interest.
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 does not satisfy Clause 5.10 - Heritage Conservation of the Kogarah Local Environmental Plan 2012.
4. 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 to the impact upon the streetscape, amenity for future occupants and to adjoining properties.
5. 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.
6. 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 proposed built form of the building will be out of character with existing and recently approved developments and does not reflect the desired future character for development in the street. The transition and interface of the building to the adjoining heritage building is considered to be unacceptable and unsympathetic with the form of these buildings.

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 proposed development in its current form, given its siting, location, design and massing is considered to be an inappropriate outcome for the site and will establish an undesirable precedent in the area which will not be in the public interest.

**ATTACHMENTS**

Attachment [↓](#) 1  North, South, East and West Elevations - 18-24 Victoria St Kogarah





