

## AGENDA - LPP

<b>Meeting:</b>	Georges River Local Planning Panel (LPP)
<b>Date:</b>	Thursday, 17 September 2020
<b>Time:</b>	4.00pm
<b>Venue:</b>	Council Chambers, Civic Centre, Hurstville
<b>Panel Members:</b>	Adam Seton (Chairperson) Juliet Grant (Expert Panel Member) Michael Leavey (Expert Panel Member) Fiona Prodromou (Community Representative)

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

- a) 799 Forest Road Peakhurst
- b) 121 Mi Mi Street Oatley
- c) 54 and 54A Noble Street Allawah

### 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**

- LPP045-20      799 Forest Road Peakhurst – DA2019/0431**  
(Report by Senior Development Assessment Officer)
- LPP046-20      54 and 54A Noble Street Allawah – DA2019/0314**  
(Report by Senior Development Assessment Planner)
- LPP047-20      121 Mi Mi Street Oatley – DA2020/0172**  
(Report by Senior Development Assessment Planner)
- LPP048-20      Public Exhibition of Draft Georges River Development Control Plan  
2020**  
(Report by Senior Strategic Planner)

**4. Confirmation of Minutes**

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 17 SEPTEMBER 2020**

LPP045-20

<b>LPP Report No</b>	<b>LPP045-20</b>	<b>Development Application No</b>	<b>DA2019/0431</b>
<b>Site Address &amp; Ward Locality</b>	799 Forest Road Peakhurst Peakhurst Ward		
<b>Proposed Development</b>	Demolition of existing structures and construction of six multi-unit dwellings, associated vehicle accommodation, an in-ground swimming pool, landscaping and site works		
<b>Owners</b>	Leila Mourad and Maurice Mourad		
<b>Applicant</b>	Monument Design Partnership		
<b>Planner/Architect</b>	Planner: Gat and Associates, Architect: Monument Design Partnership		
<b>Date Of Lodgement</b>	20/09/2019		
<b>Submissions</b>	Twenty five (25) submissions received		
<b>Cost of Works</b>	\$2,513,463		
<b>Local Planning Panel Criteria</b>	More than ten (10) unique submissions received		
<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 (Building and Sustainability Index: 2004), State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2007, Greater Regional Environmental Metropolitan No 2 – Georges River Catchment, Draft Environment SEPP, Draft Remediation SEPP, Draft Georges River Local Environmental Plan 2020, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No. 1, Georges River Council Interim Policy 2019		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans		
<b>Report prepared by</b>	Senior Development Assessment Officer		

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

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>Not Applicable</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, as the conditions can be viewed when the report is published.</b>

### Site Plan



**Figure 1:** Aerial extract of subject site (799 Forest, Road, Peakhurst) outlined in blue (Source: GRC Intramaps, 2020).

### Executive Summary Proposal

1. The development application seeks development consent for the demolition of existing structures and construction of six (6) multi unit dwellings, associated vehicle accommodation, an in-ground swimming pool, landscaping and site works on land known as 799 Forest Road, Peakhurst.
2. During the assessment process Council has accepted an amendment to the development application of which the original design comprised a one (1) x two (2) storey townhouse and five (5) x single storey villas. The amended proposal comprises of five (5) x two (2) storey townhouses and one (1) x single storey villa.

3. The proposal seeks variations to the Hurstville Development Control Plan No. 1 relating to:
  - side setbacks;
  - window side setbacks,
  - driveway; and
  - solar access.
4. The variations sought are considered to be acceptable in this instance and are supported on planning merit.
5. The proposal complies with the key design aspects regarding; floor space, height of the buildings, onsite car parking, landscape, private open space, tree protection and engineering.
6. An arborist report was provided in support of the proposal which seeks to protect four (4) trees on the subject site and three (3) trees on an adjoining southern property known as 53B Isaac Street, Peakhurst. Council's Consulting Arborist has reviewed the proposal and supports the measure provide by the application to protect these trees which has been reinforced by conditions of consent.
7. The proposal seeks to drain to the rear via an approved easement granted through 4 Dawn Street, Peakhurst. Approval for this easement was granted through development consent DA2017/0326. This consent is currently not operational however; it remains valid until 30 August 2022. The proposed stormwater disposal and impacts have been considered by Council's development engineer and is supported subject deferred commencement conditions and conditions of consent. The conditioning for the upgrading of Council's infrastructure within Dawn Street has also been conditioned.
8. The proposal is supported by Council's other specialist namely traffic, infrastructure and GIS subject to conditions of consent.
9. The proposal was referred to Ausgrid and is supported subject to conditions of consent.

### **Site and Locality**

10. The site is legally described as Lot 2, DP 210901 and known as 799 Forest Road, Peakhurst. The site forms an irregular rectangular shaped allotment. Forest Road is classified as a local road. The site is dimensioned as follows; 18.235m along the western splayed boundary fronting Forest Road, Peakhurst, 31.67m along the southern side boundary, 15.24m along the western side boundary return, 52.33 along the southern side boundary, 30.47m along the eastern rear boundary, 73.94m along the northern side boundary with a total site area of 1,998sqm (DP). The site falls from front high (RL38.97) western frontage to the rear low (35.46) south east corner. The site is affected by overland flow.
11. There are currently thirteen (13) trees on site, the largest and most prominent trees are located within the rear setback along the southern side boundary.
12. A single storey masonry dwelling is located along the western front portion of the site. Ancillary structures are located within the rear setback. A concrete driveway provides vehicular access along the southern side boundary.

13. A gully pit, a hydrant, an Ausgrid powerline and a Telstra pit are located within the road reserve.
14. The immediate surrounding area comprises residential uses. 796-797 Forest Road, Peakhurst which adjoins the site to the north comprises of a single storey dwelling house. 801 Forest Road, Peakhurst comprises of a single storey dwelling house with a carport and a swimming pool within rear setback.
15. 53B Isaac Street, Peakhurst comprises of a single storey dwelling house. 51B Isaac Street, Peakhurst to the south, comprises a single storey dwelling which is accessed from a shared access handle off Isaac Street. 4 and 6 Dawn Street, Peakhurst to the east contains single storey dwellings. Council's records indicate Dawn Street, Peakhurst located to the east is affected by flooding.

### **Zoning and Permissibility**

16. The site is zoned R2 Low Density Residential pursuant to the Hurstville Local Environmental Plan 2012 (LEP). The proposal seeks consent for multi dwelling housing.
17. As of 6 December 2019 multi dwelling housing is no longer a permissible use within the zone.
18. Clause 1.8A of the LEP contains Savings Provisions relating to development applications which were lodged but not yet determined at the time of adoption of amendments to the LEP applies to this development application.
19. The application was lodged on 20 September 2019. At the time of lodgement, multi dwelling housing was a permissible use with development consent within the zone. The proposal is therefore permissible by operation of Clause 1.8A of Hurstville Local Environmental Plan 2012.

### **Submissions**

20. The proposal was notified and renotified following the receipt of the amended proposal in accordance with the provisions of Council's notification policy. In total, twenty-five (25) submissions were received of which raised concerns relating to key concerns regarding; stormwater, trees, density, built form and traffic, overshadowing, privacy and amenity impacts generated by the proposed works. The concerns raised have been considered and are addressed in detail within the body of this report.

### **Conclusion**

21. That the development application be supported subject to a deferred commencement to lawfully obtain/register an easement through a downstream property.

### **Report in Full**

### **Proposal**

22. Development Consent is sought for demolition of existing structures, construction of six (6) multi-dwelling housing dwellings and associated vehicle accommodation an in-ground swimming pool, landscaping and site works on land known as 799 Forest Road, Peakhurst.





**Figure 2:** Extract of montage of proposal viewed from Forest Road, Peakhurst (western front elevation) (Source: Monument Design Partnership, 2020).

23. A detailed description of the proposal is as follows:
24. In detail, the particulars of the development application are described as follows;
  - Demolition of an existing dwelling and ancillary structures;
  - The protection of four (4) trees on the subject site and three (3) trees on an adjoining property known as 53B Isaac Street, Peakhurst.
25. Dwelling 1: Two storey Townhouse (accessible dwelling)
  - Ground floor: front portico, double garage, bathroom, guest bedroom, living areas kitchen, rear alfresco, in-ground swimming pool and private open space to the rear;
  - First floor: First floor: three (3) bedrooms all with ensuites and front balcony which faces Forest Road.
26. Dwelling 2: Two storey Townhouse (accessible dwelling)
  - Ground floor: portico, lounge, dining, kitchen, laundry, bathroom, two (2) accessible stacked car spaces and associated private open space;
  - First floor: four (4) bedrooms one (1) with ensuite, a bathrooms and front balcony (facing internally into site).
27. Dwelling 3: Single storey Villa
  - Portico, three (3) bedrooms one (1) with ensuite, bathroom, laundry, lounge, dining, kitchen and double garage and associated private open space.
28. Dwelling 4: Two storey Townhouse
  - Ground floor: portico, WC, lounge, dining, kitchen, laundry, two (2) stacked spaces;
  - First floor: three (3) bedrooms one (1) with ensuite, a bathroom and front balcony (facing internally into site).

29. Dwelling 5: Two storey Townhouse

- Ground floor: portico, WC, lounge, dining, kitchen, laundry, two (2) stacked spaces;
- First floor: three (3) bedrooms one (1) with ensuite, a bathroom and front balcony (facing internally into site).

30. Dwelling 6: Two storey Townhouse

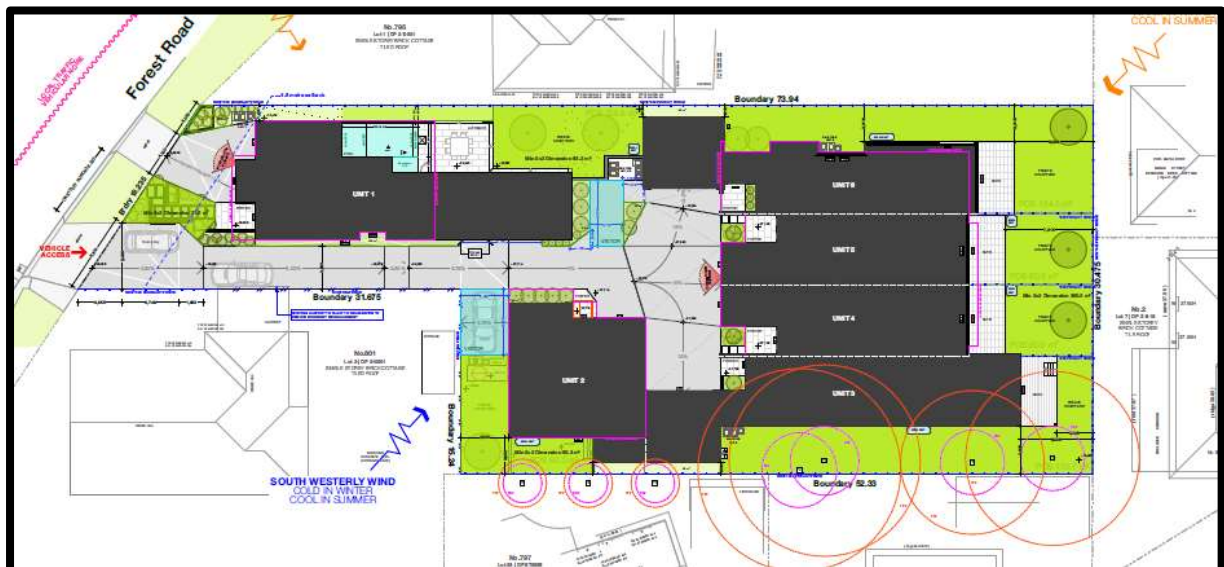
- Ground floor: portico, bedroom, bathroom, lounge, dining, kitchen, laundry, two (2) car garage and associated private open space;
- First floor: three (3) bedrooms one (1) with ensuite, a bathroom.

31. The proposal seeks associated works including front fencing, retaining walls, driveways, pathways, landscaping, engineering works and bin storage areas.

32. For the purposes of assessment, a summary table of the proposal each dwelling has been provided below.

**Table 1: Summary Table of proposed development**

Dwelling	No. of storeys	No. of bedrooms	Car parking spaces	Private Open Space
No.1	2	4	2	97.6sqm ( <i>Note: this is the only area that complies with the definition</i> ).
No.2	2	3	2	60.3sqm
No.3	1	3	2	155.7sqm
No.4	2	3	2	60.2sqm
No.5	2	3	2	60.3sqm
No.6	2	4	2	154.5sqm



**Figure 3:** Extract of site plan (Source: Monument Design Partnership, 2020).

## THE SITE AND LOCALITY

33. The site is legally described as Lot 2, DP 210901 and is known as 799 Forest Road, Peakhurst. The site forms an irregular rectangular shaped allotment. Forest Road at this location is classified as a local road. The site is dimensioned as follows; 18.35m along the western splayed boundary fronting Forest Road, Peakhurst, 31.67m along the southern side boundary, 15.24m along the western side boundary return, 52.33 along the



southern side boundary, 30.47m along the eastern rear boundary, 73.94m along the northern side boundary with a total site area of 2,001.3sqm (DP 1998sqm). The site falls from front high (RL38.97) western frontage to the rear low (35.46) south east corner. The site is not affected by overland flow.

34. A single storey masonry dwelling is located to the western portion of the site. Ancillary structures are located within the rear setback. A concrete driveway provides vehicular access along the southern side boundary.
35. A gully pit, a hydrant, an Ausgrid powerline and a Telstra pit are located within the road reserve.
36. The immediate surrounding area comprises residential uses. 796-797 Forest Road, Peakhurst which adjoins the site to the north comprises of a single storey dwelling house. 801 Forest Road, Peakhurst comprises of a single storey dwelling house with a carport and a swimming pool within rear setback. 51B Issac Street, Peakhurst to the south, contains a single storey dwelling which is accessed from a shared access handle off Issac Street. 4 and 6 Dawn Street, Peakhurst adjoining the site to the east each contains a single dwelling.



**Figure 4:** Photograph of subject site (799 Forest Road, Peakhurst) (Source: GRC, 2020).

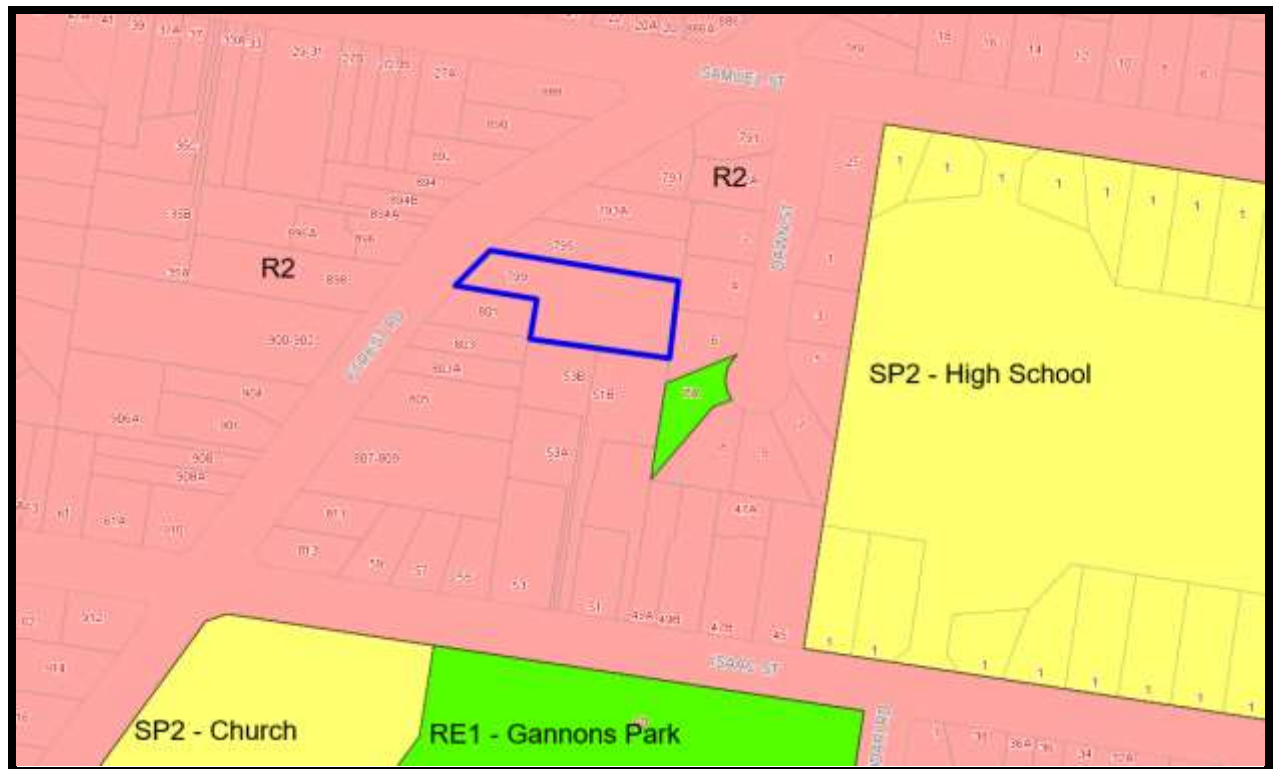


**Figure 5:** Photograph of rear of subject site (799 Forest Road, Peakhurst) (Source: GRC, 2020).



**Figure 6:** Photograph of adjoining northern property, 796-797 Forest Road, Peakhurst (Source: GRC, 2020).

37. The immediate surrounding area is zoned R2 Low Density Residential under the Hurstville Local Environmental Plan 2012. Adjoining the site comprises of a mixture of dwelling houses, dual occupancies and multi dwelling housing of varying architectural styles and designs.



**Figure 7:** Extract of HLEP 2012 with subject site outlined in blue (799 Forest Road, Peakhurst) (Source: GRC Intramaps, 2020).

38. The streetscape is undergoing transitional change from established dwellings to contemporary infill development. There are several trees within the adjoining residential properties.

### Background

39. Development consent (DA2015/0457) was granted for the demolition of the existing dwelling and construction of a six (6) dwelling multi housing development at 799 Forest Road, Peakhurst via Hearing process by the New South Wales Land and Environment Court on 16 February 2017. The consent was granted approval via deferred commencement for twelve (12) months to satisfy drainage and engineering requirements. The deferred commencement conditions were not satisfied within this timeframe. This consent lapsed on 16 February 2018.
40. Development consent DA2017/0326 was granted for easement works connecting from the subject site 799 Forest Road, Peakhurst through 4 Dawn Street, Peakhurst to the public drainage system. This consent is currently not operational however it remains valid until 30 August 2022.
41. A development application DA2019/0431 (the current application) was lodged on 20 September 2019 for demolition of existing and construction of six (6) multi-unit dwellings

associated vehicle accommodation, an in-ground swimming pool, landscaping and site works on land known as 799 Forest Road, Peakhurst.

42. A meeting was held with the applicant on 8 November 2019 advising that the application in its lodged form was not supported, and the applicant was provided an opportunity to amend the plans to better address Council's controls.
43. Amended plans and documentation were received by Council and have been accepted under Clause 55(2) Amendment of Development Application under The Environmental Planning and Assessment Regulations 2000.
44. The proposed use as multiple unit dwellings forms a permissible use on the site given that a savings provision applies to the development application under clause 1.8 of the Hurstville Local Environmental Plan. The proposal results in a reasonable built form which provides satisfactory levels of residential amenity. The proposal is considered to be responsive to the site, its immediate context and is not considered to result in any unreasonable material impacts. Given the above, the proposal is recommended for approval subject to conditions of consent.

#### **Compliance and Assessment**

45. The development has been assessed having regard to Matters for Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

#### **Section 4.15 Evaluation**

46. The following is an assessment of the application with regard to Section 4.15(1) Evaluation of the Environmental Planning and Assessment Act 1979.

#### **(1) Matters for consideration - general**

*In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

#### ***The provision of:***

- (i) Any environmental planning instrument,*

### **STATE ENVIRONMENTAL PLANNING INSTRUMENTS**

47. Compliance with the relevant State Environmental Planning Policies (SEPP) is detailed below.

#### **STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND**

48. SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
49. A review of the site history indicates that the site has been used for residential purposes for extended periods of time, and such uses and/or development are not typically associated with activities that would result in the contamination of the site. The proposed works do not include any change to the use of the land that would result in any concerns with respect to contamination. There is no indication of previous uses that would cause contamination. In this regard there is no indication that the land is contaminated.



## **STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004**

50. The trigger for BASIX Certification is when the estimated cost of works for residential development (new dwelling(s)/alterations and additions) is equal to or above \$50,000. The proposal results in a cost of works of \$2,513,463. A BASIX Certification is also triggered when proposing a swimming pool with a volume of 40,000 litres. A BASIX Certificate referenced 1044722M\_05 dated 9 April 2020 prepared by Greenworld Architectural Drafting has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004. The DA requirements of the BASIX Certificate have been detailed on the plans. In this regard, the proposal has adequately satisfied the requirements of the SEPP.

## **STATE ENVIRONMENTAL PLANNING POLICY (VEGETATION IN NON-RURAL AREAS) 2017**

51. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.  
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).
52. The objectives of the SEPP are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 5 (1) of the SEPP as the site is within both Georges River Council and the R2 Low Density Residential zone.
53. Pursuant to Clause 8 (1) of the SEPP, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
54. An arborist report was provided in support of the proposal which seeks to protect four (4) trees on the subject site and three (3) trees on an adjoining property known as 53B Issac Street, Peakhurst.
55. The proposal has been assessed and is supported by Council's consulting arborist subject to conditions of consent which include suitable replacement landscaping to embellish the site.

## **GREATER METROPOLITAN REGIONAL ENVIRONMENTAL PLAN NO 2 — GEORGES RIVER CATCHMENT**

56. The main aims and objectives of this plan include but are not limited to the following:
- *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,*

57. The proposed stormwater drainage system which seeks to drain to the rear has been assessed by Council's Development Engineer and is satisfactory subject to deferred commencement conditions to obtain an easement within a downstream property and extension of a stormwater pipe within Dawn Street, Peakhurst.

## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

### ***DRAFT ENVIRONMENTAL SEPP***

58. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating the following seven existing SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas;
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011;
- State Environmental Planning Policy No. 50 – Canal Estate Development;
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment;
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997);
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

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

### ***DRAFT REMEDIATION OF LAND SEPP***

60. The Draft Remediation of Land SEPP was exhibited from 31 January 2018 to 13 April 2018. The proposed remediation of land SEPP will:

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

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

**HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012**

62. The provisions of this Local Environmental Plan are relevant to the proposal. The extent to which the proposal complies with the relevant standards of Local Environmental Plan 2012 (LEP2012) is outlined in the table below.

**Part 2 – Permitted or Prohibited Development****1.8A Savings Provisions for Development Applications**

63. Clause “1.8A Savings provisions relating to development applications” applies to the development application whereby the clause states that “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.”
64. The development application was lodged on 20 September 2019 whereby multi dwelling housing were prohibited within the HLEP 2012 effective of 6 December 2019.
65. As of 6 December 2019 multi dwelling housing is no longer a permissible use within the zone.
66. Clause 1.8A of the LEP contains Savings Provisions relating to development applications which were lodged but not yet determined at the time of adoption of amendments to the LEP applies to this development application.
67. The application was lodged on 20 September 2019. At the time of lodgement, multi dwelling housing was a permissible use with development consent in the zone. The proposal is therefore permissible by operation of Clause 1.8A of Hurstville Local Environmental Plan 2012.

**Clause 2.1 – Land Use Zones**

68. The subject site is zoned R2 Low Density Residential. The proposal seeks development consent for “multi dwelling housing” which is a permissible form of development with Council’s consent at the time of lodgement. The proposal is consistent with the objectives of the zone.

**Table 2: Hurstville Local Environmental Plan 2012**

Clause	Standard	Proposed	Complies
4.1A Multi Dwelling Housing	1000sqm (min)	1,998sqm (based on DP)	Yes
4.3 Height of Buildings	9m	7.8m (RL45.5)	Yes
4.4 Floor Space Ratio	Site area = 1,998sqm (based on DP) 0.6:1 1,198.8sqm (max)	0.516:1 1,031sqm	Yes
4.5 Calculation of floor space ratio and site area	To be calculated in accordance with clause	Floor space and site area calculated in accordance with this clause.	Yes

**Part 6 – Additional Local Provisions**

Clause	Standard	Proposed	Complies
6.1 Acid Sulphate	Acid sulphate soils	Not affected, minimal	Yes

Soils	objectives to be satisfied	cut and fill proposed to accommodate residential development	
6.9 Essential Services	Essential utility services to be provided	Essential services provided to the site that can be extended to service the proposal.	Yes

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#### Aims of Plan

69. The particular aims of the Hurstville Local Environmental Plan 2012 in relation to Clause 1.2 (2) are as listed below:
- (2) *The particular aims of this Plan are as follows—*
- (a) *to encourage and co-ordinate the orderly and economic use and development of land that is compatible with local amenity,*
  - (b) *to provide a hierarchy of centres to cater for the retail, commercial, residential accommodation and service needs of the Hurstville community,*
  - (c) *to provide a range of housing choice that—*
    - (i) *accords with urban consolidation principles, and*
    - (ii) *is compatible with the existing environmental character of the locality, and*
    - (iii) *is sympathetic to adjoining development.*
  - (d) *to conserve, protect and enhance the environmental heritage, cultural heritage and aesthetic character of Hurstville,*
  - (e) *to maintain and enhance the existing amenity and quality of life of the Hurstville community,*
  - (f) *to ensure development embraces the principles of quality urban design,*
  - (g) *to ensure development is carried out in such a way as to promote the efficient and equitable provision of public services, infrastructure and community facilities,*
  - (h) *to protect and enhance areas of remnant bushland, natural watercourses, wetlands and riparian habitats,*
  - (i) *to retain, and where possible extend, public access to foreshore areas and link existing open space areas for environmental benefit and public enjoyment,*
  - (j) *to ensure development embraces the principles of ecologically sustainable development,*
70. The proposal satisfies the aims of the plan. The proposal forms a permissible use and complies with the development standards and zone objectives within the LEP.

#### **DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020**

71. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
72. 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.”
73. It is noted that multi dwelling housing is not a permissible use within the R2 Low Density Residential Zone under the Draft Georges River Local Environmental Plan 2020.

## DEVELOPMENT CONTROL PLANS

### Hurstville Development Control Plan No 1

74. The provisions of this Development Control Plan are relevant to the proposal. An assessment of the proposal against the key controls is outlined as follows.

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

75. The proposal provides car parking in the form of a dwelling house configuration for dwelling 1 which comprises of a double garage and driveway directly from Forest Road through a proposed driveway crossing. Dwellings 2 - 6 comprise of double garages and central turning area which allows a car to exit in a forward direction via a central driveway. The proposal is accordance with the multi dwelling housing requirements with compliant access for 6 by three (3) and four (4) bedroom dwellings. Adequate car parking and manoeuvrability is provided to accommodate the proposal based on the density and number of bedrooms proposed subject to conditions of consent.

#### Section 3.3 Access and Mobility

76. The proposal is considered to reasonably satisfy the considerations within this subsection with adaptable dwellings provided with suitable access and amenities. Two (2) accessible dwellings (Dwelling 1 and Dwelling 2) are proposed which complies with Council's requirements of providing One (1) accessible dwelling per five (5) dwellings. The finished floor levels and driveway gradient of dwelling 1 are to be amended to allow compliant gradient access to and from Forest Road.

#### Section 3.4 Crime Prevention Through Environmental Design

77. The proposal seeks to provide suitable outlook to and from the development to Forest Road and from the common driveway to the dwellings within the site. This is achieved through appropriate window placement allowing sight lines to the central driveway which services dwellings 2-6. The proposal contains logical entrances for each dwelling which minimise concealment opportunities. In this regard, the proposal reasonably satisfies the considerations within this subsection.

#### Section 3.5 Landscaping

78. The proposal provides landscaping areas within the front, centre and rear of the site with suitable dimensions which could reasonably accommodate trees, shrubs and lawns subject to the deletion of fencing and hard paved areas within the front setback. Council's Consulting arborist supports the proposal subject to conditions of consent. In this regard, the proposal reasonably satisfies the considerations within this subsection.

#### Section 3.6 Public Domain

79. The proposal is conditioned to retain the street tree as recommended by Council's Consulting Arborist as a result this retains the streetscape appearance and satisfying the criterion to 'reinforce the street hierarchy'. In this regard, the proposal reasonably satisfies the considerations within this subsection.

#### Section 3.7 Stormwater

80. The proposal seeks to drain to the rear which is supported by Council's Development Engineer subject to conditions of consent regarding the creation of an easement and upgrading Council infrastructure.

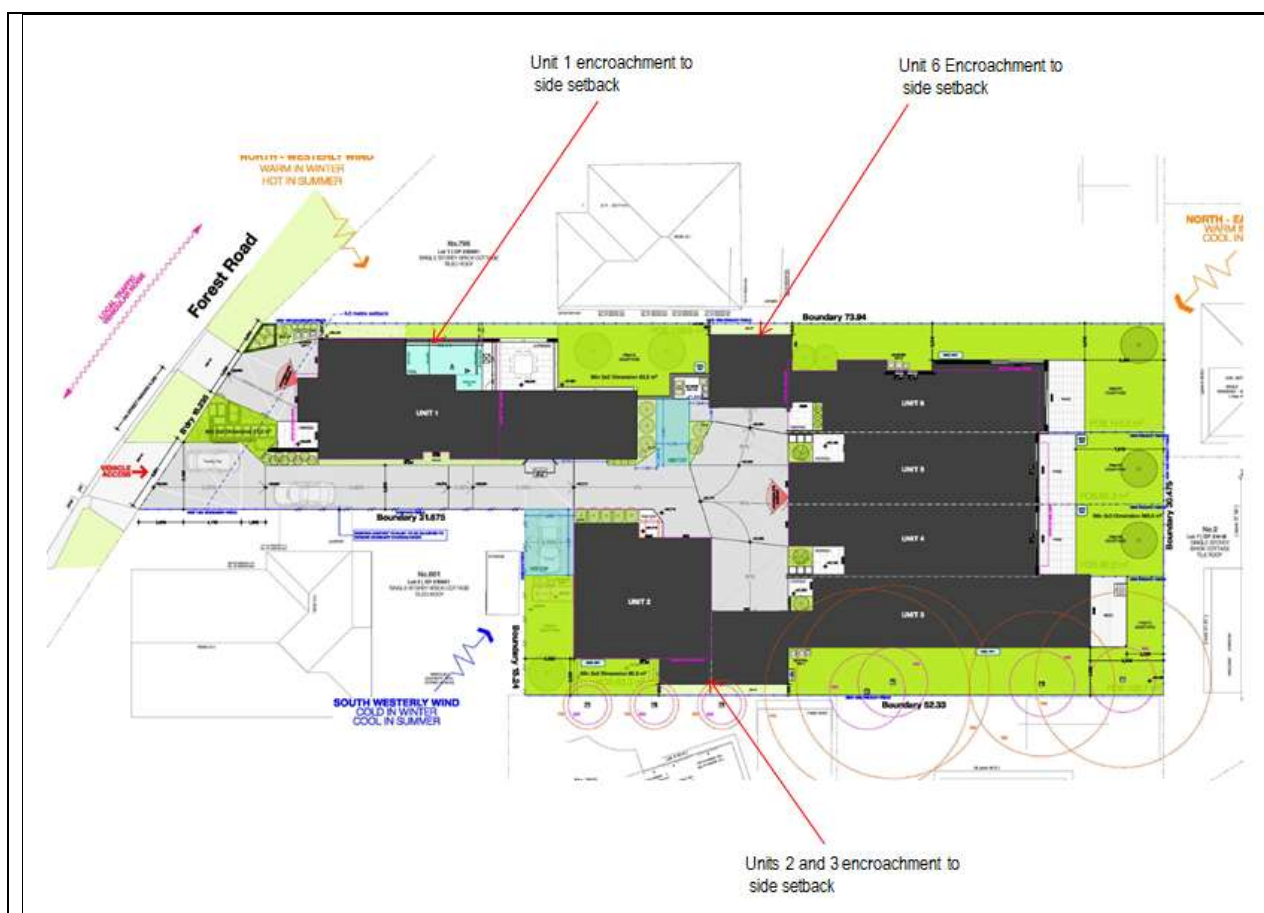
81. Section 4.2 Multi Dwelling Housing

**Table 3: Hurstville Development Control Plan Section 4.2 Multi Dwelling Housing Compliance Table**

Applicable DCP Controls	Standards	Proposal	Complies
PC2. Site frontage	15m (min)	18.235m along Forest Road, Peakhurst (as per survey)	Yes
PC3. Density	315sqm per dwelling 6 dwellings = 1,890sqm (minimum site area required) Site area = 1,998sqm	Site area 1,998sqm. 6 dwellings = 333sqm per dwelling density.	Yes
PC4. Height front of site (R2):	2 storey	Dwellings 1, 2, 4, 5 and 6 = 2 storey.	Yes
Height:	9m	Dwellings 1, 2, 4, 5 and 6 = 7.8m (RL45.5)	Yes
Height rear of site (R2):	1 storey	Dwelling 3 = 1 storey	Yes
Height:	6m	Dwelling 3 = 4.76m (RL40.65)	Yes
Floor to Ceiling	2.7m	Range: 2.7 to 3.5m	Yes
PC.5 Excavation	500mm maximum	Less than 500mm, ground floor slabs proposed to be located on or above natural ground level, some cut and fill required to support the proposed design.	Yes
PC6. Setbacks and building separation	3m (450mm eaves max encroachment)	Dwelling 1: North: 1,237mm on ground floor and first floor.	No (1)
DS6.1 Side setbacks:		Dwelling 2: West: 4m – dwelling wall	Yes
		South: 3.0m – dwelling wall	Yes
		South: 909mm – garage.	No (1)
		Dwelling 3: South: 3.909m – dwelling wall. South: 909mm - garage	Yes No (1)
		Dwelling 6: North: 3,018mm -	



DS6.2 Front setback:	4.5m	dwelling North: 919mm - garage	Yes No (1)
DS6.3 Garage front setback	5.5m (stacked car parking)	Dwelling 1: 4.5m minimum	Yes
DS.4 Articulation elements	1m forward of building line at 25%	Dwelling 1 fronting the street is not proposed in a stacked configuration, car parking is side by side.	Yes
DS6.6 Min separation distance from windows and balconies on site.	5m	All elements behind 4.5m.	Yes
D6.7 Rear setback:	6m (450mm eaves max encroachment)	More than 5m between the windows within the site.	Yes
<p><u>(1) Side setbacks</u></p> <p>Council's controls (PC6. Setbacks and Building Separation, DS6.1) prescribe a minimum ground floor side setback of 3m from side boundaries. The proposal seeks a variation to the above control whereby Dwelling 1 (two storey townhouse) which seeks a setback of 1,237mm (ground floor) and 1,237mm (first floor) from the northern side boundaries.</p>			



**Figure 8:** Site plan indicating location of variations proposed along the northern and southern side setbacks (Source: Monument Design Partnership, 2020).

The proposed side setback for Dwelling 1 adopts a setback and visual built form of that of a two (2) storey dwelling house and is not dissimilar to approved multi dwelling housing existing within the locality (to which the Hurstville DCP applies). There are no high habitable use room windows along these side setback encroachments and therefore, no unreasonable privacy impacts arise.

The proposal seeks a 909mm (ground floor) side setback for Dwelling 2 and Dwelling 3 (southern elevation) and 916mm setback for Dwelling 6 garage (northern elevation). This is to allow compliant internal vehicular circulation within the site to Forest Road, Peakhurst. The extent of the variations relate to single storey elements only which align with single storey dwelling house controls.

There are no windows along the reduced side setbacks for the garages. The extent of this variation is not readily perceivable from the public domain as this is obscured by the two (2) storey built forms of Dwelling 1 and Dwelling 2 which form two (2) storey townhouses. The flat skillion roof design also reduces visual bulk and scale impacts to adjoining residential properties.

For the reasons above, the proposed variations to the side setbacks are considered to be acceptable.

PC7. Car parking: DS7.1			
3 bedroom +	2 car spaces	Dwellings 1 to 6: 2 car spaces provided for	Yes

DS7.2	Car parking behind main building face	each dwelling within garages.	Yes
DS7.3 Driveway width	40% (site less than 20m) 7.29m	All car parking spaces behind building line.  Site width: 18.23m, Total driveway width = 4m + 6.6m (10.6m combined 58%)	No (2)
<p><u>(2) Driveway width</u></p> <p>Council's controls (PC7 Car Parking, DS7.3 Driveway Width) prescribes a maximum driveway width of 40% for sites less than 20m. The site contains a frontage of 18.23m to Forest Road, Peakhurst whereby the application of these controls prescribes a maximum driveway width of 7.29m. The proposal seeks a variation to this control as two (2) driveways are proposed being 4m servicing Dwelling 1 and 6.6m serving dwellings 2 - 6. This equates to 10.6m in total driveway width equating to 58%. The variation is considered to be acceptable for the following reasons:</p> <ul style="list-style-type: none"> <li>• The driveway width for the southern driveway (to facilitate access for Dwellings 2-6) proposes a driveway width of 6.6m at the front of the property boundary which provides a passing bay.</li> <li>• The proposed driveway width of 4m servicing Dwelling 1 is considered to be reasonable as the configuration, which presents to the street as a dwelling house, and functions generally independently to the other dwellings on site. It is noted that Council's controls a residential driveway width of 4.5m maximum.</li> <li>• The proposed cumulative driveway width will not result in an unreasonable loss of on street car parking on Forest Road which forms a local road. It is noted that there is 6.26m spatial separation between the driveways of which would reasonably allow a car to be parked within the site frontage.</li> <li>• The proposed configuration is compatible the immediate surrounding area and is similar to that of approved multi dwelling housing within the locality which results in a reasonable planning outcome given the allotment shape.</li> <li>• The proposal incorporates landscaped area within the front setback which is considered to be well integrated with the driveway layout and configuration. Additional conditions of consent require the removal of planter boxes, stepping stones, bin storage behind the building line, deletion of the blade wall along the southern side elevation forward of the building line.</li> <li>• An additional design condition prior to issue of construction certificate is recommended to ensure that a B99 and B85 vehicles can pass each other, this will alter the passing bay depth, but not the width.</li> </ul> <p>For the reasons above, the proposed variation to maximum driveway width is considered to be acceptable in relation to satisfy the underlying objectives of this clause.</p>			
PC8.Landscaped area			

DS8.1 Landscaped area	20% (400sqm)	26.13% (522.12sqm) this includes landscaped areas located forward and behind the building line.	Yes
DS8.2 Minimum dimension	2m	2m achieved.	Yes
PC9. Private Open Space:			
DS9.1 3 bedroom	6m x 4m	Dwelling 1-6: 6m x 4m minimum achieved.	Yes
Area 3 bedroom	60sqm	Dwelling s 1-6: 60sqm minimum achieved.	Yes
Access	Accessible from a main living room and 1:20 grade	Accessible from main living rooms located on the ground floor, gradient 1:20 not exceeded.	Yes
Landscaping	Landscaped area to be provided between front boundary and front setback	Landscaping provided between dwelling 1 and front setback. As previously stated an additional design condition has been imposed for the removal of structures within the front setback to allow for greater opportunities for substantial planting.	Yes
PC10. Solar Access	DS10.1 Main living  DS10.2 3 Hours minimum solar access  DS10.3 Proposal to comply with BASIX  DS10.4 Windows to incorporate shading devices	Main living areas adjoin P.O.S  3 hours solar access achieved to adjoining properties.  Proposal complies with BASIX requirements.  Eaves provided.	Yes  No (3) refer to discussion below.  Yes  Yes
<u>(3) Solar access</u> Council's controls (PC10. Solar Access, DS10.2) prescribe 3 hours solar access is to be achieved to adjoining properties.			

The adjoining southern property is most affected by the proposal. The subject site is located on a west to east axis which contains a frontage to Forest Road, Peakhurst. This is considered to be acceptable for the following reasons:

- The proposal complies with floor space ratio and height controls and generally conforms to the setback controls as previously discussed a 900mm setback is proposed for the garages of dwelling 2 and 3.
- The proposed variation of the setbacks to the southern side boundary do not result in any unreasonable overshadowing impacts to adjoining southern properties or which are considered to be difficult to retain solar access due to the inherent orientation of the site.
- It is noted that the ground floor and first floor non-compliant setback of dwelling 1 along the northern side boundary does not result in adverse impacts to southern properties given the sitting and spatial separation proposed.

For the reasons above, the proposed variation to solar access is considered to be acceptable and is supported on planning merit.

PC11. Visual Privacy	DS11.1 Windows offset by 1m or screened or oriented to ensure visual privacy	Windows appropriately offset between dwelling and adjoining properties.	Yes
PC12. Noise	DS12.1 windows minimum 3m setback	No - windows proposed within 3m of the boundary.	No (4)

#### (4) Noise

Council's controls (PC12. Noise, DC12.1) prescribe a minimum side setback of 3m for windows. Dwelling 1 which forms a two (2) storey townhouse seeks a variation to this control as a setback of 1,237mm is sought. The windows along the northern side elevation form bathroom ensuite windows which are considered to be of a low habitable use which is considered to be acceptable. As these windows are not proposed to be obscured, a condition of consent forming a design change prior to issue of construction certificate has been imposed for these first floor bathrooms windows along the northern elevation to be frosted or obscured to provide an appropriate level of privacy between the subject site and adjoining northern property.

PC13. Streetscape	DS13.1 Roof 45 degrees attic, mixed roof forms, entrances of buildings contained porch, portico or similar	Less than 45 degrees, being a mixture of parapets and skillion roof forms with the entrances of buildings appropriately treated.	Yes
PC14. Front Fencing	DS14.1 1m max front fence height	Front fences and planter boxes are proposed in the front setback with hard surfaces to be deleted to allow for mature planting and improved sightlines for vehicles to and from the Forest Road.	Yes
PC15. Site	Provision of electricity,	Can be provided on site,	Yes



facilities		mail and garbage storage is also to be provided on site.	
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### Section 5.6 Swimming Pool and Spas

82. The proposal seeks the construction of an in-ground swimming pool as part of Dwelling 1 (front townhouse) which located within the rear setback of this dwelling. The swimming pool forms an “L” shape design with beach area with dimensions of 6.31m in length and 3.99m in width. The swimming pool seeks a range in water depth from 300mm (beach area) to a maximum of 1.8m. The proposal has been considered in accordance with the applicable controls within this subsection.

**Table 4: Hurstville Development Control Plan Section 5.6 Swimming Pools and Spas Compliance Table**

<b>Applicable DCP Controls</b>	<b>Standards</b>	<b>Proposal</b>	<b>Complies</b>
PC1. Pool Siting and Noise Control	DS21.1 In-ground swimming pools shall be built so that the top of the swimming pool is as close to the existing ground level as possible. On sloping sites this will often mean excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool at the low side.	The proposed swimming pool is proposed to be located at natural ground level.	Yes
	DS1.2 Provided one point on the swimming pool or one side of the swimming pool is at or below existing ground level, then one other point or one other side may be up to 500 mm above existing ground level.	As stated above the proposed swimming pools is proposed to be located at natural ground level.	Yes
	DS1.3 When consent is granted for a swimming pool having a height above natural ground level in excess of 500 mm, any landscaping treatment must be completed before the swimming pool is filled with water.	Largely at ground level.	Yes
	DS1.5 Filling is not permitted between the swimming pool and the property boundary.	The proposal does not seek any fill between the northern side setback (closest boundary)	Yes

		adjoining this swimming pool.	
	DS1.6 The drainage of spill water from a swimming pool shall be designed so that it does not affect the natural environment of the subject site or adjoining properties.	The proposal seeks to adequately drain the pool water to the sewer. A condition to consent has been imposed to this effect.	Yes
	DS1.7 Swimming pools are to be constructed so that the top of the bond beam is as close to ground level as possible	The proposed swimming pool is located close to the ground level.	Yes
	DS1.8 Spas and swimming pools proposed to be constructed between the dwelling and the street will be considered by Council if the amenity of the area is not adversely impacted and the other requirements in this DCP are met.	The proposed swimming pool is proposed to be located behind the front building line of dwelling 1. This will not be visible from the public domain as it will be visually obstructed by the built form of dwelling 1 which forms a two storey town house.	Yes
	DS1.10 The swimming pool edge must be at least 1.5 metres from side and rear property boundaries.	The swimming pool seeks a side setback of 1.53m from the northern side boundary (forming the closest boundary). The swimming pool is more than 1.5m from the rear eastern boundary.	Yes
	DS1.11 The position of the swimming pool in relation to neighbours and other residents must be considered to reduce noise associated with activities carried out in the swimming pool or from associated the swimming pool equipment, such as cleaning equipment.	The proposed swimming pool is located sufficiently away from adjoining properties. It is noted that the swimming pool adjoins the front setback of 795-797 Forest Road, Peakhurst to the north.	Yes
	DS1.12 Council may require mechanical equipment to be suitable acoustically treated so that noise to adjoining	The mechanical equipment is to be acoustically treated.	Yes

	properties is reduced.		
	DS1.13 The construction, location and use of the swimming pool are to be such that no nuisance is caused to any neighbouring residents by reason of noise, drainage, illumination or for any other reason.	The construction, location and use are not considered to result in any unreasonable impacts in consideration of the criterion within this clause.	Yes
	DS1.14 Heated swimming pools must utilise energy for heating from renewable energy sources, such as solar heating, heat pumps and gas heating. Swimming pool covers should be used when the swimming pool is not in use.	The proposed swimming pool complies with BASIX Certificate commitments.	Yes
PC2 Landscaping	DS2.1 Tree and shrub planting is to be provided along the adjoining property boundary lines to achieve a reasonable level of privacy. Refer to Appendix 1 for recommended species to use.	Appropriate screen planting is proposed along the northern side boundary which is considered to be acceptable in minimising amenity impact to the adjoining northern property.	Yes
	DS2.2 Paved and other impervious areas are to be minimised and designed to provide stormwater and swimming pool overflow infiltration.	The proposal seeks reasonable levels of paved areas immediately around the swimming pool. A skimmer is located along the eastern rear end of the pool.	Yes
	DS2.3 Swimming pools are to be designed to ensure the retention of existing trees.	The proposed swimming pool location does not impact any trees on site or on adjoining properties.	Yes
	DS2.4 Where a swimming pool is located close to an existing tree, elevated decks are preferred as the swimming pool coping to ensure minimal root damage.	As above.	Yes
	DS2.5 Swimming pool water discharges must	The proposed swimming pool is to discharge to	Yes

	not in any circumstances be directed through bushland areas located on private or public land.	the sewer.	
	DS2.6 Council does not approve trees to be removed based upon leaf drop or lack of solar access to a swimming pool.	The proposal does not seek the removal of any trees to accommodate the proposed pool in the location along the northern side boundary.	Yes

As per the above table, the proposed swimming pool complies with the requirements of this subsection and is considered to be satisfactory.

#### Appendix 1 - 10. Building Heights

83. The site is zoned R2 Low Density Residential under the HLEP 2012 with a height of building of 9m within the Hurstville Local Environmental Plan 2012. The indicative number of storeys prescribed within this section is 2 storeys. The proposal seeks a 2 storey built form for Dwellings 1, 2, 4, 5 and 6 (front) and single storey built form for Dwelling 3 which is consistent for the envisaged number of storeys within this subsection.

#### Appendix 2 Council Codes and Policies

##### 1. Drainage and On-Site Detention

84. The proposal seeks to drain to the rear with on-site detention provided on site. The proposed stormwater disposal is supported by Council's Development Engineer subject to deferred commencement to obtain an easement on a downstream property and extension of stormwater infrastructure within Dawn Street.

##### 2. Fencing adjacent to public Roads

85. The proposal seeks a 1m high front masonry fence and planter boxes along the front western boundary. To improve vehicular sight lines to and from the street, the proposed front fences and planter boxes are to be deleted as part of design condition prior to issue of construction certificate.

#### **INTERIM POLICY GEORGES RIVER DEVELOPMENT CONTROL PLAN 2020**

86. The proposed development is subject to the provisions of the Interim Policy Georges River DCP 2020. Only the applicable aspects have been assessed with respect to the Interim DCP. All other aspects have been thoroughly assessed under the Hurstville DCP No.1. The aim of an Interim Policy is to set a consistent approach for the assessment of residential development within the Georges River Local Government Area, until such a time as a comprehensive DCP is prepared and implemented. Comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.

**Table 5: Interim Policy Georges River DCP 2020**

Control	Standard	Proposed	Complies
<b>Multi Dwelling Housing</b>			
Landscaping	Site area = 1,998sqm 20% 399.6sqm (min)	26.13% (522.12sqm) located forward and behind the building line of the site. The landscaping is reflective of resultant conditions.	Yes

87. The Interim Policy is a supplementary document, meaning that current DCP controls continue to apply if a particular control is not specified in the Interim Policy, or if it is still considered best practice. All operative DCPs still legally apply.
88. Whilst the Interim Policy has no statutory recognition in the assessment of a Development Applications pursuant to the Environmental Planning & Assessment Act 1979, the policy will be used as a guide as it is an endorsed position of the Council. The proposal is considered to be consistent with the interim policy.

## IMPACTS

### ***Natural Environment***

89. The subject site and immediate surrounding area has been historically used for residential purposes. The proposal seeks cut and fill commensurate to other multi dwelling housing residential developments within the locality. The proposal will result in the protection of the street tree, adequate stormwater disposal to the rear with appropriate tree and drainage conditions imposed. In this regard, proposed works will not materially impact the natural environment.

### ***Built Environment***

90. The built form of the proposed development is of a bulk and scale that is compatible with the immediate surrounding context. The proposed design is considered to be responsive to the allotment shape, dimensions, trees and drainage on site. The proposal for the most part complies with the prescribed planning controls. As previously discussed within this report, the proposal seeks minor variations to the controls relating to driveway width, side setbacks and overshadowing of which are not considered to result in any unreasonable material impacts.

### ***Social Impact***

91. The assessment demonstrates that the proposal in its current form will not have an adverse impact on the character of the locality and the amenity of neighbouring residential properties. The environmental impacts on the social environment are considered to be not unreasonable and therefore the application is supported.

### ***Economic Impact***

92. The proposal is not considered to result in unreasonable material economic impact given the residential use of the proposal.

93. ***Suitability of the Site***

The site is zoned R2 Low Density Residential pursuant to the provisions contained within the Hurstville Local Environmental Plan 2012. As previously addressed within the report, the proposal which forms multi-dwelling housing and was a permissible form of development in this zone at the time the application was lodged. Under clause 1.8A savings provisions apply. It is considered that the proposal will not have any unreasonable adverse impact on adjoining properties, streetscape or locality beyond in its current form subject to conditions of consent.

## SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

94. The application was notified and renotified to adjoining owners, occupiers for fourteen (14) days. In response, twenty five (25) submissions were received within and after the notification period. A summary of the key concerns raised within the submissions have been addressed below.



The proposal is not consistent with the previous approval granted by the Land and Environment Court whereby issues relating to drainage and trees have not been addressed

95. Comment: This development application (DA2019/0431) being a new application requires a new assessment, there is no relationship to the previous Land and Environment Court approval. Impacts relating to stormwater and trees have been considered within this assessment report. The application is recommended for approval subject to a deferred commencement determination and relevant conditions of consent.

Stormwater issues into Dawn Street. Inadequate stormwater capacity. Increased impervious area. Drainage should be assessed by an independent Hydraulic Engineer

96. Comment: Deferred commencement conditions imposed with appropriate details for the information to be prepared and submitted to Council for review and acceptance prior to the activation of the consent. It is noted that the original application was refused by Council and approved by the Land and Environment Court to satisfy drainage requirements. The proposal has been assessed and is supported by Council's Development Engineer subject to the necessary drainage infrastructure provided to adequately control and discharge the stormwater from the site. Deferred Commencement Condition 1A and 1B and Condition 3 address these stormwater concerns.

Information available for review. Inadequate information viewable

97. Comment: The information provided on the DA Tracker for this application is consistent with the information displayed for all applications.

Removal of trees

98. Comment: The proposal seeks to retain the four (4) trees on site along the southern side boundary and three (3) trees within the adjoining property at 53B Isaac Street, Peakhurst. This is supported by Council's Consulting Arborist subject to conditions of consent. Condition 35 has been imposed to address tree protection.
99. The landscaping plan details ten (10) trees and other vegetation is to be planted throughout the development to address the removal of trees.

Privacy and noise impacts from swimming pool and dwelling locations

100. Comment: The proposed swimming pool and dwellings generally comply with setbacks with the exception of Dwelling 1 (N) and garages of Dwelling 2 (S), Dwelling 3 (S) and Dwelling 6 (N). Windows on the first floor are low habitable use rooms. Condition 25 has been imposed to delete the rear alfresco of Dwelling 3 to allow appropriate spatial separation to the rear adjoining properties and also allows for greater landscaped area.

Shadow impacts to adjoining properties

101. Comment: The proposal is not considered to generate any unreasonable shadow impacts given the design and orientation of the site which is orientated on an east to west axis. As previously discussed within this report, the proposed variations to the side setbacks do not generate any unreasonable amenity impacts to adjoining properties to the south. In addition Dwelling 3 on the southern side at the rear is single storey to reduce overshadowing.

Car parking and vehicular impacts

102. Comment: The proposal has provided fourteen (14) car spaces in accordance with Council's controls, being two (2) spaces for each of the dwellings and two (2) visitor spaces. The proposal is supported by Council's Senior Traffic Engineer and Infrastructure Design Engineer as the concerns raised regarding queuing have been

addressed through the provision of a passing bay at the front of the site servicing Dwellings 2 - 6. Conditions 25 and 30 have been imposed to provide adequate vehicular access.

Overdevelopment of the site

103. Comment: Concerns were raised regarding bulk and scale impacts. The proposal adopts a built form similar to that of approved multi dwelling development within the locality. As the proposal for the most part conforms with the key planning controls regarding floor space, height, landscaping and on site car parking, minor variations to the DCP setback criterion have been sought and addressed in detail earlier within this report. The variations are supported on planning merit. Condition 25 has been imposed for the deletion of the rear alfresco area of Dwelling 3.

No details of air conditioning dwellings

104. Comment: The BASIX certificate details that no air conditioning dwellings have been provided, however the ducting will be installed should a connection be required in the future. No details on the potential location of condenser dwellings provided.
105. Air conditioning dwellings may be undertaken under the provisions of Exempt Development under SEPP Exempt and Complying Development Codes 2008 subject to satisfying the legislative requirements contained within.

Excavation and ponding, seeping, dampness and mould affecting adjoining properties

106. Comment: The proposal seeks excavation which is commensurate with that of other approved multi dwelling housing, no basement is proposed. A condition in relation to overland flow control has been imposed, as well as an easement created to control and discharge stormwater via a formalised drainage line into Dawn Street at the rear which will assist with addressing these issues from a site specific perspective.

Loss of solar access to western windows and impact on health and an asthmatic occupant

107. Comment: The proposal whilst reducing solar access to adjoining allotments maintains compliant solar access to these properties in accordance with the assessment criterion.

No side passage fence shown on plans. Inconsistent information on the plans.

108. Comment: The site has been inspected and adequate information has been provided for Council to undertake an assessment regarding material impact of the development proposed. The plans do not annotate fencing to boundaries is proposed.

On-site detention and drainage

109. Comment: The development incorporates an OSD system which will drain via a lawful agreement through a down stream property to Dawn Street. Engineering conditions have been imposed in to ensure adequate stormwater disposal is provided as part of this development. Conditions 11, 12 and 13 have been imposed to address stormwater disposal.

Sewer overflow impacts

110. Comment: Following the determination the construction certificate plans are required to be reviewed and stamped by a Sydney Water Agent with respect to sewer design and potable water connection, standard conditions have been imposed in this regard. Condition 29 has been imposed to address sewer overflow. The pool water is required to discharge to the sewer.

Removal of asbestos fibro shed

111. Comment: The removal of asbestos is required in the quantity on site to be undertaken by a licensed contractor. Appropriate conditions have been imposed in relation to disposal and handling of asbestos being Conditions 37, 38 and 39.

Public interest

112. Comment: The proposal will seek to manage and improve the existing condition regarding stormwater disposal. The development is not inconsistent with development in the immediate locality.

Precedent

113. Comment: Multi dwelling housing was a permissible development form in the R2 zone when this application was lodged. However during the assessment of this application multi dwelling house became prohibited in the zone. Under the provisions of the Hurstville Local Environmental Plan a savings provision applies to this development type as the proposed was lodged prior to the prohibition coming into force. As a result of this prohibition there will be no further development of this type within the R2 zone therefore approval of this application will not result in a precedent.

Devaluation of properties due to flooding

114. Comment: Assessment of the impact of development on property values is not a planning consideration under the provisions of the Environmental planning and Assessment Act 1979.

115. The overland flow impacts have been addressed and managed as part of this application. An easement is required to drain water from the site to Dawn Street via an onsite OSD system.

Multi dwelling housing not permissible in the zone

116. Comment: Multi dwelling housing at the time this application was lodged was a permissible form of development. During the assessment of this application the development form became a prohibited form of development. However the savings provisions apply to this application enabling the application to be favourably determined.

Notification

117. Comment: The application was notified and renotified in accordance with Council's Development Control Plan criterion.

Applicant ASIC, concerns raised that company named CC Builders (NSW) Pty Ltd has been wound up.

118. Comment: Based on research this company submitted an application for a winding up order 30/9/20. The applicant is now Monument Design Partnership.

Significant amendment

119. Comment: Council has accepted the amended plans for this development application which was renotified for resident consideration.

Discrepancy regarding site area and density regarding survey

120. Comment: Council's assessment of this application is based on the site area as referenced in the DP being 1,998sqm. A minimum site area of 1,890sqm is required to accommodate six (6) multi – unit dwellings. The proposal satisfies the minimum allotment size for the number of dwellings proposed.

## Council Referrals

### Development Engineer

121. The proposal seeks to drain to the rear via an approved easement granted through 4 Dawn Street, Peakhurst via development consent DA2017/0326. This consent is currently not operational however it is valid until 30 August 2022. The proposed stormwater disposal and impacts have been considered by Council's development engineer and is supported subject to deferred commencement conditions for the easement to be create and infrastructure in Dawn Street to be upgraded.

### Consultant Arborist

122. An arborist report was provided in support of the proposal which seeks to protect and protect four (4) trees on site and three (3) trees on 53B Isaac Street, Peakhurst Council's consulting arborist has reviewed the proposal and has supported the retention and protection of trees subject to conditions of consent. The proposal is supported subject to appropriate tree replacement on site and within the frontage of the site to replenish the tree canopy.

### Infrastructure

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

### Senior Traffic Engineer

124. Council's Senior Traffic Engineer has commented that vehicles should enter and exit in a forward direction and that a passing bay should be able to facilitate access of a B99 and B95 vehicle simultaneously using this.
125. Comment: Dwellings 2 - 6 are located at the rear of the site of which can enter and exit the site in a forward direction. Dwelling 1 functions more like a dwelling house as it has its own separate access to the two (2) car parking spaces which is considered be reasonable in terms of access. The proposal seeks a 1m high front masonry fence and planter boxes along the front western boundary. To improve vehicular sight lines to and from the street, the front fencing and planter boxes are to be deleted as part of design condition prior to issue of construction certificate. In addition the passing bay is to be amended to facilitate the passing of two (2) vehicles in accordance with the Australian Standards; this amendment is to be certified by an suitably qualified traffic engineer.

### GIS

126. The application was referred to Council's GIS Department for street numbering. The street numbering has been imposed as a condition of consent.

### Co-ordinator Environmental Sustainability and Waste

127. Council's Coordinator Environmental Sustainability and Waste raised concerns regarding deficiencies within the submitted waste management plan and inadequate waste storage facilities. To address these concerns, conditions of consent have been imposed to provide an adequate waste management plan, adequate on site waste storage locations and management of waste.
128. Comment: In addition to the above, appropriate design conditions are imposed to remedy the adequate location and capacity of the waste storage areas on site. A design condition has been imposed prior to the issue of the Construction Certificate for the following:
129. *"The waste storage area for Dwelling 1 is to be relocated behind the building line. The proposal is to be amended to incorporate a waste storage area for Dwelling 3 within the*

*common waste storage areas for Dwellings 2 – 4 in the centre of the site. This waste storage area is to be increased to accommodate the required capacity”.*

## External Referrals

### Ausgrid

130. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007 for consideration. In response, the proposal is supported subject to compliance with Ausgrid Network Standards and Safe Work NSW Codes of Practice for Construction Work near existing electrical assets. A condition of consent has been imposed to this effect.

## Contributions

131. In accordance with Council's Section 7.11 are applicable to multi dwelling housing developments. A condition of consent requiring payment of the contribution has been imposed.

**Table 6: Contributions**

DEVELOPMENT CONTRIBUTIONS	
Hurstville	
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Community Facilities)	\$87,610.00
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Open Space, Recreation, Public Domain)	\$12,390.00

## CONCLUSION

132. Development consent is sought for the demolition of existing structures and construction of a six (6) dwelling multi-dwelling housing development, associated vehicle accommodation, an in-ground swimming pool, landscaping and site works on land known as 799 Forest Road, Peakhurst. The proposal has been assessed with regard to the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is considered to be an appropriate response to the context of the site and will result in a reasonable planning and urban design outcome.
133. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policies, Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No 1 and complies with the development standards of the Local Environmental Plan and meets the underlying objectives of Development Control Plan is worthy of support subject to deferred commencement and appropriate conditions of consent imposed.

## DETERMINATION AND STATEMENT OF REASONS

### Statement of Reasons

- The proposed multi dwelling housing development formed a permissible use within the R2 Low Density Residential Zone within the Hurstville Local Environmental Plan 2012 at the time the application was lodged and is covered by the savings provision of the Hurstville Local Environmental Plan 2012.
- The amended design is suitable for the subject site as the objectives of the controls have been reasonably satisfied and conforms with the objectives of the applicable planning controls.
- The amended proposal provides good levels of amenity for future occupants and results in minimal adverse material impacts on adjoining properties and surrounding development.

### Determination

134. THAT Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, as amended, the Georges River Local Planning Panel grant deferred commencement consent to DA2019/0431 for the demolition of existing structures and construction of six (6) dwelling multi-dwelling housing development, associated vehicle accommodation, an in-ground swimming pool, landscaping and site works on Lot 2, DP 210901 and known as 799 Forest Road Peakhurst, subject to the following conditions.

#### **Deferred Commencement 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 Schedule 1 within thirty six (36) months from the Determination Date of this consent**. Upon confirmation in writing from Georges River Council that the Schedule 1 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**.

#### Schedule 1

1. **Deferred Commencement - Drainage** - 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 satisfied:

The following documents/plans are to be provided to and approved by Council:

- A. Deferred Commencement Condition** - Registration of a Stormwater Easement - The person with the benefit of the consent must acquire an Easement to Drain Water of 1 metre (minimum) width - except where adjacent to existing buildings on site where 900mm is acceptable through a downstream property. The easement must allow for a piped, gravity fed system of stormwater drainage from the land the subject of this consent with direct, underground connection to Council's proposed kerb inlet pit directly in front of the Dawn Street property on which an easement is acquired. The full costs of these works are to be borne by the developer.

The consent is not to operate until evidence of registration of the easement to drain water benefitting the land the subject of this consent and title of each other property/ies is provided to council.

- B. Deferred Commencement Condition** - The person with the benefit of the consent must obtain separate consent for all drainage works to be carried out within the 'Easement to Drain Water'. The written consent of each of the owners of the property/ies burdened by the Easement will be required for each development application to carry out the drainage works on the burdened lot/s.

The consent is not to operate until development consent is obtained for the whole of the drainage works within the Easement(s) to drain water.

Documentary evidence as requested or the above information must be submitted within thirty six (36) months of the granting of this deferred commencement consent. Activation of this Consent cannot commence until written approval by Council is given advising Schedule 1 is satisfied.

Subject to Schedule 1 above being satisfied the development is to be carried out subject to the following conditions as referenced in Schedule 2.

### Schedule 2

#### **Development Details**

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

Description	Reference No.	Date	Revision	Prepared by
Coversheet	DA.000	19.12.19	A	Monument Design Partnership
Survey Plan	DA.001	19.12.19	A	Monument Design Partnership
Demolition Plan	DA.002	19.12.19	A	Monument Design Partnership
Context Analysis	DA.003	19.12.19	A	Monument Design Partnership
Site Plan and Analysis	DA.004	19.12.19	A	Monument Design Partnership
Ground Floor Plan	DA.005	19.12.19	A	Monument Design Partnership
First Floor Plan	DA.006	19.12.19	A	Monument Design Partnership
Roof Plan	DA.007	19.12.19	A	Monument Design Partnership
Sections	DA.008	19.12.19	A	Monument Design Partnership
Elevations	DA.009	19.12.19	A	Monument Design Partnership
Shadow Diagrams	DA.010	19.12.19	A	Monument Design Partnership
Architectural visualisation	DA.011	19.12.19	A	Monument Design Partnership
Schedule of Finishes	DA.012	19.12.19	A	Monument Design Partnership
Window/Door Schedule + Nathers	DA.013	19.12.19	A	Monument Design Partnership
BASIX Commitments	DA.014	19.12.19	A	Monument Design Partnership
Pool Detail	DA.015	19.12.19	A	Monument Design Partnership
Stormwater Plan	D1	01 Apr 20	Q	LMW Design Group
Stormwater Plan	D2	11 Mar 20	D	LMW Design Group
Stormwater Plan	D3	10 Mar 20	I	LMW Design

				Group
Stormwater Plan	D4	11 Mar 20	I	LMW Design Group
Stormwater Plan	SW1	10 Apr 20	D	LMW Design Group
Landscape Plans	14-2875 L01	14.04.2020	H	Zenith Landscape Designs
Landscape Plans	14-2875 L02	14.04.2020	H	Zenith Landscape Designs
Landscape Plans	14-2875 L03	14.04.2020	H	Zenith Landscape Designs
Landscape Plans	14-2875 L02	14.04.2020	H	Zenith Landscape Designs
Landscape Plans	14-2875 L02	14.04.2020	H	Zenith Landscape Designs
Arborist Report	MIAR 03/20	17 <sup>th</sup> March 2020		NSW Trees
Car Park and Driveway Certification	N206341A	April 2020	1b	Motion Traffic Engineers
Access Report	19264	3 <sup>rd</sup> April 2020		Access-i
BASIX Certificate	1044722M_02		09 April 2020	Greenworld Architectural Drafting

### Separate Approvals Required Under Other Legislation

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

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

- New 1.5m wide footpath to be constructed for full frontage of the site in accordance with Council's Specifications for footpath, applying at the time construction approval is sought.
- 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.
- The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
- 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.
- Due to the increase in traffic that will be utilising the shared exit driveway onto Forest Rd, the applicant will be required to reconstruct the vehicular crossing on Council land of the shared driveway of number 801 Forest Road to a Heavy Duty driveway as per Council's specifications, the applicant will be required to give the residents of number 801 Forest Road a minimum 4 weeks notice prior to any works commencing.



3. **Extension of Council's Drainage System** - Council's drainage system shall be extended along Dawn Street, approximately 32m with a 375mm (min.) diameter pipeline and terminating in a kerb inlet pit directly outside the property through which an easement to drain water is to be acquired, with all costs borne by the developer.
4. **Section 138 Roads Act 1993 and Section 68 Local Government Act 1993** - Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

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

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

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

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

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

## Requirements of Concurrence, Integrated & Other Government Authorities

5. **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). The proposal is to comply with Ausgrid Network Standards and SafeWorkNSW Codes of Practice for construction works near existing electrical assets. The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and the relevant contractors to verify and maintain these clearances onsite.
6. **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.
7. **Sydney Water - Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water’s sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to ‘Plumbing, building and developing’ section of Sydney Water’s web site at [www.sydneywater.com.au](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™ 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 <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.

### **Prior to the Issue of a Construction Certificate**

9. **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.
10. **On Site Detention** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

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

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

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

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

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

Full details shall accompany the application for the Construction Certificate.

11. **Detailed Stormwater Drainage Design** - The submitted stormwater plan has been assessed as a concept plan only. A detailed drainage design supported by a catchment area plan and drainage calculations (including a Hydraulic Grade Line Analysis) must be submitted with the Construction Certificate application.
12. **Stormwater Overland Flow** - A design which provides for the capture of all stormwater runoff in a 1:100yr ARI storm event utilising a system of surface inlet pits (applying a 50% blockage factor for capture capacity) and underground pipeline (allowing a 50% blockage factor, and providing no offset allowance for the presence of an On Site Detention system) to provide a stormwater escape route shall be submitted. This design is to include any openings in existing or proposed fencing on the site to accommodate the overland flow. Evidence from an appropriately qualified person that this design requirement has been met shall accompany the application for the Construction Certificate
13. **Support for Easement Pipes** -
  - (a) All footings within 2.0 metres of the drainage easement shall be designed in such a manner that they are supported by foundations set at a minimum of 300mm below pipe invert levels or founded on sound rock.
  - (b) Alternatively, the footings of the building or any structure shall be designed not to affect the zone of influence taken from the invert of any pipe.
  - (c) The walls of any dwelling, pool or structure adjoining the easement shall be designed to withstand all forces should the easement be excavated to existing pipe invert levels.
  - (d) No building or other structure must be placed over the drainage easement or

stormwater system or within the zone of influence taken from the invert of any pipe.

Evidence from an appropriately qualified person that this design requirement has been met shall accompany the application for the Construction Certificate.

14. **Damage Deposit - Major Works** - In order to insure against damage to Council property the following is required:
- a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$22,532.28**
  - b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$155.00**
  - c) Submit to Council, before the commencement of work, a 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.

15. **Access for Persons with a Disability** - Access and sanitary facilities for persons with disabilities must be provided to the premises/building in accordance with the requirements of the Premises Standards, the Building Code of Australia, and AS 1428.1. Details must be submitted with the Construction Certificate Application for approval.
16. **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 including, but not limited to all adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the 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.

- 17. **Car Wash Bays** - Plans and specifications of the car washing system which has been approved by Sydney Water must be submitted with the application for the Construction Certificate.

All car washing bays shall be contained within a 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.

- 18. **Tree Removal prohibited** - This consent does not approve the removal or pruning (branches or roots) of any trees on the subject property, Council's public footway, public reserves or on neighbouring properties.

- 19. **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).

- 20. **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	\$22,532.28
Inspection Fee for Refund of Damage Deposit	\$155.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
<b>HURSTVILLE</b>	
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Community Facilities)	\$12,390.00
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Open Space, Recreation, Public Domain)	\$87,610.00

### General Fees

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

### 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).

21. **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.

22. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1044722M\_02 dated 9 April 2020 prepared by Greenworld Architectural Drafting must be implemented on the plans lodged with the application for the Construction Certificate.
23. **Required design changes (engineering)** - The following changes are required to be made and shown on the Construction Certificate plans:

Drawing Reference	Drawing Date	Revision	Drawing Description	Author
Job No. 838.14 Drawing No D1	07/4/20	Q	Ground Floor Stormwater Drainage Plan & Section Details	LMW Design Group Pty Ltd
Job No. 838.14 Drawing No D2	11/3/20	D	Section Details & Design Values	LMW Design Group Pty Ltd
Job No. 838.14 Drawing No D3	10/4/18	I	Stormwater Drainage plan, Longitudinal section & Section Details	LMW Design Group Pty Ltd

The following changes are required to be addressed in Architectural and Detailed Hydraulic (as applicable) to accompany the **application for a Construction Certificate**

- (i) (a) A detailed stormwater catchment plan is to be submitted that includes all land (on and off site) contributing runoff in a 1:100yr ARI storm event to the drainage system for the proposed development site.
- (b) Detailed hydrologic and hydraulic calculations are to be provided for the determination of the default underground drainage system proposed to convey



all overland flow from the site for the 1:100yr ARI event with a view to justifying why a larger size pipeline (i.e. 300mm (min.) diameter) should not be utilised in place of the proposed 225mm diameter at 1% grade, and making allowance for a 50% pipe blockage.

This evaluation needs to be based, for safety reasons, on a system that excludes any benefit from an On Site Detention system.

- (ii) The proposed weldmesh litter guard across the outlet pipeline in the chamber downstream of the OSD tank weir is to be deleted;
- (iii) All design pipeline gradients are to be shown, in addition to the generic reference to '@ Min. 1%'.
- (iv) The pipe invert level at both ends of pipelines (main, and branch) are to be included.
- (v) All pipelines/conduits draining grated trench drains and surface inlet pits are to be 150mm diameter (min., or equivalent cross sectional area).
- (vi) A fully detailed analysis of the surface inlet pit capture capacity, with a 50% blockage factor, is to be provided demonstrating the ability to capture and manage the total runoff from a 1:100yr ARI storm event.
- (vii) Plans shall specify concrete-encasement (150mm minimum thickness all around) for the stormwater pipeline where situated under buildings downstream of the On Site Detention tank.
- (viii) Plans shall specify that all building loads over the stormwater pipeline downstream of the On Site Detention tank shall be transmitted to foundation material below the pipe invert level via a pier and beam type footing design - piers to be 600mm (min.) clear of the pipeline concrete encasement.

**24. 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.



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

Front Setback	Amended plans and details are required to delete structures, stepping stones and planter boxes within the front setback with the exception of the mailboxes forward of the building line of Dwelling 1 (Two storey townhouse fronting Forest Road, Peakhurst). Ground covers and a tree are to be provided as an alternative, with access to the dwelling to be via the driveway.
Waste Storage	The waste storage area for Dwelling 1 is to be relocated behind the building line. The proposal is to be amended to incorporate waste storage area for Dwelling 3 within the common waste storage areas for Dwellings 2 - 4 at the centre of the site. This waste storage area maybe increased to accommodate the required capacity.
Rear setback	The rear pergola is to be deleted from the rear of Dwelling 3. Stairs are permitted to be constructed within the rear setback to provide access from the living areas to the rear yard.
Passing Bay	The vehicular passing bay is to be amended to allow a B85 and B99 to pass one another. Certification that this has been achieved must be prepared by a suitably qualified traffic engineer.
Dwelling 1 - Access	The floor finished floor levels and driveway gradient of Dwelling 1 are to be amended to allow compliant gradient access to and from the street.
Dwelling 1 - Windows	The first floor bathroom windows along the northern elevation to be frosted or obscured.

26. **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.

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) A detailed drainage design supported by a catchment area plan and drainage calculations (including a Hydraulic Grade Line Analysis), shall be prepared by a qualified practicing hydraulics engineer (with details of qualifications being provided) and submitted for approval with the Construction Certificate application.
- (b) All stormwater shall drain by gravity to the easement to drain water in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2003 (as amended).
- (c) All stormwater conveyed in the pipe system in the easement to drain water shall drain by gravity to the upper level of Council's proposed kerb inlet pit which is to be located in front of the Dawn Street property through which the easement is acquired; further, Council's drainage system is to be extended to this pit with a 375mm (min) diameter pipeline with all costs borne by the developer.

- (d) Particular attention shall be paid to that element of the drainage system under building dwellings 5 and/or 6, downstream of the on-site detention tank and driveway area, which is to be designed to capture and convey (with a 50% blockage factor) runoff from a 1:100yr ARI storm event for the total contributing catchment area.
- (e) 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.

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

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Hurstville Development Control Plan 1 which includes Appendix 2.

28. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.

A copy shall be forwarded to Council where Council is not the PCA.

29. **Swimming Pools - Use and Maintenance** - The following apply to the construction, use and maintenance of swimming pools and spas:

- (a) no ground level may be raised or filled except where shown specifically on the approved plans;
- (b) all pool/spa waste water is to be discharged to the sewer according to the requirements of Sydney Water;
- (c) the swimming pool must not be used for commercial or professional purposes;
- (d) drain paved areas to the landscaped areas or a suitable lawful drainage system; and
- (e) arrange any external pool/spa lighting to minimise glare nuisance to adjoining owners.

30. **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).

31. **Waste Management Plan** - 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.

32. **Waste Management Plan** - A revised waste management plan incorporating the following amended details is to be submitted to Council's delegate demonstrating compliance with the following:

- Details of waste management during demolition must be provided to Council for review, details of proposed facilities for the management of identified wastes.

This amended waste management plan and supporting information is to be submitted to and approved by Council's delegate prior to the issue of a Construction Certificate.

33. **Waste Storage – Residential and Mixed Use Developments** - 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.

#### Residential Waste

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

- (a) Domestic Waste – 1 x 120 litre mobile bins per dwelling (serviced once weekly).
  - (b) Domestic Recycling – 1 x 240 litre mobile bin per dwelling (serviced once fortnightly).
  - (c) Green Waste – 1 x 240 litre mobile bin per dwelling (serviced once fortnightly).
- The path of travel for bins must be demonstrated free from stairs and at an appropriate width/gradient for the movement of 240L bins.

34. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Zenith Landscape Designs, Ref No 14 - 2875 - LO1 - 03, Rev H and dated 14/4/20. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -

- a) The proposed Ten (10) trees and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan, drawn by Zenith Landscape design. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives;
- b) All ten (10) 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;
- c) If the planted ten (10) 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 ten (10) 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;

35. **Compliance with submitted Arborist Report** - The recommendations outlined in the Arborist's Report titled Arboricultural Impact Assessment prepared by NSW Trees dated 17 March must be implemented throughout the relevant stages of construction. Details of tree protection measures, recommendations and Hold Points 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 Fencing distance from trunk
T1 - <i>Syzygium austral</i>	53B Isaac Street back fence	2.0 metres
T2 - <i>Syzygium austral</i>	53B Isaac Street back fence	2.0 metres
T3 - <i>Syzygium austral</i>	53 B Isaac Street back fence	2.0 metres
T4 - <i>Syncarpia glomulifera</i>	Within site, rear south fence	10.2 metres
T5 - <i>Syncarpia glomulifera</i>	Within site, rear south fence	9.6 metres
T6 - <i>Syncarpia glomulifera</i>	Within site, rear south fence	6.12 metres
T7 - <i>Syncarpia glomulifera</i>	Within site, rear south fence	7.2 metres
Tree Protection Measures for all trees shall be in accordance with AS4970 -2009, 5.0 Discussion of Findings within Arborist Report and Hold Points forming part of this Consent. <b>Trees 4, 5, 6 and 7 shall be protected with the one continuous tree protection fencing.</b>		

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

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) TPZ as per AS4970 - 2009 Fencing distance from trunk
T1 - <i>Syzygium austral</i>	53B Isaac Street back fence	2.0 metres
T2 - <i>Syzygium austral</i>	53 B Isaac Street back fence	2.0 metres
T3 - <i>Syzygium austral</i>	53 B Isaac Street back fence	2.0 metres
T4 - <i>Syncarpia glomulifera</i>	Within site, rear south fence	10.2 metres
T5 - <i>Syncarpia glomulifera</i>	Within site, rear south fence	9.6 metres
T6 - <i>Syncarpia glomulifera</i>	Within site, rear south fence	6.12 metres
T7 - <i>Syncarpia glomulifera</i>	Within site, rear south fence	7.2 metres
Tree Protection Measures for all trees shall be in accordance with AS4970 -2009, 5.0 Discussion of Findings within Arborist Report and Hold Points forming part of this Consent. <b>Trees 4, 5, 6 and 7 shall be protected with the one continuous tree protection fencing.</b>		

- 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.
- The engaged AQF 5 Arborist shall provide a letter of engagement for the entirety of the project to oversee and provide guidance throughout all stages of the project that may affect trees on the site, adjacent sites and Councils street trees and provide to the nominated PCA for compliance.
- 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) All trees on Council property, subject site and adjacent sites, to be retained shall be protected before site set up and maintained during demolition, excavation and construction of the site.
- (b) The outdoor pergola must be removed from the eastern portion of Dwelling 3, to minimise impacts to trees 6 and 7.
- (c) All boundary fencing type construction within the tree protection zones of trees 1, 2, 3, 4, 5, 6 and 7 must be of post and rail type method, with no strip footings allowed.
- (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 site set up, 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 out 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) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
- (j) 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.

### Tree Protection Plan & Hold Points

Prior to a Construction Certificate, The engaged AQF 5 Arborist must provide a Tree Protection Plan upon A3, coloured and Hold Points in accordance with the Arborist report and AS4970 -2009, **Section 5 - Monitoring and Certification. 5.1, 5.2, 5.3, 5.4, 5.5**, and forwarded to the nominated Principal Certifying Authority, based upon;

- Details of Tree Protection Fencing, mulch and signage
- In detail, provide tree protection measures for ground protection and to prevent compaction within the Tree Protection Zones of trees 4, 5, 6 and 7.
- In detail and as per Arborist report, **5.0 Discussion**, VIII) a, b and c, provide measures on how builders shall implement formwork and associated construction techniques to have Dwellings 2 and 3 elevated, so as a 200mm void between ground level and the underside of the finished floor slab shall be implemented.

- A *hold points table* describing the timeline that the engaged AQF Arborist must attend site to certify compliance in accordance with AS4970 -2009, Protection of trees on development sites and signed off by both the engaged AQF 5 Arborist and nominated PCA.

#### **Excavation works near tree to be retained**

- (k) 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.
- (l) All excavations required for the installations of stormwater piping within the TPZ of trees 4, 5, 6 and 7 must only be conducted using a non-destructive type of excavation, being air spade and under the guidance of the engaged AQF 5 Arborist. No excavator bucket type of trench machinery is to be used within tree protection zones.
- (m) 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.
- (n) 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 -**

- (a) Prior to the Construction Certificate, Architectural and Engineers plans must demonstrate and depict pier and Beam type construction for Dwellings 2 and 3, Dwelling 3 garage with 200mm ground clearance and the removal of the pergola to Dwelling 3 and forwarded to the nominated PCA for compliance.
- (b) To preserve trees 4, 5, 6 and 7 the construction type for dwellings 2 and 3 and Dwelling 3 garage must be isolated pier and beam construction within their TPZ. The piers shall be hand dug and located such that no roots of a diameter greater than 30mm are severed or injured in the process of any site works during the construction period. The beam shall be located no less than 200mm above the existing soil levels.
- (c) 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).

#### **NSW Trees, Findings and Recommendations to be implemented**

- (a) At a minimum, the southern wall alignment of Dwelling 3 must be maintained at a 3.0m setback from T5, 6 and 7.
- (b) Dwelling 2 and 3 must be supported above grade, upon pier and beam type construction allowing for a 200mm void between ground level and the underside of the finished floor slab.
- (c) Piers must be hand dug under the supervision of the engaged AQF 5 Arborist with photographic evidence and video footage provided in report format to the nominated PCA, for compliance.
- (d) Minor pruning to trees 4 - 7 to provide building clearance only, under the guidance of the engaged AQF 5 Arborist and in accordance with AS4373- 2007, *Pruning of amenity trees*.

**All existing ground levels must be maintained for the entirety of the project**

- (a) 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 minimum certificate Level 3, Licenced and insured Tree surgeon / Arborist in accordance with AS4373 -2007 Pruning of Amenity Trees and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).

**Street Tree Removal / Replacement by Council -**

- a) One street tree 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 on public land	Number of trees	Amount per tree
Administration Fee and tree planting	X1	\$452.00
Cost of tree removal		N/A
Cost of Stump Grinding		N/A

36. **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**

- 799 Forest Road PEAKHURST NSW 2210

**Dwelling Addresses**

Dwelling numbers on DA Plans	Dwelling numbers and addresses allocated by Council
Dwelling No.	COMPLETE ADDRESS
Dwelling 1	Dwelling 1/799 Forest Road, PEAKHURST NSW 2210
Dwelling 6	Dwelling 2/799 Forest Road, PEAKHURST NSW 2210
Dwelling 5	Dwelling 3/799 Forest Road, PEAKHURST NSW 2210
Dwelling 4	Dwelling 4/799 Forest Road, PEAKHURST NSW 2210
Dwelling 3	Dwelling 5/799 Forest Road, PEAKHURST NSW 2210
Dwelling 2	Dwelling 6/799 Forest Road, PEAKHURST NSW 2210

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



Additional comments (if applicable)

If there are modifications or changes to the number of dwellings during the DA process, please advise the GIS team before the final approval. Otherwise, please ensure the list of addresses is attached to the consent.

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

37. **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).

38. **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 multi unit dwelling, 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.
39. **Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the [Work Health and Safety Regulation](#)

[2011.](#)

40. **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.

41. **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.
42. **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**

43. **Physical connection of Stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's underground drainage system in Dawn Street.
44. **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.

45. **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.
46. **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.
47. **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.

48. **Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.
49. **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.
50. **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.

#### **Prior to the issue of the Occupation Certificate**

51. **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.*

52. **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.
53. **Works as Executed and Certification of Stormwater works** - Prior to the issue of an Occupation Certificate, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be forwarded to the PCA and Council, from a professional engineer specialising in hydraulic engineering.

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

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

- (a) The location of any detention tanks with finished surface levels;
  - (b) Finished site contours at 0.2 metre intervals
  - (c) Volume of storage available in any detention tank;
  - (d) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
  - (e) The orifice size/s.
54. **Development Engineering - Restriction on use of land for overland flow** - An additional Restriction of Use of the Land is to be created using Section 88E of the Conveyancing Act 1919 over the subject property on which this development is to be carried out. This Restriction shall ensure that the stormwater overland flow-path/default surface inlet pit capture system and underground pipeline under building as required from the Applicant, be maintained free from obstructions at all times and shall be worded as follows:

*In relation to the stormwater overland flow path/default surface inlet pit capture system and underground pipeline under dwellings 5 and 6 identified on the approved plans, for Development Application DA2019/0431, the following Restrictions on The Use of The Land will apply”:*

- (a) *Property boundary fencing is not to obstruct the free flow of surface waters across the overland flow path in any way.*
- (b) *no building structures, walls, fences, trees, shrubs, grass or other vegetation shall be erected or planted within the site of the **overland flow path and/or easement to drain water** (where existing or proposed on site), except with the approval of Council.*
- (c) *The existing natural ground levels of the site shall not be raised or lowered or retaining walls constructed unless specified detailed plans are first submitted to and approved by Council.*

- (d) *The overland flow path and underground pipeline system under dwelling 5 and 6 must be kept clear of obstructions at all times and maintained to the satisfaction of Council.*

This Restriction shall benefit Georges River Council and Georges River Council is to be nominated as the Authority to release, vary or modify this Restriction. This Restriction on Use of Land shall be registered on the title of the land, prior to the issue of Any Occupation Certificate for the development (Interim or Final Occupation Certificate).

Documentary evidence of the registration of this Restriction on title is to be supplied to the Principal Certifying Authority when application for an Occupation Certificate is made.

**55. 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) A Section 73 (Sydney Water) Compliance Certificate for the Subdivision shall be issued and submitted to the PCA prior to the issue of the Occupation Certificate.
- (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.
- (g) The construction of the extension of Council's drainage system in Dawn Street shall be completed in accordance with the conditions and specifications of the Section 68 Activity Approval [insert].

**56. Vehicular crossing & Frontage work - Major development** - The following road frontage works shall be constructed in accordance with 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) New 1.5m wide footpath to be constructed for full frontages of the site in accordance with Council's Specifications for footpath, applying at the time construction approval is sought.
- (b) 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.
- (c) The thickness and design of the driveway shall be in accordance with Council's Specifications 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.
- (e) Due to the increase in traffic that will be utilising the shared exit driveway onto Forest Rd, the applicant will be required to reconstruct the vehicular crossing on Council land of the shared driveway of number 801 Forest Road to a Heavy Duty driveway

as per Council's specifications, the applicant will be required to give the residents of number 801 Forest Road a minimum 4 weeks notice prior to any works commencing.

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.

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

- (a) Stormwater pipes, pits and connections to public stormwater systems within the road related area;
- (b) Driveways and vehicular crossings within the road related area;
- (c) Removal of redundant driveways and vehicular crossings;
- (d) New 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.
- (e) New or reinstated kerb and guttering within the road related area; and
- (f) New or reinstated road surface pavement within the road.

Council's Assets and Infrastructure 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.

58. **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;
- (e) Contours indicating the direction in which water will flow over land should the capacity of the drainage system be exceeded in a storm event exceeding design limits (i.e. in this instance 1:100yr ARI storm event).

Council must advise in writing that they are satisfied with the Works-As-Executed relating to the extension of Council's drainage system in Dawn Street prior to the issue of an Occupation Certificate.

59. **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.

60. **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 all adjoining properties.

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

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

61. **Allocation of car parking spaces** - Car parking associated with the development is to be allocated as follows:
- (a) Residential dwellings: dwellings 1 - 6: 2 car spaces for each dwelling
  - (b) Residential visitors: 2 car spaces
  - (c) Car wash bay: 1 can be shared with visitors space
62. **Driveways and parking spaces** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface.
63. **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.
64. **Completion of Landscape Works** - All landscape works, the planting of ten (10) trees, street tree payment and the completed AQF 5 Arborists letter of compliance Hold points table for the entirety of the project, 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 Zenith Landscape Designs, Ref No 14 - 2875 - LO1 - 03, Rev H and dated 14/4/20. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following –
- a) The proposed Ten (10) trees and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan, drawn by Zenith Landscape design. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives;
  - b) All ten (10) 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;
  - c) If the planted ten (10) 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 ten (10) trees are found dead before they reach a height where they

are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size;

- d) A certificate of compliance for the planting of all ten (10) trees and shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all ten (10) trees have been planted as per landscape plan and specifications and forwarded to the PCA - Principal Certifying Authority.

### **Tree Protection Measures**

- a) A final certificate of compliance letter, forming part of the engaged arborists hold points, shall be forwarded, 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.

### **Tree Replacement within subject site**

- a) A minimum of 10 x 75 / 45 litre size trees as per landscape plan, which will attain a minimum mature height of nine (9) metres, shall be planted within the property. The trees are to conform to AS2303 - 2018, *Tree stock for landscape use*.
- b) If the planted ten (10) trees and all shrubs 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).

65. **Notice to Council - Allocation of street addresses** - Prior to the issue of any Occupation Certificate, 'as-built' drawings detailing the installed and allocated street/dwelling address and numbering must be submitted to the satisfaction of Council.
66. **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 Certificate.

### **Operational Conditions (Ongoing)**

67. **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](http://legislation.nsw.gov.au/) (as amended).
68. **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.

69. **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.

70. **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
71. **Waste - Wheel In Wheel Out Service (WIWO)** - The WIWO service is subject to a Risk Assessment after the site is operational. It is the responsibility for the Site/Building Manager to maintain the waste storage areas as clean and tidy. The WIWO service can be cancelled at Council's discretion in which circumstance the site may be required to arrange bin presentation on the kerbside.

Not providing for bulky waste storage is acceptable if the following conditions are applied:  
Responsibility of Owners Corporation

The Owners Corporation shall be responsible for ensuring any bulky waste material is presented in an approved manner, on the kerbside in accordance with Council's requirements, as published to residents prior to the provision of the service.

The Owners Corporation shall also be responsible for maintaining all shared or common 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.

#### Bulky Waste Service

Materials for disposal in Council's bulky waste service must be stored within private property confines of each dwelling and only presented kerbside as per Council's requirements for utilizing the service.

### **Operational Requirements Under the Environmental Planning & Assessment Act 1979**

72. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
73. **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.

74. **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.
75. **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.
76. **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.
77. **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.

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

79. **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.
80. **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.
81. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
82. **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.

83. **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.
84. **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

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

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

86. **Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
87. **Lapsing of Consent** - This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.
88. **Compliance with Access, Mobility and AS4299 - Adaptable Housing** - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.
89. **Building - Referral to 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

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.

90. **Register your Swimming Pool** - All swimming pools in NSW are required to be registered. Fines apply for pools that are not registered. To register please visit: [swimmingpoolregister.nsw.gov.au](http://swimmingpoolregister.nsw.gov.au).
91. **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.

## ATTACHMENTS

Attachment [↓](#) 1  Notification Plans - 799 Forest Rd Peakhurst



Elevation North

E.01



Elevation South

E.02



Elevation East

E.03



Elevation West + streetscape

E.04

Site address  
799 Forest Road  
Peakhurst NSW  
folio identifier  
Lot 2 DP 210901

Drawing title  
**Notification plan 1**  
  
Drawing No.  
DA.015  
Revision  
A



Scale N15  
Drawn GM  
Ref 999  
Date October 25/19  
LGA Georges  
Rivers Council

notification  
design  
partnership  
  
799 Forest Road  
Peakhurst NSW  
1500 760 070  
1500 760 070  
www.georgesriverscouncil.nsw.gov.au





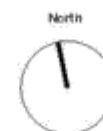
1. **Site plan**

Site address  
799 Forest Road  
**Peakhurst** NSW  
folio identifier  
Lot 2 DP 210901

Drawing title  
**Notification Plan 2**

Drawing No.  
DA.017

Revision  
A



Scale	NIS
Drawn	GM
Ref	1999
Date	October 29, 1999
LGA	Georgie Hale Culland

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# REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 17 SEPTEMBER 2020

LPP046-20

<b>LPP Report No</b>	<b>LPP046-20</b>	<b>Development Application No</b>	<b>DA2019/0314</b>
<b>Site Address &amp; Ward Locality</b>	54 and 54A Noble Street Allawah Kogarah Bay Ward		
<b>Proposed Development</b>	Demolition of existing structures, lot consolidation and the construction of a four (4) storey Residential Flat Building containing eight (8) apartments with basement car parking for twelve (12) vehicles, associated landscaping and site works		
<b>Owners</b>	Sam Pambris and Mr E Kritikos		
<b>Applicant</b>	Cornerstone Design		
<b>Planner/Architect</b>	Cornerstone Design		
<b>Date Of Lodgement</b>	24/07/2019		
<b>Submissions</b>	Total of four (4) written submissions received		
<b>Cost of Works</b>	\$2,434,828.87		
<b>Local Planning Panel Criteria</b>	The proposed development is subject to the provisions of State Environmental Planning Policy No 65		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy No 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, Draft Georges River Local Environmental Plan 2020, Draft SEPP (Environment) 2017, Draft Remediation SEPP, Greater Metropolitan Regional Environmental Plan No 2 - Georges River Catchment, Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013		
<b>List all documents submitted with this report for the Panel's consideration</b>	Amended Architectural Plans Statement of Environmental Effects and updated Clause 4.6 Statement Flood Study and Detailed Site Investigation Report Updated Parking Assessment		
<b>Report prepared by</b>	Senior Development Assessment Planner		

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

<p><b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?</p>	<p><b>Yes, Two Clause 4.6 Statements have been submitted, one to vary the Height Control (Clause 4.3) and the other the Minimum allotment size for RFB's (Clause 4.1A of the KLEP 2012)</b></p>
<p><b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p><b>Not Applicable</b></p>
<p><b>Conditions</b> Have draft conditions been provided to the applicant for comment?</p>	<p><b>No, Deferred Commencement conditions have been attached with design changes required.</b></p>

## Site Plan



Subject site outlined in blue

## Executive Summary Proposal

1. The development application (DA2019/0314) was submitted to Council on 24 July 2019. The original proposal sought development consent for the construction of a four storey residential flat building (RFB) comprising of a total of eight (8) apartments, one (1) level of basement car parking catering for a total of twelve (12) vehicles, with an area of dedicated communal open space on the roof including landscaping and associated site works. A photomontage of the originally proposed building is provided as Figure 1 below.



**Figure 1:** 3D Montage of the originally proposed RFB (*Courtesy: Cornerstone Design, June 2019 Issue A*)

## Planning Issues

2. Council Officers raised concerns regarding the bulk and scale of the building in relation to its neighbours and streetscape. Council Officers met with the Applicant to discuss the outstanding concerns which in summary related to the following:
  - The scale and height of the building is inconsistent with the three to four storey scale of the existing adjoining RFB's. The proposed scale is not in keeping with the general nature of development in the streetscape. The overall height exceeds the adjoining developments. It was recommended that the scale of the building be reduced.
  - The amount of excavation to accommodate the basement was considered to be excessive and there is no allowance made for any deep soil area at the rear of the site. The site has existing site constraints; it is burdened by a stormwater drainage easement along the north-western side of the site and is also flood prone which reduces the redevelopment potential of the site.
  - It is acknowledged that the site is "isolated" and unique in some sense and this provides the opportunity to redevelop the site for an RFB but it is considered that its full potential cannot be realised given the environmental constraints of the site and deficiencies and non-compliances in the design. The adjoining RFB at 56 Noble Street is a three storey walk up flat building with 4 apartments and ground floor parking. This building is located on a similar sized allotment with a similar frontage width. The scale and form of this development is a reasonable and acceptable planning response for this site.
  - The density is considered to be excessive considering the size of the site and the fact it fails to satisfy the minimum allotment size requirement of 1,000sqm for an RFB in the R3 Medium Density Residential zone. The site has an area of 613sqm. It was recommended that the number of apartments be reduced which would reduce the need for so many car parking spaces, hence reduce excavation and allow for a deep soil zone at the rear of some 2.7m to allow for more planting and vegetation to provide screening and green the development.
  - The development fails to satisfy the SEPP 65 minimum requirements for separation distances between buildings. It is acknowledged that the site is isolated and an infill

development may be acceptable given the context of the area however the proposed built form, scale, bulk and density is considered too great for this site to accommodate.

3. The Applicant considered the issues raised and on 27 April 2020 (Issue B) lodged amended plans which included the following changes:
  - The form of the building was amended to reduce the visual impact and scale of the building when viewed from Noble Street. This was achieved by setting the fourth floor back from the front of the building so that Unit 3.01 on Level 3 is setback over 8m from the edge of the balcony and the wall recessed further being 10.5m and reduced from a 3 bedroom unit to a 2 bedroom unit.
  - The south east elevation has been modified to remove the snorkel bedroom windows and the building wall has been 'straightened up' to increase the side setback from 1.87m to 3m.
  - The rear setback has been increased from 5.25m (to the wall of Bedroom 1) to 5.54m.

Figure 2 below shows the visual appearance of the amended scheme.

4. The top level of the building being recessed and setback at the front presents better to the street as the top floor level is not as readily visible. It is recommended that the pergola structure above the third level balcony be deleted and the roof at this level include a maximum 1m eaves overhang to provide for some better articulation and protection from weather at this upper level. However the amended plans do not provide a deep soil zone at the rear as requested.
5. Despite the amendments, the proposed development is still considered to be an overdevelopment of the site considering the site has a number of constraints, is isolated in nature and is non-compliant with the off-street, car-parking provisions and minimum physical separation distances. The landscaping at the rear of the site is inadequate given that the basement extends to the rear boundary and the basement car parking arrangement is extremely tight and inefficient. The scale and form of the building is inconsistent with the form and character of the immediately adjoining 3-4 storey RFB's. Given that the site includes a number of environmental constraints (being flood prone and accommodating a stormwater easement) and that the development fails to comply with a number of statutory controls (the minimum site area for RFB's (Clause 4.1A) of the KLEP and exceeds the 15m Height of Buildings control (Clause 4.3)) and Kogarah Development Control Plan 2013, the proposal needs to be scaled back. This will involve the density being reduced to create a more carefully and sensitively designed development that is compliant with car parking provisions, enables an increase in the amount of deep soil landscaping at the rear and creates a building that is more sympathetic and consistent with the character and form of development in the streetscape and immediate medium density precinct.
6. To achieve an improved scale and built form increase its compliance and be a more sympathetic development it is recommended that the rear Unit 3.02 shall be removed and the basement car parking be reorganised to improve its functionality and efficiency. This can be achieved through a Deferred Commencement determination which will require the reduction in density and improvement in the overall layout of the



development. This would achieve a reduction in the visual bulk of the development when viewed from the rear and will ensure the building is compliant with the height control and will be more in keeping and sympathetic with immediately adjoining buildings.



**Figure 2:** 3D Montage of the proposed RFB as amended (Courtesy: Cornerstone Design, March 2020, Issue B)

7. The development fails to comply with Clause 4.3 – Height of Buildings control within the Kogarah Local Environmental Plan 2012 and also fails to satisfy Clause 4.1A – Minimum Lot sizes for multi-dwelling housing, residential flat buildings and seniors housing. The application is accompanied by two Clause 4.6 Statements justifying the extent of the variations. In this case, the Clause 4.6 for Minimum Lots size is reasonable and well-founded given the site cannot be physically amalgamated or consolidated with the adjoining sites. However the Clause 4.6 for the variation to the height control is not considered to be well founded nor is it supported as it does not satisfy the objectives of the control. Given that the deferred commencement seeks to remove an apartment, this redesign will create a building with a compliant height and there should be no ancillary structures or the like exceeding the height control. This is considered to be a reasonable planning and design outcome as it would result in a largely compliant built form and one which is of a more suitable scale and more in keeping with the adjoining properties.
8. The areas of the building which exceed the 15m height control relate to ancillary structures in the form of the lift overrun, staircase and open style pergola structure on the roof. These elements will be visually dominating as they are not centrally located and will protrude above the roof of the immediately adjoining RFB's (50-52 Noble Street and 56 Noble Street). In this case the relocation of the roof terrace in lieu of apartment 3.02 will ensure the building will be compliant with the height and will be more sympathetic to the siting and scale of the adjoining properties. A detailed assessment of the Clause 4.6 Statement's is provided later in this report.

### **Flooding and Stormwater issues**

9. Originally Council's Stormwater Engineer requested that the stormwater easement be enlarged to 2.4m however this would render the site undevelopable given the very narrow nature of the site. It was agreed that if the stormwater pipe was replaced with a new pipe of similar dimensions this would satisfy Council and upgrade this infrastructure. Standard stormwater and drainage conditions have been imposed to ensure the

stormwater drainage arrangement and treatment of the easement is compliant with Council's specifications.

10. The application was referred to Council's Stormwater and Drainage Engineers who have highlighted a number of concerns relating to the design of the development as the site is Flood Prone. They have noted that the two (2) lots proposed to be developed are identified as Flood Affected in the Kogarah Bay Creek Flood and Overland Flows Risk Management Study and Plan June 2009 and as such flood controls apply.
11. Council's Engineer specialising in Flooding has reviewed the Applicants Flood Study and amended plans and is not satisfied that it addresses Council's requirements. The outstanding issues which remain in relation to this issue are;
  - 1) *The '54 & 54A Noble Street Allawah – Flood Assessment' dated 28 June 2019 the report will need to be amended to address the following:*
    - a) *The report is to verify that the proposed ground floor level's and design is appropriate with respect to its protection from flooding.*
    - b) *The report is to verify that the driveway ramp design with a crest at RL 34.25m AHD will protect the basement from flooding up to the 100 year ARI event. The report is to also specify the minimum levels or height above finished ground for any ventilation openings to the basement.*
  - 3) *Further detail will need to be provided of the proposed details and levels of the proposed 300mm overflow pipe, including at the inlet and outlet point and through the basement showing that it can be installed without affecting the adjacent parking space(s).*
12. These issues can be resolved through deferred commencement conditions and it may result in a slight increase in the building's height by some 300mm. The height of the building should largely be compliant and remain within the height control. The proposed height of the building (when unit 3.02 is removed) will be RL48.30 (to the roof level above Unit 3.01) and the RL to the topmost part of the building at the 15m height limit is RL49.89 (taking the existing ground level of RL34.89). This leaves 1.6m to cater for any potential overruns and the potential increase to cater for some additional height dictated by changes to address flooding.
13. In respect to stormwater and drainage, it has been agreed that the stormwater easement does not need to be widened to 2.4m (as originally requested by Council) and that the pipe will be replaced as an alternative and this infrastructure service upgraded. Conditions regarding compliance with Council's controls regarding the new pipe and associated stormwater works have been included.

### Site and Locality

14. This application applies to land known as 54 and 54A Noble Street, Allawah which is legally described as Lot A and B DP 381675. The site includes a set of single storey semi-detached dwelling houses each with vehicular access off Noble Street. The site is a regular shaped allotment with a frontage of 15.24m to Noble Street, depth of 40.235m and a total site area of 613.2sqm.
15. The site is burdened by a stormwater drainage easement located along the north western boundary which is highlighted on the amended survey plan dated 26 November 2018. A copy of the survey plan is shown at Figure 3 below.

16. The site is isolated and sits between a larger 4 storey RFB (50-52 Noble Street) and a 3 storey RFB (56 Noble Street). The streetscape and immediate locality comprises of medium density developments predominantly residential in nature.
17. The site is within close proximity to the Allawah Train Station and small commercial centre.

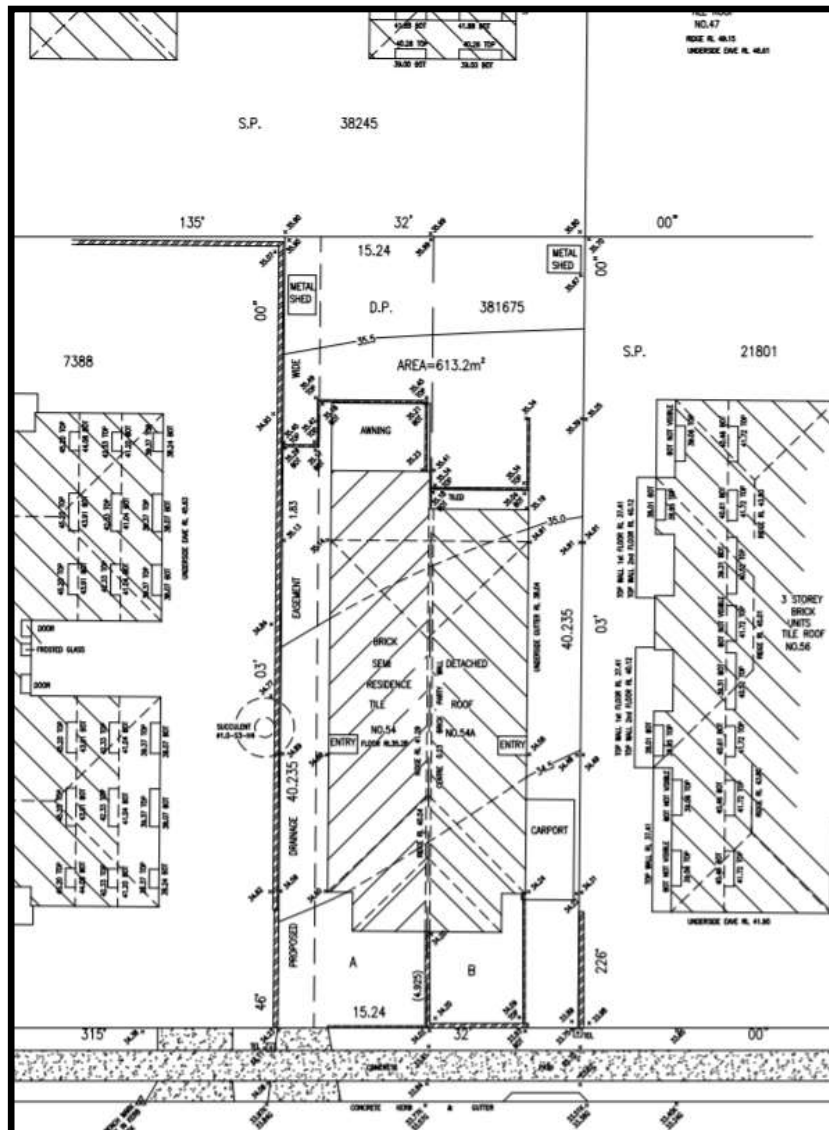


Figure 3: Amended Survey plan (Courtesy: W.Buxton, November 2018)

### Zoning and Permissibility

18. The principal local environmental planning instrument applying to the subject site is Kogarah Local Environmental Plan 2012 (KLEP), which came into force in February 2013. The LEP provides the local environmental planning provisions for land in the former Kogarah LGA in accordance with the relevant standard environmental planning instrument, as required under (the former) Section 33A of the Environmental Planning and Assessment Act 1979. The height control for the site is 15m with a maximum Floor Space Ratio of 1.5:1.
19. The subject site is zoned R3 Medium Density Residential. The proposal is defined as a Residential Flat Building (RFB) which is permissible with consent in the zone. The proposal in its current form satisfies the zone objectives.

20. A full and detailed assessment and consideration of the proposal against the key KLEP statutory planning provisions is provided later in this report.

### **Submissions**

21. The DA was notified to adjoining properties in accordance with the Kogarah Development Control Plan 2013 (DCP2013) for a statutory notification period of 14 days. A total of four (4) submissions were received in response.
22. The concerns raised in the submissions related to the potential for direct overlooking, overshadowing, the bulk and scale of the building is inconsistent with the height and character of development in the street and the proposal removes on street car parking spaces. These issues are addressed in more detail later in this report.
23. The amended plans were not renotified as they did not result in an increase in environmental impacts.

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

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

### **Conclusion**

25. 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 amended built form design is considered to improve the visual appearance of the building when viewed from Noble Street. However, the bulk and scale of the building at the rear is still considered to be inconsistent with the character of the adjoining RFB's as this building will be higher and taller than its neighbours and is pronounced given the allotment width.
26. The development also fails to satisfy a number of planning controls, building height, minimum allotment size for RFB's, the minimum off-street car parking requirements and minimum separation distances with the ADG. The basement car park has fundamental problems with manoeuvrability and accessibility and there is a lack of adequate deep soil landscaped area at the rear which would (if provided) create a natural buffer to the existing developments at the rear. In addition, the building exceeds Council's height control and minimum site area requirements for RFB's in the R3 Medium Density zone.
27. To reduce the scale of the building and create a lower scaled and more appropriate built form, it is recommended that the apartment on the top level (3.02) be removed and replaced with communal area of open space at the roof level. This should ensure the building complies with the height control and will sit more sympathetically and respect the immediately adjoining RFB's. It is also requested that the basement be redesigned to become more efficient, compliant and functional.
28. The recommendation is for a Deferred Commencement consent to be issued with the Deferred conditions to include the following;

### **Deferred Commencement Conditions**

- (1) **Deletion of Unit 3.02** - A full detailed set of amended architectural plans shall be



*prepared to include the following design changes;*

- (a) Unit 3.02 shall be deleted and replaced with a roof top area of open space.*
- (b) The new rooftop garden in lieu of Unit 3.02 shall have a maximum finished floor level of RL45.52 and shall be setback a minimum of 6m from the rear boundary.*
- (c) The deletion of Unit 3.02 will remove the need for the current area of rooftop open space located at the fourth floor. The finished floor level of the non-trafficable roof level of the building shall be at RL48.30 and shall be a standard flat roof form with no direct access to the roof other than by an internal hatch from the foyer or from inside Unit 3.01 purely for maintenance.*
- (d) A very small, standard overrun will be permitted for the staircase structure and lift structure but these elements must be located within the 15m height limit.*
- (e) Photovoltaic panels shall be installed above Unit 3.01 to face north recessed and shall not to be visible from the street.*
- (f) An open style pergola structure including BBQ and amenities WC can be included on the roof terrace but these are all to be small scale and situated within the height limit.*

## **(2) Basement redesign**

- (a) Car space G.01 shall be deleted and the basement setback a minimum of 2.7m from the rear boundary.*
- (b) The tandem spaces for Unit 3.02 shall be dedicated to Unit G.01*
- (c) Car parking space 2.01 shall be enlarged to become an accessible space.*
- (d) The visitor/car wash bay shall be converted to the waste room and the waste room will become a formal open lobby area with the lift entry located along the south eastern side.*
- (e) The bollard with the aisle and adjoining the lift shall be removed and relocated to the new lobby space.*
- (f) A Qualified Traffic Engineer shall formally certify that the basement plan, all accessways, aisles, car parking spaces and the manoeuvring arrangement complies with Council's controls, Australian Standards for car parking and access and any other related regulations/standards.*

## **(3) Landscape design changes - A full detailed set of updated Landscape plans shall be prepared to include the following design changes;**

- (a) The deep soil area at the rear resulting from the basement being setback from the rear boundary shall include a row of trees that will achieve a minimum height at maturity of 6m.*
- (b) The area at the rear of the building at the ground floor shall be converted and dedicated as an area of communal open space. It shall include soft landscaping in the form of grass and a paving area with some seating included.*
- (c) A fence shall be constructed adjacent to the wall of Bedroom 1 of Unit G.02 and extend to the side boundary of the site to differentiate the communal space from the southern courtyard area. The fence may need to include a cut out at the bottom to cater for any flooding and not to obstruct any overland flow paths.*
- (d) The new rooftop area of communal open space in lieu of Unit 3.02 shall include a 1m wide (with minimum 600mm depth) planter box around the periphery of the area and shall include a variety of plants and shrubs.*
- (e) The area of the stormwater easement adjoining the fire stairs on the ground floor shall include a small path providing access to the communal open space at the rear.*
- (f) A large canopy tree reaching a height at maturity of 10-12m shall be included within the front setback.*

**(4) Other design changes**

- (a) A small Juliette style balcony shall be provided to the living room of Unit G.02 and access to the private ground floor courtyard shall be from the laundry and Bedroom 2.
- (b) The balustrade to the front ground floor balcony to Unit G.01 shall be redesigned so it is not solid but includes glazing and is designed to be consistent with the finishes of the upper level balconies.
- (c) The pergola above the balcony to Unit 3.01 shall be removed and a roof parapet can be extended by 1m to provide some additional cover, protection and complete the building.
- (d) Appropriate low scale sensor lights shall be installed along the main entry into the building.
- (e) A rainwater tank shall be installed at the rear of the building. It shall not be visible from the entry or the street.
- (f) The rear balconies shall include a privacy screen along the south eastern and north western side having a minimum width of 1m and shall be full height.
- (g) The bottom pane of glass to any standard sized windows located along the north west or south eastern elevation will be constructed of obscure glazing.

**(5) Flood planning - The issues relating to the management of flooding across the site have not been satisfied and the following information is required:**

- (a) The Flood Assessment report dated 28 June 2019 will need to be amended to address the following:
  - i. The report is to verify that the proposed ground floor level's and design is appropriate with respect to its protection from flooding.
  - ii. The report is to verify that the driveway ramp design with a crest at RL 34.25m AHD will protect the basement from flooding up to the 100 year ARI event. The report is to also specify the minimum levels or height above finished ground for any ventilation openings to the basement.

In preparing this amended report it will need to take into consideration the flood depths Kogarah Bay Creek FRMS&P TUFLOW model on the driveway at 50-52 Noble Street that are significantly larger than those indicated along the north western setback and rear yard of the proposed developing site. It is also noted that there is a masonry wall separating the two properties that affect the overland flow through the site.

The report or an accompanying plan reference in the report will also need to include design spot ground levels for all areas within the site including adjacent to the building, along boundaries under the open structure at the rear of the building, on paths and landscaped areas, and at the top and bottom ends of the proposed 300mm overland flow diversion pipe.

- (b) Further detail will need to be provided of the proposed details and levels of the proposed 300mm overflow pipe, including at the inlet and outlet point and through the basement showing that it can be installed without affecting the adjacent parking space(s).

**(6) Contamination certification**

- (a) The Environmental Consultants who have prepared the Detailed Site

*Investigation and RAP are to be fully certified contamination land consultants. Confirmation is to be provided to Council that they are fully certified environmental practitioner and their certification number supplied to Council. If they are not the DSI and RAP will need to be reviewed and signed off by a fully certified contaminated land consultant.*

29. It is felt that subject to these changes the proposal should be more consistent in form and scale with its neighbours and will create a more sympathetic form of development in the streetscape and this will also resolve a number of planning non-compliances.

### **Report in Full Proposal**

30. The DA seeks consent for the construction of a four (4) storey residential flat building development comprising of eight (8) apartments, one (1) level of basement car parking accommodating twelve (12) vehicles and associated landscaping on the rooftop in the form of a communal area of open space.
31. Further details of the proposal are as follows;

#### Basement Plan

A total of twelve (12) car parking spaces broken up into the following configuration;

- Eleven (11) resident spaces including one (1) accessible space. Six (6) spaces are designed in a tandem form dedicated to apartments U1.01, U3.01 and U3.02.
- One (1) Visitor space which doubles up as a car wash bay
- Lift lobby and fire stair access
- Space for storage and services
- Garbage waste room
- Bicycle parking for three (3) bicycles

#### Ground Floor Plan

- Driveway entry along the south western side of the site
- Pedestrian ramp at the front to an elevated access ramp along the north western side to the main entry lobby
- 1 x three (3) bedroom apartment (G.01)
- 1 x two (2) bedroom apartment (G.02)

#### First Floor (repeated)

- 1 x three (3) bedroom apartment (1.01)
- 1 x two (2) bedroom apartment (1.02)
- Main lift lobby with stair access

#### Second Floor

- 1 x three (3) bedroom apartment (2.01)
- 1 x two (2) bedroom apartment (2.02)
- Main lift lobby with stair access

#### Third Floor

- 2 x two (2) bedroom apartments (3.01 and 3.02)
- Main lift lobby with stair access

#### Rooftop Level

- Common open space area
- Central lift and stair lobby area

- BBQ including an open style pergola feature

32. Figure 4 and 5 below show the elevations of the building as amended.

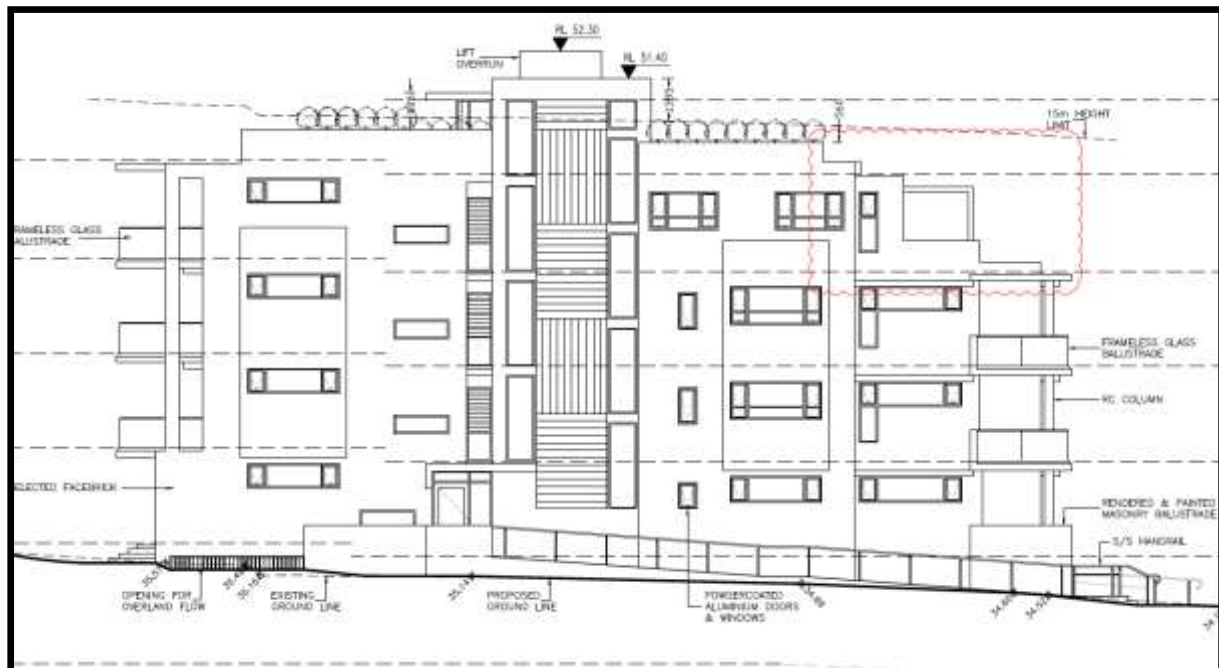


Figure 4: Amended North-western elevation (Courtesy: Cornerstone, March 2020)

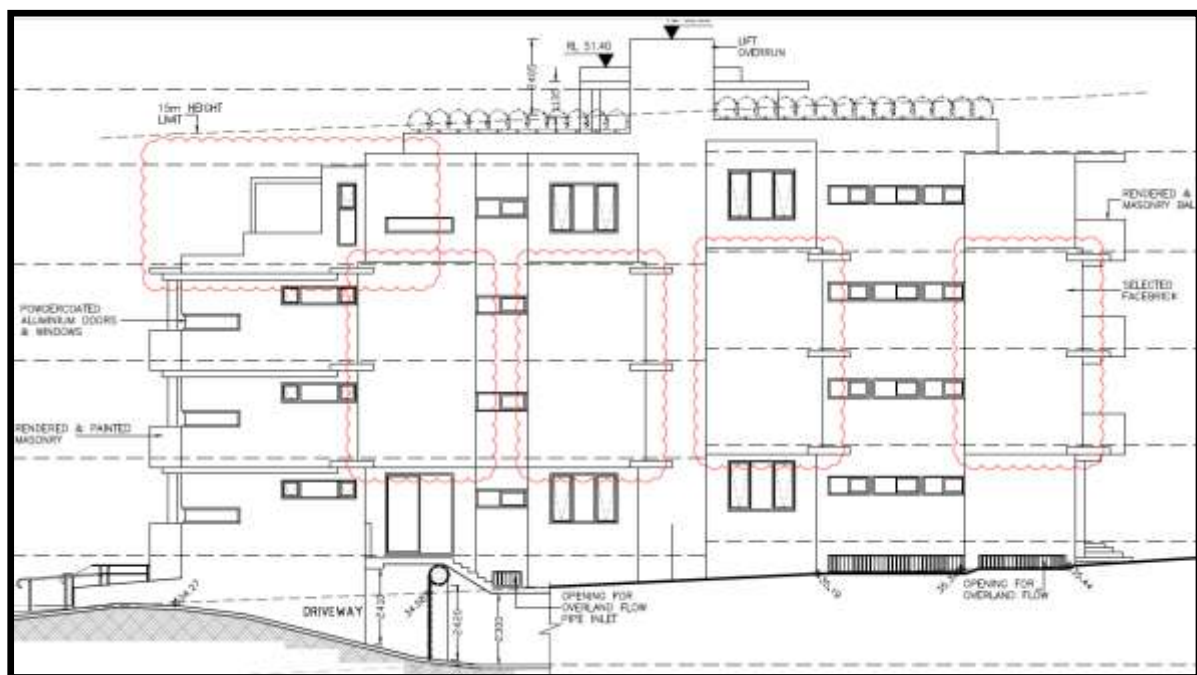


Figure 5: Amended south-eastern elevation (Courtesy: Cornerstone, March 2020)

## DESCRIPTION OF THE SITE AND LOCALITY

33. The subject site comprises of two (2) allotments known as 54 and 54A Noble Street Allawah comprising of a set of single storey semi-detached cottages which have the following legal description;

- Lot A DP 381675 – 54 Noble Street. Single storey semi-detached cottage including a stormwater drainage easement along the northern side of the property. There is a small metal shed at the rear and a driveway crossing at the front with access to a small hardstand car parking space at the front of the property.

- Lot B DP 381675 – 54A Noble Street. The other half of the pair of semi-detached cottages. This property has a metal shed at the rear and include a carport at the front of the dwelling.
34. The site has a combined frontage to the Noble Street of 15.24m and depth of 40.235m with a total site area of 613.4sqm. The site falls from the rear with an RL35.99 to RL34.20 at the front being a level difference of 1.78m from the rear to the front.



**Photo 1:** The subject site, 54 Noble Street Allawah

35. The site is burdened by a stormwater drainage easement along the north western side of the allotment which runs the length of the site. The easement cannot be built over, upon or within.
36. The other site constraint of the site is that it is flood prone.
37. Immediately to the east is a four storey RFB at 50-52 Noble Street which dates back to the 1960/70's. To the west is a three storey RFB at 56 Noble Street and to the north at the rear is a three storey block of apartments located at 43-45 Illawarra Road. The rear yard of this property faces the subject site.





**Photo 2:** Adjoining development to the south, 56 Noble Street Allawah



**Photo 3:** Adjoining development to the north, 50-52 Noble Street Allawah



**Photo 4:** Development at the rear of the subject site.

38. Across the road at 65 and 67 Noble Street are two and three storey blocks of apartments.
39. Noble Street is tree lined and dominated by medium density RFB developments. One characteristic feature is that most of the buildings are constructed of red or white face brickwork and all constructed around the 1960's, 70's and the early 80's. The immediate locality is characterised by medium density residential developments.



**Photo 5:** Adjoining development to the west, across the road from the subject development

40. The site is accessible and is within walking distances to the Allawah Train Station and small commercial centre. It is located some 1.5km away from the Hurstville Town Centre.

### State Environmental Planning Policies

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

**Table 1: Summary of SEPPs and general compliance**

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development	Partial non-compliance with some design standards

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

42. The main 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,*

43. The proposed method of stormwater disposal from the basement includes a basement pumping well system which relies on a centrifugal drainage sump acting as a holding tank with an electric motor capable of discharging water to Noble Street.

This application has been referred to Council's Engineering Section for comment. Council's stormwater engineer requires some additional details and the stormwater easement and initially required the stormwater easement to be widened from 1.8m to 2.4m, however it was later agreed that the easement does not need to be widened but that a new pipe be installed and this infrastructure facility be upgraded and improved.



Standard conditions have been included that provide details in respect to the new stormwater pipe requirements.

44. The proposed plant species to be located along the easement will need to be amended and floor levels readjusted to cater for the flood levels. These issues have been addressed via Deferred Commencement conditions.
45. The proposal however is not considered to have an adverse impact on the waterway and the Georges River catchment. The proposal aims to protect the existing water quality and use and functionality of the wider catchment.

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

46. An updated BASIX Certificate has been issued for the proposal as amended. The BASIX Certificate No.101871M\_02 is dated 21 April 2020 and the proposal in its amended form meets the minimum provisions and requirements of BASIX in terms of water, thermal comfort and Energy efficiency.

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

47. 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.
48. 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. In accordance with SEPP 55 the site must be assessed and rated suitable for the proposed development prior to a determination being made.
49. A Preliminary Site Investigation (PSI) Stage 1 report was prepared by Alliance Geotechnical (AG), dated 27 June 2019. As part of the investigation a conceptual site model (CSM) was derived for the site which identified two potential areas of environmental concern (AEC's) AEC01 and AEC02 which are shown in Figure 6 below.



**Figure 6:** Location of the two potential AEC's on the site (Courtesy: Alliance Geotechnical, June 2019)

50. The results of the report are summarised below as;
- *Two areas of environmental concern (AEC's) have been identified for the site;*
  - *Proposed development would likely result in the removal of both AEC01 and AEC02 (positive outcome).*
  - *Site could be made suitable (from a land contamination perspective) for the proposed high-density residential land use setting, subject to the proposed fill excavation works across AEC01 and controlled demolition of AEC02 being undertaken.*
51. All historical evidence suggests the site has always been occupied and used for low density residential purposes. No other uses have been identified in the past. There was also no fill noted on the site by the site investigations conducted as part of the contamination assessment.
52. The following recommendations were made by the report;
- *A waste classification assessment of the soil materials proposed to be excavated and removed should be obtained from a suitably experienced environmental consultant prior to the excavation and disposal of the soil materials;*
  - *Fill soils proposed to be excavated across AEC01 should be disposed offsite in accordance with relevant NSW EPA waste classification guidelines;*
  - *A Hazardous Materials Survey of the dwelling associated with AEC02 should be undertaken by a qualified occupational hygienist prior to any demolition works;*
  - *Records of the transport and disposal of materials from AEC01 and AEC02 should be maintained; and*
  - *An asbestos clearance certificate should be obtained for AEC02 (if identified) from a suitably experienced occupational hygienist, following relevant hazardous materials removal works.*

53. AG considered that an *“intrusive assessment of these AEC’s on the form of a Detailed Site Investigation is not warranted”*. Despite this recommendation the report could not say that the site is suitable for the intended land use and development. Council’s Environmental Health Section requested that a Detailed Site Investigation (DSI) be conducted as a precautionary measure considering that some AEC have been identified.
54. A Detailed Site Investigation (DSI) and Remediation Action Plan (RAP) was prepared by Canopy Enterprises and dated August 2020 and this report was referred to Environmental Health for comment. The report provided a detailed assessment of the site and potentially contaminated site material. It recommended the following;
55. *“On the basis of the work undertaken to date, the contaminants of concern are PAHs (specifically the carcinogenic PAHs) and potentially asbestos containing material (ACM) although it is noted that ACM has not been found in the soils on the site to date. Ash and slag material was noted in a sample obtained from fill material at the Site and although analysis of the material did not show heavy metals concentrations of concern, heavy metals should still be considered as a CoPC at the Site. Should fill material be encountered in any of the areas requiring sampling, the full range of suggested analytes as outlined above is required to be analysed.”*
56. The proposed methodology comprises the following sequence of steps:
- *Sampling, testing and validation of soil contaminants within areas of the footprint of the former building;*
  - *Confirmation of the classification of all filling and natural soils to be removed from the site prior to the commencement of excavation;*
  - *Excavation of soil/fill from within the basement area and disposal of the excavated materials at a suitably licenced facility;*
  - *Provide a Validation Report for the site and, where required, an Environmental Management Plan (EMP) which includes any future long-term (ongoing) management requirements post development. Following the completion of the remediation works and the receipt of any related analytical results from the validation sampling, a Validation Report will be prepared in general accordance with the requirements of the NSW OEH Guidelines for Consultants Reporting on Contaminated Sites (2011).*
57. The recommendations and method of disposal for any potentially contaminated or hazardous material during demolition and excavation is a simple, standard procedure which will ensure these materials are appropriately disposed of and the site is “made good” or suitable for the intended residential land use. Conditions will be included to ensure the recommendations of the DSI and RAP are implemented during the construction process.

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

58. 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.
59. The main changes proposed to this SEPP 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.

60. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. The Draft SEPP will not alter or affect the findings in respect to contamination at the Site. As discussed in more detail above, the potential areas where some contamination seems to exist can be easily and safely removed in accordance with the recommendations of the DSI report. The recommendations are also included as conditions if consent is to be issued.

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

61. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
62. 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).*
63. 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.
64. The subject site is currently does not include any significant plants, trees or vegetation. The development will therefore not remove any significant or important vegetation.

### **Draft Environment SEPP**

65. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.
66. 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.
67. The proposal is consistent with the provisions of this Draft Instrument.

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

68. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three or more storeys in height and containing at least four dwellings. Amendment 3 to SEPP 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, SEPP 65 applies.
69. Clause 28(2) of SEPP65 requires that the consent authority take into consideration the following as part of the determination of DAs to which SEPP 65 applies:
- a) *the advice (if any) obtained from the design review panel, and*
  - b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
  - c) *the Apartment Design Guide.*
70. The proposed development was referred to the Design Review Panel on 12 September 2019. The Panel raised no objection to the proposed development subject to some changes being made to the design. The Panel considered the development against each of the nine (9) Design Quality Principles (refer to Table 2) and also considered the provisions of the Apartment Design Guide (ADG) which are summarised and addressed in Table 3 below.
71. The proposal fails to satisfy a number of the Design Principles of the Apartment Design Guidelines mainly in relation to achieving minimum physical separation distances between buildings. Given the site is isolated and cannot be consolidated or integrated with an adjoining site the development is considered an “infill” development and will be assessed on its merits and whether the design outcome proposed does not adversely affect the amenity of neighbouring properties and the streetscape. The tables below provide a comprehensive assessment against the principles, objectives and controls of SEPP 65 and the ADG.

**Table 2: Application of SEPP 65**

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of “Residential Apartment Development” (RAD)	Complies with the definition. Section 4 (1) (Application of Policy) of the SEPP 65 states that the policy “ <i>applies to development for the purpose of a <b>residential flat building</b>, shop top housing or mixed use development with a residential accommodation component if:</i> (a) <i>the development consists of any of the following:</i>	Yes – the residential flat building (RFB) development satisfies the definition of SEPP 65.  The proposal is 4 storeys in scale (with the rooftop area acting as a fifth level) and contains 8 apartments.

		<p>(i) <i>the erection of a new building,</i></p> <p>(ii) <i>the substantial redevelopment or the substantial refurbishment of an existing building,</i></p> <p>(iii) <i>the conversion of an existing building, and</i></p> <p>(b) <i>the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and</i></p> <p>(c) <i>the building concerned contains at least 4 or more dwellings.”</i></p>	
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the SEPP includes mixed use developments.	<p>Construction of an RFB development which satisfies the SEPP's definition of the proposed land use.</p> <p>Refer to definition and explanation above in relation to the applicability of the Policy.</p>	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect: Nicholas Lychenko (Registration No.3010)	Yes

**Table 3: Part 2 Design Quality Principles under the SEPP**

SEPP 65 – Design Quality of	DRP Comment	Council Officers
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<b>Residential Flat Buildings</b>		<b>comment</b>
<p><b>Context and Neighbouring Character</b></p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p><i>The site is in a tree lined street that falls gently from north to south, is dominated by three to four storey hip roofed walk up residential flat buildings. Notably, buildings to both sides of the proposal have consistent, established front and rear setbacks.</i></p> <p><i>The site is a regularly shaped allotment with a 15.24 metre frontage, which is less than the required frontage for residential flat buildings. It has a 1.8 metre storm water easement to its northern boundary and it falls approximately 1.5 metres from the rear boundary to the front.</i></p> <p><i>The site is also subject to significant one in one hundred year over land flow, which severely compromises the levels permissible and requires the development to accommodate a considerable volume of water in an open chamber between the basement and ground floor levels.</i></p> <p><i>The proposal attempts to meet all of its flooding and easement constraints while providing an amenable built form despite its non-compliance with the DCP minimum site width and ADG separation requirements.</i></p>	<p>The site is isolated and there is no opportunity for consolidation or site amalgamation with any adjoining site as these are large strata subdivided sites.</p> <p>It is acknowledged that the site has constraints given it is flood prone and the site is burdened by a stormwater easement.</p> <p>Councils Engineer specialising in flooding has assessed the development and included a number of conditions to ensure that floor levels are above the 1:100 flood level which also ensures the overland flow path is not obstructed and the building does not obstruct this flow.</p>
<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><i>The built form proposed comprises a simple prism with roughly three metre setbacks from each side boundary, containing two apartments per floor over a</i></p>	<p>The proposal fails to satisfy the ADG separation distances and given the scale and density these non-compliances are</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. 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.

*single basement level of car parking.*

*While the proponent claims that the front and rear setbacks are compliant with DCP requirements, both the front and rear setbacks are not consistent with the clearly established setbacks of adjacent properties. Considering at the proposal must demonstrate a good contextual fit and an amenable and consistent streetscape, the front and rear setbacks should match adjacent properties. To achieve this objective AND meet brief requirements, it may be better to reduce the northern side setback to match the easement.*

*Building bulk and scale are exacerbated by flooding requirements, which significantly elevate ground floor levels. This issue creates a poor outcome as it:*

- *Increase its non-compliance with height*
- *Increase its apparent bulk and scale*
- *Necessitates ugly and cumbersome ramping*

*It is recommended that the flood levels are reviewed in order to minimise the height of the building off the ground. It is also recommended that pedestrian ramping is removed from the front setback and replaced with a platform lift as required.*

*It is recommended that the driveway is moved to the northern side of the site. Not only would this potentially*

not considered acceptable given the context of the area and relationship to adjoining developments. Reducing the scale and density of the development will go some way to reduce the non-compliances and increase deep soil landscaped area at the rear. This issue is discussed in more detail in Table 3 below.

The amended proposal sets the upper level of the building back from the front which reduces the visual bulk and scale of the development however the building still exceeds the height limit which isn't considered to be warranted in this case. In addressing the Panel's issues the height in this case needs to be compliant and also the density needs to be reduced to create a more acceptable and reasonable planning and design outcome that reduces the visual bulk, scale and dominance of the structure and introduces some soft landscaped elements to the design.

The driveway can not be moved to the



	<p><i>decrease the ramp length it would also provide a 1.8m setback for boundary planting to the northern boundary which is a better driveway interface to an adjoining property.</i></p> <p><i>The splayed window blades proposed appear over-scaled and visually intrusive. It is therefore recommended that the windows provided are full height and a maximum width of 800mm.</i></p> <p><i>It should be noted that balconies are considered habitable space and are therefore subject to ADG separation requirements.</i></p>	<p>northern side as this is where the stormwater easement exists.</p> <p>The windows can not be full height as this would increase the potential for overlooking given the development fails to satisfy the separation distances of 6m that are required. The smaller highlight windows are not the most ideal design solution and will adversely affect the visual amenity of the internal spaces however in this case full height windows are not a feasible option.</p> <p>The balconies at the rear encroach on the required 6m setback. A condition will require privacy screens to be installed to provide some improvement and reduce the potential for overlooking to the rear.</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</p>	<p><i>As an isolated site, the proponents are unable to achieve the permissible floor space ratio (FSR) and indeed may need to further reduce the FSR in order to comply with the above.</i></p>	<p>The Applicant has reduced the density by removing one bedroom from Unit 3.01 to create a 2 bedroom unit as opposed to a 3 bedroom unit. This change is considered an improvement to the front façade increasing</p>

<p>facilities and the environment.</p>		<p>articulation of the frontage. However a number of non-compliances exist and the DRP's intention was clearly a more substantial reduction in the FSR given the site constraints.</p> <p>It is therefore recommended through Deferred Commencement conditions that the rear unit 3.02 be removed and this area accommodates the relocation of the communal open space. Other components of the development will be improved and rearranged to achieve a better urban design and planning outcome for this site.</p>
<p><b>Sustainability</b> Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<p><i>With only two apartments per floor the proposal has good access to light and air and natural ventilation. However, it is expected that a development with a non-complying site width must exhibit intelligently integrated sustainability initiatives, including:</i></p> <ul style="list-style-type: none"> <li>• <i>rain water harvesting and re-use</i></li> <li>• <i>deep soil planting (especially in front setback)</i></li> <li>• <i>solar energy capture</i></li> <li>• <i>re-use of storm water for toilet flushing</i></li> <li>• <i>Provision of large trees in deep soil zones at front and rear.</i></li> </ul>	<p>The development does not incorporate any meaningful environmentally sustainable measures. By removing Unit 3.02 there is capacity for photovoltaic panels to be installed on the roof of Unit 3.01 and a rainwater tank could be installed along the northern side of the building.</p> <p>The requirement to provide a more useable and functional area of deep soil at the rear (currently there is</p>

		<p>none proposed) will allow for the planting of some more substantial trees and vegetation.</p> <p>Conditions will be imposed to ensure these environmentally sustainable measures are implemented as part of the design.</p>
<p><b>Landscape</b></p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well - designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management.</p>	<p><i>The landscape context of the surrounding block contains large trees and front setback zones and in some rear setbacks as noted above under Built Form it is critical that this landscape context is contained and built form strategy provides an appropriate capacity for trees.</i></p> <p><i>Other items that require further review are:</i></p> <ul style="list-style-type: none"> <li><i>Provision of large trees within the site and in deep soil zones at front and rear appropriate species for this context would be Tallwoods or rough barked apple trees. These are planted on the street. Tree planting can also act as a screen along rear boundary.</i></li> <li><i>The roof top communal open space should be single level.</i></li> <li><i>Simple amenities (W.C., kitchenette, storage) should be provided to service the roof-garden area.</i></li> <li><i>Boundary planting should be provided on side setbacks to maximise privacy this can also</i></li> </ul>	<p>The site is constrained and the basement is designed with minimal if no setback from the southern and eastern sides. This limits the potential for any deep soil areas around the perimeter of the site. This issue was always of a serious concern to Council Officers and the Applicant was requested to redesign the building to include a deep soil zone at the rear. The amended plans have not addressed this issue as the density of the development has not been reduced and the density is too great generating the need for a large number of car parking spaces. This has dictated the basement design which is poor with respect to access and manoeuvrability resulting in an unacceptable design</p>

	<p><i>support the “Built Form” recommendations above.</i></p> <ul style="list-style-type: none"> <li><i>Re-design of the front pathway system and ramps to remove excess hard stand and maximise garden space.</i></li> </ul>	<p>outcome.</p> <p>The proposed deferred commencement conditions go some way in improving the issues raised by the DRP.</p>
<p><b>Amenity</b></p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p><i>The proposal creates a number of amenity issues which requires its substantial revision:</i></p> <ul style="list-style-type: none"> <li><i>The revised built form should comply with predominant rear and side setbacks.</i></li> <li><i>The entry to the building is very un-attractive, cumbersome and creates poor streetscape. Ideally the entry should be incorporated into the street facing built form.</i></li> <li><i>Rear facing balconies do not comply with the ADG’s separation requirements.</i></li> <li><i>The windows in Unit one, bedroom 1 on each level, do not comply with the ADG.</i></li> <li><i>Basement lift features a bollard in the vehicular aisle, which is liable to create accidents.</i></li> <li><i>The bollard location is close to tandem parking which will exacerbate this issue.</i></li> <li><i>It is not clear if rubbish bins can be taken up one in four driveway ramp.</i></li> <li><i>See Note above regarding split level communal terrace.</i></li> </ul>	<p>The amended plans fail to adequately address the panels concerns regarding the built form and proposed site planning. The Panel requested “substantial” changes or revisions. Council Officers believe the amended plans which reduce a 3 bedroom to a 2 bedroom unit, some window and elevation design changes are small scale modifications which do not address the Panels overriding concerns regarding density and bulk.</p> <p>The amended design still fails to comply with the minimum rear setback, the basement car parking layout is poor and creates conflicts and difficulties in access and manoeuvrability creating an unsafe environment for motorists and pedestrians.</p> <p>The Deferred Commencement</p>

		conditions aim to amend the design which will go a long way to address the Panels concerns.
<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.</p> <p>Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p><i>The entry to the building is potentially un-safe. It is recommended that the entry is directly accessed from the front setback and that all pedestrian ramping in this location is replaced with a well integrated platform lift.</i></p> <p><i>See Note above regarding bollard in the basement.</i></p> <p><i>It is not clear how rats and other vermin are prevented from entering and nesting in the overland flow chamber. This issue must be thoroughly investigated and resolved.</i></p>	<p>The issue of the entry and its safety has not been specifically addressed but could be improved by the use of good lighting along the entry. A condition is included regarding the provision of some additional lighting along the entryway.</p> <p>Given that you enter the block via the northern side adjoining Unit G.01 this is considered acceptable given that this unit will offer some natural surveillance and also many apartments at No.50-52 have balconies and window openings orientated towards the southern side.</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 features, including different types of communal</p>	<p><i>The Panel believes that on such a compact site it is not necessary to comply with Council's requirements for a varied mix of units.</i></p> <p><i>To promote social interaction, it is crucial that communal open space is well designed, amenable and most importantly accessible for all; hence the communal open terrace must be single level.</i></p>	<p>Considered acceptable.</p> <p>The location and distribution of communal open space is recommended to be redistributed with an area at the rear on the ground floor dedicated for communal open space and an area on the roof top. This provides for two spaces for</p>

<p>spaces for a broad range of people and providing opportunities for social interaction among residents.</p>		<p>occupants and visitors to utilise. Given the small scale nature of the development these spaces are considered to be acceptable, functional and sufficient for the needs generated by the development.</p> <p>It is requested through deferred commencement conditions to create an area of common open space at the rear of the development at the ground floor. This will provide for an area of some 84sqm and another area of some 70sqm on the roof (in lieu of unit 3.02).</p>
<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>The Panel believes that a simple quiet expression is better in this context that features simple brick buildings, with hipped roofs and a tree lined streetscape.</i></p> <p><i>Currently the ground floor expression exacerbates the overbearing nature of the raised ground floor level. It would be better if the ground level was expressed as a “base” – perhaps with a dark brick - with three levels above.</i></p>	<p>The materiality and aesthetics of the building has been improved by the amended scheme. The setback of the upper level provides a better transition and relationship to adjoining developments. The proposed pergola on the upper level at the front is still considered a dominating protruding feature which is requested to be removed and replaced with a small (500mm – 1m) parapet.</p> <p>The base of the</p>

		building is still too solid and visually dominating. It is requested that the balcony to Unit G.01 on the ground floor be softened and designed of glass to reflect the design of the upper level balconies. This is addressed via a Deferred Commencement condition.
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72. In conclusion “*the Panel recommends that the above changes be made and be referred to the Panel for further consideration*”. Council provided the Applicant with the opportunity to amend the scheme and address the Panel’s concerns. The amended plans did not address all the issues and concerns raised by the Panel. In the assessment of the proposal it is considered that the proposal in its amended form is still an overdevelopment of the site and the density needs to be reduced and the basement layout reconfigured and setback from the rear to create some soft landscaped area. It is recommended that through Deferred Commencement conditions many of the concerns raised by the Panel will be addressed and an improved built form will be achieved.
73. Clause 28 and 30 of SEPP65 requires the consent authority to take into consideration the provisions of the Apartment Design Guide. Table 4 below assesses the proposal against these provisions.

**Table 4: Compliance with Design Provisions in Part 3 and Part 4 of the ADG**

Clause	Standard	Proposal	Complies
<b>Part 3 – Siting the development</b>			
<b>3D-1 Communal and public open space</b>	<p>Communal open space has a minimum area equal to 25% of the site.</p> <p>-Where it cannot be provided on ground level it should be provided on a podium or roof</p> <p>-Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> <li>• provide communal spaces elsewhere such as a landscaped roof top terrace or a common</li> </ul>	<p>A minimum area of 153.3sqm needs to be dedicated as communal open space.</p> <p>The development caters for a large area of communal open space at the rooftop amounting to 133sqm. The additional area of 75sqm is located at the front of the site. It is questionable that this space is “communal” as it hasn’t been designed for that purpose.</p> <p>The front setback area of any development is focused on providing a green, landscaped area</p>	Yes

	<p>room</p> <ul style="list-style-type: none"> <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>that is formal, enhances the visual appearance of the building and includes some canopy trees which assist in screening the bulk and scale of the building.</p> <p>It is recommended that the landscaped area and area of communal open space be redesigned in the following way;</p> <ul style="list-style-type: none"> <li>• Unit 3.02 shall be deleted and that area replaced with an area of communal open space which will amount to some 77.79sqm.</li> <li>• The rear area of open space at ground floor level is designed to be a private courtyard area for Unit G.02. This courtyard has a total area of 139sqm. It is recommended that the main area at the rear will become a communal area of open space for passive recreation and include two bench seats. This amounts to over 79sqm of communal open space and in total some 162sqm of communal open space which is 26% of the site.</li> <li>• In achieving this amended design Unit G.02 shall have a long private courtyard along the southern side and the living area shall include a small 1m wide Juliette balcony along the eastern side facing the communal area of open space.</li> <li>• It is recommended that direct access to the rear area of private open</li> </ul>	Yes
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	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	space be provided via the laundry.  The development in its current and suggested modified form will ensure greater than 50% of the area of communal open space will achieve a minimum of 2 hours of solar access during midwinter as the orientation of both spaces is facing north or north east which is an appropriate orientation.	
<b>3E-1 Deep Soil Zones</b>	1. Deep soil zones are to meet the following minimum requirements: Where the site is less than 650sqm a minimum deep soil area of 7% is required.	Based on the site area of 613.2sqm a minimum of 43sqm of deep soil area is required.  There are two small areas of nominated deep soil across the site. The first area is along the north western corner with an area of 25sqm (4m x 6.2m) and the second area is at the front which has an area of some 20sqm (4m x 5m). The site includes a stormwater drainage easement along the northern side which is intended to be planted out however this area is not included as any deep soil area given the constraints of the easement and the minimum dimension/width of 3m is not achieved.  On this basis the areas that are able to be included equate to a total area of 45sqm being 7%.	Yes

<b>3F-1 Visual Privacy</b>	Separation between windows and balconies is provided to ensure visual privacy is achieved.	North – along the northern side the building is setback between 3m to 3.47m. The design fails to achieve the 6m minimum.	No
	Minimum required separation distances from buildings to the side and rear boundaries are as follows: -Up to 12m (4 storeys) Habitable rooms and balconies = 6m Non-habitable rooms = 3m	South – along the southern side the building is setback between 2.42m- 4.05m. The design fails to achieve the minimum 6m separation distance between buildings.	No
		Eastern (rear) – the building is setback between 3.9m – 5.5m. The building fails to meet the minimum 6m separation distance. Due to the isolated nature of the site and its narrow width of the allotment, the design can not physically achieve the minimum separation distances. A detailed assessment of the non-compliance is discussed below.	No

#### Non-compliance with separation distances

Objective 3F-1 of the ADG states that “*Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy*”. Given that the site is isolated and cannot be integrated with any adjoining property, the visual and amenity impacts of the new built form will need to be very sensitively considered and treated. Council Officers were initially opposed to the scale and bulk of the development and its proposed density. It was requested that the height and scale be substantially reduced so that the visual appearance of the building is more in keeping with the scale and form of immediately adjoining three to four storey flat buildings. It was considered that this site is narrow and constrained (flooding and in this case cannot achieve the full development potential of the site).

Despite the purpose of the separation distances to protect and preserve privacy it also aims to provide adequate setbacks between buildings so there is space provided for the provision of meaningful landscaping elements and general separation so that the visual bulk and scale of the building is reduced. The design of the building has been modified to reduce the potential for overlooking by introducing highlight windows along the northern and southern elevations. Standard size windows remain in some rooms (Bedroom 1 to apartments G.01, 1.01, 2.01 and to the living room and Bed 1 of Unit 3.01). Given that these spaces are within 6m of the required setback and the fact that 50 -52 Noble Street include a series of windows along their south east and north west elevation which could contribute to some potential for overlooking. It is recommended that the standard sized windows to the rooms noted above will be conditioned so that the lower pane is constructed of obscure glass. This will reduce the potential for any

direct overlooking. Along the southern side the windows to the bedrooms have been reorientated to face the north east or south western side on Level 1 with the windows to bedrooms becoming snorkel windows. This isn't an ideal design solution for these spaces in terms of internal amenity and lack of solar access. However given this elevation is orientated to the south the snorkel windows should allow for more sunlight to access the room as opposed to a south facing highlight window which is the other alternative design solution.

On the third level, standard windows are proposed for Bedrooms 2 to apartments 3.01 and 3.02. With the removal of Unit 3.02 there will be no potential for any direct overlooking from any habitable spaces as this area will be replaced with a small roof terrace. It is requested that fixed external louvres are to be constructed to these spaces and a condition is included to ensure this occurs.

This is a unique site given that it is isolated and despite its isolation development to its full potential cannot be achieved given that it contains a number of environmental constraints coupled with the fact that the density and built form proposed will have adverse impacts onto adjoining properties in terms of overlooking and will also adversely affect the internal amenity and functionality of spaces.

The reduction in the density and reduced bulk, scale and height will create a more appropriate building for this site and will resolve some areas of non-compliance including creating a compliant height and scale which is going to be more reflective of the existing character and nature of development in the precinct. The provision of deep soil areas at the rear and the planting of some taller vegetation in this area will screen the lower levels of the building reducing the impact for overlooking. In addition privacy screens will be required to ensure overlooking from the rear balconies is minimised.

<b>3J-1 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;</li> <li>- 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.</li> </ul>	<p>The Guide to Traffic Generating Developments defines medium density development as <i>"A medium density residential flat building is a building containing at least 2 but less than 20 dwellings. This includes villas, town houses, flats, semi-detached houses, terrace or row houses and other medium density developments. This does not include aged or disabled persons' housing."</i></p> <p>High density development relates to developments exceeding 20 dwellings.</p> <p>In this case the development is within 800mm distance of the Allawah Train Station and</p>	<p>The site is located within an "accessible" area and the ADG provisions are applicable</p> <p>No – the development is short of one space</p>
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		<p>therefore the medium density requirements area applicable.</p> <p>This requires the following;  1 space per unit plus  1 space for every 5 x 2 bedroom apartments  1 additional space for every 2 x 3 bedroom apartments  1 space for every 5 apartments for visitor parking.</p> <p>On this basis the following off-street parking is required;</p> <p>8 apartments = 8 spaces plus  1 space for the 5 x 2 bedroom apartments = 1 space plus  1.5 spaces for the 3 bedroom apartments  <b>Total residential = (10.5) 11 spaces</b></p> <p><b>Total visitor spaces</b>  <b>8/5 = 2 spaces</b></p> <p><b>A total of 13 spaces are required to be provided.</b></p> <p>The development is short by 1 space however added to this non-compliance is the very tight nature of the car parking area and manoeuvrability into and around the development. The basement is very constrained and poorly designed. Swept path diagrams show the difficulty in manoeuvrability within the basement. With the removal of Unit 3.02 this</p>	
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		<p>will remove the pressure on the parking layout and the development can comply numerically.</p> <p>The removal of 1 x 2 bedroom unit will generate the need for the following parking numbers:</p> <p>7 apartments = 7 spaces  4 x 2 bedroom = 4/5 = (0.8) 1 space  3 x 3 bedroom = (1.5) 2 spaces  10 spaces for the residential component</p> <p>Visitor = 7/5 = (1.4) 2 spaces</p> <p><b>Total of 12 spaces is required.</b> Twelve (12) spaces are provided.</p>	
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#### ADG Car Parking Provisions

The ADG parking provisions are based on the Guide to Traffic Generating Developments, 2002 provisions. The Guide assists in calculating the minimum car parking spaces required by the development and also calculates potential traffic generation. In respect to car parking numbers required, there are two categories that the proposal could fall under Medium Density Residential or the High-Density Residential development.

Medium Density development under the guide is defined as a Residential Flat Building containing less than 20 dwellings. The development falls within this category as the site is located within an “accessible” location. The ADG parking provisions are very generous and flexible as opposed to Councils parking requirements and this is due to the “accessible” nature of the site. The proposed development generates the need for 13 off-street parking spaces and only 12 spaces provided, being a shortfall of one space. This is not considered acceptable given the flexibility of the Policy and the need for parking in general.

Coupled with the numeric non-compliance with the parking provisions of the ADG, the basement parking design is inefficient, tight, constrained and unworkable. The swept path diagrams are inaccurate as they generate movements across and over the bollard which is a permanent structure providing protection for occupants and visitors accessing the lift from the basement. The narrowness of the driveway in sections of some 4m is unacceptable and manoeuvrability is unsafe and the general nature of the basement is dangerous and access poor. This is largely generated by the site constraints but also by the density which dictates and generates the need for spaces. The removal of Unit 3.02 will reduce the overall generation for spaces and create a compliant number of spaces.

Despite the numeric compliance this does not resolve the poor internal design of the basement. It is recommended that the basement be redesigned via deferred commencement conditions in the following manner:

- No visitor car parking is to be provided. Given the tight configuration of the basement and provision of 1 visitor space (2 are technically required) it is considered that better use of this space is to utilise it as the waste room and reconfigure the lobby, lift in the basement and remove the bollard adjacent to lift which obstructs access and manoeuvrability.
- The accessible space at the rear shall be deleted and space for Unit 2.01 shall be enlarged with a minimum width of 3.7m and this shall become a designated accessible space.
- The basement shall be setback a further 2.5m (total setback of 2.7m) from the rear boundary to allow for a soft landscaping buffer at the rear
- The two tandem spaces for Unit 3.02 shall be dedicated to Unit 1.01.
- All 3 bedroom apartments will have two spaces and every two bedroom unit will have access to one space.

Given the tight nature of the basement and the fact the development is being conditioned to cater for 7 apartments the development in its current form and even this reduced density will not permit the visitor car parking spaces to be integrated given the narrow nature of the basement and the tandem parking spaces (which have to be dedicated to one unit). In this case it is considered more beneficial that the occupants of the building have access to car parking spaces as opposed to visitors. This is considered to be acceptable and reasonable outcome.

#### **Part 4 – Designing the building**

<b>4A-1 Solar and daylight access</b>	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	<p>The solar access diagrams prepared by the Applicant are generally accurate and show that only 1 unit (G.01) does not receive a minimum of 2 hours during the day in midwinter. This means 88% of the development meets the solar access requirements.</p> <p>Only 1 unit does not receive the minimum 2 hours of solar access during the day in midwinter which amounts to 13% of the development.</p>	<p>Yes</p> <p>Yes</p>
<b>4B-3 Natural Ventilation</b>	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p>	<p>All the apartments are cross ventilation as they have three orientations with openings along each side. The open plan nature of the living/dining spaces provides for effective cross ventilation. As a result</p>	<p>Yes</p>

	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	<p>100% of apartments are cross ventilated in accordance with the provisions of objective 4B-3 of the ADG.</p> <p>The development does not include any cross-over or cross through apartments. The maximum depth of the 3 bedroom apartments is 14.5m and the 2 bedroom apartment is approximately 14m.</p>	Yes
<b>4C-1 Ceiling heights</b>	<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>	Each residential level has a minimum floor to floor height of 3.1m, with the rooftop level having a height of 2.4m being the foyer area and pergola both non-habitable areas. The basement has a floor to floor height of 3.9m.	Yes
<b>4D-1 Apartment size and layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <p>2 bedroom = 70sqm</p> <p>3 bedroom = 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p>	<p>G.02 – 2 bedroom = 80.68sqm</p> <p>G.01 – 3 bedroom = 100.1sqm</p> <p>1.01 – 3 bedroom = 104.06sqm</p> <p>1.02 – 2 bedroom = 81.27sqm</p> <p>2.01 – 3 bedroom = 104.06sqm</p> <p>2.02 – 2 bedroom = 81.27sqm</p> <p>3.01 – 2 bedroom = 7.60sqm</p> <p>3.02 – 2 bedroom = 77.79sqm</p> <p>Each unit has an additional bathroom in the form of an ensuite, this generates the need for the floor space of each apartment to be increased by 5sqm i.e. 2 bedroom apartments need to exceed 75sqm in internal area and 3 bedroom apartments are to exceed 95sqm. The apartments comply and exceed these</p>	<p>Yes</p> <p>Yes</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	minimum internal areas.  Each habitable room has at least one window with living spaces having up to three windows. Bedrooms have one window with the smallest window achieving an area of 2.04sqm with 10% of the space amounting to 1.19sqm (3m x 3.98m).	Yes
<b>4D-2</b>	Habitable room depths are limited to a maximum of 2.5m x the ceiling height In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Within range.  apartments facing the street (south west) have maximum depths varying from 6m to 7.1m. The apartments at the rear have a depth of 5.7m from the kitchen to the living room window.	Yes  Yes
	Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)  Bedrooms have a minimum dimension of 3m (excluding wardrobe space)  Living rooms or combined living/dining rooms have a minimum width of: - 4m for 2 and 3 bedroom apartments	Main bedrooms range in area from 10.8sqm, 10.77sqm, 11.94sqm and 12m. All other bedrooms have areas greater than 9sqm.  All bedrooms have minimum dimensions of 3m.  The living rooms have minimum width of 4m in all apartments.	Yes  Yes  Yes
<b>4E-1 Private Open space and balconies</b>	All apartments are required to have primary balconies as follows:  Two bedroom = 10sqm/2m depth Three-bedroom = 12sqm/2.4m depth	G.01 (3 bed) = 14sqm balcony and private courtyard having an area of 30sqm by 2.87m G.02 (2 bed) = 139sqm (private courtyard space) with a depth of 3m 1.01, 2.01 (3 bed) = 12.9sqm (depth 2.8m)  1.02, 2.02 and 3.02 (2 bed) = 10.8sqm (depth 2.68m)	Yes

	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m	Unit 3.01 (2 bed) = 16sqm in area and depth of 2.2m.  Yes – all ground floor apartments will satisfy the minimum requirements of 15sqm each area of private open space exceeding this minimum requirement. Minimum depths of 2.87m.	Yes
<b>4F-1 Common circulation spaces</b>	The maximum number of apartments off a circulation core on a single level is eight	There is one main lift lobby which provides access to two apartments on each level.	Yes
<b>4G-1 Storage</b>	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: 2 bedroom – 8m <sup>3</sup> 3 bedroom – 10m <sup>3</sup>	All apartments have internal storage cupboards and designated storage spaces within the laundry or some have separate storage cupboards. The internal storage spaces amount to approximately 3cubic metres. The cupboards within the basement would also amount to approximately 3m <sup>3</sup> .  The basement car park also includes storage cages above every parking space.  Given the constrained and narrow nature of the site it is difficult to integrate more storage within the development and across the site. There are some additional opportunities for storage such as small sheds within the ground floor courtyards for apartments G.01 and G.02. The proposal is adequate in this regard.	Yes
<b>4H Acoustic Privacy</b>	Noisy areas within buildings including building entries and corridors should be	The development has been sensitively designed to respect the context of the area.	Yes

	located next to or above each other and quieter areas next to or above quieter areas	<p>This application is not accompanied by an Acoustic report given the RFB proposes eight (8) new apartments within a residential environment which is considered to be a small scale redevelopment of a site.</p> <p>The siting of the main living spaces which face the street is the most appropriate orientation and reduce overlooking and transmission of noise.</p> <p>The apartments facing the rear have living spaces facing the rear which is appropriate however balconies are only setback 3.9m and the bedroom wall setback 5.5m.</p> <p>Balconies along this elevation should be setback 6m in accordance with the ADG. The additional setback would provide additional physical separation reducing impacts in terms of noise and overlooking. A condition will be imposed to ensure the balconies at the rear are included with privacy screens to address this reduced setback.</p>	
<b>4J Noise and Pollution</b>	Design solutions to mitigate noise include: limiting the number and size of openings facing noise sources providing seals to prevent noise transfer through gaps using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) using	Noise mitigation has been addressed by the provision of smaller window openings along the side elevations and orientation of balconies to the front and rear. The removal of Unit 3.02 will improve noise transmission by reducing the scale, density and impact of the development to the neighbouring	Yes

	materials with mass and/or sound insulation or absorption properties e.g. solid balcony balustrades, external screens and soffits	apartments at the rear.	
<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	<p>The development has been modified from the originally proposed 4 x 2 bedroom units and 4 x 3 bedroom apartments to a mix of 5 x 2 bedroom apartments and 3 x 3 bedroom apartments. The overall density has not been reduced and despite the very minor change which has created a 2 bedroom unit from a 3 bedroom apartment the still creates a very tight building and a non-compliant car parking arrangement. To minimise impacts of scale, bulk and visual dominance of the built form, improve amenity impacts and create a more functional basement car park it is recommended Unit 3.02 be removed via a deferred commencement condition. This will result in compliant height and create a more sympathetic building that is in scale with the character of neighbouring developments.</p> <p>Although the development comprises of 2 and 3 bedroom apartments it is a lost opportunity to integrate 1 bedroom apartments.</p>	Yes
<b>4L Ground Floor Apartments</b>	Direct street access should be provided to ground floor apartments. Privacy and safety should be provided without obstructing casual surveillance.	Direct street access can not be achieved in this case as the ground floor is elevated due to the issues relating to flooding. The design is considered acceptable and reflective of similar adjoining properties (50-52 Noble that has its	Yes

		main entry along the northern side).	
<b>4M Facades</b>	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The original design of the building was inconsistent with the character and nature of existing development in the street since the scale and height of the building was out of scale with the adjoining set of apartments. The proposed development exceeded the height limit and the four to five storey scale (including the rooftop level). The overall height of the building is not consistent with the natural topography of the site and would not sit comfortably in the street between 50-52 Noble Street and 56 Noble Street. Any new development needs to respect the siting of the adjoining properties and in this case with 56 Noble achieving an overall height of RL44.01 and 50-52 Noble Street achieving an overall height of RL49.57 the new development needs to step down and sit between these established heights. The proposal is much higher than both properties with the parapet alone achieving a height of some RL49.30. Structures on the roof are much higher. With the removal of Unit 3.02 and the existing rooftop communal open space relocated to the rear the clutter on the roof will be reduced and the visual dominance and inappropriate scale reduced and should be a little more sensitive to its immediate surroundings especially at the rear where	Yes

		<p>the building will step down.</p> <p>This is considered to be a better planning and urban design outcome which will achieve a compliant height and more sensitive scale and form.</p>	
<b>4N Roof</b>	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.</p>	<p>The proposed flat roof form is contemporary in nature however is not considered to be characteristic of the roof forms in the street which are pitched in nature. As noted above the removal of the structures on the roof and the relocation of the communal area of open space this will create a compliant scale and height.</p> <p>The proposal has been conditioned to be amended to relocate the roof terrace towards the rear which will utilise the roof space for passive recreational purposes but also reduce the scale and dominance of the built form. The building will step down and relate more closely to the heights of the immediately adjoining RFB's.</p>	Yes
<b>4O Landscape Design</b>	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The proposed landscape design at the front of the site is generally an acceptable response however, there is a lack of a landscaping buffer along the rear of the building which is unacceptable. It is proposed to redesign the basement so that it is setback a minimum of 2.7m from the rear boundary via a deferred commencement condition. This will enable the planting of more substantial trees along the rear boundary to create	Yes

		<p>additional screen planting and reduce the visual dominance of the building.</p> <p>The landscape plan will require modification to address this change, so to will the roof plan for the relocated area of communal open space where Unit 3.02 was originally proposed.</p>	
<b>4P Planting on structures</b>	<p>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</p>	<p>There are no raised planter boxes however the landscape plan will need to be amended to include a dedicated area with planter boxes around the perimeter of the roof top terrace area.</p> <p>The landscape plan includes 1m wide planter boxes around the edges of the ground floor courtyard spaces.</p>	Yes
<b>4Q Universal Design</b>	<p>Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs</p> <p>Benchmark of 20% liveable dwellings.</p>	<p>The design of the apartments is relatively flexible allowing for a variety of different people and lifestyles to occupy the apartments. Most of the 8 apartments can be classified as “liveable” as they are designed to accommodate an easy open plan and would be easily altered to become customised to meet the specific needs and requirements of occupants.</p> <p>Unit 1.01 has been designed to be adaptable which equate to 13% of the development.</p>	Yes
<b>4U Energy Efficiency</b>	<p>Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer,</p>	<p>The development incorporates BASIX commitments in the design to provide appropriate energy efficiency features. A compliant BASIX certificate accompanies</p>	Yes



	natural ventilation minimises need for mechanical ventilation	this application.	
<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	Development incorporates appropriate stormwater measures and Council's Development Engineers are satisfied with the stormwater/drainage design.	Yes
<b>4W Waste Management</b>	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The basement includes a designated garbage room which caters for 8 garbage bins. This is considered satisfactory for the proposed scale of development.  A condition will require the provision of one (1) green bin which will cater for green waste.	Yes
<b>4X Building maintenance</b>	Building maintenance – building design provides protection from weathering, enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates large expanses of brickwork which allows for minimal long term maintenance of the building. This is considered to be a durable, long-lasting finish.	Yes

74. The main areas of non-compliance with the ADG (physical separation distances and car parking numbers) which are driven by the narrow width of the site. In the context of the street and site planning and layout of adjoining properties this site fails to achieve an acceptable level of design without reducing the density.
75. It is accepted that this site is isolated and therefore can only accommodate a smaller scale medium density development that is very sensitively and carefully designed to ensure it respects the siting and scale of adjoining properties. The reduction in one unit and the reconfiguration of the basement car park (via deferred commencement conditions) aims to ensure the building is compliant and provides for some much needed buffer planting at the rear and goes some way to creating a more sympathetic, compliant and reasonable redevelopment of these sites.

### **Environmental Planning Instruments**

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

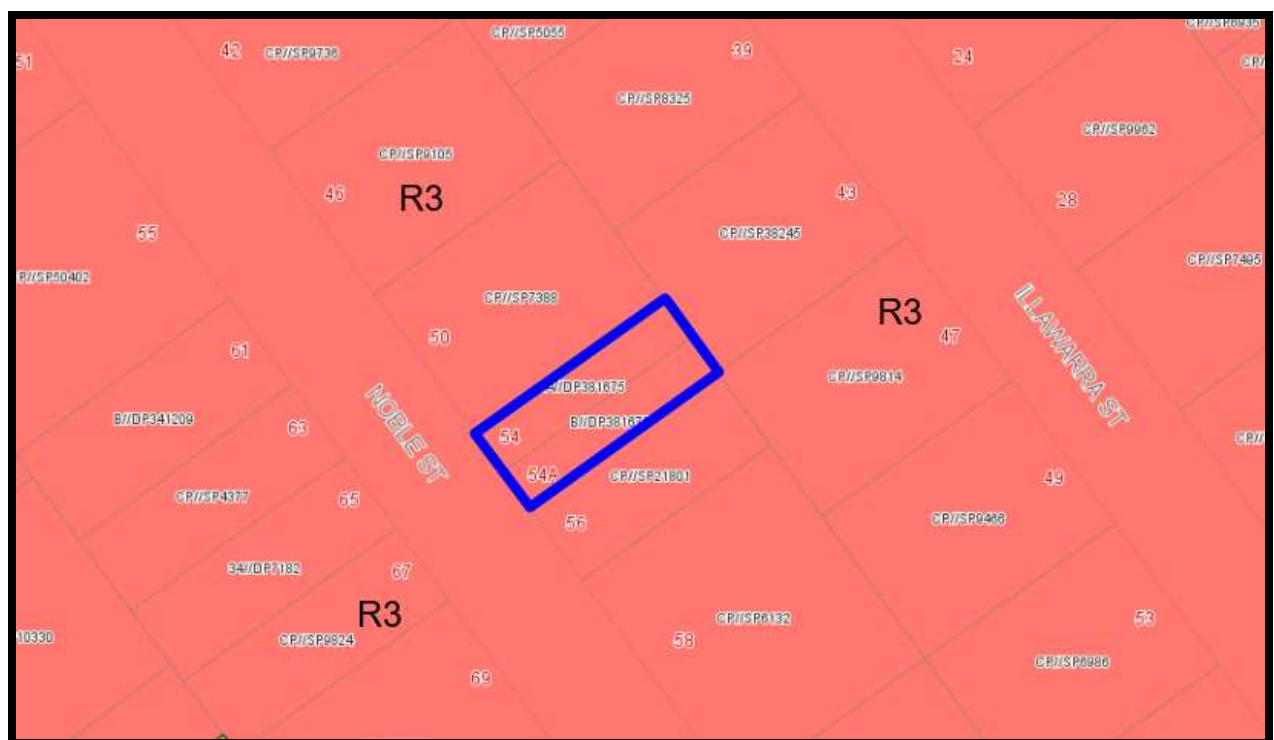
#### **Zoning**

76. The subject site is zoned R3 – Medium Density Residential pursuant to the Kogarah Local Environmental Plan 2012 (KLEP). The proposed Residential Flat Building (RFB) is a permissible land use in the zone. The proposal in its current form is considered to be

an overdevelopment and its density needs to be reduced to create a building of an acceptable scale, complies with car parking controls and one which reduces the bulk, scale and improves the visual and amenity impacts. The proposal generally satisfies the zone objectives which include;

- 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.

Figure 6 below is an extract of the zoning map showing the subject site which is outlined in blue.



**Figure 6:** Zoning map with the subject site outlined in red

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

**Table 5: KLEP Compliance Table**

Clause	Standard	Proposal	Complies
<b>2.3 – Zone objectives and land use table</b>	R3 – Medium Density Residential	Generally consistent with the zone objectives and land use table.	Yes
<b>4.1A – Minimum Lot Size</b>	A minimum site area of 1,000sqm applies to RFB's in the R3 Medium Density zone	The subject site is isolated and has a site area of 613sqm.  A Clause 4.6 Statement has been submitted to justify the non-	No - refer to (1) below

		compliance.	
<b>4.3 – Height of Buildings</b>	15m as identified on Height of Buildings Map  The application is accompanied by a Clause 4.6 Statement to formally justify the non-compliance.	15.805m to 17.4m.	No - refer to (2) below
<b>4.4 – Floor Space Ratio</b>	1.5:1 as identified on Floor Space Ratio Map	The FSR has been reduced from that originally proposal and is now proposed to be 1.27:1. The GFA calculations have been confirmed to be accurate.	Yes
<b>4.6 – Exceptions to development standards</b>	Two formal written requests have been submitted to justify the statutory non-compliance with the minimum site area for RFB's (Clause 4.1A) and non-compliance with the Height of Buildings standard (Clause 4.3).	Formal written requests lodged and addressed in detail as part of this assessment.	Yes - Clause 4.6 Statements address the relevant provisions of Clause 4.6 and are considered in (1) and (2) below
<b>5.10 – Heritage Conservation</b>	The site is not a designated heritage item and is not located within a Conservation Area	The Allawah Hotel at 270 Railway Parade is the closest heritage item (known as I1) however the subject site is not within the immediate vicinity or within the visual catchment of this item. The proposal will not alter or affect the historic significance of this item.	Yes
<b>6.1 - Acid Sulphate Soils (ASS)</b>	The objective of this clause is <i>"to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage."</i>	The subject site is not affected by ASS.	Yes
<b>6.3 – Flood Planning</b>	The subject site is located within a flood prone area and is affected by the 1:100 floods.  The application is	Council's Stormwater Engineer has reviewed the application and design of the stormwater/drainage system. Deferred	Yes

	<p>accompanied by a flood study and the building has been designed to allow for overland flow to travel through the site by the introduction of openings along the north-western side of the building at the ground floor level. The application has been referred to Council's Engineer specialising in flood assessments.</p>	<p>commencement conditions are recommended as the design will need to be modified to ensure it is compliant.</p> <p>Council's Engineer specialising in flooding has not raised any issues in relation to the treatment proposed to assist with the natural overland flow path to be maintained following construction. Standard conditions are imposed if consent is to be granted.</p>	
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LPP046-20

**(1) Clause 4.6 Exception to Development Standards – Clause 4.1A (Minimum Lot sizes for Multi-unit dwelling housing, Residential Flat Building and seniors housing) Kogarah Local Environmental Plan (KLEP) 2012**

78. The proposed development seeks a variation to the development standard relating to minimum lot size stipulated as Clause 4.1A pursuant to KLEP 2012. Clause 4.1A requires a minimum site area of 1,000sqm for a residential flat building (RFB) in the R3 Medium Density zone. The subject site has an area of 613sqm which is below the requirement.
79. A variation to the minimum lot size can be considered under Clause 4.6 – Exceptions to Development Standards in the KLEP. In assessing the variation, the provisions identified in Clause 4.6 need to be considered. The applicant's town planning consultant, BMA Urban has provided a formal response which is detailed and considered below.
80. **Clause 4.6 Exceptions to development standards**  
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.*
81. In accordance with the provisions of Clause 4.6 the following issues need to be addressed:
- Is the planning control in question a development standard?***
82. Yes, Clause 4.1A, the Minimum Lot Size control is a development standard.
- What is the extent of the variation?***
83. The development control requires a minimum site area of 1,000sqm for an RFB proposed in the R3 zone. The site area in this case amounts to 613sqm which is a deficiency of 387sqm in area and a variation of 39% to the standard.

84. To achieve compliance with the control the subject site would need to be amalgamated with an adjoining site to achieve the minimum lot size. In this case all immediately adjoining properties have been redeveloped as medium density housing developments in the form of 3-4 storey walk up blocks of apartments and the opportunity for amalgamation in this case is impractical and unrealisable.

***What is the underlying objective or purpose of the standard?***

85. The purpose of Clause 4.1A, is to establish a minimum lot size for particular developments, in this case it relates to the development of an RFB within the R3 – Medium Density Residential zone. The objective of the control is “to achieve planned residential density in certain zones.” In essence the intention is to have an appropriately sized site to cater for a larger scaled residential development in the R3 zone that is able to achieve other planning controls relating to design and amenity including achieving appropriate landscaped area, parking provisions, separation distance, setbacks and reduce impacts such as overlooking and overshadowing. The control assists in directing the desired future character of RFB development in the R3 zone and ensures consistency in the built form for the future.

***Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?***

86. Applicant's comment: *“The primary objective of the minimum lot sizes for multi-dwelling housing, residential flat buildings and seniors housing is:*

- ***to achieve planned residential density in certain zones.***

87. *This objective seeks to ensure that lot sizes for residential accommodation, more specifically residential flat building development is consistent with the strategic direction for planned residential density. In this regard, the proposal complies with the FSR standard and the height standard albeit a minor numerical non-compliance resulting from the provision of a communal open space area on the roof area of the building. The proposal is also largely consistent with the finer grain controls of the DCP particularly given the restrictions placed on the land by way of its isolation. In this regard, the proposed variation to the standard will have no bearing on the ability of the development in achieving the applicable LEP and DCP standards and controls, notwithstanding the numerical variation to the lot size standard. It is also submitted that the well-articulated building facade inclusive of the diverse range of material combinations, serve to provide a development scale and form congruous with the medium density scale and character of the setting. The design, layout and built form of the development is an appropriate response to the site and its context where it will remain in unity with the planned residential density envisaged for the area despite the shortfall in site area. When considered within the framework of these objectives, the purpose of the lot size standard also requires that appropriate consideration be given to the likely adverse amenity impacts of the development and amenity of the area. In response, the proposal has been designed as far as practical with the intent of mitigating any adverse impact on immediately adjoining lands in terms of solar access and privacy. This has been achieved despite the notable restrictions placed on the land by way of its isolation. The design itself is commensurate of the local character where it responds to its proximity to the Allawah Centre and Hurstville CBD providing opportunity for a contemporary and appropriately scaled residential flat building in the locality on a site that currently remains at odds with the scale of development observed within its immediate context. Furthermore, the built form characteristics of the proposal are not inconsistent with that observed by a number of recent identifiable developments within the sites local context approved in accord with the height and yield increases made available by the LEP. In this*

*regard, it is anticipated that the built form and scale in this part of Noble Street and surrounding streets, will gradually change as properties are redeveloped commensurate with the 70 current allowable building height and floor space ratio development standards made available to the lands. On this basis, the proposal is consistent with this objective.”*

88. Assessment Officer’s comment: The objective of the control is to achieve a “planned” residential density in certain zones. The emphasis is on “planned” as this is the intended outcome for development. Sites should be large enough (minimum 1,000sqm) in order to comply with the planning controls and achieve good urban design and built form outcomes that can be translated across streetscapes and localities to maintain consistency in design and building envelopes. This control also assists in directing future development and creating a systematic approach to RFB development in the R3 zone.
89. This site being “isolated” cannot be amalgamated with adjoining sites which have been redeveloped to achieve RFB’s of a medium density and are strata subdivided. A reasonable expectation is that purchasing these redeveloped sites is unviable and unreasonable. The issue then is to consider whether the development control is a prohibition or a development standard. In accordance with the judgement for *Principal Healthcare P/L v Council of the City of Ryde* “It found that the instrument does not act to prohibit developments, but rather permit developments if certain criteria are met”. In this case the control is considered a development standard that can be varied as the land use proposed is permissible and this is one numerical standard that needs to be satisfied in order for the proposed RFB to be considered.
90. Given that the site is isolated can an RFB be constructed on this smaller site? The site can be redeveloped for the purposes of an RFB but the design may need to be modified and the full redevelopment potential of the site may not be achieved on a smaller, constrained site like the subject site. A merit based assessment needs to be considered on all the other development controls and whether the proposed scheme complies with these. The amended design in summary is still considered to be an overdevelopment of this site given the size of the site and the other environmental constraints that burden it. These issues are considered to be separate to the argument of whether an RFB can be catered for on a smaller lot. It is concluded that this is an isolated site and given the nature of adjoining and surrounding development and the immediate context and location of the site an RFB could be constructed on this site as an infill development, subject to an appropriate design.

***Is compliance with the development standard consistent with the aims of the policy and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in s5(a)(i) and (ii) of the EP&A Act?***

91. The non-compliance must not “*hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.*”
92. Section 5 of the Environmental Planning and Assessment Act 1979 (as amended) provides:

*The objects of this Act are...*

*(a) to encourage*

- i. the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, town and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*

*ii. the promotion and co-ordination of the orderly and economic use and development of land;*

93. Assessment Officers comment: The proposed non-compliance with the minimum lot size should not obstruct the attainment of the objects nominated in section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 (“the Act”). The proposal represents an infill development that is generally anticipated within the streetscape and locality. To enforce strict compliance with Clause 4.1A of the KLEP will not promote the orderly or economic development of the land, as it would hinder the redevelopment of the site as an RFB.
94. The proposed variation will not contravene these Objects of the Act. The variation to the numeric control does not assess or consider the other related impacts of the development of the site which are assessed and considered separately. In its current form the development is considered to be too dense and non-compliant with a number of planning controls resulting in adverse amenity impacts to neighbouring developments and the streetscape. This is not to say that a smaller scaled RFB will be a more reasonable and acceptable response to this smaller site.
95. To enforce strict compliance with this control would be to compromise on the economic and social potential of the subject property. Strict compliance is therefore not consistent with the aims and objectives of section 5(a)(i) and (ii) of the Act.
96. It is believed that the proposed development in a modified form (as recommended in this report) would satisfy the objective behind the Council’s minimum lot size control by creating a more sensitively “planned” residential density.
97. Non-compliance with the development standard does not raise any matter of local, state or regional environmental planning significance. Strict compliance with clause 4.3(2) of the Plan would hinder the attainment of the objects listed in section 5(a)(i) and (ii) of the Act.
98. Applicants comment: The Applicant has provided in a tabular form an assessment of the proposal against Section 5 of the EP and A Act (as amended). This is provided as an extract below at Figure 7.



*The objects of this Act and how this proposal responds to the object are as follows:*

Object	Comment
(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,	This object is not relevant to this development.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustenance of the economic health of the area.
(c) to promote the orderly and economic use and development of land,	The proposed development will promote the orderly and economic use of the land by way of providing a land use intensity consistent with that envisaged by Council. This is most notably reflected in a number of recent planning decisions on similar lands which for the purpose of determining the orderly use of land, provide identifiable site characteristics to that of the subject site.
(d) to promote the delivery and maintenance of affordable housing,	This object is not relevant to this development.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	This object is not relevant to this development.
(g) to promote good design and amenity of the built environment,	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity compatible with both the established and emerging development and housing typology.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to this development.

**Figure 7:** Extract from Clause 4.6 Statement prepared by BMA Urban Planning

***The proposal is in the public interest as it is consistent with the objectives of the standard and the zone objectives (Clause 4.6(4)(a)(ii))***

99. The recent Court decision *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of Clause 4.6 requests. This advice further confirms that the Clause (4.6) does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.
100. As also held in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [39], Preston CJ confirmed (at[25]) that the test in 4.6 (4)(a)(i) *does not* require the consent authority to *directly* form the opinion of satisfaction regarding the matters specified. Rather, it needs to do so only *indirectly* in forming its opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated.

By contrast, the test in cl4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause; namely that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

101. The objectives of the R3 Medium Density Residential zone pursuant to KLEP 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 the residents.*
102. Applicant's comment: *"The proposal provides for eight (8) new dwellings in a residential flat building format in a well serviced location located in proximity to a variety of public transport options, expanses of public open space and services facilities. The siting arrangement, built form and architectural language of the development is consistent with that likely to be encountered in a medium density residential setting and is proportionate with that observed within the evolving context.*
103. *The dwelling mix being 5 x 2 bedroom and 3 x 3 bedroom apartments is considered to be broad enough in that will cater for a variety of households within the local area. Moreover, the proposed development includes larger three (3) bedroom dwelling options that have been lacking in approved and current developments within the local and wider areas. The proposal does not offer the provision of other land uses on the land apart from eight (8) new dwellings in a residential flat building arrangement. Notwithstanding, access to services are located within proximity to the site both within the Allawah local centre and Hurstville CBD.*
104. Assessment Officer's comment: The general nature of the proposed RFB satisfies the intentions for development in this zone and the associated objectives. The development (in an amended form) will satisfy the housing needs of the community within the existing medium density precinct. The development provides a mix of 2 bedroom and 3 bedroom apartments which will satisfy demand for this form of development in the area.
105. The site is accessible and well located and although does not provide any other land uses that provide facilities or services to meet the day to day needs of residents in the area it is very well located and serviced by the small Allawah Town Centre that is within walking distance from the site.
106. As such the proposal is considered to be in the public interest given that it satisfies the objectives of the R3 zone.

***Contravention of the standard does not give rise to any matter of significance for State or Regional Environmental Planning (Clause 4.6(5)(a))***

107. There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard in this case.

***There is no public benefit of maintaining the standard (Clause 4.6(5)(b))***

108. There is no public benefit in maintaining strict compliance with the development standard in this unique case given that doing so would unreasonably restrict the development potential of the site by way of sterilising a form of development that is encouraged and permitted by the zoning. The proposed isolated nature of the site will permit an infill RFB development of a reduced scale and form.
109. In this case there is no public benefit in imposing the control as an RFB on the site will satisfy the objectives of the zone which including catering for the housing needs of the community within a medium density residential setting. Importantly, the numerical shortfall in site area required for the provision of this form of development, will allow for a medium density development that will need to be designed to consider all the other planning and design controls that dictate development. In this case the type of development proposed is considered acceptable however its form is considered to be inappropriate for the site and will adversely impact on the nature of surrounding development and the streetscape. In this case it is considered acceptable and reasonable to vary the control and allow for an RFB development on this smaller site.

***Any other matters to be taken into consideration by the Secretary Clause 4.6(5)(c):***

110. The Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation) on 21 February 2018 which delegated concurrence on behalf of the Secretary to the consent authority. Based on this notice, the Secretary's concurrence can be assumed in this case.
111. After careful consideration of the Clause 4.6 request it is considered that the non-compliance in this case is acceptable and the request is well founded and the variation will satisfy the objectives of both the zone and development standard and therefore satisfies the provisions of Clause 4.6 of the KLEP.

**(2) Clause 4.6 Exception to Development Standards - Clause 4.3 (Height of Buildings) KLEP 2012**

112. The proposed development seeks a variation to the development standard relating to the maximum building height pursuant to Clause 4.3 of the KLEP 2012. Clause 4.3 stipulates that a maximum 15m height limit applies to the any redevelopment on this site. Figure 8 below provides an extract of the height of buildings map which shows the height relative to the subject site.
113. The proposed development seeks a variation to the development standard by proposing a building with a maximum height of between 805mm (roof shelter over entry foyer) to 1.445m (building parapet ancillary to common WC and fire stair) along the north-western elevation and 1.115m (aluminium pergola) to 2.405m (lift overrun) along the south-eastern side. The Applicant states that *"Further ancillary structures are also provided to the roof of the development that exceed the allowable maximum height all of which are located within the minimum/maximum height range as identified. As a percentage, the extent of variation along the north-western elevation ranges from 5.3% (top of roof shelter over the COS) to 9.6% (building parapet ancillary to common WC and fire stair). Along the south-eastern elevation, the extent of variation ranges from 7.4% (aluminium pergola) and 16% (lift overrun)."*
114. The amended plans lodged with the application (Issue B) dated April 2020, have removed and reduced the pergola features on the roof which limits the non-compliance to only the staircase and lift overruns with a small pergola feature remaining at the rear. The

numerical non-compliance remains technically the same just reduces the amount of structures on the roof level.

115. A confirmation of the heights having regard to the survey plan have been conducted and the Applicant's calculation of the variation is considered to be accurate.



**Figure 8:** Extract of the Height of Buildings map

116. A variation to the minimum lot size can be considered under Clause 4.6 – Exceptions to Development Standards in the KLEP. In assessing the variation, the provisions identified in Clause 4.6 needs to be considered. The applicant's town planning consultant, BMAUrban has provided a formal response which is detailed and considered below.

#### **Clause 4.6 Exceptions to development standards**

117. 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.

118. In accordance with the provisions of Clause 4.6 the following issues need to be addressed;

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

119. Yes, Clause 4.3 Building Height control is a development standard.

#### ***What is the extent of the variation?***

120. The variation is between 805mm to a maximum of 2.405m which amounts to variation of between 5% up to 16%.

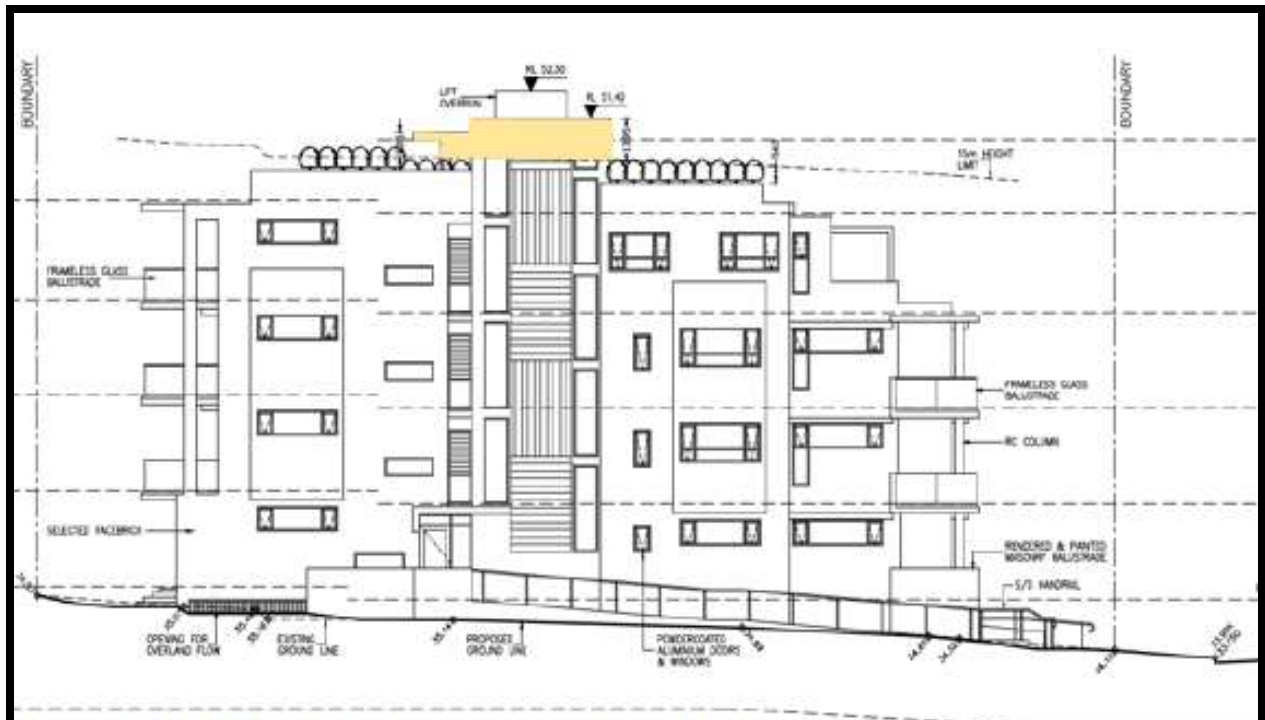


Figure 2: Extent of building height non-compliance along the north-western building elevation  
Source: Cornerstone Design

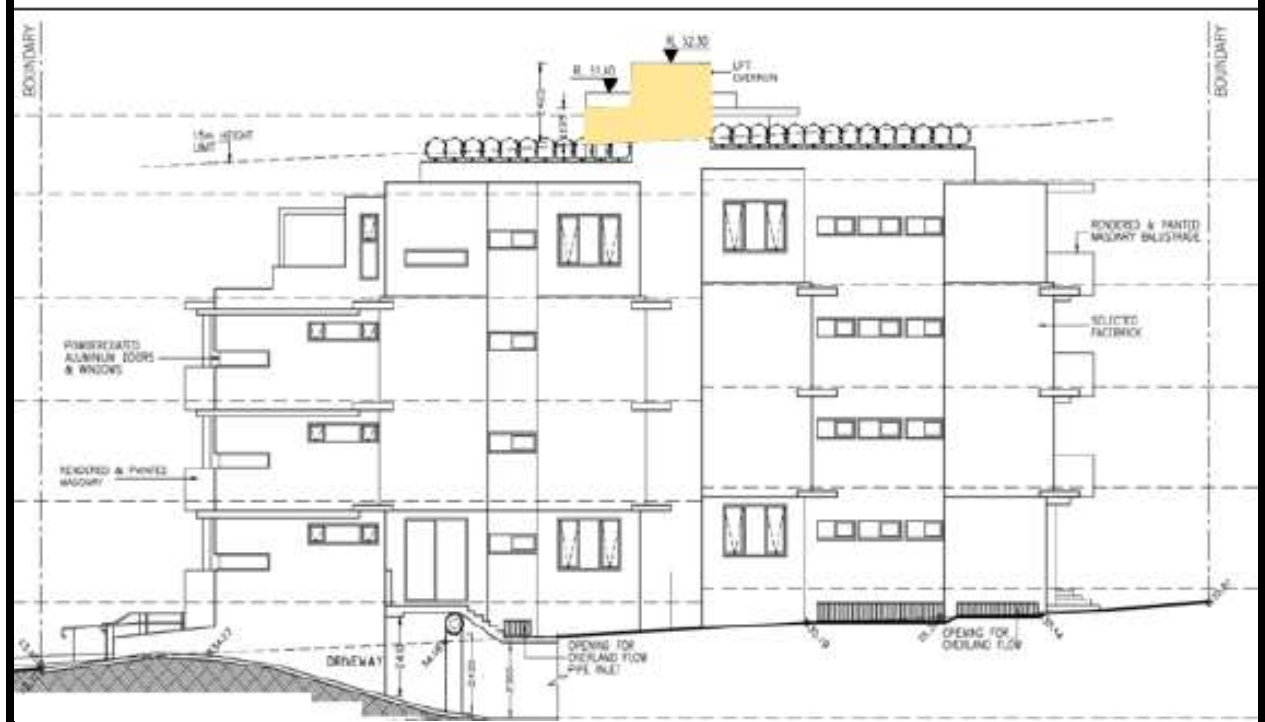
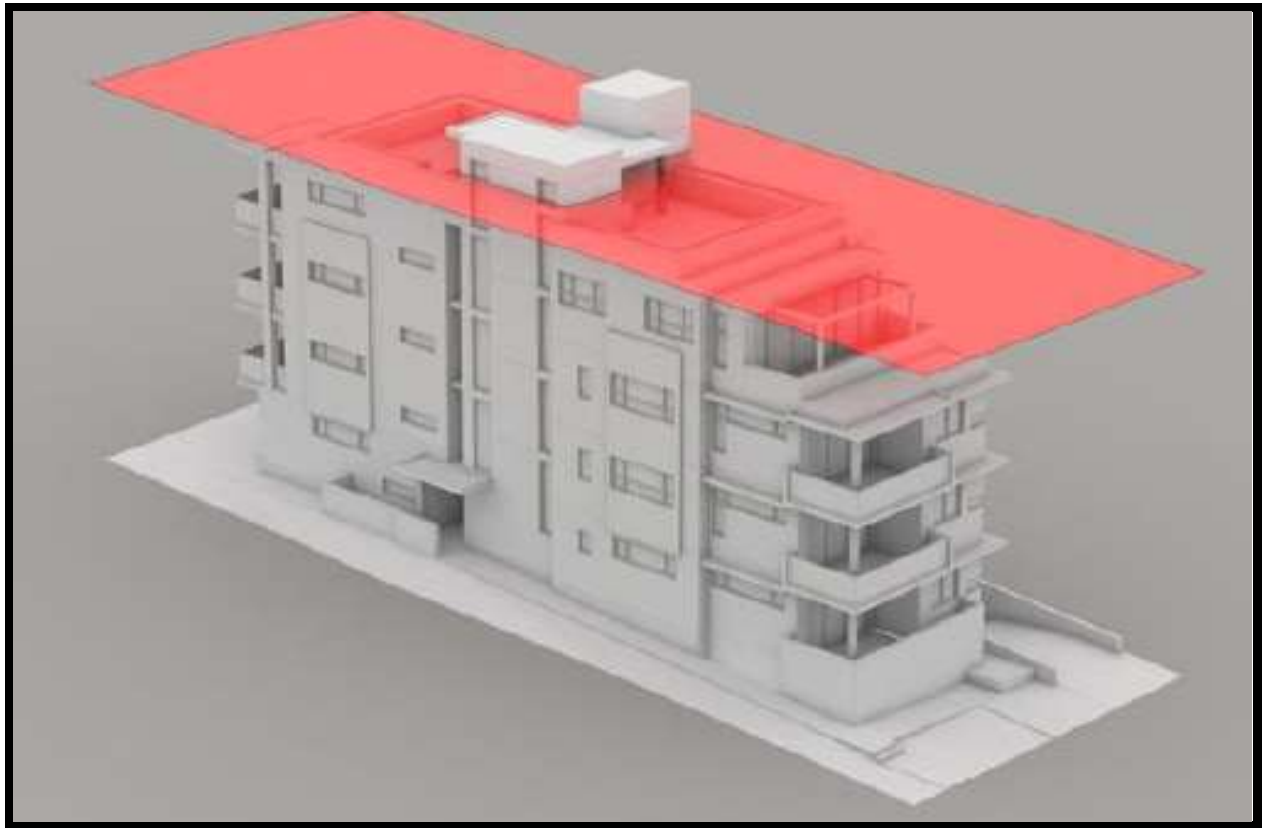


Figure 9: Elevations highlighting the extent of non-compliance with the height control (as amended)





**Figure 10:** 3D montage the extent of non-compliance with the height control (as amended).

***What is the underlying objective or purpose of the standard?***

121. The objectives of Clause 4.3 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.*

***Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?***

122. Applicant's comment: *"The objectives of height of building standard are as follows:*

- *To establish the maximum height for buildings*

123. *The underlying purpose of this objective is to ensure that any future development is designed in a manner whereby any resulting building height will appropriately respond to both the existing and future context in a controlled manner. The resulting height breach which is limited to the rooftop communal open space and the services required to access this space, has been appropriately integrated into the built form envelope reducing its visual prominence from both neighbouring properties and the public domain.*

*It is evident that the siting and scale of the height breach, noting the natural slope of the land, will enable a foreseeable integration between visual built forms with that of neighbouring building's serving as an affirmation of the objective, and not that of a building that abandons height controls.*

- *To minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas*

*Overshadowing*

124. *Comparative shadow diagrams prepared by Cornerstone Design accompany the architectural plan detail set. These diagrams demonstrate the extent of additional overshadowing anticipated to be cast by the height breach upon neighbouring development, specifically, the adjoining residential flat building to the south-east located at No.56 Noble Street. The expanse of additional shadow anticipated to be cast on this neighbouring development on the 22nd June is demonstrated in **Figure 5 below**. This elevational analysis affirms that the extent of additional shadowing that will be incurred by the height breach (**highlighted in red**), is negligible and limited to the solid building facades and or roof component. **Figures 6 and 7** below also demonstrate the extent of additional shadowing envisaged to result from the height breach on 22nd March/September and 22 December. This analysis demonstrates that the extent of height breach will not result in any unreasonable shadowing impact to the neighbouring adjoining building to the south-east at No. 56 Noble Street across the day on the aforementioned dates.*

#### *Visual Impact*

125. *The visual impact of the non-compliant height elements are not significant because:*
- The breaching height elements are suitably integrated into the overall design of the building and are of a form and materiality that do not create any unwarranted visual impact;*
  - The rooftop building elements servicing the communal open space area that exceed the height standard, have been designed in a manner where they do not unreasonably contribute to the scale or intensity of development when viewed by the casual observer.*
126. *Having regard to the above, the elements in breach of the height will be imperceptible when compared to a height compliant building on this site.*

#### *Privacy*

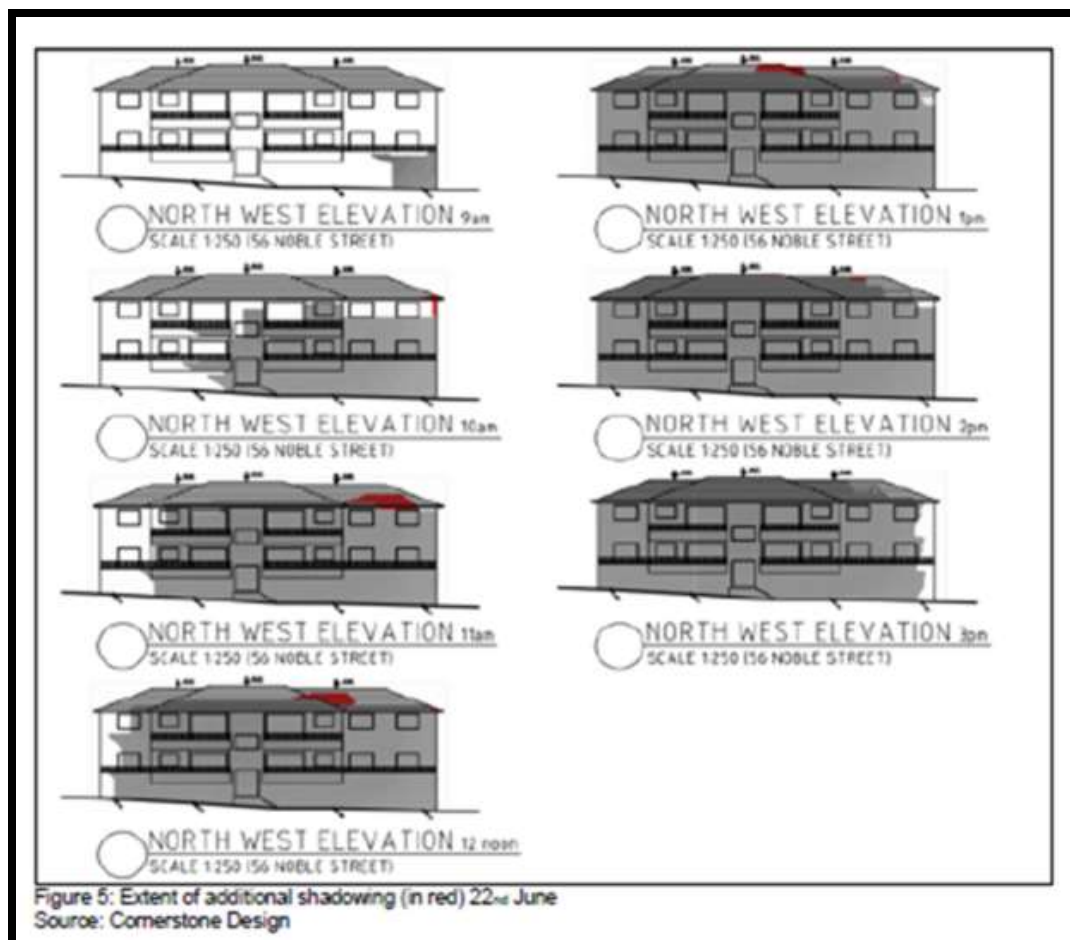
127. *In terms of privacy, the variation to the height standard is well resolved. The trafficable component of the COS area is located below the height line while planter boxes are proposed along the accessible perimeters of the space further mitigating the ability for any direct overlooking into neighbouring properties. These design measures will further suppress the ability for privacy impacts to be incurred by neighbouring properties.*
- To provide an appropriate scale and intensity of development through the height controls*
128. *The proposed development complies with the allowable FSR made available to the land and therefore, there is no identifiable nexus between the height variation and the extent of density afforded to the land.*
129. *Further to the above, the breaching height elements are suitably integrated into the overall design of the building and are of a form and materiality that do not create any unwarranted visual impact. The areas that exceed the height standard are inconsequential when viewed from the public domain and do not contribute to the scale and density of the building in terms of its visual perception to contributing bulk. Where the rooftop building elements servicing the communal open space area exceed the height standard, they have been designed in a manner where they do not present as areas that add to the scale or intensity of the development. Overall, the building height breach continues to enable the provision of an appropriate building scale and intensity on the land, and therefore, the proposal aligns with this objective despite the height variation.”*

130. Assessment Officer's comment: The objectives of the control aim to regulate the overall height and scale of buildings to ensure they are sympathetic with the surrounds compliment the form of neighbouring buildings and reduce amenity impacts such as the visual dominance and effect of the variation, overshadowing and any potential for overlooking.
131. In this case, the exceedance with the height control is not considered to be acceptable even for the proposed ancillary structures as the scale and form of the development is inconsistent with adjoining developments. Objective (a) of the control establishes the maximum height for buildings with emphasis placed on "maximum". This is the highest and tallest the building can go and in some circumstances a building may not be able to reach this height if there will be impacts generated from the proposed height. The five storey scale of the building is inconsistent with the scale of adjoining buildings all achieving lower heights. For example No.50-52 Noble Street is a three storey RFB achieving a maximum height of RL48.57 to the highest point. This building has a traditional double pitched roof form and therefore the highest point is recessed. The parapet of the roof is at RL45.63 (underside of the eave as taken from the updated Survey plan prepared by W.Buxton) which is a more prominent point when viewing the building from the street. No.56 Noble Street steps down and has a maximum height of RL43.80 and RL45.01 and this building also has a traditional pitched roof form so the highest point is a recessive element. Its parapet sits at RL41.90. Given that these adjoining sites are unlikely to be redeveloped any time in the immediate future and have largely reached their redevelopment potential, the subject site that sits in between these buildings needs to respect the existing building heights and scale. The proposed height of the building will protrude well above both these adjoining properties having a maximum RL52.30 to the top of the lift overrun along the southern side and RL51.40 to the top of the staircase along the northern side. Both these elements will be visible when viewed from the street. The proposed parapet sits at around RL48.30 which is substantially higher than both adjoining parapets to 50-52 and 56 Noble Street. The scale is also considered to be inconsistent as 50-52 Noble is a three storey RFB situated above an elevated ground floor parking level whilst 56 Noble Street is a two storey RFB situated above a raised ground floor parking area. This is characteristic of developments in the street. The proposed scale is a four storey RFB with additional structures on the rooftop that are visible elements. The form and scale is not characteristic of the nature of development and the additional rooftop features in this case add to the clutter and scale.
132. The site is an isolated one with a number of environmental constraints, flood prone, burdened by a stormwater easement, non-compliance with separation distances and car parking including a sub-standard lot size, which all suggest that an infill development on this site is unlikely to be able to fulfil its maximum potential. A smaller scaled building is a potential option.
133. In terms of meeting objective (b) of the control, the elements on the roof are not centralised and since they protrude above the adjoining properties will be visually dominating elements in the skyline especially the bulk and form of the lift overrun which exceeds the height up to 2.4m. In terms of achieving an appropriate scale and intensity of the development this is largely formed by the existing character of neighbouring developments. If these have been redeveloped then an established form is captured which in this case has occurred and therefore ques from the adjoining properties need to be considered. Relative heights assist with guiding future direction for development. Simply satisfying the numerical control may not be the best outcome for a site. In this case the exceedance in the height creates visual elements that add to the bulk and scale



of the development which are not in keeping with the established form and character of adjoining buildings and the streetscape. It is recommended by way of a series of deferred commencement conditions to reduce the scale and form of the building which will bring it into compliance with the overall height, reduce the overall density and will improve the layout and functionality of the development. By achieving the deferred commencement conditions Unit 3.02 would be removed and replaced with a rooftop area of communal space and there will be no structures that will exceed the overall height habitable or otherwise. The scale especially when viewed from the rear will be substantially improved and the visual impact of the overall built form also improved.

134. The Applicant provides some elevational shadow diagrams showing the impact of the height variation on shadowing impacts. Overshadowing diagrams are provided below with the additional shadowing shown in red by the variation. Although the Applicant claims the impacts from the non-compliance is “negligible” the objective requires shadowing and associated impacts to be “minimised” and it is not believed that this has occurred. If the staircase and lift are centralised impacts may be minimised but their location and siting on the edge of the building makes them more visible and some additional shadowing will occur.



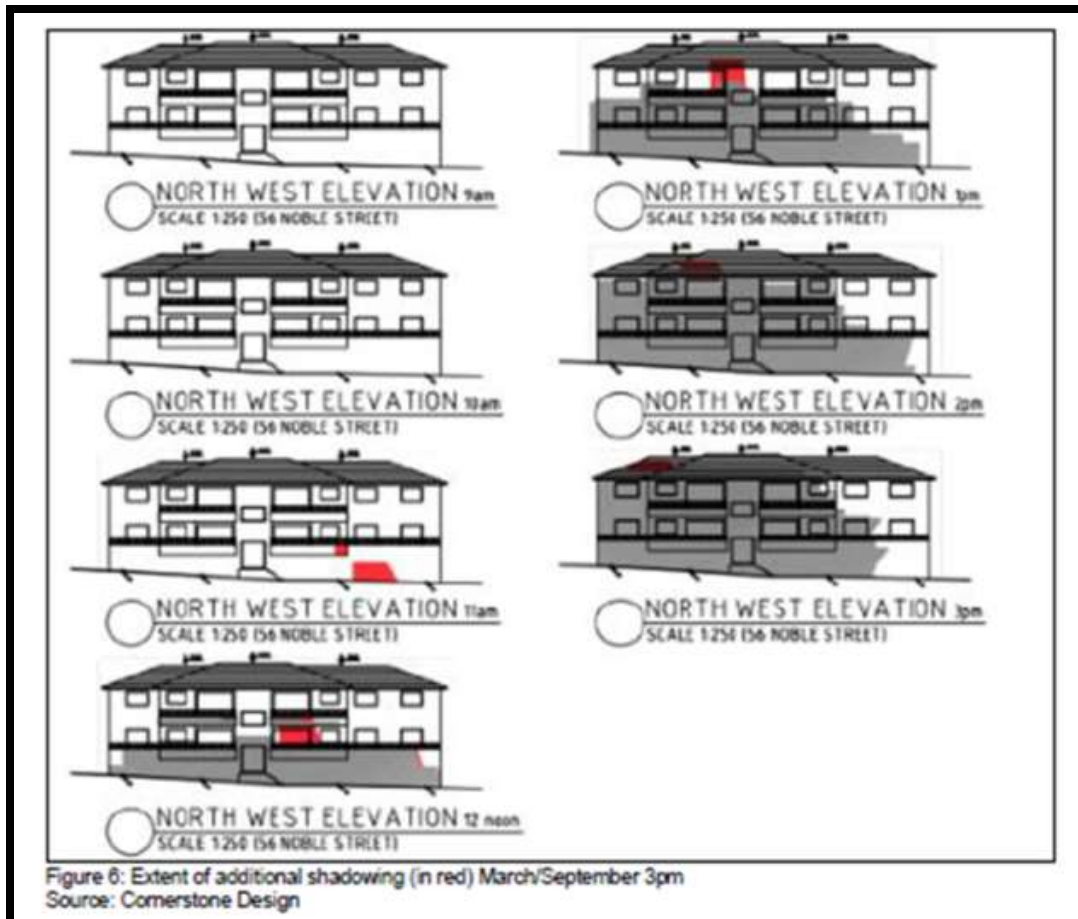


Figure 11: Proposed shadow impacts (courtesy BMA Urban)

***Is compliance with the development standard consistent with the aims of the policy and in particular does compliance with the development standard tend to hinder the obtainment of the objects specified in s5(a)(i) and (ii) of the EP&A Act?***

135. The non-compliance must not “*hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act.*”
136. Section 5 of the Environmental Planning and Assessment Act 1979 (as amended) provides:

*The objects of this Act are...*

(a) to encourage

- i. the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, town and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- ii. the promotion and co-ordination of the orderly and economic use and development of land;

137. Assessment Officers comment: The proposed non-compliance with height would not largely obstruct the attainment of the objects nominated in section 5(a)(i) & (ii) of the Environmental Planning and Assessment Act 1979 (“the Act”). The proposal represents an infill development in the form of an RFB that is generally anticipated within the streetscape and locality. However the proposed scale, height and density is considered to be inappropriate and unacceptable. There is no reason in this case that strict compliance with Clause 4.3 of the KLEP will not promote the orderly or economic development of the land, nor would hinder the redevelopment of the site as a RFB.

138. The proposed variation will not contravene these Objects of the Act. The variation to the numeric control is largely a result of the development not being able to comply with other planning and design controls. For example the ADG provision for communal open space Objective 3B clearly prefers ground floor areas of communal space as opposed to areas on the rooftop. In this case the narrow and tight nature of the site restricts the provision of communal open space on the ground floor or a large degree of it and therefore the design forces this element up to the roof where it then fails to comply with the height as access to it exceeds the height control. In its current form the development is considered to be too dense and non-compliant with a number of planning controls resulting in adverse amenity impacts to neighbouring developments and the streetscape. This is not to say that a smaller scaled RFB will be a more reasonable and acceptable response to this smaller site.
139. To enforce strict compliance with this control would not compromise on the economic and social potential of the subject property as an RFB with seven apartments can still be achieved on this site. Strict compliance is therefore considered important in these circumstances of the case and given the site constraints. Compliance with the control will still achieve the aims and objectives of section 5(a)(i) and (ii) of the Act.
140. It is believed that the proposed development in a modified form (as recommended in this report) would satisfy the objective behind the Council's height control by creating a more sensitively designed and compliant development. The strict compliance with clause 4.3(2) of the Plan would not hinder the attainment of the objects listed in section 5(a)(i) and (ii) of the Act.
141. Applicants comment: The Applicant has provided in a tabular form an assessment of the proposal against Section 5 of the EP and A Act (as amended). This is provided as an extract below at Figure 12.

Object	Comment
(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,	This object is not relevant to this development
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.
(c) to promote the orderly and economic use and development of land,	<p>The proposed development will promote the orderly and economic use of the land by way of providing a land use intensity consistent with that envisaged by Council.</p> <p>This is most notably reflected in a number of recent planning decisions on similar lands which for the purpose of determining the orderly use of land, provide identifiable site characteristics to that of the subject site.</p>
(d) to promote the delivery and maintenance of affordable housing,	This object is not relevant to this development.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	This object is not relevant to this development
(g) to promote good design and amenity of the built environment,	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity compatible with both the established and emerging development and housing typology.

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to this development
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development has been publicly notified in accordance with Council's DCP requirements.

**Figure 12:** Extract from Clause 4.6 Statement prepared by BMA Urban Planning

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

142. Applicant's comments: "Clause 4.6(3)(b) of the KLEP 2012, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:
143. "That there are sufficient environmental planning grounds to justify contravening the development standard". The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard.
144. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118). In this instance, the relevant aspect of the development is the extent of variation to the building height standard which ranges from 5.3% (top of roof shelter over the COS) and 16% (lift overrun) being the maximum. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned R3- Medium Density Residential Zone. The environmental planning grounds justification for the variation is as follows:
- The habitable floor areas of the building are located within the 15m height limit. In this regard, there is no tangible nexus between the height non-compliance and overall land use intensity of the land. The non-compliance primarily relates to the roof level of the building and the ancillary structures used to service this area being the top of roof shelter over COS and part of the COS entry foyer and lift overrun;
  - The lift overrun, entry foyer, fire stair and WC ancillary to the COS provide a reasonable level of amenity and access to the rooftop common open space. The rooftop space facilitates the orderly and economic use of the land with the provision of accessible communal open space with good solar access;
  - The roof shelter over the entry foyer and separate shade structure provided over the communal open space provide both shading and weather protection enabling the ongoing enjoyment of the area all year round;
  - The height variation predominately occurs as a result of the need to provide accessible and usable access to the rooftop communal area, noting that the remainder of the building remains under the height control;



- *The areas of non-compliance will not intensify the extent of impacts to neighbouring properties in terms of privacy or overshadowing; and*
- *The development's characteristics ensure that there is no potential for this development to have a jarring effect in the streetscape, given the appropriately sited massing arrangement proposed as part of the development, and the evolving area context".*

145. Assessment Officers comment: In justifying the variation on environmental grounds the Applicant alludes to the importance of the structures (exceeding the height control) and their introduction and relationship to the overall amenity and functionality of the development. There is no question that these additional, ancillary structures improve and provide added benefits to the functioning of the building in the form of access to the roof terrace.
146. These structures add value to the utilisation of the development and its roof space however they do not comply with the height objectives which seek to "minimise" visual impact and overshadowing and this cannot be said of the structures especially as they will protrude above the immediately adjoining RFB's. There is no minimisation of impacts which is sought by the objectives of the clause and until these elements are designed in a way that they are well integrated into the building envelope, centralised and recessed this objective can not be satisfied by the proposal in its current form.

***The proposal is in the public interest as it is consistent with the objectives of the standard and the zone objectives (Clause 4.6(4)(a)(ii))***

147. The recent Court decision Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of Clause 4.6 requests. This advice further confirms that the Clause (4.6) does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.
148. As also held in Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [39], Preston CJ confirmed (at[25]) that the test in 4.6 (4)(a)(i) *does not* require the consent authority to *directly* form the opinion of satisfaction regarding the matters specified. Rather, it needs to do so only *indirectly* in forming its opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated.

By contrast, the test in cl4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause; namely that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

149. The objectives of the R3 Medium Density Residential zone pursuant to KLEP 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 the residents.*

150. Applicant's comment: *"The proposal provides for eight (8) new dwellings in a residential flat building format in a well serviced location located in proximity to a variety of public transport options, expanses of public open space and services facilities. The siting, arrangement, built form and architectural language of the development is consistent with that likely to be encountered in a medium density residential setting and is proportionate with that observed within the evolving context."*
151. *The dwelling mix being 5 x 2 bedroom and 3 x 3 bedroom apartments is considered to be broad enough in that will cater for a variety of households within the local area. Moreover, the proposed development includes larger three (3) bedroom dwelling options that have been lacking in approved and current developments within the local and wider areas.*
152. *The proposal does not offer the provision of other land uses on the land apart from eight (8) new dwellings in a residential flat building arrangement. Notwithstanding, access to services are located within proximity to the site both within the Allawah local centre and Hurstville CBD."*
153. Assessment Officer's comment: The general nature of the height variation does not go against the objectives of the zone. It is agreed that the development (in an amended form) will satisfy the housing needs of the community within the existing medium density precinct. The development provides a mix of 2 bedroom and 3 bedroom apartments which will satisfy demand for this form of development in the area.
154. The site is accessible and well located and although does not provide any other land uses that provide facilities or services to meet the day to day needs of residents in the area it is very well located and serviced by the small Allawah Town Centre that is within walking distance from the site.
155. As such the proposal is considered to be in the public interest given that it satisfies the objectives of the R3 zone.

***Contravention of the standard does not give rise to any matter of significance for State or Regional Environmental Planning (Clause 4.6(5)(a))***

156. There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard in this case.

***There is no public benefit of maintaining the standard (Clause 4.6(5)(b))***

157. There is a big public benefit in maintaining strict compliance with the development standard in this unique case given that allowing for the variation would establish an undesirable precedent in the area which is not in the public interest. Currently there are no known developments in the street that exceed the statutory height control and this would be the first. Allowing for the variation where it is not warranted and creates a poor urban design and planning outcome is not considered to be in the public interest.
158. Given the site constraints and the number of non-compliances it is imperative that in this case the development satisfies the height control and in turn creates a more compliant and sympathetic form of development in the immediate streetscape. Despite the development satisfying the zone objectives it fails to satisfy the objectives of the development standard.

***Any other matters to be taken into consideration by the Secretary Clause 4.6(5)(c):***

159. The Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation) on 21 February 2018 which delegated concurrence on behalf of the Secretary to the consent authority. Based on this notice, the Secretary's concurrence can be assumed in this case.
160. After careful consideration of the Clause 4.6 request it is considered that the non-compliance in this case is not considered to be acceptable and the request is not considered to be well founded and the variation will not satisfy the objectives of the development standard namely *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas* as the proposal areas of exceedance do not "minimise" visual impacts and the dominance of the structures and elements that encroach above the height control are visually dominating. In this case the proposal fails to satisfy the provisions of Clause 4.6 of the KLEP; the variation can not be supported.

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

161. In relation to this development site the zoning is proposed to change from R3 Medium Density Residential to R4 High Density Residential. The height and floor space ratio remain unchanged. The minimum lot size for subdivision is currently 850sqm pursuant to Clause 4.1 of the KLEP 2012 whilst it is proposed to become a minimum of 1,000sqm pursuant to the draft plan if subdivision is requested. The draft plans intended changes do not alter the permissibility of the development nor alter the assessment in any significant manner.
162. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
163. 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)**

164. The proposal needs to address and satisfy the provisions of Part B – General Controls and Part C2 –Medium Density controls as part of the KDCP. These provisions are addressed in more detail below.

**Table 6: Compliance with KDCP provisions**

<b>Part B General Controls</b>			
<b>Control</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>B1 Heritage Items and Heritage Conservation Areas</b>	Ensure development protects and enhances the environmental and cultural heritage of Kogarah	The site is not a heritage item or located within a Conservation Area.	Yes
		The closest item is the Allawah Hotel which is located within the small Town Centre of Allawah.	



		The site is some distance from this property and will not affect the visual catchment or the significance of this item.	
<b>B2 – Tree Preservation and Greenweb</b>	<p>Development approval is required to ringbark, remove, cut down or destroy any tree that has a height greater than 3.5m or branch spread exceeding 3m in diameter.</p> <p>This locality is within the habitat reinforcement corridor area of the Green Web. In this regard, the provisions of Part B2 Section 2 apply.</p>	<p>There are no significant trees existing on site that are proposed to be removed.</p> <p>The site is not located within a Green Web habitat.</p>	Yes
<b>B3 – Developments near busy roads and rail corridors</b>	Acoustic assessments for noise sensitive developments as defined in clause 102 of the Infrastructure SEPP may be required if located in the vicinity of busy, arterial roads.	Noble Street is not a classified arterial road or main road so this provision is not applicable to this development,	N/A
<b>B4 – Parking and Traffic</b>	<p>2 bedroom unit = 1.5 spaces/unit</p> <p>3 bedroom unit = 2 spaces/unit</p> <p>1 visitor space/5 units or part thereof, and</p> <p>1 designated car wash bay which may also be a visitor space.</p>	<p><b>Required</b></p> <p>Residential 5 x 2 bedroom apartments = 7.5 spaces</p> <p>3 x 3 bedroom apartments = 6 spaces</p> <p>8/5 visitor spaces = 1.6 spaces</p> <p><b>Total = 16 spaces required (14 resident and 2 visitor)</b></p> <p><b>Provided = 12 spaces for the residential component</b></p>	<p>No</p> <p>The site is located within an accessible area and therefore compliance with the ADG is required. The proposal is short by one space when assessed against the RMS</p>

	<p>A minimum of 1% of the total number of car parking spaces within the development are to be designated “accessible” spaces for people with mobility impairments.</p> <p>Bicycle parking 1 space per 3 dwellings plus 1 space per 10 for visitors</p> <p>Internal car park layouts, space dimensions, ramp grades, access driveways, internal circulation aisles and service vehicle areas shall be designed in accordance with the requirements set out in AS 2890.1 (2004) and AS 2890.2 (2002) for off street parking and commercial vehicles.</p>	<p>One (1) accessible space is required which is catered for and provided in the basement.</p> <p>8/3 bicycle spaces = 3 spaces for residents. A minimum of 3 spaces are provided in the basement</p> <p>The parking layout and arrangement is unsatisfactory and requires redesign. Deferred commencement conditions are imposed to improve the layout, manoeuvrability and functionality of the basement.</p>	<p>provisions.</p> <p>If the density is reduced as proposed by the reduction of one x 2 bedroom unit (3.02) a total of 12 residential parking spaces would be required (2 less).</p>
<b>B5 – Waste Management</b>	Submit a Waste Management Plan (WMP).	The application was accompanied by a Waste Management Plan. It is recommended that the garbage storage area be relocated to the space that occupies car parking space No.11 and the existing waste room become a formal pedestrian access space to enter the lift which is a much safer arrangement and would remove the need for the bollard along the western side and increase the driveway access point along this side of the basement.	Yes
<b>B6 – Water Management</b>	Detention storage is to be provided that is	The subject site is located within a flood prone area.	Yes subject to

	<p>equal to or greater than the specified Site Storage Requirements (SSR).</p> <p>Rainwater tank installed to meet BASIX water conservation requirements will be given credit for SSR purpose.</p> <p>Drainage easements servicing stormwater pipes and/or overland runoff from catchments upstream of the development site are to be managed according with Council's guidelines.</p> <p>Discharge of stormwater runoff from a development site is to be undertaken in accordance with the design practice note, Site Drainage and Flood Management regarding direct discharge to kerb, discharge to a Council owned stormwater conduit, discharge to natural areas, discharge through private property and discharge within the development site.</p>	<p>Council's Drainage Engineer – Design, Survey and Drainage has suggested that the ground floor level may need to be further raised by up to 300mm. The amended Flood Study as prepared by the Applicant was still not considered to address Council's issues and it is requested via deferred commencement conditions that the issue of flooding and treatment and arrangement for the overland flow be resolved prior to consent being issued.</p> <p>No rainwater tank is proposed on the landscape plans. This will be addressed via a condition.</p> <p>The general stormwater and drainage arrangement is considered satisfactory and standard conditions are imposed in relation to this issue.</p> <p>Council's Engineers initially wanted the stormwater easement to be enlarged from 1.8m to 2.4m but given the narrow nature of the site this would sterilise the site and would not permit redevelopment. It was agreed that the installation of a new pipe will upgrade the state of the infrastructure and the size/width of the easement can remain as it exists.</p>	<p>satisfaction with the deferred commencement conditions.</p>
<b>B7 – Environmental Management</b>	<p>Orient the building, as far as possible, so</p>	<p>The application is accompanied by a BASIX</p>	<p>Yes</p>

	<p>that the longest side is on the east-west axis.</p> <p>The main facades of a building should be orientated towards the north, preferably within a range of 30 degrees east and 20 degrees west of true north.</p> <p>Maximise the number of windows on the northern face of the building.</p> <p>The use of dark coloured roofing is discouraged unless solar cells are integrated into the roof.</p> <p>Minimise glazing on the southern and western sides of the building.</p>	<p>certificate which confirms compliance with the minimum requirements of the SEPP (thermal comfort and water usage).</p> <p>The rear apartments have been orientated and designed to face north.</p> <p>The development has sought to increase the amount and type of openings along the northern side of the building. However, given that the balconies and a small section of the building wall fail to comply with the 6m rear setback (separation distance) too many windows and the large amount of glazing is discouraged in this case. A condition will require the implementation of privacy screens to balconies at the rear to minimise the potential for overlooking.</p>	
<b>Part C2 – Medium Density Controls</b>			
<b>Residential Flat Buildings</b>			
<b>Minimum site requirements</b>	<p>(1) Minimum lot size is 1,000sqm.</p> <p>(2) Minimum lot width is 24m.</p>	<p>The site area proposed is 613sqm as previously discussed this is an “isolated” site and amalgamation is not considered to be physically possible in this case given that the adjoining developments have been redeveloped.</p> <p>Site width is 15.24m, this site is isolated.</p>	<p>No but considered satisfactory in this case</p> <p>No but amalgamation is unfeasible</p>

	<p>(3) For sites which allow development greater than four storeys, greater site width may be necessary to accommodate the greater setbacks required by the Apartment Design Guide.</p> <p>Providing the minimum site area and width does not guarantee that the applicable maximum FSR will be achieved as the necessary merit assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 may identify impacts to adjoining development which limit the extent of development able to be achieved on a particular site.</p> <p>Lot widths less than the minimum are less capable of achieving the applicable floor space ratio (FSR) under clause 4.4 Floor space ratio of Kogarah LEP 2012 when the requirements of the Apartment Design Guide are also incorporated into the design.</p>	<p>The site is four storey's in scale with a roof top communal area. The proposal exceeds the height and in this case it is considered unacceptable and a variation to the height even for ancillary structures will not be permitted and the amended scheme the</p> <p>GFA is below the requirements. However, as noted in the DCP given the site constraints and narrow nature of the site, its full development potential in this case can not be realised as there are significant non-compliances especially with separation distances.</p> <p>In this case a reduction in the density of the development should achieve a compliant height and will create a 3 storey scale at the rear which is more appropriate and consistent with the character and scale of adjoining developments. The removal of the roof top terrace associated landscaping, balustrades and ancillary structures will reduce the clutter on the roof and bring the building down in height to be compliant.</p>	<p>No but reduction in the density, bulk and scale seeks to resolve and improve the appearance and presentation of the building when viewed from the street and from the rear.</p>
<b>Site isolation and amalgamation</b>	The development of an isolated site is not to detract from the character of the streetscape and is to achieve a satisfactory	The site is isolated, however the design and scale of the building in its amended form remains unacceptable as it is considered to be	No but reducing the density should achieve a more

	level of amenity including solar access, visual and acoustic privacy.	an overdevelopment of the site.	acceptable built form outcome.
	<p><b>Front setbacks:</b></p> <p>(i) Street setback: up to a building height of four storeys, a minimum setback of 5m is to be provided.</p> <p>(ii) Above four storeys, the front setback of the upper building levels is to be increased to a minimum of 8m to the street, except in the circumstances addressed in (v) below. The minimum 8m setback also applies to balconies, terraces and balustrades and must be accommodated behind the setback.</p> <p><b>Side boundary setbacks:</b></p> <p>(i) Minimum setback of 6m from side boundary between ground floor level and up to four storeys. Upper level setbacks are 9m above four storeys.</p>	<p>7.8m to the furthest building wall and 6m to the closest part of the wall (adjoining the kitchen) which technically complies with the 5m setback. The front setback of the building is consistent with the adjoining established front building setbacks.</p> <p>The ground floor and upper level balconies are setback 5m.</p> <p>The amended design sets back the balcony of Unit 3.01 by 8m. This recessed element will read better in the street and will create a more appropriate scale.</p> <p>No both side setbacks vary from 3m up to 3.5m. The issue of separation distances has been addressed earlier in this report as part of the assessment against the provisions of the ADG. The site is only 15.24m in width and</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p>

	<p><b>Rear boundary setbacks:</b></p> <p>(i) Minimum 6m setback from a rear boundary between ground floor level and up to four storeys.</p> <p>(ii) Upper level setbacks are 9m above four storeys.</p>	<p>achieving the setbacks is virtually impossible and it is considered that reducing the scale and density will create a more sensitive development.</p> <p>The balconies at the rear are setback 3.9m which is well below the intended 6m. It is requested by way of a condition that privacy screens be included and the provision of trees within a deep soil zone at the rear will assist in screening the lower levels of the development. The removal of Unit 3.02 will reduce the scale at the rear creating a 3 storey form and will further reduce the likelihood of overlooking.</p>	<p>No</p>
	<p>(i) Ground floor private open space (POS) may encroach up to 2m into the 5m front setback leaving a minimum 3m of landscaped area to the street.</p> <p>(ii) Ground floor private open space may encroach up to 3m into the side and rear setbacks leaving a minimum 3m of landscaped buffer.</p>	<p>The POS on the ground floor does not encroach on the 5m front setback.</p> <p>The private raised ground floor courtyards will be conditioned to include a 1m wide planter box which will restrict access to the edge of the courtyards and provide some natural landscape screening.</p>	<p>Yes</p>
<b>Basement setbacks</b>	<p>Basements are to be set back a minimum of 3m from the site boundaries</p> <p>The basement setback areas are to be deep soil areas as defined in the</p>	<p>Due to the narrow nature of the site, the basement has been designed to take up the whole site (excluding the stormwater drainage easement). This does not allow for any substantial deep soil</p>	<p>No but considered acceptable subject to the reduction in the number of apartments and the</p>

	<p>Apartment Design Guide.</p> <p>Driveways and driveway crossings are to be located a minimum of 1.5m from a side boundary. Basements fronting the primary street address are not to project more than 500mm above ground level (existing) at the street setback alignment.</p>	<p>zones at the rear or southern side as required by the DCP.</p> <p>The reduction in the number of apartments and reconfiguration of the basement will allow for a 2.7m wide deep soil zone at the rear which will assist with complying with the DCP.</p> <p>There is a small section of the basement which protrudes above the minimum 500mm, this is largely a result of the flood prone nature of the site and need to raise the ground floor level in order to cater for an overflow pipe to be integrated into the design. This is small balcony off the bedroom to G.01. The space is small includes a planter box along the boundary and given it is off a secondary space it is unlikely to generate adverse amenity impacts.</p>	<p>removal of a car space to provide a deep soil landscaped buffer strip at the rear.</p>
<b>Façade treatments</b>	<p>Building facades must be clearly articulated and employ high quality materials and finishes that enhance and complement the streetscape character.</p> <p>Human scale at street level must be created through the use of scale, rhythm, materiality and/or landscaping.</p>	<p>The front façade has been redesigned and the materiality of the built form altered to reflect the character of adjoining development.</p> <p>The upper level of the building Unit 3.01 has been recessed to be 8m which recesses this element and reduces the visual bulk and scale of the development from the street. The base of the building at the ground floor level to the street is still solid and</p>	<p>Yes</p> <p>Yes through redesign</p>



	<p>Essential services such as substations and fire hydrants must be integrated into the design of the façade.</p> <p>Development must not rely solely on the use of two-dimensional colour and materials to create visual interest. Modulation and articulation in the building form must be explored.</p>	<p>dominating. A condition will require this element to be softened and the balcony railing reflect the upper level balcony design.</p> <p>The location of essential services haven't been included on the plans. This will be included as a Deferred Commencement condition for more details to be provided.</p> <p>The design includes a variety of finishes and colours that intend to be reflective of the character of the brown face brickwork RFB's in the street.</p>	<p>No addressed through conditions</p> <p>Satisfactory</p>
<b>Landscaping and Private Open space</b>	<p>Deep soil is to be provided within the setbacks areas as required in figures 3a, 3b, 4 and 5 and consistent with Part 3E of the NSW State Government's Apartment Design Guide. To be included as deep soil as required by Part 3E of the Apartment Design Guide, the deep soil area must have a minimum dimension of 3.0m on any axis. Planting in the deep soil areas is to include trees that achieve a minimum mature height of 6.0m.</p> <p>The visual appearance of developments is to be softened through the incorporation into the</p>	<p>Conditions require a minimum 2.7m deep soil zone at the rear. The ADG does not exclude services such as the stormwater easement which does not permit any built structures over it but does permit some landscape features. These can only be small scaled plants so the intention of the deep soil area along the northern boundary cannot be utilised to its full potential given it is an easement.</p> <p>The intention of the design is to include larger plant species and trees at the front of the site and there is some capacity along the northern corner of the site which is in accordance with the</p>	<p>No but changes considered acceptable.</p> <p>Conditions will require plants at the rear to reach a mature height of 6m.</p> <p>The development cannot achieve the 3m wide requirement due to the location of the basement.</p>

	design planter boxes and similar design treatments that will support landscaping in a minimum soil depth of 800mm	DCP.	
<b>Common open space</b>	Common open space to a minimum area of 25% of the site area and with a minimum dimension of 5m is to be provided.  A maximum of 50% of common open space may be provided above ground level where:  a location at ground level is not possible due to site constraints;	The proposal complies with the minimum numerical requirements for common open space. However it is requested that the arrangement be amended and the rear area at the ground floor become common open space and only part of the roof (the space in lieu of Unit 3.02) is to become common open space. This provides two diverse spaces for occupants and visitors.	Yes
	the proposed elevated common open space will provide a similar level of amenity as a common open space at ground level of the site; and  there will be no significant impact on surrounding properties in respect to the loss of privacy.	Ground floor open space is preferable for most people as it often has larger trees and vegetation to create a more attractive natural environment.	Yes conditions will improve the use and functionality of communal open space around the development .
	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.	The areas of common open space are north facing and well orientated to maximise solar access.  Compliant due to the northern orientation.	Yes
	A minimum of 50% of the total area of common open space provided at ground level is to comprise unpaved landscaped area	The proposed communal open space on the ground floor (via the deferred commencement) will contribute to over 50% of communal open	Yes

	<p>The useable and trafficable area of any rooftop common open space is to be set back a minimum of 2.5m from the edge of the roof of the floor immediately below with landscape planters provided to prevent close and direct views into adjoining properties.</p> <p>Ancillary structures should be centralised</p>	<p>space at ground floor level.</p> <p>This can be conditioned to achieve compliance and minimise impacts to residents at the rear.</p> <p>No – lifts and staircase structures which are the most dominating are located on the edges of the building and will be visible. The relocation of the roof top at a lower level will create compliance with the height control and reduce the height, scale and bulk of the building and all its associated structures on the roof which add to the clutter and bulk/scale.</p>	<p>Yes via a condition</p> <p>No but removing Unit 3.02 will reduce the height of the building at the rear and all the rooftop structures.</p>
<b>Solar Access</b>	Shadow diagrams are to be submitted for the winter solstice (21 June) to demonstrate impacts at a minimum of 9am, midday and 3pm.	Shadow diagrams have been submitted and these are considered to be compliant as all immediately adjoining properties will receive a minimum of 3 hours of solar access during midwinter.	Yes
<b>Car Parking</b>	Car parking is to be provided as a maximum in accordance with the requirements in Part B4 unless Objective 3J-1 of the Apartment Design Guide applies. Car access areas and garages doors do not	<p>The ADG takes precedence as the development is located within an accessible location.</p> <p>The development still fails to comply with the ADG car parking provisions and creates a</p>	No but numerical non-compliance rectified by conditions and reconfiguration of spaces and the

	<p>visually dominate either the development or the streetscape.</p> <p>Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1-(latest edition).</p> <p>All residential flat developments must provide a car wash bay which:</p> <p>is roofed and bunded to exclude rainwater.</p> <p>has clearly visible signs which indicate that no degreasing or mechanical work is to be undertaken in the car wash bay.</p> <p>has a fixed basket trap for floor waste.</p> <p>includes a 1000 litre general purpose pit.</p>	<p>shortfall of 1 space. This is not considered acceptable given that the RMS parking provisions allow for a large degree of flexibility and allow for reduced parking due to a site's accessible location.</p> <p>No car wash bay is provided and no visitor spaces are provided as the tight nature and width of the site doesn't allow for these to be catered for unless some apartments won't receive a dedicated car space and this is considered more important. Given the small scale nature of the development (max of 7 dwellings via conditions) it is unlikely this development will generate a large amount of visitors and it is considered more beneficial to provide occupants of the apartments with designated parking as opposed to irregular visitors.</p>	<p>basement layout.</p> <p>No but considered acceptable in this case and the small scale nature of the development .</p>
<b>Views and view sharing</b>	Development shall provide for the reasonable sharing of views.	There will be no view loss generated by the proposal	Yes
<b>Adaptable and accessible housing</b>	The minimum number of adaptable units designed in accordance with AS4299 - 1995 Adaptable Housing must be incorporated into the developments	The development as conditioned will comprise of 1 adaptable unit (unit 1.01) in accordance with the DCP requirement.	Yes

	<p>included in this section:</p> <p>5-10 units – 1 adaptable unit</p> <p>Notwithstanding compliance with the above, the development is to be designed to meet the needs of people with disabilities, including:</p> <p>The provision for a continuous accessible path of travel from all public roads and public spaces as well as unimpeded internal access;</p> <p>The provision in design for ease of use and comfort through appropriate gradients, rest areas, circulation space and user friendly entrances;</p> <p>Safety design measures, including contrasting colour for points of danger and slip resistant surfaces;</p> <p>Legible design features such as signs and indicators to assist the location of handrails and guardrails.</p>	<p>The development has been designed to generally comply and cater for people with a disability, however standard conditions will be imposed if consent is issued to ensure the completed building satisfies Australian Standards and Building Regulations in respect to disabled access in and around the building.</p>	<p>Yes subject to conditions</p>
	<p>Car parking for the commercial /retail component of a development is to be provided in accordance with the requirements in Part B4.</p>	<p>Addressed earlier in this report and compliant by the reduction of a unit and the reconfiguration of the basement to improve access and functionality and reduce conflicts between pedestrians and motorists.</p>	<p>Yes</p>

	Internal car park layouts, space dimensions, ramp grades, access driveways, internal circulation aisles and service vehicle areas shall be designed in accordance with the requirements set out in the relevant Australian Standards.	Design of the car parking and access arrangement will be compliant with AS2890.	Yes
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LPP046-20

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

165. 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.
166. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current 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).
167. The Policy focuses on streamlining controls relating to Dual occupancy, Multi-Dwelling and Residential Flat Building development to provide for consistency when assessing these developments throughout the amalgamated LGA. Table 7 below outlines the compliance of the proposal against the interim provisions.

**Table 7: Compliance with the Interim Policy Compliance Table**

<b>Interim Policy – Georges River Development Control Plan 2020</b>		
<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>Site Frontage</b>		
Kogarah - 20m min frontage width for an RFB development	15.24m	No – this is an isolated site and amalgamation is highly unlikely or physically possible in this case.
<b>Building Height</b>		
The relevant LEP controls relating to building height will prevail over Development Control Plan controls that relate to height in storeys	The proposal has been assessed against the Kogarah Local Environmental Plan 2012 height standard. The proposal does not currently comply.	No – See Kogarah Local Environmental Plan 2012 Compliance Table and the assessment against Clause 4.6 of the LEP.

<b>Private Open Space</b>		
The ADG requirements prevail over the Development Control Plan controls for private open space	The proposal is fully compliant with the ADG's private open space requirements. Refer to "4E – Private Open Space and Balconies" within the ADG Compliance Table above.	Yes
<b>Communal Open Space</b>		
The ADG requirements prevail over the Development Control Plan controls for COS under the Interim Policy	Yes subject to some changes to the design and location of communal open space.	Yes
<b>Parking</b>		
<p>In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment):</p> <ul style="list-style-type: none"> <li>• If located in a strategic centre (<i>i.e.</i> 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 Development Control Plan applies.</li> </ul>	<p>The site is located within 800m of the Allawah Train station and is located within 400m of a commercial zone.</p> <p>The proposed car parking numbers proposed do not comply with the provisions of the ADG.</p> <p>The proposal has also been assessed against the Kogarah Development Control Plan controls and is substantially short by four (4) spaces. Despite the non-compliance with the KDCP, the ADG (RMS) parking provisions prevail. The proposal is short by 1 car space and it is recommended that Unit 3.02 be removed (deleted) and reductions of spaces occur in the basement and the area redesigned to be more functional and accessible.</p>	No – deferred commencement conditions seek to improve the car parking layout and arrangement.
<b>Solar Access</b>		
The ADG requirements prevail over the Development Control Plan controls for solar access under the Development Control Plan	The proposal complies with the ADG solar access provisions.	Yes

168. The proposal, although not an RFB generally complies with the purpose and intentions of the Interim Policy.

## DEVELOPER CONTRIBUTIONS

169. The proposed development would require payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979. If the development is approved a condition outlining the required contributions will need to be imposed.
170. A total S7.11 contribution of **\$58,796.15** is applicable and has been based on two (2) credits for the two (2) existing lots/dwellings on site and the generation based on 5 x 2 bedroom dwellings and 2 x 3 bedroom dwelling proposed. A standard condition is imposed if consent is to be issued.

## IMPACTS

### ***Natural Environment***

171. The proposed development is unlikely to result in adverse impacts to the natural environment as the proposal does not seek the removal of any existing significant trees or vegetation. The proposed development (as amended by the deferred commencement design changes) should reduce the scale and form of the development and improve the visual qualities of the streetscape and landscaping setting by the provision of a deep soil zone at the rear as it will introduce more planting and greenery across the Site.

### ***Built Environment***

172. Subject to the removal of one unit and a redistribution of communal open space, provision of deep soil landscaping at the rear, reconfiguration of the basement level, the proposed bulk and scale of the building will be more consistent with the form and scale and character of existing developments in the streetscape and immediately adjoining the site. In the current amended form the building is considered to be out of scale with surrounding developments and is considered to be an overdevelopment this site given the many areas of non-compliance. The design changes through the deferred commencement conditions will achieve a better built form for this particularly constrained and isolated site.

### ***Social Impact***

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

### ***Economic Impact***

174. The proposed development will have no adverse economic impact. There will be generally a positive economic impact as a result of the construction of the development and its success could encourage further investment in redevelopment projects in the locality.

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

175. The site is zoned R3 – Medium Density Residential. The proposal is a permissible form of development in this zone. The site is suitable for this form of development subject to a reduction in the density of the development and improved site planning.

## SUBMISSIONS AND THE PUBLIC INTEREST

176. The application was neighbour notified in accordance with Kogarah DCP 2013 for a period of 14 days. Four (4) submissions were received. The issues raised by the submissions is outlined below.



Building exceeds the height limit

177. Comment: The proposal exceeds the 15m height limit and as discussed earlier in this report the Clause 4.6 Statement justifying the extend and degree of variation is not well founded as it is considered that the exceedance fails to satisfy the objectives of the development standard which includes “minimising” visual and amenity impacts.
178. The proposed variation in the height control is considered excessive and unreasonable given that the development fails to comply with a series of planning controls. In addition, the small, isolated nature of the site means that in this particular case the full redevelopment potential of the site cannot be achieved. The proposed deferred commencement conditions which include deleting Unit 3.02 will achieve a building which will be compliant with the height control which is considered to be a more acceptable compromise and reasonable planning and improved urban design outcome.

Unreasonable overshadowing and solar access loss

179. Comment: The submitters are concerned with the large amount of overshadowing cast by the building. The building is tall however immediately adjoining properties will receive a minimum of 3 hours of solar access throughout the day in midwinter which is considered to be within the required limits. However the reduction in the height and scale of the building will reduce overshadowing which is an improvement for neighbouring properties and the public domain.

The parking assessment is inaccurate

180. Comment: A Parking Assessment accompanies the application and was prepared by Motion Traffic Engineers and dated June 2019. The assessment estimates that the traffic and parking generated by the proposal is satisfactory given that the eight (8) apartments generate 4 traffic movements in the am peak and 4 traffic movements in the pm peak. The existing two semi-detached dwellings generate 2 traffic movements in the am peak and two trips in the pm peak each day. So the development will only generate an overall increase in 2 trips. This is considered satisfactory and should not create undue traffic and access issues onto the road network. The assessment also evaluates the level of service at key intersections and the developments impact on these. Given that the immediate environment is of a medium density residential nature, the traffic created by the development is acceptable and will not create any undue pressure on the existing levels of service for these intersections.
181. Neighbours are concerned that traffic counts and assessments were conducted in off-peak times not during peak times which does not adequately reflect the reality of the situation in the worst parts of the day. Traffic generation counts are generalised and made on a daily basis so the assessment is accurate in this respect. The assessment has not taken into account the on-street car parking situation as it suggests the development is compliant with the numerical car parking controls stipulated as part of the ADG. The assessment in fact is not correct with the estimated numerical compliance with car parking as the RMS parking provisions require 13 spaces to be accommodated within the site and only 12 are accounted for. This is due to the need for 2 visitor spaces (1.6 required rounded up to 2 spaces) not the one (1) that is provided. So in this case the assessment is incorrect.
182. Motion Traffic has also prepared a separate Carpark and driveway certification dated June 2019 which states that based on a standard B85 vehicle, 4.9m long the basement car park layout and arrangement is satisfactory and complies with the Australian Standards. Despite the swept paths showing compliance there seems to be inaccuracies with these as cars and movements seem to traverse the bollard which is located adjacent to the lift. The Applicant was notified of the issues with manoeuvrability and the swept path diagrams and was preparing some further documentation to explain this situation or rectify the issues raised. This has not been provided to Council to date. Council still raises serious concerns with the layout

and car parking and accessibility arrangements within the basement which are considered to be poor and the deferred commencement conditions aim to improve accessibility and reduce potential conflicts between cars and pedestrians within the basement.

Visitor parking needs to be provided

183. Comment: It is accepted that the locality consists of a variety of traditional 3-4 storey walk up RFB's and the nature of this medium density environment generates a greater demand on on-street car parking. There are a number of problems with the basement car park. It is tight and constrained by the stormwater easement which reduces the utilisation of the full width of the site. This in turn stifles and limits the potential of the basement. By reducing the density of the development the number of car parking spaces is reduced. The basement could cater for the parking demand generated by reducing the density; however this would be at the expense of providing some meaningful and substantial deep soil landscaping area at the rear. In this case it is considered more important to ensure that the functionality, manoeuvrability and efficiency of the basement is maximised at the expense of the visitor spaces. It is considered more important to ensure there is more parking for occupants as they will place more pressure on on-street parking than visitors who largely come for short terms and visits. The small scale nature of the development only generates the need for 2 spaces.

184. The submitters raise concerns regarding the requirement to provide 16 spaces whilst only twelve are provided. This is the non-compliance with the KDCP whilst in actual fact the development creates a shortage of only 1 car space as the parking generation is determined by the ADG provisions given the site is within an accessible location. The proposed removal of a unit will improve the access and manoeuvrability arrangements within the basement.

Unsympathetic design and out of character with the existing character of development.

185. Comment: It is agreed that the thin, tall form of development is out of character with the established built form of the traditional 2-4 storey walk-up RFB's with pitched roof forms and ground floor (at grade) parking. The streetscape includes some very distinct and characteristic features of the established built form including a generally consistent scale of building, brick finishes, pitched and tiled roofs, good separation between buildings and ample setbacks which reduce amenity and visual impacts, deep soil landscaped areas with large canopy trees at the front.

186. The proposed 4 storey scale, modern design which includes a fifth level is inconsistent with the character, design and nature of adjoining properties. The development will tower above its neighbours (which have generally reached their maximum development potential) and will not sit comfortably in the streetscape. It is recommended through the deferred commencement conditions to reduce the scale, form and density of the development to achieve a more sympathetic design response for this Site. The removal of the roof top terrace area and its placement at the rear at the lower level will step the building down at the rear reducing and minimising overlooking and overshadowing. This is considered a more acceptable design response for this site.

The proposed five (5) storey scale is inappropriate in the street

187. Comment: This has been addressed above. The scale of the building is intended to be reduced by the relocation of the rooftop communal area of open space.

Noise impacts from the roof terrace

188. Comment: The roof terrace has been relocated and reduced in size to be located in lieu of Unit 3.02. This would be a smaller space and an additional area of communal open space is to be provided at the rear. This would reduce noise and acoustic impacts generated from this space however a Plan of Management will have to be prepared and implemented (included as

a condition) which restricts the hours to utilise this area and also restricts the number of people using this space to 15 at any one time. This will assist in minimising noise impacts.

Fails to comply with the minimum allotment width for RFB's

189. Comment: The site area of 613.2sqm falls short of the minimum 1,000sqm allotment size required for RFB's in the R3 zone. Despite the degree of non-compliance this is a unique site which is clearly isolated and can not be consolidated or amalgamated with adjoining sites which comprise of strata titled RFB's. Given this situation, the redevelopment of the site for an RFB is considered to be satisfactory and will be a better outcome than leaving the two semi-detached dwellings or creating a small-scale residential development. The locality comprises predominantly of RFB's and this is one of the few remaining under-developed sites in the immediate area. Leaving the houses as they are or redeveloping for another smaller scaled residential use will not satisfy the desired future character for development in the locality and within this zone. Redevelopment for an RFB is considered to be permissible however the scale and density needs to be reduced to achieve a more appropriate development outcome.
190. The non-compliance is supported by a Clause 4.6 Statement which in this case the variation is considered to be reasonable and compliance unnecessary and physically impossible. The Clause 4.6 Statement in this case is considered to be acceptable and well founded.

### **Council Referrals**

#### Development Engineer

191. The application was referred to Council's Development Engineers for comments. No objection was raised in respect to the design of the proposed stormwater/drainage plan subject to the imposition of standard conditions.

#### Flood Engineer

192. Council's Flood Engineer specialising in flooding reviewed the amended plans and is still not satisfied with the flood planning treatment proposed as it still does not address Council's concerns. The following comments were raised;
193. *"With regard to the '54 & 54A Noble Street Allawah – Flood Assessment' dated 28 June 2019 the report will need to be amended to address the following:*
- a) The report is to verify that the proposed ground floor level's and design is appropriate with respect to its protection from flooding.*
  - b) The report is to verify that the driveway ramp design with a crest at RL 34.25m AHD will protect the basement from flooding up to the 100 year ARI event. The report is to also specify the minimum levels or height above finished ground for any ventilation openings to the basement.*
194. *With respect to this the amended report should take in consideration the flood depths Kogarah Bay Creek FRMS&P TUFLOW model on the driveway at No. 50-52 Noble Street that are significantly larger than those indicated along the north western setback and rear yard of the proposed developing site. It is also noted that there is a masonry wall separating the two properties that affect the overland flow through the site.*
195. *The report or an accompanying plan reference in the report will also need to include design spot ground levels for all areas within the site including adjacent to the building, along boundaries under the open structure at the rear of the building, on paths and landscaped areas, and at the top and bottom ends of the proposed 300mm overland flow diversion pipe.*

196. *Further detail will need to be provided of the proposed details and levels of the proposed 300mm overflow pipe, including at the inlet and outlet point and through the basement showing that it can be installed without affecting the adjacent parking space(s)."*
197. These issues can be dealt with and addressed as Deferred Commencement conditions.

#### Traffic Engineer

198. The application was referred to Council's Traffic Engineer for comment. Council's Traffic Engineer raised a series of concerns with the car parking and access arrangements. The comments made (below) in relation to the number of car parking spaces is not considered to be accurate given that these are based on the KDCP parking provisions. The development is assessed against the ADG parking provisions given the site's accessibility. In this case the development is currently short by one space. The following traffic comments were made:
199. *"The development fails to provide enough car parking spaces to conform with Council's DCP requirement.*  
*4 x 2 bedrooms require 4x1.5 car parking spaces which will yield 6 spaces*  
*4 x 3 bedrooms require 4 x 2 car parking spaces which will yield 8 spaces*  
*Visitor space per 5 apartments which yields 1.6 spaces round up to 2 spaces.*  
*The total car parking requirements is 16 spaces. The proposed development is only accommodating for 12 car parking spaces. That's a short of 4 spaces.*
200. *The aisle width opposite spaces 1-6 needs to be 6.1 metres wide as a minimum in accordance with AS/NZ 2890.1:2004 single sided aisles section 2.4.2 - This is currently not the case.*
201. *There is a bollard right outside the lift that constricts manoeuvrability.*
202. *There is no opportunity for cars entering the site to give way to cars exiting the site at the entrance to the development.*
203. *The first 6m into the car park from the boundary must have a max of 5% gradient.*
204. *The overall manoeuvrability of the car park is quite tight."*
205. In terms of numeric compliance, the development needs to satisfy the RMS requirements for parking in accordance with the ADG as it is an "accessible" site. The development is short of one (1) off street car parking space when assessed against the RMS provisions however reducing the density of the development will ensure compliance with the car parking requirements.
206. In terms of the access to and from the site and manoeuvrability within the basement it is considered very tight, inefficient and unsafe. Manoeuvrability is very difficult within the basement and it is recommended that the design and layout of the basement be amended to create a more functional layout. This would require the removal of the visitor/car wash bay which is considered satisfactory given the small scaled nature of the development catering for seven (7) apartments (as amended by the deferred commencement conditions). It is also more important in this case to provide some additional deep soil landscaped area at the rear to soften the building and create a green buffer.

207. Many of the issues regarding accessibility have been improved by the recommended redesign. Conditions will also be imposed to ensure the layout and design is compliant with Australian Standards. The design will be required to be certified by a fully Qualified Traffic Engineer that will ensure compliance is achieved.

#### Environmental Health Officer

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

#### **External Referrals**

##### Ausgrid

209. The application was referred to Ausgrid for comment. A formal response has been received from Ausgrid which does not raise any objection to the proposal.

##### Sydney Airports

210. The application was referred to Sydney Airports in accordance with Clause 6.5 of the KLEP. To date no response has been received from this authority and given that 21 days has passed concurrence can be assumed. It is also unlikely that Sydney Airports will object to the proposed development as most of the building is below the 15.24m height limit that requires specific concurrence.

#### **CONCLUSION**

211. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is considered to be an overdevelopment of the site in its current form and the height and scale of the development is unreasonable given the character and nature of immediately adjoining properties and the context of the site. The proposed reduction in the density of the proposal and redesign of the communal area of open space and basement car park through a series of deferred commencement conditions is intended to create a more sympathetic development and one which complies with the height limit and will sit more comfortably within the established built form and will be more in keeping with existing RFB's in the streetscape.
212. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policies, Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013. The proposal satisfies the key planning controls in the Local Environmental Plan apart from exceeding the Height of Buildings provision (Clause 4.3) and the minimum allotment size for Residential Flat Buildings (Clause 4.1A). A Clause 4.6 Statement has been submitted for each of the breaches, justifying the variation in each case.
213. Following an assessment varying the minimum allotment size provision is considered acceptable given that the site cannot be consolidated or amalgamated with adjoining sites.
214. The variation to the height is not considered reasonable in this case as the development fails to satisfy the objectives of the development standard and will be out of scale with adjoining properties. The Clause 4.6 in this case is not considered to be well founded and is not supported.
215. The deferred commencement conditions will result in the development being lowered in height complying with the height standard of 15m. This is a more acceptable built form and planning outcome for this isolated site.

## DETERMINATION AND STATEMENT OF REASONS

### Statement of Reasons

216. The reasons for this recommendation are:

- Subject to a reduction in the overall density of the development by removing Unit 3.02, and the reconfiguration/relocation of the area of communal open space resulting in a reduction in the overall height the building will result in a more sympathetic addition to the street. The scale will be reduced so that it will be more in keeping with the overall heights of immediately adjoining buildings.
- The reduction of the density allows for a reduction in the number of car parking spaces allowing for a reconfiguration of the basement so that access is more workable and potential conflicts reduced.
- The deferred commencement conditions also require the basement to be setback from the rear boundary to provide an area of deep soil landscaping so that larger trees can be planted in this area to create an appropriate vegetation buffer to the development at the rear.
- Although the proposal fails to satisfy a number of planning controls in relation to height, minimum allotment size, separation distances and setbacks, car parking and the Kogarah Development Control Plan provisions for Residential Flat Building's this is an isolated site that is unlikely to be amalgamated or consolidated with the immediately adjoining sites. It is for this reason there is a reasonable expectation for the site to be redeveloped for medium density development otherwise it will be sterilised and underdeveloped.
- The development in a modified form aims to address some of the non-compliances and create a more sensitive, lower scaled and carefully designed development that will be more in keeping with adjoining developments and will be characteristic with development in the streetscape.

### Determination

217. THAT pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, grants deferred commencement development consent to Development Application DA2019/0314 for demolition, lot consolidation and construction of a four (4) storey residential flat building with basement car parking for a total of twelve (12) vehicles, landscaping and associated site works on Lot A and B in DP 381675 known as 54 and 54A Noble Street, Allawah, subject to the following conditions of consent:

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 Schedule A within thirty six (36) months from the Determination Date of this consent**. Upon confirmation in writing from Georges River Council that the Schedule 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:

## **SCHEDULE A – DEFERRED COMMENCEMENT CONDITIONS**

- A. **Deferred Commencement** - Pursuant to Section 4.16(3) of the [Environmental Planning and Assessment Act 1979](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>>, this consent will not

operate until such time as the following requirements are satisfied:

- (1) **Deletion of Unit 3.02** - A full detailed set of amended architectural plans shall be prepared to include the following design changes:
  - a) Unit 3.02 shall be deleted and replaced with a roof top area of open space.
  - b) The new rooftop garden in lieu of Unit 3.02 shall have a finished floor level of RL45.52 and shall be setback a minimum of 6m from the rear boundary.
  - c) The deletion of Unit 3.02 will remove the need for the current area of rooftop open space located on the fourth (4<sup>th</sup>) floor. The finished floor level of the non-trafficable roof level of the building shall be at RL48.30 and shall be a standard flat roof form with no direct access to the roof other than by an internal hatch from the foyer or from inside Unit 3.01 purely for maintenance.
  - d) A conservative overrun will be permitted for the staircase structure and lift structure; these elements must be located within the 15m height limit.
  - e) Photovoltaic panels shall be installed above Unit 3.01 to face north, be recessed and shall not to be visible from the street.
  - f) An open style pergola structure including BBQ and amenities including a WC can be included within the roof terrace but must be within the height limit.
- (2) **Basement redesign**
  - (a) Car space G.01 shall be deleted and the basement setback a minimum of 2.7m from the rear boundary.
  - (b) The tandem spaces for Unit 3.02 shall be dedicated to Unit G.01
  - (c) Car parking space 2.01 shall be enlarged to become an accessible space.
  - (d) The visitor/car wash bay shall become the garbage room and the waste room will become a formal open lobby area with the lift entry located along the south-eastern side.
  - (e) The bollard within the aisle and adjoining the lift shall be removed.
  - (f) A Qualified Traffic Engineer shall formally certify that the basement plan, all accessways, aisles, car parking spaces and the manoeuvring arrangement complies with Council's controls, Australian Standards for car parking and access and any other related regulations/standards.
- (3) **Landscape design changes** - A full detailed set of updated landscape plans shall be prepared to include the following design changes:
  - a) The deep soil area at the rear, resulting from the basement being setback from the rear boundary shall include a row of trees that will achieve a minimum height at maturity of 6m.
  - b) The area at the rear of the building, at the ground floor shall be converted and dedicated as an area of communal open space. It shall include soft landscaping in the form of grass and a paving area with some seating included.
  - c) A fence shall be constructed adjacent to the wall of Bedroom 1 of Unit G.02 and extend to the side boundary of the site to differentiate the communal space from the southern courtyard area. The fence may need to include a cut out at the bottom to cater for any flooding and not to obstruct any overland flow paths.
  - d) The new rooftop area of communal open space in lieu of Unit 3.02 shall include a 1m wide and a minimum 600mm depth planter box around its periphery and shall include a variety of plants and shrubs suitable in this location.
  - e) The area of the stormwater easement adjoining the fire stairs on the ground floor shall include a small path providing access to the communal open space at the rear.

- f) A large endemic canopy tree reaching a height at maturity of 10-12m shall be included within the front setback.
- g) The lodged landscaped plans propose the installation of *Syzygium australe* 'Resilience' that are listed in the table to grow to 4 metres over the easement. It will not be suitable to plant trees with Council's drainage easement. The landscape plan is to be amended to include details of the required root barrier to be installed to protect Council's pipe intrusion from the proposed revised planting details.

**(4) Other design changes**

- (a) A small Juliette style balcony shall be provided to the living room of Unit G.02 and access to the private ground floor courtyard shall be from the laundry and Bedroom 2.
- (b) The balustrade to the front ground floor balcony to Unit G.01 shall be redesigned so it is not solid but includes glazing and is designed to be consistent with the finishes of the upper level balconies.
- (c) The pergola above the balcony to Unit 3.01 shall be removed and a roof parapet can be extended by 1m to provide some additional cover, protection and complete the building.
- (d) Appropriate low scale sensor lights shall be installed along the main entry into the building.
- (e) A rainwater tank shall be installed at the rear of the building. It shall not be visible from the entry or the street.
- (f) The bottom pane of glass to any standard sized windows located along the north-west or south-eastern elevation will be constructed of obscure glazing.

**(5) Flood planning -** The issues relating to the management of flooding across the site have not been satisfied and the following information is required:

- (a) The Flood Assessment report dated 28 June 2019 will need to be amended to address the following:
  - i. The report is to verify that the proposed ground floor level's and design is appropriate with respect to its protection from flooding with an allowance for 500mm freeboard in the 100 year event.
  - ii. The report is to verify that the driveway ramp design with a crest at RL 34.25m AHD will protect the basement from flooding up to the 100 year ARI event. The report is to also specify the minimum levels or height above finished ground for any ventilation openings to the basement.

*In preparing this amended report it will need to take in consideration the flood depths as determined in the Kogarah Bay Creek FRMS&P TUFLOW model on the driveway at 50-52 Noble Street that are significantly larger than those indicated along the north western setback and rear yard of the proposed developing site. It is also noted that there is a masonry wall separating the two properties that will affect the overland flow through the site.*

*The report or an accompanying plan referenced in the report will need to include design spot ground levels for all areas within the site including adjacent to the building, along boundaries under the open structure at the rear of the building, on paths and landscaped areas, and at the top and bottom ends of the proposed 300mm overland flow diversion pipe.*



- (b) Further detail will need to be provided of the proposed details and levels of the proposed 300mm overflow pipe, including at the inlet and outlet point and through the basement showing that it can be installed without affecting the adjacent parking space(s).

**(6) Contamination certification**

- (a) The Environmental Consultants who have prepared the Detailed Site Investigation and RAP are to be fully Certified contamination land consultants. Confirmation is to be provided to Council that they are fully certified environmental practitioner and their certification number supplied to Council. If they are not the DSI and RAP will need to be reviewed and signed off by a fully certified contaminated land consultant.

Documentary evidence as requested or the above information must be submitted within 36 months of the granting of this deferred commencement consent. Commencement of the approval cannot commence until written approval of the submitted information has been given by Council.

Schedule A above being satisfied, a development consent be issued subject to the following conditions:

## **SCHEDULE B – GENERAL DEVELOPMENT CONDITIONS**

### **DEVELOPMENT DETAILS**

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

The following architectural plans prepared by <b>Cornerstone Design</b>			
<b>Description</b>	<b>Reference No.</b>	<b>Date</b>	<b>Revision</b>
Site analysis plan	DA 01	1/04/2020	Issue B
Basement plan and site/ground floor plan	DA 02	1/04/2020	Issue B
First floor plan and second floor plan	DA 03	1/04/2020	Issue B
Third floor plan and roof top plan	DA 04	1/04/2020	Issue B
Roof Plan	DA 05	1/04/2020	Issue B
Elevations	DA 06	1/04/2020	Issue B
Elevations	DA 07	1/04/2020	Issue B
Section and driveway profile	DA 08	1/04/2020	Issue B
Shadow diagrams 22 <sup>nd</sup> June	DA 09	1/04/2020	Issue B
Shadow diagrams 22 <sup>nd</sup> June	DA 10	1/04/2020	Issue B
Shadow diagrams March/September	DA 11	1/04/2020	Issue B
Shadow diagrams March/September	DA 12	1/04/2020	Issue B
Landscape Plans prepared by Zenith Design, Drawing No.s 19-3968 L01 and L02 dated 3 July 2019.			
Stormwater Plans prepared by John Romanous and Associates drawing no.s 2022-S1/3, S2/3 and S3/3 and dated 3 April 2020.			

### **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:

- 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. An amount will be determined when the application is lodged;
  - e) 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.
  - f) 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. **Road Opening Permit** - A Road Opening Permit must be obtained from Council for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.

## REQUIREMENTS OF CONCURRENCE, INTEGRATED AND OTHER GOVERNMENT AUTHORITIES

5. **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.
6. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site [www.sydneywater.com.au](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.

7. **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).

8. **Electricity Supply to Development** – The electricity supply to the development must be underground.
9. **Ausgrid - Clearances to electricity mains** - If any part of the proposed structure, within 5m of a street frontage, is higher than 3m above footway level, Ausgrid is to be consulted to determine if satisfactory clearances to any existing overhead High Voltage mains will be affected. If so, arrangements are to be made, at your cost, with Ausgrid for any necessary modification to the electrical network in question. For details visit [www.ausgrid.com.au](http://www.ausgrid.com.au) or call 131365.

## PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

10. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Zenith Landscape Designs, Ref No 19 – 3968 L01 and L02 and dated July 2019. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -
  - a) Councils Tree Management Policy, April 2019, states that trees removed from the subject site, must be replaced at a ratio of 2:1. Tree species selection shall be in accordance with Appendix 1 – Tree Planting (Tree Management Policy, April 2019)
  - b) For the removal of five (5) trees, an additional 10 trees shall be planted and species selection from *Hurstville DCP, Appendix 1, 5 Recommended species for Landscaping, Indigenous trees, all wards* and be able, be of minimum 45 litre pot/ bag size and be able to reach a height at maturity of nine (9) metres.
  - c) Only two (2) trees have been proposed upon the landscape plan. An additional eight (8) trees shall be planted throughout the southern and eastern lawn and garden areas.
  - d) All ten (10) trees proposed shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and be planted and maintained in accordance with Councils standard specification.
  - e) If the planted ten (10) 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.
  - f) A certificate of compliance for the planting of all ten (10) 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.
11. **Tree Removal & Replacement** – The following provisions must be satisfied;

### 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. 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
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<i>Lagerstroemia indica</i>	X1	Southern fence line
<i>Camellia japonica</i>	X3	Rear yards of both properties
<i>Metrosideros excelsa</i>	X1	Front yard of 54 Noble

### General Tree Removal Requirements

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

### Street Tree Removal / Replacement by Council –

- One (1) street tree of species must be provided in the road reserve fronting the site.
- 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.
- 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.
- 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 removal/ planting on public land	Amount
Administration and Planting Fee of street tree	\$452.00

- Trees removed - 5
- Trees to be planted on site - 10
- Council street tree to be paid for by applicant and planted by Council - 1

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).

- Reconstruction of Council's Stormwater System** - The full extent of Council's stormwater pipe through the site is to be reconstructed. The plan S2022-S1/1 Revision D dated 3 April 2020 by John Romanous & Associates Pty Ltd has been approved as a concept plan only. Detailed plans of these works must be approved through Council's Stormwater Drainage Application process prior to the issue of a Construction Certificate.
- 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](http://www.georgesriver.nsw.gov.au): and/or Section 68 Local Government Act 1993.
  - 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)
  - In the Application Form, quote the Development Consent No. and reference this condition number (e.g. Condition 10)

- 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 Stormwater applications.
- iv) 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.
- v) 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.

The Stormwater Drainage Application must be approved by Council prior to the issue of a Construction Certificate.

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

**14. Support for Easement Pipes**

- (a) All footings within 2.0 metres of the drainage easement shall be designed in such a manner that they are supported by foundations set at a minimum of 300mm below pipe invert levels or founded on sound rock.
  - (b) Alternatively, the footings of the building or any structure shall be designed not to affect the zone of influence taken from the invert of any pipe.
  - (c) The walls of any dwelling, pool or structure adjoining the easement shall be designed to withstand all forces should the easement be excavated to existing pipe invert levels.
  - (d) No building or other structure must be placed over the drainage easement or stormwater system or within the zone of influence taken from the invert of any pipe.
- Evidence from an appropriately qualified person that this design requirement has been met shall accompany the application for the Construction Certificate.

- 15. Work procedure and protection of Council's stormwater system** - A suitably qualified structural engineer is to provide certification including a works procedure statement for excavation and construction works. It is to be certified that the works will not cause additional loading or cause damage to the stormwater channels. The structural engineer is to also determine an exclusion zone adjacent to the stormwater channels where there is to be no stockpiling or machinery. A copy of the current Product and Public liability insurance of 20 million dollars of the principal contractor undertaking the building works is to be forwarded to Council.

- 16. 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) 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.
- (b) The PCA shall ensure that the approved drainage design levels are surveyed during construction by a registered surveyor.

- (c) The PCA shall ensure that a drainage engineer shall supervise the construction of the OSD stormwater system on site and certify his supervision in writing and state his satisfaction of the constructed site stormwater system is built as intended in this consent.
- (d) 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.

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

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (2005 or 2016) and Council's drainage guidelines within the Georges River Stormwater Management Policy.

18. **Mechanical Plant** – The proposed design and location of the mechanical ventilation system, plant and equipment will need to be provided to the Certifier. All plant and equipment shall be appropriately treated and sound proofed. It is recommended that prior to the Construction Certificate (CC) being issued a detailed acoustic assessment be conducted once the exact location of the equipment is confirmed.
19. **BCA Compliance** – The development shall comply with the provisions and regulations of the BCA and be implemented as part of the Construction Certificate and the Certifier shall ensure compliance is achieved.
20. **Remediation** – The recommendations of the Site Investigation and Remediation Action Plan report prepared by Canopy Enterprises and dated August 2020 shall be implemented during demolition, excavation and construction.

All remediation work must be carried out in accordance with: -

- The *State Environmental Planning Policy No 55--Remediation of Land* (SEPP 55); and
- Guidelines made or approved by the EPA include the National Environment Protection (Assessment of Site Contamination) Measure 1999 (April 2013) (ASC NEPM), Guidelines for consultants reporting on Contaminated Sites and Guidelines for the NSW Site Auditor

21. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1018717M\_02 and 21 April 2020 must be implemented on the plans lodged with the application for the Construction Certificate.
22. **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.
23. **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)

24. **Street trees** – One (1) new street tree shall be planted at the front of the site along Noble Street. The new tree shall be to Council's specifications.
25. **Dial before your dig** - The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" shall be forwarded to the Principal Certifying Authority (PCA) and provided to Council with the construction certificate plans and documents.
26. **Site Management Plan** - 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.

27. **Development Engineering – Alignment Levels** - An Application under Section 138 of the Roads Act 1993 shall be submitted to Council's Engineer for the issue of levels for the new kerb and gutter, footpath design and alignment levels for the full frontage of the site in Noble Street. These kerb and alignment levels shall be issued **prior to the issue of the Construction Certificate**.

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

28. **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.
29. **Health - Acoustic Certification - Rooftop Mechanical Equipment** - The Construction



Certificate plans must be accompanied by a certificate from a professional acoustic engineer certifying that noise from the operation of any roof top mechanical plant and equipment will not exceed the background noise level when measured at any boundary of the site. If sound attenuation is required, this must be detailed on the plans lodged with the Construction Certificate.

30. **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.
31. **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).

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

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

33. **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 for General Fees 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 15,24m frontage x \$1236.00 Noble Street frontage	\$18,836.64
Inspection Fee for refund of Damage Deposit (one inspection)	\$371.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Kogarah Section 94 Development Contributions Plan No.1 – Roads and Traffic Management - Residential	\$552.33
Kogarah Section 94 Development Contributions Plan No.5 – Open Space	\$55,827.97
Kogarah Section 94 Development Contributions Plan No.9 – Kogarah Libraries - Books	\$1,005.53
Kogarah Section 94 Contributions Plan No.9 – Kogarah Libraries - Building	\$1,410.32
<b>Total Development Contributions</b> (this excludes General Fees – damage deposit and inspections)	<b>\$58,796.15</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.

A Section 7.12 contribution has been levied on the subject development pursuant to the Georges River Council Section 94A Contributions Plan.

### Indexation

The above contributions will be adjusted after 1 May 2020, 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 development contribution that is required to be paid in accordance with this

condition of this consent must be paid before the issue of the first Occupation Certificate in respect of any building to which this consent relates, except as noted below in accordance with the Ministerial Direction issued 25 June 2020.

If no Construction Certificate in respect of the erection of any building to which the consent relates has been issued before or on 25 September 2022, the monetary contribution must be paid before the issue of the [first] Construction Certificate after that date for any such building.

#### 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).

34. **Damage Deposit - Major Works** In order to insure against damage to Council property the following is required:
  - i. 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: **\$18,836.64**
  - ii. 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: **\$371.00**.
35. **Use of Rooftop open space** - A Plan of Management (POM) for use of rooftop open space must be submitted to the satisfaction of the Principal Certifying Authority with a copy provided to Council prior to the issuing of the Construction Certificate. The POM must outline the following:
  - (i) The hours of use of the rooftop deck which shall be restricted from 8am until 10pm;
  - (ii) The maximum number of users at any one time shall be specified (for this development a maximum of 15 persons at any one time is recommended) given the size of the space;
  - (iii) Include provisions to maximise the safety (fire safety and general safety) for users of this area.
  - (iv) no amplified music is permitted;
  - (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.
36. **Parking and Layout** - The design of the development shall comply with the following requirements with details demonstrating this submitted to the satisfaction of the Principal Certifying Authority prior to the release of a Construction Certificate;
  - The layout of the proposed car parking and loading areas associated with the subject development (including, driveways, grades, turn paths, sight distance

requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) shall be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2002 for heavy vehicle usage.

- Bicycle parking associated with the subject development shall be in accordance with AS 2890.3 (Bicycle Parking Facilities).
- Driveway access is to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.
- Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distance requirements stipulated in the *Australian Standards AS2890.1*.
- All vehicles shall enter and exit the premises in a forward direction.

37. **Construction materials** - Any proposed new cladding 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 shall be to the satisfaction of the Principal Certifier.
38. **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. Details of the proposed Mechanical Ventilation system shall be provided to the Certifier and shall be sensitively located to minimise visual appearance of these ancillary structures and in a way to minimise any noise or visual impacts from adjoining properties.
39. **Geotechnical Reports** - The applicant must submit a Geotechnical Report, prepared by a suitably qualified Geotechnical Engineer who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted to the satisfaction of the Principal Certifying Authority **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 Certifying Authority and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
  - (c) On-site guidance by a vibration specialist during the early part of excavation.
  - (d) Rock breaking techniques. Rock excavation is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures.
  - (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.
40. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical

Engineer's report.

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

41. **Slip Resistance** – All pedestrian surfaces in areas such as foyers, public corridors, common areas and stairs as well as floor surfaces in the wet rooms in any residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2004 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.
42. **Stormwater Drainage Application** - A Stormwater Drainage Application separate to a development consent will need to be lodged and approved by Council which will include:
- Detailed plans of the reconstruction works.
  - Requirements including but not limited to lodgement of a damage deposit Council's system (amount TBC), application and inspection fees, dilapidation reports of adjoining road/footway, private property, Road Occupancy license (if required).

The location of Council's new stormwater system and the Footing Schedule will be required to be shown on a Detailed Structural Plan by a suitably qualified engineer and must be submitted and approved by Council. Footings, piers and any other load bearing structures in the vicinity of the Stormwater pipe are to be located so that all loads are transferred below the zone of influence of the Stormwater pipe or to bed rock. All load bearing structures must be located outside of any drainage easement and certification to this effect shall be provided. Please refer to Council's Water Management Policy for standard "Zone of Influence" Diagrams.

Prior to commencement of construction works on site the following are required to be submitted to Council:

- i. A statement from a suitably qualified Structural Engineer. The statement is to include:
    - a) a work procedure statement for the construction of the development to allow for protection of Council's Stormwater assets.
    - b) specifying of the required setback distance (exclusion zone) for heavy vehicles or machinery from Council's Stormwater assets.
  - ii. A copy of the current Product and Public liability insurance of 20 million dollars of the principal contractor undertaking the works is to be forwarded to Council.
43. **Requirements after the reconstruction works** would include a dilapidation report including CCTV footage (after all works completed on the site) and the lodgement of a works-as-executed plan of the works.
44. **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).

45. **Development Engineering - 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) A longitudinal driveway sections are to be prepared by a qualified civil/traffic engineer and be submitted for to and approved by the Certifying Authority. These profiles are to be at 1:100 scale along both edges of the proposed driveway, starting from the centreline of the frontage street carriageway to the proposed garage/parking level. The civil/traffic engineer shall provide specific written certification on the plans that:
    - i. Vehicular access can be obtained using grades of 25% (1 in 4) maximum and
    - ii. All changes in grade (transitions) comply with Australian Standard 2890.1 (2004) – “Off-street car parking” to prevent the scraping of the underside of the vehicles.
46. **Construction Traffic Management Plan (CTMP)** - A Construction Traffic Management Plan is to be prepared 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 CTMP shall be sent to Georges River Council email to [mail@georgesriver.nsw.gov.au](mailto:mail@georgesriver.nsw.gov.au) Attention: Traffic Section - Construction Traffic Management Plan for DA2018/0366.

47. **Waste Management Plan** – an updated/revised Waste Management Plan shall be prepared and lodged to the satisfaction of the Certifier prior to the issuing of the Construction Certificate and shall outlined waste management and removal during construction and ongoing occupation of the building.
48. **Waste Storage** - The plans shall include details of the waste storage area as below to the satisfaction of the Principal Certifying Authority prior to the release of a Construction Certificate. 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 1.0metre wide and kept clear and unobstructed at all times. All garbage rooms must have double doors to allow the access of bins from the basement to kerbside.

Residential Waste

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

*Putrescible Waste*

(a) A minimum of 4 x 240L garbage bins.

*Recycling Waste*

(b) A minimum of 4 x 240L recycling bins.

*Green Waste*

(c) A minimum of 1 x 240 litre mobile bins.

49. **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 to the satisfaction of the Principal Certifying Authority.

50. **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.
51. **Access for Persons with a Disability and Adaptable Housing** – Access for persons with disabilities must be provided direct to the site, including to the foyer, carpark and to sanitary facilities 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 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 Certifying Authority prior to issue of the Construction Certificate.

52. **Stormwater Systems with Basement** - The underground basement car park must pump to and all other stormwater must drain by gravity to:

- i. the drainage system within the site via a silt trap pit.

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

53. **Protection of basement from inundation of stormwater waters** - 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 demonstrating compliance with this requirement to the satisfaction of the Principal Certifying Authority.

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

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

- (a) peak flow rates from the site are to be restricted to a permissible site discharge (PSD) equivalent to the discharge when assuming the site contained a single dwelling, garage, lawn and garden.
- (b) at Annual Recurrence Intervals of 2 years and 100 years.
- (c) The proposed arrangement of the OSD system shall discharge by gravity as per the approved plan.
- (d) Provide sufficient ventilation and access maintenance to the OSD tank outside the building envelope.
- (e) Provide a silt trap in a boundary pit prior to the discharge connection point into Council's drainage system.
- (f) The design and structural adequacy of the OSD tank system shall be certified by a practicing drainage engineer to the satisfaction of the PCA.

55. **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 and the section of driveway that cannot drain from the site by gravity 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 to the satisfaction of the Principal Certifying Authority.

56. **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 to the satisfaction of the Principal Certifying Authority.

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.

57. **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 Applicant shall liaise with Council's Geographical Information System to confirm the unit addresses.

#### **Primary Address**

- 54 Noble Street ALLAWAH NSW 2218

#### **Unit Addresses**

Please contact Council's GIS section in respect to the allocated unit numbers for this development

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

#### **Additional comments (if applicable)**

If there are modifications or changes to the number of units during the DA process, please advise the GIS team before the final approval. Otherwise, please ensure the list of unit addresses (CM9 No. D20/109131) is attached to the consent.

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

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

**PRIOR TO THE COMMENCEMENT OF WORK (INCLUDING DEMOLITION AND EXCAVATION)**

59. **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)).

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

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

- (a) A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and
  - (b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
  - (c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available on our website) before the commencement of work; and
  - (d) A Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party; and
  - (e) 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.
61. **Building - Structural Engineers 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 must be submitted.
62. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Certifier for approval prior to construction of the specified works. A copy shall be forwarded to Council where Council is not the Certifier.

63. **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, the development is to be clear of the easement.
  - (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.

64. **Dilapidation Report on Public Land** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site. The report must include the following:
- (i) Photographs showing the existing condition of the road pavement fronting the site
  - (ii) Photographs showing the existing condition of the kerb and gutter fronting the site
  - (iii) Photographs showing the existing condition of the footpath pavement fronting the site
  - (iv) Photographs showing the existing condition of any retaining walls within the footway or road,
  - (v) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
  - (vi) The full name and signature of the structural engineer.

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

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

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

65. **Site Stormwater Discharge Pipe across the Footpath** - The stormwater connections to the street gutter are to discharge via a silt arrestor pit within the site and are to have a minimum 1% fall to the street gutter. The connections are to be made to Council's requirements and are to be spaced a minimum 100mm at the street gutter and shall not connect against the flow in the street.
66. **Pre-Construction Dilapidation Report** - A professional engineer specialising in

structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises.

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.

67. **Demolition and 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 Principal Certifier 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).

68. **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.
69. **Demolition Notification Requirements** - 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.

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.

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.

70. **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.
71. **Erosion and Sedimentation Control** - Erosion and sediment controls must be provided to in accordance with the approved Site Management Plan.

Removal or disturbance of vegetation and top soil is confined to within 3 m of the approved building area (no trees to be removed without approval). All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar.

All clean water run-off is diverted around cleared or exposed areas.

Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways.

Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway. Compliance with [Managing Urban Stormwater – Soils and Construction \(Blue Book\) produced by Landcom 2004](#) is to be met.

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.

72. **Site sign – Soil and 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.
73. **Physical connection of stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's drainage system.
74. **Utility Services** - The applicant shall undertake and bear all costs associated with the liaison, approval and relocation of any utility services. All correspondence and approvals between the Applicant and utility authorities shall be provided to the Council in conjunction with engineering documentation for the stormwater drainage works.
75. **Drainage Works** - Construction inspections shall be required by Council's Asset Engineer for the Council stormwater drainage works on public roads at the following hold points: -

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

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

## DURING CONSTRUCTION

76. **Site Validation report** – A Validation report shall be prepared in accordance with the requirements of the EPA (2020) Guidelines for Consultants Reporting on Contaminated Sites and the EPA (2017) Guidelines for the NSW Site Auditor Scheme and will confirm that the site has been remediated to a suitable standard and in accordance with the process stipulated in the Remediation Action Plan prepared by Canopy Enterprises dated August 2020.

A fully qualified Auditor will be required to sign off on the remediation works and a copy of the Validation report shall be provided to Council at the completion of the remediation works program.

77. **Site Validation and monitoring Report** - After completion of all Remediation works, a Notice of completion of remediation work must be submitted to Council in accordance with clause 17(2) of the SEPP 55 and the Notice must address all requirements listed in Clause 18 of SEPP 55.

Where a full clean-up is not feasible, or on-site containment of contamination is proposed, the need for an ongoing monitoring program should be assessed. If a monitoring program is needed, it should detail the proposed monitoring strategy, parameters to be monitored, monitoring locations, frequency of monitoring, and reporting requirements.

This Report must be completed and submitted for approval by an EHO prior to the site being granted an OC.

78. **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.

79. **Hazardous or Intractable Waste – Removal and Disposal** - Hazardous or intractable

waste arising from the demolition 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:

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

80. **Registered Surveyors Report** - 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.

81. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.

82. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act 1993 and/or under Section 68 of the Local Government Act 1993. Penalty infringement Notices may be issued for any offences and severe penalties apply.

83. **Hours of construction 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.

84. **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 Principal Certifier, and Council, where Council is not the Principal Certifier.
85. **Site contamination – Discovery of Additional information** – If any new information is discovered during demolition or construction (unexpected finds) that has the potential to alter previous conclusions about site contamination, all works must cease the site made secure and the Council and the Principal Certifying Authority (if Council is not the PCA) must be notified as soon as practicable and appropriate action taken, reporting and approvals obtained.
86. **Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.
87. **Registered Surveyors Report - During Development Work** - A report must be submitted to the Principal Certifier at each of the following applicable stages of construction:
- (i) Set out before commencing excavation;
  - (ii) Floor slabs or foundation wall, before formwork or commencing brickwork;
  - (iii) 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;
  - (iv) 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;
  - (v) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries;
  - (vi) 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 of all structures.

Work must 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.

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

88. **Flood Prone Land – Certification of overland flow path** - Prior to the issue of the



Occupation Certificate, it is required that a professional engineer specialising in flood modelling certifies that:

- a) an overland flow path has been provided in accordance with the requirements of this consent and the approved plans;
- b) the finished floor levels of the building are in accordance the approved plans;
- c) and the basement has been protected from flood inundation in accordance with the requirements of this consent and the approved plans;

This certification is to include Works-As-Executed drawings by a registered surveyor of the finished levels, dimensions and surface finishes of the design runoff overland flow path and finished floor levels to Australian Height Datum.

89. **Restriction to Use of Land and Positive Covenant for Overland Flow Path** - 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 overland flow path 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;

#### **Restriction on Use of Land**

The registered proprietor(s) shall not make or permit or suffer the making of any alterations to the overland flow path, which is on the lot(s) burdened and identified in the report, prepared and certified by ....., Reference No. ...., dated ..... and approved under Development Consent No....., without the prior consent in writing of Georges River Council.

The expression "overland flow path" shall include all ancillary pipes, drains, walls, kerbs, pits, grates and surfaces designed to convey the overland flow path through the site. Any overland flow path on the lot(s) burdened is hereafter referred to as "the overland flow path".

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

#### **Positive Covenants for Overland Flow Path**

1. The registered proprietor of the lot(s) hereby burdened will in respect of the overland flow path:
  - a) Keep the overland flow path free from rubbish and debris;
  - b) Maintain the overland flow path clear from any obstructions at the sole expense of the registered Proprietors 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; and
  - 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; and

- 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 (a) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (a) 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

- 90. **Flood Emergency Response Plan** - A Flood Emergency Response Plan is to be prepared by a suitably qualified stormwater engineer that addresses the site specific flood risks up to the PMF flood event including evacuation procedures that is in accordance with the requirements of *Managing the floodplain: a guide to best practice in flood risk management in Australia Handbook 7* by the Australian Emergency Management Institute.
- 91. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.
- 92. **Completion of Landscape Work**- All landscape works and fees payable for Councils street **tree** must be completed **before** the issue of the Final Occupation Certificate. In accordance with approved landscape plans and additional trees, drawn by Zenith Landscape Designs, Ref No 19 – 3968 L01 and dated. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -
  - a) Councils Tree Management Policy, April 2019, states that trees removed from the subject site, must be replaced at a ratio of 2:1. Tree species selection shall be in accordance with Appendix 1 – Tree Planting (Tree Management Policy, April 2019)
  - b) For the removal of Five (5) trees, an additional 10 trees shall be planted and species selection from *Hurstville DCP, Appendix 1, 5 Recommended species for Landscaping, Indigenous trees, all wards* and be able, be of minimum 45 litre pot/bag size and be able to reach a height at maturity of nine (9) metres.
  - c) Only two (2) trees have been proposed upon the landscape plan. An additional eight (8) trees shall be planted throughout the southern and eastern lawn and garden areas.
  - d) All ten (10) trees proposed shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and be planted and maintained in accordance with Councils standard specification.

- e) If the planted ten (10) 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.
- f) A certificate of compliance for the planting of all ten (10) 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.

93. **Basement design** - 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.

94. **Post Construction Dilapidation report** – 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 five adjoining premises.

The report is to be prepared at the expense of the applicant and submitted to the Principal Certifier prior to the issue of the Occupation Certificate. In ascertaining whether adverse structural damage has occurred to the adjoining premises, the Principal Certifier, 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 Principal Certifier prior to the issue of any Occupation Certificate.

95. **Consolidation of Sites** - 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.

96. **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**

*The registered proprietor of the lot(s) hereby burdened will in respect of the system:*

- i) keep the system clean and free from silt, rubbish and debris*
- ii) 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*
- iii) 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*
- iv) 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.*

*Pursuant to Section 88F(3) of the Conveyancing Act 1919 the Council shall have the following additional powers:*

*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 b) (iii) above.*

*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 (c) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (c) 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.*

- 97. **Maintenance Schedule for 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.
- 98. **Requirements prior to the issue of the Occupation Certificate** - The following shall be completed and or submitted to the Principal Certifier prior to the issue of the Occupation Certificate:

- a) 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.
- b) A Section 73 (Sydney Water) Compliance Certificate for the Subdivision shall be issued and submitted to the PCA prior to the issue of the Occupation Certificate.
- c) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- d) 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.
- e) Construct any new vehicle crossings required.
- f) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
- g) A Section 73 (Sydney Water) Compliance Certificate for the Subdivision shall be issued and submitted to the PCA prior to the issue of the Occupation Certificate.
- h) 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. **Vehicular crossing & Frontage work** – The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:

- (a) Construct a 1.2 metre 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.

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

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

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

- (a) Driveways and vehicular crossings within the road related area;
- (b) Removal of redundant driveways and vehicular crossings;
- (c) New footpaths within the road related area and all associated paving;
- (d) Relocation of any existing above ground utility services
- (e) Relocation/provision of street signs
- (f) New or replacement street trees;

- (g) New footway verges, if a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- (h) New or reinstated kerb and guttering within the road related area; and
- (i) New or reinstated road surface pavement within the road.
- (j) New or replaced street trees
- (k) The proposed artwork located along the western elevation of the building.
- (l) If applicable Stormwater pipes, pits and connections to public stormwater systems within the road related area;

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

101. **Dilapidation Report on Public Land** - Upon completion of works, a follow up dilapidation report must be prepared on 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:

- (i) Photographs showing the condition of the road pavement fronting the site;
- (ii) Photographs showing the condition of the kerb and gutter fronting the site;
- (iii) Photographs showing the condition of the footway including footpath pavement fronting the site;
- (iv) Photographs showing the condition of retaining walls within the footway or road;
- (v) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (vi) The full name and signature of the professional engineer.

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

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

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

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

103. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the *Environmental Planning and Assessment Regulation 2000*, on completion of building works and prior to the issue of an Occupation Certificate, the owner must cause the issue

of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 174 of the Environmental Planning and Assessment Regulation, 2000. In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state that:

- (i) the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so;
- (ii) 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 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.

- 104. **Structural Certificate During Construction** - The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate.
- 105. **Structural Certificates** - The proposed structure must be constructed in accordance with details designed and certified by the practising qualified structural engineer. In addition, Compliance or Structural Certificates, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifier prior issue of the Occupation Certificate.
- 106. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX and in the plans approved with the Development Consent, must be implemented before issue of any Occupation Certificate.
- 107. **Certification - Air handling systems (including water cooling system, hot water systems and warm water systems)** - Certification by a suitably qualified person engineer '2012 must be submitted to the PCA prior to the issue of any occupation certificate verifying that the air handling system has been installed in accordance with:
  - (a) Public Health Act 2010 (as amended)
  - (b) Public Health Regulation 2012 (as amended)
  - (c) AS/NZS 3666.1:2011 Air-handling and water systems of buildings -Microbial control - Design, installation and commissioning

## OPERATIONAL CONDITIONS (ONGOING)

- 108. **Open structure** - The sub-floor area of the rear of the building is to be built as an open structure to act as an overland flow path in accordance with the approved plans.
- 109. **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).

110. **Communal Open Space** - A Plan of Management for the use of this space shall be adhered to for the perpetuity of the development. The Strata Manager shall ensure that the plan is provided to all residents and occupants of the development and a sign shall be installed communal open space areas to highlight the hours of use of the area and any other operational restrictions i.e keeping the space clean, rules around using the BBQ's.
111. **Final Acoustic Report – Verification of Noise report** - Within three months from the issue of an Occupation Certificate, an acoustic assessment is to be carried out by an appropriately qualified acoustic consultant, in accordance with the EPA's Industrial Noise Policy and submitted to Council for consideration.
112. **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.
113. **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.
114. **Security** - If any security screens/grilles are installed, they are to be openable from within the building.
115. **Building identification** - The numbering is to be constructed from durable materials and shall not be obscured by vegetation and consistent with the signage of the adjoining building.
116. **Entering & Exiting of vehicles** - All vehicles shall enter and exit the basement in a forward direction.
117. **Annual Fire Safety Statement** - The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
- a) Within 12 months after the date on which the fire safety certificate was received.
  - b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
  - c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
  - d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.
118. **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.

119. **Maintenance of Landscaping** - All trees and plants forming part of the approved landscaping in must be maintained in perpetuity. 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.
120. **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.
121. **Waste facilities** - 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 must monitor the bin storage area and all spills need to be attended to immediately by cleaners.
122. **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.
123. **Disability Discrimination Act** - The applicant is responsible to ensure compliance with this and other anti-discrimination legislation.
124. **Intensity of car park lighting** - Prior to occupation, the intensity of lighting at the entrance to the basement car park is to be designed to allow for progressive adjustment of light.
125. **Removal and collection** - Bins are to be collected from the loading bay area or taken to the kerbside for collection and garbage bins and recycling bins are to be collected on a twice a week basis. They are to be removed from the kerbside as soon as possible after collection.
126. **Allocation of Car Parking Spaces** - A total of (10) car parking spaces, and a minimum of three (3) bicycle parking spaces associated with the development is to be allocated as follows, sign posted and/or line marked accordingly:
  - The three (3) tandem car parking spaces shall be dedicated to each 3 bedroom unit.
  - Each two-bedroom unit shall have a minimum of one off street car parking space exclusively dedicated to it.All car parking spaces will be numbered and marked accordingly and all other spaces shall be marked and signposted accordingly.
127. **Development Engineering - Conditions relating to future Strata Subdivision of Buildings**

**No approval is expressed or implied for the subdivision of the subject building(s). For any future Strata subdivision, a separate Complying Development Certificate shall be approved by Council or an Accredited Certifier.**

Prior to the issue of any Strata Certificate of the subject building(s) the following conditions shall be satisfied:

(a) **Unit Numbering** - Apartment type numbers shall be installed adjacent or to the front door of each unit. The unit number shall coincide with the strata plan lot numbering.

(b) **Car Parking Space Marking and Numbering** - Each car space shall be line marked with paint and numbered in accordance with the strata plan lot numbering.

"Visitor Parking" signs shall be installed adjacent to any and all visitor car spaces prior to the issue of any Strata Certificate.

(c) **Designation of Visitor Car Spaces on any Strata Plan** - Any Visitor car spaces shall be designated on the final strata plan as "Visitor Parking - Common Property".

(d) **Allocation of Car Parking Spaces, Storage Areas and Common Property on any Strata Plan**

- i. All car parking spaces shall be created as a part lot of the individual strata's unit lot in any Strata Plan of the subject building.
- ii. All storage areas shall be created as a part lot of the individual strata's unit lot or a separate Utility Lot (if practical) in any Strata Plan of the subject building.
- iii. The minimum number of parking spaces required to be allocated as a part lot to each individual strata's unit lot shall be in accordance with the car parking requirements of Council's Development Control Plan and as required by the relative development consent for the building construction.
- iv. No parking spaces shall be created as an individual strata allotment on any Strata Plan of the subject building unless these spaces are surplus to the minimum number of parking spaces required.

If preferred the surplus car spaces shall be permitted to be created as separate Utility Lots, (instead as a part lot of the individual strata's unit lot), in accordance with Section 39 of the Strata schemes (freehold development Act 1973).

The above requirements regarding car parking spaces and storage areas may only be varied with the conditions of a separate Development Application Approval for Strata Subdivision of the Building(s).

(e) **On Site Detention Requirements** - The location any on-site detention facility shall be shown on the strata plan and suitably denoted.

(f) **Creation of Positive Covenant** - A Positive Covenant shall be created over any on-site detention facility by an Instrument pursuant to Section 88B of the Conveyancing Act 1919, with the covenant including the following wording:

*"It is the responsibility of the Owner's Corporation to keep the on-site detention facilities, together with any ancillary pumps, pipes, pits etc, clean at all times and*

*maintained in an efficient working condition. The on-site detention facilities shall not be modified in any way without the prior approval of Georges River Council."*

Georges River Council is to be nominated as the Authority to release, vary or modify this Covenant.

- (g) **Creation of Positive Covenant for the accessway** – A positive covenant shall be created over the rear driveway access by an Instrument pursuant to Section 88B of the Conveyancing Act 1919, with the covenant including the following wording:

*"It is the responsibility of the Owner's Corporation to keep the rear accessway clean at all times and maintained in an efficient working condition. The accessway shall not be modified in any way without the prior approval of Georges River Council."*

Georges River Council is to be nominated as the Authority to release, vary or modify this Covenant.

128. **Strata Subdivision** - 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.

Council will undertake the required inspections to satisfy the requirements of the [Strata Schemes Development Regulation 2016](#) to determine the Strata Certificate.

Strata Plans, Administration Sheets, 88B Instruments and copies must not be folded. 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).

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

129. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
130. **Appointment of a Principal Certifier** - The erection of a building must not commence until the applicant has:
- i) appointed a Principal Certifier for the building work; and
  - ii) if relevant, advised the Principal Certifier 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:

- i) 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
- ii) notify the Principal Certifier of the details of any such appointment; and
- iii) 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.

131. **Notification of critical Stage Inspections** - 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.
132. **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.
133. **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.
134. **Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the Principal Certifier at least 48 hours before each required inspection needs to be carried out. Where Georges River Council has been appointed as the Principal Certifier, 48 hours notice in writing, or alternatively 24 hours notice by facsimile or telephone, must be given when specified work requiring inspection has been completed.
135. **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.
136. **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.
137. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the [Sydney Water Act 1994](#) must be submitted to the PCA prior to the issue of the Occupation/Subdivision Certificate.

## **PRESCRIBED CONDITIONS**

138. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
139. **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.
140. **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.

141. **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.
142. **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.
143. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

## END CONDITIONS

### NOTES/ADVICES

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144. **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.

145. **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.
146. **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.

147. **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)
148. **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.
149. **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:
- Mechanical ventilation to bathroom, laundry and basement areas not afforded natural ventilation.
  - 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 & warning systems and the location of the fire control centre.
  - Emergency lighting and exit signs throughout, including communal open space areas, lobby/foyer and basement areas.
  - Construction of all fire (smoke) doors including warning and operational signage to required exit and exit door areas.
  - Egress grades, provision of handrails, travel distance and the discharge from fire isolated exits.
  - The protection of openings, entry to basement areas.
  - Fire compartmentation and fire wall separation details including all stairway, lift and service shaft areas.
  - The location and construction of an electricity substation, including the location and smoke separation of electrical distribution boards.
  - Re-entry facilities from fire isolated exit stairways.
  - Sound transmission and insulation details.
  - Window schedule is to include the protection of openable windows.
  - Stretcher facility and emergency lift installation.

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.

150. **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.
151. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.
152. **Noise** - Noise related conditions - Council will generally enforce noise related conditions in accordance with the Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the Protection of the Environment Operations Act 1997.

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](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)).
153. **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))
154. **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).
155. **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.
156. **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.
157. **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.
158. **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.

159. **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.

160. **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.

161. **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)).

162. **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 “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)
- (ii) In the Application Form, quote the Development Consent number and reference this condition number (e.g. Condition 10)
- (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 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 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.

163. **Council as PCA - Compliance with the BCA** - Should the Council be appointed as the Principal Certifying Authority in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
164. **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.
165. **Compliance with Access, Mobility and AS4299 - Adaptable Housing** - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council’s DCP and AS 4299 Adaptable Housing.

## ATTACHMENTS

- Attachment [↓](#) 1  Elevations - South west and North west - 54-54A Noble St Allawah
- Attachment [↓](#) 2  Elevations - North east and South east - 54-54A Noble St Allawah





**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 17 SEPTEMBER 2020**

LPP047-20

<b>LPP Report No</b>	<b>LPP047-20</b>	<b>Development Application No</b>	<b>DA2020/0172</b>
<b>Site Address &amp; Ward Locality</b>	121 Mi Mi Street Oatley Peakhurst Ward		
<b>Proposed Development</b>	Alterations and additions to a dwelling house		
<b>Owners</b>	Mr D Laurence and Mrs A Laurence		
<b>Applicant</b>	Mr D Laurence and Mrs A Laurence		
<b>Planner/Architect</b>	Architects: Innovate Architects Planner: Local Consultancy Service Pty Ltd		
<b>Date Of Lodgement</b>	5/05/2020		
<b>Submissions</b>	One		
<b>Cost of Works</b>	\$175,000.00		
<b>Local Planning Panel Criteria</b>	The application relates to development as the proposal contravenes a development standard imposed by an environmental planning instrument by more than 10%		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment; State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy No 55 - Remediation of Land; State Environmental Planning Policy (Infrastructure) 2007; State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; State Environmental Planning Policy (Coastal Management) 2018 Hurstville Local Environmental Plan 2012; Hurstville Development Control Plan No 1		
<b>List all documents submitted with this report for the Panel's consideration</b>	Site Plans Elevation Plans Clause 4.6 Statement		
<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 instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development	<b>Yes - the proposed</b>



standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>development exceeds the building height (Clause 4.3) of Hurstville Local Environment Plan 2012.</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; the conditions can be viewed when the report is published.</b>

### Site Plan



**Subject Site (highlighted by blue outline)** *Courtesy: Intramap*

### Executive Summary Proposal

1. This development application (DA) seeks consent for alterations and additions to an existing dwelling house.
2. The existing development is a multi-level dwelling consisting of:
  - Workshop and store area;
  - Lower ground level - living area, bar and linen;
  - Ground level - three (3) bedrooms one (1) with ensuite, living area, kitchen, dining area, bathroom, laundry, WC and carport accommodating two (2) vehicles.

- First floor – this additional storey consisting of a living area and bathroom.
3. The proposed works consist of:
    - Alterations and additions to the ground floor to accommodate the access to the new additional floor;
    - New floor to accommodate a living room and associated bathroom; and,
    - Three (3) new skylights over the dining area.
  4. The proposed development complies with the maximum floor space ratio (FSR), however the development exceeds the height control with the non-compliance being in the south east corner of the proposed first floor level. A Clause 4.6 Statement has been submitted which has been assessed in detail later in this report. It is considered to be well founded and in this individual case is recommended for support given the nature and degree of the variation that has been applied for.
  5. Amended plans were submitted during the processing of this application. The amendments included relocating the proposed first floor addition toward the western side of the site (above the existing dwelling), as well as relocating the internal access stairs and other internal floor layout modifications to address the amendments to move the first floor addition toward the west. These amendments were lodged primarily in response to the neighbour's concerns regarding privacy impacts, view loss and property devaluation.

### **Site and Locality**

6. The development site is identified as 121 Mi Mi Street Oatley, and legally described as Lot 3 in DP224511. It is located on the eastern side of Mi Mi Street being at the head of the cul-de-sac, approximately 210m from its intersection with Myrtle Street.
7. The site is irregular in shape. It has a frontage to Mi Mi Street of 32.79m and a total site area of 948.5sqm. The land falls steeply across the site from the north-west to the south-east corner. The southern boundary adjoins Myles Dunphy Reserve and Gungah Bay. Access to Gungah Bay is only possible at high tide via an existing jetty located in the south-west corner of the allotment.
8. The surrounding area is zoned R2 Low Density Residential and is characterised by single and two (2) storey detached dwelling houses.

### **Zoning and Permissibility**

9. The subject site is zoned R2 Low Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HLEP). The proposal involves alterations and additions to an existing dwelling house which is a permissible use in the zone with development consent.

### **Submissions**

10. The DA was publicly notified to adjoining neighbours for a period of fourteen (14) days in accordance with the Hurstville Development Control Plan (HDCP). One (1) submission was received raising concerns with view sharing and privacy. The applicant instigated discussions with adjoining neighbours relating to view sharing/loss which were successfully resolved. Amended plans were submitted to Council in July 2020 however the changes did not warrant re-notification as referenced in the HDCP as the modifications resulted in less environmental impact.

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



11. This application is referred to the Georges River Local Planning Panel for determination as the proposal contravenes a development standard imposed by an environmental planning instrument by more than 10%.

### Planning and Design Issues

12. The proposal is an appropriate response to the site and the bulk and scale is consistent with the desired future character of the area as established by the HLEP development standards for FSR.
13. The proposal exceeds the building height development standard of 9m that applies to the site under HLEP with a small section of the first floor level encroaching the height limit by a maximum of 1.95m over the 9m 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.
14. It is noted that the breach of the height control is the direct result of the slope of the land, which falls significantly from the street towards the rear, and in particular the land falls sharply towards the rear in the position of the proposed additions. The addition does not propose an excessive floor to ceiling height and has a skillion roof. The relocation of this addition was in response to the submission received.
15. The proposal is fully compliant with the maximum FSR development standard that applies to the site under HLEP and the setbacks of the addition is compliant with the DCP. The proposal is therefore consistent with the desired future character for the site.

### Conclusion

16. 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 constraints of the allotment. As a result the application is recommended for approval subject to conditions of consent.

### Report in Full Proposal

17. The proposal seeks consent for alterations and additions to an existing dwelling house.



Figure 1: Proposed development (source – Innovate Architecture)

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

### Ground Floor Plan

- Addition of stairs leading to first floor level; and
- Three (3) skylights over the existing dining room.

### First floor level

- Addition of this floor level to accommodate living area and bathroom.

19. It is noted that the proposal was amended during the processing of the DA, in order to resolve issues of concern raised by the neighbour (to the north, 119 Mi Mi Street). The amended plans included relocating the proposed first floor additions towards the western side of the site (above the existing dwelling), as well as relocating the internal access stairs and other internal floor layout to suit the amendments. These amendments were lodged primarily in response to the neighbour's concerns regarding privacy impacts, view loss and property devaluation.
20. These amended plans were not required to be re-notified to neighbours because (under the provisions of Hurstville DCP No 1), as the plans did not result in any additional environmental impacts.

### **The Site and Locality**

21. The development site is identified as 121 Mi Mi Street Oatley, and legally described as Lot 3 in DP224511. It is located on the east side of Mi Mi Street being the head of the cul-de-sac, approximately 210m from its intersection with Myrtle Street.
22. The site is irregular in shape. It has a frontage to Mi Mi Street of 32.79m and a total site area of 948.5sqm. The land falls steeply across the site from the north-western to the south eastern corner. The southern boundary adjoins Myles Dunphy Reserve and Gungah Bay. Access to Gungah Bay is only possible at high tide via an existing jetty.
23. The surrounding area is zoned R2 Low Density Residential and is characterised by single and two (2) storey detached dwelling houses.
24. The site is currently occupied by a multi-storey dwelling house with carport accommodating two (2)



**Figure 2:** Street view of subject site**State Environmental Planning Policies (SEPPs)**

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

**Compliance with State Planning Policies**

<b>SEPP Title</b>	<b>Complies</b>
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 Environment Planning Policy (Coastal Management) 2018	Yes

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

26. 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**

27. The State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 aims to ensure consistency in the implementation of a scheme to encourage sustainable residential development throughout New South Wales (also referred to as the 'BASIX scheme').
28. An amended BASIX Certificate prepared by Efficient Living Pty Ltd, dated 4 September 2020, certificate number A372161\_02, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

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

29. SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
30. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
31. A review of Council records establishes the site has a history of residential uses and as such, site contamination is not suspected.
32. Based on this information, and that the proposal is limited to a first floor addition and three (3) skylights over the dining area, it is unlikely the construction phase will encounter contaminated land. However, a contingency condition has been included in the recommended conditions detailing what is required to take place should unexpected contamination be found during demolition and construction phase.

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

33. 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.
34. The DA was referred to Ausgrid on 9 June 2020 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.
35. 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**

36. 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.
37. 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).*
38. 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.
39. No issues arise in terms of the provisions of the Vegetation SEPP, as there is no significant vegetation on the site or within the footpath area or immediately fronting the site. Further, no trees are proposed for removal as part of this proposal.
40. On this basis, the proposal is consistent with relevant provisions of the Vegetation SEPP.

**Draft State Environmental Planning Policies (SEPP)****Draft Environment SEPP**

41. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
42. 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.

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

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

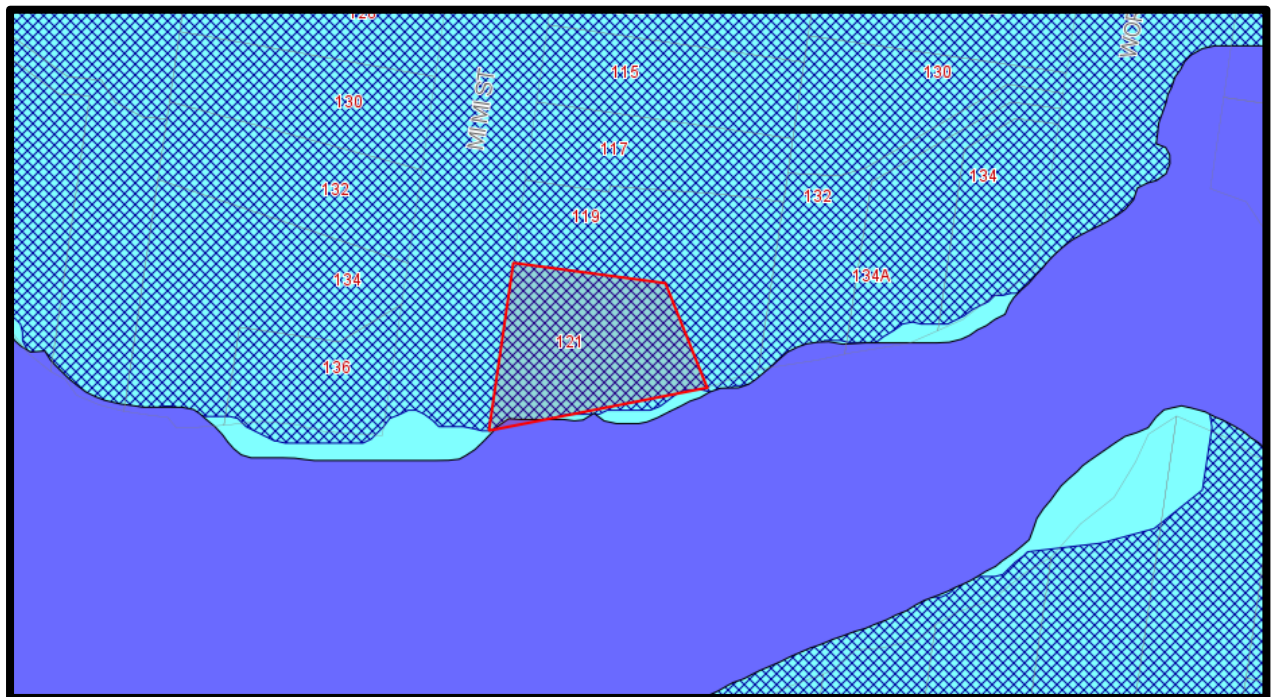
44. The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.
45. The main changes proposed include the expansion of categories of remediation work which requires 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.
46. 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.
47. The site has a history of residential uses and as such, site contamination is not suspected.
48. Based on this information, and that the proposal is limited to a first floor addition and three (3) skylights over the dining area, it is unlikely the construction phase will encounter contaminated land. However, a contingency condition has been included in the recommended conditions detailing what is required to take place should unexpected contamination be found during demolition and construction.

#### **State Environmental Planning Policy (Coastal Management) 2018**

49. SEPP (Coastal Management) 2018 updates and consolidates three previous SEPPs (SEPP 14 Coastal Wetlands, SEPP 26 Littoral Rainforests, SEPP 71 Coastal Protection) into one integrated Policy and is a matter for consideration for the current DA.
50. The Coastal Management SEPP 2018 aims to:
- “Promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 including the management objectives for each coastal management area”.*
51. Under SEPP (Coastal Management) 2018, the subject site is mapped as a Coastal Environment area and a Coastal Use area. These have the following management objectives under the SEPP:
- to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity;*
  - to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change;*
  - to maintain and improve water quality and estuary health;*
  - to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons;*



- (e) to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place;
- (f) to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.



**Figure 3:** Coastal Use Area (thatched) Coastal Wetlands (blue) Coastal Environment Area (aqua) (SEPP Coastal ) with the site outlined in red (source – IntraMaps)

52. The following is an assessment of the matters for consideration listed under the SEPP as applicable to the Coastal Wetland, Coastal Environment Area, and Coastal Use Area.

SEPP Control	Proposal	Complies
<b>13. Development on land within the coastal environment area</b>		
(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:		
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	Surface water runoff is to be managed in accordance with the approved stormwater management plan. The proposal does not include the removal of vegetation/trees.	Yes
(b) coastal environmental values and natural coastal processes,	The development will not impact the waterway.	
(c) the water quality of the marine estate (within the	The site is not located on any of the sensitive coastal lakes	N/A

meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	identified in Schedule 1.	
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	The proposal does not include the removal of any trees. The existing dwelling is forward of the 15m FBL, however this is limited to the existing ground floor decking. None of the works proposed are forward of the foreshore building line.	Yes
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	The subject site is privately owned and there is no public access to Georges River.	Yes
(f) Aboriginal cultural heritage, practices and places,	The site is not known as a place of Aboriginal significance. There is no known impact in terms of Aboriginal heritage.	Yes
(g) the use of the surf zone.	The development is not located near the surf zone.	N/A
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:		
(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	The proposal will have no impact on the marine habitat. The subject site is privately owned and currently does not afford public access to the waterways.	Yes
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or		
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact		
14 Development on land within the coastal use area		

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:		
(a) has considered whether the proposed development is likely to cause an adverse impact on the following:		
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	The proposed development does not provide public access to Gungah Bay, and no access currently exists.	N/A
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	There is limited overshadowing impacts generated by the proposal on the adjoining Myles Dunphy Reserve between 12pm and 3pm on 21 June.	Yes
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	The proposal has minimal impact on the visual quality when viewed from the waterway and public domain. The Myles Dunphy Reserve provides a green buffer between the waterway and the proposal.	Yes
(iv) Aboriginal cultural heritage, practices and places,	The property is not a known site of Aboriginal heritage.	Yes
(v) cultural and built environment heritage, and	The site does not contain or adjoin any heritage items.	Yes
is satisfied that:		
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or	The proposal will have no known impact on the marine habitat. The subject site is privately owned and currently does not afford public access to the waterways.	Yes
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or		
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and		



(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	Development is non-compliant with regards building height by approximately 1.5m. The proposal is considered appropriate in bulk and scale and although does not satisfy building height given when viewed from the public domain the dwelling appears two (2) storey in height. It is consistent with the built form of the immediately adjoining developments and is supported.	Yes
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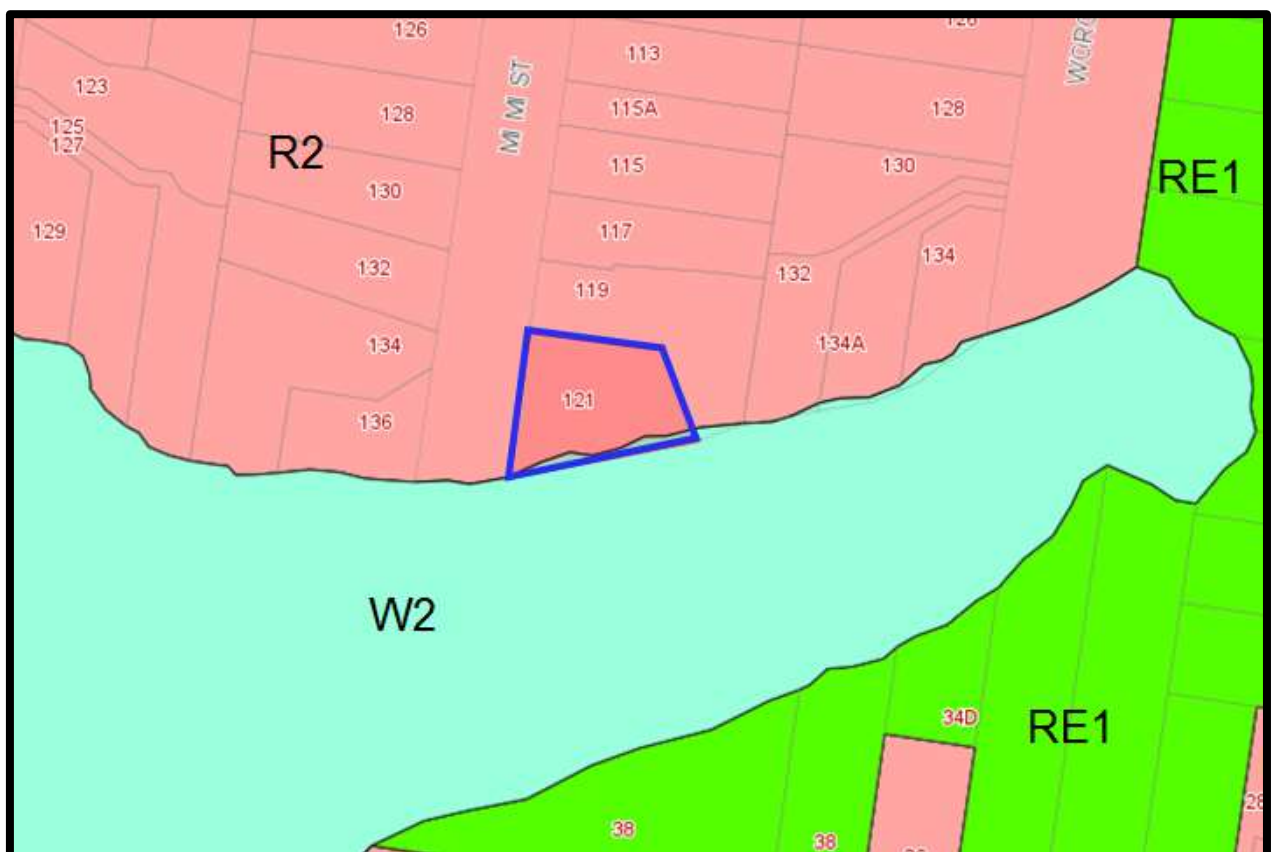
53. Generally, the proposed development is consistent with the management objectives of the SEPP. The bulk, scale and positioning of the proposal is considered acceptable and has limited impact on the visual quality and amenity when viewed from the waterway public domain.

### **Environmental Planning Instruments**

#### **Hurstville Local Environmental Plan 2012 (HLEP)**

##### **Zoning**

54. The subject site is zoned Zone R2 Low Density Residential and W2 Recreational Waterways under the provisions of the HLEP 2012. Refer to zoning map below. The proposed development is defined as alterations and additions to an existing dwelling house which is a permissible land use in the zone.



**Figure 4:** Zoning map the site is outlined in blue

55. The objectives of the zone are as follows:
- To provide for the housing needs of the community within a low density residential environment;
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents;
  - To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area;
  - To ensure that a high level of residential amenity is achieved and maintained;
  - To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment;
  - To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.
56. The proposal satisfies the objectives of the R2 Zone as it will provide for housing needs in a low density residential environment.
57. The extent to which the proposal complies with the relevant standards of HLEP is outlined in the table below.

**HLEP 2012 Compliance Table**

Clause	Standard	Proposed	Complies
2.2 Zone	R2 Low Density Residential	The proposal is defined as a dwelling house which is a permissible use within the zone.	Yes
2.3 Objectives	Objectives of the Zone	Consistent with the zone objectives.	Yes
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The building exceeds the 9m height limit. The encroachment is limited to the south-eastern corner of the first floor living room which reaches a maximum height of 10.95m.  A Clause 4.6 Statement has been submitted and is addressed in detail later in this report.	No
4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map (An assessment under Clause 6.5 – Gross floor area of Dwelling Houses in Residential Zones is referenced later in this table)	See Clause 6.5 below	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl4.5	The floor space of the dwelling has been calculated in accordance with Clause 4.5 and the “gross floor area” definition within the HLEP.	Yes

4.6 – Exceptions to Development Standards	<p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> <li>- <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i></li> <li>- <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></li> </ul>	The proposal exceeds the height control pursuant to Clause 4.3 of the HLEP and therefore a Clause 4.6 Statement was submitted to justify the non-compliance with the control.	No - A Clause 4.6 Statement has been submitted for the height variation. See assessment below.
5.10 – Heritage Conservation	<p>2) Requirement for consent</p> <p>Development consent is required for any of the following:</p> <p>(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):</p> <ul style="list-style-type: none"> <li>(i) a heritage item,</li> <li>(ii) an Aboriginal object,</li> <li>(iii) a building, work, relic or tree within a heritage conservation area.</li> </ul>	The subject allotment is not identified as a Heritage Item, is not located adjacent to a Heritage Item and neither is it located within a Heritage Conservation Area.	N/A
5.11 Bush fire hazard reduction	Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.	The site is not bushfire prone.	N/A
6.1 Acid	The objective of this	Subject site is located in a Class	Yes

Sulphate Soils (ASS)	clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	2 and Class 5 Acid Sulfate Soils Area.  The proposal does not involve any earthworks therefore an Acid Sulfate Management Plan is not required.	
6.2 – Riparian Land and watercourses	The objectives of this clause are to maintain water quality within watercourses, maintain the stability of the bed and banks of watercourses and their aquatic and riparian habitats.	The southern portion of the site is designated as Riparian Land and watercourse. The existing dwelling is 14.17m from the MHWM.	Yes
6.3 – Limited development on the Foreshore Area	The objective of this Clause is to “ <i>ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area</i> ”. Development is to be restricted within the foreshore area. A foreshore building line of 15m is applicable to the subject site. Development needs to be setback a minimum of 15m from the foreshore.	The site is located within a Foreshore Area and is affected by the Foreshore Building Line (FBL). The proposed first floor addition is not forward of the FBL. However the existing ground floor level decking is forward of the FBL by 830mm.	Yes for the addition proposed.
6.4 – Foreshore Scenic Protection Area (FSPA)	The objectives of clause are to protect significant views to and from the Georges River and reinforce the dominance of the landscape over built form.	The existing development provides adequate landscaped areas on a constrained allotment.  Existing views in a south, south west and south east direction from the neighbouring properties (119 and 136 Mi Mi Street) include a land and water interface, and are gained over the subject site and the waterfront properties at the end of Mi Mi Street in the case of 119 Mi Mi Street.  136 Mi Mi Street enjoys	Yes

		<p>uninterrupted views as the dwelling is forward of the proposal.</p> <p>The proposal will have negligible impact on the existing views as the proposal was amended after discussions were undertaken with the landowners of 119 and 121 Mi Mi Street. This resulted in the first storey level relocated further west allowing for views to Gungah Bay to be retained (Figure 7).</p>	
6.5 – Gross Floor Area of Dwellings in residential zones	<p>The gross floor area calculation</p> <p><math>\leq 630\text{sqm}</math> Site area <math>\times 0.55</math></p> <p><b><math>&gt; 630\text{sqm}</math> <math>\leq 1000\text{sqm}</math> (Site area – 630) <math>\times</math> 0.3 + 346.50</b></p> <p><math>&gt; 1000\text{sqm}</math> <math>\leq 1500\text{sqm}</math> (Site area – 1000) <math>\times</math> 0.2 + 457.50</p> <p><math>&gt; 1500\text{sqm}</math> (Site area – 1500) <math>\times</math> 0.1 + 557.50</p> <p><b>The maximum FSR for this site is therefore 0.466:1 or max 442.05sqm.</b></p>	203.8sqm / 0.214:1	Yes
6.7 – Essential Services	Development consent must not be granted to development unless services that are essential for the development are available	Essential services are currently available to the site and can be extended to service the development; conditions could be imposed if the application was to be supported.	Yes

#### **Clause 4.6 Exceptions to Development Standards**

##### **Request for Variation under Clause 4.6 HLEP – Clause 4.3 Height of Buildings**

58. The relevant development standard to be varied is clause 4.3 height of buildings more specifically subclause (2) of this standard. Clause 4.3 (2) specifies that the maximum permitted building height applicable to the site is 9.0m above existing ground level.

59. The building is generally within the height limit however the rear first floor roof of the dwelling exceeds the height control by up to 1.95m equating to a 21.6% variation. At its maximum the roof structure reaches a height of 10.95m. A variation to the height can only be considered under Clause 4.6 – Exceptions to Development Standards of the HLEP.
60. Clause 4.6(1) outlines the objectives of the standard which are to “provide an appropriate degree of flexibility in applying certain development standards to particular development” and *“to achieve better outcomes for and from development by allowing flexibility in particular circumstances”*.



**Figure 5:** Height of buildings map the site is outlined in blue

61. The non-compliance being 1.95m and 21.6% of the permitted control, is considered to be acceptable in this case as the area where the variation is located will not be visible from the public domain and will not cause unreasonable adverse amenity impacts to adjoining properties or as presented to the waterway public domain. In addition, the area of non-compliance is limited to the south east corner of the roof element first floor addition. The site is quite constrained due to the topography falling steeply towards to south boundary.
62. The land has previously been cut to accommodate the existing development on the site due to the sloping nature of the allotment where there is a change in level of RL12.49 adjacent to the front boundary of the site down to RL3.45 adjacent to the swimming pool decking being a change in level of 9.04.
63. The design of the development is to take advantage of the interface with the waterway whereby the living area faces the water. The areas of non-compliance relate to roof at the south east corner of the first floor addition.
64. It should be noted that the existing dwelling exceeds the height limited at the ground floor level. This is limited to part of the balcony and roof over the balcony.



**Figure 6:** Height blanket diagram (source – Innovate Architecture) the height breach of this proposal is outlined in red



**Figure 7** Relocation of proposal to ensure view sharing with adjoining property (source – Innovate Architecture)

65. 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:*

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

66. Applicant's Comment: The applicant has considered that strict compliance is both unreasonable and unnecessary in this case and has provided environmental planning grounds to justify the contravening of the standard for the following reasons:
  - *The development is consistent with the standard and zone objectives, even with the proposed variation;*
  - *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
67. The applicant adopted the judgment of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ('Initial Action'), in which Preston CJ indicated that a Clause 4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard.
68. The applicant has adopted the 5 point test set out by the Land and Environment Court in Wehbe v Pittwater Council (2007) NSW LEC 827, specifically that there are five different ways in which compliance with a development standard can be considered unreasonable or unnecessary, namely:
  1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
69. Comment: The proposal is considered to be consistent with the objectives of Clause 4.3 Height of Buildings, notwithstanding the numerical variation. The applicant has outlined that the proposal complies with all the DCP controls regarding setbacks, landscaping, car parking spaces and the site is able to provide high quality amenity to the residents and neighbours notwithstanding the height non-compliance.
  2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
70. Comment: The objectives of standard remain relevant and the proposal is consistent with, or at least is not antipathetic to the objectives of this standard, notwithstanding the numerical variation.
  3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
71. Comment: The proposal is consistent with the objectives of standard, notwithstanding the numerical variation, and it would not defeat or thwart the purpose of the standard.
  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;*
72. Comment: The building height standard has not been abandoned by Council through its actions in granting consent for other buildings in the locality that depart from the standard.



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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

73. Comment: The proposed alteration and additions to a single dwelling development is a permissible land use and the zoning of the site is considered to be appropriate in this location and in the context of the surrounding land uses and built form.
74. Officer Comment: The applicant's written request to vary the development standard has been considered and it is concluded that the applicant has justified that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds (as detailed below) to justify contravening the development standard. This conclusion has been reached for the following reasons:
- The site is unique and constrained due to the topography of the land sloping towards the south boundary. Further the proposal is contained within the existing building footprint.
  - The majority of the proposed first floor addition is located below the 9.0m height limit, with the elements above the limit not impacting the public or private views across Gungah Bay or visual privacy of the adjoining premises. This is discussed in further detail below.
  - The floor space ratio of the development complies with the relevant development standard which demonstrates that the height of the development is not as a result of additional floor area being provided to the development. As a result the bulk and form of the development is consistent with what is anticipated for the locality.
  - The development observes a built form consistent with that established within the locality. The setbacks proposed are both consistent with the objectives of the HDCP, and are similar to other dwelling houses along Mi Mi Street and those adjoining Myles Dunphy Reserve.
75. Clause 4.6(3)(b) states that:  
(b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
76. The applicant has demonstrated that although the height of building exceeds the permitted 9.0m limit, the proposed development is of a form and scale that is proportionate with that envisaged by the planning controls applicable to the land. The applicant relied on the proceedings of Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90.
77. The applicant demonstrated that there are sufficient environmental planning grounds as detailed below:

78. *The additions and alterations proposed are able to maintain the objectives of the R2 Low Density Residential Zone, as well as the objectives of development standards Clause 4.3 Height of buildings.*
79. *The proposal does not exceed the permitted floor space ratio and the bulk and scale of the addition is consistent with surrounding dwellings and the larger streetscape*
80. *The high quality design, with suitable materials and finishes ensures the dwelling remains well articulated and will further ensure the variation to the height of the dwelling will not result in any adverse environmental impacts to the adjoining properties or public domain*
81. *The proposal is a well considered, high quality design solution that sensitively responds to the site context and character and scale of the surrounding built form to ensure the privacy, view sharing and solar access of the subject site and surrounding properties is maintained.*
82. *There is overall public benefit in maintaining the development standards, however, there is also benefit to providing flexibility in specific circumstances. Strict compliance with the development standards would waive the opportunity to provide a superior design outcome that is in keeping with the height, scale and character of the surrounding built form.*
83. *The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically*
  - a. *“The proposal will facilitate an ecologically sustained development given that no negative impact on environmental and social considerations are present. This in turn will serve to offer the ongoing sustainment of the economic health of the area(1.3(b));*
  - b. *The proposed development will maintain the orderly and economic use of the land by providing a development and land use that is consistent with that envisaged by Council through zoning. (1.3(c)).*
  - c. *There is no anticipated impact upon any threatened species of ecological communities given the development is proposed within the footprint of the existing dwelling. (1.3(e)).*
  - d. *The proposed development is a high quality design that remains within the a suitable built form and scale to be aesthetically appropriate. The proposed development is considered to appropriately respond to the established and changing character of the development identified within both the immediate and broader context. The development maintains the amenity of the area through suitable design. (1.3(g))*
  - e. *The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants. (1.3(h))”*
84. Officer comment: The written request adequately addresses the matters in subclause (3). Sufficient environmental planning grounds have been articulated demonstrating that the height exceedance will not unreasonably impact upon the amenity of adjoining residents and the locality and will not result in an undesirable precedent. It is noted that prior to resolving if compliance with the height is unreasonable and unnecessary in this case, the consent authority must be satisfied that the matters under clause 4.6 (4)(a) have been satisfied being:

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

85. In accordance with subclause 4.6(4), the proposal needs to satisfy both the development standard and zone objectives in order to determine whether the development is in the public interest. Assessment of the non-compliance with the height control objectives is provided below.
86. The objectives of the R2 – Low Density Residential are considered to be achieved as detailed below albeit non-compliance with the height control.

<b>Zone R2 – Low Density Residential Objectives</b>	<b>Response</b>
To provide for the housing needs of the community within a low density residential environment.	The siting arrangement, built form and architectural language of the development is consistent with that likely to be encountered in a low density residential setting on an allotment of land where there is a considerable change in level and the development is working with the topography of the site.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal does not offer the provision of other land uses on the land apart from a new dwelling. Notwithstanding, access to numerous services are located within the locality.
To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.	The proposal is for alterations and additional first floor to a multi-level dwelling house. The
To ensure that a high level of residential amenity is achieved and maintained	The proposal achieves a high level of residential amenity with appropriate siting of the first floor addition to afford view sharing with the adjoining property.
To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.	The proposal does not amend the existing landscaped areas which are considered appropriate for a site and its relationship with the adjoining public reserve and waterway public domain.
To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.	The proposal does not include home business activities.

87. It is also considered that the objectives of Clause 4.3 - Height of Buildings are achieved notwithstanding the breach of the numerical control. The objectives of this clause are as follows:
- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,
  - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,
  - (c) to minimise the adverse impact of development on heritage items,
  - (d) to nominate heights that will provide a transition in built form and land use intensity,
  - (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,
  - (f) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,
  - (g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.

***Objective (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality;***

88. Applicant comment: *The proposed maximum height of 10.95m for the section of the roof impacted does not impact upon the dwelling being able to achieve the objectives of the zone or the objectives of the development standard. The proposal is considered to have a positive impact on the streetscape character of the area and a positive result for the residents of the dwelling which will have access to additional living spaces for internal amenity.*
89. *The proposed design and placement of the upper floor living room results in only a minor section of the addition requiring a variation to the development standard. Majority of the living room sits back from the steep fall of the site, which ensures it is able to maintain the maximum overall height of buildings required. The minor area to the rear of the addition would therefore not be highly noticeable from the street and the appropriate setbacks provided to the upper floor living room as per the requirements Hurstville DCP ensure the bulk and scale of the addition are in keeping with the existing and future character of the area.*
90. Officer comment: The proposed scale of the building is considered generally satisfactory and consistent with similar contemporary dwelling houses in the immediate locality.
91. The architectural language and south façade articulation successfully masks the height exceedance and presents as a compliant built form which will not be visible to the casual observer. It is considered that the minor variation to the roof at the south east corner of the first floor addition will not result in a scale of development that is noticeably different from the remaining built form. The design of the proposal ensures that the development will complement the neighbouring dwellings and is compatible with the existing character of the locality.

92. The proposed bulk and scale is generally considered acceptable. The density and scale is considered to be in line with the expected and anticipated form of development within this zone.

***Objective (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes;***

93. Applicant comment: *No impact upon public or private views is anticipated as a result of the roof height, as the minor area which requires the variation is to the rear of the site, with the bulk of the living room addition being within the required building height. The adjustment of the living room location results in a better outcome for views from the neighbouring dwelling (No. 119) as views are now maintained from the rear windows of the dwelling.*
94. *The overall height will not result in any detrimental visual impact when viewed from the street or adjoining property as the main areas of the addition are compliant with the required height, with the variation being the result of the topography under the existing dwelling. The living room addition will not result in any detrimental visual impact given that from adjoining properties and the streetscape, the height would appear compliant.*
95. Officer comment: This objective relates to considering the visual impacts, disruption of views, loss of privacy and solar access associated with the non-compliance. In terms of disruption of views the proposed amended first floor addition has been relocated towards the west (front) elevation ensuring adjoining properties (119 Mi Mi Street) continue to enjoy views across Gungah Bay and Myles Dunphy Reserve. Further, the potential for overlooking from the first floor living room windows on the northern elevation is reduced. There will be no adverse impacts in terms of overshadowing to adjoining properties due to the west-east orientation of the dwelling. Mid-winter overshadowing is contained to the south private open space of the proposal.

The proposal will have no impact when viewed from the streetscape as the structure as the non-compliant height is restricted to the south-east corner and will not be discernible from the street. The visual impact when viewed from the waterway public domain will be negligible given the property has a substantial rear setback from the water's edge and is further buffered by Myles Dunphy Reserve.

96. In terms of visual impact the amended proposal ensures view sharing with adjoining properties and is an acceptable outcome.

***Objective (c) to minimise the adverse impact of development on heritage items;***

97. Applicant comment: *There is no heritage items within the vicinity of the proposal that would be impacted upon by the height of the addition.*
98. Officer comment: The proposal is does not adjoin any heritage items nor located within the a heritage conservation area.

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

99. Applicant comment: *The proposed additions and alterations to the existing dwelling will maintain the character of the area and will be compatible with the future character of the area. Other dwellings within the local area and surrounds have similar variations which are the result of the topography of the land. As such, the addition will maintain the built form and land use intensity appropriate for the area.*

100. *The proposed additions are considered to be consistent with the objectives and expectation of the zone and the surround built form. The low density development is consistent with that of neighbouring sites and surrounds and the proposed height variation is considered to be appropriate in this regard.*

101. Officer comment: The non-compliance in height is a result of the topography of the site. The proposal is limited to the addition of the first floor level. The existing dwelling is terraced into the natural slope of the land. The resultant built form is consistent with adjoining properties and development within the locality.

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

102. Applicant comment: The development is not located within the Hurstville City Centre. An appropriate urban form is provided in keeping with the residential nature of the area.

103. Officer comment: As noted above the proposal is not located within the Hurstville City Centre.

**Objective (f) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation;**

104. Applicant comment: The proposed height of the rear area of the living room maintains the provision of the area, and its anticipated that as the streetscape undergoes urban renewal, the addition will blend with existing and new development as that occurs.

105. *The surrounding properties show a diverse range of contemporary architecture mixed with older building forms. The area is one that is undergoing change. As time passes a greater level of change is likely to occur within the vicinity. As the area is subject to change, this objective is not considered relevant.*

106. Officer comment: The proposal in its current form is considered a built form that is consistent with the character of the surrounding development currently and in the future based on the current planning controls. The surrounding area is a mixture of older style dwellings and contemporary multi-storey dwellings an indication that the locality is in transition and undergoing transition.

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

107. Applicant comment: Windows adjacent to adjoining dwellings are suitably setback and offset to ensure minimal opportunities for overlooking are created. The amended design results in windows located along the northern elevation facing the neighbouring dwelling to a bathroom and a living room window being provided to take advantage of the northern solar access. The orientation and location of this window ensures it overlooks the front setback of adjoining properties and the larger streetscape rather than the adjoining dwelling or private open space areas. The views from this room are largely to the south, and as such, the configuration of furniture will likely be towards the south than the neighbouring properties to further minimise any privacy intrusion. The proposed upper floor living room is a secondary living space, and is anticipated to be used for passive recreation. The windows proposed will maintain the privacy of the neighbouring PPOS areas as they are suitably offset from these areas.

108. *Shadows cast from the proposed addition and variation to the height of the living room do not have any impact upon the adjoining properties. All shadows cast as a result of the living room are within the boundaries of the subject site and therefore, no impact upon solar access of adjoining properties results from the request to vary the height.*
109. Officer comment: The proposed first floor addition and non-compliant height will have limited environmental impacts on adjoining properties in terms of overshadowing. Given the west-east orientation of the dwelling shadows will fall to the south over the private open space of the subject site. The proposal will have no impact to the waterway public domain or the existing streetscape. No trees or significant vegetation are proposed for removal.
110. Clause 4.6(4)(b) consent must not be granted for development that contravenes a development standard unless concurrence of the Director-General must be obtained.
111. 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 HLEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018, with the consent authority in this instance be the Georges River Local Planning Panel.
112. Clause 4.6 (5) states that: "Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))"
113. Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.
114. Despite the non-compliance in terms of the height, the proposed variation is considered to be a reasonable planning and urban design outcome given that the variation satisfies the provisions of clause 4.3, the zone objectives, and the non-compliance does not conflict with the public interest. It is considered that the Clause 4.6 Statement dated 15 July 2020 is well founded.

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

115. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
116. 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**

#### **HURSTVILLE DEVELOPMENT CONTROL PLAN NO 1 (HDCP)**

117. The following compliance table is an assessment of the proposal against the Section 4.4 controls of the HDCP.

<b>Section 4.4 – Dwelling Houses on Standard Lots</b>		
<b>Required</b>	<b>Proposed</b>	<b>Complies</b>
<b><i>Neighbourhood character</i></b>		
<p>DS1.1 The development application is supported by a Statement of Environmental Effects that:</p> <ul style="list-style-type: none"> <li>a. includes a satisfactory neighbourhood and site description, including the identification of the key features of the neighbourhood and site</li> <li>b. shows how the siting and design response derives from and responds to the key features identified in the neighbourhood and site description</li> <li>c. demonstrates that the residential development proposal respects the existing or preferred neighbourhood character and satisfies objectives of the zone in the LEP</li> </ul>	<p>The proposal is supported by an SEE and addresses the key features of neighbourhood character and demonstrates how the siting and design responds to the site conditions.</p>	<p>Yes</p>
<b><i>PC 2 - Building Height</i></b>		
<p>DS2.1. Maximum building height is in accordance with the LEP</p> <p>DS2.2. Maximum ceiling height is 7.2m above the existing ground level vertically below that point. Note: maximum ceiling height is measured at the intersection of the upper most ceiling with the internal face of any external wall.</p>	<p>The proposed maximum building height is 10.95m. The maximum existing non-compliant building height is 11.04m</p>	<p>No – see CI4.6 discussion above.</p> <p>No – see CI 4.6 discussion above. In addition given the topography of the site and that the proposal is for alternations and additions, compliance with the wall height cannot be complied with in this instance. The non-compliance</p>



<p>DS2.3. For flat roofed dwellings, maximum height to the top of the parapet of the building is: a. 7.8m above the existing ground level vertically below that point.</p> <p>DS2.4. For steep or sloping sites, the building is sited and designed to be staggered or stepped into the natural slope of the land</p>	<p>The proposal incorporates a low profile gable roof.</p> <p>The proposal is limited to the addition of the first floor level and three (3) skylights over the dining area. The existing dwelling is terraced into the natural slope of the land.</p>	<p>does not result in any unreasonable impacts to the allotments adjoining or when viewed from the water ways.</p> <p>N/A</p> <p>Yes</p>
<b>Setbacks</b>		
<p>DS3.1. The minimum front setback to a primary street is:</p> <p>a. 5.5m to the main face of the dwelling or</p> <p>b. 4.5m to the main face of the dwelling where located on a corner site and 5.5m to the garage</p> <p>DS3.2. For properties greater than 15m in width, the minimum setback to a secondary street boundary is 2.0m to the wall of the dwelling</p> <p>DS3.3. For properties 15m or less in width, the minimum setback to a secondary street boundary is in accordance with the side boundary setback requirements.</p> <p>DS3.5. The minimum side setback inside the FSPA is 900mm (ground floor) and</p>	<p>No change to existing. Proposed first floor level front setback – 5.56m.</p> <p>N/A</p> <p>N/A</p> <p><u>Ground floor - northern</u> No change to existing ground floor – minimum 810mm</p>	<p>Yes</p> <p>N/A</p> <p>N/A</p> <p>Yes</p>

1.5m (first floor).	<u>First Floor</u> North side – minimum 2.26m South side – 18.73m to MHWM	Yes
DS3.6. Minimum rear boundary setbacks are:		
a. 3m for any basement and ground floor level solid wall	No change to existing – 3.93m	Yes
b. 6m for first floor level solid walls	16.9m	Yes
c. where a first floor balcony is proposed at the rear, 6m from the balustrade	No balcony proposed	N/A
DS3.7. For battle-axe lots, minimum side boundary setbacks apply to all boundaries	N/A	N/A
<b><i>Facades</i></b>		
DS4.1. The dwelling house has a front door or window to a habitable room facing the primary street frontage.	No change to the existing location, the proposal is for a first floor addition and skylight over the ground floor dining area.	N/A
DS4.2. The dwelling house incorporates at least two of the following building elements facing any street frontage:	No change to the existing location, the proposal is for a first floor addition and skylight over the ground floor dining area.	N/A
a. entry feature or portico		
b. awnings or other features over windows		
c. eaves and sun shading		
d. window planter box treatment		
e. bay windows or similar features		
f. wall offsets, balconies, verandas, pergolas or the like		
DS4.3. Garage doors are not wider than 6m	No change to existing carport	N/A
<b><i>Views</i></b>		
DS5.1. No design solution is provided and each development application will be assessed on its individual merits	Refer to view impact assessment below	Yes
<b><i>Solar Access</i></b>		
DS6.1. Development allows for at least 3 hours of	Adjoining properties will continue to receive greater than 3 hours solar	Yes

<p>sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00 am and 3.00 pm on 22 June.</p> <p>DS6.2. Development complies with the Energy Efficiency section in Appendix 1 of this DCP and BASIX requirements.</p> <p>DS6.3. Buildings are encouraged to incorporate window shading devices where necessary to minimise exposure to direct summer sun. Alternatively, windows may be shaded by the planting of large trees, including deciduous species.</p>	<p>access during mid-winter.</p> <p>The proposal is BASIX compliant.</p> <p>The proposal is BASIX compliant.</p>	<p>Yes</p> <p>Yes</p>
<b>Visual Privacy</b>		
<p>DS7.1. Windows of proposed dwelling must be offset from neighbouring windows by 1m, especially windows of high-use rooms.</p> <p>DS7.2. Windows for primary living rooms must be designed so that they maintain privacy of adjoining site's principal private open space.</p> <p>DS7.3. Development applications are accompanied by a survey plan or site analysis plan (to AHD) of the proposed dwelling showing the location of adjoining property windows, floors levels, window sill levels and ridge and gutter line levels.</p>	<p>The proposed first floor living area windows in the south elevation do not pose privacy issues as these windows overlook Gungah Bay. The windows in the north elevation are well setback from the side boundary and offset from the adjoining property. The proposal does not overlook the principal private open space of the adjoining property.</p> <p>A survey plan is provided with the location of adjoining property windows.</p>	<p>Yes</p> <p>Yes</p>
<b>Noise</b>		
<p>DS8.1. Noise generators such as plant and machinery including air conditioning units and pool pumps are located away from windows</p>	<p>Existing on the site is a swimming pool and associated equipment.</p>	<p>Yes</p>

<p>or other openings of habitable rooms, screened to reduce noise or acoustically enclosed.</p> <p>DS8.2. For sites in proximity to a busy road or railway line, development is to comply with the provisions of State Environmental Planning Policy (Infrastructure) 2007 and the NSW Government's Development Near Rail Corridors and Busy Roads - Interim Guideline</p>	N/A	N/A
<b>Vehicle access, parking and manoeuvring</b>		
<p>DS9.1. Car parking is provided on site in accordance with the following minimum rates:</p> <p>a. for 1 and 2 bedroom dwellings, 1 car parking space</p> <p>b. for 3 or more bedroom dwellings, 2 car parking spaces</p> <p>DS9.2. For all new dwellings, at least 1 car space must be located behind the front building setback.</p> <p>DS9.3. Enclosed or roofed car accommodation, including garages and carports, are located at least 1m behind the main setback. Note: Carports forward of the front setback may be considered where no vehicular access behind the front building alignment is available.</p> <p>DS9.4. The maximum width of a garage opening is 6m.</p> <p>DS9.9. Driveway gradients must be constructed in accordance with Australian</p>	<p>No change to existing – the existing carport accommodates two (2) car parking spaces.</p> <p>N/A</p> <p>No change to existing vehicular accommodation.</p> <p>No change to existing.</p> <p>No change to existing.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

Standard 2890.1(2004).		
<b>Landscaped areas and private open space</b>		
DS10.1. Where located outside the FSPA, a minimum of 20% of site area is landscaped open space.	N/A	N/A
DS10.2. Where located in the FSPA, a minimum of 25% of the site area is landscaped open space.	No change to existing. 57.2%	Yes
DS10.3. The minimum dimension of landscaped open space is 2m in any direction.	No change to existing.	N/A
DS10.4. A minimum of 15sqm of the landscaped open space is provided between the front setback and the street boundary in the form of a front yard.	No change to existing.	N/A
DS10.5. An area of Principal Private Open Space is to be provided which: a. has a minimum area of 30m <sup>2</sup> b. has a minimum dimension of 5m c. is located at ground level and behind the front wall of the dwelling d. is directly accessible from a main living area	No change to existing.	N/A
<b>Stormwater</b>		
DS11.1. Diversion of flows from one drainage sub-catchment to another is not encouraged.	No change to existing.	N/A
DS11.2. Stormwater drainage is to occur by: a. drainage by gravity to the adjacent road kerb and Council's drainage system or	Council's Development Engineers have provided comments and raised no objection in this regard, subject to the recommended conditions.	Yes
DS11.3. Where drainage by gravity is involved this must not cause	N/A	N/A

<p>ponding/backwater effects on upstream properties.</p> <p>DS11.5. On-site retention of roof run-off using rainwater tanks or detention tanks for storage and re-use are encouraged. Overflow from storage facilities must be connected to an appropriate stormwater system as detailed in DS11.2.</p> <p>DS11.7. Development is not to concentrate overland flow of stormwater onto an adjoining property</p>	<p>Council's Development Engineers have provided comments and raised no objection in this regard, subject to the recommended conditions.</p> <p>No change to existing.</p>	<p>Yes</p> <p>N/A</p>
<b>Balconies</b>		
<p>DS14.1. Access to balconies and terraces is direct from a habitable room at the same floor level. Note: a level difference of one step may be considered for the purpose of rain water protection.</p> <p>DS14.2. Balconies and terraces include fixed planter boxes and / or privacy screens.</p> <p>DS14.3. Fixed planter boxes are at least 1m wide.</p> <p>DS14.4. Privacy screens are between 1.5m and 1.8 m high</p> <p>DS14.5. Terraces are not visible from the street.</p> <p>DS14.6. Roof top terraces are not provided.</p> <p>DS14.7. Development applications for terraces and balconies must provide sight line diagrams that demonstrate how privacy issues to neighbouring properties are proposed to</p>	<p>No balconies or terraces proposed and no change to the existing.</p>	<p>N/A</p>

be addressed.		
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118. Non-compliances in table above are discussed below.

View Assessment

119. The subject site and surrounding lands benefit from views to the south, south-west and south-east of Gungah Bay. The HDCP seeks to ensure the location and design of dwellings must reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.
120. In assessing the view loss impact, consideration has been given to the to the four-step assessment established in Tenacity Consulting v Warringah [2004] NSWLEC 140.
121. **The first step** is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
122. Comment: Existing views in a south, south west and south east direction from the neighbouring properties (119 and 136 Mi Mi Street) include a land and water interface, and are gained over the subject site and the waterfront properties at the end of Mi Mi Street in the case of 119 Mi Mi Street. 136 Mi Mi Street enjoys uninterrupted views as the dwelling is forward of the proposal.
123. The proposal will have negligible impact on the existing views as the proposal was amended after discussion were undertaken with the landowners of 119 and 121 Mi Mi Street. This resulted in the first storey level relocated further west allowing for views to Gungah Bay to be retained (Figure 7). Further, the potential for overlooking from the living room windows on the northern elevation is reduced.
124. **The second step** is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.
125. Comment: The side boundary views to the south from 119 Mi Mi Street appears to be gained from the upper level rooms of the dwelling. As the views are obtained across a boundary, the expectation that this view can or should be protected is considered to be less likely.
126. The proposal has been amended at the instigation of the applicant, relocating the first floor level to the west. This provides greater view sharing with views maintained as noted in Figure 7 above.
127. **The third step** is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from a living area is more significant than from bedrooms or service areas. The impact may be assessed quantitatively, but in many cases this can be meaningless. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

128. Comment: In terms of classification of impact:

- The amended proposal is likely to have a minor impact on the existing views from 119 Mi Mi Street given that the first floor addition has been relocated further west and that this property is elevated. Views across Myles Dunphy Reserve and Gungah Bay are somewhat preserved.

129. **The fourth step** is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of a non-compliance with one (1) or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbour's. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

130. Comment: The proposal is non-compliant with regard to the height controls contained in HLEP 2012. Further, both dwellings are also non-compliant with the side setback controls in HDCP1. However the resulting design is an acceptable and compliant built form in the context of the site, given the topography of the land. The built form, bulk and scale of the proposal is appropriate for the site.

131. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment of the locality and enables adequate view sharing.

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

132. Council at its Environment and Planning Committee Meeting dated 11 June 2019 resolved to adopt the Georges River Interim Policy DCP.

133. 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).

134. 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>Dwelling House</b>		
<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
<b><i>Building Setback</i></b>		
<u>Front Setback</u> • Minimum setback from the primary street boundary is: a) 4.5m to the main building face  b) 5.5m to the front wall of garage, carport roof or	No change to existing – 5.56m	Yes



<p>onsite parking space</p> <p><b>Or</b> Within 20% of the average setback of dwellings on adjoining lots</p> <p><u>Rear Setback</u></p> <ul style="list-style-type: none"> <li>• Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater</li> <li>• Where the existing pattern of development displays an established rear setback, development should recognise and respond to site features and cross views of neighbouring properties</li> </ul> <p><u>Side Setback</u></p> <ul style="list-style-type: none"> <li>• The minimum side setback inside the FSPA is 900mm (ground floor) and 1.5m (first floor) with a minimum of 5.5m in front of any proposed new garage.</li> </ul>	<p>No change to existing – 3.93m</p> <p><u>Ground floor</u> No change to existing ground floor – North side - minimum 810mm South side – 17.99m</p> <p><u>First Floor</u> North side – minimum 2.26m South side – 18.73m to MHWM</p>	<p>N/A</p> <p>N/A</p> <p>Yes</p>
<b><i>Landscape Area</i></b>		
<ul style="list-style-type: none"> <li>• Where located inside the FSPA, a minimum of 25% of the site area is landscaped open space</li> <li>• The minimum dimension of landscaped open space is 2m, designed in a useable configuration</li> <li>• A minimum of 15m<sup>2</sup> of the landscaped open space is provided between the front setback and the street boundary in the form of a front yard</li> </ul>	<p>No change to existing. 57.2%</p>	<p>Yes</p>
<b><i>Private Open Space</i></b>		
<ul style="list-style-type: none"> <li>• An area of Principal Private Open Space is to be provided which:               <ol style="list-style-type: none"> <li>a) has a minimum area of 30m<sup>2</sup></li> <li>b) has a minimum dimension of 5m, designed in a useable configuration</li> </ol> </li> </ul>	<p>No change to existing.</p>	<p>N/A</p>

c) is located at ground level and behind the front wall of the dwelling d) is directly accessible from a main living area		
<b>Basement/Land Modification</b>		
• Basements are permitted where Council's height controls are not exceeded, and it is demonstrated that there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure).	Basement not proposed.	N/A
• Basements for low grade sites (i.e. < 12.5% Grade front to rear): a) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition below) and the overall development presents as 2 storeys to the street. b) A basement is not considered a storey if it is: situated partly below the finished ground and the underside of the ceiling is not more than 1m above the natural ground at the external wall for a maximum of 12m in length, with the exception of the façade in which the garage door is located.	N/A	N/A
<b>Solar Access</b>		
Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00am and 3.00pm on 22 June.	The proposed private open space will receive the minimum 3 hours of sunlight between 9am – 3pm on 21 June.	Yes
Note 1: development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design solution.	Shadow diagrams provided.	Yes

- |  |  |  |
|--|--|--|
| <ul style="list-style-type: none"> <li>Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation.</li> </ul> |  |  |
|--|--|--|

## DEVELOPER CONTRIBUTIONS

135. The proposed development would require payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979. If the development consent is granted a condition outlining the required contributions will be imposed requiring payment of \$875.00 (being 0.5% of the estimated cost of development which is \$175,000).

## IMPACTS

### *Natural Environment*

136. The proposed development will not adversely affect the natural environment. No on-site or street trees are removed or require to be removed as part of this application.

### *Built Environment*

137. The proposal represents an appropriate planning outcome for the site with respect to its bulk, scale and density, and is an appropriate response to the context of the site and its R2 Low Density Residential zoning.

### *Social Impact*

138. 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 dwelling house on the site is consistent with the residential zoning of the land.

### *Economic Impact*

139. There is no apparent adverse economic impact that is likely to result within the locality. It is likely there will be a small positive economic impact as a result of the construction of the development.

### *Suitability of the site*

140. The site is zoned R2 – Low Density Residential. The proposal is 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.

## SUBMISSIONS AND THE PUBLIC INTEREST

141. The application was neighbour notified in accordance with Hurstville DCP No. 1 for a period of twenty eight (28) days between 27 May 2020 and 26 June 2020. One (1) submission was received. Amended plans were received on 27 May 2020 however, the changes did not warrant re-notification as outlined in Hurstville DCP No 1 as there were no additional environmental impacts resulting from the amendments.

142. In summary the following issues and concerns were raised (in regard to the amended plans).

### Loss of view and privacy issues

143. Officer Comment: The applicant and landowner of the adjoining property discussed the issue of view loss/sharing. Amended plans were submitted, relocating the proposed first floor addition further to the west. This ensured the water views from the adjoining property could be maintained. This ensures views across Myles Dunphy Reserve and Gungah Bay are somewhat preserved and reduces overlooking into the adjoining property.

The proposal will affect the market value of our property

144. Officer comment: This is not a matter for consideration under the provisions of the Environmental Planning and Assessment Act 1979.

## REFERRALS

### Council Referrals

#### Development Engineer

145. 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.

### External Referrals

#### Ausgrid

146. 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.

## CONCLUSION

147. 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 site constraints and the proposed additional 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 this location and immediate locality.
148. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policies, Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1. The proposal satisfies the key planning controls in the Hurstville Local Environmental Plan notwithstanding exceeding the height limit for north-eastern corner of the first floor level. A Clause 4.6 Statement has been submitted with the application justifying the variation in this case.
149. 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 Hurstville Local Environmental Plan 2012.

## DETERMINATION AND STATEMENT OF REASONS

### Statement of Reasons

150. The reasons for this recommendation are:

- The proposed development generally 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 proposed design has been sensitively considered to be consistent with the anticipated desired future character for development in this area.
- The proposal aims to provide a high-quality building that will establish a positive urban design outcome.

### Determination

151. THAT Georges River Local Planning Panel support the request for variation under Clause 4.6 of the Kogarah LEP 2012, in relation to the building height control (Clause 4.3).
152. 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 DA2020/0172 for alterations and additions to an existing dwelling house in the form of a first floor addition and skylight of the ground floor on Lot 3 in DP 224511 known as 121 Mi Mi Street Oatley, subject to the following conditions of consent:

### **DEVELOPMENT DETAILS**

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

Description	Reference No.	Date	Revision	Prepared by
Site Plan	01	June 20	B	Innovate Architects
Ground and First Floor Plans	03	June 20	B	Innovate Architects
Elevation Plan	04	June 20	B	Innovate Architects
Sections & Height Blanket Image	05	June 20	B	Innovate Architects

### **Separate Approvals Required Under Other Legislation**

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

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

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

- Placing or storing materials or equipment;
- Placing or storing waste containers or skip bins;
- 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.

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

To apply for approval, complete the “Application for Driveway Crossing and Associated Works on Council Road Reserve” issued under Section 138 Roads Act.” which can be downloaded from Georges River Council’s Website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au). Lodge the application form, together with the associated fees at Council’s Customer Service Centre, during business hours. Refer to Section P1 and P2, in Council’s adopted *Fees and Charges* for the administrative and inspection charges associated with Driveway Crossing applications.

An approval for a new or modified driveway crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out in accordance with Council’s specifications applicable at the time, prior to the issue of an Occupation Certificate.

The design boundary level is to be received from Council prior to construction of the internal driveway.

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

the road.

## Requirements of Concurrence, Integrated & Other Government Authorities

5. **Sydney Water - Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at [www.sydneywater.com.au](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™ agent has appropriately stamped the plans prior to the issue of the Construction Certificate.

## Prior to the Issue of a Construction Certificate

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

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	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$155.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Georges River Council Section 94A Development Contributions Plan 2017	\$875.00

## General Fees

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

## Development Contributions

A Section 7.12 contribution has been levied on the subject development pursuant to the Georges River Council Section 94A Contributions Plan 2017.

### 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).

7. **Damage Deposit** - In order to insure against damage to Council property the following is required:
- Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$1,900.00**
  - Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$155.00**
  - Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

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

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

9. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. A372161\_02 dated 4 September 2020 must be implemented on the plans lodged with the application for the Construction Certificate.
10. **Erosion & Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
- Compliance with the approved Erosion & Sediment Control Plan
  - 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)
  - All clean water runoff is diverted around cleared or exposed areas
  - 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.

11. **Stormwater System** - Stormwater drainage to be connected to the existing stormwater disposal system.
12. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.

A copy shall be forwarded to Council where Council is not the PCA.

13. **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).
14. **Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

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

15. **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).

16. **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.
17. **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.
18. **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.

### During Construction

19. **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.

20. **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.

21. **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.
22. **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.
23. **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**

24. **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.

#### **Operational Conditions (Ongoing)**

25. **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.
26. **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**

27. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
28. **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.

29. **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.

30. **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.

31. **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](#).
32. **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.

33. **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

34. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
35. **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.
36. **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.
37. **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](#).
38. **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.
39. **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.

40. **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.

## Advice

41. **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.

42. **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.
43. **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.
44. **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.

45. **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.

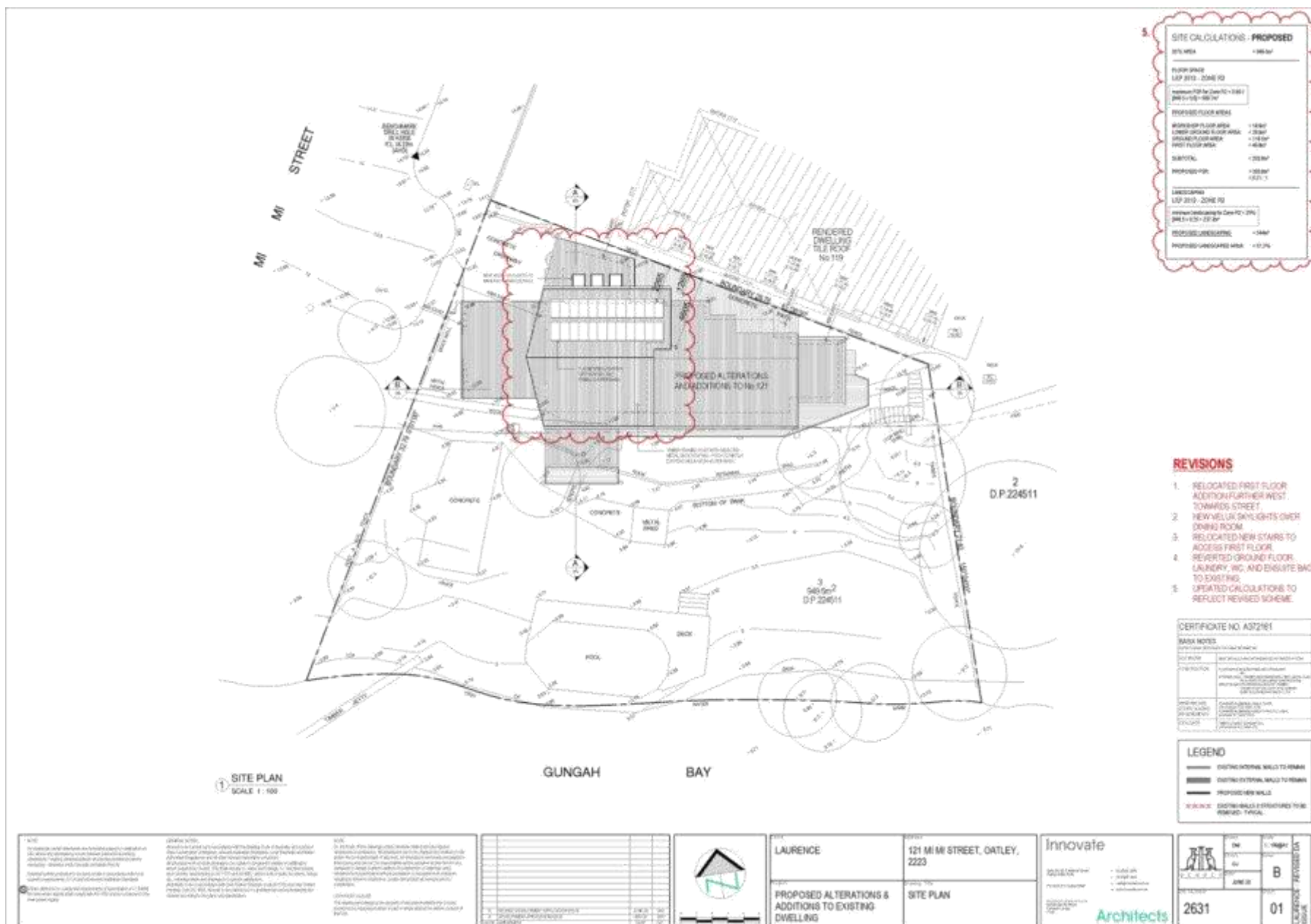
46. **Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must 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.
47. **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)).

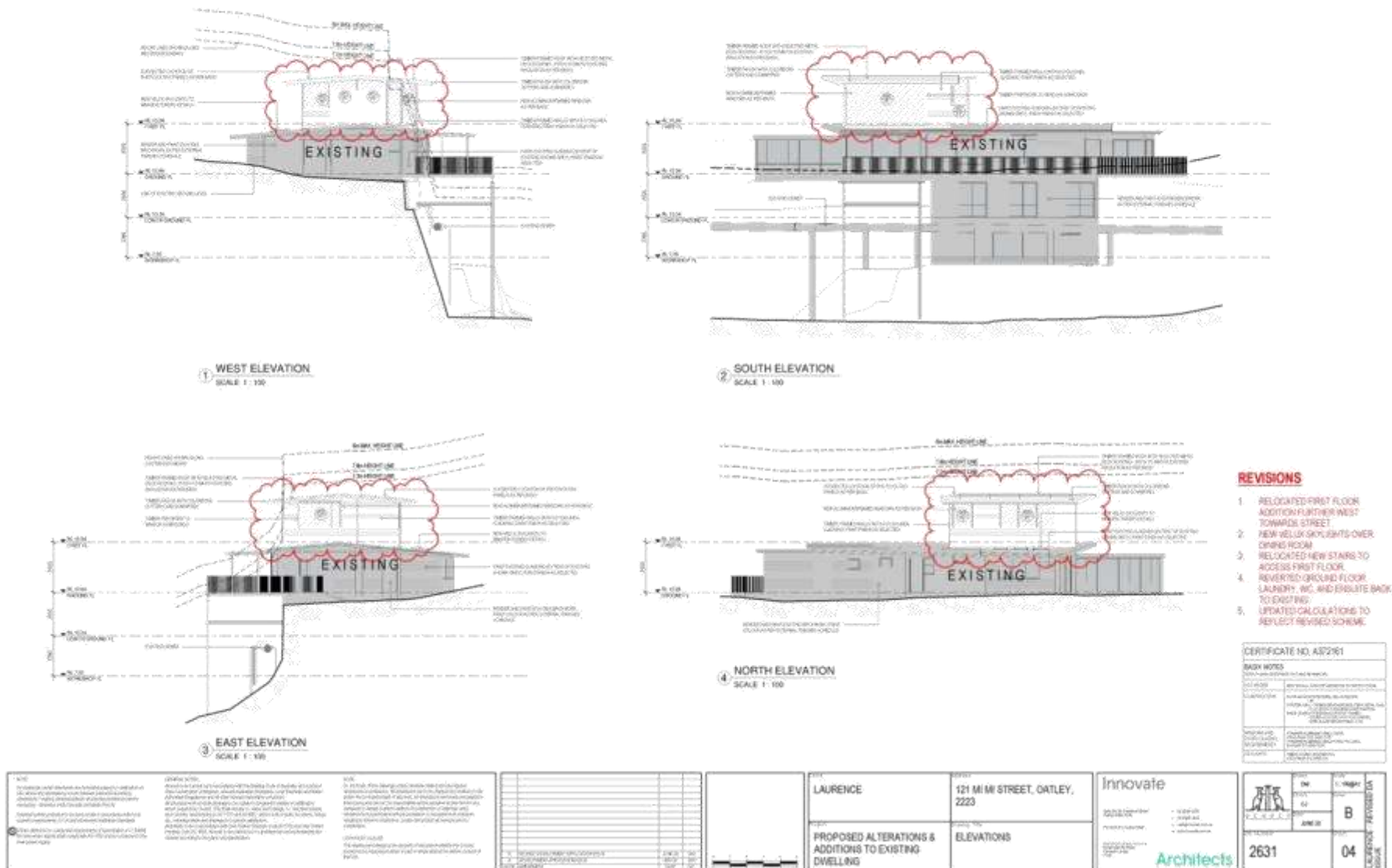
## ATTACHMENTS

- Attachment [↓](#) 1  Site plan - 121 Mi Mi St Oatley
- Attachment [↓](#) 2  Elevations - 121 Mi Mi St Oatley









# REPORT TO GEORGES RIVER COUNCIL

## LPP MEETING OF THURSDAY, 17 SEPTEMBER 2020

LPP048-20

<b>LPP Report No</b>	<b>LPP048-20</b>	<b>Development Application No</b>	
<b>Site Address &amp; Ward Locality</b>	Public Exhibition of Draft Georges River Development Control Plan 2020		
<b>Proposed Development</b>	Principal DCP for the Georges River Local Government Area		
<b>Owners</b>	N/A		
<b>Applicant</b>	Georges River Council		
<b>Planner/Architect</b>	N/A		
<b>Date Of Lodgement</b>	N/A		
<b>Submissions</b>	N/A		
<b>Cost of Works</b>	N/A		
<b>Local Planning Panel Criteria</b>	Delegated planning authority pursuant to Part 3, Division 3.6 of the Environmental Planning and Assessment Act 1979		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	N/A – Development Control Plan		
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Attachment 1 – Final List of Car parking rates and their source; Attachment 2 – Comparison Table of Key Draft GRDCP controls for various residential styles; Attachment 3 – GRDCP Table of Contents; Attachment 4 – GRDCP Part 1 – Introduction; Attachment 5 – GRDCP Part 2 – Application Process; Attachment 6 – GRDCP Part 3 – General Planning Considerations; Attachment 7 – GRDCP Part 4 – General Land Use; Attachment 8 – GRDCP Part 5 – Residential Locality Statements; Attachment 9 – GRDCP Part 6.1 – Low Density Residential Controls; Attachment 10 – GRDCP Part 6.2 – Medium Density Residential Controls; Attachment 11 – GRDCP Part 6.3 – High Density Residential Controls; Attachment 12 – GRDCP Part 6.4 – Ancillary Development; Attachment 13 – GRDCP Part 6.5 – Foreshore Locality Controls; Attachment 14 – GRDCP Part 7 – Business Precincts; Attachment 15 – GRDCP Part 8 – Kogarah Town Centre; Attachment 16 – GRDCP Part 9 – Industrial Development; Attachment 17 – GRDCP Part 10 – Precincts; Attachment 18 – GRDCP Appendices</p> <p>(NOTE: REFER TO THE DRAFT GEORGES RIVER DEVELOPMENT CONTROL PLAN 2020 PAGE ON COUNCIL'S WEBSITE FOR ALL THE ATTACHMENTS)</p>		
<b>Report prepared by</b>	Senior Strategic Planner		

<b>Recommendation</b>	<p>That the Georges River Local Planning Panel, as delegate of the Georges River Council, resolve as follows:</p> <p>(a) That Council commence the process of repealing the following DCPs pursuant to Clause 22(2) of the Environmental Planning and Assessment Regulations 2000:</p>
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|  | <ul style="list-style-type: none"> <li>a. Kogarah DCP 2013</li> <li>b. Hurstville Control Plan 1 – applies to land within Penshurst, Mortdale and Hurstville wards</li> </ul> <p>(b) That Council commence the process to repeal the following Council policies:</p> <ul style="list-style-type: none"> <li>a. Interim Policy DCP (Policy #: Pol-061.01)</li> <li>b. Drainage and Onsite Detention Policy (replaced by Georges River Stormwater Management Policy 2019)</li> <li>c. Fencing adjacent to public roads (provisions in the draft Georges River DCP 2020)</li> <li>d. Balcony Enclosures in Residential flat buildings Policy (provisions in the draft Georges River DCP 2020)</li> <li>e. Satellite Dish Policy (provisions in the draft Georges River DCP 2020 and covered by Exempt and Complying SEPP)</li> <li>f. Code for the erection of private tennis courts (provisions in the draft Georges River DCP 2020)</li> <li>g. Stencilling of street driveways policy (provisions in the draft Georges River DCP 2020)</li> <li>h. Underground electricity cabling to developments policy (provisions in the draft Georges River DCP 2020)</li> <li>i. Design guidelines for absorption trenches (replaced by Georges River Stormwater Management Policy 2019)</li> <li>j. Rainwater Tanks Policy, adopted 18 December 2002 (replaced by Georges River Stormwater Management Policy 2019)</li> <li>k. Home Activities Policy, adopted 15 August 2001 (home occupations are permitted without consent)</li> <li>l. Code for Commercial Use of Public Footpaths (replaced by Georges River Council Local Approvals Policy – Use of Public Land dated 29 October 2018)</li> </ul> <p>(c) That Council note the retention of the following DCPs:</p> <ul style="list-style-type: none"> <li>a. Hurstville Development Control Plan Number 2 - Amendment No. 9 - Applies to sites within the Hurstville City Centre excluding the 'deferred matters' on the Draft Georges River Local Environmental Plan 2020 Land Application Map.</li> <li>b. Hurstville Development Control Plan Number 2 - Amendment No. 5 - Applies to sites within the Hurstville City Centre identified as 'deferred matters' on the Draft Georges River Local Environmental Plan 2020 Land Application Map</li> </ul> <p>(d) That, as recommended by the Department of Planning Industry and Environment, the current notification provisions</p> |
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	<p>listed in the Development Control Plans below be repealed in accordance with Clause 22(2) of the Environmental Planning and Assessment Regulation 2000 by subsequent Development Control Plans:</p> <ul style="list-style-type: none"> <li>i. <i>Section 2.4 of the Hurstville Development Control Plan Number 2 - Amendment No. 9 - Applies to sites within the Hurstville City Centre excluding the 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map.</i></li> <li>ii. <i>Section 2.2 of the Hurstville Development Control Plan Number 2 - Amendment No. 5 - Applies to sites within the Hurstville City Centre identified as 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map.</i></li> </ul> <ul style="list-style-type: none"> <li>(e) That the Georges River Local Planning Panel endorse the draft Georges River Development Control Plan 2020 for public exhibition for a minimum of 28 days.</li> <li>(f) That Council publicly exhibit the draft Georges River Development Control Plan 2020 in accordance with the <i>Environmental Planning and Assessment Act 1979</i>, the Environmental Planning and Assessment Regulation 2000 and relevant COVID-19 Planning Orders issued by the NSW Minister for Planning and Public Spaces.</li> <li>(g) That the Georges River Local Planning Panel authorise the General Manager to make minor modifications to any numerical, typographical, interpretation and formatting errors, if required, in preparation for the public exhibition of the draft Georges River Development Control Plan 2020.</li> </ul>
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## Executive Summary

1. At its meeting of 23 April 2019, Council resolved to prepare a comprehensive Development Control Plan (DCP) for the Georges River Local Government Area to support the Georges River LEP 2020 (GRLEP 2020). The DCP has been prepared in four stages:
  - a. Stage 1 – The Community Participation Plan
  - b. Stage 2 – Introduction, general planning considerations, general land uses and land zoned IN2-Light Industry
  - c. Stage 3 - Residential Controls and Precincts
  - d. Stage 4 - Business Precincts.
2. The draft Georges River Development Control Plan (GRDCP) 2020 has been prepared and is submitted to Council for consideration to be placed on community consultation in accordance with the *Environmental Planning and Assessment Act 1979* and its Regulation.
3. The draft GRDCP 2020 supports the draft GRLEP 2020.
4. Section 3.43 of the Environmental Planning & Assessment Act 1979 (in summary) states that a provision of a DCP that is inconsistent with the provisions of an Environmental Planning Instrument has no effect.

5. In bringing GRDCP 2020 into effect, it is to be noted that the Council will also need to begin the process of repealing the current DCPs, Interim DCP and former Hurstville Council policies. Clause 22(2) of the Environmental Planning and Assessment Regulations 2000 states that
  - (2) *A council may repeal a development control plan—*
    - (a) *by a subsequent development control plan, or*
    - (b) *by publishing notice of the decision to repeal the plan on its website.*
  - (3) *At least 14 days before repealing a development control plan under subclause (2)(b), the council must publish notice of its intention to repeal the plan, and its reasons for the repeal, on its website.*
  - (4) *The repeal of a development control plan under subclause (2) (b) takes effect on the date on which the notice is published on the council's website.*
6. The report is broken up into the following sections to assist Council:
  - a. Resolutions of Council
  - b. Background
  - c. Councillor briefings
  - d. Approach to preparation of the draft GRDCP
  - e. Content of the draft GRDCP
  - f. Matters for consideration by Council
  - g. Design Review Panel
  - h. Repeal of DCPs and former Hurstville Council Policies
  - i. Financial Implications
  - j. Risk Implications
  - k. Community Engagement
  - l. Next Steps
7. The report has the following Attachments:
  - a. Attachment 1 – Final List of Car parking rates and their source
  - b. Attachment 2 – Comparison Table of Key Draft GRDCP controls for various residential styles
  - c. Attachment 3 – GRDCP Table of Contents
  - d. Attachment 4 – GRDCP Part 1 – Introduction
  - e. Attachment 5 – GRDCP Part 2 – Application Process
  - f. Attachment 6 – GRDCP Part 3 – General Planning Considerations
  - g. Attachment 7 – GRDCP Part 4 – General Land Use
  - h. Attachment 8 – GRDCP Part 5 – Residential Locality Statements
  - i. Attachment 9 – GRDCP Part 6.1 – Low Density Residential Controls
  - j. Attachment 10 – GRDCP Part 6.2 – Medium Density Residential Controls
  - k. Attachment 11 – GRDCP Part 6.3 – High Density Residential Controls
  - l. Attachment 12 – GRDCP Part 6.4 – Ancillary Development

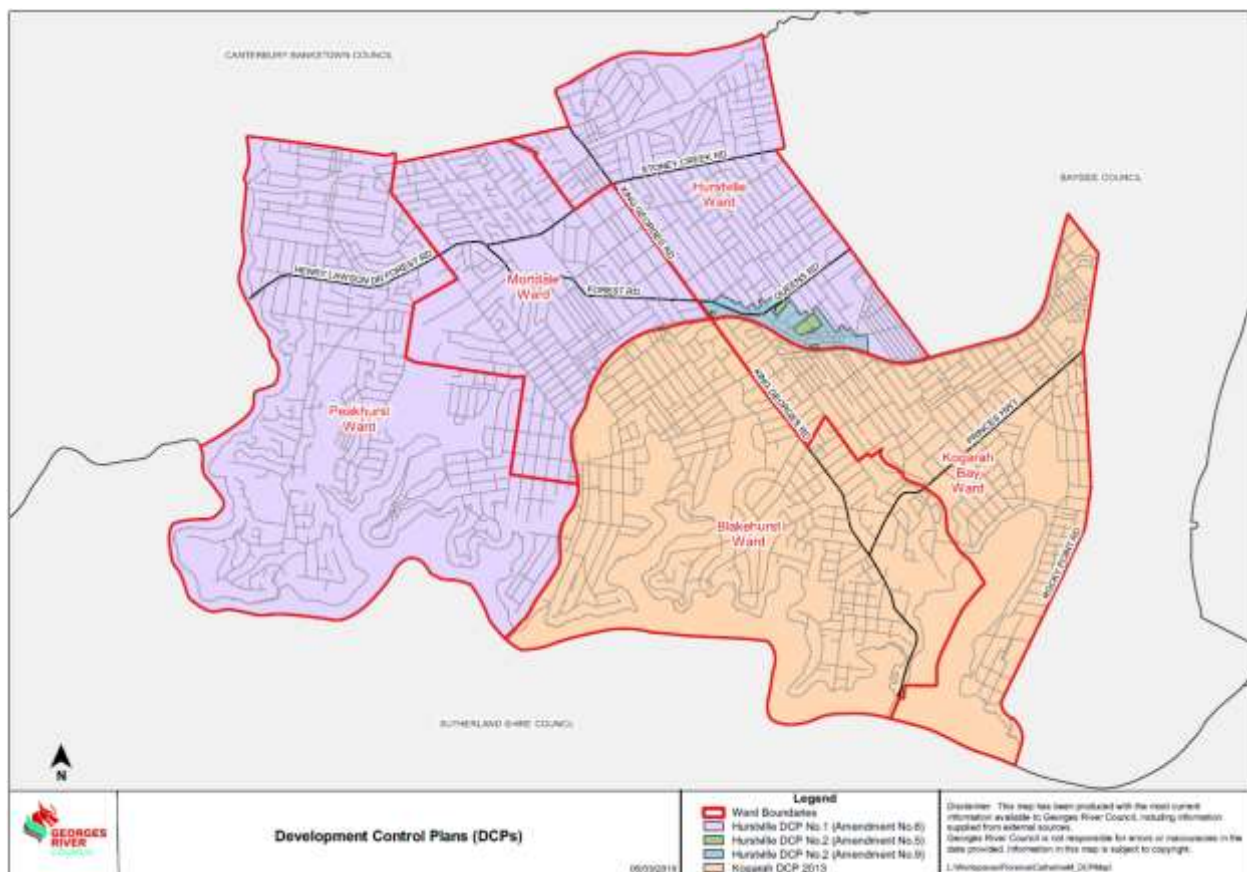
- m. Attachment 13 – GRDCP Part 6.5 – Foreshore Locality Controls
  - n. Attachment 14 - GRDCP Part 7 – Business Precincts
  - o. Attachment 15 – GRDCP Part 8 – Kogarah Town Centre
  - p. Attachment 16 – GRDCP Part 9 –Industrial Development
  - q. Attachment 17 – GRDCP Part 10 – Precincts
  - r. Attachment 18 – GRDCP Appendices
8. Council at its meeting held 24 August 2020 considered the *Deferred Report From Environment And Planning Committee Meeting 10 August 2020 (ENV030-20) - Public Exhibition of Draft Georges River Development Control Plan 2020* and resolved as follows:
- a. That Council note that due to the nature and number of disclosures of interest made, Council does not have a quorum present for the consideration of Item CCL046-20 Deferred Report from Environment and Planning Committee Meeting 10 August 2020 (ENV030-20) - Public Exhibition of Draft Georges River Development Control Plan 2020 held on 24 August 2020; and
  - b. That having regard to the lack of quorum, Council delegate the Council functions under Part 3, Division 3.6 of the Environmental Planning and Assessment Act 1979 in relation to the Draft Georges River Development Control Plan 2020 including the determination of the matters contained in recommendation of Item CCL046-20 Deferred Report from Environment and Planning Committee Meeting 10 August 2020 (ENV030-20) - Public Exhibition of Draft Georges River Development Control Plan 2020 held on 24 August 2020 to the Georges River Local Planning Panel.
9. **The matter is now reported to the Georges River Local Planning Panel.**

## PREVIOUS RESOLUTIONS OF COUNCIL

10. Council has previously resolved the following relating to development controls and the preparation of the GRDCP:
- a. Proposed Interim Policy Approach for Development Control Plans (Inconsistent Controls for Development) – dated 24/09/2018
  - b. Preparation of a new Development Control Plan for the Kogarah Bay Precinct Princes Highway and the west side of the Princes Highway from Jubilee Avenue to Park Road – dated 23/04/2019
  - c. Preparation of Development Control Plan Provisions for Mechanical Parking Installations in Developments within the Georges River LGA – dated 23/04/2019
  - d. Preparation of a new Development Control Plan for restrictions on the provision or installation of hostile architecture – dated 26 August 2019
  - e. Additional controls relating to use of rainwater for car wash bays in residential flat buildings and the further investigation and review of the setbacks, landscaped areas, and common open space to ensure compatibility between the scale of development at the point of transition between the low density residential zone and the adjoining higher density residential areas - Council resolution dated 25 May 2020 in adopting Part C2 Amendment.
11. The preparation of the GRDCP has considered and addressed these resolutions of Council.

## Report in Full BACKGROUND

12. Council has four Development Control Plans that apply to the Local Government Area:
- Hurstville Development Control Plan 1 - Applies to land within the Peakhurst, Mortdale and Hurstville Wards;
  - Hurstville Development Control Plan Number 2 - Amendment No. 9 - Applies to sites within the Hurstville City Centre excluding the 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map;
  - Hurstville Development Control Plan Number 2 - Amendment No. 5 - Applies to sites within the Hurstville City Centre identified as 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map; and
  - Kogarah Development Control Plan 2013 - Applies to land within the Blakehurst and Kogarah Bay Wards.
13. **Figure 1** depicts the area covered by each of the DCPs listed above.



**Figure 1 – Area covered by each DCP**

14. At its meeting of 23 April 2019, Council resolved to prepare a comprehensive Development Control Plan for the Georges River Local Government Area to ensure that it supports the GRLEP 2020.
15. The draft Georges River DCP 2020 (GRDCP 2020) was prepared in 4 stages:
- Stage 1 – The Community Participation Plan, which is a statutory document required under Section 2.23 of the EP&A Act 1979. This Plan was adopted by Council on 28 October 2019 and details how and when the community will be involved in planning matters. This is a separate document.

- b. Stage 2 – This stage covers:
    - i. Introduction
    - ii. General planning considerations
    - iii. General land uses
    - iv. Land zoned IN2-Light Industry
  - c. Stage 3 - Residential controls and Precincts – This stage covers:
    - i. Task 1 - Amendment to Part C2 Medium Density Housing of Kogarah DCP 2013
    - ii. Task 2 – Low Density Housing
    - iii. Task 3 – Multi Dwelling Housing, Multi Dwelling Housing (Terraces) and Manor Houses
    - iv. Task 4 – Residential Flat Buildings
    - v. Task 5 - Ancillary Structures
  - d. Stage 4 - Business Precincts – Covers all business-zoned land in the LGA.
16. Council engaged SJB Consultants to undertake Stages 2 and 3 of the DCP 2020. Stage 4 was undertaken in-house.
  17. The first task for Stage 3 of DCP 2020 was to prepare an amendment to Part C2 of Kogarah Development Control Plan 2013.
  18. At the 23 April 2019 meeting, Council also resolved that 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 and 2:1) and height (21m), Council immediately proceed 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. This amendment to the DCP is to address, but is not limited to the following matters:
    - a. Site isolation and amalgamation
    - b. Vehicular access, parking and circulation
    - c. Traffic impact
    - d. Landscape character
    - e. 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.
    - f. Impact on Heritage Item I3 “Sunnyside” at 186-188 Princes Highway
  19. The draft amendment was briefed to Councillors on 16 September 2019 and was considered by Council at its meeting on 25 November 2019.
  20. Council at its meeting on 25 May 2020 and pursuant to Clause 21(1) (b) of the Environmental Planning and Assessment Regulations adopted the development control plan – being the “Kogarah Development Control Plan 2013 (Part C2 – Medium Density Housing Amendment)”.



21. The multi-unit housing and residential flat building sections of the GRDCP correspond to that adopted by Council on 25 May 2020 for Part C2 of the Kogarah DCP except for the changes outlined in **Table 3** of this report and the following two additional controls inserted to limit the extent of excavation and bulk and scale:
- Where topography conditions require a basement, the area of the basement should not exceed the area required to meet the car parking requirements for the development, access ramp to the parking, and storage requirements outlined in Section 1.16 of the DCP. Additional basement area to that required to satisfy these requirements may be included as floor space area when calculating floor space ratio.
  - The maximum size of voids at the first floor level should be a cumulative total of 15m<sup>2</sup> (excluding voids created by internal stairs).

### COUNCILLOR BRIEFINGS HELD ON THE PREPARATION OF THE DRAFT GRDCP 2020

22. The following **Table 1** provides the summary of the briefings that have been held with Council on the contents of the Draft Georges River Development Control Plan 2020.

**Table 1 – Summary of Councillor Briefings held**

<b>Date</b>	<b>Presentation Topic</b>	<b>Issues raised by Councillors</b>	<b>Direction/Action</b>
02/07/2018	<p><b>LEP and DCP Foreshore Review</b></p> <p>This briefing provided an introduction to the LEP and DCP Foreshore Review. It covered:</p> <ul style="list-style-type: none"> <li>The implementation in the Georges River Estuary Coastal Zone Management Plan 2013</li> <li>A review of all current water and foreshore controls to the ridgeline as viewed from the water under all of the Council's LEPs and DCPs</li> <li>Visual assessment of foreshore based on photographic analysis of LGA</li> <li>Preparation of a list of LEP and DCP controls that will apply across the LGA and that can be incorporated into the comprehensive LEP and DCP currently being prepared for the Georges River LGA</li> <li>Preparation of a new</li> </ul>	No issues raised.	Nil

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	Foreshore Building Line Map that will be incorporated into the GRLEP 2020		
15/10/2018	<b>Review of Planning Controls for Foreshore Development</b>  This briefing covered: <ul style="list-style-type: none"> <li>Coastal hazard, flood hazard risk and climate change</li> <li>Suggestion that Council strengthen DCP controls to protect views, and incorporate Water Sensitive Urban Design principles and regulate subdivision.</li> </ul>	The issues raised: <ul style="list-style-type: none"> <li>Relationship with Georges River Foreshore Access and Improvement Plan (FAIP)</li> <li>Will the FBL change</li> </ul>	Explanation provided – the FAIP has identified locations of publicly owned foreshore suitable for enhanced recreational access and links between key foreshore assets, opportunities to create resilient estuarine ecosystems and liveable community places. It also considers strategic projects where important access opportunities are identified and considered a high priority. In addition the plan identifies foreshore improvement works to enhance amenity and recreational opportunities such as the creation of formal walking and cycling trails.  The FBL was to be retained.
01/04/2019	<b>Interim Policy DCP:</b> To propose an Interim Policy DCP for assessing development applications until such time as the	The issues raised were: <ul style="list-style-type: none"> <li>Side setbacks of the 1<sup>st</sup> floor for dwelling houses</li> <li>Front setbacks being</li> </ul>	The issues raised were addressed in the final Interim Policy DCP which was adopted by

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	GRDCP 2020 is adopted by Council. The Interim Policy addresses dwelling houses, dual occupancies, multi-unit dwellings and residential flat buildings, providing harmonised controls for setbacks, landscaped areas, private open space and communal open space, site frontages and solar access.	<p>wholly concreted</p> <ul style="list-style-type: none"> <li>• Have a minimum % landscaped area</li> <li>• Excavation for basements</li> <li>• Provision of car parking</li> </ul>	Council on 11 June 2019.
01/04/2019	<p><b>Draft Foreshore Planning Controls</b></p> <p>This briefing covered:</p> <ul style="list-style-type: none"> <li>• DCP provisions for Dual Occupancies which link well with the Codes SEPP and are informed by the built form testing and the Low Rise Medium Density Design Guide:</li> <li>• New DCP provisions <ul style="list-style-type: none"> <li>○ Green Web</li> <li>○ Siting (e.g. front and side setbacks)</li> <li>○ Built Form (e.g. maximum length of building)</li> <li>○ Landscaping (e.g. deep soil areas)</li> </ul> </li> </ul>	<p>The issues raised were mainly related to the LEP provisions – which were incorporated into the Draft GRLEP 2020:</p> <ul style="list-style-type: none"> <li>• Concerned about the term Foreshore Scenic Protection Area and would be considered an environmentally sensitive area, which will result in excluding exempt and complying development.</li> <li>• Could the term Foreshore Scenic Protection Area (FSPA) be called something else</li> <li>• The FSPA and the area of the proposed extension into the former KCC seem excessive. Some of these areas are not suitable or relevant.</li> <li>• What additional controls would be introduced in the FSPA?</li> </ul>	<p>DCP provisions have been included in the draft GRDCP, similar to those contained in the current Hurstville DCP 2012.</p> <p>Council exhibited a reduced FSPA in accordance with the recommendations of the Foreshore Strategic Directions Paper (part of the Foreshore Review).</p> <p>The LPP has resolved to retain the exhibited and reinstate the original FSPA. Further work on the role, mapped extent and zoning of the FSPA will be undertaken as part of the preparation of draft LEP in 2021/2022.</p>
06/05/2019	<b>Approach to the preparation of the GRDCP 2020</b>	No issues raised.	Nil

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	<p>Staged approach to DCP explained to Council and is as follows:</p> <ul style="list-style-type: none"> <li>• Stage 1 – The Community Participation Plan</li> <li>• Stage 2 – Introduction, general planning considerations, general land uses and land zoned IN2-Light Industry</li> <li>• Stage 3 - Residential Controls and Precincts</li> <li>• Stage 4 - Business Precincts.</li> </ul>		
05/08/2020	<p><b>Foreshore Review – Sea Level Rise</b> Councillors were briefed on sea level rise.</p>	The main issue raised was the impact on private properties.	The draft GRLEP 2020 contains Clause 6.5 – Foreshore area and coastal hazards and risks which deals with the sea level rise affectation on properties. Council will be required to consider the impacts of sea level rise and tidal inundation as a result of climate change.
02/09/2019	<p><b>Industrial Precincts in the GRDCP 2020 (Stage 2 DCP)</b></p> <p>There are 8 industrial precincts within the Georges River LGA and all zoned IN2 Light Industrial under the draft GRLEP 2020. The Precincts are:</p> <ul style="list-style-type: none"> <li>• Blakehurst</li> <li>• Carlton</li> <li>• South Hurstville (Halstead Street)</li> <li>• Beverly Hills</li> <li>• Kingsgrove</li> </ul>	<p>Feedback included:</p> <ul style="list-style-type: none"> <li>• 4.5m setback was agreed with</li> <li>• Request to reconsider the secondary road of 3m width – this may not be enough</li> <li>• 3m landscaped setback to stormwater channels – it was stated that this setback may be difficult to achieve in the smaller industrial precincts</li> </ul>	These matters have been addressed in the draft DCP. Further work was carried out on the Penshurst Lane Precinct, including a tree survey.

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	<ul style="list-style-type: none"> <li>• Peakhurst</li> <li>• Penshurst (Forest Road)</li> <li>• Penshurst Lane</li> </ul> <p>The Councillors were provided with a comparison of the Kogarah and Hurstville DCP controls relating to industrial zoned land and provided with a proposed set of controls covering:</p> <ul style="list-style-type: none"> <li>• Setbacks</li> <li>• Interface with residential development and zones</li> <li>• Landscaping and trees</li> </ul> <p>Precinct controls were proposed for Blakehurst and Penshurst Lane.</p>	<ul style="list-style-type: none"> <li>• For Penshurst Lane Precinct, check the requirements to make sure that there is a viable site left after road widenings and tree setbacks.</li> </ul>	
16/09/2019	<p><b>R3 Medium Density Residential Precincts in the KLEP 2012 (Stage 3 DCP)</b></p> <p>As part of the preparation of Stage 3 – Residential of the GRDCP 2020, a draft amendment to Part C2 - Medium Density Housing of the Kogarah DCP 2013 was prepared as the first task to address inconsistencies between Kogarah LEP 2012 and Kogarah DCP 2013 and transition issues.</p>	<p>The following Issues were raised:</p> <ul style="list-style-type: none"> <li>• Relationship between landscape area and the private open space and the extent of its occurrence.</li> <li>• Confirmation to delete the inconsistent planning control table and envelope controls in the current Part C2 - Medium Density Housing of the Kogarah DCP 2013 was provided.</li> <li>• Question raised on how to ensure that the owners have received a good offer in relation to the matter of site isolation</li> </ul>	<p>Clause 6.13 in the draft GRLEP 2020 indicates that the development to which SEPP65 applies is excluded from the 10% minimum landscaped area requirement in Zone R4 High Density Residential.</p> <p>Therefore this requirement has been deleted from the <i>Landscaped areas and private open space</i> section of Part 1 of the DCP and reference has been made to the NSW</p>

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
			<p>Government's ADG requirement for deep soil (7% of site area)</p> <p>The inconsistent planning control table and envelope controls have been removed from the draft DCP.</p> <p>The draft DCP includes controls to encourage site consolidation. It also provides controls in case the amalgamation of the isolated site is not able to occur including requiring Council to get an independent valuation done.</p>
04/11/2019	<p><b>Stage 3 DCP – Dwelling Houses, narrow lot housing, dual occupancies (attached and detached) and secondary dwellings.</b></p> <p>The Councillors were provided with a comparison of the Kogarah and Hurstville DCP controls relating to dwelling houses, narrow lot housing, dual occupancies (attached and detached) and secondary dwellings and provided with a proposed set of controls covering:</p> <ul style="list-style-type: none"> <li>• Setbacks</li> <li>• Wall heights</li> <li>• Principal open space</li> <li>• Impervious areas</li> <li>• Fencing</li> <li>• Roof top terraces</li> </ul>	<p>Councillors requested:</p> <ul style="list-style-type: none"> <li>• Separate controls for dwelling houses and dual occupancies</li> <li>• For corner blocks have a front setback and a side setback. If a garage fronts a secondary street then a setback of 5.5m required for additional on-site parking.</li> <li>• Require modulation in buildings and buildings have to address both streets if the site is a corner site</li> <li>• Side setbacks of 900mm and 1200mm to be streamlined in accordance with site widths and whether it</li> </ul>	<p>Controls for low density housing styles in the LGA are included in the DCP.</p> <p>In response to impervious areas, the control related to impervious area in the Landscaping section of the DCP has a reduced impervious area of 40% of the setback area.</p> <p>The other matters raised by Councillors have been incorporated into</p>

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	<ul style="list-style-type: none"> <li>Extent of glazing used on waterfront dwellings</li> <li>View sharing planning principle to be relied on for view sharing assessments.</li> <li>Elevated rear facing balconies to be provided with privacy screens/solid walls on the side elevations</li> </ul>	<p>is alterations/additions or newly built dwellings</p> <ul style="list-style-type: none"> <li>Investigate a building setback to the foreshore</li> <li>Controls for sloping sites to be incorporated</li> <li>Provide wall heights</li> <li>Rooftop terraces should not be allowed</li> <li>Facades fronting the foreshore should be broken up – made interesting</li> <li>Clarify basement setbacks</li> <li>Discouraged the inclusion of a maximum impervious area (as a percentage of the site area) in the low density housing.</li> </ul>	<p>various sections of the DCP, including clarification of setbacks, modulation in building facades to streets &amp; the foreshore, controls for sloping sites and basement setbacks.</p>
17/02/2020	<p><b>Stage 2 DCP – General Controls and General land use Types</b></p> <p>General controls and general land uses briefed to Councillors. It involved a comparison of Kogarah and Hurstville DCP controls as well as a benchmark against other Council DCPs.</p> <p>The only new general controls included were:</p> <ul style="list-style-type: none"> <li>Earthworks - groups construction management controls</li> <li>Coastal Hazards and Risk i.e. sea level rise</li> <li>Parking Access and Transport - added end of trip &amp; bicycle controls</li> </ul>	<p>No changes required as a result of the briefing.</p>	<p>Nil.</p>

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	<p>(NB: Does not include review of car parking controls)</p> <ul style="list-style-type: none"> <li>Public Domain including Public Art</li> <li>View Impacts</li> </ul> <p>The only new general land uses included were:</p> <ul style="list-style-type: none"> <li>Tourist and Visitor Accommodation (Backpackers, Bed and Breakfast, Motel / Hotel, Serviced Apartments, Short-term Rental Accommodation)</li> <li>Vehicle Repairs, Sales and Hire Premises</li> <li>Swimming pools relocated to Residential Chapter</li> </ul> <p>The focus was on simplification i.e. plain English, objectives and controls; updated references to draft LEP, current NSW legislation/ guidance policies, and Australian Standards; relocate DA submission requirements to DA checklist and guidelines and deferral to other Council policy documents / studies e.g. Local Approvals Policy (Outdoor dining).</p>		
17/02/2020	<p><b>Stage 3 DCP – multi dwelling housing, multi dwelling housing (terraces) and manor houses</b></p> <p>The proposed DCP controls seek to complement GRLEP 2020 controls and respond to the controls contained within the Codes SEPP and Low Rise</p>	<ul style="list-style-type: none"> <li>Question rose regarding car parking for terraces that are allowed on Torrens title land, specifically visitor spaces.</li> <li>Question rose regarding number of lots in the LGA that can accommodate medium density</li> </ul>	<p>The recommended car parking was 1 space per dwelling (no visitor) for Manor Houses, 1 space per dwelling and 1 visitor space per 5 units or part thereof Multi Dwelling Housing</p>



Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	Medium Density Design Guide – Development Applications.	<p>development. Around 650 lots identified; Peakhurst / Penshurst area has 15m to 18m wide lots and the Culwulla Street, South Hurstville area has around 600sqm lots; where Council's controls can be requested in the Low Rise Medium Density Design Code.</p> <ul style="list-style-type: none"> <li>The intent and circumstances around the 5m single storey height restriction at the rear of the lot in the Multi Dwelling Housing was questioned and whether it was to apply at the transition of R2 and R3 zones.</li> </ul>	<p>(terraces) and 1.5 spaces for Multi Dwelling Housing and 1 visitor space for 5 dwellings or part thereof for Multi-dwelling Housing (excluding terraces)</p> <p>It was clarified that the rear dwelling should be single storey, not 5m to avoid any privacy concerns. This control needs to apply at the interface between the R2 and R3 zones and not where R3 abuts R3.</p>
02/03/2020	<p><b>Georges River Car Parking Strategy</b></p> <p>Car parking rates for retail and commercial uses were discussed in this briefing on the Georges River Car Parking Strategy. At the Council Meeting on 27 April 2020, Council endorsed the Position Paper and the Car Parking Strategy.</p> <p>Car parking rates were established for business and office premises, retail premises (shops), restaurants and cafes; and medical centres.</p> <p><b>Attachment 1</b> to this report indicates the final list of car parking rates and where they have been sourced</p>	<p>Councillors agreed with the overall rates for retail/commercial, shops, restaurants/cafes and medical centres.</p> <p>Suggestion for increasing the car parking rates for restaurants.</p> <p>Suggestion to include rates for reception halls.</p>	<p>Council recommended amending the rates for restaurants from 1 space per 60sqm to 1 per 40sqm.</p> <p>The car parking rates for reception halls need to be calculated as part of a community facility on individual basis and thus a specific parking rate for the facility cannot be recommended.</p>

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	from and is provided for the Council's information.		
02/03/2020	Stage 3 DCP – Residential flat buildings	<p>The following issues raised in the submissions received to the draft C2 DCP were discussed with Councillors:</p> <ul style="list-style-type: none"> <li>• Combination of two setbacks - 5.0metres for 75% of the width of the building and 7.0metres for the remaining 25%</li> <li>• Transition for high rise buildings to be reduced to 3 storeys and not four, for example, LEP requires 21m height in the vicinity of 9m</li> <li>• Eliminating encroachments in the front setbacks to encourage deep soil planting</li> <li>• Prohibit rooftop Common Open Space (COS) – will cause significant acoustic impacts and have an adverse impact on the amenity of adjoining developments</li> <li>• Question raised regarding why the rooftop COS is permitted in R3 and R4 zones and not R2.</li> <li>• Reiterated that the parapet heights need to be included in the 21m maximum permissible height in R3/R4 zones.</li> <li>• Permissibility of shops in R4 zones</li> </ul>	<p>In response to the direction provided the following have been incorporated in the residential flat buildings section of the DCP:</p> <ul style="list-style-type: none"> <li>• A consistent front setback</li> <li>• For the interface issue at the R2/R4 boundary - use the setback control and leave the podium 4 storeys as exhibited in amendment to C2 to Kogarah DCP 2013.</li> <li>• 3m of the front setback near the property boundary to be landscaped/deep soil and the rest be Private Open Space</li> <li>• The rooftop COS will have 3m setback from the edge of the roof, which will be non-trafficable. It will be landscaped and have a physical barrier. The</li> </ul>

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
		<p>and their maximum size - in areas like Carlton, there is a possibility of residential above a café downstairs. Also, while shop top housing is permitted in the R4 zones, RFBs are also permitted, which means there could be commercial/retail use on ground along the street with residential on top; while the rear could have residential both on the ground and the levels above.</p>	<p>Local Planning Panel has been permitting a mix of ground and rooftop COS.</p> <ul style="list-style-type: none"> <li>• 120sqm maximum size of shops in the R4 zones</li> </ul>
16/03/2020	<p>Stage 4 DCP – commercial centres</p> <ul style="list-style-type: none"> <li>• Approach for the commercial centres is “Harmonisation”.</li> <li>• Hurstville Development Control Plan Number 2 - Amendment No. 5 applies to 3 sites within the Hurstville City Centre identified as 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map - Civic Precinct, Westfield and Treacy Street Carpark sites. This DCP needs to be retained for the Civic Precinct and the Westfield sites.</li> <li>• Hurstville Development Control Plan Number 2 - Amendment No. 9 applies to sites within the Hurstville City Centre excluding the 'deferred matters' on the Hurstville Local</li> </ul>	<p>The following matters were raised:</p> <ul style="list-style-type: none"> <li>• Investigate green walls/roofs</li> <li>• Facade articulation</li> <li>• Hostile architecture</li> <li>• Rezoning of B6 zone</li> </ul>	<p>The GRDCP includes controls in relation to the matters raised by Councillors.</p> <p>The rezoning of B6 zone was not recommended, rather the scope for site amalgamations needs to be investigated to enable the bulky goods retailing permissible in B6 zones.</p>

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	<p>Environmental Plan 2012 Land Application Map. This DCP needs to be retained for all sites within the Hurstville City Centre excluding the Civic Precinct and the Westfield sites which will be 'deferred matters' under the Hurstville Development Control Plan Number 2 - Amendment No. 5.</p> <ul style="list-style-type: none"> <li>• Move the controls relating to centres from the Hurstville Development Control Plan 1 which applies to land within the Peakhurst, Mortdale and Hurstville Wards and Kogarah Development Control Plan 2013 which applies to land within the Blakehurst and Kogarah Bay Wards into a new Part 4 – Commercial Centres section of the draft GRDCP 2020</li> <li>• Generally no introduction of new controls until after Commercial Centres Strategy completed in 2022 except for: <ul style="list-style-type: none"> <li>○ B6 – Enterprise Corridor Controls;</li> <li>○ Supermarket controls (shopping trolley management);</li> <li>○ Interface controls – as per the recent amendments to Section C2 of the Kogarah DCP 2013; and</li> <li>○ Green</li> </ul> </li> </ul>		

Date	Presentation Topic	Issues raised by Councillors	Direction/Action
	walls/roofs.		

## APPROACH TO THE PREPARATION OF THE GEORGES RIVER DCP 2020

23. A staged approach to the DCP was taken as follows:

### Stage 1 - Notification Requirements

24. This section is similar to both the former Hurstville and Kogarah DCPs but includes Council's Pre-lodgement Advisory Service.
25. Section 402 of the Local Government Act 1993 stipulates that councils must establish and implement a strategy (its Community Engagement Strategy), based on social justice principles, for engagement with the local community.
26. Reforms to the Environmental Planning and Assessment Act 1979 (EP&A Act) required councils across NSW to prepare Community Participation Plans (CPPs) by December 2019. Georges River Council prepared a *Georges River Community Engagement Strategy 2018-2028* (CES) to replace Council's existing Community Engagement Strategy (originally adopted by Council on 5 June 2017). The CES includes the Council's CPP.
27. The CES was adopted by Council at its meeting held 28 October 2019. The CES sets out Council's engagement approach and framework to guide how and when Council will engage with the community and the methods and tools to be used in engagement activities. It also stipulates engagement timeframes and notification requirements relevant to the EP&A Act and key engagement timeframes, from the Local Government Act 1993.
28. Part C of the CES contains the same notification controls that are in the current Council DCPs. The aim of Part C is to:
  - a. Enable public participation in the consideration of Development Applications.
  - b. Provide a process for property owners and residents to make submissions.
  - c. Provide a process when notification is required.
  - d. Set out the matters Council will consider when forming its opinion as to whether or not the enjoyment of adjoining and neighbouring land may be detrimentally affected by a development after its completion.
  - e. Ensure notification of landholders who may be affected by a development application even though they do not own adjoining land.
  - f. Define the circumstances when notification is not required.
29. The Department of Planning, Industry and Environment (DPIE) has advised that Council should now revoke the notification requirements from any DCP as the CPP is now made.
30. When Council adopted the CES on 28 October 2019 it also resolved:
 

*That, as recommended by the Department of Planning Industry and Environment, the current notification provisions listed in the Development Control Plans below be repealed in accordance with Clause 22(2) of the Environmental Planning and Assessment Regulation 2000 by subsequent Development Control Plans:*

  - i. *Section 2.2 of the Hurstville Development Control Plan 1 - Applies to land within the Peakhurst, Mortdale and Hurstville Wards.*

- ii. *Section 2.4 of the Hurstville Development Control Plan Number 2 - Amendment No. 9 - Applies to sites within the Hurstville City Centre excluding the 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map.*
  - iii. *Section 2.2 of the Hurstville Development Control Plan Number 2 - Amendment No. 5 - Applies to sites within the Hurstville City Centre identified as 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map.*
  - iv. *Part A2 of the Kogarah Development Control Plan 2013 - Applies to land within the Blakehurst and Kogarah Bay Wards.*
31. The following DCPs will be revoked upon adoption of the new GRDCP 2020:
- a. Hurstville Development Control Plan 1 - Applies to land within the Peakhurst, Mortdale and Hurstville Wards; and
  - b. Kogarah Development Control Plan 2013 - Applies to land within the Blakehurst and Kogarah Bay Wards.
32. Therefore the current notification provisions listed in the Development Control Plans below will still need to be repealed in accordance with Clause 22(2) of the Environmental Planning and Assessment Regulation 2000 by subsequent Development Control Plans:
- a. Section 2.4 of the Hurstville Development Control Plan Number 2 - Amendment No. 9 - Applies to sites within the Hurstville City Centre excluding the 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map.
  - b. Section 2.2 of the Hurstville Development Control Plan Number 2 - Amendment No. 5 - Applies to sites within the Hurstville City Centre identified as 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map.

### Stage 2 - General Controls and Industrial Character Statements

33. Components of this stage were briefed to Councillors and a comparison of Kogarah and Hurstville DCP controls was benchmarked against other Council DCPs.
34. Council officers were supported by SJB Planning and Architecture in developing Stage 2 of the DCP which covered:
- a. Introduction
  - b. Application process for development within the LGA
  - c. General planning considerations such as biodiversity, landscaping, bush fire prone land, earthworks, contaminated land, heritage, views, risks, water management, waste management, ESD, parking access, utilities, subdivision, signage and noise and vibration
  - d. General land uses such as child care facilities, places of public worship, tourist and visitor accommodation, boarding houses, late night trading, vehicle repairs, sales and hire premises
  - e. Industrial precincts and controls including built form, setbacks, landscaping, vehicle access, signage, environmental protection, creative industries and industrial/sensitive landuse interface.

### Stage 3 – Residential (including Kogarah North Precinct)

35. This section included reviewing the previous residential locality statements under former Kogarah LGA as a basis for locality boundaries. Sections of various residential types were briefed to Councillors for their guidance and advice. The RFB section corresponds to that

adopted by Council on 25 May 2020 for Part C2 of the Kogarah DCP 2013 except for the matters outlined in **Table 3**.

36. Council officers were supported by SJB Planning and Architecture in developing Stage 3 of the DCP which covered:
- Locality Statements for each suburb
  - Dwellings, dual occupancies (attached and detached), secondary dwellings, and dual key dwellings
  - Multi-unit housing (terraces) and manor houses
  - Residential flat buildings
  - Ancillary structures
  - Kogarah North Precinct – has been reviewed by Council officers in light of the recent court cases. Please refer to **paragraphs 84-89** for an overview of the changes.

#### Stage 4 – Commercial Centres

37. This stage included the preparation of controls for commercial centres within the LGA and included general controls, controls for B2 Local Centres and B6 Enterprise Corridor.
38. This stage of the Draft GRDCP 2020 was developed in-house.
39. Council adopted the *Commercial Centres Strategy – Stage 1 Centres Analysis (the ‘Strategy’)* at its meeting held 24 February 2020 (Refer **Figure 2**).
40. Stage 1 of the Strategy draws on an evidence base informed by independent expert advice, community input and an in-depth review of all centres to support the on-going viability of all centres in the LGA.
41. The primary purpose of this part is to inform the preparation of GRLEP 2020. This will help to work out an appropriate mix of employment and residential floor space to ensure that the provision of additional housing does not affect the viability of commercial centres and jobs growth.
42. Stage 1 also conducted a stocktake of all 48 commercial centres in the LGA – providing local context, existing floor space, GRLEP 2020 and GRLEP 2022 recommendations which have been utilised in the Centre Precinct Controls. Stage 1 of the Strategy does not propose any zoning changes as part of GRLEP 2020. Proposed LEP recommendations relate to changes in land use permissibility and the minimum non-residential floor space ratio (“FSR”). Further investigations are required in Part 2 of this Strategy to inform LEP 2022 and beyond.

Figure 2 Existing Centres Hierarchy

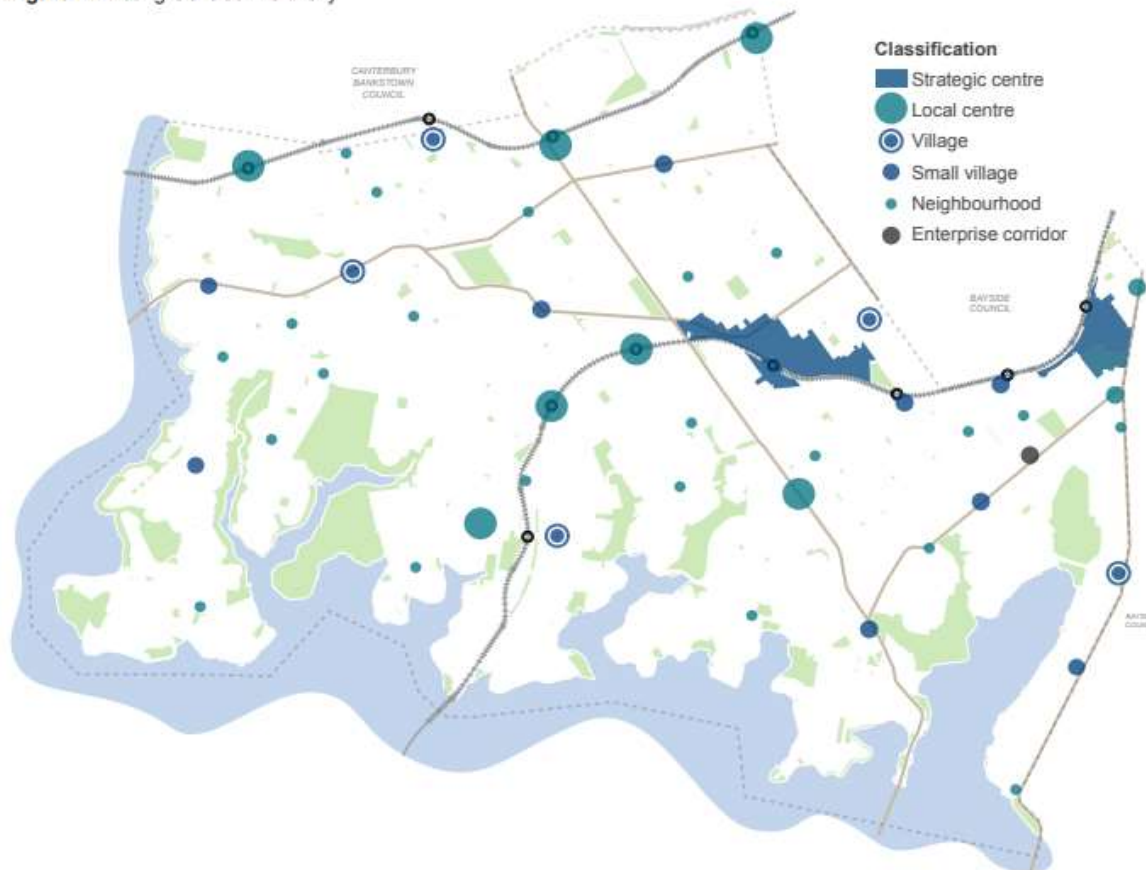


Figure 2 – Existing Centres Hierarchy

43. Therefore the following approach has been taken for the centres within the LGA:

- a. **Hurstville Development Control Plan Number 2 - Amendment No. 5** currently applies to three sites within the Hurstville City Centre identified as 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map – the Civic Precinct, the Westfield and the Treacy Street Carpark sites. Refer to **Figure 3** for the location of the three sites.

The Schedule of Conditions dated 10 March 2020 to the Gateway Determination for GRLEP 2020 required that the Georges River planning proposal be amended “prior to community consultation to delete the inclusion of the Civic Precinct and Westfield sites. Insufficient information is provided to enable assessment of the rezoning of these sites for Gateway determination. Council is encouraged to pursue rezoning of these sites as part of a future planning proposal. With regards to the Treacy Street Carpark site, the planning proposal is to be amended prior to community consultation to clearly differentiate the proposal from the former proposal granted Gateway in 2017, including an explanation of the difference in development.

This DCP will be retained for the Civic Precinct and the Westfield sites.





**Figure 3 – Location of the Deferred Matters Sites**

- b. **Hurstville Development Control Plan Number 2 - Amendment No. 9** applies to sites within the Hurstville City Centre excluding the 'deferred matters' on the Hurstville Local Environmental Plan 2012 Land Application Map (Refer to **Figure 3** for the sites). This DCP will be retained for all sites within the Hurstville City Centre excluding the Civic Precinct and the Westfield sites which will be 'deferred matters' under the Hurstville Development Control Plan Number 2 - Amendment No. 5.

The Treacy Street Carpark site will be included in HDCP No. 2 (Amend 9) as it will be zoned under the Georges River LEP 2020 (See **Figure 4**).



**Figure 4 – Hurstville City Centre**

- c. The controls relating to centres in the **Hurstville Development Control Plan 1** which applies to land within the Peakhurst, Mortdale and Hurstville Wards and in the Kogarah **Development Control Plan 2013** which applies to land within the Blakehurst and Kogarah Bay Wards will be moved into a new Commercial Centres section in the Georges River DCP 2020. The controls incorporated into the draft GRDCP are:

- From the **Hurstville DCP 1**:
  - Built form and setbacks
  - Façade treatments
  - Pedestrian access
  - Active street frontages
  - Public domain
  - Beverly Hills, Riverwood and Mashman Site Kingsgrove
- From the **Kogarah Development Control Plan 2013**:
  - Part D1 - Development in B1 and B2 zones – the majority of the controls have been relocated into Stage 3 – DCP General Controls
  - Locality controls for - Blakehurst (Princes Highway), Carlton/ Kogarah Bay (Princes Highway), Oatley (Oatley Ave/Frederick St) and Ramsgate

**d. Simplifying of controls (i.e. no repetition of ADG controls)**

- i. Removal of controls that conflict with the LEP (i.e. FSR & HOB) including building envelope controls (not required as FSR & height are set. As Council is aware Section 3.43 of the Environmental Planning & Assessment Act 1979 (in summary) states that a provision of a DCP that is inconsistent with the provisions of an Environmental Planning Instrument has no effect. Therefore as heights and FSRs are included in the draft GRLEP they are not permitted in the draft GRDCP.

- ii. Removal of the B1 and B2 precinct controls under Kogarah DCP 2013 that do not align with the draft GRLEP controls and the harmonisation of the remaining precinct controls under general controls;
- iii. Removal of repetition in the Hurstville DCPs;
- iv. Generally no introduction of new controls until after Commercial Centres Strategy completed in 2022 except for:
  1. B6 – Enterprise Corridor controls
  2. Supermarket controls (Shopping Trolley Management Plan);
  3. Interface controls – as per recent amendments to Part C2 of Kogarah DCP 2013.
  4. Green walls/roofs

## CONTENT OF THE DRAFT GEORGES RIVER DCP

44. The following **Table 2** outlines the content of the draft DCP along with comments.

**Table 2 – Table of Contents (Refer Attachment 3)**

List of Contents	Comments
<b>Part 1 – Introduction (Attachment 4)</b>	
1.1 Name of Development Control Plan 1.2 Adoption Date and Commencement 1.3 Role of the DCP 1.4 Principles and Purpose of the DCP 1.5 Monitoring and Review 1.6 Relationship to other Planning Documents and Instruments 1.7 Application of the DCP 1.8 Structure of this DCP 1.9 How to use this DCP 1.10 List of Development Contributions and Planning Agreements Policy 1.11 List of Amendments to this DCP	This section outlines the administrative and governance issues for the DCP and covers areas of: <ul style="list-style-type: none"> <li>• Role of DCP – contains detail for the design and assessment of developments within the LGA</li> <li>• Application of the DCP – applies to:               <ul style="list-style-type: none"> <li>○ all land within the LGA, with the exception of deferred matters including the Westfield and the Civic Precinct sites</li> <li>○ categories of developments such as residential, business, industrial and general landuses.</li> </ul> </li> </ul>
<b>Part 2 - Application Process (Attachment 5)</b>	
2.1 Introduction 2.2 Pre-lodgement Advisory Service 2.3 Types of Development <ol style="list-style-type: none"> <li>2.3.1 Aims of this Section</li> <li>2.3.2 What are the Types of Development?</li> <li>2.3.3 Exempt and Development</li> </ol> 2.4 Neighbourhood Notification and Advertising of Development Applications	This section provides information on: <ul style="list-style-type: none"> <li>• Pre-lodgement process</li> <li>• Development types – exempt, complying and local, requiring the lodgement of development applications.</li> <li>• Neighbour notification provisions and requirements are contained within the Georges River Council Community Engagement Strategy</li> </ul>
<b>Part 3 - General Planning Considerations (Attachment 6)</b>	
3.1 Introduction 3.2 Biodiversity <ol style="list-style-type: none"> <li>3.2.1 Trees &amp; Vegetation</li> </ol>	This section of the DCP contains controls that assist in ensuring the protection of the environment. It also includes controls for all

List of Contents	Comments								
3.2.2 Green Web 3.3 Landscaping 3.4 Bushfire Prone Land 3.5 Earthworks 3.5.1 Excavation (including cut and fill) 3.5.2 Construction Management / Erosion and Sediment Control 3.6 Contaminated Land 3.7 Heritage 3.7.1 Aboriginal Cultural Heritage 3.7.2 Non-Aboriginal Heritage 3.7.3 Archaeological Management 3.7.4 Heritage Items – Site specific Requirements 3.7.5 Heritage Conservation Areas 3.7.6 Development in the vicinity of a Heritage Item or Heritage Conservation Area 3.8 Views Impacts 3.9 Coastal Hazards and Risks 3.9.1 Coastal Management 3.9.2 Sea Level Rise 3.10 Water Management 3.11 Ecologically Sustainable Development 3.11.1 Energy and Water Efficiency 3.12 Waste Management 3.13 Parking Access and Transport 3.14 Utilities 3.15 Public Domain 3.15.1 Infrastructure 3.15.2 Public Art 3.16 Subdivision and Amalgamation 3.16.1 Lot Size and Shape 3.16.2 Roads, Vehicular Access and Car Parking 3.16.3 Utilities and Services 3.16.4 Drainage 3.17 Universal/Accessible design 3.18 Advertising and Signage 3.19 Crime Prevention/ Safety and Security 3.20 Noise and Vibration 3.20.1 Aircraft Noise and OLS 3.20.2 Development near Road and Rail Corridors 3.20.3 Noise Generating Development	<p>development for areas such as heritage, waste, parking and access, public domain work, noise vibration.</p> <p>An outline of the intention of some of the key controls in this section are summarised below:</p> <ul style="list-style-type: none"> <li>Biodiversity – controls to ensure the protection of existing trees, requirement for the replacement of trees and maximising tree canopy coverage for habitat and connectivity of bushland.</li> <li>Landscaping – controls that encourage the landscaping of development sites to reduce the visual and environmental impact of the built form, the public domain as well as providing habitat for local wildlife. The controls aim to assist in creating a distinct landscape character for the LGA. The provisions in the DCP complement the landscape requirements in Georges River LEP 2020.</li> <li>Earthworks – the aim of the control is to ensure that the natural topography and landform of an area is maintained, the visual impact of development is minimised and earthworks protect the integrity of the geological elements and do not impact stormwater flows or increase flood conditions. For example, cut and fill should not alter the existing ground level by more than 1m.</li> <li>Parking Access and Transport – the car parking rates for a comprehensive range of development types are outlined within the control with key rates being:             <table border="1"> <thead> <tr> <th>Land Use Types</th><th>Parking Rate (Minimum)</th></tr> </thead> <tbody> <tr> <td>Business and Office</td><td> <ul style="list-style-type: none"> <li>1 space per 60m<sup>2</sup> (GFA)</li> </ul> </td></tr> <tr> <td>Retail Premises (Shops)</td><td> <ul style="list-style-type: none"> <li>1 space per 60m<sup>2</sup> (GFA)</li> </ul> </td></tr> <tr> <td>Restaurant or Cafés</td><td> <ul style="list-style-type: none"> <li>1 space per 40m<sup>2</sup> (GFA)</li> </ul> </td></tr> </tbody> </table> </li> <li>Car parking rates for Hurstville and Kogarah Centres</li> </ul>	Land Use Types	Parking Rate (Minimum)	Business and Office	<ul style="list-style-type: none"> <li>1 space per 60m<sup>2</sup> (GFA)</li> </ul>	Retail Premises (Shops)	<ul style="list-style-type: none"> <li>1 space per 60m<sup>2</sup> (GFA)</li> </ul>	Restaurant or Cafés	<ul style="list-style-type: none"> <li>1 space per 40m<sup>2</sup> (GFA)</li> </ul>
Land Use Types	Parking Rate (Minimum)								
Business and Office	<ul style="list-style-type: none"> <li>1 space per 60m<sup>2</sup> (GFA)</li> </ul>								
Retail Premises (Shops)	<ul style="list-style-type: none"> <li>1 space per 60m<sup>2</sup> (GFA)</li> </ul>								
Restaurant or Cafés	<ul style="list-style-type: none"> <li>1 space per 40m<sup>2</sup> (GFA)</li> </ul>								

List of Contents	Comments		
	Medical Centre	<ul style="list-style-type: none"><li>1 space per 50m<sup>2</sup> (GFA)</li><li>NB: Transport and Parking Assessment Study required</li></ul>	
	<ul style="list-style-type: none"><li>Car Parking Rates for other Centres</li></ul>		
	Specific Commercial / Retail	≤800m walking distance of Railway station	≥800m walking distance of Railway station
	Business and Commercial	1 space per 60m <sup>2</sup> (GFA)	1 space per 60m <sup>2</sup> (GFA)
	Retail Premises (Shops)	1 space per 60m <sup>2</sup> (GFA)	1 space per 60m <sup>2</sup> (GFA)
	Restaurant or Cafés	1 space per 60m <sup>2</sup> (GFA)	1 space per 60m <sup>2</sup> (GFA)
	Medical Centre	1 space per 60m <sup>2</sup> (GFA)	1 space per 60m <sup>2</sup> (GFA)
	<ul style="list-style-type: none"><li>Car parking rates for other key landuse types</li></ul>		
	Residential Accommodation	Car Parking Rates	
	Attached Dwelling	<ul style="list-style-type: none"><li>1 space per 1 and 2 beds</li><li>2 spaces per 3 beds or more</li><li>1 visitor space per 4 dwellings or part thereof for developments of 4 dwellings or more</li></ul>	
Dual Occupancy	<ul style="list-style-type: none"><li>1 garage space and 1 driveway space per dwelling</li></ul>		

List of Contents	Comments
	<div>Dwelling House</div> <ul style="list-style-type: none"> <li>1 space per 1 and 2 beds</li> <li>2 spaces per 3 beds or more</li> </ul>
	<div>Secondary Dwellings</div> <ul style="list-style-type: none"> <li>N/A for secondary dwellings</li> <li>NB: Car parking rate for principal dwelling is to be achieved</li> </ul>
	<div>Multi-dwelling housing (terraces)</div> <ul style="list-style-type: none"> <li>1 space per dwelling</li> <li>1 visitor space per 5 units or part thereof and 1 designated car wash bay which may also be a visitor space</li> </ul>
	<div>Multi-dwelling housing (excluding terraces)</div> <ul style="list-style-type: none"> <li>1.5 spaces per dwelling</li> <li>1 visitor space per 5 units or part thereof and 1 designated car wash bay which may also be a visitor space</li> </ul>
	<div>Residential flat building</div> <ul style="list-style-type: none"> <li>1 space per 1 and 2 beds</li> <li>2 spaces per 3 beds or more</li> <li>1 visitor space per 5 units or part thereof and 1 designated car wash bay which may also be a visitor space</li> </ul>

List of Contents	Comments
	<div data-bbox="807 215 1437 730"> <p>Shop-top housing / mixed use development (residential component)</p> <ul style="list-style-type: none"> <li>• 1 space per 1 and 2 beds</li> <li>• 2 spaces per 3 beds or more</li> <li>• 1 visitor space per 5 units or part thereof and 1 designated car wash bay which may also be a visitor space</li> </ul> </div> <p>• Public Domain including Public Art – the controls ensure that development is designed and constructed to complement and enhance the public domain, the elements of street furniture, street plantings and foot path improvements. The control also requires the provision of public art in major developments (capital investment value over \$5 million) – with 1% of the total cost of the development allocated to public art.</p>
<b>Part 4 – General Land Use (Attachment 7)</b>	
<p>4.1 Introduction</p> <p>4.2 Early Education and Child Care facilities</p> <p>    4.2.1 Building Setbacks</p> <p>    4.2.2 Provision of Parking</p> <p>    4.2.3 Signage</p> <p>    4.2.4 Management of Operation</p> <p>4.3 Places of Public Worship</p> <p>    4.3.1 Locational and Site Requirements</p> <p>    4.3.2 Bulk and Scale</p> <p>    4.3.3 Building Design</p> <p>    4.3.4 Solar Access</p> <p>    4.3.5 Energy Efficiency</p> <p>    4.3.6 Traffic, access and Parking</p> <p>    4.3.7 Amenity Impacts</p> <p>    4.3.8 Open Space and Landscaping</p> <p>    4.3.9 Site Facilities, services and Signage</p> <p>    4.3.10 Safety and Security</p> <p>    4.3.11 Management and Operations</p> <p>4.4 Sex Services Premises</p> <p>    4.4.1 Location of Premises</p> <p>    4.4.2 Layout of Premises</p> <p>    4.4.3 Parking and Access</p> <p>    4.4.4 Hours of Operation</p>	<p>This section contains controls for a broad range of landuses. A summary of the intent of the key controls in this section are outlined below:</p> <ul style="list-style-type: none"> <li>• Early Education and Child care facilities – the controls relate to building setbacks, parking, signage and provisions to guide the management of operations and support the controls within SEPP (Educational Establishments and Child Care Facilities) 2017</li> <li>• Places of Public Worship – the controls for this landuse are discussed in <b>paragraphs 82-83</b> of this report.</li> <li>• Sex Services Premises and Restricted Premises – controls are aimed at ensuring such premises are sensitively located and do not cause offense to the community. The controls relate to hours of operations, size of premises and management of operations.</li> <li>• Tourist and Visitor Accommodation – This control guides development for alterations</li> </ul>

List of Contents	Comments
<ul style="list-style-type: none"> <li>4.4.5 Size of Premises</li> <li>4.4.6 Noise</li> <li>4.4.7 Signage</li> <li>4.4.8 Health and Safety Requirements</li> <li>4.4.9 Management of Operations</li> <li>4.5 Restricted Premises <ul style="list-style-type: none"> <li>4.5.1 Location of Premises</li> <li>4.5.2 Layout of Premise</li> <li>4.5.3 Parking and Access</li> <li>4.5.4 Display of Goods and Signage</li> </ul> </li> <li>4.6 Tourist and Visitor Accommodation <ul style="list-style-type: none"> <li>4.6.1 Backpackers Accommodation</li> <li>4.6.2 Bed and Breakfast Accommodation</li> <li>4.6.3 Hotel and Motel Accommodation</li> <li>4.6.4 Serviced Apartments</li> <li>4.6.5 Short Term Rental Accommodation</li> </ul> </li> <li>4.7 Boarding Houses</li> <li>4.8 Vehicle Repairs, Sales and Hire Premises <ul style="list-style-type: none"> <li>4.8.1 Vehicle body repair workshops and vehicle repair stations</li> <li>4.8.2 Vehicle and Hire Premises</li> </ul> </li> <li>4.9 Telecommunications Facilities</li> </ul>	<p>and additions, change of use or new visitor accommodation; including backpackers accommodation, bed and breakfast and serviced apartments. The controls focus on occupation period, number of bedrooms/occupants, communal areas and hours of operation</p> <ul style="list-style-type: none"> <li>• Boarding houses – The controls relate to sleeping room requirements, internal communal areas, communal open space, bathroom / laundries and are in addition to the provisions contained in the SEPP (Affordable Rental Housing) 2009.</li> <li>• Neighbourhood shops in Residential Zones – Shops are permitted in R3 Medium Density and R4 High Density Residential zones. The controls encourage the built form, design and operation to be in character with the local area.</li> </ul>
Part 5 – Residential Locality Statements (Attachments 8)	
<p>Locality Statements for residential areas</p> <ul style="list-style-type: none"> <li>5.1 Riverwood</li> <li>5.2 Beverly Hills and Narwee</li> <li>5.3 Kingsgrove</li> <li>5.4 Peakhurst</li> <li>5.5 Penshurst <ul style="list-style-type: none"> <li>5.5.1 Penshurst North</li> <li>5.5.2 Penshurst South</li> </ul> </li> <li>5.6 Hurstville (non-CBD)</li> <li>5.7 Lugarno</li> <li>5.8 Peakhurst Heights</li> <li>5.9 Mortdale</li> <li>5.10 Oatley <ul style="list-style-type: none"> <li>5.10.1 Oatley East</li> <li>5.10.2 Oatley West</li> </ul> </li> <li>5.11 Hurstville Grove</li> <li>5.12 South Hurstville</li> <li>5.13 Allawah</li> <li>5.14 Carlton <ul style="list-style-type: none"> <li>5.14.1 Carlton North</li> <li>5.14.2 Carlton South</li> </ul> </li> <li>5.15 Kogarah South</li> <li>5.16 Connells Point and Kyle Bay</li> <li>5.17 Blakehurst</li> <li>5.18 Carss Park and Kogarah Bay</li> <li>5.19 Beverley Park and Ramsgate</li> </ul>	<p>This section contains locality statements for each suburb, which are locality specific and identify the unique qualities that make up the local character of the area and provide the future desired character guidelines.</p> <p>The statement provides information on:</p> <ul style="list-style-type: none"> <li>• Location</li> <li>• Background</li> <li>• Heritage</li> <li>• Built Form and Setting</li> <li>• Streetscape Character</li> <li>• Future Desired Character</li> </ul>



List of Contents		Comments
5.20 Sans Souci and Ramsgate		
<b>Part 6 – Residential Controls (Attachments 9-13)</b>		
This part outlines the controls for a range of residential accommodation that can be developed in the LGA. A broad overview of the controls for each accommodation type are outlined below:		
<b>Part 6.1 (Attachment 9)</b>	Dwellings, Dual occupancies (attached and detached), secondary dwellings, Dual key dwellings, Narrow Lot Housing and ancillary dwellings	<p>This part provides controls for a range of low density housing styles for the following development elements:</p> <ul style="list-style-type: none"> <li>• Streetscape character and built form</li> <li>• Building Scale and Height</li> <li>• Setbacks</li> <li>• Solar Access</li> <li>• Visual Privacy</li> <li>• Noise</li> <li>• Excavation</li> <li>• Vehicular Access, Parking and Circulation</li> <li>• Subdivision</li> <li>• Private Open Space</li> <li>• Landscaping</li> <li>• Materials, Colour Scheme and Details</li> <li>• Site Facilities</li> </ul> <p>Refer to <b>Attachment 2</b> for a comparison table of key DCP controls for the various residential styles.</p>
<b>Part 6.2 (Attachment 10)</b>	Multi-dwelling housing, Multi-dwelling housing (terraces) and Manor Houses	<p>This part provides the controls for multi dwelling housing of villas, terraces, manor houses and other forms of low rise medium density housing. The development controls address the following:</p> <ul style="list-style-type: none"> <li>• Minimum Site Requirements</li> <li>• Building Scale and Height</li> <li>• Streetscape Character and Built Form</li> <li>• Building Setbacks</li> <li>• Façade Treatment and Street Corners</li> <li>• Orientation and Public Domain Interface</li> <li>• Landscaped Area and Private Open Space</li> <li>• Visual Privacy</li> <li>• Acoustic Privacy</li> <li>• Solar Access</li> <li>• Excavation (cut and fill)</li> <li>• Vehicular access, parking and circulation</li> <li>• Waste and recycling Storage</li> <li>• Dwelling mix and size</li> <li>• Storage</li> <li>• Universal and Adaptable Design</li> <li>• Materials, Colour Schemes and Details</li> <li>• Subdivision</li> </ul> <p>Refer to <b>Attachment 2</b> for a comparison table of key</p>

List of Contents		Comments
		DCP controls for the various residential styles.
<b>Part 6.3 (Attachment 11)</b>	Residential Flat Buildings	<p>This part contains the design controls for residential flat buildings. This part does not apply to for residential flat buildings located in Kogarah North Precinct as this development is governed by a separate Part 10 Kogarah North Precinct of this DCP. The controls, where applicable reference SEPP 65 and parts 3 and 4 of the Apartment Design Guide. Applications for residential flat buildings subject to SEPP 65 must be supported by a Design Verification Statement. This part contains development controls that address the following:</p> <ul style="list-style-type: none"> <li>• Minimum Site Requirements</li> <li>• Site Isolation and Amalgamation</li> <li>• Building Setbacks and street interface</li> <li>• Basement Setbacks</li> <li>• Façade Treatment and Street Corners</li> <li>• Landscaped Treatment and Private Open Space</li> <li>• Communal Open Space</li> <li>• Solar Access</li> <li>• Vehicular Access, Parking and Circulation</li> <li>• Dwelling Mix</li> <li>• Adaptable Housing</li> <li>• Universal Design</li> <li>• Shops, Restaurants and Cafes, and Small Bars in R4 zones</li> </ul> <p>Refer to <b>Attachment 2</b> for a comparison table of key DCP controls for the various residential styles.</p>
<b>Part 6.4 (Attachment 12)</b>	Ancillary Structures 1 Fences and Walls 2 Air Conditioning 3 Outbuildings 4 Setbacks 5 External finishes and cladding 6 Swimming Pools/ Spas 7 Tennis Courts 8 Aerials, antennae and communication dishes	<ul style="list-style-type: none"> <li>• This part contains controls for development forms that often support residential development.</li> </ul>
<b>Part 6.5 (Attachment 13)</b>	Foreshore Locality Controls 1 Foreshore Scenic Protection Area 2 Development in the Foreshore Area	<p>This part contains development provisions and controls that are specific to the protection of the foreshore area. The controls include:</p> <ul style="list-style-type: none"> <li>• Environmental qualities and scenic landscape values</li> <li>• Controls for specific development in the foreshore area including:</li> </ul>

List of Contents		Comments
		<ul style="list-style-type: none"> <li>○ Jetty, Ramp and Pontoon Structures</li> <li>○ Residential Waterfront Structures</li> <li>○ Boatsheds</li> <li>○ Seawalls</li> <li>○ Stairways and Inclinator</li> <li>○ Fencing</li> <li>○ Swimming pools/spas</li> </ul>
<b>Part 7 - Business Precincts (Attachment 14)</b>		
<p>Applies to all B1, B2, B4 (Kogarah Town Centre) and B6 centres. Following the finalisation of the Commercial Centres Strategy and GRLEP 2022, the DCP controls will be updated accordingly.</p> <p>7.1 General 7.2 B2 Local Centres 7.3 B6 Enterprise Corridor</p>		<p>This part of the draft GRDCP 2020 contains general controls and precinct controls and will apply to all B zoned land. The general controls cover the following areas:</p> <ul style="list-style-type: none"> <li>• Built form <ul style="list-style-type: none"> <li>○ Streetscape</li> <li>○ Setbacks</li> <li>○ Building height and interface</li> </ul> </li> <li>• Design <ul style="list-style-type: none"> <li>○ Design excellence</li> <li>○ Building facades</li> <li>○ Awnings</li> <li>○ Public Domain interface at ground level</li> <li>○ Active Street Frontages</li> <li>○ Materials and finishes</li> <li>○ Landscaping</li> <li>○ Shop top housing</li> </ul> </li> <li>• Amenity <ul style="list-style-type: none"> <li>○ Visual privacy</li> <li>○ Acoustic privacy</li> <li>○ Interface between Business zones and adjoin land uses</li> <li>○ Utility Infrastructure</li> </ul> </li> <li>• Shopping trolley management Plan</li> <li>• Plant rooms</li> <li>• Servicing</li> <li>• Plan of Management</li> <li>• Site Isolation and Amalgamation</li> </ul> <p>Precinct Controls are provided for the following B2 centres:</p> <ul style="list-style-type: none"> <li>• Kogarah Town Centre (separate part of the DCP)</li> <li>• Beverly Hills</li> <li>• Kingsgrove</li> <li>• Riverwood</li> <li>• Blakehurst</li> <li>• Carlton/ Kogarah Bay</li> <li>• Oatley</li> <li>• Ramsgate</li> </ul> <p>Enterprise Corridor along the Princes Highway applies to</p>

List of Contents	Comments
	<p>the B6 zone. The Precinct Controls generally cover:</p> <ul style="list-style-type: none"><li>Existing Character</li><li>Desired Future Character</li><li>Site Amalgamation</li><li>Setbacks</li><li>Balconies</li><li>Through block connections</li></ul>
<b>Part 8 – Kogarah Town Centre (Attachment 15)</b>	
<p>This part provides the vision for Kogarah Town Centre and character statements and controls for various precincts that form part of the Kogarah Town Centre. The existing character, desired future character and controls are contained in this part for the following precincts:</p> <ul style="list-style-type: none"><li>Railway Parade Precinct</li><li>Premier Street Precinct</li><li>Montgomery Street Precinct</li><li>Belgrave Street Precinct</li><li>Princes Highway</li><li>Kensington Street Precinct</li><li>The Hospital Precinct</li><li>Chapel Street Precinct</li><li>Railway Parade South Precinct</li><li>Southern Retail Precinct</li></ul> <p>This part also contains general controls for the centre that relate to:</p> <ul style="list-style-type: none"><li>Consolidation of sites</li><li>Alignment of buildings</li><li>Dedication of Land to Council for Road/Lane Widening</li><li>Awnings</li></ul>	
<b>Part 9 - IN2 Light Industrial Zones (Attachment 16)</b>	
9.1 Introduction	<p>This part contains controls to guide development on land zoned IN2 Light Industrial. The controls address:</p> <ul style="list-style-type: none"><li>Built form</li><li>Site area and subdivision</li><li>Setbacks</li><li>Building Design and appearance</li><li>Landscaping</li><li>Acoustic and visual privacy</li><li>Operational restrictions such as hours of operation, waste, hazardous development, energy efficiency, and safety and security</li><li>Signage,</li><li>Office premises</li><li>Creative industries</li><li>Industrial/sensitive land use interface.</li></ul> <p>This part contains 8 industrial precincts within the LGA</p>
9.2 General Provisions	
9.2.1 Built Form	
9.2.2 Site Area and Subdivision	
9.2.3 Setbacks	
9.2.4 Building Design and Appearance	
9.2.5 Landscaping	
9.2.6 Vehicle access and parking	
9.2.7 Environmental Protection	
9.2.8 Signage	
9.2.8 Office Premises	
9.2.10 Creative Industries	
9.2.11 Industrial / Sensitive Land Use Interface	

List of Contents		Comments
9.3 Precinct / Character Controls 9.3.1 Beverly Hills 9.3.2 Blakehurst 9.3.3 Carlton 9.3.4 Kingsgrove 9.3.5 Peakhurst 9.3.6 Penshurst – Forest Road 9.3.7 Penshurst – Penshurst Lane 9.3.8 South Hurstville		<p>and all are zoned IN2 Light Industrial under the draft GRLEP2020. Precinct controls are proposed for Beverly Hills, Blakehurst, Carlton, Kingsgrove, Peakhurst, Penshurst – Forest Road, Penshurst - Penshurst Lane and South Hurstville as follows:</p> <ul style="list-style-type: none"> <li>• Desired future character</li> <li>• Objectives</li> <li>• Precinct controls which cover amalgamation of land if required and landscaped setbacks.</li> </ul>
<b>Part 10 – Precincts (Attachment 17)</b>		
Kogarah North Precinct		<p>This part contains planning controls for the area known as Kogarah North Precinct. The controls relating to this precinct include:</p> <ul style="list-style-type: none"> <li>• Siting and consolidation of development sites</li> <li>• Heritage</li> <li>• Street Frontage Height</li> <li>• Setbacks</li> <li>• Trees and Landscape</li> <li>• Dedication of land to Council for Road/Lane widening and splays</li> <li>• Creation of through site pedestrian links and additional open space</li> <li>• Housing Choice</li> <li>• Addressing the street and public domain</li> <li>• Impact of the development of the road/pedestrian network</li> <li>• Acoustic impacts from Road and Rail</li> <li>• Vehicular access and car parking</li> <li>• Architectural articulation – façade, roof, wall design and balconies</li> <li>• Awnings</li> <li>• Active Street Frontages along Princes Highway and Railway Parade North</li> <li>• Solar Access to Public Domain</li> <li>• Safety and Security</li> <li>• Waste Minimisation</li> <li>• Site Facilities</li> <li>• Maintenance</li> <li>• Acoustic Privacy</li> </ul> <p>The changes are detailed in <b>Paragraphs 84 to 89</b> of this report.</p>
<b>Appendices (Attachment 18)</b>		
1	Waste Management requirements (based on Hurstville	This appendix contains the waste management requirements for development.

List of Contents		Comments
	DCP)	
2	Height and Storeys	This appendix is on height and storey interpretation.
3	Road classifications	This appendix contains the State and Regional Road classifications within the LGA.
4	Heritage Items and Heritage Conservation Areas	This appendix supports Schedule 5 of the GRLEP 2020, providing detailed development controls for specific sites identified as heritage items: <ul style="list-style-type: none"> <li>No. 24 Penshurst Avenue, Penshurst</li> <li>No. 211-217 Rocky Point Road, Ramsgate</li> </ul>
5	Heritage Conservation Areas <ul style="list-style-type: none"> <li>Penshurst HCA</li> <li>Kogarah South HCA</li> <li>O'Brien's Estate HCA</li> </ul>	This appendix supports Schedule 5 of the GRLEP 2020 and provides guidance for development in the three Heritage Conservation Areas.
6	Green Web	The Green Web seeks to conserve and enhance Georges River's bushland and biodiversity by identifying and appropriately managing key areas of bushland habitat and establishing and maintaining interconnecting linkages and corridors. <p>The Green Web component of the DCP is accompanied by:</p> <ul style="list-style-type: none"> <li>GRDCP 2020 Green Web Map</li> <li>GRDCP 2020 Biodiversity Guide</li> </ul> <p>The key aims of this appendix are to prevent direct loss of habitat in and adjoining Green Web areas and enhance biodiversity and ecological resilience through greater connectivity of bushland areas.</p>

45. A comparison of changes to the high density section of GRDCP 2020 in relation to the adopted Part C2 of the Kogarah DCP 2013 is tabulated in **Table 3** below. The adopted Part C2 has been further refined in response to the Draft Georges River LEP 2020 and review by the Council officers. A justification has been provided for each change in **Table 3**.

**Table 3 - Changes in High Density Residential section of Draft GRDCP as compared to Part C2 Kogarah DCP**

DCP Section	Control/Note detail	Justification
Building Setbacks and street interface	Additional Note under Control 3 added: Note: A reduced side or rear setback may be permitted where permitted by Part 3F of	To cater to site specific circumstances.

DCP Section	Control/Note detail	Justification
	the NSW State Government's ADG.	
Building Setbacks and street interface	Control 8 amended: 8. <del>Sub-stations, fire booster assemblies and waste bin storage structures need to be integrated into the development and identified at the DA stage.</del> Where services including fire booster valves, substations and other infrastructure required as part of the any new development present to a public road or public space, they must be concealed by a screen or fence that corresponds with the materiality of the building façade.	To allow these services to be concealed by a screen or a fence; in response to the submission from Kogarah Bay Progress Association.
Basement Setbacks	Additional objective inserted: (e) To provide capacity to protect existing trees on site and provide capacity for new tree planting.	To provide additional protection to existing and capacity for new trees
Façade Treatment and Street Corners	Additional words regarding 'Architectural character' have been added in the general blurb.  Two objectives have been amended: (a) To introduce fine grain built form and varied architectural character in developments. (d) To ensure that the scale, modulation and façade articulation of development responds to its context.  Two controls have been amended: 3. Human scale at street level must be reinforced in the design of the building and overall development. The scale, rhythm, materiality and landscaping treatment need to define the appearance of the building to create physical and visual connections between the	Objectives amended in response to the inclusion of the concept of 'Architectural character' in the general blurb.  Control 3 has been amended to emphasise the connections between the private and public domain for pedestrians.  Control 7 recommends clear

DCP Section	Control/Note detail	Justification
	private and public domain for pedestrians. 7. Clear glazing to balustrades must be avoided where they are visible from the public domain. Screening of balconies by way of adjustable or fixed panels should be included where there are issues of privacy, and/or excessive exposure to solar impacts.	balustrades to be <b>avoided</b> and removes specific solutions, e.g. incorporation of solid upturns at the base of the balustrade.
Landscaped Treatment and Private Open Space	New control added: The landscaped area needs to accommodate a minimum of two (2) canopy trees to a mature height of at least 6m.	Control added in response to the submission from Kogarah Bay Progress Association.
Common Open Space (COS)	Control 2 amended: <del>(2) A maximum of 50% of common open space may be provided above ground level where:</del> <del>(i) a location at ground level is not possible due to site constraints;</del> <del>(ii) the proposed elevated common open space will provide a similar level of amenity as a common open space at ground level of the site; and</del> <del>(iii) there will be no significant impact on surrounding properties in respect to the loss of privacy.</del>  2. Communal open space may be provided above ground level where: i. the proposed elevated communal open space will provide a similar level of amenity as a communal open space at ground level of the site; and  ii. there will be no significant impact on surrounding properties in respect to the loss of	Reference to percentage of COS to be provided on ground or roof top has been removed in response to comments from the Design Review Panel and Council officers.



DCP Section	Control/Note detail	Justification
	privacy.	
Vehicle access, parking and circulation	<p>Objective (b) in C2 DCP deleted from this section:</p> <p><del>(b) To reduce resident on-site parking where public transport is available within reasonable walking distance or where low car parking demand exists</del></p> <p>Control 12 deleted:  <del>(12) If the car wash bay discharges into the sewer, a 'Permission to Discharge Trade Wastewater' issued by Sydney Water must be obtained prior to approval of the development.</del></p>	<p>Objective (b) deleted in accordance with the Councillors' advice.</p> <p>Control 12 deleted as control 13 covers the issue as reproduced below:</p> <p>13. If the carwash bay is not discharged into the sewer, applicants must provide Council with details and evidence of how wastewater</p>

DCP Section	Control/Note detail	Justification
		will be removed (e.g. removal by an authorised liquid waste disposal contractor).
Views and View Sharing	This section has been deleted from this section of the DCP.	This section has been relocated in the Part 3 General Planning considerations of the DCP in accordance with review by Council Officers.
Dwelling Mix	<p>Control 1 amended:</p> <p><del>(1) Developments that propose more than 10 apartments are to provide a mix of dwellings consistent with the following percentage mix:</del></p> <p><del>(i) Studio and 1 bed apartments – Minimum of 20%</del></p> <p><del>(ii) 2 bed apartments – Maximum of 30%</del></p> <p><del>(iii) 3+ bed apartments – Minimum of 15%</del></p> <p>(1) Developments that propose more than 20 dwellings are to provide a mix of dwellings consistent with the following percentage mix:</p> <p>i. Studio apartments and 1 bed apartments – Maximum of 25%</p> <p>iii. 2 bed apartments – Minimum of 35%</p> <p>iv. 3+ bed apartments – Minimum of 15%</p>	Control 1 amended in accordance with Environment and Planning Committee recommendation.
Adaptable and Accessible Housing	<p>Control 1 part (i) amended:</p> <p>(1) The minimum number of adaptable units designed in accordance with AS4299 - 1995 Adaptable Housing must be incorporated into the developments included in this section:</p> <p><del>(i) 3-10 units – 1 adaptable unit</del></p>	Range in part (i) changed from 3-10 units to 5-10 units in accordance with Environment and Planning Committee recommendation.

DCP Section	Control/Note detail	Justification
	<p>(i) 5-10 units – 1 adaptable unit</p> <p>Blurb on adaptable housing added at the bottom of the section:</p> <p>Adaptable Housing is defined by Australian Standard AS 4299, which is specifically designed to allow for the future adaptation of a dwelling to accommodate the occupant's needs.</p>	Blurb added in preparation of the DCP.
Universal Design	<p>New section added that includes universal design features to promote flexible housing for all community members.</p> <p>Developments to achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features.</p>	Section added in accordance with Council officer review during DCP preparation.
Shops, Restaurants and Cafes, and Small Bars in R4 Zones	<p>New section added that protects the hierarchy of the designated business zones in the Georges River LGA and limits the potential adverse amenity impacts of shops, restaurants and cafes, and small bars on residential apartments and adjoining residential areas.</p>	Section added in response to the inclusion of Shops, Restaurants and Cafes and Small Bars in R4 zones of GRLEP 2020.

## MATTERS FOR CONSIDERATION BY THE LOCAL PLANNING PANEL

46. This section of the report provides a response to the Council resolutions, addresses issues raised in Councillor Briefings and amendment to the DCP to ensure consistency with the draft GRLEP as endorsed by the Local Planning Panel on 26 June 2020.
47. This section addresses the following:
  - a. Response to the following Council resolutions:
    - i. Mechanical Parking Installations in Developments
    - ii. Restrictions on the provision or installation of hostile architecture
    - iii. Additional controls relating to:
      1. use of rainwater for car wash bays in residential flat buildings (RFBs) and
      2. the further investigation and review of the setbacks, landscaped areas, and common open space to ensure compatibility between the scale of

development at the point of transition between the low density residential zone and the adjoining higher density residential areas.

- b. Foreshore scenic protection area
- c. Places of Public worship
- d. Kogarah North Precinct

Response to Council resolutions – this section includes commentary on Council resolutions, its consideration and response.

- *Mechanical Parking*

48. Council resolved on 23 April 2019 to prepare draft Development Control Plan provisions for Mechanical Parking Installations for developments within the Georges River LGA.
49. Draft provisions have been included in the DCP to cover:
  - a. Mechanical parking installations i.e. mechanical car stackers, car lifts and turntables.
  - b. Stacked parking i.e. sharing a parking space vertically through use of a mechanical car stacker.
  - c. Tandem parking i.e. two or more vehicles sharing a parking space at the same level configured nose to tail.
50. There has been concern raised by the Council in respect of mechanical parking installations, with some of a view that they should be prohibited. However, DCPs cannot prohibit development. The role of the DCP is to support the LEP with controls.
51. Such installations are becoming a common occurrence and therefore the draft DCP does contain controls to address the installations as follows:
  - a. Where development includes a mechanical parking installation, such as car stackers, turntables, car lifts or another automated parking system, the development application is to include a Parking and Access Report.
  - b. Access to mechanical parking installations is to be in accordance with the relevant Australian Standards.
  - c. Tandem or stacked parking will only be permitted where:
    - i. Each tandem or stacked parking arrangement is limited to a maximum of two spaces;
    - ii. The maximum parking limit for spaces is not exceeded;
    - iii. They are not used for service vehicle parking;
    - iv. The spaces are attached to the same strata title in residential buildings and small commercial or retail developments;
    - v. In residential buildings and serviced apartments, they are used for tenant parking only;
    - vi. In commercial or retail development, they are used for staff parking only; and
    - vii. The manoeuvring of and queuing for stacked vehicles is able to occur wholly within the premises, without obstructing the entry or egress of other vehicles.

52. Mechanical parking installations will be considered for developments involving the adaptive re-use of existing buildings where site or building constraints prevent standard parking arrangements and no inconvenience arises from their use.
53. Mechanical parking installations, tandem or stacked parking are not to be used for visitor parking or parking for car share schemes.
54. The minimum length of a tandem space is to be 10.8m.
55. Car lifts will only be considered where it can be demonstrated that a basement ramp is not feasible/achievable.
56. Where a car lift is required, car lifts are to be provided at a minimum rate of 1 lift per 25 spaces or part thereof.
57. Note: Queuing analysis must be completed in accordance with Australian Standard AS2890.1 and Ausroads "Guide to Traffic Management". The assessment is to establish whether the mechanical lift requires queuing to be accommodated on the property noting that queuing of vehicles on public roads will not be supported.

- *Hostile Architecture:*

58. Council resolved on 26 August 2019 as follows:
  - a. *That the upcoming Georges River Council Development Control Plan 2020, and any future public domain plans for the City, include provisions that prevent the installation of devices, materials or designs in the public domain (hostile architecture) which would make it difficult for homeless people to occupy public spaces.*
  - b. *Such provisions should include (but not be limited to) a restriction on the design and installation of Items such as: slanted or curved benches, rocky pavements, spiked windowsills, segmented benches, street spikes, awning gaps, barred corners, street dividers, raised grate covers, tiered seating, fence grates, retractable spikes and the like.*
  - c. *That a standard condition of development consent be prepared to restrict the provision or installation of hostile architecture within the Georges River Area.*
  - d. *That the General Manager prepare a report on the options available to Council to apply similar design and installation restrictions to development on privately owned land within the Kogarah and Hurstville CBDs.*
59. With respect to the draft DCP and (a) above, the following has been included in Section 3 of the DCP relating to Public Domain:
 

*The installation of hostile architectural features in areas accessible to the public is not permitted. Hostile architecture includes a restriction on the design and installation of items such as: slanted or curved benches, rocky pavements, spiked windowsills, segmented benches, street spikes, awning gaps, barred corners, street dividers, raised grate covers, tiered seating, fence grates, retractable spikes and the like.*
60. Additional Controls - This section includes consideration of issues re the use of rainwater for car wash bays in RFBs and further investigation of the setbacks, landscaped areas and common open space to ensure compatibility between the scale of development at the point of transition between the low density residential zone and the adjoining higher density residential areas.

- *Use of rainwater for car wash bays in the residential flat buildings*

61. Council at its meeting on 25 May 2020 resolved: *That Council investigate the use of rainwater for car wash bays in the residential flat buildings as part of the future amendments of DCP 2020.*
62. Recycled water (also referred to as 'non-drinking water') is wastewater (sewerage) that has been collected and treated and can be used for variety of purposes depending on the level of treatment. The process of creating recycled water is typically undertaken by Sydney Water and not as part of a new small-scale residential development.
63. Greywater is re-usable wastewater from washing machines, showers, baths and basins. This requirement could be addressed within any BASIX certificate prepared as part of the development. Therefore, a control seeking the use of recycled or grey water is not recommended to be imposed.

- *Review of the setbacks, landscaped areas, and common open space*

64. Council at its meeting on 25 May 2020 resolved:

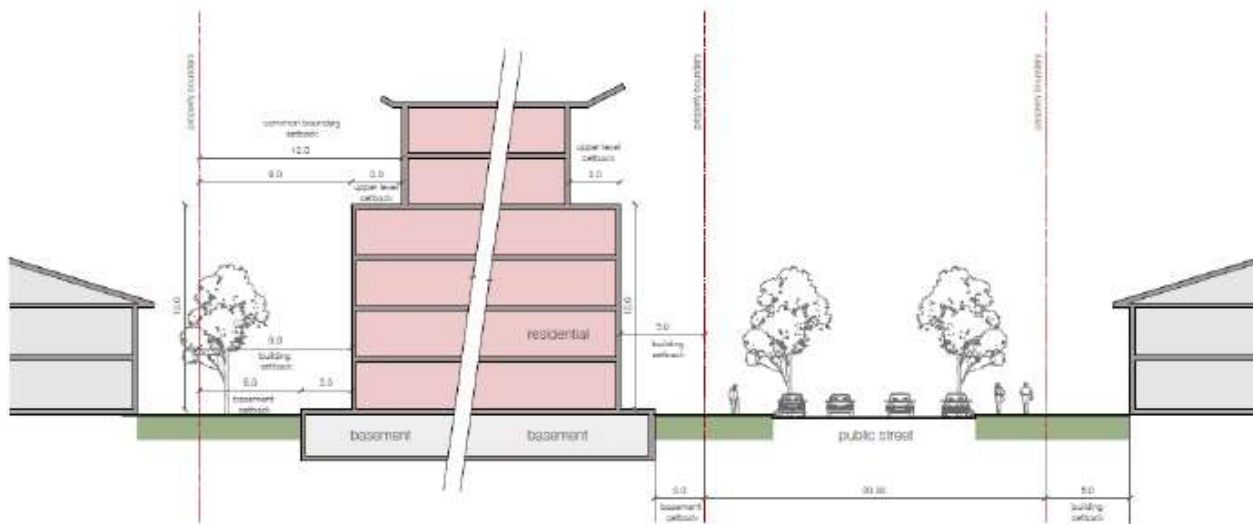
*That Council incorporate the adopted Part C2 Medium Density Housing into the Georges River DCP 2020; pending further investigation and review of the setbacks, landscaped areas, and common open space outline in Part 1 Section 3 - Building Setbacks and Street Interface to ensure compatibility between the scale of development at the point of transition between the low density residential zone and the adjoining higher density residential area.*

#### *Building Setbacks*

65. A singular setback control creates a more uniform street wall and better overall streetscape presentation for individual buildings. Articulation of the building will occur through the incorporation of balconies orientated towards the street, individual entries to the ground floor apartments addressing the street and the main entrance into the building. This must also be considered in conjunction with the minimum side boundary setbacks of 6.0m which are required. This results in a minimum gap between buildings of 12.0m breaking up the built form presentation to the street.
66. The DCP provisions proposed a base of up to four storeys (approximately 12m in height) creating a four storey street wall to the street address. Above the four-storey street wall, is a two to three storey top element to the building.
67. The proposed 4 storey street wall is considered more appropriate where a lower density zone (9m) and higher density zone (21m) are located on opposite sides of a street, for the following reasons:
  - A distance of at least 30m separates the different density zones when the width of the road, road reserve and setback of the buildings from the front property boundaries is considered. The minimum separation requirements (between buildings) directed by the Apartment Design Guide (the 'ADG') for buildings up to eight storeys in height is 18m. The separation achieved is well above the minimum guided by the ADG.
  - The four storey street wall height is considered to be a scale that is comfortably perceived in the streetscape, particularly when the separation of buildings across the street (30m) is greater than the maximum building height (21m).
  - The four storey base in conjunction with the setback will partially screen the next level (fifth storey). The suggested lower base height of three storeys will screen less

of the upper levels and therefore increase the perceived height of a building from the street.

- The proportioning would be visually awkward having a taller three to four storey element sitting above the three storey element. Having the base taller than the upper level visually anchors the building and reduces the perception of height for the upper levels.
- A deep soil zone of 3m is required to be provided within the front setback of the higher density zone to allow for substantial tree planting which will provide a visual and landscape buffer between the two zones and built form. Street tree planting will further complement tree planting within the front setback.

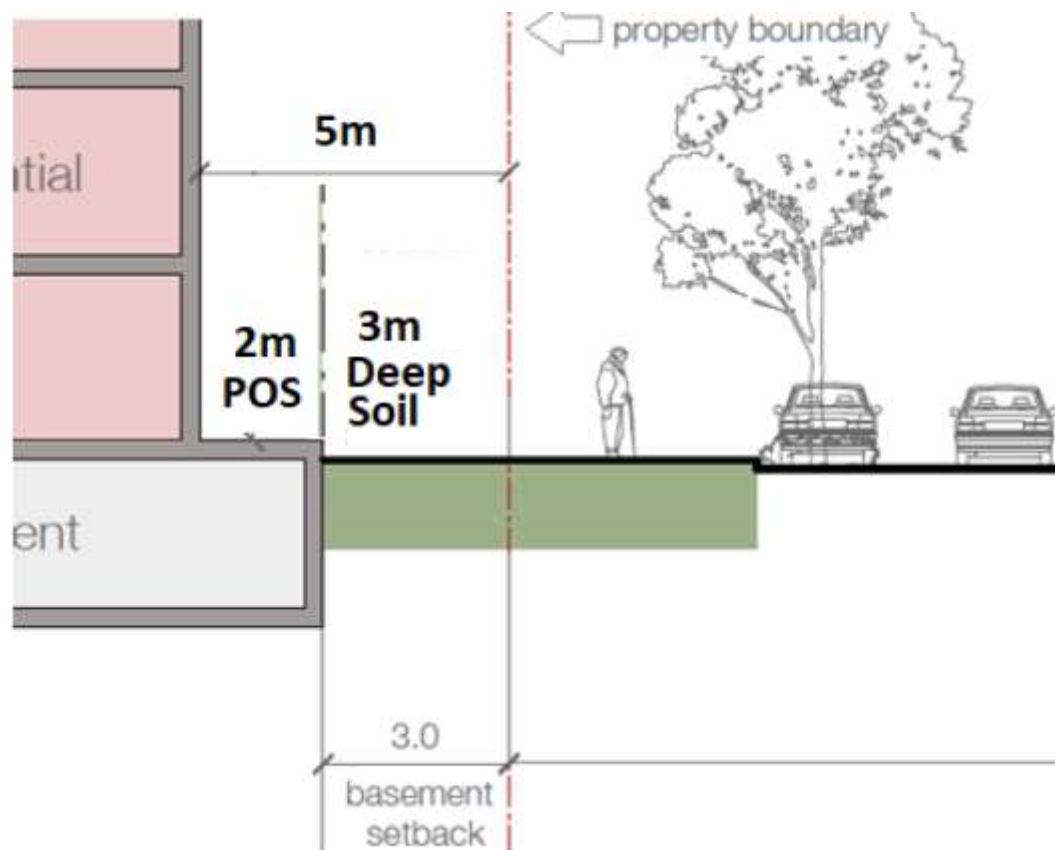


**Figure 5 – Setback and interface treatments**

68. The above review demonstrates that the existing control should remain unchanged.

#### *Encroachments and Private Open Space*

69. The DCP states that ground floor private open space (POS) is permitted within the last 2m of the required 5m front setback. However, the first 3m of the front setback (from the street/property boundary) will be deep soil area and will provide for adequate landscaping opportunities including tree planting, that will complement the public domain including any street planting. **Figure 5** above demonstrates the interface between the street (front property boundary) and the front wall of the building.



**Figure 6 - Location of private open space (POS) and deep soil within the 5m front setback**

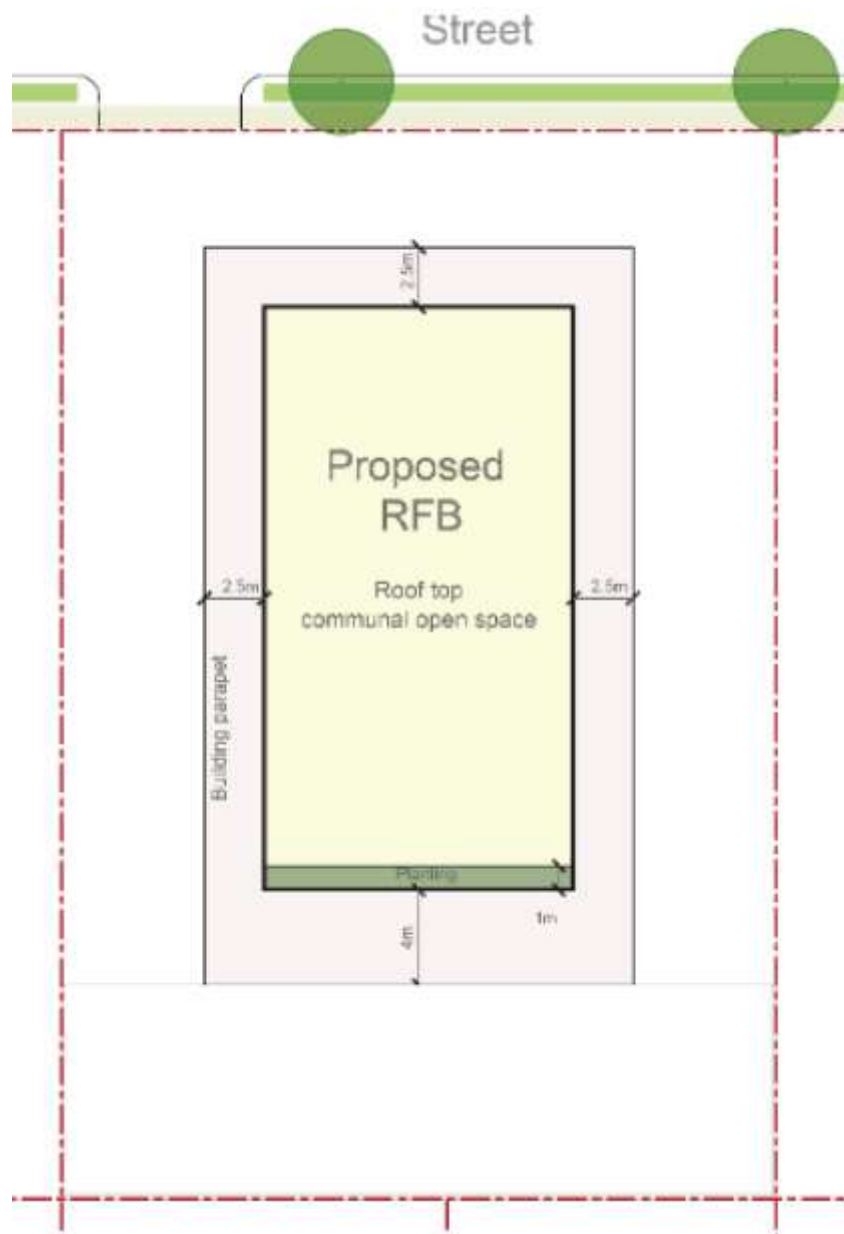
70. Providing POS within the front setback provides opportunities for an apartment building and its landscape to respond to the human scale of the streetscape (**Figure 6**). The location of POS within the front setback facilitates direct access from the street which provides increased street frontage activation and passive surveillance of the public domain. The location of POS within the front setback is consistent with Part 4L Ground Floor Apartments of the ADG.
71. The location of substations and fire booster valves as highlighted within the KBPA submission are determined by other statutory bodies.
72. Nevertheless, a control could be imposed requiring the location of these services be considered in the design of the building, including the concealment of services by a screen or fence that corresponds with the materiality of the building façade, when presenting to a street.
73. For example, a control could be worded as follows:
 

*Where services including fire booster valves, substations and other infrastructure required as part of the any new development present to a public road or public space, they must be concealed by a screen or fence that corresponds with the materiality of the building façade.*
74. The location of POS within the front setback is appropriate and the above proposed control should be included in RFB section of the GRDCP 2020.

#### *Common Open Space*



75. The size, location and design of communal open space will vary depending on the site context and the scale of development. Communal open space (COS) can be provided on the ground floor of the development or on the rooftop.
76. Part 3D of the ADG which applies to RFBs, including the recently up-zoned areas where Part C2 Kogarah DCP 2013 applies, permits the provision of COS on the ground floor and/or on the rooftop of RFBs.
77. The provision of ground floor COS is typically provided on larger sites or precincts that have been strategically set aside to accommodate increased density.
78. Providing ground floor COS on suburban infill sites as part of any RFB is more difficult as the sites are smaller in area and frontage, and share multiple boundaries with existing development (including lower density zoned properties) which limits the building envelopes in relation to separation distances, privacy and overshadowing. In these instances, the provision of COS on the ground floor within the side or rear setbacks can impact upon the visual and acoustic amenity of courtyards and habitable rooms of ground floor apartments.
79. Neighbouring properties will also be impacted by the provision of COS on the ground floor within the side or rear setbacks, particularly where a higher density zone shares a boundary with a lower density zone.
80. Therefore, the provision of roof top COS on some suburban infill sites is more appropriate as it does not share a direct interface with courtyards and habitable rooms of ground floor apartments, and allows for improved visual and acoustic amenity. Further, upper level setbacks ranging from 2.5m – 4m are proposed for any roof top COS from the level directly below (from all boundaries) to mitigate any potential acoustic or overlooking opportunities onto neighbouring properties, as demonstrated in **Figure 7**.



**Figure 7 - Application of the setbacks required for the location of communal open space zone interface**

81. The total setback of roof top COS from side boundaries will be 11.5m (5-8 storey building) and 13m (5-8 storey building) from the rear boundary. Where a building shares an interface with a lower density zone, the total setback will increase to 14.5m from a side boundary and 16m from the rear boundary.
82. The prohibition of roof top COS is inconsistent with the Part 3D of the ADG and will hinder the orderly development of land by constraining a building to the provision of ground floor COS only. Further, the upper level setbacks proposed for any roof top COS from the level directly below (from all boundaries) will mitigate any potential acoustic or overlooking opportunities onto neighbouring properties.

#### Foreshore Scenic Protection Area (FSPA)

83. The Local Planning Panel (the 'LPP') considered the GRLEP 2020 on 25 and 26 June 2020 and in terms of the Foreshore Scenic Protection Area resolved to retain the existing Foreshore Scenic Protection Area as identified by the *Hurstville Local Environmental Plan*

2012 Foreshore Scenic Protection Area Map; and add the proposed Foreshore Scenic Protection Area as exhibited by the Planning Proposal Map entitled “*Foreshore Scenic Protection Area Map*” and shown in pink shading.

84. The Panel also recommended that Council as part of the preparation of the draft Local Environmental Plan in 2021/2022, further define the role, mapped extent and zoning of Foreshore Scenic Protection Areas, in both the former Hurstville and Kogarah Local Government Areas, having regard to those properties and ridge lines visible to and from the Georges River and its tributaries, and associated environmental protection applying to those areas in order to better reflect the objectives of Clause 6.7 of the *Georges River Local Environmental Plan 2020*. This may include the consideration of additional environmental protection zones or modifications of the Foreshore Scenic Protection Area.
85. In response to the LPP recommendations, the draft GRDCP adopts the current Hurstville DCP 2012 foreshore controls. Additionally, controls related to specific development types in the Foreshore area, including jetties, ramps, pontoon structures, residential waterfront structures, boatsheds, seawalls, stairways, inclinators, fencing, swimming pools and spas, have also been included in the draft GRDCP.

#### Places of Public Worship

86. The draft GRLEP 2020 prohibits places of public worship in the R2 Low Density Residential zone due to the adverse amenity impacts considered to be generated by these uses. However, the existing places of public worship will retain their use through the inclusion of these sites in *Schedule 1 Additional permitted uses*.
87. The General Land Uses section of the DCP contains the following controls for places of public worship:
  - a. *Locational requirements*: located on sites of sufficient size to accommodate all proposed buildings, parking areas, outdoor areas etc.; must maintain the general amenity of the area; must optimise the use of surrounding and potential infrastructure, with a particular emphasis on public transport; large scale places of public worship should be located a minimum of 250 metres away from any other existing or approved large-scale place of public worship; must not be located on lots with a frontage to a road with a carriageway width less than 10 metres; and must not be located on lots where access is via a cul-de-sac.
  - b. *Site Requirements*: restricts the minimum allotment size of a new place of public worship to 800m<sup>2</sup> and the minimum allotment width to 20m (measured at the front building line) and 15 metres for a corner allotment.
  - c. *Building Scale*: restricts the maximum site coverage for places of public worship located within a residential zone to 40%; and any spire, tower or similar structure must be considered on the basis of the form, bulk, scale and height and its relationship with the prevailing character of the locality.
  - d. *Setbacks*: The minimum setback from the principal street frontage in residential zones is 6 metres and where a place of public worship is to be located immediately adjacent to a property used primarily for residential purposes, a buffer of a minimum of 3 metres must be provided to the side boundaries and a minimum of 6 metres to the rear boundary. This setback area shall be landscaped and shall not be used for parking areas, outdoor assembly areas or the like.
  - e. *General Design*: The design of the development must consider the amenity of the surrounding locality, especially sites within or near residential localities. Any place of public worship within or in close proximity to a residential neighbourhood must be

well designed and incorporate high quality external materials and finishes as well as suitable landscape treatment around the perimeter of the site.

- f. *Façade Design:* Development must articulate the façade to achieve a unique and contemporary architectural appearance that:
  - i. Unites the facade with the whole building form;
  - ii. Ensures the facade has an appropriate scale and proportion that responds to the use of the building and the desired contextual character;
  - iii. Combines high quality materials and finishes.
- g. *Front Fences:* The maximum fence height for a front fence is 1.5 metres. Front fences along an arterial road must not be made of chain wire, metal sheeting, brushwood, electric fences or noise attenuation walls. The external appearance of a front fence along the front boundary of an allotment or facing an arterial road must ensure:
  - i. The section of the front fence that comprises solid construction must not exceed a fence height of 1 metre above natural ground level; and
  - ii. The remaining height of the front fence must comprise open style construction such as spaced timber pickets or wrought iron that enhance and unify the building design.

#### Kogarah North Precinct

- 88. The Kogarah North Precinct DCP controls have been reviewed in light of Council's experience with the implementation of controls under the Kogarah North DCP (KNDCP), in particular in relation to the issues identified in the controls in recent developments in the Precinct that have been subject to appeal to the Land and Environment Court. The review also includes controls from the new Part C2 Medium Density Housing in Kogarah DCP 2013.
- 89. The main basis for the review is the outcome as a result of the loss of the appeal for the residential flat building development at the site at 2-4 Gladstone Street and 10 Victor Street Kogarah - Vortex Property Group (NSW) P/L vs Georges River Council [2019] NSWLEC 1153 (Vortex). This site is on the corner of Railway Parade Lane, Gladstone Street, and Victor Street, opposite the Kogarah High School oval.
- 90. The current KNDCP references the Kogarah North Precinct Urban Design Study (November 2017) (UDS) by adopting controls aimed at a lower FSR than that allowed in the KLEP.
- 91. The UDS presented three options for development, and the Council for the purposes of preparing a DCP adopted "Option 3", being development with an FSR 2.5:1 and 10 storey buildings having a four storey street wall. The building heights along Victor Street are reduced to minimise overshadowing to the new community open space 'common' (on part of the school oval).
- 92. Option 3 was adopted by the Council in May 2017 as the interim set of planning controls. The problem with this approach as identified in Vortex, is that some of the controls are explicitly contrary to the KLEP. Whilst an attempt was made to argue that the KLEP controls are a maximum and a suitable urban design outcome should prevail, an underlying premise of the planning system is that the LEP controls must be achievable.
- 93. To avoid any issues related to this in the future, this review of the KNDCP has concentrated on deleting any direct references that could be construed that the DCP is based on a lower density than the LEP allows. The changes include:

- Updating the introductory section to include the work of the GSC and the Kogarah Place Strategy.
- Updating references to GRLEP 2020 and the EP&A Act 1979.
- Deleting references to height and FSR as they are in the GRLEP 2020.
- Deleting references to compliance with ADG as this is a given.
- Adding in relevant information from the *Kogarah Place Strategy* (the 'Strategy') relating to:
  - The focus - that one of the places in the Kogarah Collaboration Area is Kogarah North which will be a focus for new housing close to the health, knowledge and wellness education core.
  - The shared objectives in the Strategy relates to Kogarah North - *Kogarah North Precinct will be a renewed neighbourhood village for the community – an authentic place where the community enjoys attractive and safe pedestrian and cycle paths and facilities, green infrastructure, and a variety of public open spaces.*
  - Relevant actions from the *Strategy* relating to:
    - Action 6: Use the Movement and Place framework to achieve the desired future character for streets and places in the Collaboration Area
    - Action 8: Refine and plan for the Green Grid in the Collaboration Area
    - Action 26: Explore precinct-wide and site-specific energy efficiency initiatives, with a focus on NSW Government-owned land, high energy users and catalyst projects
    - Action 29: Plan for sustainable development through controls for new buildings and higher BASIX targets
    - Action 34: Map open space deficiencies, explore the expansion of open space, investigate acquisition of land for new open space and investigate initiatives for large roof surface areas and car parks for open space
    - Action 35: Increase the percentage of urban tree canopy  
Note: The Strategy states on page 71- Increase the urban tree canopy as identified in Kogarah North and Rockdale Town Centre master plans, and prioritise planting according to urban heat mapping, heat vulnerability and Green Grid planning
    - Capture discussions and work undertaken as part of the Movement and Place Framework pilot and seek in part to identify:
      - a desired 2036 future character statement for streets and places in the Collaboration Area
      - issues and opportunities for that street or place
      - actions to deliver the desired character
- Adding in Section 4 – The Kogarah North Urban Design Strategy:
  - *The controls in this DCP (as amended) are informed in part by the analysis undertaken in the UDS. Since the introduction of KLEP Amendment No. 2, there has been several development applications lodged in the Precinct. The controls in this Part of the DCP (as amended) are also based on a review of the recent development applications, including those approved by the Land and Environment Court in the Precinct. This is with a view to ensure that the aims of*

*the up-zoning of the Precinct under LEP Amendment No. 2 with regards to increased density can be realised.*

- Retaining the vision but deleting or converting the principles into objectives in the controls section where applicable; as they have more weight as objectives.
- Deleting Tables 2 and 3 relating to setbacks and replacing with words as it is simpler for interpretation. The court has found that there is inconsistency in the current text in the references to the following terms that are in the controls – Frontage, Boundary, Property boundary, Site boundary, etc. In the Vortex appeal, much discussion was about the ambiguity of these controls – the meaning of ‘frontage’, whether the control applies only to that part of the site that had a boundary to the street. Also, whether if a site had a visual frontage to the street (which in Vortex was Railway Pde North), that the control would apply to the whole boundary that had a visual aspect to the street. The applicant successfully argued that as that site had an outlook to Railway Pde North, then the setback applied to the site (even though the actual boundary was to Gladstone Street).
- Including in the dwelling mix control what was adopted by Council for Part C2 – Kogarah DCP 2013:
  - (1) *Developments that propose more than 10 apartments are to provide a mix of dwellings consistent with the following percentage mix:*
    - (i) *Studio and 1 bed apartments – Minimum of 20%*
    - (ii) *2 bed apartments – Maximum of 30%*
    - (iii) *3+ bed apartments – Minimum of 15%*
  - (2) *Any variations to the apartment mix are to take into consideration:*
    - (i) *the distance to public transport, employment and education centres.*
    - (ii) *the current market demands and projected future demographic trends.*
    - (iii) *the demand for social and affordable housing.*
    - (iv) *different cultural and socioeconomic groups.*

*Apartment configurations are to support diverse household types and stages of life including single person households, families, multi-generational families and group households.*

- Amending the residential car parking controls to reference the Objective 3J-1 of the ADG as the precinct is within 800m of Kogarah Railway Station.

## DESIGN REVIEW PANEL

94. In accordance with *Clause 21A Approval of development control plans relating to residential apartment development* of the Environmental Planning and Assessment Regulation 2000, the Amendment to Part C2 - Medium Density Housing of the Kogarah DCP 2013 was referred to the Design Review Panel (the ‘DRP’) for review and comments. The DRP comments were addressed in the report adopted by Council at its meeting held on 25 May 2020.

## REPEAL OF DCPS AND FORMER HURSTVILLE COUNCIL POLICIES

95. At its meeting on 11 June 2019, Council endorsed the Georges River Interim Policy DCP (Policy #: Pol-061.01) for assessing development applications until such time as the GRDCP 2020 is adopted by Council.
96. The Interim Policy is a public document used by Development Assessment planners in their assessment of residential development applications (Das). It will ensure that

assessment is consistent across the LGA. The controls have been formatted in accordance with the operative DCPs.

97. The draft Georges River DCP 2020 will replace the following:
  - a. Interim Policy DCP (Policy #: Pol-061.01);
  - b. Kogarah DCP 2013; and
  - c. Hurstville Control Plan 1 – applies to land within Penshurst, Mortdale and Hurstville wards
98. The following policies will also need to be repealed for the land covered by the GRDCP 2020:
  - a. Drainage and On site Detention Policy (replaced by Georges River Stormwater Management Policy 2019)
  - b. Fencing adjacent to public roads (provisions in the draft Georges River DCP 2020)
  - c. Balcony Enclosures in Residential flat buildings Policy (provisions in the draft Georges River DCP 2020)
  - d. Satellite Dish Policy (provisions in the draft GRDCP 2020 and covered by Exempt and Complying SEPP)
  - e. Code for the erection of private tennis courts (provisions in the draft GRDCP 2020)
  - f. Stencilling of street driveways policy (provisions in the draft GRDCP 2020)
  - g. Underground electricity cabling to developments policy (provisions in the draft GRDCP 2020)
  - h. Design guidelines for absorption trenches (replaced by Georges River Stormwater Management Policy 2019)
  - i. Rainwater Tanks Policy adopted 18 December 2002 (replaced by Georges River Stormwater Management Policy 2019).
  - j. Home Activities Policy adopted 15 August 2001 (home occupations are permitted without consent).
  - k. Code for Commercial Use of Public Footpaths (replaced by Georges River Council Local Approvals Policy – Use of Public Land dated 29 October 2018).
99. Clause 22(2) of the Environmental Planning and Assessment Regulations 2000 states that
  - (2) *A council may repeal a development control plan—*
    - (a) *by a subsequent development control plan, or*
    - (b) *by publishing notice of the decision to repeal the plan on its website.*
  - (3) *At least 14 days before repealing a development control plan under subclause (2)(b), the council must publish notice of its intention to repeal the plan, and its reasons for the repeal, on its website.*
  - (4) *The repeal of a development control plan under subclause (2) (b) takes effect on the date on which the notice is published on the council's website.*

## COMMUNITY ENGAGEMENT

100. Community engagement is proposed to be undertaken for an extended period of 60 days beyond the 28 days required under Council's Community Engagement Strategy. It is intended to work together with Council's Communication team. The extended time frame

will also provide the community sufficient time to review the draft DCP. The proposed engagement activities are outlined in **Table 4** below.

**Table 4 – Community Engagement Program**

<b>Community Engagement</b>	<b>Proposed Action</b>
Online and digital	<ul style="list-style-type: none"> <li>• Council's website</li> <li>• Social media (Facebook page)</li> <li>• Council's 'Your Say' Georges River DCP 2020 page</li> </ul>
Drop in sessions	<ul style="list-style-type: none"> <li>• 1 per ward (reliant on funding)</li> </ul>
Letters	<ul style="list-style-type: none"> <li>• Bayside Council</li> <li>• Canterbury Bankstown Council</li> <li>• State MPs</li> <li>• Federal MPs</li> <li>• Transport for NSW (including Sydney Trains and RMS)</li> <li>• Other relevant Government agencies and authorities.</li> </ul>
Letterbox drop	A postcard will be sent to residents in LGA. (Reliant on funding)
Public notice	Public notice to be placed in the local newspaper and the NSW Government's Planning Portal, notifying the exhibition of the draft GRDCP 2020.
Telephone Consultation	Council's Strategic Planning staff will be available during office hours to answer telephone enquiries.
Customer Service centres and Libraries'	Copies of the Draft GRDCP 2020 available for the public to review

## NEXT STEPS

101. The next steps for this project include:

<b>Date</b>	<b>Step</b>
September 2020	Georges River Local Planning Panel endorses the draft GRDCP 2020 for public exhibition
September 2020	Preparation of public exhibition materials
October 2020 to November 2020	Public Exhibition - minimum 28 days
December 2020	Consideration of submissions
February 2021	Report on submissions received and adoption of GRDCP 2020.