

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 17 June 2021
Time:	4.00pm
Venue:	Council Chambers, Civic Centre, Hurstville
Panel Members:	Paul Vergotis (Chairperson) Milan Marecic (Expert Panel Member) Michael Leavey (Expert Panel Member) Erin Sellers (Community Representative)

1. On Site Inspections

- a) 206-214 Railway Parade Kogarah
- b) 89-93 Railway Parade Mortdale
- c) 31 Westbrook Street Beverly Hills

2. Opening

3. Consideration of Items and Verbal Submissions

LPP026-21	206-214 Railway Parade Kogarah – DA2020/0236 (Report by Senior Development Assessment Officer)
LPP027-21	89-93 Railway Parade Mortdale – DA2020/0375 (Report by Senior Development Assessment Officer)
LPP028-21	31 Westbrook Street Beverly Hills – REV2020/0030 (Report by Senior Development Assessment Planner)

4. LPP Deliberations in Session Closed

5. Confirmation of Minutes

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 17 JUNE 2021**

LPP026-21

LPP Report No	LPP026-21	Development Application No	DA2020/0236
Site Address & Ward Locality	206-214 Railway Parade Kogarah Kogarah Bay Ward		
Proposed Development	Demolition works, lot consolidation, site preparation and construction of a twelve (12) storey mixed use development containing ground floor and first floor commercial floor space and 49 residential apartments above three (3) levels of basement containing 75 car spaces, level 1 and roof top communal open space, landscaping and site works		
Owners	Kyser Pty Limited		
Applicant	Novakog Pty Ltd ATF Novakog Trust		
Planner/Architect	Planner: City Plan Architect: Fuse Architects		
Date Of Lodgement	12/06/2020		
Submissions	Twelve (12) submissions		
Cost of Works	\$18,570,935.00		
Local Planning Panel Criteria	The application seeks consent for development to which the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment, State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Draft Georges River Local Environmental Plan 2020 Draft Design and Place State Environmental Planning Policy		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects and Clause 4.6 Statement Acosutic and Arborist Report Site Investigation and Remedial Action Plan Traffic and Parking Report		
Report prepared by	Senior Development Assessment Officer		

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

satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - Clause 4.3 Height of buildings
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, standard conditions have been attached which can be reviewed when the report is published.

Site Plan



Aerial photo – the subject site is outlined in blue

Executive Summary

Proposal

1. Council received a development application (DA2020/0236) seeking consent for demolition works, site preparation and construction of a twelve storey (12) mixed use

development in elevation comprising ground floor commercial floor space, 11 first floor serviced apartments and 49 residential apartments above four (4) levels of basement containing 86 car spaces, roof top communal open space, landscaping and site works.

2. In response to the issues raised by Council and the consultant Urban Designer, resulted in the proposal being amended to include demolition works, lot consolidation, site preparation and construction of a twelve (12) storey mixed use development containing ground floor and first floor commercial floor space and 49 residential apartments above three (3) levels of basement containing 75 car spaces, level 1 and roof top communal open space, landscaping and site works.
3. This assessment is based on these amended plans.

Site and Locality

4. The subject development site is known as 206-214 Railway Parade, Kogarah.

The allotments and their legal description are noted below:

- 206 Railway Parade – Lot 23 DP 2013.
 - 212 Railway Parade – Lot 24 DP 2013.
 - 214 Railway Parade – Lot 25 DP 2013.
5. The development site is a slightly irregular in shape with a 28.575m frontage to Railway Parade, a 36.575m secondary street frontage to Bowns Road, a western side boundary of 38.635m with a rear boundary width of 29.135m. It is located on the southern corner of the intersection of Railway Parade and Bowns Road. The site has a total area of 1,081.3sqm and has a fall from the southern corner to the northern corner of approximately 1.8m.
 6. Situated on the development site are three (3) commercial buildings and four (4) outbuildings. 206 Railway Parade contains a two storey building that is being used as a dance studio. 212 Railway Parade contains a single storey building that is being used by a tool and die making shop and 214 Railway Parade contains a single storey building currently being used as a gymnasium and personal training premises. A car park for the buildings is located at the rear, with access from Bowns Road.
 7. The site is located within the Kogarah Town Centre in the Railway Parade South Precinct. The intention of the controls in this precinct is to create a defined street wall to Railway Parade. The proposed development includes all the sites identified in the preferred amalgamation pattern.

State Environmental Planning Policies

8. The proposal has been considered to be satisfactory in respect to the following policies which have been considered in respect to the application:
 - State Environmental Planning Policy No.55 – Remediation of Land.
 - State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
 - State Environmental Planning Policy (Building and Sustainability Index:2004).
 - State Environmental Planning Policy (Infrastructure) 2007.
 - State Regional Environmental Plan No 2 – Georges River Catchment.
 - State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

- Draft Environment State Environmental Planning Policy.
- Draft Remediation of Land SEPP.
- Draft Design and Place State Environmental Planning Policy.

Zoning and KLEP (2012) Compliance - LEP

9. The site is zoned B4 Mixed use pursuant to the provisions of the Kogarah Local Environmental Plan 2012. The proposal satisfies the B4 zone objectives. The proposed mixed use development includes a number of uses including residential flat buildings, shop top housing and commercial premises which are all permitted uses within the zone. The application seeks an increase to the statutory height limit whereby the lift over run, fire stairs and associated services exceed the maximum permitted height.
10. The application has been accompanied by Clause 4.6 - Exceptions to development standards requests for variations to Clause 4.3 – Height of buildings development standard.

Kogarah Development Control Plan 2013 (KDCP)

11. The provisions of Kogarah Development Control Plan 2013 are applicable to the proposed development. The proposal is considered to be an acceptable urban design and planning outcome for the site and generally satisfies the applicable provisions contained within the KDCP.

Specific Precinct Requirements – Railway Parade South Precinct

12. In addition to the general controls of KDCP, the Kogarah Town Centre DCP is relevant. The proposal is considered to reasonably satisfy the objectives of the Railway Parade South precinct controls which results in an appropriate built form in relation to the applicable planning controls.
13. A detailed assessment of the proposal against these controls is provided later in this report.

Submissions

14. The application was advertised for a period of twenty eight (28) days between 1 July 2020 and 29 July 2020 in accordance with the Kogarah Development Control Plan. Twelve (12) submissions were received.

Reason for referral to the Local Planning Panel

15. This application is referred to the Georges River Local Planning Panel for consideration and determination in accordance with a s9.1 Environmental Planning and Assessment Act Ministerial Direction, as the proposal relates to a Residential Flat Building in which the provisions of State Environmental Planning Policy – Design Quality of Residential Flat Development is applicable.

Planning and Design Issues

16. The proposal is an appropriate response to the site when considered against the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. Its bulk and scale are consistent with the desired future character of the area as established by the Kogarah Local Environment Plan 2012 (KLEP) development standards for FSR and height.
17. The application exceeds the overall height control of 39m. A Clause 4.6 Statement has been submitted seeking a variation to the statutory height control (Clause 4.3) of Kogarah

Local Environmental Plan 2012 (KLEP). The Statement is comprehensive and generally justifies the non-compliance. This issue is discussed in greater detail in the body of this report.

18. The proposal is fully compliant with the maximum FSR development standard that applies to the site under Kogarah Local Environmental Plan 2012. The proposal is therefore consistent with the desired future building density for the site.

Conclusion

19. 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 (DA2020/0236) is recommended for approval subject to the conditions referenced at the end of this report.

Report in Full

Description of Proposal

20. Development consent is sought for demolition works, lot consolidation, remediation and construction of a twelve (12) storey shop top housing development containing commercial floor space on the ground and first floor and 49 apartments above three (3) levels of basement car park containing 75 car spaces, landscaping and site works.



Figure 1: Photomontage of the development as proposed to the corner of Railway Parade and Bowns Road (Source - Fuse Architects)

21. A detailed breakdown of the proposed development is as follows:

Basement Level 03

- Twenty six (26) residential car spaces including three (3) accessible spaces.
- Fire stairs and lift access.
- Twenty three (23) individual storage spaces.
- Nine (9) bicycle spaces
- General services.

Basement Level 02

- Twenty six (26) residential car spaces including two (2) accessible spaces.
- One (1) visitors/car wash bay.
- Fire Stairs and lift access.
- Fifteen (15) individual storage spaces.
- General services

Basement Level 01

- Sixteen (16) retail car parking spaces including one (1) accessible space.
- Six (6) visitors car parking spaces including one (1) accessible space.
- Fire hydrant and sprinkler pump rooms
- Fire Stairs and lift access.
- Storage.
- Main switch room.
- Communications room
- Above ground grease traps.
- General services.

Ground Floor Plan

- Residential lobby entry including Fire Indicator Panel (FIP) and letter boxes.
- 287sqm of retail premises including commercial kitchen.
- Public toilet facilities for retail premises including a separate accessible WC.
- Communications and electrical cupboards in retail premises.
- External awning to be constructed around the perimeter of the building at ground level.
- Fire hydrant booster located on Bowns Road frontage.
- Eight (8) bicycle spaces
- Bulky waste storage area.
- Commercial waste storage area adjacent to loading dock.
- Residential waste room
- Fire Stairs and lift access.
- Vehicular access from Bowns Road.
- Combined fire hydrant/fire sprinkler tank above ramp.
- OSD tank
- Loading dock.
- Fire control centre.
- Gas and water meters
- Substation chamber.

Level 01

- 384sqm of commercial floor space.

- Toilet facilities provided for commercial premises.
- Residential and commercial communal open space.
- Two (2) x 240litre bin storage room.
- Car park exhaust and supply services.
- Hot water services and water meter cupboards.
- Stair pressurisation shaft.
- Residential access to communal open space
- Fire Stairs and separate commercial lift access.
- External stairs providing access to Bowns Road.
- Eight (8) bicycle spaces.

Level 02

- Residential apartments comprising the following:
 - o 3 x 1 bedroom apartments.
 - o 3 x 2 bedroom apartments.
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire Stairs and lift access.
- Stair pressurisation shaft.

Level 03

- Residential apartments comprising the following:
 - o 3 x 1 bedroom apartments.
 - o 3 x 2 bedroom apartments.
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 04

- Residential apartments comprising the following:
 - o 3 x 1 bedroom apartments.
 - o 3 x 2 bedroom apartments.
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 05

- Residential apartments comprising the following:
 - o 5 x 2 bedroom apartments one being an accessible room.

- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire Stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 06

- Residential apartments comprising the following:
 - o 5 x 2 bedroom apartments one being an accessible room.
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 07

- Residential apartments comprising the following:
 - o 1 x 1 bedroom apartment
 - o 4 x 2 bedroom apartments.
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 08

- Residential apartments comprising the following:
 - o 3 x 2 bedroom apartments
 - o 1 x 3 bedroom dual key apartment (which includes 1 x studio apartment and 1 x 2 bedroom apartment).
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 09

- Residential apartments comprising the following:
 - o 3 x 2 bedroom apartments.

- 1 x 3 bedroom dual key apartment (which includes 1 x studio apartment and 1 x 2 bedroom apartment)
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 10

- Residential apartments comprising the following:
 - 2 x 2 bedroom apartments.
 - 1 x 3 bedroom apartment
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 11

- Residential apartments comprising the following:
 - 2 x 2 bedroom apartments.
 - 1 x 3 bedroom apartment
- Open gallery with external stairs providing access throughout the building from the Level 01 communal open space to the rooftop communal open space.
- Car park exhaust and supply services.
- Water meter
- Comms and electricity cupboards.
- Fire stairs and lift access.
- Stair pressurisation shaft.
- Services

Level 12

- Roof top communal open space comprising the following:
 - Fire stairs and lift over run.
 - Lobby area with awning covering lobby and BBQ area
 - Accessible WC.
 - Plant room
 - Water tank
 - Tables and seating.

Development Summary

22. A numerical summary of the proposed development is provided as follows:

Element	Proposal
Height	• 42.1m

Levels	<ul style="list-style-type: none"> • Twelve (12) storeys
Apartments	<p>49 residential apartments comprised as follows:</p> <ul style="list-style-type: none"> • 2 x studio apartments. • 10 x 1 bedroom apartments (21.3%). • 35 x 2 bedroom apartments (70.2%). • 2 x 3 bedroom apartments (8.5%). <p>Note There are two (2) x three (3) bedroom dual key apartments which contain a studio and a two (2) bedroom apartment. The ADG requires that for the purpose of unit mix these units are treated as separate sole occupancy units.</p>
Commercial floor area	<ul style="list-style-type: none"> • Ground floor - 287sqm • First floor - 384sqm <p>Total of 671sqm.</p>
Car parking spaces	<p>75 car parking spaces comprising the following:</p> <ul style="list-style-type: none"> • 52 Residential spaces including five (5) accessible spaces. • 16 Retail spaces including one (1) accessible space. • 7 visitors spaces (including one (1) car wash bay/visitors space and one accessible space)
Bicycle parking spaces	<p>(25 bicycle spaces are required as follows: 4 commercial required 16 residential required 5 visitors required)</p>
Communal open space	618sqm (57%)
Solar access for apartments	98% - 2 hours between 9am -3pm (46 out of 47 apartments)
Cross ventilation for apartments	100% of units provide cross ventilation in the first nine storeys.

Background

23. A pre-lodgement meeting was held on 26 March 202. The key issues identified were as follows:
- Design quality principles;
 - Floor space ratio and building height;
 - Bulk & scale and overshadowing;
 - Railway Parade South controls;
 - Building entry & way finding;
 - Visual & acoustic privacy;
 - Landscaping and communal open space;
 - Waste management;
 - Active street frontage and balcony treatment;
 - Heritage; and
 - Housing choice and flexibility.
24. A formal letter was sent to the applicant on 1 May 2020 with specific details and requirements.
25. DA2020/0236 (subject application) was lodged to Council on 10 September 2020 seeking development consent for demolition works, site preparation and construction of a twelve storey (12) mixed use development in elevation comprising containing ground floor

commercial floor space, 11 first floor serviced apartments and 49 residential apartments above four (4) levels of basement containing 86 car spaces, roof top communal open space, landscaping and site works.

26. A Request for further information was sent to the applicant on 13 November 2020 to address a number of issues including Urban Design, Building Height, floor space, traffic and parking, waste management, landscaping requirements, additional details and clarification of information and a Detailed Site Investigation (DSI) report required to address the requirements of SEPP 55. A Remedial Action Plan (RAP) may be required depending on the outcome of the DSI.
27. Based on the outcomes of the request from Council for additional information, a number of issues were raised and have been considered by the applicant which resulted in the lodgement of amended plans and documentation. Amended plans now seek development consent for demolition works, site preparation and construction of a twelve (12) storey mixed use development containing ground floor and first floor commercial floor space and 49 residential apartments above three (3) levels of basement containing 75 car spaces, level 1 and roof top communal open space, landscaping and site works.

Site and Locality

28. The subject development site is known as 206 – 214 Railway Parade, Kogarah. The allotments and their legal descriptions are noted below:
- 206 Railway Parade – Lot 23 DP 2013.
 - 212 Railway Parade – Lot 24 DP 2013.
 - 214 Railway Parade – Lot 25 DP 2013.

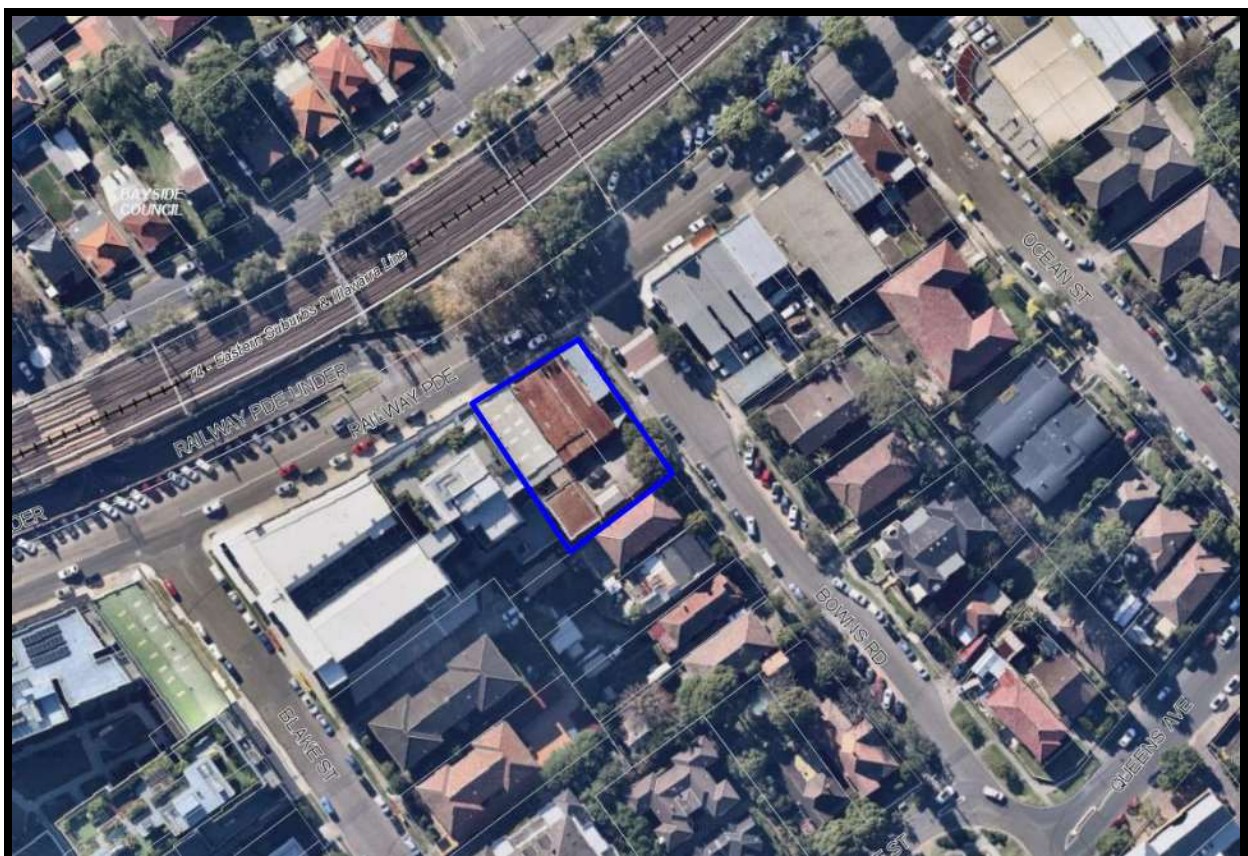


Figure 2: Aerial view of subject site outlined in blue (Source: Intramaps 2021)

29. It is a slightly irregular shaped allotment with a 28.575m frontage to Railway Parade, a 36.575m secondary street frontage to Bowns Road, a western side boundary of 38.635m with a rear boundary width of 29.135m. It is located on the southern corner of the intersection of Railway Parade and Bowns Road. The site has a total area of 1,081.3sqm and has a cross fall of approximately 1.8m from the southern to northern corner of the site.



Figure 3: Subject site as viewed from Railway Parade looking south

30. Situated on the development site are three (3) commercial buildings and four (4) outbuildings. 206 Railway Parade contains a two storey building that is being used as a dance studio. 212 Railway Parade contains a single storey building that is being used by a tool and die making shop and 214 Railway Parade contains a single storey building currently being used as a gymnasium and personal training premises.
31. The site is located within the Kogarah Town Centre in the Railway Parade South Precinct. The intention of the controls in this precinct is to create a defined street wall to Railway Parade. The proposed development includes all the sites identified in the preferred amalgamation pattern.
32. The subject site is bounded by Railway Parade to the north and Bowns Road to the east. The site is approximately 550m north of Carlton railway station and 600 metres south of Kogarah railway station and Kogarah CBD.
33. A car park for the buildings is located at the rear with access from Bowns Road.



Figure 4: Existing car park for the subject site commercial uses.



Figure 5: View of the site along Railway Parade.

Surrounding Development

34. The subject development site is being transformed from lower scale commercial developments to a high density mixed use development. This is as a result of the recent uplift in density and height.

35. To the north east on the opposite side of Bowns Road is 200-204 railway Parade. The site is currently occupied by a two storey heritage listed commercial building being used as a food premises, music school and dog salon. Further to the north east along Railway Parade are two storey commercial and light industrial premises.



Figure 6: Existing heritage building located at 200-204 Railway Parade

36. To the east on the opposite side of Bowns Road are 2 and 4 Bowns Road. 2 Bowns Road is occupied by a two storey apartment building and 4 Bowns Road a two storey dwelling house.
37. To the south of the site adjoining the subject development site is 1- 7 Bowns Road, which is currently occupied by four (4) single dwelling houses. A development consent was issued in August 2019 for the demolition of all dwellings and construction of a six storey residential flat building containing 55 apartments and two levels of basement car parking.
38. The subject site is located within an area that is zoned B4 Mixed Use. To the south from 1 Bowns Road to Bellevue Street the adjoining zone is R3 Medium Density Residential. A further transition to R2 Low Density Residential continues further south towards the Princes Highway where the buildings fronting the Princes Highway are zone R3 Medium Density Residential.



Figure 7: Existing building located at 1 Bowns Road, Kogarah.



Figure 8: Adjoining building at 218-222 Railway Parade in the background as viewed from Bowns Road.

39. Adjoining the site to the west is 218-222 Railway Parade, which contains a new ten (10) storey mixed use building which contains 45 apartments and a ground floor retail tenancy. The building has a north south orientation with no windows on the north east elevation.



Figure 9: Existing building at No 218-222 Railway Parade as viewed from Railway Parade.



Figure 10: Slip Road which connects to the tunnel that passes under the rail corridor.

40. To the north of the site across Railway Parade is the Eastern Suburbs and Illawarra Railway line. On the northern side of Railway Parade is a slip road which connects with a tunnel that passes under the railway corridor and provides vehicular access to the north.

Compliance and Assessment

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

State Environmental Planning Policy	Complies
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	Yes
State Environmental Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65)	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

42. The primary relevant aims and objectives of this plan are:

- *to maintain and improve the water quality and river flows of the Georges River and its tributaries and ensure that development is managed in a manner that is in keeping with the national, State, regional and local significance of the Catchment,*
- *to protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*
- *to ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
- *to establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment,*

43. The stormwater design was referred to Council's Development Engineer for review. The disposal of stormwater is considered to be consistent with the Council requirements for the disposal of stormwater in the catchment.
44. In summary, the proposal is consistent with the aims, objectives or purpose of the Regional Plan if effected in accordance with the recommended conditions of consent.

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

45. The aim of this policy is to facilitate the effective delivery of infrastructure across the State. The policy also examines and ensures that the acoustic performance of buildings adjoining the rail corridor or busy arterial roads is acceptable and internal amenity within apartments is reasonable given the impacts of adjoining infrastructure.

Clause 86 – Excavation in, above, below or adjacent to rail corridors

46. Clause 86 relates to proposed excavation works adjacent to rail corridors. Clause 86 states the following:

(1) This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land—

- (a) within, below or above a rail corridor, or*
- (b) within 25m (measured horizontally) of a rail corridor, or*
- (b1) within 25m (measured horizontally) of the ground directly below a rail corridor, or*
- (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.*

47. The proposal has been referred to Sydney trains and they have reviewed the proposal and provided their concurrence subject to condition of development provided which have been included in the consent conditions.

Clause 87 Impact of rail noise or vibration on no rail development

48. Clause 87 states the following:

- (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.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*
 - (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

49. The application was submitted with an acoustic report that has addressed the above and indicated that compliance can be achieved subject to compliance with the recommendations of the report.

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

50. State Environmental Planning Policy No. 55 - Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.
51. Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to carrying out of any development on that land and if the land is contaminated, it is satisfied that the land is suitable in its current state or will be suitable after remediation for the purpose for which the development is proposed to be carried out.
52. A Preliminary site investigation was undertaken by eiaustralia with the key findings of the PSI as follows:
- *The site covered a total area of 1081.3sqm and was comprised of three commercial properties with car parking spaces at grade (206-208 Railway Parade (Lot 23 in DP 2013), 210-212 Railway Parade (Lot 24 in DP 2013) and 214 Railway Parade (Lot 25 in DP 2013). At the time of this PSI, the buildings were being used as a dance studio, a tool machine shop and a fitness studio.*
 - *Review of historical information indicated that 210-212 Railway Parade had been used for residential purposes until 1965 (at least), after which a new (commercial) building was constructed. 206-208 and 214 Railway Parade had continuously been commercial properties since 1930 (at least), until the present time.*
 - *The on-site commercial activities included a dance studio, auction house, sale of baby products, injection moulding, spray painting and panel beating, tool machine shop (manufacture), automotive engine reconditioning, sale of pre packaged foods and a fitness studio. Safework NSW records indicated that an underground storage tank (UST; 10,000L) was installed on 206-208 Railway Parade, the occupant at that time being King Bros Engine Reconditioning Pty Ltd.*

- *Visual evidence of gross contamination was not observed on any part of the site.*
- *Surrounding land uses were largely unchanged since 1930, consisting of residential and commercial properties, with railway lines to the northwest of the site.*
- *The site and neighbouring properties were free of statutory notices and licensing agreements issued under the Contaminated Land Management Act 1997 and Protection of the Environment Operations Act 1997. The site was not included on the List of NSW Contaminated Sites Notified to the EPA.*
- *The conceptual site model (CSM) identified a medium contamination risk for the site, mainly associated with the previous on-site commercial activities, the UST and the importation of filling from unknown origin(s).*

Conclusion

53. Based on the findings of this PSI, conducted in accordance with the scope agreed with the client and EI's Statement of Limitations (Section 8) there was potential for contamination to exist on the site. A detailed (Phase 2) investigation was therefore required, to further characterise the soils and groundwater at the site and determine suitability of the land for residential use.
54. Following this a site investigation was undertaken and Remedial Action Plan (RAP) was prepared by Canopy Enterprises. As part of this report a Remediation Action Plan (RAP) was developed in accordance with the relevant regulatory requirements to address the identified contention issues and render the site suitable for the proposed land use.
55. This investigation has been undertaken in consideration of and deference to the relevant guidelines and regulatory documents as presented in Section 7 (among others), with a regard for the project and site specific circumstances. In particular *the Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites (EPA 2020) (Reporting Guidelines)* and SEPP 55.
56. Based on the available data presented in this Report and subject to the recommendations as stated in SI-RAP herein and actions being satisfactorily implemented, it is Canopy's opinion in alignment with Clause 7 (1) (c) of SEPP 55, that contamination at the Site is not present at levels that would preclude the Site from being made suitable for the proposed land use.
57. The application is accompanied by a Remediation Action Plan prepared by Canopy Enterprises. The report concluded that the site can be made suitable for the intended land use subject to appropriate remediation in accordance with the RAP and SEPP 55. The application was assessed by Council's delegate and was supported subject to specific conditions.
58. The full suite of findings and conclusions and recommendations are outlined in Section 11 respectively, however the salient points can be summarised as follows:
 1. *The site is located in a mixed commercial and residential area, with a size of approximately 1,081sqm;*
 2. *The site history can reasonably be summarised as a block of land that has been used mainly for commercial and industrial uses since the mid of the beginning of the 20th century.*
 3. *No stress was observed in the vegetation and no surface staining or olfactory evidence of contamination was encountered. Boiler ash and slag material ubiquitous to the general area was observed to be present in fill material in some samples;*

4. *No groundwater was encountered as part of the investigation (maximum depth reached was 0.8 m bgl);*
5. *The standing water level in a well installed as part of a previous geotechnical investigation was measured to be at 5.23 mbgl;*
6. *A sample obtained from the groundwater was free of contaminants of concern;*
7. *Groundwater is considered to be unlikely to be impacted by contamination present at the site's subsurface;*
8. *Four boreholes were drilled across the Site as part of the investigation's sampling program, with a total of three soil samples submitted to the laboratory and analysed for a broad range of contaminants;*
9. *A fill layer was present to a depth of approximately 0.6 to 0.8 m below ground level (bgl) in the shallow subsurface in the two borings in the southern (accessible) portion of the Site; This fill layer was underlain by dark weathered sandstone;*
10. *No visual or olfactory evidence for contamination was noticed in any of the samples other than the presence of possible ash and slag material;*
11. *Concentrations of all Contaminants of Potential Concern in all samples were below the Health Investigation Levels for residential land use with minimal soil access (HIL-B);*
12. *It is recommended that:*
 - *The remaining data gaps outlined in Section 9.1.3 are closed via the implementation of the attached Remediation Action Plan (RAP); and*
 - *A validation report is prepared outlining the results of the works undertaken during the implementation of the RAP; and*
13. *Subject to the satisfactory implementation of the Remedial Action Plan during the preconstruction phase as outlined herein, it is considered the Site will be suitable for the proposed land use.*

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

59. Regulations under the Act have established a scheme to encourage sustainable residential development (***the BASIX scheme***) under which:
 - (a) an application for a development consent, complying development certificate or construction certificate in relation to certain kinds of residential development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and
 - (b) the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled.
- (2) The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.
- (3) This Policy achieves its aim by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.
60. A BASIX Certificate prepared by Credwell Energy, dated 3 June 2021, certificate number 1099981M_03, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

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

61. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.

62. The Vegetation SEPP applies to clearing of:
- (a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
 - (b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).
63. The objectives of the SEPP are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 5(1) of the SEPP as the site is within both Georges River Council and the SP2 Infrastructure zone.
64. Pursuant to Clause 8(1) of the SEPP, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
65. Three (3) trees are nominated to be removed as part of the works. The application was referred to Council's Consultant Arborist who concurred with the findings of the applicants Arborist Report and supported the tree removal subject to replacement planting of trees and site landscaping in accordance with the landscape plan provided. In addition, two (2) of these trees were required to be valued under the Thyer method of tree valuation. This has been completed and reviewed by Council's Consultant Arborist and has been included within the conditions of consent as requiring to be paid prior to the issues of the Construction Certificate.
66. Council's Consultant arborist has reviewed all the relevant documentation and plans and has concurred with the proposed landscaping outcome.

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

67. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (State Environmental Planning Policy 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three (3) or more storeys in height and containing at least four (4) dwellings. Amendment 3 to State Environmental Planning Policy 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, State Environmental Planning Policy 65 applies.
68. Clause 28(2) of State Environmental Planning Policy 65 requires that the consent authority take into consideration the following as part of the determination of DAs to which State Environmental Planning Policy 65 applies:
- a) *the advice (if any) obtained from the design review panel, and*
 - b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
 - c) *the Apartment Design Guide.*

69. The application has been reviewed having regard to the criterion and design principles as set out in the ADG.
70. The tables below provide a comprehensive assessment against the principles, objectives and controls of State Environmental Planning Policy No 65 and the ADG.

Table - Application of State Environmental Planning Policy 65

Clause	Standard	Proposal	Complies
3. Definitions	<p>Complies with definition of “Residential Apartment Development” (RAD) Section 4 (1) (Application of Policy) of the State Environmental Planning Policy 65 states that the policy <i>“applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:</i></p> <p><i>(a) the development consists of any of the following:</i></p> <p><i>(i) the erection of a new building,</i></p> <p><i>(ii) the substantial redevelopment or the substantial refurbishment of an existing building,</i></p> <p><i>(iii) the conversion of an existing building, and</i></p> <p><i>(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and</i></p> <p><i>(c) the building</i></p>	<p>Complies with definition.</p> <p>The proposal is for the construction of a mixed use twelve (12) storey building with three levels of basement.</p>	Yes

	<i>concerned contains at least 4 or more dwellings."</i>		
4. Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the State Environmental Planning Policy includes mixed use developments.	The development proposes the construction of a new shop top housing development, which satisfies the definition of the policy.	Yes
Clause 50 - Development Applications (E P & A Regulation 2000)	Design verification statement provided by qualified designer. Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect Rachid Andary (Nominated Architect No.8627).	Yes

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71. A design verification statement has been provided by Rachid Andary (Registration No 8627) of Fuse Architects in accordance with Clause 50 of the *Environmental Planning and Assessment Regulation 2000*.
72. The application was referred to an Independent Urban Design and Architecture Consultancy, GM Urban Design and Architecture (GMU) to carry out an assessment of the proposal against the provisions of SEPP 65 and the ADG. An assessment of the proposal has been undertaken taking into consideration the design quality of the development. Those comments are provided below:

"The key issues relate to built form, streetscape character and amenity impacts as summarised in the comments below:

- The bulk and scale of the proposed development is considered excessive, exceeding the scale of adjoining development. The site is constrained, being located on the visually prominent corner with a zone interface to the south and therefore requires a responsive built form to ensure harmonious streetscape proportions and good amenity outcomes. We also note the local heritage item located to the east at the corner of Railway Parade and Bowns Street which, subject to input from Council's heritage officer, may also need to be considered.*
- The proposal is taller than nearby development along Railway Parade. The scale is inconsistent with the existing streetscape both in terms of height in meters and the number of storeys. The upper penthouse level as seen in the northern elevation (DA 202) has a greater floor to floor height of approximately 4m, resulting in an overall building height of 42.3m which is in breach of the existing height control applying to the subject site. The proposed built form is 1-2 levels*

taller than the next door development (Nos. 216-222 Railway Parade) and exceeds the current control by approximately 3.3m. More appropriate streetscape proportions would be achieved by deleting Level 11 and relocating the penthouse level to Level 10. This would assist in reducing the overall building scale and reduce visual prominence by providing a scale closer to the neighbouring development to the west.

- *The built form lacks a clear distinction between the base and top of the building, contrary to ADG objectives (4M-1), presenting with bulky proportions. The proposal attempts to align with the horizontal elements in the podium of the adjacent property to the west fronting Railway Parade. However, improved built form proportions would be achieved by wrapping the horizontal element around the corner, continuing along the Bowns Road frontage. A change in texture and materiality to the podium will further assist in defining the base of the building in response to the pedestrian interface.*
- *The recent developments to the west of the site along Railway Parade incorporate streetwall elements and a secondary setback above, creating a built form 'waist' which articulates the tower form as a separate element to the streetwall. We recommend the proposal be amended to provide a streetwall for the lower three levels, as a consistent response to a more human scale along the pedestrian environment. The streetwall should integrate vertical articulation in response to the width of the traditional shopfronts and to the recent development to the west which incorporates streetwalls articulated as 'bays'.*
- *The driveway and the stairway to Level 1 extend to the edge of the southern boundary as seen in the ground floor plan (DA 105). A 3m setback is sought by the KDCP and should be provided in response to the zone interface. The setback would allow for landscaping opportunities to complement and enhance the existing residential streetscape character along Bowns Road.*
- *We note that the proposal provides a stepped form to the southern interface, transitioning to the adjoining R3 zone. The ziggurat form does not respond well to the corner location, adding visual bulk. A simplified built form transition should be provided to the zone interface to avoid visual dominance. The proposal should be amended to meet ADG (2F) guidelines for minimum building separation. A reduction in the number of 'steps' would improve the built form profile to Railway Parade and Bowns Road. These adjustments to the form could successfully be integrated with a streetwall component, further to previous comments.*
- *An open corridor concept is proposed for Levels 2-12. This arrangement is not supported as it could result in visual and acoustic impacts to the adjacent properties. The circulation areas add to the visual bulk and we note that the proposal results in an FSR exceedance of 0.2:1 (approximately 266 sqm), excluding the open corridors. We recommend the corridors be enclosed within the building envelope to improve residential amenity and minimise adverse impacts. The layouts should be adjusted to remove reliance on the corridor for ventilation as it would result in privacy impacts.*
- *According to the ground floor plan (DA 105) the proposed retail suite is further inset from the required 2m setback as per the KDCP. To make the podium form more pronounced and to maximise activation to Railway Parade, the building line*

should be brought further forward at the ground floor level to align with the setback line. The streetwall proportion should respond to the existing alignment of the streetwall established along Railway Parade as well as to the heritage item located on No. 200 Railway Parade. Subject to heritage advice, the facade articulation may also need to reference key datum lines of the heritage item on the opposite corner.

- *Due to the topography of the area and the curvilinear arrangement of Railway Parade, the subject site is visible from a number of vantage points. As seen in the western elevation (DA 203), blank walls are exposed at the top two levels beyond the alignment of the adjacent development at Nos. 216-222 Railway Parade. These will be visible to the public domain including perpendicular streets (Blake Street). Due to the recent development at Nos. 216-222 Railway Parade, the blank wall is likely to be exposed for the mid- to longterm future, detracting from the visual character of the area. The depth of the building footprint at the upper levels (from levels 2-12) extends beyond the alignment established by No 216-222 Railway Parade, exposing the blank walls. The outcome would result in adverse visual impacts to surrounding streets and pending the orientation of habitable rooms within the neighbouring development, it may also adversely impact residential amenity. A reduction in the depth of the building footprint in this location (unit 201 and other units in a similar location on the levels above) to align with the building line of the adjacent development would provide an improved outcome.*
- *The serviced apartments on Level 1, along the western boundary (namely 1111, 1101, 1109 and 1110 (DA 106) include bedrooms without windows which is not supported.*
- *Levels 2-4 include a number of study areas with windows orientated to the open corridor. These areas could easily be converted into habitable rooms with no windows. The arrangement is not supported as it fails to meet ADG guidelines (4F-1) and would compromise residential privacy and security issues resulting from windows orientated to the common circulation area.*
- *The layout and arrangement of balconies fronting Railway Parade may result in overlooking and privacy impact to balconies of the adjoining units. The layouts should be reconfigured to prevent privacy impact.*
- *The location of the communal open space on Level 2 (DA 107) above the podium level adjoins the southern boundary and may result in adverse privacy impact to the adjacent residential development at Nos. 1-7 Bowns Road. A 3m setback along the southern boundary would reduce the potential for overlooking.*
- *According to the SEE (prepared by City Plan dated May 2020), the unit sizes meet ADG guidelines but fail to satisfy KDCP (Clause 4.13). We note that the unit sizes and room depth are not appropriately annotated.*
- *The building setback to the southern boundary is not sufficiently annotated on the architectural plans.”*

73. The plans have been amended and addressed a number of the above concerns raised. The amended scheme is considered to be an appropriate urban design outcome for the subject development site given the development controls permitted.

74. Clause 28 of SEPP 65 requires the consent authority to take into consideration the provisions of the Apartment Design Code. The table below assesses the proposal against these provisions.

Table - Design considerations of Part 3 and Part 4 of the Apartment Design Guide (ADG)

Clause	Standard	Proposal	Complies
3D - Communal open space	<p>1. Communal open space has a minimum area equal to 25% of the site.</p> <p>- Where it cannot be provided on ground level it should be provided on a podium or roof</p> <ul style="list-style-type: none"> • Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should: <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space 	618sqm (57%) (Includes 293sqm of communal open space on level 01 and 325sqm of communal open space on the roof top)	<p>Yes</p> <p>Numerically compliant.</p> <p>The roof top communal open space will achieve a minimum of 2 hours (or more) of solar access throughout the day in midwinter.</p>
	2. Developments achieve a minimum of 50% direct sunlight to the	Complies	The roof top communal open space will achieve a minimum of 2 hours

	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)		(or more) of solar access throughout the day in midwinter.
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>Where the site has an area of between 650sqm – 1,500sqm = 3m min dimension</p> <p>Min deep soil area of 7% (75.69sqm)</p>	Nil proposed	<p>No, however acceptable. The provision of the deep soil zone is limited by the footprint of the basement that is required to cater for the parking for the development.</p> <p>Landscaping is provided at street level and within the Level 01 communal open space area together with the rooftop communal open space area. This area includes planting of trees and generous vegetation planting. Overall, the landscaping proposed provides good amenity for future users of this space.</p>
3F- Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4</p>	<p>Apartment privacy has been coordinated throughout the proposals to balance use, solar access and cross ventilation as well as communal open space.</p> <p>The rear setback of the building to the south eastern boundary varies from between 3m to 14.9m. The rear setbacks are as follows:</p> <p>Rear setbacks:</p>	No, however considered acceptable see discussion below.

	storeys) Habitable - 6m Non-habitable – 3m Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m Over 25m (9+ storeys) Habitable - 12m Non habitable – 6m	Level 02-03 – 3m to 14.93m Level 04 – 07 – 3m to 14.9m Level 08- 4.59 – 14.93m Level 09 – 5.95m to 14.9m Level 10- 10m to 14.9m Level 11 - 12.99m to 14.9m The use of blank walls ensures privacy is maintained along the south western boundary. This blank wall aligns with the existing blank wall of the adjoining property at No 218-222 Railway Parade. Setbacks and separation distances to the street frontages of the site are dictated by the Kogarah DCP.	
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Comment on Separation Distances (3F Visual Privacy)

South eastern boundary (Rear boundary) – The apartments located at the rear of the building on levels 02 to level 07 are setback between 3m and 14.93m to the boundary. On Levels 02, 03 and 04, it is only the windows of the studies of apartments 206, 306 and 406 which fail to provide the 6m separation. It is noted that these windows contain translucent glass to minimise any impacts associated with privacy.

In addition, the balconies of apartments 206, 306, 406, 506 and 606, which have frontage to Bowns Road are located 3m from the boundary. To maintain privacy it is required that a privacy screen be provided to the south eastern side of the balconies.

Apartment 704 on level 07, although still only setback 3m, a planter box separates the balcony from the rear boundary to ensure privacy will be afforded between properties.

Apartment 804 on Level 08, the planer box is setback 4.59m with the balcony located 6.1m from the rear boundary; once again ensuring privacy is maintained between the properties through the planter box and associated screen planting.

Apartment 904 on Level 09, the planer box is setback 5.95m with the balcony located 7.46m from the rear boundary; once again ensuring privacy is maintained between the properties through the planter box and associated screen planting.

Apartment 1003 on Level 10, the planer box is setback 10m with the balcony located 11.55m from the rear boundary; once again ensuring privacy is maintained between properties through the planter box and associated screen planting.

Apartment 1103 on Level 11 is fully compliant with the separation distances of the ADG providing a setback of 12.99m to the front of the planter box.

All other apartments are setback 14.9m from the rear boundary meeting the minimum separation requirements of the ADG.

South western side boundary - The proposed development contains blank walls and will align with the blank wall of the adjoining building. No separation is required between blank walls and compliance has been achieved.

The amended plans submitted provide adequate separation distances between neighbouring sites to ensure reasonable privacy is achieved

3G – Pedestrian Access and entries	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>Residential apartments and the commercial premises are accessed via Railway Parade, with vehicular access from Bowns Road.</p> <p>The streetscape is activated by the commercial premises which has frontage to both Bowns Road and Railway Parade.</p>	Yes
3H-Vehicle Access	<p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>	<p>The vehicular access point is located off Bowns Road</p>	Yes
3J-Bicycle and car 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; or - On land zoned and sites within 400m of land zoned B3 Commercial 	<p>The site is located within 800m of Carlton and Kogarah Railway station as such the RMS provisions are applicable to this assessment.</p> <p>Proposal relies on the following car parking provisions;</p> <ul style="list-style-type: none"> • 12 x 1 bedroom units = 0.4 x 12 = 4.8 spaces • 35 x 2 bedroom units = 0.7 x 35 = 24.5 spaces • 2 x 3 bedroom units = 1.2 x 2 = 2.4 spaces 	<p>The car parking arrangement and number of car spaces provided complies with the ADG/RMS requirements.</p> <p>The proposal complies with the numerical requirements of the ADG given the accessible location of the site.</p>

	<p>Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Roads and Maritime Services Guide to Traffic Generating Developments (RMS), or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>In accordance with Section 5.4.3 (High Density Residential Flat Buildings) of the RMS Traffic Generating Guidelines. The site is located within the “Metropolitan Regional (CBD) Centres” and the following provisions apply;</p> <p>0.4 spaces per 1 bedroom unit 0.7 spaces per 2 bedroom unit 1.2 spaces per 3 bedroom unit 1 space per 7 units (visitor parking)</p> <p>The provision of at least one loading dock for residential use is desirable, although a dock intended for</p>	<p>Residential spaces required = 32 spaces</p> <p>Visitor total = 47/7 = 7 spaces required</p> <p>The ADG requires that the dual key apartments be treated as separate SOUs for the purpose of unit mix. An assessment of parking rates using the dual key apartments as 3 bedroom apartments results in identical parking requirements as shown below:</p> <ul style="list-style-type: none"> • 10 x 1 bedroom units = 0.4 x 10 = 4 spaces • 33 x 2 bedroom units = 0.7 x 33 = 23.1 spaces • 4 x 3 bedroom units = 1.2 x 4 = 4.8 spaces <p>Visitor total = 49/7 = 7 spaces required</p> <p>The proposal requires a total of 39 off-street car parking spaces for residents and visitors.</p> <p>The proposal provides a total of 59 car parking spaces for residents and visitors.</p> <p>The following parking has also been provided:</p> <p>16 spaces have been provided for retail/commercial</p> <p>In total the development requires a total of 55 car parking spaces.</p> <p>A total of 75 car parking</p>	
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	commercial uses may be sufficient. 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. The car parking needs for a development must be provided off street	spaces have been provided. The off street car parking provision exceeds the requirements of RMS/ADG provisions. A loading dock has been provided and accessed via Bowns Road	
4A- Solar and daylight access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter	A minimum of 98% of apartments receive a minimum of 2 hours of solar access during mid-winter. Only unit 201 does not achieve the minimum 2 hours.	Complies
4B- Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass	All apartments have been designed to comply with minimum cross ventilation requirements. No apartment exceeds 18m in depth.	Yes Yes

	<p>line to glass line</p> <p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths</p>	Every apartment has a dual aspect.	Yes
4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable rooms = 2.4m</p> <p>3.3m for ground floor and first floor in mixed use areas to promote flexibility of use.</p>	<p>A minimum 3.05m floor to floor height has been provided to enable a minimum 2.7m ceiling height to be achieved to the residential component.</p> <p>The ground floor provides a floor to floor height of 4.53m which enables a minimum 3.3m to be achieved on the ground floor. Note: The first floor commercial space provides a floor to floor height of 3.05m.</p>	<p>Yes</p> <p>No, however the ground floor height will be compliant and the ceiling height proposed for the first floor is considered acceptable even though not numerically compliant.</p>
<p><u>Variation to 3.3m ceiling height for first floor of mixed use development</u> The ground floor to floor height will enable a minimum ceiling height of 3.3m. The first floor commercial tenancy has a floor to floor height of 3.05m, which does not meet the desired 3.3m ceiling height for a mixed use building. The ceiling height as proposed will not affect its usability or adaptability of various uses.</p>			
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>The minimum internal areas include only one</p>	<p>One bedroom units have minimum areas of 50sqm-61sqm.</p> <p>Two bedroom units have minimum area of 76-78sqm.</p> <p>Three bedroom units have minimum internal areas of</p>	Complies

	bathroom. Additional bathrooms increase the minimum internal area by 5sqm each	107sqm-108sqm.	
	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	Every habitable room has window openings larger than 10% of the floor area of the room area.	Complies
4D-2 Apartment size and layout	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Satisfactory With the minimum floor to ceiling heights complying with the 2.7m minimum, all habitable room depths satisfy the minimum requirements.	Complies
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	The apartments have open plan living/dining room layouts.	Complies
4D-3 Apartment size and layout	Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space).	All master bedrooms have a minimum internal size of 10sqm.	Complies
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have minimum dimensions of 3m	Complies
	Living rooms or combined living/dining rooms have a minimum width of: -3.6m for studio and 1 bedroom	All living rooms have minimum widths of 4m.	Complies

	- 4m for 2 and 3 bedroom apartments		
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies	Yes
<p><u>Comment on apartment flexibility</u></p> <p>The ADG provides design guidance and encourage apartment layouts that allow flexibility over time. The proposed development includes two (2) x three (3) bedroom dual key apartments. These 3 bedroom apartments contain a layout that can be adapted to be used separately as a studio apartment and a 2 bedroom apartment. The apartments have been designed to allow future adaptation to accommodate the occupants needs. The flexible apartment design allows the apartment to accommodate a diverse range of lifestyle needs such as different household structures, live/work housing arrangements and future changes in use.</p>			
4E- Private Open space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth</p> <p>-2 bedroom = 10sqm/2m depth</p> <p>-3+ bedroom = 12sqm/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	<p>The proposed balconies and terraces for all apartments exceed the minimum sizes.</p> <p>Achieved. (9 - 32sqm/ min 2m)</p> <p>Achieved. (11 - 41sqm/ min 2m)</p> <p>Achieved. (38 - 95sqm/ min 2.4)</p> <p>Noted and applied in the calculation.</p>	<p>Complies</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</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	No ground floor apartments proposed.	Yes
4F- Common circulation	The maximum number of	No more than six (6) units access the lift from any	Complies

areas	apartments off a circulation core on a single level is eight	one core on a single level in line with the ADG.	
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	The proposed development contains more than 10 storeys, has 49 apartments and only has one lift for the residents. There is a commercial lift provided and a condition of consent will be imposed requiring that this lift is constructed to enable access to all levels.	No, however considered acceptable. No more than six (6) apartments are located on each level.
4G- Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m³ 2 bedroom – 8m³ 3 bedroom – 10m³</p> <p>At least 50% of storage is to be located within the apartment.</p>	<p>Each unit is provided with sufficient storage space with at least 50% located in individual units. The remaining is located in a dedicated secure location within the residential areas of the basement.</p> <p>Storage spaces within apartments are located as part of a holistic design approach and integrated into the overall layout.</p>	Yes
4H- Acoustic Privacy	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.</p> <p>Window and door openings are generally orientated away from noise sources</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above</p>	<p>Building separation, orientation and arrangements are designed to mitigate noise pollution with openings shielded through setbacks and other arrangements from noise sources.</p> <p>Recommendations have been provided to ensure separation between buildings complies. In addition the building must comply with the specific requirements of the NCC – BCA.</p> <p>Internal layouts further work to mitigate noise.</p> <p>The application is accompanied by an</p>	Complies

	quieter areas Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	acoustic report addressing potential noises issues on the site from the roadways and the train line, from traffic generation and vehicle movements, noise from commercial usage and from mechanical plant. Recommendations of the report are to be implemented in the build.	
4J – Noise and Pollution	To minimise impacts the following design solutions may be used: <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 	Site layout and floor plan design seeks to minimise acoustic disruption on the enjoyment of the future residents/users of the development. The Communal open on level 01 is centrally located within the development and is shielded from Railway Parade and Bowns Parade by the proposed building. Vehicle entries are located and designed to minimise further noise impacts and the placement of non-residential uses aids in separating residents from noise sources. The design incorporates seals to prevent noise transfer through gaps, acoustic glazing, and other measures where necessary to attenuate noise impacts on apartments.	Yes
4K – Apartment Mix	A range of apartment types and sizes is provided to cater for different household types	The development offers a mix of 1, 2 and 3 bedroom apartments. <ul style="list-style-type: none"> • 2 x studio apartments (4.1%) 	Complies

	<p>now and into the future</p> <p>The apartment mix is distributed to suitable locations within the building</p>	<ul style="list-style-type: none"> • 10 x 1 bedroom apartments (20.4%) • 35 x 2 bedroom apartments (71.4%) • 2 x 3 bedroom apartments (4.1%) <p>The mix is considered to be acceptable and appropriate.</p>	
4L – Ground Floor Apartments	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	No ground floor apartments proposed	N/A
4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The façade treatments as amended and the overall aesthetic is considered to be well resolved and is consistent with the desired streetscape character.	Yes
4N – roof design	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p> <p>Incorporates sustainability features.</p>	The roof is a modern element that is generally consistent with new developments of this scale and form. It includes a communal area on the roof which is a benefit for future occupants.	Complies
4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	<p>A detailed landscape design has been prepared which compliments the natural and cultural features of the area and streetscape.</p> <p>Planting is provided throughout the design to</p>	Yes

		create a welcoming, green and bio-diverse environment. This includes street edge planting along Bowns Road and Railway Parade. The range and type of species and planting is consistent with the requirements of the ADG and DCP.	
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>Planting zones have been integrated into the design to ensure appropriate growing conditions; drainage and placement are facilitated as well as an attractive, welcoming environment.</p> <p>Planted spaces are designed as part of the overall architectural approach using planters and landscaped spaces in combination to achieve an integrated design.</p>	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	<p>The proposal provides two (2) x three (3) bedroom dual key apartments, which can be adapted to be used as a studio apartment and a two (2) bedroom apartment. This design allows for a variety of configurations including home office or separate tenancy.</p> <p>Note: Dual key apartments which are separate but on the same title are regarded as two sole occupancy units for the purposes of the BCA and for calculating dwelling mix.</p>	Complies
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary,	This is a new development.	N/A

	provide residential amenity while not precluding future adaptive reuse.		
4S Mixed Use	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	<p>Located within the B4 Mixed-Use zones of the Railway Parade South precinct area of the Kogarah Town as designated within the KLEP and DCP, the proposal provides a range of uses that support the town centre.</p> <p>A range of public transport options, including bus and rail, are located within 550m, of the site as well as green open spaces.</p> <p>Within the development the ground level commercial use will create active frontages, encourage movement and curiosity, and contribute to the public domain.</p>	Yes
4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A compliant BASIX Certificate accompanies the application.	Yes
4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management	The development incorporates appropriate stormwater measures and Council's Development Engineers are satisfied with the design subject to conditions.	Yes

	systems are integrated into the site design		
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	Designated waste storage areas are provided in the basement for building users, with recycling facilities included. A bulk waste area for residents is also provided within the basement. Appropriate loading areas are provided to facilitate collection.	Yes
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates a mix of external finishes that require minimal maintenance.	Yes

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environmental State Environmental Planning Policy

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

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

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

Draft Remediation of Land State Environmental Planning Policy

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

- Provide a state-wide planning framework for the remediation of land;
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well;
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land;
- Clearly list the remediation works that require development consent;

- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

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

Draft Design and Place SEPP

79. The Draft Design and Place SEPP will repeal and replace SEPP No 65 – Design Quality of Residential Apartment Development and SEPP (Building Sustainability Index: BASIX) 2004. The explanation of intended effect of the draft SEPP was publicly exhibited in February/March 2021. Following submissions of the EIE the draft SEPP will be on public exhibition in late 2021.

Kogarah Local Environmental Plan 2012 (KLEP 2012)

80. The subject development site is zoned B4 Mixed Use under the KLEP 2012 as shown in Figure11 below.

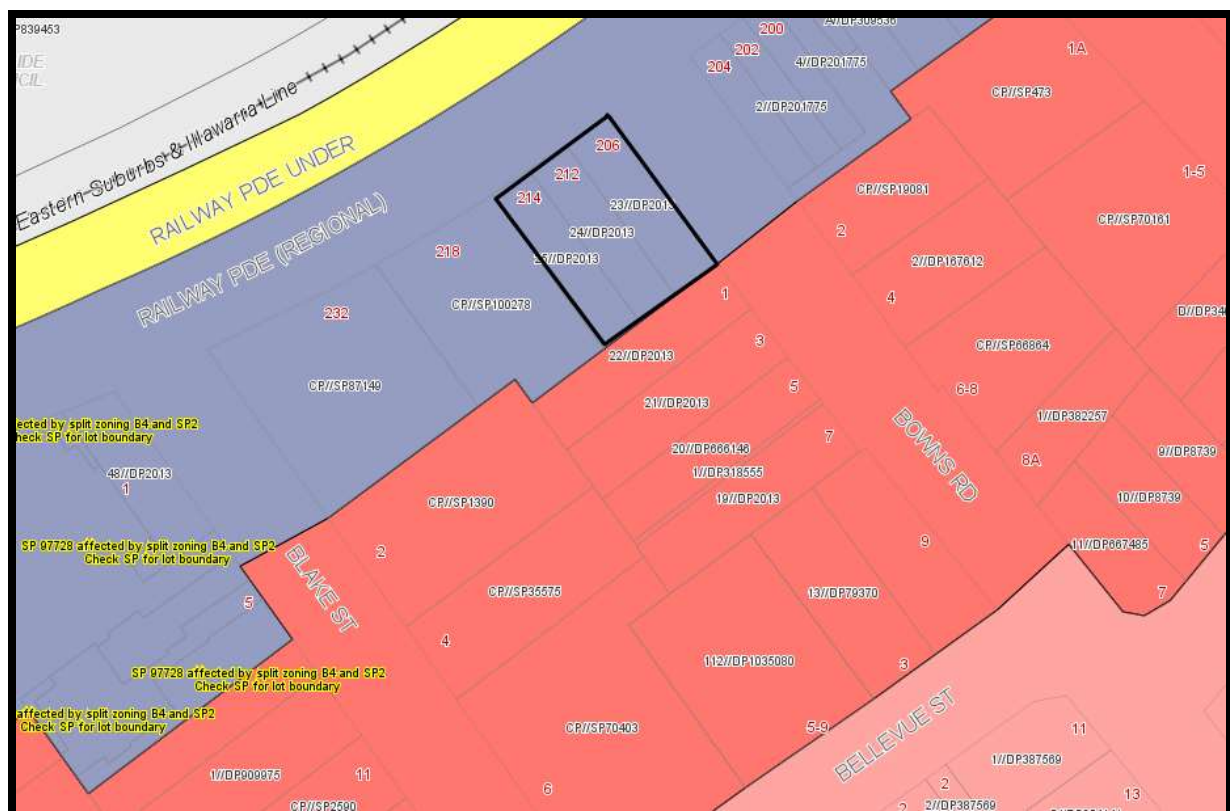


Figure 11: Zoning map (KLEP 2012) - Subject site outlined in black.

81. The objectives of the zone are as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To encourage development that contributes to economic growth and employment opportunities.
- To encourage development that contributes to an active, vibrant and sustainable town centre.
- To provide opportunities for residential development, where appropriate.

82. The B4 zoning is very much focused on providing a mixture of compatible land uses, promoting and integrating suitable business, office, residential, retail and other developments within accessible locations to maximise public transport and encourage walking and cycling. It seeks to encourage development that will contribute to an active, vibrant and sustainable town centre.
83. The subject site is located within the Kogarah Town Centre. Due to the sites close accessibility to Carlton and Kogarah railway stations and the local shopping precinct there is a clear expectation through the zoning to provide for retail and commercial uses to activate the street frontages and support the centre.
84. An assessment of the proposal against the relevant LEP clauses and standards is as follows:

Clause	Standard	Proposal	Complies
Part 2: Permitted or Prohibited Development			
2.2 Zoning of Land to which Plan applies	B4 Mixed Use	The proposal is defined as a shop top housing being a mixed use development comprising a residential flat building development and commercial premises which are permitted land uses in the B4 mixed use zone under KLEP 2012.	Yes
2.3 Zone objectives and Land use table	Objectives of zone to be satisfied	The proposal satisfies the objectives of the zone by providing a mixture of residential apartments and commercial premises which are consistent with the zone objectives and are suitable for the site not adversely impact neighbouring properties.	Yes
2.7 Demolition	Demolition requires development consent.	Consent for demolition of existing structures is sought.	Yes
Part 4: Principal Development Standards			
4.3 Height of Buildings	39m as identified on Height of Buildings Map.	The building exceeds the 39m height limit and achieves an overall height at the highest point of 42.1m. The lift overrun, fire stairs and associated services are the elements which exceed the height control.	No – see discussion below regarding Clause 4.6 Statement which has been submitted.
Note: Clause 4.6 objection has been submitted requesting variation to the development standards for the maximum building height. The areas of non-compliance include the lift over run, stairs, plant and awning.			
4.4 Floor Space Ratio	4:1 as identified on Floor Space Ratio Map	The proposed FSR is 4:1. The proposal complies with a GFA of 4,325sqm being and FSR of 4:1.	Yes

4.5 Calculations of Floor space and Site area	Floor space to be calculated in accordance with Clause.	Floor space has been calculated in accordance with this clause.	Yes
4.6 Exceptions to Development Standards	A clause 4.6 variation request has been submitted in relation to the proposed building height.		
Part 5: Miscellaneous Provisions			
5.6 Architectural roof features	Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.	No architectural roof feature proposed.	N/A
5.10 Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	<p>The site is not a heritage item and is not within a heritage conservation area.</p> <p>Schedule 5 of the KLEP identifies that item I105 is Subway shops located at 200 – 204 Railway Parade, Kogarah which is located to the north east of the development site.</p> <p>The heritage item is not immediately adjacent to the development site and is not adversely affected by the proposal. Council's DCP has specific requirements for development adjoining the heritage item. The proposed development is not considered to have an adverse impact upon this heritage item.</p>	Yes
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 any Acid Sulfate Soils.	Yes

6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	<p>The proposal includes the provision of three (3) levels of basement car parking.</p> <p>This is a standard amount of excavation and site works to accommodate a development of this scale and density.</p> <p>The proposed earthworks are not considered to be unreasonable for the use sort.</p>	Yes
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>to avoid significant adverse impacts on flood behaviour and the environment.</p>	The site is not affected by any flood planning restrictions.	Yes
6.5 Airspace Operations	<p>The objective of this clause is to protect airspace around airports.</p> <p>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</p>	<p>Approval has been provided to a maximum height of RL 70.32m AHD. This height is not breached by the development.</p>	Yes

	Division		
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Clause 4.6 Exceptions to development standards

Detailed assessment of variation to Clause 4.3 Height of Buildings

85. Clause 4.3 of the Kogarah Local Environmental Plan 2012 (KLEP) relates to the maximum permitted building height for a site and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 39m. Building Height is defined as:

“Building height (or height of building) means:

- (a) In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) In relation to the RL of a building the vertical distance from the Australian Height Datum to the highest point of the building*

Including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

86. The maximum height zones within the immediate area is shown below.

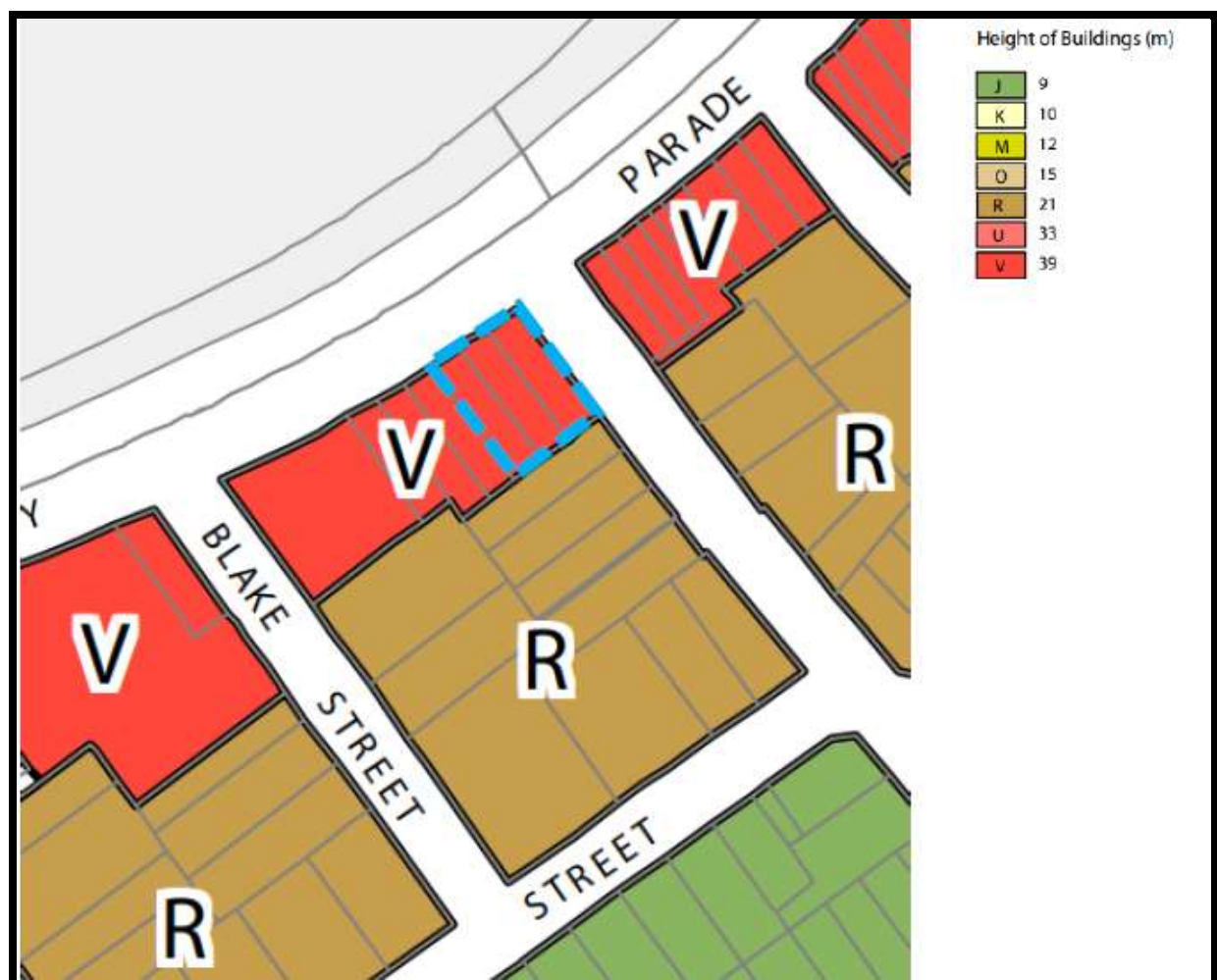


Figure 12: Extract from the KLEP height of buildings map, site outlined in blue

87. The location and extent of the non-compliance is provided in the images below (figures 13 and 14).

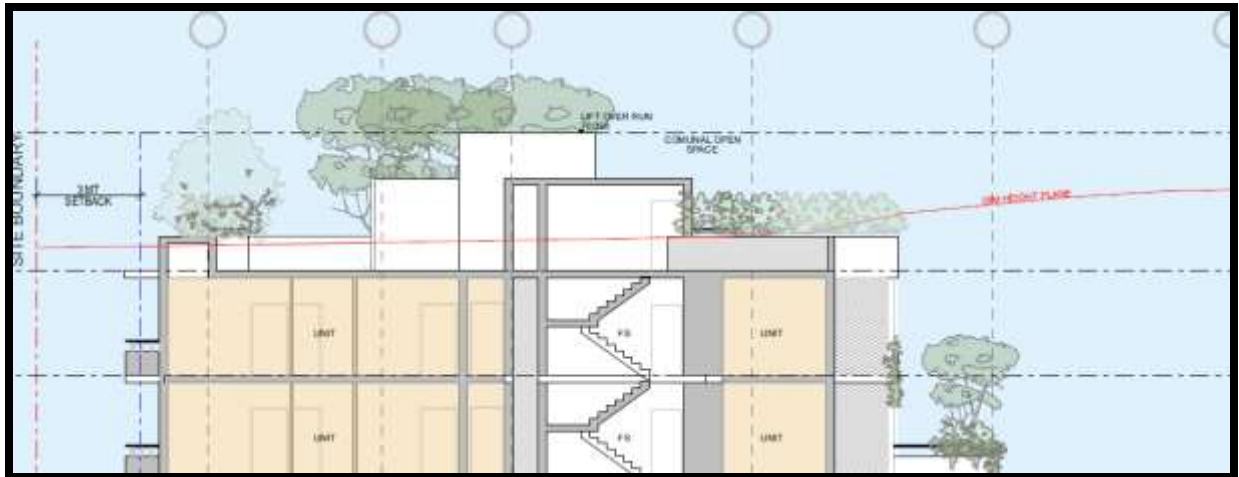


Figure 13: Section showing extent of non-compliance to height control.

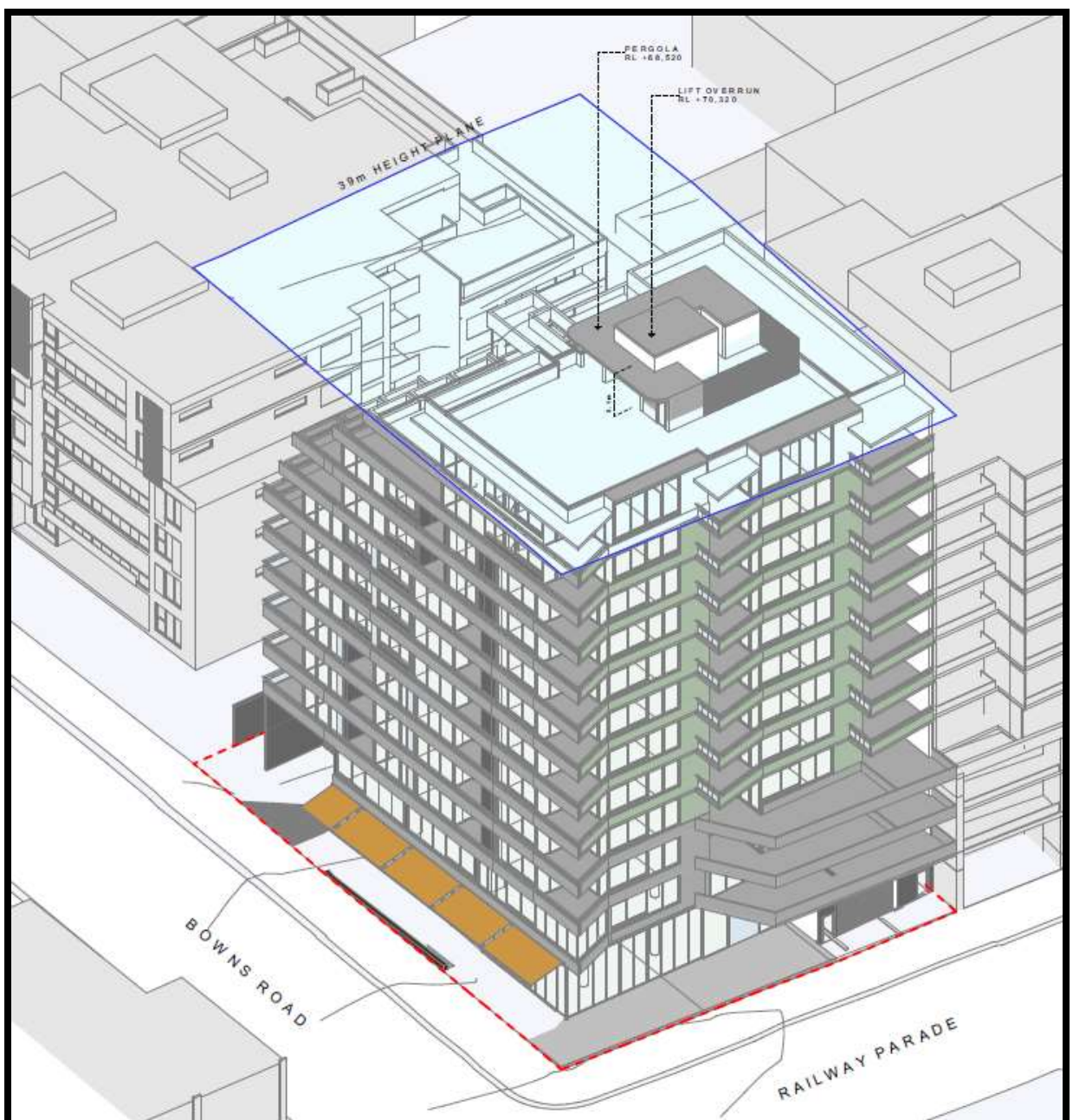


Figure 14: Height plan drawing which illustrates the components which are above the height control. (Source: Fuse Architects).

88. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The KLEP identifies a maximum height of 39m for the site and the proposed development will exceed the height by 3.1m. The height breach relates to the lift over run, fire stairs and associated services having a maximum RL of 70.32m, resulting in a 7.95% variation of the control.
89. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.
90. Clause 4.6(1) outlines the objectives of the standard which are to *"provide an appropriate degree of flexibility in applying certain development standards to particular development"* and *"to achieve better outcomes for and from development by allowing flexibility in particular circumstances"*.
91. Clause 4.6(3) states that:
- "Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - that there are sufficient environmental planning grounds to justify contravening the development standard"*
92. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of KLEP 2012. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

93. The Height of Buildings control under Clause 4.3 of the Kogarah Local Environment Plan 2012 is a development standard.

What are the underlying objectives of the development standard?

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

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

95. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6.
96. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under State Environmental Planning Policy 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

97. The judgment goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

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

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

99. The Clause 4.6 statement was prepared having regard to the recent court cases and their judgements.

100. Applicants comment: *“In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.*

101. *The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see Wehbe v Pittwater Council [2007] NSWLEC 827).*

102. *The five ways of establishing that compliance is unreasonable or unnecessary are:*

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*

3. *The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and*
5. *The zoning of the land is unreasonable or inappropriate.*

103. *It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (Wehbe v Pittwater Council [2007] NSWLEC 827, Initial Action Pty Limited v Woollahra Municipal Council [2018] NSWLEC 118 at [22] and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [28]).*

104. *We have considered each of the ways as follows.*

5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

105. *The following considers whether the objectives of the development standard are achieved notwithstanding the proposed variation.*

(a) to establish the maximum height for buildings,

106. *The substantial mass of the building is compliant with the maximum building height control. The sections in breach are minor in size and will not be highly visible from the surrounding public domain due to their central location within the floorplate. The proposed building will therefore present to the streetscape and be perceived as being compliant with the height control.*

107. *Therefore, the minor nature of the requested variation does not prevent the height of a substantial proportion of the building to be established in a compliant manner and satisfies this objective.*

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

108. Overshadowing

The areas of the building which contravene the 39 metre height standard are the centre of the roof plate allowing access to the roof top COS and services.

109. *The revised shadow diagrams demonstrate that the elements which contravene the height standard do not substantially increase overshadowing to surrounding sites. The shadows cast by the development have been centrally located on the roof top floorplate and will result in additional overshadowing being located within the roof of the proposal.*

110. *The amended roof top elements result in a revised shadow at 12pm. Refer to the table below.*

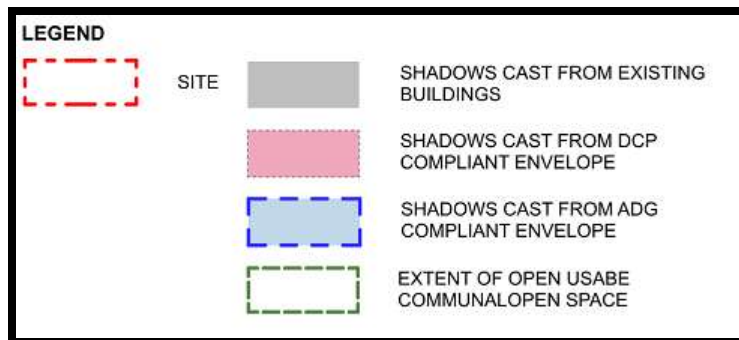


Figure 15: Shadow diagrams comparing shadowing from compliant to non-compliant scheme.

111. As shown above, there will be partial overshadowing of an existing carport (in blue, above) for 1 hour at 12pm during mid-winter, due to the revised roof top elements.
112. The shadow will not fall onto habitable space nor will it fall onto communal open space.
113. The revised roof top elements have been designed to provide access and amenity to future residents of the building and have been centrally located away from lot boundaries. Any overshadowing, visual, and privacy impacts have been minimised by limiting shadows to non-habitable and non-recreational spaces of 4 Blake Street, and the central

roof top location which minimises impacts to views to and from the revised roof top structure. Consistency with the objective is therefore achieved.

Visual Impact

114. The requested variation will have minimal visual impact on adjoining properties and public domains. The impact is mitigated by the central location of the key breaches and will not be directly perceivable from key locations at ground level.

Privacy

115. The requested variation consists of the lift overrun, lift plant and accessible bathroom. These elements are fully enclosed, located centrally and do not present additional opportunities for overlooking or acoustic emissions adjoining properties and open space areas.
116. The requested variation facilitates equitable access to the roof top level for residents to enjoy the communal open space. Further, the roof top communal open space does not result in adverse privacy impacts to adjoining development at 1-7 Bowns Road nor 218 Railway Parade.

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

117. The portion of the building that exceeds the height limit does not alter the scale or intensity of the development as these elements of the building will allow access to the roof and improve amenity for residents in the roof top COS.
118. The portion of the building that exceeds does not alter its height relationship with adjoining properties, being concentrated to the centre of the building and of limited visibility from ground level.
119. The breaches do not create any additional habitable area and as such do not increase the intensity of use of the site.
120. The objectives of the height development standard are achieved notwithstanding the proposed variation.
121. In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, therefore, compliance with the Height of Buildings development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.
122. For the sake of completeness, the other recognised ways are considered as follows.

5.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

123. The underlying objective or purpose is relevant to the development and therefore is not relied upon.

5.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

124. *The objective would not be defeated or thwarted if compliance was required, and therefore is not relied upon.*

5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or

125. *Council has permitted variations to the height standard on numerous occasions in circumstances comparable to those of this development (Table 4). Although the development standard is not said to have been virtually abandoned or destroyed, Council have shown flexibility in approving variations to the height standard that deliver improved development outcomes for future residents. The proposed variations will permit creation of a high amenity communal open space that is accessible to all residents.*

5.5. The zoning of the land is unreasonable or inappropriate.

126. *The zoning of the land is reasonable and appropriate and therefore is not relied upon."*
127. Officer's comment: In respect to Prestons CJ judgement the NSW Land and Environment Court and in accordance with a recent decision (Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118), the NSW Land and Environment Court has established a "five part test" for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation has established the five part test (as outlined above). In this case it is considered that the proposal satisfies the five part test for the following reasons:
- As previously discussed the objectives of the height standard are considered to be satisfied despite the non-compliance.
 - The underlying objective of the standard remains relevant and therefore compliance is necessary and warranted. The majority of the building sits within the height limit with the lift overrun, an ancillary operational structures exceeding the control. No habitable area or its associated roof element extends beyond the 39m height limit.
 - In this case the underlying objective will not be defeated or thwarted by the approval of the building. As the building has been designed to generally comply with the height standard. The height control will not be abandoned or destroyed through this or any recent approvals for similar mixed use developments.
 - The Mixed Use zone is an appropriate zoning for the site and this parcel of land has been recently and up-scaled. The proposed scale of the development is consistent with the anticipated height for developments within this zone and precinct.
128. The height control objectives articulate the ultimate function of the establishing the height of buildings. The maximum height for buildings on land within the former Kogarah Local Government Area is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 39m and the maximum height of the proposal is 42.15m. The proposal contravenes the standard, as a result the amount and degree of non-compliance and its resultant impact needs to be considered.
129. The proposed height of the development is considered to be in keeping with the desired future character of development within this precinct.

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

130. Applicants Comment: "In Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development

standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

131. *In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.*
132. *As discussed in Section 4, the elements of the development which contravene the height of buildings development standard is the centrally located structure containing the lift overrun, accessible bathroom, fire stair, area for screening and containing services such as the proposed plant and water tank, and awning structure, all of which contribute to residential amenity and which allow equitable access to the rooftop communal open space area.*
133. *The environmental planning grounds to justify the departure of the height standard are as follows:*
- *The height variation is confined to the roof top edge parapet, and the structure towards the centre of roof floorplate which comprises the lift overrun being 3.1 metres above the 39 metre height plane. The central elements are positioned away from the south eastern boundary of the site by 19 metres, over 9 metres from the north eastern boundary, and 13.5 metres from the north eastern boundary. This minimises the perception of visual bulk from adjacent buildings, from Railway Parade and from Bowns Road. The roof area above the 39 metre height limit is therefore minor and will be visually screened from ground level and adjacent development by parapets and on-structure planting surrounding the elements of the roof top area.*
 - *The building bulk has been concentrated to the north west to address the street corner and the height steps down towards the east to transition towards sites with a lower height standard along Bowns Road. This removes the opportunity for a COS area on the lower levels which is compliant with solar access provisions in the ADG. The proposed roof top communal open space will have high levels of residential amenity and will positively contribute to residents living experience by way of equitable access.*
 - *The proposed development is a 12-storey built form designed to be consistent with the envisioned form of development for the site being high density mixed use development within the B4 Mixed Use zone. It is also compatible with the existing development in the immediate context of the site and with the emerging pattern of development in the locality along Railway Parade. The proposed elements do not increase the total number of levels.*
 - *The location of the communal open space area on the roof results in fewer amenity impacts such as overlooking, with the space located away from the sites boundaries and above adjoining properties.*
 - *The shadow diagrams that form part of this Development Application indicate that the area of height variation will comprise partial overshadowing of an existing carport, limited to 12pm during midwinter. There will be no other adverse impacts associated with the revised roof top elements.*
 - *It is considered that the proposed elements which depart from the standard do not result in any unreasonable impact and is appropriate for the orderly and economic use of the land.*

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

134. Clause 4.6(4) states that:

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

(a) the consent authority is satisfied that:

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

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

135. Applicants comment: *“In this section it is explained how the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. This is required by clause 4.6(4)(a)(ii) of the LEP.*

136. *In section 5 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard, (see comments below).*

137. *The below considers whether the proposal is also consistent with the objectives of the zone.*

Objectives of the Zone

To provide a mixture of compatible land uses.

138. *The proposal involves ground floor retail, commercial premises on the first floor and residential uses above. These land uses are all permissible with consent in the B4 zone and are compatible on the site and with the existing and desired future land use character of neighbouring properties.*

139. *This objective is therefore achieved.*

To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

140. *The proposed uses listed above are suitable for its location. The site is located between Kogarah and Carlton Railway Stations on the T4 Illawarra Line and within 550m of the Kogarah Strategic Centre. The railway connects the site with other major centres including Sutherland, Hurstville and the Sydney CBD. Given its close proximity to these locations, the development on this site for commercial and residential uses encourages the use of active and public transportation.*

141. *This objective is therefore achieved.*

To encourage development that contributes to economic growth and employment opportunities.

142. *The proposal provides ground floor retail use and serviced apartments on the first floor. These uses, along with the construction of the development, provide additional employment opportunities in a highly accessible location and contributes to the economic growth of Kogarah.*

143. *This objective is therefore achieved.*

To encourage development that contributes to an active, vibrant and sustainable town centre.

144. *Although the proposal is not located within the Kogarah Strategic Centre, the proposal supports and contributes to this Centre by locating high density residential uses near the town centre.*

145. *This objective is therefore achieved.*

To provide opportunities for residential development, where appropriate.

146. *The proposal provides 47 residential apartment units in an accessible location close to two railway stations and the Kogarah Strategic Centre. The provision of the rooftop communal open space provides an area of high amenity, with ample solar access at all hours and is compliant with COS objectives in the ADG. There are minimal overshadowing, privacy and visual related impacts associated with this variation on surrounding properties.*

147. *This objective is therefore achieved.*

148. *As demonstrated in Table 5, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal in the public interest.”*

149. Officer’s comment: The non-compliance to the building ensures all habitable areas are located within the permitted height and the only exceedance relates to the lift over run, fire stairs and associated services which are generally recessive in nature. The proposal generally satisfies the objectives of the development standard in the following ways.

150. The amenity impacts associated with the non-compliance have been considered. In terms of visual impact, the structures are generally centrally located which reduces their visual appearance from the immediately adjoining streetscapes. The lift over run and stairs are centrally located. It is considered that in this case the small scale ancillary structures which will not be highly visible or an intrusive element given the scale and proportions of the building are considered acceptable. In respect to the more dominant elements like the lift overrun accessing the roof terrace at the rear, this will be a visible element when viewed from a distance. It will not be readily visible from immediately adjoining properties and streetscapes given that it is centrally located. There will be no significant adverse impacts in terms of overshadowing or overlooking to adjoining properties.

151. New developments of a similar nature have been approved along Railway Parade and have established a precedent for development in the street and immediate precinct. The proposed development is consistent with the pattern of development that is emerging in this precinct and the up zoning to permit development of this scale.

152. The proposed development is considered to satisfy the objectives of the building height development standard for the following reasons:
- The development is consistent with the built form envisaged for the Railway Parade South precinct and the B4 Mixed Use zone within the town centre.
 - Despite the variation, the bulk and scale of the development is compatible with the existing buildings that have been completed and approved within the immediate vicinity.
 - When considered in the context of the development, the variation is minor and would not be readily discernible from street level.
 - The height variation will not result in any unreasonable adverse amenity impacts such as overshadowing on neighbouring properties or the public domain.
 - The variation to the height would not result in an unreasonable visual impact on neighbouring properties or the streetscape.
 - The height breach does not exceed that permitted by the airspace approval.
153. The B4 Mixed Use zone objectives require the development to:
- *To provide a mixture of compatible land uses.*
 - *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
 - *To encourage development that contributes to economic growth and employment opportunities.*
 - *To encourage development that contributes to an active, vibrant and sustainable town centre.*
 - *To provide opportunities for residential development, where appropriate.*
154. The exceedance in the building height control generally satisfies the objectives of the zone for the following reasons:
- The development will provide for a compatible mix of residential and commercial uses, the proposed variations will not impede the attainment of this objective.
 - The development is providing for the housing needs of the community with a mix of apartment choices and layouts including two (2) dual key apartments within a mixed use zone whilst also integrating commercial and retail development.
 - The development is located within an accessible location with only a short walk to Carlton and Kogarah Stations and a number of bus stops within close proximity.
 - The development incorporates a diversity of apartment types (offering studio, 1, 2, and 3 bedroom apartments and dual key apartments. The proposal also includes adaptable apartments.
 - The development will provide residential development for the Kogarah Town Centre whilst also activating the street through the provision of non-residential uses at street level.
155. The area of non-compliance is considered not to be unreasonable and will not establish an undesirable precedent or undermine the objectives of the zone or height control. It will not have any adverse impact on the surrounding locality, which is consistent within the B4 location. The proposal promotes the economic use and development of the land consistent with zone and its purpose.

156. The public benefit of the variation is that it will appropriately facilitate the provision of a high density mixed use development on B4 zoned land and will provide for a range of housing stock. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 needs to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.
157. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard.
158. The structures which breach the building height are ancillary containing lift over run, fire stairs and associated services. The lift over run, fire stairs and associated services are all centrally located and have minimal visual impact.
159. In this case the proposal seeks to establish the preferred and appropriate design and built form outcome for this site with the building complying in large with the height standard. There will be no adverse amenity or visual impacts generated by the variation, the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request.

Clause 4.6(4)(b) the concurrence of the Director-General has been obtained

160. In accordance with clause 64 of the Environmental Planning and Assessment Regulation 2000, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))

161. Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or Regional environmental planning.

Conclusion – Assessment of Clause 4.6 Request for Variation

162. Despite the non-compliance in terms of the height, the proposed variation is considered to be acceptable and satisfies the provisions of Clause 4.6.
163. The proposed variation satisfies the objectives of the height control as the non-compliant structures, being the architectural roof feature, lift overrun, stairs and plant will not be visually dominating. The additional height is considered to be consistent with other developments in the immediate locality and the scale of the development is sympathetic with the existing scale and form of existing and approved adjoining developments.
164. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify

contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).

165. For these reasons the Clause 4.6 Statement is considered to be well-founded and could be supported if the development as a whole was consistent with the assessment criterion and was of a form that could be supported.

Draft Georges River Local Environmental Plan 2020

166. In accordance with section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 any proposed instrument that is or has been the subject of public consultation is a relevant matter for consideration in the assessment of a development application.
167. The Georges River Local Planning Panel endorsed at its meeting dated 26 June 2020 the Planning Proposal (as amended) to be forwarded to the Department of Planning, Industry and Environment for gazettal in accordance with Section 3.36 of the Environmental Planning and Assessment Act 1979.
168. The Draft Georges River Local Environmental Plan 2020 provisions have no detrimental weight as a result of proposed operation of Clause *“1.8A Savings provisions relating to development applications”* of the Draft Plan which provides *“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced”*.

Development Control Plans

Kogarah Development Control Plan 2013

169. Apart from satisfying some of the provisions of the ADG and SEPP 65 the controls within the KDCP are applicable. Part B, General Controls, Part C2 Medium Density, controls in Appendix 4 relating to residential development in the R3 zone are required to be considered in the design of the proposal.

Table – KDCP 2013 Compliance Table

PART B – GENERAL CONTROLS		
Required	Proposed	Complies
<i>B1 Heritage Items and Heritage Conservation Areas</i>		
Ensure development protects and enhances the environmental and cultural heritage of Kogarah; The relevant requirements of Clause 5.10 of KLEP 2012 are to be addressed for any development relating to a heritage item	In respect to the heritage provisions of Part B1 of the KDCP, the site is located within the vicinity of a heritage item. The site is not a heritage item and is not within a heritage conservation area. Schedule 5 of the KLEP identifies that item I105 is Subway shops located at 200 – 204 Railway Parade, Kogarah which is located to the north east of the development site. The heritage item is not immediately adjacent to the development site and is not adversely affected by the proposal. Council's DCP has specific requirements for development adjoining the heritage item.	Yes

	The proposed development is not considered to have an adverse impact upon this heritage item.	
B2 Tree Management and Greenweb		
<p>The objectives of this part include the following:</p> <ul style="list-style-type: none"> • Ensure the protection of existing trees which contribute to the visual amenity and environment of the City of Kogarah; • Protect trees within and adjacent to development sites; • Maximise healthy tree canopy coverage across the City of Kogarah <p>Development consent or a Council permit is required to ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree, whether on private or public land, which has:</p> <p>(i) A height greater than 3.5m, or</p> <p>(ii) A branch spread exceeding 3 metres in diameter</p>	<p>The proposal includes the removal of several trees on the subject site. Council's arborist required a Thyer method assessment of evaluation be undertaken in permitting their removal.</p> <p>A suitable Thyer method of assessment report of evaluation and landscape plan has been submitted with the proposal.</p> <p>The site is not within a 'habitat corridor' or 'habitat reinforcement corridor' under Council's green web strategy.</p>	Yes
B3 – Development near busy roads and rail corridors		
Acoustic assessment for noise sensitive development may be required if located in the vicinity of a rail corridor or busy roads	<p>Subject site is located fronting Railway Parade and located within 25m of a rail corridor.</p> <p>A Noise and Vibration Impact Assessment report was provided with the application. The assessment concluded that a suitable acoustic environment can be achieved for the residents through the installation of specified standards of glazing.</p> <p>The acoustic report provided a series of recommendations in the form of implementing construction techniques and materials that will assist in ameliorating acoustic impacts on the internal areas of the building. A detailed discussion regarding the acoustic compliance was conducted earlier in this report.</p> <p><u>Note:</u> Should the proposal be approved,</p>	Yes

	appropriate conditions will be imposed to ensure the constructed building complies with the recommendations of the Acoustic Report.	
B4 Parking and Traffic		
<p>For development in the following locations:</p> <p>On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</p> <p>On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated.</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street</p>	<p>The site is located within 800m of Kogarah and Carlton Railway Stations and is located inside the Strategic Centre. As such the “Metropolitan Regional (CBD) Centres” rates apply. Given this development is within an accessible area under SEPP 65 and the ADG, the requirements of the RMS Guide for Traffic Generating Development outlines the assessment criterion.</p> <p><u>Residential parking:</u> 12 x 1 bedroom units @ 0.4 space per unit = 4.8 spaces required</p> <p>35 x 2 bedroom units @ 0.7 spaces per unit = 24.5 spaces required.</p> <p>2 x 3 bedroom units @ 1.2 spaces per unit = 2.4 spaces required</p> <p>Residential spaces required = 32 spaces</p> <p>Visitors = 49/7 = 7 spaces required</p> <p>Total = 7 spaces required</p> <p>The ADG requires that the dual key apartments be treated as separate SOUs for the purpose of unit mix. An assessment of parking rates using the dual key apartments as 3 bedroom apartments results in identical parking requirements as shown below:</p> <p><u>Residential parking:</u> 10 x 1 bedroom units @ 0.4 space per unit = 4 spaces required</p> <p>33 x 2 bedroom units @ 0.7 spaces per unit = 23.1 spaces required.</p> <p>4 x 3 bedroom units @ 1.2 spaces per unit = 4.8 spaces required</p> <p>Residential spaces required = 32 spaces</p> <p>Visitors = 47/7 = 7 spaces required</p>	Yes

	<p>Total = 7 spaces required</p> <p>The proposal requires a total of 39 off-street car parking spaces for residents and visitors.</p> <p>The proposal provides a total of 59 car parking spaces for residents and visitors.</p> <p>The following parking has also been provided:</p> <p>16 spaces have been provided for retail/commercial.</p> <p>In total the development requires a total of 55 car parking spaces.</p> <p>A total of 75 car parking spaces have been provided.</p> <p>The off-street parking provision exceeds the minimum requirements of the RMS/ADG provisions.</p>	
Loading dock	A loading dock has been provided and is accessed via Bowns Road.	Yes
<u>Car wash bay:</u> 1 bay, which can also function as a visitor space	A shared car wash bay/visitors space has been provided.	Yes
<u>Bicycle Parking:</u> 1 space per 3 dwellings = 16	<ul style="list-style-type: none"> 9 residential bicycle parking spaces are provided in Basement 3. 7 residential bicycle spaces are provided within the communal open space area on Level 01. 	Yes
<u>Bicycle parking - Visitors</u> 1 space per 10 dwellings for visitors = 5 spaces	<ul style="list-style-type: none"> 4 visitor bicycle parking spaces are provided at ground level, near the entry to the residential lobby there are 8 at ground level). 1 space has been provided at Level 01. 	Yes
<u>Bicycle parking – Commercial</u> 1 space per 5 car parking spaces = 16/5 = 4 spaces	<ul style="list-style-type: none"> Four (4) spaces have been provided at ground level, near the entry to the residential lobby there are 8 at ground level). 	Yes
Car park access and layout to comply with relevant Australian Standards	The internal layout and size of car parking spaces in the basement levels is considered satisfactory.	Yes
B5 – Waste Management and Minimisation		
Submit Waste Management Plan (WMP) Provide a dedicated caged	WMP was prepared by Dickens Solutions. The development includes a residential garbage room and bulky goods area and	Yes

area within the bin room for the storage of discarded bulky items.	commercial room on the ground floor level. The garbage rooms are suitably sized to cater for the garbage bins as required. Bins will be collected from the street. The waste disposal area and arrangement is considered to be satisfactory and in accordance with Council's requirements.	
B6 – Water Management		
All developments require consideration of Council's Water Management Policy	The subject site is not located within flood prone land. The proposed stormwater system has been reviewed by Council's Drainage Engineer and found to be satisfactory.	Yes
B7 – Environmental Management		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	The application is accompanied by a BASIX certificate which confirms compliance with the minimum requirements. Design, materials, siting and orientation generally optimise solar efficiency, with a high proportion of north-facing window openings. Glazing is minimised on the southern and western elevations.	Yes

Development Control Plans

Part E1 – Kogarah Town Centre

170. The proposal is subject to the provisions of Part E1 - Kogarah Town Centre. Assessment against the relevant controls has been undertaken below.

Part E1 - Kogarah Town Centre		
2.9 Railway Parade South Precinct		
2.9.2 Desired Future Character Principles		
Land Uses (a) Increase the diversity of uses to include residential uses (b) Provide for commercial uses such as small offices and specialist retail on the ground floor fronting Railway Parade. (c) Encourage the continuation of the RSL use and the provision of community related uses within the block between Blake Street and English Street	The proposed development seeks consent for two levels of commercial premises with residential apartments above. This is consistent with the B4 mixed use zoning.	Yes
Street Frontage	The proposed ground floor commercial	Yes

<p>(d) Address Railway Parade with active street frontages, awnings and street trees to increase pedestrian amenity.</p> <p>(e) Set buildings back from Railway Parade to allow for widened footpath areas and improved public domain.</p>	<p>tenancy will activate the corner of Bowns Road and Railway Parade.</p> <p>The building is setback a minimum of 2m from Railway Parade and 3m from Bowns Road, providing space for a widened footpath and street planting.</p>	
<p>Built Form</p> <p>(f) Reinforce the two-storey street wall height by setting back upper levels of the buildings.</p> <p>(g) Introduce breaks in the building massing at upper levels to reduce the buildings' apparent scale.</p> <p>(h) Establish a consistent 'build to' line along a 2m front setback on Railway Parade to create a consistent edge to the street.</p> <p>(i) Emphasise the block between Blake Street and English Street with taller buildings that create a landmark entry to the Kogarah Centre</p>	<p>The proposed building has a vertical emphasis, is articulated and provides recessed elements across the façade of the building.</p> <p>The proposed building will establish a taller building that will create a landmark entry to the Kogarah Town Centre.</p>	Yes
<p>Heritage</p> <p>(j) Respect the heritage building at Nos. 200-204 Railway Parade and the significant facade at No. 186 Railway Parade.</p> <p>(k) Where development adjoins the heritage listed buildings it should relate with vertical proportions and building articulation.</p>	<p>The proposal will not adversely affect the heritage significance of No 200-204 Railway Parade or No 186 Railway Parade.</p>	Yes
<p>Pedestrian Movement</p> <p>(l) Enhance the pedestrian amenity of Railway Parade with awnings, street tree planting and upgraded footpaths</p>	<p>The proposed building will enhance pedestrian movement through the design and inclusion of smaller awnings setbacks of buildings and street tree planting.</p>	Yes

Part 3 Built Form		
3.3 Consolidation of Sites		
(2) A minimum street frontage of 18m is required for buildings taller than 3 storeys to provide a minimum workable building footprint, allowing for adequate car parking and the required setbacks.	Street frontage exceeds 18m	Yes
3.4 Building Heights		
(1) Maximum building heights are shown in Figure 1 – Building Heights Plan	The proposed building has a height of 42.1m, which exceeds the maximum building height of 39m contained within KLEP 2012. A Clause 4.6 has been submitted in support of this variation.	No, however discussed within the Clause 4.6 Assessment.
3.5 Building Density		
(1) The maximum floorspace ratios for the Kogarah Centre are specified in the Floor Space Ratio Plan	The proposed development provides a FSR of 4:1 which is compliant with KLEP 2012.	Yes
(2) The maximum floorspace ratios have been calculated using building heights and setbacks specified in this DCP to achieve a realistic building envelope.	N/A	N/A
(3) Rooftop development, where permissible, is not included as part of the total gross floor area for the building, and is not counted as an additional storey for the purposes of calculating the allowable gross floor area for the building	Noted	Yes
3.7 Building Depth		
(1) New buildings are to provide operable windows to all living and working environments	Each living area includes operable openings to its living areas subject to the acoustic report criterion.	Yes
(2) Articulate buildings using courtyards, atria and the like to achieve substantial daylighting, cross ventilation and/or stack ventilation	All apartments can achieve cross ventilation.	Yes
(5) The range of maximum building depth for residential buildings in	The apartments on the western side of the site exceed the 15m, however they are dual orientated and all have	Yes

order to allow natural light and cross ventilation should be 10m – 15m. This includes sheltered balconies (which is a balcony with a roof over it), sunrooms and the like.	windows.	
3.8 Floor to Ceiling Heights		
(1) Floor to ceiling heights should be a minimum of 3m at ground floor level, to allow for a range of uses including retail, commercial offices and home offices	Ground floor ceiling height exceeds 3m.	Yes
(2) Floor to ceiling heights should be a minimum of 2.7m at upper storeys of buildings, to all habitable rooms to allow for a range of uses, and to improve the environmental performance and amenity of the building	2.7m proposed	Yes
3.9 Parking Provision in the Kogarah Town Centre		
3.9.1 Car Parking		
Refer to Section B4 in KDCP 2013		
4. Urban Design		
4.1 Address and Active Street Frontages		
(1) Buildings on the street frontage are to provide pedestrian amenity in the form of active street frontages, building entrances and awnings	An active street frontage has been proposed through the ground floor commercial premises which wraps around the two street frontages.	Yes
(2) Buildings setback from the street frontage, are to address the street with major facades, entrances, stairs, low fences, substantial planting and other streetscapes	The proposal incorporates these elements.	Yes
4.2 Corners		
(1) Buildings are to be sited on the street frontages at corners, addressing the corner	The street corner at Bowns and Railway Parade has been satisfactorily addressed through the architectural design.	Yes
(2) The street intersection is to be addressed with splays, curves, building entries and other special architectural elements	These architectural elements have been incorporated into the design.	Yes
4.3 Architectural Articulation		
(1) Large areas of flat	The buildings facades are articulated	Yes

facade are to be avoided. Facades should be articulated into separate sections, using steps in the facade, expressed entries, panels, bay windows, balconies, pergolas and other architectural elements	through the design of the building. The northern elevation is broken into three vertical bands, by stepping in the façade and balcony projections. The eastern elevation has a terraced form with the upper levels stepping inwards. The balcony balustrades create strong horizontal bands to break up the faced line. The southern elevation is articulated by the stepping of the upper levels and space created by the building having an 'L' shaped design.	
(2) Articulation elements must be integral with the building design and should consider the whole building - not just the street facade	Articulation has been undertaken for the building as a whole incorporated at all levels.	Yes
(3) Changes of texture and colour should complement facade articulation	Materials and finishes complement the proposed façade.	Yes
4.4 Façade Composition		
(1) Provide a balance of horizontal and vertical facade elements to relate to adjacent facades in the streetscape. Avoid simple facade designs containing only horizontal or vertical elements.	Horizontal and vertical elements have been provided to the building through the choice of materials and the location of balconies in addition to the size of vertical and horizontal elements.	Yes
(2) Subdivide long facades with columns, windows and other vertical elements to provide a vertical emphasis	Columns, windows and balconies have been incorporated into the design to provide articulation.	Yes
(3) Provide substantial cornices, balconies and other horizontal elements to subdivide the facade into a base, middle and top.	Balconies of differing shapes and sizes have been provided to provide suitable articulation.	Yes
4.5 Private Open Space and Balconies		
(1) Every apartment is to have at least one balcony directly accessible from the main living area, of minimum size 10m ²	Balcony sizes vary from 9sqm for one (1) bedroom apartments up to 41sqm for the two (2) and three (3) bedroom apartments. The balcony sizes for all apartments comply with the ADG.	No, however complaint with ADG requirements.
(2) The minimum dimension in any direction is to be 2.5m	Complies	Yes
(3) There is no minimum size for a bedroom balcony (eg: Juliet balconies)	Complies	Yes
(4) Design balconies which are recessed into the wall	The building incorporates recessed balconies into the design of the	Yes

or enclosed with walls, columns or roofs to provide sufficient enclosure and visual firmness	building.	
(5) Design balustrades which allow for views into, and along the street but, avoid all-glass and all-brick balustrades	The proposed balustrade is considered appropriate and is consistent with the design of the building.	Yes
4.6 Awnings		
(1) Step awnings and other weather protection devices in relation to street level changes and building entrances.	Both frontages have a continuous awning. The site is located in the Kogarah Town Centre and the proposed awnings overhang the public footpath on Railway Parade and wrap around the corner of Bowns Road to provide weather protection for pedestrians.	No, however conditioned for the awning to extend along the public domain area on Bowns Road.
(2) Avoid steeply pitched awnings which break the general alignment of awnings in the street.	The proposed awnings are not steeply pitched.	Yes
(3) Provide architectural detail in the form of: (i) Posts (ii) exposed structures and joints (iii) fascia motifs, patterns.	Complies	Yes
(4) Provide under-awning lighting to enhance safety.	Can be provided	Yes
(5) Awnings are to be built to the street frontage where indicated in Figure 4.9	The site is not required to provide awnings to the street frontage	N/A
4.7 Roof Designs		
(1) Articulate roofs to provide a varied and interesting roofscape	The proposed development includes a roof top communal open space area.	Yes
(2) Design large projections, shade structures and pavilions to enhance the appearance of flat roofed buildings.	The rooftop area contains lift over run, fire stairs and an awning which all flat roofed structures.	Yes
(3) Conceal lift over-runs and plant equipment (incl. satellite dishes) within well designed roof forms	The lift over run and fire stairs are centrally located within the roof top level.	Yes
(4) Design steep pitched roofs with strong roof forms. Roofs should be integral part of the design	N/A	N/A

of the building		
(5) Penthouses are encouraged in residential developments, to create interesting skylines using setback upper storeys, special fenestration and roof decks	The upper level apartments contain larger outdoor areas with substantial views.	Yes
4.8 Visual and Acoustic Privacy		
(1) Buildings are to be sited so that walls containing windows to habitable rooms are a minimum of 6m from a side or rear boundary. This will ensure a minimum distance of 12m is achieved between windows of habitable rooms	The western side boundary has no openings in the walls, with the exception of the south facing windows in units 206, 306 and 406 and bedroom windows in units 506 and 606, a 6m rear boundary setback has been provided.	No, however considered acceptable.
(2) Separation for balconies and terraces is to be a minimum 8m balcony to another balcony, or 7m balcony to a window of a non-habitable room. (This assumes that only habitable rooms will have balconies)	Complies	Yes
(3) Overlooking should be minimised by: (i) building on the perimeter of the block and building to the side boundaries of sites, with blank walls, to avoid overlooking; (ii) locating habitable rooms within buildings away from privacy sensitive areas	Complies	Yes
(4) Screen views from windows and balconies by: (i) using screens in front of windows and balconies to cut out direct views; (ii) offsetting windows opposite each other in neighbouring walls; (iii) using horizontal and vertical projecting screens above, below and to the side of windows, to reduce overlooking	Measures employed to address these matters.	Yes
(5) Development is to meet	This is a requirement that will need to	Yes

or exceed the sound insulation requirements for separating walls and floors of adjoining dwellings of the Building Code of Australia	be shown on design documentation for Construction Certificate and achieved prior to issue of Occupation Certificate.	
(6) With particular regard to timber flooring in residential developments, appropriate insulation between floors is to achieve minimum sound attenuation of (50Rw).	A condition of consent has been proposed to address this matter.	Yes
(7) Submit an acoustic report demonstrating the method and acoustic rating achieved for the development with the Development Application. Issues to address include, but are not limited to, party walls, storeys, different uses and traffic noise	An acoustic report has been provided and assessed by Council's Environmental Health Officer. Suitable conditions have been proposed including the development complying with the recommendations of the report.	Yes
(8) Site buildings and design internal layouts of rooms, courtyards, terraces, to minimise acoustic problems. The use of openings, screens and blade walls can reduce acoustic problems	Complies	Yes
(9) Design restaurants and cafes to diminish the impact of noise associated with late night operation on nearby residents	An acoustic report has been provided to address these matters.	Yes
(10) Blank walls are not desirable however blank walls may be built on the property boundary in certain circumstances. They should be articulated, patterned or contain appropriate public art	A blank wall is proposed along the western boundary to align with the blank wall of the adjoining property.	Yes
(11) For development adjacent to the railway line or with frontage to a classified road, the requirements of the ISEPP apply. Developments are to be designed to take into account the requirements of the ISEPP and any other	An acoustic report has been provided to address these matters.	Yes

applicable policies or guidelines		
4.9 Landscaping and Deep Soil Planting		
(1) Deep soil landscaping areas are to be provided where possible within the side boundary setback area and to the front and rear setback areas, where more than one building is located on the site, landscaping and deep soil planting should be provided to assist in privacy screening	The excavation is to the perimeter of the site to accommodate the basement parking so no deep soil is proposed. The development provides two areas of communal open space and are proposed to be suitably planted to the satisfaction of Council's Arborist.	No, however the landscaping proposed is considered acceptable.
(2) Landscaping should be of native species and should include species that are drought resistant and require minimal watering once established, or plants that match the rainfall and drainage conditions	A landscape plan has been provided and found to be satisfactory by Council's Arborist. Appropriate conditions have been provided.	Yes
(3) Limit turf to usable outdoor spaces.	N/A	Yes
4.10 Location of car parking		
(1) Car parking should be provided below ground.	Car parking is provided below ground. Only the loading dock is at ground level.	Yes
4.11 Safety and Security		
(1) Orient buildings towards the street, such that building frontages and entries overlook and are clearly visible from the street and provide a sense of address and visual interest	The design of the building ensures that both street frontages are clearly visible from the public domain.	Yes
(2) Avoid blank walls addressing streets and any other public spaces	Complies	Yes
(3) Clearly design buildings and spaces, and the entries to buildings, delineate public, semi public and private space through the use of symbolic or actual barriers, such as low fences or landscaping, post boxes, lighting and signage	Complies	Yes
(4) Avoid building recess,	Complies	Yes

alcoves or dense landscaping in places where concealment is possible		
(6) Where developments have a car park or access laneway to a car park, provide windows, lighting or secondary access doors that address the car park	Complies	Yes
4.12 Outdoor Advertising		
None proposed or approved under this proposal.		
4.13 Housing Choice and Ancillary Requirements		
(1) To achieve a mix of living styles, sizes and layouts, all residential development (or residential component within a mixed development must provide a mix of one bedroom, two bedroom and three bedroom apartments	<p>The proposed development provides a mix of apartments as follows:</p> <p>2 x studio apartment 10 x 1 bedroom apartments. 35 x 2 bedroom apartments. 2 x 3 bedroom apartments.</p> <p>Note: Two (2) x three (3) bedroom dual key apartments have been provided which have been calculated as two (2) x studio apartments and two (2) x two (2) bedroom apartments.</p>	Yes
(2) Residential units must have the minimum net floor area as follows: 1 Bedroom unit = 75sqm 2 Bedroom unit = 100sqm 3 Bedroom unit = 115sqm	<p>1 bedroom units 50 -61sqm 2 bedroom units 76-78sqm 3 bedroom units 107-108sqm</p>	No, however compliant with the ADG requirements
(3) External clothes drying facilities are encouraged. These should be provided in the form of a screened balcony or terrace area.	Not provided. All apartments have space for an internal dryer.	No, however acceptable.
(4) All developments must provide a designated secure storage space (in addition to any areas set aside for off-street parking) to a minimum floor area of 4m ² for each dwelling or unit. The storage space could be incorporated as part of the garage.	Individual storage spaces provided in the basement for all apartments being 4-9sqm.	Yes

Specific Precinct Requirements
Railway Parade South Precinct

171. The Railway Parade South Precinct is located at the end of the Kogarah Town Centre retail strip and is currently occupied by predominantly light industrial and commercial uses.
172. The purpose of this section is to describe the intended use and nature of the built form and the level of amenity achieved within the built environment on Railway Parade between Gray Street and English Street, Kogarah and are in addition to those covered in other relevant sections of Part E1 of the DCP.

5 Specific Precinct Requirements

5.6 Railway Parade South Precinct

5.1.3 Site Amalgamation

It is unlikely that the design objectives and principles can be achieved on smaller sized lots, and unlikely that the permitted floorspace ratios will be achieved. Site amalgamations are therefore encouraged to facilitate an appropriate form of development for Railway Parade South, and to ensure that consistent streetscape character, and the integrity of any heritage buildings and facades, can be maintained. Applications for development should comply with the site amalgamations shown in the figure below:

The proposed amalgamation of the three lots is consistent with the anticipated amalgamation pattern established in Section 5.1.3 of the DCP.

Yes

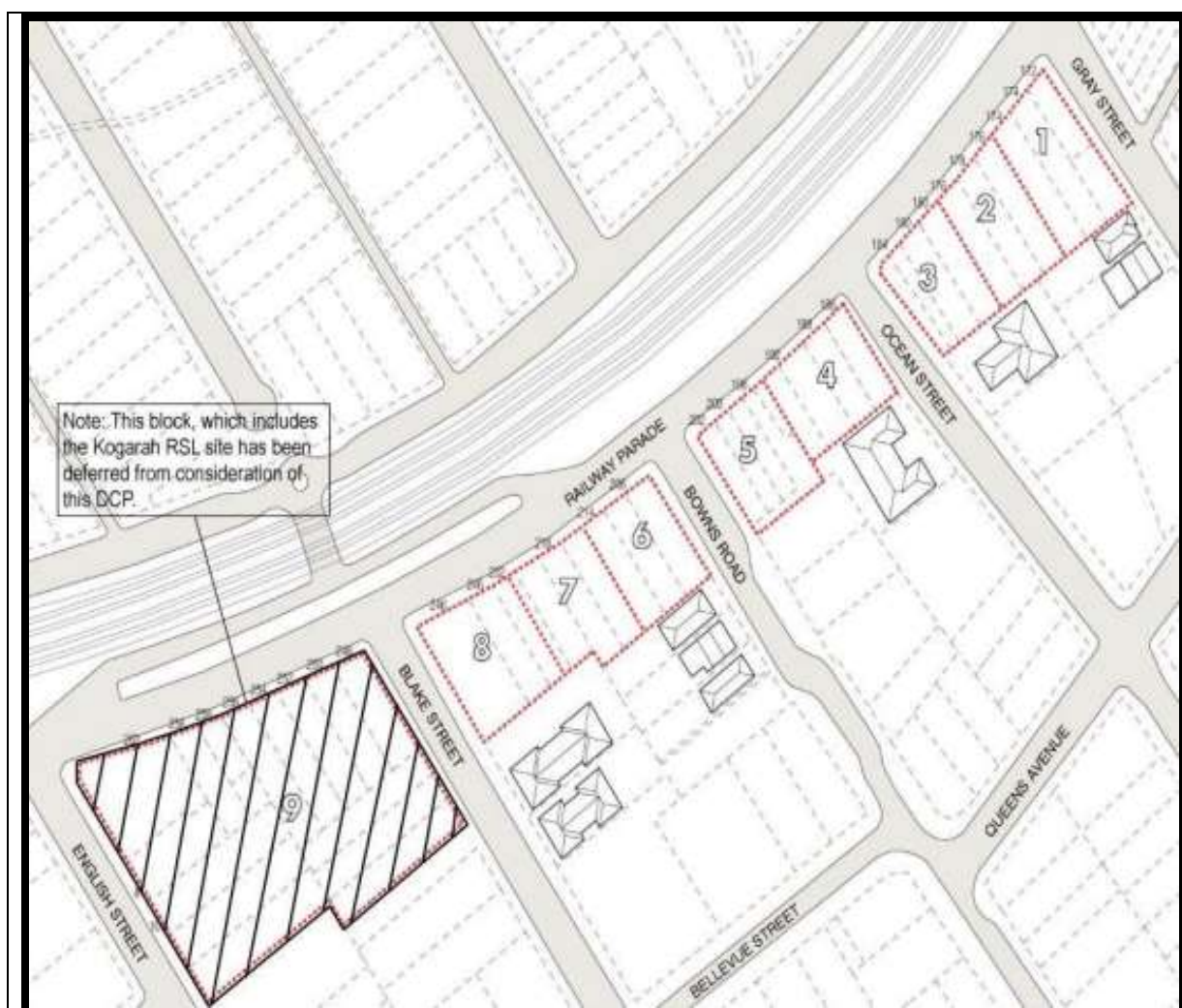


Figure 16: Site amalgamation along railway Parade. Subject site is shown as No 6.

5.1.7 Performance Criteria and Design Solutions

Land Use

(1) Encourage mixed-use developments with active uses at the ground floor (commercial, specialist retail, community facilities), commercial at the first floor and residential above	The proposed development provides commercial on the ground and first floors with residential above.	Yes
(2) Commercial uses only are permitted on the ground floor of buildings fronting Railway Parade and in the building return to side streets	Commercial use only on the ground floor.	Yes
(3) Residential uses at the ground floor on Railway Parade or in the building return to side streets are not permitted	No residential uses proposed on the ground floor.	Yes
(4) Residential uses are permitted at the ground floor of side streets in the residue of the study area where there is a minimum 3m setback	N/A No residential uses proposed on the ground floor.	Yes
Building Heights		
(6) Establish a two (2) storey street	These controls were	N/A

wall height that relates to the scale of the traditional strip retail buildings in the retail precinct of Railway Parade, with the third and fourth storey set back from the Railway Parade frontage	developed prior to the up zoning and are no longer relevant.	
(7) Provide an appropriate transition to existing lower scale residential development adjacent on side streets and to the rear by permitting a maximum building height of three (3) storeys.	These controls were developed prior to the up zoning and are no longer relevant.	N/A
(8) Allow greater heights at the junction of Railway Parade and English Street (gateway site) to mark the beginning of the approach to the Kogarah Town Centre.	These controls were developed prior to the up zoning and are no longer relevant.	N/A
Floor to Ceiling Heights		
(9) Allow for a range of uses including retail, commercial and home offices, at ground level	Commercial uses proposed on the ground and first floor.	Yes
(10) Increase the sense of space in apartments and provide well proportioned rooms	Complies	Yes
(11) Promote the penetration of day lighting into interior spaces.	Complies	Yes
(12) At ground level, floor to ceiling heights should be not less than 3m and not greater than 4m.	Ground floor ceiling height exceeds 4m, however is considered acceptable.	No, however acceptable
(13) At upper levels, floor to ceiling heights should be not less than 2.7m and not greater than 3m to all habitable rooms	Complies	Yes
Building Setbacks		
(14) Create a consistent street edge to Railway Parade by aligning all new development to the same front building line, with the exception of heritage items and the significant façade	The proposed building provides a minimum setback of 2m to the external facade of the building consistent with the Block 3 setback controls. An awning extends beyond the property boundary aligning with the adjoining building, which ensures weather protection for pedestrians is provided.	Yes
(15) Provide a 2m front building line setback to visually extend and enhance the public domain and building setting	Complies	Yes
(16) Provide a 3m setback on side	The proposed building is	Yes

streets to enable landscaping in front gardens consistent with residential character	setback 3m from Bowns Road.	
(17) Provide a minimum 3m setback from rear boundaries to protect the amenity of neighbouring residential uses	The ground floor is built to the boundary; however the levels above provide a minimum 3m setback with the exception of the stairs which provide access to and from the level 01 communal open space.	No, however acceptable
Densities		
(18) Provide appropriate densities for development whose bulk and scale is consistent with the desired future character of the precinct	The proposal complies with the FSR requirements of KLEP 2012.	Yes
Facade Composition		
(22) Break down the scale of large buildings	Complies	Yes
(23) Reinforce a desired pattern characterised by simple, rectilinear building forms, a consistent street wall height, and a balance of horizontal elements (parapet, central area, below-awning area) and vertical elements (subdivision patterns, building bays)	The articulation of the northern and eastern elevations effectively responds to the corner of the site to assist in minimising the bulk and scale through the vertical elements provided.	Yes
(24) Create harmonious, well balanced facades that reflect building uses and activities	Complies	Yes
(25) Retain the pedestrian scale and give continuity to the 'base' of the built form.	Complies	Yes
(26) Optimise environmental sustainability and minimise energy consumption through the placement and design of openings and shade systems	Complies	Yes
(27) On Railway Parade, the building mass should be broken up both vertically and horizontally, for example with building bays, openings and entries	Complies	Yes
(28) Strongly model the facades using recessed balconies, projecting bay windows, deeply recessed windows and projecting panels	Generally acceptable	Yes
(29) Design building facades to optimise environmental amenity through sun shading devices, privacy screens and noise barriers combined with useable outdoor	Generally acceptable	Yes

areas		
(30) Avoid large expanses of blank walls or glass curtain walls	Generally acceptable	Yes
(31) Conceal meter boxes, fire hydrant boosters, sprinkler valves and the like so that they are not visible from the street.	Locations are considered appropriate for use of relevant people and are acceptable.	Yes
Awnings and Verandahs		
(32) Enhance pedestrian amenity by providing shade and weather protection	Complies	Yes
(33) Contribute to a sense of safety and security in the public domain	Complies	Yes
(34) Provide awnings along Railway Parade, projecting beyond the front setback over the public footpath where possible	There is awning located along the full frontage of Railway Parade and projects beyond the front setback over the public footpath in Railway Parade.	Yes
(35) Step awnings and other weather protection devices in relation to street level changes and building entrances, and to achieve an appropriate transition to the awnings of any heritage facades.	Complies	Yes
(37) Provide awnings flat or near-flat in shape, with traditional fascia and profile.	Complies	Yes
(38) Provide under awning lighting to enhance safety	Can be provided.	Yes
Built Form		
(39) Break down the bulk and scale of buildings fronting Railway Parade South by introducing breaks in the building massing.	Complies, see comments in SEPP 65 and ADG section.	Yes
(40) Optimise residential amenity for new development and existing neighbours through building orientation, setbacks and apartment design	Complies, see comments in SEPP 65 and ADG section.	Yes
(41) Provide appropriate setbacks and transitions in height to heritage buildings	Complies, see comments in SEPP 65 and ADG section.	Yes
(42) Design building depths to optimise natural ventilation and daylight, solar penetration, and visual and acoustic amenity, and to enable buildings to be adapted to different uses overtime	Complies, see comments in SEPP 65 and ADG section.	Yes
Commercial and Retail Frontages		
(51) Enable active street frontages.	Complies	Yes

(52) Ensure buildings are of high visual quality, by providing shopfronts and openings that relate in scale and proportion to the overall building massing and height	Complies	Yes
(53) Ensure that the non-retail uses (for example upper level commercial) and their entries do not detract from the retail streetscape while still providing clear and secure address.	Complies	Yes
(54) Preserve the surviving heritage character of whole shop frontages and their elements	Complies	Yes
(55) Design building fronts and entries to be readily apparent from the street and to convey a sense of address.	Complies	Yes
(56) Recess entries to commercial uses a minimum 450mm from the main façade of the building	Complies	Yes
Roofs		
(60) Ensure that new development contributes positively to the streetscape.	Complies	Yes
(61) Ensure that roofs, parapets and architectural features of any heritage buildings retain their visual prominence	Complies	Yes
(62) Ensure that roof fixtures for new development do not detract from appreciation of significant features of existing heritage buildings.	Complies	Yes
(63) Design upper level residential storeys to create interesting roof lines and interesting silhouettes. Penthouses are encouraged, using set back upper levels with special fenestration, balconies and pergolas and roof terraces.	Complies	Yes
(64) Roof fixtures are not permitted where they are visible from the street. Fixtures include aerials, vents, chimneys, solar collectors and mobile phone transmitters.	Complies	Yes
(65) Conceal lift over-runs and plant equipment, including satellite dishes, within well designed roof forms	Complies, lift over run and fire stairs are centrally located.	Yes
(66) Where there are heritage buildings, new roofs adjacent are to be flat, skillion or pitched in keeping with the prevailing roof forms	Complies	Yes

(67) No development will be permitted within the roof void.	Complies	Yes
Parking		
This has been addressed in Section B4 and the SEPP 65 assessment of this report.		
Private Open Space and Balconies		
(87) Provide useable private open space at ground level for dwellings fronting side streets in the form of front and/or rear gardens or courtyards.	N/A	N/A
(88) Provide a high standard of outdoor living to residential apartments.	Complies	Yes
(89) Design building facades and apartment layout so that balconies are functional and responsive to environmental conditions	Complies	Yes
(90) Integrate balconies into the overall building form and to enhance the articulation of facades.	Complies	Yes
(91) Balconies on the floor above ground level should appear as recessed spaces behind 'holes' in the façade, with solid balustrades provided, to strengthen the consistent two (2) storey street edge	The balcony on the first floor is for the use of the commercial tenancy and is located at the front of the site ensuring minimal impacts upon the amenity of neighbouring properties. It considered to be appropriately designed and articulated consistent with the design of the building. There is an area of communal open space however suitable separation from boundaries has been provided.	Yes
(92) Balustrades above the 1st floor (Level 3 and above) can be a combination of solid and transparent materials	Complies	Yes
(93) Create an active interface between the public and private domain, to encourage casual overlooking and surveillance of the street	Complies	Yes
(94) Provide opportunities for external clothes drying facilities	The design of the development does not provide an area for clothes drying externally, however suitable facilities are contained within each	No, however acceptable.

	apartment.	
(95) Design balconies fronting Railway Parade which are recessed into the façade or enclosed with walls, columns or roofs, to provide sufficient enclosure to protect the amenity of their users.	Balconies have been designed to meet this requirement where possible.	Yes
(96) Rooftop terraces are permitted where they are the primary open space areas associated with a rooftop development (for example a penthouse apartment). Where proposed, they must have direct access to a living area and be level with that living area	Roof top communal open space area has been provided.	No, however consistent with the ADG requirements for providing communal open space.
Public Domain, Landscaping and Communal Open Space		
(97) Integrate new development with the surrounding environment by extending paving treatments into the required 2m front setback	Will be subject to Council's Assets and Infrastructure requirements.	Yes
(98) Select tree and plant species appropriate to soil and microclimate, in particular local indigenous or Australian native plant species.	The landscape plan is satisfactory in this regard.	Yes
(99) Where appropriate, incorporate deep soil areas within the development to accommodate large trees and provide for stormwater infiltration	Complies	Yes
(100) Design podium areas to sustain planting for communal open spaces	Communal open space areas provided at Level 01 and the rooftop provides suitable planting.	Yes
Services Infrastructure and Stormwater Management		
(101) Reduce visual intrusion and enhance amenity by integrating undergrounding of services and infrastructure in new development	Condition of consent requiring underground cabling.	Yes
(102) Provide adequate drainage, services and facilities to new development.	Council's drainage engineer has reviewed the proposed drainage for the site and raised no objection subject to suitable conditions.	Yes
5.1.8 Block Controls		
Block 3 – Block bounded by Bowns Road, Railway Parade and Blake Street		



Figure 17: Block 3 – 206-216 Railway Parade, Kogarah

Amalgamation Requirements

The amalgamation requirements contained within the table below apply to Block 3:

Site	Address
Site F	206-214 Railway Parade
Site G	218 Railway Parade
Site H	232-246 Railway Parade

The subject development includes the sites as listed in Site F.

Front Setback (Railway Parade)

Ground Floor

Min 2m setback	2m	Yes
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First Floor

Commercial min 2m	>2m	Yes
Balconies/terraces are permitted within the residential setback, but only in the form of punched openings in the façade.		

Second Floor and above

Minimum 5.5m (Of this 5.5m, 2.5m is to be setback to the edge of balconies /terraces with an articulation zone of 3m)	3m proposed	No, however considered acceptable.
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Setback to side street		
3m minimum	3m proposed	Yes
Rear Setback		
3m plus ¼ the amount that the wall height exceeds 3m	The proposed development is consistent with the minimum building separation requirements of the ADG.	No, this control is superseded by the ADG
Setbacks between buildings (between boundaries)		
Ground floor (Build to boundary) South west (side) South east (rear)	Nil Varies from 3m to 14.93m	Yes No, however subject to ADG requirements.
First Floor (build to boundary) South west (side) South east (rear)	Nil Varies from 3m to 14.93	Yes No, however subject to ADG requirements
Second Floor and above (min 3m to provide break in building massing) South west (side) South east (rear)	Nil Varies from 3m to 14.93	Yes No, however subject to ADG requirements
Land uses (fronting Railway Parade and side streets)		
Ground floor		
Active use such as specialty retail/commercial	Commercial/Retail proposed on the ground floor with frontages to both Railway Parade and Bowns Road.	Yes
First Floor		
Commercial or Residential	Commercial proposed.	Yes
Second Floor and above		
Residential/commercial (Level 3 and Level 4)	Residential proposed.	Yes
Density		
Not relevant this is superseded by KLEP 2012.		
Building Heights		
Not relevant this is superseded by KLEP 2012.		
Vehicular entry		
For development sites F and H, vehicular access is to be provided from Bowns Road/Blake Street	Vehicular access is proposed from Bowns Road.	Yes
Car Parking		
Refer to Section B4		
Awnings		
Development fronting Railway	Awning proposed and	Yes

Parade and within 20m from its intersection is to provide a suspended awning across the full frontage of the development.	conditioned to be returned along Bowns Road.	
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LPP026-21

Georges River Development Control Plan 2020 (Interim Policy)

173. The Interim Policy is a supplementary document, meaning that the current Development Control Plan controls continue to apply if a particular control is not specified in the Interim Policy, or if it is still considered best practice. All operative Development Control Plans still legally apply. Whilst the Interim Policy has no statutory recognition in the assessment of a Development Applications pursuant to the Environmental Planning and Assessment Act 1979, the policy was used as a guide as it is an endorsed position of the Council.

174. The proposal is generally consistent with relevant requirements in this policy.

Impacts

Natural Environment

175. The proposed development is unlikely to result in adverse impacts to the natural environment. The site contains several trees which are required to be removed as part of the development. Council's arborist required that the applicant undertake a Thyer method of tree valuation assessment to value the trees as part of consenting to their removal. These tree reports were reviewed by Council's arborist and appropriate conditions have been imposed.

176. A Landscape Plan prepared by a qualified landscape architect has been prepared for the development which shows appropriate planting and suitable landscaping to the communal open space on the rooftop and also within the Level 01 communal open space.

177. The proposed excavation to the site is for the purposes of providing three (3) levels of basement for car parking. The excavation is consistent with that required for most new developments.

Built Environment

178. The proposed redevelopment will provide for the urban renewal of a large consolidated site within the Kogarah Town Centre that will contribute positively to the building stock within the area with a harmonious built form. The siting, scale, bulk, and massing of the development is generally consistent with that anticipated for the site and represents an appropriately designed development which will contribute positively to the character of the area.

179. The building has introduced a highly modulated and articulated front façade treatment along Railway Parade with a transition to the sites in Bowns Road to create a landmark development benefiting the local and regional community.

180. The proposed development incorporates appropriate design elements to ameliorate potential amenity impacts to adjoining properties.

Social Environment

181. The proposed development is of a scale and form that is consistent with modern developments which is unlikely to result in adverse social impacts.

Economic Environment

182. The proposed development will have no adverse economic impact in fact it will benefit in the longer term the sustainability of the Kogarah Town Centre and will in the immediate term contribute to maintaining jobs in the construction industry.
183. The proposed development will provide temporary employment through the construction of the development. In addition, the proposal will restore and increase employment associated with the use of the site.

Suitability of the Site

184. It is considered that the proposed development is of a scale and design that is suitable for the site. It is a permissible use in the zone. Having regards to its size, shape, topography, vegetation and relationship to adjoining developments, the subject site does not contain any impediments that would preclude it or compromise its suitability for the intended land use as proposed.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

185. The application was advertised for a period of twenty eight (28) days between 1 July 2020 and 29 July 2020 in accordance with the Kogarah Development Control Plan. Twelve (12) submissions have been received.

Note: Of the twelve (12) submissions received:

- Four (4) submissions were received from the same person on 29, 30 July and 9 and 18 August 2020.
- Three (3) submissions were received from another neighbouring property owner on 17, 29 and 30 July 2020.

186. The concerns raised are summarised below.

- Privacy impacts from balconies of Unit 101 of the proposed development.

187. Comment: Level 1 of the proposed development has been modified and does not contain any residential apartments. This level is now occupied by commercial floor space and a communal open space towards the rear.

- Traffic issues, increase congestion and conflicts generated.

188. Comment: Increased traffic congestion and reduced parking around the development site and other connecting roads are raised as concerns by residents within the Kogarah area. It is inevitable that the proposal will increase traffic volumes, particularly during the peak hour traffic periods. However, given that the proposal complies with the maximum total permitted floor space across the site, such traffic generation is considered reasonable and consistent with what was envisaged when the precinct was upzoned.

189. The development exceeds the carparking required for the development enabling all those, living, working and accessing the uses in the future can be accommodated within the confines of the development.

- The bulk and scale is out of scale with the existing streetscape

190. Comment: The bulk and scale of the proposed development has been raised as a concern. This area has been rezoned for the development site altering the planning controls applicable to the site permitting buildings with a height up to 39m and a floor space ratio of 4:1. The bulk and scale of the building is consistent with the control for the B4 Mixed Use zoning, and the envelope and form envisaged by the up-zoning.

- Impact on the heritage items on Railway Parade.
191. Comment: Council's Heritage Advisor has reviewed the proposal and is satisfied that the proposal will not have an adverse impact on the listed items
- Impact on excavation.
192. Comment: The recommendations in the Geotechnical Report submitted with the DA will be included as conditions of consent.
- The proposal does not comply with the maximum FSR permitted.
193. Comment: The plans have been amended and the proposal now complies with the maximum 4:1 FSR for the subject site.
- The proposal does not comply with the maximum Building Height permitted.
194. Comment: The proposal although non-complaint with the maximum building height, the areas that are non-compliant relate to the lift over run, fire stairs and associated services used in conjunction with the rooftop communal open space. A clause 4.6 objection has been submitted in support of this variation and this has been supported for the reasons outlined in the report.
- The proposal does not comply with the maximum FSR permitted.
195. Comment: The plans have been amended and the proposal now complies with the maximum 4:1 FSR for the subject site.
- The proposed roof top garden is a detrimental feature of the development and the proposal lacks deep soil zones and landscaping.
196. Comment: The provision of a roof top communal open space area is a design feature that is encouraged by the ADG where developments are unable to provide communal open space at ground level. Although there are no deep soil zones proposed the development has provided a suitable landscape plan, which incorporates suitable landscaping in and around the site to the satisfaction of Council's Arborist.
- Dilapidation Reports should be provided for the adjoining sites.
197. Comment: Conditions of consent will be imposed requiring that pre-construction dilapidation reports be undertaken with copies provided to the property owner and Council and a post construction dilapidation report be undertaken also.
- Noise and dust pollution.
198. Comment: Appropriate conditions of consent will be imposed requiring that the building employ suitable noise and dust measures to minimise impacts upon neighbouring properties.
- Overshadowing.
199. Comment: The shadow diagrams submitted indicate that compliance with the minimum requirements will be achieved.
- Loss of views from apartments.
200. Comment: The adjoining development at 218-222 Railway Parade has a blank wall constructed to the boundary adjoining the subject development. Any views would be directed towards the front and rear of the site which would not be affected by the proposed development. Any views to the north east and south east would already be partially restricted by their own development. Given the up zoning it is anticipated that a development of this scale and size would be constructed on this site.

REFERRALS

201. The application was referred to a number of external agencies and internal officers for comment as follows.

Council ReferralsDevelopment Engineer

202. Council's Development Engineer reviewed the proposal. Conditions of development consent have been imposed.

Traffic Engineer

203. The DA was referred to Council's Traffic Engineer. Council's Traffic Engineer who has raised no objection to the proposal subject to suitable conditions of development consent.

Assets and Infrastructure

204. Council's Assets and Infrastructure Section reviewed the proposed development in relation to public domain works and raised no objection to the proposal subject to suitable conditions of development consent. The condition would require a public domain plan to be lodged and approved by Council's Assets and Infrastructure Division prior to the issue of the Construction Certificate. As part of these conditions the applicant is to discuss the layout for public domain works with Council's Assets and Infrastructure staff prior to preparing designs.

Consultant Arborist

205. Council's Consultant Arborist has reviewed the landscape plan and arborist report submitted with the application. No objection is raised to the proposal subject to conditions of development consent.

Urban Designer

206. Council's Consultant Urban Designer has reviewed the proposal and provided detailed comments on the revised proposal. The concerns raised have been addressed through amended plans.

Coordinator of Environment Sustainability and Waste

207. The application was referred to Council's Coordinator of Environment Sustainability and Waste for assessment and review. The Waste Officer has advised that the proposed arrangements for ongoing waste management are acceptable and have provided conditions of development consent.

Environmental Health Officer

208. Council's Environmental Health Officer has reviewed the Noise Impact Assessment Report and raised no objection to the proposal subject to conditions of consent.

Heritage Advisor

209. Council's Consultant Heritage Advisor has reviewed the proposed development and has raised no objection to the proposal subject to suitable conditions of development provided.

External ReferralsAusgrid

210. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Comments were received from Ausgrid and they have raised no objection to the proposed development.

Sydney Airport and CASA (Civil Aviation Safety Authority)

211. The application is supported subject to specific conditions relating to the height limitation for the building and any construction equipment (such as cranes). The building must not exceed a maximum height of 70.32 metres AHD, inclusive of all lift over runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.” The application does not exceed this criterion.

NSW Ambulance

212. The proposal was referred to NSW Ambulance for comment. They have reviewed the Aviation Impact Assessment Report and raised no objection to the proposed development.

NSW Police

213. The proposal was referred to NSW Police for comment. No objection is raised subject to conditions provided.

Sydney Trains

214. The application was referred to Sydney Trains in accordance with Clause 86 of State Environmental Planning Policy (Infrastructure) 2007. Sydney Trains have reviewed the proposal and provided their concurrence subject to specific conditions of development provided.

Developer Contributions

215. The proposed development if approved would require the payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979 as the proposal is increasing the density of the locality. Conditions of development consent have been recommended should the application be supported.

CONCLUSION

216. The proposal seeks consent for demolition works, lot consolidation, site preparation and construction of a twelve (12) storey mixed use development containing ground floor and first floor commercial floor space and 49 residential apartments above three (3) levels of basement containing 75 car spaces, level one (1) and roof top communal open space, landscaping and site works on Lot 23 DP 2013, Lot 24 DP 2013 and Lot 25 DP 2013 and known as 206 – 214 Railway Parade, Kogarah.

217. 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 is considered a form of development which is compatible with its surrounding environment. The proposal is not considered to exacerbate physical environmental impact of the adjoining and immediate locality. In addition, it is considered that the proposed is within character and is capable of existing harmoniously within its surroundings.

218. The proposal has been assessed against the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013.

219. The proposal satisfies the key planning controls in the Kogarah Local Environmental Plan apart from Clause 4.3 Height of Buildings development standard. A Clause 4.6 Statement has been submitted with the application justifying the variation, in this case it is considered to be unreasonable and unnecessary in the circumstance of this case and sufficient environmental Planning grounds have been demonstrated to contravene the control in this instance.

220. The proposed development design satisfies the objectives of both the Building Height Development control and the zone objectives for the site and the Clause 4.6 Statement and is considered to be well founded and in the public interest as there will not be any direct adverse environmental impacts generated by the variation sought. The proposal satisfies the requirements of Clause 4.3 of the Kogarah Local Environmental Plan 2012.
221. Operationally, the proposal will not result in any unreasonable impacts on the amenity of adjoining properties subject to conditions of consent as recommended below.
222. The application is recommended for approval subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

223. Statement of Reasons

- The proposed development complies with the requirements of the relevant environmental planning instruments except in the height of the development. A Clause 4.6 exception has been submitted in support of the application which is considered acceptable having regard to the justification provided in the report above.
- The proposed development satisfies the objectives of the B4 Mixed Use zone of Kogarah Local Environmental Plan 2012 which emphasises the need to provide a mixture of compatible uses, create an active, vibrant and sustainable town centre, whilst also encouraging economic growth and employment opportunities.
- The proposed development is not considered to be incompatible with surrounding development and surrounding land uses.
- The building will not unreasonably affect the amenity of any immediately adjoining properties in terms of unreasonable overlooking, overshadowing or view loss.
- The proposed development is well considered and sensitively designed so that it will not result in any unreasonable impact on the natural and built environment.
- The proposed development is not considered incompatible with the character of the locality and is capable of existing harmoniously with its surroundings.
- The proposed development is located within the Kogarah Town Centre and is consistent with the desired future character of the precinct by providing a high density shop top housing development consistent with adjoining development.
- The proposal is not inconsistent with the provisions of the Draft Georges River Local Environmental Plan 2020.

DETERMINATION

224. THAT Georges River Local Planning Panel, as the consent authority, support the request for variation under Clause 4.6 of Kogarah Local Environmental Plan 2012, in relation to the Height of Buildings (Clause 4.3) as the variation sought is considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought.
225. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Environmental Planning Panel grants consent to DA2020/0236 for demolition works, lot consolidation, site preparation and construction of a twelve (12) storey mixed use development containing ground floor and first floor commercial floor space and 49 residential apartments above three (3) levels of basement containing 75 car spaces, level one (1) and roof top communal open space, landscaping and site works on Lot 23 DP 2013, Lot 24 DP 2013 and Lot 25 DP 2013 and known as 206 – 214 Railway Parade, Kogarah, subject to the following conditions:

Conditions of consent

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
Cover sheet	DA 000	02.06.2021	J	Fuse Architects
Legend and BASIX	DA 001	02.06.2021	I	Fuse Architects
Location Plan	DA 002	02.06.2021	F	Fuse Architects
Site Analysis	DA 003	02.06.2021	F	Fuse Architects
Planning Analysis	DA 004	02.06.2021	F	Fuse Architects
Context Analysis	DA 005	02.06.2021	F	Fuse Architects
Planning Diagrams	DA 006	02.06.2021	F	Fuse Architects
Building Separation Analysis	DA 007	02.06.2021	F	Fuse Architects
Envelope Transition	DA 008	02.06.2021	G	Fuse Architects
Site Plan	DA 009	02.06.2021	F	Fuse Architects
Streetscape Analysis	DA 010	02.06.2021	F	Fuse Architects
Demolition Plan	DA 011	02.06.2021	F	Fuse Architects
Basement 3 Plan	DA 101	02.06.2021	J	Fuse Architects
Basement 2 Plan	DA 102	02.06.2021	J	Fuse Architects
Basement 1 Plan	DA 103	02.06.2021	I	Fuse Architects
Ground Floor Plan	DA 104	02.06.2021	J	Fuse Architects
Level 01 Plan	DA 105	02.06.2021	J	Fuse Architects
Level 02 Plan	DA 106	02.06.2021	I	Fuse Architects
Level 03 Plan	DA 107	02.06.2021	H	Fuse Architects
Level 04 Plan	DA 108	02.06.2021	H	Fuse Architects
Level 05 Plan	DA 109	02.06.2021	H	Fuse Architects
Level 06 Plan	DA 110	02.06.2021	H	Fuse Architects
Level 07 Plan	DA 111	02.06.2021	H	Fuse Architects
Level 08 Plan	DA 112	02.06.2021	H	Fuse Architects
Level 09 Plan	DA 113	02.06.2021	H	Fuse Architects
Level 10 Plan	DA 114	02.06.2021	H	Fuse Architects
Level 11 Plan	DA 115	02.06.2021	H	Fuse Architects
Level 12 Plan	DA 116	02.06.2021	H	Fuse Architects
Roof Plan	DA 117	02.06.2021	H	Fuse Architects
East Elevation	DA 201	02.06.2021	H	Fuse Architects
North Elevation	DA 202	02.06.2021	H	Fuse Architects
West Elevation	DA 203	02.06.2021	H	Fuse Architects
South Elevation	DA 204	02.06.2021	H	Fuse Architects
Section AA	DA 301	02.06.2021	G	Fuse Architects
Section BB	DA 302	02.06.2021	H	Fuse Architects
Driveway Section	DA 303	02.06.2021	F	Fuse Architects
Unit Types Sheet 1	DA 310	02.06.2021	G	Fuse Architects
Unit Types	DA311	02.06.2021	G	Fuse Architects

Sheet 2				
Unit Types Sheet 3	DA311B	02.06.2021	A	Fuse Architects
Adaptable Unit Type	DA312	02.06.2021	G	Fuse Architects
GFA Diagrams	DA 501	02.06.2021	F	Fuse Architects
Landscape Area Diagrams	DA 502	02.06.2021	H	Fuse Architects
SEPP 65 Natural Ventilation	DA 601	02.06.2021	F	Fuse Architects
SEPP 65 Daylight Access	DA 602	02.06.2021	F	Fuse Architects
SEPP 65 South Facing	DA 603	02.06.2021	F	Fuse Architects
LEP Height Plane	DA 604	02.06.2021	I	Fuse Architects
Materials and Finishes Schedule	-	-	-	Fuse Architects
Photomontage	DA800	18.03.2021	D	Fuse Architects
Landscape Plan – Ground Floor	LA LP 101/03	14.05.20	03	Black Beetle Landscape Architecture and Design
Landscape Plan – Level 01	LA LP 102/03	14.05.20	03	Black Beetle Landscape Architecture and Design
Landscape Plan – Level 02	LA LP 103/03	14.05.20	03	Black Beetle Landscape Architecture and Design
Landscape Plan – Level 03 - 07	LA LP 104/02	14.05.21	02	Black Beetle Landscape Architecture and Design
Landscape Plan -Level 08	LA LP 105/03	14.05.20	03	Black Beetle Landscape Architecture and Design
Landscape Plan – Level 09	LA LP 106/03	14.05.20	03	Black Beetle Landscape Architecture and Design
Landscape Plan Level 10	LA LP 107/03	14.05.21	03	Black Beetle Landscape Architecture and Design
Landscape Plan Level 11	LA LP 108/03	14.05.21	03	Black Beetle Landscape Architecture and Design
Landscape Plan - Roof	LA LP 109/04	14.05.21	04	Black Beetle

				Landscape Architecture and Design
Landscape Plan – Notes, legend and plant schedule.	LA LP 110/03	15.05.21	03	Black Beetle Landscape Architecture and Design

LPP026-21

2. **Fit out of commercial premises** - No approval is granted for the use or fit-out of any of the commercial premises. Separate Development consent for the use and fit out of each commercial tenancy is required prior to the occupation of any commercial component of the development.
3. **Signage** - A separate application shall be submitted to Council prior to the erection of any signage unless the proposed signage is 'exempt development' under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or any other applicable environmental planning instrument.

Separate Approvals Required Under Other Legislation

4. **Vehicular Crossing - Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:
 - (a) Construct a full width (boundary to kerb) footpath area in paving material for the full length of all frontages of the site in accordance with Council's Specifications applying at the time construction approval is sought.
 - (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
 - (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
 - (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

5. **Building - Hoarding Application** Prior to demolition of the buildings on the site, or the commencement of work above ground level, a separate application for the erection of an 'A class' (fence type) or a 'B class' (overhead type) hoarding or 'C type' scaffold, in accordance with the requirements of SafeWork NSW, must be erected along that portion of the footways/roadway where the building is within 3 metres of the street boundary. An application for this work under Section 68 of the Local Government Act 1993 and the Roads Act 1993 must be submitted for approval to Council.

The following information is to be submitted with a Hoarding Application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993:

- (a) A site and location plan of the hoarding with detailed elevation, dimensions,

setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location.

- (b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
- (c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available on our website) before the commencement of work; and
- (d) A Public Risk Insurance Policy with a minimum cover of \$20 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party.
- (e) The application must be endorsement by the Roads & Maritime Services (RMS) as the hoarding is located within 100m of an intersection with traffic lights. For assistance you should contact the DA unit at RMS and speak to Hans on 88492076. Or email hans.pilly.mootanah@rms.nsw.gov.au to obtain concurrence for the hoarding structure.

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

- (a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.
- (b) The applicant has indemnified Council from all public liability claims arising from the proposed works and provide adequate insurance cover to the satisfaction of council.
- (c) Documentary evidence of such insurance cover to the value of \$20 million.
- (d) The applicant must register a non-terminating bank guarantee in favour of Council in accordance with Council's fees and charges. The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
- (e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.

7. **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 (e.g. 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.

8. **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

9. **Sydney Trains** - The proposed development shall be carried out in accordance with the following requirements as detailed in their concurrence letter dated 2 September 2020:
 - (a) Prior to the issuing of a Construction Certificate, the Applicant is to submit to Sydney Trains for review, comment and written endorsement the following items:
 - A Geotechnical Engineering report, Structural Report and Drawing for review by Sydney Trains. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by Sydney Trains. The report shall include the potential impact of demolition and excavation, and demolition- and excavation-induced vibration in rail facilities, and loadings imposed on Sydney Trains Facilities by the development.
 - If required by Sydney Trains, and FE analysis which assesses the different stages of excavation and construction of the site and its effect on the rock mass surrounding the rail corridor.

The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- (b) Prior to the issue of a Construction Certificate, the Applicant shall provide an accurate survey locating the development with respect to the rail boundary and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of Sydney Trains representative.
- (c) Prior to the issue of a Construction Certificate, the Applicant shall undertake a services search to establish the existence and location of any rail services. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within the subject development site, the Applicant must discuss with Sydney Trains as to whether these services are to be relocated or incorporated within the development site
- (d) Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.
- (e) Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority, Council and Sydney Trains certifying that the completed development meets the requirements of State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such a report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development, and that internal noise levels meet the required dB(A) levels. Where it is found that internal noise levels are greater than the required dB(A) level, necessary corrective measures must be carried out to ensure that internal noise levels are compliant with the requirements of this consent.
- (f) If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied
- (g) Prior to the issuing of a Construction Certificate the Applicant must submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied

- (h) The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:
- oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
 - acts as the authorised representative of the Applicant; and
 - is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.
- (i) Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.
- (j) Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains external party interface team. In this instance the relevant interface team is Central and they can be contacted via email on Illawarra_Interface@transport.nsw.gov.au.
- (k) Where a condition of consent requires Sydney Trains or Transport for NSW endorsement the Principal Certifying Authority is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.
10. **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.
11. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 <http://legislation.nsw.gov.au/> must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

The Notice of requirements must be submitted prior to the commencement of work. A

Section 73 Compliance Certificate will be required at the completion of development in accordance with further conditions.

12. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
13. **Electricity Supply to development** - All existing overhead power lines within or at the immediate street frontage to the development site shall be relocated underground to Energy Australia standards and specifications. If not practicable to relocate the power line underground, arrangements shall be made with Energy Australia to place the conduit to carry those power lines underground so that they can be utilised at a later date by Energy Australia. In this regard all associated costs shall be borne by the applicant
14. **Trade Waste Agreements** - A Trade Waste Agreement with Sydney Water may be required. Details of any work required to comply with the agreement must be detailed on the plans lodged with the Construction Certificate. If no trade waste agreement or grease trap is required, a letter from Sydney Water to this effect must be submitted with the application for the Construction Certificate.
15. **Department of Infrastructure, Regional Development and Cities** - In accordance with The Airports (Protection of Airspace) Regulations 1996, regulation 14(1) (b), by the Department of Infrastructure, Regional Development and Cities imposes the following conditions on any approval:
 - a) The building **must not exceed** a maximum height of **70.32 metres AHD, this includes** all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any rooftop garden plantings, exhaust flues etc.
 - b) The building must be obstacle lit by low density steady red lighting during the hours of darkness at the highest point of the building. Obstacle lights are to be arranged to ensure the building can be observed in a 360 degree radius as per Chapter 9 of the Civil Aviation Safety Regulations 1998 – Part 139 (Aerodromes) Manual of Standards 2019 (the MOS). Characteristics for low intensity lights are stated in section 9.32 of the MOS.
 - c) Following completion of the building, the Proponent must advise SACL, in writing:
 - That the future owner(s)/manager(s) of the building **have been informed** of their **obligation to maintain** the obstacle lighting in accordance with conditions of this approval; and
 - The contact details of the person/position **responsible for the maintenance** of the obstacle lighting. These details **must be reviewed regularly** and kept up to date.
 - d) The Proponent **must ensure** the obstacle lighting is monitored. For detailed requirements for the monitoring of obstacle lights within the aerodrome's OLS refer to section 9.36 of the MOS.

- e) The proponent **must ensure** obstacle lighting is maintained in serviceable condition and any outage immediately notified to SACL.
- f) Separate approval **must be sought** under the Regulations for any equipment (i.e. cranes) required to construct the building. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore, it is advisable that approval to operate construction equipment (i.e. cranes) must be obtained prior to any commitment to construct.
- g) The Proponent must advise Airservices Australia at least three business days prior to the controlled activity commencing by emailing ifp@airservicesaustralia.com and quoting YSSY-CA-367.
- h) On completion of construction of the building, the applicant must provide Georges River Council and the airfield design manager with a written report from a certified surveyor on the finished height of the building.

Breaches of approval conditions are subject to significant penalties under Sections 185 and 187 of the Act.

16. **NSW Ambulance** - Critical to our ongoing operations and flight safety in and around St George Hospital, crane lighting during the construction period should be as described below:

The illumination requirements for cranes in the vicinity of a Hospital HLS are detailed below.

The crane tower and jib are to be illuminated in the following manner for the duration of the period the crane is erected – including periods where the site is inactive.

From recent crane/helicopter scenarios across the network, the following crane lighting requirements have been developed that provide good situational awareness to Helicopter pilots/crew with and without NVG.

Lesser lighting gets lost in the background lighting (houses, traffic lights, vehicle break lights) when viewed from above.

As a minimum for all tower cranes:

- Top of crane A frame or cabin: medium intensity flashing red obstruction light (night) and white by day.
- Both ends of Jib: medium intensity red obstruction light (night) and white by day.
- Along Jib: line of white LED fluoro on a PE cell along the full length of the jib, and
- Tower section: stairway lights or spot lights attached to the top of the tower pointing down and onto the tower (not up into pilot eyes).

The LED jib Fluoro details are:

- Lights used: LED WEATHER PROOF EMERGENCY FLUROS (minimum 90 minute battery back up).
- Lights are controlled via a PE Cell.

Prior to the Issue of a Construction Certificate

17. **Communal Open Space** - A Plan of Management (POM) for use of rooftop open space must be submitted to and approved by the PCA prior to the issue of any Construction Certificate, with a copy stamped as received by the PCA provided to Council. The POM must outline the:
- (i) hours of use of the rooftop communal open space and the Level 01 communal open space, which shall be restricted to between 8am to 10pm;
 - (ii) maximum number of 25 users at any one time in each communal open space area
 - (iii) provisions that no amplified music to be played; and
 - (iv) identify other measures to ensure that the amenity and safety of persons within the development and in nearby existing and future development is maintained.
 - (v) Location and type of signage to be installed in the building to notify residents and visitors in respect to the use of this space.
 - (vi) The approved POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision and a sign in the front entry of the building shall be included to ensure the use of this space is monitored and understood by all occupants.

The development must be carried out in accordance with this POM at all times.

18. **Public Domain Plans** - The applicant is required to submit Public Domain Plans which are to consist of full civil engineering drawings to Australian Standards. These plans are to be inclusive of new kerbing long sections, cross sections, driveway, drainage, paved footpath, landscape and tree pits and in accordance with Council's "Public Domain Streetscape Works Specification."

The Public Domain works shall be constructed in accordance with the approvals and specifications issued under the "Application for Driveway Crossing and Associated Works on Council Road Reserve" Roads Act 1993 Section 138 Approval issued by Council's Assets and Infrastructure Division. Applications to be made at the Georges River Council Customer Service Centre.

The Plan must be approved by Council's Assets and Infrastructure Division prior to the issue of Construction Certificate. In this regard it is recommended the applicant liaise with Council's Assets and Infrastructure staff prior to preparing the public domain works design criterion.

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

19. **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	\$80,525.40 (Calculation is based on \$1236 per metre of street frontage as follows: Railway Parade – 28.575m Bowns Road – 36.575m)
Inspection Fee for Refund of Damage Deposit	\$742.00
DEVELOPMENT CONTRIBUTIONS	
Kogarah Section 94 Development Contributions Plan No 5 – Open Space	\$852,516.74
Kogarah Section 94 Development Contributions Plan No 8 – Kogarah Town Centre – Traffic Facilities	\$5,400.21
Kogarah Section 94 Development Contributions Plan No 8 – Kogarah Town Centre – Community Facilities	\$14,842.37
Kogarah Section 94 Development Contributions Plan No 9 – Kogarah Libraries – Buildings	\$13,833.05
Kogarah Section 94 Development Contributions Plan No 9 – Kogarah Libraries - Books	\$9,863.29
Total S94 Contributions	\$896,455.66

General Fees

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

Development Contributions

The Section 94 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

Indexation

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

Timing of Payment

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

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

Note: Prior to the issue of any Occupation Certificate, written confirmation from Council's delegate that all outstanding s7.11 contributions have been paid, is to be obtained and provided to the satisfaction of the PCA.

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.

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

- (a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$80,525.40** (Not inclusive of drainage works).
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee (for two inspections) to enable assessment of any damage and repairs where required: **\$742.00**
- (c) Submit to Council, before the commencement of work, a dilapidation report of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

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

21. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
22. **Acoustic requirements for timber flooring** - If timber flooring is installed within the development, then appropriate insulation between floors shall be implemented to exceed the minimum sound attenuation.
23. **Driveway access/sight lines** - Driveway access to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.

Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distance requirements stipulated in the *Australian Standards AS2890.1*.

In the instance of multi storey car park and to prevent vehicles from running over the edge of a raised platform or deck of a multi-story car park, barriers in accordance to AS2890.1:2004 section 2.4.5.3 need to be installed.

24. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by a qualified designer, shall be submitted to the Certifying Authority verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of *State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development*.
25. **BASIX Commitments** – All energy efficiency measures as detailed in the BASIX Certificate No must be implemented on the plans lodged with the application for the Construction Certificate.
26. **Pre-Construction Dilapidation Report - Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:
 - (a) All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.

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

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

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

27. **Stormwater System** - The submitted stormwater plans as described in the table below have been assessed as a concept plan only.

Description	Reference No.	Date	Revision	Prepared by
Cover Sheet	SW100	13.5.2021	C	SGC Consulting Engineers
Basement 3 Plan	SW200	13.5.2021	C	SGC Consulting Engineers
Ground Floor Plan	SW201	13.5.2021	C	SGC Consulting Engineers
Roof Plan	SW202	13.5.2021	C	SGC Consulting Engineers

Details Sheet	SW300	13.5.2021	C	SGC Consulting Engineers
Erosion and Sediment Control Plan and Details	SW400	13.5.2021	C	SGC Consulting Engineers
OSD Catchment Plan	SW500	13.5.2021	C	SGC Consulting Engineers

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

- (a) All stormwater shall drain by gravity to Councils existing drainage pit located in the street using a 375mm diameter RCP pipe in accordance with the Australian Standard AS/NZS 3500.3: 2015 (as amended).
- (b) The PCA shall ensure that the approved drainage design levels are surveyed during construction by a registered surveyor.
- (c) 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.
- (d) The design and structural adequacy of the OSD tank system shall be certified by a practising drainage engineer to the satisfaction of the PCA.

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

Stormwater Systems with Basement

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

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

Protection of basement from inundation of stormwater waters

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

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

28. **On Site Detention** - The submitted stormwater plan has been assessed as a concept plan only. 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 design must comply with the results of the generated stormwater management report regarding the OSD storage volume and the stormwater permissible site discharge.

- (a) Provide grated access and sufficient ventilation to the OSD tank as shown on the stormwater plan.
- (b) The surcharge flow from the OSD tank to the street shall not be blocked.
- (c) The PCA shall ensure that a drainage engineer shall supervise the construction of the OSD stormwater system and certify his supervision in writing and state his satisfaction of the constructed stormwater system on site that it is built as intended in this consent.

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>

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

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

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

30. **Contamination** – Prior to the issue of any Construction Certificate for above ground building works, the site must be remediated in accordance with the recommendations of

the approved Site Investigation & Remedial Action Plan (RAP) prepared by Canopy Enterprises Pty Ltd dated 26 August 2020.

- a. The applicant must engage an appropriately qualified and experienced supervising environmental consultant to supervise all aspects of site remediation and validation. The environmental consultant must supervise all aspects of the remediation and validation works in accordance with the approved Remediation Action Plan.
- b. Any reports relating to contamination must be prepared, or reviewed and approved by an appropriately qualified and certified environmental consultant. The front cover of the report must include the details of the consultant's certification.
- c. Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to Council and the Principal Certifying Authority in writing.
- d. Any variations to the approved Remediation Action Plan must be prepared, or reviewed and approved by an appropriately qualified and certified environmental consultant, and submitted to Council prior to the commencement of such work.

Remediation Works

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

- the Managing Land Contamination: Planning Guidelines SEPP 55 Remediation of Land; and,
- the EPA Guidelines made under the Contaminated Land Management Act 1997;

and in accordance with the Remedial Action Plan.

31. **Site Validation** - Prior to the issue of any Construction Certificate for above ground building works, a Validation report shall be prepared in accordance with the requirements of the EPA (2020) Guidelines for Consultants Reporting on Contaminated Sites and the EPA (2017) Guidelines for the NSW Site Auditor Scheme and provided to Council and the PCA.

The Validation Report will confirm that the site has been remediated to a suitable standard and in accordance with the process stipulated in the Site Investigation & Remedial Action Plan prepared by Canopy Enterprises Pty Ltd dated 26 August 2020 and that the site is suitable for the proposed use.

The validation report shall be prepared in accordance with the Office Environment and Heritage Guidelines, *Consultants Reporting on Contaminated Sites*, and shall certify the suitability of the site for the proposed development.

- 1 describe and document all works performed;
- 2 include results of validation testing and monitoring;
- 3 include validation results of any fill imported on to the site;
- 4 show how the objectives of the Remedial Action Plan have been met;
- 5 show how all agreed clean-up criteria and relevant regulations have been complied with; and include clear justification as to the suitability of the site for the proposed development and the potential for off-site migration of any residual contaminants

The Validation Report must be prepared, or reviewed and approved by an appropriately qualified and certified environmental consultant. The front cover of the report must

include the details of the consultant's certification

32. **Notice of Completion and monitoring Report** - After completion of all Remediation works and prior to the issue of any Construction Certificate for above ground building works, a Notice of completion of remediation work must be submitted to Council in accordance with clause 17(2) of the SEPP 55 and the Notice must address all requirements listed in Clause 18 of SEPP 55.

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

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

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

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

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

35. **Fire Safety Measures** - Prior to the issue of a construction certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a PCA. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or PCA will then issue a Fire Safety Schedule for the building.
36. **Structural Details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns & other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.
37. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical

Engineer's report.

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

38. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors, common areas, stairs and ramps as well as floor surfaces in all wet rooms including in any residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2013 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.

39. **Access for Persons with a Disability** - Access and or sanitary facilities for persons with disabilities must be provided to the premises/building in accordance with the requirements of the Premises Standards, the Building Code of Australia, and AS 1428.1. Details must be submitted with the Construction Certificate Application for approval.

In regard to the above, pedestrian access throughout basement levels shall be highlighted and sign posted to safeguard access and egress.

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

40. **Traffic Management** - 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).

41. **Acoustic Requirements - Compliance with submitted Acoustic Report** - The Construction Certificate plans shall demonstrate compliance with the Acoustic Assessment Report submitted to Council, titled the "*Noise and Vibration Impact Assessment*" dated 24/06/2020 Revision 2; Reference Number: 20020_240220_Noise Impact Assessment_BW_R0 by White Noise Acoustics. This means that a review of glazing design and mechanical plant must be undertaken to ensure that acoustic objectives will be met. It is also imperative that section 6.4 of the "*Noise and Vibration Impact Assessment*" dated 26/04/2020; Reference Number: 20020_240220_Noise Impact Assessment_BW_R2 by White Noise Acoustics is addressed.

Written verification from a suitably qualified acoustic consultant must be submitted to Council validating that the acoustic objectives contained within the aforementioned report will be met, must be submitted to Council for approval.

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

Acoustic Report - General Operation of Premises

The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 (as amended) and Regulations.

An Acoustic Report shall be prepared by a suitably qualified acoustic consultant demonstrating that the operation of the premises and plant equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise sources under consideration by more than 5dB. The source noise level shall be assessed as an LAeq, 15 min in accordance with the NSW Environment Protection Authority's NSW Industrial Noise Policy.

42. **NSW Police - Crime Prevention-** In line with the recommendations of the NSW Police Force, the following are to accompany the Construction Certificate application:
 - (a) The development is to provide/install Closed-Circuit Television (CCTV) cameras within and around the development. A Closed-Circuit Television plan is to be prepared in that regard.
 - (b) A Crime Risk assessment report is to be provided and there must be strict adherence to the requirements of the 'Crime Risk Assessment Report'.
 - (c) The system must record continuously at all times.
 - (d) Recordings must be in a digital format and at a minimum of ten frames per second (10 fps).
 - (e) Any recorded image must specify the time and date of the recorded image.
 - (f) The systems cameras must cover the following areas
 - (i) All entry and exit points on the premises
 - (ii) The footpath immediately adjacent to the premises
 - (iii) All publicly accessible areas (other than toilets) within the premises.
 - (iv) Throughout the underground car park to monitor activities around these areas
43. **Lighting in and around the Site-** Lighting, which complies with the Australian Standard, must be installed in and around the property to increase visibility during the hours of darkness. Lighting must comply with the relevant Australian Standard.
44. **Commonwealth Disability (Access to Premises) Standard** - The Commonwealth Disability (Access to Premises - Buildings) Standards 2010 (the Premises Standards) applies to all applications (i.e. Construction Certificate). This requires any new building, part of a building and the affected part of the existing building to comply with the Premises Standards, the Building Code of Australia and AS 1428.
45. **Geotechnical report** - The applicant must submit a Geotechnical Report, prepared by a professional engineer specialising in geotechnical engineering who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted before the issue of the Construction Certificate and is to include:
 - (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
 - (b) Dilapidation Reports on the adjoining properties including, but not limited to adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the PCA and the

adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.

- (c) On-site guidance by a vibration specialist during the early part of excavation.
- (d) Measures to minimise vibration damage and loss of support to other buildings. Where possible any excavation into rock is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures. Where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) the report shall detail the maximum size of hammer to be used and provide all reasonable recommendations to manage impacts.
- (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

46. **Construction Traffic Management Plan** - A Construction Traffic Management Plan detailing but not limited to the following:

- (a) Construction vehicle routes;
- (b) Anticipated number of trucks per day;
- (c) Anticipated number of staff per day
- (d) Hours of construction;
- (e) Duration of construction;
- (f) Traffic Control Plans to manage construction vehicles;
- (g) Access arrangements; and
- (h) Proposed traffic measures to minimise impacts of construction vehicles.

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

47. **Waste Room Design and Construction** - The Construction Certificate drawing shall show the waste room containing the following to minimise odours, deter vermin, protect surrounding areas, and make it a user-friendly and safe area:

- i. waste room floor to be sealed;
- ii. waste room walls and floor surface is flat and even;
- iii. all walls painted with light colour and washable paint;
- iv. equipment electric outlets to be installed 1700mm above floor levels;
- v. light switch installed at a height of 1.6m.
- vi. The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
- vii. waste rooms must be well lit (sensor lighting required);
- viii. optional automatic odour and pest control system installed to eliminate all pest
- ix. types and assist with odour reduction - this process generally takes place at building handover - building management make the decision to install;
- x. all personnel doors are hinged and self-closing;
- xi. waste collection area must hold all bins - bin movements should be with ease of access;
- xii. conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.
- xiii. Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.

xiv. Cleaners or other on-site personnel will monitor the bin storage area and all spills will be attended to immediately by cleaners.

48. **Waste Handling Systems** - All waste handling equipment and systems used in conjunction with the provision of waste and recycling services shall be manufactured, installed and maintained in accordance with any applicable regulatory requirements, relevant Australian Standards, and relevant manufacturer's specifications.
49. **Site Management Plan** - A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:
- (a) location of protective site fencing;
 - (b) location of site storage areas/sheds/equipment;
 - (c) location of building materials for construction, e.g. stockpiles
 - (d) provisions for public safety;
 - (e) dust control measures;
 - (f) method used to provide site access location and materials used;
 - (g) details of methods of disposal of demolition materials;
 - (h) method used to provide protective measures for tree preservation;
 - (i) provisions for temporary sanitary facilities;
 - (j) location and size of waste containers/skip bins;
 - (k) details of proposed sediment and erosion control measures;
 - (l) method used to provide construction noise and vibration management;
 - (m) construction and demolition traffic management details.

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

50. **Required Design Changes** - The following changes are required to be made and shown on the Construction Certificate plans to the satisfaction of the PCA:
- (a) The awning across the frontage of Bowns Road is to be extended for the full length of the commercial tenancy. The awning is to project beyond the property boundary over the public footpath area to enhance pedestrian amenity by providing shade and weather protection.
 - (b) 1.7m high privacy screens (as measured from the finished floor level of the balcony) with slats angled to enable eastern sunlight into the development and prevent overlooking to the adjoining allotment to the south east, are to be provided to the south eastern side of the balconies associated with apartments 206, 306, 406, 506 and 606.
 - (c) The plans provided indicate that the commercial lift only provides access to basement 1, ground floor, level 01 and the roof top communal open space. The plans are to be amended to ensure that access can be made available to all residential levels of the building (Levels 02 to level 11 inclusive), in addition to the levels that access has already been provided to.
 - (d) An accessible WC is to be provided within the first floor commercial tenancy.
 - (e) Prior to the issue of the Construction Certificate, a registered surveyor shall survey the surface and invert levels of the existing kerb inlet pit in Railway Parade and incorporate the invert level in the proposed stormwater design.

(f) It is required to provide a boundary junction pit prior to discharge into Council's kerb inlet pit.

51. **Traffic Design Certificate** - A detailed "design" certificate from an experienced and qualified traffic engineer with tertiary qualifications is to be submitted to and approved by the Principal Certifying Authority confirming the following:

- (a) The car parking layout and loading areas associated with the development (including, driveway grades, headroom clearance turn paths, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS2890.1:2004, AS2890.6:2009 and AS2890.2:2018.
- (b) Bicycle parking associated with the development is provided in accordance with AS2890.3 design requirements.
- (c) Driveway access complies with Figure 3.3 of AS2890.1:2004 minimum sight lines for pedestrian safety.
- (d) All vehicles shall enter and exit the premises in a forward direction.

52. **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.

53. **Allocation of street addresses** - In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing, the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street address for the subject development must be allocated as advised by Georges River Council.

Primary Address

- 206 Railway Parade, Kogarah NSW 2217

Unit Addresses

- Refer to the attached list of unit addresses for the subject development.

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

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

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

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

55. **Materials and Finishes** - Any proposed cladding to the building shall be constructed of fire resistant materials which comply with the requirements of the National Construction Code (NCC) 2019 Volume (1) One Building Code of Australia (BCA). Details of the proposed materials and finishes are to be detailed on the construction certificate drawings and shall be to the satisfaction of the PCA.
56. **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.

57. **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.
58. **NBN Connection** - Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:
- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
 - (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

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

59. **Landscape Plans** – All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Black beetle Landscape Architecture, Ref No BB1263, LA LP 101 - 110/03 and dated 14/05/21. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the

following –

- (a) The proposed seventeen (17) trees (within site) and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan.
- (b) All seventeen (17) trees proposed within the site, 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) A minimum of 17 x 200 litre size trees, which will attain a minimum mature height of six (6) metres, shall be planted within the property
- (d) All trees and shrubs must be contract grown with a reputable and licensed nursery grower early within the build phase to ensure that the proposed trees, plant species, quantities and sizes are guaranteed at the time of landscape planting and implementation. The purchasing of all trees and shrubs must be signed off and certified by the Landscape Architect as a record, to ensuring that the trees and plants planted at the landscape stage and to confirm compliance to the PCA.
- (e) 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;

60. Tree Removal & Replacement

(a) Tree removal

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
T1 – <i>Melaleuca linarifolia</i>	X1	Within site, south east corner
T2 - <i>Melaleuca quinquenervia</i>	X1	Within site, south east corner
T1 & T2 have been valued via the Thyer method of tree valuation, by Ross Jackson as being \$2512.00 for T1 and \$3777.00 for T2 , to be paid to Council prior to obtaining a Construction Certificate and prior to removal and signed off by the PCA		
<i>Callistemon viminalis</i>	X1	Within site, south east corner

General Tree Removal Requirements

- (a) All tree removal shall be carried out by a minimum certificate Level 3, Licenced and insured Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - Pruning of Amenity Trees and Tree Works Industry Code of Practice (Work Cover NSW 1.8.98).
- (b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

Street Tree Removal / Replacement by Council –

- a) Six (6) street trees of species to be determined must be provided in accordance with the Public Domain Plan Approval.
- b) Council shall be appointed to remove and plant all tree/s on public land. All costs

associated with the removal of the tree/s and the planting of replacement trees shall be met by the applicant. Fees and charges outlined in the table below are subject to change and are set out in the current version of Council's 'Schedule of Fees and Charges', applicable at the time of payment.

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

Fee Type – Tree planting on public land	Number of trees	Amount per tree
Administration Fee, tree planting and maintenance	X6	\$452.00
Cost of tree removal		N/A
Cost of Stump Grinding		N/A

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

61. **Dilapidation Report on Public Land – Major Development Only** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site, including:

- (a) Foot paths, Kerb and gutter and roadways
- (b) Stormwater drainage pits and pipes

The report must include the following:

- (a) Photographs showing the existing condition of the road pavement fronting the site,
- (b) Photographs showing the existing condition of the kerb and gutter fronting the site,
- (c) Photographs showing the existing condition of the footpath pavement fronting the site,
- (d) Photographs showing the existing condition of any retaining walls within the footway or road, and
- (e) The full name and signature of the structural engineer
- (f) The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the PCA and a copy provided to the Council.

The Dilapidation Report must be prepared by a professional engineer. The report must be provided to the PCA and a copy provided to the Council. The report is to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

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

62. **Structural Engineers Details – Supporting Council road/footway-** Prior to the commencement of work in connection with the excavation of the site associated with the basement carpark, structural engineer's details relating to the method of supporting Council's roadways/footways must be submitted to the satisfaction of Council.

63. **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.

64. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
- (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
 - (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
 - (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
65. **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.
66. **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.
67. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The cost associated with

the provision or adjustment of services within the road and footway areas is to be at the applicant's expense.

During Construction

68. **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.

69. **Hours of construction for demolition and building work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.

Note: A penalty infringement notice may be issued for any offence.

70. **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.

71. **Site contamination (additional information)** - Any new information that comes to light during demolition, excavation or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.

72. **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.

73. **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.

74. **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.

75. **Structural Certificate During Construction** - The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate
76. **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 Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
 - (f) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey 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.

77. **Hazardous or Intractable Waste – Removal and Disposal**- Hazardous or intractable waste arising from the demolition or construction process shall be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and with the provision of:
- Work Health and Safety Act 2011 (NSW) (as amended);
 - Work Health and Safety Regulation 2011 (as amended);
 - Protection Of the Environment Operations Act 1997 (NSW) (as amended); and
 - Protection of the Environment Operations (Waste) Regulation 2014 (as amended)
78. **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.
79. **Damage within Road Reserve and Council Assets** - The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at,

near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.

80. **Public Utility and Telecommunication Assets** -The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
81. **Physical connection of Stormwater to site.** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's stormwater system in Railway Parade.

Prior to the issue of the Occupation Certificate

82. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent, must be implemented before issue of any Occupation Certificate.
83. **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.
84. **Payment of S7.11 and S7.12 Contributions** - Prior to the issue of any Occupation Certificate, written confirmation from Councils delegate that all outstanding s7.11 and s7.12 contributions have been paid, is to be obtained and provided to the satisfaction of the PCA.
85. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the PCA prior to the issue of the Occupation/Subdivision Certificate.
86. **Acoustic Certification** – Prior to the issue of any Occupation Certificate, a suitably qualified acoustic consultant shall certify that the operation of the premises and plant equipment shall not give rise to a sound pressure level at any affected premises that exceeds the acoustic criteria established by the Acoustic Report required by a condition of this consent. The development shall at all times comply with these noise levels post occupation.
87. **Acoustic Compliance** – Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report titled *“206-214 Railway Parade Kogarah. Noise and Vibration Assessment”* Project number: 20020 Revision 2; reference number: 20020_240220_Noise Impact Assessment_BW_RO prepared by White Noise Acoustics.
88. **Post Construction Dilapidation report- Private Land** – At the completion of the construction works, a suitably qualified person is to be engaged to prepare a post construction dilapidation report. This report is to ascertain whether the construction works associated with the subject development created any structural damage to the adjoining premises.

The report is to be prepared at the expense of the applicant and submitted to the PCA

prior to the issue of the Occupation Certificate. In ascertaining whether adverse structural damage has occurred to the adjoining premises, the PCA, must compare the post construction dilapidation report with the pre-construction dilapidation report required by conditions in this consent.

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

89. **Acoustic Compliance – General Operation of Premises-** The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 (as amended) and Regulations.

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

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

90. **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.*

91. 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.

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

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

93. Requirements prior to the issue of the Occupation Certificate- The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:

- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.

- (b) The internal driveway construction works, together with the provision for all services shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
 - (c) Construct any new vehicle crossings required.
 - (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
 - (e) Work as Executed Plans prepared by a chartered Professional Engineer or a Registered Surveyor and certified by a practicing drainage engineer when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.
94. **Line marking of parking spaces** - Parking spaces shall be clearly designated (sign posted and marked on ground) and line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with *Australian Standards, AS1742, Manual of Uniform Traffic Control Devices* and *NSW Road Transport (Safety and Traffic Management) Regulations 1999*.
95. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.
96. **SEPP 65 Design Verification Statement** - The PCA must not issue any Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the PCA has received a design verification, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.
97. **Vehicular crossing & Frontage work – Major development-** The following road frontage works shall be constructed in accordance with the specifications issued under the 'Application for Driveway Crossing and Associated Works on Council Road Reserve' approval issued by Council's Assets and Infrastructure Division:
- (a) Construct a full width (boundary to kerb) footpath area in paving material for the full length of all frontages of the site in accordance with Council's Specifications for footpaths.
 - (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
 - (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
 - (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

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

98. **Traffic Certification-** An “as built” certificate from an experienced and qualified traffic engineer with tertiary qualifications is to be submitted to and approved by the Principal Certifying Authority confirming the following:
- (a) The car parking layout and loading areas associated with the development (including, driveway grades, headroom clearance turn paths, aisle widths, aisle lengths and parking bay dimensions) has been constructed in accordance with AS2890.1:2004, AS2890.6:2009 and AS2890.2:2018.
 - (b) Bicycle parking associated with the development is provided in accordance with AS2890.3 design requirements.
 - (c) Driveway access complies with Figure 3.3 of AS2890.1:2004 minimum sight lines for pedestrian safety.
 - (d) All vehicles shall enter and exit the premises in a forward direction;
 - (e) Parking spaces shall be clearly line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with *Australian Standards, AS1742, Manual of Uniform Traffic Control Devices* where required.
99. **Consolidation of Site** - The site shall be consolidated into one allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan shall be registered at the NSW Land and Property Information prior to the issue of a final occupation certificate.
100. **Completion of Major Works** - Prior to the issue of a Final Occupation Certificate, the following works must be completed at the applicant's expense to the satisfaction of Council's Engineering Services section:
- (a) Stormwater pipes, pits and connections to public stormwater systems within the road related area;
 - (b) Driveways and vehicular crossings within the road related area;
 - (c) Removal of redundant driveways and vehicular crossings;
 - (d) New footpaths within the road related area;
 - (e) Relocation of existing power/light pole
 - (f) Relocation/provision of street signs
 - (g) New or replacement street trees;
 - (h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
 - (i) New or reinstated kerb and guttering within the road related area; and
 - (j) New or reinstated road surface pavement within the road.

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

101. **Dilapidation Report on Public Land**– Upon completion of works, a follow up dilapidation report must be prepared for the items of Council infrastructure adjoining the

development site:

- (a) Footpaths, kerb and gutter
- (b) Drainage Infra-structure

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

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

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

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

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

102. **Allocation of car parking spaces** – Car parking associated with the development is to be allocated as follows:

- a) Residential dwellings: 52 car parking spaces
- b) Commercial/Retail: 16 car parking spaces
- c) Visitors Spaces: 7 car parking spaces (includes visitor/car wash bay)
- d) Visitor/Car wash bay: 1 car parking space.

103. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000, on completion of building works and prior to the issue of an Occupation Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 174 of the Environmental Planning and Assessment Regulation, 2000. In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:

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

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

104. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public

corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any commercial/retail/residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.

105. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to Ausgrid (or relevant electricity provider).
106. **Allocation of street addresses** - All street addresses are to be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing & the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements.
107. **Completion of Landscape Works**
 - (a) All landscape works, planting of seventeen (17) trees within the site and fees payable for Councils street tree planting must be completed before the issue of the Final Occupation Certificate and to the satisfaction of Councils Tree Management Officers and in accordance with approved landscape plans and specifications, drawn by Black beetle Landscape Architecture, Ref No BB1263, LA LP 101 - 110/03 and dated 14/05/21.
 - (b) A certificate of compliance for the planting of all seventeen (17) trees and shrubs proposed for the development (this includes street trees). An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA – Principal Certifying Authority, to form compliance.

Operational Conditions (On-Going)

108. **Communal Open Space** – The use of the roof top communal open space area is to be in accordance with the approved Plan of Management (POM) at all times.
109. **Crime Prevention**- In line with the recommendation of the NSW Police Force, the premise is to always operate as per the following:
 - (a) The CCTV system must continuously record and operate at all times.
 - (b) Recordings must be in a digital format and at a minimum of ten frames per second (10 fps).
 - (c) Any recorded image must specify the time and date of the recorded image.
 - (d) The systems cameras must cover the following areas
 - i. All entry and exit points on the premises
 - ii. The footpath immediately adjacent to the premises
 - iii. All publicly accessible areas (other than toilets) within the premises.
 - iv. Throughout the underground car park to monitor activities around these areas
 - (e) Lighting in and around the Site- Lighting devices must be in operation in and around the property to increase visibility during the hours of darkness. Lighting must comply with the relevant Australian Standard.

The premise is to always operate as per the approved Crime Risk Assessment and Security Management Plan.

110. **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).
111. **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.
112. **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.
113. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
114. **Maximum vehicle size** - No vehicle larger than a Small Rigid Vehicle (SRV) as defined in AS 2890.2: 2018 (Australian Standard for off street commercial vehicle facilities) is to be permitted to access the development for the purpose of loading or unloading of goods and/or services.
115. **Deliveries** - No deliveries to the premises shall be made direct from a public place or street inclusive of footpaths, nature strip, roadway and car parks.
116. **Deliveries** – No deliveries and/or waste removal to/from the site shall take place between 10pm and 6am, 7 days a week.
117. **Loading and unloading areas** - All loading and unloading of vehicles in relation to the use of the premises shall take place wholly within the dedicated loading/unloading areas, which is wholly within the site.
118. **Visitors Parking** - All allocated car parking spaces shall be freely available for the visitors of the proposed development.
119. **Entering & Exiting of vehicles** - All vehicles shall enter and exit the site in a forward direction.
120. **Annual Fire Safety Statement** - The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
- (a) Within 12 months after the date on which the fire safety certificate was received.
 - (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
 - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
 - (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.

121. Maintenance of Landscaping –

- (a) All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and other operations required to maintain healthy trees, plants and turfed areas.
- (b) A final certificate of compliance letter, once all building and landscape works have been completed, from the engaged AQF 5 Consulting Arborist, that tree protection measures have been installed and maintained for the entirety of the project and report on the condition of the trees that as part of this Consent, were to be protected and retained
- (c) If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
- (d) A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy, Masterplan, and Tree Management Policy 2019, can be downloaded from Council's website www.georgesriver.nsw.gov.au

122. 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.

123. Responsibility of Strata/Building Manager - Movement of bins around the site is the responsibility of the Strata/Building Manager or a delegated contractor (such as cleaners).

It is the responsibility of the Strata/Building Manager or a delegated contractor to clean and maintain bin storage rooms to maintain a sanitary environment. It is also the responsibility of the Strata/Building Manager or a delegated contractor to monitor fill levels of all bins in each designated bin storage area discharge room and rotate these for servicing using bin lift equipment at the site. The Strata/Building Manager or a delegated contractor will also be responsible for monitoring the fill levels of bulky waste in the designated bulky waste storage areas.

The Strata/Building Manager shall also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory requirements and relevant health and environmental standards.

124. Waste Management - The provision of all residential, public and commercial waste services are to be provided as per the Waste Management Plan prepared by Dickens Solutions Revision 3 dated April 2021. The Body Corporate/Strata Manager will be responsible for overseeing the provision of waste services in accordance with the approved WMP and relevant legislation, including maintaining bins in a clean and sanitary manner utilising the equipment provided as per the WMP.

It will be the responsibility of the Owners Corporation to arrange for the removal of all waste materials from the site on a regular basis. All common (litter bins), residential and

commercial general waste, recycling and bulky waste (where applicable) collection services are to be provided by private waste contractor. The development will not be permitted to place bins or bulky waste on the kerbside at any time and all collection services must occur onsite within the designated loading bay, as per the Waste Management Plan and at cost to the Owners Corporation.

The Strata/Building Manager shall also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory requirements and relevant health and environmental standards.

Chute discharge will be provided as per the WMP and architectural plans. The chute discharge area will only be accessible by authorised building or cleaning staff and must be secured by lock and key. Central bin storage must be by double door (or appropriate roller door if space requires) to enable the movement of 1100L bins in/out of the room. Chutes are to be installed and maintained as per manufacturers instruction and in order to maintain safe and hygienic infrastructure for resident's use.

The approval has been granted for the use of 1100L bins. Therefore the development is conditioned that door widths must enable the passage of 1100L bins from the residential bins central bin storage area to the SRV Loading Dock. The SRV Loading Dock has been designed to enable turning of a SRV vehicle, provided by private waste contractor.

Residential waste storage areas must be secured under lock and key and not accessible to commercial tenants.

Common bins must be enclosed by lid or rosette-opening enclosure to prevent wind-blown litter from the rooftop or other open space.

Waste collection services are restricted to 3 collection services per week to maintain amenity and reduce noise impacts. Waste collection services must be provided at a time that reduces impacts on the residents and tenants.

All garden organic waste generated onsite must be removed from the site by private contractor, at cost to the Owners Corporation, as per the arrangements within the Waste Management Plan.

Loose or unbagged waste materials are not permitted to be moved between levels or around the site without being contained within appropriate bins as per the Australian Standards.

Operational Requirements Under the Environmental Planning & Assessment Act 1979

125. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
126. **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.

127. **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.

128. **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.

129. **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.

130. **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.

131. **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.

Prescribed Conditions

132. **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
133. **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.

134. **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.
135. **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.
136. **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.
137. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

END CONDITIONS

NOTES/ADVICES

138. **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

139. **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.

140. **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.
141. **Access to NSW Legislation (Acts, Regulations and Planning Instruments)** – NSW Legislation can be accessed free of charge at www.legislation.nsw.gov.au.
142. **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.

143. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.
144. **Underground Cables**- Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

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

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
- (b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
- (c) New South Wales Government Legislation home page for access to all NSW

legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 (www.legislation.nsw.gov.au).

- (d) Australian Acoustical Society - professional society of noise-related professionals (www.acoustics.asn.au/index.php).
- (e) Association of Australian Acoustical Consultants - professional society of noise related professionals (www.aaac.org.au).
- (f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).

146. **Acoustical Engineer Contacts & Reference Material-** Further information including lists of Acoustic Engineers can be obtained from:

- (a) Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au)
- (b) Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au)
- (c) NSW Industrial Noise Policy – Office of Environment & Heritage (www.environment.nsw.gov.au)

147. **Disability Discrimination Act** - This application has been assessed in accordance with the Environmental Planning and Assessment Act 1979. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992. The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.

148. **FR NSW comments** - Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation 2000 to seek written comment from FR NSW about any Fire Engineered Solution developed to meet the performance requirements for external combustible cladding.

The applicant is also advised to seek written advice from FR NSW on the location and construction of the proposed Fire Control Centre Facility, the location of the Fire Indicator/Mimic Panels and the location, use and installation of Hydrants/Sprinkler Booster facilities.

149. **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.

150. **Council appointed as the PCA** - 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.

In this regard, detailed construction plans and specifications that demonstrate compliance with the above requirements of the BCA, in which case, including in relation to the provision of egress and the protection of openings etc must be submitted with the Construction Certificate Application.

151. **Energy Efficiency Provisions** - Should Council be appointed as the PCA, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the PCA.

Energy efficiency provisions relate only to new building work or the installation of new measure. Existing building fabric and measures may not be upgraded.

152. **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).

153. **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. (e.g. DA2018/0***) and reference this condition number (e.g. Condition 23)
 - (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.

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

The preparation of all engineering drawings (site layout plans, cross sections, longitudinal sections, elevation views together with a hydraulic grade analysis) and specifications for

the new stormwater drainage system to be arranged by the applicant. The design plans must be lodged and approved by Council prior to the issue of a Construction Certificate.

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

154. **Land Contamination** - Note: A Certified Contaminated Land Consultant is a Certified Environmental Practitioner (Site Contamination) (CENVP(SC)) or certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM)

Information relating to certified contaminated land consultant or accredited site auditors can be found in EPA webpage: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/>

155. **Underground Storage Tanks Removal** - You are reminded that if underground storage tanks and associated pipework are uncovered during excavation you have a duty to notify the Georges River Council as the ARA of the removal and decommissioning as per Clause 23(1)(a) of the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019, which states:

23 Notice and report of system being decommissioned

- (1) *If a storage system is to be decommissioned, the person responsible for the storage system must notify the relevant local authority of the decommissioning—*
 (a) *in the case of urgent and unforeseen decommissioning—as soon as reasonably practicable after the decision to decommission the system is made, or*
 (b) *in any other case—no later than 30 days before the system is decommissioned or removed.*

Maximum penalty – 100 units (in the case of an individual) and 200 penalty units

SafeWork NSW (13 10 50) are to be contacted separately to obtain any additional requirements for the removal of underground storage tanks.






UNIT ADDRESSES

Unit Addresses at 206 Railway Parade, Kogarah NSW 2217

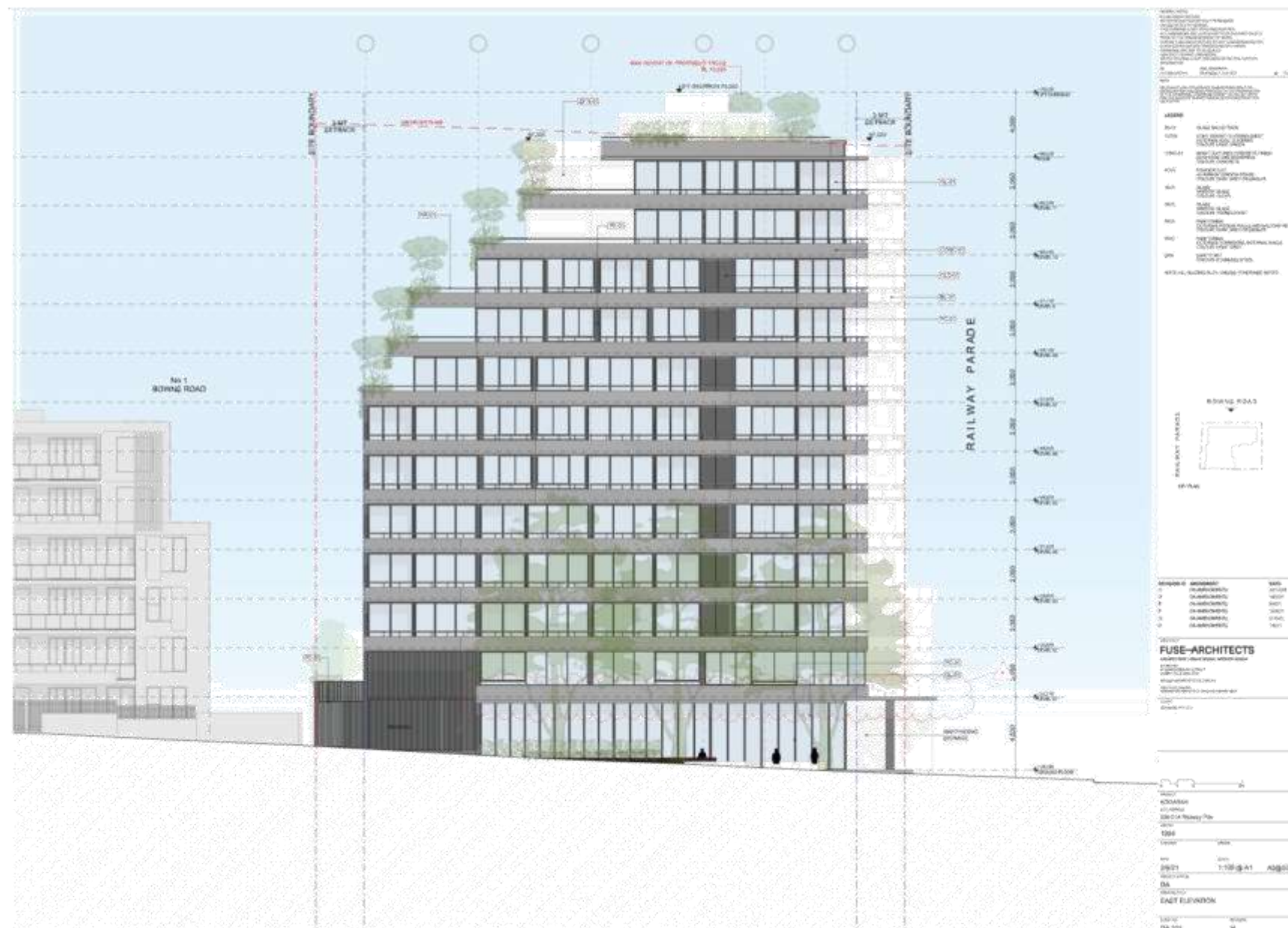
Unit numbers on DA Plans		Unit numbers and addresses allocated by Council				
Level	Unit No.	Unit No	Street No	Street Name	Suburb	COMPLETE ADDRESS
Basement 3	-	Basement CarPark 3 (B3)				
Basement 2	-	Basement CarPark 2 (B2)				
Basement 1	-	Basement Carpark 1 (B1)				
Ground Floor	Retail	G01	206	Railway Parade	Kogarah NSW 2217	G01/206 Railway Parade, Kogarah NSW 2217
Level 01	Commercial	101	206	Railway Parade	Kogarah NSW 2217	101/206 Railway Parade, Kogarah NSW 2217
Level 02	201	201	206	Railway Parade	Kogarah NSW 2217	201/206 Railway Parade, Kogarah NSW 2217
Level 02	202	202	206	Railway Parade	Kogarah NSW 2217	202/206 Railway Parade, Kogarah NSW 2217
Level 02	203	203	206	Railway Parade	Kogarah NSW 2217	203/206 Railway Parade, Kogarah NSW 2217
Level 02	204	204	206	Railway Parade	Kogarah NSW 2217	204/206 Railway Parade, Kogarah NSW 2217
Level 02	205	205	206	Railway Parade	Kogarah NSW 2217	205/206 Railway Parade, Kogarah NSW 2217
Level 02	206	206	206	Railway Parade	Kogarah NSW 2217	206/206 Railway Parade, Kogarah NSW 2217
Level 03	301	301	206	Railway Parade	Kogarah NSW 2217	301/206 Railway Parade, Kogarah NSW 2217
Level 03	302	302	206	Railway Parade	Kogarah NSW 2217	302/206 Railway Parade, Kogarah NSW 2217
Level 03	303	303	206	Railway Parade	Kogarah NSW 2217	303/206 Railway Parade, Kogarah NSW 2217
Level 03	304	304	206	Railway Parade	Kogarah NSW 2217	304/206 Railway Parade, Kogarah NSW 2217
Level 03	305	305	206	Railway Parade	Kogarah NSW 2217	305/206 Railway Parade, Kogarah NSW 2217
Level 03	306	306	206	Railway Parade	Kogarah NSW 2217	306/206 Railway Parade, Kogarah NSW 2217
Level 04	401	401	206	Railway Parade	Kogarah NSW 2217	401/206 Railway Parade, Kogarah NSW 2217
Level 04	402	402	206	Railway Parade	Kogarah NSW 2217	402/206 Railway Parade, Kogarah NSW 2217
Level 04	403	403	206	Railway Parade	Kogarah NSW 2217	403/206 Railway Parade, Kogarah NSW 2217
Level 04	404	404	206	Railway Parade	Kogarah NSW 2217	404/206 Railway Parade, Kogarah NSW 2217
Level 04	405	405	206	Railway Parade	Kogarah NSW 2217	405/206 Railway Parade, Kogarah NSW 2217
Level 04	406	406	206	Railway Parade	Kogarah NSW 2217	406/206 Railway Parade, Kogarah NSW 2217
Level 05	501	501	206	Railway Parade	Kogarah NSW 2217	501/206 Railway Parade, Kogarah NSW 2217
Level 05	502	502	206	Railway Parade	Kogarah NSW 2217	502/206 Railway Parade, Kogarah NSW 2217
Level 05	503	503	206	Railway Parade	Kogarah NSW 2217	503/206 Railway Parade, Kogarah NSW 2217
Level 05	504	504	206	Railway Parade	Kogarah NSW 2217	504/206 Railway Parade, Kogarah NSW 2217
Level 05	505	505	206	Railway Parade	Kogarah NSW 2217	505/206 Railway Parade, Kogarah NSW 2217
Level 06	601	601	206	Railway Parade	Kogarah NSW 2217	601/206 Railway Parade, Kogarah NSW 2217
Level 06	602	602	206	Railway Parade	Kogarah NSW 2217	602/206 Railway Parade, Kogarah NSW 2217
Level 06	603	603	206	Railway Parade	Kogarah NSW 2217	603/206 Railway Parade, Kogarah NSW 2217
Level 06	604	604	206	Railway Parade	Kogarah NSW 2217	604/206 Railway Parade, Kogarah NSW 2217
Level 06	605	605	206	Railway Parade	Kogarah NSW 2217	605/206 Railway Parade, Kogarah NSW 2217
Level 07	701	701	206	Railway Parade	Kogarah NSW 2217	701/206 Railway Parade, Kogarah NSW 2217
Level 07	702	702	206	Railway Parade	Kogarah NSW 2217	702/206 Railway Parade, Kogarah NSW 2217
Level 07	703	703	206	Railway Parade	Kogarah NSW 2217	703/206 Railway Parade, Kogarah NSW 2217
Level 07	704	704	206	Railway Parade	Kogarah NSW 2217	704/206 Railway Parade, Kogarah NSW 2217
Level 07	705	705	206	Railway Parade	Kogarah NSW 2217	705/206 Railway Parade, Kogarah NSW 2217
Level 08	801	801	206	Railway Parade	Kogarah NSW 2217	801/206 Railway Parade, Kogarah NSW 2217
Level 08	802	802	206	Railway Parade	Kogarah NSW 2217	802/206 Railway Parade, Kogarah NSW 2217
Level 08	803	803	206	Railway Parade	Kogarah NSW 2217	803/206 Railway Parade, Kogarah NSW 2217
Level 08	804	804	206	Railway Parade	Kogarah NSW 2217	804/206 Railway Parade, Kogarah NSW 2217
Level 09	901	901	206	Railway Parade	Kogarah NSW 2217	901/206 Railway Parade, Kogarah NSW 2217
Level 09	902	902	206	Railway Parade	Kogarah NSW 2217	902/206 Railway Parade, Kogarah NSW 2217
Level 09	903	903	206	Railway Parade	Kogarah NSW 2217	903/206 Railway Parade, Kogarah NSW 2217
Level 09	904	904	206	Railway Parade	Kogarah NSW 2217	904/206 Railway Parade, Kogarah NSW 2217
Level 10	1001	1001	206	Railway Parade	Kogarah NSW 2217	1001/206 Railway Parade, Kogarah NSW 2217
Level 10	1002	1002	206	Railway Parade	Kogarah NSW 2217	1002/206 Railway Parade, Kogarah NSW 2217
Level 10	1003	1003	206	Railway Parade	Kogarah NSW 2217	1003/206 Railway Parade, Kogarah NSW 2217
Level 11	1101	1101	206	Railway Parade	Kogarah NSW 2217	1101/206 Railway Parade, Kogarah NSW 2217
Level 11	1102	1102	206	Railway Parade	Kogarah NSW 2217	1102/206 Railway Parade, Kogarah NSW 2217
Level 11	1103	1103	206	Railway Parade	Kogarah NSW 2217	1103/206 Railway Parade, Kogarah NSW 2217

LP026-21

ATTACHMENTS

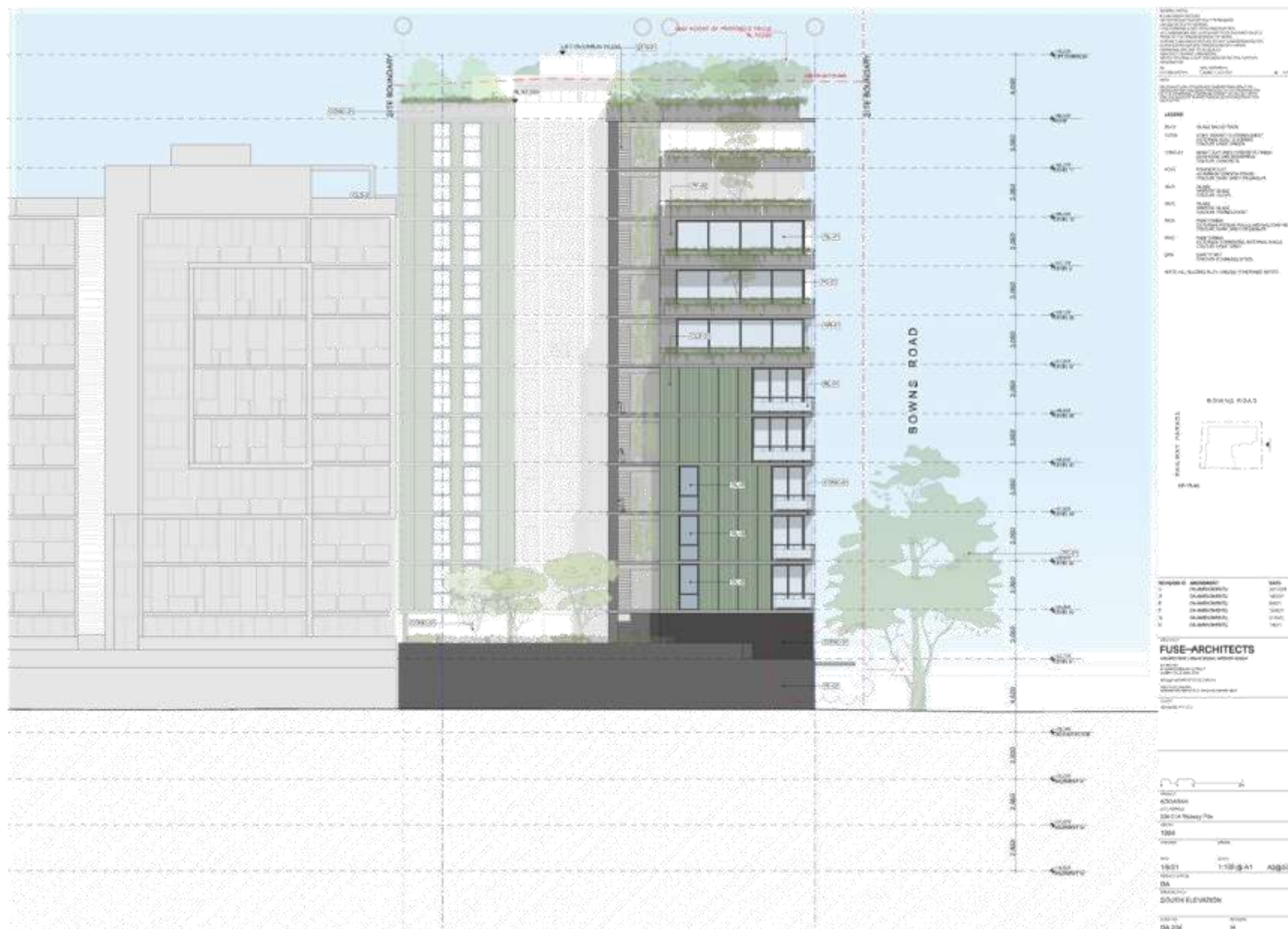
- Attachment [1](#)  Site Plan - 206 - 214 Railway Parade
- Attachment [2](#)  East Elevation - 206 - 214 Railway Parade
- Attachment [3](#)  North Elevation - 206 - 214 Railway Parade
- Attachment [4](#)  West Elevation - 206 - 214 Railway Parade
- Attachment [5](#)  South Elevation - 206 - 214 Railway Parade











REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 17 JUNE 2021

LPP027-21

LPP Report No	LPP027-21	Development Application No	DA2020/0375
Site Address & Ward Locality	89-93 Railway Parade Mortdale Mortdale Ward		
Proposed Development	Demolition of all existing structures on site and the construction of a seven (7) storey shop top housing development comprising of a total of thirty seven (37) apartments, car parking for a total of sixty nine (69) vehicles (inclusive of car wash bay) and two (2) ground floor retail tenancies		
Owners	Younan Management Pty Ltd, Younan Youssef, and Mr P Panayiotou and Mrs N Panayiotou		
Applicant	Loucas Architects		
Planner/Architect	Planner: Bernard Moroz Architect: Loucas Architects		
Date Of Lodgement	19/10/2020		
Submissions	Two (2) submissions were received		
Cost of Works	\$12,445,857.00		
Local Planning Panel Criteria	Shop top housing development falls within the category of development to be assessed in accordance with the provisions of SEPP 65 (Design Quality of Residential Flat Development).		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment, State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Draft Georges River Local Environmental Plan 2020 Draft Design and Place State Environmental Planning Policy		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects and Clause 4.6 Statement Acoustic Report Preliminary Site Investigation Report Traffic and Parking Assessment		
Report prepared by	Senior Development Assessment Officer		

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

satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes – Clause 4.3 (Height of Buildings control)
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, standard conditions have been attached with no design changes

Site Plan



Aerial view of subject site, site is outlined in red

Executive Summary

Proposal

- The development application (DA) seeks consent for the demolition of all existing structures on site and the construction of a seven (7) storey shop top housing development comprising of a total of thirty seven (37) apartments, car parking for a total of sixty nine (69) vehicles (inclusive of car wash bay), two (2) ground floor retail tenancies with an area of dedicated communal open space on the roof including landscaping at the rear and associated site works.

2. In response to the issues raised by Council and the comments provided by the Urban Design Consultant, the plans have been amended. These are the plans which have been relied upon in the assessment of the proposal.
3. The proposal is located within an area zoned to facilitate the expansion of the Mortdale Town Centre which is located to the north west of the site adjoining the Mortdale Railway Station.
4. This new business precinct is bounded by Railway Parade, Ellen Subway and Colebourne Avenue and comprises of a total of eight (8) low scale residential properties with two existing commercial properties from 85-105 Railway Parade. The northern end of Colebourne Avenue is a cul-de-sac and includes a pedestrian accessway providing a direct link through to Mortdale Railway Station.
5. This small precinct was earmarked in New City Plan amendment, to the Kogarah Local Environmental Plan to be rezoned from the R3 Medium Density Residential zone to the B2 Local Centre zone establishing a new building height of 21m and FSR of 2.5:1 for these sites. The intention of the uplift is to expand the Mortdale Town Centre due to the accessibility of this locality and this precincts proximity to the station is a key driver to promote higher density development in this area.
6. The Local Planning Panel previously refused an application on 12 December 2019 for a mixed-use development comprising 89-91 Railway Parade. One of the key planning issues with the redevelopment of the site was its narrow width and generally small site area. This issue has now been addressed as the development site now includes No 93 Railway Parade in addition to the other two lots resulting in an increase in the combined lot width from 16.155m 30.48m.

Site and Locality

7. The subject development site is known as 89-93 Railway Parade, Mortdale.

The allotments and their legal description is noted below:

- 89 Railway Parade, Mortdale - Lot 1 DP 964242.
 - 91 Railway Parade, Mortdale - Lot 2 DP 964242.
 - 93 Railway Parade, Mortdale - Lot 5 DP 925477
8. It is a regular shaped allotment with a 30.48m frontage to Railway Parade, side boundaries along the north eastern and south western boundary of 44.1955m and a rear boundary of 30.48m. The site has a total site area of 1347sqm and has a cross fall of approximately 2m from the rear (north west) to the front (south east).
 9. The site currently contains a set of single and part two storey semi-detached dwelling houses with a single storey detached secondary dwelling located at the rear of 89 Railway Parade.
 10. The site is located on the south eastern side of the rail corridor removed by just one property at the rear (1A Ellen Subway). The site is located within a Local Centre zone within close proximity (walking distance) to the Mortdale Railway Station and the Mortdale Town Centre.

11. The precinct is bounded by Railway Parade, Ellen Subway and Colebourne Avenue which is presently undergoing transition from low density housing to shop top housing developments. Recent approvals in the precinct include DA2017/0570 at 1 Ellen Subway, and DA2017/0398 for 85-87 Railway Parade which establish a precedent for future developments.

Zoning, Permissibility and KLEP (2012) Compliance - LEP

12. The subject site is zoned B2 Local Centre under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP2012). The proposal is a mixed use development and defined as a shop top housing development which is permissible with consent in the zone. Notwithstanding the permissibility of the proposal the development is considered to be consistent with the objectives of the zone.
13. The proposal seeks an increase to the statutory height limit whereby the lift overrun, fire stairs and associated services exceed the maximum permitted.
14. The application has been accompanied by a Clause 4.6 exceptions to development standards request for the variation to Clause 4.3 – Height of Buildings development standard. This request has been supported for the reasons contained within this report.

Kogarah Development Control Plan 2013

15. The provisions of Kogarah Development Control Plan 2013 (KDCP) are applicable to the proposed development. The proposal is considered to be an acceptable urban design and planning outcome for the site and generally satisfies the applicable provisions contained within the KDCP.

Submissions

16. The DA was notified to adjoining properties in accordance with the Kogarah Development Control Plan 2013 (DCP2013) for a statutory notification period of 14 days. Two (2) submissions were received.

Reason for Referral to the Local Planning Panel

17. This application is referred to the Georges River Local Planning Panel for consideration in accordance with a s9.1 Environmental Planning and Assessment Act 1979 Ministerial Direction, as the proposal relates to a Residential Flat Building in which the provisions of State Environmental Planning Policy – Design Quality of Residential Flat Development is applicable.

Planning and Design Issues

18. The proposal is an appropriate response to the site when considered against the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. Its bulk and scale is consistent with the desired future character of the area as established by the Kogarah Local Environment Plan 2012 (KLEP) development standards for FSR and height.
19. The application exceeds the overall height control of 21m. A Clause 4.6 Statement has been submitted seeking a variation to the statutory height control (Clause 4.3) of Kogarah Local Environmental Plan 2012 (KLEP). The Statement is comprehensive and generally justifies the non-compliance. This issue is discussed in greater detail in the body of this report.

20. The proposal is fully compliant with the maximum FSR development standard that applies to the site under Kogarah Local Environmental Plan 2012. The proposal is therefore consistent with the desired future building density for the site.

Conclusion

21. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans, the proposed development application (DA2020/0352) is recommended for approval subject to the conditions referenced at the end of this report.

Report in Full

DESCRIPTION OF THE PROPOSAL

22. Development consent is sought for the demolition of all existing structures on site and the construction of a seven (7) shop top housing development comprising of a total of thirty seven (37) apartments, car parking for a total of sixty nine (69) vehicles (inclusive of car wash bay), two (2) ground floor retail tenancies with an area of dedicated communal open space on the roof including landscaping at the rear and associated site works.
23. The proposal is located within an area zoned to facilitate the expansion of the Mortdale Town Centre which is located to the north west of the site adjoining the Mortdale Railway Station.



Figure 1: Photomontage of the development as viewed along Railway Parade

24. Further details of the proposal are as follows:

Basement 2 Floor Plan

- Thirty two (32) residential car parking spaces including four (4) accessible spaces.
- Seventeen (17) independent storage spaces
- Fourteen (14) bicycle parking spaces.
- Two (2) motorcycle spaces.
- Fire stairs and lift access.

Basement 1 Floor Plan

- Total of 30 car spaces comprising the following:
 - o Thirteen (13) residential car parking spaces.
 - o Nine (9) retail car parking spaces.
 - o Eight (8) visitors car parking spaces (including one (1) accessible space).
- One (1) motorcycle parking space.
- Three (3) retail bicycle parking spaces
- Three (3) residential bicycle parking spaces.
- Twenty (20) independent storage spaces.
- MDB Room.
- Pump room.
- Fire stairs and lift access.

Ground Floor Plan

- Driveway entry along the south-eastern side of the site
- Two (2) retail tenancies with total floor areas of 135sqm and 180sqm respectively.
- Main entry lobby to the lift.
- Letter boxes located adjacent to the main lobby entry.
- Bulky waste and residential garbage, recycling bin storage room.
- Retail garbage and recycling bin storage room
- Six (6) car parking spaces for the retail tenancies (including one accessible space).
- One (1) Loading bay to accommodate a Small Rigid Vehicle (SRV).
- One (1) designated car wash bay.
- Hydrant booster
- Fire stairs and lift access.

First Floor Plan

- Central lobby area providing access to all apartments.
- Six (6) x two (2) bedroom apartments.
- One (1) x three (3) bedroom apartment.
- Private terraces for each unit ranging from 10sqm to 117sqm.
- Landscaped area at the rear accessed via the ground floor stairwell adjacent to the loading bay.
- Services cupboards
- Common property to enable access to OSD tank below.
- Fire stairs and lift access.

Second Floor Plan

- Central lobby area providing access to all apartments.
- Six (6) x two (2) bedroom apartments.
- One (1) x three (3) bedroom apartment.
- Private terraces for each unit ranging from 10sqm to 18sqm.
- Services cupboards
- Fire stairs and lift access.

Third Floor Plan

- Central lobby area providing access to all apartments.
- Five (5) x two (2) bedroom apartments.
- One (1) x three (3) bedroom apartment.
- Private terraces for each unit ranging from 10sqm to 30sqm.
- Services cupboards
- Fire stairs and lift access.

Fourth Floor Plan

- Central lobby area providing access to all apartments.
- One (1) x one (1) bedroom apartment.
- Five (5) x two (2) bedroom apartments.
- Private terraces for each unit ranging from 10sqm to 14sqm.
- Services cupboards
- Fire stairs and lift access.

Fifth Floor Plan

- Central lobby area providing access to all apartments.
- One (1) x one (1) bedroom apartment.
- Five (5) x two (2) bedroom apartments.
- Private terraces for each unit ranging from 10sqm to 14sqm.
- Services cupboard.
- Fire stairs and lift access.

Sixth Floor Plan

- Central lobby area providing access to all apartments.
- Two (2) x one (1) bedroom apartment.
- One (1) x two (2) bedroom apartment
- Two (2) x three (3) bedroom apartments.
- Private terraces for each unit ranging from 10sqm to 24sqm.
- Services cupboard.
- Fire stairs and lift access.

Roof Floor Plan

- Roof top communal open space of 405sqm.
- Covered BBQ area with tables and chairs.
- Lobby area
- Accessible WC.
- Fire stairs and lift access.

25. The proposed retail component of the proposed development comprises of 315sqm which equates to 9.35% of the total Gross Floor Area.

Development Summary

26. A numerical summary of the proposed development is provided as follows:

Element	Proposal
Height	24.95m
Levels	Seven (7) storeys.
Apartments	37 residential apartments comprised as follows: <ul style="list-style-type: none"> • 4 x 1 bedroom apartments (10.8%). • 28 x 2 bedroom apartments (75.7%). • 5 x 3 bedroom apartments (13.5%).

Commercial	Total of 354 sqm of commercial floor space as follows: <ul style="list-style-type: none"> • Retail 1 - 135sqm • Retail 2 - 180sqm
Car parking spaces	69 car parking spaces comprising the following: <ul style="list-style-type: none"> • 45 Residential car spaces. • 15 Retail spaces. • 8 Visitors car spaces. • 1 car wash bay
Loading bay	One (1) loading bay provided.
Bicycle parking spaces	20 bicycle spaces <ul style="list-style-type: none"> • 3 retail bicycle spaces • 17 residential bicycle spaces (including 4 visitors bicycle spaces).
Motorcycle spaces	3 Motorcycle spaces provided.
Communal open space	405sqm (30%)
Deep soil Area	127sqm (9.4%)
Solar access for apartments	73% - 2 hours between 9am -3pm
Cross ventilation for apartments	24 of 37 units (65%)

BACKGROUND

27. A Pre Lodgement application, which only included 89 and 91 Railway Parade, Mortdale was lodged with Council on 8 June 2018 and was subsequently referred to the Design Review Panel (DRP) on 5 July 2018. The design DRP did not support the pre-lodgement scheme and in summary the following issues were raised;
- *Overall built form and the nil side setbacks provide inadequate building separation distances.*
 - *Central area of open space at the ground floor will be compromised by future development on adjoining sites and the quality of these spaces should be improved.*
 - *The panel formed the view that the width and orientation of the site prevents a satisfactory RFB.*
28. The pre-lodgement advice stated;
29. *“The subject site is relatively narrow and as indicated in the comments below, this narrow width results in compliance issues specifically in relation to side boundary setbacks and building separation. The narrow nature of the site also results in the commercial/retail shop being reduced to a relatively narrow width and the activation of the street front from this use is limited both by the allotment width and the fall of the site.*
30. *A better outcome would be possible with the amalgamation of the subject site and an adjacent neighbour. Every effort should be made (prior to finalising plans and lodging a development application) to amalgamate with adjacent site(s). Any future development application must demonstrate that an appropriate offer has been made to the adjoining neighbour as advised in a valuation report prepared by a Registered Valuer.”*
31. The subject proposal was the subject of a Pre-lodgement meeting and advice (PRE2018/0032) dated 9 August 2018 which encouraged the amalgamation of the

adjoining site being 93 Railway Parade. This would create a larger and more integrated development and achieve a better urban design and planning outcome

32. DA2018/0439 was lodged on 24 October 2018 for the demolition of existing structures and construction of a six (6) storey shop top housing development containing a commercial/retail tenancy on the ground floor and a total of nineteen (19) apartments and thirty one (31) car parking spaces within the basement and associated works at 89-91 Railway Parade, Mortdale.
33. The proposed design of the building was amended in an attempt to address the Panels concerns and was re-referred to the DRP on 11 April 2019 after the Development Application was lodged. In addition to satisfying the nine (9) design principles, the proposal failed to satisfy several Design Principles of the Apartment Design Guidelines which was predominantly due to the narrow site width. One of the key planning issues with the redevelopment of the subject site is its narrow width and generally small site area.
34. DA2018/0439 was determined by way of refusal by the Local Planning Panel on 12 December 2019.
35. The applicant has since acquired the adjoining site at No 93 Railway Parade and the subject development site now includes Nos 89, 91 and 93 Railway Parade, Mortdale.
36. DA2020/0375 (subject application) was lodged to Council on 19 October 2020 for the demolition of all existing structures on site and the construction of a seven (7) shop top housing development comprising of a total of thirty seven (37) apartments, car parking for a total of sixty nine (69) vehicles (inclusive of car wash bay), two (2) ground floor retail tenancies with an area of dedicated communal open space on the roof including landscaping at the rear and associated site works at 89 -93 Railway Parade, Mortdale.

DESCRIPTION OF THE SITE AND LOCALITY

37. The subject development site is known as 89-93 Railway Parade, Mortdale.

The allotments and their legal description is noted below:

- 89 Railway Parade, Mortdale - Lot 1 DP 964242.
- 91 Railway Parade, Mortdale - Lot 2 DP 964242.
- 93 Railway Parade, Mortdale - Lot 5 DP 925477

38. It is a regular shaped allotment with a 30.48m frontage to Railway Parade, side boundaries along the north eastern and south western boundary of 44.1955m and a rear boundary of 30.48m. The site has a total site area of 1347sqm and has a cross fall of approximately 2m from the rear (north west) to the front (south east).
39. The site comprises of two separate semi-detached dwelling houses. 89 Railway Parade is a single storey with a two storey section which includes a garage at ground floor level. At the rear of this property is a detached structure adjoining the boundary which is noted as a "granny flat" on the survey plan. 91 Railway Parade is a narrow single storey semi-detached cottage with a pergola structure at the rear and metal shed. At 93 Railway Parade is a single storey detached dwelling house with an attached garage structure at the front.



Figure 2: Existing dwellings of the subject development site, 89-93 Railway Parade, Mortdale

40. The site is located on the south eastern side of the rail corridor removed by just one property at the rear (1A Ellen Subway). The site is located within a Local Centre zone within close proximity (walking distance) to the Mortdale Railway Station and the Mortdale Town Centre.
41. The precinct is bounded by Railway Parade, Ellen Subway and Colebourne Avenue which is presently undergoing transition from low density housing to shop top housing developments. Recent approvals in the precinct include DA2017/0570 at 1 Ellen Subway, and DA2017/0398 for 85-87 Railway Parade which establish a precedent for future developments.
42. The site is located within a small precinct comprising of lower scale dwelling houses and some larger medium density developments. Across the road to the south is a small neighbourhood shopping precinct within a streetscape comprising predominantly of single and two storey dwelling houses. The retail uses are “existing uses”. The precinct is going through a process of transition to accommodate larger scaled mixed use developments that are an extension of the Mortdale Town Centre.
43. The site is conveniently located and has been rezoned to form part of the Mortdale Town Centre, and is within a very accessible area close to the Mortdale Railway Station and other services and amenities such as Renown Reserve and Mortdale Public School.

Surrounding Development

44. The subject development site is being transformed from lower scale developments to a mixed use development more consistent with the B2 Local Centre zoning.
45. Immediately adjoining the site to the north east is No 85-87 Railway Parade, a new six storey mixed use development. To the south west, the site is adjoining by semi detached dwellings that form part of the remaining aged housing stock. The property immediately to the rear known as 1 Ellen Subway which is a triangular piece of land, received development approval for the construction of a seven (7) storey mixed use development (DA2017/0570). Refer to Figure 3 below.



Figure 3: Front elevation (3D montage) of the approved development at 1 Ellen Subway (DA2017/0570)



Figure 4: 85-87 Railway Parade, Mortdale (DA2017/0398)

46. Across Railway Parade, the streetscape is characterised by low rise residential flat buildings and detached dwellings. At 126 and 128 Railway Parade are two storey residential flat buildings.



Figure 5: 124 and 126 Railway Parade, Mortdale

47. Across the road and to the north east are commercial buildings located at 116 and 118 Railway Parade. The building at 116 Railway Parade is a single storey structure with the commercial component fronting the street at ground level with the residential portion situated at the rear. 118 Railway Parade is a two storey shop top housing building containing commercial premises on the ground floor and residential on the first floor. Both buildings have an awning extending over the Railway Parade footpath.



Figure 6: 116 and 118 Railway Parade, Mortdale

48. The site is conveniently located and has been rezoned to form part of the Mortdale Town Centre, and is within a very accessible area close to the Mortdale Railway Station and other services and amenities such as Renown Reserve and Mortdale Public School.

COMPLIANCE AND ASSESSMENT

State Environmental Planning Policies

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

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

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

50. The main aims and objectives of this plan are (not limited to);

- *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,*

51. The proposed system and method of stormwater disposal relies on a series of pits and an OSD (onsite detention tank) located within the central area of communal open space to store additional stormwater and release it via gravity to the street stormwater system.

52. The application has been referred to Council's Engineering Section for comment. No objection was raised in respect to the proposed design and no additional requirements were imposed other than standard conditions that will ensure the system operates accordingly. The stormwater arrangement is generally consistent and in accordance with Council's Water Management Policy and satisfied the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

53. The proposal is not considered to have an adverse impact on the waterway and the Georges River catchment. The proposal aims to protect the existing water quality and use and functionality of the wider catchment.

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

54. Regulations under the Act have established a scheme to encourage sustainable residential development (***the BASIX scheme***) under which:

- (a) an application for a development consent, complying development certificate or construction certificate in relation to certain kinds of residential development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and

- (b) the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled.
- (2) The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.
- (3) This Policy achieves its aim by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.

55. A BASIX Certificate prepared by Building & Energy Consultants Australia, dated 20 May 2021, certificate number 1126041M_02, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy No 55 - Remediation of Land

56. State Environmental Planning Policy No. 55 - Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land .SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
57. Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to carrying out of any development on that land and if the land is contaminated, it is satisfied that the land is suitable in its current state or will be suitable after remediation for the purpose for which the development is proposed to be carried out.
58. A Preliminary Site Investigation was prepared by EI Australia, dated 14 August 2020. The key findings of the PSI were as follows:
- *The site had continuously been used for residential purposes since at least the 1940s. The existing structures (houses) on 89 and 91 Railway Parade were constructed before 1943, while the residence on 93 Railway Parade was constructed around the 1950s.*
 - *The sub--surface conditions were expected to be a shallow layer of fill ($\leq 0.6\text{m}$ thickness), overlying residual sandy clays ($0.8\text{--}1.6\text{m}$ thickness) and (weathered) shale bedrock. The groundwater table was expected to be at greater than 8m BGL.*
 - *The site and neighbouring properties (within 250m radius) were free of statutory notices and licensing agreements issued under the Contaminated Land Management Act 1997 and Protection of the Environment Operations Act 1997. The site was not included on the List of NSW Contaminated Sites Notified to the EPA.*
 - *Visual evidence of gross contamination, including fragments of FCS, was not observed on any part of the site. No suspicious odour was detected during the site inspection.*
 - *There was no evidence that a UPSS was present on the site. No AST was present.*
 - *The potential for ASS to be present on the site was extremely low.*
 - *The CSM established there was a low contamination risk for the site.*
59. In conclusion and “based on the findings of this report and with consideration of the Statement of Limitations (Section 8), EI concludes that the site is considered to be suitable for the proposed development, subject to the implementation of the recommendations provided in Section 7. EI provide the following recommendations:

- Before commencement of demolition works, a HMS should be completed by a suitably qualified consultant, to identify any hazardous substances present within the existing building fabrics.
 - All identified hazardous materials must be appropriately managed, to maintain worker health and safety during demolition works and prevent the spread of hazardous substances onto the site and soil surfaces.
 - An asbestos clearance inspection and certificate should be completed by a suitably qualified professional (SafeWork NSW Licensed Asbestos Assessor), following the removal of all ACM from the site.
 - Where clearance inspection indicates the presence of hazardous materials remaining on the site, further removal and validation or further clearance inspection works must be undertaken.
- Under the proposed development (Appendix B), bulk excavation of site soils will be performed, in order to construct the two--level basement. All (fill) soil materials that are designated for off-- site disposal, including any *virgin excavated natural material* (VENM), must be pre--classified in accordance with the EPA (2014) *Waste Classification Guidelines*. The drafting of a Soil Management Plan, with measures for appropriate soil sampling and classification testing, would assist this process.
- Any material being imported to the site should be validated as suitable for the intended use in accordance with EPA guidelines.

60. Taking into consideration the findings and the recommendations of the report the likelihood for any site contamination is low and therefore, the provisions of SEPP 55 are considered to be satisfied.

State Environmental Planning Policy (Infrastructure) 2007

61. The aim of the Policy is to facilitate the effective delivery of infrastructure across the State. The Policy also examines and ensures that the acoustic performance of buildings adjoining the rail corridor or busy arterial roads is acceptable and internal amenity within apartments is reasonable given the impacts of adjoining infrastructure.

62. Clause 85 (Development adjoining a rail corridor) and Clause 87 (Impact of rail noise or vibration on non-rail development) of the SEPP are relevant and state that;

“If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10.00 pm and 7.00 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.”*

63. The property does not immediately adjoin the rail corridor so technically Clause 85 is not relevant as it is removed from the rail line by one property (1 Ellen Subway). An acoustic assessment was still prepared and considered rail traffic noise, mechanical plant noise and evaluated acoustic privacy between units. This report was prepared by Koikas Acoustics and dated 18 August 2020.



Figure 7: Noise monitoring locations (courtesy Acoustic assessment by Koikas Acoustics, 2020)

64. In respect to traffic noise impacts the assessment considers the measures required to satisfy the provisions within the *Development Near Rail Corridors and Busy Roads – Interim Guidelines 2008*. These standards are aligned with the noise requirements stipulated in Clause 87 of the Infrastructure SEPP. The standard provisions state that if internal noise levels exceed the noise requirements by more than 10db with windows open these spaces need to be mechanically ventilated which will allow noise levels to be achieved with windows closed. The assessment was also conducted against the EPA's Noise Policy for Industry (NPI) Guidelines. The assessment included the installation of unattended noise loggers across the site (refer to Figure 7 for the location of the loggers). The assessment concluded that;
1. The building can be sufficiently insulated against existing external sources of noise in the area such as rail traffic through the use of acoustic glazing. Recommended glazing systems are provided in this report. These recommendations should be verified prior to construction.
 2. A detailed assessment of mechanical plant noise should be prepared for the subject development prior to construction.
 3. Acoustic treatment options for the common floors and services partitions included within this report would be adequate for satisfying the sound insulation provisions of the BCA.
65. A series of construction measures are proposed to improve the acoustic performance of the building. If approval was granted it would be conditioned so that the recommendations of the acoustic report are integrated into the design of the building.
66. Given that the development involves excavation for the basement car park of greater than 2m in depth and with the site boundary within 25m of the rail corridor, the development is subject to the provisions of Clause 86 (Excavation in, above or adjacent

to rail corridors) of the Infrastructure SEPP. The application was referred to Sydney Trains for their formal concurrence.

67. Sydney Trains has reviewed the proposal and has provided concurrence to the development proposed subject to the imposition of deferred commencement conditions and operational conditions provided in their concurrence letter.

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

68. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
69. The Vegetation SEPP applies to clearing of:
- (a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
 - (b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).*
70. The Vegetation SEPP repeals clause 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable DCP.
71. The proposed development involves the removal of a number of trees from the subject site as detailed in the Arborist Report provided with the application. The proposed trees to be removed are not considered to be significant plant or tree species. Council's Landscape Officer has reviewed the application and has given approval for their removal subject to the implementation of standard conditions. In addition, his conditions require the protection of trees located on the adjoining property at 95 Railway Parade during construction. This will require that a suitably qualified arborist is engaged to supervise the development prior to works, during works and once all building works have been completed.
72. Council's Consultant Arborist has reviewed all the relevant documentation and plans and has concurred with the landscaping outcome.

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

73. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (State Environmental Planning Policy 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three (3) or more storeys in height and containing at least four (4) dwellings. Amendment 3 to State Environmental Planning Policy 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, State Environmental Planning Policy 65 applies.
74. Clause 28(2) of State Environmental Planning Policy 65 requires that the consent authority take into consideration the following as part of the determination of DAs to which State Environmental Planning Policy 65 applies:

- a) *the advice (if any) obtained from the design review panel, and*
- b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
- c) *the Apartment Design Guide*

Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of “Residential Apartment Development” (RAD)	<p>Complies with the definition.</p> <p>Section 4 (1) (Application of Policy) of the SEPP 65 states that the policy <i>“applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:</i></p> <ul style="list-style-type: none"> <i>(a) the development consists of any of the following:</i> <ul style="list-style-type: none"> <i>(i) the erection of a new building,</i> <i>(ii) the substantial redevelopment or the substantial refurbishment of an existing building,</i> <i>(iii) the conversion of an existing building, and</i> <i>(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and</i> <i>(c) the building concerned contains at least 4 or more</i> 	Yes – the proposed the shop top housing development is a mixed use development which satisfies the definition of SEPP 65.

		<i>“dwellings.”</i>	
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.	Erection of an RFB or mixed use development (shop top housing) which satisfies the SEPP's definition of the proposed land use. Refer to definition and explanation above in relation to the applicability of the Policy.	Yes
Clause 50 – Development Applications (E P & A Regulation 2000)	Design verification statement provided by qualified designer. Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect: Jim Apostolou (Registration No.7490)	Yes

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75. A design verification statement has been provided by Jim Apostolou (Registration No 7490) of Loucas Architects in accordance with Clause 50 of the *Environmental Planning and Assessment Regulation 2000*.
76. Council engaged the services of an Independent Urban Design and Architecture Consultancy, GM Urban Design and Architecture (GMU) to carry out an assessment of the proposal. An assessment of the proposal has been undertaken taking into consideration the design quality of the development. Those comments are provided below:
77. *“GMU have reviewed relevant documents as provided by Council in relation to the Development Application (DA) at Nos. 89-93 Railway Parade, Mortdale. The key urban design issues relate to its built form response to the context and streetscape character, internal layout and amenity impacts are summarised in the comments below:*

Bulk and scale

78. *The subject site is located within a triangular-shaped street block bounded by Railway Pde to the south, Ellen Subway to the north-east and railway line to the northwest. The entire block is zoned B2-Local Centre with a max permissible height of 21m and an FSR of 2.5:1.*
79. *The proposed development (7st plus lift overrun and rooftop structure) exceeds the maximum allowable height (21m) by approx. 3.8m. The neighboring development to the east (85-87 Railway Pde) is a 6 storey mixed-use building plus rooftop communal open space and structure. To the north, there is an approval for a 6-7 storey mixed-use development on 1 Ellen Subway. The available DA plan shows that the approved built form generally complies with the height control with only a small portion of the lift overrun exceeding the height plane. The majority of the building appears to be 6st in height with 7st addressing Ellen Subway. Taking the existing and emerging context into consideration, we consider that the proposed development does not provide a sympathetic response to the surrounding development. We consider that a reduction of height from 7 to 6 storeys is required, which will assist in achieving a more appropriate*

design response to the neighbouring development and the emerging streetscape character along Railway Pde.

80. *The proposal provides a 1-storey podium built to the street boundary with upper levels set back by 3m to the street frontage. It provides nil side setbacks to the first 3 storeys and varied side setbacks (3-6m) to upper levels. The proposal generally responds to the corner site development at 85-87 Railway Pde and it meets the KDCP Part D1 Section 3.5 Setbacks, Controls (1) and (7).*
81. *However, we noticed that the corner development provides an additional 1m street frontage setback to the top 2 levels. We are not sure if this is to facilitate any distance views to Georges River to the north, especially for these corner units. Preliminary view impact analysis may be required to understand if the subject development with upper levels projecting forward the line will have any impact on the existing views obtained by these corner units on the neighbouring site.*

Internal layout and amenity issues –

82. *As seen in the first-floor plan (Drawing A-1100), a linear communal open space (COS) has been provided along the eastern boundary which does not present a good outcome. It is located in a relatively isolated area and will be heavily overshadowed by the subject development itself and potentially the future development of the neighbouring site given it has the same potential to achieve a similar type of development. It may create potential acoustic impacts to the neighbouring properties. Additionally, it is located next to the private open spaces of Unit A1.04 & A1.05, which may result in overlooking, visual privacy and acoustic impacts. Given that the COS provided on the roof level will meet the minimum ADG requirements, we suggest removing this COS space from the first level.*
83. *We note that the living rooms and associated terraces of units A1.04 and A1.01 and all the units in a similar location above are located away from the street to the north. The terraces of Units A1.04&A1.01 located adjacent to the terrace and bedroom 1 of Unit A1.07 and the COS area is a concern. It will lead to visual privacy, overlooking, acoustic and potential safety issues. Other terraces in a similar location above, they may also have amenity impacts on the neighbouring units given their location closer to the adjacent bedrooms. We suggest reconfiguring the layouts of these units to achieve a better design outcome.*
84. *Snorkel bedrooms with limited outlook and solar access should be avoided i.e. Unit A1.02-5.02, 1.03-5.03, 1.06-2.06 & 3.05. Bedrooms with window openings facing a blank wall façade is an issue and should be reconsidered, i.e. Units A1.07-2.07, 3.06 & 6.02.*
85. *The design of long and linear circulation corridor leading to the functional areas of the bedrooms does not present a good design outcome, i.e. Units 1.02-5.02, 1.03-5.03, 1.06-2.06 & 3.05. The internal layout should be reconfigured to achieve a more efficient and compact space.*
86. *The secondary terraces of Units A4.06-5.06 & 6.05 in a linear narrow configuration and deeply recessed way from the main building façade is not an acceptable outcome and should be reconfigured.*
87. *Terraces located along the eastern and western boundaries should be reconsidered as they are borrowing amenity from the neighbouring sites and may result in potential overlooking, visual privacy and acoustic impacts.*

88. *The west elevation shows that the proposed development incorporates highlight window design to habitable rooms on upper levels to avoid potential overlooking and visual privacy issues. However, it limits the residential amenity to these spaces.*
89. *The wet areas of the units along Railway Parade on levels 5 and 6 do not stack which maybe an issue. Further details should be provided for assessment.*
90. *As seen in the basement 1 plan (Dwg: A-0900) there is no distinct separation between the residential and retail carparking. As per the KDCP Part D1 (3.7), parking areas should be physically separated from those vehicular spaces used by non-residential and residential development.*
91. *The protruding basement level with terraces above (approx. 2.2m above the natural ground level) is not an acceptable outcome. It presents a solid wall/inactive edge to the landscaped area along the northern boundary. The terraces above will result in overlooking and visual privacy impacts to the proposed ground level communal open space at 1 Ellen Subway.*
92. *The sun-eye diagrams provided do not take into account the proposed privacy screens of the terraces for the units along Railway Parade. The inclusion of the screens may result in reduced solar access to these units.*
93. *Insufficient information has been provided to analyse the overshadowing impacts to the developments located to the south of Railway Parade.*

Building design

94. *We note that a variety of materials and architectural elements have been used to try to distinguish the top, middle and base of the proposal. However, the architectural language is not cohesive for the upper and lower levels. The proposal shows a strong sense of horizontality through the wide solid horizontal bandings, which contributes to the perceived bulk and scale. We recommend incorporating more vertical indents/articulations to break up the massing, providing a more balanced façade composition that will sympathetically respond to the existing fine-grain streetscape character and the allotment pattern.*
95. *The extent of the blank wall facades facing side boundaries should be minimised. High quality materials and architectural design should be incorporated to achieve a visual interest when viewed from the public and private domain.*
96. *Based on the above review, we consider that further amendments to the current proposal are required to achieve a better design outcome.”*
97. *The plans have been amended and have satisfactorily addressed the urban design comments. These are further discussed in the compliance table below:*
98. *Clause 28 of SEPP 65 requires the consent authority to take into consideration the provisions of the Apartment Design Guidelines. The Table below assesses the proposal against these provisions.*

Design considerations of Part 3 and Part 4 of the Apartment Design Guide (ADG)

Clause	Standard	Proposal	Complies
3D - Communal	1. Communal open space has a	405sqm (30%)	Yes, numerically compliant, the roof

open space	<p>minimum area equal to 25% of the site.</p> <p>-Where it cannot be provided on ground level it should be provided on a podium or roof</p> <p>-Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • 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>There is also an area at the rear of the site that can be accessed from the ground floor carpark however this area has not been included as part of the communal open space.</p>	<p>top communal open space area exceeds the minimum requirement of 25%.</p>
	<p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>	<p>Complies</p>	<p>Yes the rooftop communal open space will achieve a minimum of 2 hours (or more) of solar access throughout the day in midwinter.</p>
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p>	<p>127sqm (9.4%)</p>	<p>Yes</p>

	Where the site has an area of between 650sqm – 1500sqm = 3m min dimension Min deep soil area of 7% (94.29sqm)		
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</p> <p>Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m</p>	<p><u>Eastern side</u> Level 1-3 – Nil to 5.5m Level 4 -5 – 3m to 5.5m Level 6 – 3.75m to 5.5m</p> <p><u>Western side</u> Level 1-3 – Nil to 6.035m Level 4 -5 – 3.615m to 6.035m Level 6 – 4.765m to 6.035</p> <p><u>North</u> Level 1 – 3.095m Levels 2 - 3 – 6.05m Level 4 - 6 – 9.05m</p>	<p>No, however considered acceptable see discussion below.</p> <p>No No No</p> <p>Yes Yes No</p> <p>No Yes Yes</p>

Separation Distances (3F Visual Privacy)

Eastern boundary – The apartments located at the rear of the building on the first, second and third floor are setback a minimum of 5.5m from the side boundary with the only opening that faces the adjoining property a bedroom window which exceeds 6m. Additional windows within these units have angled windows restricting the line of sight and minimising any potential privacy concerns. On the fourth fifth, and sixth floor plans the 5.5m setback is maintained however the use of highlight windows and angled louvres have been provided to minimise any potential privacy concerns.

The units facing the street on the first and second floor do not contain any openings and comply with the ADG. The external wall of the third floor unit is setback 3m with a terrace that is screened by a planter box. The fifth and sixth floor are also setback 3m with no openings in the external wall. The use of angled and blank walls along with highlight windows on the upper levels ensures visual privacy will be achieved.

Western boundary – The apartments located at the rear of the building on the first, second and third floor are setback a minimum of 4.765m from the side boundary where blank walls are proposed and 6.035m where windows are proposed. The use of angled walls also assists in minimising any privacy concerns. On the fourth fifth, and sixth floor plans the 4.765m setback to blank walls is maintained and the 6.035m setback to window openings is maintained however the use of highlight windows has been used

to meet the objectives of the ADG.

The units facing the street on the first and second floor do not contain any openings and comply with the ADG. The external wall of the third floor unit is setback 3.615m with a terrace that is screened by a planter box. The fourth and fifth floors are setback by 3.615m to blank walls with the sixth setback 5.115m to a blank wall to ensure compliance with the ADG is achieved. The use of angled and blank walls along with highlight windows on the upper levels ensures visual privacy will be achieved.

Northern (rear boundary) – The external wall of the building is setback 6.6m from the rear boundary with the private terraces located 3.095m from the rear boundary. Planter boxes have been provided at the end of the terraces to provide screening and afford privacy to the rear property. In addition to this planting is proposed to be provided along the rear boundary.

The building is setback a minimum of 6m to the rear boundary at the second floor and third floor. The building at the fourth, fifth and sixth is setback a minimum of 9m from the rear boundary. These setbacks are compliant with the ADG requirements.

3G – Pedestrian Access and entries	Building entries and pedestrian access connects to and addresses the public domain Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge	The residential lobby is accessed from the Railway Parade located between the two retail tenancies. facade.	Yes
3H-Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	The vehicular access point is located along the eastern side of the site.	Yes
3J-Bicycle and car parking	For development in the following locations: - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan	The site is located within 800m of the Mortdale Railway station as such the RMS provisions are applicable to this assessment. Proposal relies on the following car parking provisions;	The car parking arrangement and number of car spaces provided complies with the ADG/RMS requirements. The proposal complies with the

	<p>Area; or</p> <ul style="list-style-type: none"> - On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Roads and Maritime Services Guide to Traffic Generating Developments (RMS), or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>In accordance with Section 5.4.3 (High Density Residential Flat Buildings) of the RMS Traffic Generating Guidelines. The site is located within the “Metropolitan Sub-Regional Centres” and the following provisions apply;</p> <p>0.6 spaces per 1 bedroom unit 0.9 spaces per 2 bedroom unit 1.4 spaces per 3 bedroom unit 1 space per 5 units (visitor parking)</p> <p>The provision of at least one loading dock for residential</p>	<p>4 x 1 bedroom units = 0.6 x 4 = 2.4 spaces</p> <p>28 x 2 bedroom units = 0.9 x 28 = 25.2 spaces</p> <p>3 x 3 bedroom = 1.4 x 5 = 7 spaces</p> <p>Residential spaces required = 35 spaces</p> <p>Visitor = 37/5 = 8 spaces</p> <p>Total = 43 spaces</p> <p>The proposal requires a total of 43 off street car parking spaces for residents and visitors</p> <p>Commercial parking in accordance with KDCP provisions which is 1 space per 40sqm but given this space is likely to be retail than the provision of 1 space per 25sqm of GFA has been applied. This amounts to 15 spaces</p> <p>Fifteen (15) dedicated retail spaces are provided.</p> <p>A total required car parking spaces including commercial components amounts to a total of 58 spaces.</p> <p>The two (2) basement levels and ground floor area dedicated for car parking caters for the following;</p> <ul style="list-style-type: none"> • 45 dedicated resident spaces • 8 dedicated visitor spaces • 15 dedicated 	<p>numerical requirements of the ADG given the accessible location of the site.</p>
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	<p>use is desirable, although a dock intended for commercial uses may be sufficient.</p> <p>The parking provisions for commercial use within a high density residential flat building should be separately established by referring to the relevant guidelines for those specific uses.</p>	<p>commercial spaces</p> <p>A loading dock has been provided in the ground floor carpark.</p> <p>A designated Car Wash Bay has been provided.</p> <p>Total of 69 car parking spaces (inclusive of car wash bay) are provided.</p> <p>The off street car parking provision exceeds the requirements of RMS/ADG provisions.</p>	
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 9am and 3pm at mid-winter in the Sydney Metropolitan Area</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter</p>	<p>The proposed development provides for a total of twenty seven (27) apartments that will receive a minimum of 2 hours of solar access.</p> <p>This equates to 73% of the development.</p>	Complies
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</p>	<p>A minimum of 65% of apartments have been designed to comply with the minimum cross ventilation requirements of the ADG.</p> <p>No apartment exceeds 18m in depth.</p> <p>The development contains dual aspect apartments and corner</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	through apartments and corner apartments and limit apartment depths	apartments	
4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable rooms = 2.4m</p> <p>3.3m for ground floor and first floor in mixed use areas to promote flexibility of use.</p>	<p>Ground Floor Commercial - floor to floor is 3.6m with a 3.3m floor to ceiling height.</p> <p>Levels 1, 2, 3 and 4 have floor to floor heights of 3.05m and internal heights of 2.85m.</p> <p>Level 6 has a floor to floor height of 3.15m, the floor to ceiling for this level is 2.85m.</p>	The floor to floor and floor to ceiling heights are generally compliant.
4D-Apartment size and layout	<p>Apartments are required to have the following minimum internal areas: 1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p>	<p>One bedroom units have minimum areas of 55sqm to 67sqm.</p> <p>Two bedroom units have minimum areas of 70sqm to 89sqm.</p> <p>Three bedroom units have minimum internal areas of 95sqm to 110sqm.</p>	Complies
	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	Every habitable room has window openings larger than 10% of the room area.	Complies
4D-2 Apartment size and layout	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	<p>Satisfactory</p> <p>With the minimum floor to ceiling heights complying</p>	Complies

	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	with the 2.7m minimum, all habitable room depths satisfy the minimum requirements. The apartments have open plan living/dining room layouts.	
	Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space). 3. Living rooms or combined living/dining rooms have a minimum width of: -3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	All master bedrooms have a minimum internal size of 10sqm. All bedrooms have minimum dimensions of 3m. All living rooms have minimum widths of 4m. There are no crossover or cross-through apartments proposed.	Complies
4E- Private Open space and balconies	All apartments are required to have primary balconies as follows: -1 bedroom = 8sqm/2m depth -2 bedroom = 10sqm/2m depth -3+ bedroom = 12sqm/2.4m The minimum	The proposed balconies and terraces which are proposed for all apartments exceed the minimum sizes. 1 bedroom units 10sqm – 17sqm (width minimum 2m) 2 bedroom units 10sqm – 117sqm (width minimum 2m) 3 bedroom units 15sqm – 106sqm (width minimum 2.4m) The raised rear terrace	Complies

	<p>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>areas adjacent to Unit 1.05 (117sqm) and Unit 1.07 (106sqm) are substantial in size.</p> <p>Although these are not located directly on ground they act in a similar capacity.</p>	
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	Maximum of 7 apartments have access to the lobby at Level 1 and 2. A maximum of 6 apartments have access to the lobby at levels 3, 4 and 5. A maximum of 5 apartments access the main lobby at Level 6.	Complies
4G- Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m³ 2 bedroom – 8m³ 3 bedroom – 10m³</p> <p>At least 50% of storage is to be located within the apartment.</p>	<p>Each apartment has dedicated internal storage spaces within each unit and there are also dedicated storage cages located within the basement levels.</p> <p>In total the amount of storage space provided per apartment is compliance including where it is located.</p>	Complies
4H- Acoustic Privacy	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.</p> <p>Window and door openings are generally orientated away from noise sources</p> <p>Noisy areas within buildings including</p>	<p>An Acoustic Report was prepared for the proposed development and a series of construction measures have been proposed which are considered to adequately address any acoustic concerns relating to the development proximity to the rail corridor, impacts from mechanical ventilation and plant and in respect to achieving</p>	Complies

	building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	adequate acoustic privacy between units.	
4J – Noise and Pollution	To minimise impacts the following design solutions may be used: <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 	The development can comply with the provisions of 4J of the ADG should the application be approval.	Yes
4K – Apartment Mix	A range of apartment types and sizes is provided to cater for different household types now and into	The development offers a mix of 1, 2 and 3 bedroom apartments. 4 x 1 bedroom apartments (10.8%)	Complies

	<p>the future</p> <p>The apartment mix is distributed to suitable locations within the building</p>	<p>28 x 2 bedroom apartments (75.7%)</p> <p>5 x 3 bedroom apartments (13.5%)</p> <p>The mix is considered to be appropriate.</p>	
4L – Ground Floor Apartments	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	There are no ground floor apartments in this development.	Complies
4M - Facades	<p>Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.</p>	The façade treatment of the building is considered to be well resolved and the design of the building is modern, contemporary and well considered.	Yes
4N – roof design	<p>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.</p>	<p>The roof design is considered to be consistent with the character of mixed use developments in the area and the LGA.</p> <p>Level 6 terrace located along the frontage of the building with units setback and located towards the rear.</p>	Complies
4O – Landscape Design	<p>Landscape design is viable and sustainable, contributes to the streetscape and amenity</p>	<p>A detailed landscape design has been prepared which compliments the natural and cultural features of the area and streetscape.</p> <p>The proposed landscape design for the rooftop level is considered to be satisfactory and provides good amenity for future</p>	Rooftop open space is considered to be acceptable.

		occupants.	
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>There are planter boxes proposed at the front of the development above the ground floor and at the roof top level.</p> <p>The design and location of planters is considered to be satisfactory and improves the overall articulation of the building.</p>	Complies
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory	Complies
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	This is a new development.	Complies
4S Mixed Use	Mixed use development are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	<p>Located within the B2 Local Centre, the proposal provides a range of uses that support the centre.</p> <p>A range of public transport options, including bus and train, are located within 450m, as well as green open spaces.</p>	Yes
4T Awnings and signage	Awnings are well located and complement and integrate with the building design. Signage responds to the context and desired streetscape	An appropriate awning has been provided and integrated into the design of the building.	Yes

	character.		
4U – Energy Efficiency.	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A compliant BASIX Certificate accompanies the application.	Yes
4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The proposed stormwater/drainage design has been referred to Council's Engineering Services section; no concerns have been raised subject to the imposition of standard conditions if the application was being supported.	Complies
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	<p>The waste management arrangement involves the provision of residential and commercial garbage rooms at the ground floor level to the north of the lift.</p> <p>The application was referred to Council's Waste Coordinator. The waste storage area adequately caters for the residential and commercial components.</p>	Yes
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates a mix of external finishes that require minimal maintenance.	Yes

Draft Environmental State Environmental Planning Policy

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

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

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

Draft Remediation of Land State Environmental Planning Policy

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

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

102. 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 Design and Place SEPP

103. The Draft Design and Place SEPP will repeal and replace SEPP No 65 – Design Quality of Residential Apartment Development and SEPP (Building Sustainability Index: BASIX) 2004. The explanation of intended effect of the draft SEPP was publicly exhibited in February/March 2021. Following submissions of the EIE the draft SEPP will be on public exhibition in late 2021.

ENVIRONMENTAL PLANNING INSTRUMENTS**Kogarah Local Environmental Plan 2012****Zoning**

104. The subject site is zoned B2 Local Centre under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP2012). Refer to zoning map (Figure 7) below. The proposed development is a mixed use development defined as “shop top housing” which is a permissible land use in the zone.

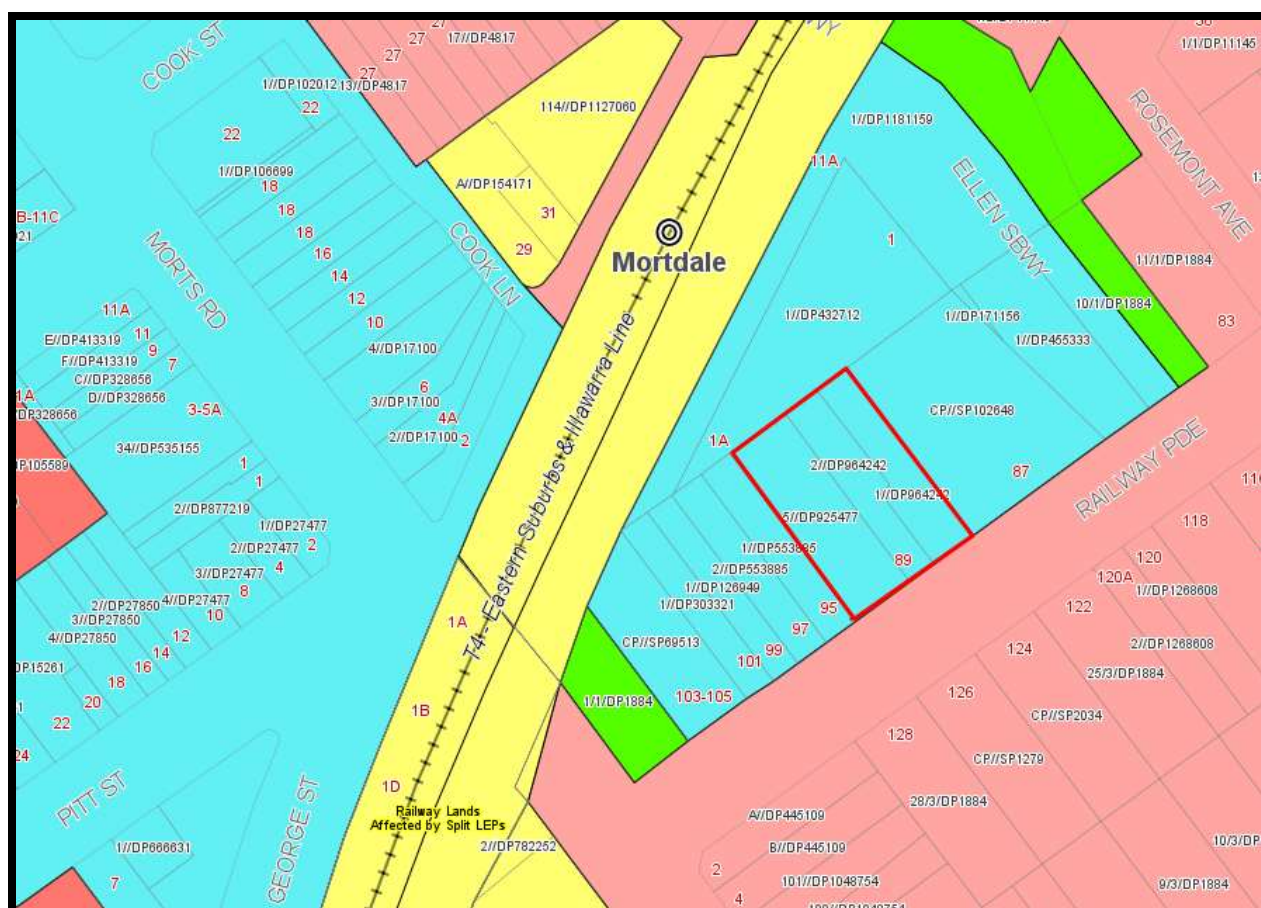


Figure 8: Zoning map – the site is outlined in red

105. The objectives of the zone are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

106. This zone is very much focused on promoting commercial, retail and employment related activities in this accessible environment. The intention and purpose of the zone is very much about creating a business area and expanding the Town Centre.

107. The subject site is located within a business zone precinct. Due to the site's accessibility to Mortdale Railway Station and local shopping precinct there is a clear expectation through the zoning to provide for retail and commercial uses to service the local community. The precinct is considered to be an extension of the Mortdale Town Centre and the emphasis is placed on the provision of employment generating uses which promote the commercial nature of the area whilst also allowing for the provision of residential accommodation, however the residential component should be secondary to the overall objective and intent of the zone to promote business operations through a variety of land uses.

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

KLEP2012 Compliance Table

Clause	Standard	Proposed	Complies
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Part 2: Permitted or Prohibited Development			
2.2 Zoning of land to which plan applies	B2 Local Centre zone	The proposal is defined as shop top housing which is a permissible use within the zone.	Yes
2.3 Zone Objectives and Land Use Table	Objectives of the Zone	The proposal satisfies the objectives of the zone by providing a mixture of residential apartments and commercial premises which are consistent with the zone objectives and are suitable for the site and will not adversely impact neighbouring properties.	Yes
2.7 Demolition requires development consent	Demolition requires development consent.	Consent for demolition of existing structures is sought.	Yes
Part 4 Principal Development Standards			
4.3 – Height of Buildings	21m as identified on Height of Buildings Map	The building exceeds the 21m height limit and achieves an overall height at the highest point of 24.95m. The lift overrun, fire stairs and associated services are the elements which exceed the height control.	No – see discussion below regarding Clause 4.6 Statement which has been submitted.
Note: Clause 4.6 objection has been submitted requesting variation to the development standards for the maximum building height. The areas of non- compliance include the lift over run, stairs, plant and associated services.			
4.4 – Floor Space Ratio	2.5:1 as identified on Floor Space Ratio Map	The proposed FSR is 2.5:1. The proposal complies with a GFA of 3,368sqm which amounts to a total FSR of 2.5:1.	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	Floor space has been calculated in accordance with this clause.	Yes
4.6 Exceptions to Development Standards	A Clause 4.6 variation request has been submitted in relation to the proposed building height.		
Part 5: Miscellaneous Provisions			
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental	The site is within the vicinity of the Mortdale Railway Station and car sheds, which is listed as an item (I71) of State significance within the	Yes

	<p>heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.</p>	<p>Hurstville Local Environmental 2012. Council has not required a heritage impact assessment and considered that the proposal is unlikely to result in any undue impacts on the nearby item. Notably, a DA for a new 7 storey mixed use development at No.1 Ellen Subway has been determined and approved by the Georges River Local Planning Panel on 21 February 2019 and if constructed this building will largely screen the proposed development from the rail corridor.</p> <p>The proposed development is outside the immediate visual catchment and will not impact structurally as a result this item is unlikely to adversely affect the integrity and significance of the item.</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 any Acid Sulfate Soils.	Yes
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	<p>The proposal includes the provision of two levels of basement car parking.</p> <p>This is a standard amount of excavation and site works to accommodate a development of this scale and density.</p> <p>The proposed earthworks are not considered to be unreasonable.</p>	Yes

6.3 Flood Planning	<p>The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> (a) to minimise the flood risk to life and property associated with the use of land, (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, (c) to avoid significant adverse impacts on flood behaviour and the environment.a 	The Site is not affected by any flood planning restrictions.	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	The height of the proposed development will not penetrate the Obstacle Limitation Surface (OLS) level.	Yes

Division.

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**Detailed assessment of variation to Clause 4.3 Height of Buildings**

109. Clause 4.3 of the Kogarah Local Environmental Plan 2012 (KLEP) relates to the maximum permitted building height for a site and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 21m. Building height is defined as:

building height (or height of building) means:

- (a) in relation the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building – the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

110. The maximum height zones within the immediate area is shown below:



Figure 9: Extract from the KLP (Height Map_003) designated as “R” which notes a 21m height limit

111. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The KLEP identifies a maximum height of 21m for the site (refer to Figure 11 below) and the proposed development will exceed the height by 3.95m. The height breach relates to the lift over run., fire stairs and associated services having a maximum RL 72.55m resulting in a 19.3% variation of the control. The location and extent of the non-compliance is provided in the section below.

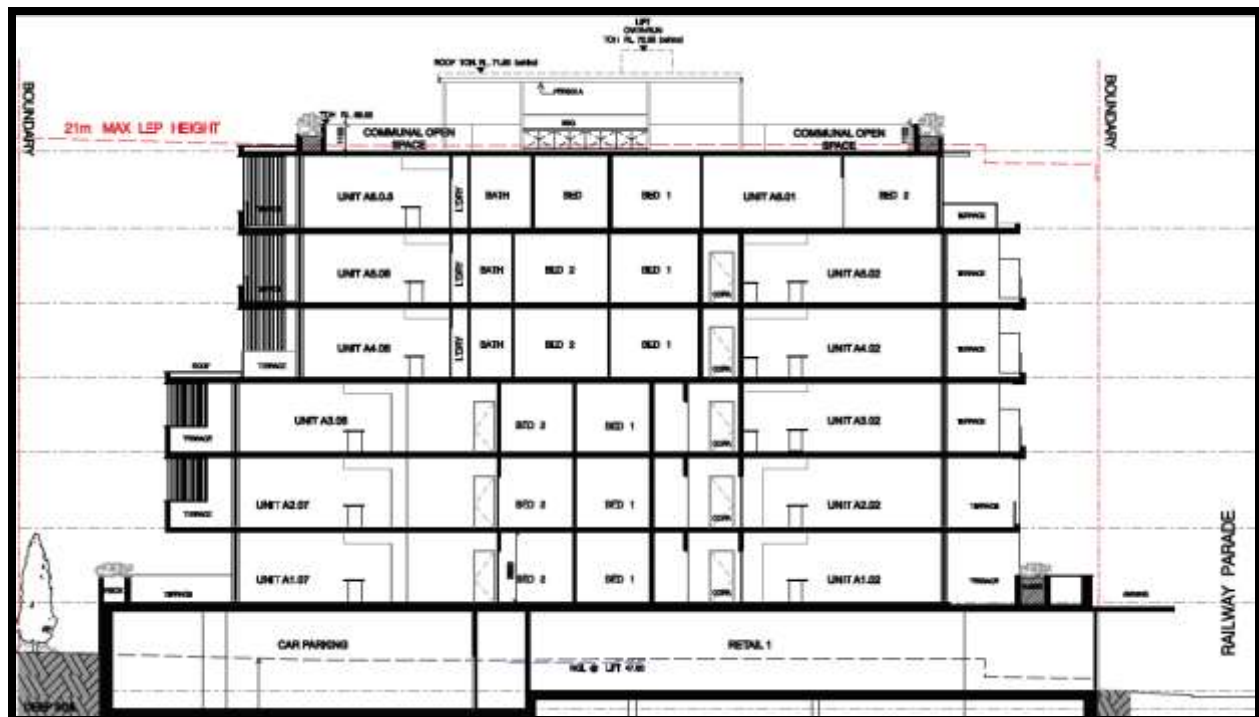


Figure 10: The extent of variation is shown in the Section (Source: Loucas Architects)



Figure 11: Extent of height breach along the south eastern and south western façade (Source: Loucas Architects)

112. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the applicant's calculations are generally accurate.
113. Clause 4.6(1) outlines the objectives of the standard which are to “provide an appropriate degree of flexibility in applying certain development standards to particular

development” and “to achieve better outcomes for and from development by allowing flexibility in particular circumstances”.

114. Clause 4.6(3) states that:

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

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

115. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of KLEP 2012. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

116. Height of Buildings limitation under Clause 4.3 of the Kogarah Local Environmental Plan 2012 is a development standard.

What are the underlying objectives of the development standard?

117. The objectives of Height of Buildings standard under Clause 4.3 of KLEP 2012 are:

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

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

118. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6.

119. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under State Environmental Planning Policy 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

120. The judgment goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental

or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

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

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

122. The Clause 4.6 statement was prepared having regard to the recent court cases and their judgements.

123. Applicants Comments: *"Preston CJ identifies 5 options in Wehbe v Pittwater [2007] NSW LEC 827 which can be used to analyse whether the application of the standard to a particular building is unreasonable or unnecessary in the circumstances of the case.*

Preston CJ at [16] states as follows:

124. *"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]--[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

125. *In Wehbe, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive;; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.*

The five methods outlined in Wehbe are:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).*

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

126. Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the **First Method**.

The objectives of the development standard are achieved notwithstanding the noncompliance (First Method).

127. The objectives of height of building standard area as follows:

a) To establish a maximum height for buildings.

128. The underlying purpose of this objective is to ensure that any future development is designed in a manner whereby any resulting building height will appropriately respond to both the existing and future context in a controlled manner. The proposal demonstrates that the building will visually adapt with that of neighbouring buildings both current and future and that the resulting height breach has been appropriately integrated into the built form envelope reducing its visual prominence from both neighbouring properties and the public domain.
129. The proposal is compliant in height along the Railway Parade Street frontage as measured to the uppermost apartment ceiling level, albeit marginally encroaches above the prescribed height where related to the feature horizontal banding, landscape planters and perimeter rooftop communal open space balustrade. The extent of non-compliance is numerically more pronounced upon approach to the centre of the rooftop where the departure from the height is attributed to the lift overrun and stairs which are required to provide equitable access to the rooftop communal open space, entry foyer, WC and pergola all of which contribute to the amenity and functionality of this space.
130. The development is not inconsistent with that anticipated to result by way of a compliant scheme when viewed from the public domain and neighbouring properties. Furthermore, the largely recessive nature of the height breach, site slope and aspect of the site enable the proposed building to visually integrate with that of neighbouring building both current and future serving as an affirmation of the objective and not that of a building that abandons height controls.

b) To minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.

Overshadowing

131. Comparative shadow diagrams which form part of the architectural plan detail set have been provided illustrating the extent of additional overshadowing impact resulting from the height variation on June 21 at 9am, 12pm and 3pm. Figures 4 and 5 below demonstrate that any additional overshadowing resulting from the height non-compliance does not unreasonably alter the extent of overall shadow impact as cast upon neighbouring properties. Furthermore, Figures 6 and 7 below being the 21 September 9am 12pm and 3pm shadows identify a marginally less pronounced impact during this

period. On balance, the extent of additional shadow cast by the proposed development over that of a height compliant development is not anticipated to result in any discernible increase to the extent of impact incurred by neighbouring properties. Within this context and having regard to the orientation and geometry of the existing allotments, the proposal achieves satisfactory daylight to buildings, key areas and the public domain.

Visual Impact

132. *The visual impact of the non-compliant height elements and or structures are not significant because:*
- *Any breaching height elements are suitably integrated into the overall design of the building and are of a form and materiality that do not create any unwarranted visual impact;;*
 - *The landscaped planter boxes and balustrades have been appropriately recessed back from the building edges and therefore do not have a high degree of visibility as viewed from neighbouring properties or public domain.*
 - *The landscaped treatments proposed to the roof of the building will serve to soften the visual presentation of the building.*
133. *Having regard to the above, the elements and or structures in breach of the height will not be visually jarring when compared to a height compliant building on this site.*

Privacy

134. *The non-compliant building elements with the exception of the parapet feature banding, landscape planter and perimeter balustrade are sited within the centre of the building generously setback from the building edges. Furthermore, planter boxes are proposed adjacent to the accessible perimeters of the communal rooftop area disrupting any direct view lines into neighbouring properties. The aforementioned design measures will further mitigate the ability for privacy impacts to be incurred.*

c) To provide appropriate scale and intensity of development through height controls.

135. *The proposed development complies with the allowable FSR made available to the land and therefore, there is no identifiable nexus between the height variation and the extent of density afforded to the land.*
136. *The breaching height elements and or structures are suitably integrated into the overall design of the building and are of a form and materiality that do not create any unwarranted visual impact. The areas that exceed the height standard are inconsequential when viewed from the public domain and do not contribute to the scale and density of the building in terms of its visual perception to contributing bulk.*
137. *Where the building elements and or structures exceed the height standard, they have been designed in a manner where they are of a form, materiality or siting that does not unreasonably contribute to the scale or intensity of development when viewed by the casual observer. The highly articulated facades and extent of modulation provided across the building also serve to reduce the extent of perceivable building volume as it presents along the critical elevations.*
138. *Overall, the building height breach allows for an improved outcome, and therefore, the proposal continues to align with this objective despite the height variation.*

139. Officers Comments: In respect to Prestons CJ judgement the NSW Land and Environment Court and in accordance with a recent decision (Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118), the NSW Land and Environment Court has established a “five part test” for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation has established the five part test (as outlined above). In this case it is considered that the proposal satisfies the five part test for the following reasons;
- a. As previously discussed the objectives of the height standard are considered to be satisfied despite the non-compliance.
 - b. The underlying objective of the standard remains relevant and therefore compliance is necessary and warranted. The majority of the building sits within the height limit with the lift overrun, an ancillary operational structures exceeding the control. No habitable area or its associated roof element extends beyond the 21m height limit.
 - c. In this case the underlying objective will not be defeated or thwarted by the approval of the building. As the building has been designed to generally comply with the height standard. The height control will not be abandoned or destroyed through this or any recent approvals for similar mixed use developments.
 - d. The Local Centre zone is an appropriate zoning for the site and this parcel of land has been recently rezoned and up-scaled. The proposed scale of the development is consistent with the anticipated height for developments within this zone and precinct.
140. The height control objectives articulates the ultimate function of the establishing the height of buildings. The maximum height for buildings on land within the former Kogarah Local Government Area is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 21m and the maximum height of the proposal is 25.05m. The proposal contravenes the standard, as a result the amount and degree of non-compliance and its resultant impact needs to be considered.
141. When considering the breach against the objectives of the height standard, the lift overrun, fire stairs, WC and associated services are centrally located within the roof space and will not be visible from the street. The structure will be visible when travelling eastwards along Railway Parade from Colebourne Avenue and only if the adjoining properties to the south remains undeveloped. The height breach will not be visible when travelling westward along Railway Parade as this development will be obscured by the development at 85-87 Railway Parade. The visual impact however is considered to be minimal.
142. In respect to overshadowing, both immediately adjoining properties 85-87 and 95 Railway Parade will receive a compliant amount of solar access during midwinter. 95 Railway Parade will be overshadowed until midday but will start to obtain solar access from 12noon onwards. 85-87 Railway Parade is not affected by the proposed development from 9am until midday however the building at 85-87 will overshadow itself during this time. The proposal complies with the solar access requirements for adjoining properties.
143. The proposed height of the proposal is considered to be in keeping with the desired future character of development within this precinct, and is consistent with the overall approved height for the mixed use developments at 85-87 Railway Parade and 1 Ellen Subway.

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

144. *Applicant's comments:* Clause 4.6(3)(b) of the KLEP 2012, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:
145. "That there are sufficient environmental planning grounds to justify contravening the development standard".
146. The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in (Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118).
147. The proposed development is supportable on environmental planning grounds for the following reasons:
- The proposal (notwithstanding the LEP contravention) is consistent with the objectives of the development standard as provided in clause 4.3 of the KLEP 2012.
 - The proposal is compliant with the maximum FSR (2.5:1) that applies to the site. Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).
 - The height breach does not unreasonably contribute to the extent of overshadowing cast on neighbouring properties nor will it result in any identifiable loss of privacy;;
 - The additional height, above the height limit will visually accentuate the subject building (even if only incrementally) and will present a well--considered building of high architectural merit when viewed from along the elevations.
 - The proposed height non--compliance relates to parts of the building that either add to the visual interest of the building and or primarily service the rooftop communal open space. With the exception of the feature parapet banding, landscaped planter and perimeter balustrades, all other elements and or structures associated with the communal open space have been centrally located within the rooftop floor plate reducing the extent of their visual prominence.
148. The Objects of the Act under S1.3 are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless we consider whether the proposed development is consistent with each object.

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

149. Clause 4.6 (4) states that

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

(a) the consent authority is satisfied that:

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

150. *Applicants comments:* Clause 4.6(4)(a)(ii) provides that development consent *must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

151. *In Part 3 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal, inclusive of the non-compliance, is also consistent with the objectives of the B2 Local Centre Zone*

To provide a range of retail, business entertainment and community uses that serve the needs of the people who live in, work in and visit the local area

152. *The proposal includes the provision of two (2) commercial spaces along Railway Parade that will serve to cater to the needs of people who live, work or visit the area.*

To encourage employment opportunities in accessible locations.

153. *The provision of two (2) commercial spaces at ground level will offer future employment opportunities to person/s in a highly accessible location located in close proximity to both rail and bus services and established retail/commercial businesses within the Mortdale Centre.*

To maximise public transport patronage and encourage walking and cycling

154. *The proposal is located in very close proximity to Mortdale station and also seeks to provide nineteen (19) bicycle spaces across the two basement levels encouraging this form of alternate transport. The subject site is also located in close proximity to the Mortdale Centre, located to the north-west of the site directly across from the rail line. This proximity will enable any future residents ease of access to services and facilities by way of walking and cycling reducing reliance on motor vehicles.*

155. *The objectives of the zones as demonstrated above, as well as the objectives for the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest."*

156. *Officer's Comment:* In accordance with the provisions of Clause 4.6(4)(a)(ii) a consent authority must be satisfied that the contravention of a development standard will be in the public interest because the development is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.

157. *The amenity impacts associated with the non-compliance have been considered. In terms of visual impact, the structures are generally centrally located which reduces their visual appearance from the immediately adjoining streetscapes. The lift over run and stairs are centrally located with the architectural roof feature providing screening and also visual relief from the roof structures. It is considered that in this case the small scale ancillary structures which will not be highly visible or an intrusive element given the scale*

and proportions of the building are considered acceptable. In respect to the more dominant elements like the lift overrun accessing the roof terrace at the rear, this will be a visible element when viewed from a distance. It will not be readily visible from immediately adjoining properties and streetscapes given that it is centrally located. There will be no significant adverse impacts in terms of overshadowing or overlooking to adjoining properties.

158. New developments of a similar nature have been approved along Railway Parade and Ellen Subway and have established a precedent for development in the street and immediate precinct. The proposed development is consistent with the pattern of development that is emerging in this precinct.
159. The proposed development is considered to satisfy the objectives of the building height development standard for the following reasons:
- The development is consistent with the built form envisaged for the precinct.
 - Despite the variation, the bulk and scale of the development is compatible with the existing buildings that have been completed and approved within the immediate area.
 - When considered in the context of the development, the variation is minor and would not be readily discernible from street level.
 - The height variation will not result in any unreasonable adverse amenity impacts such as overshadowing on neighbouring properties or the public domain.

The variation to the height would not result in an unreasonable visual impact on neighbouring properties or the streetscape

160. The B2 Local Centre zone objectives require the development to:
- *to establish the maximum height for buildings,*
 - *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,*
 - *to provide appropriate scale and intensity of development through height controls.*
161. The exceedance in the building height control generally satisfies the objectives of the zone for the following reasons:
- The development will provide for a compatible mix of residential and commercial uses, and the proposed variations will not impede the attainment of this objective.
 - The development is providing for the housing needs with a mix of apartment choices and layouts within a Mixed use zone whilst also integrating retail development.
 - The development is located within an accessible location with only a short walk to Mortdale Station and a number of bus stops within close proximity.
 - The development incorporates a diversity of apartment types (offering 1, 2, and 3 bedroom apartments, including adaptable and liveable apartments.
 - The development will provide residential development for the Mortdale area whilst also activating the street through the provision of non-residential uses at street level.
162. The area of non-compliance is considered not to be unreasonable and will not establish an undesirable precedent or undermine the objectives of the zone or height control. It will not have any adverse effect on the surrounding locality, which is consistent within the B2 location. The proposal promotes the economic use and development of the land consistent with zone and its purpose.

163. The public benefit of the variation is that it will appropriately facilitate the provision of a high density mixed use development on B2 zoned land and will provide for a range of housing stock. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 needs to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.
164. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard.
165. The structures which breach the building height are ancillary containing lift over run, fire stairs and associated services. These structures are all centrally located and have minimal visual impact.
166. In this case the proposal seeks to establish the preferred and appropriate design and built form outcome for this site with the building complying in large with the height standard. There will be no adverse amenity or visual impacts generated by the variation, the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request

Clause 4.6(4)(b) the concurrence of the Director-General has been obtained.

167. In accordance with clause 64 of the Environmental Planning and Assessment Regulation 2000, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))

168. Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

Conclusion – Assessment of Clause 4.6 Request for Variation

169. Despite the non-compliance in terms of the height, the proposed variation is considered to be acceptable and satisfies the provisions of Clause 4.6.
170. The proposed variation satisfies the objectives of the height control as the non-compliant structures, being the lift overrun, fire stairs and associated services will not be visually dominating. The additional height is considered to be consistent with other developments in the immediate locality and the scale of the development is sympathetic with the existing scale and form of existing adjoining developments.
171. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify

contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).

172. For these reasons the Clause 4.6 Statement is considered to be well-founded and could be supported if the development as a whole was consistent with the assessment criterion and was of a form that could be supported

Draft Georges River Local Environmental Plan 2020

173. In accordance with section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 any proposed instrument that is or has been the subject of public consultation is a relevant matter for consideration in the assessment of a development application.
174. The Georges River Local Planning Panel endorsed at its meeting dated 26 June 2020 the Planning Proposal (as amended) to be forwarded to the Department of Planning, Industry and Environment for gazettal in accordance with Section 3.36 of the Environmental Planning and Assessment Act 1979.
175. The Draft Georges River Local Environmental Plan 2020 provisions have no detrimental weight as a result of proposed operation of Clause *“1.8A Savings provisions relating to development applications”* of the Draft Plan which provides *“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”*

Development Control Plans

KOGARAH DEVELOPMENT CONTROL PLAN NO 2013 (KDCP)

176. The proposal needs to address and satisfy the provisions of Part B – General Controls and Part D1 – Development in the B1 Neighbourhood Centres and B2 Local Centre zones as part of the KDCP. These provisions are addressed in more detail below.

KDCP Compliance Table

Part B General Controls		
Standard	Proposed	Complies
B1 Heritage Items and Heritage Conservation Areas		
Ensure development protects and enhances the environmental and cultural heritage of Kogarah	<p>In respect to the heritage provisions (Part B1) of the KDCP, the site is located within the vicinity of Heritage Item - Mortdale Railway Station and car sheds, which is listed as an item (I71) of State significance within the Hurstville Local Environmental 2012. Council has not required a heritage impact assessment and it is considered that the proposal is unlikely to result in any undue impacts on the nearby item as it is removed from the visual catchment of this item and it will not be impacted structurally by this development.</p> <p>The subject site is separated by the presence of 1 Ellen Subway from the</p>	Yes

	Railway Line. The integrity and significance of the item will not be diminished or adversely impacted on by the proposed development.	
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.	<p>The proposal includes a number of trees for removal which have been supported by Council's arborist subject to suitable replacement planting.</p> <p>The application is accompanied by a landscape plan prepared by a suitably qualified landscape architect.</p>	Yes
This locality is within the habitat reinforcement corridor area of the Green Web. In this regard, the provisions of Part B2 Section 2 apply	The site is not located within a Green Web habitat.	Yes
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.	<p>This part of the KDCP is relevant as the density of the proposal is being increased and it will generate an increase in parking. The planning control in respect to this section of the DCP states that "<i>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</i>". The issue of noise and potential acoustic impacts have been discussed earlier in this report and can comply if the proposal was to be supported and the recommendations of the Acoustic assessment implemented.</p> <p>Clause 87 of the Infrastructure SEPP refers to development "<i>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</i>". Clause 85 (development adjacent to rail corridors) relates to immediately adjoining sites. The site is setback from the rail corridor by approximately 23m-31m as shown in Figure 10 below. The Acoustic report has also considered all background noise</p>	Yes

	<p>sources in its assessment. It is therefore considered that Clause 87 of the SEPP is not relevant in this case due to the adequate separation distance.</p> <p>Sydney Trains was notified of the proposal and provided their concurrence subject to deferred commencement conditions.</p>	
B4 – Parking and Traffic		
<p>1 bedroom unit = 1 space/unit</p> <p>2 bedroom unit = 1.5 spaces/unit</p> <p>3 bedroom unit = 2 spaces/unit</p> <p>1 visitor space/5 units or part thereof, and</p>	<p>Required</p> <p>Residential</p> <p>4 x 1 bedroom units = 4 spaces</p> <p>28 x 2 bedroom units = 42 spaces</p> <p>5 x 3 bedroom units = 10 spaces</p> <p>37/5 visitor spaces = 8 spaces</p> <p>Total = 64 spaces required (56 resident and 8 visitor)</p> <p>Provided = 53 spaces (45 resident and 8 visitor)</p> <p>The development is deficient in car spaces in accordance with the KDCP; however the RMS Guide to Traffic Generating Development provisions override Council's provisions by virtue of the development being subject to SEPP 65. The development complies with the RMS provisions given the accessibility of the site and close proximity to the Mortdale Railway Station.</p>	<p>No but ADG provisions prevail and the proposal complies with RMS Traffic Generating Guidelines for parking.</p>
1 designated car wash bay which may also be a visitor space.	A designated car wash bay has been provided.	Yes
1 space per 25sqm of retail floor space	<p>315sqm/25sqm = 13 spaces required</p> <p>15 spaces provided for the retail component</p>	Yes
1 Loading Bay per retail space that has a floor area of between 15sqm-500sqm	A loading bay has been provided.	Yes
A minimum of 1% of the total number of car parking	Six (6) accessible spaces are provided which exceeds the	Yes

spaces within the development are to be designated “accessible” spaces for people with mobility impairments	requirement	
<p>Bicycle parking 1 space per 3 dwellings plus 1 space per 10 for visitors. Based on 37 units:</p> <p>Note: The minimum number of bicycle parking spaces is to be rounded up to the nearest whole number if it is not a whole number.</p> <p>13 resident spaces required and 4 visitors spaces required.</p>	17 bicycle spaces provided for residents and visitors.	Complies
Bicycle parking for commercial component 1 space per 5 car parking spaces. Based on 15 spaces – 3 required No minimum requirements for Motorcycle parking	3 bicycle spaces provided for the commercial/retail.	Complies
	Three (3) spaces provided for a motorcycle.	Yes
Internal car park layouts, space dimensions, ramp grades, access driveways, internal circulation aisles and service vehicle areas shall be designed in accordance with the requirements set out in AS 2890.1 (2004) and AS 2890.2 (2002) for off street parking and commercial vehicles.	The internal layout and size of car parking spaces in the basement levels is considered satisfactory	Yes
B5 – Waste Management		
Submit a Waste Management Plan (WMP).	<p>The application was accompanied by a WMP which was assessed by Council’s Coordinator of Environmental Sustainability.</p> <p>The bin storage area and number of residential garbage bins is considered to be satisfactory</p>	Yes
B6 – Water Management		
Detention storage is to be provided that is equal to or	The subject site is not located within flood prone land.	Yes

<p>greater than the specified Site Storage Requirements (SSR).</p> <p>Rainwater tank installed to meet BASIX water conservation requirements will be given credit for SSR purpose.</p> <p>Drainage easements servicing stormwater pipes and/or overland runoff from catchments upstream of the development site are to be managed according with Council's guidelines.</p> <p>Discharge of stormwater runoff from a development site is to be undertaken in accordance with the design practice note, Site Drainage and Flood Management regarding direct discharge to kerb, discharge to a Council owned stormwater conduit, discharge to natural areas, discharge through private property and discharge within the development site.</p>	<p>The application is accompanied by a BASIX certificate and the proposal complies with the commitments..</p> <p>The application was referred to Council's Stormwater Engineers who assessed the proposed stormwater and drainage arrangement and are generally satisfied with the layout as the development intends on draining to the street.</p> <p>Satisfactory</p>	<p>Yes</p> <p>Generally satisfactory subject to the imposition of conditions if approval is to be recommended.</p> <p>Yes subject to conditions if the application was to be supported.</p>
B7 Environmental Management		
<p>Orient the building, as far as possible, so that the longest side is on the east-west axis.</p> <p>The main facades of a building should be orientated towards the north, preferably within a range of 30 degrees east and 20 degrees west of true north.</p> <p>Maximise the number of windows on the northern face of the building.</p> <p>The use of dark coloured</p>	<p>The application is accompanied by a BASIX certificate which confirms compliance with the minimum requirements of the SEPP (thermal comfort and water usage).</p> <p>The development has been orientated so that primary balconies and living spaces face north.</p> <p>The proposed flat roof includes a roof terrace and the proposed finishes and colours are light and modern. Roofing materials are lighter and non-reflective.</p> <p>The southern side of the building fronts Railway Parade and windows</p>	<p>Yes</p>

roofing is discouraged unless solar cells are integrated into the roof.	and openings are orientated to face the street as this is the main façade.	
Minimise glazing on the southern and western sides of the building.		

LPP027-21

Part D1 - Development in the B1 Neighbourhood Centres and B2 Local Centres zones

177. The proposal is subject to the provisions of Part D1 – Development in the B1 Neighbourhood Centres and B2 Local Centres zones. Assessment against the relevant controls has been undertaken below.

Clause	Relevant Requirements	Proposed	Complies
Part D1 – Development in the B1 Neighbourhood Centres and B2 Local Centres zones.			
3.1 Streetscape			
3.1 (3)	Facades are to be ordered and articulated to visually break up the building massing, for example through materials, colour and the design of openings. Large areas of glass curtain walling and blank walls are to be avoided.	The development complies with these requirements.	Yes
3.1 (4)	Enhance pedestrian amenity through the provision of continuous awnings for weather protection.	The development provides an awning across the extent of the building across the Railway Parade frontage.	Yes
3.1 (5)	Promote safety and security by providing a high level of activation to the street, employing clear and direct lines of sight between the street and building entries, and using appropriate signage and lighting to enhance the amenity of the public domain.	The street frontage has been activated through the two retail tenancies. Clear lines of site have been provided through the design.	Yes
3.1 (6)	Site and design vehicular access (driveways, parking facilities, service access and garages) away from the main street frontage, from rear lanes or secondary streets	The vehicular entry is proposed off Railway Parade being the only street frontage and access point to the site.	Yes
3.2 Shop Top housing			
3.2 (1)	The ground floor level of	The ground floor of the	Yes

	buildings shall maintain active retail/commercial uses facing the street.	building proposes two retail tenancies facing the street to activate the street frontage.	
3.2 (2)	Levels above ground can sustain mixed uses, including commercial, professional services, and residential, where appropriate.	The design of the building provides for apartments above the ground level which is considered appropriate.	Yes
3.2 (3)	Site and design non-residential and residential land uses in the same development in a manner that will not adversely affect the future operation of those land uses	The design of the two land uses is considered appropriate and will function effectively without adversely affecting each other.	Yes
3.2 (4)	Residential uses are only be permitted subject to demonstration of satisfactory amenity for building occupants, particularly in relation to impacts from noise, fumes and vibration on heavily trafficked streets.	Amenity will be satisfactory	Yes
3.4 Building Heights			
3.4 (1)	Building heights are to be in accordance with the Locality Controls	These have been superseded by the FSR standards in the LEP. Generally complies with KLEP with the exception of the lift over run, fire stairs and associated services for the communal open space.	No, however acceptable. Clause 4.6 submitted
3.4 (2)	Buildings are massed towards the street frontage and step down towards the rear, to be in keeping with the existing retail/commercial built form pattern and compatible with the scale and character of adjacent residential areas.	The area has been up-zoned to B2 Local Centre which redefines the character of the area as envisaged by KLEP2012. The proposal is consistent with the future character as envisaged, together with the other adjoining approved developments and those currently under assessment which have been designed having regard to the	Yes

		same criterion.	
3.4 (3)	Where allotments adjoins a low density residential area, buildings should be: (i) reduced in height in accordance with the locality controls; (ii) setback from the adjoining property boundary	The entire block in which this site is located is zoned B2 and is currently undergoing change in the scale and form of the streetscape to align with this up-zoning through the KLEP 2012, being a 21m height standard and 2.5:1 FSR standard.	Yes
3.4 (5)	Floor to ceiling heights should be a minimum of 3m at ground floor level, to allow for a range of uses including retail, commercial offices and home offices.	Ground floor commercial floor to ceiling height exceeds 3m	Yes
3.4 (6)	Floor to ceiling should be a minimum of 2.7m at the upper storeys of the building, to allow for a range of uses, and to improve the environmental performance and amenity of the building.	Residential component floor to ceiling height is a min of 2.7m floor to ceiling	Yes
3.5 Setbacks			
3.5 (1)	Buildings adjacent to public roads are generally to align with and be built to the street frontage to provide continuity in the streetscape and encourage active frontages to ground level.	The proposal aligns to and responds to the built form frontage along Railway Parade.	Yes
3.5 (2)	Street setbacks at ground level are permitted only: (i) Where the existing footpath is narrow and the provision of additional pedestrian space is desirable (ii) Where the established pattern is setback (for example where there are residential buildings within the locality) (iii) Where the setback enables or enhances visual appreciations of adjacent heritage items.	Street setbacks at ground level have not been proposed.	Yes

3.5(3)	Side setbacks are generally not permitted in order to maintain the continuity of active frontages, unless specified in the locality controls	This is accepted if buildings are already established on the common boundary.	N/A
3.5 (4)	Where the locality abuts a residential zone and/or a residential allotment, the side setbacks are generally to be a minimum 3m, except where the locality character is established by the existing footprints and the allotment capacity of the locality would be unreasonably constrained. Refer to the Locality Controls of Part D2 for specific side setback requirements.	The subject site adjoins a residential allotment and a 3m setback would be required. The area is going through change with the up zoning and the proposed development is consistent with the already constructed development at 85-87 railway Parade.	No, however acceptable
3.5 (5)	Rear setbacks are determined by the context including the amenity of neighbouring residential uses and the amenity of any rear lanes. Refer to Locality Controls within Part D2 for specific rear setback requirements.	The 6m rear setback proposed is considered satisfactory.	Yes
3.5 (7)	Upper level street setbacks are required to any residential component above retail/ commercial uses together with building design and apartment layout that satisfactorily mitigates the impacts of noise, fumes and vibration on major Roads	From level 1 and above a minimum 3m setback is provided which is consistent with 85-87 Railway Parade.	Yes

3.6 Building Design

3.6.1 Building Facades

3.6.1 (1)	Where appropriate, integrate buildings into the streetscape by adopting a modular form, which reflects the underlying narrow shop width of older buildings. Use vertical elements, such as vertically proportioned windows, exposed party walls, vertical balustrades, attached fins to express this modulation and rhythm. Use horizontal elements such as roofs, parapets, balconies and balustrades to align the building with its neighbours.	The building facade is well designed providing suitable articulation and modulation.	Yes
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3.6.1 (2)	Ensure that the facade clearly expresses a bottom, middle and top related to the overall proportion of the building.	Complies	Yes
3.6.1 (3)	Incorporate design characteristics such as projecting fins, corbelling, balconies with variable materials and finishes, punctuated walls with visually recognisable patterns, decorative features, rhythm and texture and a variable colour palate to achieve façade modulation and articulation	The building incorporates a number of design elements to achieve articulation and modulation.	Yes
3.6.1 (4)	Avoid curtain walls, large expanses of glass and large expanses of concrete as these do not create well-articulated and harmonious façades.	Complies	Yes
3.6.1 (6)	Provide a greater proportion of solid areas to void areas on all façades and incorporate non-reflective materials.	There is an acceptable balance between solid areas and void areas	Yes
3.6.1 (7)	Use non-reflective glass or recess glass behind balconies to minimise reflectivity.	Complies	Yes
3.6.1 (8)	Windows and openings are to be generally of a vertical character and located within vertical bays.	Complies	Yes
3.6.2 Active Frontages			
3.6.2 (1)	Provide direct visual connections between footpaths and shops.	Direct visual connection has been provided.	Yes
3.6.2 (3)	Design building openings at the ground floor to be in keeping with the overall building and bay scale and proportions.	Building openings on the ground floor are generally consistent with the overall buildings scale.	Yes
3.6.2 (5)	For commercial uses, avoid blank walls, dark or obscure glass to the street frontage.	Generally acceptable	Yes
3.6.2 (6)	Incorporate continuous, independent and barrier free access to ground floor commercial entries, including effective signage, sufficient illumination, tactile ground surface indicators and pathways with limited cross-falls, sufficient width, comfortable seating and	Level access is capable of being provided.	Yes

	slip-resistant floor surfaces.		
3.6.2 (8)	Pedestrian access to upper level uses is preferred from the side street or rear lane. If provided from the main street, openings for access are to be between 1.5m and 3m wide.	Pedestrian access to the upper levels is via the main lobby which is approximately 2.9m in width.	Yes
3.6.2 (9)	Recessed shop frontages are not permitted except in the cases of heritage buildings where the recess is sympathetic to the building character.	Both shop frontages align with the street frontage.	Yes
3.6.3 Awnings			
3.6.3 (2)	Provide under awning lighting to improve public safety.	Complies	Yes
3.6 (5)	Provide awnings flat or near-flat in shape (not tilted upwards away from the facade), and opaque in finish.	Complies	Yes
3.6.4 Balconies			
3.6.4 (1)	Each apartment is to have at least one primary balcony.	Each balcony is provided with at least one primary balcony.	Yes
3.6.4 (2)	Primary balconies are to have a minimum depth of 2.5m and a minimum size of 10m ² .	The proposed balconies comply with the ADG.	Yes
3.6.4 (3)	Design balconies that are recessed into the wall or enclosed with walls, columns or roofs to provide sufficient enclosure and visual firmness.	The development has been designed with balconies that are recessed as a design element.	Yes
3.6 (6)	Locate balconies adjacent to main living areas to expand the living space of units, where possible	Balconies are located adjacent to each living area	Yes
3.6 (7)	Balconies are to be designed to respond to the local context. In this regard, special attention should be paid to the design of balconies for buildings situated on busy roads and/or adjacent to railway lines. This may be achieved by: (i) layering and recessing balconies to increase noise buffering from busy roads and railway lines; (ii) grouping balcony openings; (iii) providing balconies with operable screens, windows, or operable walls/sliding doors with a balustrade;	An acoustic report was submitted with the application and confirms that the apartments are capable of satisfying relevant internal acoustic requirements.	Yes

	(iv) recessing balconies in response to acoustic and visual privacy issues; and (v) ensure the privacy of occupants, neighbours, and public is taken into account by careful design and balustrades with a balance of transparent and solid materials.		
3.6.5 Materials & Finishes			
3.6.5 (1)	Utilise high quality and durable materials and finishes.	Materials and finishes schedule has been provided. The proposed materials satisfy this control.	Yes
3.6.5 (2)	Combine different materials and finishes to assist building articulation and modulation.		Yes
3.6.5 (3)	Where the Locality includes a significant facade or streetscape, materials and finishes are to compliment the existing streetscape.	Consistent with the future and desired streetscape form.	Yes
3.6.5 (4)	Avoid large unarticulated expanses of any single material to facades.	Complies	Yes
3.6.6 Mobility and Access			
3.6.6 (1)	New development and refurbishments are to comply with the requirements of the Building Code of Australia (BCA) and the Australian Standards	Access report and BCA report indicates compliance can be achieved.	Yes
3.6.6 (2)	All buildings with a residential component that have access to more than two storeys are required to have lift access.	A lift has been provided.	Yes
3.7 Vehicular Access and Parking			
	Refer to controls in Section B4 of this table.	Complies with RMS requirements, which prevail over the provisions of the DCP as detailed in the ADG table above as the RMS standard is referenced in SEPP 65.	Complies with the ADG
3.8 Dwelling Design, Apartment Mix and Dwelling Size			
3.8 (1)	Provide a mix of studios, 1, 2 and 3 or more bedroom apartments in varying layouts.	A mix of one, two and three bedroom apartments have been proposed.	Complies with the ADG which takes

			precedent over these controls
3.8 (2)	Dwellings within the residential component of a mixed development must have the minimum internal floor areas (IFA): <ul style="list-style-type: none"> • Studios - minimum IFA of 40sqm • 1 bedroom unit - minimum IFA of 60sqm • 2 bedroom unit - minimum IFA of 85sqm • 3 bedroom unit - minimum IFA of 100sqm 	The apartment sizes are compliant with the minimum sizes under the ADG.	Complies with the ADG which takes precedent over these controls
3.10 Storage			
3.10 (1)	All developments must provide a designated secure storage space (in addition to any areas set aside for off street parking) to a minimum floor area of 4sqm for each dwelling or unit.	Storage areas comply with the ADG	Yes
3.10 (2)	The storage space may be incorporated as part of the garage.	Storage has been provided in the basement in addition to the apartment storage.	Yes
3.12 Amenity			
3.12.1 Visual and Acoustic Privacy			
3.12.1 (1)	Design building separation for parallel ranges of buildings to at least the following standards for the residential component: <ul style="list-style-type: none"> -12m between habitable rooms/the edge of their balconies -9m between habitable rooms/the edge of their balconies and non-habitable rooms -6m between non-habitable rooms 	The DCP and the ADG requirements are consistent with one another numerically.	See comment in SEPP 65 assessment
3.12.1 (2)	Offset facade openings from existing openings in adjacent development to minimise direct overlooking of rooms and private open spaces.	The design with apartment layouts, window positioning and building separation will ensure impacts are minimised.	Yes
3.12 (4)	For ground floor retail/commercial uses, provide appropriate rear and side	The ground floor setbacks are consistent with that	Yes

	setbacks to adjacent residential uses, and design building layout to avoid overlooking of private spaces.	deemed acceptable in a B2 Local Centre zone.	
3.12.1 (5)	Utilise design elements to increase levels of privacy such as landscaping, screening, offset windows, recessed balconies, louvres, planter boxes, pergolas or shading devices.	The proposal includes a number of design elements to satisfy this control including landscaping, screening offset windows and planter boxes.	Yes
Acoustic Privacy – General			
3.12.1.(7)	Design and site buildings adjacent to noise generating land uses to minimise noise impacts, for example through building layout and location and size of openings.	Complies	Yes
3.12.1 (8)	Where appropriate locate individual buildings and groups of buildings to act as barriers to the noise	Complies	Yes
3.12.1 (9)	Utilise the site and building layout to maximise the potential for acoustic privacy by providing adequate building separation within the development and from neighbouring buildings.	Complies	Yes
3.12.1 (10)	Locate and design all noise generating equipment such as mechanical plant rooms, mechanical ventilation from car parks, driveway entry shutters, garbage collection areas or similar to protect the acoustic privacy of workers, residents and neighbours. The noise level generated by any equipment must not exceed an Laeq of 5dBA above background noise at the property boundary.	Acoustic report has been provided which indicates compliance can be achieved.	Yes
3.12.1 (13)	Where development is proposed adjacent to the railway line or a classified road corridor compliance with the requirements of the SEPP.	The proposed design is subject to compliance with all noise mitigating measures as recommended in the acoustic report submitted. A condition of consent has been imposed to ensure adherence with the recommendations of	Yes

		the acoustic report.	
3.13 Open Space and Landscaping			
3.13 (1)	Retain existing, and incorporate new indigenous trees, shrubs and ground cover where appropriate.	The subject site did not contain any significant vegetation, however the landscape plan will ensure that suitable trees and shrubs will be planted a part of the development.	Complies
3.13 (2)	Maximise deep soil zones to provide for substantial landscaping and mature trees.	The proposal provides 127sqm (9.4%) of deep soil exceeding the minimum required by the ADG of 7%.	Complies
3.13 (3)	Submit a landscape plan prepared by a qualified landscape architect.	The proposed development was accompanied by a landscape plan designed by a qualified landscape architect	Complies
3.13 (4)	Where development is proposed adjacent to low density residential development, an appropriate landscape buffer is to be planted to provide separation and screening between the proposed development and the existing low density development (Refer to Locality Controls). These areas should be deep soil areas so as to allow for the planting of large/medium trees.	The deep soil zone is provided at the rear of the site and suitable landscaping is proposed to be planted to provide a buffer between the development to the rear.	Complies

Commercial Locality Guides – Mortdale

178. There are twenty (20) centres within the Kogarah LGA zoned B1 - Neighbourhood Centres and B2 – Local Centres. Two (2) of these centres, being the Ramsgate Commercial Centre and the South Hurstville Commercial Centre have specific Development Control Plans that apply and are contained within Volume 4 – Centres, of this DCP.

179. This Part of the DCP provides specific controls to each of the remaining 18 centres within the Kogarah LGA. Each Locality Guide identifies the existing and desired character for the Centre and provides specific objectives and controls to ensure that the desired character is achieved.

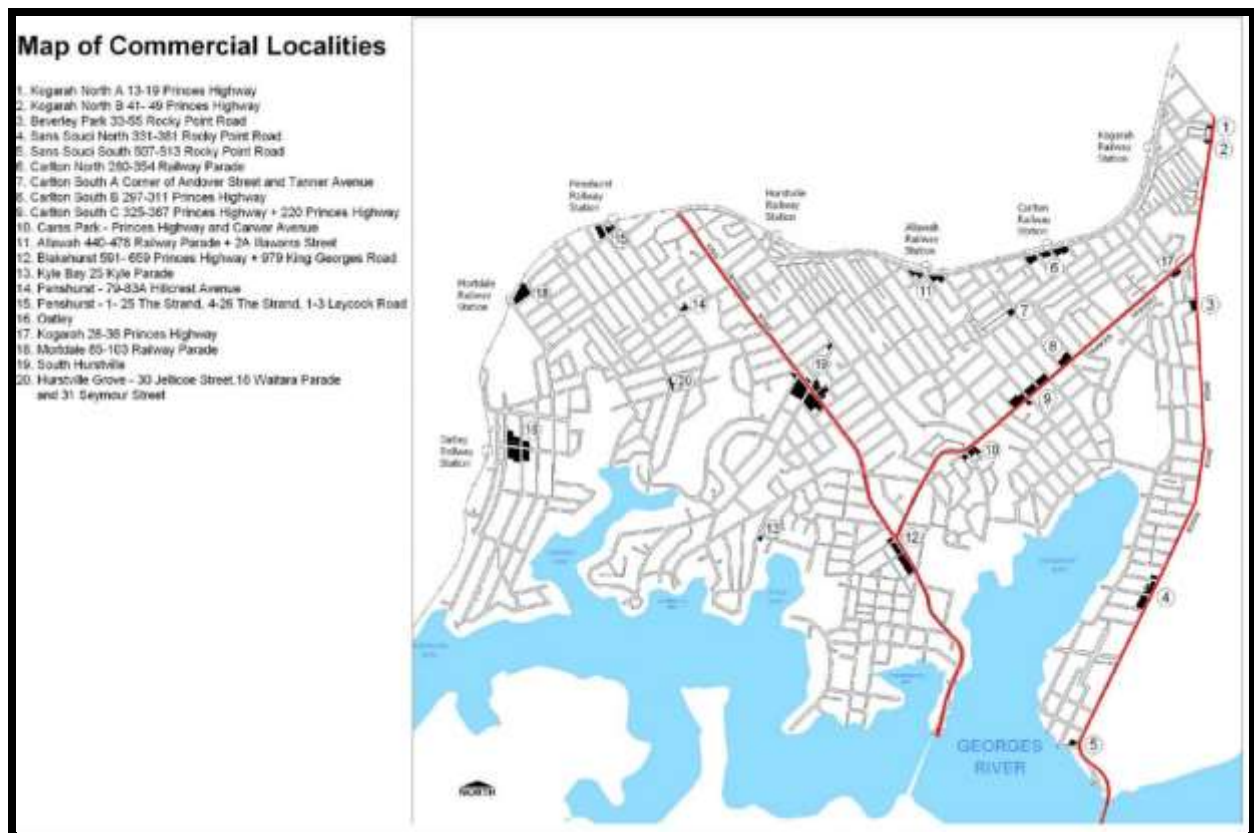


Figure12: Map of Commercial Localities site is within No 18 – Mortdale 85-103 Railway Parade.

180. The subject site is located within the Mortdale area of the Commercial Locality Guides within D2 of KDCP 2013



Figure 13: Aerial photo of Mortdale Centre (outlined in black)

181. This locality is situated adjacent to Mortdale Station on the northern side of Railway Parade and is on the boundary with Hurstville Council. The part of the centre situated on the Hurstville side of the railway line is a growing and vibrant shopping precinct. These provisions are addressed in detail below.

D2 – Commercial Locality Guides (Mortdale)

18.1.1 Height

18.1.1 (1)	The maximum overall building height including any residential component (measured from natural ground level) = 7m to the eave and 9m to the ridge.	These precinct controls have not been updated since the KLEP changes to the zoning, height and FSR controls.	No – but satisfies KLEP which prevails
18.1.1 (2)	The ground floor is to have a minimum floor to ceiling height of 3.2m while all other floors are to have a minimum floor to ceiling height of 2.7m.	The proposal generally satisfies the KLEP height control and the floor to ceiling heights are also compliant with the KDCP and ADG.	Yes
18.1.1 (3)	Only one (1) level or floor is permitted below natural ground level, which can only be used for car parking purposes	Two (2) basement levels are proposed to cater for off-street car parking. The DCP control of permitting one basement level was based on the lower scaled	No but the control is not considered applicable as the development controls and

		controls (height of 9m and density of 1:1).	zoning have been amended
18.1.2 Density			
18.1.2 (1)	The maximum permitted gross floor area of any building or buildings erected or proposed to be erected on this land is 0.5:1.	The GFA satisfies the KLEP control of 2.5:1. The DCP control has not been updated to reflect the amended LEP control in relation to floor space.	No but complies with KLEP as this prevails.
18.1.2 (2)	The floor space ratio, may be exceeded only if: (i) the gross floor area in excess of 0.5:1 is used only for the purposes of dwellings; and (ii) the ratio of the gross floor area of the building or buildings to the site area for the respective zone does not exceed 1:1.	The GFA satisfies the KLEP control of 2.5:1. The DCP control has not been updated to reflect the amended LEP control in relation to floor space	No but complies with KLEP as this prevails.

Georges River Development Control Plan 2020 (Interim Policy)

182. The Interim Policy is a supplementary document, meaning that the current Development Control Plan controls continue to apply if a particular control is not specified in the Interim Policy, or if it is still considered best practice. All operative Development Control Plans still legally apply. Whilst the Interim Policy has no statutory recognition in the assessment of a Development Applications pursuant to the Environmental Planning and Assessment Act 1979, the policy was used as a guide as it is an endorsed position of the Council.

183. The proposal is generally consistent with the relevant requirements in this policy.

DEVELOPER CONTRIBUTIONS

184. If considered for approval the proposed development would require payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979. If the development is approved a condition outlining the required contributions will need to be imposed.

IMPACTS

Natural Environment

185. The proposed development is unlikely to result in adverse impacts to the natural environment as the proposal does not request the removal of any significant or important existing trees, vegetation or natural features. Council's arborist has imposed conditions requiring that tree protection measures be provided to protect the trees on the adjoining property.

Built Environment

186. The proposed built form and design is considered to be in keeping with the desired future character for development along the northern side of Railway Parade being the B2 Local Centre zoned land. The amended design now realises the full potential of the development to satisfy the objectives of the Local Centre zone, which focuses on

providing a range of retail, business and community uses and encourage employment opportunities in accessible locations.

187. The proposed building is consistent with its immediately adjoining eastern neighbour, 85-87 Railway Parade (a shop top housing development currently under construction) which has established a built form precedent for redevelopment within the streetscape of the B2 zoned land.

Social Impact

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

Economic Impact

189. The acquisition of the adjoining site at 93 Railway Parade now results in the provision of large and functional commercial/retail components of the development and will ensure the future economic viability of this part of the B2 zoned land and the Mortdale Town Centre. The proposal satisfies the objectives of the B2 zone which focus on the ability of development in this up-zoned precinct to promote and encourage a wide diversity of business and employment generating uses. The overall intent and purpose of a Town Centre and the desire to create a mixture of land uses on the ground floor that can cater for a variety of commercial uses has been achieved through the amended scheme.

Suitability of the site

190. The site is zoned B2 – Local Centre. The proposal is a permissible form of development in this zone. It is considered that the proposed development is of a scale and design that is suitable for the site. Having regards to its size, shape, topography, vegetation and relationship to adjoining developments, the subject site does not contain any impediments that preclude it or compromise its suitability for the intended land use as proposed.

SUBMISSIONS AND THE PUBLIC INTEREST

191. The application was neighbour notified in accordance with Kogarah DCP 2013 for a period of 14 days. Two (2) submissions were received.
192. Note: Both submissions were received from the same resident who resides in Carrington Avenue, Mortdale.
193. In summary the following concerns have been raised by the submitters.
- Concern was raised that the proposed development will be out of character and will have an adverse impact on the privacy of property owners in Carrington Avenue, Mortdale.
194. Comment: The development sites are located in an area which has been rezoned to B2 Local Centre which permits a FSR of 2.5:1 and a building height of 21m. This is consistent with the future and desired streetscape character for this rezoned area.

REFERRALS

Council Referrals

Development Engineer

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

Traffic Engineer

196. The DA was referred to Council's Traffic Engineer. Council's Traffic Engineer has raised no objection to the proposal subject to suitable conditions of development consent.

Environmental Health Officer

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

Consultant Arborist

198. Council's Consultant Arborist has reviewed the landscape plan and arborist report submitted with the application. No objection is raised to the proposal subject to conditions of development consent.

Coordinator Environment Sustainability and Waste

199. Council's Coordinator Environment, Sustainability and Waste has reviewed the proposal and raised no objection subject to conditions of consent being attached if approval is granted.

Assets and Infrastructure

200. Council's Assets and Infrastructure Officer has reviewed the proposal and has raised no objection subject to conditions of consent being attached if approval is granted.

Land Information

201. Council's Land Information Officer has reviewed the proposal and has raised no objection subject to conditions of consent being attached if approval is granted.

External ReferralsAusgrid

202. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Comments were received from Ausgrid and they have raised no objection to the proposed development. No conditions were recommended.

NSW Police

203. The application was referred to NSW Police for comment. NO objection raised subject to conditions provided.

Sydney Trains

204. The application was referred to Sydney Trains in accordance with Clause 86 of State Environmental Planning Policy (Infrastructure) 2007. Sydney Trains have reviewed the proposal and provided concurrence subject to deferred commencement conditions of consent.

Sydney Airport

205. The application was referred to Sydney Airport. No objection is raised to the proposal as it will not penetrate the obstacle Limitation Surface (OLS).

CONCLUSION

206. The proposal seeks consent for demolition works, and construction of a seven (7) storey mixed use development containing 37 residential apartments and ground floor commercial floor space above two (2) basement levels, landscaping and site works at Lot 1 DP 964242, Lot 2 DP 964242 and Lot 5 DP 925477 and known as 89-93 Railway Parade, Mortdale.

207. The proposal has been assessed in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act 1979. The proposal is considered to be an appropriate urban design and built form outcome for the site. As discussed throughout this report, the proposal is considered a form of development which is compatible with its surrounding environment. The proposal is not considered to exacerbate physical environmental impact to the adjoining and immediate locality. In addition, it is considered that the proposed development is within character and is capable of existing harmoniously with its surroundings.
208. The proposal has been assessed against the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013.
209. The proposal satisfies the key planning controls in the Kogarah Local Environmental Plan apart from Clause 4.3 Height of Buildings development standard. A Clause 4.6 Statement has been submitted with the application justifying the variation in this case is considered to be unreasonable and unnecessary in the circumstances of this case and sufficient environmental planning grounds have been demonstrated to contravene the control in this instance.

The proposed development design satisfies the objectives of both the Building Height Development control and the zone objectives for the site and the Clause 4.6 Statement and is considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought. The proposal satisfies the requirements of Clause 4.3 of the Kogarah Local Environmental Plan 2012.

210. Operationally the proposal will not result in any unreasonable impacts on the amenity of adjoining properties subject to conditions of consent as recommended below.
211. The application is recommended for approval subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

212. The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments except in the height of the development. A Clause 4.6 exception has been submitted in support of the application which is considered to be acceptable having regard to the justification provided in the report above.
- The proposed development satisfies the objectives of the B2 Local Centre zone of Kogarah Local Environmental Plan which emphasis the need to create a vibrant and active commercial/retail environment.
- The proposed built form, scale and siting of the building will be in keeping with the character of the streetscape and will be consistent with development form that has been approved within this precinct.
- The proposed development is considered to be compatible with surrounding development and surrounding land uses.
- The building will not unreasonably affect the amenity of any immediately adjoining properties in terms of unreasonable overlooking, overshadowing or view loss.
- The proposed development is well considered and sensitively designed so that it will not result in any unreasonable impact on the natural and built environment.

- The proposed development is not considered incompatible with the character of the locality and is capable of existing harmoniously with its surroundings.
- The proposed development is located within the Mortdale precinct of the commercial locality areas of KDCP 2013 and is consistent with the desired future character of the precinct by providing a high quality building consistent with adjoining development.
- The proposal is not inconsistent with the provisions of the Draft Georges River Local Environmental Plan 2020.

Determination

213. THAT Georges River Local Planning Panel, as the consent authority, support the request for variation under Clause 4.6 of Kogarah Local Environmental Plan 2012, in relation to the Height of Buildings (Clause 4.3) as the variation sought is considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought.
214. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel grant deferred commencement consent to Development Application DA2020/0375 demolition works, and construction of a seven (7) storey mixed use development containing 37 residential apartments and ground floor commercial floor space above two (2) basement levels, landscaping and site works at Lot 1 DP 964242, Lot 2 DP 964242 and Lot 5 DP 925477 and known as 89-93 Railway Parade, Mortdale, subject to the following conditions:

The Development Application described above has been determined by the granting of a Deferred Commencement Consent subject to the conditions specified in this notice.

This Development Application is a Deferred Commencement Consent under Section 4.16(3) of the Environmental Planning and Assessment Act 1979. Strict compliance is required with **all conditions appearing in Schedule 1** within **thirty-six (36) months from the Determination Date of this consent**. Upon confirmation in writing from Georges River Council that the Schedule 1 Conditions have been satisfied, the consent shall commence to operate as a Development Consent for a period of five (5) years from the **Determination Date of this consent**.

Schedule 1

- A. **Deferred Commencement - General** - Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, this consent will not operate until such time as the following requirements are satisfied:

The Applicant shall prepare and provide to Sydney Trains for approval/certification the following final version items in compliance with relevant ASA Standards <https://www.transport.nsw.gov.au/industry/standards-and-accreditation/standards>):

1. Geotechnical and Structural report/drawings that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducted on the site closest to the rail corridor.
2. Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.

3. Cross sectional drawings showing the rail corridor, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.

4. Detailed Survey Plan showing the relationship of the proposed developed with respect to Sydney Trains easement and rail corridor land.

5. If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.

Any conditions issued as part of Sydney Trains approval/certification of the above documents will also form part of the consent conditions that the Applicant is required to comply with.

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

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

Schedule 2 **DEVELOPMENT DETAILS**

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

Description	Reference No.	Date	Revision	Prepared by
Site/Roof Plan	A-0700	21.05.2021	C	Loucas Architects
Basement 2 Floor Plan	A-0800	21.05.2021	C	Loucas Architects
Basement 1 Floor Plan	A-0900	21.05.2021	C	Loucas Architects
Ground Floor Plan	A-1000	21.05.2021	C	Loucas Architects
First Floor Plan	A-1100	21.05.2021	C	Loucas Architects
Second Floor Plan	A-1200	21.05.2021	C	Loucas Architects
Third Floor Plan	A-1300	21.05.2021	C	Loucas Architects
Fourth Floor Plan	A-1400	21.05.2021	C	Loucas Architects
Fifth Floor Plan	A-1500	21.05.2021	C	Loucas Architects
Sixth Floor Plan	A-1600	21.05.2021	C	Loucas Architects
Roof Floor Plan	A-1700	21.05.2021	C	Loucas Architects
Sections	A-2500	21.05.2021	C	Loucas Architects
South Elevation	A-2600	21.05.2021	C	Loucas Architects
West Elevation	A-2700	21.05.2021	C	Loucas Architects
North Elevation	A-2800	21.05.2021	C	Loucas Architects
East Elevation	A-2900	21.05.2021	C	Loucas Architects
Street Analysis	A-30000	21.5.2021	C	Loucas Architects
GFA Calculations	A-4000	21.05.2021	C	Loucas Architects

Solar Access and Ventilation	A-4100	21.05.2021	C	Loucas Architects
Adaptable Units	A-4200	21.05.2021	C	Loucas Architects
Adaptable Units	A-4210	21.05.2021	C	Loucas Architects
Livable Units	A-4220	21.05.2021	C	Loucas Architects
Construction & Environmental Management Plan	A-4300	21.05.2021	C	Loucas Architects
Excavation Plan	A-4400	21.05.2021	C	Loucas Architects
Landscape Plan Level 1	20126 DA 1-2	17.5.2021	B	Vision Dynamics
Landscape Plan Level 3 and Roof Level	20126 DA 2-2	17.5.2021	B	Vision Dynamics

Note: Any variation to the development as approved must only be undertaken in accordance with any applicable Exempt, Complying Development or an Approved Development Consent as outlined under the Environmental Planning and Assessment Act 1979.

2. **Fit out of commercial premises** - No approval is granted for the use or fit-out of any of the commercial premises. Separate Development consent for the use and fit out of each commercial tenancy is required prior to the occupation of any commercial component of the development.
3. **Signage** - A separate application shall be submitted to Council prior to the erection of any signage unless the proposed signage is 'exempt development' under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or any other applicable environmental planning instrument.

Separate Approvals Required Under Other Legislation

4. **Vehicular Crossing - Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:
 - (a) Construct a 1.5m wide footpath for the full length of the site in accordance with Council's Specifications applying at the time construction approval is sought.
 - (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
 - (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
 - (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought. Constructing a vehicular crossing and/or footpath requires separate approval under Section 138 of the Roads Act 1993, prior to the commencement of those works.
 - (e) The design boundary level is to be received from Council prior to construction of the internal driveway.

5. **Access for garbage** - Access for garbage bins is to be provided from a 100mm high "Access Layback" as per council standard drawing S.D.041. It is to be detailed on plans and approved and subject to a section 138 application.
6. **Building - Hoarding Application** - Prior to demolition of the buildings on the site, or the commencement of work above ground level, a separate application for the erection of an 'A class' (fence type) or a 'B class' (overhead type) hoarding or 'C type' scaffold, in accordance with the requirements of SafeWork NSW, must be erected along that portion of the footways/roadway where the building is within 3 metres of the street boundary. An application for this work under Section 68 of the Local Government Act 1993 and the Roads Act 1993 must be submitted for approval to Council.

The following information is to be submitted with a Hoarding Application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993:

- (a) A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location.
 - (b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
 - (c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available on our website) before the commencement of work; and
 - (d) A Public Risk Insurance Policy with a minimum cover of \$20 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party.
7. **Below Ground anchors Information to be submitted with S68 Application under LGA 1993 and S138 Application under Roads Act 1993** - In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application must be lodged with Council under Section 68 of the Local Government Act 1993 and the Roads Act 1993 for approval, prior to commencement of those works. The following details must be submitted.
 - (a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.
 - (b) The applicant has indemnified Council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of council.
 - (c) Documentary evidence of such insurance cover to the value of \$20 million.
 - (d) The applicant must register a non-terminating bank guarantee in favour of Council in accordance with Council's fees and charges. The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
 - (e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.

8. **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 (e.g. 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.

9. **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

10. **Sydney Trains** - The proposed development shall be carried out in accordance with the following requirements as detailed in their concurrence letter dated 1 December 2020:
11. **Supervision** - Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects and who holds current professional indemnity insurance.
12. **Survey** - Prior to the issue of a Construction Certificate, the Applicant shall provide an accurate survey locating the development with respect to the rail boundary and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction

of Sydney Trains representative.

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

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority, Council and Sydney Trains certifying that the completed development meets the requirements of State Environmental Planning Policy (Infrastructure) 2007 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such a report must include external and internal noise levels to ensure that the external noise levels during the test are representative of the typical maximum levels that may occur at this development, and that internal noise levels meet the required dB(A) levels. Where it is found that internal noise levels are greater than the required dB(A) level, necessary corrective measures must be carried out to ensure that internal noise levels are compliant with the requirements of this consent.

14. **Electrolysis** - Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.

15. **Design** - Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows and other external features (eg roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of Sydney Trains (eg awning windows, louvres, enclosed balconies, window restrictors etc) which prevent the throwing of objects onto the rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of the rail operator. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

There is a need to ensure that the roots and foliage of trees being planted beside the rail corridor do not have an impact on the rail corridor or rail operations. A final landscaping and planting plan demonstrating measures to ensure compliance with this condition must

be prepared to the satisfaction of Sydney Trains. No construction certificate can be issued until written confirmation has been received from Sydney Trains confirming that this condition has been complied with.

16. **Construction** - No metal ladders, tapes, and plant, machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and catenary, contact and pull-off wires of the adjacent tracks, and to any aerial power supplies within or adjacent to the rail corridor.

No work is permitted within the rail corridor, or any easements which benefit Sydney Trains/TAHE (Transport Asset Holding Entity), at any time, unless the prior approval of, or an Agreement with, Sydney Trains/TAHE (Transport Asset Holding Entity) has been obtained by the Applicant. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

No rock anchors, rock bolts, ground anchors or rock ties, piles, foundations, rock pillars, transfer structures, basement walls, slabs, columns, beams, cut rock faces, are to be installed into TAHE (Transport Asset Holding Entity)/Sydney Trains property or easements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

If required by Sydney Trains, prior to the issuing of a Construction Certificate, the following rail specific items are to be submitted to Sydney Trains for review and endorsement:

- Machinery to be used during excavation/construction.
- Demolition, excavation and construction methodology and staging

The Principal Certifying Authority is not to issue the Construction Certificate until it has received written confirmation from Sydney Trains that this condition has been complied with.

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

If required by Sydney Trains, a monitoring plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate. The Principal Certifying Authority is not to issue a Construction Certificate until written confirmation has been received from Sydney Trains advising of the need to undertake the track monitoring plan, and if required, that it has been endorsed.

Prior to the issuing of a Construction Certificate the Applicant must submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to

issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

No scaffolding is to be used facing the rail corridor unless prior written approval has been obtained from Sydney Trains. To obtain approval the Applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.

If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains External Interface Management team to determine the need for public liability insurance cover. If insurance cover is deemed necessary this insurance be for sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure and must be maintained for the duration specified by Sydney Trains. The Applicant is to contact Sydney Trains External Interface Management team to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.

If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains External Interface Management team to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.

If required by Sydney Trains, the Applicant/Developer must give Sydney Trains written notice at least 5 business days before, and on the day of, commencing works which occur within 25 metres of the rail corridor land.

17. **Consultation** - The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:
- oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
 - acts as the authorised representative of the Applicant; and
 - is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.

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

Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the Sydney Trains External Interface Management team via email on Illawarra_Interface@transport.nsw.gov.au.

18. **Documentation** - If required by Sydney Trains, prior to the issuing of an Occupation Certificate the Applicant is to submit as-built drawings to Sydney Trains and Council. The

as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into TAHE (Transport Asset Holding Entity) property or easements, unless agreed to be TAHE (Transport Asset Holding Entity). The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied

Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains or TAHE (Transport Asset Holding Entity) must be submitted to Council for its records prior to the issuing of the applicable Construction Certificate or Occupation Certificate.

19. **Inspections** - If required by Sydney Trains, prior to the commencement of works or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required within 10 days following the undertaking of the inspection, unless otherwise notified by Sydney Trains.

If required by Sydney Trains, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied

Sydney Trains or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, must be permitted to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and the requirements of this consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.

20. **Maintenance** - Prior to the issuing of any Occupation Certificate the Applicant must provide to Sydney Trains for review and endorsement a plan of how future maintenance of the development facing the rail corridor is to be undertaken. The Principal Certifying Authority is not to issue any Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied. The maintenance plan must be implemented for the life of the approved development.
21. **Sydney Trains - Other** - Any conditions issued as part of Sydney Trains approval/certification of any documentation for compliance with the Sydney Trains conditions of consent, those approval/certification conditions will also form part of the consent conditions that the Applicant is required to comply with.

Where a condition of consent requires Sydney Trains or Transport for NSW endorsement the Principal Certifying Authority is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those

entities that the particular condition has been complied with. The issuing of staged Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.

22. **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.
23. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 <http://legislation.nsw.gov.au/> must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site www.sydneywater.com.au <http://www.sydneywater.com.au> then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

24. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site
25. **Electricity Supply to development** - All existing overhead power lines within or at the immediate street frontage to the development site shall be relocated underground to Energy Australia standards and specifications. If not practicable to relocate the power line underground, arrangements shall be made with Energy Australia to place the conduit to carry those power lines underground so that they can be utilised at a later date by Energy Australia. In this regard all associated costs shall be borne by the applicant
26. **Trade Waste Agreements** - A Trade Waste Agreement with Sydney Water may be required. Details of any work required to comply with the agreement must be detailed on the plans lodged with the Construction Certificate. If no trade waste agreement or grease trap is required, a letter from Sydney Water to this effect must be submitted with the application for the Construction Certificate.

Prior to the Issue of a Construction Certificate

27. **Communal Open Space** - A Plan of Management (POM) for use of rooftop open space

must be submitted to and approved by the PCA prior to the issue of any Construction Certificate, with a copy stamped as received by the PCA provided to Council. The POM must outline the:

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

The development must be carried out in accordance with this POM at all times.

28. **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	\$37,673.28 (Calculation is based on \$1236 per metre of street frontage as follows: Railway Parade – 30.48m)
Inspection Fee for Refund of Damage Deposit	\$742.00
DEVELOPMENT CONTRIBUTIONS	
Kogarah Section 94 Development Contributions Plan No 1 – Roads and Traffic Management – Residential	\$24,577.03
Kogarah Section 94 Development Contributions Plan No 5 – Open Space	\$384,091.29

Kogarah Section 94 Development Contributions Plan No 9 – Kogarah Libraries – Buildings	\$8,713.61
Kogarah Section 94 Development Contributions Plan No 9 – Kogarah Libraries - Books	\$6,212.60
Total S7.11 Contributions	\$423,594.53

General Fees

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

Development Contributions

The Section 94 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

Indexation

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

Timing of Payment

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

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

Note: Prior to the issue of any Occupation Certificate, written confirmation from Council's delegate that all outstanding s7.11 contributions have been paid, is to be obtained and provided to the satisfaction of the PCA.

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.

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

- Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$37,673.28** (Not inclusive of drainage works).
- Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee (for two inspections) to enable assessment of any damage and repairs where required: **\$742.00**
- Submit to Council, before the commencement of work, a dilapidation report of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

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

30. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
31. **Acoustic requirements for timber flooring** - If timber flooring is installed within the development, then appropriate insulation between floors shall be implemented to exceed the minimum sound attenuation
32. **Traffic Light System** - A Traffic light system is to be installed for the one way movement along the circulation ramps inside the development. Details are to be provided with the construction certificate.
33. **Driveway access/sight lines** - Driveway access to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.

Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distance requirements stipulated in the *Australian Standards AS2890.1*

In the instance of multi storey car park and to prevent vehicles from running over the edge of a raised platform or deck of a multi-story car park, barriers in accordance to AS2890.1:2004 section 2.4.5.3 need to be installed.

34. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by a qualified designer, shall be submitted to the Certifying Authority verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of *State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development*.
35. **BASIX Commitments** – All energy efficiency measures as detailed in the BASIX Certificate No must be implemented on the plans lodged with the application for the Construction Certificate
36. **Pre-Construction Dilapidation Report - Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:
 - (a) All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.

The report shall be prepared at the expense of the applicant and submitted to the

satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

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

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

37. **Stormwater System** - The submitted stormwater plans as described in the table below have been assessed as a concept plan only.

Description	Reference No.	Date	Revision	Prepared by
Basement 2 Drainage Plan	2114- S1/6	17.5.2021	D	John Romanous & Associates Pty Ltd
Basement 1 Drainage Plan	2114- S2/6	17.5.2021	D	John Romanous & Associates Pty Ltd
Ground Floor Drainage Plan	2114- S3/6	17.5.2021	D	John Romanous & Associates Pty Ltd
First Floor Drainage Plan	2114- S4/6	17.5.2021	D	John Romanous & Associates Pty Ltd
Second Floor Drainage Plan	2114- S5/6	17.5.2021	D	John Romanous & Associates Pty Ltd
On-site detention Tank and OSD Design Calculations	2114- S6/6	17.5.2021	D	John Romanous & Associates Pty Ltd

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.

- Prior to the issue of a construction certificate, a longitudinal section of the new proposed 375mm diameter RCP pipe in the road showing surface levels, invert levels and public utility services shall be submitted to Council's drainage engineer in the 'Infrastructure and Asset Engineering' Unit for their approval in writing and to their satisfaction for the proposed drainage pipe in the road.
- All stormwater shall drain by gravity to Council's existing drainage pit located in the street using a 375mm diameter RCP pipe in accordance with the Australian Standard AS/NZS 3500.3: 2015 (as amended).
- The PCA shall ensure that the approved drainage design levels are surveyed during construction by a registered surveyor.
- 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.

- (e) The design and structural adequacy of the OSD tank system shall be certified by a practising drainage engineer to the satisfaction of the PCA.

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

Protection of basement from inundation of stormwater waters

- (a) The construction of the building shall be designed to conform to the recommendations and conclusions of Geotechnical Investigation Report (Report No GS7995-1A) dated 14 August 2020 by Aargus Geotechnical Engineering in regard to the protection of the underground basement from possible inundation by surface waters.

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

38. **On Site Detention-** The submitted stormwater plan has been assessed as a concept plan only. 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 design must comply with the results of the generated stormwater management report regarding the OSD storage volume and the stormwater permissible site discharge.

- (a) Provide at least one grated access and sufficient ventilation to the OSD tank.
- (b) Provide at least two sealed access for future maintenance.
- (c) The PCA shall ensure that a drainage engineer shall supervise the construction of the OSD stormwater system and certify his supervision in writing and state his satisfaction of the constructed stormwater system on site that it is built as intended in this consent.

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>

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

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

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

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

- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
- (b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).
- (c) The full length of the driveway designed with a minimum 150mm thick reinforced concrete and minimum of 3m wide pavement/kerb face to kerb face width, and a non-slip surface.

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

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

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

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

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

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

45. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors, common areas, stairs and ramps as well as floor surfaces in all wet rooms including in any residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2013 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.

46. **Access for Persons with a Disability** - Access and or sanitary facilities for persons with disabilities must be provided to the premises/building in accordance with the requirements of the Premises Standards, the Building Code of Australia, and AS 1428.1. Details must be submitted with the Construction Certificate Application for approval.

In regard to the above, pedestrian access throughout basement levels shall be highlighted and sign posted to safeguard access and egress.

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

47. **Traffic Management** - 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).
48. **Acoustic Requirements - Compliance with submitted Acoustic Report** - The Construction Certificate plans shall demonstrate compliance with the Acoustic Assessment Report submitted to Council, titled the "Acoustical Report – Proposed Mixed Use Development – 89-93 Railway Pde, Mortdale NSW" produced by Koikas Acoustics P/L Ref: 4281R20200806pd89-93RailwayPrdMortdale_DA" and dated 4 August 2020. This means that a review of glazing design and mechanical plant must be undertaken to ensure that acoustic objectives will be met.

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

Acoustic Report - General Operation of Premises

The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the [Protection of the Environment Operations Act 1997](#) (as amended) and [Regulations](#).

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

49. **NSW Police - Crime Prevention** - In line with the recommendations of the NSW Police Force, the following are to accompany the Construction Certificate application:
- (a) The development is to provide/install Closed-Circuit Television (CCTV) cameras within and around the development. A Closed-Circuit Television plan is to be prepared in that regard.
 - (b) A Crime Risk assessment report is to be provided and there must be strict adherence to the requirements of the 'Crime Risk Assessment Report'.
 - (c) The system must record continuously at all times.
 - (d) Recordings must be in a digital format and at a minimum of ten frames per second (10 fps).
 - (e) Any recorded image must specify the time and date of the recorded image.
 - (f) The systems cameras must cover the following areas
 - (i) All entry and exit points on the premises
 - (ii) The footpath immediately adjacent to the premises
 - (iii) All publicly accessible areas (other than toilets) within the premises.
 - (iv) Throughout the underground car park to monitor activities around these areas
50. **Lighting in and around the Site-** Lighting must be installed in and around the property to increase visibility during the hours of darkness. Lighting must comply with the relevant Australian Standard.
51. **Commonwealth Disability (Access to Premises) Standard** - The Commonwealth Disability (Access to Premises - Buildings) Standards 2010 (the Premises Standards) applies to all applications (i.e. Construction Certificate). This requires any new building, part of a building and the affected part of the existing building to comply with the Premises Standards, the Building Code of Australia and AS 1428.
52. **Geotechnical report** - The applicant must submit a Geotechnical Report, prepared by a professional engineer specialising in geotechnical engineering who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted before the issue of the Construction Certificate and is to include:
- (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
 - (b) Dilapidation Reports on the adjoining properties including, but not limited to adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the PCA and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
 - (c) On-site guidance by a vibration specialist during the early part of excavation.

- (d) Measures to minimise vibration damage and loss of support to other buildings. Where possible any excavation into rock is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures. Where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) the report shall detail the maximum size of hammer to be used and provide all reasonable recommendations to manage impacts.
- (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

53. **Construction Traffic Management Plan** - A Construction Traffic Management Plan detailing but not limited to the following:

- (a) Construction vehicle routes;
- (b) Anticipated number of trucks per day;
- (c) Anticipated number of staff per day
- (d) Hours of construction;
- (e) Duration of construction;
- (f) Traffic Control Plans to manage construction vehicles;
- (g) Access arrangements; and
- (h) Proposed traffic measures to minimise impacts of construction vehicles.

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

54. **Waste Room Design and Construction** - The construction certificate drawing shall show the waste room containing the following to minimise odours, deter vermin, protect surrounding areas, and make it a user-friendly and safe area:

- i. waste room floor to be sealed;
- ii. waste room walls and floor surface is flat and even;
- iii. all walls painted with light colour and washable paint;
- iv. equipment electric outlets to be installed 1700mm above floor levels;
- v. light switch installed at a height of 1.6m.
- vi. The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
- vii. waste rooms must be well lit (sensor lighting required);
- viii. optional automatic odour and pest control system installed to eliminate all pest
- ix. types and assist with odour reduction - this process generally takes place at building handover - building management make the decision to install;
- x. all personnel doors are hinged and self-closing;
- xi. waste collection area must hold all bins - bin movements should be with ease of access;
- xii. conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.
- xiii. Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.
- xiv. Cleaners or other on-site personnel will monitor the bin storage area and all spills will be attended to immediately by cleaners.

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

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

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

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

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

57. **Traffic Design Certificate**- A detailed "design" certificate from an experienced and qualified traffic engineer with tertiary qualifications is to be submitted to and approved by the Principal Certifying Authority confirming the following:

- (a) The car parking layout and loading areas associated with the development (including, driveway grades, headroom clearance turn paths, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS2890.1:2004, AS2890.6:2009 and AS2890.2:2018.
- (b) Bicycle parking associated with the development is provided in accordance with AS2890.3 design requirements.
- (c) Driveway access complies with Figure 3.3 of AS2890.1:2004 minimum sight lines for pedestrian safety.
- (d) All vehicles shall enter and exit the premises in a forward direction.

58. **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.

59. **Allocation of street addresses**- In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing, the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street address for the subject development must be allocated as advised by Georges River Council.

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

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

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

61. **Materials and Finishes** - Any proposed cladding to the building shall be constructed of fire resistant materials which comply with the requirements of the National Construction Code (NCC) 2019 Volume (1) One Building Code of Australia (BCA). Details of the proposed materials and finishes are to be detailed on the construction certificate drawings and shall be to the satisfaction of the PCA.

62. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the 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.

63. **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.

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

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

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

65. **Landscape Plans** – All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Vision Dynamics, Ref No 20126 DA 1 – 2, Rev B and dated 17/5/21. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following –
- (a) The proposed thirty three (33) trees (within site) and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
 - (b) All thirty three (33) trees must be a minimum 45 litre pot/bag size.
 - (c) All trees and shrubs must be contract grown with a reputable and licensed nursery grower early within the build phase to ensure that the proposed trees, plant species, quantities and sizes are guaranteed at the time of landscape planting and implementation. The purchasing of all trees and shrubs must be signed off and certified by the Landscape Architect as a record, to ensuring that the trees and plants planted at the landscape stage and to confirm compliance to the PCA.
 - (d) All thirty three (33) trees proposed within the site, 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.
 - (e) 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;
66. **Compliance with submitted Arborist Report** - The recommendations outlined in the Arborist's Report titled Arboricultural Impact Assessment Report prepared by Tree Power dated 13th July, Version 1.1 must be implemented throughout the relevant stages of site set up, demolition, excavation construction and landscaping. Details of tree protection measures to be implemented must be detailed and lodged with the Construction Certificate application for approval and shall be in accordance with Section 4 - Australian Standard AS 4970-2009: Protection of trees on development sites.

Tree Protection Requirements within the Arborist Report must be implemented and signed off by the Project Arborist for compliance, to the PCA.

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

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) TPZ as per
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		AS4970 - 2009 Fencing distance from trunk
1.4 – Syzygium australe	Within rear yard of 95 Railway Pde	7.95 metres radially out from its trunk
1.5 – Syzygium australe	Within rear yard of 95 Railway Pde	8.0 metres radially out from its trunk

67. Tree Protection and Retention

The following trees shall be retained and protected:

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) TPZ as per AS4970 - 2009 Fencing distance from trunk
1.4 – Syzygium australe	Within rear yard of 95 Railway Pde	7.95 metres radially out from its trunk
1.5 – Syzygium australe	Within rear yard of 95 Railway Pde	8.0 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, prior to any works being undertaken.
- (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 for two (2) trees upon 95 Railway Pde

- (c) The tree protection measures must be undertaken in accordance AS4970 -2009 *Protection of trees on development sites*.
- (d) All trees on adjacent sites, to be retained must be protected before site set up and maintained during demolition, excavation and construction of the site.
- (e) 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.
- (f) No level or grade changes are permitted within the TPZ of both neighbouring trees in the north west corner of the site. Natural grade levels must be maintained, mulched and fenced off for the entirety of the project.
- (g) 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.
- (h) 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.

- (i) 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.
- (j) 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.
- (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, that are located upon 95 Railway Pde.

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, with no strip footings permitted.

68. Tree Removal & Replacement - Tree removal

(a) Tree removal

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
1 – <i>Laurus nobilis</i>	X1	Within site
2, 4, 5 – <i>Ravenea rivularis</i>	X3	Within site
3 – <i>Citrus Spp</i>	X1	Within site
1.2 – <i>Melia azedarach</i>	X1	Within site
2.2 – <i>Tibouchina Spp</i>	X1	Within site
1.3 – <i>Ligustrum Spp</i>	X1	Within site
2.3 – <i>Ligustrum Spp</i>	X1	Within site

General Tree Removal Requirements

- (a) All tree removal shall be carried out by a minimum certificate Level 3, Licenced and insured Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - Pruning of Amenity Trees and Tree Works Industry Code of Practice (Work Cover NSW 1.8.98).
- (b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

Street Tree Removal / Replacement by Council –

- a) Three (3) street trees of species to be determined (number is subject to public domain approval) must be provided in accordance with the Public Domain Plan Approval.
- b) Council shall be appointed to remove and plant all tree/s on public land. All costs associated with the removal of the tree/s and the planting of replacement trees shall be met by the applicant. Fees and charges outlined in the table below are subject to change and are set out in the current version of Council's 'Schedule of Fees and Charges', applicable at the time of payment.
- c) The fees must be paid in accordance with the conditions of this consent. The fee payable is to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.
- d) The fees payable will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant conditions set out in this consent.

Fee Type – Tree planting on public land	Number of trees	Amount per tree
Administration Fee, tree planting and maintenance	X3	\$452.00
Cost of tree removal – One tree	To be determined	
Cost of Stump Grinding – One tree	To be determined	

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

69. **Dilapidation Report on Public Land – Major Development Only** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site, including:
- (a) Foot paths , Kerb and gutter and roadways
 - (b) Stormwater drainage pits and pipes

The report must include the following:

- (a) Photographs showing the existing condition of the road pavement fronting the site,
- (b) Photographs showing the existing condition of the kerb and gutter fronting the site,
- (c) Photographs showing the existing condition of the footpath pavement fronting the site,

- (d) Photographs showing the existing condition of any retaining walls within the footway or road, and
- (e) The full name and signature of the structural engineer
- (f) The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the PCA and a copy provided to the Council.

The Dilapidation Report must be prepared by a professional engineer. The report must be provided to the PCA and a copy provided to the Council. The report is to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

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

70. **Structural Engineers Details – Supporting Council road/footway-** Prior to the commencement of work in connection with the excavation of the site associated with the basement carpark, structural engineer's details relating to the method of supporting Council's roadways/footways must be submitted to the satisfaction of Council.
71. **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.

72. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
- (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
 - (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
 - (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS

REMOVAL IN PROGRESS” measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.

73. **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.
74. **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.
75. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The cost associated with the provision or adjustment of services within the road and footway areas is to be at the applicant's expense.

During Construction

76. **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.
77. **Hours of construction for demolition and building work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.

Note: A penalty infringement notice may be issued for any offence.

78. **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.
79. **Site contamination (additional information)** - Any new information that comes to light during demolition, excavation or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.
80. **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.

81. **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.
82. **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.
83. **Structural Certificate During Construction** - The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate
84. **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 Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
 - (f) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey 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.

85. **Hazardous or Intractable Waste – Removal and Disposal** - Hazardous or intractable waste arising from the demolition or construction process shall be removed and disposed

of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and with the provision of:

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

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

87. **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.

88. **Damage within Road Reserve and Council Assets** - The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.

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

Prior to the issue of the Occupation Certificate

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

91. **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.

92. **Payment of S7.11 and S7.12 Contributions** - Prior to the issue of any Occupation Certificate, written confirmation from Councils delegate that all outstanding s7.11 and s7.12 contributions have been paid, is to be obtained and provided to the satisfaction of the PCA.

93. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the PCA prior to the issue of the Occupation/Subdivision Certificate.

94. **Acoustic Certification** – Prior to the issue of any Occupation Certificate, a suitably qualified acoustic consultant shall certify that the operation of the premises and plant

equipment shall not give rise to a sound pressure level at any affected premises that exceeds the acoustic criteria established by the Acoustic Report required by a condition of this consent. The development shall at all times comply with these noise levels post occupation.

95. **Acoustic Compliance** – Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report titled the “*Acoustical Report – Proposed Mixed Use Development – 89-93 Railway Pde, Mortdale NSW*” produced by Koikas Acoustics P/L Ref: 4281R20200806pd89-93RailwayPrdMortdale_DA” and dated 4 August 2020.

96. **Post Construction Dilapidation report- Private Land** – At the completion of the construction works, a suitably qualified person is to be engaged to prepare a post construction dilapidation report. This report is to ascertain whether the construction works associated with the subject development created any structural damage to the adjoining premises.

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

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

97. **Acoustic Compliance – General Operation of Premises-** The proposed use of the premises and the operation of all plant and equipment shall not give rise to an ‘offensive noise’ as defined in the [Protection of the Environment Operations Act 1997](#) (as amended) and [Regulations](#).

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

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

98. **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.*

99. **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.

100. **Requirements prior to the issue of the Occupation Certificate-** The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:
- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
 - (b) The internal driveway construction works, together with the provision for all services shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
 - (c) Construct any new vehicle crossings required.
 - (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
 - (e) Work as Executed Plans prepared by a chartered Professional Engineer or a Registered Surveyor and certified by a practicing drainage engineer when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.
101. **Line marking of parking spaces** - Parking spaces shall be clearly designated (sign posted and marked on ground) and line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with *Australian Standards, AS1742, Manual of Uniform Traffic Control Devices* and *NSW Road Transport (Safety and Traffic Management) Regulations 1999*.
102. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.
103. **SEPP 65 Design Verification Statement** - The PCA must not issue any Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the PCA has received a design verification , being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.
104. **Vehicular crossing & Frontage work – Major development-** The following road frontage works shall be constructed in accordance with the specifications issued under the 'Application for Driveway Crossing and Associated Works on Council Road Reserve' approval issued by Council's Assets and Infrastructure Division:
- (a) Construct a 1.5m wide footpath for the full frontage of the site in accordance with Council's Specifications for footpaths.
 - (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
 - (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
 - (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at

the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

A private contractor shall carry out the above work, at the expense of the applicant and in accordance with Council's Specification for Driveway Crossings and Associated Works. The driveway and road frontage works are to be completed before the issue of the Occupation Certificate.

105. **Traffic Certification-** An "as built" certificate from an experienced and qualified traffic engineer with tertiary qualifications is to be submitted to and approved by the Principal Certifying Authority confirming the following:
 - (a) The car parking layout and loading areas associated with the development (including, driveway grades, headroom clearance turn paths, aisle widths, aisle lengths and parking bay dimensions) has been constructed in accordance with AS2890.1:2004, AS2890.6:2009 and AS2890.2:2018.
 - (b) Bicycle parking associated with the development is provided in accordance with AS2890.3 design requirements.
 - (c) Driveway access complies with Figure 3.3 of AS2890.1:2004 minimum sight lines for pedestrian safety.
 - (d) All vehicles shall enter and exit the premises in a forward direction;
 - (e) Parking spaces shall be clearly line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with *Australian Standards, AS1742, Manual of Uniform Traffic Control Devices* where required.
106. **Consolidation of Site** - The site shall be consolidated into one allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan shall be registered at the NSW Land and Property Information prior to the issue of a final occupation certificate.
107. **Completion of Major Works** - Prior to the issue of a Final Occupation Certificate, the following works must be completed at the applicant's expense to the satisfaction of Council's Engineering Services section:
 - (a) Stormwater pipes, pits and connections to public stormwater systems within the road related area;
 - (b) Driveways and vehicular crossings within the road related area;
 - (c) Removal of redundant driveways and vehicular crossings;
 - (d) New footpaths within the road related area;
 - (e) Relocation of existing power/light pole
 - (f) Relocation/provision of street signs
 - (g) New or replacement street trees;
 - (h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
 - (i) New or reinstated kerb and guttering within the road related area; and
 - (j) New or reinstated road surface pavement within the road.

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

The damage deposit paid to Council will not be released until the works have been completed to Council's satisfaction.

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

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

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

- (a) Footpaths, kerb and gutter
- (b) Drainage Infra-structure

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

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

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

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

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

110. **Allocation of car parking spaces** – Car parking associated with the development is to be allocated as follows:

- a) Residential dwellings: 45 car parking spaces
- b) Commercial/Retail: 15 car parking spaces
- c) Visitors Spaces: 8 car parking spaces
- d) Car wash bay: 1 car parking space.

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

of the Environmental Planning and Assessment Regulation, 2000. In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:

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

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

- 112. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any commercial/retail/residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.
- 113. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to Ausgrid (or relevant electricity provider).
- 114. **Allocation of street addresses** - All street addresses are to be allocated in accordance with AS/NZS 4819:2011 Rural and Urban Addressing & the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements.
- 115. **Completion of Landscape Works**
 - (a) All landscape works, planting of thirty three (33) trees within the site and fees payable for Councils street tree planting must be completed before the issue of the Final Occupation Certificate and to the satisfaction of Councils Tree Management Officers and in accordance with approved landscape plans and specifications, drawn by Vision Dynamics Ref No 20126 DA 1-2 Rev B dated 17 May 2021.
 - (b) A certificate of compliance for the planting of all thirty six (36) trees and shrubs proposed for the development (this includes street trees). An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA – Principal Certifying Authority, to form compliance.

Operational Conditions (Ongoing)

- 116. **Communal Open Space** – The use of the roof top communal open space area is to be in accordance with the approved Plan of Management (POM) at all times.
- 117. **Crime Prevention**- In line with the recommendation of the NSW Police Force, the premise is to always operate as per the following:
 - (a) The CCTV system must continuously record and operate at all times.

- (b) Recordings must be in a digital format and at a minimum of ten frames per second (10 fps).
- (c) Any recorded image must specify the time and date of the recorded image.
- (d) The systems cameras must cover the following areas
 - i. All entry and exit points on the premises
 - ii. The footpath immediately adjacent to the premises
 - iii. All publicly accessible areas (other than toilets) within the premises.
 - iv. Throughout the underground car park to monitor activities around these areas
- (e) Lighting in and around the Site- Lighting devices must be in operation in and around the property to increase visibility during the hours of darkness. Lighting must comply with the relevant Australian Standard.

The premise is to always operate as per the approved Crime Risk Assessment and Security Management Plan.

- 118. **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).
- 119. **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.
- 120. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
- 121. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
- 122. **Maximum vehicle size** - No vehicle larger than a Small Rigid Vehicle (SRV) as defined in AS 2890.2: 2018 (Australian Standard for off street commercial vehicle facilities) is to be permitted to access the development for the purpose of loading or unloading of goods and/or services.
- 123. **Deliveries** - No deliveries to the premises shall be made direct from a public place or street inclusive of footpaths, nature strip, roadway and car parks.
- 124. **Deliveries** – No deliveries and/or waste removal to/from the site shall take place between 10pm and 6am, 7 days a week.
- 125. **Loading and unloading areas** - All loading and unloading of vehicles in relation to the use of the premises shall take place wholly within the dedicated loading/unloading areas, which is wholly within the site.
- 126. **Visitors Parking** - All allocated car parking spaces shall be freely available for the visitors of the proposed development.
- 127. **Entering & Exiting of vehicles** - All vehicles shall enter and exit the site in a forward

direction.

128. **Annual Fire Safety Statement** - The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:

- (a) Within 12 months after the date on which the fire safety certificate was received.
- (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
- (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
- (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.

129. **Maintenance of Landscaping** –

- (a) All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and other operations required to maintain healthy trees, plants and turfed areas.
- (b) A final certificate of compliance letter, once all building and landscape works have been completed, from the engaged AQF 5 Consulting Arborist, that tree protection measures have been installed and maintained for the entirety of the project and report on the condition of the trees that as part of this Consent, were to be protected and retained
- (c) If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
- (d) A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy, Masterplan, and Tree Management Policy 2019, can be downloaded from Council's website www.georgesriver.nsw.gov.au

130. **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.

131. **Responsibility of Strata/Building Manager** - Movement of bins around the site is the responsibility of the Strata/Building Manager or a delegated contractor (such as cleaners).

It is the responsibility of the Strata/Building Manager or a delegated contractor to clean and maintain bin storage rooms to maintain a sanitary environment. It is also the responsibility of the Strata/Building Manager or a delegated contractor to monitor fill levels of all bins in each designated bin storage area discharge room and rotate these for servicing using bin lift equipment at the site. The Strata/Building Manager or a delegated contractor will also be responsible for monitoring the fill levels of bulky waste in the designated bulky waste storage areas.

The Strata/Building Manager shall also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory requirements and relevant health and environmental standards.

132. **Waste Management** - The provision of all residential, public and commercial waste services are to be provided as per the Waste Management Plan prepared by Loucas Architects. The Body Corporate/Strata Manager will be responsible for overseeing the provision of waste services in accordance with the approved WMP and relevant legislation, including maintaining bins in a clean and sanitary manner utilising the equipment provided as per the WMP (bin wash, bin lift etc).

For a development of 37 units, the following bin numbers are required (Residential):

- 3 x 1100L waste bins (serviced twice weekly) + 19 x 240L recycling bins (serviced once weekly).

Residential bulky and bin store areas must not be accessible by retail or commercial tenancies. Residential bulky waste and bin store areas must be secured under lock and key, and only accessible by authorised persons.

It will be the responsibility of the Site/Building Manager to present all residential bins at the kerbside no earlier than 12 hours prior to collection and remove bins from the kerbside back to private property within 12 hours post collection.

Adequate equipment such as bin tugs should be purchased by the Strata once the site is operational to reduce manual handling risk of bin movement on the driveway.

If the waste storage room once built will not store the required bin numbers, the site will be conditioned entirely to use a private waste collection contractor for the provision of all residential bin and bulky waste services.

The applicant has not outlined the kerbside storage for bulky waste at the same time as the bins, therefore collection of residential bulky waste, if unable to be provided by Council's waste collection contractor once the site is operational, may be required after notice provided in writing by Council, to engage a private waste collection contractor for the provision of bulky waste collection services.

Bulky waste storage must be provided for as per the Full Amended Set of architectural plans dated 21/5/2021.

It will be the responsibility of the Site/Building Manager to oversee the use of the 2 x 240L garden organics bins by any landscaping contractors and present the bins at the kerbside for servicing.

It will be the responsibility of the onsite Strata/Building Manager to oversee the provision of regular retail waste collection services in conjunction with the relevant retail tenancies. All waste removal and collection services relating to the retail waste must be provided onsite by a SRV through private waste collection contractor. Kerbside presentation of retail bins is not permitted. Further, collection of retail wastes onsite must not occur more than twice weekly and should only be provided within the hours of 6 am – 10 pm Monday-Friday.

The site should be conditioned to only enable retail uses – not retail generating food businesses as the designated bin and waste storage will be inadequate for a change of use.

Residential bulky and bin store areas must not be accessible by retail or commercial tenancies. Residential bulky waste and bin store areas must be secured under lock and key, and only accessible by authorised persons (caged areas are suitable for temporary bin storage areas, with keys made available to Council to enable servicing).

The Site/Building Manager will be required to cater for both commingled recycling and general waste bin provisions in common areas such as the rooftop and foyer areas to prevent wind-borne litter. Bins must be emptied at least once a week and be secured with a lid to prevent litter. The Site/Building Manager will be responsible for coordinating the waste to be transferred to the central bin storage area from the common area bins.

Operational Requirements Under the Environmental Planning & Assessment Act 1979

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

134. **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.

135. **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.

136. **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.

137. **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.

138. **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.

139. **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.

Prescribed Conditions

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

141. **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.

142. **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.

143. **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.

144. **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.

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

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

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

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

END CONDITIONS

NOTES/ADVICES

146. **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

147. **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.
148. **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.
149. **Access to NSW Legislation (Acts, Regulations and Planning Instruments)** – NSW Legislation can be accessed free of charge at www.legislation.nsw.gov.au.
150. **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.

151. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.

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

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

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

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
 - (b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
 - (c) New South Wales Government Legislation home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 (www.legislation.nsw.gov.au).
 - (d) Australian Acoustical Society - professional society of noise-related professionals (www.acoustics.asn.au/index.php).
 - (e) Association of Australian Acoustical Consultants - professional society of noise related professionals (www.aaac.org.au).
 - (f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).
154. **Acoustical Engineer Contacts & Reference Material-** Further information including lists of Acoustic Engineers can be obtained from:
- (a) *Australian Acoustical Society—professional society of noise-related professionals* (www.acoustics.asn.au)
 - (b) *Association of Australian Acoustical Consultants—professional society of noise related professionals* (www.aaac.org.au)
 - (c) *NSW Industrial Noise Policy – Office of Environment & Heritage* (www.environment.nsw.gov.au)

155. **Disability Discrimination Act** - This application has been assessed in accordance with the Environmental Planning and Assessment Act 1979. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992. The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.

156. **FR NSW comments** - Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation 2000 to seek written comment from FR NSW about any Fire Engineered Solution developed to meet the performance requirements for external combustible cladding.

The applicant is also advised to seek written advice from FR NSW on the location and construction of the proposed Fire Control Centre Facility, the location of the Fire Indicator/Mimic Panels and the location, use and installation of Hydrants/Sprinkler Booster facilities.

157. **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.

158. **Council appointed as the PCA** - 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.

In this regard, detailed construction plans and specifications that demonstrate compliance with the above requirements of the BCA, in which case, including in relation to the provision of egress and the protection of openings etc must be submitted with the Construction Certificate Application.

159. **Energy Efficiency Provisions** - Should Council be appointed as the PCA, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the PCA.

Energy efficiency provisions relate only to new building work or the installation of new measure. Existing building fabric and measures may not be upgraded.

160. **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).

161. 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. (e.g. DA2018/0***) and reference this condition number (e.g. Condition 23)
- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.

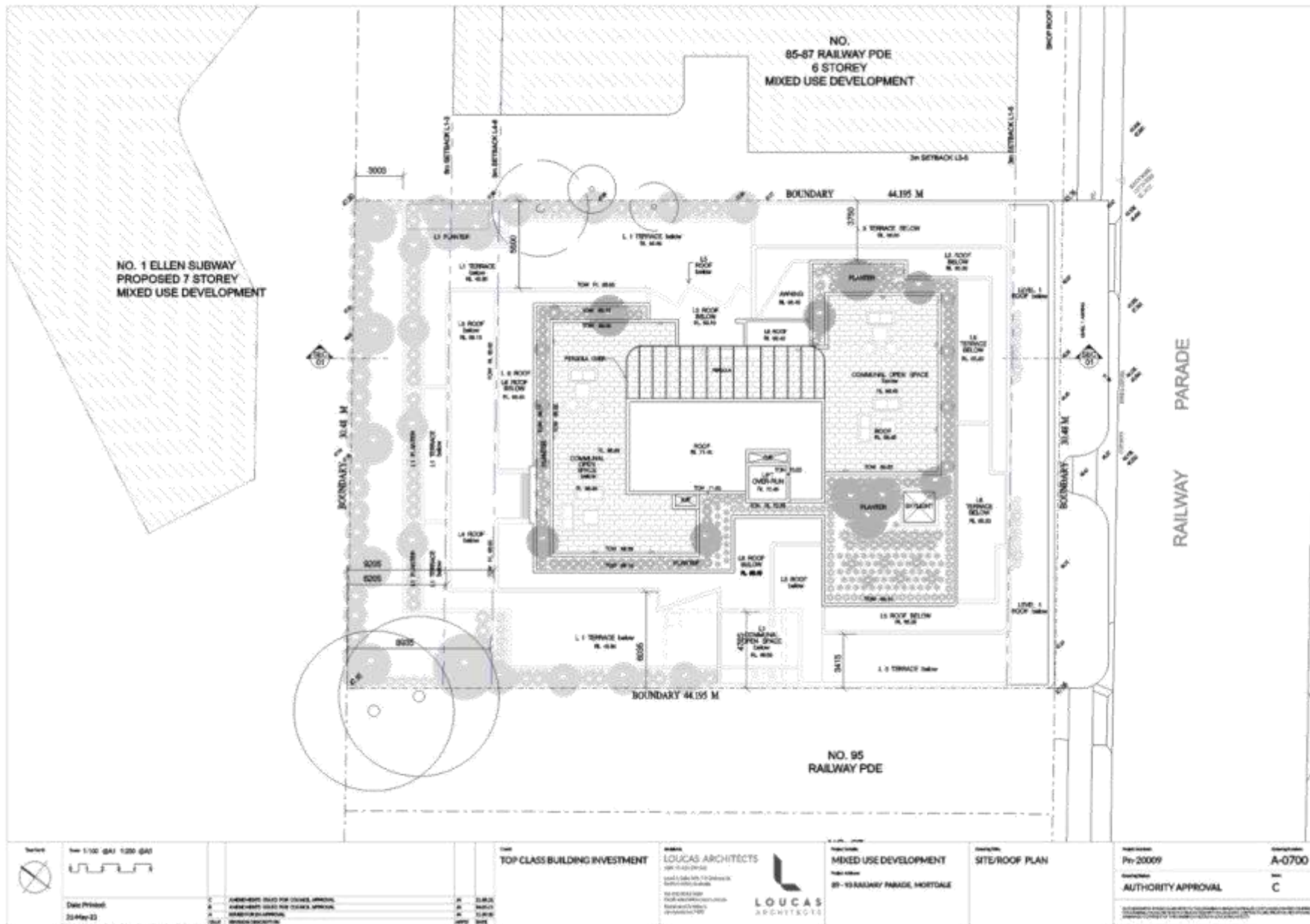
The developer must meet all costs of the extension, relocation or reconstruction of any part of Council's drainage system (including design drawings and easements) required to carry out the approved development.

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

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

ATTACHMENTS

Attachment  1  Site Plan and Elevations - 89-93 Railway Pde Mortdale











REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 17 JUNE 2021

LPP028-21

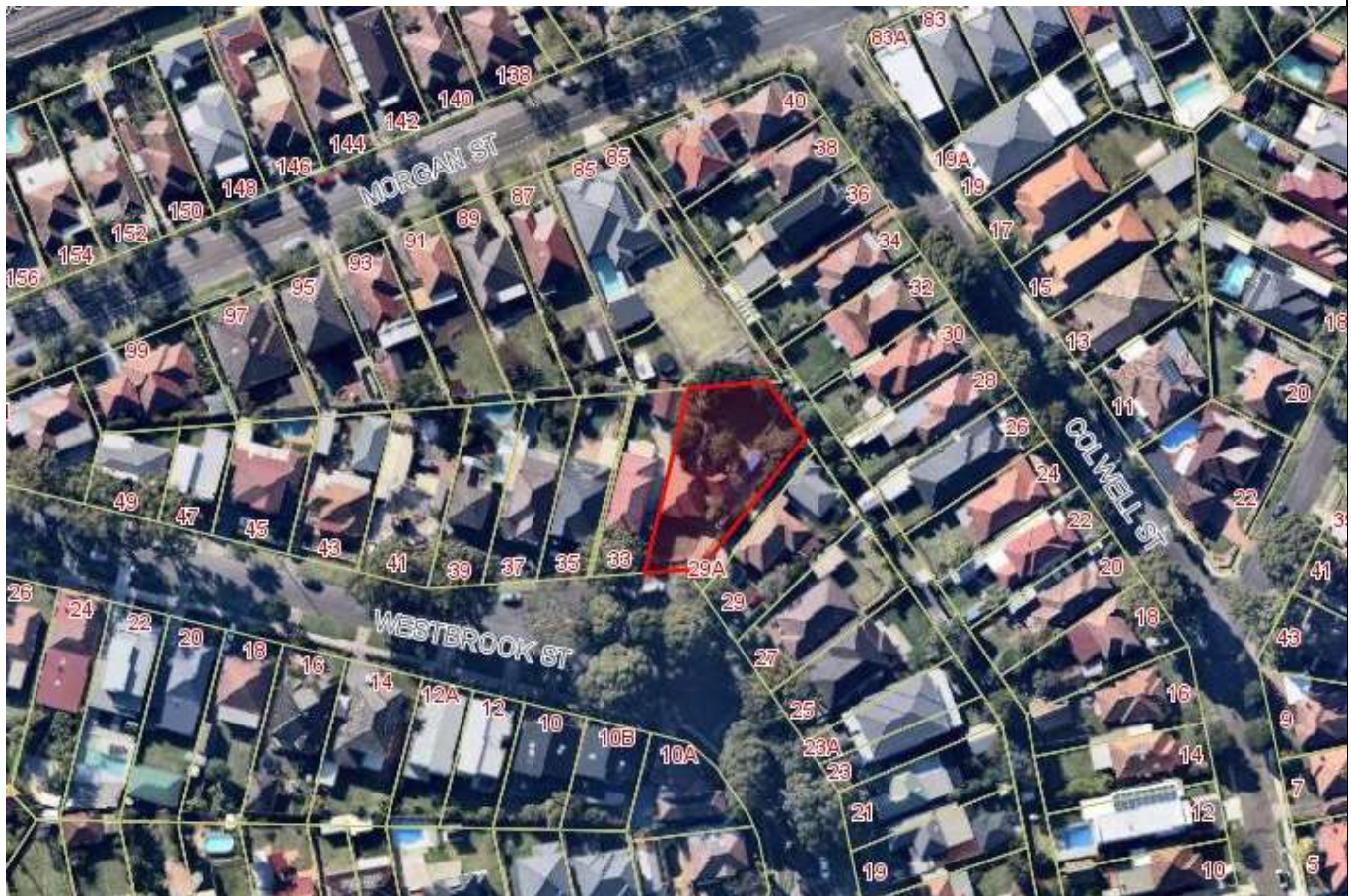
LPP Report No	LPP028-21	Development Application No	REV2020/0030
Site Address & Ward Locality	31 Westbrook Street Beverly Hills Hurstville Ward		
Proposed Development	Review of determination of DA2019/0534 for demolition works and construction of a multi dwelling development		
Owners	Mr N J Collins		
Applicant	Mr S Collins		
Planner/Architect	Resolut		
Date Of Lodgement	18/12/2020		
Submissions	One (1)		
Cost of Works	\$1,495,945.00		
Local Planning Panel Criteria	Pursuant to the General Manager's Delegation, the Manager Building and Development considers it to be in the public interest for the application to be determined by the Local Planning Panel.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy No 55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No 1, Georges River Stormwater Management Policy, 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, Arborist Report, Stormwater Plans, Flood Report, Submission		
Report prepared by	Senior Development Assessment Planner		

Recommendation	That the application be refused for the reasons in this report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant 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?	Not Applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No – the application is recommended for refusal

Site Plan



Executive Summary

Proposal

- Council is in receipt of a Section 8.2 Review pursuant to the Environmental Planning and Assessment Act, 1979 (EP&A Act) application relating to a development application (DA) that seeks consent for the review of determination of DA2019/0534 for demolition works and construction of a multi dwelling development.
- Further details of the proposal are as follows:
 - Demolition of all existing structures;
 - Basement level – parking for five (5) cars, within three double garages, each with internal stair access to the ground floor of their associated unit, Dwelling 3 has a basement store room and a basement communal bin storage area is also provided.

- Ground floor –
 - Unit 1: kitchen, living, dining area, laundry, bathroom, bedroom, private open space on the eastern side of the dwelling;
 - Unit 2: kitchen, pantry, living, dining area, laundry, bathroom, bedroom, private open space on the eastern side of the dwelling;
 - Unit 3: kitchen, living, dining area, laundry, bathroom, two bedrooms, store room, master bedroom with ensuite bathroom and walk in robe, and private open space on the eastern and northern side of the dwelling.
- First Floor –
 - Unit 1: three bedrooms, bathroom, an ensuite bathroom and walk in robe;
 - Unit 2: three bedrooms, store room, an ensuite bathroom and walk in robe;
 - Unit 3: Master bedroom with walk in robe and ensuite bathroom.
- The proposal involves the removal of 12 trees/shrubs from within the site.



Figure 1: Perspective

Site and Locality

3. The subject site is known as 31 Westbrook Street, Beverly Hills and is legally described as Lot 139 in DP14854. The site has an angled frontage to Westbrook Street of 12.76m and a site area of 961sqm.
4. The site is relatively flat and is currently occupied by a single storey dwelling house and scattered vegetation, none of which is significant.
5. The site is located in a residential neighbourhood characterised by recently constructed dwelling houses and more recently constructed dual occupancy developments. The property to the west is occupied by a two storey dwelling house at 33 Westbrook Street. The land immediately adjoining the site to the east is a 3.66m wide Council-owned drainage reserve, and east of that is 29A and 29 Westbrook Street – two single storey

dwelling houses, 29A Westbrook Street is accessed by a driveway from Westbrook Street.

6. North of the site is a Council drainage reserve (underground) and overland flow path.
7. The site is traversed by a major trunk drainage system and overland flow path (separate to the overland flow path through the northern adjacent Council drainage reserve) which is a tributary of Wolli Creek. As a result the property is greatly affected by upstream overland flow. This site constraint and the impacts on the design of the proposal is discussed in greater detail later in this report.

Zoning and Permissibility

8. The site is zoned R2 - Low Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HLEP 2012). Multi dwelling housing was permitted with consent in the R2 at the time the original DA was lodged. Multi dwelling house is no longer permissible in the R2 zone.

Submissions

9. The original plans lodged with the DA received one submission.

Conclusion

10. An assessment has been undertaken in accordance with the applicable assessment criterion as outlined in this report and the proposal is not considered worthy of support for a number of reasons.
11. Based upon the information provided to date, it is assessed that the proposal will have an adverse and unreasonable environmental impact in the following regard:
 - Insufficient information to allow proper assessment of the stormwater management of the subject site and overland flow in the immediate locality;
 - The proposal will have an adverse visual privacy impact on adjacent residential properties;
 - Unacceptable driveway design and impacts on street stormwater infrastructure;
 - Non-compliance with a number of DCP controls including car parking, landscaping in the front setback, site width, privacy impacts for neighbours and stormwater management.
12. Additional information and amended plans were requested of the applicant during the assessment of the application to address the issues listed above. It is noted that some, but not all the required information was provided by the applicant.
13. 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 Review Application (REV2020/0030) is recommended for refusal for the reasons contained within this report.
14. It is noted that as the original determination of DA2019/0534 was made on 17 June 2020, and the S8.2 appeal rights lapse on 17 June 2021.

Report in Full

Proposal

15. Council is in receipt of a Section 8.2 Review Environmental Planning and Assessment Act, 1979 (EP&A Act) application relating to a development application (DA) that seeks consent for the review of determination of DA2019/0534 for demolition works and construction of a multi dwelling development.
16. Further details of the proposal are as follows:
 - Demolition of all existing structures;
 - Basement level – parking for five (5) cars, within three double garages, each with internal stair access to the ground floor of their associated unit, Dwelling 3 has a basement store room and a basement communal bin storage area is also provided.
 - Ground floor –
 - Unit 1: kitchen, living, dining area, laundry, bathroom, bedroom, private open space on the eastern side of the dwelling;
 - Unit 2: kitchen, pantry, living, dining area, laundry, bathroom, bedroom, private open space on the eastern side of the dwelling;
 - Unit 3: kitchen, living, dining area, laundry, bathroom, two bedrooms, store room, master bedroom with ensuite bathroom and walk in robe, and private open space on the eastern and northern side of the dwelling.
 - First Floor –
 - Unit 1: three bedrooms, bathroom, an ensuite bathroom and walk in robe;
 - Unit 2: three bedrooms, store room, an ensuite bathroom and walk in robe;
 - Unit 3: Master bedroom with walk in robe and ensuite bathroom.
 - The proposal involves the removal of 12 trees/shrubs from within the site.
17. The proposed site plan is provided in at Figure 2.

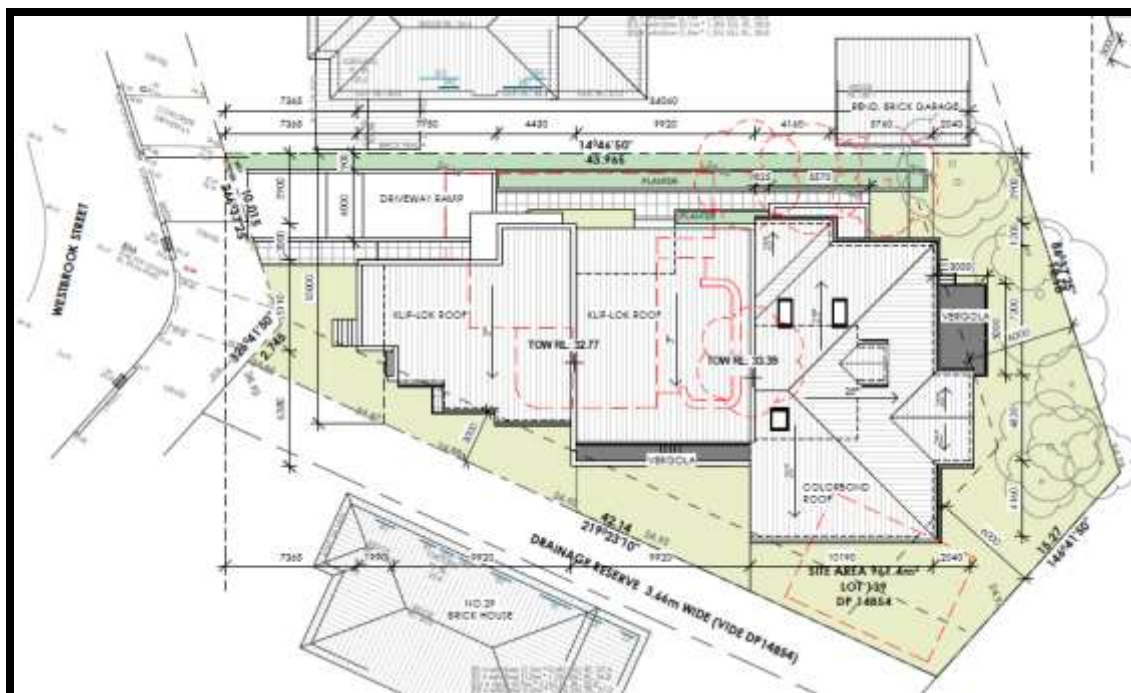


Figure 2: Proposed Site Plan

The Site and Locality

18. The subject site is known as 31 Westbrook Street, Beverly Hills and is legally described as Lot 139 in DP14854. The site has an angled frontage to Westbrook Street of 12.76m and a site area of 961sqm.
19. The site is relatively flat and is currently occupied by a single storey dwelling house and scattered vegetation, none of which is significant.
20. The site is located in a residential neighbourhood characterised by recently constructed dwelling houses and more recently constructed dual occupancy developments. The property to the west is occupied by a two storey dwelling house at 33 Westbrook Street. The land immediately adjoining the site to the east is a 3.66m wide Council-owned drainage reserve, and east of that is 29a and 29 Westbrook Street – two single storey dwelling houses, 29A Westbrook Street is accessed by a driveway from Westbrook Street.
21. North of the site is a Council drainage reserve (underground) and overland flow path.
22. The site is traversed by a major trunk drainage system and overland flow path (separate to the overland flow path through the northern adjacent Council drainage reserve) which is a tributary of Wolli Creek. As a result the property is greatly affected by upstream overland flow. This site constraint and the impacts on the design of the proposal is discussed in greater detail later in this report.



Figure 3: The site as viewed from Westbrook Street



Figure 4: 33 Westbrook St (west of the site)



Figure 5: 29 Westbrook St and access driveway to 29A Westbrook St (drainage easement located between the properties)

Background

23. DA2019/0534 sought consent for demolition works, construction of multi dwelling housing containing 3 dwellings with basement car parking. The application was refused under delegated authority on 17 June 2020 for the following reasons:
1. *Environmental Planning Instrument - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with relevant environmental planning instruments in terms of the following:*
 - (a) *The proposal fails to adequately satisfy the R2 Low Density Residential objective "to ensure that a high level of residential amenity is achieved and maintained".*
 2. *Development Control Plan - Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Hurstville Development Control Plan No 1 – LGA Wide:*
 - (a) *Section 4.2 Multi Dwelling Housing – Site Frontage;*
 - (b) *Section 4.2 Multi Dwelling Housing – Excavation.*
 3. *Impacts on the Environment - Pursuant to Section 4.15 (1)(b), the proposed development is likely to have an adverse impact on the following aspects of the environment:*
 - (a) *Natural environment - It is considered that the proposed development will have an adverse impact on the natural environment. In particular, concern is raised regarding impacts on the Arbutus unedo tree (located to the rear of the site) in relation to the current design.*
 - (b) *Natural environment – The proposed development as currently submitted is an unacceptable design response to the site's affectation in terms of flooding.*
 - (c) *Built environment - The development does not comply with the site frontage and excavation controls, and as such does not meet the objectives underpinning the multi-dwelling housing controls. It will adversely impact on neighbouring properties through excessive excavation and visual bulk and scale.*
 4. *Suitability of Site - Pursuant to 4.15(1)(c), the site is not considered suitable for the proposed development for the following reasons:*

The application has failed to provide a development that is suitable for the site having regard to the excessive excavation, visual bulk and overland flow impact. Further, the proposed development as currently submitted is an unacceptable design response to the site's affectation in terms of flooding.
 5. *Public interest - Pursuant to Section 4.15 (1)(e), the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent for such design solutions on similar sites in the locality.*
 6. *Lack of Information - Insufficient information was provided to allow Council to undertake a thorough assessment; particularly in relation to the submitted flood*

study; impact on flooding in terms of basement driveway ramps and retaining walls; and also the submitted stormwater concept plan.

24. The Review Application was lodged with Council on 18 December 2020.

Request for additional information and amended plans

25. A timeline and detail on information requested in relation to the review application is provided below.

Date	Action	
17 June 2020	DA2019/0534 refused under Delegated Authority	
August 2020	Meeting held between Council Engineers and the applicant's engineer to discuss the flooding issue, non-compliance with Council's Stormwater Management controls, non-compliant driveway profile and stormwater disposal from the site.	
18 December 2020	REV2020/0030 lodged with Council. Under S8.2 of the EP&A Act the determination of this Review application must be on or before 17 June 2021.	
Date	Request	Applicant Response
26 March 2021	Additional information and amended plans (stormwater management, overland flow management, driveway and ramp design and details on the architectural plans). The applicant was given 21 days to provide the information (due 16 April 2021)	No response
7 April 2021	Follow up email to applicant to confirm email was received	Applicant confirmed email had been received (7/4/21)
6 May 2021	Email to applicant to advise that under S8.2 of the EP&A Act application appeal rights would expire on 17 June 2021 if additional information was not provided	Applicant advised the additional information and plans will be provided by 12/5/21
11 May 2021	Applicant emailed to advise their engineer is waiting on information from Council Engineer in order to complete the request. Advised that the engineer they were waiting on was on annual leave. Plans submitted: architectural plans and a ramp section plan.	
11 May 2021	Email to applicant clarifying which Council Engineer was being sought. The applicant was provided correct engineer details.	
12 May 2021	The Council Assets Engineer advised that he left a voicemail message for the applicant's engineer.	
13 May 2021	The Council Planner contacted the Assets Engineer to confirm whether the applicant's engineer returned his call but this had not occurred.	
18 May 2021	Council's Assets Engineer advised the amended design was not supported due to the proposal driveway being located over an existing stormwater lintel in Westbrook Street.	
28 May 2021	Applicant submitted additional stormwater plans and flood report which were accepted by Council notwithstanding their late provision.	

Council's Senior Development Engineer completed an assessment and provided comment to the assessing officer that not all the required information has been submitted to make a proper assessment of the adequacy of the proposal relative to the sites flood conditions.

26. A comment is provided below against each issue providing detail on how the amended plans addressed each request contained in the additional information letter of 26 March 2021.

Issue	Request	Comment on amendments made
Stormwater Management	The stormwater management plan and supporting detail is to be revised by a suitably qualified and experienced stormwater engineer with respect to the following matters:	
	1. The OSD basin plan & cross section are not presented in full detail and without complete dimensions on all sides and therefore cannot be readily assessed.	Provided
	A longitudinal section is required similar to cross section AA (drainage plan No D4).	Provided
	2. Cross section AA is incorrectly represented and not dimensioned (all measurements with pit's IL, orifice plate size are required to be shown clearly and should not be subject to others' interpretation.	Provided
	3. The proposed OSD basin discharge control pit (DCP) is currently discharging total site runoff and acting as a site outlet pit which is not acceptable as satisfactory as the DCP performance & effectiveness will be impacted and greatly reduced whilst nearby areas will be not be able to drain effectively and get flooded.	Provided
	The revision below is required: a) A separate site boundary pit (with silt arrester capability) is required right at the boundary	Provided

	<p>which is then connected to a lawful point of discharge and the DCP will be able to connect independently to boundary pit.</p>	
	<p>4. The DRAINS model downstream tail water level for the OSD basin investigation is to be established and demonstrated adequately through a ground investigation of Council's underground pipe (including pipe size & obvert level, offset from boundary etc.).</p> <p>In this regard Council's drainage engineer is required to be contacted for proposed investigation to obtain future connection and asset information that will then be required to be incorporated into the stormwater design and model.</p> <p>The following adjustments/supporting detail are also required to demonstrate the appropriateness of the proposed design solution:</p> <p>a) Impervious/pervious area calculation for pre/post DRAINS model are required to be submitted with marked up areas, clearly along with DRAINS model for review. For the purpose of this, all proposed planter box areas are to be considered as 100% impervious.</p> <p>b) A final landscaping plan is required to be submitted showing Impervious/pervious areas for Council review. This plan is required to be consistent the with DRAINS model, drainage and architectural plans.</p> <p>c) The provided plans are not sufficiently detailed or clear to enable assessment of the proposal and are required to be amended. In particular:</p> <ul style="list-style-type: none"> - The existing and proposed ground levels should be differentiated by a different mark up to clearly 	<p>Not provided (which is essential to review in order to verify overall detail design of above ground detention basin)</p> <p>Provided</p> <p>Marked up areas were provided, but without the DRAINS model itself, it cannot be verified that this is based on the model.</p> <p>Not provided</p> <p>Not provided</p>

	<p>denote the scope of the work considered in drainage design plans including OSD and adjoining areas.</p> <p>d) A pre and post development DRAINS model is required (input, output and readme files) supporting the OSD detail design with model parameters for Council assessment.</p> <p>e) The OSD basin, as currently proposed, as a hole in the ground with battered slope is not acceptable. The current design is unsatisfactory as it is not permanent for servicing the development lifecycle (80-100 years) and potentially could be altered in times with adverse consequences with respect to flow behaviours.</p> <p>Accordingly the basin is required to have a 300mm high brick wall along the perimeter for ascertaining its durability and permanency.</p> <p>f) All detail layout/sections of the OSD basin design are required to be finalised at the DA stage. The basin detail footprint is required to be clearly incorporated in the drainage plan, landscape plan and architectural plans (Ground floor plan and Site/Roof plan) indicating offsets from building footprint and boundary fence. This will ensure no ambiguities among relevant plans and Council's DA approved final plans would be consistent to those plans for construction and work-as-executed certification.</p> <p>g) The developed site drainage system is required to be designed with pits/pipes and finished ground levels clearly marked up with ground levels (existing & finished) shown on the drainage plan (Sheet D2)</p>	<p>Not provided</p> <p>Provided</p> <p>Not provided</p> <p>Not provided</p>
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	and architectural/landscaping plans for Council review. This will include all drainage system including bypass area conveyed either to OSD basin or to the street satisfactorily.	
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Issue	Request	Comment on amendments made
Overland Flow Management	5. The development site is traversed by a major trunk drainage system, which is a tributary of Wolli Creek. A recent flood assessment undertaken (by NY Civil Engineering) demonstrated that the property is greatly affected and overwhelmed by upstream overland flow. The flood model predicted an average 700mm depth of overland flow, with the south-west area of the site being affected with flooding in the event of a 1:100 year ARI storm event. The 1:100 year ARI flood level for the property is 25.40mAHD and the nominated floor level proposed as 25.90mAHD (25.40 plus 0.5m freeboard) which is acceptable.	Provided
	6. The basement driveway entry ramp crest level is set to 25.40mAHD which is unacceptable as this will result in basement inundation. As such, the ramp crest is required to be raised with at least 300mm freeboard from 100 year flood level to provide appropriate protection. Failure to adequately protect the basement from inundation is unacceptable as this area must be protected from risk of flooding to person and property as otherwise the basement will suffer inundation similar to a sealed bathtub. Hence the ramp crest level is required to be raised to at minimum 25.70mAHD (25.40 plus 0.3m freeboard).	Provided
	7. In addition, to manage higher risk caused by a flood in excess of 100 year ARI event and being flood proof, a flood barrier is required	Provided

	<p>along the crest line of the driveway to prevent direct entry of overland flow into the basement thus protecting basement from further inundation and to maintain an appropriate level of safety for persons and property.</p> <p>Nonetheless, the flood barrier requires a robust on-going operation and maintenance plan to be in place and implemented throughout the development life cycle. A concept floor barrier operation and maintenance plan, prepared by a suitably qualified and experienced engineer, is required to be provided.</p>	
	<p>8. Given the property flood severity and affectation, a Flood Emergency Response Plan (FERP) is required to be prepared and submitted comprising with the following:</p> <ul style="list-style-type: none"> a. Selected response strategy b. Relevant response plan and triggers c. Management Actions 	Not provided
	<p>9. As the building is to be raised on piers to maintain the existing blockage footprint and minimise impacts on flow behaviours (Figure 12 of the flood report), the flow through area under the building is to be screened off to prevent fauna entry and potential storage of material in the subfloor area, with a flood compatible design. Detail of this screening is to be submitted for review and approval.</p>	Not provided
	<p>10. It is to note that a drainage easement is required to run the site discharge outlet pipe to Council's pipe through Council drainage reserve. The property boundary fence is required be erected along the lot boundary of Council drainage lot (29A Westbrook Street) and the development is required to be separated from the drainage reserve.</p>	Provided

Issue	Request	Comment on amendments made
Access Driveway and Basement Ramp	<p>11. A non-compliant driveway is currently proposed within submitted plans (site/roof, basement and stormwater plans) which is not sufficiently detailed and inconsistent with fixed nature strip. A minimum 3.5m wide driveway access entry from Westbrook Street is required to be demonstrated on architectural and drainage plans concurrently, to show that this will not result in any conflict with adjoining driveway layback (33 Westbrook Street) and street drainage system.</p>	Not addressed - The driveway design conflicts with the street drainage system and adjoining neighbouring driveway.
	<p>Council's Asset Section has advised the location of the proposed driveway hard up against the existing stormwater pit and lintel cannot be supported. A minimum distance of 0.3m between the wing of the driveway and the pit lintel must be provided to prevent conflict between the pit and lintel, and driveway crossing location.</p>	
	<p>12. A Swept Paths and Driveway Long Section are required for this development.</p> <p>This must be prepared by a suitable qualified and experienced traffic engineer given the complexity of the design resulting from the narrow and constrained site frontage and the necessary flood protection measures.</p>	Not provided.
	<p>a) A driveway and basement ramp profile that complies with AS2890 – B85 vehicle template, illustrating the underside of a B85 vehicle to have sufficient clearance throughout its Journey along the ramp both ways.</p> <p>b) This profile (scale 1:20) is to show levels and grades from road centreline to the proposed internal ramp including but not limited to levels of, road centreline, changes</p>	

	<p>of grade on road surface, lip of gutter, invert of gutter, back of vehicular crossing (gutter layback), front of path, back of path and boundary. The profiles provided are also to include the natural surface of the land as well as the proposed design including cut and fill dimensions.</p> <p>c) Swept path diagram of vehicles demonstrating that they can enter and leave the site for each garage in a forward direction.</p> <p>The purpose of this is to demonstrate that vehicles can have suitable access and exit from the development as designed. Where these documents show that this cannot occur, the design of the development will require revision.</p>	Not provided.
Architectural Plans	<p>Please provide a full set of revised plans include all of the following detail:</p> <p>a) All required design changes and details list above in relation to drainage, flooding and vehicular access (each prepared by suitably qualified professionals in the field); and</p> <p>b) Levels all over the site and in the road frontage to AHD (existing ground levels and proposed finished ground levels); and</p> <p>c) Finished levels of the proposed terraces and measures to improve privacy for adjoining neighbours; and</p> <p>d) Finished levels of the pathways on the western side of the building; and</p> <p>e) Location of retaining walls (with top of wall heights notated) and fences – Note: no retaining walls are permitted on boundaries and must be setback a minimum 200mm to accommodate required footings, and are not permitted where they will impede overland flow; and</p> <p>f) Typical sections of the rear yard levels; and</p>	<p>Not provided.</p> <p>Not provided.</p> <p>Not adequately addressed.</p> <p>Provided.</p> <p>Provided.</p> <p>Not provided.</p>

	g) Areas proposed for cut and/or fill (with the existing and finished ground level notated).	Provided.
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Division 8.2 Reviews

27. Division 8.2 of the Environmental Planning and Assessment Act requires the following provisions (Section 8.3) to be considered in the assessment of an application to review a determination:

An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.

*(2) A determination or decision cannot be reviewed under this Division:
after the period within which any appeal may be made to the Court has expired if no appeal was made, or
after the Court has disposed of an appeal against the determination or decision.*

(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

28. The statutory considerations pursuant to Division 8.2 Reviews have been met. The application has been lodged within an appropriate timeframe, being six months before the appeal rights expire, and is considered to be substantially the same as the original application (DA2019/0534).

Compliance and Assessment

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

State Environmental Planning Policies (SEPPs)

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

State Environmental Planning Policy Title	Complies
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy No 55 – Remediation of Land	Yes
State Environmental Planning Policy (Infrastructure) 2007	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
Draft Environment State Environmental Planning Policy	Yes
Draft Remediation of Land State Environmental Planning Policy	Yes

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

31. BASIX Certificate No. 979766M_04 dated 23 November 2020 was lodged with the Section 8.2 Review application and indicates that the proposal meets the provisions and minimum requirements of BASIX in terms of water, thermal comfort and Energy efficiency.

State Environmental Planning Policy No 55 - Remediation of Land (State Environmental Planning Policy 55)

32. State Environmental Planning Policy No 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
33. Clause 7 requires contamination and remediation to be considered in determining a DA. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
34. A review of historic aerial photography indicates that the site has been used for residential purposes since at least 1943. Residential usage is not typically associated with activities that would result in the contamination of land. On this basis, the site is likely to be suitable for residential development in its current state for the development proposed with respect to contamination.

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

35. The Vegetation State Environmental Planning Policy aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
36. The Vegetation State Environment Planning Policy applies to clearing of:

Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).
37. The Vegetation State Environmental Planning Policy repeals clauses 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable development control plan (Development Control Plan).
38. The proposal involves the removal of 12 trees from the site. Council's Consultant Arborist has reviewed the proposed tree removal and raised no objection to the removal of the trees subject to appropriate replacement tree planting on site and the deletion of the rear vergola/terrace of Unit 3 to protect a tree located on the rear boundary should the application be supported.
39. On this basis, the proposal, should it be supported, is consistent with relevant provisions of the Vegetation State Environmental Planning Policy.

Draft Remediation of Land State Environmental Planning Policy

40. The Department of Planning and Environment has announced a Draft Remediation of Land State Environmental Planning Policy, which will eventually repeal and replace the current State Environmental Planning Policy No 55 — Remediation of Land.
41. 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.

42. Whilst the proposed State Environmental Planning Policy will retain the key operational framework of State Environmental Planning Policy 55, it will adopt a more modern approach to the management of contaminated land. The Draft State Environmental Planning Policy will not alter or affect the findings with respect to State Environmental Planning Policy 55 detailed above.

Draft Environment State Environmental Planning Policy

43. 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.
44. 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.
45. The proposal is consistent with the provisions of this Draft Instrument.

Environmental Planning Instruments

Hurstville Local Environmental Plan 2012

Zoning

46. The subject site is zoned R2 Low Density Residential under the provisions of the Hurstville Local Environmental Plan 2012 (HLEP2012) (see zoning map below). The proposed development is for multi dwelling housing which was a permissible land use in the zone at the time the original DA was lodged. Multi dwelling housing is no longer a permitted land use in the R2 zone.

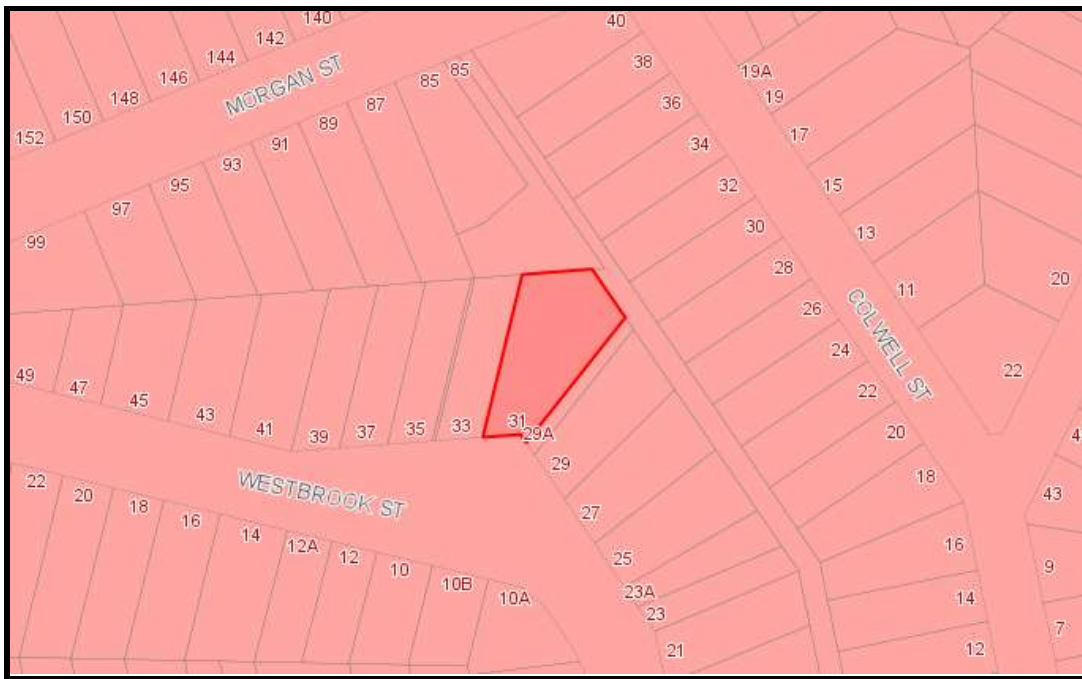


Figure 6: Zoning map (HLEP 2012)

47. The objectives of the zone are as follows:
- *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*
 - *To ensure that a high level of residential amenity is achieved and maintained.*
 - *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
 - *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*
48. The proposal does not satisfy all of the objectives of the R2 Low Density Residential zone. The proposal does not ensure the privacy of neighbours is maintained, does not provide a suitably landscaped front setback which adversely impacts the streetscape, and given the insufficient information submitted with the application in relation to overland flow and stormwater management, it has not been demonstrated that the site is suitable for the proposal.
49. The extent to which the proposal complies with the relevant standards of Hurstville Local Environmental Plan 2012 (HLEP2012) is outlined in the table below.

Clause	Standard	Proposed	Complies
4.1A Minimum lot sizes for dual occupancies and multi	Land 'G' in Zone R2 – 630sqm This was the minimum lot size at the time the original DA was lodged.	961sqm	Yes

dwelling housing			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	7.5m	Yes
4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	The proposed FSR is 0.5:1	Yes
4.5 – Calculation of floor space ratio & site area	FSR and site area calculated in accordance with Cl.4.5	The GFA calculations provided by the Applicant have been verified and are considered satisfactory.	Yes
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	Excavation for the car parking level is proposed. Suitable conditions of consent could be imposed to protect neighbouring properties during construction should the application be approved.	Yes
6.7 Essential services	Development consent must not be granted to development unless services that are essential for the development are available	Essential services are currently available to the site and can be extended to service the development; conditions could be imposed if the application was to be supported.	Yes

LPP028-21

Development Control Plans

HURSTVILLE DEVELOPMENT CONTROL PLAN NO 1 (HDCP)

50. The proposed development is subject to the provisions of the Hurstville Development Control Plan No 1. The following comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.

Chapter 3 General Planning Considerations

Development	Requirements	Proposed	Complies
3.1 Vehicle Access and Parking	DS1.5 Refer to AS 2890.1 2004 and AS2890.2 Part 2 for the design and layout of parking facilities. DS1.6 Council does not encourage, but may consider stacked parking for parking spaces in a controlled parking situation which:	<p>No swept paths provided to confirm compliance.</p> <p>The proposal includes three basement level garages. Units 2 and 3 have access to two parking spaces, Unit 1 has a single opening to the garage.</p>	<p>No</p> <p>No – refer to discussion below.</p>

	allows no more than two cars in the stacked parking arrangement; is likely to maintain a very low turnover; or is able to function easily within the management of the site's future operation		
	A designated car washing area (which may also be a designated visitor car space) is required for service stations and residential developments of four or more dwellings.	3 dwellings proposed – no car wash area required.	N/A

Discussion on access and parking

51. Two parking spaces are required per dwelling as each dwelling contains 4 bedrooms. The parking is proposed in the basement level in the form of a double garage for Unit 2 and Unit 3 and a garage with a single garage door opening for Unit 1.
52. No swept path diagrams have been provided to demonstrate access to the garages complies with the relevant standards, and the parking for Unit 1 is deficient by one space as the garage design cannot accommodate two vehicles due to the single car width opening.
53. Further, a section plan as requested by the Council Planner, was not provided to assess the height above natural ground of the parking level to ascertain whether parts of the basement such as the bin store area are truly contained within the basement level or may contribute to GFA in accordance with the definition in the LEP.

Development	Requirements	Proposed	Complies
Numerical parking controls	<u>Residential Accommodation</u> Dwelling (1-2 bedrooms): 1 space per dwelling Dwelling (3 bedrooms and over): 2 spaces per dwelling Visitor spaces: 1 space per 4 dwellings (or part thereof) = 1 (0.75 rounded up) space required	N/A 3 x 4B = 6 spaces required 5 spaces proposed No visitor parking provided.	N/A No – refer to discussion above No
3.3 Access and Mobility	In developments containing five or more	There are three dwellings proposed therefore an	Yes

	<p>dwelling, a minimum of one adaptable dwelling, designed in accordance with relevant Australian Standards must be provided for every ten dwellings or part thereof.</p> <p>Access for all persons through the principal entrance and access to any common laundry, kitchen, sanitary or other common facilities in accordance with relevant Australian Standards.</p>	accessible unit is not required.	
3.4 Crime Prevention through Environmental Design	<p>Ensures that the way in which the site, and the buildings within the site, are laid out enhance security and feelings of safety.</p> <p>Ensures that private and public spaces are clearly delineated</p> <p>Ensures that the design of the development allows for natural surveillance to and from the street and between individual dwellings or commercial units within the site</p>	The design of the building generally complies with the objectives and controls.	Yes
3.5 Landscaping	<p>Site layout and design, including buildings, structures and hardstand, ensures the long term retention and health of existing significant trees and vegetation.</p> <p>Where significant trees or vegetation are required to be removed to allow for site development, they are to be replaced with the same or similar species achieving the same coverage at maturity.</p>	<p>41% of the site is deep soil area and is located in consolidated areas along the eastern and northern site boundaries.</p> <p>No significant trees are required for removal.</p>	<p>Yes</p> <p>Yes</p>

3.6 Public Domain	Development contributes to the creation of attractive, comfortable and safe streets that comprise consistent and high quality paving, street furniture and street tree plantings.	The front setback is predominantly hard surface area with the small pocket of deep soil area unable to support significant landscaping to soften the built form of the building.	No
3.7 Stormwater	A development application is supported by a concept stormwater management plan showing how surface and roof waters are to be discharged by gravity to the street or easement and the size of all pipes.	Council's Engineers have reviewed the proposed drainage and stormwater arrangement and do not support the proposal. Insufficient information has been provided to confirm the site can be adequately drained and protected from overland flow.	No

Chapter 4.2 Multi Dwelling Housing

Key Applicable DCP Controls	DCP Provisions	Development Provisions	Complies
Neighbourhood character	<p>DS1.1. The development application is supported by a Statement of Environmental Effects that:</p> <p>a. includes a satisfactory neighbourhood and site description, including the identification of the key features of the neighbourhood and site</p> <p>b. shows how the siting and design response derives from and responds to the key features identified in the neighbourhood and site description</p> <p>c. demonstrates that the residential development proposal respects the existing or desired neighbourhood character and satisfies objectives of the zone in the LEP.</p>	A suitable Statement of Environmental Effects has been submitted with the DA.	Yes
Site frontage	DS2.1. The minimum	12.76m	No – refer to

	street frontage is 15m.		comments below
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Discussion on site frontage

54. The allotment is 12.76m wide, which is a non-compliant in width, being 2.24m less than the required 15m site frontage (a variation to the control of 14.9%). The performance criteria for the site frontage control are:

- a. *siting of a building and structures*
- b. *provision of adequate setbacks*
- c. *provision of adequate landscaped open space*
- d. *efficient vehicle access, parking and manoeuvring*
- e. *creation of high quality built form*

55. The proposal fails to meet criteria (c), (d) and (e) the following reasons:

- insufficient landscaping is provided in the front setback due to the accumulation of built form structures to service the development including the driveway ramp, pedestrian access pathway to Units 2 and 3 and the stair access to Unit 1;
- The proposed location of the driveway conflicts with a drainage lintel and insufficient distance is provided between the pit and the driveway crossing of 33 Westbrook Street;
- The cumulative impacts of the built form in the front setback creates an adverse visual impact on the streetscape.

56. The proposed design does not respond appropriately to the constraints of the site, one of which is the site width.

Key Applicable DCP Controls	DCP Provisions	Development Provisions	Complies
Dwelling Density	DS3.1. Where in the R2 Low Density Residential zone, an average of 315m ² of site area is required per dwelling.	320sqm per dwelling	Yes
Building Height	DS4.1. The maximum building height is in accordance with the Hurstville LEP 2012 and: a. 2 storeys where in the R2 Low Density Residential zone	Max LEP = 9m Proposed 7.1m	Yes
	DS4.2. In the R2 Low Density Residential zone, the maximum number of storeys is limited to 1 for the rear most dwelling.	Two storeys for the front two dwellings only	Yes
	DS4.3. The minimum floor to ceiling height is 2.7m.	One storey for Unit 3.	Yes
Excavation	DS5.1. The natural ground	Min. 2.7m	Yes
		Not proposed.	Yes

	<p>level is not excavated more than 0.5m for the finished ground floor level.</p> <p>DS5.2. The maximum excavation for any building's finished ground floor level facing a public street is 0.5m below natural ground level.</p>	The ground level is elevated above natural ground.	Yes
Setbacks and building separation	<p>DS6.1. Minimum side boundary setback is 3m Note: eaves and gutters may project within this setback up to a maximum distance of 450mm.</p> <p>DS6.2. The minimum setback to a primary street is 4.5m Note: balconies may project within this setback up to a maximum distance of 1m.</p> <p>DS6.3. To enable stacked carparking, the minimum front setback to a garage, carport or other roofed carparking space is 5.5m.</p> <p>DS6.4. An articulation zone allowing for lightweight elements such as eaves, sun-hoods, blade walls, battens and the like may intrude up to 1m within a road boundary setback for a maximum of 25% of the horizontal distance of the total facade.</p> <p>DS6.6. The minimum separation distance between balconies and / or windows of different buildings located upon the same site is 5m.</p> <p>DS6.7. Minimum rear boundary setback is 6m.</p>	<p>W side: Min. 3.9m</p> <p>E side: Min. 1.2m</p> <p>4m</p> <p>N/A</p> <p>Stairs to Unit 1 with 1m zone.</p> <p>Not proposed.</p> <p>Unit 3 terrace is 3.6m to rear</p>	<p>Yes – refer to discussion below</p> <p>No – refer to discussion below</p> <p>No, however articulation permitted in DS6.4 below.</p> <p>N/A</p> <p>Yes</p> <p>N/A</p> <p>No – refer to discussion</p>

	Note: eaves and gutters may project within this setback up to a maximum distance of 450mm.	boundary.	below
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Discussion on setbacks

57. The proposed setbacks to the eastern side boundary encroach the minimum 3m setback control, however in this application do not result in an unacceptable impact on the eastern neighbour as there is a 3.66m wide drainage easement between the site and 29 Westbrook Street which provides a suitable separation between the proposal and the dwelling on 29 Westbrook Street.
58. The setback of the western walls of the proposed building to the western side boundary complies with the numerical control of 3m, however the proposed pedestrian pathway leading from the street that provides access Units 2 and 3 is elevated above natural ground level as it is situated above the semi-basement parking level. The figure below shows the height of the pathway above natural ground level (highlighted yellow).



Figure 7: Western elevation showing pathway above natural ground level

59. The height of the pathway above natural ground level will have an adverse privacy impact on the east facing windows and private open space area of the neighbouring property at 33 Westbrook Street, and this forms one of the reasons for refusal of the application.

Key Applicable DCP Controls	DCP Provisions	Development Provisions	Complies
Vehicle access, parking and manoeuvring	DS7.1. Car parking is provided on site in accordance with the following rates:		
	b. 2 resident spaces for every 3 or more bedroom dwelling	2 spaces U2 and U3 1 space U1	No – discussed earlier in report
	c. for developments of 4 dwellings or more, one visitor space per 4 dwellings or part thereof	3 dwellings - no visitor parking required.	N/A
	DS7.2. Car parking is	Basement	Yes

	<p>located behind the main building face fronting a primary and secondary street and is not visually prominent when viewed from the street.</p> <p>DS7.3. Vehicle access and manoeuvring does not occupy more than: b. 33% of the frontage where the total site frontage to street is greater than 20m.</p> <p>DS7.4. Garages and carports do not visually dominate the street façade and are compatible with the building design.</p> <p>DS7.5. The maximum height of a basement above natural ground level is 1m.</p> <p>DS7.6. Only the basement parking entry is visible as a separate level in a building.</p> <p>DS7.7. Large exposed foundations, voids and walls are not used in relation to basements.</p> <p>DS7.8. Basement carparking is adequately ventilated. Note: a development application that involves basement parking must be supported by details of the proposed method of ventilation, and where mechanical ventilation is proposed, this is to include details of the motor room and exhaust shaft.</p>	<p>parking is proposed.</p> <p>N/A 12m frontage.</p> <p>Basement ramp dominates the frontage.</p> <p>1m</p> <p>Complies.</p> <p>The western elevation has basement walls exposed.</p> <p>No detail provided.</p>	<p>N/A</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p>
Landscaped open space	<p>DS8.1. The minimum amount of landscaped open space is: a. is 20% of the site area.</p>	<p>28%.</p>	<p>Yes</p>

	<p>DS8.2. The minimum dimension of landscaped open space is 2m in any direction.</p> <p>DS8.3. Landscaping between the front of buildings and the street boundary achieves a balance between reducing the visual impact of buildings when viewed from the street and facilitating passive casual surveillance of the street.</p> <p>DS8.4. A development application is to be supported by a landscape plan prepared by a qualified person addressing the performance criteria and design solutions and in particular addresses areas of communal open space and areas that are visible from the street.</p>	<p>Greater than 2m min. provided in each direction.</p> <p>Minimal landscaping is provided in the front setback due to the driveway ramp, pedestrian access and direct stair access to Unit 1 on an under-width lot.</p> <p>A suitable landscape plan was not submitted with the application.</p>	<p>Yes</p> <p>No</p> <p>No</p>
Private open space	<p>DS9.2. Each dwelling containing 3 or more bedrooms is provided with an area of private open space that:</p> <p>a. has a minimum area of 60sqm</p> <p>b. has a minimum dimension of 3m</p> <p>c. contains at least one area of principal private open space that has minimum dimensions of 6m x 4m, is not steeper than 1 in 20 and is directly accessible from a main living room.</p> <p>DS9.3. The principal</p>	<p>Unit 1: 60sqm Unit 2: 60sqm Unit 3: 125sqm</p> <p>All comply</p> <p>All comply</p> <p>Each principal</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	private open space of any dwelling is not to be located forward of the front setback.	private open space is located behind the front building line.	
Solar access	DS10.1. Main living areas and areas of principal private open space are oriented in accordance with Figure 1- Preferred Orientation Range Note: exceptions may be made where the site is subject to constraints such as existing lot layout and topography.	Compliant level of solar access achieved.	Yes
	DS10.2. Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00am and 3.00pm on 21 June. Note 1: development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design solution. Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation.	At least 3 hours solar access achieved the during winter solstice.	Yes
	DS10.3. Development complies with the Energy Efficiency section in Appendix 1 of the DCP and BASIX requirements.	Compliant BASIX Certificate provided.	Yes
	DS10.4. Buildings are encouraged to incorporate window shading devices where necessary to minimise exposure to direct summer sun.	The proposal is BASIX compliant.	Yes

	Alternatively, windows may be shaded by the planting of large trees, including deciduous species		
Visual privacy	DS11.1. Habitable room windows of development with a direct outlook within 9m of the habitable room windows of an adjacent dwelling must be: a. offset by a minimum of 1m from the edge of the opposite window; or b. screened or oriented to ensure visual privacy.	Side and rear facing windows on the first floor are setback sufficiently from the boundaries and are not windows to active rooms.	Yes
Noise	DS12.1. Windows of adjacent dwellings are separated by a distance of at least 3m. Note: this can be achieved by an offset.	All dwellings are attached.	Yes
	DS12.2. Site layout separates active recreational areas, parking areas, vehicle access-ways and service equipment areas from bedroom areas.	Appropriate layout proposed to reduce impacts.	Yes.
	DS12.3. Dwellings are designed so that the internal noise level from outside sources does not exceed the parameters established by the NSW EPA.	Appropriate layout proposed to reduce impacts. Only 1 bedroom directly faces the road.	Yes
	DS12.4. Habitable rooms located within 60m of a railway or facing a classified major road satisfy the acoustic criteria contained within the NSW Government's Development Near Rail Corridors and Busy Roads – Interim Guideline (2008), or most recent version.	Not located near a railway or classified major road.	N/A
	DS12.5. Where	N/A	N/A

	development is likely to be subject to noise from a railway line, arterial or state road or Sydney airport flight path, council may require the submission of a report prepared by a qualified acoustic engineer to demonstrate that internal noise levels will be acceptable.		
Streetscape	<p>DS13.3. Roofs:</p> <ul style="list-style-type: none"> a. have a pitch up to 35 degrees, or up to 45 degrees where an attic is involved b. are encouraged to have a varied shape with hips, gables or other forms c. mark the entrance to a building by the use of a porch, portico or similar element. <p>DS13.5. The maximum wall length in one plane is 6m at the street frontage. Note: Lengths greater than this are supported where the elevation incorporates visually significant changes in massing and form and the use of articulation such as recesses, projections, balconies, blade walls and similar.</p>	<p>A flat roof is proposed over Unit 1 and 2, a pitched roof over Unit 3.</p> <p>The front wall of Unit 1 is 4.8m.</p>	<p>Yes</p> <p>Yes</p>
Fencing	<p>DS14.1. Solid fences and walls fronting public space are no more than 1m in height.</p> <p>DS14.2. Where private open space has a common boundary to a street, the maximum height of fences is 1.8m provided that the fence has openings which make it a minimum 50% transparent.</p>	<p>No front fence proposed.</p> <p>No private open space fronting the street.</p>	<p>N/A</p> <p>N/A</p>

	<p>DS14.3. Where fronting a major road or railway line:</p> <p>a. the maximum height of fences is 1.8m</p> <p>b. must not exceed 10m in length or 75% of the frontage, whichever is the lesser</p> <p>c. must provide variation or detailing as required by the fences adjacent to public roads policy contained in Appendix 2 of this DCP</p> <p>DS14.4. Fencing at street frontages is constructed from high quality durable materials such as rendered concrete, stone or treated and painted timber.</p> <p>Note: Galvanised or aluminium sheeting or profiled fibro are not permitted as front fencing materials</p>	<p>N/A</p> <p>Front fencing not proposed.</p>	<p>N/A</p> <p>N/A</p>
Site facilities	<p>DS15.1. Electricity and telephone lines are provided underground unless there is the connection of electricity and telephone lines directly from the service pole to the fascia of the front dwelling.</p> <p>DS15.2. Mail and garbage collection areas are integrated into the overall design of the development.</p> <p>DS15.3. Development provides space for the storage of recyclable goods, either in the curtilage of each dwelling or in a central storage area in larger developments.</p> <p>DS15.4. A master TV antenna is provided for any development of more than two dwellings.</p>	<p>Undergrounding of services is conditioned to be part of the CC.</p> <p>Integrated within the overall development.</p> <p>Bin storage is provided in the basement.</p> <p>Can be conditioned.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	DS15.5. A minimum area of 6m ³ per dwelling is provided for storage and is located as either an extension of a carport or garage or part of an attic.	Adequate space is provided to accommodate storage within the dwelling or the basement.	Yes
	DS15.6. Communal outdoor clothes drying facilities must be visually screened from the street.	No communal outdoor area, each dwelling has their own clothes drying facilities within the rear setbacks of each dwelling.	Yes

Interim Policy – Georges River Development Control Plan 2020

60. Council at its Environment and Planning Committee Meeting dated 24 June 2019 resolved to adopt the Georges River Interim Policy Development Control Plan which became effective on 22 July 2019.
61. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current Development Control Plan controls will prevail if they are considered best practice. The Interim Policy has no statutory recognition in the assessment of DAs pursuant to the Environmental Planning and Assessment Act, 1979 (EP&A Act).
62. An assessment of the proposal has been carried out against the provisions of the Interim Policy as set out in the following table.

Interim Policy Compliance Table

Interim Policy – Georges River Development Control Plan 2020		
Standard	Proposed	Complies
Site Frontage		
15m	12.76m	No – see Hurstville Development Control Plan compliance table above for discussion.
Building Setbacks		
The minimum setback to a primary street is 4.5m (Hurstville)	4m	No – see Hurstville Development Control Plan compliance table above for discussion.
Solar Access		
Hurstville: Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private	Compliant solar access provided.	Yes

<p>open space of adjacent dwellings between 9.00am and 3.00pm on 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>		
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DEVELOPER CONTRIBUTIONS

63. The proposed development if approved would require the payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979 as the proposal is increasing the density of the locality by the construction of three dwellings. If the development was to be approved a condition outlining the required contributions will be imposed.

IMPACTS

Natural Environment

64. The proposed tree removal has been assessed by Council's Consultant Arborist as being acceptable subject to appropriate conditions of consent requiring replacement tree planting, submission of a suitable Landscape Plan and deletion of the terrace and vergola at the rear of Unit 3 to protect a tree on the rear boundary.
65. However, the absence of a sufficiently sized front setback precludes the planting of significant canopy trees within the site itself to ameliorate the scale of the building and reduce its visual impact. This forms of the reasons for refusal.

Built Environment

66. The proposal complies with the maximum FSR and building height development standards of Hurstville Local Environmental Plan 2012, however due to the under-width site frontage of the property and the design of the proposal failing to appropriately consider the site constraints, results in unacceptable outcome at the front of the site in terms of an accumulation of structures in the front setback to service the development. The driveway ramp and pedestrian access is inconsistent with the site context and the neighbourhood character. The proposal is inconsistent with the existing and desired future character of the locality. The built form and insufficient landscaping in the front setback result in an unacceptable outcome for the site and will set an undesirable precedent.

Social Impact

67. No adverse social impacts have been identified as part of the assessment. The provision of additional dwellings would in principle provide for additional housing for a cross-section of the community. However, the built form is not an appropriate outcome for the site.

Economic Impact

68. The proposed development has no apparent adverse economic impact. There may be a small positive economic impact as a result of the construction of the development.

Suitability of the site

69. The site is zoned R2 Low Density Residential. The proposal is a permissible land use within the zone, subject to development consent.
70. The proposed design has not appropriately considered the site constraints of site width, and overland flow and does not result in a suitable design outcome for the site, particularly with respect to the proliferation of the built form in the front setback, insufficient landscaping in the front setback, non-compliant driveway access and failure to demonstrate adequate drainage of the site.

SUBMISSIONS AND THE PUBLIC INTEREST

71. The application was neighbour notified in accordance with Hurstville Development Control Plan between 21 January 2021 and 12 February 2021. One (1) submission was received after the close of the notification period.
72. The issues raised in the submission are summarised as follows, with a response provided to each.

Concern	Comment
1. Loss of Light/Overshadowing: <i>The proposed development casts a significant shadow over our property such that the only windows getting natural light on the ground floor of our house will be overshadowed by the property and we will not have natural light through those windows for a significant part of the day.</i>	The planning controls require at least three hours of solar access midwinter to neighbouring living area windows and private open space. The proposal complies with these controls.
2. Privacy: <i>With second storey windows and (what looks like) a verandah of the proposed development facing our property there will be an impact on our privacy and our family's use of our backyard and driveway. Having young children also heightens our concern for privacy.</i>	The proposal does not include a first floor balcony facing either side boundary and the windows are not to high activity rooms such as living areas. In addition they are setback 3.9m to the western side boundary which is more than the required setback of 3m.
3. Safety: <i>Being a young family, we are naturally concerned about the safety of our children. With three dwellings on the property, there will be an increase in vehicular traffic in the area and potential increased risk of traffic accidents.</i>	It is not considered that the proposed increase in density on the site will result in a significant increase in traffic.
4. Lack of Parking: <i>Additional to the increase in traffic and safety concerns, there will also be a lack of parking if the residents of the proposed development have visitors.</i>	One visitor parking space is required for the proposal. No visitor parking is proposed and this forms one of the reasons for refusal.
5. Increase in noise and disturbance:	The proposal is not considered to result in

<i>The proposed multi dwelling development will mean an increase in people residing on the property and also an increase in noise.</i>	significant noise impacts for neighbours.
6. Loss of street value/fit with local area: <i>While this is less of an issue to our safety, privacy and loss of light concerns, we are concerned about how this proposed development fits with the local area and the impact it has to the value of the area. Other than duplexes which we understand each have their own land title, we are not aware of any other multi dwelling properties around Westbrook St. This proposed development is not in keeping with the single dwelling landscape of Westbrook St and may potentially affect the area value, as well as set an unwanted precedent of further development of multi dwelling properties in the street and area.</i>	<p>Property value is not a matter for consideration under the Environmental Planning Assessment Act 1979.</p> <p>When the original DA was lodged for this proposal, multi dwelling housing was permissible in the R2 zone. It has since been removed as a permissible use however for the purposes of assessing this Review application, the use remains permissible.</p>

REFERRALS

Council Referrals

Development Engineer

73. Council's Development Engineer reviewed the amended proposal. Following a detailed request for additional information and amended stormwater and architectural design, insufficient information has been submitted to demonstrate the site can be adequately drained, a Flood Emergency Plan has not been provided, and it has not been demonstrated that the building design is appropriately protected and designed to prevent damage to life and property up to a 1:100 flood level.

Design Engineer - Crossing and Public Domain

74. Council's Design Engineer does not support the proposed driveway location as it conflicts with a drainage lintel in the kerb and insufficient distance is provided to the neighbouring driveway crossing of 33 Westbrook Street (refer to Figure 8 on the following page).
75. The applicant was advised of this issue in the letter of 26 March 2021 and failed to provide a response to the issue.

Drainage Engineer - Council Infrastructure

76. As the application proposes a driveway arrangement that conflicts with an existing council stormwater pipe the application was referred to Council's Drainage Engineer. Council's Drainage Engineer has advised that given the length and size of the system connected to the stormwater pit in conflict with the proposed driveway a modification to Council's drainage system is not feasible.
77. Notwithstanding the advice provided to the applicant to liaise with Council's engineers to develop a design that did not depend upon the relocation of Council's stormwater assets, no plan has been provided demonstrating a relocated driveway location that is not in conflict with these assets.



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Figure 8: Stormwater lintel on Westbrook Street

Consultant Arborist

78. Council's Consultant Arborist reviewed the proposal and raised no objection to the removal of the existing trees subject to conditions of consent if approval is granted. Those conditions require providing a landscape plan prepared by a qualified landscape architect (as one was not provided with the application), replacement tree planting on site and within the street to offset the loss of existing trees and deletion of the vergola at the rear of Dwelling 3 to protect the tree located on the rear boundary.

External Referrals

Ausgrid

79. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Comments were received from Ausgrid and they have raised no objection to the proposed development.

CONCLUSION

80. The proposal has been assessed having regard to the Matters for Consideration under Section 8.2 and Section 4.15 of the Environmental Planning and Assessment Act. The proposal is found to be an unsuitable development of the site, with excessive built form in the front setback, inadequately landscaped area in the front setback, adverse privacy impacts for neighbours, non-compliant driveway design and insufficient information to ensure the site is adequately drained.
81. As such, it represents an unacceptable planning and design outcome for this site and would adversely affect both the character of development in the street, which is intended to be buildings set in a landscaped setting, the immediate locality and the residential amenity of the area. The building façade is dominated by the driveway, stairs

and ramps which does not provide an appropriate scale and proportion to the streetscape.

82. The proposal has been assessed against the provisions of both Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1. The proposal fails to comply with various built form controls of Hurstville Development Control Plan No. 1 including the site frontage, car parking, landscaping, privacy and stormwater management.
83. For the above reasons, the proposal is recommended for refusal.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

84. The reasons for this recommendation are:
- The proposed development is not considered to be an appropriate scale and form for, and it has not been demonstrated that an appropriate design can be achieved on the site and the character of the locality.
 - The site width does not comply with the minimum 15m from multi dwelling housing.
 - The application fails to demonstrate compliance with stormwater and drainage controls.
 - The proposal has not been designed to mitigate flood risk.
 - The proposed development will have unacceptable adverse impacts on the natural and built environments.
 - The proposed development will result in unacceptable adverse impacts on the amenity of adjoining residents and the locality and is likely to set an undesirable precedent.
 - In consideration of the aforementioned reasons, the proposed development is not a suitable and planned use of the site and its approval is not in the public interest.

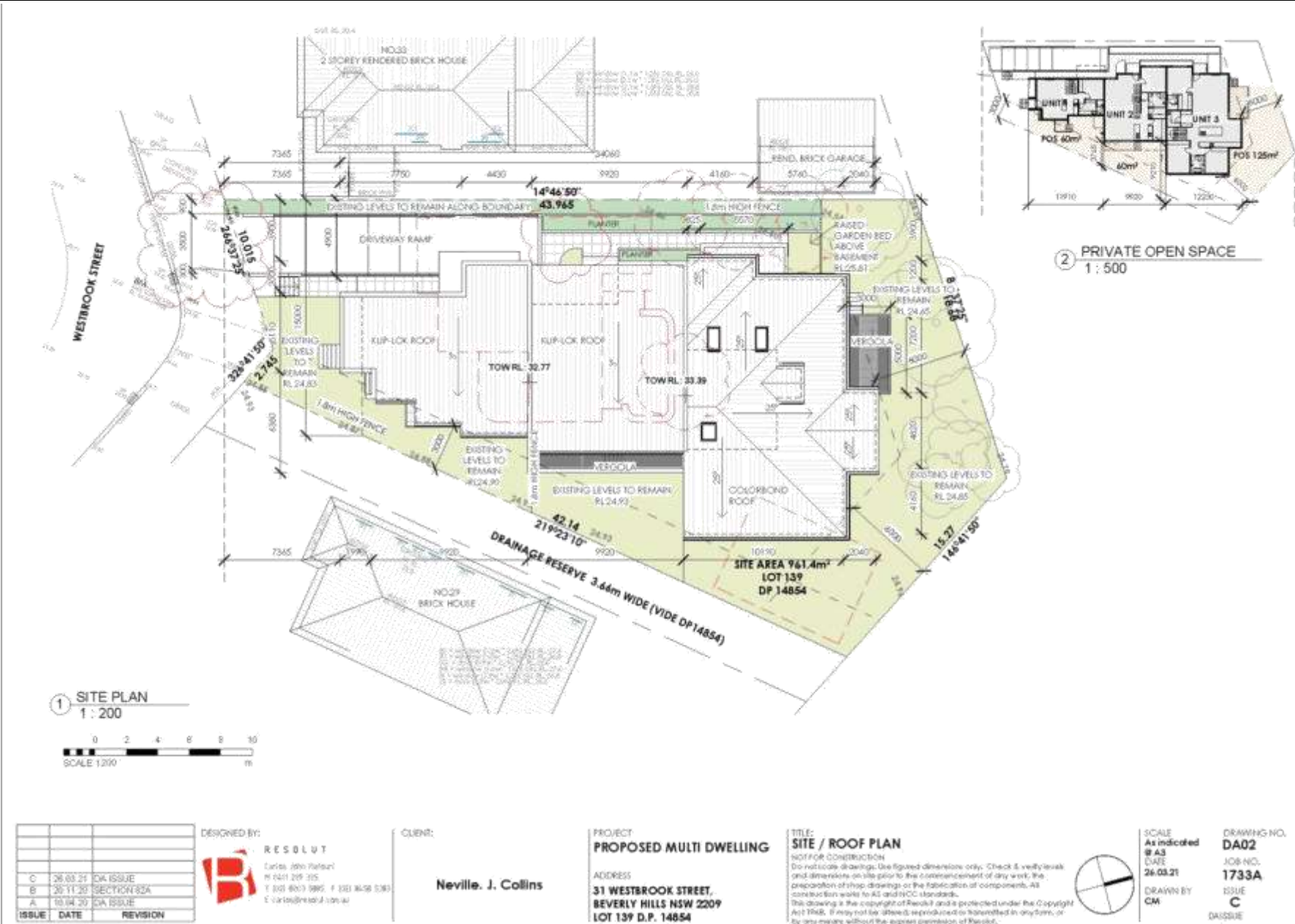
Determination

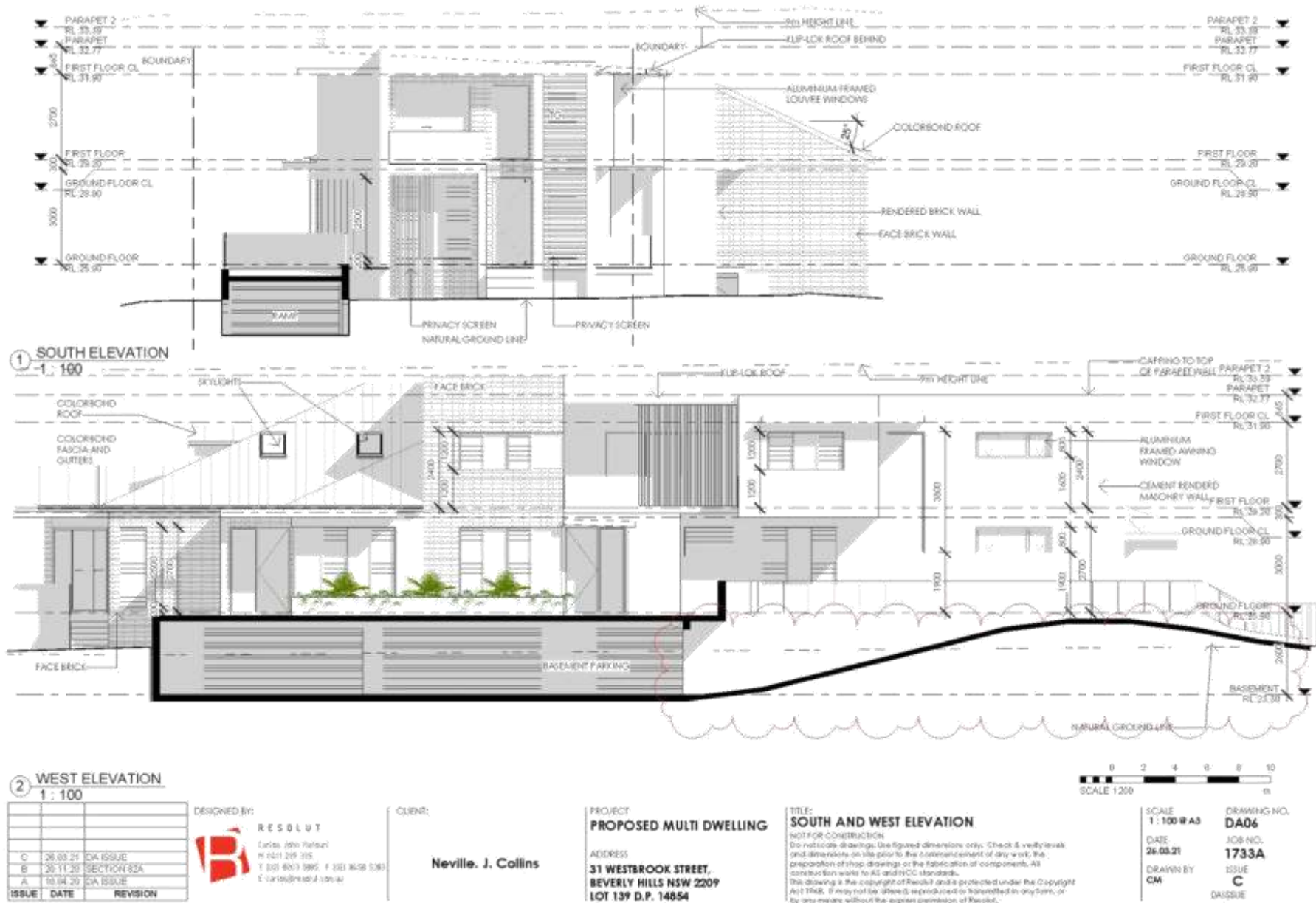
85. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended), Georges River Council refuse development consent to Review Application REV2020/0030 (DA2019/0534) for demolition of existing structures, tree removal and construction of multi dwelling housing at Lot 139 in DP1854 known as 31 Westbrook Street, Beverly Hills, for the following reasons:
1. The proposed development does not comply with the following sections of Hurstville Local Environmental Plan 2012:
 - a. Clause 1.2 – Aims of the Plan;
 - b. Clause 2.3 – Zone Objectives (R2 Low Density Residential);
 2. The proposed development does not comply with the following sections of Hurstville Development Control Plan No. 1:
 - a. 3.1 – Vehicle Access and Parking;
 - b. 3.6 – Public Domain;
 - c. 3.7 – Stormwater;
 - d. 4.2 – Street Frontage, Setbacks and Building Separation, and Landscaping and Open Space.

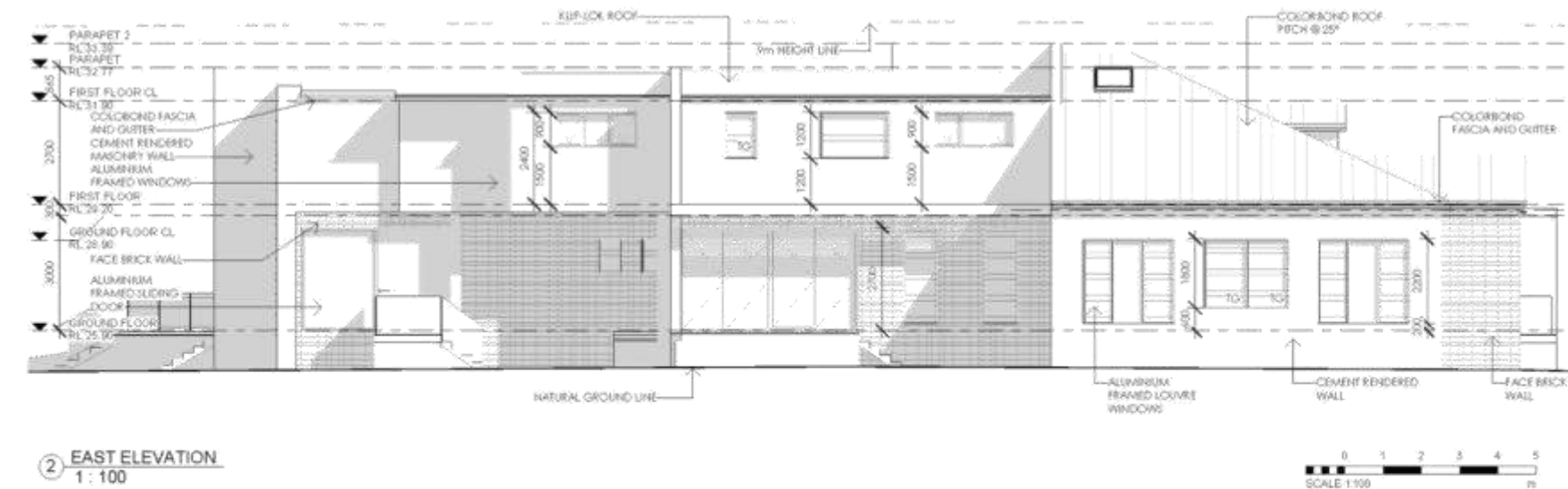
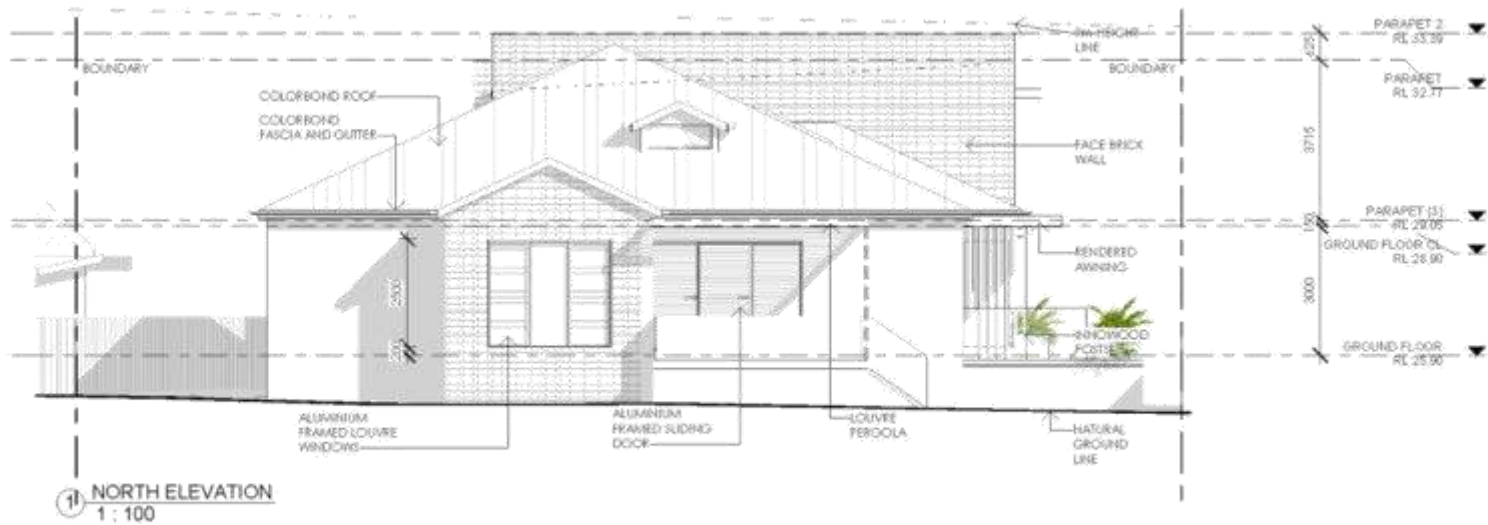
3. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the following aspects of the environment:
 - a. Built Environment: An adverse impact would result from the proposed development on the amenity of adjoining premises relating to building bulk, scale and form, and overlooking and impacts upon adjoining neighbours. In addition, the proposed stormwater system fails to adequately drain the development and has not been designed to adequately manage flood risk.
 - b. Social Impacts: An adverse impact would result from the proposed development on the amenity of the locality and adjoining neighbours and general expectations for development in a low density residential area.
4. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be suitable for the site or its locality and is likely to set an undesirable precedent.
5. Approval of the development would not be in the public interest and contrary to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

Attachment [1](#)  Site Plan and Elevations - 31 Westbrook St Beverly Hills







ISSUE	DATE	REVISION
B	20.11.20	SECTION 32A
A	10.04.20	DA ISSUE

DESIGNED BY:
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CLIENT:
Neville. J. Collins

PROJECT:
PROPOSED MULTI DWELLING
ADDRESS:
**31 WESTBROOK STREET,
BEVERLY HILLS NSW 2209
LOT 139 D.P. 14854**

TITLE:
NORTH AND EAST ELEVATIONS
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DATE:
20.11.20
DRAWN BY:
CM
DRAWING NO.:
DA07
JOB NO.:
1733A
ISSUE:
B
DATE:



ISSUE	DATE	REVISION
C	26.03.21	C/A ISSUE
B	20.11.20	SECTION 82A
A	10.04.20	C/A ISSUE



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PROJECT
PROPOSED MULTI DWELLING

ADDRESS
**31 WESTBROOK STREET,
BEVERLY HILLS NSW 2209
LOT 139 D.P. 14854**

TITLE:
SOUTH WEST PERSPECTIVE

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1733A

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26.03.21