

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 18 March 2021
Time:	4.00pm
Venue:	Council Chambers, Civic Centre, Hurstville
Panel Members:	Sue Francis (Chairperson) John Brockhoff (Expert Panel Member) Michael Leavey (Expert Panel Member) Annette Ruhotas (Community Representative)

1. On Site Inspections

- a) 192-196 Princes Highway Kogarah Bay
- b) 14 Garden Street Kogarah
- c) 11 Leeder Avenue Penshurst

2. Opening

3. Consideration of items and verbal submissions

LPP003-21 11 Leeder Avenue Penshurst – DA2020/0344
(Report by Development Assessment Planner)

LPP004-21 14 Garden Street, Kogarah – DA2020/0383
(Report by Development Assessment Planner)

LPP005-21 192 - 196 Princes Highway, Kogarah Bay – DA2020/0144
(Report by Senior Development Assessment Officer)

4. LPP Deliberations in Closed Session

5. Confirmation of Minutes

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 18 MARCH 2021**

LPP003-21

LPP Report No	LPP003-21	Development Application No	DA2020/0344
Site Address & Ward Locality	11 Leeder Avenue Penshurst NSW 2222 Blakehurst Ward		
Proposed Development	Alterations and additions to an existing group home		
Owners	Sunnyhaven Disability Services Ltd		
Applicant	ES Design		
Planner/Architect	ES Planning/ED Design		
Date Of Lodgement	3/09/2020		
Submissions	Two (2) submissions and a petition containing nine (9) signatures		
Cost of Works	\$1,500.00		
Local Planning Panel Criteria	Staff Referral- General Manager Delegation		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy (Affordable Rental Housing) 2009; State Environmental Planning Policy No 55 - Remediation of Land; State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; State Environmental Planning Policy (Infrastructure) 2007; Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment; Draft Environment State Environmental Planning Policy; Draft Remediation of Land SEPP; Kogarah Local Environmental Plan 2012; Kogarah Development Control Plan 2013; 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		
Report prepared by	Development Assessment Planner		

Recommendation	That the application be approved subject to the conditions referenced at the 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?	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 conditions can be viewed when the report is published.

Site Plan

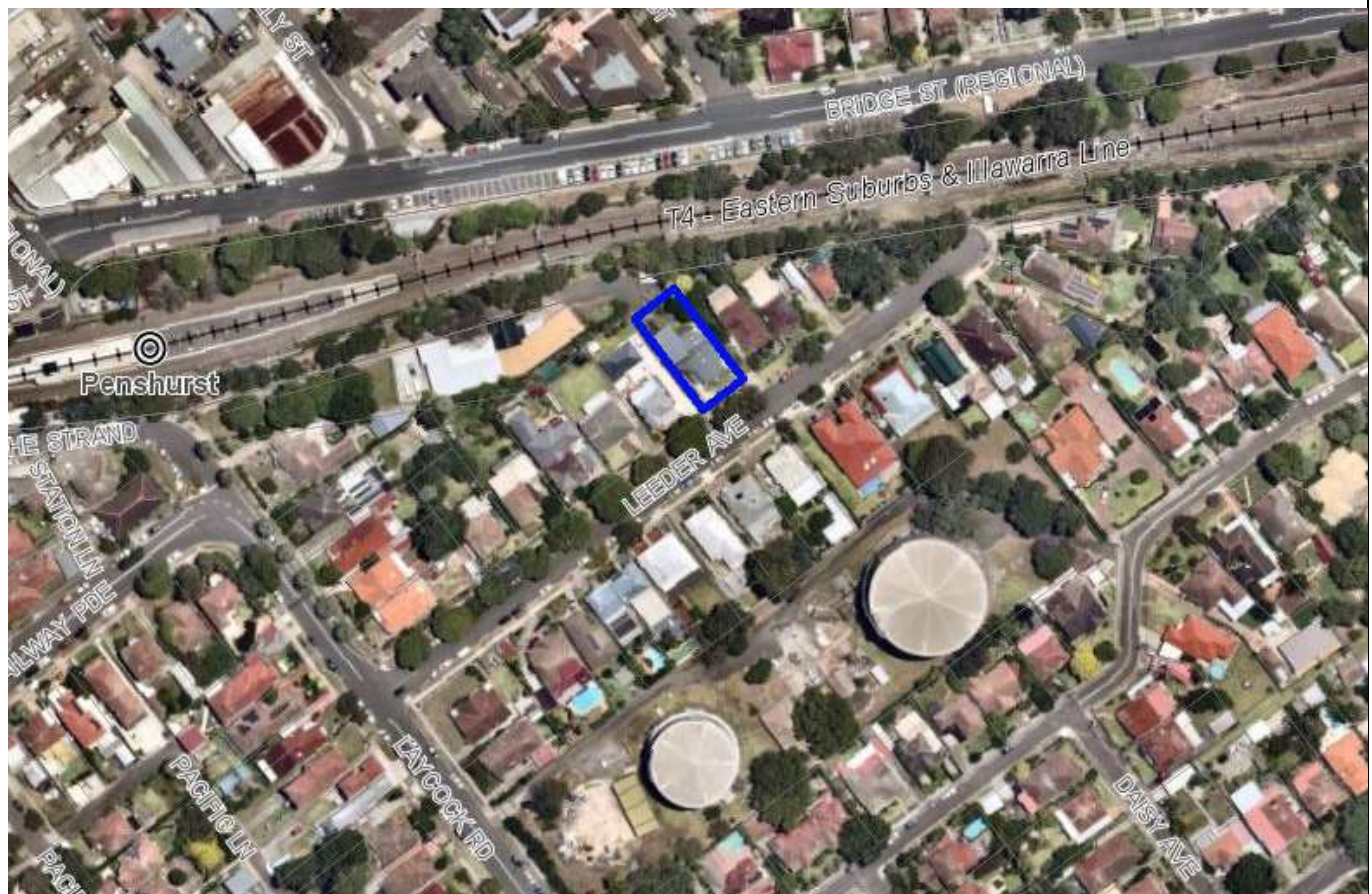


Figure 1: Aerial view of subject site outlined in blue

Executive Summary

Proposal

1. Development consent is sought for alteration and addition to an existing group home proposing the conversion of an existing rumpus room to a staff bedroom and construction of internal partition walls.

Site and Locality

2. The subject site is a rectangular shaped allotment located on the north-western side of Leeder Avenue, Penshurst. The site has a frontage of 16.70m and a site area of 642.4sqm. The site is occupied by a two (2) storey group home. The site is within the Penshurst heritage conservation area which is generally characterised by single and two (2) storey dwelling houses traditional in design. The site is in proximity to the Penshurst Train Station.

Zoning and Permissibility

3. The site is zoned R2 - Low Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). Group homes are permitted with consent.

Submissions

4. The application was notified in accordance with Council's Notification Policy and two (2) individual submissions were received in addition to a petition containing nine (9) signatures objecting to the application. The issues raised are summarised below:
 - Loss of backyard access for the residents of the group home.
 - Overcrowding.
 - Standard of living in existing group home.
 - Non-compliance with development consent.

Conclusion

5. 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 (DA2020/0344) is recommended for approval subject to conditions for the reasons contained within this report.

Report in Full**Proposal**

Development consent is sought for alterations and additions to an existing group home proposing the conversion of an existing rumpus room to a staff bedroom and construction of internal partition walls.⁷ Further details of the proposed development are as follows:

Construction

- Construction of internal partition walls to create an area to enable residents to navigate the door leading to the rear yard and an entry door to the new bedroom.

Note: Access to the rear yard can still be made through existing door along south-western façade of rumpus room.

Change of use

- Change of use of the existing rumpus on the lower floor to a staff bedroom.

Note: The existing rumpus room contains a storage space, bathroom and laundry room. The change of use will not result in alteration of these areas.

The Site and Locality

8. The site is identified as Lot 9, DP6083 being 11 Leeder Avenue Penshurst. The site is situated on the north-western side of Leeder Avenue. The site has a frontage of 16.70m and a site area of 642.4sqm. The site observes a gradual slope to the rear.
9. The site currently accommodates a two (2) storey clad and metal skillion roofed group home with a rear detached weatherboard garage. The site does not contain any significant vegetation. Along the street interface is a Council street tree.
10. The subject site is located within the Penshurst heritage conservation area which is generally characterised by single and two (2) storey dwelling houses traditional in design. It is noted that the dwelling is classified as a neutral item within the conservation area.
11. Adjoining the site to the north-east and south-west are two (2) storey dwelling houses. Along Leeder Avenue are single dwelling houses and a semi attached two-storey dual occupancy. Adjoining the site to the north is a single storey building currently used as a residential care facility and respite day care facility.
12. In the wider context, the subject site is 350m walking distance from Penshurst Train Station. The T4-Eastern Suburbs and Illawarra train line is approximately 50m north of the subject site. It is noted that approximately 100m south of the subject site is a state heritage item identified as item (I139) "*Penshurst Reservoirs and Pumping Station*".



Figure 2: View of site as per officer site inspection



Figure 3: View of subject rumpus room identified in red

Background

13. A review of Council's records identified that development consent (12/78) was granted for the "*erection of a two-storey building to provide supervised accommodation for 6 to 8 intellectually handicapped children who are, or have been, attending the Sunnyhurst School (2 Laycock Road Penshurst)*" on 15 February 1978.
14. Development consent (172/2016) was granted by Council on 11 October 2016 for alterations to the rear of the top floor living area. The proposal extended the internal communal area located along the top floor in a northerly direction.
15. A Construction Certificate was subsequently issued by Council on 23 December 2016 for the works pertinent to DA172/2016. The works are now complete.
16. Council issued a Development Control Order (ON2020/0079) on 27 February 2020 to cease use of the rumpus room as a bedroom.
17. A Complying Development Certificate (CDC) was lodged with Council in an attempt to rectify the order. The application did not progress and was withdrawn by the applicant.
18. This Development Application (DA2020/0344) was lodged on the 03 September 2020 with no communal access shown to the rear yard. The plans were amended accordingly to show the partition walls currently proposed affording access by the resident to the side door providing access to the rear yard area.

Compliance and Assessment

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

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

State Environmental Planning Policy	Complies
State Environmental Planning Policy (Affordable Rental Housing) 2009	Yes
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004	Not Applicable
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 (AFFORDABLE RENTAL HOUSING) 2009

21. The application is designed having regard to the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) and as such the provisions of Division 7 relating to Group Homes are applicable to the application.

Clause	Control	Proposed	Complies
42 Definitions	<p>(1) In this Division— group home means a (i) permanent group home or a (ii) transitional group home.</p> <p>(i) permanent group home means a dwelling—</p> <p><i>(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and</i></p> <p><i>(b) that is used to provide permanent</i></p>	<p>The existing group home is a permanent group home housing people with a disability.</p>	Yes.

	<p><i>household accommodation for people with a disability or people who are socially disadvantaged,</i></p> <p><i>but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.</i></p> <p>prescribed zone means—</p> <p>(a) any of the following land use zones or a land use zone that is equivalent to any of those zones—</p> <p>Zones R1, R2, R3, R4, B4, SP1, SP2.</p> <p>(ii) transitional group home means a dwelling—</p> <p><i>(a) that is occupied by persons as single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and</i></p> <p><i>(b) that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation</i></p>	<p>The site is zoned R2 Low Density Residential under Kogarah Local Environmental Plan 2012, a group home is permissible in this zone.</p> <p>The existing group home is a permanent group home housing people with a disability.</p>	<p>Yes</p> <p>Yes</p>
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	<p><i>for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people,</i></p> <p><i>but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.</i></p> <p>(2) In this clause—</p> <p>(a) a reference to people with a disability is a reference to people of any age who, as a result of having an intellectual, psychiatric, sensory, physical or similar impairment, or a combination of such impairments, either permanently or for an extended period, have substantially limited opportunities to enjoy full and active lives, and</p> <p>(b) a reference to people who are socially disadvantaged is a reference to—</p> <p>(i) people who are disadvantaged because of their alcohol or drug dependence, extreme poverty, psychological disorder or other similar disadvantage, or</p> <p>(ii) people who require</p>	<p>The group home provides permanent accommodation for intellectually disabled persons.</p>	<p>Yes</p>
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	protection because of domestic violence or upheaval.		
43 Development in prescribed zones	<p>(1) Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out—</p> <p>(a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or</p> <p>(b) with consent in any other case.</p>	<p>Development is not proposed by a public authority.</p> <p>The subject group home is existing, and this application seeks to alter the internal layout by converting an existing rumpus room to a staff bedroom. The staff personnel provide resident supervision. A condition of consent is imposed preventing the use of the new bedroom as a bedroom for residents of the group home.</p>	<p>N/A</p> <p>Yes</p>
46 Determination of development applications	<p>(1) A consent authority must not—</p> <p>(a) refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or</p> <p>(b) impose a condition on any consent granted for a group home only for the</p>	<p>The proposal is considered acceptable and is recommended for approval subject to conditions.</p> <p>No condition has been imposed for the reason that the development is for the purpose of a group</p>	<p>Yes</p> <p>Yes</p>

	<p>reason that the development is for the purpose of a group home.</p>	<p>home.</p> <p>A condition has been imposed limiting the use of the new bedroom to be a staff bedroom only. The room has access to a communal laundry room which will not maximize resident amenity should the room be used by residents of the group home. The applicants have confirmed that the room is intended to provide overnight accommodation for staff supervising the residents of the group home.</p>	
	<p>(2) This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.</p>	<p>Group homes are a permissible land use within the R2 zone under the provisions of the Kogarah LEP 2012.</p>	<p>Yes</p>

22. Based on the above assessment, the proposal is considered to satisfy Division 7 of the ARH State Environmental Planning Policy.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

23. It is noted that the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is not applicable to the subject DA as the use of 'group home' is not a defined use in this State Environmental Planning Policy. Group homes are defined and assessed under the ARH State Environmental Planning Policy.
24. It is further noted that the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is not applicable to the site due to being located in a heritage conservation area pursuant to clause 4A of the State Environmental Planning Policy which states:
- “(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.”*

STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND

- 25. State Environmental Planning Policy 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. 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.
- 26. 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 significant construction 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 criterion of State Environmental Planning Policy 55 have been satisfied

STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

- 27. Clause 85- Development Adjacent to Rail corridor of the Infrastructure State Environmental Planning Policy states:
 - “(1) This clause applies to development on land that is in or adjacent to a rail corridor, if the development—*
 - (a) is likely to have an adverse effect on rail safety, or*
 - (b) involves the placing of a metal finish on a structure and the rail corridor concerned is used by electric trains, or*
 - (c) involves the use of a crane in air space above any rail corridor, or*
 - (d) is located within 5 metres of an exposed overhead electricity power line that is used for the purpose of railways or rail infrastructure facilities.”*
- 28. It is considered that the development is for a change of use of a rumpus room to a bedroom, and some internal partition works. As the proposed works are minor in nature and unlikely to affect rail safety the application was not referred to Sydney Trains. It is further noted that the subject site is not adjacent to the rail corridor.
- 29. Clause 87- Impact of rail noise or vibration on non-rail development states:
 - “(1) This clause applies to development for any of the following purposes that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise or vibration—*
 - (a) residential accommodation,*
 - (b) a place of public worship,*
 - (c) a hospital,*
 - (d) an educational establishment or centre-based child care facility.”*

30. The subject site although located within vicinity of the T4- Eastern Suburbs and Illawarra railway line, is not adjacent to nor adjoins the railway line. This clause does not apply to this development.
31. The subject site is separated from the railway line by a residential site known as 2 Laycock Road Penshurst.

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

32. 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 or more.
33. No BASIX Certificate was required to be lodged in this case as the cost of works was not equal or above \$50,000.

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

34. The Vegetation State Environmental Planning Policy regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
35. The Vegetation State Environmental Planning Policy applies to clearing of:
 - (a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
 - (b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).
36. The objectives of the State Environmental Planning Policy 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 State Environmental Planning Policy as the site is within both Georges River Council and the R2 Low Density Residential zone.
37. Pursuant to Clause 8(1) of the State Environmental Planning Policy, 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).
38. No trees or significant vegetation are proposed to be removed by the proposal.

GREATER METROPOLITAN REGIONAL ENVIRONMENTAL PLAN NO 2 - GEORGES RIVER CATCHMENT

39. 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,*

40. Due to nature of the works being internal to the existing building, the application did not require referral to Council's Development Engineer. The proposal is not inconsistent with the provisions of this plan.

Draft Environmental Planning Instruments

DRAFT ENVIRONMENTAL STATE ENVIRONMENTAL PLANNING POLICY

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

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

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

DRAFT REMEDIATION OF LAND STATE ENVIRONMENTAL PLANNING POLICY

43. The Draft Remediation of Land State Environmental Planning Policy was exhibited from 31 January 2018 to 13 April 2018. The proposed remediation of land State Environmental Planning Policy 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.

44. 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.

DRAFT STATE ENVIRONMENTAL PLANNING POLICY (HOUSING DIVERSITY) 2020

45. Consideration is given to the provisions of the Draft State Environmental Planning Policy (Housing Diversity) 2020 in the assessment this application.
46. 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).*
47. The proposal is not considered to be inconsistent with the provisions of the Draft State Environmental Planning Policy.

KOGARAH LOCAL ENVIRONMENTAL PLAN 2012

48. The allotment is zoned R2 – Low Density Residential Zone and 'group home' is a permitted use with consent.

Note: The definition of group home is as per clause 42 of the ARH State Environmental Planning Policy found in the assessment above.

49. 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.

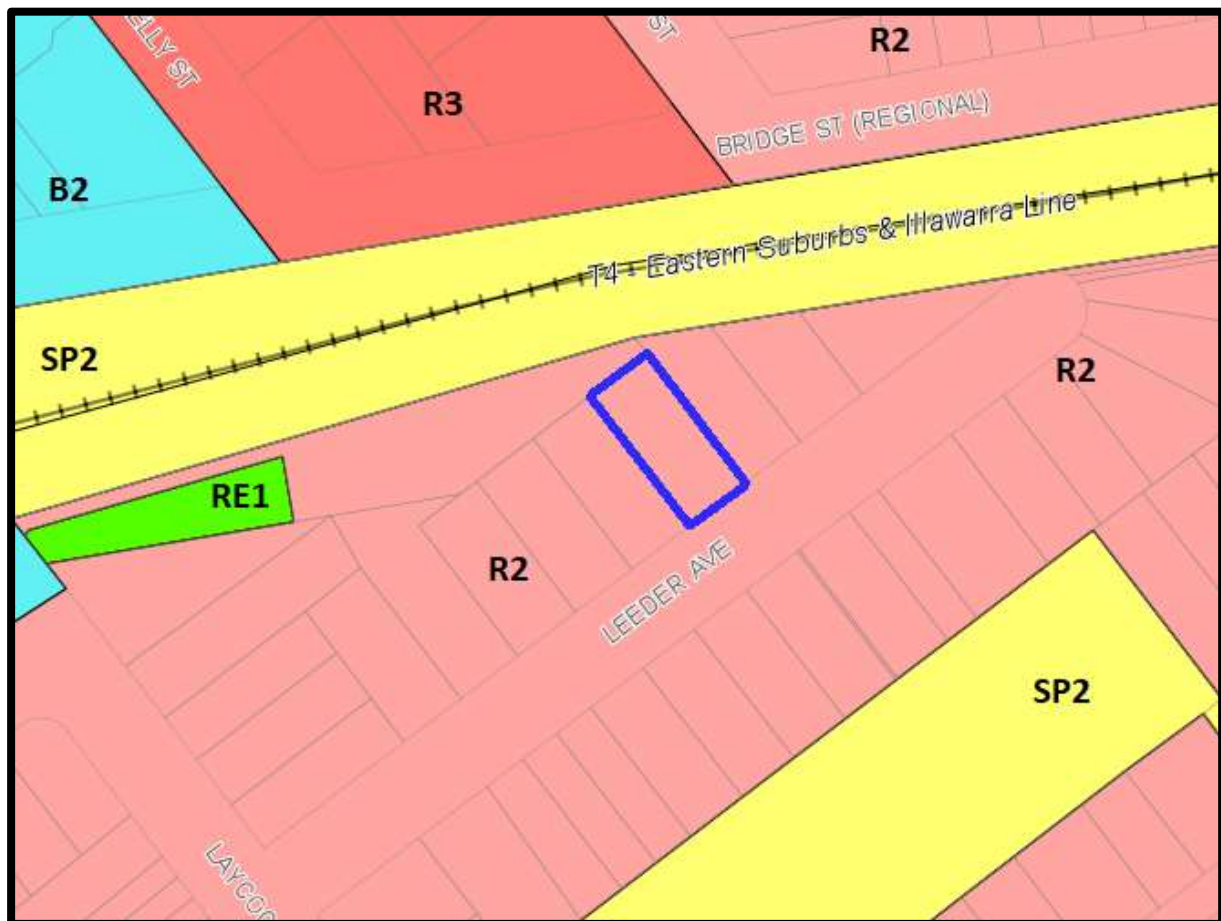


Figure 4: Zoning map – the site outlined in blue.

Clause	Standard	Proposed	Complies
Part 1 Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is consistent with the aims of the plan.	Yes
1.4 – Definitions	<p>group home <i>means a permanent group home or a transitional group home.</i></p> <p><u>permanent group home</u> means a dwelling—</p> <p><i>(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and</i></p> <p><i>(b) that is used to</i></p>	The proposed development is defined as a permanent group home. This has been confirmed with by the applicants.	Yes

provide permanent household accommodation for people with a disability or people who are socially disadvantaged,

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

transitional group

home means a dwelling—

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

(b) that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people,

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

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 zone and is permissible with development consent.	Yes
Part 4 Principal development standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The height of building will remain as existing.	Yes, as existing
4.4A – Exceptions to floor space ratio for residential accommodation in Zone R2	For site area less than 650sqm the maximum FSR is 0.55:1	The FSR will remain as existing.	Yes, as existing
Part 5 Miscellaneous provisions			
5.10 – Heritage conservation	In accordance with Clause 5.10 (1)	<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- local). Laycock Road street trees, Laycock Road, Penshurst (Item No I138- local). 	Yes

		<ul style="list-style-type: none"> Penshurst Reservoirs and Pumping Station (item I139- state) <p>The application was referred to Council's Heritage Consultant who supported the development with no recommended conditions.</p>	
Part 6 Additional local provisions			
6.1 – Acid sulfate soils	(1) 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	(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 to development for which development consent has been given.	No earthworks are proposed as part of this application.	Yes
6.3 – Flood planning	(2) This clause applies to — (a) land identified as "Flood planning area" on the Flood Planning Map, and (b) other land at or below the flood planning level.	The proposed development is not located in a mapped flood prone area.	Yes

DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020

50. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
51. In this regard, the provisions have no determining weight as a result of proposed operation of Clause "1.8A Savings provisions relating to development applications" of the

Draft Plan which provides “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

DEVELOPMENT CONTROL PLANS

52. The proposal has been assessed under the relevant sections of the Kogarah Development Control Plan 2013 as follows.

KDCP 2013 Compliance Table		
PART B – GENERAL CONTROLS		
Required	Proposed	Complies
B1 Heritage Items and Heritage Conservation Areas		
<p>The subject site is located within the Penshurst Heritage Conservation Area.</p> <p>Any development in the Heritage Conservation Areas is to address and respond to the requirements of the relevant Heritage Conservation Area Guidelines contained in Appendix 1.</p>	<p>The application was referred to Council's Heritage Consultant who was satisfied that the proposal will have minimal impact on the Heritage Conservation Area given the works are for a change of use with minor internal alterations.</p>	Yes

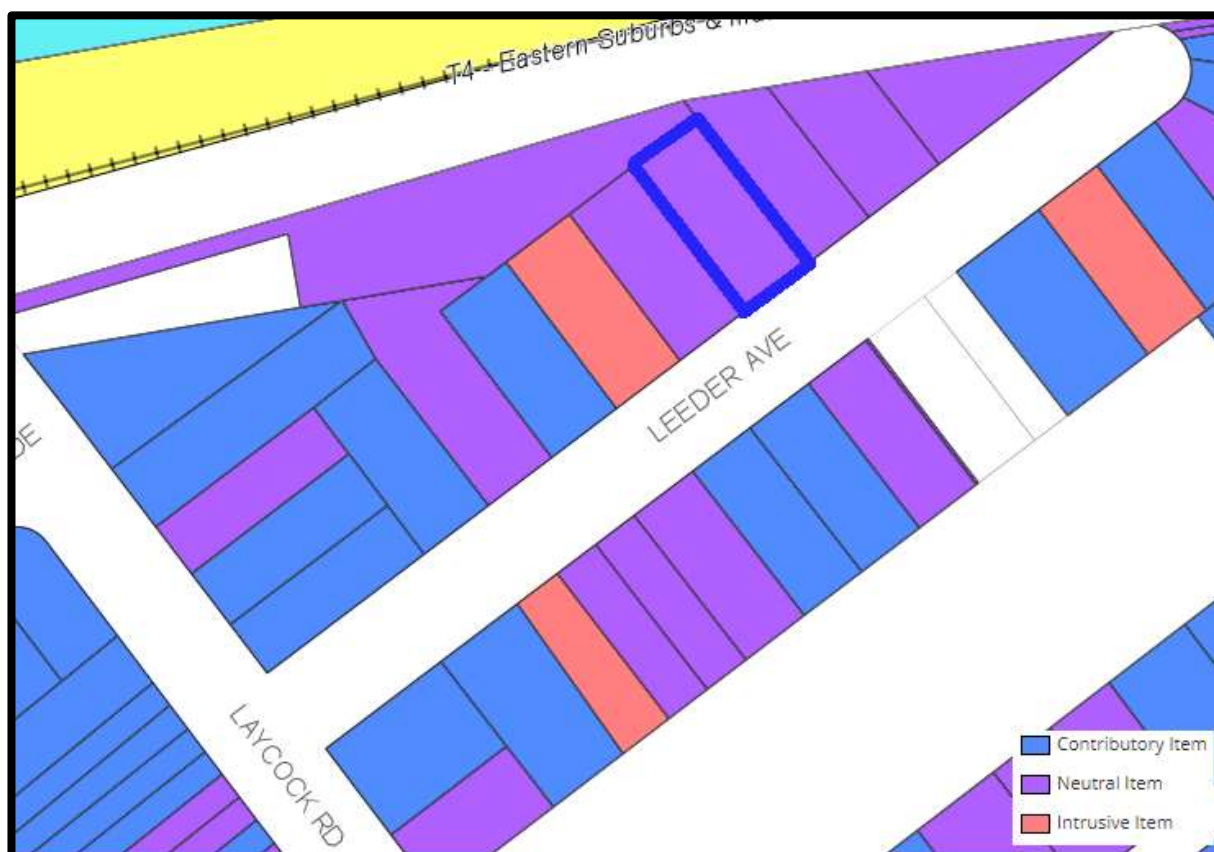


Figure 5: Map of Penshurst Heritage Conservation Area with subject site highlighted in

blue.

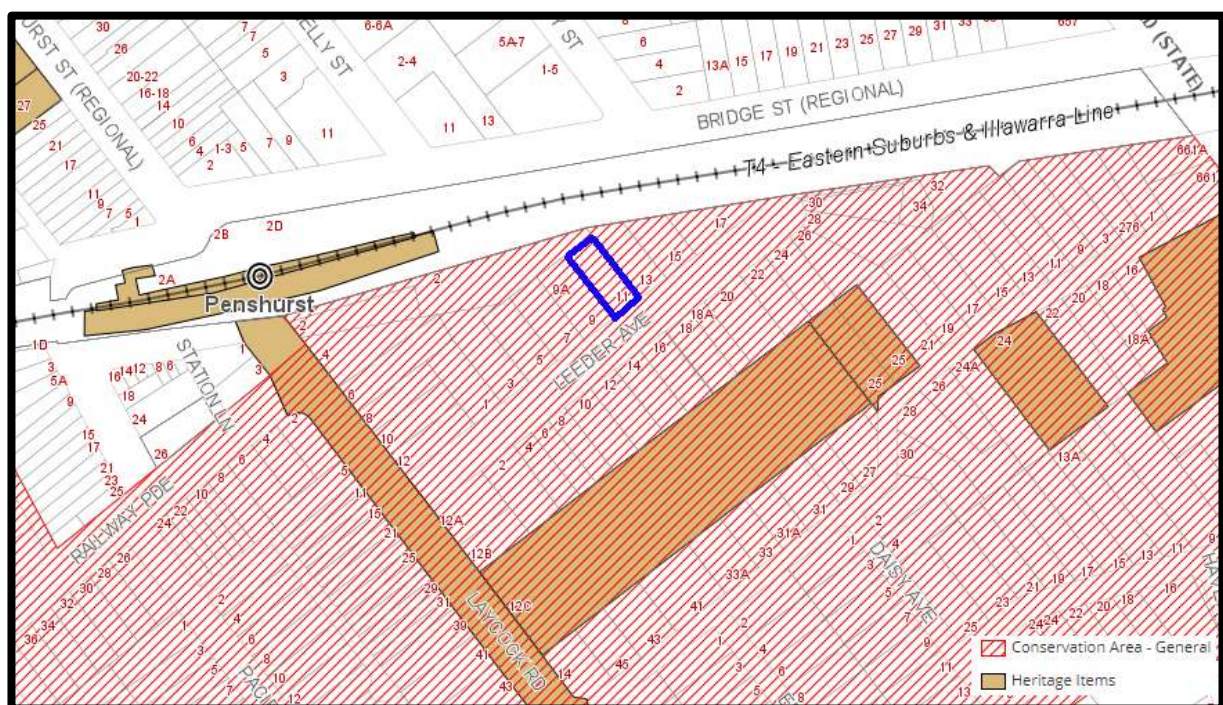


Figure 6: Penshurst Conservation Area defined with the subject site outlined in blue.

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 brief statement was included within the submitted Statement of Environmental Effects. The application was referred to Council's Heritage Consultant who was satisfied that the proposal will have minimal impact on the Heritage Conservation Area given the works are for a change of use with minor internal alterations. No heritage impact statement was required to be submitted given the minor nature of the works proposed.	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 a condition will be imposed prohibiting the removal of tree without a valid consent.	N/A
B3 – Development near busy roads and rail corridors		
Acoustic assessment for noise sensitive development may be required if located in the	As per clause 87 of the Infrastructure SEPP, the development does not adjoin or is adjacent to a rail corridor. The site is separated from the rail corridor by a site	Yes

vicinity of a rail corridor or busy roads	identified as 2 Laycock Road Penshurst. An acoustic report was not required to be submitted in this regard.	
B4 Parking and Traffic		
Parking Requirements <ul style="list-style-type: none"> No specific requirement for group homes. 	The proposal will utilise the existing parking facilities.	Yes, as existing
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.	No waste management plan was required to be submitted given the minor nature of the works proposed.	Yes
B6 – Water Management		
All developments require consideration of Council's Water Management Policy	No stormwater plan was required to be submitted given the works are proposed to be internal of the existing building.	Yes
B7 – Environmental Management		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	The building envelope will remain as existing. The conversion of the rumpus room to a bedroom is internal and will not alter the external appearance of the existing building.	Yes

53. Kogarah Development Control Plan 2013 Part C1- Low Density Housing applies to the site given that the development is for residential accommodation within the R2 low density residential zone.
54. As the proposed works are limited to the conversion of the rumpus room to a bedroom, in addition to partition walls and outdoor lighting, no specific controls are applicable for this type of development. No additional outdoor paving is proposed and the existing landscape ratio will not be modified and will remain as existing.

GEORGES RIVER DEVELOPMENT CONTROL PLAN 2020 (INTERIM POLICY)

55. 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 is used as a guide as it is an endorsed position of the Council.
56. No specific controls apply due to the minor nature of the development. Notwithstanding, the proposal does not conflict with the controls and objectives of the Interim Policy Development Control Plan.

IMPACTS

Natural Environment

57. The proposal does not involve the removal of any trees or vegetation and the existing landscaping will remain unaltered.
58. The proposed method of drainage will remain as existing given all the works are internal to the existing building envelope.
59. The development will not result in any significant adverse impacts on the natural environment.

Built Environment

60. The proposed works are internal to the existing building envelope and will not be visible from the public domain. Some lighting will be installed along external western façade of the lower ground floor in order to allow for a well-lit path connecting the home to the rear yard.
61. A condition is imposed with regarding to the external lighting not causing unacceptable glare to the adjoining neighbours. A condition is also imposed requiring internal blinds being installed along the windows/glass doors of the new bedroom to allow privacy for the staff member residing in the bedroom.

Social Impact

62. The proposed development is of a scale and form that is consistent with existing development which does not result in unreasonable social impact. The proposed alterations and additions will provide a benefit for the community in that it will provide additional amenities for staff caring for the residents of the group home.

Economic Impact

63. The proposal is unlikely to result in adverse economic impacts.

Suitability of the Site

64. The subject site is zoned R2 – Low Density Residential, and group homes are a permissible form of development in this zone. Alterations and additions to the existing group home is considered to be ancillary to the primary use and is an appropriate and suitable form of development.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

65. The application was notified to adjoining residents between 16 September 2020 and 30 September 2020 in which notified residents were invited to view the plans and submit any comments on the proposal. Two (2) submissions and a petition containing nine (9) signatures objecting to the development were received in response to this notification

Loss of backyard access to the residents of the group home

66. Concern was raised due to loss of backyard access to the resident of the group home.
67. Officer Comment: Although the original plans lodged did not depict internal access to the rear yard for residents, the plans have been amended to provide internal access for the residents to the rear yard via a new partition along the lower ground level.

A condition has been imposed requiring the path between the door leading outward and the rear yard be well-lit, slip resistant, with appropriate lighting and that this area remain obstacle free.

It is noted that the path is weather protected due to the suspended floor level above serving as a roof.

Overcrowding

68. Concern was raised due to overcrowding of the group home as a result of the conversion of the rumpus room to a bedroom.
69. Officer Comment: Although the rumpus room will be converted to a bedroom, the bedroom is to be used for staff purposes only and will not be a resident bedroom. The capacity of the group home will not be modified by the proposal. A condition has been imposed prohibiting the use of the rumpus room as a resident bedroom.

It is noted that an internal communal area is existing along the top floor of the group home. The area is approximately 68sqm in size (excluding kitchen pantry) and includes a dining/kitchen and living area that overlooks the rear yard. The communal area was expanded from 31sqm to 68sqm under Development Application 172/2016 which was approved on 11 October 2016. Upon a site inspection it was found that the area has been constructed and is usable.

Standard of living in existing group home.

70. Concern was raised as to the current standard of living of the group home.
71. Officer Comment: Assessment of the current standard of living of the group home is not a matter for consideration assessed under this Development Application. It is noted that the proposal will provide additional staff amenities which is likely to contribute to a higher standard of living for residents of the group home.

Note: It is recommended to contact the National Disability Insurance Scheme Commission or the National Disability Insurance Agency to report any issues in relation to the standard of living within the group home.

Non-compliance with development consent.

72. Concern was raised due to unauthorised use of the current rumpus room as a resident bedroom.
73. Officer Comment: A Development Control Order (ON2020/0079) was issued on 27 February 2020 to cease use of the rumpus room as a bedroom. The subject development application was lodged seeking to legally convert the room to a staff bedroom.
74. A condition has been imposed prohibiting the use of the rumpus room as a resident bedroom.

Council Referrals

Heritage Consultant

75. The proposal was referred to Council's Heritage Consultant given the location of the site within the Penshurst Heritage Conservation Area. The application was supported with no conditions being recommended.

Contributions

76. Section 7.12 (former Section 94A Contribution) contributions are applicable to any development with cost of works exceeding \$100,000.00.

77. In this case, as the cost of works does not exceed \$100,000.00 no contributions are required to be paid.

CONCLUSION

78. Development consent is sought for alterations and additions to the existing group home proposing the change of use of a rumpus room to a staff bedroom and construction of some internal partition walls to provide an area for the residents to move through to access the rear yard.
79. 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.
80. The proposal will not result in any unreasonable amenity impacts to the residents of the group home or residents of adjoining properties subject to the conditions of consent recommended below.
81. The application is recommended for approval subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

82. Statement of Reasons

- The proposed alterations and additions to the existing group home is an appropriate response to the site and is consistent with the objectives of the R2 zone and existing developments in the locality.
- The proposed alterations and additions will not adversely affect the heritage conservation area and satisfies the relevant controls of Clause 5.10 of Kogarah Local Environmental Plan 2012, Part B1 of Kogarah Development Control Plan 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 proposal will not result in any unreasonable amenity impacts to the residents of the group home or residents of adjoining properties.
- The proposal is not inconsistent with the provisions of Draft Georges River Local Environmental Plan 2020.
- The proposal will provide additional staff amenities which is likely to result in a higher standard of living for residents of the group home.

Determination

83. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) Georges River Local Planning Panel grant consent to DA2020/0344 for alterations and additions to the existing group being the conversion of a rumpus room to a staff bedroom on the lower level of the dwelling at Lot 9, DP6083 and known as 11 Leeder Avenue 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 Plan	20034-01	12/08/2020	B	ES Design
Floor Plan	20034-02	12/08/2020	B	ES Design

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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.

Prior to the Issue of a Construction Certificate

3. **Tree Removal prohibited** - This consent does not approve the removal or pruning (branches or roots) of any trees on the subject property, Council's public footway, public reserves or on neighbouring properties.
4. **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	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$155.00

General Fees

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

Development Contributions

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.

5. **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.

6. **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.

7. **Lighting-** Prior to the release of the construction certificate, the plans are to be amended to show appropriate lighting along the path between the communal door along the south-western facade of the lower floor bedroom (previous rumpus room) and the rear yard.

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

8. **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.

During Construction

9. **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.
10. **Hours of construction for demolition and building work** - Unless authorised by Council:
 - a. Building construction and delivery of material hours are restricted to: 7.00 am to 5.00 pm (inclusive) Monday to Saturday and no work on Sundays and Public Holidays.
 - b. Demolition and excavation works are restricted to: 8.00 am to 5.00 pm (inclusive) Monday to Friday only. Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site.
11. **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.
12. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the [Roads Act 1993](#) and/or under Section 68 of the [Local Government Act 1993](#). Penalty infringement Notices may be issued for any offences and severe penalties apply.

Prior to the issue of the Occupation Certificate

13. **Installation of Blinds-** Adjustable opaque blinds (or curtains) are to be installed along the internal face of glazed elements (doors and windows) of the bedroom (previous rumpus room) located along the lower floor level. PCA to ensure that the blinds prevent people in the rear yard from overlooking into the bedroom when the blinds/curtains are engaged.
14. **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 between the communal door along the south-western facade of the lower floor bedroom (previous rumpus room) and the rear yard 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 to the satisfaction of the PCA.

Operational Conditions (On-Going)

15. **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).
16. **Use of Lower Flood Bedroom (previous rumpus room)-** The lower floor bedroom (previous rumpus room) is to be only used as a staff bedroom. No resident of the group home (other than staff) is to reside in the bedroom at any time.
17. **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.
18. **Obstacle Prevention-** The path between the communal door along the south-western facade of the lower floor bedroom (previous rumpus room) and the rear yard is to remain free from any obstacles or obstructions at any time. The path is to also be well lit at all times.
19. **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.
20. **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.
21. **Amenity of the neighbourhood** - The implementation of this development shall not

adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.

Operational Requirements Under the Environmental Planning & Assessment Act 1979

22. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
23. **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.

24. **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.

25. **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.

26. **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](#).
27. **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.

28. **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

29. **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.
30. **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.
31. **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](#).
32. **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.
33. **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

34. **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.

35. **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.
36. **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.
37. **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.

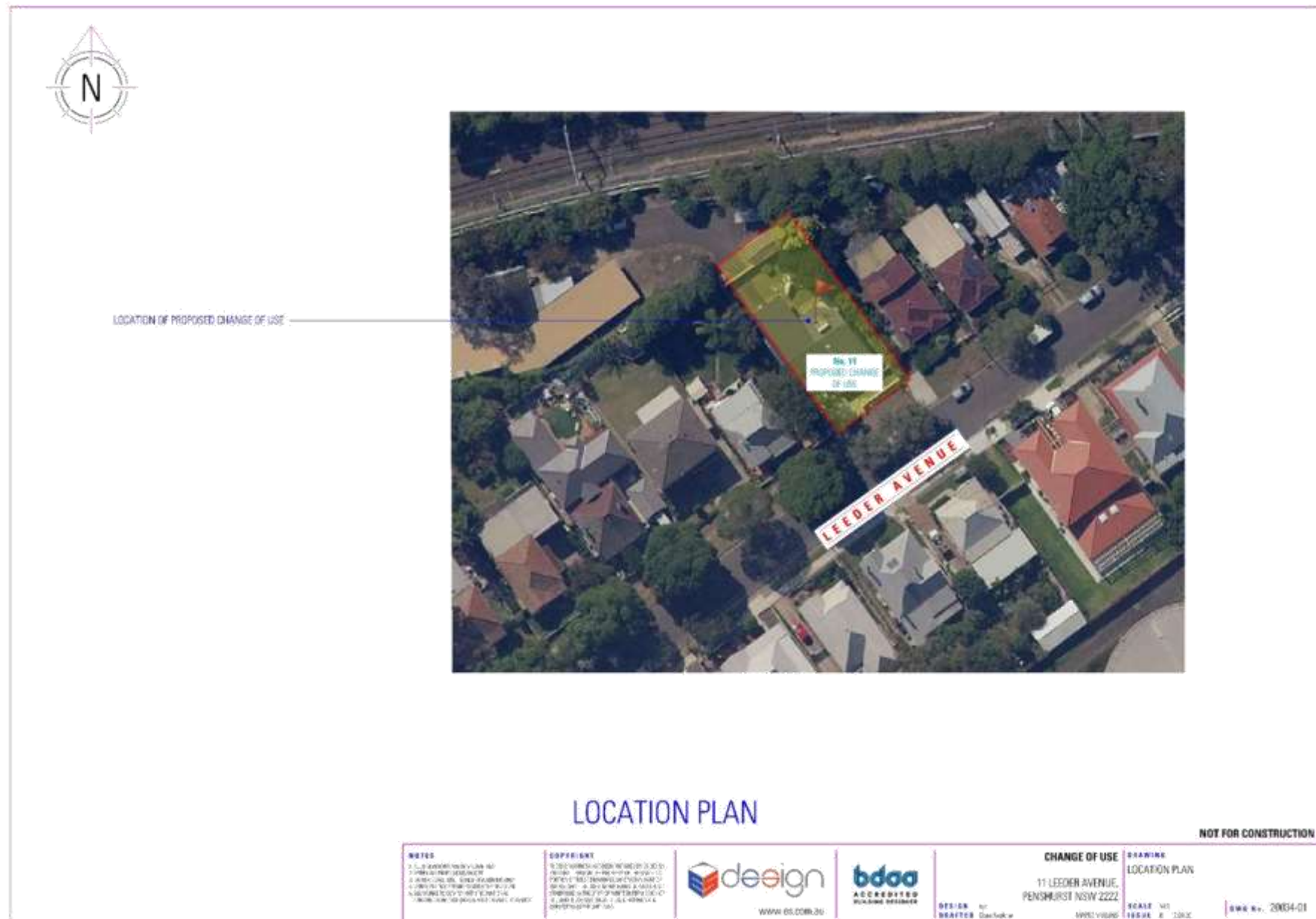
38. **Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must 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.
39. **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.

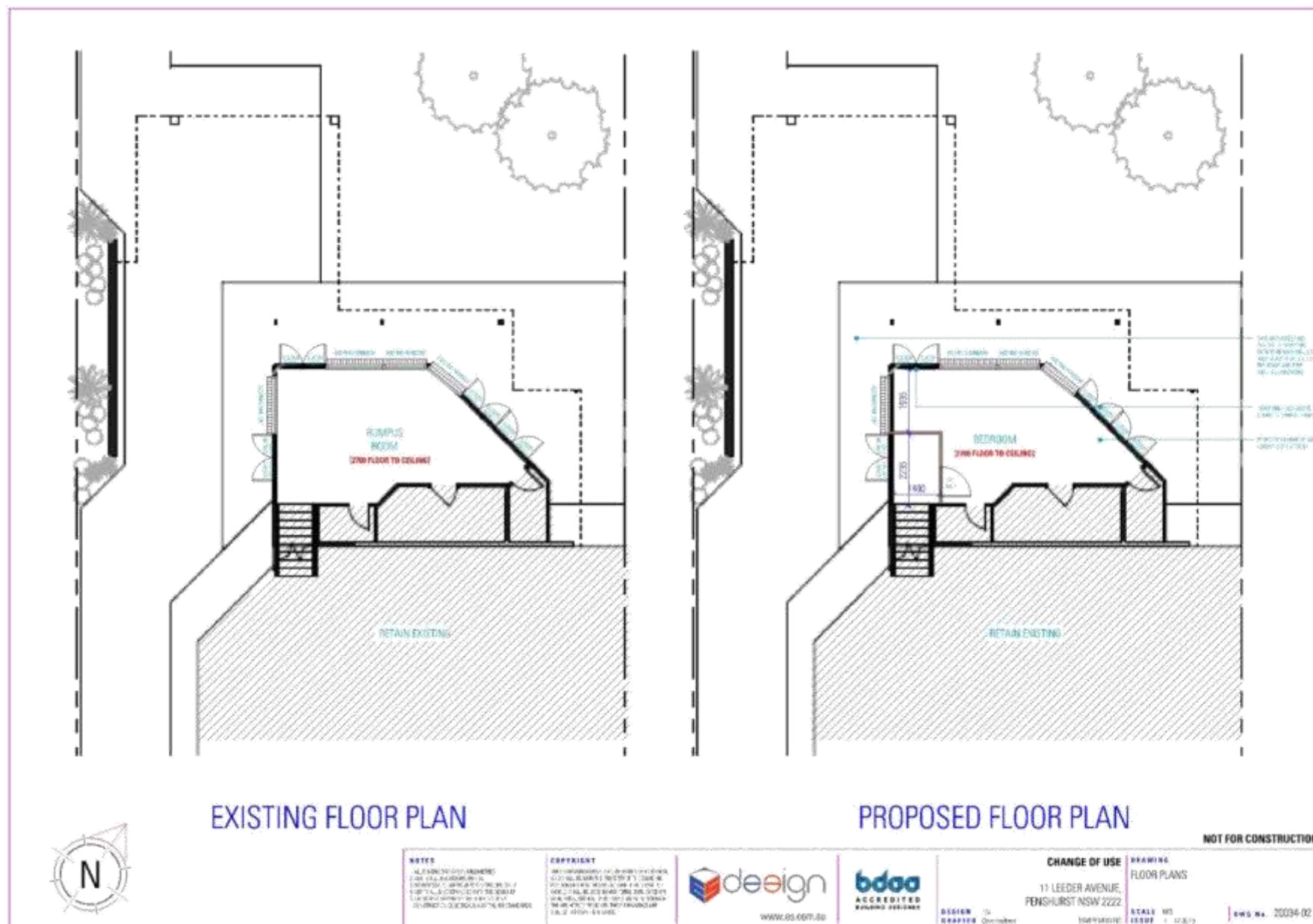
A demolition licence and/or a high risk work license may be required from SafeWork NSW (see www.SafeWork.nsw.gov.au).

ATTACHMENTS

- Attachment [↓](#)1  Site plan- 11 Leeder Avenue Penshurst
- Attachment [↓](#)2  Floor Plan- 11 Leeder Avenue Penshurst

LPP003-21





**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 18 MARCH 2021**

LPP004-21

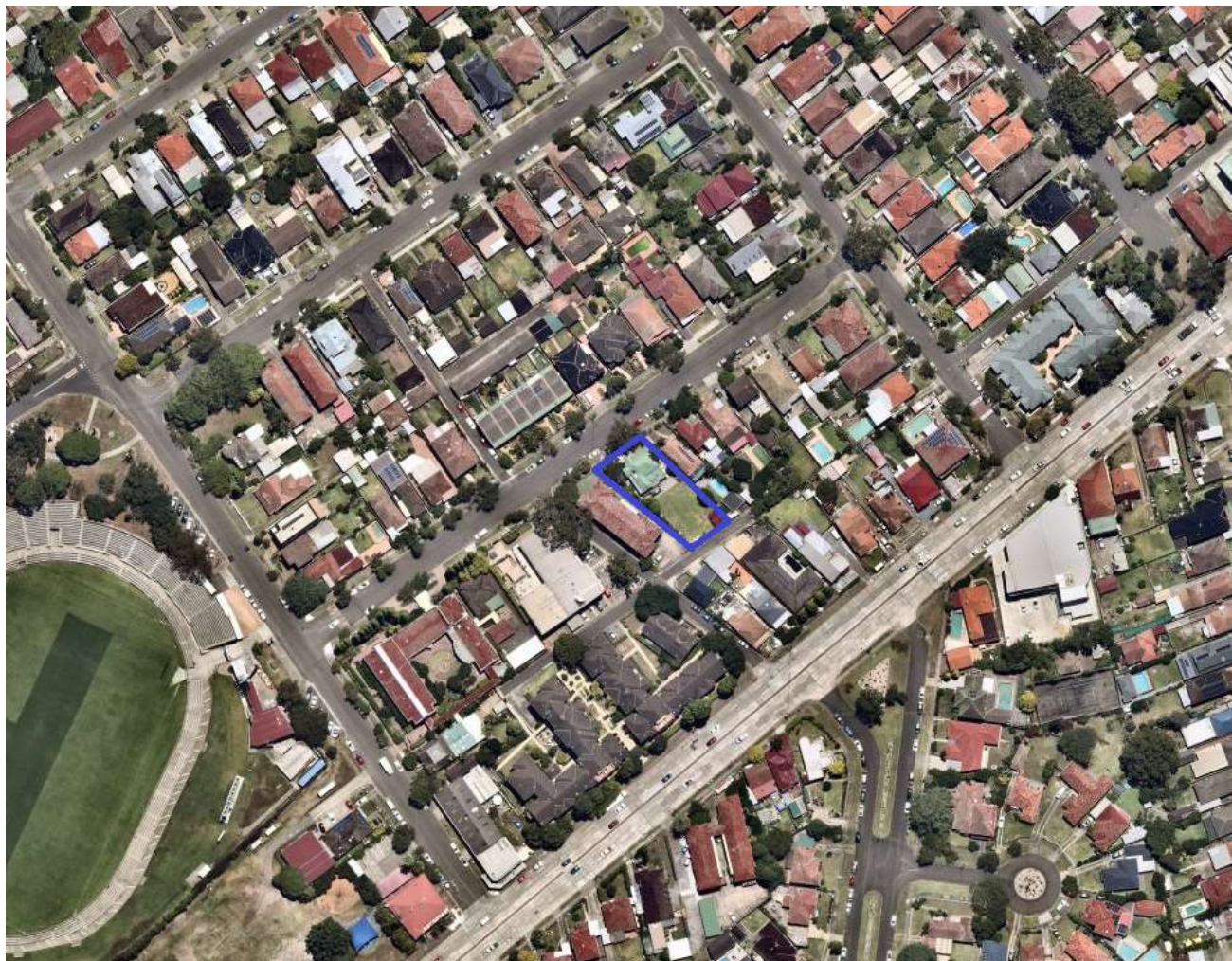
LPP Report No	LPP004-21	Development Application No	DA2020/0383
Site Address & Ward Locality	14 Garden Street, KOGARAH Kogarah Bay Ward		
Proposed Development	Demolition and alterations and additions to a heritage listed dwelling house.		
Owners	Cherie Butler and Mathew Vane-Tempest		
Applicant	Nicole Allen		
Planner/Architect	DNArch		
Date Of Lodgement	1/10/2020		
Submissions	One (1)		
Cost of Works	\$400,000		
Local Planning Panel Criteria	Application involves demolition works to a heritage item		
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 (Building Sustainability Index: BASIX) 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 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	Architectural Plans, Statement of Environmental Effects, Heritage Impact Statement, BASIX Certificate, Flood Risk Mangement Report		
Report prepared by	Development Assessment Planner		

Recommendation	Approval, Subject to conditions
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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?	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 conditions can be reviewed when the report is published.

Site Plan



The subject allotment is outlined in blue.

EXECUTIVE SUMMARY

Proposal

1. The application seeks approval for partial demolition of a heritage listed dwelling and alterations and additions to the existing heritage listed dwelling at 14 Garden Street, Kogarah.

Site and Locality

2. The subject site is on two (2) lots and each lot is a regular shaped allotment and is located on the south eastern side of Garden Street, Kogarah. Each lot has a primary frontage of 9.145m to Garden Street. The site adjoins English Lane at the rear; there is vehicular access from the rear through a gate and a formed layback.
3. According to the submitted survey, each lot has side boundary lengths of 46.505m and a site area of 417.3sqm by DP but 417.9sqm as calculated. However when using the dimensions both allotments have a combined area of 850.576sqm. The assessment has used the DP calculation of 417.3sqm being 834.5sqm combined area for the basis of the calculations.
4. The subject site being over two (2) lots does affect the application of the controls. This report will consider the lots being consolidated as this will be conditioned prior to the Construction Certificate being issued.
5. The site currently accommodates a single storey heritage listed dwelling house of local significance, with a detached structure being a shed at the rear of the site. The dwelling is listed under Schedule 5 of Kogarah Local Environmental Plan 2012 as item 'I74'. The immediate area is dominated by residential uses containing a mix of one (1) and two (2) storey residential developments, residential flats buildings and an aged care facility. The site is also flood prone.

Zoning and Permissibility

6. The site is zoned R2 – Low Density Residential and demolition and alterations and additions to a dwelling house are ancillary to the use of “dwelling house” which is permissible with consent under the provisions of Kogarah Local Environmental Plan 2012.

Submissions

7. The application was notified to surrounding neighbours for a period of twenty eight (28) days between 21 October 2020 to 18 November 2020 in accordance with Part 1 of Kogarah Development Control Plan 2013. The application was also advertised in the St George and Sutherland Shire Leader. One (1) submission was received, which requested the heritage façade be maintained.

Conclusion

8. 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 (DA2020/0383) is recommended for approval subject to the conditions referenced at the end of this report.

REPORT IN FULL

Proposal

9. Development consent is sought for partial demolition of a heritage listed dwelling, alterations and additions to the existing heritage listed dwelling and the construction of a single storey pavilion at the rear of 14 Garden Street Kogarah.

10. Further details of the proposed development are as follows:

Demolition:

- Demolition a portion of the rear of the dwelling which includes the terrace, deck, laundry, hallway, bathroom, ensuite.
- Partial demolition of rooms referenced as 'Store room', 'Pantry' and 'Kitchen' to facilitate the proposed alterations and additions.
- The street façade of the dwelling remains in place.

Alteration and Addition:

- Conversion of the existing kitchen and pantry to be bedroom 4 with an attached ensuite.
- Renovation of existing store room to extend the lounge room.
- Conversion of existing bathroom and ensuite to a bathroom.
- Construction of a stepped down rear extension, in a pavilion form, creating a kitchen (with pantry), lounge room, dining room, laundry and terrace with BBQ alcove.

Ancillary development:

- Existing concrete pathway to be removed either side of the dwelling.
- Removal of four (4) trees along the southern boundary.

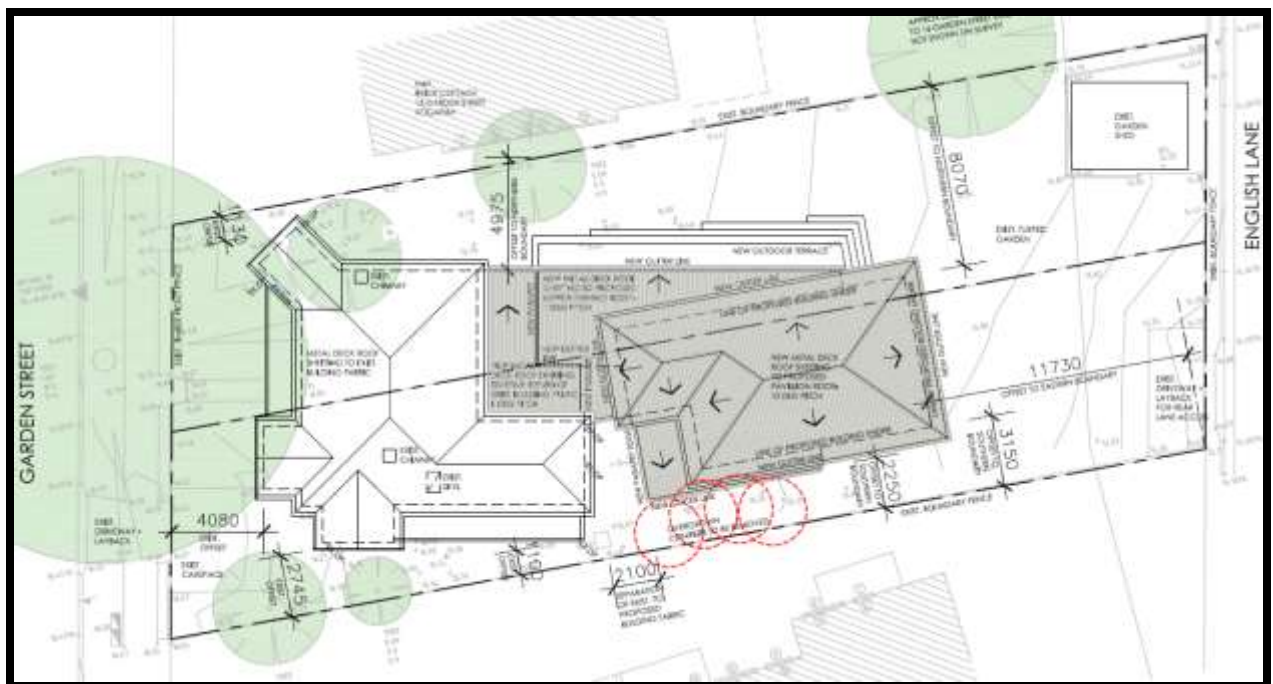


Figure 2: Proposed site plan (Source: DNArch 2020).

The Site and Locality

11. The subject site is formally identified as Lot 21 Sec 1 DP 2635 and Lot 22 Sec 1 DP 2635 known as 14 Garden Street, Kogarah. The subject site is on two (2) lots and each lot is a regular shaped allotment and is located on the south eastern side of Garden Street, Kogarah. Each lot has a primary frontage of 9.145m to Garden Street. The site adjoins English Lane at the rear; there is vehicular access from the rear through a gate and a formed layback.

12. According to the submitted survey, each lot has side boundary lengths of 46.505m and a site area of 417.3sqm by DP but 417.9sqm as calculated. However when using the dimensions both allotments have a combined area of 850.576sqm. The assessment has used the DP calculation of 417.3sqm being 834.5sqm combined area for the basis of the calculations
13. The site slopes to the rear (English Lane) with a height difference of approximately 2.18m. The site is also flood prone.
14. The proposal has been assessed as though the lots are consolidated and this will be a condition of consent prior to the issue of the construction certificate.
15. The site currently accommodates a single storey heritage listed dwelling house of local significance. The house and garden is listed under Schedule 5 of Kogarah Local Environmental Plan 2012 as item '174'.
16. The existing dwelling is a single-storey Federation Bungalow style dwelling. The site is part of the Bayview Park Estate and was first auctioned in 1880. (Heritage NSW 2020).
17. The site is serviced by an existing vehicular crossing along the south side of the southern allotment (Lot 22) from Garden Street.
18. The immediate area is dominated by residential uses containing Residential Flat Buildings and a mix of one (1) and two (2) storey residential development and an aged care facility. The area is generally residential in character.
19. In the wider context, the subject site is located approximately 150m east of Jubilee Oval and 50m north of the Princes Highway.





Figure 3 and 4 : Street view of subject site from the assessing officers inspection.

Compliance and Assessment

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

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

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 (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 (SEPP 55)

22. State Environmental Planning Policies 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.

23. 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 criterion of State Environmental Planning Policies 55 has been satisfied.

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

24. 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 or more.
25. A BASIX Certificate prepared by Doug Southwell, dated 15 September 2020, certificate number A379110 has been submitted with the Development Application satisfying the minimum requirements of State Environmental Planning Policies (Building Sustainability Index: BASIX) 2004.

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

26. The Vegetation State Environmental Planning Policies regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
27. The Vegetation State Environmental Planning Policies applies to clearing of:
 - (a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
 - (b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).
28. The objectives of the State Environmental Planning Policies 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 State Environmental Planning Policies as the site is within both Georges River Council and the R2 Low Density Residential zone.
29. Pursuant to Clause 8(1) of the State Environmental Planning Policies, 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).
30. The proposal requires the removal of 4 trees. This has been assessed by Councils Arborist and standard and specific tree and landscape conditions have been recommended by Council's consultant arborist and have been referenced at the end of this report.

GREATER METROPOLITAN REGIONAL ENVIRONMENTAL PLAN NO 2 - GEORGES RIVER CATCHMENT

31. 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,*
32. The proposed stormwater drainage system has been assessed by Council's Development Engineer having regard to the flooding constraints of the site and has been found to be satisfactory. Specific stormwater conditions have been imposed in this regard.

Draft Environmental Planning Instruments

DRAFT ENVIRONMENTAL STATE ENVIRONMENTAL PLANNING POLICY

33. The Draft Environment State Environmental Planning Policies was exhibited from 31 October 2017 to 31 January 2018. This consolidated State Environmental Planning Policy proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating the following seven existing State Environmental Planning Policies:
- State Environmental Planning Policy No. 19 – Bushland in Urban Areas;
 - State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011;
 - State Environmental Planning Policy No. 50 – Canal Estate Development;
 - Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment;
 - Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997);
 - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
 - Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.
34. The proposal is not inconsistent with the provisions of this Draft Instrument.

DRAFT REMEDIATION OF LAND STATE ENVIRONMENTAL PLANNING POLICY

35. The Draft Remediation of Land State Environmental Planning Policies was exhibited from 31 January 2018 to 13 April 2018. The proposed remediation of land State Environmental Planning Policies 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.

36. 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

37. 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.

38. The allotment is zoned R2 – Low Density Residential Zone, 'dwelling houses' are permitted with consent. It is noted that alteration and addition works and the construction of a carport are considered ancillary to the dwelling house use and are also a permitted form of development with consent.

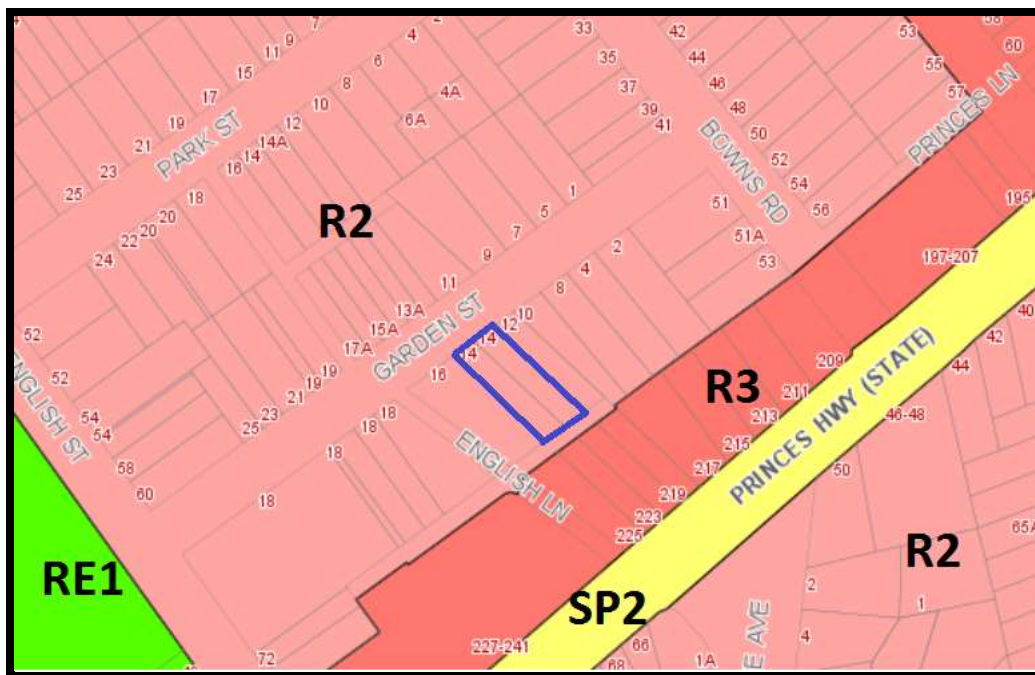


Figure 4: Zoning Map – site outlined in blue

KOGARAH Local Environmental Plan Compliance Table

Clause	Standard	Comment	Complies
Part 2 Permitted or prohibited development			
2.2 – Zone	R2 – Low Density Residential	The proposal is for alterations and additions to an existing dwelling house which is a permissible land use in the zone.	Yes
2.7 – Demolition	Demolition requires development consent	The consent for partial demolition is sought under this application.	Yes
Part 4 Principal development standards			

4.3 – Height of Buildings	9m as identified on Height of Buildings Map	5.4m. It is noted that the existing dwelling is higher than the proposed extension.	Yes
4.4 – Floor space ratio	0.55:1 (as identified on Floor Space Ratio Map)	The proposed development is alterations and additions to an existing dwelling. Clause 4.4A overrides this clause.	Yes
4.4A – Exceptions to Gross Floor Area of Dwellings in residential zones	The gross floor area calculation applicable to the proposal less than 1,000sqm but not less than 800 square metres = (lot area – 800) × 0.2 + 402.5] ÷ lot area:1 Permitted GFA = 409.42sqm	The proposed GFA is 245.1sqm.	Yes

Part 5 Miscellaneous provisions

5.10 – Heritage conservation	<p>(2) Requirement for consent Development consent is required for any of the following—</p> <p>(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—</p> <p>(i) a heritage item, (ii) an Aboriginal object, (iii) a building, work, relic or tree within a heritage conservation area,</p> <p>(5) Heritage assessment The consent authority may, before granting consent to any development—</p> <p>(a) on land on which a heritage item is located, or (b) on land that is</p>	<p>Consent is sought for demolition and alterations and additions to a heritage item.</p> <p>The site contains a local heritage item (I74), being a house and garden. The Statement of Significance is provided below.</p>	<p>Yes</p> <p>Yes</p>
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	<p>within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</p> <p>Require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>		
<p>Statement of Significance <i>“14 Garden Street is significant at a Local level for its aesthetic qualities, historical contribution to the streetscape and historic value. The place is overall a very good representative example of an early twentieth century single storey brick and iron dwelling which displays Federation Bungalow stylistic influence. Substantially intact original external fabric including tuck pointed brickwork, casement and double-hung timber windows and verandah with turned timber posts and tessellated tiling contributes to its overall aesthetic value. There is a sympathetic recent timber picket boundary fence. The place makes a valuable historic contribution to the streetscape and to the evolution of residential development within the Bayview Park Estate in the early twentieth century, which along with other comparable properties in the vicinity strengthens the cultural values of the area.”</i></p> <p>Comment: The application was accompanied by a heritage impact statement prepared by Design 5 Architects dated September 2020.</p> <p>The application was referred to Council's Heritage Consultant who stated “Significant internal and external architectural features and fabric of the dwelling will be retained and not directly impacted by the proposed works”. Council's Heritage Consultant has no objections subject to specific conditions which have been referenced in the recommended conditions at the end of this report.</p>			
Part 6 Additional local provisions			
6.1 – Acid sulfate soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by acid sulfate soils.	Yes
6.2 – Earthworks	To ensure that earthworks do not have a detrimental impact on environmental	The proposed earthworks will be minimal and is not inconsistent with this clause.	Yes

	functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land		
6.3 – Flood planning	<p>The objectives of this clause are as follows:</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p>	<p>The subject land is identified as being affected by flooding. The application is supported by a <i>"Flood Risk Management Report"</i> prepared by Partridge Dated the 17th September 2020.</p> <p>Council's Drainage Engineer provided the minimum floor level required for the development being 16.00 AHD. The proposal complies with this floor level. Council's engineers have assessed the proposal and provided applicable conditions which have been included in the recommended conditions below.</p>	Yes

Georges River Development Control Plan 2020 - Interim Policy

The proposed dual occupancy development is subject to the provisions of Georges River Development Control Plan (GRDCP) 2020 - Interim Policy. The following comments are made with respect to the proposal considering the objectives and controls contained within Georges River Development Control Plan 2020 - Interim Policy.

Applicable Interim Policy Control	DCP Standards	Proposed Development	Complies
Dwelling Houses			
Building Setback (Front)	<p>Minimum setback from the primary street boundary is:</p> <p>a) 4.5m to the main building face</p>	a) The existing front setback remains unchanged.	N/A
Building Setback (Rear)	<p>- Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever</p>	The proposed rear boundary setback is 11.73m.	Yes

	<p>is greater.</p> <ul style="list-style-type: none"> - 15% = 6.975m - 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 	There is no established rear setback pattern in this locality.	N/A
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) 	<p>The proposed setback of the southern side is 2.250m and the northern setback is 4.975m.</p> <p>The existing dwelling is setback 1100m to the southern side and 1130m to the northern setback.</p>	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 Required - $834.6\text{m}^2 \times 0.20 = 166.92\text{sq m}$. - The minimum dimension of landscaped open space is 2m, design in a useable configuration - A minimum of 15m^2 of the landscaped open space is provided between the front setback and the street 	<p>The subject site is located outside the FSPA and proposes 27% landscaping equating to 229.2sqm.</p> <p>The minimum dimension of the calculated landscaping is 2m.</p> <p>The proposal provides 37.67sqm of the landscaped open space between the front setback and the street boundary in the form of a front yard; this is not proposed to be altered.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	boundary in the form of a front yard		
Private Open Space (PPOS)	An area of Principal Private Open Space is to be provided which: a) has a minimum area of 30m ²	The proposed Principal Private Open Space has an area of 47sqm on the proposed terrace in addition to the 191.6sqm of grassed area at the rear of the site.	Yes
	b) has a minimum dimension of 5m, designed in a useable configuration	The proposed Principal Private Open Space for the dwelling has a minimum dimension greater than 5m.	Yes
	c) is located at ground level and behind the front wall of the dwelling	The proposed Principal Private Open Space for the existing dwelling is located at ground level and behind the front wall of the dwelling	Yes
	d) is directly accessible from a main living area	The PPOS is directly accessible from the lounge and dining rooms, it is demonstrated that there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure).	Yes
Basements	<ul style="list-style-type: none"> Basements for low grade sites (ie < 12.5% Grade front to rear): a) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition below) and the overall development presents as 2 storeys to the street. b) A basement is not considered a storey if it is: situated partly below the finished ground and the underside of the ceiling is not more 	The proposal does not involve a basement or land modification	N/A

	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>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> <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>	Single storey extension and will not have an unreasonable impact in this regard. The solar access required is provided by this development.	Yes

Kogarah Development Control Plan 2013

39. The proposal has been assessed under the relevant sections of the Kogarah Development Control Plan as follows.

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 is sufficiently articulated.	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 considered appropriate in the heritage context of the site.	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.	Single storey dwelling.	N/A
1.2.2 Building Heights	(1) The maximum building height must comply with the requirements specified in table below: Dwelling Type		

LPP004-21

	<p>Single dwelling;</p> <p>Maximum Height 7.2m to the underside of the upper ceiling; 7.8m to the top of the parapet;</p>	<p>4.67m</p> <p>5.4m.</p>	<p>Yes</p> <p>Yes</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 not proposed to be altered.</p> <p>The primary façade is not proposed to be altered.</p> <p>The streetscape is characterised by a mix of pitched and parapet roofs. The proposed development incorporates a pitched design which is acceptable.</p>	<p>Yes</p> <p>Yes</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 & Rear Setbacks</p>	<p>The existing front setback remains unchanged.</p>	<p>Yes</p>

	<p>(1) The side and rear boundary setbacks should comply with 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>15% equates to 6.975m. Development is setback 11.73m.</p> <p>The proposed setback of the southern side is: 2.250 and the northern setback is 4.975m</p> <p>N/A dwelling will remain single storey.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p>
1.2.5 Fenestration and External Materials	<p>(1) New buildings and alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.</p> <p>(2) Garage doors should not dominate the street front elevation (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</p>	<p>The proposed development does not change the streetscape presentation, the additions to the existing dwelling are sympathetic and the rear pavilion extension is recessive and complimentary.</p> <p>N/A</p> <p>The immediate vicinity demonstrates both pitched and parapet roofs, the proposal is consistent with the streetscape.</p> <p>The external facades of</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>

	<p>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>the proposed development are considered appropriate for the locality and the heritage nature of the subject site.</p> <p>N/A – no change to the façade.</p> <p>N/A – no change to the façade.</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 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>N/A – no change to the façade.</p> <p>No additional fencing is proposed.</p> <p>N/A – no change to the façade.</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</p>	<p>27% landscaping (229.2 sqm)</p> <p>The proposed development includes a</p>	<p>Yes.</p> <p>Yes</p>

	<p>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 must be incorporated into proposed landscape treatment.</p>	<p>satisfactory area for private open space.</p> <p>The proposed private open space is appropriately located.</p> <p>The proposal has a satisfactory amount of soft landscaped area and the drainage has been assessed by Councils Engineers as appropriate subject to conditions which are included in the recommended conditions at the end of this report.</p> <p>Four (4) trees have been nominated for removal. The application was referred to Council's Consultant Arborist and their removal was supported subject to specific conditions of consent which are included in the recommended conditions at the end of this report. No street trees were nominated for removal.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
1.4 Vehicular access, parking and circulation			
	<p>(1) Car parking is to be provided in accordance with the requirements in Section B4.</p> <p>(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</p>	<p>The existing parking arrangements are not proposed to be altered.</p> <p>No change to the location of the crossing.</p>	<p>Yes</p> <p>N/A</p>

	<p>avoided.</p> <p>(5) Garaging should be setback behind the primary façade.</p> <p>(6) The maximum driveway width between the street boundary and the primary building façade is 4m.</p>	<p>No change to the car parking.</p> <p>No change to the location of the crossing.</p>	<p>Yes</p> <p>Yes</p>
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.	A majority of the proposed windows are offset from adjoining properties. It is noted that in the northern elevation the proposal includes floor to ceiling windows/door. This is deemed acceptable as it is 8.7m from the northern boundary and is not excessively raised above the existing ground level. The land is also lower on the subject site. There will be no unreasonable privacy impacts as a result of these windows/doors.	No, Justified
	(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.	There are no terraces above 1.5m.	N/A
	(5) For active rooms or balconies on an upper level, the design should incorporate placement of	The proposal is single storey.	N/A

	room windows or screening devices to only allow oblique views to adjoining properties (Figures 18 and 19).		
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.	Single storey extension and will not have an unreasonable impact in this regard.	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).	Single storey extension and will not have an unreasonable impact in this regard.	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 Planning Principle established by the Land and Environment Court in Tenacity Consulting vs Warringah Council (2004) NSWLEC140	The proposed development is not expected to impact any adjoining properties or public space access to view corridors.	Yes

DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020

40. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
41. 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.”

IMPACTS***Natural Environment***

42. The development will not result in any significant adverse impacts on the natural environment. Due to the removal of four (4) trees, the proposal was referred to Council's consultant arborist who supported the application subject to specific landscape conditions for the resulting landscape design.

Built Environment

43. The proposed alterations and additions are considered acceptable in that they will have a low visual and material impact on the heritage item, having been designed in a manner that will sit recessively at the rear of the dwelling, without obscuring or impacting on significant features or distorting the streetscape presentation. The proposed materials, colours and finishes as nominated on the proposed elevations revision A, are considered acceptable. There will be minimal bulk that will be added to English Lane due to the setback and slope of the area.
44. The application was referred to Council's Heritage Consultant who supported the proposal subject to specific conditions which have been included in the recommended conditions at the end of this report.

Social and Economic Impact

45. The proposed development will not result in any adverse social and/or economic impacts within the locality.

Suitability of the Site

46. It is considered that the proposed development is of a scale and design that is suitable for the site having regard to its size and shape, its topography and relationship to adjoining developments.

SUBMISSIONS AND THE PUBLIC INTEREST

47. The application was notified to surrounding neighbours for a period of twenty eight (28) days between 21 October 2020 to 18 November 2020 in accordance with Part 1 of the Kogarah Development Control Plan 2013. The application was also advertised in the St George and Sutherland Shire Leader. One (1) submissions were received.
48. The submission requested for a majority of the front of the house to be retained.
49. Comment: The proposal is only for a rear extension and there is no change proposed to the front façade of the dwelling.

REFERRALS***Council Referrals******Consultant Arborist***

50. The application has been assessed and endorsed by Council's Consultant Arborist and relevant tree and landscaping conditions have been recommended.

Heritage Consultant

51. The proposal is supported by Council's Heritage Consultant subject to standard and specific conditions of consent. Council's Heritage Consultant has specifically requested for amendments which has been taken into consideration in the amended plans.

Drainage Engineering

52. The application has been assessed and endorsed by Council's Drainage Engineer. Stormwater related consent conditions of consent have been imposed.

GIS

53. The application has been referred to Council's GIS team. They had no objections and no conditions to impose.

External Referrals

Ausgrid

54. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. A response was received stating that no objection is raised with regards to the proposal.

Development Contributions

55. The development is subject to Section 7.12 (former 94A Contributions) contributions as the proposed cost of works exceeds \$100,000.00. In accordance with Council's Section 7.12 plan contributions are applicable to alterations and additions to dwelling house developments. A condition of consent requiring payment of the contributions has been imposed.

CONCLUSION

56. The application seeks approval for partial demolition of a portion of the rear of the heritage listed dwelling and alterations and additions to this dwelling in the form of works to the dwelling and a pavilion extension to the rear at 14 Garden Street Kogarah.
57. 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.
58. Given the heritage status of the existing dwelling, the proposal was referred to Council's Heritage Consultant who assessed and supported the application subject to standard and specific conditions of consent.
59. The proposal will not result in any unreasonable impacts to the amenity of adjoining properties subject to the conditions of consent recommended below.
60. The application is recommended for approval subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

61. The statement of reasons are as following:
- The development proposal is of a scale and bulk that does not dominate the heritage item;
 - The proposed development is considered to be of an appropriate scale and form for the site and the character of the locality;

- The proposed development, subject to the recommended conditions, will have no unacceptable adverse impacts upon the heritage item and the natural or 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 proposed development is a suitable and planned use of the site and its approval is in the public interest.

Determination

62. That pursuant to Section 4.16 (1) of the Environmental Planning and Assessment Act, 1979; as amended, the Georges River Local Planning Panel grant development consent to Development Application DA2020/0383 for partial demolition of the heritage item and construction of additions to the existing dwelling and the construction of a pavilion addition to the rear of the dwelling at Lot 21 Sec 1 DP 2635 and Lot 22 Sec 1 DP 2635 known as 14 Garden Street, Kogarah, subject to the conditions listed below.

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
Title Page and Site Plan	A-001	-	A	DNArch
Demolition Plan	A-005	-	A	DNArch
Proposed Ground Floor Plan	A-006	-	A	DNArch
Proposed Roof Plan	A-007	-	A	DNArch
Proposed Elevations - East + West	A-008	-	A	DNArch
Proposed Elevations - North + South	A-009	-	A	DNArch
Proposed Section AA+BB	A-010	-	A	DNArch
Proposed Sections CC+DD	A-011	-	A	DNArch
Deep Soil - Landscape Plan	A-014	-	A	DNArch

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 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

5. **Consolidation** - Prior to the issue of the Construction Certificate, Lot 21 Sec 1 DP 2635 and Lot 22 Sec 1 DP 2635 are to be consolidated.
6. **Compliance with Flood Requirements** - The development shall be designed to conform to the following requirements as per the approved Architectural Plans:
 - (a) Minimum floor levels of the extension must be RL16.00m AHD.
 - (b) Minimum floor levels of the alterations must be RL16.84m AHD.
 - (c) The natural ground level below the extension cannot be increased.

Evidence from professional engineer that specialises in hydraulic engineering that all design requirements have been adhered to shall be submitted with the Construction Certificate application.

7. Heritage Conditions

a) Building works to comply with BCA

Any building works required to ensure compliance with the BCA or new building standards not specified in the submitted/approved plan must not damage existing fabric and building features.

If such upgrading works will potentially impact on existing fabric and features, details of the works must be submitted and approved by Council's Heritage Advisor prior to issue of a Construction Certificate.

b) Materials and Colour Finishes Schedule

A final Materials and Colours Finishes Schedule is to be provided with the construction certificate plans and documents.

The Materials, Colours and Finishes Schedule is to nominate a palette of materials and colour finishes for the new additions and existing dwelling (if any change in colour scheme is proposed to the heritage item) and shall be complimentary to the textures, tones, hues, materiality and style of the existing heritage item.

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

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

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

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

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

Fee Type	Fee
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	\$4000.00

General Fees

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

Development Contributions

A Section 7.12 contribution has been levied on the subject development pursuant to the Georges River Council Section 94A Contributions Plan 2017.

Timing of Payment

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

Further Information

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

9. **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.

10. **Site Management Plan** - A Site Management Plan detailing all weather access control points, sedimentation controls, fencing, builder's site sheds office, amenities, materials storage and unloading arrangements must be submitted with the application for the Construction Certificate.

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

11. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. A379110 must be implemented on the plans lodged with the application for the Construction Certificate.
12. **Required design changes** - The following changes are required to be made and shown on the Construction Certificate plans:

Engineering - On Site Detention (new Stormwater Management Policy)

The final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

An onsite detention (OSD) facility designed by a professional engineer who specialises in Hydraulic engineering must be designed, approved and installed.

The required OSD storage requirements and permissible discharge are to be calculated in accordance with Table 3 of Council's Stormwater Management Policy.

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

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

Full details shall accompany the application for the Construction Certificate.
Council's stormwater policy can be obtained from the following link:

<https://www.georgesriver.nsw.gov.au/StGeorge/media/Documents/Council/Governance/Codes%20and%20Policies/Pol-073-01-Stormwater-Management-Policy-July-2020.pdf>

13. **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.

14. **Stormwater System** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.
 - (a) All stormwater shall be drained in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
 - (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.
15. **Stormwater System - Gravity to the Kerb and Gutter** - All stormwater shall drain by gravity to Council's kerb and gutter directly in front of the development site at English lane in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
16. **Stormwater System - Silt Arrestor** - A Silt Arrestor Pit must be located inside the property just upstream of the point of discharge from the site. This pit must have minimum dimensions of 450mm x 450mm and shall have a 150mm deep sump and galvanised mesh screen permanently fixed over the outlet pipe or pipes. A minimum of 4 x 30mm diameter seepage holes shall be provided in the pit base. For drainage into the surrounding soil, the pit base shall be constructed on a layer of 200mm thick aggregate base wrapped in geotextile fabric. All non-plastic drainage pits must be benched and streamlined.
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. **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. **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.
20. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by DN Arch Architecture, Ref No Rev A, Drawing No A - 014 and dated Sept 2020. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -
 - a) The proposed sixteen (16) trees and plant species, pot/ bag size of 300mm/ 12 inch and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan.
 - b) All sixteen (16) trees proposed upon the approved landscape plan shall comply with AS 2303 - 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification;
 - c) If the planted trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size;
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 as per AS4970 -2009
<i>Eucalyptus Spp</i>	Councils street tree	Trunk wrapping as per Section 4, 4.5.2 AS4970 -2009
<i>Murraya paniculata</i>	Within No 12 Garden St, side rear fence line	4.0 metres radially out from its trunk into subject site
<i>Lagerstroemia indica</i>	Within site, side eastern fence	2.5 metres radially out from its trunk

- 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, with a letter of engagement forwarded to the nominated PCA.
- b) A certificate of compliance letter from the AQF 5 Arborist must be 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 being maintained during the building process.

Tree Protection Measures

- c) All trees on Council property, subject site and adjacent sites, to be retained must be protected before site set up and maintained during demolition, excavation and construction of the site.
- d) Although trees may be on adjacent sites, the tree protection fencing must be placed on the nominated distances as per table above, out from the trees trunk, within the subject site to minimise impacts to neighbours trees and kept for the entirety of the project.
- e) The tree protection measures must be undertaken in accordance AS4970 -2009 Protection of trees on development sites.
- f) Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation.
- g) The engaged AQF 5 Consulting Project Arborist must be present on-site during the stages of site set up, excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
- h) In accordance with AS 4970-2009 *Protection of trees on development sites*, a protective fence consisting of 2.4 x 1.8 metres high, fully supported chainmesh fence shall be used. The distance of the fence out from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.
- i) The tree protection fencing must be kept in place during demolition, excavation and construction and also have a sign displaying 'Tree Protection Zone - DO NOT ENTER' attached to the fence and must also include the name and contact details of the Project Arborist.
- j) To preserve the Councils street tree, no work shall commence nor shall a Construction Certificate be issued (whichever occurs first) until the trunk/ branches are protected, in accordance with AS4970 - 2009, Section 4, *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.
- k) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
- l) No building products, preparation of building products, storage of materials, stockpiling, site sheds or services shall be installed within the TPZ of the trees to be retained.

Excavation works near tree to be retained

- m) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the AQF 5 Project Arborist to ensure that the root system will not adversely be affected.
- n) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the AQF 5 Project arborist shall be consulted to establish the position of any major roots and determine the necessary

measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

- o) Tree Protection Zones around the trees to be retained are not to have soil level changes, building product / materials stored or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.
- p) Removal or pruning of any other tree (that would require consent of Council) on the site is not approved. All pruning must be undertaken by a qualified Arborist in accordance with AS4373 -2007 Pruning of Amenity Trees and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).
- q) Removal or pruning of any other tree (that would require consent of Council) on the site is not approved. All pruning must be undertaken by a minimum certificate Level 3, Licenced and insured Tree surgeon / Arborist in accordance with AS4373 -2007 Pruning of Amenity Trees and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).

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

22. **Heritage Conditions** - Prior to the commencement of any works, including the dismantling of fabric or demolition, a Photographic Archival Recording shall be undertaken and submitted to Council.

Written confirmation must also be obtained from Council's Heritage Advisor, confirming that the Photographic Archival Recording is of an acceptable quality that satisfies the requirements of this condition.

The Photographic Archival Recording shall be prepared in accordance with the guidelines "*Archival Recording of Heritage Items Using Film or Digital Capture*" published by the Heritage Council of NSW.

One complete copy of the Photographic Archival Recording shall be submitted to Council and should contain (for digital projects):

- A brief report or introduction which explains the purposes of the Photographic Archival Recording and gives a brief description of the subject site, as well as details of the sequence in which images were taken. The report may also address the limitations of the photographic record and may make recommendations for future work;
- Plans of the building marked up to indicate where the photographs were taken and the direction of the photograph;
- The report should include all technical details including camera and lenses, image file size and format, technical metadata associated with the images, and colour information;
- Catalogue sheets, photographic plan, supplementary maps;
- Colour thumbnail image sheets (e.g. A4 page with six images by six images) showing images and reference numbers. The thumbnail sheets should be processed with archivally stable inks on archivally acceptable photographic paper and cross referenced to catalogue sheets;

- One full set of 10.5x14.8cm (A6) colour prints OR, if a large project, a representative set of selected images processed with archivally stable inks on archivally acceptable photographic paper.
- A CD or DVD containing electronic image files saved as RAW and JPEG files with associated metadata, and cross-referenced to catalogue sheets. The report should be presented on archival quality paper in a suitable archival binder and slipcase, and all storage of individual components must be in archival quality packaging suitable for long term storage.

23. **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.

24. **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](#).
25. **Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.
26. **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

- 27. **Road Opening Permit** - A Road Opening Permit must be obtained from Council for every opening of a public road reserve to access services including sewer, water mains, gas mains, connecting of stormwater to the kerb and telecommunication. This is for any work that involves excavation through or within a public road, kerb and gutter, and or the public footway between the road and the property boundary. The permit is to be lodged prior to the commencement of works. Additional approval is required from Roads and Maritime Services for works on a State Road.
- 28. **Building Materials - Flood Prone Land** - All building materials used to construct the additions and alterations must be constructed using flood proof materials up to the RL 16.00m AHD for the addition and RL16.84m AHD for the alterations to the existing dwelling. All electrical services must also be located above this level. The applicant should refer to the NSW Government Public [Reducing Vulnerability of Buildings to Flood Damage](http://www.ses.nsw.gov.au/content/documents/pdf/resources/Building_Guidelines.pdf) Guidance on Building in Flood Prone Areas
<http://www.ses.nsw.gov.au/content/documents/pdf/resources/Building_Guidelines.pdf>, Chapter 4.3'.
- 29. **Heritage Conditions** -

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

In the event that archaeological resources are encountered, further archaeological work may be required before works can re-commence, including the statutory requirement under the Heritage Act 1977 to obtain the necessary approvals/permits from Heritage NSW.

Note: The *National Parks and Wildlife Service Act 1974* and the *Heritage Act 1977* impose substantial penalty infringements and / or imprisonment for the unauthorised destruction of archaeological resources, regardless of whether or not such archaeological resources are known to exist on the site.

General Heritage

- (a) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing heritage item.
- (b) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction.
- (c) All conservation and adaptation works are to be in accordance with the Articles of the Australia ICOMOS Burra Charter (2013).
- (d) New services are to be surface mounted rather than chased-in to existing walls to minimise impact on significant heritage fabric.
- (e) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.

No demolition of extra fabric - Alterations to, and demolition of, the existing building shall be limited to that documented on the approved plans (by way of notation) or conditioned in this consent.

No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained.

Should any portion of the existing building which is indicated on the approved plans to be retained, be damaged for whatever reason, all the works in the area of this damaged portion are to cease and written notification given to Council.

No work is to resume until the written approval of Council is obtained.

Uncovering of concealed architectural features or detailing

Should any concealed architectural features or detailing, not previously noted in the DA documentation, be discovered during demolition or building works, all works are to immediately cease and the architectural features or detailing to be photographically recorded and Council's Heritage Advisor is to be contacted for advice.

- 30. **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.
- 31. **Hours of construction for demolition and building work** - Unless authorised by Council:
 - a. Building construction and delivery of material hours are restricted to: 7.00 am to 5.00 pm (inclusive) Monday to Saturday and no work on Sundays and Public Holidays.

- b. Demolition and excavation works are restricted to: 8.00 am to 5.00 pm (inclusive) Monday to Friday only. Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site.
32. **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.
33. **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.
34. **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.
35. **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

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

Restrictions on Use of Land

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

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

Positive Covenants

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

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

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

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

- (a) The location of any detention basin/s with finished surface levels;
- (b) 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);

39. **Requirements prior to the issue of the Occupation Certificate - Stormwater Works**

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.

40. **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.

41. **Flood Prone Land - Survey of levels** - A registered surveyor shall verify the finished floor levels have been built to the design levels, dimensions and surface finishes as specified in the approved plans.

Operational Conditions (On-Going)

42. **No painting or rendering of masonry or stone** - No painting or rendering shall be permitted to masonry or stone surfaces which have not previously been painted or rendered.

43. **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.

44. **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.

45. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.

Operational Requirements Under the Environmental Planning & Assessment Act 1979

46. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
47. **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.

48. **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.

49. **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.

50. **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](#).

51. **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.

52. **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

53. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
54. **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.
55. **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.
56. **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](#).
57. **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.
58. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

Advice

59. **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.

60. **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.
61. **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.
62. **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.

63. **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.

64. **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.
65. **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).

66. **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. (eg. DA2018/0001) and reference this condition number (e.g. Condition 23)
 - (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.

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

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

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

ATTACHMENTS

Attachment 1 Site Plan - 14 Garden Street, Kogarah

[↓](#) Attachment 2 Proposed Elevations - East and West - 14 Garden Street, Kogarah



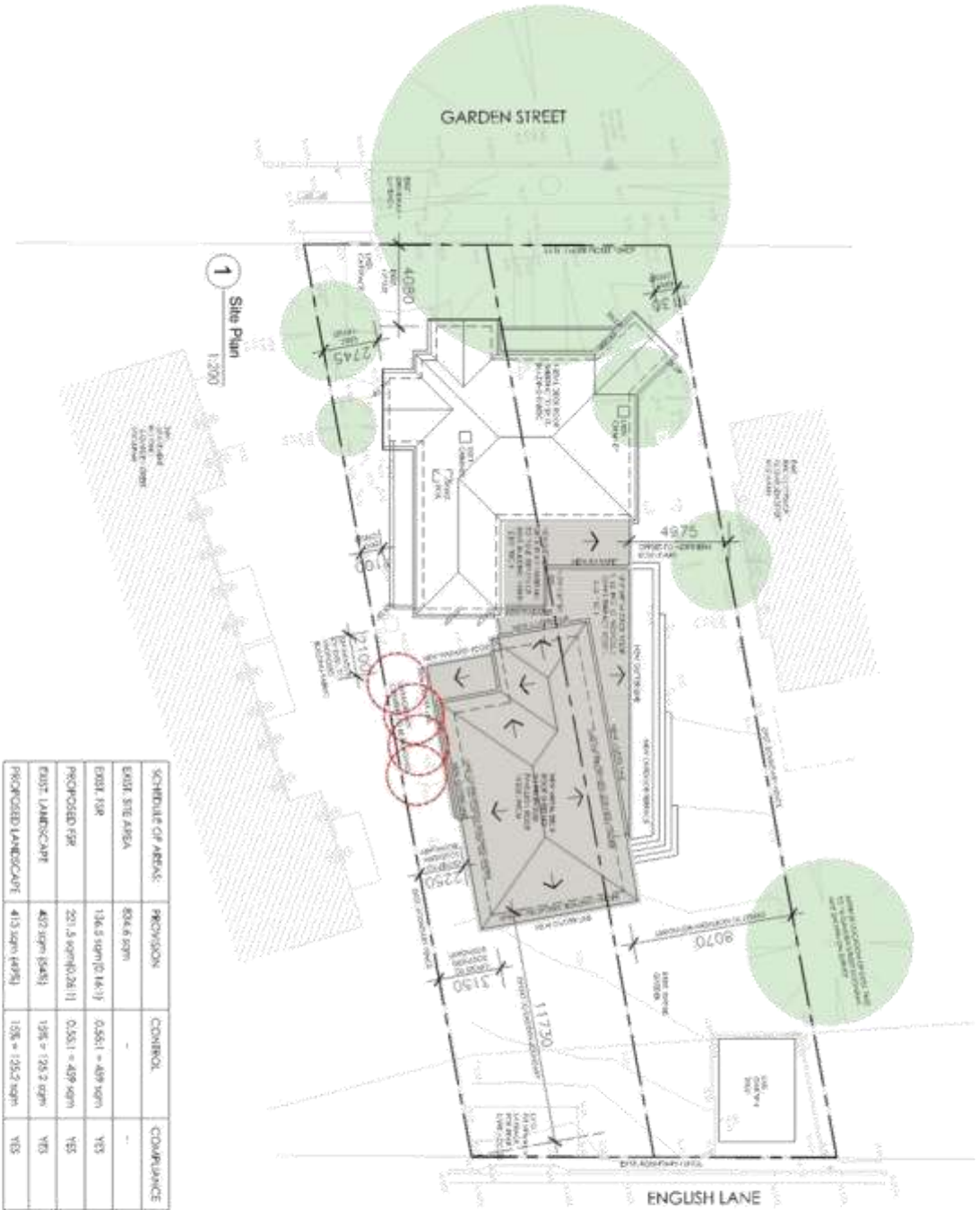
DNArch

DNArch is a professional design and drafting software package for the architectural and engineering industries. It is a powerful tool for creating 2D and 3D drawings, and it is easy to learn and use. DNArch is available for Windows and Mac OS.

14 Garden Street KOGARAH
 Charlie Butler and Matt Van'temptest

1 : 200 @ A3

TITLE PAGE AND SITE PLAN
 A A-001 A



SCHEDULE OF AREAS	PROVISION	CONTROL	COMPLIANCE
EXIST. SITE AREA	834.6 sqm	-	-
EXIST. FSR	136.5 sqm (16.1%)	0.551 = 409 sqm	YES
PROPOSED FSR	221.5 sqm (26.1%)	0.551 = 409 sqm	YES
PROPOSED LANDSCAPE	407 sqm (48.5%)	15% = 128.7 sqm	YES
PROPOSED LANDSCAPE	413 sqm (49%)	15% = 128.7 sqm	YES

LEGEND
 Green: min. 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent or LED lamps.
 Blue: new or altered showwindows have a flow rate no greater than 15% per min. or 3.10% water rating.
 Brown: new or altered floor have a flow rate no greater than 15% per min. or 3.10% water rating.
 Grey: new or altered floor have a flow rate no greater than 15% per min. or 3.10% water rating.
Construction:
 Existing: new or altered floor have a flow rate no greater than 15% per min. or 3.10% water rating.
 New: new or altered floor have a flow rate no greater than 15% per min. or 3.10% water rating.
Roofing:
 Existing: new or altered roof have a flow rate no greater than 15% per min. or 3.10% water rating.
 New: new or altered roof have a flow rate no greater than 15% per min. or 3.10% water rating.

GENERAL NOTES
 1. Read in conjunction with Statement of Environmental Effects.
 2. All new and existing construction is to be constructed in accordance with the requirements set out in the LPP.
 3. All new and existing construction is to be constructed in accordance with the requirements set out in the LPP.
 4. All new and existing construction is to be constructed in accordance with the requirements set out in the LPP.

LEGEND
 Red: Structure to be demolished
 Blue: New brick masonry wall
 Green: New timber framed roof wall
 Grey: Proposed Alterations and Additions

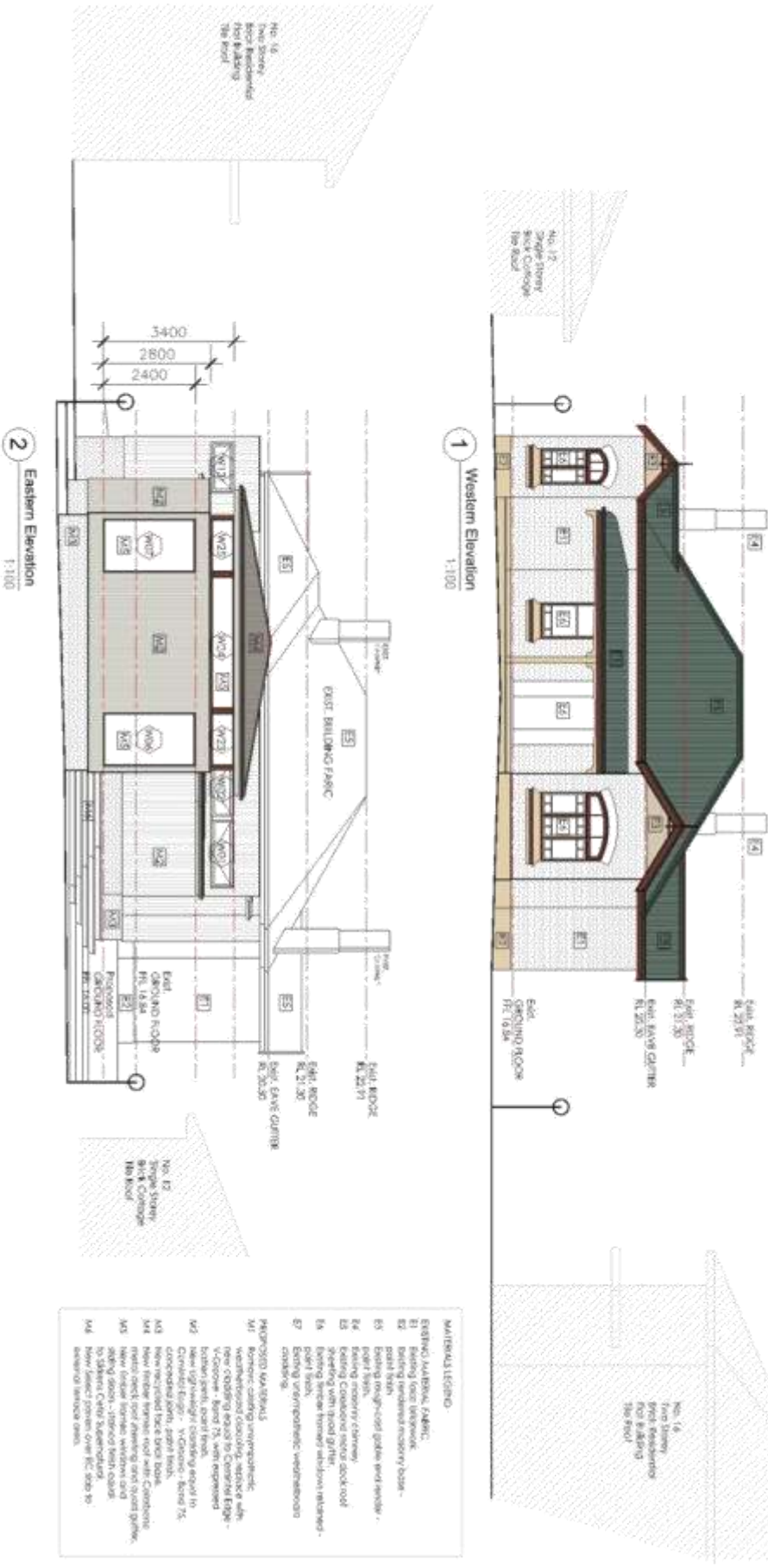
DRAWING SCHEDULE
 A-001 TITLE PAGE AND SITE PLAN
 A-002 SITE ANALYSIS
 A-003 EXISTING FLOOR PLAN
 A-004 EXISTING ELEVATIONS
 A-005 EXISTING SECTION PLAN
 A-006 PROPOSED FLOOR PLAN
 A-007 PROPOSED ELEVATIONS
 A-008 PROPOSED SECTION PLAN
 A-009 PROPOSED ELEVATIONS - NORTH AND SOUTH
 A-010 PROPOSED SECTION AA + BB
 A-011 PROPOSED SECTION CC + DD
 A-012 PROPOSED SECTION EE + FF
 A-013 PROPOSED SECTION GG + HH
 A-014 PROPOSED SECTION II + JJ
 A-015 PROPOSED SECTION KK + LL

DNArch
Architectural Design & Drafting
14 Garden Street, Kogarah
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14 Garden Street KOGARAH
Client: Charlie Butler and Matt Van Tempest

1:100 @ A3

PROPOSED ELEVATIONS - EAST + WEST
Scale: 1:100
A-008 A



REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 18 MARCH 2021

LPP005-21

LPP Report No	LPP005-21	Development Application No	DA2020/0144
Site Address & Ward Locality	192 - 196 Princes Highway, Kogarah Bay Kogarah Bay Ward		
Proposed Development	Demolition works and construction of a residential flat building		
Owners	Kogarah Bay Property Pty Ltd		
Applicant	Anthony Charbel		
Planner/Architect	Architect: Bureau SRH, Planner: Planning Ingenuity		
Date Of Lodgement	23/04/2020		
Submissions	Nil		
Cost of Works	\$9,543,602		
Local Planning Panel Criteria	Ministerial Direction – 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, 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 (Infrastructure) 2007, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Draft Environmental State Environmental Planning Policy, Draft Remediation of Land State Environmental Planning Policy, Draft Georges River Local Environmental Plan 2020, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Georges River Interim Policy Development Control Plan 2020		
List all documents submitted with this report for the Panel's consideration	Site Plans and Elevations		
Report prepared by	Senior Development Assessment Officer		

Recommendation	Refusal
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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?	No
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 application is recommended for refusal. The refusal reasons can be viewed when the report is published.

Site Plan



Figure. 1 – Site plan with the site outlined in blue.

Executive Summary

1. The development application seeks consent for demolition works and construction of a residential flat building on land known as 192-196 Princes Highway, Kogarah Bay.
2. A pre-lodgement meeting was held for a residential flat building (PRE2020/0084) on 22 January 2020 and minutes were provided to the applicant on 3 March 2020.
3. The development application (DA2020/0144) was received by Council on 23 April 2020. In detail, the development application seeks consent for demolition of existing structures and construction of a six (6) storey residential flat building with roof top communal open space with lift, stair access and pergola. The proposal comprises of thirty-six (36) residential apartments, two (2) levels of basement car parking containing sixty-three (63) car spaces and associated landscaping and site works.
4. On 15 October 2020, Council sent a request for additional information relating to; built form, traffic, landscaping and engineering issues. The applicant submitted subsequent information for Council's consideration which forms the basis of this assessment report.
5. On 2 March 2021, Council requested a revised Clause 4.6 Exception to Development Standard to reflect the amended reduced height. This was not received upon the finalisation of this assessment report and forms a reason for refusal.
6. On 5 March 2021, Council raised concerns with the proposed floor space ratio. In response the applicant provided a revised GFA calculation. Council's assessment indicates that the proposal is still over FSR and not Clause 4.6 Exception to Development Standard has been provided in support of this variation.
7. It is noted that Part C2 Medium Density Housing of the Kogarah Development Control Plan 2013 came into effect on 10 June 2020. This development application was lodged on 23 April 2020 being prior to this date. The development control plan does not contain a savings provision preserving the controls.
8. The application was notified between 11 May and 25 May 2020. In response, no submissions were received during the notification period or upon finalisation of this assessment report. The amendment made to the proposal did not require re-notification as the proposed built form is largely unchanged with in a minor decrease in height for the lift overrun, stair case and pergola on the communal rooftop level and minor internal and external changes.
9. On 15 October 2020, Council sent a request for additional information relating to; built form, traffic, landscaping and engineering issues. The applicant submitted subsequent information for Council's consideration which forms the basis of this assessment report.
10. An assessment of the amended proposal has been undertaken the proposal seeks variations to the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development regarding spatial separation (visual privacy, deep soil, amenity), Kogarah Local Environmental Plan 2012 (height of building, floor space ratio) and Kogarah Development Control Plan 2013 (deep soil, built form, basement setbacks, common open space and dwelling mix).

11. The original proposal sought the overall height of 23.57m resulting in a 12.23% variation to the maximum height control of 21m. The applicant provided amended plans which reduced the height of the lift overrun to 23.17m resulting in a 10.33m variation (reduction of 400mm) and stair access and pergola to 20.5m (reduction of 1600mm) with the later now complying. A revised clause 4.6 exception to development standard was not submitted with the amended plans. This was requested however this was not provided upon finalisation of this assessment report.

Site and Locality

12. The subject site is legally described as Lot 1 DP 655948, Lot 2 DP 658231 and Part 3 Section 17 DP 1963. The site is known as 192-196 Princes Highway Kogarah. The site is dimensioned as follows:
- Northern front boundary - 41.5m with a splay of 3.9m along the north-east corner of the site.
 - Southern rear boundary - 43.85m.
 - Western side boundary - 31.75m.
- With a total site area of 1,520.60sqm.

The site has a fall of approximately 1.26m from the north-west corner) to the south-east corner. Three dwelling houses, a swimming pool and ancillary structures are located on development site.

13. The immediate surrounding area is undergoing transitional change from dwellings to residential flat buildings. Shop top housing is located further to the north on the western side of the Princes Highway. The closet heritage item is located at 186-188 Princes Highway, Kogarah Bay (two storey dwelling and gardens) which is located approximately 33.7m to the north-east of the site.



Figure 3 - Aerial extract of subject site 192-196 Princes Highway, Kogarah Bay with the site outlined in red (Source: SEE prepared by Planning Ingenuity, 2020).

Zoning and Permissibility

14. The subject site is zoned Zone R3 Medium Density Residential pursuant to the Kogarah Local Environmental Plan 2012 (KLEP2012). The proposed development is defined as a Residential Flat Building and is a permissible use in the zone with development consent.



Figure 4 - Zoning extract of subject site 192-196 Princes Highway, Kogarah Bay with the site outlined in red (Source: Intramaps, 2020).

Submissions

15. The application was notified between 11 May and 25 May 2020. In response, no submissions were received during the notification period or upon finalisation of this assessment report. The amendment made to the proposal did not require re-notification as the proposed built form is largely unchanged with in a minor decrease in height for the lift overrun, stair case and pergola on the communal rooftop level and minor internal and external changes.

Reason for Referral to the Local Planning Panel

16. The application for is for a residential flat building and the consent authority is the Georges River Local Planning Panel via Ministerial Direction.

Planning and Design Issues

17. Council's assessment has identified inconsistencies to State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development in regards to Visual Privacy and Separation, deep soil and apartment size and layout. The proposal does not adequately satisfy the Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment in relation to stormwater disposal. The proposal seeks a variation to the height of building and floor space ratio referenced within the Kogarah Local Environmental Plan 2012 whereby Clause 4.6 Exception to Development Standards have not been provided for the revised plans relating to height and no 4.6 variation statement has been proved for the floor space ratio breach.

18. The proposal is not considered to satisfy the R3 Medium Density Residential Development zone objectives as the proposal results in excessive bulk and scale for the proportions of the site. The proposal also does not comply with Part B: B4 and B5 Waste Management, Parking and Traffic and Section C2 Medium Density Housing of the Kogarah Development Control Plan 2013 relating to residential flat buildings regarding; setbacks, corner setbacks, basement setbacks, landscaping, communal open space and dwelling mix. These issues are discussed in further detail within the body of the report.

Conclusion

19. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The proposal is considered unsatisfactory in its current form and is recommended for refusal.

Report in Full

Description of the Proposal

20. The DA seeks consent for the demolition of all existing structures on the subject site, and the construction of a six (6) storey residential flat building with roof top communal open space, comprising of thirty-six (36) residential apartments, two (2) levels of basement car parking containing sixty-three (63) car spaces and associated landscaping and site works on land known as 192-196 Princes Highway, Kogarah Bay.



Figure 6 - Extract of originally proposed montage viewed from the corner of the Princes Highway and Lacey Street, Kogarah. It is noted that the amended proposal adopts a form which is similar to that of the amended proposal. (Source: Bureau SRH, 2020).

21. In detail, of the proposal is described as follows;

Demolition

Demolition of (3) dwelling houses, associated ancillary structures and outbuildings associated with the development site being 192-196 Princes Highway, Kogarah Bay.

- Basement Level 1
Thirty-five (35) car parking spaces, three (3) bicycle spaces, storage, lift core, access stairs and waste storage area.
- Basement Level 2
Twenty-eight (28) car parking spaces, seven (7) bicycle spaces, storage, lift core, access stairs and waste storage area.
- Ground Floor
Pedestrian entrance from Lacey Street.
Access driveway from Lacey Street.
6 x 1 bedroom, 1 x 2 bedroom and 1 x 3 bedroom units.
Hydrant and services along Princes Highway.
Communal open space along western side boundary.
Bicycle parking.
Protection of two *Phoenix canariensis* trees on site and removal of one *Dracaena marginata* tree.
- Level 1, 2 and 3
5 x 2 bedroom units and 1 x 3 bedroom units.
Lift core and access stairs.
- Level 4
3 x 2 bedroom units and 2 x 3 bedroom units.
Lift core and access stairs.
- Level 5
3 x 2 bedroom units and 2 x 3 bedroom units.
Lift core and access stairs,
- Rooftop Level
Landscaped communal open space 380sqm with BBQ area, pergola structure, lift and stair access.

Description of the Site and Locality

22. The subject site is legally described as Lot 1 DP 655948, Lot 2 DP 658231 and Part 3 Section 17 DP 1963. The site is known as 192-196 Princes Highway Kogarah Bay. The site is dimensioned as follows:
- Northern front boundary - 41.5m with a splay of 3.9m along the north-east corner of the site.
 - Southern rear boundary - 43.85m.
 - Western side boundary - 31.75m.
- With a total site area of 1,520.60sqm.

The site has a fall of approximately 1.26m from the north-west corner) to the south-east corner. Three dwelling houses, a swimming pool and ancillary structures are located on development site.



Figure 7 - Photograph of subject site viewed from the corner of Princes Highway and Lacey Street, Kogarah Bay (Source: GRC, 2020).

23. The immediate surrounding area is undergoing transitional change from dwellings to residential flat buildings. Shop top housing is located further to the north on the western side of the Princes Highway. The closest heritage item is located at 186-188 Princes Highway, Kogarah Bay (two storey dwelling and gardens) which is located approximately 33.7m to the north-east of the site.

DESCRIPTION OF THE SITE AND LOCALITY

24. The site is zoned R3 Medium Density Residential pursuant to the Kogarah Local Environmental Plan 2012. A *“residential flat building”* forms a permissible development subject to development consent.
25. The proposed development comprises of the amalgamation of the three (3) sites and the combined area and dimensions of the subject site are as follows:

Site Area	1,520.6sqm
Northern primary frontage to Princes Highway, Kogarah	41.47m, 3.915m (splay at north-eastern corner between Princes Highway and Lacey Street, Kogarah)
Eastern secondary frontage to Lacey Street, Kogarah Bay.	31.75m
Rear boundary (adjoining 1 Lacey Street, Kogarah Bay). This currently adjoins a dwelling house.	34.75m
Side boundary (adjoining 198 Princes Highway, Kogarah Bay) This currently adjoins a dwelling house.	34.84m

26. It is noted that the site area excludes the road widening (1.63m wide) along the Princes Highway, Kogarah Bay for Nos. 194 and 196. In total, these areas equate to 55.77sqm and have been excluded for the proposal and Council's assessment.
27. The subject site is located on the south-eastern side of the Princes Highway, Kogarah Bay.
28. Currently to the west and the site are predominantly lower scale residential properties which are currently occupied by dwelling houses. Further to the north along the western side of the Princes Highway comprises of a mixture of commercial uses and shop top housing.
29. It is noted that that the built form adopts a similar bulk, form and scale as that of approved developments within the immediate vicinity being along the northern sides of John and Wyuna Streets where the up-zoning occurred.

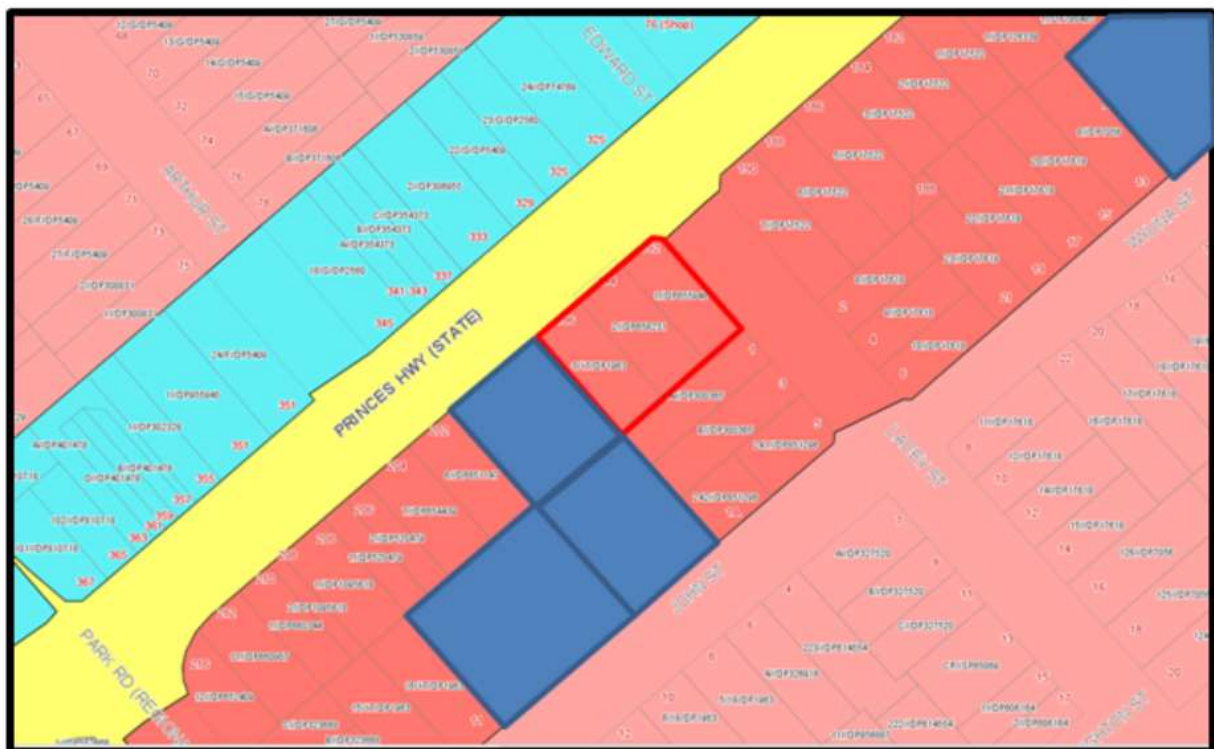


Figure 8 - Extract of Map indicating location of recent approvals and immediate location which indicates the subject site and immediate surrounding area. The subject site is outlined in red and recent RFB approvals within the R3 Medium Density Residential Zone are marked in dark blue. (Source: GRC Intramaps, 2021)

Property	DA approval	Over height of Building (lift overrun, access and common open space)	Side setbacks	Rear setback
190-200 Princes Highway, Kogarah Bay (consent granted for a residential flat)	DA2017/0655	Yes	<12m = 6m >12m = 6m	>12m = 6m <12m = 9m

building however construction works has not commenced)				
5-9 John Street, Kogarah Bay (currently under construction)	DA2017/0663	Yes	>12m = 6m <12m = 9m	>12m = 6m <12m = 9m
1-3 John Street, Kogarah Bay (currently under construction)	DA2017/0218	Yes	<12m = 6m >12m = 9m	<12m = 6m >12m = 9m
5- 11A Wyuna Street, Kogarah Bay (currently under construction)	DA2018/0516	Yes	>12m = 6m <12m = 9m	>12m = 6m <12m = 9m
192-196 Princes Highway, Kogarah Bay (subject site)	DA2020/0144	Yes	>12m = 6m <12m = 6-7.6m	>12m = 6m <12m = 9m



Figure 9 - Extract of north street facing elevation of approved residential flat building (198-200 Princes Highway, Kogarah Bay (DA2017/0655) (Source: Charles Tang Design, 2017).



Figure 10 - Front elevation of approved residential flat building at 5-9 John Street, Kogarah Bay (DA2017/0663) (Source: UrbanLink).



Figure 11 - Front elevation of approved 1-3 John Street, Kogarah Bay DA2017/0218 (Source: Tecton Group).



Figure 12 - Front elevation of approved residential flat building at 5-11A Wyuna Street, Kogarah Bay (DA2018/0516) (Source: PBD Architects, 2020).

LPP005-21

HISTORY

30. A pre-lodgement (PRE2020/0084) meeting was held on 22 January 2020 for a similar scheme to that lodged under this application. The minutes were provided to the applicant on 3 March 2020.
31. The development application was received by Council on 23 April 2020. In specific detail, the development application seeks consent for the demolition of all existing structures on the subject development site, and the construction of a six (6) storey residential flat building with roof top communal open space, comprising of thirty-six (36) residential apartments, two (2) levels of basement car parking containing sixty-three (63) car spaces and associated landscaping and site works.
32. The application was notified between 11 May and 25 May 2020. In response, no submissions were received during the notification period or upon finalisation of this assessment report. The amendment made to the proposal did not require re-notification as the proposed built form is largely unchanged with in a minor decrease in height for the lift overrun, stair case and pergola on the communal rooftop level and minor internal and external changes.
33. On 15 October 2020, Council sent a request for additional information relating to; built form, traffic, landscaping and engineering issues. The applicant submitted subsequent information for Council's consideration which forms the basis of this assessment report.
34. On 2 March 2021, Council requested a revised Clause 4.6 Exception to Development Standard to reflect the amended reduced height. This was not received upon the finalisation of this assessment report and forms a reason for refusal.
35. On 5 March 2021, Council raised concerns with the proposed floor space ratio. In response the applicant provided a revised GFA calculation. Council's assessment indicates that the proposal is still over FSR and not Clause 4.6 Exception to Development Standard has been provided in support of this variation.

State Environmental Planning Policies (SEPPs)

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

SEPP Title	Complies
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	No
State Environmental Planning Policy (Infrastructure) 2007	Yes
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 (Vegetation in Non-Rural Areas) 2017	Yes

Environmental Planning and Assessment Regulations 2000

37. The proposed development satisfies the relevant matters for consideration under the Regulations.

State Environmental Planning Policy No 55 - Remediation of Land

38. State Environmental Planning Policy 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. 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.
39. A review of the site history based on Council's records 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. A Geotechnical report accompanies the application which was prepared by Geotechnique dated 20 March 2020 which contains recommendations for a dilapidation survey on adjoining properties. In this regard, the proposal has adequately satisfied the considerations of the State Environmental Planning Policy. If the application was to be supported this would be imposed as a condition of consent.

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

40. State Environmental Planning Policy No.65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three or more storeys in height and containing at least four dwellings. Amendment 3 to SEPP 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, SEPP 65 applies.

Clause 28(2) of SEPP65 requires that the consent authority take into consideration the following as part of the determination of DAs to which SEPP 65 applies:

- a) *the advice (if any) obtained from the design review panel, and*

- b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
- c) *the Apartment Design Guide.*

41. In addition to satisfying the above nine (9) design principles, the proposal generally satisfies the Apartment Design Guidelines in respect to the design quality of the building and its apartments. An assessment against the principles, objectives and controls of SEPP 65 and the ADG have been provided below;

Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of “Residential Apartment Development” (RAD)	The proposal complies with definition of a “ <i>residential apartment development</i> ” within the SEPP.	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the SEPP includes mixed use developments.	The proposal seeks the erection of an Residential Flat Building (RFB) which satisfies the SEPP’s definition of this residential land use.	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect and practicing Simon Hanson (6739). However it is noted that a revised Design Verification did not accompany the amended application.	Yes

Part 2 Design Quality Principles under the State Environmental Planning Policy

42. The proposal has been considered in relation to the following design principles; context and neighbourhood character, build form and scale, density, sustainability, landscape, amenity, housing diversity and social interaction and aesthetics.

Council’s Strategic Planner/Urban Designer commented on the proposal as follows:

“Strategic Considerations

1. *The proposal provides a mix of 1, 2 and 3 bedroom dwellings within a high density residential development. The subject R3 Medium Density Residential zone is proposed to be translated into the R4 High Density Residential zone under the draft Georges River LEP 2020 to establish a clear hierarchy of residential zones. Accordingly, the proposal is consistent with the objectives of the existing R3 zone and the proposed R4 zone.*

2. *It is acknowledged that the proposal seeks to vary the existing maximum building height due to the built form occupied by the communal roof top area and the lift overruns. This is considered appropriate given that adequate building setbacks have been provided.*

Urban Design Considerations

Basement setback and deep soil

1. *There is only one issue raised with regards to this proposal which relates to the inadequate provision of deep soil area as result of the narrow basement setbacks.*
2. *The design criteria of Objective 3E-1 specifies a minimum 6m dimension for deep soil zones on sites with areas of greater than 1,500sqm. Accordingly, none of the deep soil areas provided are able to meet this requirement.*
3. *However, it should be recognised that the intent of the minimum dimensions for deep soil zones is to provide adequate opportunities for deep soil landscape planting like mature trees.*
4. *The draft Georges River Development Control Plan is exploring the implementation of a minimum basement setback of 3m so that a combined 6m wide deep soil zone can be established between adjoining high density developments.*
5. *It is recommended that the basement setback at the rear boundary be increased to a minimum of 3m to enable the creation of a 6m wide deep soil zone when the adjacent sites at No.1 Lacey Street is redevelopment.*

Façade and materials

6. *No issue is raised regarding the proposed façade finishes. The use of the continuous balustrades that wrap around the building in an undulating pattern provides a fluidity that softens the rectangular footprint.*
7. *The contrast provided by the vertical batten elements is also supported and should be retained in future iterations”.*

Comment: The proposal has been considered in relation to the design quality principles. No concerns are raised in relation to the lift overrun, communal stair access and pergola above the height of building control however a revised Clause 4.6 Exception to Development Standard did not accompany the amended proposal. This forms a reason for refusal. Deep soil areas have been improved. Whilst a 3m basement rear setback has not been provided, a basement setback of 1.2m – 2.65m is not considered to be unreasonable to provide suitable vehicular and pedestrian access and circulation. However the proposal seeks an excessive FSR which results in adverse bulk and scale impacts. This forms a key reason for refusal.

Clause 28 of SEPP65 requires the consent authority to take into consideration the provisions of the ADG. This consideration has been undertaken below:

Part 3 and Part 4 – Consideration of Residential Flat Design Code Design Controls

Clause	Standard	Proposal	Complies
Objective 3D- Communal and Open Space	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	The proposal provides one area of common open space, 1. Rooftop area to = 380sqm (usable area excluding planter box and lift and stair access) (25%). Every apartment includes a	Yes

	<p>= 380.15sqm (min)</p> <p>-Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space <p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>	<p>sizable and compliant balcony/terrace of which numerous balconies/terraces exceed the minimum requirements of the SEPP. It is noted that the calculations exclude balcony areas that are under the minimum depth.</p> <p>The roof top area of common open space receives in excess of 2hours of solar access during the day midwinter due to its location orientation and dual street frontage aspect.</p>	Yes
Objective 3E- Deep Soil Zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>Where the site is less than 1500sqm = 6m min dimension</p> <p>Min deep soil area of 7% (106.44sqm min)</p>	<p>The site is 1,520.6sqm. This amounts to 0% with a minimum dimension of 6m due to the sitting of the building and basement location below. Despite this adequate landscaping has been provided equating to 307sqm, noting that the minimum dimensions are not achieved embellishing the site.</p>	No

		Council's consultant arborist has supported the landscaping component of this proposal. However the proposal is not supported for other reasons as contained within this report.	
Objective 3F-Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys) Habitable - 6m Non-habitable – 3m (Levels: GF, L1, L2 and L3)</p> <p>Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m (Levels: L4, L5 and L6 communal rooftop open space)</p>	<p>The balconies at upper levels are appropriately screened with privacy elements and blade walls etc.</p> <p>Southern rear boundary: 6m 6m</p> <p>Western side boundary: 6m 6m</p> <p>Southern rear boundary: 9m 9m</p> <p>Western side boundary: 6m 6m - 7.6m</p>	<p>Yes</p> <p>Yes Yes</p> <p>Yes Yes</p> <p>Yes N/A</p> <p>Yes No, refer to discussion (1)</p>
Objective 3G- Pedestrian Access and Entries	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	The development has a main central entry which is accessed from Lacey Street which provides direct access to the lift core. Ground floor units 1-5 contain front courtyards fronting the Princes Highway and unit 8 fronting Lacey Street. Secondary access via gates for each of these units would have been conditioned to provide improved access and better activate the streetscape presentation to the Princes Highway and Lacey Street however the proposal is	Yes

		not supported for other reasons.	
Objective 3H- Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	<p>The development proposes a driveway along the eastern side of the site fronting Lacey Street. The driveway entry is recessed behind the front building line and is sufficient enough for two vehicles to pass each other without any conflict. This is a safe and appropriate design feature. It is noted that Council's Senior Traffic Engineer raised concerns regarding inadequate internal aisle widths. This could be conditioned to comply, however the application is not supported for other planning reasons.</p> <p>The proposal was referred to Roads and Maritime Services (RMS) under the Roads Act 1993. In response, the RMS raised no objections to the proposed vehicle access arrangement subject to the imposition of conditions; however the application is not supported for other planning reasons.</p>	Yes
Objective 3J- Bicycle and Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; - 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>These provisions are not applicable as the proposal is not within 800m of a railway station or light rail stop.</p> <p>Council's car parking provisions contained in the DCP are relevant, the proposal complies providing 63 car parking spaces within basement levels 1 and 2.</p>	<p>Yes</p> <p>Yes</p>

Objective 4A-Solar and daylight access	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area</p> <p>Daylight access is maximised where sunlight is limited.</p>	72% of units (a total of 26/36 units) receive a minimum of 2 hours of solar access between 9am to 3pm in mid-winter.	Yes
Objective 4B-Natural Ventilation	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p> <p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths</p>	66.6% (24/36 units) of apartments are cross ventilated as they are corner apartments designed around a central linear core.	Yes
Objective 4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>If located in mixed use areas = 3.3m for ground and first floor to promote future flexibility of use. Habitable rooms = 2.7m Non-habitable rooms = 2.4m</p>	The minimum floor to ceiling height at all levels is 2.7m with slab to slab levels being 3.1m floor to floor.	Yes
Objective 4D-Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm</p>	<p>All apartments comply with the minimum internal area requirements.</p> <p>1 bedroom apartments have</p>	<p>Yes</p> <p>Yes</p>

	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	<p>minimum internal areas of 50-52sqm.</p> <p>2 bedroom apartments have minimum internal areas of 75-76sqm.</p> <p>3 bedroom apartments have internal areas of 100sqm.</p> <p>Additional bathrooms within the 2 and 3 bedroom units with a minimum 5sqm added.</p> <p>Every habitable room has natural ventilation via windows with a minimum glass area of 10%.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Complies and addressed as part of the design.</p> <p>Most rooms contain a maximum depth of 7.5m for the 1 and 2 bedroom units and 9.4m for the 3 bedroom units.</p>	<p>Yes</p> <p>No</p>
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>3. Living rooms or combined living/dining</p>	<p>Complies with the minimum room sizes. Master bedrooms have a minimum area of 10 - 13sqm whilst all other secondary bedrooms have areas of 9sqm (excluding the wardrobes).</p> <p>Bedrooms have a minimum dimension of 3m which exclude robes.</p>	<p>Yes</p> <p>Yes</p>

	<p>rooms have a minimum width of:</p> <ul style="list-style-type: none"> -3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>3.6m min for 1 bedroom</p> <p>4m min for 2 and 3 bedroom units.</p> <p>No cross-over or double loaded apartments are proposed.</p>	<p>Yes</p> <p>N/A</p>
Objective 4E-Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> -1 bedroom = 8sqm/2m depth -2 bedroom = 10sqm/2m depth -3+ bedroom = 12sqm/2.4m <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m</p>	<p>All balconies have a minimum depth.</p> <p>2m for all 1-2 bedroom units.</p> <p>2.4m for all 3 bedroom units.</p> <p>Balcony areas included.</p> <p>The seven (7) ground floor apartments have terraces with minimum areas of 36-57sqm exceeding the minimum requirements.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Objective 4F-Common circulation and spaces	The maximum number of apartments off a circulation core on a single level is eight	<p>There is one lift core to service the following units on each level;</p> <p>GF = 8</p> <p>L1-L3 = 6 (each level)</p> <p>L4-L5 = 5 (each level)</p>	Yes
Objective 4K – Apartment mix	A variety of apartments to be provided	6 x 1 bedroom units, 22 x 2 bedroom units and 8 x 3 bedroom units are proposed.	Yes
Objective 4G-storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	All units have storage areas that comply with these requirements. Separate storage areas for each apartment are provided in the basement parking levels.	Yes

	1 bedroom = 6m ³ 2 bedroom – 8m ³ 3 bedroom – 10m ³	The apartments are generous in size and include internal laundries, closets and linen cupboards within each unit.	
Objective 4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	<p>The design of the façade is modern and articulated. The design of the main entries and residential levels are differentiated by differing architectural treatments defining the spaces.</p> <p>The building is of a high architectural and design quality and includes a number of visually attractive architectural elements and features that enhance the overall appearance of the development when viewed from the streets and public domain.</p>	Yes
Objective 4N – Roof Design	Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.	The roof design is considered to be integrated with the design of the development. The communal roof terrace is centralised with landscaping planters along the edges to be embellish the rooftop and provide privacy to adjoining properties.	Yes
Objective 4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The amended landscape design is considered appropriate for a corner allotment and provides suitable communal and private open space areas and the planting of canopy trees which is supported by Council's Consulting arborist.	No
Objective 4P – Planting on Structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	<p>Planter boxes provide on the rooftop level.</p> <p>The development allows for substantial areas of deep soil planting around the periphery of the site which will permit the planting of mature trees and plants which will screen the lower levels of the building and create attractive areas of</p>	Yes

		landscaping around the building as indicated on the landscape plan. The proposal is supported by Council's Consulting arborist.	
Objective 4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	The apartment design allows for use by different lifestyles. Internal layouts vary and provide flexible layouts. 4 adaptable units are also provided located on the ground floor being units 2, 3, 4 and 8.	Yes
Objective 4R – Adaptive Use	Adaptive reuse as apartment of existing buildings - new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	N/A	N/A
Objective 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 is accompanied by a valid BASIX certificate. A condition of consent would have imposed to ensure the BASIX requirements were satisfied if the proposal was supported.	Yes
Objective 4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into site design	The development is supported by an appropriately detailed stormwater and drainage design which incorporates onsite detention tanks (OSD). The proposed method of stormwater and drainage management has been referred to Council's Engineer however the proposal has not provided a compliant OSD and stormwater design whereby an OSD should not be located beneath a habitable room due to amenity impacts.	Yes
Objective 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. The waste management and disposal design has been assessed by Council's Coordinator Environmental Sustainability. It is considered that adequate waste facilities have been provided to	Yes

		service the proposed thirty-six (36) units and the design is considered acceptable subject to conditions of consent if the proposal was to be supported.	
Objective 4X – Building Maintenance	Building maintenance – building design provides protection from weathering, enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates a mix of contemporary external finishes that require minimal maintenance such as render, privacy screens and in fill panels on the upper levels. Materials and finishes have been carefully considered to minimise longer term costs relating to long term maintenance. The materials proposed are considered to be appropriate for this location which is undergoing urban transformation.	Yes

(1) Separation Distances

43. The proposal seeks a variation to the minimum 9m side separation distances to the fourth, fifth and sixth levels as required by the ADG. The building has been designed to be modulated and articulated at every level; however levels 4, 5 and the rooftop level 6 are proposed to be setback 6m to 7.6m from the western side boundary. This achieves a spatial separation of 12m (min) between the site and the approved residential flat building at 198–200 Princes Highway, Kogarah Bay. 18m is the required separation distance for these levels.

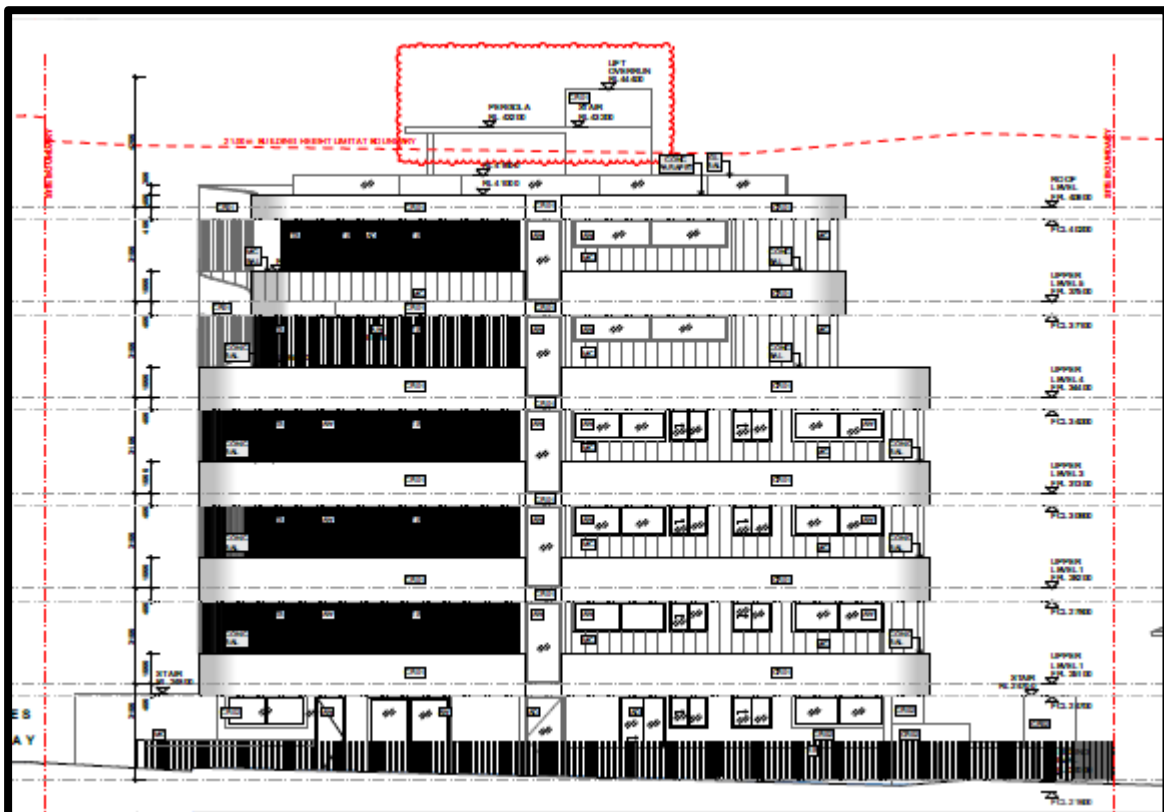


Figure 13 - Extract of western side elevation of the subject site which will face the northern side elevation of 198-200 Princes Highway, Kogarah Bay. Levels 4 and 5 comprise of living rooms and screened balconies (Source: Bureau SRH, 2020).

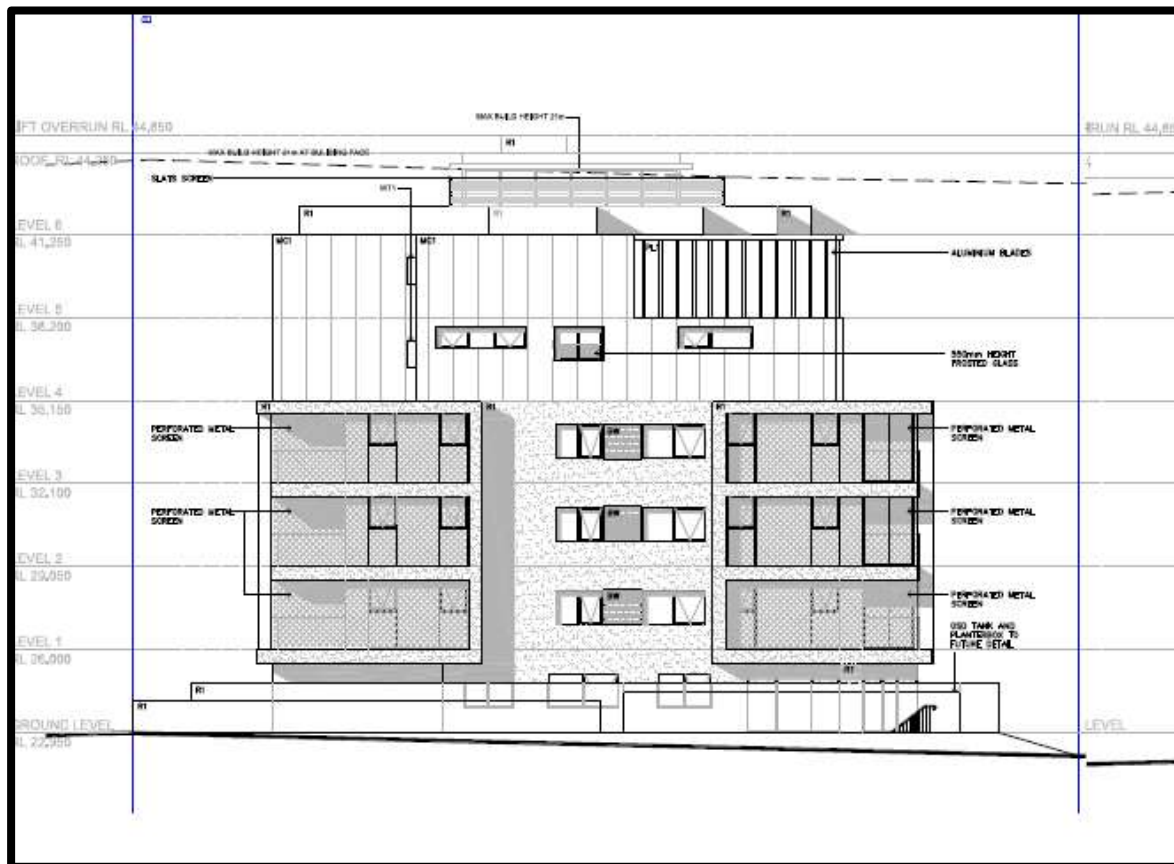


Figure 14 - Extract of eastern side elevation which will face the western elevation of the subject site 192-196 Princes Highway, Kogarah Bay. Rooms on level 4 comprise of 2 bedrooms and one living room, level 5 comprises of a screened balcony. (Source: Charles Tang Designs, 2017).

44. This variation has been considered and is not supported for the following reasons:

The applicant has not sufficiently detailed the impacts and relationship between that of the proposed variation and that of 198-200 Princes Highway. There has been no sight line diagram analysis or vertical shadow diagrams in relation to the extent of the impact generated by the reduced side setback. Given this variation, in addition to the excessive FSR sought, the proposal results in unacceptable adverse bulk and scale impacts. This forms a key reason for refusal.

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

45. As the slope of the site is generally level the stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and can drain to the street satisfying the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment. The method of stormwater detention has been reviewed by Council's Development Engineers, the proposal has not provided adequate OSD or an acceptable stormwater solution as the OSD should be not located beneath the height of building.

State Environmental Planning Policy (Infrastructure) 2007

46. The aim of the Infrastructure State Environmental Planning Policy is to facilitate the effective delivery of infrastructure across the State. The DA was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid advised there are no issues with the proposal subject to minimum clearance distances from Ausgrid's Infrastructure.
47. As the subject site is located on Princes Highway, Kogarah Bay this is a classified road which has a traffic volume of over 20,000 cars daily. An acoustic report has been provided in relation to considerations under Clause 102 Impact of road noise or vibration on non-road development and is supported by Council's Environmental Health Officer.
48. Given the above, the proposal has adequately satisfies the provisions of the State Environmental Planning Policy.

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

49. BASIX Certificate No. 1087636M dated 19 March 2020 prepared by Greenworld Architectural Drafting has been issued for the proposed development and the development meets the provisions and minimum requirements of BASIX in terms of water, thermal comfort and energy efficiency. The amended plans did not alter the internal arrangement and layout of the units nor does it affect the original density proposed, as such the original BASIX certificate is still relevant to the amended design.

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

50. The objectives of the State Environmental Planning Policy 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 State Environmental Planning Policy as the site is within both Georges River Council and the R3 Medium Density Residential zone.
51. Pursuant to Clause 8(1) of the State Environmental Planning Policy, 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).
52. An arborist report was submitted with the development application. The proposal results in the protection of two *Phoenix canariensis* trees on site and removal of one *Dracaena marginata* tree on site. Council's consulting arborist supports the proposal subject to appropriate conditions imposed if the application was to be supported.

Environmental Planning Instruments**Kogarah Local Environmental Plan 2012****Zoning**

53. The subject site is zoned Zone R3 Medium Density Residential pursuant to Kogarah Local Environmental Plan 2012 (KLEP2012). The proposed development is defined as a Residential Flat Building and is a permissible use in the zone with development consent.

54. A strip across the front portion of No 194-196 Princes Highway, Kogarah Bay are zoned SP2 Infrastructure which is subject to road widening from Transport for New South Wales. This area does not form part of the subject site for the purposes of this application and its assessment.



Figure 15 - Zoning extract of subject site 192-196 Princes Highway, Kogarah Bay with the site outlined in red (Source:Intramaps, 2020).

55. 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.*

The proposal does not satisfy the zone objectives as the proposal is excessive in bulk and scale and the design detracts from the amenity of future occupants as it is considered to impact adjoining properties.

The proposal has been considered against the relevant clauses of Kogarah Local Environmental Plan 2012 (KLEP2012) and is outlined in the table below.

Clause	Standard	Proposed	Complies
Part 2 – Permitted or Prohibited Development	R3 Medium Density Residential Zone.	The proposal is defined as a Residential Flat Building (RFB) which is a permissible use within the zone.	Yes
	SP2 Infrastructure (Front part of No.	As previously stated, the SP2 zoned land is not proposed to be used as	Yes

	194 Princes Highway, Kogarah Bay)	part of the site area for this proposal.	
2.1 Objectives	Objectives of the Zone R3 Medium Density Residential	The proposal is considered to be inconsistent with zone objectives for the reasons detailed within this report.	No
	Objectives of SP2 Infrastructure satisfied	The front portion of 194 and 196 Princes Highway, Kogarah Bay is zoned SP2. This element does not form part of the development site.	Yes
4.1A Minimum lot sizes for Residential Flat Buildings	Clause 4.1A requires a minimum site area of 1,000sqm for the purpose of a residential flat building in the R3 zone.	The total combined site area is 1,520.6sqm. This area is adequate to accommodate a residential flat building. As previously stated within this report, this excludes the road widening along the Princes Highway, Kogarah Bay.	Yes
4.3 – Height of Buildings	21m as identified on Height of Building Map	The habitable area of the development is within the height limit however, the lift overrun and pergola structure on the roof top exceed the height control by 2.17m (10.33% variation). At its maximum, the structures on the roof reach a height of 23m (max)..	No (1)
4.4 – Floor Space Ratio	2:1 as identified on Floor Space Ratio Map Site area = 1,520.6sqm Total GFA = 3,041.2sqm (max)	FSR proposed by applicant at 1.99:1 however Council's assessment and scaling from plans indicates an area of 3,082sqm (2.02:1)	No (2)
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The FSR has been calculated in accordance with this clause.	Yes
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas,	The site not identified as a heritage item or within a heritage conservation area. The closet heritage item is located at 186-188 Princes Highway, Kogarah Bay (two storey dwelling and gardens) which is located approximately 33.7m to the north-east of the site. Between the subject site and the heritage item is Lacey Street and No. 190 Princes Highway which is also zoned medium density residential which	Yes

	including associated fabric, settings and views.	has a height limit of 21m and FSR of 2:1 being the same as the subject site.	
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	<p>The proposed earthworks are considered acceptable having regard to the provisions of this clause as the works are not likely to have any unreasonable detrimental impact on environmental functions and processes, neighbouring properties for an area which is undergoing urban transition.</p> <p>A condition would be recommended if the application was to be supported for a dilapidation report prepared for the immediately adjoining properties.</p>	Yes
6.5 Airspace Operations	The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the <i>Airports Act 1996</i> of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.	<p>The application was referred to the Civil Aviation Safety Authority (CASA) who raised no concerns with the proposal with the maximum lift overrun height of RL44.80. The height of the proposed development is below the Obstacle Limitation Surface (OLS).</p> <p>The amended proposal was reduced in height. The maximum height of RL44.40 is sought for the top of the lift overrun. The fire stair and top of pergola proposes a height of RL.43.20. Given the reduction of the maximum height a re-referral to CASA was not required.</p> <p>It is noted that any crane activities during construction would require further applications to CASA.</p>	Yes

56. **Clause 4.6 Exceptions to Development Standards – Height of Building**

The Kogarah LEP 2012 prescribes a maximum building height of 21m for this site. The proposed development seeks a variation to the development standard relating to Clause 4.3 Height of Building. The original proposed development sought a maximum height of 23.57m (lift overrun) and fire stair rooftop and pergola at 22.1m. The applicant provided amended plans of which sought minor changes to reduce the height of the lift overrun to 23.17m being a 400mm reduction and the stair access and pergola reduced to 20.5m being a 1600mm reduction. The extent of the variation is lesser however a revised clause 4.6 exception to development standard was not submitted with the amended plans upon the finalisation of the assessment report. This was requested but not received upon finalisation of this assessment report. On this basis, the applicant has not provided a revised Clause 4.6 in support of the revised scheme.

(2)Floor Space Ratio

57. The permitted maximum floor space ratio is 2:1 (3,041.20sqm max). The applicant submission details the proposal seeks an FSR of 1.99:1
58. The FSR proposed by applicant at 1.99:1 however Council's assessment and scaling from plans indicates an area of 3,082sqm (2.02:1). A statement prepared by the registered architect accompanied the development application which confirmed that the floor space and height had been calculated in accordance with the Kogarah Local Environmental Plan 2012.
59. No clause 4.6 Exception to Development Standard has been submitted for the additional floor space for Council's assessment.
60. In this instance it is considered that there are no material planning grounds to support a variation to floor space. A clause 4.6 Exception to Development Standard has not been provided in support of the proposal. This results in a jurisdictional whereby Council does not have the ability to consider a variation to a breach in a Development Standard.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environment State Environmental Planning Policy

61. The Draft Environment State Environmental Planning Policy was exhibited from 31 October 2017 to 31 January 2018. This consolidated State Environmental Planning Policy proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

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.

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

Draft Remediation of Land State Environmental Planning Policy

63. The Department of Planning and Environment has announced a Draft Remediation of Land State Environmental Planning Policy, which will repeal and replace the current State Environmental Planning Policy No 55 — Remediation of Land.
64. 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.

65. Whilst the proposed State Environmental Planning Policy will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. The Draft State Environmental Planning Policy will not alter or affect the findings in relation to contamination at the site.
66. 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. The geotechnical support submitted did not identify any potential issues with contamination.

Draft Georges River Local Environmental Plan 2020

67. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
68. 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.”*
69. The proposal is considered inconsistent with this draft instrument given the variation in additional floor space sought.

Development Control Plans

Kogarah Development Control Plan 2013

70. The proposed development is subject to the provisions of the Kogarah Development Control Plan No 2013. The following comments are made with respect to the proposal considering the objectives and controls contained within the Development Control Plans.

Part B General Controls		
Control	Standard	Complies
B1 Heritage Items and Heritage Conservation Areas	The subject site is not recognised as a Heritage Item or located within a Heritage Conservation Area.	N/A
B2 – Tree Preservation and Greenweb	Development approval is required to ringbark, remove, cut down or destroy any tree that has a height greater than 3.5m or branch spread exceeding 3m in diameter. Must not be within a Green Web habitat.	The proposal involves the removal of two (2) trees and retention of one (1) tree. This aspect is supported by Council's consulting arborist.
B3 – Developments near busy roads and rail corridors	Acoustic assessments for noise sensitive developments as defined in clauses 87 and 102 of the Infrastructure SEPP may be required if located in the vicinity of a rail corridor or busy roads.	Princes Highway is a classified road. An acoustic report was prepared given the location of this proposal. The acoustic report suggests a series of measures that will

		<p>improve noise attenuation within the apartments and includes double glazing, better insulation and other construction methods that will buffer the development from the surrounds. The proposal is supported by Council's Environmental Health Officer subject to the imposition of conditions which if recommended for approval ensure compliance with these recommendations if the application was to be supported.</p>
B4 – Parking and Traffic	<p>1 bedroom unit = 1 space/unit 2 bedroom unit = 1.5 spaces/unit 3 bedroom unit = 2 spaces/unit 1 visitor space/5 units or part there of, and 1 designated car wash bay which may also be a visitor space.</p> <p>6 x 1 bedroom units = 6 spaces 22 x 2 bedroom units = 33 spaces 8 x 3 bedroom units = 16 spaces 8 visitor spaces 1 x car wash</p> <p>Total required spaces = 63</p> <p>Bicycle parking 1 space per 3 dwellings plus 1 space per 10 for visitors so 12 resident bike racks are required and 4 visitor bike parking Total = 16 bike parking spaces required</p> <p>Internal car park layouts, space dimensions, ramp grades, access</p>	<p>B2 Plan = 35 spaces (including 4 accessible spaces)</p> <p>B1 Plan = 28 spaces including 8 visitor spaces,</p> <p>Total = 63 car spaces Numerically compliant</p> <p>Should the application be supported a condition could require the provision of a car wash which can be shared as a visitor space.</p> <p>10 bicycle spaces have been provided however additional bike storage area can be accommodated within the basement. There are also some at grade on the western side of the building which can accommodate the remainder.</p> <p>The parking layout and arrangement does not</p>

	driveways, internal circulation aisles and service vehicle areas shall be designed in accordance with the requirements set out in AS 2890.1 (2004) and AS 2890.2 (2002) for off street parking and commercial vehicles.	satisfy Council's requirements and Australian Standards. The application was also referred to RMS who raised no concerns. Should the application be supported conditions of consent would be imposed.
B5 – Waste Management	Submit a Waste Management Plan (WMP).	The application was accompanied by a WMP. The proposal does not provide a garbage chute or on interim bin storage areas on each level which is not supported by Council's Co-ordinator Environmental Sustainability.
B6 – Water Management	Detention storage is to be provided that is equal to or greater than the specified Site Storage Requirements (SSR). Rainwater tank installed to meet BASIX water conservation requirements will be given credit for SSR purpose. Drainage easements servicing stormwater pipes and/or overland runoff from catchments upstream of the development site are to be managed according with Council's guidelines. Discharge of stormwater runoff from a development site is to be undertaken in accordance with the design practice note, Site Drainage and Flood Management regarding direct discharge to kerb, discharge to a Council owned stormwater conduit, discharge to natural areas, discharge through private property and discharge within the development site.	The subject site is not located within Flood Prone land. The application was referred to Council's development engineer who have assessed the proposed stormwater disposal, the proposal has not provided an adequate OSD and stormwater solution whereby the OSD should not be located beneath any habitable areas.
B7 – Environmental Management	Provisions relating to the siting and orientation of the building, use and promotion of sustainable building materials and standard provisions established for non-residential development.	The application is accompanied by a BASIX certificate which confirms compliance with the minimum requirements of the SEPP (thermal comfort and water usage).

Part C2 - Medium Density Development of Kogarah Development Control Plan 2013 DCP came into effect on 10 June 2020. The Development Control Plan does not contain a savings provision. These controls apply to the development.

Part C2 - Medium Density Development of Kogarah DCP 2013			
Control	Standard	Proposed	Complies
1.Minimum Lot size requirements	(1) Minimum lot size is 1,000sqm.	1,520.60sqm	Yes
	(2) Minimum lot width is 24m.	45.48m.	Yes
	(3) For sites which allow development greater than four storeys, greater site width may be necessary to accommodate the greater setbacks required by the Apartment Design Guide.	The site contains a wide allotment width of 45.48m.	Yes
2.Site isolation and amalgamation	(1) Development for the purpose of residential flat buildings is not to result in the creation of an isolated site that could not be developed in compliance with the relevant planning controls, including the Kogarah LEP 2012 and this DCP.	The proposal does not result in the creation of an isolated site.	Yes
3.Building setbacks and street interface	(1) Front setbacks:		
	(i) Street setback: up to a building height of four storeys, a minimum setback of 5m is to be provided.	5m.	Yes
	(ii) Corner sites: up to a building height of four storeys, a minimum setback of 5m to both street frontages is to be provided.	5m.	Yes
	(iii) Above four storeys, the front setback of the upper building levels is to be increased to a minimum of 8m to the street, except in the circumstances addressed in (v) below. The minimum 8m setback also applies to balconies, terraces and balustrades and must be accommodated behind the setback.	5m sought, refer to clause below.	No
	(iv) On a corner site, both	5m – 6.6m to Princes Highway and 5m along Lacey Street.	No
		The road	Yes

	frontages are to provide the increased setback above four storeys.	reserve along Lacey Street is 20m in width. No further additional setback required as the design reinforces the corner.	
	(v) Above level four (ground plus 3 storeys); an increased setback of the upper levels/s may be required depending on the width of the street. The required additional upper level setback for sites fronting a road with a reservation width less than 20.0m will be determined based on their visual impact in the specific context of the development. If the assessment determines that an additional setback is required, the minimum additional setback will be 2.0m and up to 3.0m based on the assessment.	6m (w)	Yes
		6m – 7.6m (w) variation sought.	No, previously discussed within this report.
	(2) side boundary setbacks		
	(i) minimum setback of 6m from side boundary between ground floor level and up to 4 storeys	6m (s)	Yes
	(ii) upper level setbacks are 9m above four storeys	9m (s)	Yes
	(3) rear boundary setbacks:	The POS complies with the ADG requirements.	Yes
	(i) minimum 6m setback from a rear boundary between ground floor and up to four storeys.	Ground floor POS has a maximum encroachment up to 2m into the front setback.	Yes
	(ii) Upper level setbacks are 9m above 4 storeys POS and balconies must comply with 4E of the ADG		
	(5) Encroachments into boundary setbacks:	Ground POS encroaches into the side setbacks with no landscape buffer.	Yes
	(i) Ground floor private open space may encroach up to 2m into the 5m front setback leaving a minimum of 3m landscaped area to the street.	Landscaped	Yes

	<p>(ii) Ground floor private open space may encroach up to 3m into the side and rear setbacks leaving a minimum 3m of landscaped buffer.</p> <p>(6) The setback areas, other than any permitted ground floor private open space, are to be landscaped and be retained as part of the common property of the development</p> <p>(7) For improved streetscape and reduction in visual clutter, powerlines in the street verge in front of new development to which this part applies will be undergrounded. This includes the connection of power supply from the road reservation into the development site</p> <p>(8) Sub-stations, fire booster valves and waste bin storage structures need to be integrated into the development and identified at the DA stage</p> <p>(9) Setbacks may need to be increased to maintain the required levels of solar access to adjoining development or where the site is in a Heritage Conservation Area or in the vicinity of a Heritage Item to provide an appropriate buffer or curtilage to the Heritage Conservation Area or Heritage Item.</p>	<p>areas forward of front fences form a common area.</p> <p>Powerlines to be located below ground.</p> <p>Services such as hydrants and waste storage areas located on the plans.</p> <p>The site does not directly adjoin a heritage item.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4. Basement setbacks	<p>(1) Basements are to be set back a minimum of 3m from the site boundaries.</p>	<p>The basement is setback at various points from 1200mm to 3200mm.</p>	<p>No</p>

	<p>(2) The basement setback areas are to be deep soil areas as defined in the Apartment Design Guide.</p> <p>(3) Driveways and driveway crossings are to be located a minimum of 1.5m from a side boundary.</p> <p>(5) The 6m basement setback at a zone boundary is to be planted to provide a vegetated landscape buffer between the development and adjoining lower density development. Planting is to include trees that achieve a minimum mature height of 6.0m. Under canopy planting is to include lower scale planting that provides a visual buffer between developments and creates the desired landscape buffer.</p> <p>(6) Basements fronting the primary street address are not to project more than 500mm above ground level (existing) at the street setback alignment.</p>	<p>Setback areas do not meet the deep soil requirements as required by the AGD, 6m is required.</p> <p>The basement is setback 17m from the Lacey Street being the secondary frontage with landscaping embellishing the vehicular entry.</p> <p>The basement is accessed from the secondary street and located fully below ground.</p>	<p>No</p> <p>Yes</p> <p>Yes</p>
5.Facade Treatment and Street Corners	<p>(1) Building facades must be clearly articulated and employ high quality materials and finishes that enhance and complement the streetscape character.</p> <p>(2) Street corners must be given prominence by a change in building articulation, materials, colours, form or height.</p> <p>(3) Human scale at street level must be created through the use of scale,</p>	<p>The building adopts a mixture of contemporary materials which positively contribute to the streetscape.</p> <p>The corner contains a variation of curved forms to accentuate the corner.</p> <p>The proposal is considered to be human scale</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	rhythm, materiality and/or landscaping.	at street level with the incorporation of fencing and landscaping embellishment.	
	(4) Essential services such as substations and fire hydrants must be integrated into the design of the façade	Hydrants have been incorporated within the front north-west corner.	Yes
	(5) Development must not rely solely on the use of two-dimensional colour and materials to create visual interest. Modulation and articulation in the building form must be explored.	The proposal uses a mixture of modulation and forms such as render and rows of open timber privacy screens.	Yes
	(6) Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding and green walls should be considered as alternatives to blank walls.	No areas are left blank.	Yes
	(7) Clear glazing balustrades are discouraged when visible from the public domain. Screening of balconies by way of adjustable or fixed panels or incorporation of solid upturns at the base of the balustrade should be included where there are issues of privacy when viewed from lower levels, and/or excessive exposure to solar impacts.	No clear glazing proposed. Balustrades are generally rendered.	Yes
	(8) Noise mitigation treatments and design considerations for developments adjoining busy roads or rail corridors, that satisfy the requirements	An acoustic report accompanied the development application	Yes

	for habitable rooms in accordance with Department of Planning Industry and Environment's 'Development Near Rail Corridors and Busy Roads – Interim Guideline' and the requirements of Clause 102 (3) of State Environmental Planning Policy (Infrastructure) 2007 must be considered	which seeks to include acoustic measures such as construction methods, window thickness and seals to minimise impacts.	
6. Landscape Treatment and Private Open Space	(1) Deep soil is to be provided within the setbacks areas as required in figures 3a, 3b, 4 and 5 and consistent with Part 3E of the NSW State Government's Apartment Design Guide. To be included as deep soil as required by Part 3E of the Apartment Design Guide, the deep soil area must have a minimum dimension of 3.0m on any axis. Planting in the deep soil areas is to include trees that achieve a minimum mature height of 6.0m.	Part 3m of deep soil provided however 6m dimension of the ADG not satisfied which prevails. There is not deep soil on the site which achieves the 6m dimension.	No
	(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.	Planter boxes incorporated within the development to the communal rooftop level with a minimum soil depth of 800mm.	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.	This is not included within the calculation of rooftop communal open space.	Yes
	(4) Private open space should be adjacent to and	Private open space directly	Yes

	<p>visible from the main living and/or dining rooms and be accessible from those areas.</p> <p>(5) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year round use.</p> <p>(6) Unpaved or unsealed landscaped areas should be maximised and designed to facilitate on-site infiltration of stormwater.</p> <p>(7) Existing significant trees and vegetation must be incorporated into the proposed landscape treatment.</p> <p>(8) Private open space and balconies must comply with part 4E of the NSW State Government's Apartment Design Guide.</p> <p>(9) Planting of replacement trees is to be in accordance with Council's Tree Management Policy.</p>	<p>adjoins key habitable rooms.</p> <p>Balconies maximised along the northern and eastern elevations.</p> <p>Minimal paved areas proposed on the ground level.</p> <p>Tree replacement and landscaping supported by Council's consulting arborist.</p> <p>Private Open Space requirements of the ADG are satisfied.</p> <p>Tree replacement and landscaping supported by Council's consulting arborist.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	
7.Common Open Space	<p>(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.</p> <p>(2) A maximum of 50% of common open space may be provided above ground level where:</p> <p>(i) a location at ground level is not possible due to site</p>	<p>380sqm (min) required and provided on the rooftop (25%)</p> <p>This is all located within the communal rooftop as the location of this area will provide good levels of</p>	<p>Yes</p> <p>No</p>	

	<p>constraints;</p> <p>(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</p> <p>(iii) there will be no significant impact on surrounding properties in respect to the loss of privacy.</p>	<p>amenity for future occupants, this is not affected by overshadowing or overlooking impacts.</p>	
	<p>(3) At least 50% of the required common open space area is to receive 2 hours of direct sunlight between 9am and 3pm on 21 June.</p>	<p>More than 50% of the private open space achieves this criterion during the Winter Solstice between 9am – 3pm.</p>	Yes
	<p>(4) A minimum of 50% of the total area of common open space provided at ground level is to comprise unpaved landscaped area</p>	<p>No proposed common open space at ground level.</p>	No
	<p>(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.</p>	<p>Usable trafficable areas are less than 2.5m away from the roof edge.</p>	No
	<p>(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.</p>	<p>Equitable access is provided to the rooftop via the lift.</p>	Yes
	<p>(8) Ancillary structures on the roof such as lift overruns and staircases should be centralised to reduce their</p>	<p>The proposed</p>	Yes

	visual dominance. Balustrades should be visually recessive.	lift overrun, staircase and pergola are centrally located. The balustrades to the communal open space are formwork which are considered to be well integrated into the building.	
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 provided for consideration which indicates impacts during winter solstice.	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.	Shadow diagrams provided for consideration.	Yes
	(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. Note: Achieving compliance with this control may be difficult on steeply sloping sites, east west facing allotments, irregular allotments or sites with open space to the south of the built form. In this instance, compliance with the control will be considered on its merits.	Shadow diagrams provided indicate the extent of shadow impact.	Yes

9.Vehicular access, parking and circulation	(1) Car parking is to be provided as a maximum in accordance with the requirements in Part B4 unless Objective 3J-1 of the Apartment Design Guide applies. Car access areas and garages doors do not visually dominate either the development or the streetscape.	Car parking in accordance with the DCP and located in a basement.	Yes
	(2) Vehicular access points should be clearly visible from the street with adequate sign posting or design cues to alert drivers to their availability.	Sign posting to be added by conditions if the application was to be supported.	Yes
	(3) On corner sites with two street frontages, vehicular access should be provided to the street with the lesser traffic volumes.	Single access point from Lacey street with clear sight lines. Driveway access from Lacey Street provided instead of Princes Highway given it is a classified road.	Yes
	(5) 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.	No street trees removed to accommodate the driveway crossover.	Yes
	(6) Driveways should be designed to avoid a straight, long “gun barrel” appearance by using appropriate landscaping and variations in alignment.	The driveway proposed is straight and direct to the basement levels.	Yes
	(7) Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1-(latest		

	<p>edition).</p> <p>(8) Clearance above the general parking surface must be a minimum of 2.5m.</p> <p>(10) All residential flat developments must provide a car wash bay which:</p> <p>(i) is roofed and bunded to exclude rainwater.</p> <p>(ii) has clearly visible signs which indicate that no degreasing or mechanical work is to be undertaken in the car wash bay.</p> <p>(iii) has a fixed basket trap for floor waste.</p> <p>(iv) includes a 1000 litre general purpose pit.</p> <p>(11) Three options exist for the disposal of trade wastewater from residential car wash bays. They are:</p> <p>(i) removal off-site by an authorised liquid waste disposal contractor;</p> <p>(ii) reuse of treated wastewater for car washing or irrigation on landscaped areas. An appropriate method should be used to treat grease, oil and silt before reuse or irrigation; or</p> <p>(iii) discharge to the sewer via appropriate pre-treatment.</p> <p>(12) If the car wash bay discharges into the sewer, a 'Permission to Discharge Trade Wastewater' issued by Sydney Water must be obtained prior to approval of the development.</p> <p>(13) If the carwash bay is not discharged into the sewer, applicants must provide Council with details and evidence of how wastewater will be removed (e.g. removal by an authorised liquid waste disposal contractor)</p>	<p>The does not comply with the Australian Standards in relation to aisle width.</p> <p>Clearance is at least 2.5m</p> <p>Can be a visitors space and is located within the basement level and can satisfy criterion of this clause. A condition would be imposed if the application was to be approved.</p> <p>The proposal would be conditioned to drain into the sewer but is not supported for other reasons.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
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	<p>(14) Developments on Classified Roads are to:</p> <p>(i) minimise the number of access points or seek alternative access wherever possible.</p> <p>(ii) provide safe vehicle access, adequate sight distances and make provision for vehicles to leave the site in a forward direction in accordance with AS2890.1 (latest edition)</p> <p>(iii) Sufficient space within the property boundary is to be provided to accommodate vehicles entering the property and waiting for security gates or booms to open. The queuing area is to be sufficient to ensure waiting vehicles are wholly within the property boundary.</p> <p>(iv) comply with any conditions imposed by Council to satisfy the requirements of TfNSW.</p> <p>(15) Basement car parking should be naturally ventilated where possible.</p>	<p>The proposal seeks to provide a vehicular crossing on the secondary street which is Lacey Street.</p> <p>Sufficient passing is proposed for 2 vehicles.</p> <p>No boom gates proposed.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
	<p>(16) Separate pedestrian access to buildings should be provided which does not rely upon access from a basement as the sole pedestrian access location.</p> <p>(17) The use of mechanical parking devices such as car lifts, turn tables and car stackers for the provision of</p>	<p>The proposal can comply with TfNSW requirements.</p> <p>Basement parking is located below ground, natural ventilation cannot occur</p>	<p>Yes</p> <p>Yes</p>

	car parking should be avoided wherever possible.	with the exception of the basement entrance. Separate access provided for vehicles and pedestrians. Not proposed to be used as part of the proposal.	Yes Yes
10. Views and view sharing	<p>(1) Development shall provide for the reasonable sharing of views.</p> <p>(2) A view impact assessment or information to assist in determining the potential impact on views on a development will be required where a development proposal could adversely impact upon existing views enjoyed by surrounding properties.</p> <p>(3) Height poles may need to be constructed (with confirmation of heights by a Registered Surveyor provided) or a detailed view analysis including accurate photomontages may be required to be provided to assist in assessing view loss impacts.</p> <p>(4) Where a detailed view assessment is required to be undertaken to consider the potential impacts of a development proposal, the view impact statement is to be prepared in accordance with the four steps detailed in the view loss principles established by Tenacity vs. Warringah Council [2004] NSWLEC140 may be required to be lodged with the application to assist in analysing the potential view impacts.</p>	The proposal is not considered to result in any view loss impacts.	Yes

11. Dwelling Mix	(1) Developments that propose more than 10 apartments are to provide a mix of dwellings consistent with the following percentage mix:	36 units in total proposed.	Yes
	(i) Studio and 1 bed apartments – Minimum of 20%	6 x 1 bed = 16.6%	No
	(ii) 2 bed apartments – Maximum of 30%	22 x 2 bed = 61.1%	Yes
	(iii) 3+ bed apartments – Minimum of 15%	8 x 3 bed = 22.2%	Yes
	(2) Any variations to the apartment mix are to take into consideration: (i) the distance to public transport, employment and education centres. (ii) the current market demands and projected future demographic trends. (iii) the demand for social and affordable housing. (iv) different cultural and socioeconomic groups. Apartment configurations are to support diverse household types and stages of life including single person households, families, multi-generational families and group households.	Despite this, the proposal provides a reasonable mixture of units and a range of configurations.	
12. Adaptable and Accessible Housing	(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: (i) 5-10 units – 1 adaptable unit (ii) 11-20 units – 2 adaptable units (iii) 21-30 units – 3 adaptable units (iv) 31-40 units – 4 adaptable units (v) 41-50 units – 5 adaptable units (vi) 51+ units - 6 adaptable units + 10% of additional	4 adaptable units have been proposed on the ground floor being units 2, 3, 4 and 8.	Yes

	<p> dwellings beyond 60 (rounded up to the nearest whole number).</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>(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>(4) Notwithstanding compliance with the 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</p>	<p>Units are to comply with the relevant standards and 4 accessible car parking spaces proposed on level B2.</p> <p>Development to be constructed to comply with the standards.</p> <p>Development to be constructed to comply with standards within clause (i)-(iv).</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
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handrails and guardrails.

Interim Policy Georges River Development Control Plan 2020

71. The proposed development is subject to the provisions of the Interim Policy Georges River Development Control Plan 2020. Only the applicable aspects have been assessed with respect to the Interim Development Control Plan. All other aspects have been thoroughly assessed under Kogarah Development Control Plan. 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.

Control	Standard	Proposed	Complies
Site frontage	20m Kogarah	45.48m	Yes
Height	The relevant LEP controls relating to maximum height will prevail over DCP controls relating to height in storeys	No revised clause 4.6 Exception to Development Standard provided for consideration.	Yes
Private Open Space	ADG (SEPP 65) controls prevail over the DCP	Compliance achieved with ADG.	Yes
Communal Open Space	ADG (SEPP 65) controls prevail over the DCP	Compliance achieved with ADG.	Yes
Parking	Located outside of 800m of a Railway Station, the relevant DCP applies	Compliance achieved with KDCP car parking rate.	Yes
Solar Access	ADG (SEPP 65) controls prevail over the DCP	Compliance achieved with ADG.	Yes

72. The proposal is not considered to be inconsistent with the Interim DCP 2020.

DEVELOPER CONTRIBUTIONS

73. A residential flat building requires payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979. The proposal is not recommended for approval as a result contributions have not been levied.

IMPACTS

Natural Environment

74. The proposal provides inadequate deep soil planting dimensions which limits opportunity for substantial tree planting to further embellish the site.

Built Environment

75. The proposed development results in an outcome which results in excessive FSR, height of building, insufficient deep soil, inadequate articulation and reduced amenity of the communal open space as a minor portion of this has been located on ground level. Primarily the proposal results in adverse bulk and scale impacts as a result of the extent of the floor space variation. Given this, the proposal results in adverse impacts to adjoining developments and the streetscape and is not compatible with the envisaged character of the area.

Social Impact

76. The proposed development has no apparent adverse social impact given the residential nature of the proposal.

Economic Impact

77. The proposed development will have no apparent adverse economic impact given the residential nature of the proposal.

Suitability of the Site

78. It is considered that the proposed development is of a not of an appropriate scale and form for the subject site for the reasons contained within this report.

SUBMISSIONS AND THE PUBLIC INTEREST

79. The application was notified and advertised to adjoining owners and occupiers in accordance with Council's requirements. The notification regarding the original scheme did not generate any submissions. The amended proposal did not require re-notification given the minor changes sought which did not result in an increase in building height or reduction of setbacks than originally proposed.

REFERRALS

Council Referrals

Development Engineer

80. Council's Development Engineering section does not support the proposal. The proposal has not provided an adequate OSD and stormwater design which seeks the location of the OSD below the living room of a unit which is not supported. It is noted that the application was referred to TFNSW, no concerns were raised in relation to stormwater disposal.

Traffic Engineer

81. Council's Traffic Engineer had raised concerns regarding non-compliant aisle widths to provide adequate vehicular manoeuvrability. These aisle widths have not been amended with the revised proposal, whilst these aspects could be conditioned to achieve compliance if the application was to be supported.

Environmental Health Officer

82. Council's Environmental Health Officer supports the proposal.

Infrastructure and Assets

83. Council's Infrastructure and Assets section supports the proposal.

GIS

84. Council's Geographical Information Systems Officer supports the proposal.

Consultant Arborist

85. Council's consultant arborist supports the proposal.

Waste

86. Council's Coordinator Environmental Sustainability and Waste has raised concerns with the proposal.

External Referrals

Ausgrid

87. The application was referred to AUSGRID under Clause 45(2) of Statement Environmental Planning Policy (Infrastructure) 2007. In response, comments were received on 15 May 2020 of which did not raise any concerns with the proposal.

Roads and Maritime Services (RMS)

88. The application was referred to RMS in accordance with Section 138 of the Roads Act, 1993 as the Princes Highway is a classified State Road and falls within the jurisdiction of RMS. The RMS reviewed the proposal and provided formal concurrence on 21 May 2020 of which raised no objections to the proposal.

Civil Aviation Safety Authority

89. On 5 May 2020 Council received the following response;

“CASA has reviewed the information provided and has no objections to the proposed development. According to the elevation drawing, the height of the proposed building including the lift overrun is RL 44.8m or approximately 23m above ground level. At this height the proposed building will not infringe any Obstacle Limitation Surface and will not be a controlled activity”

In this regard, this is not considered to result in any issues in relation to aviation obstruction.

CONCLUSION

90. The development seeks approval for the demolition of existing structures and construction of a residential flat building. The application has been assessed having regard to the Matters of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. Following detailed assessment the proposal of which the proposal is considered to be unsatisfactory in its current form and results as an excessive built form for the subject site. It is considered that Development Application No DA2020/0144 should be refused.

DETERMINATION AND STATEMENT OF REASONS

91. Statement of Reasons

- No Clause 4.6 Exception to Development Standards to Clause 4.3 Height of Building and 4.4 Floor Space Ratio of the Kogarah Local Environmental Plan 2012 has been provided for consideration.
- The proposal does not satisfy Section 1.3 Objects of the Act of the Environmental Planning and Assessment Act 1979 whereby the proposal does not satisfy objective (g) *to promote good design and amenity of the built environment*. The proposed development significantly exceeds the floor space ratio and results in adverse bulk and scale in relation to the site.
- The proposed development results detract from the amenity on site and adjoining properties and results in an undesirable precedent in relation to desired future character of the area in relation to the C2 Medium Density Housing of the Kogarah Development Control Plan 2013.
- The proposed development will have unacceptable adverse impacts to the natural and built environment the scale of the development proposed.

- 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

92. THAT pursuant to Section 4.16 (1)(b) of the Environmental Planning and Assessment Act 1979, as amended, the Georges River Local Planning Panel refuse development consent to Development Application DA2020/0144 for demolition works and construction of a residential flat building include the description from above Lot 1 DP 655948, Lot 2 DP 658231 and Part 3 Section 17 DP 1963 and known as 192-196 Princes Highway, Kogarah 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 satisfy the following Object of the Act:

(a) To promote good design and amenity of the built environment.

2. **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 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development in terms of the following:

- (a) 3F Visual privacy and separation - whereby the proposal has not provided sufficient spatial separation of levels 4-6 along the western side boundary.
- (b) 3E Deep Soil whereby – no adequate deep soil planting with appropriate dimensions have been provided.
- (c) 4D Apartment size and layout - whereby units exceed the maximum room depth.

3. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal does not satisfy the following;

- (a) Clause 4.3 Height of Building. Further that no clause 4.6 Exception to Development Standard has been provided in support of Clause 4.4 Floor Space Ratio.
- (b) Clause 4.4 Floor Space Ratio. Further that no clause 4.6 Exception to Development Standard has been provided in support of Clause 4.4 Floor Space Ratio.

4. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal does not satisfy the Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment.

(a) The proposal does not provide an adequate stormwater solution.

5. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following objectives of the R3 Medium Density Residential Zone of the Kogarah Local Environmental Plan 2012.

- *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.*
6. **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 the Kogarah Development Control Plan 2012;
- (a) B4 – Parking and Traffic
 - (b) B5 - Waste Management and Minimisation
7. **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 Chapter C2 Medium Density Housing of the Kogarah Development Control Plan 2012;
- (a) Clause 3. Building Setbacks and Street Interface Clause (iii) above four storey setbacks.
 - (b) Clause 3. Building Setbacks and Street Interface Clause (iv) above four storey setbacks on corners.
 - (c) Clause 4. Basement setbacks (1) minimum basement setback to site boundaries.
 - (d) Clause 6. Landscape Treatment and Private Open Space (1) deep soil dimensions.
 - (e) Clause 7. Common open space (4) minimum common open space to be located on ground level.
 - (f) Clause 11. Dwelling mix (1) minimum number of studios and 1 bedroom apartments.
8. **Impacts on the Environment** - Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the natural environment:
- (a) The proposal due its design and building footprint has resulted in reduced opportunities to provide for meaningful deep soil planting.
9. **Impacts on the Environment** - Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the built environment:
- (a) The proposal results in adverse visual bulk and scale impacts.
 - (b) The proposal results in reduced amenity for future occupants on site.
10. **Suitability of Site** - Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development as:

(a) The proposal results in an adverse bulk and scale which is not proportionate with the subject site.

11. **Public interest** - Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development in its current form is not considered to be in the public interest and is likely to set an undesirable precedent within the locality.

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 [↓](#)  Elevations and Site Plan - 192-196 Princes Highway Kogarah



