

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 15 October 2020
Time:	4.00pm
Venue:	Council Chambers, Civic Centre, Hurstville
Panel Members:	Paul Vergotis (Chairperson) Helen Deegan (Expert Panel Member) John Brockhoff (Expert Panel Member) George Vardas (Community Representative)

1. On Site Inspections - 1.00pm –3.30pm

- a) 70-78 Regent Street Kogarah
- b) 27-33 Nielsen Avenue Carlton
- c) 117 Stuart Street Blakehurst
- d) 14A Merriman Street Kyle Bay
- e) 2 Laycock Road Penshurst
- f) 14 Maple Street Lugarno

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

- LPP049-20 117 Stuart Street Blakehurst – DA2020/0247**
(Report by Senior Development Assessment Planner)
- LPP050-20 14 Maple Street Lugarno – DA2019/0645**
(Report by Development Assessment Planner)
- LPP051-20 27-33 Nielson Avenue Carlton – MOD2020/0084**
(Report by Senior Development Assessment Officer)
- LPP052-20 14A Merriman Street Kyle Bay – DA2020/0098**
(Report by Senior Development Assessment Planner)
- LPP053-20 2 Laycock Road Penshurst – DA2020/0607**
(Report by Senior Development Assessment Officer)
- LPP054-20 70-78 Regent Street Kogarah – MOD2020/0144**
(Report by Development Assessment Planner)

4. Confirmation of Minutes

LPP049-20

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 15 OCTOBER 2020**

LPP049-20

LPP Report No	LPP049-20	Development Application No	DA2020/0247
Site Address & Ward Locality	117 Stuart Street Blakehurst Blakehurst Ward		
Proposed Development	Demolition, tree removal, construction of a multi level dwelling house, in-ground swimming pool, front fencing, landscaping and site works		
Owners	Gemaveld Pty Ltd		
Applicant	MKD Architects		
Planner/Architect	Planner: BMA Urban; Architect: MKD Architects		
Date Of Lodgement	19/06/2020		
Submissions	One submission		
Cost of Works	\$4,362,857		
Local Planning Panel Criteria	The proposal seeks a variation to the maximum FSR development standard that is greater than 10%.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 55 - Remediation Of Land; State Environmental Planning Policy (Infrastructure) 2007; State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment; State Environmental Planning Policy (Coastal Management) 2018; Draft Environment State Environmental Planning Policy; Draft Remediation of Land State Environmental Planning Policy; Kogarah Local Environmental Plan 2012; Draft Georges River Local Environmental Plan 2020; Kogarah Development Control Plan 2013		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Massing Diagrams, Landscape Plan, Arborist Report, Statement of Environmental Effects, Clause 4.6 Variation Request, Geotechnical Report		
Report prepared by	Senior Development Assessment Planner		

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

recommendations summarised, in the Executive Summary of the assessment report?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - Clause 4.4A – Exceptions to floor space ratio for residential accommodation in Zone R2
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No – the application is recommended for refusal

Site Plan



Subject site outlined in blue

Executive Summary Proposal

1. Development consent is sought for demolition works, tree removal, and construction of a multi-level dwelling house, swimming pool, front fence, landscaping and site works.
2. Three trees are located in the front setback of the property, two Eucalyptus and one Angophora. The arborist report submitted with the application rates these trees as Category A: *Important trees suitable for retention for more than 10 years and worthy of being a material constraint.*

All three trees are proposed for removal to accommodate the proposed driveway. Council's consulting arborist does not support their removal.

3. The proposal fails to provide an adequate Clause 4.6 statement to support the necessity for the variation of the Kogarah Local Environmental Plan 2012 (KLEP) Floor Space Ratio (FSR) development standard. The proposal seeks to vary the applicable FSR of 0.28 (570.4sqm) seeking an FSR of 0.4:1 (825.3sqm) being a variation of 45%.
4. The application is recommended for refusal.

Site and Locality

5. The site is identified as Lot B in DP33563, known as 117 Stuart Street, Blakehurst.
6. The lot is a waterfront property and has a site area of 2,029sqm and a 15.24m frontage to Stuart Street. The local topography surrounding the site falls to the west toward the Georges River. The site has a change in levels from the street to the water of 35m.
7. Currently on the site is a two storey dwelling house with driveway access from Stuart Street. There is an excavated hardstand area with large retaining walls in the front setback, below street level.
8. A swimming pool is located in the rear yard and there are slip rails and a boat shed located adjacent to the bay. Access to the water from the existing dwelling is via a series of stairs and pathways.
9. The site contains a number of trees, both at the street frontage and on the land between the dwelling and the foreshore. The three trees located on the front setback are Category A trees and worthy of retention.

Zoning and Permissibility

10. The site is zoned R2 - Low Density Residential under the provisions of Kogarah Local Environmental Plan 2012

Background

11. The Application was lodged on 19 June 2020. The Applicant was advised on 9 July 2020 that the proposed FSR variation of 45% would not be supported and it was suggested the application be withdrawn. The Applicant advised on 10 July 2020 that they would not be withdrawing the application.

Reason for Referral to the Local Planning Panel

12. This application is referred to the Georges River Local Planning Panel for determination as the proposal seeks consent for a variation of greater than 10% to the floor space ratio development standard of the Kogarah Local Environmental Plan 2012.

Submissions

13. One submission was received at the close of the public notification period.

Conclusion

14. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed Development Application DA2020/0247 for demolition works, tree removal, and construction of a multi-level dwelling house, swimming pool, front fence, landscaping and site works is recommended for refusal for the reasons referenced at the end of this report.

Report in Full

PROPOSAL

15. Council is in receipt of an application seeking development consent for demolition works, tree removal, and construction of a multi-level dwelling house, swimming pool, front fence, landscaping and site works.

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

- Demolition: the existing dwelling house, driveway, hardstand area, external staircases and swimming pool are to be demolished.
- Tree removal: three trees are proposed for removal from the front setback to accommodate the proposed driveway.
- Front Fence/Entry Feature: the proposal includes an access portico located on the front boundary and extending the width of the site frontage. The structure is of concrete construction and includes columns supporting a roof reaching a height of up to 3.1m.
- Landscaping and earthworks: landscaping is proposed to the site boundaries, within the internal courtyards and the area at the rear of the proposed dwelling.

Significant earthworks are proposed to accommodate the lower levels of the proposed dwelling and to level the site to provide a flat lawn area at the rear of the dwelling. The site currently retains the natural topography of the land between the dwelling and the foreshore. The proposal involves excavation of up to 10m to accommodate the three lower levels of the dwelling, and cut and fill at the rear of the dwelling to create a flat landscaped private open space area ground level.

The plans are not dimensioned to enable a proper assessment of the depth of the proposed cut and fill in this area, and no detail is provided on the required retaining walls around the area.

- Dwelling house: the proposed dwelling house is described by each level as follows:
 - Level 1: entry lobby, screened lounge area, office, meeting room, bathroom, kitchenette, terrace, lift and stair access to the level below. There is an internal courtyard at this level.
 - Ground Level: garage with parking for three vehicles, living, dining, bathroom, two bedrooms with robes and balconies, terrace, lift and stair access to other levels. There is a bamboo garden to this level.
 - Level 1: four bedrooms (each with robe and ensuite bathroom), master bedroom with terrace, walk in robe and ensuite bathroom, lounge area, lift and stair access to other levels.
 - Level 2: kitchen, living, dining, WC, wine cellar and pantry, terrace containing a kitchen, BBQ and pizza oven, access to the swimming pool and spa, stair and lift access to other levels, plus stair access to Level 3 terrace.
 - Level 3: movie room, laundry chute room, laundry, drying room, sauna, two WCs, shower room, rumpus room/gym/games room/study containing a bar and

kitchenette, terrace with outdoor shower, storage and sinks, stair and lift access to other levels plus stair access to the rear yard.

17. The proposed site plan is shown in Figure 1 and the proposed levelling and landscaping of the site and the rear yard is shown in Figures 2 and 3.

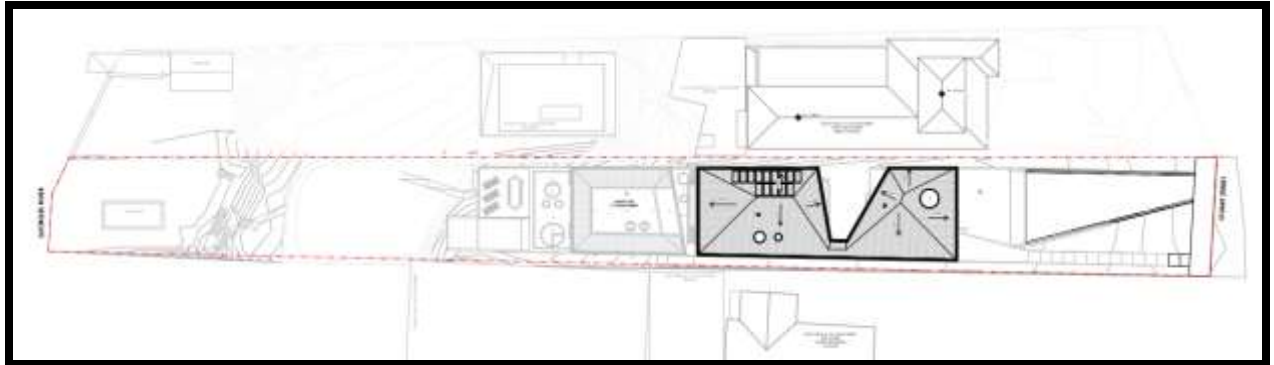


Figure 1: Proposed site plan

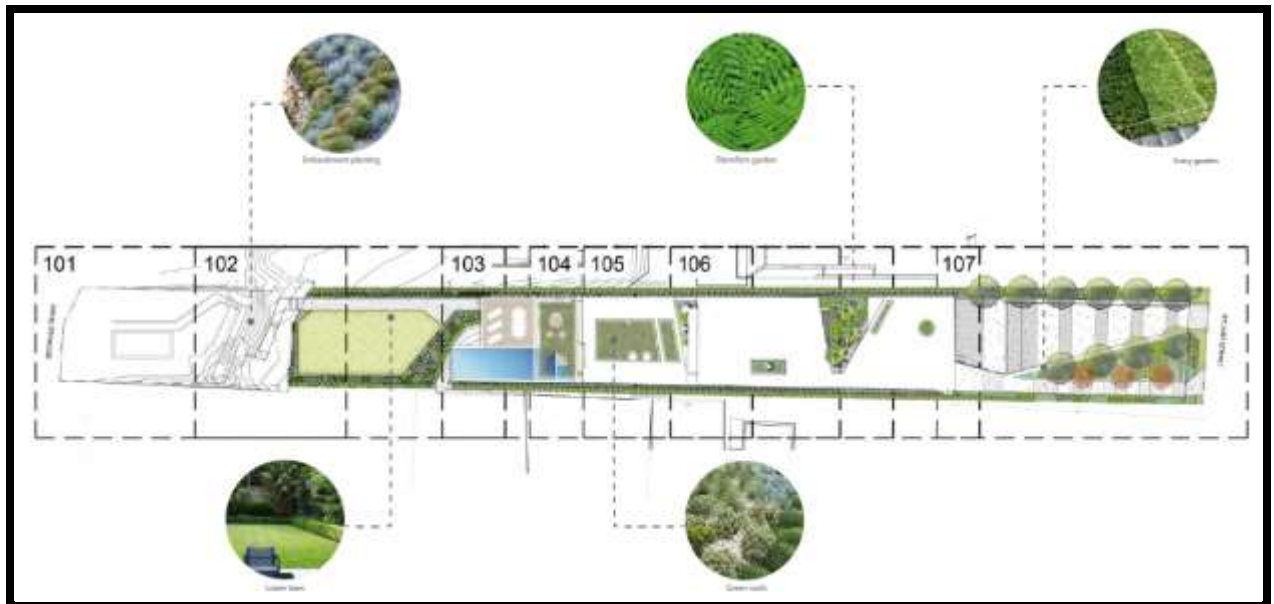


Figure 2: Proposed Landscape Plan

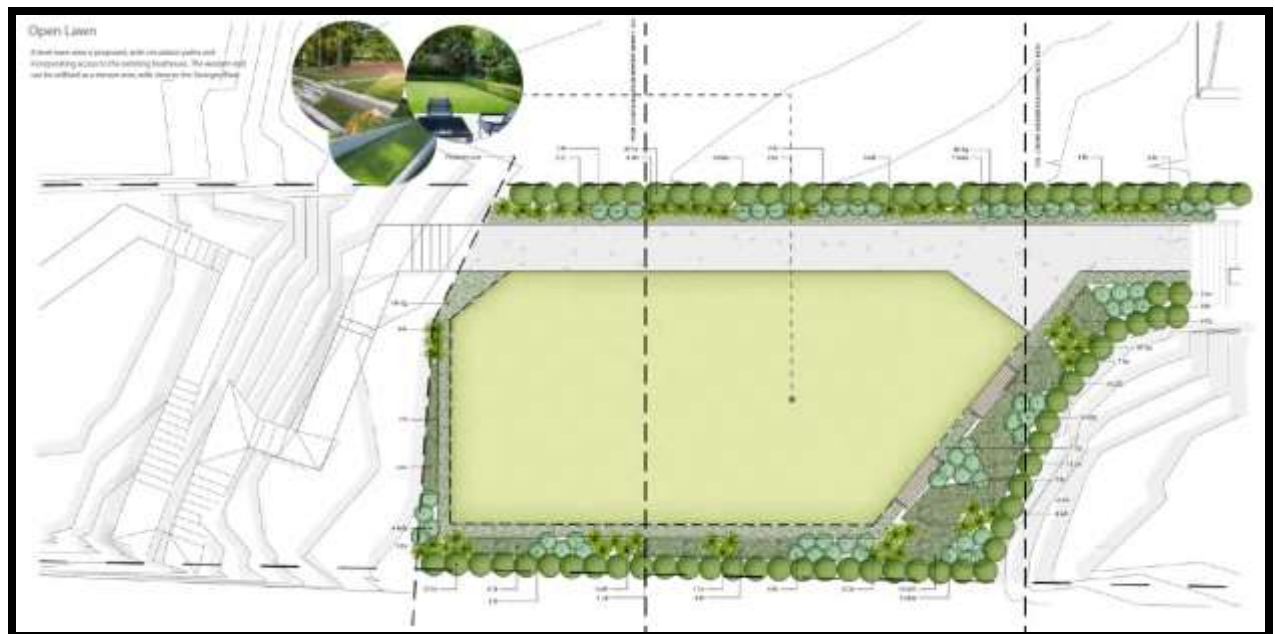


Figure 3: Proposed levelling and landscaping of rear yard

THE SITE AND LOCALITY

18. The site is identified as Lot B in DP33563, known as 117 Stuart Street, Blakehurst.
19. The lot is a waterfront property and has a site area of 2,029sqm and a 15.24m frontage to Stuart Street. The local topography surrounding the site falls to the west toward the Georges River. The site has a change in level from the street to the water of 35m.
20. Currently on the site is a two storey dwelling house with driveway access from Stuart Street. There is an excavated hardstand area with large retaining walls in the front setback, below street level.
21. A swimming pool is located in the rear yard and there are slip rails and a boat shed located adjacent to the bay. Access to the water from the existing dwelling is via a series of stairs and pathways.
22. The site contains a number of trees, both at within the street frontage and on the land between the dwelling and the foreshore. The three trees located within the front setback are Category A trees and worthy of retention.
23. Photos of the site are provided in the figures below.



Figure 4: View of the site from Stuart Street



Figure 5: Excavated hardstand area in the front setback

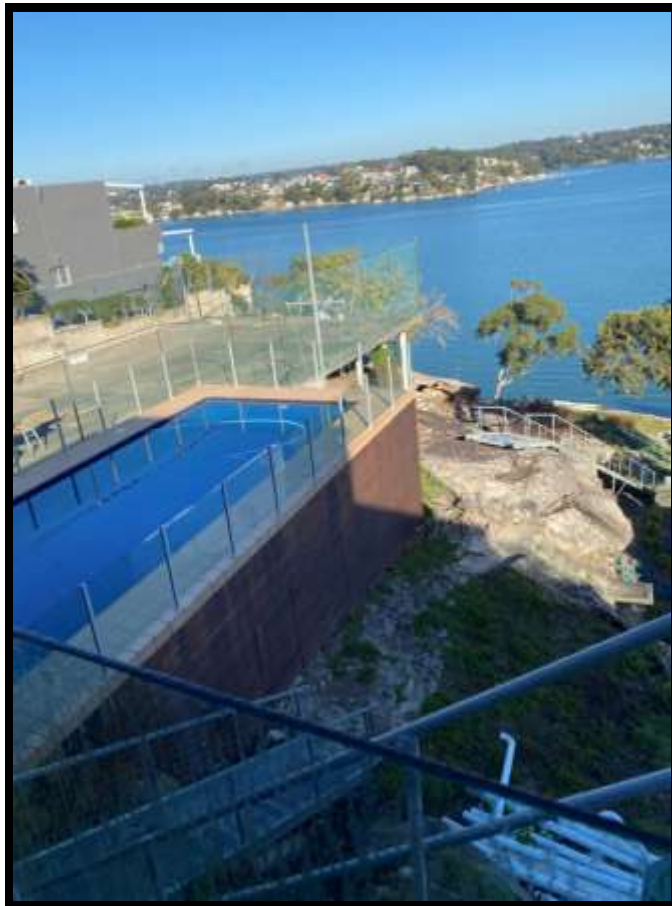


Figure 6: Pool on the subject site

24. The site is located in a low density residential, waterfront area, characterised by multi-level dwelling houses, ancillary and waterfront structures, with a subdivision pattern containing battle axe allotments. The adjoining property to the north is known as 115 and 115A Stuart Street, a recently subdivided allotment containing a dwelling house on each lot (Figures 7 and 8).
25. The property to the south is known as 123 Stuart Street and contains a dwelling house, swimming pool and tennis court (Figure 9).

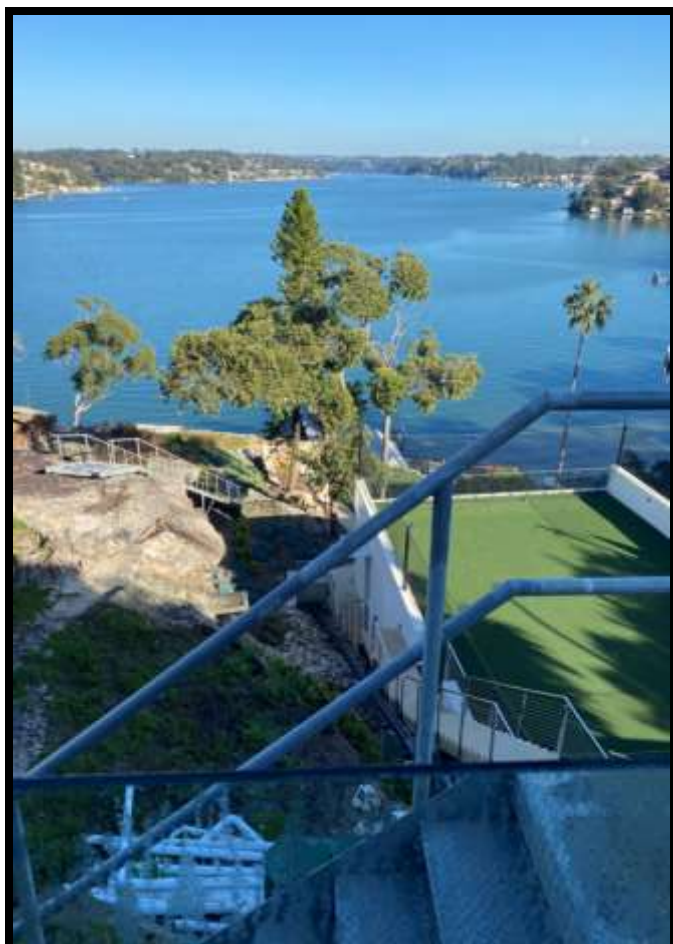


Figure 7: Dwelling on 115A Stuart Street (green roof)



Figure 8: Rear of the dwelling on 115 Stuart Street



Figure 9: Development to the south of the subject site

Background

26. The Application was lodged on 19 June 2020. The Applicant was advised on 9 July 2020 that the proposed FSR variation of 45% would not be supported and it was requested that the application be withdrawn. The Applicant advised on 10 July 2020 that they would not be withdrawing the application.

Compliance and Assessment

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

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

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. 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.
30. 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

31. 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. BASIX Certification is also triggered when proposing a swimming pool with a volume of 40,000 litres.
32. A BASIX Certificate dated 29 May 2020, certificate number 1102034S, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

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

33. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
34. 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).
35. 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.
36. 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).
37. As part of the proposal, three (3) trees have been nominated for removal.
38. The application was referred to Council's Consultant Arborist who provided the following comments:

"There are several large Eucalypts and an Angophora costata located within the sites front boundary. They all appear as possible mature remnant trees, all in good condition via a visual assessment. The Arborist Report for this DA assesses all three trees and rates the Eucalypts as of HIGH significance, whilst the Angophora is rated as a MEDIUM significance."

The arborist report mentions that the only reason for removal is due to the driveway affecting the TPZ and SRZ and the only reason for removal is to necessitate the driveway.

RECOMMENDATIONS:

I cannot support the removal of such significant mature trees that contribute to the general greening canopy of the local area. The trees are growing quite comfortably...a more favourable outcome would be to utilise the existing footprint and driveway. This way the impacts to existing trees will be minimised."

39. The proposal does not satisfy the objectives of the SEPP.

STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018

40. 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"*.

The subject site has not been identified as being located in a coastal vulnerability area and a coastal environmental area as per NSW State Environmental Planning Policy (Coastal Management) 2018 - Maps.

SEPP Control	Proposal	Complies
13. Development on land within the coastal environment area		
(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 stormwater management plan should the application be approved.	Yes
(b) coastal environmental values and natural coastal processes,	The proposal is used for residential purposes and will unacceptably impact the coastal environmental values, as it will result in adverse visual impacts from the waterway. There is no anticipated impact on coastal processes.	No
(c) the water quality of the marine estate (within the 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,	Appropriate standard conditions would be imposed if the application were to be approved to ensure water quality is maintained. The site is not located on any of the sensitive coastal lakes identified in Schedule 1.	Yes
(d) marine vegetation, native vegetation and fauna and their habitats,	Adverse impacts will arise from the proposed development in relation to vegetation and landform.	No

undeveloped headlands and rock platforms,		
(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 and immediately adjoining sites are privately owned, with no public access to this part of the foreshore.	Yes
(f) Aboriginal cultural heritage, practices and places,	The allotment is not known as a place of Aboriginal significance. There is no 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 is unsatisfactory in terms of impact as discussed throughout this report.	No
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposal is unsatisfactory and has not been designed to reduce impacts.	No
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact	The proposal is unsatisfactory and has not been designed to minimise impacts.	No
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,	There is no public access in this location.	Yes
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	The proposal will not shadow the foreshore.	Yes
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	The proposal is a cascading development form as well as excessive amounts of cut to accommodate the proposal. This development is inconsistent with the development forms immediately adjoining and along the bay, as it proposes a continuous built form with no relief	No

	by way of separation and landscaping visible from the bay.	
(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
(b) 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 is unsatisfactory in terms of impact as discussed throughout this report.	No
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The development will result in unreasonable impacts.	No
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	The development will result in unreasonable impacts.	No
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	Development is unsatisfactory in terms of the built form controls in Kogarah LEP 2012 and DCP 2013. The development form and scale is inconsistent with the built form immediately adjoining and that of the visual catchment.	No

GREATER METROPOLITAN REGIONAL ENVIRONMENTAL PLAN NO 2 — GEORGES RIVER CATCHMENT

41. 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,*

42. The proposed stormwater drainage system has been assessed by Council's Development Engineer and has been found to be satisfactory and conditions of consent can be imposed should the application be approved.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environmental SEPP

43. 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.
44. The proposal is not inconsistent with the provisions of this Draft Instrument. Council's engineers have provided conditions of consent should the application be approved.

Draft Remediation of Land SEPP

45. 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.*
46. The proposal is not inconsistent with the provisions of this Draft Instrument.

KOGARAH LOCAL ENVIRONMENTAL PLAN 2012

47. The extent to which the proposed development complies with the Kogarah Local Environmental Plan 2012 (KLEP 2012) is detailed and discussed in the table below.



Figure 9: Land Zoning Map as per KLEP 2012 (subject site outlined in blue)

Clause	Standard	Proposed	Complies
Part 1 – Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is not considered to be consistent with the aims of the plan.	No. Refer to discussion below.
<p><u>Comments on Aims of the Plan:</u> The particular aims of the Kogarah Local Environmental Plan 2012 in relation to Clause 1.2 (2) are as listed below:</p> <ul style="list-style-type: none"> • To guide the orderly and sustainable development of Kogarah, • To encourage a diversity of housing choice suited to meet the needs of the current and future residents of Kogarah, • To promote economic development and facilitate the continued growth of commercial, medical-related and industrial employment-generating opportunities, • To protect and enhance Kogarah's natural environment, foreshores and waterways, • To provide high quality open space and a range of recreational areas and facilities suited to meet the needs of the residents of Kogarah and its visitors, • To conserve Kogarah's environmental heritage. <p>The development is not considered to be consistent with the aims of the Kogarah Local Environmental Plan 2012, as the proposal has not been designed to satisfy the criteria relating to the orderly and sustainable development given the excessive density breach and resultant bulk and scale of the proposal. The proposal is not considered to be well suited to meet the needs of the current and future residents of the locality.</p>			
1.4 - Definitions	Dwelling House means: <i>a building containing only one dwelling.</i>	The proposed development is inconsistent with the definition.	No. Refer to discussion below.

Comments on Definitions:

The proposal seeks consent for the construction of a dwelling house; however the Ground Level of the proposal is essentially a self-contained dwelling. It contains two bedrooms, storage, a bathroom, living and dining area, common area and a large water-facing terrace including a separate access from the pathway on the southern side of the property.

The architectural plans do not show a kitchen, however the landscape plan does show a kitchen, confirming the intention of the applicant to use this level as a separate domicile as shown on Sheet 105 B of the Landscape Plans submitted with the DA.

Part 2 - Permitted or prohibited development

2.3 - Zone objectives and Land Use Table	Meets objectives of R2-Low Density Residential Zone.	The proposal fails to meet all the objectives of the zone.	No. Refer to discussion below.
	Development must be permissible with consent	The proposal is permissible with development consent.	Yes

Comments on zone objectives:

The objectives of the R2 Low Density Residential Zone as identified in KLEP 2012 are as listed below:

- *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.*

The proposed development fails to satisfy all the R2 Low Density Residential zone objectives as:

- i. The development presents unreasonable visual bulk and scale compromising the amenity of the surrounding area.
- ii. The proposed development will result in significant built form, which is inconsistent with the surrounding waterfront built form. It is acknowledged there is a subdivision pattern of battle axe allotments in this locality. The battle axe arrangement results in 2 or three allotments off an access handle. Each allotment has a dwelling on it, resulting in massing of built form down the slope of the land. It is acknowledged that this massing has visual relief through the setbacks provided between each dwelling.

This application is seeking to cascade down the allotment, however results in considerable and unreasonable bulk as there is no relief of the built form given there is no break in the massing of the dwelling house and structures.

An adverse impact will result from the proposed development on the amenity of the locality and adjoining neighbours, this is not expected by a residential dwelling form in a low density residential area.

Part 4 - Principal Development Standards

4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The proposal appears to have a maximum overall height of 9m, however no spot levels are provided on the plans to confirm the existing natural ground level.	Insufficient detail is provided to confirm compliance.
4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential, Clause 4.4A applies.	Refer to Clause 4.4A
4.4A – Exceptions to floor space ratio for residential accommodation in Zone R2	<p>2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>For site area not less than 1,500sqm $[(\text{lot area} - 1,500) \times 0.1 + 517.5] \div \text{lot area}:1$</p> <p>Site area: 2,029sqm</p> <p>0.28:1 or 570.4sqm</p>	<p>The proposed development has a total FSR of 825.3sqm or 0.4:1</p> <p>254.9sqm exceedance or a 44.7% variation.</p>	No. Refer to Clause 4.6 assessment.
4.6 – Exceptions to development standards	In accordance with Clause 4.6 (1) through to and including (8)	The proposal is accompanied by a Clause 4.6 variation statement relating to the breach of the Floor Space Ratio standard under Clause 4.4A.	Refer to Clause 4.6 assessment.
Part 5 – Miscellaneous Provisions			
5.4 - Controls relating to miscellaneous permissible uses	(2) Home businesses If development for the purposes of a home business is permitted under this Plan, the carrying on of the business must not involve the use of more than 30 square metres of floor area.	Home businesses are permitted in the R2 zone. Level 1 of the development proposes an office, meeting room, store/printer room, kitchenette and terrace equating to an	No. Refer to comments below.

		area of 137sqm.	
<p><u>Comments on home office:</u></p> <p>The size of the home office exceeds the maximum 30sqm permitted by Clause 5.4 of the KLEP.</p> <p>While not stated in the LEP, the underlying objective of the clause is to limit the size of the area able to be used as a home business so that it remains ancillary to the dwelling and not of a size that may result in other impacts such as staff and visitor parking etc.</p> <p>The size of the office and meeting room can accommodate a number of staff and visitors and unnecessarily adds to the floor space of the development as a whole.</p> <p>The home office is not supported in its current form.</p>			
5.7 – Development below mean high water mark	(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).	The proposal does not involve works below the Mean High Water Mark.	Yes
5.10 – Heritage conservation	In accordance with Clause 5.10 (2)	The site is not a heritage item and not located within the vicinity of any heritage items. Site is not in a heritage conservation area.	Yes
Part 6 - Additional Local Provisions			
6.1 – Acid sulfate soils	(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.	The site is not mapped as being affected by acid sulfate soils.	N/A
6.2 – Earthworks	(2) Development consent is required for earthworks unless— (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or (b) the earthworks are ancillary to development that is permitted without consent under this Plan or	The proposed earthworks are excessive and are unacceptable for this form of development. See comments below.	No, refer to comments below.

	to development for which development consent has been given.		
<p><u>Comments on earthworks:</u></p> <p>The proposed earthworks extend up to 10m below natural ground level to accommodate the lift shaft and parts of the Ground Level, -1 Level, -2 Level and -3 Level. This extent of excavation is excessive and is not supported. It fails to meet the objective of the KLEP 2012 that seeks to protect and enhance Kogarah's natural environment, foreshores and waterways. Removal of the site features that provide the topography is considered to be unacceptable from a visual perspective and the impact this cut has upon adjoining allotments and the waterway.</p> <p>Earthworks are also proposed at the rear of the dwelling to create a flat landscaped private open space area at ground level. The plans are not dimensioned to enable a proper assessment of the depth of the proposed cut and fill in this area, and no detail is provided on the required retaining walls around this area.</p> <p>The Geotechnical Report submitted with the DA concludes (our emphasis added in bold):</p> <p>"5.1 SITE STABILITY</p> <p><i>Based on the preliminary geotechnical assessment carried out by Fortify Geotech, including a site walk-over inspection, it appears that the site is not suitable for the proposed development from a slope stability perspective due to the quantity of unstable boulders present to the west of the existing property. The boulders present an unacceptable risk to people and property particularly following large rainfall events. Remediation to mitigate instability risks include removing the unstable boulders and levelling the site. Alternatively, the unstable boulders could be anchored using rock bolts where possible.</i></p> <p><i>Additionally, the good hillside practice guidelines must be followed for the proposed development. Given the proposed 6m/9m excavation depths, a detailed, intrusive geotechnical report is recommended for construction of the proposed development."</i></p> <p>The levelled area proposed at the rear of the dwelling is not supported as it results in unnecessary alteration to the natural topography of the site.</p> <p>No details have been provided with the application on the required retaining walls to contain the proposed fill in the levelled area. The proposal has failed to provide details on the quantity, number and location of required rock bolts. From the commentary provided above this may necessitate work on adjoining allotments, which is not addressed as part of this application.</p> <p>The excessive excavation to accommodate multiple levels of the dwelling, which is more than double the allowable FSR for the land, and the proposed solution to offset the site instability as a result by levelling a large area of the site is not supported and forms a reason for refusal.</p>			
6.4 – Limited development on foreshore area	In accordance with Clause (2) and (3)	No works are proposed below the foreshore building line.	Yes



Figure 10: The foreshore building line is referenced by the pink shaded area.

Clause 4.6 Variation Assessment

Clause 4.4A Exceptions to floor space ratio for residential accommodation in Zone R2

48. The proposed development seeks a total Floor Space Ratio (FSR) of 0.4:1, being 825.3sqm, whilst Clause 4.4A of KLEP 2012 restricts the FSR to 0.281, being 570.4sqm, resulting in a non-compliance of 254.9sqm being a 45% variation of the control. The Applicant has submitted a Clause 4.6 statement to vary the permissible FSR and this is addressed below.
49. Any assessment of the intent and objective of the development standard must have regard to the definitions for Gross Floor Area and Floor Space Ratio and their wording to ascertain what form of building is proposed see below:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

And

*The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*

50. The submitted architectural plans in conjunction with the Statement of Environmental Effects and Clause 4.6 variation request prepared by BMA Urban seeks a variation of 45% to the maximum allowable FSR control.
51. The applicant has provided gross floor area calculations excluding the garage.
52. No elevation has been provided in the architectural plans showing the treatment of the western edge of the garage i.e. no wall or balustrade is shown. It is also of relevance to note that the following statement was included the Statement of Environmental Effects submitted with the DA (refer to figure 11):



Figure 11: Extract from SEE (page 12)

53. With reference to the definition of gross floor area:

(g) car parking to meet any requirements of the consent authority (including access to that car parking),
54. As per Kogarah DCP 2013 Chapter B4 - Parking and Traffic, dwelling houses are required to provide two (2) car spaces. The entire parking area has been excluded from the GFA by the applicant. Council's assessment of the proposed parking area is that it is sufficiently enclosed to meet the definition of GFA and is required to be included in GFA calculation. This results in the third parking space, being an area of 16.5sqm, added to the GFA, bringing the total to 841.8sqm (0.41:1).
55. An assessment of the applicant's 4.6 variation request is provided below.

Exception to Development Standards

Detailed assessment of variation to Clause 4.4A Exceptions to floor space ratio for residential accommodation in Zone R2

56. 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.*
57. The proposed development seeks a variation of the development standard relating to FSR (Clause 4.4A). The Kogarah Local Environmental Plan 2012 (KLEP) identifies a maximum FSR of 0.28:1 or 570.4sqm for the Site and the proposed development has an FSR of 841.8sqm or 0.41:1 (825.3sqm or 0.4:1 as calculated by the applicant). This breach amounts to a 45% variation of the control.

58. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP.

59. Clause 4.6(3) states that:

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

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

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

Is the planning control in question a development standard?

61. The floor space ratio control under Clause 4.4A of the KLEP 2012 is a development standard. The maximum permissible FSR is 0.28:1 or 570.4sqm.

What are the underlying objectives of the development standard?

62. The objectives of Floor space ratio standard under Clause 4.4A of KLEP 2012 are:

- (a) *to ensure that the bulk and scale of development are compatible with the size of the lot, and*
- (b) *to promote good residential amenity.*

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

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

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

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be*

unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

65. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.
66. Applicants comment: *“The objectives of the development standard are achieved notwithstanding the noncompliance (First Method).*

The objectives of the Floor Space Ratio standard in cl. 4.4 of KLEP 2012 are as follows:

- *to ensure the intensity of development is compatible with the desired future character and zone objectives of the land*
-
67. *The underlying purpose of this objective is to ensure that any future development is designed in a manner whereby any resulting land use intensity will appropriately respond to both the zone objectives and existing and future context in a controlled manner. Reference is made to the potential for subdivision analysis prepared by MKD Architects and identified as DA-9.01 (May 20) within the architectural plan set. This analysis demonstrates the ability for land subdivision which while not being sought in this case, would govern a land use intensity envisaged to result if this development path was considered. More specifically, this analysis provides a preliminary subdivision and lot layout plan inclusive of an FSR summary demonstrating a total potential GFA for the land if the subdivision path was pursued. In summary, the anticipated total GFA that would be made available to the land upon land subdivision and the subsequent construction of a detached dwelling on each lot would be 828.6m² or 0.408:1. The extent of GFA offered in this scenario is on balance, no different to that being proposed by the subject development; however, this development proposes to consolidate the allowable GFA in a singular built form.*
 68. *Further to the above, the defining context presents an array of built forms and subdivision patterns designed in either a single lot, dual battle-axe lot or multi lots serviced by reciprocal rights of way extending from Stuart Street down towards the foreshore along the Georges River. The resulting built form notwithstanding the FSR breach is visually less defined than that of that predominately observed within the context noting the established land use intensities and desired future character which seeks to control the magnitude of development on any given parcel of land.*
 69. *Furthermore, the proposed FSR breach will in no way hinder the development ability to remain consistent with the zoning objections which primarily call for the provision of housing within a low density residential environment.*
 - *To limit the bulk and scale of development*
 70. *The proposal has been designed in response to the natural characteristics of the land where it will maintain an appropriate relationship with both neighbouring development and critical land interfaces. The building elevations incorporate a significant degree of physical articulation and modulation in the form of slots or breaks in the building, recessed and projecting balconies and architectural features and privacy screens. These features and design elements complement the aforementioned massing arrangement and contribute to visual interest, particularly when viewed from the Georges River foreshore.*

71. *The design of the development creates a singular built form with a clear architectural dialectic designed in response to the natural characteristics of the land. The staggered and appropriately modulated floor level geometry enables each level to distinctly coordinate with each preceding or succeeding level and in turn, offers an appropriate level of visually contrast. This design outcome mitigates the extent of appreciable mass which most importantly, will appear subordinate to the extent of built form currently identified from along the foreshore.*
72. *Importantly, the proposed arrangement of building mass means that the extent of visual scale offered most notably by the FSR breach, will have no adverse bearing in terms of the aesthetic characteristics and setting of the building. In this regard, the form and massing of the development will remain congruent with that as currently presented by established development within its defining context.*

The objectives of Floor Space Ratio standard in cl. 4.4A of KLEP 2012 are as follows:

- *To ensure that the bulk and scale of development are compatible with the size of the lot.*
73. *As discussed in address of the objective above, the resulting bulk and scale of this development is consistent with that envisaged for a parcel of land of this size. Importantly, the potential subdivision of the subject land and subsequent construction of two (2) detached dwellings on the site in lieu of the single dwelling as proposed would yield an FSR not inconsistent with that sought in this case.*
- *To promote good residential amenity*
74. *The proposed development has been designed in a manner where reciprocal privacy benefits will continue to be enjoyed, while solar access to both the subject and neighbouring dwellings will be maintained at acceptable levels. Furthermore, the resulting built form which is limited to a single yet appropriately staggered arrangement, would offer a reduction in the extent of appreciable building mass across the extent of the land over what would be anticipated by the subdivision of the subject site into two (2) allotments and the subsequent construction of a multi-level dwelling on each of the created lots.”*

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

75. Applicants Comment: *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:*

“That there are sufficient environmental planning grounds to justify contravening the development standard”.

76. *The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. 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).

77. *The proposed development is supportable on environmental planning grounds for the following reasons:*

- *The proposal (notwithstanding the LEP contravention) is consistent with the objectives of the development standard as provided in clause 4.4A of the KLEP 2012;*
- *The variation does not alter the intended purpose for a “dwelling house” in the Zone;*
- *The additional development density afforded by the breach is suitably arranged and will not result in any adverse impacts on neighbouring land or potential future development thereon;*
- *Any adverse environmental impacts of the proposed development are not materially different from that of a floor space ratio that would be achieved by the subdivision of the land into two (2) lots and the construction of a new dwelling on the created lots. Therefore, there is no environmental benefit to reducing building volume. The design of the development creates a singular built form with a clear architectural dialectic designed in response to the natural characteristics of the land. The staggered and appropriately modulated floor level geometry enables each level to distinctly coordinate with each preceding or succeeding level and in turn, offers an appropriate level of visually contrast. This design outcome mitigates the extent of appreciable building mass which most importantly, will appear subordinate to that currently identified along the foreshore setting.*
- *The development’s characteristics ensure that there is no potential for this development to have a jarring effect on either the street or waterscape, given the appropriately sited massing arrangement proposed as part of the development, and the evolving area context.*

78. *The Objects of the Act under S1.3 are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in the table below we consider whether the proposed development is consistent with each object.*

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 application.

(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.
(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.

79. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there will be negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overlooking, visual bulk and scale.

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

80. Clause 4.6(4) states that:

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

(a) the consent authority is satisfied that:

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

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

81. Applicants Comment: *“Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*
82. *In Part 3 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal, inclusive of the non-compliance, is also consistent with the objectives of the R2 Medium Density Zone as detailed below:*

Objective	Comment
To provide for the housing needs of the community within a low density residential environment.	The development constituting a dwelling house is a form of development anticipated in the R2 Zone. The proposed development is capable of providing for the housing needs of the community in a low density residential environment.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	This objective is not relevant to this development.

83. *The objectives of the zones as demonstrated above, as well as the objectives for the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.”*
84. The objectives of the standard are as follows:
- (a) *to ensure that the bulk and scale of development are compatible with the size of the lot, and*
- (b) *to promote good residential amenity.*
85. Officer Comment: The proposal seeks an FSR of 0.4:1 (825.3sqm) on an allotment of 2,029sqm whereas the planning controls define a floor space for development of this type residential accommodation in Zone R2 of 0.28:1 (570.4sqm).
86. The proposal is 255sqm in excess of the standard. This is an excessive non-compliance with the FSR standard with a flawed justification provided for the additional floor space, and will impose amenity impact on the amenity of surrounding properties.
87. The applicant states the proposal has been designed in response to natural characteristics of the land, and results in a bulk and scale envisaged for this type of the development on the land.
88. The extent of excavation of up to 10m is clearly at odds with the natural topography of the site and the bulk and scale resulting from this breach creates an undesirable outcome for a single dwelling house by creating a potential precedent where excessive floor space can be proposed simply on the basis that it equates to the same numerical amount of floor space had the site been subdivided and two separate dwellings constructed.

89. Additionally, the objective of the clause is to ensure that the bulk and scale of the development is compatible with the size of the lot, and to promote good residential amenity. The control achieves this by limiting the amount of floor area for residential accommodation as expressed. The proposal results in a large and bulky residence, which is at odds with the objective of this clause.
90. In the development of this site it is considered that there are no unique or exceptional environmental circumstances that apply that justify a variation of the control to the extent sought.
91. The Clause 4.6 variation relies on compliance with two of the five justifications expressed in the Land and Environment Court decision of *Wehbe -v- Pittwater City Council* (2007) which set down criteria to justify a variation under State Environmental Planning Policy No.1 (Development Standards) which has been replaced in Planning Instruments by the standard Clause 4.6. The principals espoused in the Appeal do however, remain relevant for consideration.
92. The Applicants reliance on the first justification that *“the objectives of the development standard are achieved notwithstanding non-compliance with the standard”* is not accepted as, although the works will not result in increased bulk and scale when viewed directly from Stuart Street it will present as a large and bulky building from adjoining sites and the adjacent waterway, being a larger building when viewed from other aspects.
93. The proposal, if approved, would serve to promote a building form and site density that is contrary to the objectives of the controls. This would undermine the intent and objectives of the controls and diminishing the amenity of adjoining properties.
94. In respect to Prestons CJ judgement the NSW Land and Environment Court has established the five part test (outlined above). In this case the development fails to satisfy the five part test for the following reasons:
- The objectives of the standard are not considered to be satisfied;
 - The underlying objective of the standard remains relevant and therefore compliance is necessary and warranted;
 - The underlying objective has not been defeated or thwarted as recent development applications within the vicinity have been designed to comply.
95. In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard.
96. The applicant has attempted to justify that that there are sufficient environmental planning grounds to justify contravening the development standard. The request fails to justify contravening the development standard and fails to adequately demonstrate that there are sufficient environmental planning grounds to justify the contravention with respect to the circumstances or context of the site.
97. In terms of the proposal providing sufficient planning grounds to justify contravention of the standard, the variation to the floor space development standard is considered to increase the bulk, scale and massing of the building, contrary to the objectives of Clause 4.4A. The visual dominance of the building will be increased and the scale of the building

is larger, bulkier and inconsistent with development in the immediate vicinity of the site and the desired character of the area. The proposed additional 255sqm floor space in a single building is considered to be an overdevelopment of the site.

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

98. Clause 4.6(5):

“In deciding whether to grant concurrence, the Secretary must consider-

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

99. Pursuant to Clause 4.6(5) of KLEP 2012 the matter involves a variation of 45% and the Secretary’s consideration of this extent of variation has been delegated to the Local Planning Panel. Therefore the Panel is required to consider the matters for consideration by the Secretary. In this instance the following is relevant:

“the public benefit of maintaining the development standard”

- 100. A variation of 45% where there is no extenuating site or location circumstances to warrant or substantiate the breach, the proposal is considered beyond what is acceptable when considering a variation to the standard.
- 101. Approval of the subject proposal would create an unacceptable and unjustified precedent to vary the standard in the low density residential locality. Being a building significantly larger than the set parameters, would result in an undesirable outcome that would set an undesirable precedent.
- 102. The dwelling will result in an excessive bulk and built form when viewed from multiple aspects and no landscaped relief is provided in mass or built form that would be achieved between separate dwellings on separate allotments. A stringent application of the FSR standard in this instance ensures a building form, scale and design that is compatible with dwelling houses in a low density residential locality.
- 103. On the basis of the commentary expressed above, the Clause 4.6 submission is not considered to be well founded or acceptable and would result in an undesirable precedent and building form that would undermine the intent of the development standard as it applies to the low density residential area.

Draft Georges River Local Environmental Plan 2020

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

DEVELOPMENT CONTROL PLANS**Kogarah Development Control Plan 2013**

106. The proposed development is subject to the provisions of the Interim Policy - Georges River Development Control Plan 2020 and the Kogarah Development Control Plan 2013. The following comments are made with respect to the proposal considering the objectives and controls contained within both DCPs.

C1- Low Density Housing

Control	Standard	Proposed	Complies
1.2 Building Scale and Height			
1.2.1 Floor space Requirements	(5) Blank walls and flat facades should be avoided. Walls longer than 10m should be articulated by a minimum 300mm projection or indentation in the façade.	The proposed development incorporates articulation, notwithstanding this, the bulk exceeds that envisaged in this zone.	Yes
	(6) The overall building should present a building mass that is in proportion with the allotment size, provides opportunities for modulation and articulation of the building and does not detract from the satisfaction of any other applicable design principle.	The proposed building mass is not considered suitable for the allotment size as the proposal exceeds the floor space ratio development standard and results in a bulk and scale that is not representative of development in the immediate locality and what is envisaged in the zone. The Clause 4.6 variation to justify the breach of the floor space ratio (gross floor area of the dwelling) development standard has not been supported by the assessing officer as it is not considered to be well founded.	No – refer to discussion in relation to FSR earlier in this report.
	(7) Where proposed development includes a two (2) residential level element, then the second level should not extend beyond 60% of the depth of	60% depth = 89.7m Proposed - 2 Level = 89.7m	Yes

	the allotment measured from the street boundary. Where side boundaries are of varying length, the second level is limited to a line across the block between the points on both boundaries.		
1.2.2 Building Heights	<p>(1) The maximum building height must comply with the requirements specified in table below:</p> <p>Dwelling Type Single dwelling;</p> <p>Maximum Height 7.2m to the underside of the upper ceiling; 7.8m to the top of the parapet;</p>	The proposal, in parts, exceeds the 7.2m ceiling height and 7.8m parapet height; however no spot levels are provided on the plans to confirm the existing ground level of the site.	No.
1.2.3 Rhythm of the Built Elements in the Streetscape	<p>(1) The primary building façade should not exceed 40% of the overall width of the total frontage.</p> <p>(2) The secondary building façade should be set back a minimum of 1.5 metres from the primary building façade.</p> <p>(3) Where the dominant built form in the streetscape provides for a pitched</p>	<p>The primary façade exceeds 40% the width of the frontage however will not be readily visible from the street due to the 32m setback and slope of the land which is lower than the street level. However, the front entry feature is to be of concrete construction, extend the width of the site and be to a height of 3.1m which is not supported.</p> <p>The design does not incorporate a secondary façade.</p> <p>The streetscape is characterised by a mix of pitched and parapet roofs. The proposed</p>	<p>No</p> <p>Acceptable on merit</p> <p>Yes</p>

	hip or gable ended presentation to the street, the new buildings and/or additions should reflect that roof form.	development incorporates a parapet design which is acceptable.	
1.2.4 Building Setbacks	<p><u>1.2.4.2 Front Setbacks</u> (1) Where the setback of an adjacent building is greater than 5m, an appropriate setback may be achieved by ensuring development is set back:</p> <p>(i) the same distance as one or the other of the adjoining buildings, provided the difference between the setbacks of the two adjoining buildings is less than or equal to 2.0m (Figure 9); or</p> <p><u>1.2.4.3 Side & Rear Setbacks</u> (1) The side and rear boundary setbacks should comply with the table below.</p> <p><u>Rear Setback</u> Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater.</p> <p><u>Side Setbacks</u> For buildings having a wall height of 3.5m or less, the minimum side boundary setback is 900mm.</p> <p>For buildings having a wall height of greater than 3.5m, the minimum side boundary setback is 1200mm.</p>	<p>Level 1 has a setback of 32.5m. This is the level that can be seen from Stuart Street.</p> <p>15% equates to 22.3m. Development is setback 50m</p> <p><u>Northern side setback</u> Ground floor: 1.2m First floor: 1.2m</p> <p><u>Southern side setback</u> Ground floor: 1.2m First floor: 1.2m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

1.2.5 Fenestration and External Materials	(1) New buildings and alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.	The proposed development is considered to be consistent with the modern design demonstrated throughout the immediate vicinity.	Yes
	(2) Garage doors should not dominate the street front elevation (Figure 16).	The parking area cannot be seen from the street. However, the front entry feature is to be of concrete construction, extend the width of the site and to a height of 3.1m which is not supported.	No
	(3) The roof should be similar to the angle of pitch, materials and colour of roofs in the streetscape (Figure 14).	The immediate vicinity demonstrates both pitched and parapet roofs, the proposal is consistent with contemporary development in the locality.	Yes
	(4) The colours of garages, window frames, and balustrading on main facades and elevations are to be integrated with the external design of the building.	The external facades of the proposed development are considered appropriate for the locality as they are consistent with contemporary development forms.	Yes
	(5) Glazing shall be limited to a maximum 35% of the total area of the overall street front façade. This includes both primary and secondary façade bays (Figure 15).	The proposed front façade does not exceed the maximum 35% glazing and cannot be readily seen from the street due to the setback and slope of the land and the proposed entry feature which is 3.1m in height (and is not supported).	Yes

	(6) Where garaging is in the front façade it should be limited to a maximum of two garage bays, with separate garage door openings of a maximum width of 3m.	The parking area cannot be seen from the street given the site topography and the vehicle accommodation being lower than the street level.	Yes
1.2.6 Street Edge	(1) New developments should provide front fencing that complements fencing within the streetscape.	The proposed entry feature/fence does not complement the streetscape as it exceeds the maximum height permitted for front fences and is of concrete construction with columns supporting a roof structure.	No
	(2) Fencing is to be consistent with the requirements of Section 4.2.	The proposed fencing is inconsistent with the Section 4.2 requirements (refer to 4.2 controls later in this table)	No
	(3) Existing vegetation in the front building line setback or on the street verge that contributes to the character of the streetscape should be preserved.	Three (3) trees have been nominated for removal. The application was referred to Council's Consultant Arborist and their removal is not supported as they are significant trees worthy of retention.	No
	(4) The driveway location should not result in the removal of any street trees or removal of substantial trees on the site.	The proposed driveway results in the removal of three significant trees in the front setback which is not supported by Council's arborist as the trees are significant, healthy species worthy of retention. An alternate design may enable these trees to be retained.	No

1.3 Open Space			
1.3 Open Space	(1) 15% of the site area must be deep soil landscaped area.	712sqm or 35%	Yes
	(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	The proposed development includes a satisfactory area for private open space.	Yes
	(3) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year round use.	The proposed private open space is appropriately located.	Yes
	(4) Where soil and drainage conditions are suitable, unpaved or unsealed landscaped areas should be maximised and designed to facilitate on site infiltration of stormwater.	The landscape area calculation is correct.	Yes
	(5) Existing significant trees and vegetation must be incorporated into proposed landscape treatment.	Three (3) trees have been nominated for removal. The application was referred to Council's Consultant Arborist and their removal is not supported given the quality, health and significance of these trees. An alternate design could see these trees retained.	No
1.4 Vehicular access, parking and circulation			
	(1) Car parking is to be provided in accordance with the requirements in Section B4.	The proposed development is satisfactory having regard to Section B4 of the KDCP 2013.	Yes

	2 spaces required	3 car spaces required and have been provided (the additional car space provided contributes to FSR)	Yes
	(4) Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	The proposed vehicular crossing will impact on three (3) significant trees in the front setback, the removal of which is not supported. An alternate design would see these trees retained.	No
	(5) Garaging should be setback behind the primary façade.	The parking area is forward of the dwelling, however given the site topography cannot be seen from the street.	Yes
	(6) The maximum driveway width between the street boundary and the primary building façade is 4m.	The proposed driveway is 3m.	Yes
1.5 Privacy			
1.5.1 Visual Privacy	(1) Windows from active rooms are to be offset between adjacent dwellings so as to avoid direct overlooking onto neighbouring windows.	Windows facing the side boundaries are limited in size and number.	Yes
	(2) Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m from any adjoining	Each balcony/terrace on G, L1, L-1 and L-2 exceeds the 2.5m width control and/or are less than 3m from the northern side boundary.	No – refer to comments below

	property boundary.		
	(3) The area of balconies or terraces greater than 1.5m above ground level is limited to a cumulative total of 40sqm per dwelling.	The areas of balconies great than 1.5m above ground level total 186.5sqm.	No – refer to comments below
	(5) For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties (Figures 18 and 19).	The proposed development is considered to have been appropriately treated to prevent any privacy concerns to the side boundaries through the use of solid walls to terrace/balcony edges.	Yes, however these subsequently add to the bulk of the dwelling when viewed from neighbouring properties.

Comments on visual privacy:

The cumulative total of balcony/terrace area is 186sqm, which is over four times the DCP control of 40sqm. Additionally, four (4) terraces exceed the maximum width and/or are located within 3m of the side boundary.

The excessive number and area of balconies, one (1) at each level of the proposed dwelling, results in a greater overlooking impact upon neighbouring properties than a compliant proposal.

The primary open space outdoor terraces on Levels -2 and -3 do not have privacy screens to mitigate the potential for overlooking to neighbouring properties and will have the greatest impacts as they are the largest of the terraces and will be used regularly given they are located adjacent to the proposed pool and primary living areas.

The objectives of the visual privacy controls are:

(a) Ensure the siting and design of buildings provides a high level of visual and acoustic privacy for residents and neighbours in dwellings and private open space.

(b) Direct overlooking from active windows, balconies and terraces is minimised.

(c) Council will only consider the impact of a proposed development on a neighbouring property's privacy in certain circumstances.

(d) The transmission of sound and vibration between adjoining properties should be minimised.

The cumulative total of balconies, many located closer to the side boundaries than permitted by the DCP, does not meet the objectives of the control. The private open space areas of adjacent neighbours will be overlooked from all levels of the proposed dwelling. The solid walls on the sides of Level-1, Ground and Level 1 balconies will not reduce the impacts as the balconies are elevated and span the width of the

dwelling (with the exception of the master bed terrace which only occupies half the width of that level).

The application is considered unacceptable in this regard.

1.6 Solar Access

	(1) At least 50% of the primary private open space of the proposed development should have access to a minimum of four hours of sunlight between 9am–3pm on 21 June.	The proposed private open space will receive the minimum 4 hours sunlight between 9am–3pm on 21 June.	Yes
	(3) Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on 21 June (Figure 21).	The proposed development affects the immediate neighbour to the south; however this property receives a minimum of 3 hours sunlight between 9am–3pm to at least 50% of the existing primary private open space on 21 st June.	Yes. Although the proposed dwelling satisfies the numerical solar amenity requirements, the additional built form will prevent additional sunlight reaching the adjoining allotments. Compliant FSR would have the ability to increase solar access to this allotment.

1.7 Views and view sharing

	(1) Development shall provide for the reasonable sharing of views. Note: Assessment of applications will refer to the Planning Principle established by the Land and Environment Court in Tenacity Consulting vs Warringah Council (2004) NSWLEC140	An assessment of the view impacts is provided below.	No - moderate impact on views – refer to view impact assessment below.
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View Impact Assessment

The subject site and surrounding lands benefit from views to the west, north-west and south-west to the Georges River. The DCP 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.

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*:

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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment: Existing views in a westerly, south westerly and north westerly direction from neighbouring properties include a land and water interface, and are gained over the subject site for properties to the north and south of the subject site.

The proposal will not impact on the existing views from neighbouring properties in a westerly direction. The proposal will obscure views to the north-west and south-west as the proposed dwelling extends further west than the existing dwelling on the site.

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.

Comment: The views from neighbouring properties to the north and south of the subject site to the north-west and south-west are obtained over parts of the existing dwelling/swimming pool on the subject site. The views appear to be gained from the living areas and balconies at the rear of the dwellings. As the views are obtained across a boundary and over other properties, the expectation that this view can or should be protected is considered to be less likely.

However the view impact is considered to be more than the existing situation as the proposed dwelling extends further west than the existing dwelling and swimming pool.

It is noted that the existing views to the west are unaffected by the proposal.

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 living areas 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.

Comment: In terms of classification of impact, the proposal is likely to have a moderate impact on the existing views from 115 Stuart Street (to the north) and 123 Stuart Street (to the south) given that they are obtained over the existing dwelling/swimming pool. The views impacted will be to the north west and south west as the proposed dwelling is setback further west than the existing dwelling and swimming pool. The existing views to the west are unaffected by the proposal for both neighbours.

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 non-compliance with one 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 neighbours. 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.

Comment: The proposal complies with the height controls contained in Kogarah LEP 2012 and the side setback controls in Kogarah DCP 2013; however exceeds the maximum FSR for the site. The built form, bulk and scale of the proposal is inappropriate for the site and contributes to the view impacts on the northern and southern neighbours. A development that complies with the FSR through a reduction in FSR or a subdivision of the site and the accommodation of built form in a different location would have the benefit of distributing the bulk and providing greater viewing corridors.

4.2 Fences and Walls

4.2.1 Front Fences	(1) In cases where an applicant can demonstrate the need for a front fence higher than 1.4m, the maximum height of the fence must not exceed 1.8m.	The front fence/entry feature extends to a height of up to 3.1m without justification provided by the applicant.	No
	(2) Fences over 1.4m must be setback 1.2m from the street alignment, except where Council considers a lesser distance is warranted due to the siting of the existing residence, levels or width of the allotment or exceptional circumstances of the site.	The walls of the front entry feature are setback from the front boundary; however the portico appears to extend over the front boundary. The height, design and location of the entry feature are not supported.	No

4.6 Swimming pools, spas and enclosures

	(1) Swimming pools/spas should be located at the rear of properties.	The proposed pool is located in the rear yard of the property.	Yes
	(3) Swimming pools/spas must be positioned a minimum of 900mm from the	The proposed pool waterline is located 1.5m from the southern side	Yes

	<p>property boundary with the water line being a minimum of 1500mm from the property boundary.</p> <p>(4) 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 require excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool at the low side.</p> <p>(7) On steeply sloping sites, Council may consider allowing the top of the swimming pool at one point or along one side to extend up to 1m above natural ground level, provided that the exposed face of the swimming pool wall is treated to minimise impact. The materials and design of the retaining wall should be integrated with, and complement the style of the swimming pool.</p> <p>(8) Filling is not permitted between the swimming pool and the property boundary. The position of the swimming pool, in relation to neighbours and other residents, must be considered to minimise noise associated with activities carried out in</p>	<p>boundary and 7.5m from the northern side boundary.</p> <p>The pool and paved area at the rear is cantilevered due to slope of land (elevated pools are not out of character for this locality), however the proposed structural support for the pool has adverse visual impacts when viewed from the north and is out of character for the residential setting of the site.</p> <p>The proposed development is located on a steep site; however the proposed structural support for the pool has adverse visual impacts when viewed from the north and is out of character for the residential setting of the site.</p> <p>The proposal does not include fill between the pool and the boundary.</p>	<p>No</p> <p>No</p> <p>Yes</p>
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	the swimming pool or from the swimming pool equipment, such as cleaning equipment.		
	(10) A pool fence complying with the legislation should separate access from the residential dwelling on the site to the pool.	Pool fencing is nominated on the plans to comply with the relevant Australian Standards. If the application was to be supported a condition would be imposed to reinforce this criterion.	Yes
	(11) Safety and security measures for swimming pools must comply with the relevant requirements of the Swimming Pools Act and any relevant Australian Standards.	Pool could comply with NCC and relevant Australian Standard.	Yes

Interim Policy Georges River Development Control Plan 2020

107. The proposed development is subject to the provisions of the Interim Policy Georges River DCP 2020. All other aspects have been thoroughly assessed under Kogarah DCP 2013. 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.

Section	Interim Policy Control	Proposal	Complies
Building Setback (Front)	Minimum setback from the primary street boundary is:		
	a) 4.5m to the main building face.	32.5m	Yes
	b) 5.5m to the front wall of garage, carport roof or onsite parking space. Or a) Within 20% of the average setback of dwellings on adjoining lots.	32.5m N/A	Yes N/A
Building Setback (Rear)	Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater.	15% depth = 22.35m Setback = 50m	Yes
	Where the existing pattern of development displays an	Consistent	Yes

	established rear setback, development should recognise and respond to site features and cross views of neighbouring properties.		
Building Setback (Side)	<p>The minimum side setback outside the FSPA is 900mm (ground floor) and 1.2m (first floor)</p> <p>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.</p>	<p>Min. 1.2m all levels</p> <p>N/A</p>	<p>Yes</p> <p>N/A</p>
Landscaped area	<p>Where located outside the FSPA, a minimum of 20% of site area is landscaped open space.</p> <p>Where located inside the FSPA, a minimum of 25% of the site area is landscaped open space.</p> <p>The minimum dimension of landscaped open space is 2m, designed in a useable configuration.</p> <p>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.</p>	<p>N/A</p> <p>35% (712sqm)</p> <p>Complies</p> <p>100sqm (lower level garden)</p>	<p>N/A</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Private Open Space	<p>An area of Principal Private Open Space is to be provided which:</p> <p>a) has a minimum area of 30sqm.</p> <p>b) has a minimum dimension of 5m, designed in a useable configuration.</p> <p>c) is located at ground level and behind the front wall of the dwelling.</p> <p>d) is directly accessible from a main living area.</p>	Private open space is proposed within a number of terraces and balconies at each level of the dwelling, plus a levelled area at the rear of the dwelling.	No. The accumulative areas of terraces and balconies is excessive and the levelled landscaped area is inconsistent with the topography of the site and involves

			earthworks to offset the excessive excavation proposed as part of the dwelling design to address site stability issues identified in the Geotechnical Report submitted with the DA.
Basement/ Land Modification	<p>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).</p> <p>Basements for low grade sites (i.e. < 12.5% Grade front to rear):</p> <p>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.</p>	<p>Basement parking is not proposed as part of the proposal; however the land is to be significantly modified, with excavation up to 10m in depth to accommodate the lower levels of the dwelling.</p> <p>This extent of excavation is not supported and has been identified in the Geotechnical Report submitted with the DA as not being suitable for the site due to site stability and safety concerns.</p> <p>N/A</p>	No

	<p>b) A basement is not considered a storey if it is:</p> <ul style="list-style-type: none"> 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. 		
Solar Access	<p><u>Kogarah</u> Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June).</p> <p>Note 1: development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design solution.</p> <p>Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation.</p>	The neighbouring properties to the east and west will receive more than 3 hours sunlight to more than 50% of their respective private open space areas and living room windows.	Yes

IMPACTS

Natural Environment

108. The proposal seeks to remove three (3) trees from the front setback of the site. The request for removal has been assessed by Council's Consultant Arborist and is not supported. The three (3) trees proposed for removal are in the location where the new driveway is proposed (the existing driveway is to be removed and replaced with a pedestrian path and garden with the new location of the driveway being where the three (3) trees exist). The applicant's arborist have identified these trees as being of high and medium significance, and would otherwise be worthy of retention if not for the proposed driveway.

109. As discussed earlier in this report, the Geotechnical Report submitted with the application concludes the site is not suitable for the proposed extent of excavation and will pose safety risks to human life as a result of the disturbance and removal of rock boulders. The proposal has failed to provide details on the quantity, number and location of required rock bolts. From the commentary provided in the Geotechnical Report this may necessitate work on adjoining allotments, which is not addressed as part of this application.
110. The extent of excavation, up to 10m in depth, to accommodate a number of proposed levels of the dwelling, is excessive and does not ensure the protection of the natural landscape or topography of the site.
111. The proposed works will directly impact the natural environment given the extent of the built form and will also indirectly impact the environment through excavation works and the change in hydrology.

Built Environment

112. The built form of the proposed development is of a bulk and scale that is inconsistent with contemporary development in the locality and what is envisaged by the density controls in the Local Environmental Plan regard gross floor area. The development presents unreasonable visual bulk impacts to the neighbouring properties along both the northern and southern side elevations.
113. The proposal will result in a dwelling of 825.3sqm, approximately 254sqm above the permissible floor space, resulting in an FSR of 0.4:1 and numerical variation to the standard of 45%. A Clause 4.6 variation was submitted in support of the non-compliance but is considered to be inadequate.

Social Impact

114. The proposal is not considered to result in an unreasonable social impact.

Economic Impact

115. The proposal is not considered to result in an unreasonable material economic impact.

Suitability of the Site

116. The site is zoned R2 – Low Density Residential. Whilst the proposal being a dwelling and ancillary works, is a permissible form of development in this zone, it is considered that the proposal will have an adverse impact on the adjoining properties and the broader locality in its current form. The proposal is considered an overdevelopment and ultimately is unsuitable for the site.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

117. The application was advertised and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. One (1) submission was received during the neighbour notification period.

Survey plan

118. The survey plan submitted with the DA is dated 2004 and does not reflect the current works on site, nor the current buildings on the adjacent property.
119. Comment: The architectural plans show the current buildings on adjacent properties; however no spot levels are shown on the plans to allow a proper assessment of the

proposal in relation to height above ground and alteration to natural ground levels. The survey is considered to be deficient for the assessment of this application.

Council Referrals

Development Engineer

120. Council's assessment of the drainage system concluded that the proposal is satisfactory and conditions of consent have been provided should the application be supported.

Consultant Arborist

121. Objection is raised for the removal of trees within the front setback to accommodate the proposed driveway, and the proposed is not supported on these grounds as there is a potential alternative that could result in retention of these trees.

External Referrals

Ausgrid

122. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. Correspondence was received on 29 July 2020 and no objections are raised.

Contributions

123. The development is subject to Section 7.12 (former Section 94A Contribution) contribution as the proposed cost of works exceed \$100,000.00. In accordance with Council's Section 94A Contributions Plan 2017, Section 7.12 – Fixed Development Consent Levies are applicable to dwelling house developments. A condition of consent requiring payment of the contribution will be imposed should the application be supported.

CONCLUSION

124. Development consent is sought for demolition works, tree removal, and construction of a multi-level dwelling house, swimming pool, front fence, landscaping and site works.
125. The proposal fails to provide an adequate Clause 4.6 submission to justify the necessity for the variation of the Kogarah LEP 2012 requirement for Floor Space Ratio. The proposal seeks to vary the 0.28:1 (570.4sqm) standard to 0.41:1 (841.8sqm) equating to a variation of 47%.
126. The proposal has been assessed in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979. As discussed throughout this report, the proposal fails to provide an adequate Clause 4.6 statement to justify the necessity for the variation of the Kogarah Local Environmental Plan 2012 requirement for Floor Space Ratio, the proposal fails to satisfy all the R2 Low Density zone objectives and a number of Kogarah Development Control Plan controls. The proposed development is not considered to be suitable for the site or the locality and is likely to set an undesirable precedent.
127. It is considered that the proposed development is not of a size or scale that is suitable for the site having regard to its size and shape, its topography, vegetation and relationship to adjoining developments and the waterway and the lack of adequate justification supporting a significant Floor Space Ratio variation.

DETERMINATION AND STATEMENT OF REASONS

128. **Statement of Reasons**

- The proposed development is not considered to be an appropriate scale and form for the site and the character of the locality.
- The excessive non-compliance of the Floor Space Ratio standard is unjustified and is considered unacceptable.
- The proposed development will have unacceptable adverse impacts on the natural and built environments.
- The proposal involves the removal of three (3) healthy and significant trees from the front setback, which is considered to be unnecessary.
- The proposed development will result in unacceptable adverse impacts on the amenity of adjoining residents and the locality and is likely to set an undesirable precedent.
- In consideration of the aforementioned reasons, the proposed development is not a suitable and planned use of the site and its approval is not in the public interest.

Determination

129. THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) Council refuses DA2020/0247 for demolition works, tree removal, and construction of a multi-level dwelling house, swimming pool, front fence, landscaping and site works at Lot B in DP33563 and known as 117 Stuart Street, Blakehurst, for the following reasons:

1. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 as it involves the removal of three (3) healthy and Category A-rated trees, being trees that are important trees suitable for retention for more than 10 years and worthy of being a material constraint.
2. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with State Environmental Planning Policy (Coastal Management) 2018 as the built form is inconsistent with the development forms immediately adjoining the site and along the bay, as it proposes a continuous built form with no relief as it extends down the site, as there is no separation of built form or landscaping visible from the bay.
3. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Kogarah Local Environmental Plan 2012:
 - a. Clause 1.2 - Aims of the Plan relating to the orderly and sustainable development given the excessive density breach and resultant bulk and scale of the proposal;
 - b. Clause 1.2 - Definitions: the proposal contains two self-contained dwellings and application has been made for one dwelling house;
 - c. Clause 2.3 – Zone Objectives - R2 Low Density Residential;
 - d. Clause 4.4A – Exceptions to floor space ratio for residential accommodation in Zone R2, having regard to the extent of variation sought;
 - e. Clause 4.6 – Exceptions to development standards, having regard to lack of adequacy in justifying the need for development standard variation;

- f. Clause 5.4(2) - Controls relating to miscellaneous permissible uses, having regard to the 137sqm of floor area of the proposal for use as a 'home business' exceeding the 30sqm maximum permitted; and
 - g. Clause 6.2 – Earthworks, having regard to the extent of excavation to accommodate multiple levels of the proposal and the extent of fill proposed to provide a level landscaped area in the rear yard.
4. Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Kogarah Development Control Plan 2013:
 - a. Control 1.2.1 Floor Space Requirements;
 - b. Control 1.5.1 Visual Privacy;
 - c. Control 1.2.6 Street edge;
 - d. Control 1.3(8) Open space;
 - e. Chapter 4.2 Fences and Walls; and
 - f. Chapter 4.6 Swimming Pools and Spas.
5. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the following aspects of the environment:
 - a. Natural Environment: Three (3) healthy and significant trees are proposed for removal which could be retained with an alternate design and the natural site topography is unnecessarily being significantly altered to accommodate the dwelling and private open space area.
 - b. Built Environment: An adverse impact will result from the proposed development on the amenity of adjoining premises relating to building bulk, scale and form, and overlooking impacts upon adjoining neighbours.
6. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be suitable for the site or its locality and is likely to set an undesirable precedent as:
 - a. The built form is excessively bulky for the site and results in adverse privacy and visual impacts for residential neighbours.
 - b. The information submitted with the application is deficient in detail to make a full and proper assessment of the proposed height of the dwelling.
 - c. No information has been provided regarding the retaining walls required to support the levelled area proposed in the rear yard.
 - d. The Geotechnical Report concludes the site is unsuitable for the extent of excavation proposed and will pose a risk to human life. No mitigation strategy has been included with the application to address this.
7. Approval of the development would not be in the public interest and contrary to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

Attachment [↓](#) 1 Site Plan and Elevations - 117 Stuart St Blakehurst





REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 15 OCTOBER 2020

LPP050-20

LPP Report No	LPP050-20	Development Application No	DA2019/0645
Site Address & Ward Locality	14 Maple Street Lugarno Peakhurst Ward		
Proposed Development	Construction of decking around an above ground swimming pool which is currently being used to house fish		
Owners	Qixin Xu		
Applicant	Qixin Xu		
Planner/Architect	Original Plans drawn by Li Can and checked by Ming Hsieh – Revised plans received by an unknown author		
Date Of Lodgement	20/12/2019		
Submissions	One (1)		
Cost of Works	\$15,840.00		
Local Planning Panel Criteria	The application is referred to the Panel for review and determination as the application is considered to a matter in the public interest in accordance with Council Officer delegations of 3 February 2020.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Draft Environment State Environmental Planning Policy, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Draft Environment State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No1, Draft Georges River Local Environmental Plan 2020.		
List all documents submitted with this report for the Panel's consideration	Architectural plans Statement of Environmental Effects Annotated Architecturals		
Report prepared by	Development Assessment Planner		

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

the assessment report?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, the application is recommended for refusal which can be viewed when the report is published.

Site Plan



The subject allotment is outlined in blue

Executive Summary Proposal

1. The subject development application (DA) seeks consent for the construction of decking, stairs, retaining walls, privacy screening and the planting of vegetation to address privacy and overlooking from the new decking. The decking is irregular in design and extends from the rear of the dwelling house adjacent to the northern boundary to the swimming pool and returns in a westerly direction to form a coping for the swimming pool. The works will also need to comply with the swimming pool fencing at 14 Maple Street, Lugarno.
2. The existing above ground swimming pool, which has been in existence for many years, has been converted to a fish pond. The proposed decking is to provide an elevated

walkway around the pool structure and access stairs to the pool equipment as an area for enjoying the pond and an area for a person to stand to undertake maintenance.

3. Council has previously considered DA2019/0028 for works of a similar design as the subject application, which was determined by way of refusal on 19 July 2019. The reasons for refusal included non-compliance with Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan No 1, site suitability of the development, inconsistency with the public interest and impacts on the adjoining allotments as detailed in the submissions.
4. Following the determination of DA2019/0028 (previous DA) Council Officers met with the owners of the site and their designer as well as undertaking a site inspection to provide pre lodgement advice for the submission of a revised proposal. The owners were advised that it was evident there had been significant vegetation removal from the site which has result in overlooking and privacy impacts onto the adjoining allotments. The neighbouring allotments are considerably lower than the subject site due to the topography of the locality. The plans submitted with DA2019/0645 (current DA) including amendments in an attempt to resolve the reasons for refusal of DA2019/0028.
5. The plans that accompany the subject application have included design amendments; however the plans contain errors with respect to the location of the proposed works and the relationship to the boundaries of the site and the existing site works.
6. In particular, the current DA plans are not accurate in terms the setback of the existing swimming pool from side and rear boundaries, and are also not accurate in terms of ground levels depicted on the plans which are not reflective of what exists on site. Accordingly, these plans cannot be relied upon for assessment purposes and construction of any approved development based on such plans would not be able to achieve the nominated setbacks.
7. Explaining the errors in the plans with the owners was difficult, as a result a site inspection was under taken to take measurements of the existing structures relative to the site boundaries and provide this information to the owners in order to remedy the inconsistencies.
8. A notated plan with the outcomes of the site inspection together with the photos taken during the site inspection were forwarded to the designer on 26 June 2020 as requested, and later the owners as the designer was medically unfit to proceed further with the proposal.
9. Following the provision of this information a new designer was engaged by the Owners. Council Officers also provided the annotated plans and photos as well as a detailed briefing of what the issues were with the proposal in an attempt to have the necessary information provided to facilitate a full and proper assessment. On 8 September 2020 revised plans were submitted, these plans increased in width of the decking and stairs and the setbacks and levels remained unresolved. In fact the plans received worsened the inconsistencies with the plans and that which exists on site.

Site and Locality

10. The subject allotment is legally identified as Lot 8; Section 2; DP 237428 with a street address of 14 Maple Street, Lugarno. The site is an irregularly shaped allotment with a 16.765m frontage to Maple Street, a 41.105m northern side boundary, a 36.88m southern side boundary, a rear boundary of 16.955m and a total site area of 644.9sqm.

11. A two storey brick dwelling is currently located on site. At the rear of the site is an above ground swimming pool currently used as a fish pond.
12. Adjacent to the subject site is a range of single, double and multi-level dwellings of similar scale and character. It is noted that the locality includes several significant trees. No trees are proposed for removal under this application.

Zoning and Permissibility

13. The site is zoned R2 – Low Density Residential under the Hurstville Local Environmental Plan, the proposed development being ancillary development to a dwelling is permissible with development consent in the zone.

Submissions

14. The application was neighbour notified in accordance with the provisions of Hurstville Development Control Plan and Council's Community Engagement and Participation Plan for a period of 21 days from 14 January to 4 February 2020.
15. In response one (1) submission objecting to the proposal was received, the concerns raised in the submission are discussed in detail later in this report and broadly relate to the following:
 - External appearance of the under-side of the deck,
 - Concerns that landscaping not be able to address such visual impact concerns, and it is requested that a screening structure be installed, and
 - Powers to enforce landscape maintenance.

Reason for Referral to Local Planning Panel

16. This application is referred to the Local Planning Panel for consideration and determination as the proposed is considered in the public interest as referenced in Council Officer Delegations of 3 February 2020.

Conclusion

17. Having regard to the matters for consideration Part 4.15 of the Environmental Planning and Assessment Act 1979, Development Application No. DA2019/0645 is recommended for refusal.

Report in Full Proposal

18. The subject development application (DA) seeks consent for the construction of decking, stairs, retaining walls, privacy screening and the planting of vegetation to address privacy and overlooking from the new decking. The decking is irregular in design and extends from the rear of the dwelling house adjacent to the northern boundary to the swimming pool and returns in a westerly direction to form a coping for the swimming pool. The works will also need to comply with the swimming pool fencing at 14 Maple Street, Lugarno. The works proposed are specifically outlined below:
 - Construction of a rear raised and stepped timber deck adjacent to the northern side boundary and returning in a western direction adjacent to the western site of the swimming pool (the deck setback is unknown as the plans are inaccurate);
 - Amendments to the pool fencing to facilitate the new works;

- Privacy screens along the perimeter of the decking that vary from 1.2m to 1.8m in height; and
- Associated landscaping along the northern and western boundaries.

The Site and Locality

19. The subject allotment is legally identified as Lot 8; Section 2; DP 237428 with a street address of 14 Maple Street, Lugarno. The site is located on the western side of Maple Street. The site is an irregularly shaped allotment with a 16.765m frontage to Maple Street, a 41.105m northern side boundary, a 36.88m southern side boundary, a rear boundary of 16.955m and a total site area of 644.9sqm. The site has a fall of approximately 7.96m measured from the front boundary to the rear (or 20.46%).
20. The immediate locality is characterised by low density residential land uses. Adjoining the site to the north and south are two (2) storey residential dwellings. The site is in close proximity to Great Moon Bay and the Lugarno Board walk.
21. The site is located within the Foreshore Scenic Protection Area. The area is generally residential in character. It is noted that a sewer line bisects the rear portion of the site. It is noted that the locality includes several significant trees. No trees are proposed for removal under this application.

Background

Subject Site

22. A review of Council's records could not locate an approval for the existing above ground swimming pool which has been converted to a fish pond. Historical aerial photos show that the pool has existed since at least 2001, and the site inspection by the Assessment Officer indicates that the pool is 20-30 years old.
23. According to submissions from neighbours and past inspections by Council Officers, the above ground swimming pool has for several years been used as a fish pond, rather than for recreational swimming.
24. The pool located at the rear of the site has been the subject of a number of compliance enforcement orders.
25. The first enforcement action taken by Council was under order (ON2015/0066 dated 8 April 2015), which required the installation of pool fencing. Prior to this, the pool did not have a fence, raising safety concerns. Subsequently, an additional enforcement order was issued (ON2017/0058 dated 17 February 2017) requiring the installation of a pool fence, which has since been installed.

Previous Development Application – DA2019/0028

26. A Development Application (DA2019/0028) which was for a similar type of development on the subject site was refused. The original plans submitted with this Development Application encompassed a roof over the walkways and 2m high privacy screens.
27. The reasons for refusal included non-compliance with Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan No 1, site suitability of the development, inconsistency with the public interest and impacts on the adjoining allotments as detailed in the submissions.

28. Throughout the processing of DA2019/0028 and discussions that occurred throughout the application and post the determination have resulted in a reduction in the size of the deck, the addition of stairs to the northern elevation, lowering of the privacy screens, landscaping to the northern and western boundaries of the allotment and the removal of the roofing over the decking.

Current Development Application – DA2019/0645

29. This development application was lodged on 10 December 2019. A site inspection was required to be undertaken and due to COVID-19 this was undertaken on 18 June 2020.
30. During the site inspection, it became evident many of the proposed setbacks (as shown on the DA plans) were incorrect. There were also other inconsistencies with the plans in relation to the deck interface with the dwelling, the location of pavers and concrete that is existing and the existing ground level in the area where the works are being undertaken.
31. To assist the applicant, Council Officers prepared an annotated plan and photos whilst on site to demonstrate the inconsistencies and the areas required to be addressed via amended plans. This annotated plan was forwarded to the designer on the 29 June 2020 as well as to the owner and again to the newly engaged designer on 2 September 2020. The following is an extract of the annotated plan that was provided to the applicant:

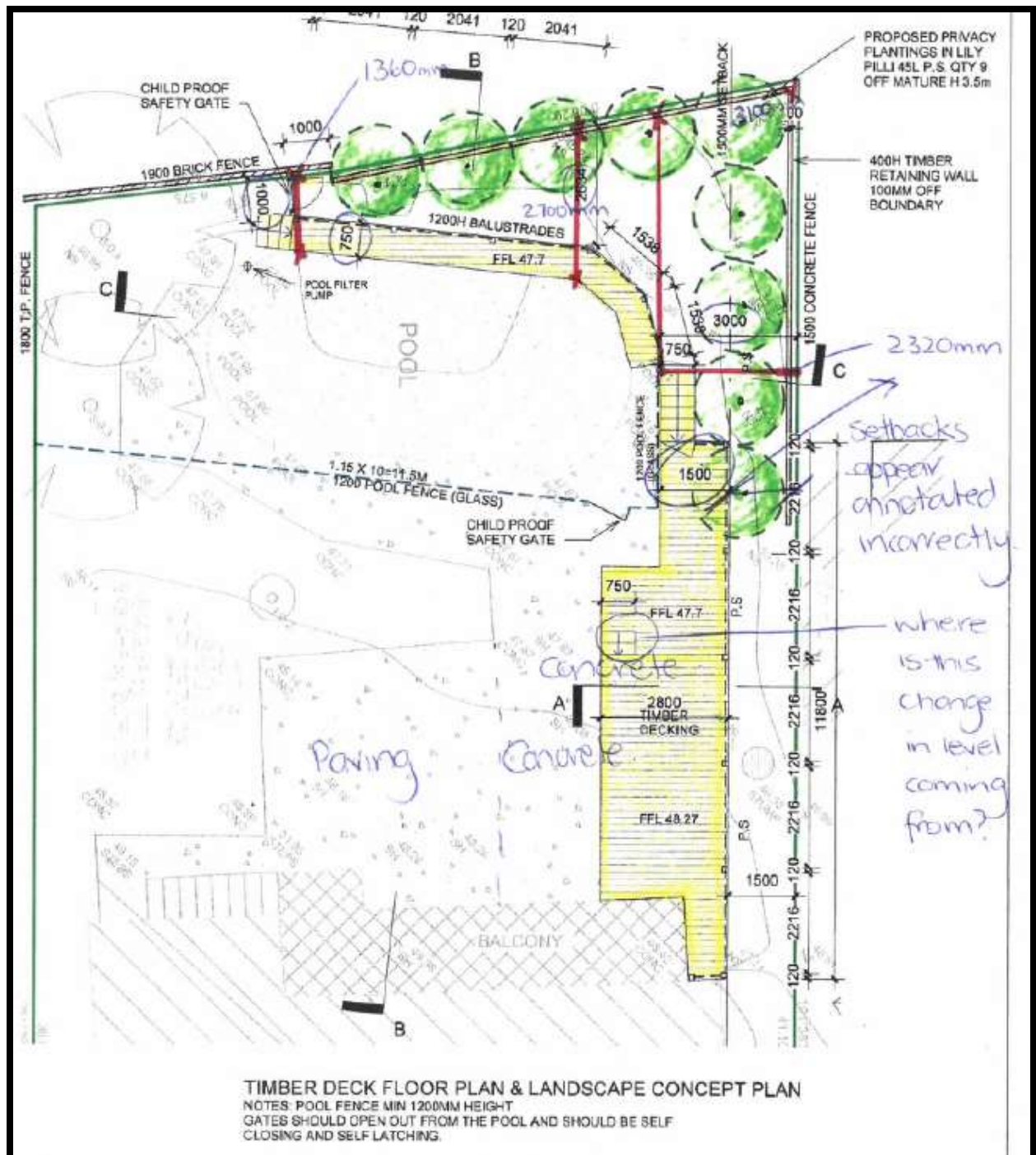


Figure 1: Site plan annotated with the inconsistencies measures and observed on site (provided to the applicant on 29 June 2020).

32. Amended plans were provided on 8 September 2020. The amended plans remain inaccurate and do not reflect what is on site or the correct setbacks of the existing swimming pool, or existing site contours and levels. In addition the width of the decking and stairs have been increased in width, resulting in a worsening of the inaccuracies.



Figure 2: Amended plan submitted on the 8 September 2020

33. The amended plans have addressed some of the areas of inconsistency, but a majority of the inconsistencies remain. These include the dimensions to the rear setback. Figure 1 demonstrates that the rear setback (from the western boundary) was measured to be 1360mm however the dimensions shown on the plan in Figure 2 is 970mm+800mm which is 1770mm and inconsistent with the measurements taken on site. The existing ground floor level and interface with the dwelling also remains incorrect.



Figure 3: From the northwest corner of the site along the northern boundary of 14 Maple Street, Lugarno



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Figure 4: Along the rear (western) boundary of 14 Maple Street, Lugarno

34. With the number and nature of the inaccuracies of the plans in terms of side/rear boundary setbacks, site levels and the width of the decking and stairs, the submitted DA plans cannot be relied upon to undertake a full and proper assessment of the DA, nor could they be relied upon in any potential development consent to be issued by Council as there would be no certainty as to the finished built form outcome.
35. Council Officers have provided the applicant with opportunities to address these issues throughout the assessment of this DA; however the applicant has not been able to provide plans with the required level of accuracy for assessment purposes.

APPLICABLE PLANNING CONTROLS

Statutory Consideration

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

36. The following Environmental Planning Instruments are relevant to this application:
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
 - Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment;
 - State Environmental Planning Policy No 55 - Remediation of Land;
 - State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;
 - Draft State Environmental Planning Policy 55 – Remediation of Land;
 - Draft Environment State Environmental Planning Policy;
 - Hurstville Local Environmental Plan 2012;
 - Hurstville Development Control Plan No1; and
 - Draft Georges River Local Environmental Plan 2020.

Environmental Planning Instruments

Deemed State Environmental Planning Policy – Georges River Catchment

37. Conditions surrounding the materials of the terrace extension and material beneath the subject extension allow natural ingress of water. No change to the stormwater design is required as a result of the proposed development. The proposal does not cause inconsistencies with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

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

38. A BASIX Certificate is not required for the proposal as the cost of works is below \$50,000 and the pool is existing.

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

39. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
40. 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).*
41. 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.
42. 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).
43. The application does not involve any vegetation removal, as such the proposal is considered satisfactory having regard to State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

State Environmental Planning Policy No 55 – Remediation of Land

44. 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.
45. 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.
46. The site has a history of residential uses and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regard to site

contamination, and further, there is only minimal excavation proposed (for example, for footings for the proposed decking).

Draft Remediation of Land SEPP

47. The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55 — Remediation of Land.
48. The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.
49. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. The Draft SEPP will not alter or affect the findings in relation to contamination at the site.
50. The site has a history of residential uses and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regard to site contamination, and further (as stated above), there is only minimal excavation proposed (for example, for footings for the proposed decking).

Draft Environment SEPP

51. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.
52. 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
53. The proposal is not inconsistent with the provisions of this Draft Instrument.

Hurstville Local Environmental Plan (HLEP) 2012

54. The site is zone R2 – Low Density Residential under the Hurstville Local Environmental Plan 2012 (see zoning map below). The proposed development is permissible with consent.

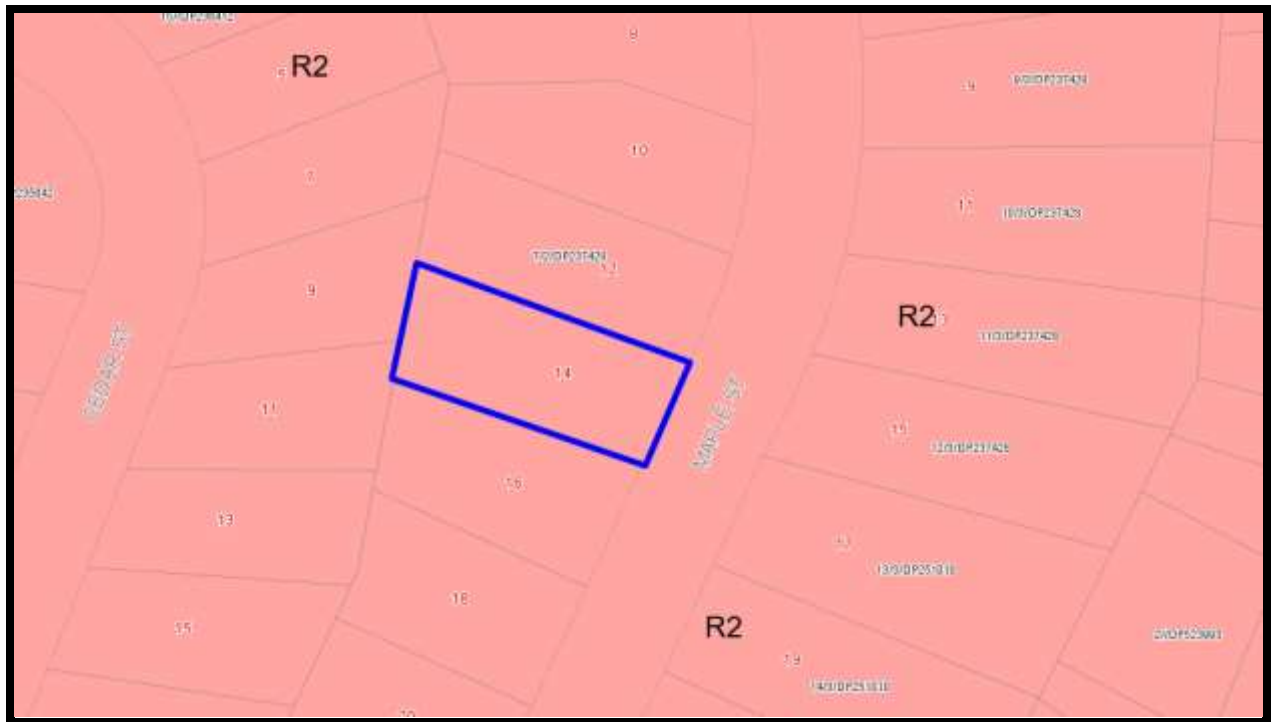


Figure 5: Zoning Map. Source: HLEP 2012

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. As stated throughout this report, based on the plans currently submitted, Council is unable to confirm that the proposal is consistent with the objectives, mainly “*to ensure that a high level of residential amenity is achieved and maintained*”. The development is considered inconsistent with the objectives of the zone under HLEP 2012, however the plans currently submitted do not enable Council to make a full and proper assessment in this regard.

Part 4 – Principal Development Standards

Applicable LEP Clause	Development Standards	Development Proposal	Complies
4.3 Height of Buildings	9m	The proposal does not result in any change to the height of the dwelling. The height of the deck is 1.91m (according to dimensions on northern elevation).	Yes

4.4 Floor Space Ratio	0.6:1	The proposal does not alter the approved FSR.	Yes
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Part 5 - Miscellaneous Provisions

Applicable LEP Clause	Development Standards	Development Proposal	Complies
5.10 Heritage Conservation	The objectives of this clause are as follows: a) To conserve the environmental heritage of Hurstville. b) To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views. c) Conserve archaeological sites, d) To conserve Aboriginal objects and Aboriginal places of heritage significance.	Site is not a heritage item and neither is it located within the vicinity of any heritage items	Yes
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 has not been identified as bushfire prone land.	Yes

Part 6 – Additional Local Provisions

Applicable HLEP 2012 Clause	HLEP Provisions	Development Provisions	Complies
6.1 Acid Sulphate Soils	The site is not affected by ASS.		
6.3 Limited Development on Foreshore Area	The site is not located in a foreshore area.		
6.4 Foreshore Scenic Protection Area (FSPA)	Development consent must not be granted to development on land to which this clause applies unless the consent	The proposed deck will not be able to be seen from the foreshore and is not expected to have an unreasonable impact on the topography, rock formations or vegetation. The proposal	Yes

	<p>authority has considered how the development would:</p> <p>(a) affect the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation, and</p> <p>(b) affect the visual environment, including the views to and from the Georges River, foreshore reserves, residential areas and public places, and</p> <p>(c) affect the environmental heritage of Hurstville, and</p> <p>(d) contribute to the scenic qualities of the residential areas and the Georges River by maintaining the dominance of landscape over built form.</p>	will enable visual lines of site and is considered consistent with this clause.	
6.5 Gross floor area of dwellings in residential zones	$\leq 630\text{sqm} = \text{Site area} \times 0.55$	The proposal will not alter the Gross Floor Area for the site.	Yes

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Draft Georges River Local Environmental Plan 2020

57. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
58. 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.”
59. The proposal remains within the R2 Low Density Residential zone under the provisions of the Draft Georges River LEP 2020.

DEVELOPMENT CONTROL PLAN

60. The proposed development is subject to the provisions of the Hurstville Development Control Plan No1 (DCP). The following comments are made with respect to the proposal

satisfying the objectives and controls contained within the DCP. As a majority of the controls relate to dwelling houses, only the relevant controls relating to the proposed use are assessed below.

61. It is acknowledged that though the pool is acting as a fish pond, the application has been assessed as though the structure is a pool as it could be returned to a swimming pool at any time. Discussions between Council staff and the owner have provided clarity on the use of the proposed deck. The proposed development is proposed to be used by the owners to maintain the pond and sit and appreciate the fish. This is not inconsistent with the way in which pools are use. Therefore the controls for pools have been used as part of the assessment.

Section	Standard	Proposed	Complies
PC5. Views	No design solution is provided and each development application will be assessed on its individual merits	Due to the topography of the site there is no unreasonable impact on views.	Yes
PC10. Landscaping	DS10.1 Where located inside the FSPA, a minimum of 25% of site area is landscaped open space.	The proposed development has 29.84% of the site area as landscaped open space.	Yes
	DS10.3 The minimum dimension of landscaped open space is 2m in any direction.	The minimum dimensions included in the calculation of the landscaped open space are 2m.	Yes
	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.	The landscaped setback within the frontage of the site exceeds 15sqm.	Yes
	DS10.5 An area of Principal Private Open Space is to be provided which: a. has a minimum area of 30sqm 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	The proposed development includes private open space in excess of 30sqm and is compliant with this control.	Yes
5.6 Swimming	DS2.1	The application is proposing	Yes

Pools – PC2 Landscaping	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.	to add planting to the northern and western boundaries between the pool and the fence.	
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Objectives

62. The objectives of Part 5.6 – Swimming Pools state the following:

- *Ensure all swimming pools do not adversely affect the amenity of the locality by their location, visual appearance, size or operation.*

63. It is acknowledged that currently the pool is being used as a fish pond however the way in which the deck is proposed to be used is consistent with a pool deck which is for maintenance and amenity for the owners. The pond is also capable of transitioning back into a pool. The proposal is for ancillary structures associated with a pool and therefore these objectives are applicable.

64. The plans that have been provided do not demonstrate that there will be an acceptable level of amenity impacts in relation to the visual appearance and size. Landscaping has been provided that will soften the appearance of the deck. However as the setbacks are inconsistent on the plans with that on site and given that it is an elevated structure in line with the top of the boundary fences the accuracy of the setbacks is necessary to review and consider the resultant amenity impacts and how they could be ameliorated.

65. The visual appearance will also be dominated by privacy screens. As the setbacks are unknown the extent of the bulk that they will cause is not able to be accurately determined. As a result compliance with these objectives cannot be established.

PROVISIONS OF ENVIRONMENTAL PLANNING & ASSESSMENT REGULATION 2000

66. The provisions of the Environmental Planning & Assessment Regulation 2000 relating to this application have been taken into consideration during this assessment and have been discussed specifically throughout this report.

67. In particular, in Schedule 1 (Forms) of the EP&A Regulation 2000, clause 2 prescribes the “Documents to accompany (a) Development Application”. This clause requires a development application to include a site plan and a sketch of the development. Implicit in this requirement is for these drawings to be accurate in terms of the existing features of the site (in this instance – the setbacks of the existing swimming pool); as well as the contours and levels of the site.

68. The plans submitted with the DA do not accurately depict these existing site features. With the amount and nature of the inaccuracies in the plans in terms of side/rear boundary setbacks and site levels, the submitted DA plans cannot be relied upon to undertake a full and proper assessment of the DA, nor could they be relied upon in any potential development consent to be issued by Council, as there would be no certainty as to the finished built form outcome.

69. Council Officers have provided the applicant with opportunities to address these issues throughout the assessment of this DA; however the applicant has not been able to provide plans with the required level of accuracy for assessment purposes.

(iii) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

70. As stated above, the DA as currently submitted is not satisfactory in terms of the DA plan submission requirements under the Environmental Planning & Assessment Regulation 2000 (Schedule 1 – Forms).

IMPACTS

71. It is considered that due to the lack of clarity that the plans provide the impacts of the development are unable to be determined. Given that the proposal is regarding a raised deck close to the boundary, the setbacks may affect the privacy of adjoining neighbours. The proposal is unable to be adequately assessed in relation to any built environmental and social impacts without a set of accurate plans. As the impact against this assessment criterion cannot be determined the proposal is currently not considered supportable.

Suitability of the Site

72. As discussed throughout this report, the plans submitted are inconsistent and do not demonstrate the site is suitable for the development.

SUBMISSIONS

73. The proposal as modified has been notified in accordance with the provision of Hurstville Development Control Plan 1 and Council's Community Engagement and Participation Plan and one (1) submission was received. The issues of concern in the submission have been summarised and discussed below.

Concerns regarding external appearance of the underside of the deck

74. The submission raises concerns regarding the unsightly view under the deck and recommends screening or planting. The submission also requests more planting is required, questioned how the planting will be able to be maintained and how excess water coming from the bedrock will be dealt with.
75. Officer Comment: As the setbacks nominated are inconsistent with what exists on site the Assessing Officer is unable to accurately determine the amount of deck that will be seen from this property. Irrespective of the plans, the planting is considered to be sufficient and is capable of being conditioned to be maintained, should it be supported. If this landscaping is not maintained than it would be a breach of development consent, and Council has enforcement powers to take action in relation to any such breach of consent.

PUBLIC INTEREST

76. The inconsistencies in the plans, especially the setbacks do not demonstrate that there will be minimal impacts on surrounding properties. The lack of clarity around the setbacks and heights does not allow for impacts around privacy and amenity to be assessed. The proposal as amended is considered to have unreasonable impacts on the surrounding properties. Therefore, the proposal is not in the public interest.

REFERRALS

Consulting Arborist

77. The application was referred to Council's Consulting Arborist who raised no objection with the proposal subject to recommended conditions in relation to the trees to be planted and the tree to be maintained (Cedar) on the neighbouring property, and the completion of these works.

CONCLUSION

78. The application has been assessed having regard to Evaluation under Section 4.15 (1) of the Environmental Planning and Assessment Act 1979, the provisions of the applicable State Environmental Planning Policies, Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan 1.
79. Following a detailed assessment it is considered that Development Application No. DA2019/0645 should be refused for the following reasons.

DETERMINATION AND STATEMENT OF REASONS

80. Statement of Reasons

- The proposal, has not adequately demonstrated compliance with the Hurstville Local Environmental Plan and the Hurstville Development Control Plan No.1.
- The plans that have been submitted with the current development application are not capable of being built having regard to the annotated dimensions.
- The proposed development, does not demonstrate that there will be no unreasonable impacts upon the built environment and amenity of the neighbourhood.

Determination

81. That pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, the Georges River Local Planning Panel refuse DA2019/0645 for the construction of decking, stairs, retaining walls, privacy screening and the planting of vegetation to address privacy and overlooking from the new decking at Lot 8; Section 2; DP 237428 and known as 14 Maple Street, Lugarno, for the following reasons:

1. **Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Hurstville Local Environmental Plan 2012:
 - (a) Clause 2.3 - Zone Objectives and Land Use Table (R2 Low Density Residential) - In particular, the development does not contain sufficient information to enable full and proper assessment of the development - to ensure that a high level of amenity is achieved and maintained; and also the development does not encourage greater visual amenity through maintaining and enhancing existing landscaping as a major element in the residential environment.
2. **Impact on the Environment** – Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:
 - (a) Built Environment: Unable to assess if the impact would be adverse and result in adverse impacts to the amenity of adjoining premises;
 - (b) Social Impacts: Unable to assess if the impact would be adverse and result in adverse impacts to the amenity of adjoining premises.

3. **Suitability of the Site** – Pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development does not demonstrate that the proposed development is suitable for the site or its locality.
4. Pursuant to the provisions of the Environmental Planning & Assessment Regulation 2000 (Schedule 1 – Forms), the documentation submitted with the development application does not comply with the requirements of “Documents to accompany development application” in Part 1, Clause 2.

In particular, the plans submitted with the development application are not accurate in terms of the ground levels depicted on the plans which are not reflective of what exists on site.

5. **Development Control Plan** - Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Hurstville Development Control Plan No. 1:
 - (a) 5.6 – Swimming Pools and Spas. In particular, the development does not contain sufficient information to enable assessment to be made in terms of the requirements of Clause 5.6.2, Purpose of this Chapter – to ensure that all swimming pools do not adversely affect the amenity of the locality by their location, visual appearance, size or operation.
6. **The Public Interest** – Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

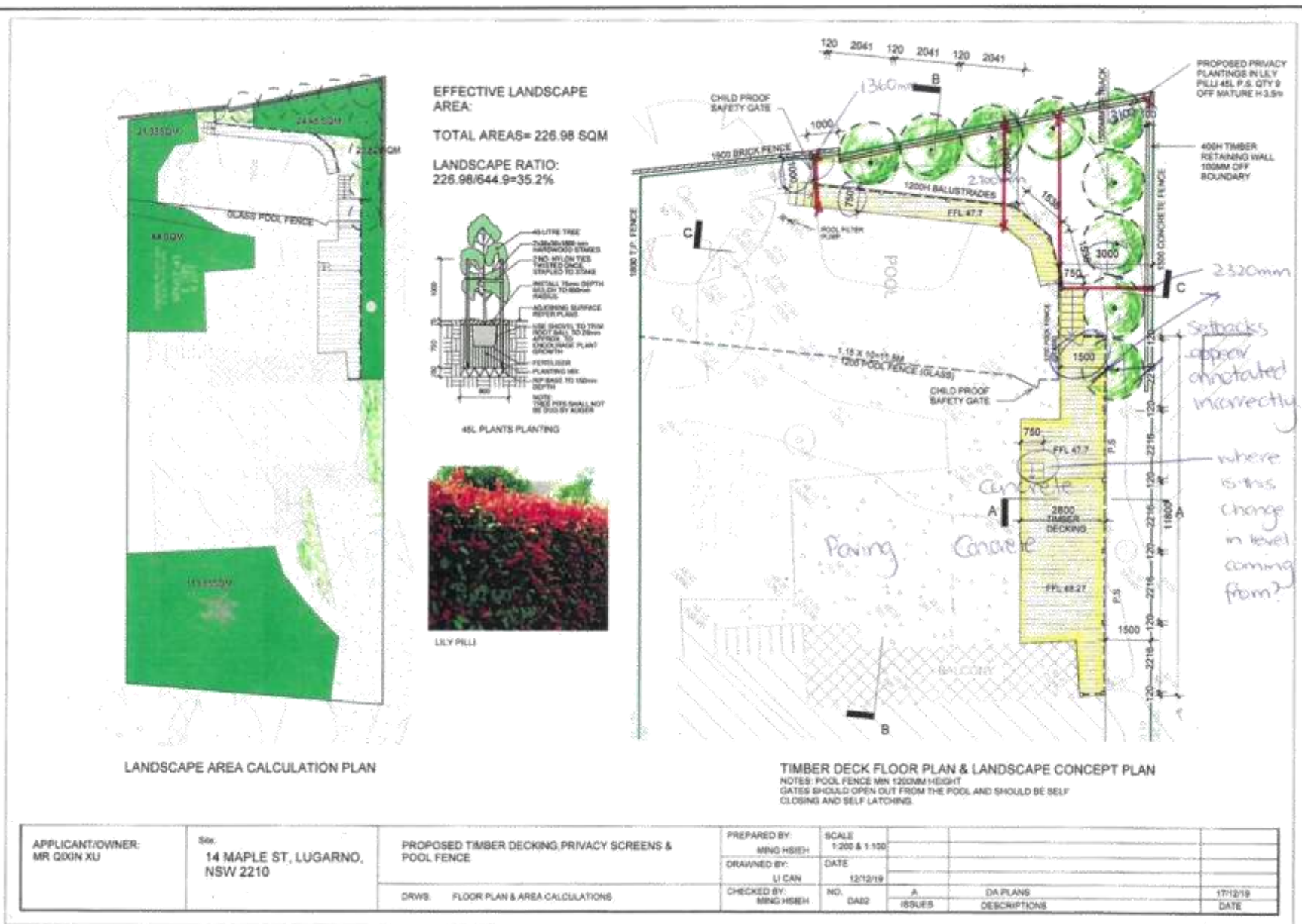
Review of Determination - Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 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.

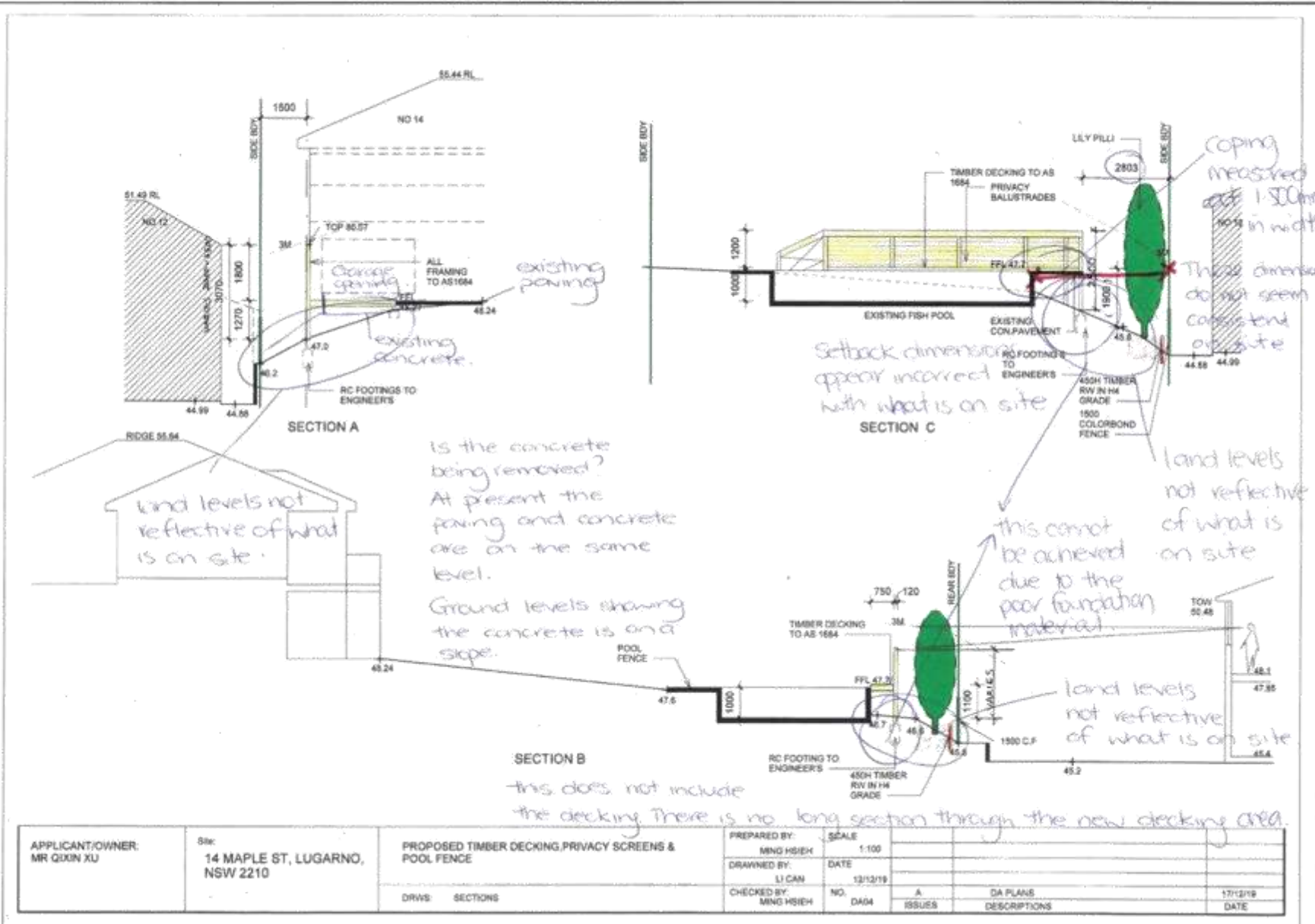
Note: Review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney South Planning Panel or the Land & Environment Court.

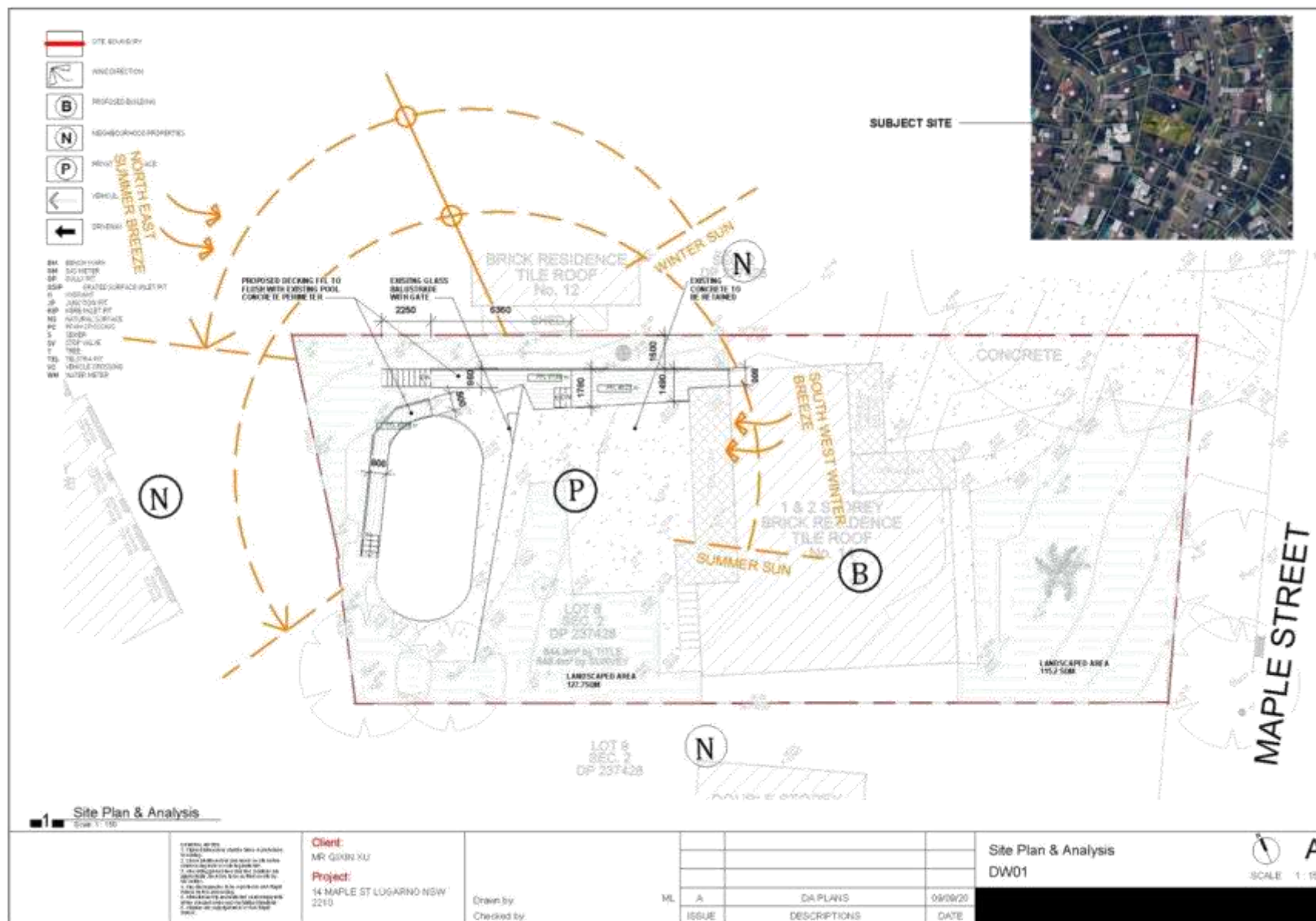
Appeal Rights - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.

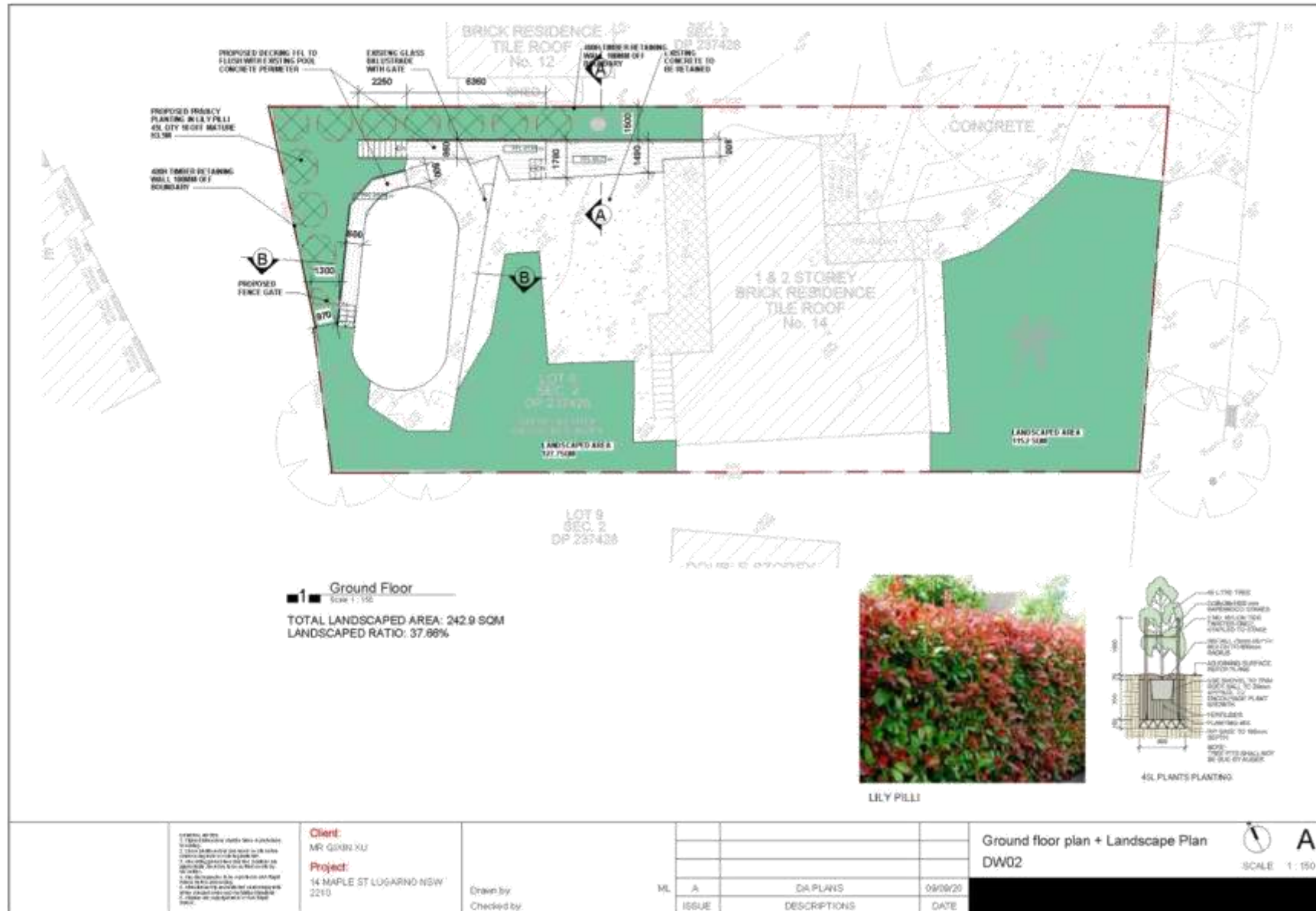
ATTACHMENTS

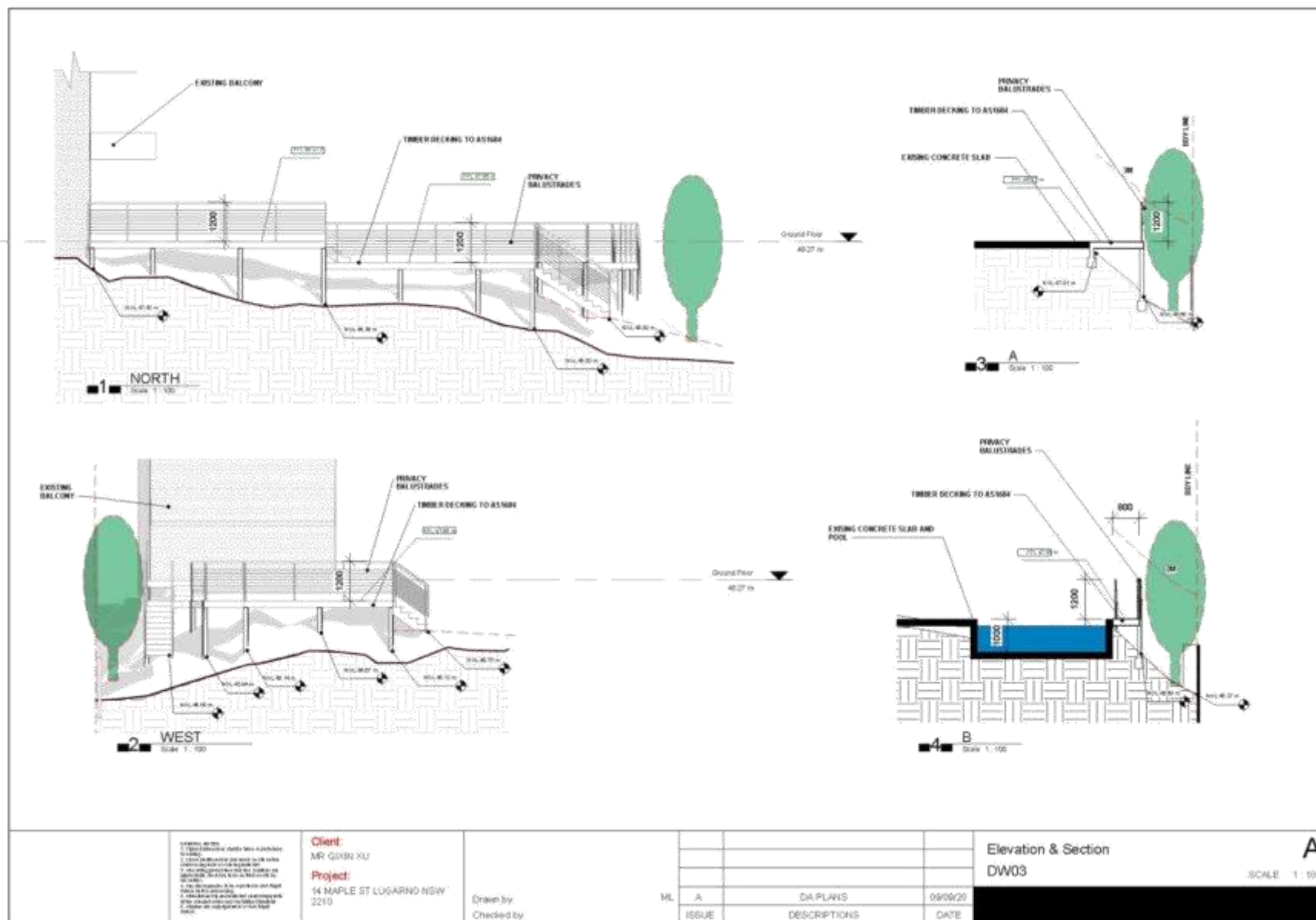
- Attachment [1](#) Annotated Plans - 14 Maple St Lugarno
 Attachment [2](#) Amended Plans - 14 Maple St Lugarno











**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 15 OCTOBER 2020**

LPP051-20

LPP Report No	LPP051-20	Development Application No	MOD2020/0084
Site Address & Ward Locality	27-33 Nielson Avenue Carlton Kogarah Bay Ward		
Proposed Development	Section 4.55(2) modification to an approved Residential Flat Building to provide an one (1) additional studio apartment on the fourth floor		
Owners	Mandi Abboud and Katherine Khalil		
Applicant	Jane Abboud		
Planner/Architect	Planner: Devlin Planning Architect: Loucas Architects		
Date Of Lodgement	14/05/2020		
Submissions	One (1) submission received		
Cost of Works	\$10,778,669.00 (cost of original development)		
Local Planning Panel Criteria	Section 4.55(2) Major modification to an approved residential flat building		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environment Planning Policy No 55 – Remediation of Land, State Environment Planning Policy No 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy – BASIX 2004, Draft Remediation of Land SEPP, Draft Georges River Local Environmental Plan 2020, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Interim Policy Georges River Development Control Plan 2019		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Statement of Environmental Effects, Justification for Height of Building		
Report prepared by	Senior Development Assessment Officer		

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

the assessment report?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	No as the application is a modification, a merit request for a variation to Clause 4.3 Height of Building of the Kogarah Local Environmental Plan 2012 has been provided.
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, as the conditions can be viewed when the report is published

Site Plan

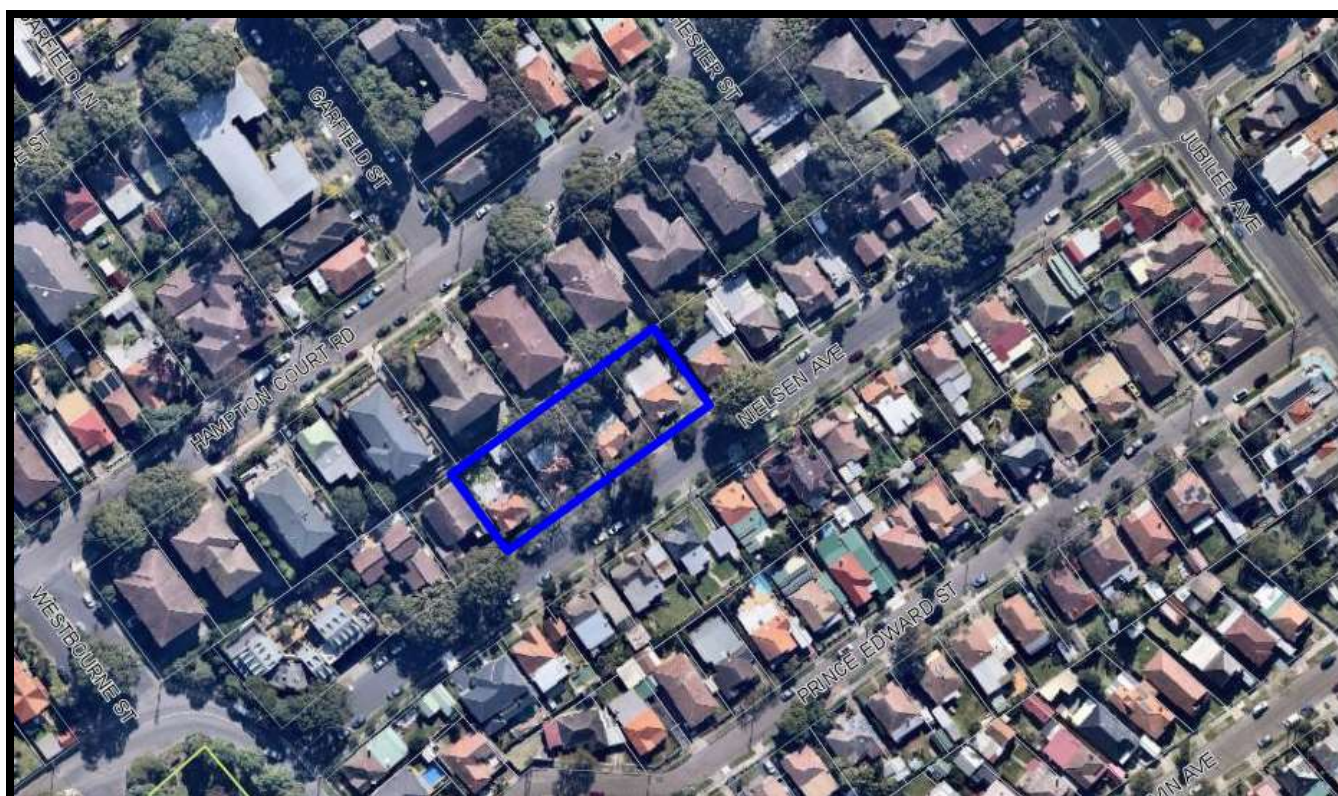


Figure 1: Aerial extract of subject site (27-33 Nielson Avenue, Carlton) outlined in blue (Source: Georges River Council Intramaps, 2020)

Executive Summary

Proposal

1. Council is in receipt of a Section 4.55(2) modification to modify Development Consent DA2016/0212 which seeks to provide an additional studio unit on the fourth floor to an approved residential flat building on land known as 27-33 Nielson Avenue, Carlton.

2. It is noted that this modification originally sought consent for one (1) x one (1) bedroom unit on the fourth floor. The application has been amended seeking consent for one (1) studio unit which adopts a smaller apartment size than that originally proposed. The studio comprises of an open plan living/dining, kitchen, bedroom nook, bathroom, laundry and balcony.
3. Development consent DA2016/0212 forming, the parent application sought consent for the demolition of the existing dwellings and construction of a five (5) storey residential flat building comprising forty (40) units with basement parking. Development consent was granted by the Georges River Local Planning Panel on 19 April 2018, which resulted in the deletion of a unit on the fourth floor to comply with the height of building control.
4. A section 4.55(2) modification MOD2018/0085 was refused by the Local Planning Panel on 18 December 2018. MOD2018/0085 sought to provide an additional one (1) bedroom apartment (Unit 4.02) on the fourth floor of the approved residential flat building, which sought to exceed the height control by 275mm being 1.8%. The proposal also involved the alteration of the rooftop communal open space area.
5. The modification was refused for the following reasons;
 1. *Pursuant to sections 4.55(3) and 4.15(1)(i) the Panel is not satisfied with the proposed modification having regard to the exceedance of the height standard prescribed by Clause 4.3 of the Kogarah Local Environmental Plan 2012 without adequate justification why the building cannot comply with the standard.*
 2. *Pursuant to sections 4.55(3) and 4.15(1)(i) the Panel is not satisfied with the proposed modification in relation to the configuration and amenity of proposed Unit 4.02 with regard to the provisions of State Environmental Planning Policy No 65 and Apartment Design Guide.*
6. This modification (current application MOD2020/0084) originally sought the same extent of works as that previously proposed within MOD2018/0085.
7. Clause 4.3 Height of Building of the Kogarah Local Environmental Plan 2012 prescribes a height of 15m. The maximum height of the building proposed for this modification is 15.225m which is located above the living room of the proposed unit.
8. The modification proposal did not comply with the non-habitable minimum floor to ceiling height of 2.4m within the Apartment Design Guide (ADG) Objective 4C of the Apartment Design Guide of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
9. The applicant was advised that Council Officers raised concerns regarding the non-compliant floor to ceiling heights within the non-habitable rooms being the laundry, bathroom and wardrobe of the proposed unit resulting in reduced occupant amenity.
10. The applicant has provided an amended proposal which proposes a studio unit by reducing the size of this unit along the north-east elevation which adjoins the communal rooftop open space. The amended proposal now complies with the Apartment Design Guide criterion.

11. The modification has provided adequate justification in a format similar to a Clause 4.6 exception to Development Standard in relation to the exceedance to height of building to the Kogarah Local Environmental Plan 2012.
12. The modification was notified in accordance with Council's Development Control Plan. In response, one (1) submission was received. The amended proposal incorporates a studio unit and did not require re-notification as the size of the unit was reduced in size.

Site and Locality

13. The subject site is 27-33 Nielson Avenue, Carlton (Lots 23 – 26 in DP 5452) located on the north western side of Neilson Avenue.
14. The site has a total site area of 2,054.4sqm, with a site frontage of 73.152m, and a depth of 28.245m.
15. The land slopes down gradually towards Nielson Avenue by approximately 1.2m.
16. Existing on each of the allotments are single storey dwelling houses with associated outbuildings.
17. The development site is adjoined to the sides and across the road by single storey dwellings, and to the rear by residential flat buildings.
18. Demolition and construction of the approved residential flat building has not commenced.
19. The subject site is adjoined by dwellings along Neilson Avenue and residential flat buildings to the rear. Opposite the site are dwelling houses of varying architectural styles and designs.

Zoning and Permissibility

20. The subject site is zoned R3 Medium Density Residential, with the immediate adjoining land zoned R3 Medium Density Residential. The land on the southern side of Nielson Avenue is zoned R2 Low Density Residential.



Figure 2: Zoning Extract of subject site (27-33 Neilson Avenue, Carlton) outlined in blue (Source: Georges River Council Intramaps, 2020).

21. Residential Flat Buildings are permitted with consent in the R3 Medium Density Residential zone as outlined in the Kogarah Local Environmental Plan 2012 (KLEP).
22. The Kogarah Development Control Plan 2013 (KDCP) provides detailed provisions to guide development in achieving the objectives of the KLEP, providing detailed controls and objectives for residential and commercial development. The proposed modification complies with the relevant clauses of the KDCP.

Level of Determination

23. The application is referred to the Local Planning Panel for determination as the proposal relates a Section 4.55(2) modification associated with a residential flat building which is subject to the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development, as outlined in Schedule 1, 4(b) of the Local Planning Panels Directions – Development Applications dated 23 February 2018.

Submissions

24. The modification was notified to adjoining neighbours for a period of 14 days between 1 and 16 June 2020. In response, one (1) submission was received which raised concerns regarding excavation and impacts on adjoining properties. The amended proposal to alter the proposal from a one (1) bedroom unit to a studio unit did not require re-notification as the size of the unit was reduced in size.
25. The modification does not seek any changes to the approval in relation to excavation as the extent of work relates to the addition of a studio unit on the fourth floor. Conditions relating to excavation approved under DA2016/212 remain unchanged and are part of the recommendation for approval of this modification.

Conclusion

26. Having regard to the matters for consideration under Part 4.15, and 4.55(2) Modifications of Consents of the Environmental Planning and Assessment Act 1979, Modification Application No. MOD2018/0085 which seeks to provide an additional studio unit on the fourth floor to an approved residential flat building is recommended for approval subject to modified conditions to consent.

Report in Full Proposal

27. Council is in receipt of a Section 4.55(2) modification application to modify Development Consent DA2016/0212, to add an additional one (1) bedroom unit to the fourth floor to an approved residential flat building.
28. It is noted that this modification original sought consent for one (1) x one (1) bedroom unit on the fourth floor. The modification has been amended which seeks consent for one (1) studio unit which adopts a smaller apartment size than that originally proposed. The studio comprises of an open plan living/dining, kitchen, bedroom nook, bathroom, laundry and balcony.
29. Development consent DA2016/0212 (parent application) sought consent for the demolition of the existing dwellings and construction of a five (5) storey residential flat building comprising forty (40) units and basement parking. Development consent was granted by the Georges River Local Planning Panel on 19 April 2018 which resulted in the deletion of a unit on the fourth floor to comply with the height of building control.
30. The proposal is an application under Section 4.55(2) to modify the Development Consent DA2016/0212 (originally a Kogarah Council application), to add an additional unit to a residential flat building, as shown on the elevation below (clouded in red).



Figure 3: Proposed south east elevation with the proposed studio located behind the lift overrun circled in blue (Source: Loucas Architects, 2020).

31. The modification seeks to provide an additional studio unit (Unit 4.02) on the fourth floor of the approved residential flat building, which will exceed the height control by 275mm being 1.8%.
32. To accommodate the new studio unit, the proposal also involves the alteration of the rooftop communal open space area; which will remain compliant with the communal open space criterion for residents as referenced in the Apartment Design Guide (ADG).

Site and Locality

33. The subject site is located at 27 - 33 Nielson Avenue Carlton (Lots 23 – 26 in DP 5452) on the north western side of the road.
34. The site forms a rectangular shaped allotment has a total site area of 2,054.4sqm, with a site frontage of 73.152m, and a depth of 28.245m.
35. The land slopes down gradually towards Nielson Avenue by approximately 1.2m.
36. Demolition of the existing buildings and the construction of the approved residential flat building has not commenced. Existing on the sites are single storey dwelling houses with associated outbuildings, as shown in the photos below.



Figure 4: Photograph of subject site (Source: Georges River Council, September 2020).



Figure 5: Photograph of subject site (Source: Georges River Council, September 2020).

37. The subject site is adjoined by dwellings along Neilson Avenue and residential flat buildings to the rear. Opposite the site are dwelling houses of varying architectural styles and designs.

Background

38. Development Application DA2016/0212 initially proposed a residential flat building as shown in the elevation below.



Figure 6: Originally proposed elevation (Source: Architecture and Building Works).

39. On 19 December 2017 the Local Planning Panel (formally known as IHAP) at its meeting on 19 December 2017 considered development application DA2016/0212. The height control was breached as annotated above by the red line. The Panel resolved to defer the application seeking amended plans to:

- *Comply with the height controls - proposed units 401 and 402 may need to be deleted.*

40. Revised plans were provided to address the deferral reasons of the Panel, showing the deletion of a unit.



Figure 7: Approved north-west (rear) elevation (Source: Architecture and Building Works).

41. On 19 April 2018 DA2016/0212 was granted consent by the LPP for demolition of existing dwellings and the construction of a five (5) storey residential flat building comprising forty (40) units and basement parking, as shown above.
42. A section 4.55(2) modification MOD2018/0085 was refused by the Local Planning Panel on 18 December 2018. MOD2018/0085 sought to provide an additional one (1) bedroom apartment (Unit 4.02) on the fourth floor of the approved residential flat building, which sought to exceed the height control by 275mm being 1.8%. The proposal also involved the alteration of the rooftop communal open space area.
43. The modification was refused for the following reasons:
1. *Pursuant to sections 4.55(3) and 4.15(1)(i) the Panel is not satisfied with the proposed modification having regard to the exceedance of the height standard prescribed by Clause 4.3 of the Kogarah Local Environmental Plan 2012 without adequate justification why the building cannot comply with the standard.*
 2. *Pursuant to sections 4.55(3) and 4.15(1)(i) the Panel is not satisfied with the proposed modification in relation to the configuration and amenity of proposed Unit 4.02 with regard to the provisions of State Environmental Planning Policy No 65 and Apartment Design Guide.*

44. The applicant has provided an amended proposal which proposes a studio unit which has been achieved by reducing the size of the former one (1) bedroom unit along the north east elevation which adjoins the communal rooftop open space. The amended proposal now complies with the Apartment Design Guide criterion in relation to floor to ceiling heights therefore resulting in good levels of occupant amenity.

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,*

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.55(2) of the Environmental Planning and Assessment Act

47. The proposal has been lodged under the relevant Section 4.55(2) of the Act and has been assessed against the following matters for consideration under this section of the Act.

“4.55(2) Modification of consents – other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

48. Comment: It is considered this Section 4.55(2) modification is substantially the same development as the development approved, as this application is seeking to include an additional unit on the fourth floor to an approved residential flat building. In consideration with the above;

- The modification seeks to retain the approved use as a residential flat building;
- The modification seeks one (1) additional studio unit to the existing forty (40) units approved; and
- The modification will generally retain the approved built form of a five (5) storey residential flat building.

49. On this basis, it is considered that the modification is quantitative and qualitatively the same and as the original consent.

(c) it has notified the application in accordance with:

- (i) the regulations, if the regulations so require, or*
- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

50. Comment: The application was notified in accordance with the Kogarah DCP 2013, in response, one (1) submission was received. The amended proposal did not require re-notification as this did not generate a greater impact than that of the original design sought in this modification.

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be."

51. Comment: The concerns raised within the one (1) submission received have been addressed in detail later in this report.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

52. Comment: Section 4.15(1) matters have been considered below.

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

54. The following Environmental Planning Instruments are relevant to this application:

- Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment;
- State Environmental Planning Policy No 55 - Remediation of Land;
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- Draft Environment State Environmental Planning Policy;
- Draft Remediation of Land SEPP;
- Draft Georges River Local Environmental Plan 2020
- Kogarah Local Environmental Plan 2012;
- Kogarah Development Control Plan 2013; and
- Interim Policy Georges River Development Control Plan 2019

55. An assessment has been undertaken having regard to the relevant State Environmental Planning Policies is detailed below:

DEEMED STATE ENVIRONMENTAL PLANNING POLICY – GEORGES RIVER CATCHMENT

56. All stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and would satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment and the original engineering conditions of consent. No changes to the approved stormwater design are required as a result of change in the roof design as the works are located within the approved building footprint, therefore there is not additional roof area.

STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND

57. The approved development was for construction of one residential unit over an existing structure. This application seeks approval for alterations, accordingly, there are no earthworks proposed.
58. Based on Council's records, the subject site has been used for residential purposes and has not been used for any potentially contaminating activities. As such, it is considered unlikely that the land is contaminated.

STATE ENVIRONMENTAL PLANNING POLICY NO 65 — DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

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

Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of "Residential Apartment Development" (RAD)	The proposal complies with this definition.	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB	This is a modification of an approval for the erection of a new residential flat building.	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect Mr Jim Apostolou (Registration No.7490)	Yes

60. Clause 29 states that modifications applications require advice from the Design Review Panel (DRP) as to whether the modifications diminish or detract from the design quality, or compromise the design intent, of the development for which the consent was granted.
61. The original proposal was referred to the Design Review Panel (DRP) on 1 December 2016 and the Panel supported the DA. The elevation below shows the extent of bulk above the maximum height line (red line) and the approximate location of the subject proposed unit (red oval).

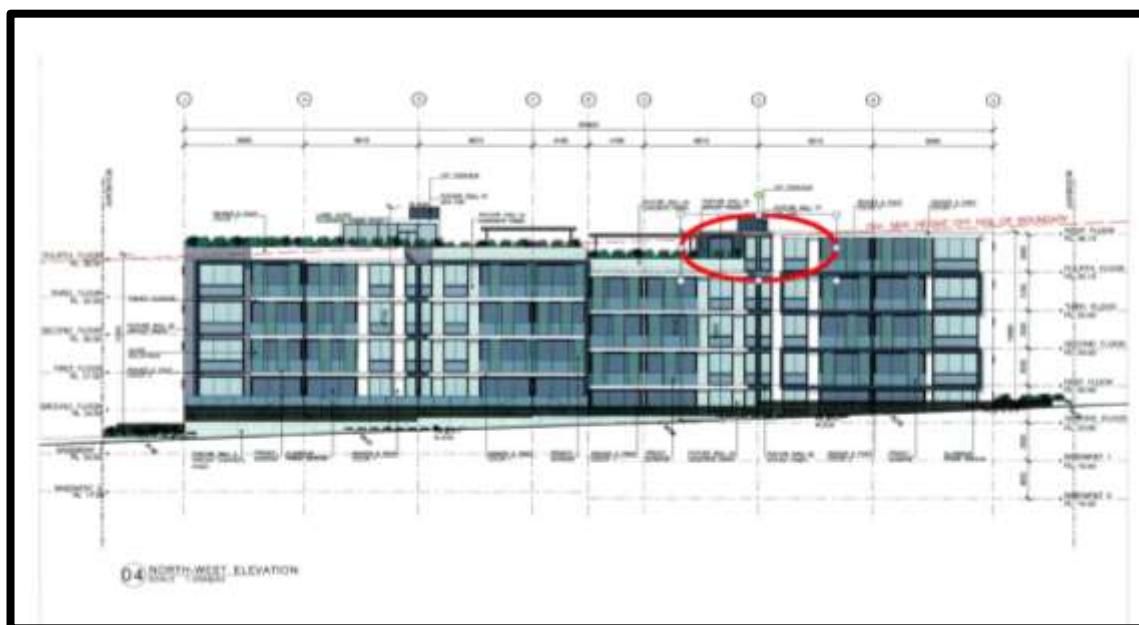


Figure 9: Previously proposed north west (rear) elevation (Source: Architecture and Building Works).

62. Given that the unit was previously considered by the DRP, who supported this aspect of the original DA. The applicant has amended the proposal from a one (1) bedroom unit to a studio to achieve compliant floor to ceiling heights in accordance with the AGD.
63. The proposed modification has been reviewed having regard to the Principles of this State Environmental Planning Policy, comments are provided below.

Clause	Council's comments	Complies
1 – Context and neighbourhood character	The proposed additional unit will not significantly alter the overall design of the approved building which was previously assessed as being in context with the surrounding area.	Yes
2 – Built form and scale	The approved residential flat building is located in an area undergoing change and therefore is compatible with the future character of the area given the uplift presently being experienced.	Yes
3 - Density	The proposal complies with the Floor Space Ratio control as outlined above.	Yes
4 – Sustainability	The applicant has provided a solar access and natural ventilation plan which shows the proposed unit will receive 2 hours of sunlight to the main living room and balcony mid-winter, and is cross ventilation, the proposal is considered acceptable.	Yes
5 - Landscape	This design principle is not applicable to the subject modification as the landscaped area remains compliant.	Yes
6 - Amenity	The amended proposal which forms a studio unit achieves compliant levels of amenity in accordance with the AGD. The reduction in size of this unit has resulted in compliant floor to ceiling heights being achieved.	Yes
7 – Safety	This design principle is not applicable to the subject modification proposal.	Yes
8 – Housing diversity and	The proposal will increase the number of 1 bedroom units, the mix is as follows:	Yes

social interaction	<p>41 units in total 1 x studio (2.43%) 7 x 1 bedroom (17.07%) 31 x 2 bedroom (75.6%) 2 x 3 bedroom (4.87%)</p> <p>The proposal involves reducing the communal open space area to accommodate the proposed unit. The ADG tool 3D-1 states that communal open space is to be 25% of the site, which is 513.6sqm for the subject site. The result of the conditioning the one (1) bedroom unit to a studio thereby reducing the units footprint will result in a communal open space area of 537.29sqm which complies.</p> <p>The landscape plan shows that the rooftop contains a variety of open space areas for future residents including a BBQ area and shade structure, seating in communal open space areas, children's active play area with shade structure, and a sundeck area. The BBQ area has been slightly reduced in size to accommodate the proposed unit, which is acceptable as it remains functional.</p>	
9 - Aesthetics	It is considered the proposed addition adopts a design which is compatible with the remainder of the approved residential flat building.	Yes

Clause 30 – Consideration of Apartment Design Guide

64. An assessment has been undertaken based on the amended proposal being a studio unit.

Clause	Standard	Proposal	Complies
2E – Building depth	12-18m	9m	Yes
3D-Communal and Public Open Space	<p>1. Communal open space has a minimum area equal to 25% of the site. - Where it cannot be provided on ground level it should be provided on a podium or roof.</p> <p>The communal open space is to be a minimum of 25% of the site, which equates to 513.6sqm for the subject site.</p>	<p>The proposal involves reducing the rooftop communal open space area to accommodate the proposed unit. The amended proposal incorporating the studio unit results in communal open space of 536.29sqm which complies. 398sqm of usable communal space is proposed on the communal rooftop (which excludes planters) with the remainder located within the front setback.</p>	Yes

	<ul style="list-style-type: none"> - 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: <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space <p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>	The communal open space is located on the rooftop which receives complaint levels of solar access given its location.	Yes
3E- Deep Soil Zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <ul style="list-style-type: none"> - Where site area is between 650sqm and 1500sqm = 3m minimum dimension <p>Deep soil = 7%</p>	The proposal does not change the location of deep soil landscaping approved under the DA as the extent of modification works are located within the approved building footprint.	Yes
3F- Visual Privacy	<p>1. Separation between windows and balconies is provided to ensure visual</p>		

	<p>privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Over 12m (5-8 storeys) Habitable rooms and balconies = 9m (18m separation distance)</p>	<p>The distance between the proposed unit habitable rooms and the studio unit of the building to the north west is more than 18.49m, which is more than the required separation of 9m.</p>	Yes
3H-Vehicle Access	<p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>	<p>This element remains unaltered by this proposal.</p>	Yes
3J- Access and parking	<p>1. For development in the following locations:</p> <p>On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area;</p> <p>- The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant Council, whichever is less</p> <p>The car parking needs for a development must be provided off street</p>	<p>The site is located within 800m to Carlton Station being to the north west of the site. The subregional car parking rate under the Guide to Traffic Generating Development (GTTGD) Applies to the site. Additional car parking demand generated by the unit can be accommodated within the approved residential flat building which has a surplus of car parking spaces under the GTTGD.</p>	Yes (1), refer to discussion below.
<u>Car parking</u>			

The proposal seeks an additional studio unit). The site is located within 800m to Carlton Station being north-west of the site. The subregional car parking rate under the Guide to Traffic Generating Development (GTTGD) applies to the site.

During the original assessment of the application, the applicant demonstrated the car parking provided was in accordance with the provisions of the RMS Guide to Traffic Generating Developments', the Panel accepted the parking provided. It is acknowledged this application is seeking an additional unit; however the parking provided exceeded the RMS requirements, therefore the additional 0.6 of a space required by the proposed studio unit can be accommodated within the development without the need for changes to the basement which is considered to be acceptable.

Conditions 49 and 50 state the following;

Condition 49 - Allocation of Car Parking Spaces - A minimum of 54 off street car parking spaces shall be constructed, drained, marked and maintained at all times in accordance with the approved plans. These spaces shall be allocated as follows:

- a) 45 are to be allocated to the residential units.
- b) 9 are to be allocated as visitor parking spaces.

Condition 50 - Residential Car Parking Spaces - A minimum of one (1) unrestricted car parking space shall be allocated to each residential unit.

Given that one additional unit is proposed, the additional car parking demand can be accommodated within the total number of approved car parking spaces being fifty four (54).

4A- Solar Access	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	The applicant has provided a solar access plan which shows that the proposed unit will receive 2 hours of sunlight to the main living room and balcony mid-winter which is considered to be acceptable.	Yes
4B- Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	The applicant has provided a natural ventilation plan which demonstrates that the building complies. The proposed studio unit is a single north west aspect unit.	Yes

	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line		
4C – Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable rooms = 2.4m	Proposed unit: Habitable rooms = 2.75m. Non-habitable rooms = 2.4m.	Yes, refer to discussion below.

Ceiling heights

The Apartment Design Guide prescribes a minimum floor to ceiling height of 2.7m for habitable rooms and 2.4m for non-habitable rooms. An extract of the cross section has been provided below which demonstrates that the amended proposal being a studio unit now complies.

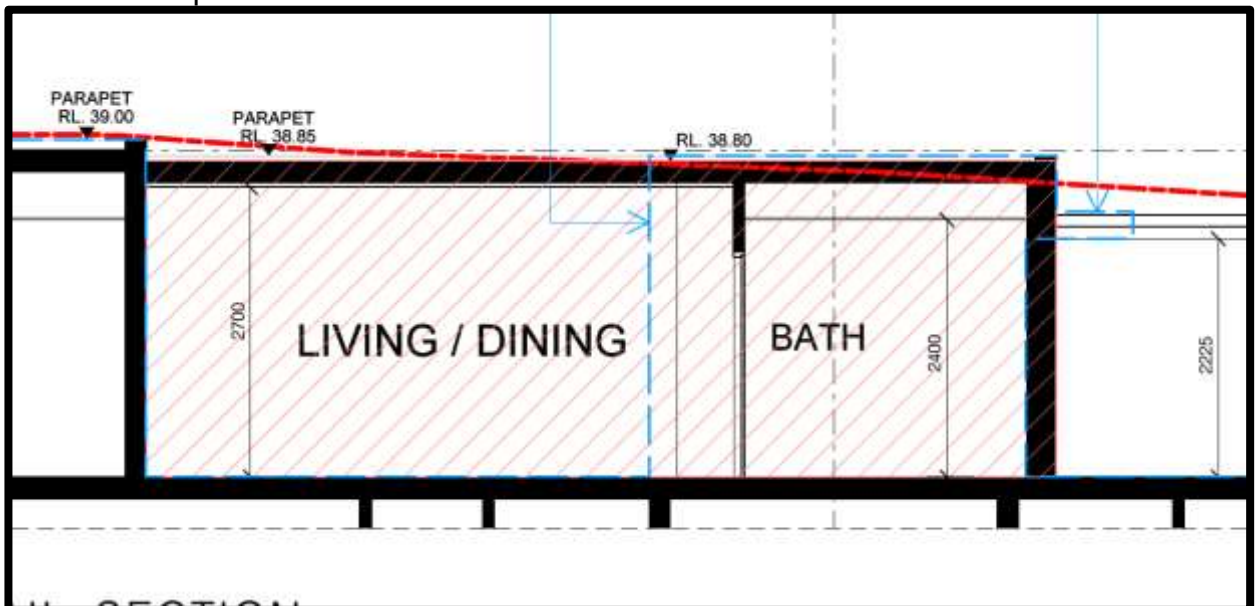


Figure 10: Extract of cross section plan of proposed studio layout, with living/dining and bedroom nook located behind the bathroom (Source: Locus Architects, 2020).

4D-Apartment size and layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>Studio = 35sqm</p> <p>The minimum internal areas include only one bathroom.</p> <p>Additional bathrooms</p>	<p>The studio has an internal floor area of 46.45sqm.</p> <p>There is one (1) bathroom proposed to service the proposed studio unit.</p>	<p>Yes</p> <p>Yes</p>
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	<p>increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	The window provided for each habitable room (living/dining and bedroom nook) has a glazed area satisfying this control.	Yes
4D-Apartment rooms, location and sizes	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	The combined depth of the open plan living / dining/ kitchen area for the studio unit is 5.275m.	Yes
	Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom	The minimum width of the studio living/dining room is 4.96m.	Yes
4E-Private Open Space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <p>Studio 4sqm/no min depth</p>	The area of the balcony for the studio unit is 9.9sqm with a minimum dimension of 2m, which is acceptable.	Yes
4F-Circulation spaces	The maximum number of apartments off a circulation core on a single level is eight	There is a maximum of two (2) units off the circulation core on the fourth floor.	Yes
4G- Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is		Yes

	<p>provided:</p> <p>1 bedroom - 4m³</p> <p>50% of storage to be located within basement</p>	<p>More than 2m³ storage within the studio unit.</p> <p>2m³ for this additional unit can be provided in the basement levels given the approved basement footprints.</p>	
4K – Apartment Mix	A variety of apartment types is provided	<p>The proposal will contribute to the diversity of the apartment composition as follows;</p> <p>1 x studio 7 x 1 bedroom 31 x 2 bedrooms 2 x 3 bedrooms</p>	Yes
4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The façade is well articulated and varied through the use of different materials and finishes, as approved which will be continued and incorporated into the additional studio unit.	Yes
4N- Roof Design	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.</p>	The proposed unit integrates well into the overall design of the approved residential flat building.	Yes
4O-Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The amended proposal results in good levels of landscape within the communal open space areas.	Yes
4P-Planting on structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public	The landscape design approved as per the parent DA remains unaltered by this modification with the exception of a reduction in the communal open space on the fourth floor, it is noted the remains compliant and incorporates planters.	Yes

	open spaces.		
4Q-Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Design and mix of apartments allows for different occupants with a range of lifestyle needs. Lift access is provided to this unit.	Yes
4R-Adaptive Reuse	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse	The development is a new development; it is not the adaptive reuse of a building.	Yes
4U- Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	The proposal incorporates a compliant BASIX Certificate, with the commitments in the design to provide appropriate energy efficiency features.	Yes
4W-Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	Waste facilities are provided which are accessible to all residents. There is a bin storage room in the basement which can cater for the additional unit.	Yes
4X-Building Maintenance	Building maintenance – building design provides protection from weathering, enables ease of maintenance, material selection reduces ongoing maintenance cost	The unit will comprise the same materials as approved in the parent DA.	Yes

65. Therefore the proposal generally complies with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, the variations proposed are considered reasonable and worthy of support.

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

66. The applicant has provided BASIX Certificate No. 744521M_12 dated 1 October 2020 prepared by Max Brightwell which adequately satisfies the requirements of the SEPP.

**ENVIRONMENTAL PLANNING INSTRUMENTS
KOGARAH LOCAL ENVIRONMENTAL PLAN 2012**

67. The subject site is subject to provisions contained within the Kogarah Local Environmental Plan 2012.
68. The development is subject to a range of clauses in Kogarah LEP 2012 which are summarised in the following table.

Clause	Standard	Proposed	Complies
4.3 - Height of Buildings	15m as identified on Height of Buildings Map	15.275m (max), exceeds the control by 275mm or 1.8% for the roof slab located above the proposed studio unit 4.02.	No, justification has been provided for the additional height of building; refer to discussion for additional height of building below.
4.4 - Floor Space Ratio	Site = 2,054.4sqm 1.5:1 as identified on Floor Space Ratio Map Max = 3,081.6sqm	Proposed = 1.490:1 3,062.45sqm	Yes

69. It is acknowledged that Clause 4.6 Exceptions to development standards does not apply to a modification application. Under the provision of the 'matters for consideration' a Clause 4.6 based assessment has been undertaken on this proposal, given the height variation and the supporting Clause 4.6 was not previously supported by the Panel.
70. This assessment is to demonstrate the applicant has amended the proposal largely to address the reasons the Panel did not support the Clause 4.6 variation to Building Height, which resulted in the deletion of a unit from the proposal.

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.

71. The following tests below are used to determine whether the standard should be varied:



Figure 11: Height of Building Map KLEP 2012 (Source: GRC Intramaps, 2020).

Consideration for additional Height of Building

Detailed assessment of variation to Clause 4.3 Height of Buildings

72. The Kogarah LEP 2012 prescribes a maximum building height of 15m for this site.
73. The proposal does not comply with the 15m height control of the Hurstville LEP 2012. The extent of the non-compliance, at the highest point being the above the proposed living room of the unit equates to 275mm or 1.8% above the 15m height limit for a length of 3.77m which is considered to not be out of character with recently approved developments. The extent of the breach is limited to the roof slab thickness.

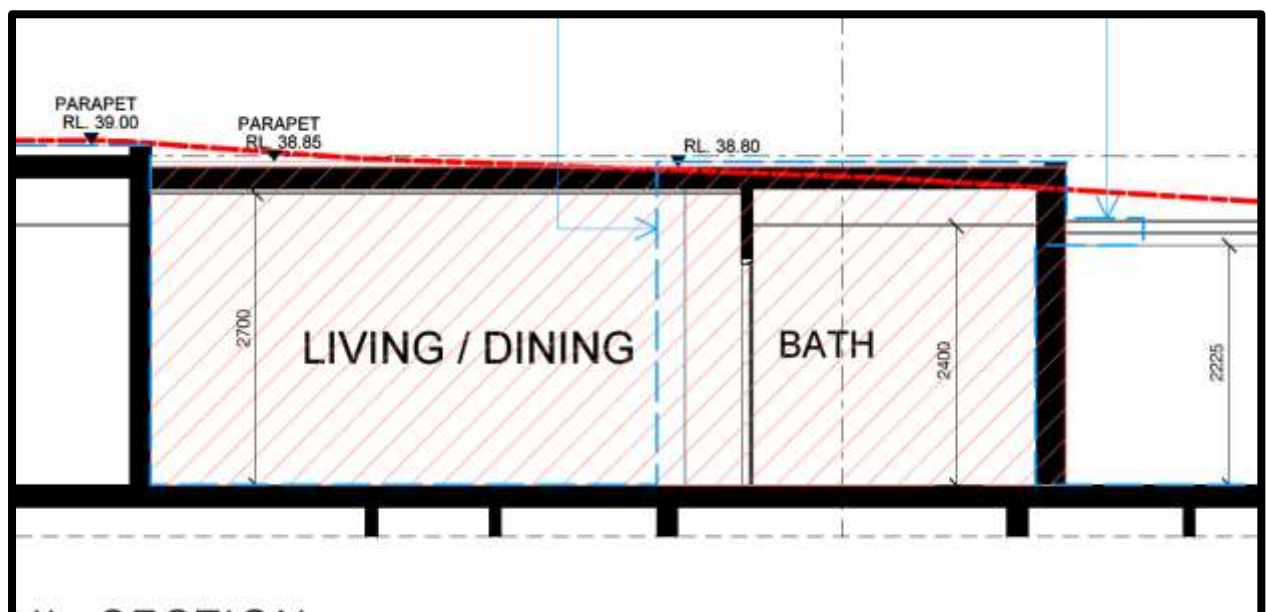


Figure 12: Extract of cross section of proposed studio unit (Source: Loucas Architects, 2020).

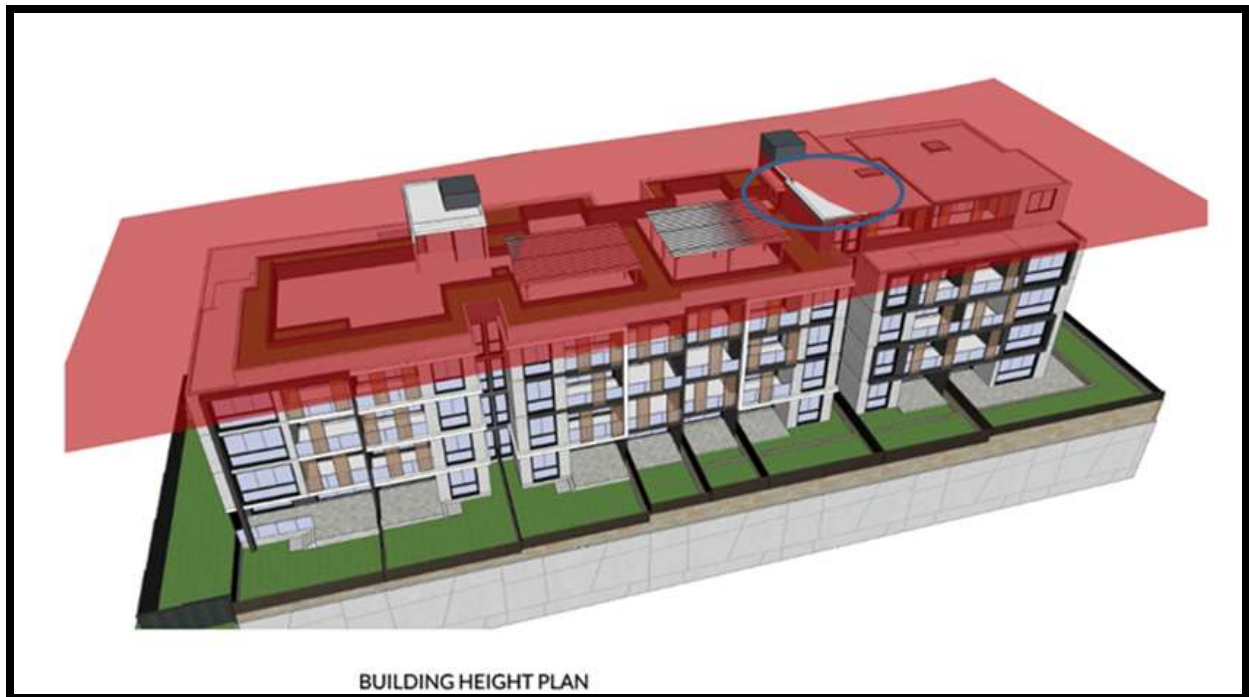


Figure 13: Height plane diagram indicating the extent of the proposed height breach circled in blue (Source: Loucas Architects, 2020).

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74. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of Kogarah Local Environmental Plan 2012 (LEP) points have been extracted to justify the reasons to support the variation. This request for a variation is assessed as follows:
- *“The majority of the additional apartment is contained within the approved height of the development and where it exceeds the height standard it represents only a very minor variation.*
 - *The additional apartment complies with the required separation distances of the ADG does not result in any significant adverse amenity impacts, in terms of privacy, overshadowing, view loss or visual intrusion onto adjoining properties.*
 - *That portion of the development associated with the additional apartment that are non-compliant are minor elements that are not highly visible from the street and have been architecturally treated in a fashion that does not contribute adversely to the bulk and scale of the development”.*

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

77. The applicant has provided the following justification regarding the development's consistency with the above objectives.
78. Applicant's Comments: The proposed development achieves the objectives of the standard notwithstanding non-compliance with the height of buildings control because:
- *the majority of the additional apartment is contained within the approved height of the development and where it projects beyond the approved roofline it has a maximum height of 15m which is compliant with the maximum height standard;*
 - *the additional apartment complies with the required separation distances of the Apartment Design Guide (ADG), and does not result in any significant adverse amenity impacts in terms of privacy, overshadowing, view loss or visual intrusion onto adjoining properties;*
 - *the proposed development is a high quality residential building that is well articulated using architectural elements, varied setbacks and materials to ensure that the development contributes positively to the streetscape and when viewed from surrounding lands and the public domain; and*
 - *that portion of the development associated with the additional apartment, lift overrun, stairwell and pergola that are non-compliant have been approved are relatively minor elements that are not highly visible from the street and have been architecturally treated in a fashion that does not contribute adversely to the bulk and scale of the development.*
79. Officer Comment: The applicant's justification is supported. As shown in the section (Figures 12 and 13), the extent of the height variation relates to the roof slab of top of the proposed unit which is centrally sited within the building footprint. The proposed variation does not comprise of floor space or area which could be readily converted into floor space, it is merely the roof slab thickness.
80. The height of the building results in minimal additional impacts of overshadowing or visual bulk, when compared to that of a numerically compliant building, the additional shadowing will fall to the south of the site and not impacting other developments given the topography of the land.
81. Given the above, the proposed variation is considered to be consistent with the objectives of Clause 4.3, and is acceptable despite the numerical non-compliance.

What are the underlying objectives of the zone?

82. The objectives of the R3 Medium Density Residential zone are as follows:
- *To provide for the housing needs of the community within a medium density residential environment.*
 - *To provide a variety of housing types within a medium density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents”.*
83. Officer Comment: The applicant's justification is considered to be reasonable and sound given the underlying zone objectives and height objectives of the Development Standard.

The proposal is considered to positively contribute to the broadening of the variety of housing types within the Medium Density Residential zone.

84. The objectives for Clause 4.3 Height of Buildings development standard state the following:

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

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

85. The applicant has provided the following justification;
86. *“The majority of the additional apartment is contained within the approved height of the development and where it exceeds the height standard it represents only a very minor variation.*
87. *The additional apartment complies with the required separation distances of the ADG does not result in any significant adverse amenity impacts, in terms of privacy, overshadowing, view loss or visual intrusion onto adjoining properties.*
88. *The proposed development is a high quality residential building that is well articulated using architectural elements, varied setbacks and materials to ensure that the development contributes positively to the streetscape and when viewed from surrounding lands and the public domain.*
89. *That portion of the development associated with the additional apartment that are noncompliant are minor elements that are not highly visible from the street and have been architecturally treated in a fashion that does not contribute adversely to the bulk and scale of the development.”*
90. Officer Comment: The variation in height is to a maximum point of 275mm equating to 1.8%. The applicant's justification is considered to be reasonable. The extent of the variation from an amenity perspective is minor, inconsequential and of minimal impact. Further consideration has been applied to the variation having regard to the principles established under the 'Five Part Test' established by the NSW Land and Environment Court. Councils may choose to not only use the principles of Clause 4.6 and SEPP1 but also this five part test.
91. Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded, consideration to these principles and extent of variation have been considered as per below.

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

92. Applicant's comment: *"It is considered that the proposed development will provide for the housing needs of the community and incorporates a variety of housing types that satisfy objective of the zone."*
93. Officer comment: The applicant's justification is considered to be sound given that the underlying objectives have been satisfied.
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;**
94. Applicant's comment: *"it is considered that compliance with the maximum height standard as specified in clause 4.3 KLEP 2012 is both unreasonable and unnecessary in this particular case and it has been demonstrated that there are sufficient environmental grounds to justify contravening the standard."*
95. Officer comment: Given the above, the proposal is considered to be satisfactory which results in a built form which is generally consistent with the maximum height within the zone.
- 3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**
96. Applicant's comment: *"Strict compliance with the development standard would not improve the building's relationship to its surroundings. The proposed design solution is considered to represent an acceptable development outcome for the site, whilst ensuring the amenity of both existing development and future residents is preserved."*
- 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;**
97. Applicant's comment: *"The Section 4.55 (2) Application involves the construction of an additional one (1) bedroom apartment contained within the roof area of the approved BBQ area and the approved height of the development which is generally compliant with the 15m height standard. However, a minor variation of the height standard for a portion of the additional apartment exists as the parapet (RL38.85) of the additional apartment adjacent to the rooftop communal open space results in a maximum height of 15.225m."*
98. Officer comment: The extent of the minor variation is considered to be similar to that of other approved residential flat buildings within the locality. The height breach related to the thickness of the roof slab and will not be readily discernible from the public domain.
- 5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**
99. Applicant's comment: *"That portion of the development associated with the additional apartment that is non-compliant are minor elements that are not highly visible from the street and have been architecturally treated in a fashion that does not contribute adversely to the bulk and scale of the development."*
100. Officer comment: The applicant's justification is considered to be reasonable and sound given that the variation to the height of building satisfies the objectives of the development standard and is of a negligible impact.

Is the variation to the development standard consistent with Clause 4.6 of the Hurstville LEP 2012?

101. Clause 4.6(1):

The objectives of this clause are as follows:

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

102. Comment: Flexibility in applying the standard is appropriate and the requisite levels of satisfaction permitted by the controls have been achieved in this case. The variation is to ensure appropriate floor to ceiling heights for the habitable room of the proposed unit.

103. Clause 4.6(2):

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

104. Comment: Clause 4.3 Height of Buildings is not excluded from the operation of Clause 4.6.

105. Clause 4.6(3):

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

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

106. Comment: The applicant has provided a written variation request prepared by Devlin Planning. A copy of this justification request for the height of building variation is provided for the Panel’s consideration.

107. Clause 4.6(4):

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

(a) the consent authority is satisfied that:

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

108. Comment: The written request adequately addresses the matters in subclause (3). Strict compliance with the standard is unreasonable and unnecessary because the

development remains consistent with the objectives of the R3 zone and height of building standard as described above. It is considered that sufficient environmental planning grounds to justify contravening the standard given that the non-compliance provides for an improved amenity outcome while resulting in no adverse environmental impacts.

- (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*

109. Comment: For the reasons detailed above, the development is considered to be consistent with the objectives of Clause 4.3 Height of Buildings and the R3 Medium Density Residential zone.

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

110. Comment: As the application seeks a variation to a Development Standard of less than 10%. The proposed residential flat building must be determined by the Local Planning Panel as the modification forms a Section 4.55(2).

Conclusion – Assessment of Clause 4.6 Request for Variation

111. The variation is considered minor in extent for a maximum of 275mm or 1.8% above the 15m height of building control for a length of 3.77m.
112. In a 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 clause 4.6 does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not. This is considered to be the case in this instance given the additional height sought and minimal impact generated.
113. As 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.
114. 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 (at[26]); 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.
115. The variation for additional height of building has been considered and it concluded that overall, the non-compliance in this instance is acceptable and the applicant's request is well founded.
116. After careful consideration of the request for additional height on planning merit, it is considered that the minor non-compliance in this case is acceptable and the request is well founded and the variation will satisfy the objectives of both the R3 Medium Density Residential zone and development standard Clause 4.3 Height of Building.

117. Whilst technically a Clause 4.6 Variation Exception to Development Standard does not apply to modifications, similar consideration has been applied to ensure consistency in consideration of the variation.
118. The variation is a minor point variation a result of the slope of the site at the point where the new element is proposed, and is acceptable given its minor nature and the fact that the development reasonably responds in height to the slope of the land.
119. All other applicable provisions within the Kogarah Local Environmental Plan 2012 are considered to be satisfactory in respect to consideration of the extent of works relating to the modification.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

120. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
121. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.
122. 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.
123. The proposal is not inconsistent with the provisions of this Draft Instrument.

DRAFT REMEDIATION OF LAND SEPP

124. 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.*
125. The proposal is not inconsistent with the provisions of this Draft Instrument.

DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020

126. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
127. In this regard, the provisions have no determining weight as a result of proposed operation of Clause “1.8A Savings provisions relating to development applications” of the Draft Plan which provides “If a development application has been made before the

commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this plan had not commenced.”

DEVELOPMENT CONTROL PLANS

KOGARAH DEVELOPMENT CONTROL PLAN 2013

128. The relevant sections of the Kogarah DCP 2013 have been considered below:

Part B4 – Parking and Traffic

129. As earlier addressed within this report, the proposal complies with the car parking rates within the Guide to Traffic Generating Development under State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

Part	Control	Proposed	Complies
9. Vehicular access, parking and circulation	8 x 1 bed = 8 spaces 31 x 2 bed = 46.5 spaces for 2 x 3 bed = 4 spaces 9 visitor spaces Total: 67.5 spaces	54	No, however compliant with the requirements of SEPP 65 which overrides this control.

Part C2 – Medium Density Housing

130. The modification has been considered in accordance with the applicable clauses of the following subsection. It is noted that the proposal seeks consent for one (1) additional studio unit which triggers the requirement of an additional accessible unit to be provided on site.

Part C2- Medium Density Housing – Kogarah DCP 2013		
Part 1 Residential Flat Buildings		
Required	Proposed	Complies
1. Minimum site requirements		
(1) Minimum lot size is 1,000sqm.	2,054.4sqm	Yes
(2) Minimum lot width is 24m.	73.15m	Yes
3. Building Setbacks		
(3) Rear boundary setbacks: (ii) Upper level setbacks are 9m above four storeys. Note: Private open space and balconies must comply with part 4E of the NSW State Government's Apartment Design Guide.	9m	Yes
5. Façade Treatment and Street Corners		
(1) Building facades must be clearly articulated and employ high quality materials and finishes that enhance and complement the streetscape character.	The proposed unit is considered to be well integrated into the approved residential flat building which adopts contemporary finishes and does not detract from the streetscape character.	Yes
(3) Human scale at street level must be created through the use of scale, rhythm, materiality and/or landscaping.	The proposed additional unit does not detract from the scale, rhythm, materiality or landscaping treatment due to	Yes

	its location.	
6. Landscaped Treatment and Private Open Space		
(2) The visual appearance of developments is to be softened through the incorporation into the design planter boxes and similar design treatments that will support landscaping in a minimum soil depth of 800mm.	The proposal incorporates the reconfiguration of planter boxes with the communal rooftop terrace.	Yes
(3) Where landscaping is included on balconies and terraces, the functional area of the private open space is not to be reduced to below the minimum requirements of Part 4E of the Apartment Design Guide.	No landscaping is proposed within the balcony for the new unit.	Yes
(4) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	Private open space in the form of balcony adjoins key living areas.	Yes
(5) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year round use.	The balcony is orientated to the north-east which achieves reasonable levels of solar access.	Yes
(8) Private open space and balconies must comply with part 4E of the NSW State Government's Apartment Design Guide.	The proposal complies with the minimum private open space area and dimensions.	Yes
7. Common Open space		
(1) Common open space to a minimum area of 25% of the site area and with a minimum dimension of 5m is to be provided.	More than 25% communal open space provided on the rooftop with a minimum dimension of 5m.	Yes
(2) A maximum of 50% of common open space may be provided above ground level where: (i) a location at ground level is not possible due to site constraints; (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 (iii) there will be no significant impact on surrounding properties in respect to the loss of privacy.	The proposal provides 50% of the communal open space on the rooftop which is primarily unchanged as part of this modification resulting in a reduction of 46.45sqm of communal open space from the previous approval.	Yes
(5) 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.	The useable trafficable area contains planters along the edge of the communal open space however the setback is less than 2.5m. This is considered to be reasonable given that the majority of the	Yes

	communal open space in unchanged as part of this modification with the exception of the location affected by the proposed new studio unit resulting in a reduction of 46.45sqm of communal open space. The communal open space remains compliant.	
(6) Roof top common open space areas should include equitable access for all residents, and must be designed to ensure that noise and overlooking will be avoided, by way of screening and setbacks from boundaries as detailed in Figure 6.	Rooftop areas contain equitable access with appropriate screening and setbacks proposed.	Yes
8. Solar Access		
(1) 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 provided with the application.	Yes
(2) Shadow diagrams should include elevational diagrams identifying the habitable rooms and private open space areas of the adjoining dwellings, and view from the sun diagrams, identifying solar access compliance to the proposed development.	The proposal has not provided elevational shadow diagrams however based on the shadow diagrams and Council's assessment compliant levels of solar access have been provided.	
(3) Shadow diagrams are required to show the impact of the proposal on the sunlight to the open space of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams.	Shadow diagrams provided.	Yes
10. Views and view sharing		
(1) Development shall provide for the reasonable sharing of views.	The proposal does not result in any unreasonable view sharing impacts.	Yes
11. Dwelling Mix		
<p>(1) Developments that propose more than 10 apartments are to provide a mix of dwellings consistent with the following percentage mix:</p> <p>(i) Studio and 1 bed apartments – Minimum of 20%</p> <p>(ii) 2 bed apartments – Maximum of 30%</p> <p>(iii) 3+ bed apartments – Minimum of 15%</p>	<p>The proposal seeks one (1) additional studio unit which alters the unit mix for studio and 1 bedroom apartments. This equates to 19.5% for studios and 1 bedroom apartments combined.</p> <p>As this forms a modification, the existing approved composition is considered to be reasonable.</p>	Yes

<p>(2) Any variations to the apartment mix are to take into consideration:</p> <p>(i) the distance to public transport, employment and education centres.</p> <p>(ii) the current market demands and projected future demographic trends.</p> <p>(iii) the demand for social and affordable housing.</p> <p>(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.</p>	<p>The proposed additional studio unit results in an increase in housing diversity as there were no studios previously approved within this residential flat building.</p>	<p>Yes</p>
<p>12. Adaptable and accessible housing</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>(i) 5-10 units – 1 adaptable unit</p> <p>(ii) 11-20 units – 2 adaptable units</p> <p>(iii) 21-30 units – 3 adaptable units</p> <p>(iv) 31-40 units – 4 adaptable units</p> <p>(v) 41-50 units – 5 adaptable units</p> <p>(vi) 51+ units - 6 adaptable units + 10% of additional dwellings beyond 60 (rounded up to the nearest whole number).</p> <p>5 adaptable units are required for 41 units.</p>	<p>The existing approval seeks one (1) additional studio unit resulting in a total of 41 units. It is noted that six (6) adaptable units were provide as part of the original approval being:</p> <p>Units; G.5, G.7, 1.05, 1.06, 2.04, and 2.06.</p>	<p>Yes</p>
<p>(2) The adaptable units must comply with the relevant Australian Standards and be certified as “adaptable housing units” and every adaptable unit needs to have an accessible car space.</p>	<p>Six (6) adaptable units each with a car space were provided with the original approval which complies with Council’s requirements and the Australian Standards.</p>	<p>Yes</p>
<p>(3) Developments must be designed and constructed to comply with:</p> <p>(i) AS 1428.1 – 1993 Design for Access and Mobility Part 1</p> <p>(ii) AS 1428 – 1993 Design for Access and Mobility Part 2 Enhanced and Additional Requirements – Buildings and Facilities.</p> <p>(iii) Relevant provisions of the Building Code of Australia</p>	<p>The determination will contain a condition to ensure compliance.</p>	<p>Yes</p>
<p>(4) Notwithstanding compliance with the</p>	<p>The remainder of the building</p>	<p>Yes</p>

<p>above, the development is to be designed to meet the needs of people with disabilities, including:</p> <p>(i) The provision for a continuous accessible path of travel from all public roads and public spaces as well as unimpeded internal access;</p> <p>(ii) The provision in design for ease of use and comfort through appropriate gradients, rest areas, circulation space and user friendly entrances;</p> <p>(iii) Safety design measures, including contrasting colour for points of danger and slip resistant surfaces; and</p> <p>(iv) Legible design features such as signs and indicators to assist the location of handrails and guardrails.</p>	<p>complies with the accessible requirements.</p>	
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INTERIM POLICY GEORGES RIVER DEVELOPMENT CONTROL PLAN 2020

131. 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. The modification is not inconsistent with the controls contained within the DCP given the nature of the modification.

IMPACTS

Natural Environment

132. The modification works are contained within the approved building footprint whereby there are no changes or impacts in relation to trees, excavation or stormwater disposal.

Built Environment

133. The modification as proposed results in a scale and form being acceptable and consistent with the future character of the locality.

Social Impacts

134. The modification is unlikely to result in any unreasonable social impacts given the residential nature of the proposal. Whilst the modification seeks to add an additional studio unit, given the proximity of this unit to the communal open space area, a condition has been added to manage the impact on the amenity of the apartment from the rooftop communal open space as follows:

“Use of the rooftop common area - The rooftop common area shall be vacated and not used between the hours of 10.00pm and 8.00am the following day”.

135. This condition has been added to protect the amenity for this proposed unit which directly adjoins the communal open space.

136. It is also noted that the applicant has raised no objection to this condition being imposed.

Economic Impacts

137. The modification is unlikely to result in any unreasonable economic impacts given the residential nature of the use.

Suitability of the site

138. The modification as amended for a studio is of a scale and design that is generally suitable for the site having regard to its size and shape and relationship to adjoining developments.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

139. The application was notified to adjoining owners, occupiers, for a period of 14 days between 1 and 16 July 2020. In response, one (1) submission was received raising the following issues.

Impact of excavation to adjoining properties

140. Comment: Concerns were raised regarding excavation and impacts to adjoining properties. The proposal does not seek any changes to the approval in relation to excavation as the extent of works relate to the addition of a one (1) bedroom unit on the fourth floor. Conditions relating to excavation approved under DA2016/212 remain unchanged by this proposal.

External Referrals

Ausgrid

141. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007 for consideration. In response, comments were received which supported the proposed works subject to conditions relating to supply of electricity and service mains.

Air Services Australia

142. A request was submitted to the Air Services Australia through the NSW Planning Portal on May 2020. On 16 June Council received an email via the NSW Planning Portal that the statutory timeframe for the agency had now expired. On that basis, no concerns were raised.

Public Interest

143. The amended proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. Therefore, the proposal as modified is considered to be in the public interest.

Section 7.12 Contributions

144. A revised Section 7.12 Contribution amount of \$402,547.26 is applicable.

CONCLUSION

145. The Section 4.55(2) Modification has been assessed in accordance with the applicable statutory considerations and the amended proposal is considered to be satisfactory.

146. Having regard to the matters for considered under Part 4.15, and 4.55(2) Modification of Consents of the Environmental Planning and Assessment Act 1979, Modification Application No. MOD2020/0084 is recommended for approval subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

147. Statement of Reasons

- The amended proposal has adequately provided justification for the exceedance to Clause 4.3 height of building of the Kogarah Local Environmental Plan 2012.
- The amended proposal complies with other aspects of the planning controls.
- The amended proposal is consistent with the objectives of the applicable considerations and in particular, State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
- In consideration of the aforementioned reasons, the amended proposed development is a suitable response to the site and its approval is in the public interest.

148. Determination

THAT pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel grants development consent to MOD2020/0208 to provide an additional studio unit on the fourth level of a residential flat building at Lots 23 – 26 in DP 5452 and known as 27 - 33 Nielson Avenue, Carlton for subject to the following conditions:

SECTION A - General Conditions

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

1. Approved Plans of Consent

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

- (i) Architectural plans- Prepared by Architecture and Building Works Project No PN-16005 Drawing numbers DA-0800 (J), DA-0900 (J), DA-1000 (M), DA-1100 (G), DA-1200 (G), DA-1300 (F), DA-1400 (H), DA-1500 (H), DA-2000 (F), DA-2100 (F), DA-2200 (F), DA-3000 (F), DA-3100 (D), DA-3200 (E) and DA-3300 (D) received by Council on 31 November 2017.

And as amended by architectural plans prepared by Loucus Architects, No. A-1400, A-1500, A-2000, A-2100, A-2200, A-3000, Rev B dated 30.09.20.

(This condition is modified as part of MOD2020/0084 (DA2016/0212))

- (i)(a) BASIX Certificate 744512_12 dated 1 October 2020 prepared by Max Brightwell.

(This condition is added as part of MOD2020/0084 (DA2016/0212))

- (ii) Landscape plans- Prepared by Isthmus- Drawing numbers ISO213DA1 and DA2 Issue D dated 10 October 2017.

- (ii)(a) **The rooftop landscape plan is to be amended to be consistent with approved architectural plan A-1400 prepared by Loucus Architects, Rev B dated 30.09.20.**

(This condition is added as part of MOD2020/0084 (DA2016/0212))

- (iii) Stormwater plans- Australian Consulting Engineers- Job No 1606380 Drawing numbers D00 (A), D01 (C), D02 (C), D03 (E), D05 (C), D06 (A), D07 (A),

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

The conditions that follow in this Section B of the Notice of Determination relate to the payment of fees, amendments being made to the proposal, further investigation being undertaken or the preparation of documentation that must be complied with prior to the issue of a Construction Certificate or Demolition.

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

2. Asset & Building Fees

Payment of the following amounts as detailed below:

- | | |
|-----------------------------------------------------------|--------------|
| • *Builders Long Service Levy of | \$107,786.69 |
| • Driveway Design and Inspection Fee (Dwelling) of | \$ 1,000.00 |
| • Driveway and Restoration Works Design Inspection Fee of | \$ 36,400.00 |
| • Asset Inspection Fee of | \$ 110.00 |

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

3. Restoration Deposit

A deposit of \$36,400.00 shall be lodged with Council to ensure the completion of the following works to be completed at the applicant's expense

- Construction of 1.2 metre wide concrete footpath along Nielsen Avenue.
- All associated road pavement restorations.
- Installation of turf as required across full street frontage along Nielsen Avenue.

These works are to be in accordance with plans and specifications to be issued by Council.

4. Section 94 Index

Section 94 Contributions are to be paid as detailed below in the following condition, and until paid all contributions will be indexed four (4) times a year (on the following dates) to allow for the cost increases: 31 January, 30 April, 31 July and 31 October.

5. **Section 94 Contributions**

As at the date of Development Consent the following contributions have been levied on the subject development under Section 94 of the Environmental Planning and Assessment Act, 1979 and the nominated Section 94 Contributions Plans:

No.1 – Roads and Traffic Management – Residential	\$ 5,389.68
No.5 – Open Space 2007	\$382,396.40
No.9 – Kogarah Libraries – Buildings	\$ 6,143.80
No.9 – Kogarah Libraries – Books	\$ 8,617.38
TOTAL	\$402,547.26

Any of the above Section 94 Contributions Plans may be inspected at the Georges River Council Customer Service Centres.

(This condition is modified as part of MOD2020/0084 (DA2016/0212))

6. **Dilapidation Report**

Prior to issue of any construction certificate or commencement of any demolition or earth works on site, the applicant shall submit, for acceptance by the Principal Certifying Authority (PCA), with a copy forwarded to Council where Council is not the PCA, a full dilapidation report on the visible and structural condition of the following properties;

- (i) All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.

The report must be completed by a suitably qualified consulting structural/ geotechnical engineer as determined necessary by that professional based on the excavations for the proposal, the subsoil conditions and any recommendations of a geotechnical report for the site. The report shall have regard to protecting the applicant from spurious claims for structural damage and shall be verified by all stakeholders as far as practicable.”

Reports relating to properties that refuse access to carry out inspections to complete the dilapidation report, after being given reasonable written notice to request access (at least 14 days) at a reasonable time (8.00am-6.00pm), are not to hold up the release of the Construction Certificate.

7. **Soil and Water Management**

A Soil and Water Management Control Plan, incorporating contour levels and prepared in accordance with Environmental Site Management Policy shall be submitted to Council detailing all measures to control soil erosion and sedimentation runoff from the site during excavation and construction activities.

8. **SEPP No 65 Certification**

A design verification statement from a qualified designer shall be submitted that verifying that the plans and specifications achieve the design quality of the development for which consent was granted having regard to the design quality principles of State Environmental Planning Policy No. 65.

9. **Adaptable Housing Compliance**

The proposed development including the nominated adaptable units shall comply with the adaptable housing provisions of AS4299 – Adaptable Housing and AS1498 – Access and Mobility (Parts 1 and 2). The Adaptable Housing checklist and circulation diagram demonstrating compliance shall be submitted.

9A. **Unit 4.02 storage**

2m³ of storage is to be located within the basement level to service unit 4.02 and referenced on all plans and documents.

(This condition is added as part of MOD2020/0084 (DA2016/0212))

10. **Ausgrid Sub Station**

The applicant is to confer with Ausgrid to determine if an electricity distribution substation is required. If so, shall be incorporated within the Construction Certificate and it will be necessary for the final film survey plan to be endorsed with an area having dimensions 5m x 4m over the location of the proposed electricity distribution substation to be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements are to be met prior to release of the occupation certificate.

11. **Clearances to Overhead Mains**

If any part of the proposed structure, within 5m of a street frontage, is higher than 3m above footway level, the applicant is to confer with Ausgrid to determine if satisfactory clearances to any existing overhead mains will be affected. If so, the applicant is to make arrangements with Ausgrid for any necessary modification to the electrical network in question.

These works to be at the applicant's expense and Ausgrid's requirements are to be met prior to actual construction commencing on site or as agreed with Ausgrid.

Supply of electricity

It is recommended that for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the enquiry which may include weather or not:

- **The existing network can support the expected electrical load of the development**
- **A substation may be required on-site, either a pad mount kiosk or chamber style and;**
- **Site conditions or other issues that may impact on the method of supply.**
- **Please direct the developer to Ausgrid's website, www.ausgrid.com.au about how to connect to Ausgrid's network**

Service mains

It appears that existing overhead electricity service mains, that supply the subject property, may not have sufficient clearance to the proposed construction as per

the requirements of the “Installation and Service Rules of NSW”. It is recommended that the developer engage a Level 2 Accredited Service Provider (ASP) Electrician to ensure that the installation will comply with the Service Rules.

(This condition is modified as part of MOD2020/0084 (DA2016/0212))

12. Sydney Water (DA Only)

The approved plans must be processed through Sydney Water to determine whether the development will affect any Sydney Water asset's (sewer and water mains, stormwater drains and/or easements) and if any further requirements need to be met. An approval receipt will be issued by Sydney Water which is to be submitted to Council or the Principal Certifying Authority.

Please refer to the web site www.sydneywater.com.au for;

- Sydney Water Tap in – see Plumbing, building and developing and then Sydney Water Tap in; and
- Building over/adjacent to a Sydney Water Asset - see Plumbing, building and developing, building then Building Approvals or telephone 13 20 92.

13. Certification of Detailed Plan

The detailed stormwater plan is to be certified by a Chartered Professional Engineer. A statement, that the stormwater system has been designed in accordance with Council's Water Management Policy and satisfies the provisions and objectives of that policy, must be included in the Stormwater Detailed Plan.

14. Stormwater Plan

The submitted stormwater plan has been assessed and approved as a concept plan only. No detailed assessment of the design has been undertaken. A Detailed Stormwater Plan and supporting information of the proposed on-site stormwater management system is to be submitted. The required details in this Plan and the relevant checklist are presented in the document 'Water Management Policy. Kogarah Council. August 2006'

The design parameters and the general concept of the proposed on-site stormwater management system are to be the same as documented in the approved Concept Stormwater Plan for the proposed development. Any conceptual variations to the stormwater design will require written approval from Council and will require to be justified and supported by appropriate details, calculations and information to allow for proper assessment.

The Detailed Stormwater Plan is to address the following issue(s):

- a) A suitably qualified engineer is to certify that appropriate design measures have been taken to ensure that the upper and lower basements have been protected from flooding in the case of the On-site Detention system malfunctioning or reaching capacity.

15. Ingress Points

All possible ingress points such as vehicle entrances and exits, ventilation ducts, windows, light wells, lift shaft openings, risers and stairwells to the basement car parking levels are to be built at or protected up to the 1 in 100 year flood levels. The applicant will need to liaise with the flood consultant with respect to the required levels at each possible ingress location.

SECTION C – Prior to Commencement of Construction Conditions

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

16. Geotechnical Report

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. In this regard, all excavated waste materials shall be disposed of at an approved Waste Depot.

No rock breaking or other machinery for the excavation, drilling, cutting or removal of rock shall be used on the site prior to the acceptance by the principal certifying authority of the following documentation:

- (i) A report by a geotechnical engineer detailing the measures recommended in undertaking the works so as to prevent damage to any adjoining or nearby buildings.
- (ii) The type and size of machinery proposed.
- (iii) The routes of all trucks to convey material to and from the site.

17. On-Site Detention

A 49.6m³ On-Site Detention system with a Maximum Site Discharge of 25 Litres per Second is to be provided in accordance with the Stormwater Concept Plan and associated Design Assessment Report. The overflow is to be directed to the site drainage system.

18. Certification by Mechanical Engineer

To ensure that adequate provision is made for ventilation of the building, mechanical and /or natural ventilation shall be provided. These systems shall be designed in accordance with the provisions of:-

- a) The Building Code of Australia;
- b) Australian Standard AS 1668 Part 1 - 1998;
- c) Australian Standard AS 1668 Part 2 - 2002;
- d) The Public Health Act 2010;
- e) The Public Health Regulation 2012;
- f) Australian Standard 3666.1 - 2002;
- g) Australian Standard 3666.2 - 2002;
- h) Australian Standard 3666.3 - 2000.

Details of all mechanical and /or natural ventilation systems, along with specific certification, provided by an appropriately qualified person, verifying compliance with the abovementioned requirements.

19. **Structural Engineer's Details**

Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns & 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.

20. **Tree Protection**

Prior to the commencement of any works on the site the tree protection measures required for the established Tree Protection Zone (TPZ) of the trees to be retained shall be installed in accordance with Section 4 - *Australian Standard AS 4970-2009 - Protection of trees on development sites*.

Unless otherwise specified in AS 4970-2009 a protective fence consisting of 1.8m high fully supported chainmesh shall be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed below. 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.

There shall be no services installed within the drip line TPZ of the tree. This fence shall be kept in place during demolition, construction and also have a sign displaying "Tree Protection Zone" attached to the fence, this must also include the name and contact details of the Project Arborist.

21. **Tree Retention – Arborist Report**

The trees identified for retention in the Arboricultural Development Assessment Report dated September 2016 by Paul Vegzoff of Moore Trees listed below shall be protected in accordance with the above report and the requirements of Section 4 - *Australian Standard AS 4970-2009 - Protection of trees on development sites*.

Tree Numbers	Location on site	TPZ
1,2,3, 9 -11 26 – 29, 30, 31	27 – 33 Nielsen Avenue, Carlton	Refer to Arborist report

22. **Protection of Site – Hoarding**

A hoarding or fence must be erected between the work site and the public place if:

- the work involved in the erection or demolition of a building is likely to cause obstruction or inconvenience to pedestrian or vehicular traffic in a public place; or
- if it involves the enclosure of a public place.

If necessary an awning is to be erected which is sufficient to prevent any substance from

or in connection with the work from falling into a public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

If the work site is likely to be hazardous to persons in a public place, it must be kept lit between sunset and sunrise.

23. **Ground Anchors**

Should the proposed development require the installation of ground anchors to a road reserve the following must be complied with:

- The appropriate Roads Act 1993 approvals shall be obtained.
- The anchoring is to be de-stressed once no longer required.
- The work is to be clear of all services contained within the public roadway and the required dial before you dig investigations are to be undertaken in relation to any services that may be in the proposed anchor locations.
- Public liability insurances being held by the builder/ developer with a copy being submitted to Council.
- A works-as-executed plan showing the exact location of all anchoring points being submitted to Council upon their installation.

It is to be noted that if anchoring into adjacent private properties is required any such approval would need to be obtained from the owners of this property.

24. **Driveway**

In respect to vehicular access to the proposed development the gutter crossing and driveway are to be reconstructed between the kerb and street alignment to Council's specifications.

In this regard a separate driveway application is to be lodged with Council for works outside the property boundary. Furthermore the design boundary level is to be received from Council prior to construction of the internal driveway.

25. **Council Infrastructure Inspection**

Prior to the commencement of any works an authorised representative of the applicant is to organise and attend a meeting on site with Council's Infrastructure Compliance Co-ordinator to discuss protection of Council's infrastructure. To organise this meeting contact Council's Customer Service Centre on 9330 6400.

26. **Public Liability Insurance**

All nominated contractors / applicants carrying out driveway and/or restoration works on Council property must carry public liability insurance with a minimum cover of twenty million dollars (\$20,000,000.00). In this regard, prior to commencement of works, the principal contractor is to lodge an "Application for the Construction of Work by Private Contractor" to Council, which includes submitting evidence of their current insurance. The principal contractor must ensure that sub-contractors are also adequately insured.

27. Soil Erosion Controls

Prior to commencement of any site works, erosion and sediment controls are to be installed in accordance with Environmental Site Management Policy and any approved Soil and Water Management Plan and shall incorporate:

- Measures to prevent sediment and other debris escaping from the cleared or disturbed areas into drainage systems or waterways;
- Controls to prevent tracking of sand, soil, aggregates, etc, by vehicles onto adjoining roadways.

SECTION D – Construction and Operational Conditions

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

28. Inspections - Multi Unit

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

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

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

In addition to the above, it is recommended that the following inspections be carried out for the subject development;

- Erosion Control
- Earthworks/Excavation
- Building setout
- Concrete reinforcement
- Timber and/or steel framework
- Mechanical/Hydraulic work
- Driveways
- Landscaping
- External Finishes

29. Storage of materials on Public Road

All building materials or waste containers must be stored within the confines of the site. The storage of such building materials, waste containers or equipment associated with

the project upon the public roadway, including the pedestrian footway or unpaved verge, is prohibited.

30. **Use of Crane on Public Road**

Prior approval must be obtained from Council a minimum of 24 hours before the use on any site of a crane, hoist or similar machinery that will be used to transfer materials across Council's footpath. This includes cranes that are situated on roadways, footpaths and road reserves.

Any application for approval must be accompanied by the following information:-

- Site sketch indicating the proposed location of the crane, pedestrian controls and traffic controls;
- A copy of current public liability insurance with minimum cover of twenty million dollars (\$20,000,000) indemnifying Council in the event of an incident;
- A copy of an RMS accredited traffic control plan;
- Proof that the local area command of the NSW Police have been advised of the proposal.

The use of a crane, hoist or similar machinery on any site without prior approval is prohibited.

31. **Building Height - Surveyors Certificate**

The proposed building is not to be erected at a height greater than that indicated on the approved plan. A certificate from a Registered Surveyor verifying the correct Reduced Level of the ground floor slab and boundary clearances shall be submitted prior to inspection of the steel reinforcement.

32. **Excavation of Site**

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. In this regard, all excavated waste materials shall be disposed of at an approved Waste Depot (details are available from Council).

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.

33. **Stormwater to Kerb**

Any stormwater connections to the kerb and gutter are to be in accordance with Council's *'Specification for Construction by Private Contractors'*.

34. Redundant Driveway

All existing vehicular crossings adjacent to the subject premises that have become redundant shall be removed and the footway and kerb and gutter reinstated at the developer/applicants expense.

35. Work within Road Reserve

A Development Consent or any related Construction Certificate does not allow for the erection of a structure or to carry out work in, on or over a public road. Should a structure or work be required a separate approval under S138 of the Road Act 1993 must be granted by Council prior to the commencement of any works within the road reserve. Applications may be made at Council's Customer Service Centre.

36. Damage within Road Reserve & 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.

37. Public Utility & Telecommunication Assets

The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.

38. Stormwater Drainage

All roof water and surface water from paved or concreted areas being disposed of to the street gutter by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3.2. The line must pass through a silt arrestor pit, a standard design is available within Council's Water Management Policy.

39. Garbage Room

The proposed garbage room being provided with the following:-

- a) A smooth concrete floor graded and drained to a floor waste connected to the sewer of the Water Board.
- b) The walls being cement rendered with the intersection of the walls and floor being coved to a radius of not less than 25mm.
- c) The door being close fitting to prevent the access of rats and mice.
- d) A cold water hose cock being provided for the cleaning of containers and the room itself.
- e) Ventilation being provided by means of direct connection to the outside air to the satisfaction of Council.

- f) A sign, minimum size 600mm x 600mm, directing residents not to place recyclables in garbage carts and encouraging residents to recycle. Details of an acceptable wording for the sign are available from Council.

40. **Hours of Construction**

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

41. **Restriction on Hours of Excavation (other than single residential dwelling)**

Despite the general hours of construction above,

- a) The hours where rock breaking, cutting, hammering and drilling occur shall be limited to 9:00am – 4:00pm on weekdays only.
- b) A noise management plan for the above works, prepared by a suitably qualified acoustical practitioner in accordance with the Interim Noise Construction Guidelines prepared by the Department of Environment & Climate Change NSW, must be submitted to Council prior to commencement of any excavation works.

41A. **Use of the rooftop common area**

The rooftop common area shall be vacated and not used between the hours of 10.00pm and 8.00am the following day.

(This condition is added as part of MOD2020/0084 (DA2016/0212))

42. **Provision of Amenities**

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site or as specified by Workcover requirements .

- each toilet provided must be a standard flushing toilet and must be connected:
- to a public sewer; or
- if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
- if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities must be completed before any other work is commenced.

43. **Letter Boxes**

Suitable letter box facilities (including Owner's Corporation in the case of strata units) shall be provided in accordance with Australia Post specifications.

44. **Oil/Silt Separator**

An oil/silt separator sized to the catchment area must be specified on the Stormwater Detailed Plans and located downstream of the proposed basement car park and prior to discharge to councils stormwater system.

45. **Car Wash**

To ensure that waste water is treated in an acceptable manner the car wash bay shall be designed and constructed to ensure that waste water is discharged to the sewer in accordance with the requirements of Sydney Water. Evidence of a permit issued by Sydney Water shall be submitted.

46. **Basix Certificate Details – DA Only**

Construction of building works given Development Consent must be carried out in accordance with a valid and current BASIX certificate and all required commitments must be satisfied.

47. **Air Conditioning / Offensive Noise**

Air conditioning plant and equipment shall be installed and operated so as to not create an offensive noise as defined under the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Noise Control) Regulation 2008.

48. **Building Finishes**

The building finishes are to be constructed in accordance with the colour board and perspective submitted with the Development Application.

49. **Allocation of Car Parking Spaces**

A minimum of 54 off street car parking spaces shall be constructed, drained, marked and maintained at all times in accordance with the approved plans. These spaces shall be allocated as follows:

- a) 45 are to be allocated to the residential units.
- b) 9 are to be allocated as visitor parking spaces.

50. **Residential Car Parking Spaces**

A minimum of one (1) unrestricted car parking space shall be allocated to each residential unit.

51. **OSD Markers**

All on-site stormwater storages that experience permanent or temporary ponding shall be indicated on the site by fixing a marker plate.

52. **Visitor Parking**

A directional sign shall be provided at the front of the site indicating the availability of visitor and/or customer parking on site. Those visitor and/or customer spaces shall be marked or signposted.

53. Planting or Walls

Planting or walls adjacent the driveway near the boundary shall comply with the requirements of “AS/NZS 2890.1:2004 - Off Street Car Parking, Section 3.2.4(b)”.

54. Works Zone

The installation of a "Works Zone" for the site will require the approval from the Traffic Advisory Committee. As a result, the applicant shall provide a formal request to Council's Traffic Section with the duration and exact location of the required "Works Zone" at least 6 weeks prior to its required installation date. All costs associated with the installation of a "Works Zone" will be at the applicants expense.

55. Road Closure Application

A Road Closure Application form and associated documents shall be submitted to Council for approval at least 5 business days prior to any proposed lane usage for concrete pours, cranes or other activities involved in the demolition, excavation and construction on the site.

56. Tree Protection - Excavation

Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not adversely be affected.

Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project Arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

Tree Protection Zone (TPZ) around the trees to be retained are not to have soil level changes 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.

SECTION E – Prior to Occupation or Subdivision Certificate Conditions

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

57. Adaptable Housing Certification

Certification shall be provided by a person suitably accredited by the Association of Consultants in Access Australia, verifying that the development has been constructed in accordance with the requirements of AS4299 - Adaptable Housing and AS1428 - Design for Access and Mobility and in accordance with the report and checklist submitted with the Construction Certificate.

(This condition is modified as part of MOD2020/0084 (DA2016/0212))

58. SEPP No 65 Certification

A design verification statement from a qualified designer shall be submitted verifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principals of State Environmental Planning Policy No. 65.

59. Completion of Landscaping

Certification shall be provided from a suitably qualified and experienced Landscape Designer or Landscape Architect. This Certification shall verify that the landscape works have been completed in accordance with the approved detailed landscape plan and relevant conditions of this consent.

Note: A Landscape Designer is a person eligible for membership of the Australian Institute of Landscape Designers and Managers and a Landscape Architect is a person eligible for membership of the Australian Institute of Landscape Architects as a Registered Landscape Architect.

60. Consolidation of Lots

The lots covered by this development consent shall be consolidated into one lot and proof of registration of the consolidation shall be submitted to Council.

61. Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the Sydney Water Act, 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Coordinator, since building of water / sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority.

62. Stormwater Compliance Certificate

A Stormwater Compliance Certificate is to be obtained for the constructed on-site stormwater management systems in conjunction with the works-as-executed drawings and the final inspection. This Certificate is to be signed by an accredited hydraulic engineer (preferably be the original design consultant) and submitted to the Principal Certifying Authority. Copy of the standard Stormwater Compliance Certificate is shown in Council's Water Management Policy.

If the proposed works involve Council owned stormwater infrastructure (or infrastructure to be owned by Council), then the applicant should organise inspection with Council and

pay Council the appropriate inspection fee. Inspection is to be carried out at the following specified stages:

- Prior to backfilling of pipelines trenches.
- Prior to backfilling of drainage connection to pipeline or channels.
- Prior to casting pits and other concrete structures including kerb and gutter, aprons, pathways, vehicular crossings, dish crossings and pathway steps.

63. Positive Covenant

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 owner of the land. The terms of the instrument are to be generally in accordance with the Council's standard terms and conditions for Restriction on Use of the land and Positive Covenant shown in Council's Water Management Policy.

64. Maintenance Schedule

A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted. 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.

65. Verification of Levels

For flood affected properties, a registered surveyor shall verify the levels of the design overland runoff path and finished floor levels to AHD and according the approved plans.

66. Fire Safety Schedule

Certain items of equipment or forms of construction shall be nominated as "fire safety measures" within the building.

Upon completion of works, and before occupation of the building, each of the fire safety measures is required to be certified by an appropriately competent person (chosen by the owner of the building). The certificate is to state that the measure was inspected and found to be designed, installed and capable of operating to a standard not less than that required by the relevant regulations.

Further, it is the responsibility of the owner of the building that each fire safety measure is again inspected and certified as to its condition every twelve (12) months following the submission to Council of the original certification.

67. BASIX Completion Receipt

In accordance with clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the certifying authority must apply to the Director-General for a BASIX completion receipt.

SECTION F – Prescribed Conditions

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

68. Compliance with the Building Code of Australia

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

69. Insurance Requirements under Home Building Act 1989

The builder or person who does the residential building work must comply with the applicable requirements of Part 6 of the Home Building Act, 1989. This means that a contract of insurance must be in force in accordance with Part 6 of that Act before any building work authorised to be carried out by the consent commences.

It is the responsibility of the builder or person who is to do the work to satisfy Council that they have complied with the applicable requirements of Part 6 of the Home Building Act, 1989.

If Council is the Principal Certifying Authority it will not carry out any inspections until a copy of the insurance certificate is received.

70. Erection of Signs

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

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

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

71. Notification of Home Building Act 1989 Requirements

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

72. **Shoring and Adequacy of Adjoining Property**

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

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

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

73. **Council Notification of Construction**

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

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

SECTION G – Demolition Conditions

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

74. **Demolition Conditions-Asbestos**

- (a) Demolition of buildings where asbestos is determined to be present should only occur 7am – 5pm Monday to Saturdays, and must not occur on Sundays or Public Holidays, to ensure that the persons carrying out the work have access to WorkCover professionals if required.

- (b) All asbestos removal shall be undertaken in accordance with the requirements of WorkCover's 'How to Safely Remove Asbestos' Code of Practice and Council's Asbestos Policy.
- (c) Written notice must be provided to Georges River Council five (5) working days (excluding public holidays) prior to commencement of any works.

Written notice is to include the following details:

- Date the demolition will commence
- Name, address, contact details (including after hours) and licence number of the demolisher and asbestos removalist (if different)

Work must not commence prior to the nominated demolition date.

Note: it is the responsibility of the persons undertaking demolition work to obtain the relevant WorkCover licences and permits.

- (d) The owner is to notify all owners and occupiers of premises on either side, opposite and at the rear of the development site five (5) working days prior to demolition. Such notification is to be clearly written on A4 size paper stating the date the demolition will commence and is to be placed in the letterbox of every premises (including every residential flat or unit, if any). The demolition must not commence prior to the date and time stated in the notification.
- (e) A demolition or asbestos removal contractor licensed under the *Work Health and Safety Regulations 2011* must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

- (f) Demolition sites that involve the removal of asbestos must display 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 on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.
- (g) All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.
- (h) A Clearance Certificate or Statement, prepared by a suitably qualified occupational hygienist must be provided to Council upon completion of demolition and asbestos related works, which confirms that the relevant legislative requirements in relation to safe removal and disposal have been satisfied.
- (i) A Work Cover Licensed Demolisher is to be engaged to carry out any demolition works using mechanical equipment where the structure is over 4 metres in height

or to carry out any manual demolition works on a structure over 10 metres in height.

- (j) The provision of temporary fences and footpath crossing pads prior to commencement of demolition operations. Further, no waste materials or bins are to be placed on Council's roadways or footpaths.
- (k) No waste materials are to be burnt on site.
- (l) No trees as defined by Council's Tree Preservation Order being removed or damaged on the site without the prior written approval of Council.
- (m) Compliance with the provisions of Australian Standard AS 2601-1991: "The Demolition of Structures", which requires notification of demolition to be submitted at least seven (7) days prior to demolition to the NSW Workcover Authority.
- (n) Effective erosion and sediment control measures are to be undertaken during the course of demolition and building works in accordance with Council's 'Environmental Site Management Policy'. Failure to implement appropriate measures may result in a \$750 Penalty Infringement Notice (individual) and/or \$1,500 (corporation) being issued and/or the incurring of a maximum penalty of \$250,000 (corporation) or \$120,000 (individual) through the Land and Environment Court.
- (o) Appropriate measures are to be implemented on site to control dust and other air borne matter and demolition material is to be stored and stacked in a manner so as to minimise the risk of damage or nuisance to neighbouring properties.
- (p) Council being notified upon completion of the demolition works so that an inspection can be made of the roadway and footpath.
- (q) All non-recyclable demolition material being disposed of at an approved waste disposal depot. Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept as evidence of approved method of disposal.
- (r) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.

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

END CONDITIONS

NOTES/ADVICES

1. Review of Determination

Section 82A 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.

2. Appeal Rights

Division 8 (Appeals and Related matters) Part 4 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.

3. 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 95 of the Environmental Planning and Assessment Act 1979 as amended.

4. Worksite Safety

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

5. Worksite Safety Scaffolding

Council is committed to worksite safety and requiring that all scaffolding is installed by competent and qualified professionals with the relative appropriate standards. The applicable Australian Standards for the scaffolding is AS/NZS1576 in respect of the design of the scaffolding and AS/NZS4576 with respect to the erection of the scaffolding. Also, you should ensure that those erecting scaffolding are appropriately qualified and have the appropriate qualifications to erect scaffolding. For further information regarding this please see www.workcover.nsw.gov.au.

6. Kid Safe NSW

Kidsafe NSW has produced Safer Homes for Children Design and Construction Guidelines for builders, renovators and home owners. The guidelines identify common hazards for children and recommended practical design applications to improve child safety for all areas of the home. Free copies of the Guidelines are available from Council's Customer Service Centre, or

contact Kidsafe on (02) 9845 0890 or their website <http://www.kidsafensw.org/homesafety/index.htm> for more information.

7. Dial Before You Dig

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

8. Disability Discrimination Act

This authorisation does not imply that the proposal complies with *Disability Discrimination Act 1992*. The Proponent is responsible to ensure compliance with this and other anti-discrimination legislation. The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS 1428.1 – Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under *The Disability Discrimination Act 1992*.

9. Demolition Waste

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

10. Property Address

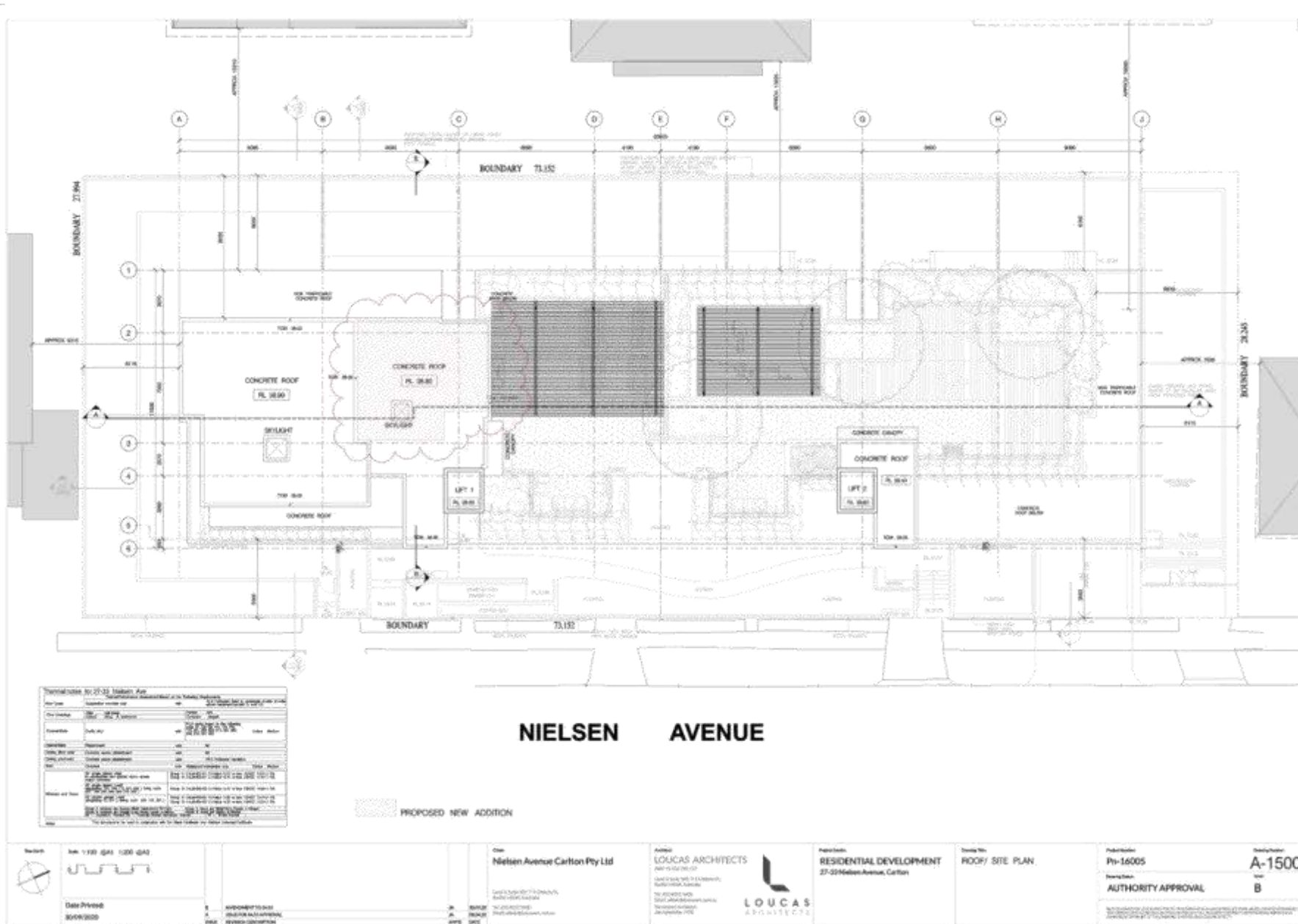
Property addresses shall be allocated by Council in accordance with the Addressing Standard AS/NZS 4819:2011.

11. Stormwater

The Flood Planning Level (FPL) of Lot 23 of DP5452 is identified at RL 23.11m (AHD). The Flood Planning Level (FPL) of Lot 24 of DP5452 is identified at RL 23.84m (AHD). Lots 25 and 26 of DP5452 are affected by the Probable Maximum Flood (PMF) but not the 1 in 100 year flood. The development has been approved with a Finished Floor Level upon submission and review of the document *27-33 Nielsen Avenue – Flood Level Summary* by Cardno dated 9 June 2017.

ATTACHMENTS

- Attachment [1](#) Roof Plan - 27-33 Nielson Avenue Carlton
- Attachment [2](#) South East Elevation - 27-33 Nielson Avenue Carlton
- Attachment [3](#) North East and South West Elevations - 27-33 Nielson Avenue Carlton
- Attachment [4](#) North West Elevation - 27-33 Nielson Avenue Carlton







**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 15 OCTOBER 2020**

LPP052-20

LPP Report No	LPP052-20	Development Application No	DA2020/0098
Site Address & Ward Locality	14A Merriman Street Kyle Bay Blakehurst Ward		
Proposed Development	Demolition, construction of a dwelling house and inground swimming pool and retention and extension of the existing garage		
Owners	Mr and Mrs Bosco		
Applicant	Andrew Bosco		
Planner/Architect	Architect: Resolut Building Solutions Planner: BMA Urban		
Date Of Lodgement	9/03/2020		
Submissions	Nil		
Cost of Works	\$1,019,551.50		
Local Planning Panel Criteria	The application relates to development as the proposal contravenes a development standard imposed by an environmental planning instrument by more than 10%		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	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, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Draft Amendment to Section C2 – Low Density Development of Kogarah Development Control Plan 2013, Draft Georges River Local Environmental Plan 2020		
List all documents submitted with this report for the Panel's consideration	Site Plan Elevations Clause 4.6 Request for Variation – Clause 6.4 Limited Development in Foreshore Area		
Report prepared by	Senior Development Assessment Planner		

Recommendation	That the application be granted a deferred commencement approval in accordance with the conditions referenced at the end of this report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning	Yes

instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - the application has been accompanied by a request for variation of the Foreshore Building Line under Clause 6.4 of the Kogarah Local Environmental Plan.
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	Yes, conditions (with design changes) made available to the applicant at the time the report is published.

Site Plan



Aerial Photo – Subject site outlined in blue

1. The development application proposes demolition of the existing dwelling and swimming pool and the construction of a two (2) storey dwelling house and in-ground pool. The existing garage is to be retained and extended to accommodate two (2) vehicles with material change to the north wall and the garage door to accommodate two vehicles and in keeping with the proposed external finishes.
2. The proposed development complies with the maximum floor space ratio (FSR), however, the development is forward of the foreshore building line (FBL). A Clause 4.6 Statement has been submitted and is assessed in detail later in this report. The Statement is considered to be well founded and is it recommended for support given the nature and degree of variation that has been applied for.



Figure 1: Photomontage of the proposal – front (north) elevation (source- Resolut Building Solutions)

Site and Locality

3. The site is identified as 14A Merriman Street Kyle Bay, and legally described as Lot Y, DP417411. The lot is a battle-axe allotment with an access handle (3.05m driveway frontage to Merriman Street) on the north western boundary of 14 Merriman Street. The site has a total site area of 771.4sqm, with direct access to Kyle Bay.
4. The site is currently occupied by a single storey detached rendered dwelling, detached garage and an in-ground swimming pool located within the rear setback.
5. The site is affected by a foreshore building (FBL) as indicated in the Kogarah Local Environmental Plan 2012 (KLEP). The FBL extends 15m from the mean high water mark from the south western boundary adjacent to Kyle Bay.
6. Adjoining the site to the north east is a single storey rendered dwelling (14 Merriman), to the south east is a two (2) storey brick dwelling (16 Merriman). Merriman Foreshore Reserve and Kyle Bay Bowling Club (local heritage item I115) adjoins the site to the west.

7. The locality contains a mixture of contemporary and older style single and two (2) storey dwellings.

Zoning and Permissibility

8. The subject site is zoned R2 Low Density Residential under the provisions of KLEP 2012. The proposed demolition and construction of a dwelling house and swimming pool is permissible with consent.

Submissions

9. The development application was publicly exhibited in accordance with the provisions of the Kogarah Development Control Plan 2013. No submissions were received.

Reason for Referral to the Local Planning Panel

10. The application is referred to the Local Planning Panel for consideration and determination as the proposal contravenes a development standard imposed by an environmental planning instrument by more than 10% (namely Clause 6.4 – Limited Development in Foreshore Area).

Issues of Concern

11. The proposal has been assessed against the planning controls contained in Kogarah Local Environmental Plan (LEP) 2012 and Kogarah Development Control Plan (DCP) 2013. There are a number of areas of non-compliance with the planning control, namely:
- Encroachment within the foreshore building line under KLEP 2012 (extent of variation is between 2.18m to 4.9m at ground level and 1.946m to 3.366m at first floor level). This is supported by a clause 4.6 request for a variation;
 - Building setbacks under Kogarah DCP 2013 (for both the foreshore building line as mentioned above, and also the nil setback to the eastern boundary for the existing garage);
 - Visual privacy under Kogarah DCP 2013 (to be resolved via conditions as recommended);
 - Swimming pool requirements under Kogarah DCP 2013 (waterline setbacks to boundaries, and filling under the pool coping – both to be resolved via conditions as recommended);
12. Despite the areas of non-compliance, the proposal is considered to be acceptable as discussed within the body of the report. It is noted that under the provisions of the Environmental Planning and Assessment Act 1979 (Clause 4.15(3A)(b)) – the consent authority is required to be flexible in applying the provisions of a Development Control Plan, and allow reasonable alternative solutions that achieve the objects of those provisions.
13. The areas of non-compliance are either justifiable having been resolved via amended plans throughout the DA process to date and/or can be addressed via conditions of consent for further amendments to be made.
14. In particular, it is noted that the existing dwelling (single storey) on the site also breaches the foreshore building line to a greater extent than the proposed dwelling (two-storey). The proposed dwelling also has a similar rear (foreshore) setback to adjoining developments in this location.

Conclusion

15. The proposed development has been assessed having regard to the matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The proposal is acceptable subject to amendments and it is recommended for a deferred commencement determination subject to the conditions referenced at the end of this report.

Report in Full Proposal

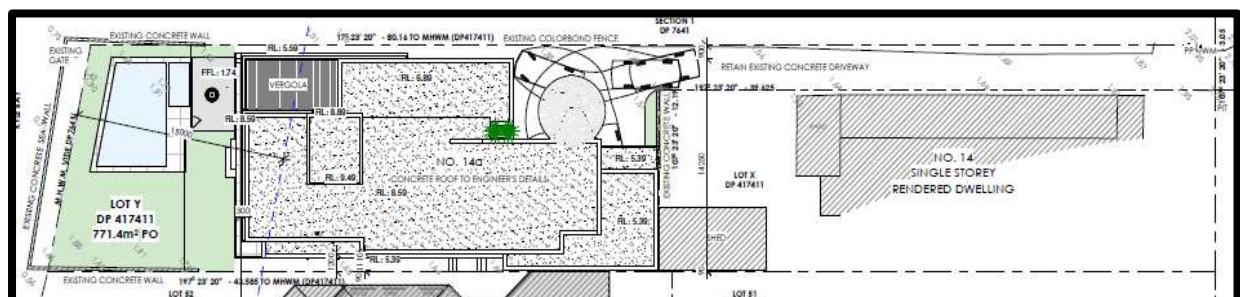
16. The development application proposes demolition of the existing dwelling and swimming pool and the construction of a two (2) storey dwelling house and in-ground pool. The existing garage is to be retained and extended to accommodate two (2) vehicles with material change to the north wall and the garage door to accommodate two vehicles and in keeping with the proposed external finishes.
17. A detailed description of the proposal is as follows:
- Demolition of the existing dwelling and swimming pool.
 - Retention and extension of the existing garage.

Ground floor level

- Alteration and extension of the existing garage which contains a workshop. The garage manoeuvring is to be accessed via a turntable.
- Dwelling entry.
- Home office.
- Rumpus room.
- Laundry.
- Mud room.
- Powder room.
- Open plan kitchen with walk in pantry, dining and lounge areas
- Alfresco area including a BBQ area.
- WC, pool equipment and store area accessed from the eastern side of the lounge dining area.
- In-ground swimming pool and adjoining deck.
- Landscape works.

First floor level

- Master bedroom with W.I.R., dresser and ensuite.
- Two bedrooms with W.I.R.'s. and one with an ensuite.
- One bedroom.
- Common bathroom.
- Void located above the circulation corridor.



The Site and Locality

18. The subject site is located on the south western side of Merriman Street, Kyle Bay. The site is located approximately 136m from the intersection of Merriman Street and Waratah Street.
19. The site is legally described as Lot Y, DP417411. The lot is a battle-axe allotment with an access handle (3.05m driveway frontage to Merriman Street) on the north western boundary of 14 Merriman Street. The site has a total site area of 771.4sqm, with direct access to Kyle Bay.
20. The land falls gently from the street to the rear boundary.
21. The site is currently occupied by a single storey detached rendered dwelling, detached garage and in-ground swimming pool within the rear setback.
22. The site is affected by a foreshore building (FBL) as indicated in the Kogarah Local Environmental Plan 2012 (KLEP). The FBL extends 15m from the south-western boundary adjacent to Kyle Bay.
23. Adjoining the site to the north east is a single storey rendered dwelling (14 Merriman Street), to the south east is a two (2) storey brick dwelling (16 Merriman Street). Merriman Foreshore Reserve and Kyle Bay Bowling Club (local heritage item I115) adjoins the site to the west.
24. The locality contains a mixture of contemporary and older style single and two (2) storey dwellings.

PLANNING ASSESSMENT

25. The subject site has been inspected and the development has been assessed under the relevant Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

State Environmental Planning Policies

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

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy (Infrastructure) 2007	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	N/A
State Environmental Planning Policy (Coastal Management) 2018	Yes

Deemed State Environmental Planning Policy – Georges River Catchment

27. 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. However,

landowners consent from the Road and Maritime Services (RMS) is required for the construction of the proposed stormwater pipe through the section of reclaimed land forward of the MHWM. Deferred commencement condition is recommended requiring land owners consent to be obtained and proposed from the RMS to activate the consent.

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

28. 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').
29. A BASIX Certificate prepared by Sustainability-Z Pty Ltd, dated 12 February 2020, certificate number 1025670S-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

30. 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.
31. 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.
32. The site has a history of residential uses and as such, site contamination is not suspected.
33. Based on the information provided, a contingency condition has been included in the recommended conditions detailing what is required to take place should unexpected contamination be found during demolition, excavation and construction.

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

34. The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP') regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
35. 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).
36. The Vegetation SEPP repeals clauses 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan, with the regulation of the clearing of vegetation (including native vegetation) below the BOS threshold being through any applicable DCP.
37. 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, there is no significant vegetation on immediately adjoining properties in close proximity to the site that is likely to be impacted by the development.

State Environmental Planning Policy (Coastal Management) 2018

38. 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.
39. 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”.
40. 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,*
 - to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,*
 - to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.*

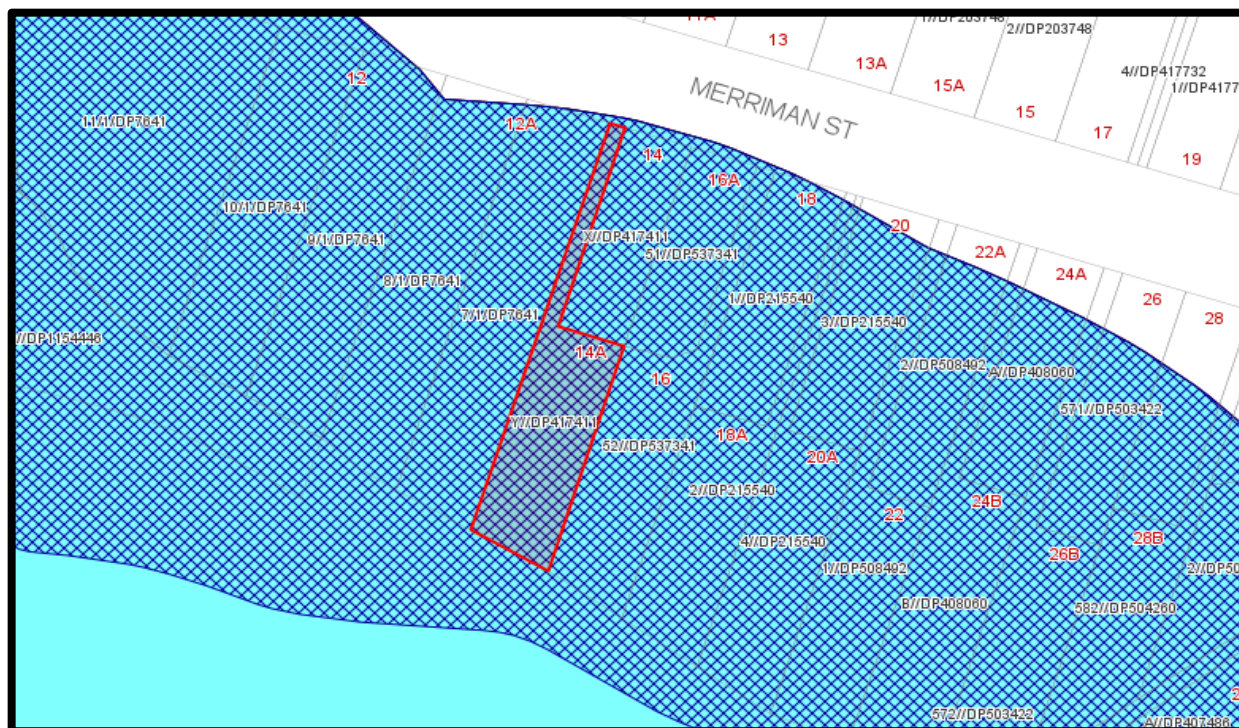


Figure 3: Coastal use area (SEPP Coastal Management 2018) with the site outlined in red

41. The following is an assessment of the matters for consideration listed under the SEPP as applicable to the Coastal Environment Area and Coastal Use Area.

SEPP Control	Proposal	Complies
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Division 3 Coastal Environmental Area**13. Development on land within the coastal environment area**

(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 and imposition of a deferred commencement condition and standard conditions to require the infrastructure to be installed. The proposal does not include the removal of vegetation/trees. Deferred commencement determination has been recommended requiring land owner's consent from the RMS to permit the construction of the proposed storm water discharge pipe through a section of reclaimed land in order to drain the site via gravity into Kyle Bay.	Yes
(b) coastal environmental values and natural coastal processes,		
(c) the water quality of the marine estate (within the 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,	The site is not located on any of the sensitive coastal lakes identified in Schedule 1.	N/A
(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 works are forward of the FBL however, will have limited impact on the marine vegetation given the existing dwelling and pool are currently within forward of the FBL.	Yes

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(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 Kyle Bay through this site or impacted by this development.	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 sub clause (1), or	The proposed dwelling although partially forward of the FBL is well sited and will be managed to avoid adverse impact on the marine habitat. The subject site is privately owned and currently does not afford or prevent public access to the waterway.	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		
Division 4 Coastal use area		
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 the Georges River, no access currently exists.	N/A
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	There is minimal overshadowing impacts generated by the proposal on the adjoining Merriman Reserve between 9am and 12pm 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 of this location when viewed from the waterway. The dwelling is consistent in scale and form of adjoining development.	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 proposed dwelling although partially forward of the FBL is well sited and will be managed to avoid adverse impact on the marine habitat. The subject site is privately owned and currently does not afford or restrict public access to the waterway.	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 regard to development forward of the FBL by approximately 7.4m to the rear of the deck. The proposal is considered appropriate in bulk and scale and although does not satisfy FBL in KLEP it is consistent with the built form of the immediately adjoining developments and is supported.	Yes

42. Generally, the proposed development is consistent with the management objectives of the SEPP. The bulk, scale and positioning of the proposal is generally compliant with the controls in Kogarah DCP 2013 and this will assist to ensure that the proposal is consistent with the objectives and controls of the SEPP (Coastal Management) 2018. Although the proposal is forward of the FBL it will have limited impact on the marine vegetation given the existing interface with the waterway is highly modified with an existing seawall in place. The proposal is considered acceptable and will not have an unreasonable impact on the visual quality and amenity when viewed from the waterway public domain.

43. The subject site is zoned R2 Low Density Residential under the provisions of the Kogarah Local Environmental Plan 2012.

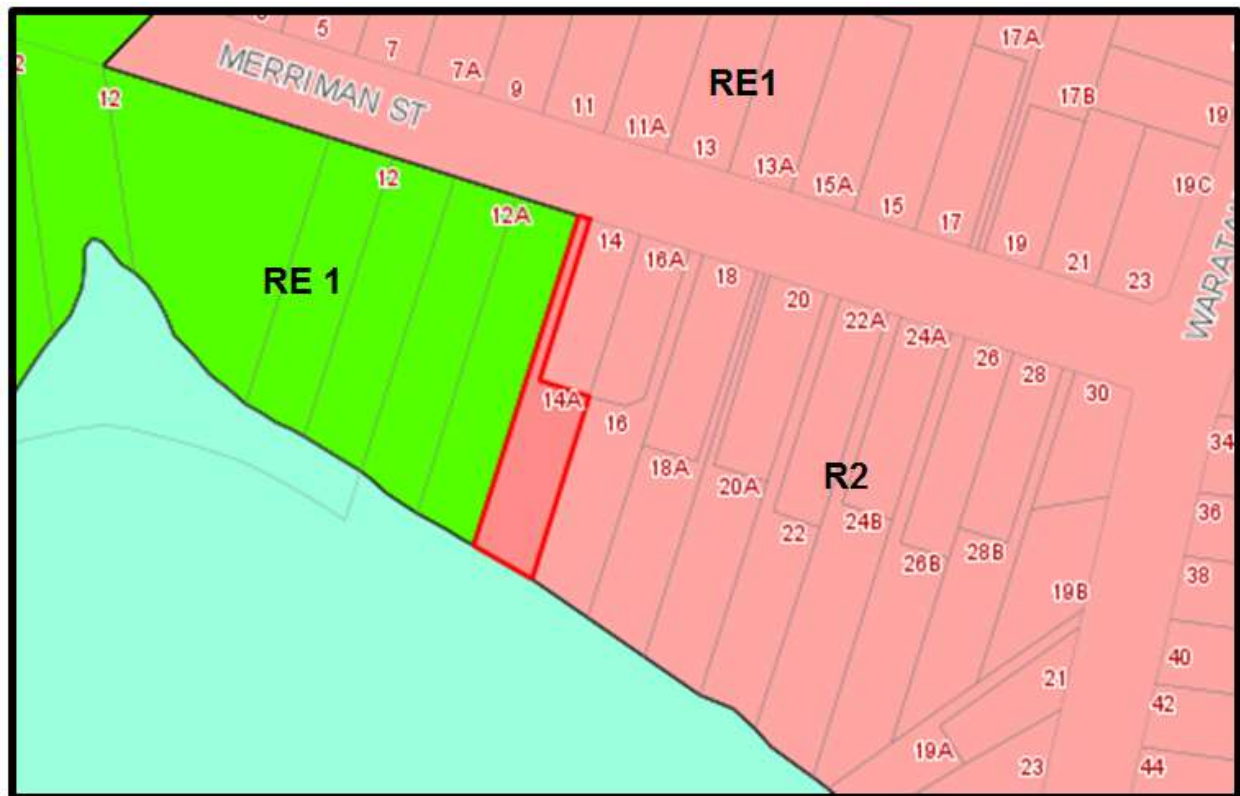


Figure 4: Zoning map – site outline in red (source- Intramaps)

44. The proposed development is demolition and construction of a dwelling house and swimming pool and additions to an existing garage which are all permissible land uses in the zone.
45. The extent to which the proposed development complies with the Kogarah Local Environmental Plan 2012 is detailed and discussed in the table below.

Clause	Standard	Proposed	Complies
Part 1 – Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is considered to be consistent with the aims of the plan.	Yes
1.4 – Definitions	Dwelling House means: <i>a building containing only one dwelling.</i>	The proposed development is consistent with the definition.	Yes
Part 2 - Permitted or prohibited development			
2.3 - Zone objectives and Land Use Table	Meets objectives of R2- Low Density Residential Zone. Development must be permissible with consent	The proposal meets all objectives. The proposal for demolition, a dwelling house and swimming pool all permissible with development consent.	Yes Yes

Part 4 - Principal Development Standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The proposal has a maximum overall height of 7.96m.	Yes
4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential, Clause 4.4A applies.	Refer to Clause 4.4A
4.4A – Exceptions to floor space ratio for residential accommodation in Zone R2	<p>2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>Site area</p> <ul style="list-style-type: none"> Maximum floor space ratio less than 650sqm 0.55:1 less than 800sqm but not less than 650sqm [(lot area – 650) × 0.3 + 357.5] ÷ lot area:1 less than 1,000sqm but not less than 800sqm [(lot area – 800) × 0.2 + 402.5] ÷ lot area:1 less than 1,500sqm but not less than 1,000sqm [(lot area – 1,000) × 0.15 + 442.5] ÷ lot area:1 not less than 1,500sqm [(lot area – 1,500) × 0.1 + 517.5] ÷ lot area:1 	<p>The proposed development has a total FSR of 344.2sqm or 0.44:1</p>	Yes

	Site area: 771.4sqm Maximum FSR: 0.51:1 or 393.92sqm		
4.6 – Exceptions to development standards	In accordance with Clause 4.6 (1) through to and including (8)	The proposal is accompanied by a Clause 4.6 variation relating to the breach of Limited development on foreshore area standard (i.e. the Foreshore Building Line) under Clause 6.4.	Refer to the Clause 4.6 assessment below.
Part 5 - Miscellaneous Provisions			
5.7 – Development below mean high water mark	(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).	The proposal does not involve works below the Mean High Water Mark.	Yes
5.10 – Heritage conservation	In accordance with Clause 5.10 (2)	The site is not a heritage item and is not in a heritage conservation area. The Kyle Bay Bowling Club (I115) is located approximately 80m to the west.	See comments below.
<p><u>Heritage conservation</u> Kyle Bay Bowling Club (KBBC) (Schedule 5 local heritage item I115) is historically significant as a representation of a Post-War international style building c1950 and is socially significant as a community focus for the local community.</p> <p>The proposal is approximately 110m from the KBBC across the expanse of Merriman Reserve, its associated car parking area and mature stand of trees adjacent to the western boundary of the proposal. The proposal is of an architectural style consistent with development in the area, having limited impact on the KBBC heritage significance.</p>			
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 subject land is not within a bush fire prone area.	N/A
Part 6 - Additional Local Provisions			
6.1 – Acid sulfate soils	(2) Development consent is required for the carrying out of works described	Subject site is located in a Class 2 Acid Sulfate Soils Area.	No - deferred commencement

	<p>in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</p> <p>Class 5: Works within 100 metres of adjacent Class 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 2, 3 or 4 land.</p>	<p>The site is classified as a Class 2, with works that is below 5 metres AHD. An Acid Sulfate Soils Preliminary Assessment was undertaken and established an Acid Sulfate Soils Management Plan is required.</p>	<p>condition imposed requiring Acid Sulfate Soils Management Plan.</p>
6.2 – Earthworks	<p>(2) Development consent is required for earthworks unless -</p> <p>(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or</p> <p>(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.</p>	<p>The proposed earthworks are ancillary to the proposed development and are acceptable for this form of development.</p> <p>The DA plans (sections) show that the proposed dwelling would involve minimal excavation (mostly for proposed footings), and the swimming pool is to involve excavation of approximately 1m into natural ground level (noting it replaces an existing pool that has been raised above natural ground level).</p>	Yes
6.3 – Flood planning	<p>(2) This clause applies to -</p> <p>(a) land identified as “Flood planning area” on the Flood</p>	<p>The proposed development is not located in a mapped flood prone area.</p>	Yes

	Planning Map, and (b) other land at or below the flood planning level.		
6.4 – Limited development on foreshore area	In accordance with Clause (2) and (3)	The proposal is forward of the FBL within the foreshore area.	No – see Cl 4.6 assessment below.

Request for Variation under Clause 4.6 Kogarah Local Environmental Plan (KLEP) 2012 – Clause 6.4 Limited development on foreshore area

46. The proposed development seeks a variation to the development standard relating to Foreshore Development pursuant to Clause 6.4 of the KLEP. The LEP identifies a Foreshore Building Line (FBL) of 15m for the Site (refer to Figure 5 below). Parts of the proposed building encroach the 15m FBL. A variation to the FBL (Clause 6.4) can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. The Applicant has submitted a Clause 4.6 Statement to support the non-compliance. An assessment of the statement and reasoning for the variation is discussed below.
47. 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”.

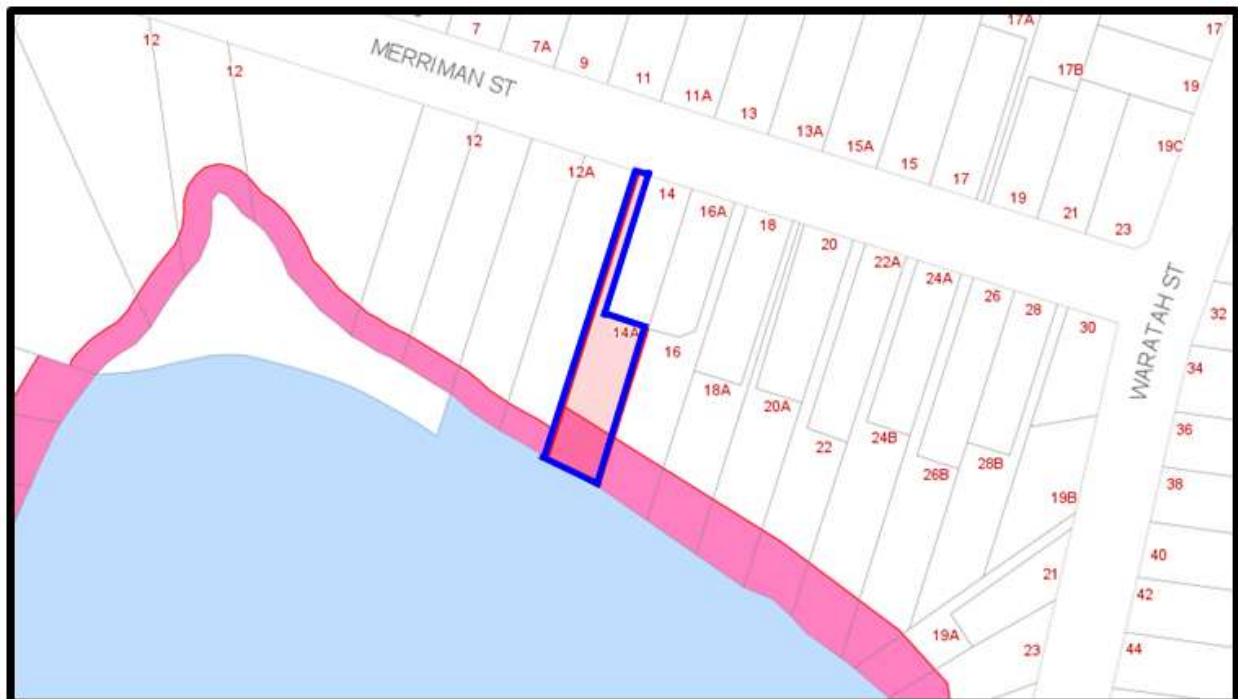


Figure 5: FBL map – the site outlined in blue (source Intramaps)

48. The site has a Foreshore Building Line (FBL) of 15m as per KLEP 2012. The proposed development is for the construction of a new dwelling, replacing a dwelling which is located partially within the foreshore area. It is noted that the proposal will not result in any further encroachment in a south easterly direction beyond the established rear building line. The proposal will reduce the extent of the encroachment by a reduction of

the ground floor building footprint. Numerically, if the encroachment is measured as a ratio between the established foreshore building line (15m) and the mean high water mark, the building at its most south easterly portion (10.1m setback between building and mean high water mark), the building encroaches approximately 32.7% past the 15m foreshore building line.

49. The existing building at its most south easterly portion (7.06m setback between building and mean high water mark), the existing building encroaches 53% past the 15m foreshore building line. This is only on a numerical basis and does consider the volume of built form encroaching past the 15m foreshore building line.
50. It is acknowledged that calculating the encroachment as a ratio between the established foreshore building line (15m) and the mean high water mark is purely to yield a numerical value and does not consider the scale of the built form encroaching past the 15m foreshore building line. An assessment against clause 4.6 and clause 6.4 has been undertaken to establish whether the encroachment in this case has sufficient environmental planning grounds to justify contravening the development standard and to establish if compliance with the development standard is unreasonable or unnecessary in the circumstances of this case.



Figure 6: Foreshore building line with respect to the existing dwelling – 14A Merriman Street Kyle Bay

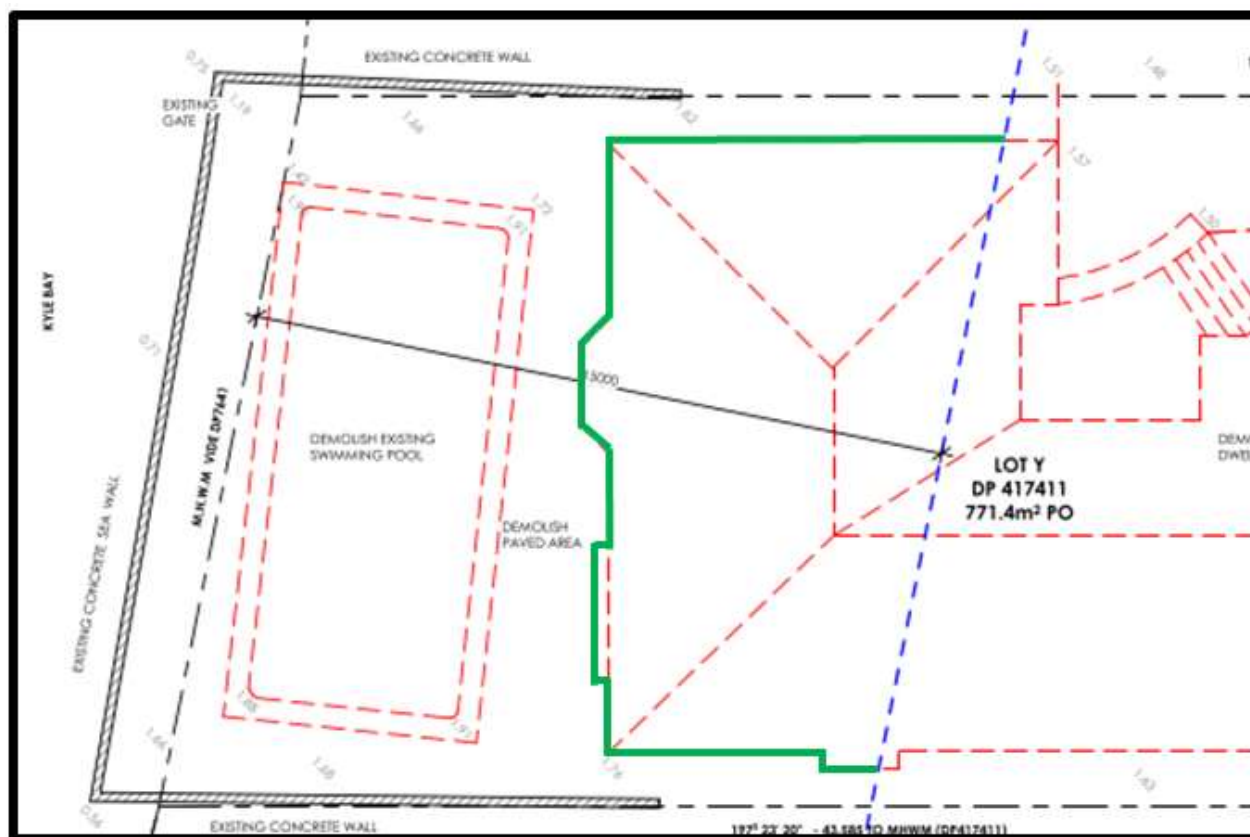


Figure 7: Existing forward most part of the dwelling showing in green

Clause 4.6(3)(a) 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

52. 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.*
53. 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.
54. 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;*
55. *Applicants comment: In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.*
56. *The sole objective of the control is to ensure that development in the foreshore are will not impact on natural foreshore processes, or affect the significance and amenity of the area.*
 - *ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance of the amenity of the area.*
57. *In addressing this objective, we firstly rely on the detail provided in address of Clause 6.4 Limited Development on the Foreshore Area identified on pages 23 through to 25 of the SEE prepared by BMA Urban dated 10 February 2020. In summary:*
 - *The development will not adversely impact on natural foreshore processes or affect the significance and amenity of the area;*
 - *There is no existing public access to the intertidal area where such access would cause adverse environmental impact;*
 - *The development will not have any adverse impact on water quality and will improve the quality of urban run-off entering waterways by implementing a new stormwater system;*
 - *The foreshore is already highly modified in its existing form;*
 - *The development minimises any adverse visual impact of development when viewed from adjacent land and waterways by using a design and materials that complement the natural landscape of the foreshore area;*
 - *The extent of cut and fill is minimised resulting in no discernible change to the natural topography of the foreshore area; and,*
 - *The development has no impact on the public use of the waterways.*
58. *Reference is also made to Figure (6) above which demonstrates the current extent of the FBL incursion observed by both neighbouring dwellings and that of the existing dwelling on the land. The approval and subsequent construction of these defining dwellings and or their ancillary structures along the foreshore, further exemplifies that the natural foreshore processes remain steady and undisrupted by their location and siting beyond the FBL. In terms of the proposed dwelling, it presents a build form, scale and materiality that does not unreasonably impose on its setting but rather, re-establishes a more sensitive relationship with the foreshore. As demonstrated the proposed dwelling (including the ground level terrace), is predominately setback beyond the building line observed by the existing dwelling proposed to be demolished on the site. In this regard, the extent of the breach beyond the FBL will not result in any discernible visual impact or jarring of the waterscape setting nor will it result in an adverse impact to either the significance or amenity of the area.*
59. *Comment: The proposal relies solely on first method. The proposal is considered to be consistent with the objectives of Clause 6.4 Limited Development in Foreshore area, notwithstanding the variation. The applicant has outlined that the development is for the rebuilding of an existing building partly in the foreshore area as per Clause 6.4(2)(a), and has satisfactorily demonstrated that the proposal is capable of achieving the criteria as set by Clause 6.4(3).*

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
60. 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;*
61. 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;*
62. Comment: The standard has not been abandoned by Council through its actions in granting consent for other developments within the Georges River Council LGA that depart from the standard. The control continues to be applied in the assessment of applications.
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.*
63. Comment: The proposed 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.
64. 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 to justify contravening the development standard. This conclusion has been reached for the following reasons:
 - The existing building is located partly in the foreshore area and clause 6.4 (2)(a) permits the rebuilding of a dwelling which is wholly or partially located in the foreshore area.
 - The proposal will not result in any further encroachment in a south easterly direction beyond the established rear building line of the existing dwelling.
 - The proposal will be not be inconsistent with the established rear building line as observed along the foreshore allotments in the immediate locality.
 - The proposal has been designed to ensure compatibility with the character of the foreshore area and enhance the visual quality of the built form.
65. Clause 4.6(3)(b) states that:
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

66. The applicant demonstrated that there are sufficient environmental planning grounds as summarised below:
67. *The proposal seeks the provision of an FSR of 0.446:1 or 344sqm and height of 7.96m that is notably below the maximum FSR and height enabled to the land. The variation does not establish a precedent in the locality that would derogate from the objectives of the zone.*
68. *The proposed development is of a form and scale that is not incompatible with that envisaged by the planning strategies applicable to the land. It is also submitted that the well articulated building facades inclusive of the diverse range of material combinations serve to provide a development scale and form congruous with that of the setting.*
69. *The design, layout and built form of the development most notably identified by the FBL breaching elements, are an appropriate response to the site and its context where they will remain in unity with the planned residential density envisaged for the area despite the breach.*
70. *Furthermore, the breaching elements have been designed as far as practical with the intent of mitigating any adverse impact on immediately adjoin lands in terms of solar access and privacy.*
71. *In dealing with the sufficient environmental planning grounds Preston CJ in Intial Action considers that it is available to the applicant to also deal with the Objects of the (EP&A) Act under S1.3 in order to demonstrate that grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, we consider how the proposed development is consistent with each object.*
72. *The objectives of this Act and how this proposal responds to the object are as follows:*

Objectives	Comments
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	<i>This object is not relevant to this development.</i>
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	<i>The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social consideration will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.</i>
<i>(c) to promote the orderly and economic use and development of land,</i>	<i>The proposed development will promote orderly and economic use of the land by way of providing a land use intensity consistent with that envisaged by Council</i>
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	<i>This object is not relevant to this development.</i>
<i>(e) to protect the environment, including the conservation of threatened and other</i>	<i>The proposal will have no detrimental impact on any endemic vegetation,</i>

<i>species of native animals and plants, ecological communities and their habitats,</i>	<i>ecological communities and or their habitats.</i>
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<i>This objective is not relevant to this development</i>
<i>(g) to promote good design and amenity of the built environment,</i>	<i>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 foreshore character.</i>
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	<i>The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.</i>
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	<i>This objective is not relevant to this development.</i>
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	<i>The proposed development has been publicly notified in accordance with Council's DCP requirements.</i>

73. Officer comment: The written request adequately addresses the matters in subclause (3). Sufficient environmental planning grounds have been demonstrated that the building encroachment past the foreshore building line will not unreasonably impact upon the amenity of adjoining residents and the locality and will not result in an undesirable precedent. It is noted prior to resolving if compliance with the limited development in foreshore area development standard 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 specifically –
- (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*
74. 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 limited development in foreshore area development standard is provided below.
75. The objectives of the R2 – Low Density Residential are considered to be achieved as detailed below albeit non-compliance with limited development in foreshore area development standard.

Zone R2 – Low Density Residential Objectives	Response
To provide for the housing needs of the community within a low density residential environment.	The proposed development will provide for low density residential housing within the locality and will improve the quality of the neighbourhood by improving the appearance and amenity of the existing dwelling stock. The development forward of the foreshore building line is a single dwelling and consistent with the R2 zone objective.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal will have limited impacts on the ability of other land uses to provide facilities and services within the locality given all surrounding properties within the immediate vicinity are primarily residential. The adjacent reserve and Kyle Bay Bowling Club are not residentially zoned.

76. When considering the objective of Clause 6.4, subclauses Clause 6.4(2) and 6.3(3) need to be taken into account as they have been constructed to assist in the interpretation of the Clause and aim to provide an indication of development that is considered to be acceptable along the foreshore. Clause 4.6(2) states that development consent must not be granted to development on land in the foreshore area except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,**
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, works to enable pedestrian access to the waterway, swimming pools, fences, cycleways or walking trails.*

77. In terms of compliance with Clause 6.4(2) the proposal complies as the proposal fits within the category of Clause 6.4(2)(a) as it is development that it involves “the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area”. It is noted that the proposal does not extend further beyond the FBL than the development that presently exists on site. This dwelling will improve the extent of the breach by 3.04m.
78. Clause 6.4(3) requires a detailed assessment of the proposal against a series of provisions to ensure there are no detrimental impacts on the foreshore in terms of environmental, cultural, social and visual impacts:

Clause 6.4 (3) Provisions	Response
(3) Development consent must not be granted under this clause unless the consent authority is satisfied that—	
(a) the development will contribute to achieving the objectives for the zone in which the land is located, and	The dwelling will continue to achieve the objectives in the R2 zone.
(b) the appearance of any proposed structure, from both the waterway	The two (2) storey dwelling as viewed from the waterway will be compatible with the

<p>and adjacent foreshore areas, will be compatible with the surrounding area, and</p> <p>(c) the development will not cause environmental harm such as—</p> <ul style="list-style-type: none"> (i) pollution or siltation of the waterway, or (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or (iii) an adverse effect on drainage patterns, and <p>(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and</p> <p>(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and</p> <p>(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and</p> <p>(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and</p> <p>(h) sea level rise or change of flooding patterns as a result of climate change has been considered.</p>	<p>surrounding development in the immediate locality.</p> <p>The proposed dwelling will be largely located within the existing footprint of the dwelling and does not propose to intensify the use. The application has been assessed with regards to stormwater and the proposed method of drainage has been supported by Council's engineers.</p> <p>The development will not result in a change in circumstances of the use of the waterway or public open space.</p> <p>The proposed development will not alter any existing access arrangement.</p> <p>The proposed dwelling will largely be located within the footprint of the existing dwelling. The existing interface with the waterway is highly modified with an existing seawall and this will remain in place and will not be altered or removed.</p> <p>Although the existing dwelling is located forward of the FBL, the dwelling to be constructed will reduce the extent of the breach, therefore will not impact the amenity or aesthetic of the foreshore.</p> <p>The dwelling has been appropriately located to protect against rise in sea levels due to climatic changes.</p>
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79. 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.
80. In accordance with clause 64 of the Environmental Planning and Assessment Regulation 2000, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

81. 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))”*
82. Contravention of the limited development in foreshore area development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.
83. Despite the non-compliance in terms of the foreshore building line, the proposed variation is considered to be a reasonable planning and urban design outcome given that the variation satisfies the provisions as set by clause 6.4, the zone objectives, and the non-compliance does not conflict with the public interest. It is considered that the Clause 4.6 Statement dated 16 July 2020 is well founded.

Draft Georges River Local Environmental Plan 2020

84. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
85. 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.”*
86. In relation to this development site the zoning, height and floor space ratio remain unchanged.

Development Control Plans

Kogarah Development Control Plan 2013 (Part C1 – Low Density Housing)

87. The proposal is subject to the provision of Kogarah Development Control Plan 2013 (Part C1 – Low Density Housing). These provisions are addressed in more detail below.

Control	Standard	Proposed	Complies
1.2 Building Scale and Height			
1.2.1 Floor space Requirements	(5) Blank walls and flat facades should be avoided. Walls longer than 10m should be articulated by a minimum 300mm projection or indentation in the façade.	The proposed development is sufficiently articulated.	Yes
	(6) The overall building should present a building mass that is in proportion with the allotment size, provides opportunities for	The proposed building mass is in proportion with the allotment size. The proposal is compliant with height and FSR and provides adequate articulation.	No – see garage setback comment below.

	<p>modulation and articulation of the building and does not detract from the satisfaction of any other applicable design principle.</p> <p>(7) Where proposed development includes a two (2) residential level element, then the second level should not extend beyond 60% of the depth of the allotment measured from the street boundary. Where side boundaries are of varying length, the second level is limited to a line across the block between the points on both boundaries.</p>	<p>60% depth = 27.22m</p> <p>Proposed first floor element = 25.64m.</p>	Yes
1.2.2 Building Heights	<p>(1) The maximum building height must comply with the requirements specified in table below:</p> <p>Dwelling Type Single dwelling;</p> <p>Maximum Height 7.2m to the underside of the upper ceiling;</p> <p>7.8m to the top of the parapet;</p>	<p>6.98m</p> <p>7.82m</p> <p>The proposal involves a very minor (2mm) departure from the maximum parapet height control, but complies with the building height outline in the KLEP 2012 and this prevails over the KDCP 2013.</p>	<p>Yes (underside of ceiling height)</p> <p>No (parapet height)</p>

1.2.3 Rhythm of the Built Elements in the Streetscape	<p>(1) The primary building façade should not exceed 40% of the overall width of the total frontage.</p> <p>(2) The secondary building façade should be set back a minimum of 1.5 metres from the primary building façade.</p> <p>(3) Where the dominant built form in the streetscape provides for a pitched hip or gable ended presentation to the street, the new buildings and/or additions should reflect that roof form.</p>	<p>The primary façade is 4.25m or 27.8% of the overall width of the total frontage.</p> <p>N/A – the site does not have a street frontage.</p> <p>The streetscape is characterised by a mix of pitched and parapet roofs. The proposed development incorporates a parapet design which is acceptable.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p>
1.2.4 Building Setbacks	<p>1.2.4.2 Front Setbacks</p> <p>(1) Where the setback of an adjacent building is greater than 5m, an appropriate setback may be achieved by ensuring development is set back:</p> <p>(i) the same distance as one or the other of the adjoining buildings, provided the difference between the setbacks of the two adjoining buildings is less than or equal to 2.0m (Figure 9); or</p> <p>1.2.4.3 Side and Rear Setbacks</p> <p>(1) The side and rear boundary setbacks should comply with</p>	<p>N/A – the site is a battle-axe allotment.</p>	<p>N/A</p>

	<p>the table below.</p> <p>Rear Setback Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater.</p> <p>Side Setbacks For buildings having a wall height of 3.5m or less, the minimum side boundary setback is 900mm.</p> <p>For buildings having a wall height of greater than 3.5m, the minimum side boundary setback is 1200mm.</p>	<p>If this was a standard allotment, the rear setback would be 6.54m (which is 15% of the site length of 43.585m)</p> <p>However as a foreshore site, this site is subject to FBL of 15m from the MHW. The proposal seeks a variation to the development standard relating to limited development on foreshore area.</p> <p><u>North west side setback</u> Ground floor: 920mm First floor: 4.64m</p> <p><u>South east side setback</u> Ground floor: 900mm Garage nil setback First floor: 1500mm</p>	<p>No - see assessment above – Cl. 4.6 variation.</p> <p>Yes</p> <p>Yes – with the exception of part of the garage – see comments below</p>
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Garage setback

The existing garage which is to be retained and extended to accommodate two (2) vehicles has a nil setback to the south east and north east boundaries. In this location is the boundary alignment of this site and the adjoining properties known as 14, 16 and 16A Merriman Street. Both 14 and 16 Merriman Street have a nil setback to these respective boundaries. The garage at 14 Merriman Street has a nil setback to the rear boundary, while 16 Merriman Street first floor terrace has a nil setback to the north west boundary. 16A Merriman Street complies with rear setback at this junction. The non-compliance of side setback is acceptable given the garage is an extension of existing structure and the two (2) of the three (3) adjoining properties have structures with nil setback in the corner locations (see Figure 8 below).



Figure 8: Alignment of 14, 14A and 16 Merriman Street – elements of nil setback (source – Nearmap 2 Aug 2020)

1.2.5 Fenestration and External Materials	(1) New buildings and alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.	The proposed does not have a presentation to the street frontage, being a battle-axe block. The proposed dwelling will be visible from the public domain, Merriman Reserve, to the west. However, the development is considered to be consistent with the modern design and colour range demonstrated throughout the	Yes
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	<p>(2) Garage doors should not dominate the street front elevation (Figure 16).</p> <p>(3) The roof should be similar to the angle of pitch, materials and colour of roofs in the streetscape (Figure 14).</p> <p>(4) The colours of garages, window frames, and balustrading on main facades and elevations are to be integrated with the external design of the building.</p> <p>(5) Glazing shall be limited to a maximum 35% of the total area of the overall street front façade. This includes both primary and secondary façade bays (Figure 15).</p> <p>(6) Where garaging is in the front façade it should be limited to a maximum of two garage bays, with separate garage door openings of a maximum width of 3m.</p>	<p>immediate vicinity.</p> <p>N/A – battle-axe allotment.</p> <p>The immediate vicinity demonstrates both pitched and parapet roofs, the proposal is consistent with the streetscape.</p> <p>The external facades of the proposed development are considered appropriate for the locality.</p> <p>N/A - the proposed does not have a presentation to the street, being a battle-axe allotment.</p> <p>N/A - the proposed does not have a presentation to the street, being a battle-axe allotment.</p>	<p>N/A</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>N/A</p>
1.2.6 Street Edge	<p>(1) New developments should provide front fencing that complements fencing within the streetscape.</p> <p>(2) Fencing is to be consistent with the requirements of</p>	<p>N/A - the proposed does not have a presentation to the street, being a battle-axe allotment.</p>	<p>N/A</p> <p>Yes</p>

	<p>Section 4.2.</p> <p>(3) Existing vegetation in the front building line setback or on the street verge that contributes to the character of the streetscape should be preserved.</p> <p>(4) The driveway location should not result in the removal of any street trees or removal of substantial trees on the site.</p>	<p>No trees have been nominated for removal.</p> <p>The existing driveway is to be retained and does not result in the removal of any street trees.</p>	<p>N/A</p> <p>Yes</p>
1.3 Open Space			
1.3 Open Space	<p>(1) 15% of the site area must be deep soil landscaped area.</p> <p>(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.</p> <p>(3) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year round use.</p> <p>(4) Where soil and drainage conditions are suitable, unpaved or unsealed landscaped areas should be maximised and designed to facilitate on site infiltration of stormwater.</p> <p>(5) Existing significant trees and vegetation</p>	<p>24.7%</p> <p>The proposed development includes a satisfactory area for private open space.</p> <p>The proposed private open space is appropriately located to achieve solar access.</p> <p>The proposal provides adequate turfed landscaped areas within the rear setback.</p> <p>No on site or street trees have been</p>	<p>No – see comments below</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	must be incorporated into proposed landscape treatment.	nominated for removal.	
<p><u>Landscape Area</u></p> <p>The existing rear setback contains a large swimming pool and impervious surfaces. There is currently no green landscaped area within the rear setback. The proposal provides a smaller swimming pool and introduces deep soil areas with the use of soft landscaping and turfed areas to this rear setback where it interfaces with the waterway. The proposal although it does not comply with KDCP being just below 25%, it is an improved planning outcome for the site with respect to landscaped open space.</p>			
1.4 Vehicular access, parking and circulation			
	(1) Car parking is to be provided in accordance with the requirements in Section B4.	The proposed development is satisfactory having regard to Section B4 of the KDCP 2013.	Yes
	(two (2) spaces required for this development).	2 car spaces required and have been provided.	
	(4) Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	The existing vehicular crossing is to be retained and does not impact on existing on-street parking arrangements or landscaping.	Yes
	(5) Garaging should be setback behind the primary façade.	The garage is forward of the primary façade. This is acceptable given the site is a battle-axe allotment.	Yes
	(6) The maximum driveway width between the street boundary and the primary building façade is 4m.	The existing driveway/access handle remains unaltered by this proposal.	Yes
1.5 Privacy			
1.5.1 Visual Privacy	(1) Windows from active rooms are to be offset between adjacent dwellings so as to avoid direct overlooking onto neighbouring windows.	The ground floor living room windows are located in the rear elevation and the north-western side elevation which adjoins a public reserve. Windows in the south-	No – conditions imposed ensuring first floor windows to the hallway are to be frosted/obscure.

		<p>eastern elevation servicing the rumpus room have a sill height of 1.8m from the FFL. Windows in south-eastern elevation to hallway pose visual privacy issues. Treatment of these openings is required.</p>	
	<p>(2) Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m from any adjoining property boundary.</p>	<p>The proposal does not include terraces or balconies 1.5m above ground level.</p>	N/A
	<p>(3) The area of balconies or terraces greater than 1.5m above ground level is limited to a cumulative total of 40m² per dwelling.</p>	<p>No balconies or terraces proposed.</p>	N/A
	<p>(5) For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties (Figures 18 and 19).</p>	<p>Windows in south-eastern elevation to the hallway pose visual privacy issues. Treatment of these openings is required.</p>	<p>No - conditions imposed to address privacy issues posed by louvered windows in the south-eastern elevation.</p>
1.6 Solar Access			
	<p>(1) At least 50% of the primary private open space of the</p>	<p>The proposed private open space will receive the minimum</p>	<p>Yes</p>

	<p>proposed development should have access to a minimum of four hours of sunlight between 9am–3pm on 21 June.</p> <p>(3) Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on 21 June (Figure 21).</p>	<p>four hours sunlight between 9am–3pm on 21 June.</p> <p>The adjoining property to the south east will receive the minimum 3 hours sunlight to 50% of the existing primary open space between 9am–3pm on 21 June</p>	<p>Yes.</p>
1.7 Views and view sharing			
	<p>(1) Development shall provide for the reasonable sharing of views. Note: Assessment of applications will refer to the Planning Principle established by the Land and Environment Court in Tenacity Consulting vs Warringah Council (2004) NSWLEC140</p>	<p>The proposed development is not expected to unreasonably impact any adjoining properties or public space with respect to access of view corridors.</p>	<p>Yes – see comments below</p>
4.2 Fences and Walls			
4.2.1 Front Fences	<p>(1) In cases where an applicant can demonstrate the need for a front fence higher than 1.4m, the maximum height of the fence must not exceed 1.8m.</p> <p>(2) Fences over 1.4m must be setback 1.2m from the street alignment, except where Council</p>	<p>The site is a battle-axe allotment and no front fence is proposed.</p> <p>No front fence is proposed.</p>	<p>N/A</p> <p>N/A</p>

	considers a lesser distance is warranted due to the siting of the existing residence, levels or width of the allotment or exceptional circumstances of the site.		
4.6 Swimming pools, spas and enclosures			
	(1) Swimming pools/spas should be located at the rear of properties.	The proposed pool is located in the rear yard of the property.	Yes
	(3) Swimming pools/spas must be positioned a minimum of 900mm from the property boundary with the water line being a minimum of 1500mm from the property boundary.	The proposed pool is positioned 915mm from the north west property boundary and the waterline being 1295mm from the north western boundary.	No – conditions imposed to ensure compliance with minimum swimming pool setbacks.
	(4) 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 require 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 swimming pool coping is at RL1.74 approximately 660mm above NGL.	No - condition imposed to reduce pool coping to a minimum of RL1.08 to reduce the elevated form of the pool.
	(7) On steeply sloping sites, Council may consider allowing the top of the swimming pool at one point or along one side to extend up to 1m above natural ground level, provided that the exposed face of	N/A	N/A

	<p>the swimming pool wall is treated to minimise impact. The materials and design of the retaining wall should be integrated with, and complement the style of the swimming pool.</p> <p>(8) Filling is not permitted between the swimming pool and the property boundary. The position of the swimming pool, in relation to neighbours and other residents, must be considered to minimise noise associated with activities carried out in the swimming pool or from the swimming pool equipment, such as cleaning equipment.</p> <p>(10) A pool fence complying with the legislation should separate access from the residential dwelling on the site to the pool.</p> <p>(11) Safety and security measures for swimming pools must comply with the relevant requirements of the Swimming Pools Act and any relevant Australian Standards.</p>	<p>Filling is proposed and is considered unacceptable. Condition imposed for this to be removed.</p> <p>Pool fencing in accordance with the relevant Australian Standards has been proposed. If the application was to be supported a condition reinforcing this criterion would be imposed.</p> <p>Pool to comply with NCC and relevant Australian Standard.</p>	<p>No – conditions imposed to reduce the RL of the pool coping.</p> <p>Yes</p>
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C3 – Foreshore and Waterfront Controls

6.6 Swimming Pools/Spa Pool	(1) Any swimming pool or spa pool is to be sited as close to natural or existing ground level as possible. In this regard, the coping level of swimming pools and spa pools is not to be elevated more than 500mm above natural or existing ground level (Figure 4).	The swimming pool coping is at RL1.74 approximately 660mm above NGL. The proposal does not present an exposed edge to the waterway and is setback 1620mm from the MHW. This area is suitably landscaped.	No - condition imposed to reduce pool coping to a minimum of RL1.08 to reduce the elevated form of the pool.
	(2) Any exposed edge is to have the natural or existing ground level reinstated and be suitably landscaped with mature trees and landscaping so as to reduce the visual impact from the waterway.	The proposal demolishes an existing 11.5m long swimming pool located in the rear set and replaces this pool with a smaller swimming pool approximately 5.88m long. No native vegetation or significant trees are removed and reshaping of the landform is not proposed. The rear setback introduces additional soft landscaping along the rear boundary.	Yes
	(3) The construction of swimming pools and spa pools below the FBL and above MHW should avoid reshaping of the landform and removal of native vegetation and significant trees. In areas where the construction of a pool will necessitate excessive excavation or the removal of significant vegetation, the siting of the pool may be restricted to above the FBL. The Foreshore Locality Controls specify areas where this may be required.		Yes
	(4) Pool/spa fencing that is visible from the	Pool fencing material is not indicated.	No - conditions imposed to

	foreshore/water must be open or transparent and must be of a colour that blends into the landscape character of the waterway.		ensure pool fencing complies and is aesthetically pleasing when viewed from the waterway.
	(5) With respect to existing swimming pools/spa pools below MHWM, Council is unlikely to request that the pool be removed or filled, unless it is considered that its economic life has been reached.	N/A	N/A
	(6) In circumstances where it is considered that the economic life of the pool has been reached, and the Department of Lands is in agreement, then Council may require, upon substantial redevelopment, that the pool be removed.	N/A	N/A
C4 – Foreshore Locality Controls			

6.6 Mapping Areas	<p>In addition to the controls contained in Part C3, the following controls apply to areas 6(d): Swimming pools and spa pools in Area 6(d) are permitted subject to specific controls and will be restricted where:</p> <ul style="list-style-type: none"> • Excessive excavation of the site required. This is in order to protect the existing foreshore and sandstone landscape • Removal of significant vegetation is proposed. This is to limit disturbance to significant tracts of remnant vegetation and canopy cover. 	The subject site is located within Area 6(d) and is permitted subject to specific controls.	Yes - see comments below.
<p><u>Mapping Areas</u></p> <p>The proposal demolishes an existing 11.5m long swimming pool located in the rear setback and replaces this pool with a smaller swimming pool approximately 5.88m long. As a result excessive excavation of the site is not required to accommodate the pool, infilling of the former swimming pool area will be required given the length difference of the swimming pools.</p> <p>The existing rear setback contains a large swimming pool and impervious surfaces. There is currently no green landscaped area within the rear setback. The proposal provides a smaller swimming pool and introduces deep soil areas with the use of soft landscaping and turfed areas to this rear setback where it interfaces with the waterway. The proposal is an improved planning outcome for the site with respect to softening the waterway interface.</p>			

LPP052-20

Interim Policy – Georges River Development Control Plan 2020

88. Council at its Environment and Planning Committee Meeting dated 11 June 2019 resolved to adopt the Georges River Interim Policy DCP.
89. 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 currently DCP controls will prevail if they are considered best practice. The Interim Policy has no statutory recognition in the assessment of DA's pursuant to the Environmental Planning and Assessment Act
90. An assessment of the proposal has been carried out against the provisions of the Interim Policy as set out in the table below.

Interim Policy – Georges River DCP 2020		
Standard	Proposed	Complies
<u>Building Setback</u>		
<p><u>Front setback</u></p> <ul style="list-style-type: none"> Minimum setback from the primary street boundary is: <ol style="list-style-type: none"> 4.5m to the main building face 5.5m to the front wall of garage, carport roof or onsite parking space <p>Or</p> <p>Within 20% of the average setback of dwellings on adjoining lots</p> <p><u>Rear setback</u></p> <ul style="list-style-type: none"> Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater <p>• 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</p> <p><u>Side setback</u></p> <ul style="list-style-type: none"> The minimum side setback outside the FSPA is 900mm (ground floor) and 1.2m (first floor) 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. 	<p>The allotment is a battle axe lot and therefore there is no street setback.</p> <p>If this was a standard allotment, the rear setback would be 6.54m (which is 15% of the site length of 43.585m)</p> <p>However as a foreshore site, this site is subject to FBL of 15m from the MHWM. The proposal seeks a variation to the development standard relating to limited development on foreshore area.</p> <p>N/A</p> <p><u>North west side setback</u> Ground floor: 920mm First floor: 4.64m</p> <p><u>South east side setback</u> Ground floor: 900mm Garage nil setback First floor: 1500mm</p>	<p>N/A</p> <p>Yes</p>

Side setback – Garage - Nil setback

The existing garage which is to be retained and extended to accommodate two (2) vehicles has a nil setback to the south eastern and north eastern boundaries. At this corner the adjoining properties 14 and 16 Merriman Street have a nil setback to their respective boundaries, while 16A Merriman Street complies with the rear boundary setback. The garage at 14 Merriman Street has a nil setback to the rear boundary, while 16 Merriman Streets first floor terrace has a nil setback to the north western boundary. The non-compliance of side setback control is acceptable given the garage is an extension of existing structure and the two (2) adjoining properties have structures with nil setbacks in the corner locations (see figure 8 above). The proposed garage extension can be undertaken without accessing the neighbouring allotments and will be conditioned accordingly.

Landscape area

<ul style="list-style-type: none"> Where located inside the FSPA, a minimum of 25% of the site area is landscaped open space 	190.4sqm or 24.7%	No – see comments below
<ul style="list-style-type: none"> The minimum dimension of landscaped open space is 2m, designed in a useable configuration 	A minimum of 6m x 5m of landscaped open space is provided within the rear setback.	Yes
<ul style="list-style-type: none"> 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 	The proposal is a battle-axe allotment.	N/A

Landscape Area

The existing rear setback contains a large swimming pool and impervious surfaces. There is currently no green landscaped area within the rear setback. The proposal provides a smaller swimming pool and introduces deep soil areas with the use of soft landscaping and turfed areas to this rear setback where it interfaces with the waterway. The proposal although it does not comply with KDCP being just below 25%, it is an improved planning outcome for the site with respect to landscaped open space.

Private Open Space

<ul style="list-style-type: none"> An area of Principal Private Open Space is to be provided which: <ol style="list-style-type: none"> has a minimum area of 30sqm has a minimum dimension of 5m, designed in a useable configuration is located at ground level and behind the front wall of the dwelling is directly accessible from a main living area 	<p>5m x 6m of useable space</p> <p>The proposed development includes a satisfactory area for private open space as it is directly accessible from the main living area.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
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Basement/Land Modification		
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).	A basement not proposed.	N/A
Solar Access		
<p>Kogarah: Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June).</p> <ul style="list-style-type: none"> Note 1: development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design 	<p>The adjoining property to the south east will receive the minimum 3 hours sunlight to 50% of the existing primary open space between 9am–3pm on 21 June</p> <p>Acceptable shadow diagram were submitted.</p>	<p>Yes</p> <p>Yes</p>

View and view sharing

91. The subject site and surrounding lands benefit from views to the west, south west and south east of Kyle Bay. The KDCP 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.
92. 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:
93. **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.
94. Comment: Existing views in a westerly, south west and south easterly direction from the neighbouring properties (11, 11A and 13 Merriman Street) include a land and water

interface, and are gained over the subject site and the waterfront properties on the south western side of Merriman Street.

95. The proposal will have negligible impact on the existing views from 11, 11A and 13 Merriman Street as the subject site is relatively flat while these properties are elevated. The proposal will actually improve the existing views from 16 Merriman Street as the proposal increases the setback to the rear boundary.
96. **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.
97. Comment: The side boundary views to the south west from 16 Merriman Street appear to be gained from the upper level balcony at the rear 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. However, the proposal increases the rear setback and the view to the south west will be improved.
98. **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.
99. Comment: In terms of classification of impact:
- The proposal is likely to have a negligible impact on the existing views from 11, 11A and 13 Merriman Street given that these properties are on the elevated north eastern side the of street, and the proposal being a battle-axe allotment is situated behind 14 Merriman Street.
 - The proposal is likely to improve the views from 16 Merriman Street. The proposed dwelling increases the setback from the rear boundary providing improved views from the rear-facing balcony at 16 Merriman Street.
100. **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 non-compliance with one 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.
101. Comment: The proposal is non-compliant with regards to development forward of the FBL control contained in KLEP 2012. The resulting design is an acceptable and compliant built form in the context of the site, given there is an improved view sharing for

16 Merriman Street. The built form, bulk and scale of the proposal are appropriate for the site.

102. 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.

DEVELOPER CONTRIBUTIONS

103. 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.
104. The table below shows the contributions which are applicable for this development. A condition is imposed if consent is issued that reflects the contributions as stated.

Georges River Section 7.12 Contribution Plan	\$10,195.52
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IMPACTS

Natural Environment

105. The proposed development does not propose on-site or street tree removal and will not adversely affect the natural environment.
106. The proposal includes excavation that has been assessed as being reasonable in the context of the site and consistent with the extent of excavation expected in an R2 Low Density area. Excavation impacts will be managed through standard conditions of consent that have been imposed to protect the environment with respect to contamination and impact onto adjoining allotments and the public domain.

Built Environment

107. The proposal represents an appropriate planning outcome for the site with respect to its bulk and scale, façade articulation and expression and is an appropriate response to the context of the site and its R2 Low Density Residential zoning.

Social Impact

108. 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 a residential dwelling on the site is consistent with the residential zoning of the land and adjoining residential development.

Economic Impact

109. 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

110. The site is zoned R2 – Low Density Residential. The proposal is a permissible form of development in this zone and has been designed to reflect the context of the area as it evolves and as it exists.

SUBMISSIONS AND THE PUBLIC INTEREST

111. The application was neighbour notified in accordance with Kogarah DCP 2013 for a period of fourteen (14) days between 30 March and 20 April 2020. No submissions were received.

REFERRALS

Council Referrals

Development Engineer

112. The application was referred to Council's Development Engineers for comment. They are satisfied with the stormwater drainage arrangement. However, landowners consent was not provided for construction of the new proposed stormwater pipe through the section of reclaimed land forward of the MHW. Deferred commencement conditions are recommended requiring land owners consent from the RMS (noting that there is an Aboriginal Land claim that has been lodged against this parcel of land, which will need to be part of the owner's consent considerations) should the application be considered worthy of approval.

External Referrals

Ausgrid

113. 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

114. 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 proposed additional scale, bulk and height is considered to be an acceptable planning and design outcome for this site and will be consistent with the desired future character of development in the R2 zoned land in this location and immediate locality.
115. The proposal has been assessed against the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013. The proposal satisfies the key planning controls in the Kogarah Local Environmental Plan apart from the encroachment of the dwelling within the foreshore building line. A Clause 4.6 Statement has been submitted with the application justifying the variation in this case.
116. The proposed development design satisfies the objectives of both limited development on the foreshore area and the zone. The Clause 4.6 Statement is considered to be well founded as there will not be any direct or adverse environmental impacts generated; the proposal satisfies the requirements of Clause 4.6 of the Kogarah Local Environmental Plan 2012.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

117. The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and development control plan apart from the encroachment of the dwelling within the foreshore building line 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 limited development in the foreshore area is reasonable in the circumstances of the case.

- The proposal has effective façade modulation and wall articulation that will serve to provide visual interest when viewed from the waterway public domain.
- The proposal aims to provide a high-quality dwelling that will establish a positive urban design outcome.

Determination

118. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, grants deferred commencement consent to Development Application DA2020/0098 for demolition of existing dwelling including a swimming pool, retention of garage and construction of a two (2) storey dwelling house and in-ground swimming pool on Lot Y in DP417411 known as 14A Merriman Street, Kyle Bay, subject to the following conditions of consent:

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

A 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:

1. The applicant must submit adequate written documents and plans to address the following issues effectively to the satisfaction of Council's development engineer
 - i. Legal permission: The applicant must acquire an owner's consent from the Roads and Maritime Services (RMS), to permit the construction of the proposed stormwater discharge pipe (150mm diameter) through the section of the 'Reclaimed land' to drain the site by gravity into the Bay.

B Deferred Commencement - General - 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:

- (a) The applicant must submit adequate written documents and plans to address the following issues effectively to the satisfaction of Council:
 - (i) An Acid Sulfate Soils Management Plan shall be prepared for the proposed works in accordance with the Acid Sulfate Soils Manual.

Documentary evidence of the above information must be submitted within thirty six (36) months of the granting of this deferred commencement consent. Commencement of the Consent cannot commence until written approval of the submitted information has been given by Council.

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
Proposed Site & Roof Plan	DA02	03.09.20	E	Resolut Building Solutions
Ground Floor Plan	DA04	03.09.20	E	Resolut Building Solutions
First Floor Plan	DA05	03.09.20	E	Resolut Building Solutions
North East and South East Elevations	DA06	03.09.20	E	Resolut Building Solutions
South West and North West Elevations	DA07	03.09.20	E	Resolut Building Solutions
Sections A-A and B-B	DA08	03.09.20	E	Resolut Building Solutions
Site Plans/Calculations	L-01 A	7.09.20	B	Site Design Studios
Detailed Plan	L-02 A	7.09.20	B	Site Design Studios
Detailed Plan	L-03 A	7.09.20	B	Site Design Studios
Passenger Vehicle Swept Paths	Sheet 1	03/09/2020	A	Stanbury Traffic Planning
Passenger Vehicle Swept Paths	Sheet 2	03/09/2020	A	Stanbury Traffic Planning

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;

- (a) Placing or storing materials or equipment;
- (b) Placing or storing waste containers or skip bins;

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 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).

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
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$155.00
DEVELOPMENT CONTRIBUTIONS	
Georges River Council Section 94A Development Contributions Plan 2017	\$0,195.52

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.

7. **Damage Deposit - Minor Works** - In order to insure against damage to Council property the following is required:
 - a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$1,900.00**
 - b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$155.00**
 - c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

8. **Site Management Plan - Minor Development** - 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. 1025670S_02 must be implemented on the plans lodged with the application for the Construction Certificate.
10. **Required design changes** - The following changes are required to be made and shown on the Construction Certificate plans:

Amendments made in red on approved plans	All changes made in red on the approved plans shall be updated and shown on the Construction Certificate plans.
Window Privacy	The windows within the rumpus are to be fixed and provided with translucent, obscured, frosted or sandblasted glazing below 1.7m above floor level. The windows to the stair well on the south-east elevation are to

	be fixed and provided with translucent, obscured, frosted or sandblasted glazing.
Swimming pool setback	The swimming pool must be located 1500mm from water line to north west boundary.
Swimming pool coping level	The swimming pool coping level is to be reduced to be a maximum of 500mm above ground level to RL1.08.
Swimming pool fencing	The swimming pool fence must be located at least 1m from the pool edge. Materials must be open or transparent, aesthetically pleasing such as glazing or transparent metal fencing in black that blends into the landscape character of the waterway.
Swimming pool equipment	The swimming pool equipment must be located within the rear yard. This condition is required to reduce any potential noise impacts to adjoining properties.

11. **Vehicle Turntable** – The vehicle turntable is to be constructed strictly in accordance with the report entitled *Passenger Vehicle Manoeuvring within proposed residential development* 14A Merriman Street, Kyle Bay, by Stanbury Traffic Planning, dated 3 September 2020 and accompanying plans, Passenger Vehicle Swept Paths, by Stanbury Traffic Planning, Issue A, Sheet 1 and Sheet 2, dated 3 September 2020.
12. **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.

13. **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) The stormwater plan shall show that all stormwater from the site is draining by gravity to the bay; with the provision of a pollution control pit (such as in SP1), located within the property boundary prior to the discharge point into the bay, to the satisfaction of the PCA.
- (b) The PCA shall ensure that a minimum 200mm wide grated drain is installed properly in front of the garages in order to avoid flooding the garages during a heavy rain event.
- (c) The PCA shall ensure that during the construction of the stormwater pipes, that no damages or interruption as a result of this consent, is to occur to the existing pipe within the drainage easement running through the site and draining Lot (X) DP417411.

14. **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.

15. **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.

16. **Compliance with Swimming Pool Act 1992** - The alterations and additions to the dwelling house and/or the construction of the new dwelling house subject of this consent must not generate any non-compliances with the Swimming Pools Act 1992, Swimming Pool Regulation 2008, Building Code of Australia and/or AS 1926.1-2007 - Swimming Pool Safety. Details of compliance to be illustrated on the plans lodged with the application for the Construction Certificate.
17. **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.

18. **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.
19. **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).
20. **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.
21. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans. The landscaping shall be maintained in accordance with the approved plans in perpetuity.

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

22. **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.

23. **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](#).
24. **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.
25. **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

26. **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.

27. **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.

28. **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.
29. **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.
30. **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.
31. **Swimming Pools - Filling with water** - The pool/spa shall not filled until the safety fences have been completed in accordance with the approved plans and specifications and inspected by the PCA.
32. **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.

33. **Tree Removal on Private Land** - The trees identified as 'to be removed/pruned' on the approved plans or by conditions of this consent shall be removed in accordance with AS4373 -2007 and the Amenity Tree Industry Code of Practice (SafeWork NSW, August 1998).

Prior to the issue of the Occupation Certificate

34. **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.
35. **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.

Operational Conditions (Ongoing)

36. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas.
37. **Swimming Pools - Resuscitation Notice** - An expired air resuscitation warning notice complying with the [Swimming Pools Act 1992](#) must be affixed in a prominent position adjacent to the pool.
38. **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.
39. **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.
40. **Private Swimming Pools & Spas - Pump Noise** - The swimming pool/spa pump and associated equipment must be located so that the noise emitted does not exceed 5dB(A) above the background level. If this cannot be achieved, a ventilated and sound-proofed enclosure must enclose the pump to achieve the required noise levels.

Swimming pool is to be installed with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):

- (a) before 8 am or after 8 pm on any Sunday or public holiday, or
- (b) before 7 am or after 8 pm on any other day.

Operational Requirements Under the Environmental Planning & Assessment Act 1979

41. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
42. **Appointment of a PCA** - The erection of a building must not commence until the applicant has:
 - (a) appointed a PCA for the building work; and
 - (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

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

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

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

43. **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.

44. **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.

45. **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](#).

46. **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.

47. **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

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

49. **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.
50. **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.
51. **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](#).
52. **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.
53. **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.

54. **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

55. **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.

56. **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.
57. **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.
58. **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.

59. **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.

60. **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.

61. **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).

62. **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: www.swimmingpoolregister.nsw.gov.au.

ATTACHMENTS

- Attachment [↓](#) 1 Site Plan - 14A Merriman St Kyle Bay
Attachment [↓](#) 2 Elevations - 14A Merriman St Kyle Bay



E	01.09.20	OK - RUC
D	24.09.20	OK - RUC
A	03.10.2020	OK - RUC
REVISOR	DATE	REVISION



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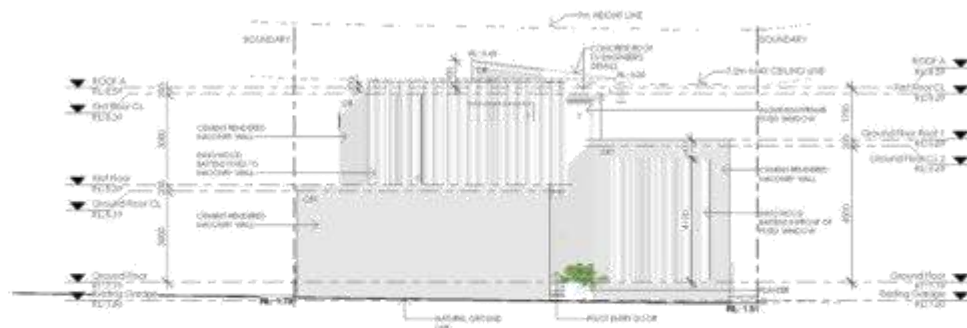
Andrew and Katrina Bosco

PROPOSED NEW DWELLING
14a Merriman Street
KYLE BAY NSW 2221

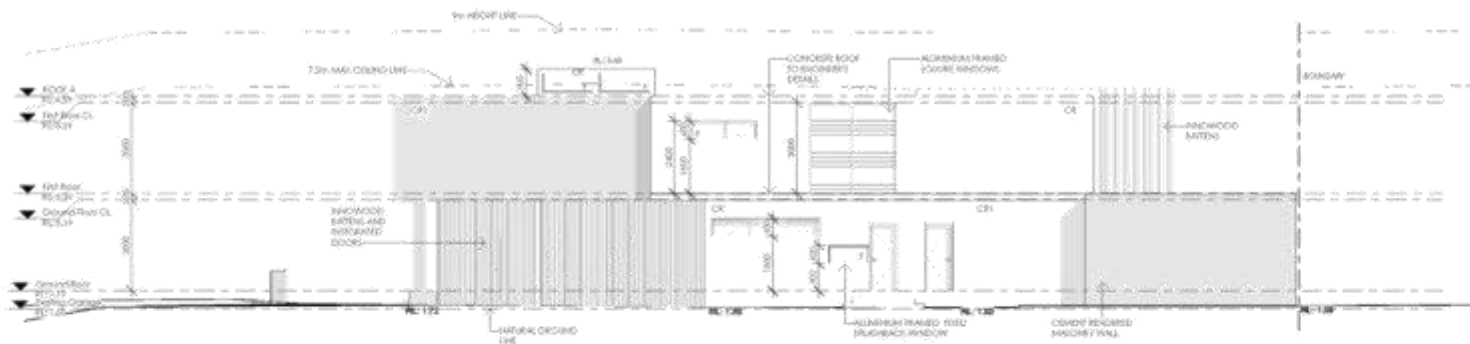
PROPOSED SITE & ROOF PLAN
The proposed site and roof plan for the proposed building is shown in the attached drawings. The proposed building is a single-story building with a total area of 10,000 square feet. The proposed building is located on the east side of the site, adjacent to the existing building. The proposed building is a single-story building with a total area of 10,000 square feet. The proposed building is located on the east side of the site, adjacent to the existing building.

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 As indicated
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1 NORTH EAST ELEVATION
1 : 100



2 SOUTH EAST ELEVATION
1 : 100

REVISION	DATE	BY	CHK
1	10/08/20	CA RUSSELL	CA RUSSELL
2	11/08/20	CA RUSSELL	CA RUSSELL

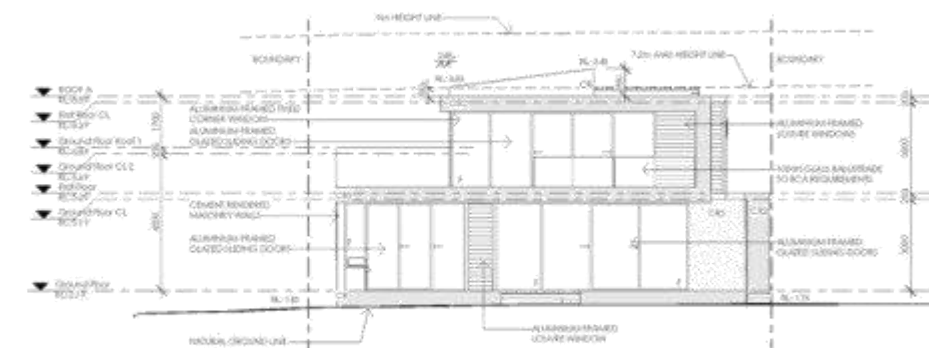


CLIENT:
Andrew and Katrina Bosco

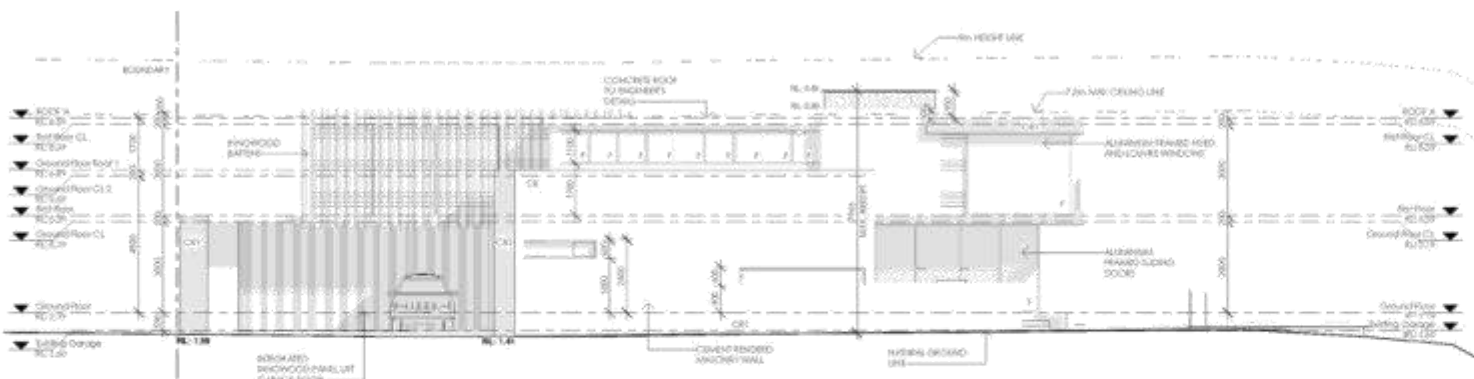
PROJECT:
PROPOSED NEW DWELLING
14A MERRIMAN STREET
KYLE BAY NSW 2221

TITLE:
NORTH EAST AND SOUTH EAST ELEVATIONS
This drawing is a preliminary design. It is not to be used for construction without the approval of the Council. The drawing is a preliminary design and is not to be used for construction without the approval of the Council. The drawing is a preliminary design and is not to be used for construction without the approval of the Council.

SCALE:
1:100 & 1:50
DATE:
03/08/20
DRAWN BY:
CA RUSSELL
CHECKED BY:
CA RUSSELL
ISSUED BY:
CA RUSSELL



1 SOUTH WEST ELEVATION
1:100 S.A.



2 NORTH WEST ELEVATION
1:100 S.A.

REVISION	DATE	REVISION
1	10/08/20	CA RUSSELL
2	11/08/20	CA RUSSELL

SCALE 1:100 S.A.



RESULT
1300 760 1400
1300 760 1400
1300 760 1400

CLIENT:
Andrew and Katrina Bosco

PROJECT:
PROPOSED NEW DWELLING
14A Merriman Street
KYLE BAY NSW 2221

TITLE:
SOUTH WEST AND NORTH WEST ELEVATIONS
 1:100 S.A.
 10/08/20
 11/08/20

SCALE:
 1:100 S.A.
 DATE:
 10/08/20
 11/08/20

REPORT TO GEORGES RIVER COUNCIL

LPP MEETING OF THURSDAY, 15 OCTOBER 2020

LPP053-20

LPP Report No	LPP053-20	Development Application No	DA2019/0607
Site Address & Ward Locality	2 Laycock Road Penshurst Blakehurst Ward		
Proposed Development	Alterations and additions to existing residential care facility and respite day care to centre to provide 2 additional rooms		
Owners	Sunnyhaven Disability Services Ltd		
Applicant	Sunnyhaven Disability Services Ltd		
Planner/Architect	Planner: Wynne Planning; Architect: Innovate Architects		
Date Of Lodgement	11/12/2019		
Submissions	No submissions received		
Cost of Works	\$357,030.00		
Local Planning Panel Criteria	The proposal has been referred to the Georges River Local Planning Panel (LPP) as the proposal seeks consent for a variation of greater than 10% to the floor space ratio development standard contained within Kogarah Local Environmental Plan 2012.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	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 (Housing for Seniors or People with a Disability) 2004, State Environmental Planning Policy (Building and Sustainability Index: 2004, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment, Draft State Environmental Planning Policy – Environment, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Draft Georges River Local Environmental Plan 2020, Kogarah Development Control Plan 2013, Draft State Environmental Planning Policy (Housing Diversity) 2020		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Acoustic Report, Heritage Impact Statement, Statement of Environmental Effects, Stormwater Plan		
Report prepared by	Senior Development Assessment Officer		

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

satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - Clause 4.6 Statement has been submitted to vary the floor space ratio control under Clause 4.4A of Kogarah Local Environmental Plan 2012.
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, as the conditions can be viewed when the report is published.

Site Plan



Figure 1: The subject site is outlined in blue

Executive Summary Proposal

1. This Development application (DA2019/0607) was submitted to Council seeking consent for alterations and additions to an existing residential care facility which is co-located with a respite day care centre to provide two (2) additional residential rooms at 2 Laycock Road, Penshurst.

2. The proposed development exceeds the maximum floor space ratio control. A Clause 4.6 Statement has been submitted for the variation to the floor space ratio development standard contained within Clause 4.4A of the Kogarah Local Environmental Plan 2012 (KLEP), which has been assessed in detail later in this report. The variation is considered to be well founded and recommended to be supported.
3. A Heritage Impact Statement has been prepared and provided in support of the application as the subject site is located with Penshurst Heritage Conservation Area.

Site and Locality

4. The subject site is legally described as Lot 2 in DP 204781 on land known as 2 Laycock Road, Penshurst. The subject site is a narrow and long internal allotment accessed via an access handle from Laycock Road, which located along the northern side of the lot adjoining the Eastern Suburbs and Illawarra Railway line. The subject site has an overall site area of 1815sqm.
5. Existing on the site is a single storey brick and tile building currently used as a residential care facility and respite day care facility. The subject site is located within the Penshurst Heritage Conservation Area under the provisions of Kogarah Local Environmental Plan 2012.
6. Adjoining the property to the north is Penshurst Railway Station, with Penshurst shopping centre located to the west and north on both sides of the rail corridor, which is zoned B2. A public reserve is located adjacent to the access handle with a frontage to Laycock Road.

Zoning and Permissibility

7. The site is zoned R2 – Low Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal is most appropriately defined as a residential care facility and respite day care centre which are permissible land uses with consent in the zone.

Submissions

8. The application was notified for a period of fourteen (14) days in accordance with the Kogarah Development Control Plan 2013. No formal submissions to the development were received.

Reason for Referral to the Local Planning Panel

9. The proposal has been referred to the Georges River Local Planning Panel (LPP) or determination as the proposal seeks consent for a variation of greater than 10% to the floor space ratio development standard contained within Kogarah Local Environmental Plan 2012.

Conclusion

10. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed Development Application (DA2019/0607) is recommended for approval subject to the conditions referenced at the end of this report.

Report in Full

Description of the Proposal

11. The proposal seeks development consent for alterations and additions to an existing residential care facility which is co-located on site with a respite day care centre at 2 Laycock Road, Penshurst.



Figure 2: Architects impression of the north elevation of the proposed building as viewed from the railway (Source: Innovate Architects 2019).

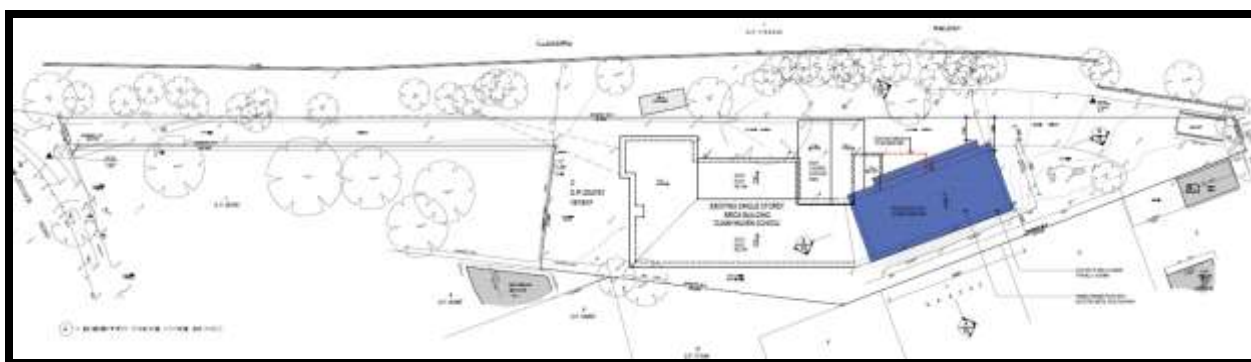


Figure 3: Site plan of subject site (Source: Innovate Architects 2019).

12. Further details of the proposed development are as follows.

Ground Floor

13. The proposed alterations and additions at the ground floor level comprise the following:
- Demolition of the existing awning adjacent to the living room.
 - Internal alterations to facilitate installation of the new internal stair for access to the first floor level.
 - Columns to support the upper first floor balcony.

First Floor

14. The proposed new first floor level will comprise the following:
- Internal stairs providing access between the ground and first floor levels;
 - Bathroom;
 - Open plan kitchen, living and dining room;
 - Two new bedrooms with a walk in robe in each;
 - New north facing balcony with access from living room and the north facing bedroom;
 - and
 - Storage.

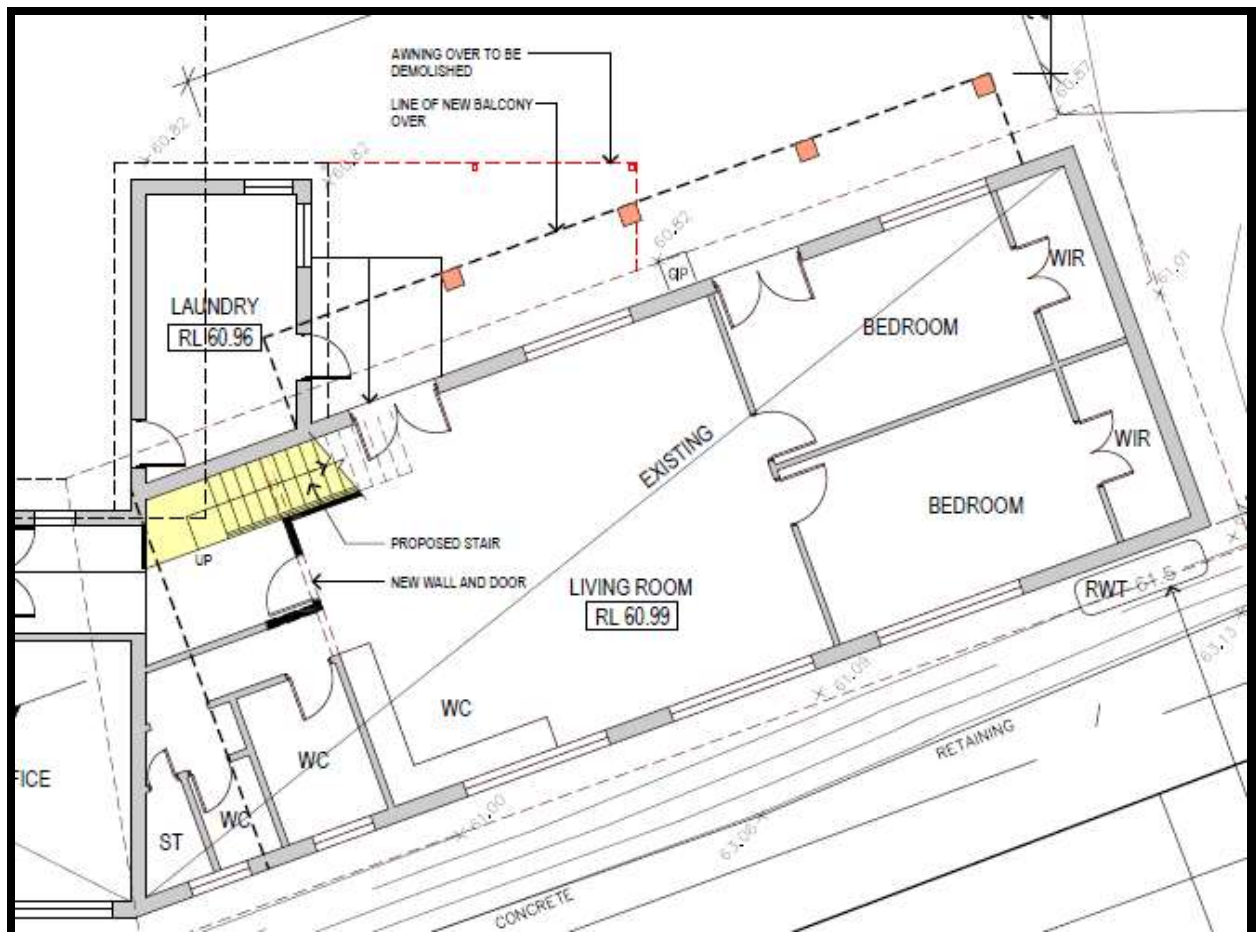


Figure 4: Proposed works to the ground

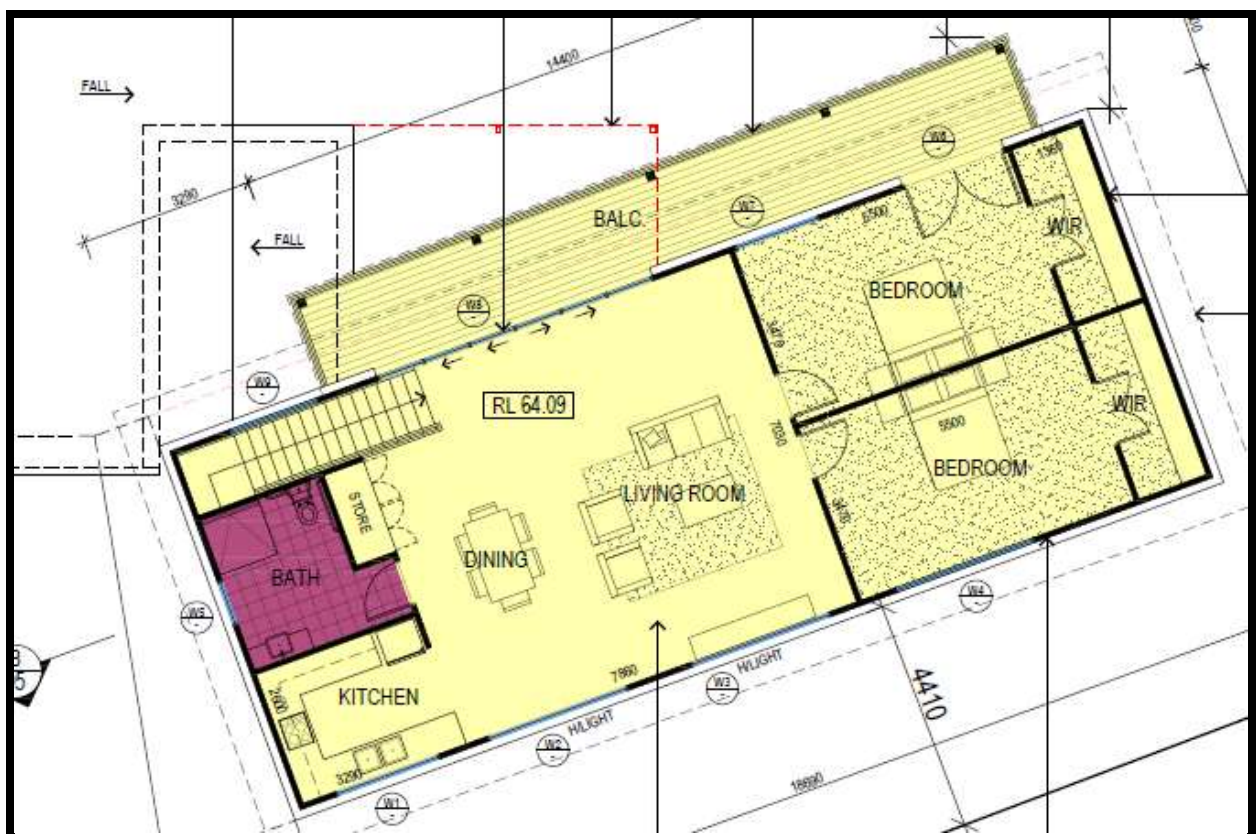


Figure 5: Proposed new first floor addition (Source: Innovate Architects 2019).

The Site and Locality

15. The subject site is legally described as Lot 2 in DP 204781 on land known as 2 Laycock Road, Penshurst. The subject site is an internal allotment accessed via an access handle from Laycock Road located along the northern side of the allotment, which adjoins the Eastern Suburbs and Illawarra Railway line. A 0.9m easement for drainage traverses the front of the access handle. The subject site has an overall site area of 1815sqm.



Figure 6: Entry from the access handle to Sunnyhurst



Figure 7: Access to site via Laycock Road, a public reserve is adjacent and known as Sunnyhurst Reserve

16. Existing on the site is a single storey brick and tile building currently used as a residential care facility and respite day care facility. The site contains a number of trees and shrubs and falls from west to east by approximately 2.5m. The subject site is in the immediate proximity to Local Heritage items I147 Penshurst Railway Station and I138 Laycock Road Street Trees. The site is also located within the Penshurst Heritage Conservation Area under the provisions of Kogarah Local Environmental Plan 2012.



Figure 8: Existing building located at 2 Laycock Road

17. Immediately to the north and adjoining the subject site is Penshurst Railway Station forming part of the Eastern Suburbs and Illawarra Railway line. To the south and east are residential dwelling houses located within the Penshurst Heritage. These buildings are of varying ages and styles reflective of the Heritage Conservation Area.
18. Across the road to the west and across the rail corridor to the north west is the Penshurst town centre on land zoned B2.



Figure 9: East elevation of existing building. The first floor addition is proposed to be located above the existing skillion roof



Figure 10: East elevation looking towards Laycock Road



Figure 11: North and east elevation corner of existing building. The photo shows the building sits significantly lower than the adjoining residential dwellings to the south.

ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policies

19. Compliance with the relevant State Environmental Planning Policies (SEPP) is summarised in the table as follows and discussed in more detail thereafter:

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

STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND

20. 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.

21. 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. The works the subject of this application involve minimal earthworks to accommodate the supports for the first floor balcony, structural supports and the stairs. The criterion of SEPP 55 has been satisfied.

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

22. 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').
23. A BASIX Certificate prepared by Efficient Living Pty Ltd, dated 10 October 2019, certificate number A360729, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

STATE ENVIRONMENTAL HOUSING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

24. The aim of this policy is:
 - (1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will—*
 - (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
 - (b) *make efficient use of existing infrastructure and services, and*
 - (c) *be of good design.*
 - (2) *These aims will be achieved by—*
 - (a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
 - (b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
 - (c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*
25. The existing building is currently being used as a residential care facility and respite day care. This use would normally be assessed and determined under the provisions of the Seniors Housing SEPP. Section 4A which refers to land located within heritage conservation areas in Greater Sydney Region prevents the use of this policy within these areas. Section 4A has been reproduced below:

4A Land to which Policy applies—heritage conservation areas in Greater Sydney Region

- (1) *This Policy does not apply to land in the Greater Sydney Region if an environmental planning instrument identifies the land as being within a heritage conservation area.*
- (2) *This Policy continues to apply to development on land referred to in subclause (1) if—*
 (a) *the relevant development application was lodged before the commencement of this clause, or*
 (b) *the relevant development application was lodged after the commencement of this clause but the development application relies on a site compatibility certificate and the application for that certificate was lodged before the commencement of this clause.*
- (3) *A site compatibility certificate may be issued for land referred to in subclause (1) after the commencement of this clause if the application for that certificate was lodged before the commencement of this clause.*
- (3A) *This clause does not apply to land in the North Sydney local government area.*
- (4) *This clause ceases to have effect on 1 July 2021.*

26. The subject site is located within a Heritage Conservation Area and as such this policy does not apply to the subject site until 1 July 2021. This restriction was previously applied until 1 July 2020, however was recently extended until 1 July 2021.
27. Given this is the instrument that is used to assess this development type outside of conservation areas, the application has been considered against the assessment criterion referenced below.

• Chapter 1 - Preliminary

Section/Standard	Proposed	Complies
Section 4A Land to which Policy applies – Heritage conservation areas in Greater Sydney Region		
(1) This Policy does not apply to land in the Greater Sydney Region if an environmental planning instrument identifies the land as being within a heritage conservation area. (2) This Policy continues to apply to development on land referred to in subclause (1) if— (a) the relevant development application was lodged before the commencement of this clause, or (b) the relevant development application was lodged after the commencement of this clause but the development application relies on a site compatibility certificate and the application for that certificate was lodged before the commencement of this clause.	The subject site is located within Penshurst Heritage Conservation Area. Accordingly, this SEPP does not apply to this proposal.	N/A

<p>(3A) A site compatibility certificate may be issued for land referred to in subclause (1) after the commencement of this clause if the application for that certificate was lodged before the commencement of this clause.</p> <p>(3A) This clause does not apply to land in the North Sydney local government area.</p> <p>(4) This clause ceases to have effect on 1 July 2021.</p>		
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• **Part 2 Site – Related requirements**

Section	Standard	Proposed	Complies
Section 26 Location and access to facilities	Access and locational requirements to be satisfied	The proposal relates to an existing residential care facility.	Yes
Section 28 Water and Sewer	Adequate stormwater and disposal of sewerage to be provided	The proposal relates to an existing residential care facility whereby new works are to be connected into existing services regarding stormwater and sewerage disposal.	Yes

• **Part 3 Design Requirements**
Division 1 General

Section	Standard	Proposed	Complies
Section 30 Site Analysis	Consideration to be applied to site dimensions, topography, services, existing vegetation, micro climates, buildings and structures, overshadowing, neighbouring buildings, privacy, walls on boundary, difference in levels, trees, frontages, built form and character, heritage direction of facilities, public open space, sources of nuisance and adjoining land uses.	A site analysis has been provided and has considered the site and context.	Yes
Section 31 Design of in-fill self-care housing	Proposal to consider Seniors Living Policy: Urban Design Guideline for Infill	The proposal has been considered in accordance with this Design Guideline (see table below).	Yes

	Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004.		
Section 32 Design of Residential Development	A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.	Assessment carried out in relation to Division 2	Yes

• **Seniors Living Policy – Urban Design Guidelines for infill Development**

Clause	Standard	Proposed	Complies
1. Responding to context	Analysis of neighbourhood character, site analysis	The land use is existing and the proposed works are considered appropriate in relation to the immediate context of the site.	Yes
2. Site Planning and Design	Built form, trees, landscape and deep soil zones	The proposal does not result in the removal of trees or a reduction in landscaped area, the proposal is an appropriate planning outcome.	Yes
3. Impacts on Streetscape	Built form, trees, landscape and deep soil zones, residential amenity, parking and garaging	The proposal is not considered to result in any adverse streetscape impacts given the nature of the proposal which adopts minimal visual bulk and is not readily perceivable from the public domain given it is accessed via an access way from Laycock Road.	Yes
4. Impacts on neighbours	Built form, trees, landscape and deep soil zones, residential amenity, parking and garaging	The extent of works do not result in any unreasonable amenity impacts to adjoining properties given the design proposal and central siting and the development site is	Yes

		lower than the adjoining residential allotments to the south.	
5. Internal site amenity	Built form, parking, garaging and vehicular circulation, residential amenity.	The proposal provides good levels of internal amenity with a logical and practical layout.	Yes
Appendix SEPP (Seniors Living) 2004 Design Principles	Proposal is to satisfy design principles.	Satisfactorily satisfies the Design Principles below (which is replicated within the SEPP)	Yes

• **Division 2 Design Principles**

Section/Standard	Proposed	Complies
Section 33 Neighbourhood amenity and streetscape		
<p>The proposed development should</p> <p>(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and</p> <p>(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and</p> <p>(c) maintain reasonable neighbourhood amenity and appropriate residential character by—</p> <p>(i) providing building setbacks to reduce bulk and overshadowing, and</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and</p> <p>(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and</p> <p>(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</p>	<p>The proposal forms alterations and additions which are considered to maintain reasonable amenity to adjoining properties.</p>	Yes

<p>(e) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and</p> <p>(f) retain, wherever reasonable, major existing trees, and</p> <p>(g) be designed so that no building is constructed in a riparian zone.</p>		
Section 34 Visual and acoustic privacy		
<p>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by—</p> <p>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</p> <p>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</p> <p>Note— The Australian and New Zealand Standard entitled AS/NZS 2107–2000, <i>Acoustics—Recommended design sound levels and reverberation times for building interior</i> and the Australian Standard entitled AS 3671— 1989, <i>Acoustics—Road traffic noise intrusion—Building siting and construction</i>, published by Standards Australia, should be referred to in establishing acceptable noise levels.</p>	<p>The proposal results in reasonable acoustic privacy and visual amenity on site by virtue of the design and topography.</p> <p>An acoustic report was provided with the application which recommends the use of glazing assemblies with 6.38mm laminate to the north facing windows and doors and 6mm to the south and west facing windows. All with acoustic seals.</p>	Yes
Section 35 Solar access and design for climate		
<p>The proposed development should—</p> <p>(a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the</p>	<p>The proposed addition is located towards the rear of the site, well setback from the street and not highly visible. The works are not considered to detract from the amenity of neighbouring properties.</p>	Yes

<p>windows of living and dining areas in a northerly direction.</p> <p>Note— AMCORD: A National Resource Document for Residential Development, 1995, may be referred to in establishing adequate solar access and dwelling orientation appropriate to the climatic conditions.</p>		
Section 36 Stormwater		
<p>The proposed development should—</p> <p>(a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and</p> <p>(b) include, where practical, on-site stormwater detention or re-use for second quality water uses.</p>	Stormwater to drain to existing system.	Yes
Section 37 Crime prevention		
<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by—</p> <p>(a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and</p> <p>(b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and</p> <p>(c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.</p>	The proposal is considered to adequately satisfy Crime Prevention Through Environmental Design Principles.	Yes
Section 38 Accessibility		
<p>The proposed development should—</p> <p>(a) have obvious and safe pedestrian</p>	Accessibility has been considered. An access report has been provided	Yes

<p>links from the site that provide access to public transport services or local facilities, and</p> <p>(b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.</p>	<p>which provides recommendations to ensure the building is compliant with AS1428.1-2009.</p> <p>As part of these recommendations the existing entrance is to be upgraded to provide a continuous accessible path of travel from the northern wall of the residential component to the new works. The report provides an option to either comply with the DTS provisions of the BCA or a BCA performance solution. Conditions of development consent have been proposed requiring that the building be upgraded to comply with the recommendations of the access report.</p> <p>The proposal is supported by Council's Senior Building Surveyor subject to conditions.</p> <p>Parking is required at the rate of 1 space per 10 rooms. As the number of rooms remains less than 10, no additional parking is required. No change to existing car parking condition.</p>	
Section 39 Waste Management		
<p>The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.</p>	<p>The subject site is currently serviced by 2 x waste bins and 2 x recycling bins, collected by Council weekly. No change is proposed to the existing bin arrangements. It is anticipated that the existing garbage and recycling bin arrangements will be adequate to service the site with the additional rooms. Sunnyhurst Disability Services are</p>	<p>Yes</p>

	aware they will need to contact Council should additional bins be required.	
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• **Division 1 General**

Section	Standard	Proposed	Complies
40 Development standards—minimum sizes and building height			
Section 40(1) General	A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.	The proposal has been considered in accordance with the following provisions within this subsection.	Yes
Section 40(2) Site size	The size of the site must be at least 1,000 square metres.	The site is 1815qm.	Yes
Section 40(3) Site frontage	The site frontage must be at least 20 metres wide measured at the building line.	The subject site contains an access handle and is a battle axe allotment. The frontage of the battle axe allotment exceeds 20m.	No, as the facility is existing. The application is for alterations and additions only.
(4) Height in zones where residential flat buildings are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted—			
Section 40 (4)(a)	(4)(a) the height of all buildings in the proposed development must be 8m or less, and <u>Note</u> Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings	The proposed works have a height of 7.08m, well below 8m height control.	Yes

	are 8m or less in height. See clauses 48 (a), 49 (a) and 50 (a).		
Section 40(4)(b)	(4)(b) a building that is adjacent to a boundary of the site (being the site, not only that particular development, but also of any other associated development to which this policy applies) must be not more than 2 storeys in height, and <u>Note</u> The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.	The alterations and additions result in the development comprising 2 storeys.	Yes
Section 40(4)(c)	(4)(c) a building located in the rear 25% of the site must not exceed 1 storey in height	The new addition will be 31.505m from the rear boundary. Based on the site length of 153.27m including the access handle the first floor would be required to be setback 38.32m.	No however considered acceptable, as the site is burdened by the long and narrow access handle when calculating the required setback based on the rear 25% of the site. The proposed setback will not be out of

			character within the area or adversely affect the amenity of adjoining properties.
(5) Development applications to which clause does not apply			
Section 40(5)	Subclauses (2), (3) and (4) (c) do not apply to a development application made by any of the following— (a) Department of Housing (b) Any other social housing provider.	Regardless of the provider the development complies with the above considerations.	Yes

• **Division 2 Residential Care Facilities**

Section	Standard	Proposed	Complies
48 Standards that cannot be used to refuse development consent for residential care facilities			
Section 48(a) building height	if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),	The proposed works are below 8m in height and comprise of 2 storeys.	Yes
Section 48(b) density and scale	if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,	The development has an FSR of 0.338:1.	Yes
Section 48(c) landscaped area	if a minimum of 25 square metres of landscaped area per residential care facility bed is provided	Although there is an increase from 2 to 4 beds the existing landscaped area is greater than 100sqm, providing sufficient area for the	Yes

		residents.	
Section 48(d) parking for residents and visitors	<p>if at least the following is provided—</p> <p>(i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and</p> <p>(ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and</p> <p>(iii) 1 parking space suitable for an ambulance.</p>	<p>The site currently contains a hardstand area at the front of the building which provides parking for six (6) vehicles in a stacked parking arrangement. There are also two (2) spaces at the rear of the site. Total parking available is currently eight (8) spaces.</p> <p>There will be a total of 4 beds on site; therefore no additional parking is required.</p>	Yes
	<p>Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.</p>	The proposal complies with the requirements of this subsection.	Noted.

28. The proposal has been considered in accordance with the applicable provisions and is satisfactory.

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

29. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
30. 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).
31. 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.
32. 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).
33. No trees are proposed to be removed as part of the development. Conditions have however been imposed requiring the retention and protection of specific trees on site.

GREATER METROPOLITAN REGIONAL ENVIRONMENTAL PLAN NO 2 - GEORGES RIVER CATCHMENT

34. 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,*
35. The proposed stormwater drainage system has been assessed by Council's Development Engineer and has been found to be satisfactory. Specific stormwater conditions have been imposed in this regard.

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

36. 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.
37. Clause 85 - Development adjacent to rail corridors and Clause 87 - Impact of rail noise or vibration on non-rail development is relevant to this DA on the basis that the proposal

involves the construction of residential accommodation on land that is generally adjacent to the rail corridor and is likely to be adversely affected by rail noise or vibration. As a result, the following provisions of Clause 87 of the SEPP are relevant:

- (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
- (a) *in any bedroom in the residential accommodation — 35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) — 40 dB(A) at any time.*

38. An Acoustic Report (Rail Noise Intrusion Assessment) was submitted with the DA, dated 28 October 2019 and prepared by Acoustic Logic. The report addresses the provisions of the Policy with respect to achieving acoustic compliance. The report suggests a series of construction methods and materials such as 6.38mm laminate to windows facing the rail corridor and 6mm to all other new windows, all with full perimeter acoustic seals).
39. The DA was also referred to Ausgrid on 8 January 2020 in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. At the time of writing this report no response had been received (17 September 2020).
40. The DA was referred to Sydney Trains in accordance in accordance with the provisions of Clause 85 of the Infrastructure SEPP. A response was provided by Sydney Trains on 6 June 2020, raising no objection to the proposal subject to conditions provided.
41. The provisions and requirements of the Infrastructure SEPP have been satisfactorily addressed.

Draft Environmental Planning Instruments

DRAFT ENVIRONMENTAL SEPP

42. 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.
43. The proposal is not inconsistent with the provisions of this Draft Instrument.

DRAFT REMEDIATION OF LAND SEPP

44. 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.
45. The proposal is not inconsistent with the provisions of this Draft Instrument as there is no evidence this site is contaminated based on previous uses.

KOGARAH LOCAL ENVIRONMENTAL PLAN 2012

Zoning and Permissibility

46. The extent to which the proposed development complies with the Kogarah Local Environmental Plan 2012 (KLEP 2012) is detailed and discussed below.
47. The subject site is zoned R2 – Low Density Residential Zone, a ‘residential care facility’ and ‘respite day care’ are permitted with consent in the zone.

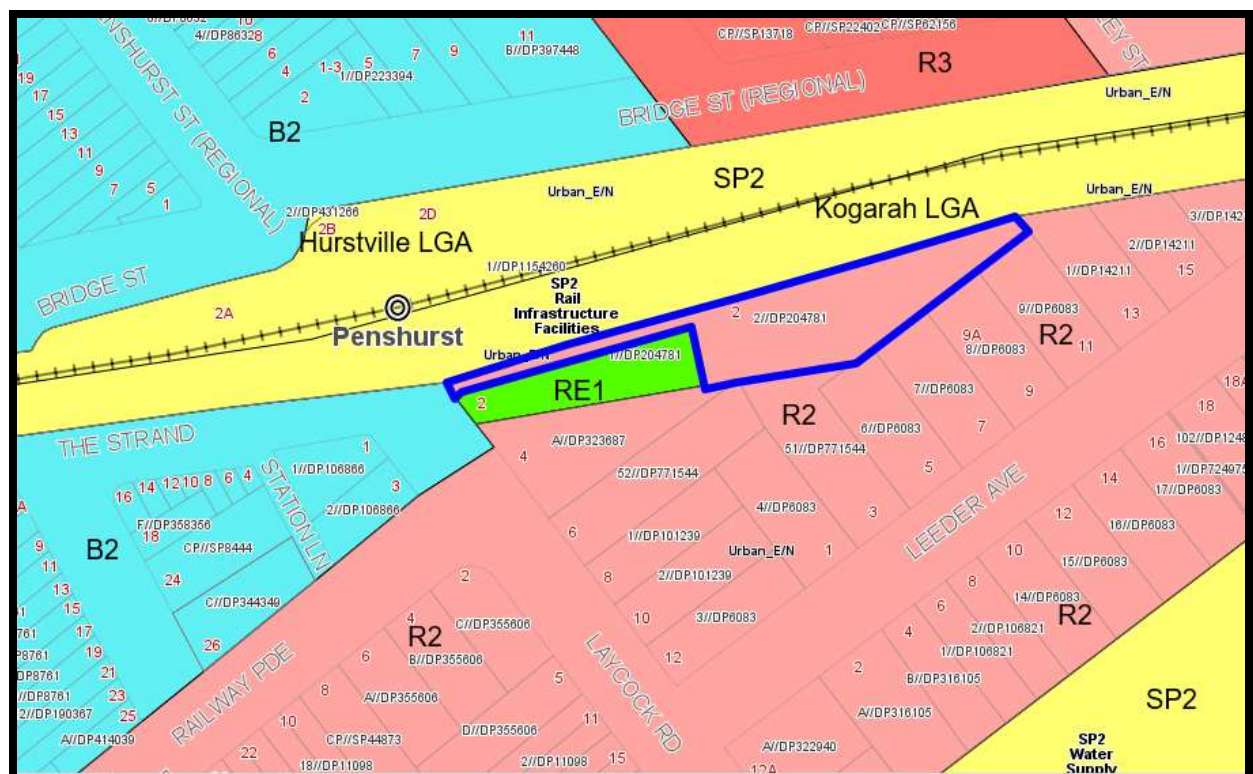


Figure 12: Zoning Map of the subject site 2 Laycock Road, Penshurst outlined in blue

Clause	Standard	Proposed	Complies
Part 1 Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is consistent with the aims of the plan.	Yes

1.4 – Definitions	<p>Residential care facility <i>means accommodation for seniors or people with a disability that includes:</i></p> <p>(a) <i>Meals and cleaning services, and</i></p> <p>(b) <i>Personal care or nursing care, or both, and</i></p> <p>(c) <i>Appropriate staffing, furniture, furnishings, and equipment for the provision of that accommodation and care.</i></p> <p>but does not include a dwelling, hostel or psychiatric facility</p>	The proposed development is consistent with the residential care facility definition.	Yes
Part 2 Permitted or prohibited development			
2.3 - Zone objectives and Land Use Table	<p>Meets objectives of R2-Low Density Residential Zone:</p> <ul style="list-style-type: none"> <i>To provide for the housing needs of the community within a low density residential environment.</i> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> 	The proposal satisfies the objectives of the R2 Low Density Residential zone and the use is permissible with development consent.	Yes
Part 4 Principal development standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	7.08m	Yes
4.1A – Minimum lot size for seniors housing o	1000sqm in Zone R2	1815sqm	Yes
4.4A – Exceptions to floor space ratio for residential accommodation in Zone R2	(2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.	The proposed development has a total FSR of 0.338:1 (613.87sqm)	No, Refer to Clause 4.6 assessment

	<p>For a site area not less than 1,500 square metres, floor space is not to exceed: $[(\text{lot area} - 1,500) \times 0.1 + 517.5] \div \text{lot area}:1$</p> <p>Site area: 1,815sqm 0.302:1 or 549sqm</p>		
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The gross floor area (GFA) calculation nominated by the applicant is considered accurate.	Yes
4.6 – Exceptions to development standards	<p>(1) The objectives of this clause are as follows—</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	The proposal is accompanied by a Clause 4.6 variation statement relating to the breach of the Floor Space Ratio standard under Clause 4.4A.	Refer to Clause 4.6 assessment
Part 5 Miscellaneous provisions			
5.10 – Heritage conservation	In accordance with the requirements of Clause 5.10.	<p>The subject site is identified as being located within a heritage conservation area (Penshurst Heritage Conservation Area). The site is within the vicinity of the following items of heritage significance listed under schedule 5 of KLEP 2012:</p> <ul style="list-style-type: none"> • Penshurst Railway Station, 1a The Strand Penshurst (Item No I147). • Laycock Road street trees, 	Yes

		<p>Laycock Road, Penshurst (Item No I138).</p> <p>A Statement of Heritage Impact has been provided with the application. This was reviewed by Council's Heritage Advisor and is supported on heritage grounds.</p>	
Part 6 Additional local provisions			
6.1 – Acid sulfate soils	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	The site is not affected by Acid sulfate soils	Yes
6.2 – Earthworks	<p>The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p> <p>(2) Development consent is required for earthworks unless—</p> <p>(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.</p>	The proposed earthworks are relatively minor and considered acceptable having regard to the provisions of this clause as the works are not likely to have a detrimental impact on environmental functions and processes, or neighbouring properties.	Yes
6.3 – Flood planning	<p>(2) This clause applies to —</p> <p>(a) land identified as</p>	The proposed development is not located in a mapped	Yes

	“Flood planning area” on the Flood Planning Map, and (b) other land at or below the flood planning level.	flood prone area.	
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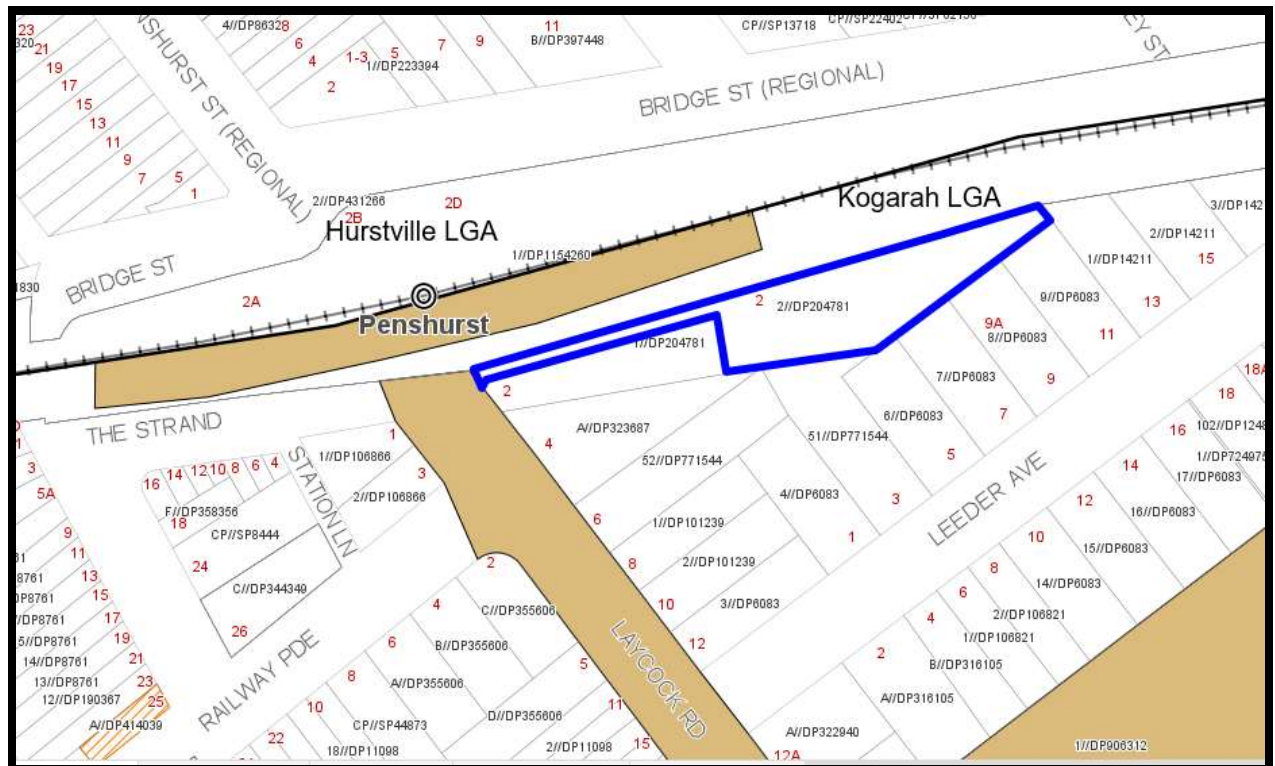


Figure 13: Heritage items in the vicinity of the site which is outlined in blue.

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Request for Variation under Clause 4.6 KLEP 2012 (LEP) - Clause 4.4A Floor Space Ratio

48. Clause 4.4A of Kogarah Local Environmental Plan (KLEP 2012) relates to the maximum floor space ratio for a site for residential accommodation in Zone R2. This maximum floor space ratio is based on a calculation from the site area specified in the table under Clause 4.4A. The maximum floor space ratio for this site is 0.302:1.
49. The proposed development seeks a total Floor space Ratio (FSR) of 0.338:1, being 613.87sqm, whilst Clause 4.4A of KLEP 2012 restricts the FSR to 0.302, being 548.13sqm, resulting in a non-compliance of 65.74sqm equating to 11.99%. The Applicant has submitted a Clause 4.6 submission to vary the permissible FSR and this is addressed below.
50. Any assessment of the intent and objective of the development standard must have regard to the definitions for Gross Floor Area and Floor Space Ratio contained within KLEP 2012 and their wording to ascertain what form of building is proposed see below:

Gross Floor area

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and

- (b) *habitable rooms in a basement or an attic, and*
- (c) *any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:*
- (d) *any area for common vertical circulation, such as lifts and stairs, and*
- (e) *any basement:*
 - (i) *storage, and*
 - (ii) *vehicular access, loading areas, garbage and services, and*
- (f) *plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) *car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) *any space used for the loading or unloading of goods (including access to it), and*
- (i) *terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) *voids above a floor at the level of a storey or storey above.*

Floor Space ratio

The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

51. The submitted architectural plans in conjunction with the Statement of Environmental Effects and Clause 4.6 variation statement prepared by Wynne Planning seeks a variation of 11.99% to the maximum allowable FSR control.

An assessment of the applicant's 4.6 variation request is provided below. **Exception to Development Standards**

Detailed assessment of variation to Clause 4.4A Exceptions to floor space ratio for residential accommodation in Zone R2

53. The objectives of Clause 4.6 are as follows
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- The proposed development seeks a variation to the development standard relating to FSR (Clause 4.4A). The Kogarah Local Environmental Plan 2012 (KLEP) identifies a maximum FSR of 0.302:1 or 548.13sqm for the Site and the proposed development has an FSR of 613.87sqm or 0.338:1. This breach amounts to an 11.99% variation of the control. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. 56.

Clause 4.6(3) states that:

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

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard”:*

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

Is the planning control in question a development standard? 58. The Floor Space Ratio control under Clause 4.4A of the KLEP 2012 is a development standard. The maximum permissible FSR is 0.302:1 or 548.13sqm.

What are the underlying objectives of the development standard?

59. The objectives of the Floor Space Ratio standard under Clause 4.4A of KLEP 2012 are:

- (a) *to ensure that the bulk and scale of development are compatible with the size of the lot, and*
- (b) *to promote good residential amenity.*

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

60. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6:

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

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

The judgement goes on to state that:

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

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

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

65. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements:
66. Applicants comment: *“Under Clause 4.6 (3)(a) of KLEP 2012 “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”.***
67. *The Initial Action case is referable to the judgement of Preston CJ in Wehbe v Pittwater Council [2007] NSWLEC 827 (Wehbe) which sets out five ways of demonstrating that compliance with a development standard is unreasonable or unnecessary. Cases such as Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and Randwick Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 have confirmed that adopting the ‘Wehbe’ principles when assessing a clause 4.6 submission in respect of clause 4.6(3)(a) is an appropriate approach.*
68. *It is necessary that the proposal meets one or more of the Wehbe principles (although the Wehbe principles are not the only basis upon which ‘unnecessary or unreasonable may be demonstrated).*
69. *Five ways from the Wehbe judgement of demonstrating that compliance with a development standard is unreasonable or unnecessary are:*
- 1. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).*
 - 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
 - 3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
 - 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
 - 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.*
70. *For the purpose of this variation request, only the first of the Wehbe principles is relevant. Set out below is an extract from the judgement in Wehbe together with a response in relation to the subject application:*
71. ***Compliance with objectives of the standard:*** *“The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends.*
72. *The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning*

objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

73. *Despite the breach to the floor space ratio control, the proposal achieves the objectives for floor space ratio in Clause 4.4A as outlined below:*

(a) To ensure that the bulk and scale of development are compatible with the size of the lot, and"

74. *The subject site is generously large, being 1,815sqm in area. This is well in excess of the minimum site area required under Clause 4.1A of KLEP 2012. Whilst the proposal presents a variation to the development standard, the proposal results in a low FSR on site of 0.338:1. The proposed addition has been well designed so as to be of a modest size which is suitable and functional to cater to the specialised needs of future occupants.*
75. *Additionally, it is noted that the proposal would easily comply with the FSR requirement under SEPP (Housing for Seniors or People with a Disability) if this SEPP was applicable, and easily complies with the applicable FSR on site under the LEP if the proposal did not include a residential component.*
76. *The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would."*

(b) To promote good residential amenity.

77. *As discussed above, the proposed addition has been well designed so as to be of a modest size which is suitable and functional to cater to the specialised needs of future occupants. The modest size of the addition is complemented by its fenestration, easily compliant maximum height, roof form, materiality and finishes so as to ensure good residential amenity with well minimised impacts upon surrounding development. The proposed addition will benefit from good solar access and ventilation, without unduly impacting surrounding dwellings.*
78. *The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would."*
79. *Despite the floor space ratio breach the proposal also satisfies the R2 zone objectives:*
- "To provide for the housing needs of the community within a low density residential environment."***
80. *The proposal is for alterations and additions to an existing residential care facility, providing for the needs of its future occupants as per the increased demand in the locality, within a low density residential setting. The level of compliance provided, design response to site context, design response to the irregular nature of the site, and well considered overall design to maximise amenity and minimise impacts ensures that the dwelling remains compatible with its low density context. The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.*

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

81. *The proposal is residential in nature, however does not prevent a differing landuse from being located on, nearby or adjacent the site. The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.*

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

82. *Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that the Clause 4.6 Statement lodged with the review application addresses all the information required pursuant to Clause 4.6. The Statement is considered to be well founded and there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the floor space ratio control.*
83. *Applicants Comment: “Under Clause 4.6 (3)(b) of the KLEP 2012, “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:*
84. *“That there are sufficient environmental planning grounds to justify contravening the development standard”.*
85. *It is considered that there are sufficient environmental planning grounds to justify breaching the floor space ratio development standard in this instance because:*
- The proposal would be compliant with FSR from 1 July 2021 – SEPP (Housing for Seniors or People with a Disability) would allow for a maximum FSR of 1:1 on site, however a recently implemented and temporary clause (Clause 4A) of the SEPP prevents the SEPP from applying to sites within heritage conservation areas until 1 July 2021. Accordingly, should the proposal be submitted from 1 July 2021, it would be easily compliant and have an FSR well below the maximum allowable.*
 - Waiting until 1 July 2021 would restrict the ability for the existing service to cater to the growing needs of the community. The alternative to the submission of the proposal at the current time would be to wait until 1 July 2021. However, this would be undesirable as it would have no impact other than to prolong the time until which the growing need for residential care within the community could be addressed.*
 - The proposal would easily comply if it did not contain residential accommodation. Where residential accommodation were not proposed on site, a maximum FSR of 0.55:1 would be applied and the proposal would easily comply, having a much lower FSR of 0.338:1. It is also noted that the entirety of the use of the site is not residential.*
 - The proposed addition creating the variation will not be visible from the street. The subject site is an internal lot, with the proposed addition significantly setback from the street at Laycock Road. It will be screened from view by the distance and existing mature trees surrounding the site.*

- *No part of the current building contains any heritage fabric. The proposed addition to the building is located far from the street frontage and will not be visible from Laycock Road, or the public realm of the adjoining HCA.”*
- *The proposed addition to the building will have no adverse impact on the heritage significance of any adjacent heritage items or the Penshurst Heritage Conservation Area due to the distance and tree cover between the building and the site frontage.*
- *There are no views between the subject site and the heritage items in the vicinity that have been identified as contributing factors to the cultural heritage significance of any of these places.*
- *The proposed development is consistent with the heritage requirements and guidelines of the Kogarah LEP 2012 and the Kogarah DCP 2013.*
- *The proposal allows for the retention of the existing building in the Heritage Conservation Area: The proposal allows for the retention of the existing building within the Heritage Conservation Area, which is understood to pre-date the Heritage Conservation Area.*
- *The proposal maintains the historic land use of the site: The site has been used as existing and proposed for a number of years, understood to pre-date the Heritage Conservation Area. The alterations and additions ensure that the site will remain suitable for this historic use for years to come.*
- *The basic form of the building is retained within the Heritage Conservation Area: The alterations and additions are minor, generally retaining the basic form of the building within its Heritage Conservation Area setting.*
- *The variation does not prevent the proposal from achieving the objectives of Clause 5.10 of KLEP 2012: The Statement of Heritage Impact provided under separate cover discusses that the proposal is “considered to be consistent with the relevant heritage objectives of the Kogarah LEP 2012”, noting that:*
 - *The proposal retains views to and from the adjacent heritage item.*
 - *The proposed development is to a neutral item in the Penshurst HCA.*
 - *The significance of the Penshurst HCA will be retained.*
- *The variation does not prevent the proposal from being consistent with the guidelines of KDCP 2013 with regard to heritage: The Statement of Heritage Impact provided under separate cover discusses that the “development is generally consistent with the guidelines of the Kogarah DCP 2013 that relate to development in conservation areas”. This ensures that the variation does not prevent the proposal from achieving consistency with the DCP requirements.*
- *The design of the proposed variation avoids impacts to trees: the area of the alterations and additions creating a variation has been sited above the ground floor level building footprint so as to ensure any impacts to trees are avoided.*
- *The non-compliance will have no adverse environmental impact on neighbouring properties in terms of visual intrusion, privacy, view sharing and shadow: The*

proposed addition (which creates the variation to the development standard) has been well designed as discussed throughout the Statement of Environmental Effects to be well separated and setback from surrounding properties, with windows, doors and balconies well oriented and designed, and is provided with suitable fenestration, roof forms, materials and finishes so as not to adversely affect the amenity of surrounding development.

- *The variation does not prevent the proposal from meeting building scale and height objectives within KDCP 2013 as follows:*

“(a) Ensure that new buildings and alterations and additions respect the dominant building forms and scale through the use of innovative architectural responses.”

86. *The proposed addition (which creates the FSR variation) has been positioned and designed so as to respect the existing low density residential character of the locality. The local topography, roof pitch, form, materiality, fenestration and finishes as well as good building separation ensure this. The proposed addition is of a minor scale and is well integrated with the existing main fabric of the building in its Heritage Conservation Area setting.*
87. *The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.*

“(b) Distribute building height and bulk on the site so as to ensure there is no significant loss of amenity to adjacent sites, open space and public streets.”

88. *The long, irregular and narrow nature of the site restricts the building footprint. The proposed addition has been designed so as to be well separated, oriented and provided with considered window and door placement so as to ensure no significant loss of amenity to surrounding properties. The position of the addition at the first floor level places this within the existing building footprint, avoiding impacts to trees. The proposed addition will not be visible from the street. The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.*
89. *The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.*

“(c) Ensure that building heights respond to the scale of the street and surrounding buildings.”

90. *The proposed addition (which creates the FSR variation) will not be visible from and will not affect the street. The proposed building height is easily compliant, and number of storeys is compatible with that visible in the Laycock Road streetscape. The building height and bulk is appropriately distributed as discussed above. The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.*

“(d) Ensure that the height of buildings does not overly impact on the streetscape or neighbouring properties.”

91. *The proposed maximum building height is easily compliant and does not adversely affect adjoining properties, including adjoining residential development which is located at a*

higher RL. The proposed addition will not be visible from the street. These considerations ensure that the height does not overly impact the streetscape or neighbouring properties. The proposed development will achieve this objective to at least an equal degree than a proposal that complied with the standard would.

- *Requiring full compliance would be undesirable: Requiring full compliance with the development standard is considered to be undesirable as it would prevent the site from being able to continue to meet the demands of the community for the historic landuse, particularly given that if the Development Application were lodged after 1 July 2021 it would comply with FSR.*
- *The non compliant elements of the proposal satisfy the relevant matters outlined in Section 1.3 of the Environmental Planning and Assessment Act 1979. This is outlined below:*

“(c) to promote the orderly and economic use and development of land,”:

92. *The design of the alterations and additions has been carefully considered and well designed so as to meet the demand for additional capacity within the existing service for the community, while ensuring no adverse impacts upon surrounding properties. This promotes the orderly use of land while having no adverse environmental impacts on adjoining properties in terms of visual bulk and scale, overshadowing or loss of sunlight. By allowing the variation to the FSR control the residential care facility will be facilitated in economically developing the land while responding to the needs of the local community.*

“(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,”

93. *The proposed addition is located at a new upper level, and will not affect existing landscaping or vegetation. Accordingly, the proposal will not affect threatened species, communities or habitats.*

“(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),”

94. *The site is not known to contain items of cultural heritage, and none are anticipated to be encountered given the location of the alterations and additions and that the site has been previously cleared and developed.*

“(g) to promote good design and amenity of the built environment”.

95. *The FSR breach is considered a positive outcome as part of the proposed alterations and additions, allowing for the residential care facility to meet the needs of the community while minimising and avoiding potential impacts upon the environment and surrounding development. The proposed design of the alterations and additions is considerate in ensuring compatibility with adjacent development and surrounding dwellings and will not be visible from Laycock Road. The appropriate design ensures no unreasonable adverse environmental impacts will result from the proposed works, including in terms of privacy, visual intrusion and overshadowing. It also does not have any adverse impacts upon the Heritage Conservation Area or nearby heritage items. Given that it will not result in any adverse impacts and will result in a building form that is visually appropriate for its context it will satisfy this object of the Act.*

- *The FSR breach has no implications for compliance with other key KLEP 2012 requirements: The proposed alterations and additions are consistent with other key KLEP 2012 requirements. The proposed height is easily less than the maximum allowable under KLEP 2012, and the site is well in excess of the minimum lot size required to facilitate the proposed alterations and additions. Overall, the design has been well considered in striving to achieve compatibility with both the existing housing stock and the future desired built form of the locality. It is also noted that the proposal overall is consistent with the objectives of the R2 zone."*

96. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there are sufficient environmental grounds to justify the variation to the floor space ratio, particularly given that:

- The development has been designed to minimise impacts where practicable on neighbouring properties.
- Strict compliance with the floor space ratio standard would result in no material visual/density benefit.
- The proposed development will not be highly visible when viewed from the street frontage, public reserve or from private properties.
- The additional floor space does not result in adverse amenity impacts upon neighbouring properties in terms of overlooking, overshadowing or loss of privacy.
- The additional floor space has been distributed within the footprint of the existing building to minimise its impact.
- Given its location the first floor addition is obscured from the street, railway and adjoining properties ensuring it will not be overbearing or visually intrusive.
- There is no adverse impact upon residential outlook, privacy, amenity or overshadowing.
- The proposed additions will not be out of character or look out of place within its context when viewed from the rail corridor or the commercial centre of Penshurst.

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

97. Clause 4.6(4) states that:

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

(a) the consent authority is satisfied that:

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

98. Applicants Comment: *"Under Clause 4.6 (4) of KLEP 2012 "Development consent must not be granted for development that contravenes a development standard unless: (a) the consent authority is satisfied that: (i) the applicant's written request has adequately*

addressed the matters required to be demonstrated by subclause (3), and (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (b) the concurrence of the Secretary has been obtained.”

99. *This Clause 4.6 variation request is in the public interest because it has been shown to be consistent with the objectives of the FSR development standard and the R2 zone.*

100. *It is understood that concurrence of the Secretary has been obtained.”*

101. Officers Comment: The proposal seeks a FSR of 0.388:1 (613.87sqm) on an allotment of 1815sqm, whereas the planning controls permit a FSR for this type of development in Zone R2 of 0.302:1 (548.13sqm).

102. 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 (Clause 4.6(4)(a)(ii).

103. The objectives of the floor space ratio are as follows:

(a) to ensure that the bulk and scale of development are compatible with the size of the lot, and

(b) to promote good residential amenity.

In order to address the requirements of subclause 4.6(4)(a)(ii) each of the relevant objectives of Clause 4.4A are addressed in turn below:

Objective (a) – to ensure that the bulk and scale of development are compatible with the size of the lot

104. The subject site is a large allotment within the R2 zone and is located at the rear of the allotment; access is via an access handle located along the northern boundary adjacent to the railway corridor. The building is setback a significant distance from the Laycock Road, with the buildings presence not dominant within the street.

105. The addition will not be highly visible when viewed from Laycock Road given the significant setback and the row of mature trees located within the public reserve adjacent to the access handle to the lot.

106. The bulk and scale generated for this development is considered to be minor and envisaged for this type of development. The Site is located within a Heritage Conservation Area and in the vicinity of heritage items. Council's Heritage advisor has advised that the proposed additions will have an acceptable visual absorption into the Penshurst Heritage Conservation Area and is considered consistent with the heritage provisions of Kogarah DCP 2013 and the Penshurst Heritage Conservation Area Assessment guidelines.

107. It is also noted that this particular land use would normally fall under the provisions of the Seniors Housing SEPP, except that Clause 4A of the SEPP prevents the SEPP being applied to land within heritage conservation areas until July 2021. This SEPP would permit a FSR of 1:1; the proposed FSR of 0.388:1 is not inconsistent with these controls.

Objective (b) - to promote good residential amenity

108. The subject site is located below the adjoining residential properties to the south and adjoins the railway to the north. It is setback from all boundaries and is well below the maximum building height permitted within the zone. It is not envisaged that the proposed works will have an adverse impact upon the amenity of adjoining properties.
109. It is also noted that the proposed development satisfies the R2 Low Density Residential Zone objectives by providing housing needs for the community in the form of additional rooms for the existing residential care facility and although still residential in nature, it does expand the use of the residential care facility which is an alternative to residential dwellings whilst offering residential accommodation.

Clause 4.6(5) the concurrence of the Secretary

110. Clause 4.6(5) states the following:

“In deciding whether to grant concurrence, the Secretary must consider-

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

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

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

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

112. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a “better” planning outcome resulting from the non-compliance.
113. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.
114. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development result in a ‘better environmental planning outcome for the site’ relative to a compliant development. Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.
115. The proposed building works are located towards the rear of the allotment and is well set back from the street. It does not generate any significant adverse amenity impacts upon neighbouring properties or the streetscape and meets the zone and floor space ratio objectives.

Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence (Clause 4.6(5)(c))

116. In accordance with Clause 64 of the Environmental Planning and Assessment Regulation 2000, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

Conclusion- Assessment of Clause 4.6 Request for Variation

Despite the non compliance with the floor space ratio, the proposed variation is considered to be acceptable and satisfies the provisions of Clause 4.6. Although there is additional floor space proposed this does not result in unacceptable bulk to the proposed development. 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. 118. The proposal has been designed in response to the site characteristics of the land and results in a bulk and scale envisaged for this type of development on the allotment.

119. Additionally, the objective of the clause is to ensure that the bulk and scale of the development is compatible with the size of the lot, and to promote good residential amenity. The proposed works achieve this by keeping the building height well within the maximum height control and locating the first floor towards the rear of the allotment reducing its visibility from the street.
120. The subject site is accessed via an access handle with the existing building located towards the rear of the allotment. A public reserve with a number of mature trees is located adjacent to the access handle. This unique access minimises any potential streetscape impacts given the building works are not highly visible from the street.
121. Despite the non-compliance in terms of the floor space ratio, the proposed variation is considered to be a reasonable planning and urban design outcome given that the variation satisfies the provisions as set by clause 4.4A, the zone objectives, and the non-compliance does not conflict with the public interest. It is considered that the Clause 4.6 Statement is well founded
On the basis of the commentary expressed above the Clause 4.6 submission is considered to be well founded and would result in a building form consistent with the zone objections as it applies to the low density residential area and would maintain the existing streetscape character.

DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020

123. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
124. 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."*

DRAFT STATE ENVIRONMENTAL PLANNING POLICY (HOUSING DIVERSITY) 2020

125. Consideration is given to the provisions of the Draft State Environmental Planning Policy (Housing Diversity) 2020 in the assessment this application.

126. The New South Wales Department of Planning, Industry and Environment exhibited an Explanation of Intended Effect between 29 July and 9 September 2020 for the proposed new Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP) that:
1. *Introduces new definitions for build-to-rent housing, student housing and co-living;*
 2. *Amends some state-level planning provisions, particularly for boarding house and seniors housing development;*
 3. *Amends some state-level planning provisions to support social housing developments undertaken by the NSW Land and Housing Corporation (LAHC) on government-owned land; and*
 4. *Consolidates three housing-related SEPPs*
 - *State Environmental Planning Policy (Affordable Rental Housing) 2009*
 - *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*
 - *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes).*
127. Comment: The development application was lodged on 11 December 2019 prior to the exhibition of Explanation of Intended Effect. Notwithstanding the above, the proposal is not considered to be inconsistent with the provisions of the Draft SEPP.
128. Of relevance to this application is the following:
129. The definitions in the Seniors SEPP have not been updated in line with the Standard Instrument LEP. This has led to inconsistency in the interpretation and application of the SEPP by developers and consent authorities.

Definitions

It is proposed that the following definitions be updated:

- the definition of 'height';
- the definition of 'people with a disability'; and
- the definition of 'AS 2890'.

Zoning

130. The site is zoned R2 Low Density Residential and currently residential care facilities are mandated as a permitted permissible use. Under this Draft instrument a residential care facility will continue to be mandated in this zone, should this instrument come into effect.

Update Schedule 1 – Environmentally Sensitive Land of the Seniors SEPP

131. The Seniors SEPP does not apply to land identified in Schedule 1 – Environmentally Sensitive Land. Schedule 1 has not been comprehensively updated since the commencement of the Seniors SEPP in 2004. Over time, especially with the introduction of the Standard Instrument LEP across all councils in NSW, some Schedule 1 terms have become obsolete and others have been the subject of significant debate in the Land and Environment Court.
132. It is proposed that Schedule 1 will be updated, to be better aligned with current legislation and planning conditions

Location and access to facilities provisions

133. It is proposed to amend the provisions for 'location and access to facilities' in the Seniors SEPP so that point-to-point transport, including taxis, hires cars and ride share services, cannot be used for the purpose of meeting the accessibility requirement.

Site Compatibility Certificate (SCC)

134. Validity of Site Compatibility Certificates - A site compatibility certificate (SCC) is usually valid for 24 months. Once a SCC has been issued, development consent is sought through a development application lodged with the consent authority, which is usually the local council. Because of the 24 month timeframe for the validity of a SCC, and the time needed to prepare and assess seniors housing proposals, SCCs sometimes expire before a development application has been determined. It is proposed to introduce provisions in the new SEPP so that a SCC is valid for 5 years, provided that a development application is lodged within 12 months of the date on which the SCC is issued. The 5 year timeframe is consistent with the current timeframe for SCCs in Division 5 of the ARHSEPP for development of residential flat buildings by public authorities or social housing providers.

Application of local development standards

135. Currently, the Seniors SEPP allows development for the purpose of seniors housing to be carried out 'despite the provisions of any other environmental planning instrument'. It is proposed to amend the SEPP provisions to clarify that development standards in an LEP prevail to the extent of any inconsistency with the SEPP. It is proposed that the development standards in the Seniors SEPP could be varied using clause 4.6 of the Standard Instrument LEP, but only to a maximum of 20%.

Conclusion

136. Notwithstanding the above, the proposal is not considered to be inconsistent with the provisions of the Draft SEPP.

DEVELOPMENT CONTROL PLANS

137. The proposal has been assessed under the relevant sections of the Kogarah Development Control Plan 2013 as follows.
138. The table below summarises the compliance of the proposal in relation to these controls.

KDCP 2013 Compliance Table		
PART B – GENERAL CONTROLS		
Required	Proposed	Complies
<i>B1 Heritage Items and Heritage Conservation Areas</i>		
The subject site is located within the Penshurst Heritage Conservation Area. Any development in the Heritage Conservation Areas is to address and respond to the requirements of the relevant Heritage Conservation Area Guidelines contained in	Heritage Statement provided and reviewed by Council's Heritage Advisor. Council's Heritage Advisor has raised no objection to the proposal and is supports the proposal in its current form.	Yes

Appendix 1.



Figure 14: Map of Penshurst Heritage Conservation Area showing contributory, neutral and intrusive items. The subject site is referenced as neutral and is outlined in blue.

Appendix B1 - Penshurst Heritage Conservation Area Assessment Guidelines

Clause 5.10(5) of Kogarah Local Environmental Plan 2012 requires that these Guidelines must be addressed in a heritage impact statement accompanying an application for development in the Penshurst Heritage Conservation Area. In particular, this must include consideration of how any proposed development satisfies the provisions of these Guidelines.	A Statement of heritage was provided with the application by GBA Heritage and was reviewed by Council's Consultant Heritage Advisor, who raised no objection to the proposal on heritage grounds.	Yes
B2 Tree Management and Greenweb		
Compliance with provisions of Clause 5.9 Preservation of Trees or Vegetation of KLEP 2012 must be achieved.	This clause has been repealed.	N/A
Approval required for tree removal on site	No trees are proposed for removal and conditions will be imposed should approval be granted for the protection and retention of the existing site trees.	N/A

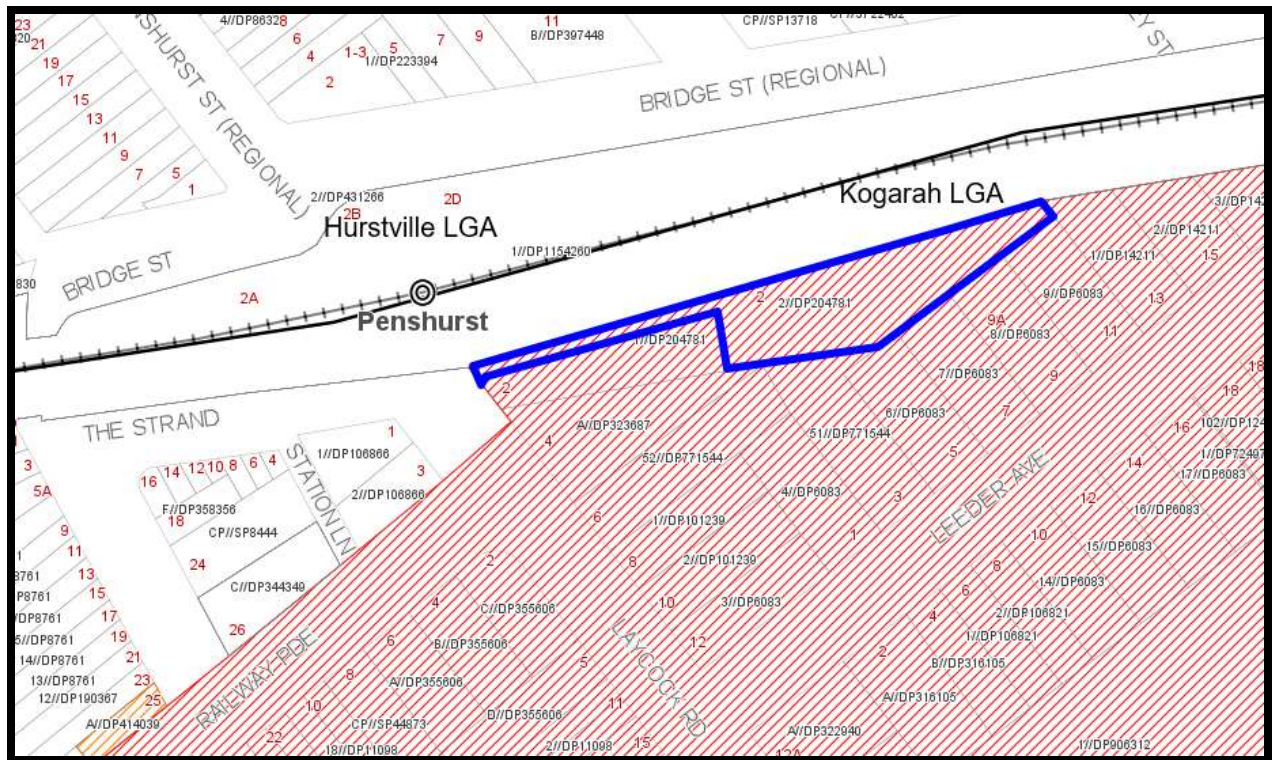
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B3 – Development near busy roads and rail corridors		
Acoustic assessment for noise sensitive development may be required if located in the vicinity of a rail corridor or busy roads	<p>Subject site is adjacent to Penshurst train station and located within 25m of a rail corridor.</p> <p>An Acoustic report was prepared by Acoustic Logic and assessed the development against the provisions of Clause 87 of the Infrastructure SEPP.</p> <p>The acoustic report provided a series of recommendations in the form of implementing construction techniques and materials that will assist in ameliorating acoustic impacts on the internal areas of the building. A detailed discussion regarding the acoustic compliance was conducted earlier in this report.</p> <p><u>Note:</u> Should the proposal be approved, appropriate conditions will be imposed to ensure the proposed development complies with the recommendations of the Acoustic Report and Sydney Trains requirements and conditions.</p>	Yes
B4 Parking and Traffic		
Parking Requirements <ul style="list-style-type: none"> • 1 space per 10 beds • 1 space for an ambulance • 1 space per 2 employees on duty 	The proposal will utilise the existing parking. The proposed development increases the number of beds from 2 to 4 and as the number of beds is still less than 10, there is no increase in the parking required.	Yes
B5 – Waste Management and Minimisation		
Submit Waste Management Plan (WMP) Provide for the sufficient on-site provision for the temporary storage of waste. Design and site waste storage areas so as to have minimal impact on adjoining properties.	<p>WMP was prepared by Innovate Architects Pty Ltd. The WMP caters for the demolition, construction and the operational phase of the proposal.</p> <p>The existing waste services are considered acceptable and in accordance with Council's requirements for the use of the building.</p>	Yes
B6 – Water Management		
All developments require consideration of Council's Water Management Policy	The proposed stormwater/drainage design has been referred to Council's Development Engineers. The proposed addition is to be connected to the existing system.	Yes
B7 – Environmental Management		
Building to be designed to improve solar efficiency	The design, materials, siting and orientation generally optimise solar	Yes

and are to use sustainable building materials and techniques

efficiency, with a high proportion of north-facing window openings. Glazing is minimised on the southern and western elevations. The development is BASIX compliant.

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	neighbourhood character and the potential impact of your development.	found to be satisfactory. The addition cannot be readily viewed from Laycock Road.											
1.2 Building Scale and Height													
1.2.1 Floor space Requirements (1) The floor space ratio for dwelling houses must comply with the requirements below:		The proposal seeks a FSR of 0.338:1	No – however a Clause 4.6 statement requesting a variation to Clause 4.4A of KLEP 2012. The Clause 4.6 is considered to be well founded.										
<table><tr><th>Site Area</th><th>Maximum FSR</th></tr><tr><td>Less than or equal to 650m²</td><td>0.55:1</td></tr><tr><td>Greater than 650m² Less than or equal to 800m²</td><td>(Site Area – 650) × 0.3 + 357.5</td></tr><tr><td>Greater than 800m² Less than or equal to 1000m²</td><td>(Site Area – 800) × 0.2 + 402.5</td></tr><tr><td>Greater than 1000m² Less than or equal to 1500m²</td><td>(Site Area – 1000) × 0.15 + 442.5</td></tr><tr><td>Greater than 1500m²</td><td>(Site Area – 1500) × 0.1 + 517.5</td></tr></table>				Site Area	Maximum FSR	Less than or equal to 650m ²	0.55:1	Greater than 650m ² Less than or equal to 800m ²	(Site Area – 650) × 0.3 + 357.5	Greater than 800m ² Less than or equal to 1000m ²	(Site Area – 800) × 0.2 + 402.5	Greater than 1000m ² Less than or equal to 1500m ²	(Site Area – 1000) × 0.15 + 442.5
Site Area	Maximum FSR												
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Greater than 800m ² Less than or equal to 1000m ²	(Site Area – 800) × 0.2 + 402.5												
Greater than 1000m ² Less than or equal to 1500m ²	(Site Area – 1000) × 0.15 + 442.5												
Greater than 1500m ²	(Site Area – 1500) × 0.1 + 517.5												
Maximum FSR is 0.302:1.													
1.2.1 (3)	Notwithstanding compliance with the numerical requirements in Table 1, applicants must demonstrate that the bulk and relative mass of the proposed development is acceptable in the street and on adjoining dwellings, in terms of the following impacts: (i) streetscape considerations (bulk and scale); (ii) building setbacks; (iii) landscape requirements; (iv) the existence of significant trees/vegetation on site; (v) the size and shape of the allotment; and (vi) topography of the site.	The bulk and mass of the proposal will have no adverse impact on the streetscape given the lot is an internal lot and is surrounded by natural vegetation with a public reserve located along the access handle to the subject site. The proposed addition will be constructed within the existing building footprint and provides generous setbacks. No trees are proposed for removal as part of this development.	Yes										
1.2.1 (2)	(5) Blank walls and flat facades should be avoided. Walls longer than 10m should be articulated by a minimum 300mm projection or indentation in the façade.	18.69m with no indentation. This is considered acceptable for the reasons detailed below:	No, see justification below										
Variation to Clause 1.2.1 (2) This variation is considered acceptable as the proposed addition is utilising the existing													

building footprint. Although there is a blank wall located along the southern boundary, due to the topography of the site, the existing building is sited lower than the adjoining property and this wall will not be visually intrusive or dominant when viewed from the adjoining residential lots. A low profile skillion roof has also been proposed minimising the height of the building. There are a number of trees and shrubs located on and adjacent to the southern boundary that will also screen and soften this part of the building. The northern wall is broken up by the provision of a balcony and awning that provides relief to this northern façade.

	(6) The overall building should present a building mass that is in proportion with the allotment size, provides opportunities for modulation and articulation of the building and does not detract from the satisfaction of any other applicable design principle	The proposed development is considered to be appropriate given the significant streetscape setback and the location on the site of the existing building and the proposed additions.	Yes
	(7) Where proposed development includes a two (2) residential level element, then the second level should not extend beyond 60% of the depth of the allotment measured from the street boundary. Where side boundaries are of varying length, the second level is limited to a line across the block between the points on both boundaries.	Due to the irregular shape of the site and being a battle axe allotment that contains an access handle of over 60m, compliance with this control is not achievable; the building additions will extend beyond the 60% line, but will not adversely impact the amenity of the rear yards of the residential allotments adjoining.	Yes
1.2.2 Building Heights	<p>(1) The maximum building height must comply with the requirements specified in table below:</p> <p>Dwelling Type Single dwelling;</p> <p>Maximum Height 7.2m to the underside of the upper ceiling; 9.0m to the top of the ridge;</p> <p>(2) The maximum number of residential levels is two (2), except where the site has a slope exceeding 1:8 (12.5%), where the</p>	<p>5.97m</p> <p>7.08m</p> <p>Two (2) proposed</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	maximum number of residential levels is three (3).		
1.2.3 Rhythm of the Built Elements in the Streetscape	(1) The primary building façade should not exceed 40% of the overall width of the total frontage.	Existing building façade remains unchanged.	N/A
	(2) The secondary building façade should be set back a minimum of 1.5 metres from the primary building façade.	The secondary building façade is setback >1.5m.	Yes
	(3) Where the dominant built form in the streetscape provides for a pitched hip or gable ended presentation to the street, the new buildings and/or additions should reflect that roof form.	The streetscape is characterised by a mix of pitched and parapet roofs. The proposed development incorporates a skillion roof design which is acceptable as it is not readily visible from Laycock Road and does not compete with or dominate the contributory items in the conservation area.	Yes
1.2.4 Building Setbacks	1.2.4.2 Front Setbacks (1) Where the setback of an adjacent building is greater than 5m, an appropriate setback may be achieved by ensuring development is set back: (i) the same distance as one or the other of the adjoining buildings, provided the difference between the setbacks of the two adjoining buildings is less than or equal to 2.0m.	N/A the building is existing and is an internal lot. N/A the building is existing and is an internal lot.	N/A N/A
	1.2.4.3 Side and Rear Setbacks (1) The side and rear boundary setbacks should comply with the table below. <u>Rear Setback</u>		

	<p>Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater.</p> <p><u>Side Setbacks</u> For buildings having a wall height of 3.5m or less, the minimum side boundary setback is 900mm.</p> <p>For buildings having a wall height of greater than 3.5m, the minimum side boundary setback is 1200mm.</p>	<p>The rear setback is existing and exceeds 15% of the average site length.</p> <p><u>Existing ground floor</u> North - >900mm South - >900mm</p> <p><u>First floor addition</u> North - 2.955m South – 4.41m</p>	<p>Yes</p> <p>Yes Yes</p> <p>Yes Yes</p>
1.2.5 Fenestration and External Materials	(1) New buildings and alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.	The proposed development is considered to be consistent with the design demonstrated throughout the immediate vicinity.	Yes
	(3) The roof should be similar to the angle of pitch, materials and colour of roofs in the streetscape (Figure 14).	The immediate vicinity demonstrates both pitched and parapet roofs, the proposal is consistent with the streetscape given the angled skillion roof proposed.	Yes
	(4) The colours of garages, window frames, and balustrading on main facades and elevations are to be integrated with the external design of the building.	The external facades of the proposed development are considered appropriate for the locality. The new work proposed will be integrated into the existing building.	Yes
	(5) Glazing shall be limited to a maximum 35% of the total area of the overall street front façade. This includes both primary and secondary façade bays (Figure 15).	Glazing to the street facing façade does not exceed 35%.	Yes
1.3 Open Space			

	(1) 15% of the site area must be deep soil landscaped area.	19.7% or 357.4sqm – no deep soil is impacted by this development.	Yes
	(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	The proposed development includes a satisfactory area for private open space which remains unaltered by this development.	Yes
	(3) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year round use.	The proposed private open space is appropriately located. The private open space area is north facing and is located at the rear of the building. In addition the new north facing balcony will provide private open space from the main living area of the new residential accommodation.	Yes
	(4) Where soil and drainage conditions are suitable, unpaved or unsealed landscaped areas should be maximised and designed to facilitate on site infiltration of stormwater.	The proposed development provides satisfactory and appropriate areas of landscaping.	Yes
	(5) Existing significant trees and vegetation must be incorporated into proposed landscape treatment.	There are no trees proposed for removal.	Yes
1.4 Vehicular access, parking and circulation			
	(1) Car parking is to be provided in accordance with the requirements in Section B4. Residential care facility/respite day care centre <ul style="list-style-type: none"> One (1) space per 10 beds One (1) space per 2 employees on duty at any one time One (1) space suitable for an ambulance 	The proposed development will increase to 4 beds and as such there is no additional parking required. The development is satisfactory having regard to Section B4 of the KDCP 2013.	Yes
	(4) Crossings are to be positioned so that on-street	No new driveway crossing is proposed.	Yes

	parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.		
1.5 Privacy			
1.5.1 Visual Privacy	(1) Windows from active rooms are to be offset between adjacent dwellings so as to avoid direct overlooking onto neighbouring windows.	The proposed development is satisfactory with respect to this control as this development is lower than the residential allotments adjoining and there are highlight windows to the living area. As a result there is no adverse overlooking.	Yes
	(2) Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m from any adjoining property boundary.	Width 1.5m Setback 2.955m (the balcony is setback 2.955m at the north eastern corner with an increased setback along the balcony to the west) the balcony faces the railway and will have no adverse impact upon the amenity of any adjoining residential properties.	Yes No, however is supported in this case.
	(3) The area of balconies or terraces greater than 1.5m above ground level is limited to a cumulative total of 40sqm per dwelling. (4) Council may consider a variation to the above requirements where it is considered that the terrace or balcony will not result in a loss of privacy to neighbouring properties.	25.92sqm complies N/A – Complies	Yes N/A
	(5) For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties (Figures 18 and 19).	The proposed development is considered to be appropriately treated to prevent any privacy concerns.	Yes

1.5.2 Acoustic Privacy			
Residential development adjacent to a rail corridor or a busy road should be designed and sited to minimise noise impacts Refer to requirements in State Environmental Planning Policy – Infrastructure and the NSW Department of Planning’s Development near Rail Corridors and Busy Roads – Interim Guidelines.		Rail noise Intrusion Assessment Report provided by Acoustic Logic. Reviewed by Council’s Health Officer and found to be acceptable.	Yes
1.6 Solar Access			
	(1) At least 50% of the primary private open space of the proposed development should have access to a minimum of four hours of sunlight between 9am–3pm on 21 June.	The proposed private open space will receive minimum 4 hours sunlight between 9am–3pm on 21 June.	Yes
	(3) Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on 21 June (Figure 21).	The adjoining property to the south will still receive the minimum of 3 hours sunlight between 9am–3pm to at least 50% of the existing primary private open space on 21 June.	Yes
	(4) Shadow diagrams are to be submitted for the winter solstice (21 June) and the spring equinox (22 September).	Provided	Yes
	(5) Shadow diagrams are required to show the impact of the proposal on solar access to the open space of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams	Provided	Yes
1.7 Views and view sharing			
	(1) Development shall provide for the reasonable sharing of views. Note: Assessment of applications will refer to the	The proposed development will not impact any viewing corridors.	Yes

	Planning Principle established by the Land and Environment Court in Tenacity Consulting vs Warringah Council (2004) NSWLEC140		
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GEORGES RIVER DEVELOPMENT CONTROL PLAN 2020 (INTERIM POLICY)

139. The Interim Policy is a supplementary document, meaning that the current Development Control Plan 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 Development Control Plans still legally apply. Whilst the Interim Policy has no statutory recognition in the assessment of a Development Applications pursuant to the Environmental Planning and Assessment Act 1979, the policy was used as a guide as it is an endorsed position of the Council.
140. An assessment of the proposal has been carried out against the provisions of the Interim Policy in respect to the dwelling house provisions as the site is located within the R2 Low Density Zone as set out in the following table:

Interim Policy – Georges River DCP 2020

Standard	Proposed	Complies
Building Setback (Front)		
<ul style="list-style-type: none"> Minimum setback from the primary street boundary is: <ul style="list-style-type: none"> a) 4.5m to the main building face b) 5.5m to the front wall of garage, carport roof or onsite parking space Or <ul style="list-style-type: none"> a) Within 20% of the average setback of dwellings on adjoining lots 	N/A - The subject site is a battle axe allotment	N/A
Building Setback (Rear)		
<ul style="list-style-type: none"> Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater 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 	Complies – 31.505m provided, which complies with the required 23.35m based on an average site length of 155.67m.	Yes
Building Setback (Side)		
<ul style="list-style-type: none"> The minimum side setback outside the FSPA is 900mm (ground floor) and 1.2m (first floor) 	Ground floor existing >900mm First floor North – 2.955m First floor South – 4.41m	Yes Yes Yes
Landscaped area		
<ul style="list-style-type: none"> Where located outside the FSPA, a minimum of 20% of site area is landscaped open space 	357.4sqm (19.7%)	No, however no change from existing.

<ul style="list-style-type: none"> • The minimum dimension of landscaped open space is 2m, designed in a useable configuration • 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 	<p>Minimum 2m dimension provided</p> <p>Not provided as the lot is a battle axe allotment. It is noted that there is a public reserve located adjacent to the access handle which interfaces with Laycock Road.</p>	<p>Yes</p> <p>N/A</p>
Private Open Space		
<ul style="list-style-type: none"> • An area of Principal Private Open Space is to be provided which: <ul style="list-style-type: none"> a) has a minimum area of 30sqm b) has a minimum dimension of 5m, designed in a useable configuration c) is located at ground level and behind the front wall of the dwelling d) is directly accessible from a main living area 	<p>There is an existing grassed area to the east of the building which provides a private open space area. Minimum dimension of 7.53m</p> <p>Is located at ground level and behind the building.</p> <p>Can be accessed from the ground floor terrace</p>	<p>Yes</p>
Solar Access		
<p>Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June).</p> <p>Note 1: development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design Interim Policy – Georges River Development Control Plan 2020 July 2019 Page 8 of 8 solution.</p> <p>Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation</p>	<p>The proposed private open space will receive minimum 4 hours sunlight between 9am–3pm on 21 June.</p> <p>The adjoining property to the south will still receive the minimum of 3 hours sunlight between 9am–3pm to at least 50% of the existing primary private open space on 21 June.</p>	<p>Yes</p>

141. In relation to the proposed dwelling house, the proposal does not conflict with the controls of the Interim Policy Development Control Plan.

IMPACTS

Natural Environment

142. The proposal does not involve the removal of any trees or vegetation and the existing landscaping will remain unaltered through the alterations and additions to the existing building.
143. The proposed method of drainage involves the new stormwater downpipes being connected to the existing drainage system on site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3:2015 (as amended). The concept plan has been assessed by Council's Development Engineer and he has imposed a condition of consent in that regard.
144. The development will not result in any significant adverse impacts on the natural environment.

Built Environment

145. The built form of the proposed development is of a bulk and scale that is consistent with other residential care facilities. The development proposes a skillion roof which is not inconsistent with the existing housing stock in the locality.
146. The proposed works will result in an architectural style that is compatible with the character of the area and consistent in scale with the surrounding development. The materials proposed includes painting the existing bricks and cladding, cladding to the first floor and metal deck roofing. The design incorporates both attractive and functional architectural details which maintain outlook to living spaces whilst maintaining privacy to neighbouring properties.
147. The development has been designed to maintain visual privacy between the subject site and adjoining properties. The addition is orientated to the north towards the railway with a generous boundary setback to the southern properties of 4.41m. The location, sill heights and types of windows also ensures privacy is maintained.
148. Given the site orientation, the proposed development will result in some overshadowing to the neighbouring properties during the winter solstice. However, shadow diagrams provided demonstrate that the primary living areas of this neighbouring property will achieve solar access in accordance with the requirements of KDCP 2013.
149. It is noted that the proposed development will not unreasonably increase overshadowing to the neighbouring properties and is therefore considered acceptable.

Social Impact

150. The proposed development is of a scale and form that is consistent with existing development which does not result in a negative social impact. The proposed alterations and additions will provide a benefit for the community in that it will provide additional housing for vulnerable people in the society.

Economic Impact

151. The proposal will result in a short term positive economic stimulus due to the employment opportunities created by the demolition and construction works.

Suitability of the Site

152. The subject site is zoned R2 – Low Density Residential, and a residential care facility is a permissible form of development in this zone. Alterations and additions to the existing building are considered to be an appropriate and suitable form of development.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

153. The application was notified to adjoining residents between 8 January 2020 and 12 February 2020 in which notified residents were invited to view the plans and submit any comments on the proposal. No submissions were received in response to this notification.

Council ReferralsDevelopment Engineer

154. The proposal was referred to Council's Development Engineer. No objection was raised to the proposal subject to suitable conditions of development consent. Specific conditions of consent have been recommended and included in the conditions referenced at the end of this report.

Environmental Health Officer

155. The proposal was referred to Council's Environmental Health Officer and no objection was raised subject to suitable conditions of development consent.

Consultant Arborist

156. The proposal was referred to Council's Consultant Arborist and no objection was raised to the proposal subject to conditions of consent in relation to tree protection and retention for existing trees.

Heritage Advisor

157. The proposal was referred to Council's Heritage Advisor; no objection was raised to the proposal. The following comments were made:

"The subject site is situated along the northern fringe of the Penshurst HCA and is a battle-axe shaped allotment which is bound by the railway corridor to the north and an area of open space immediately adjoining the access-handle of the site.

Consequently, this portion of Laycock Road is mostly defined by the open space that presents to the streetscape and the extant built form on the subject site does not have a visual presence but rather a silent contribution to Laycock Road.

Situated on the site is a single storey building which is attributed to the late 20th / early 21st century and is identified in the Penshurst HCA Assessment Guidelines as being a neutral item.

Although the proposed additions will vertically extend the height of the existing single storey building, the additions will not be visually discernible from Laycock Road and will have a negligible visual impact on the nearby Penshurst Railway Station or street trees in Laycock Road.

Overall, the proposed additions will have an acceptable visual absorption into the Penshurst HCA and is considered consistent with the heritage provisions of Kogarah DCP 2013 and the Penshurst HCA assessment guidelines.

The proposed development is supported on heritage grounds and there are no conditions recommended."

Building Surveyor

158. The proposal was referred to Council's Building Surveyor. They requested that the following additional information be provided:

- *A comprehensive BCA compliance report addressing the relevant parts of Sections C, D, E and F of the NCC/BCA 2019. This report is to be prepared by a qualified and experienced Building Professionals Board (BPB) Grade A1 Building Certifier.*
- *A comprehensive BCA Compliance Report addressing the relevant parts of the Premises Standard and Part D3 of the NCC/BCA 2019. This report is to be prepared by a qualified and experienced Accredited Member of the Association of Consultants in Access Australia – ACAA.*
- *Provide details of existing Fire Safety measures that are installed in the building. This information may be available from the fire protection company that maintains these measures on your behalf.*

159. The BCA Assessment Report, Access Reports and details of existing fire safety measures were provided. The reports provided detailed recommendations required to meet the requirements of the BCA. A condition of development consent has been imposed requiring that the recommendations of these reports be incorporated into the scope of works for the proposed alterations and additions.

External Referrals

Sydney Trains

160. The application was referred to Sydney Trains in accordance with Clause 85 of the State Environmental Planning Policy (Infrastructure) 2007 on 8 January 2020. Comments and conditions were received on 16 June 2020. These conditions have been included within the conditions list at the end of this report.

Ausgrid

161. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007 on 8 January 2020. No response was received at the time of preparation of this report.

Contributions

162. The development is subject to Section 7.12 (former Section 94A Contribution) contribution as the proposed cost of works, registered with Council exceeds \$100,000.00. In accordance with Council's Section 94A Plan, Section 7.12 – Fixed Development Consent Levies are applicable to residential developments.

163. In this case the levied charge is \$3570.30, which is required to be paid in full prior to the release of any Construction Certificate.

CONCLUSION

164. Development consent is sought for alterations and additions to the existing residential care facility and respite day care centre.

165. The proposal has been assessed in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979. As discussed throughout this report, the proposal satisfies the R2 Low Density zone objectives, in addition to complying with the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plan. The application has been accompanied by a Clause 4.6 variation to the maximum floor space ratio control.

166. The Clause 4.6 request has been assessed and found to be well founded and provides sufficient environmental planning grounds to justify that compliance in this individual case is unreasonable and unnecessary.
167. The proposal will not result in any unreasonable impacts to the amenity of adjoining properties subject to the conditions of consent recommended below.
168. The application is recommended for approval subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

169. Statement of Reasons

- The proposed alterations and additions to the existing building is an appropriate response to the site and is consistent with the objectives of the R2 zone and existing developments in the locality.
- The clause 4.6 request to vary the floor space ratio development standard is well founded and is acceptable in the circumstances of this proposal.
- The proposed alterations and additions will not adversely affect the heritage conservation area and satisfies the relevant controls of Clause 5.10 of KLEP 2012, Part B1 of KDCP 2013 and the Penshurst Heritage Conservation Area Assessment Guidelines.
- The proposed development generally complies with the requirements of the relevant environmental planning instruments and development control plan.
- The proposed development is well considered and sensitively designed so that it will not result in any unreasonable impacts on the natural and built environment.
- The building will not unreasonably affect the amenity of any immediately adjoining properties in terms of unreasonable overlooking, overshadowing or view loss.
- The proposal is not inconsistent with the provisions of Draft Georges River Local Environmental Plan 2020.
- The proposal will provide additional rooms which will provide a benefit for the use in serving a community need.

Determination

170. THAT the Georges River Local Planning Panel, as the consent authority, support the request for variation pursuant to Clause 4.6 of Hurstville Local Environmental Plan 2012, in relation to the floor space ratio (Clause 4.4A) control as the variation is considered to be well founded and in the public interest.
171. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) Georges River Local Planning Panel grants consent to DA2019/0607 for alterations and additions including a first floor addition to the existing residential care facility and respite day care centre at Lot 2, DP204781 and known as 2 Laycock Road, Penshurst, subject to the following 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:

Description	Reference No.	Date	Revision	Prepared by
Site Analysis Plan	Job 2621 sheet SA	December	A	Innovate Architects

		2019		
Site Plan	Job 2621 sheet 01	October 2020	B	Innovate Architects
Ground Floor Plan	Job 2621 sheet 02	October 2020	B	Innovate Architects
First Floor Plan	Job 2621 sheet 03	October 2020	B	Innovate Architects
Elevations	Job 2621 sheet 04	December 2019	A	Innovate Architects
Sections Plan	Job 2621 sheet 05	December 2019	A	Innovate Architects
Calculation Plan	Job 2621 sheet 07	December 2019	A	Innovate Architects
External Finishes of building				Innovate Architects
External Finishes Schedule				Innovate Architects
Site Drainage and Erosion and Sediment Control Plan	Job 19122-C01	25.9.2019		CPM Engineering

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;

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

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

4. **Sydney Trains** – Prior to the issue of a Construction Certificate, the applicant shall consult with Sydney Trains regrading compliance with the following conditions:
 - (a) The proposed development is to comply with the deemed-to-satisfy provisions in the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".
 - (b) Excess soil is not allowed to enter, be spread or stockpiled within the rail corridor (and its easements) and must be adequately managed/disposed of.
 - (c) The Applicant must ensure that all drainage from the development is adequately disposed of and managed and not allowed to be discharged into the railway corridor unless prior written approval has been obtained from Sydney Trains.
 - (d) No work is permitted within the rail corridor, or any easements which benefit Sydney Trains/RailCorp, at any time, unless the prior approval of, or an Agreement with, Sydney Trains/RailCorp has been obtained by the Applicant. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
 - (e) No scaffolding is to be used facing the rail corridor unless prior written approval has been obtained from Sydney Trains. To obtain approval the Applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.

- (f) If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- (g) If required, prior to the issuing of a Construction Certificate the Applicant must submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
- (h) The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:
 - oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
 - acts as the authorised representative of the Applicant; and
 - is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.
- (i) Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.
- (j) Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains external party interface team. In this instance the relevant interface team is Illawarra Interface and they can be contacted via email on Illawarra_Interface@transport.nsw.gov.au.

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 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. **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.

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

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

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$160.00
Georges River Council Section 94A Development Contributions Plan 2017	\$3,570.30

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.

8. **Damage Deposit - Minor Works** - 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:
\$160.00

- (c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

9. **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.
10. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. A360729 prepared by Efficient Living Pty Ltd, dated 10 October 2019 must be implemented on the plans lodged with the application for the Construction Certificate.
11. **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.

12. **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) the new stormwater downpipes are to drain to the existing drainage system on site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).

13. **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.
14. **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.

15. **Access for persons with a disability** - Access to and throughout the premises and sanitary facilities for persons with disabilities must be provided in accordance with the requirements and recommendations contained within the Access Report prepared by Code Performance Ref No 20010 – R1.1 dated 23 September 2020. Details must be submitted with the Construction Certificate Application.
16. **BCA Compliance** – Pursuant to Clause 94 of the Environmental Planning and Assessment Regulation 2000, the existing building is to be upgraded in accordance with the recommendations as required and detailed in the Statutory Compliance Report No J3274 dated 3 June 2020 prepared by DPC.

In this regard detailed construction plans and specifications that demonstrate compliance with the above must be submitted to the Certifying Authority with the Construction Certificate for approval.

17. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors/hallways, stairs and ramps as well as floor surfaces in the wet rooms in any commercial/retail/residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2013 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.
18. **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).
19. **Acoustic Requirements – Compliance with submitted Acoustic Report** - The Construction Certificate plans shall demonstrate compliance with the Acoustic Report submitted and approved by Council, titled 2 Laycock Road Penshurst - Rail Noise

Intrusion Assessment, prepared by Acoustic Logic and dated 28 October 2019

20. **Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, bin locations and disposal method, 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.
21. **Tree Protection and Retention** - The following trees shall be retained and protected:

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) TPZ Fencing distance from trunk
<i>Eucalyptus haemastoma</i>	State rails corridor adjacent to proposed works	4.8 metres radially out from its trunk
<i>Lophostemon confertus</i> (stand of several)	Reserve fronting the site	5 metres radially out from their trunks

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

Tree Protection Measures – truck deliveries and impacts to trees in reserve along driveway

- (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) Although trees may be on adjacent sites, the truck deliveries may impact the overhanging trees canopy on the driveway. The engaged arborist must be in attendance for guidance if the canopy is impacted.
- (c) The tree protection measures must be in undertaken in accordance AS4970 -2009 *Protection of trees on development sites*.
- (d) 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.
- (e) The engaged Project Arborist must be present on-site during the stages of excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
- (f) To preserve the *Eucalyptus haemastoma*, no work shall commence nor shall a Construction Certificate be issued (whichever occurs first) until the trunk/branches are protected, in accordance with AS 4970-2009 *Protection of trees on development sites*, by the wrapping of geo woven fabric around the trunk 4/5 times and the placement of two metre long, lengths of 50mm x 100mm timber battens vertically

arranged around the trunk, with 100mm spacing's. The timber battens shall be secured by wire/hoop straps but not secured into the tree itself. The trunk/branch protection shall be maintained intact until the completion of all works upon the site.

- (g) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
- (h) No building products/ materials or services shall be installed within the TPZ of the *Eucalyptus haemastoma*. The tree protection trunk wrapping shall be kept in place during demolition, construction and also have a sign displaying 'Tree Protection Zone - DO NOT ENTER' attached to the timber and must also include the name and contact details of the Project Arborist.

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

- 22. **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.

- 23. **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.
- 24. **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.
- 25. **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.

26. **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 applicants expense.

During Construction

27. **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.
28. **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.

29. **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.
30. **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.

31. **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.
32. **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:
- Work Health and Safety Act 2011 (NSW) (as amended);
 - Work Health and Safety Regulation 2011 (as amended);
 - Protection Of the Environment Operations Act 1997 (NSW) (as amended); and
 - Protection of the Environment Operations (Waste) Regulation 2014 (as amended)
33. **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

34. **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.
35. **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.
36. **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.
37. **Arborist Certification** - An engaged Arborist shall certify in writing, if tree protection measures have been enacted and kept in place before, during and after works have been completed.

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.

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

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

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

39. **Acoustic Compliance** - Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report titled Rail Noise Intrusion Assessment, prepared by Acoustic Logic and dated 28 October 2019.
40. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.

Operational Conditions (Ongoing)

41. **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.

42. **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).
43. **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.
44. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and other operations required to maintain healthy trees, plants and turfed areas.
45. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorist on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.
46. **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.
47. **Activities and storage of goods outside building** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.

Operational Requirements Under the Environmental Planning & Assessment Act 1979

48. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
49. **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.

50. **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.

51. **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.

52. **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.

53. **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.

54. **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

55. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
56. **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.
57. **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.

58. **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.
59. **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.
60. **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.

Advices

61. **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.

62. **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.
63. **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.
64. **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.

65. **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.

66. **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.

67. **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).

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

(a) Complete the Stormwater Drainage Application Form which can be downloaded from Georges River Council's website at www.georgesriver.nsw.gov.au.

(b) In the Application Form, quote the Development Consent No. and reference this

condition number.

- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.

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

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

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

69. **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).

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

Useful links relating to Noise:

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

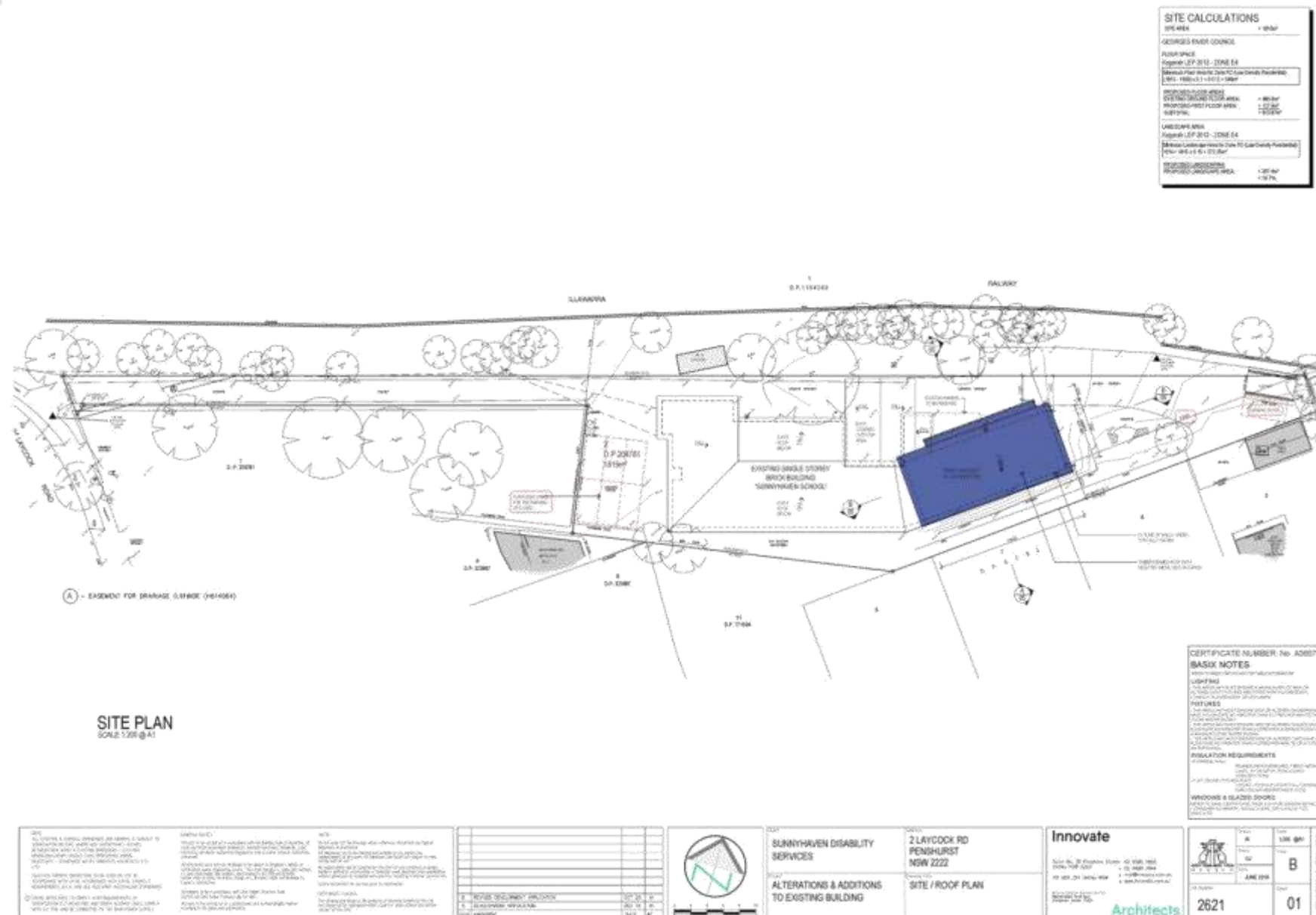
71. **Acoustic Engineer Contacts & Reference Material** – Further information including lists of Acoustic Engineers can be obtained from:

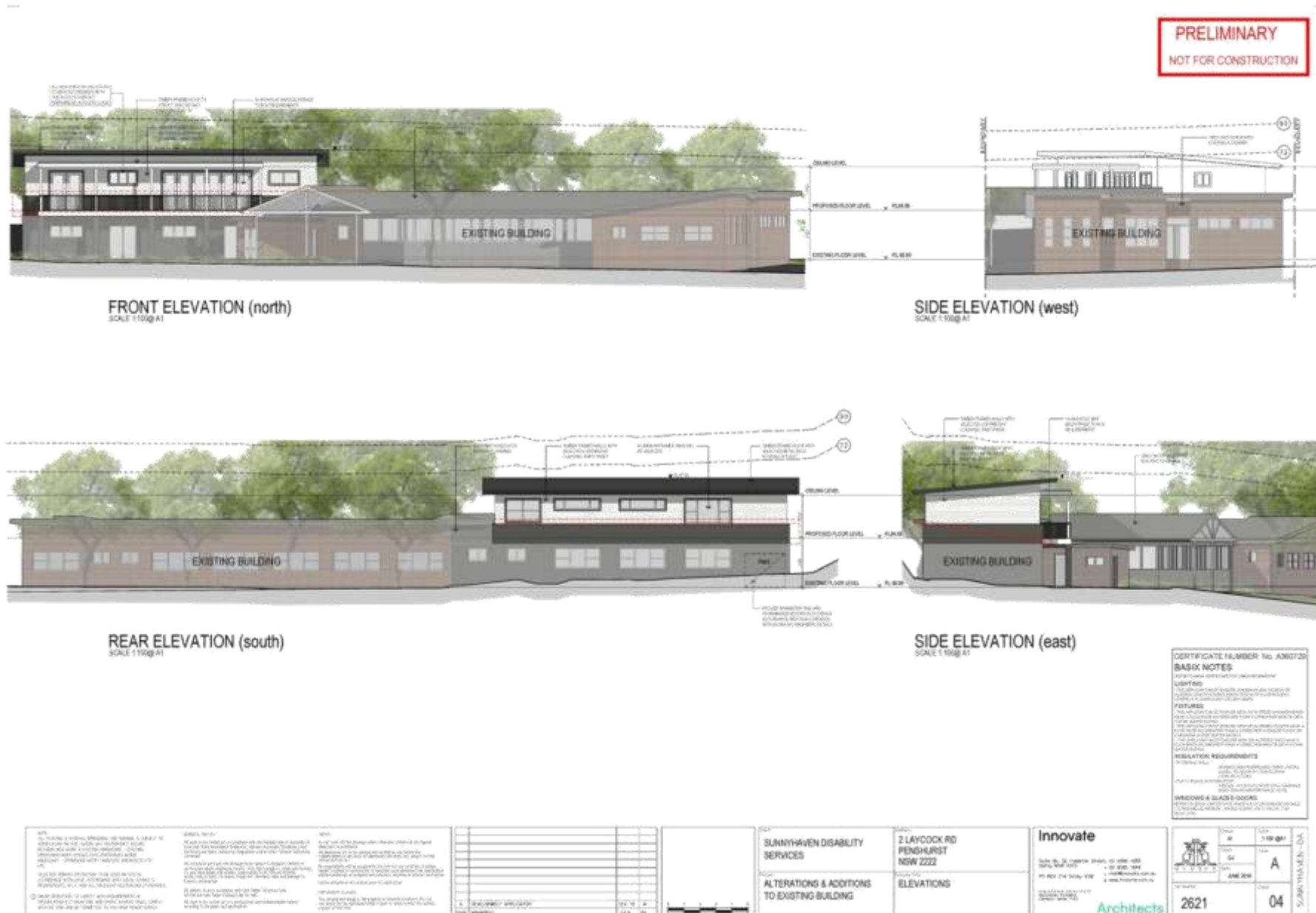
- (a) Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au)
- (b) Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au)
- (c) NSW Industrial Noise Policy – Office of Environment & Heritage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

LPP053-20

ATTACHMENTS

- Attachment [↓](#)1 Site plan - 2 Laycock Road Penshurst
- Attachment [↓](#)2 Elevations - 2 Laycock Road Penshurst





**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 15 OCTOBER 2020**

LPP054-20

LPP Report No	LPP054-20	Development Application No	MOD2020/0144
Site Address & Ward Locality	70-78 Regent Street Kogarah Kogarah Bay Ward		
Proposed Development	Modification to DA111/2017 for demolition and construction of an eleven (11) storey residential flat building. Modification seeks to remove a street tree to facilitate the undergrounding of power lines.		
Owners	Regent Land Pty Ltd		
Applicant	Modern Construction and Development Pty Ltd		
Planner/Architect	Planner - Mersonn Pty Ltd / Architect - DR Design (NSW) Pty Ltd		
Date Of Lodgement	5/08/2020		
Submissions	No submissions recieved		
Cost of Works	\$33,900,000.00 (cost of works of initial development)		
Local Planning Panel Criteria	Determination of Section 4.56 applications (Modification by consent authorities of consents granted by the Court)		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development, State Environmental Planning Policy BASIX 2004, State Environmental Planning Policy (Infrastructure) 2007; State Environmental Planning Policy No 55 - Remediation Of Land; State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment; Draft Environment State Environmental Planning Policy; Draft Remediation of Land SEPP; Draft Georges River Local Environmental Plan 2020; Kogarah Local Environmental Plan 2012; Kogarah Development Control Plan 2013.		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects, Electricity Cabling Design Layout Plan, Public Domain Works Plans		
Report prepared by	Development Assessment Planner		

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

recommendations summarised, in the Executive Summary of the assessment report?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, standard conditions have been attached with no design changes

Site Plan

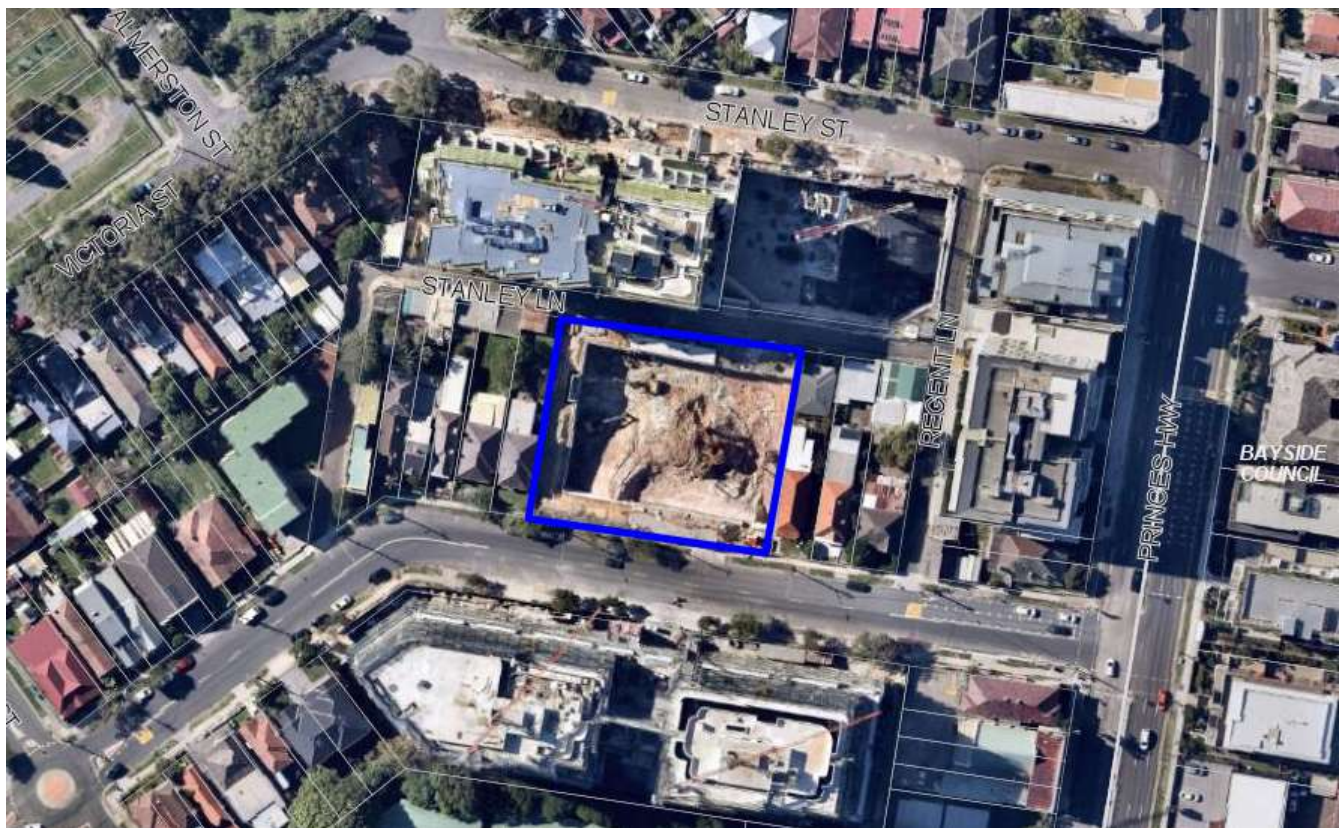


Figure 1: Aerial view of subject site outlined in blue

Executive Summary Proposal

- The Section 4.56 Modification Application is sought to modify the original development consent under DA111/2017 (as modified) approved by the NSW Land and Environment Court on 3 April 2017, the modification seeks the following:
 - Amend Condition 45 which relates to trees to be retained. The applicant seeks consent for the removal of a street tree numbered twelve (12) as per the Arborist Report prepared by Tony Lydon dated April 2017.

2. The reasoning for the tree removal is to allow for the implementation of Condition 1A imposed by the Land and Environment Court (Proceeding 2019/298589) which requires the undergrounding of overhead power lines to service the site.

Site and Locality

3. The site is located on the northern side of Regent Street, Kogarah and forms part of the Kogarah North Precinct. The rectangular site has an area of approximately 2513.70sqm with a frontage of 54.865m to Regent Street. The site is currently a construction site for the approved residential flat building approved under DA111/2017 (as modified).

Zoning and Permissibility

4. The site is zoned R4 – High Density Residential under the Kogarah Local Environmental Plan 2012 (KLEP 2012) and the proposed development is permissible with consent in the zone.

Submissions

5. The application was notified for a period of fourteen (14) days in accordance with the Kogarah Development Control Plan 2013. No submissions objecting to the development were received.

Conclusion

6. Having regard to the matters for consideration under Section 4.15(1) and the applicable assessment criteria under Section 4.56 of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed modification application (MOD2020/0144) is recommended for approval subject to the revised conditions referenced at the end of this report.

Report in Full

Proposal

7. The Section 4.56 Modification Application is sought to modify the original development consent under DA111/2017 (as modified) approved by the NSW Land and Environment Court on 3 April 2017, the modification seeks the following:
 - Amend Condition 45 which relates to trees to be retained. The applicant seeks consent for the removal of a street tree numbered twelve (12) as per the Arborist Report prepared by Tony Lydon dated April 2017.
8. The reasoning for the tree removal is to allow for the implementation of Condition 1A imposed by the Land and Environment Court (Proceeding 2019/298589) which requires the undergrounding of overhead power lines to service the site.
9. The Statement of Environmental Effects dated July 2020 accompanying this application, seeks to vary Condition 45 as follows:

46- 45- Tree Retention – Arborist Report – The trees identified for retention on the Arborist Report prepared by Tony Lydon dated 27 April 2017 listed below will be protected in accordance with the above report and the requirements of Section 4 - Australian Standard AS 4970-2009 - Protection of trees on development sites.

Tree Species	Location of Tree/Tree No	TPZ
<i>Plumeria rubra</i>	<i>Tree 11, 68 Regent St, Kogarah</i>	<i>2</i>

<i>Callistemon viminalis</i>	Street tree 12, 68 Regent St, Kogarah	2
<i>Callistemon viminalis</i>	Street tree 13, 70 Regent St, Kogarah	2
<i>Callistemon viminalis</i>	Street tree 14, 74 Regent St, Kogarah	2
<i>Callistemon viminalis</i>	Street tree 15, 76 Regent St, Kogarah	2

Note: Street trees 13 and 15 referenced in the table with a strikethrough were removed from the consent condition via the Land and Environment Court proceedings 2019/298489 on 20 November 2019.

10. The proposal will not physically alter the approved layout of the development or its operation, merely facilitates compliance with the conditions of consent.

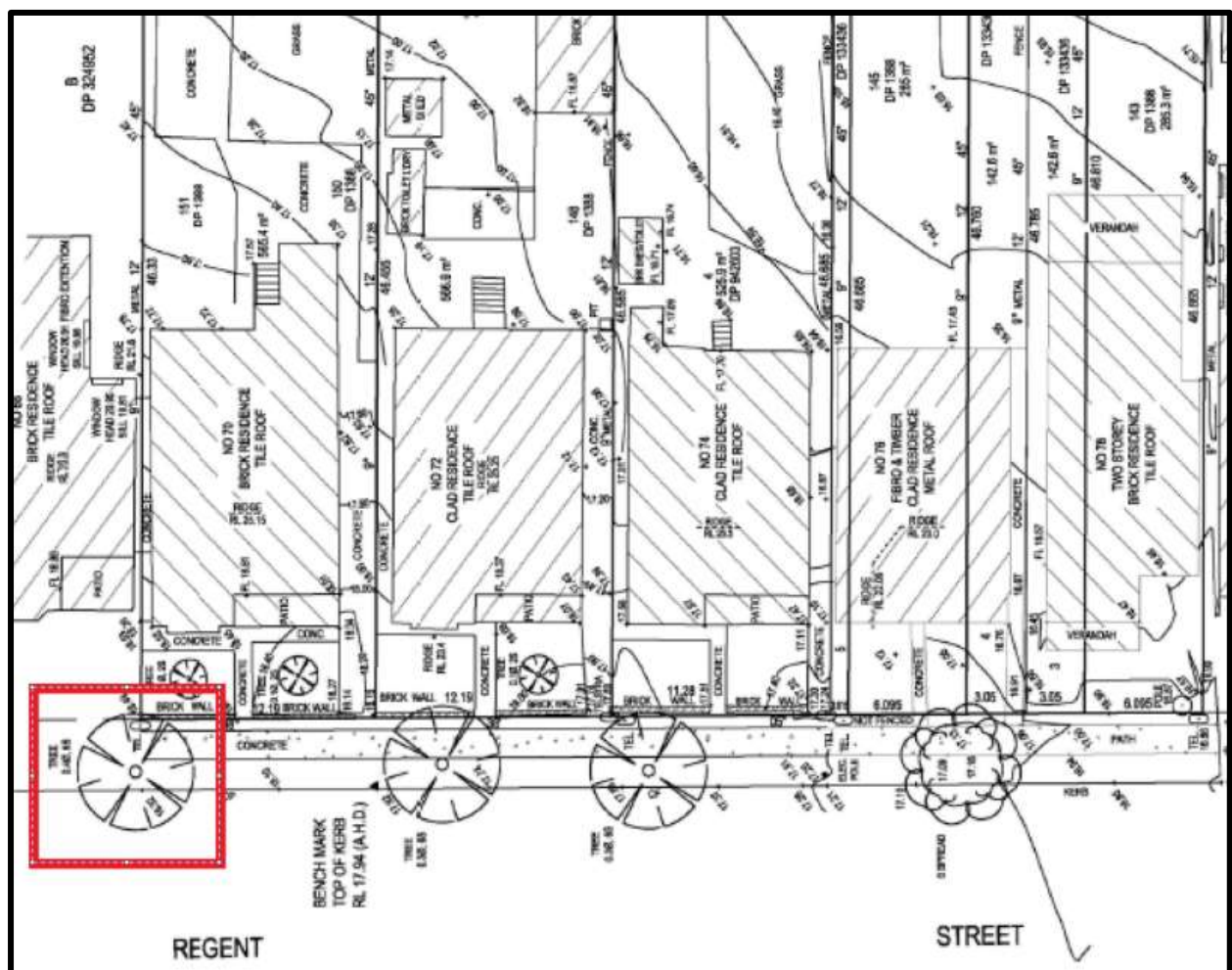


Figure 2: Tree 12 (outlined in red) as per original survey of the site (Source: John McDonald Group dated May 2016)

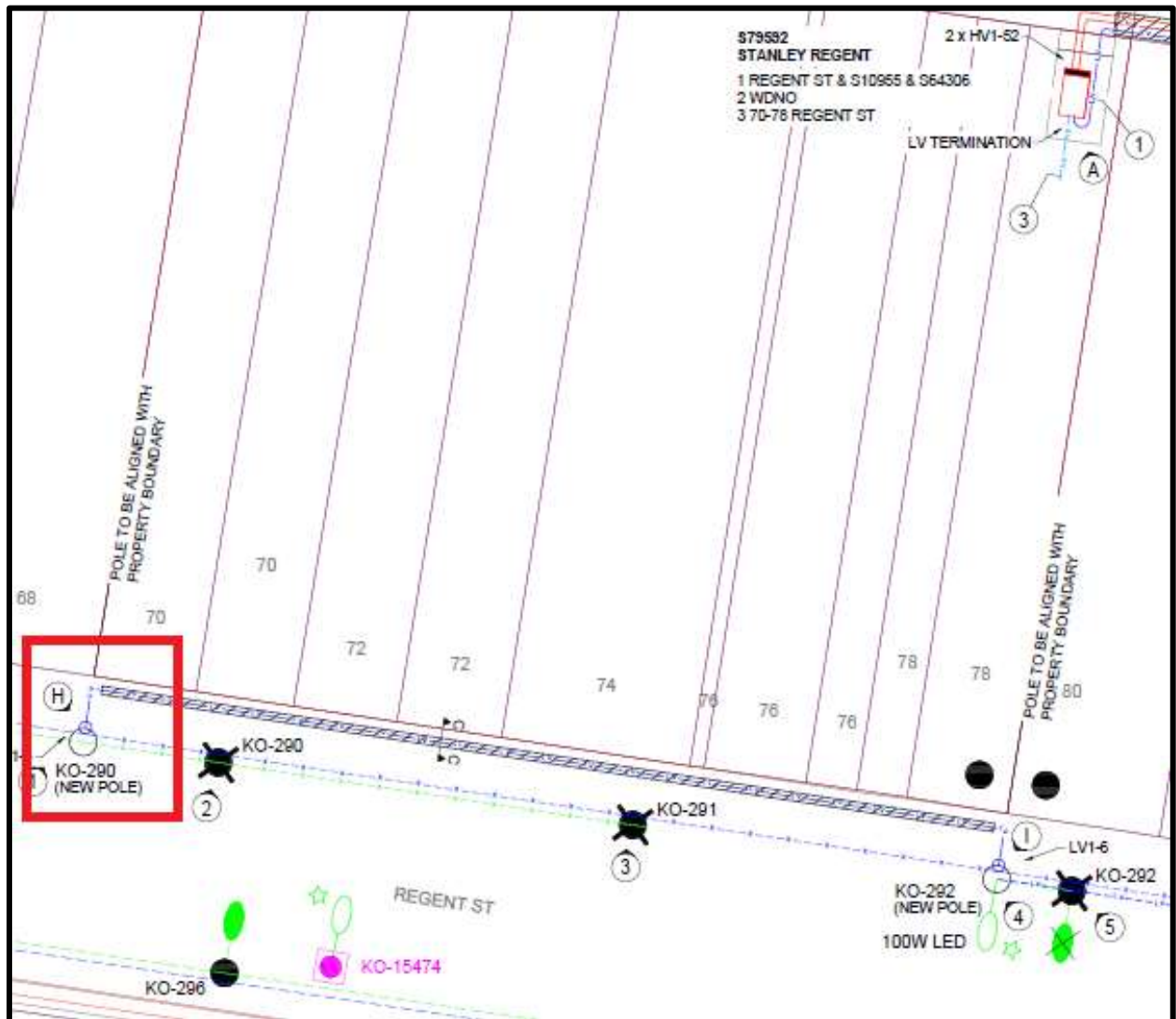


Figure 3: New pole (outlined in red) as per Electricity Cabling Design Layout Plan (Source: AA Power Engineering)

11. As per Figures 2 and 3 above, the location of Tree 12 will interfere with the proposed location of the power pole servicing the allotments to the west of the subject site. It is noted that as per Condition 1A, the applicant is only required to underground cables associated with the perimeter of the subject site, hence the new power pole to be installed to the south western corner of this development site.

The Site and Locality

12. The subject site is formally identified as Lot 1 in DP1260976 and known as 70 Regent Street Kogarah. The site is located on the northern side of Regent Street and forms part of the Kogarah North Precinct. The rectangular site has an area of approximately 2513.70sqm with a frontage of 54.865m to Regent Street. The site is also serviced by a rear laneway identified as Stanley Lane.
13. The site is currently a construction site for the eleven (11) storey Residential Flat Building (RFB) containing 104 apartments over basement parking containing 123 car parking spaces approved under DA111/2017 (as modified).
14. Adjoining the site to the east and west are single storey single dwellings houses with either consents granted or currently being considered by Georges River Council. Located opposite is an approved Residential Flat Building under construction. To the rear of the

site on the opposite side of Stanley Lane are two (2) Residential Flat Buildings under construction which front Stanley Street. The locality is generally residential in character which is transitioning from single dwelling to Residential Flat Buildings with the recent density uplift.

15. In the wider context, the site is located in close proximity to the Kogarah Town Centre, Kogarah Railway Station, St George Public and Private hospitals, and various educational facilities, being Kogarah High School to the west and St George Girls High School to the north west. The St George TAFE is also located in close proximity.
16. To the east of the site fronting Princes Highway is a mixture of residential, commercial and mixed use developments. The scale of these developments varies throughout.

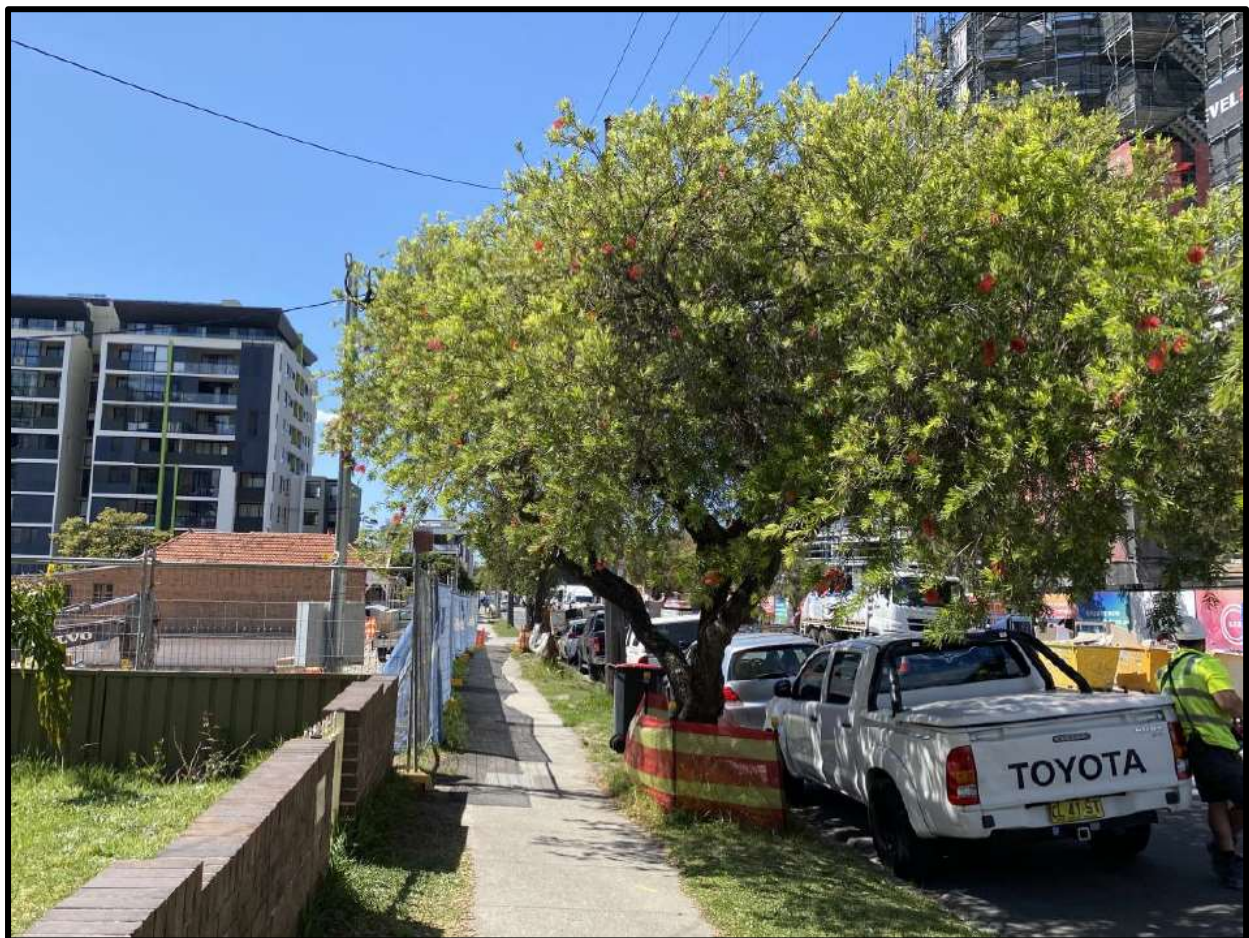


Figure 4: Tree 12 as viewed from the western side of the site

Background

17. Consent was granted subject to deferred commencement conditions by the Land and Environment Court on 24 July 2018 “*Regent Land Pty Ltd ATF Regent Land Unit Trust v Georges River Council [2018] NSWLEC 1370*” for the construction of an eleven (11) storey Residential Flat Building containing 104 apartments over basement parking containing 123 car parking spaces.
18. The deferred commencement conditions were satisfied and the consent was activated on 20 September 2018.

19. A Section 4.56 Modification Application (MOD2018/0153) was lodged in October 2018 seeking to increase the number of apartments while largely retaining the same building envelope. The application was subsequently withdrawn.
20. A subsequent Section 4.55 (8) Modifications by the Court application (MOD2019/0180) was lodged seeking to increase the number of apartments and parking spaces in addition to external and internal modifications. The application was approved by the Land and Environment Court on 20 November 2019 through conciliation.
21. A Construction Certificate (CC2020/0269) was issued by Elite Certification on 2 July 2020 which allowed works to commence.

PLANNING ASSESSMENT

22. The site has been inspected and the proposed development has been assessed under the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

ENVIRONMENTAL PLANNING INSTRUMENTS

Environmental Planning and Assessment Act 1979

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

Section 4.56 Modification under Environmental Planning and Assessment Act, 1979

24. The proposal has been considered against relevant statutory provisions of Section 4.56 as follows;

(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

25. Comment: Applications under Section 4.56 of the Act cannot be granted if the modified development is not substantially the same as that which the consent was originally granted. In this regard, the modification should not be so substantial as to cause the application to lose its original identity.
26. The application seeks to amend Condition 45 in order to allow for the removal of a street tree to facilitate the proposed works, namely the undergrounding of the power as per another condition of consent. The building form remains consistent with that approved and therefore is considered to be 'substantially the same'.
27. It is noted the Council's Consultant Arborist has assessed the proposal, and supported the tree removal subject to the payment of a fee to Council to allow for the replacement of the removed tree.

(b) it has notified the application in accordance with—
(i) the regulations, if the regulations so require, and

- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

28. Comment: In accordance with the provisions of Council's Public Notification process, the application was placed on neighbour notification for 14 days between 10 August 2020 and 24 August 2020. During this time no submission were received by Council.

29. As per clause 4.56 (1)(c) it is required that all original objectors be notified of the Section 4.56 Modification Application. A reasonable attempt has been made to notify all persons who have previously objected to DA111/2017.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

30. Comment: No submissions were received during the neighbour notification period.

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

31. Comment: The modification application does not result in any physical alteration to the approved Residential Flat Building; rather the only change is within the public domain along Regent Street. The issues for consideration associated with this modification are primarily related to tree removal which Council's Consultant Arborist has supported subject to an additional prior to occupation certificate condition.

Environmental Planning and Assessment Regulation 2000

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

STATE ENVIRONMENTAL PLANNING POLICIES

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

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

State Environmental Planning Policy (Infrastructure) 2007

Yes

34. As the amendment relates to the need to remove a street tree to accommodate the new power pole to satisfy the energy provider's requirements as the development consent required the undergrounding of power associated with this development. No compliance tables have been included assessing this modification against the applicable SEPPs as the works as there is no change to the assessment undertaken with the exception of SEPP Infrastructure for the provision of servicing. The necessary documentation has been provided to support this approach.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**Draft Environmental State Environmental Planning Policy**

35. 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.

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

Draft Remediation of Land State Environmental Planning Policy

37. 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.

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

KOGARAH LOCAL ENVIRONMENTAL PLAN 2012

39. The proposal generally complies with the relevant standards of the Kogarah Local Environmental Plan 2012 (KLEP 2012) and is a permissible development within the R4 High Density Residential zone.

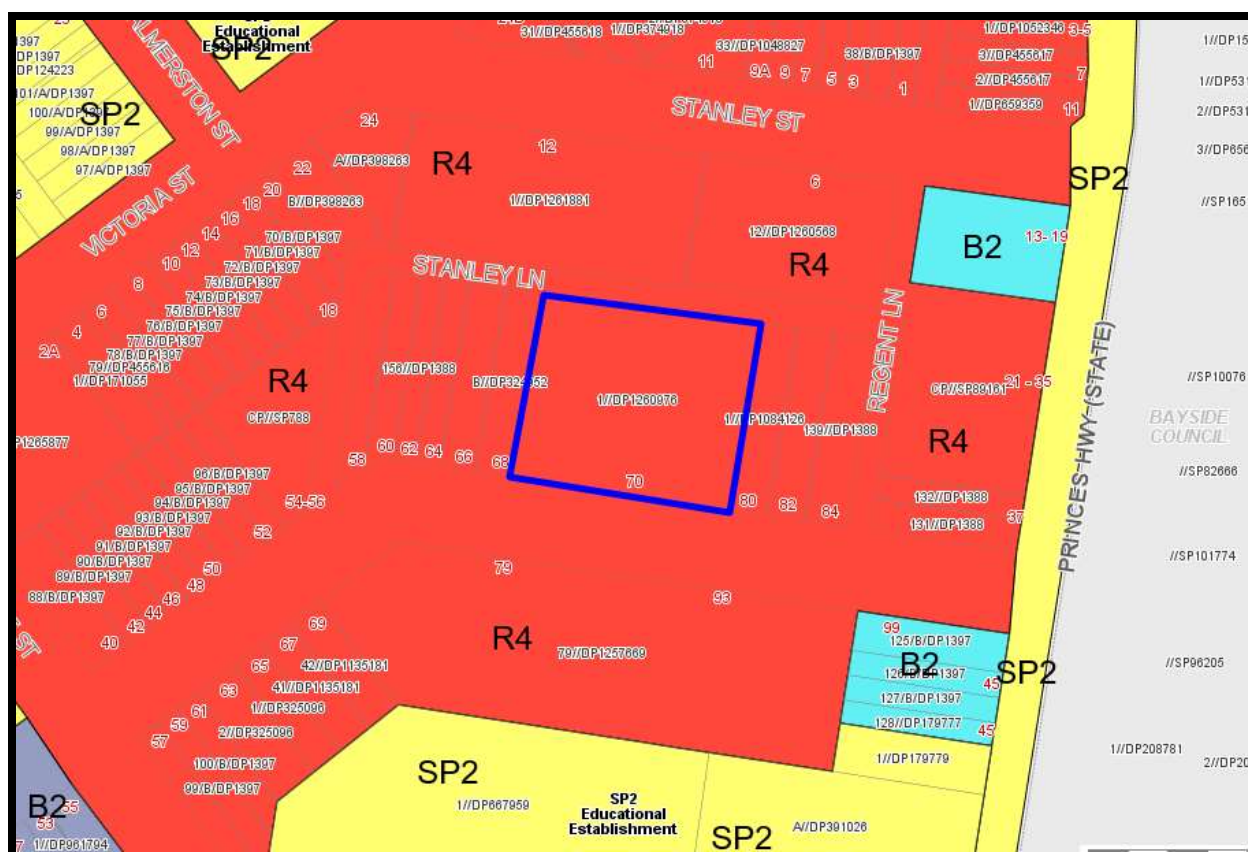


Figure 5: Zoning Map - Site outlined in blue (Source: Intramaps 2020)

40. The proposed amendment supports the development approved for the site as it is required to facilitate compliance with another condition requiring the undergrounding of electricity for this development site. The development remains consistent with the R4 Zone objectives as per Clause 2.3.
41. As the amendment relates to the need to remove a street tree to accommodate the new power pole to satisfy the energy provider's requirements, no compliance table associated with the LEP has been included.

DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020

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

DEVELOPMENT CONTROL PLAN

Kogarah Development Control Plan 2013

44. The proposal has been considered in accordance to the below sections of the Kogarah DCP 2013.

Relevant Kogarah DCP 2013 Sections	Complies
B – General Controls (B2 – Tree Management and Greenweb Tree Management and Greenweb Tree Management and Greenweb)	Yes

Part C2 – Medium density housing – Kogarah DCP 2013	Yes
E4 – Kogarah North Precinct	Yes

45. As the amendment relates to the need to remove a street tree to accommodate the new power pole to satisfy the energy provider's requirements for the undergrounding of electricity associated with this Residential Flat Building, no compliance table against the DCP has been included.
46. The proposal will not physically alter the approved layout of the development or its operation.

Georges River Council Interim Development Control Plan 2020

47. The proposal has been considered in accordance with the relevant provisions within the Georges River Council Interim Development Control Plan 2020 relating to residential flat buildings. No applicable clauses relating to the removal of trees have been identified.

IMPACTS

Natural Environment

48. The proposal seeks for the removal of one street tree to accommodate the new power pole to satisfy the energy provider's requirements for the undergrounding of electricity associated with this development. Council's Consultant Arborist has assessed the proposal, and supported the tree removal subject to the payment of a fee to Council to allow for the replacement of the tree being removed.

Built Environment

49. The proposed modification of the approved development will not result in any adverse impacts upon the built environment, in fact it will improve the built form as the electrical connections to service this Residential Flat Building are being undergrounded.

Social and Economic Impact

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

Suitability of the Site

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

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

52. The application was notified for a period of fourteen (14) days in accordance with the Kogarah Development Control Plan 2013. No submissions objecting to the development were received

Council Referrals

Consultant Arborist

53. No objections were raised, and a specific condition of consent has been recommended and included in the conditions referenced at the end of this report.

Local Infrastructure Contributions

54. The modification application is not subject to additional contributions being levied.

CONCLUSION

55. The application has been assessed having regard to Section 4.56 and Section 4.15 of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies and the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013.
56. The proposal has been considered on its merits and is acceptable in a modified form for the reasons outlined within this report. The proposal is reasonable given the objectives of the controls have been adequately satisfied and the modification does not result in any physical alteration to the approved development form or operation.
57. Following detailed assessment contained within this report, it is considered that MOD2020/0144 should be approved subject to modifying Condition 45 and adding Condition 61A.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

58. The reasons for this recommendation are:
- The proposed development generally complies with the requirements of the relevant environmental planning instruments and development control plan;
 - The proposed modification to remove a tree in order to accommodate the new power pole to satisfy the energy providers requirements associated with the undergrounding of electricity to service this development and does not result in any unreasonable impact on the natural and built environment.
 - The proposal provides a quality residential flat building development that responds to community needs and demands.
 - The modification remains consistent with the objectives of the zone and the character of the locality.
 - The development is not inconsistent with the Georges River Local Environmental Plan 2020.

Determination

59. That pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel, grant consent to modification application (MOD2020/0144) seeking to modify Condition 45 for the removal of street tree number 12 and the inclusion of condition 61A for street tree removal and replacement associated with DA111/2017 (as modified) for the demolition of existing structures and construction of an eleven (11) storey Residential Flat Building containing 104 apartments over basement parking containing 123 car parking spaces.

The following is the condition being altered and the additional condition being added:

45. **Tree Retention – Arborist Report** – The trees identified for retention on the Arborist Report prepared by Tony Lydon dated 27 April 2017 listed below will be protected in accordance with the above report and the requirements of Section 4 - *Australian Standard AS 4970-2009 - Protection of trees on development sites*.

Tree Species	Location of Tree/Tree No	TPZ
Plumeria rubra	Tree 11, 68 Regent St, Kogarah	2
Callistemon viminalis	Street tree 12, 68 Regent St, Kogarah	2
Callistemon viminalis	Street tree 13, 70 Regent St, Kogarah	2

Callistemon viminalis	Street tree 14, 74 Regent St, Kogarah	2
Callistemon viminalis	Street tree 15, 76 Regent St, Kogarah	2

(This condition is amended as part of MOD2020/0144 (DA111/2017))

61A. Street Tree Removal / Replacement by Council –

- (a) Council shall be appointed to remove and plant all tree/s on public land. All costs associated with the removal of 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.
- (b) 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.
- (c) 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	Number of trees	Amount per tree
Administration Fee, tree planting and maintenance for future street tree masterplan	X1	\$452.00
Tree to be removed by Council - Callistemon viminalis fronting south west corner of 70 Regent St		
Cost of tree removal	To be quoted by Council and paid for by applicant prior to OC	
Cost of Stump Grinding	To be quoted by Council and paid for by applicant prior to OC	

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.

(This condition is added as part of MOD2020/0144 (DA111/2017))

Development Details

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

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

Description	Reference No.	Date	Revision	Prepared by
Architectural Plans				
Cover Sheet	DA-0-001	19/09/2019	K	Dickson Rothschild
Photomontage 1 – Regent Street	DA-0-006	19/09/2019	G	Dickson Rothschild
Photomontage Materials	DA-0-009	19/09/2019	G	Dickson Rothschild
Project Summary	DA-0-011	11/11/2019	L	Dickson Rothschild
Site Location Plan	DA-0-021	24/10/2018	A	Dickson Rothschild
Site Analysis – Local Context Plan	DA-0-022	24/10/2018	A	Dickson Rothschild
Site Analysis – Site Photos	DA-0-023	24/10/2018	A	Dickson Rothschild
Site Analysis – DCP Diagrams	DA-0-025	24/10/2018	A	Dickson Rothschild
Survey Drawing	DA-0-099	24/10/2018	A	Dickson Rothschild
Site Plan	DA-0-101	19/09/2019	G	Dickson Rothschild
Neighbouring Complaint Scheme	DA-0-104	24/10/2018	A	Dickson Rothschild
Basement 3	DA-0-208	19/09/2019	N	Dickson Rothschild
Basement 2	DA-0-209	19/09/2019	O	Dickson Rothschild
Basement 1	DA-0-210	11/11/2019	P	Dickson Rothschild
Ground Floor Plan	DA-0-211	19/09/2019	Q	Dickson Rothschild
Level 1 – Floor Plan	DA-0-212	19/09/2019	P	Dickson Rothschild
Level 2-3 – Floor Plan	DA-0-213	19/09/2019	P	Dickson Rothschild
Level 4-10 – Floor Plan	DA-0-214	19/09/2019	O	Dickson Rothschild
Roof Garden – Floor Plan	DA-0-217	19/09/2019	P	Dickson Rothschild
Roof Plan	DA-0-217a	19/09/2019	F	Dickson Rothschild
North Elevation	DA-0-302	19/09/2019	K	Dickson Rothschild
South Elevation	DA-0-303	19/09/2019	J	Dickson Rothschild

West Elevation	DA-0-304	19/09/2019	J	Dickson Rothschild
East Elevation	DA-0-305	19/09/2019	J	Dickson Rothschild
Section A-A	DA-0-401	19/09/2019	J	Dickson Rothschild
Section B-B	DA-0-402	19/09/2019	J	Dickson Rothschild
Section C-C	DA-0-403	24/10/2018	A	Dickson Rothschild
Ramp Details – Sheet 1	DA-0-601	4/09/2019	E	Dickson Rothschild
Adaptable Units – Sheet 1	DA-0-611	19/09/2019	F	Dickson Rothschild
Adaptable Units – Sheet 2	DA-0-612	4/09/2019	D	Dickson Rothschild
Livable Units –Type 1	DA-0-613	4/09/2019	C	Dickson Rothschild
Detail Section – Living and Bathroom	DA-0-631	24/10/2018	A	Dickson Rothschild
Finishes Schedule	DA-0-901	19/09/2019	G	Dickson Rothschild
GFA Plans Comparison with Previous s4.56	DA-0-905	19/09/2019	F	Dickson Rothschild
GFA Plans Comparison with Previous s4.56	DA-0-906	19/09/2019	H	Dickson Rothschild
GFA Plans Comparison with Previous s4.56	DA-0-907	19/09/2019	F	Dickson Rothschild
GFA Plans Comparison with Previous s4.56	DA-0-908	19/09/2019	F	Dickson Rothschild
Solar Diagrams – 1	DA-0-911	19/09/2019	I	Dickson Rothschild
Deep Soil Diagram	DA-0-916	19/09/2019	D	Dickson Rothschild
Communal Open Space Diagram	DA-0-921	19/09/2019	G	Dickson Rothschild
Winter Solstice Shadow Diagram – 9am	DA-0-941	19/09/2019	E	Dickson Rothschild
Winter Solstice Shadow Diagram – 10am	DA-0-942	19/09/2019	E	Dickson Rothschild
Winter Solstice Shadow Diagram – 11am	DA-0-943	19/09/2019	E	Dickson Rothschild
Winter Solstice Shadow Diagram – 12pm	DA-0-944	19/09/2019	E	Dickson Rothschild
Winter Solstice Shadow Diagram – 1pm	DA-0-945	19/09/2019	E	Dickson Rothschild
Winter Solstice Shadow Diagram – 2pm	DA-0-946	19/09/2019	E	Dickson Rothschild

Winter Solstice Shadow Diagram – 3pm	DA-0-947	19/09/2019	E	Dickson Rothschild
3D Height Exceedance Plane	DA-0-951	19/09/2019	E	Dickson Rothschild
Tree Management Diagram	DA-0-960	4/09/2019	B	Dickson Rothschild
Unit Storage Schedule	DA-0-971	19/09/2019	C	Dickson Rothschild
Sun View - Winter Solstice - 9am	DA-0-980	19/09/2019	F	Dickson Rothschild
Sun View - Winter Solstice - 10am	DA-0-981	19/09/2019	F	Dickson Rothschild
Sun View - Winter Solstice - 11am	DA-0-982	19/09/2019	F	Dickson Rothschild
Sun View - Winter Solstice - 12pm	DA-0-983	19/09/2019	F	Dickson Rothschild
Sun View - Winter Solstice - 1pm	DA-0-984	19/09/2019	F	Dickson Rothschild
Sun View - Winter Solstice - 2pm	DA-0-985	19/09/2019	F	Dickson Rothschild
Sun View - Winter Solstice - 3pm	DA-0-986	19/09/2019	F	Dickson Rothschild
Unit G.05 - Sun View - Winter Solstice	DA-0-987	19/09/2019	C	Dickson Rothschild
Unit G.09 - Sun View - Winter Solstice	DA-0-988	19/09/2019	C	Dickson Rothschild
Unit 2.02 - Sun View - Winter Solstice	DA-0-989	19/09/2019	C	Dickson Rothschild
Unit 4.01 - Sun View - Winter Solstice	DA-0-990	19/09/2019	C	Dickson Rothschild
Landscape Plans				
Cover Sheet	000	1/8/2019	J	Site Image
Landscape Plan Ground Floor	101	20/9/2019	P	Site Image
Landscape Plan Roof Top	102	20/9/2019	M	Site Image
Landscape Details	501	26/3/2018	D	Site Image
Landscape Specification	502	26/3/2018	D	Site Image
Stormwater Plans				
Erosion and Sediment Control Plan	ESCP01	17/10/2018	C	Adcar Consulting
Stormwater Services Cover Sheet and Details	SW01	17/10/2018	C	Adcar Consulting
Stormwater Services Basement 3	SW02	17/10/2018	C	Adcar Consulting

Stormwater Services Basement 2	SW03	17/10/2018	C	Adcar Consulting
Stormwater Services Basement 1	SW04	17/10/2018	C	Adcar Consulting
Stormwater Services Ground Floor	SW05	24/10/2018	F	Adcar Consulting
Stormwater Services Council Main Extension	SW06	17/10/2018	B	Adcar Consulting

(Amended by Land and Environment Court Proceeding 2019/298489)

- 1A. **Regent Street Frontage** - All existing overhead power lines within or along the street frontage of the development site shall be relocated underground to Energy Australia standards and specifications. If not practicable to relocate the power line underground, arrangements shall be made with Energy Australia to place the conduit to carry those power lines underground so that they can be utilised at a later date by Energy Australia. In this regard all associated costs shall be borne by the applicant.

(Amended by Land and Environment Court Proceeding 2019/298489)

SEPARATE APPROVALS UNDER OTHER LEGISLATION

2. Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure. If separate activity approvals are required under other legislation, these approvals will be obtained and evidence of the approval(s) provided to the Certifier prior to the issue of the Construction Certificate.

Separate approval is required under the *Roads Act 1993* and/or 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.

- (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 will be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

The relevant Application Forms for these activities can be downloaded from Council's website www.georgesriver.nsw.gov.au

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

3. **Vehicular Crossing - Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:
- (a) Construct a footpath for the full length of the frontage(s) of the site in accordance with Council's Specifications applying at the time construction approval is sought.
 - (b) All associated road pavement restorations.
 - (c) Installation of turf as required across all street frontages.
 - (d) The thickness and design of the driveway will be in accordance with Council's Specifications applying at the time construction approval is sought.
 - (e) 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.
 - (f) Any existing vehicular crossing and/or laybacks which are redundant will be removed. The kerb and gutter, any other footpath and turf areas will be restored at the expense of the applicant. The work will 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 the Roads Act 1993, prior to the commencement of those works.

4. **Structural Engineer's Details - Supporting excavations and adjoining land** - Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer's details relating to the method of supporting the excavation will be submitted.
5. **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, will be erected along that portion of the footway/road reserve, where the building is within 3 metres of the street boundary.

An application for this work (Hoarding Application) under Section 68 of the Local Government Act 1993 and the Roads Act 1993 will be submitted for approval to Council.

6. **Road Opening Permit** - A Road Opening Permit will be obtained from Council, in the case of local or regional roads, or from the RMS, in the case of State roads, for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.
7. **Below ground anchors** - In the event that the excavation associated with the basement car park is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application will be lodged with Council under Section 68 of the Local Government Act 1993 and the Roads Act 1993 for approval, prior to commencement of those works.

REQUIREMENTS OF OTHER GOVERNMENT AGENCIES

8. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements for a

Section 73 Compliance Certificate under the *Sydney Water Act 1994* that relates specifically to this development consent must be obtained from Sydney Water Corporation. Application will be made through an authorised Water Servicing Co-ordinator. The Notice of Requirements will be submitted prior to the commencement of work.

9. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the Sydney Water Act 1994 that relates specifically to this development consent must be submitted to the Principal Certifier prior to the issue of the Occupation/Subdivision Certificate.
10. **Electricity Supply** - An application will be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application to Ausgrid will be provided to the Certifier prior to the issue of a Construction Certificate.
11. **Structural Certificate** - The proposed building will be constructed in accordance with details designed and certified by a practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building will 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 out in accordance with the structural design, will be submitted to the Principal Certifier at each stage of construction and prior to the issue of the Occupation Certificate.
12. **Requirements of Civil Aviation Safety Authority**
 - (.1.a) The building will not exceed a maximum height of 57.9m AHD, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any rooftop garden plantings, exhaust flues etc.
 - (.1.b) The building **will be obstacle lit** by low intensity steady red lighting during the hours of darkness at the highest point of the building. Obstacle lights are to be arranged to ensure the building can be observed in a 360 degree radius as per subsection 9.4.3 of the Manual of Standards Part 139 – Aerodromes (MOS). Characteristics for low intensity lights are stated in subsection 9.4.7 of the MOS.
 - (.1.c) The proponent **will ensure** obstacle lighting arrangements have a remote monitoring capability, in lieu of observation every 24 hours, to alert SACL reporting staff of any outage. For detailed arrangements for obstacle lighting monitoring within the OLS of an aerodrome, refer to subsection 9.4.10 of the MOS.
 - (.1.d) The obstacle lighting **will have** a built in alarm that will provide remote monitoring that will notify the building manager/body corporate in the event of the obstacle lighting being inoperable. The person responsible for the maintenance of the obstacle lighting will take immediate action to repair the obstacle lighting. The contact details of the person responsible for the maintenance of the obstacle lighting will be sent to Sydney Airport prior to the building penetrating protected airspace.
 - (.1.e) The proponent will advise Airservices Australia at least three business days prior to the controlled activity commencing by emailing ifp@airservicesaustralia.com and quoting SY-CA-494 P2.

- (.1.f) Separate approval will be sought under the Regulations for any construction equipment (ie cranes) required to construct the building. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlling activity and consequently may not be approved under the Regulations. Therefore, it is advisable that approval to operate construction equipment (ie cranes) be obtained prior to any commitment to construct.
- (.1.g) At the completion of the construction of the building, a certified surveyor is to notify (in writing) Sydney Airport Corporation Limited of the finished height of the building.

Breaches of the approval conditions are subject to significant penalties under Sections 185 and 187 of the *Airports Act 1996*.

PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

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

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

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

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

Fee Type		Fee
GENERAL FEES		
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/		
Builders Damage Deposit		\$31,200.00
Inspection Fee for Refund of Damage Deposit		\$150.00
Security Deposit for Council's Stormwater Extension Works		\$39,200.00
Driveway and Restoration Works Design Inspection Fee (Multi-unit Development)		\$970.00
Sign Relocation Fee – No Parking Sign in rear Lane		\$150.00
DEVELOPMENT CONTRIBUTIONS		
Contribution Plan	Description	Section 94 contributions payable
Kogarah Plan No. 8	Streetscape, Open Space & Public Domain	\$1,847,499.81
Kogarah Plan No. 8	Traffic Facilities	\$32,322.86
Kogarah Plan No. 8	Community Facilities	\$32,935.50
Kogarah Plan No. 9	Kogarah libraries - buildings component	\$30,696.62
Kogarah Plan No. 9	Kogarah libraries - books component	\$21,886.51
Total Section 94 Contributions Currently Payable		\$1,965,341.30

General Fees

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

Development Contributions

Indexation

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

Timing of Payment

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

Further Information

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

(Amended by Land and Environment Court Proceeding 2019/298489)

14. **Service Utilities - Land Subdivision Only** - Arrangements will be made to the satisfaction of all Service Utility Authorities in respect to the services supplied by those authorities to the development. All services to any future dwellings erected on the site will be underground.
15. **Erosion & Sedimentation Control** - Erosion and sediment controls must be in place prior to commencement of any work on the site. These measures include:
 - (a) Compliance with the approved Erosion & Sediment Control Plan
 - (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
 - (c) All clean water runoff is diverted around cleared or exposed areas
 - (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
 - (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
 - (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
 - (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
 - (h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

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

16. **Pre-Construction Dilapidation Report - Private Land** - A professional engineer specialising in structural or geotechnical engineering will prepare a Pre-Construction Dilapidation Report detailing the current structural condition of all neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.

The report will be prepared at the expense of the applicant and submitted to the satisfaction of the Certifier prior to the issue of the Construction Certificate.

A copy of the pre-construction dilapidation report is to be provided to the properties that are the 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 Certifier prior to the commencement of any work on the site.

Should the owners of properties (or their agents) refuse access to carry out inspections, after being given reasonable written notice, this will 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.

17. **Fire Safety Measures** - Prior to the issue of a construction certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to the Certifier. Such a list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Certifier will then issue a Fire Safety Schedule for the building.
18. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifier for approval prior to construction of the specified works.

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

19. **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 and to ensure the construction of the civil works to be complete at the applicant's expense: **\$31,200.00**
 - (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$150.00**
 - (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.

20. **Access for Persons with Disabilities** - Access for persons with disabilities will be

provided throughout the site, including to all common rooms, lobby areas and 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. Pedestrian access throughout basement levels will be highlighted/line marked and sign posted to safeguard egress.

21. **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.
22. **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/stabilisation works and any excavations.
 - (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This will be submitted to the Certifying Authority and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
 - (c) On-site guidance by a vibration specialist during the early part of excavation.
 - (d) Rock breaking techniques. Rock excavation is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures.
 - (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.
23. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical Engineer's report.

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

24. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors/hallways, stairs and ramps as well as floor surfaces in the wet rooms in any commercial/retail/residential units will have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, will comply with AS/NZS4586:2004 - Slip Resistance Classifications of New Pedestrian Materials and will be detailed on the plans lodged with the application for the Construction Certificate.

25. **Advice from FR NSW** - Prior to the issue of a Construction Certificate the applicant may be required, under 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.

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

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

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

27. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces will be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1-2004 (for car / motorbike parking facilities), AS 2890.2-2002 (for commercial vehicle facilities), AS 2890.6-2009 (Off-street parking for people with disabilities) and AS 2890.3-2015 (bicycles). A *“Detailed Design”* certificate, prepared by a tertiary qualified and experienced traffic engineer that fully addresses this condition, will be submitted to the Principal Certifier with the Construction Certificate Application. An *“As Constructed”* certificate, prepared by a tertiary qualified and experienced traffic engineer that fully addresses this condition, must be submitted to the Principal Certifier with the Occupation Certificate Application.
28. **Construction Traffic Management Plan** - A Construction Traffic Management Plan detailing:
- (a) construction vehicle routes;
 - (b) anticipated number of trucks per day;
 - (c) hours of construction;
 - (d) Access arrangements; and
 - (e) Proposed traffic measures to minimise impacts of construction vehicles

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

29. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by a qualified designer, must be submitted to the Certifier verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of State Environmental Planning Policy No 65 -Design Quality of Residential Flat Development.
30. **Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility must be submitted to the Certifier prior to the issue of any Construction Certificate.

(Amended by Land and Environment Court Proceeding 2019/298489)

31. **Landscape Plans** - All landscape works will be carried out in accordance with the approved landscape plans. The landscaping will be maintained in accordance with the approved plans in perpetuity.

(Amended by Land and Environment Court Proceeding 2019/298489)

32. **Driveway Construction Plan Details** - Detailed engineering plans for the driveway will 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 revision to the architectural plans to include detailed design levels of a crest within the internal driveway that is consistently 140mm above the adjacent existing street gutter invert level in Stanley Lane. This crest is required to minimise the potential for stormwater to enter the basements from off the laneway in large storm events.
33. **Amended Stormwater Plan** - The approved stormwater plans have been assessed and approved as concept plans only. No detailed assessment of the design has been undertaken. A Detailed Stormwater Plan and supporting information of the proposed on-site stormwater management system is to be submitted. The required details in this Plan and the relevant checklist are presented in the document '*Water Management Policy Kogarah Council August 2006*'. The design parameters and the general concept of the proposed on-site stormwater management system are to be the same as documented in the approved Concept Stormwater Plan for the proposed development. Any conceptual variations to the stormwater design will require written approval from Council and will require to be justified and supported by appropriate details, calculations and information to allow for proper assessment.

The Detailed Stormwater Plan is to be certified by a professional engineer specialising in

hydraulic engineering. A Statement that the stormwater system has been designed in accordance with the document, '*Water Management Policy Kogarah Council August 2006*' and satisfies the provisions and objectives of that policy along with the requirements stated above will be included with the Stormwater Detailed Plan.

A 65.4m³ On-Site Detention system with a Maximum Site Discharge of 44 Litres per Second is to be provided in accordance with the Stormwater Concept Plan and associated Design Assessment Report. The overflow is to be directed to the site drainage system.

The extension to Council's stormwater system has been assessed and approved as a concept only. A separate approval will need to be obtained through a Stormwater Drainage Application. This application will include submission to Council of a detailed design for approval. This plan would need to include further details including:

- a) The design is to be amended to allow for a minimum of 450mm cover over the pipe for its full extent within the Council road ways. If it is shown that this is not feasible in some locations Council may consider a minimum cover of 300mm with the pipe to be fully concrete encased.
- b) From an inspection of the service locating markings at the site it appears that the design pipe line would clash with the some of the existing services in particular sewer connection pipes that it crosses. The design is to be amended to clearly identify any such clashes and indicate all adjustments required to be made to existing underground services.
- c) All pits and pipe trench details within the road reserve would need to be submitted to Council's specifications.

A security deposit of \$39,200.00 will be lodged with Council for the extension of the Council stormwater system in Regent Lane and Stanley Lane and all associated restorations prior to the issue of a Construction Certificate.

(Amended by Land and Environment Court Proceeding 2019/298489)

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

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

- 35A. **Car Wash Bays** – Plans and specifications of the car washing system approved by Sydney Water must be submitted with the application for the Construction Certificate.

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

If alternative water management and disposal options are proposed (ie 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.

35. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate must be implemented on the plans lodged with the application for the Construction Certificate.
36. **Public Domain Plan.** A public domain plan is to be submitted to Council **generally** in accordance with the requirements of the Kogarah North Public Domain Strategy/Plan prepared by Atlas Urban on behalf of Council. The plan is to address the design criteria, including but not limited to:
 - Street trees located in islands behind the kerb,
 - Reconfiguration of street verges with geometries that provide better for trees,
 - Expanded soil volumes in verges and linear parks for maximum root space,
 - The utilization of permeable hard materials for water access to tree roots,
 - Variation in seating opportunities
 - Bike racks by school interface, and
 - Stormwater provision.

The plan must be approved by Council prior to the issue of a Construction Certificate.

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

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

For demolition work which involves the removal of asbestos, the asbestos removal work will be carried out by a licensed asbestos removalist who is licensed to carry out the work in accordance with the *NSW Work Health & Safety Act 2011* and the *NSW Work Health & Safety Regulation 2011* and the *Demolition Code of Practice (NSW Work Cover July 2015)*.

38. **Dial before your dig** - The applicant will 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" will be forwarded to Council's Engineers for their records.
39. **Dilapidation Report on Public Land - Major Development Only** - Prior to the commencement of works (including demolition and excavation), a dilapidation report will be prepared for the Council infrastructure adjoining the development site, including:
 - (a) Photographs showing the existing condition of the road pavement fronting the site,
 - (b) Photographs showing the existing condition of the kerb and gutter fronting the site,
 - (c) Photographs showing the existing condition of the footpath pavement fronting the site,

- (d) Photographs showing the existing condition of any retaining walls within the footway or road, and
- (g) The Dilapidation Report will be prepared by a qualified structural engineer. The report will be provided to the Certifier and a copy provided to the Council.

The Dilapidation Report will be prepared by a professional engineer. The report will 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.

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

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

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

41. **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.
42. **Structural Engineer's Details - Supporting Council road/footway** - Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer's details relating to the method of supporting Council's roadways/footways will be submitted to the satisfaction of Council.
43. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
- (a) The developer /builder will notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.

- (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
- (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.

44. **Tree Protection** - Prior to the commencement of any works on the site the tree protection measures required for the established Tree Protection Zone (TPZ) of the trees to be retained will be installed in accordance with Section 4 - *Australian Standard AS 4970-2009 - Protection of trees on development sites*.

Unless otherwise specified in AS 4970-2009 a protective fence consisting of 1.8m high fully supported chainmesh will be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed below. A layer of organic mulch 100 millimetres thick will be placed over the protected area and no soil or fill should be placed within the protection area.

There will be no services installed within the drip line TPZ of the tree. This fence will be kept in place during demolition, construction and also have a sign displaying “Tree Protection Zone” attached to the fence, this will also include the name and contact details of the Project Arborist.

45. **Tree Retention – Arborist Report** – The trees identified for retention on the Arborist Report prepared by Tony Lydon dated 27 April 2017 listed below will be protected in accordance with the above report and the requirements of Section 4 - Australian Standard AS 4970-2009 - Protection of trees on development sites.

Tree Species	Location of Tree/Tree No	TPZ
Plumeria rubra	Tree 11, 68 Regent St, Kogarah	2
Callistemon viminalis	Street tree 12, 68 Regent St, Kogarah	2
Callistemon viminalis	Street tree 13, 70 Regent St, Kogarah	2
Callistemon viminalis	Street tree 14, 74 Regent St, Kogarah	2
Callistemon viminalis	Street tree 15, 76 Regent St, Kogarah	2

(This condition is amended as part of MOD2020/0144 (DA111/2017))

DURING WORK

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

47. **Cost of work to be borne by the applicant** - The applicant will bear the cost of all works associated with the construction of the development that occurs on Council property. Care will be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway will be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction must be maintained in a state of good repair and condition throughout the course of construction.
48. **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 the Roads Act 1993 and/or the Local Government Act 1993.
49. **Hours of Construction for Demolition and Building Work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery must not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.
50. **Hazardous or Intractable Waste – Removal and Disposal.** Hazardous or intractable waste arising from the demolition or construction process must be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and all applicable legislation.
51. **Tree Protection – Excavation** - Excavations around the trees to be retained on site or the adjoining properties will be supervised by the Project Arborist to ensure that the root system will not adversely be affected.

Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project Arborist will be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist will be submitted to Council prior to any further demolition or construction works taking place.

Tree Protection Zone (TPZ) around the trees to be retained are not to have soil level changes 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.

52. **Structural Certificate During Construction** - The proposed building will 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 will be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, will be submitted to the Principal Certifier at each stage of Construction or prior issue of the Occupation Certificate.
53. **Structural Certificates** - The proposed structure will be constructed in accordance with details designed and certified by the practising qualified structural engineer. In addition, Compliance or Structural Certificates, to the effect that the building works have been carried in accordance with the structural design, will be submitted to the Principal Certifier prior issue of the Occupation Certificate.

54. **Tree Removal** – The trees identified in the table below may be removed as per Arborist Report prepared by Tony Lydon dated 27 April 2017.

Tree Species	Location on Site/Tree No	Work Required
Trees 1 – 7, Trees 8 – 10, Tree 13 , Tree 15	70 – 78 Regent St, Kogarah	Remove

All tree removals are to be carried out by a certified 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.

(Amended by Land and Environment Court Proceeding 2019/298489)

55. **Stormwater to Kerb** - Any stormwater connections to the kerb and gutter are to be in accordance with Council's 'Specification for Construction by Private Contractors'.

All roof water and surface water from paved or concreted areas are to be disposed of in accordance with the Stormwater Plan by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3:2015. The line will pass through a silt arrestor pit.

56. **Redundant Driveway** - All existing vehicular crossings adjacent to the subject premises that have become redundant will be removed and the footway and kerb and gutter reinstated at the developer/applicant's expense.
57. **Damage within Road Reserve & Council Assets** - The owner will bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.
58. **Public Utility & Telecommunication Assets** - The owner will bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines and cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
59. **Works Zone** - The installation of a "Works Zone" for the site will require the approval from the Traffic Advisory Committee. As a result, the applicant will provide a formal request to Council's Traffic Section with the duration and exact location of the required "Works Zone" at least 6 weeks prior to its required installation date. All costs associated with the installation of a "Works Zone" will be at the applicant's expense.
60. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation will be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like will be ignited or burnt.

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

PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

61. **SEPP 65 Design Verification Statement** - The Principal Certifier will not issue an Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the he/she has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No 65 Design Quality of Residential Flat Development.

61A. Street Tree Removal / Replacement by Council –

- (a) Council shall be appointed to remove and plant all tree/s on public land. All costs associated with the removal of 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.
- (b) 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.
- (c) 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	Number of trees	Amount per tree
Administration Fee, tree planting and maintenance for future street tree masterplan	X1	\$452.00
Tree to be removed by Council - Callistemon viminalis fronting south west corner of 70 Regent St		
Cost of tree removal	To be quoted by Council and paid for by applicant prior to OC	
Cost of Stump Grinding	To be quoted by Council and paid for by applicant prior to OC	

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.

(This condition is added as part of MOD2020/0144 (DA111/2017))

62. **Restriction to User and Positive Covenant for On-Site Detention Facility** - A Restriction on Use of the Land and Positive Covenant will 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 will not make or permit or suffer the making of any alterations to any on-site stormwater management system which is, or will be, constructed on the lot(s) burdened without the prior consent in writing of Georges River Council. The expression “on-site stormwater management system” will 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 will 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 will 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.*

63. **Maintenance Schedule – On-site Stormwater Management** - A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule will outline the required maintenance

works, how and when these will be done and who will be carrying out these maintenance works.

64. **Works as Executed and Certification of Stormwater works** - Prior to the issue of an Occupation Certificate, the Principal Certifier will 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 will be forwarded to the Principal Certifier and Council, from a professional engineer specialising in hydraulic engineering.

This Plan and Certification will 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 Certifier.

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

- (a) The location of any detention basin/s with finished surface levels;
- (b) Finished site contours at 0.2 metre intervals (if applicable);
- (c) Volume of storage available in any detention areas;
- (d) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
- (e) The orifice size/s (if applicable);
- (f) Details of any infiltration/absorption systems; and (if applicable);
- (g) Details of any pumping systems installed (including wet well volumes) (if applicable).

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

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

- (a) All the stormwater/drainage works will be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) will 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 will be issued and submitted to the Principal Certifier 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 will be

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

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

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

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

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

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

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

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

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

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

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

- (a) Compliance with conditions of development consent relating to stormwater;

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

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

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

70. A Dilapidation Report will be required prior to the release of the Security Deposit to ensure the new stormwater asset has not failed during the works. The dilapidation report is to include CCTV footage of the full extent of the newly constructed Council stormwater assets within the Council road reserves in Regent Lane, Stanley Lane and Stanley Street. The footage is to include the inspection and notation of all visible defects and joints along the asset. The report is to be carried out upon completion of all construction works.

The Security Bond may be released upon all of the following being met.

- the issue of the occupation certificate,
- the completion of the final inspection for the stormwater pipe replacement.
- written approval from Council's Drainage section of the dilapidation report.

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

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

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

72. **Acoustic Certification** - Prior to the issue of any Occupation Certificate, a suitably qualified acoustic consultant will certify that the operation of the premises and plant equipment will not give rise to a sound pressure level at any affected premises that exceeds the relevant acoustic criteria. The development will at all times comply with these noise levels post occupation.

73. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent, will be implemented before issue of any Occupation Certificate.
74. **BASIX Compliance Certificate** - A Compliance Certificate will be provided to the Principal Certifier regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.
75. **Notice to Council - Allocation of street addresses** - Prior to the issue of any Occupation Certificate, 'as-built' drawings detailing the installed and allocated street/unit address and numbering will be submitted to the satisfaction of Council.
76. **Allocation of Car Parking Spaces** – A total of **138** car parking spaces, 5 motorcycle spaces and a minimum of **57** bicycle parking spaces associated with the development is to be allocated as follows:
- (a) A minimum of 99 resident car spaces, including 12 accessible spaces
 - (b) A minimum of 23 visitor car spaces, including 1 accessible space and including one shared visitor/car wash space
 - (c) 5 motorcycle spaces
 - (d) 57 bicycle spaces

(Amended by Land and Environment Court Proceeding 2019/298489)

77. **Electricity Supply** - Evidence will be provided demonstrating that the development has been connected to the Ausgrid, if required.
78. **Public Domain Plan** – Compliance. The works in the approved Public Domain Plan lodged and generally in accordance with the requirements of the Kogarah North Public Domain Strategy/Plan prepared by Atlas Urban on behalf of Council are to be completed prior to issue of the occupation certificate.

(Amended by Land and Environment Court Proceeding 2019/298489)

- 78A. **Vehicular Access** - A vehicular access (entry and exit) must be provided from Stanley Lane. To that end, the applicant must submit a formal application to Council for its approval for the following interim Traffic Management Measures (**TMMs**):
- a. installing "No Parking" and/or "No Stopping" restrictions along both sides of Stanley Lane for its full extent from Regent Street to Regent Lane;
 - b. installing a ONE WAY westbound traffic flow condition from Regent Lane to Regent Street;
 - c. Installing localised speed humps (or other similar devices) along Stanley Lane to reduce traffic speed.
- 78B. Upon receipt of Council's approval of any interim TMMs, the applicant will prepare detailed plans of the measures and obtain approval of the works prior to the issue of a Construction Certificate. The works are to be funded by the applicant and completed/operational prior to Occupation Certificate.
- 78C. Traffic to and from the site must be in accordance with any interim TMMs approved by Council, unless and until the traffic management measures are changed by Council after which traffic to and from the site must be in accordance with those measures.

- 78D. No vehicular access to the site is to be permitted from Regent Street or from Regent Lane.
- 78E. All waste collection must occur from Stanley Lane. Bins are required to be placed kerbside by the property manager/contractor for collection. Bins are to be located in an appropriate location within Stanley Lane to ensure collection procedures will not adversely impact upon operation traffic flow on the road network.
79. **Dedication of Land.** The submission of documentary evidence of the formal dedication of land to a width of 1.2m for the purpose of road widening of Stanley Lane. The road widening is to ensure appropriate access and egress from the laneway to the subject site. Appropriate documentary evidence is to be submitted to the Principal Certifier and Council (if Council is not the Principal Certifier).

ONGOING CONDITIONS

80. **Noise Control** - The use of the premises will not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997.
81. **Lighting - General Nuisance** - Any lighting on the site will 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.
82. **Amenity of the Neighbourhood** - The implementation of this development will not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
83. **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.
84. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping will be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas.
85. **Annual Fire Safety Statement** - The owner of the building premises will ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement will be given:
- (a) Within 12 months after the date on which the fire safety certificate was received.
 - (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
 - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
 - (d) A copy of the statement is to be given to the Commissioner of Fire and Rescue NSW, and a further copy is to be prominently displayed in the building.

86. **Responsibility of Owners Corporation** - The Owners Corporation will be responsible for presenting all approved waste and recycling receptacles for collection, and returning all receptacles to the Main Waste Collection Room, as soon as practicable after they have been serviced.

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

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

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

88. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986.

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

89. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. The applicant is advised to contact Ausgrid for further details and information on lodging your application to connect to the network.

90. **Disability Discrimination Act** – The applicant is responsible to ensure compliance with this and other anti-discrimination legislation.

91. **Security deposit administration and compliance fee** - Under 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 will 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.

92. **Stormwater & Ancillary Works - Applications under Section 138 Roads Act and/or Section 68 Local Government Act 1993** – The applicant must obtain all necessary approvals. An approval for a new or modified vehicular crossing will contain the

approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work will be carried out by a private contractor in accordance with Council's specifications prior to the issue of an Occupation Certificate.

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

Schedule C – Prescribed Conditions

Prescribed conditions are those which are mandated under Division 8A of the Environmental Planning and Assessment Regulation 2000 and given weight by Section 80A (11) of the Environmental Planning and Assessment Act 1979.

Detailed below is a **summary** of all the prescribed conditions which apply to development in New South Wales. Please refer to the full details of the prescribed conditions as in force, at www.legislation.nsw.gov.au.

It is the responsibility of the beneficiary of this consent to determine which prescribed conditions apply.

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

Clause 98 – Building Code of Australia - Requires all building work to be carried out in accordance with the Building Code of Australia.

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.

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.

Operational & Statutory Conditions - These conditions comprise the operational and statutory conditions which must be satisfied under the Environmental Planning and Assessment Act 1979 and the Environmental Planning & Assessment Regulation 2000. Please refer to the full details of the Act and Regulations as in force, at www.legislation.nsw.gov.au. It is the responsibility of the beneficiary of this consent to determine which operational and statutory conditions apply.

Requirement for a Construction Certificate - The erection of a building must not commence until a Construction Certificate has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier.

Appointment of a Principal Certifier - The erection of a building must not commence until the beneficiary of the development consent has appointed a Certifier for the building work.

Notification of Critical Stage Inspections - No later than two (2) days before the building work commences, the Principal Certifier must notify:

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

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

Subdivision Work – Construction Certificate and Appointment of Principal Certifier - Subdivision work in accordance with a development consent cannot commence until:

- (a) A Construction Certificate has been issued by the consent authority, the Council (if not the consent authority) or an accredited Certifier; and
- (b) The beneficiary of the consent has appointed a Principal Certifier for the subdivision work.

No later than two (2) days before the subdivision work commences, the Principal Certifier must notify:

- (a) The Council of his or her appointment; and
- (b) The beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the subdivision work.

Subdivision work – Notice of Commencement - The beneficiary of the development consent must give at least two (2) days notice to the Council and the Principal Certifier of their intention to commence the subdivision works.

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.

Occupation Certificate - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building. Only the Principal Certifier appointed for the building work can issue the Occupation Certificate.

Attachment [↓](#) 1 Electricity cabling design layout plan - 70-78 Regent St Kogarah

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