

## AGENDA - LPP

<b>Meeting:</b>	Georges River Local Planning Panel (LPP)
<b>Date:</b>	Thursday, 15 July 2021
<b>Time:</b>	4.00pm
<b>Venue:</b>	Council Chambers, Civic Centre, Hurstville
<b>Panel Members:</b>	Sue Francis (Chairperson) Michael Leavey (Expert Panel Member) John Brockhoff (Expert Panel Member) Annette Ruhotas (Community Representative)

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<b>1. On Site Inspections - Carried out by Panel Members prior to meeting</b>	
<b>2. Opening</b>	
<b>3. Consideration of Items and Verbal Submissions</b>	
<b>LPP029-21</b>	<b>165 Penshurst Street Beverly Hills – DA2021/0078</b> (Report by Senior Development Assessment Planner)
<b>LPP030-21</b>	<b>120 and 120A Railway Parade Mortdale – MOD2020/0234</b> (Report by Development Assessment Planner)
<b>LPP031-21</b>	<b>32-38 Montgomery Street Kogarah DA2021/0110</b> (Report by Senior Development Assessment Planner)
<b>4. LPP Deliberations in Session Closed</b>	
<b>5. Confirmation of Minutes</b>	

# REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 15 JULY 2021

LPP029-21

<b>LPP Report No</b>	<b>LPP029-21</b>	<b>Development Application No</b>	<b>DA2021/0078</b>
<b>Site Address &amp; Ward Locality</b>	165 Penshurst Street Beverly Hills Mortdale Ward		
<b>Proposed Development</b>	Alterations and additions to an industrial building and use of the premises as a self-storage facility		
<b>Owners</b>	ME Property Holdings Pty Ltd		
<b>Applicant</b>	Turnball Planning International		
<b>Planner/Architect</b>	Turnball Planning International; Graeme Scott Architect		
<b>Date Of Lodgement</b>	5/03/2021		
<b>Submissions</b>	Eleven (11)		
<b>Cost of Works</b>	\$930,000.00		
<b>Local Planning Panel Criteria</b>	The variation to the height of buildings standard is 20% and more than 10 submissions		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Draft Georges River Local Environmental Plan 2020, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No. 1		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans, Statement of Environmental Effects, Clause 4.6 Variation Request, Stormwater Plans, Survey, Geotechnical Report, NCC Report, Structural Engineering Design, Traffic and Parking Report, Preliminary Site Investigation Report, Submissions		
<b>Report prepared by</b>	Senior Development Assessment Planner		

<b>Recommendation</b>	That the application be refused in accordance with the reasons in this report.
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<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>Yes - Clause 4.3 Height of buildings</b>

<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	<b>Not Applicable</b>
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	<b>No, the application is recommended for refusal</b>

### Site Plan



## Executive Summary

### Proposal

1. Development consent is sought for alterations and additions to the existing building and a change of use to a self-storage facility.
2. The proposal involves additions and alterations to increase the height of the buildings to 12m, internal works to provide staff and visitor amenities, loading bays in each building, office and administration space in each building and external works to provide three parking spaces in the front setback and four parking spaces at the rear of the site.

### Site and Locality

3. The site is identified as Lot A in DP335941 and is known as 165 Penshurst Street, Beverly Hills. The lot is a rectangle shape and has a total site area of 2,826sqm (by title) and a 25m frontage to Penshurst Street. The site slopes gently from the rear to the street.
4. The site is currently occupied by two industrial buildings and hardstand areas and is currently used for manufacturing and warehousing operations.

5. In the wider context, the subject site is located in a pocket of land zoned Light Industrial surrounded by an established R2 Low Density Residential Area containing dwelling houses, villas, townhouses and dual occupancies.

### **Zoning and Permissibility**

6. The site is zoned IN2 Light Industrial under the provisions of Hurstville Local Environmental Plan 2012 (HLEP 2012). The proposed land use is an innominate land use and is permitted with consent.

### **Submissions**

7. A total of 11 public submissions were received. The issues raised in the submissions include permissibility, height non-compliance, car parking deficiency, asbestos management, delivery times and acoustic impacts.

### **Conclusion**

8. 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.
9. Based upon the information submitted with the application, the proposal fails to demonstrate compliance with, or provide sufficient information to enable a proper assessment of, a number of issues including stormwater management, car parking, access and mobility, building design, acoustic impacts, energy efficiency and waste management.
10. The written Clause 4.6 variation request of the height of building standard is not well founded and the variation is not supported.
11. 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 (DA2021/0078) is recommended for refusal for the reasons in this report.

### **Report in Full PROPOSAL**

12. Development consent is sought for alterations and additions to the existing building and a change of use to a self-storage facility.
13. The proposal involves additions and alterations to increase the height of the buildings to 12m, internal works to provide staff and visitor amenities, loading bays in each building, office and administration space in each building and external works to provide three parking spaces in the front setback and four parking spaces at the rear of the site.

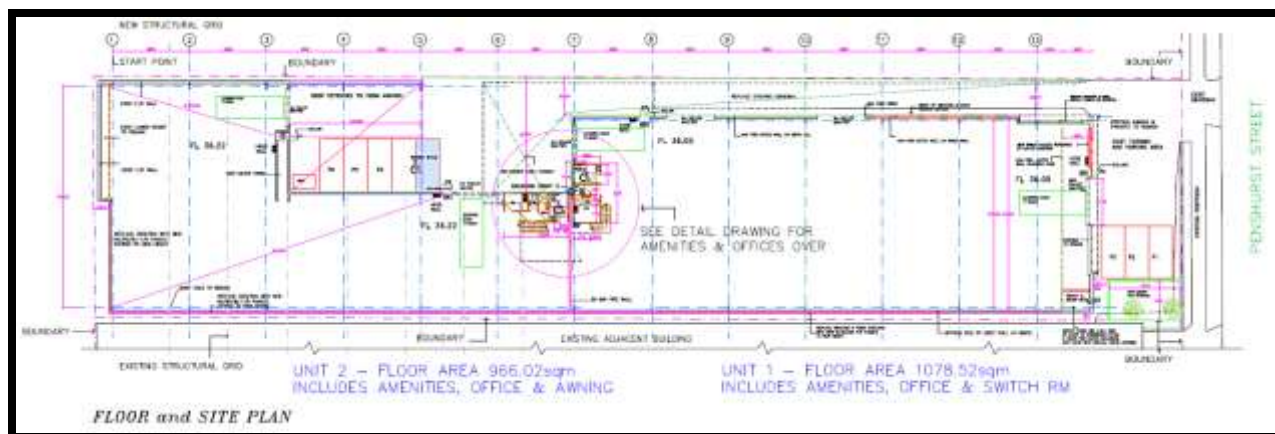


Figure 1: Proposed site plan

## BACKGROUND

14. A Pre DA meeting was held with the applicant on 9 December 2019 and formal written advice provided on 10 February 2020. In relation to the key planning issues identified in this report, the following advice was provided:

Pre DA Advice	Applicant response/Council comment
<p><b>1.1 Proposed use &amp; operational details</b></p> <p>Council's records indicate that the most recent development consent issued for the subject site (1997/DA - 0016) is for a factory fit out for the purposes of metal work manufacture.</p> <p>During the pre – lodgement meeting it was discussed that the premises will be used for the purposes of “self-storage units”. The operational details involve;</p> <ul style="list-style-type: none"> <li>• The operator will deliver a timber crate (dimensions 1.8 x 2.4 x 2.6) to the customer;</li> <li>• The customer will store items with the supervision of the operator so that the items are recorded;</li> <li>• The timber crate will be transported by the operator to the warehouse;</li> <li>• The timber crate will be stacked on top of each other in the warehouse by the operator;</li> <li>• When customer wants to access the timber crate the operator will retrieve the storage unit and place it in a designated location for viewing;</li> </ul> <p>The operator indicated that the main users of this storage facility are people who are moving house or want to store items for long term.</p> <p>As discussed during the pre – lodgement</p>	

<p>meeting the submitted statement of environmental effects with the formal DA needs to detail the exact nature of use, operational details, transportation of crate and items that will be stored.</p> <p>Please also note that, the proposal is not considered to be alterations and additions to existing building as it involves significant amount of demolition works and reconstruction. As advised during the pre – lodgement meeting compliance with planning controls, including but not limited to, setbacks, landscaping, building height, FSR, overshadowing and amenity impacts must be considered.</p>	<p>Operational details were provided with the DA.</p> <p>The DA was lodged as alterations and additions to the existing building and change of use.</p> <p>The proposal seeks variations to a number of controls in the LEP and DCP.</p>
<p><u>1.2 Building height</u></p> <p>The maximum permitted building height for the subject site is 10m pursuant to Clause 4.3 of the Hurstville Local Environmental Plan 2012 (HLEP 2012). The proposed scheme has an overall height of 12m exceeding the maximum allowable height limit. As discussed at the pre-lodgement meeting, variation to building height will not be supported. The only exception is that Council may consider a slight breach in height for lift over run. In this respect the proposal should be amended so that no part of the building (except lift overrun) exceeds the allowable 10m building height limit.</p> <p>Breach in the primary height controls will not be supported considering the local context. The height of the proposed built form exceeds the applicable controls, providing a built form outcome which is likely to be incompatible with the existing and the future character of the area. The proposal provides no valid justification for the variation and the outcome sets an undesirable precedence for future development in the area particularly considering that the subject site is in close proximity to established residential development.</p>	<p>The height of the proposal has not changed from the Pre DA design and still seeks a 2m variation to the 10m height limit.</p> <p>Refer to Clause 4.6 assessment in this report.</p>
<p><u>1.3 Floor space ratio</u></p> <p>The maximum permitted floor space ratio for the site is 1:1 pursuant to Clause 4.4 of the HLEP 2012. The submitted scheme does not provide adequate information to assess the proposed floor space ratio.</p> <p>The submission of a colour coded plan illustrating floor areas included vs excluded</p>	<p>The proposed FSR is compliant and Drawing DA-04 Revision D provides a GFA breakdown.</p>



<p>areas for the purposes of calculating FSR in accordance with the definition of gross floor area pursuant to HLEP 2012 is required to be submitted.</p>	
<p><u>2.1 Neighbourhood character</u> The proposed built form has an excessive bulk and scale and does not reflect the dominant building rhythm of the locality which predominantly consists of low density residential dwellings. Whilst it is acknowledged that the subject site and the adjoining site to the North West is zoned IN2 – Light Industrial, the surrounding land uses are predominantly zoned R2 – Low Density Residential and as such the proposal in terms of its height, landscaping, setbacks and building mass is not sympathetic to the existing built form.</p> <p>It is suggested that a streetscape Character Analysis (SCA) be submitted with the DA. The SCA is to include an analysis of both the existing streetscape and the future desirable streetscape. It should consider the overall streetscape character and the potential impact of your development.</p> <p>Particularly the SCA should analyse the scale, height, built form character, setback treatment, architectural character and character of spaces between buildings including vehicular entries.</p>	<p>The built form of the proposal has not changed from the Pre DA.</p> <p>A Streetscape Character Analysis was not submitted with the DA.</p>
<p><u>2.2 Front Façade Treatment</u> The submitted scheme indicates that the proposed front façade:-</p> <p>Comprises of excessive bulk and scale that is not appropriately articulated which results in a built form that is not compatible with the existing built form and streetscape; Does not employ appropriate architectural features that will result in more visually interesting light industrial premises. Please note that the proposed architectural treatment should be more visually interesting compared to the existing built form.</p> <p>Consequently, the proposal does not comply with the Design Solution DS4.9 and DS4.10 which stipulates the following:</p> <p>“DS4.9. Buildings must present a satisfactory facade to the street. Blank wall facades are not acceptable.</p>	<p>The built form of the proposal has not changed from the Pre DA design.</p> <p>No schedule of materials or finishes was submitted with the DA.</p> <p>The proposal does not address Penshurst Street through activation of the front façade. It contains a roller</p>

<p>DS4.10. Architectural features are to be included in the design of new buildings to provide for more visually interesting light industrial areas. Such features may include:</p> <ul style="list-style-type: none"> <li>• Distinctive parapets or roof forms</li> <li>• Articulated facades</li> <li>• Distinctive entries</li> <li>• A variety of window patterns</li> <li>• Balustrades</li> <li>• Pergolas and other sun shading devices; and</li> <li>• Selection of building materials”.</li> </ul> <p>Consideration should be made to amend the proposed front façade to create articulation and modulation whilst creating visually interesting light industrial premise that is compatible with the streetscape which is predominantly comprised by low density residential dwellings houses.</p>	<p>door and fire exit door.</p> <p>The front façade is not visually interesting and does not allow for casual surveillance of the street.</p>
<p><u>Onsite car parking</u></p> <p>The required number of onsite car parking for the proposal cannot be determined due to inadequate information submitted with the pre-lodgement application. However, the submitted scheme suggests that the proposal provides six (6) onsite car park spaces located within the front setback area which is not supported.</p> <p>In this regard, revised plans are required to be submitted with the formal DA addressing the following:</p> <ul style="list-style-type: none"> <li>• Provide the required number of onsite car parking needed to service the proposed use;</li> <li>• Be located behind the front building setback;</li> <li>• Vehicles must enter and leave the site in a forward direction;</li> <li>• Provision of loading and unloading zone;</li> <li>• Not involve stacked parking; and</li> <li>• Adequate on-site manoeuvring be provided to enable all delivery vehicles, including large trucks to enter and leave the site in a forward direction.</li> </ul> <p>During the pre – lodgement meeting it was advised that the proposed number of onsite car parking is considered to be inadequate to</p>	<p>The proposal includes 3 parking spaces in the front setback and 4 at the rear of the site, which are to be used as loading area as indicated on Page 28 of the SEE submitted with the DA.</p> <ul style="list-style-type: none"> <li>• Does not comply.</li> <li>• Does not comply.</li> <li>• Complies.</li> <li>• 4 loading bays are provided.</li> <li>• Not proposed.</li> <li>• Complies.</li> </ul> <p>This position is retained in the SEE.</p>



service the proposal. The applicant stated that as a result of the operation of the premises, onsite car parking is not required and the proposed “self-storage units” should be exempt from the provision of on-site car parking. The applicant claims that this is further supported by a study that was undertaken by Aurecon Australia Pty Ltd for Self-Storage Association of Australia Pty Ltd.

Whilst Council does not encourage reduced onsite car parking, in the event a variation is sought, the applicant must provide a valid planning consideration for Council to consider the onsite car parking requirement. The submitted justification should be prepared by a qualified and experienced traffic consultant and take into account the location of the subject site being in close proximity to established residential area.

In accordance with the DCP, the following onsite car parking is required:-

Light industry

Office area 1 space per 40m<sup>2</sup>

GFA; and

Warehouse (storage) 1 space per 300m<sup>2</sup>  
GFA.

The parking shortfall has not been adequately justified. Refer to assessment in this report.

### 2.3 Traffic Management

The proposed development is required to provide a “Traffic Impact and Parking Management Plan” addressing the following:-

- A swept path analysis using the AS2890.2:2018 Off Street Commercial Vehicles Facilities document for the largest expected vehicle to use the facility to ensure that all vehicles enter and exit the property in a forward direction. This swept path analysis shall show the movements from trucks entering at the street boundary, into the site, accessing the building to drop off the materials, then exiting the site on the street. Loss of street parking will not be permitted to cater for the entering and exiting movements;
- Plan of management in regards to use and hours of operation;
- If the future development application comprises parking spaces that are within the existing structure must

Council’s Traffic Engineer has raised no concern with the proposal (car parking shortfall is addressed elsewhere in this report).

<p>adhere to the AS2890.1:2004 requirement;</p> <ul style="list-style-type: none"> <li>• There shall be enough driveway width to allow two heavy vehicles to pass on the driveway at all times;</li> <li>• Measures to ensure that there will be no vehicles queuing on Penshurst Street or nearby streets whilst waiting to enter the facility;</li> <li>• Provision of Safe pedestrian movements to be indicated from the car parking to the storage units; and</li> <li>• The number of spaces shall comply with the DCP requirements.</li> </ul>	
<p><b>2.4 Landscaping</b></p> <p>The submitted scheme suggests that the proposal provides 26m<sup>2</sup> of landscaping within the front setback area. Providing adequate landscaping is particularly important as the subject site is located adjacent to R2 Low Density Residential zone.</p> <p>Furthermore, the submitted scheme suggests that the proposal provides six (6) car park spaces within the front setback area and does not provide landscaped open space in accordance with the Design Solution DS3.2, Section 5.2 of Hurstville Development Control Plan (HDCP) 2013 No. 1 which stipulates the following:</p> <p>“DS3.2. Within the front setback area, a minimum of 3 metres is to be landscaped and maintained as open area in order to enhance the streetscape. This area is not to consist of buildings, storage areas or car parking and manoeuvring areas”.</p> <p>In light of the above, a detailed landscape plan prepared by a qualified landscape architect is required proving the following information:-</p> <ul style="list-style-type: none"> <li>• A minimum of 10% of the site area is to comprise of “soft” landscaping including lawns, trees and shrubs. Car parking, paths and pedestrian walkways are to be excluded from the 10%;</li> <li>• A minimum of 3 metres is to be landscaped and maintained as open area within the front setback area in order to enhance the streetscape; and</li> <li>• Landscaped areas are to be provided to</li> </ul>	<p>An area of 29sqm in the front corner of the site is shown as landscaped area.</p> <p>Three parking spaces are proposed in the front setback but the landscaped area remains 29sqm.</p> <p>The landscaped area is 4m x 7.3m.</p> <p>A Landscape Plan was not submitted with the DA.</p> <p>1% of the site is landscaped area.</p> <p>4m x 7.3m area in the front setback</p> <p>The site does not directly adjoin</p>

side boundaries adjoining residential properties.	residential land.
<p><u>2.5 Signage</u> No signage details were provided with the pre – lodgement application, however the following requirements should be achieved:-</p> <p>The provision of signage is to comply with the requirements of Section 5.5 of the Hurstville DCP 2013 No.1; and Advertising must be integrated into the overall development. In this regard, details are to be submitted with the Development Application.</p>	No signage details were submitted with the DA.
<p><u>3.0 Stormwater Management</u> Council's Development Engineer has reviewed the submitted stormwater plans and provided the following comments:-</p> <p><u>Disposal of Stormwater</u> The DA is to be accompanied by a report prepared by a qualified practising Hydraulic Engineer confirming that the existing drainage system has been thoroughly investigated and is fully functional. Further, the report is to advise on the sizing of the existing underground drainage system with regard to Council's current stormwater design policy.</p> <p><u>On Site Detention</u> On Site Detention is to be provided for the site in accordance with the guidelines contained in Council's Hurstville Development Control Plan 2013 No. 1, Appendix 2, Section 1, Drainage and On Site Detention (OSD) Policy. A minimum of 80% of the site is to drain through the OSD system.</p>	Council's Development Engineer review the DA and advised the stormwater management plans submitted with the DA fail to adequately address the relevant controls in the Stormwater Policy.

15. In relation to the current application, Council did not seek additional information or amended plans under Clause 55 of the Environmental Planning and Assessment Regulation as there was no prospect of a recommendation for approval being given the height variation issue.

## THE SITE AND LOCALITY

16. The site is identified as Lot A in DP335941 and is known as No. 165 Penshurst Street, Beverly Hills. The lot is a rectangle shape and has a total site area of 2,826sqm (by title) and a 25m frontage to Penshurst Street. The site slopes gently from the rear to the street. The site is currently occupied by two industrial buildings and hardstand areas and is currently used for manufacturing and warehousing operations (Figure 2).
17. In the wider context, the subject site is located in a pocket of land zoned Light Industrial surrounded by an established R2 Low Density Residential Area containing dwelling houses, villas, townhouses and dual occupancies.

18. The property to the south-east is occupied by a 2-3 storey industrial building built to the shared boundary with the site (Figure 3), and to the north is a landscaped pedestrian pathway that connects Penshurst Street to the residential villa development on Mercury street to the rear of the subject site (Figure 4).
19. The land opposite the site is characterised by low density residential development as shown in Figure 6.



**Figure 2:** The existing building fronting Penshurst Street



**Figure 3:** The adjoining building at 159-163 Penshurst Street (south-east of the site)





**Figure 4:** Pedestrian connection (north of the site) to residential development on Mercury Street



**Figure 5:** Residential development on Mercury Street at the rear of the subject site



Figure 6: Residential development opposite the site on Penshurst Street

### Compliance and Assessment

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

### STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

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

22. State Environmental Planning Policies 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
23. A review of the site history indicates that the site has been used for industrial purposes for extended periods of time. A Preliminary Site Investigation Report was submitted with the DA which concluded:

- *Based on the findings of this PSI, the potential for exposure to CoPC at the Site is considered to be low. However, the following potentially complete SPR linkages are considered to exist at the Site:*
  - *Potential for site maintenance and construction workers to contact PACM and/or CoPC and/or hazardous materials in building materials during planned works.*
  - *Potential for site maintenance and construction workers to contact impacted soils.*
  - *Potential for site maintenance and construction workers to contact impacted groundwater (if encountered).*
  - *Potential for general environmental impacts to soil and/or groundwater.*

24. A Detailed Site Investigation Report is required to satisfy Council that the requirements of SEPP 55 are met.

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

25. The Vegetation State Environmental Planning Policy regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.

The Vegetation State Environmental Planning Policy applies to clearing of:

- (a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
  - (b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).
26. The objectives of the State Environmental Planning Policy are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 5(1) of the State Environmental Planning Policy as the site is within both Georges River Council and the R2 Low Density Residential zone.
27. Pursuant to Clause 8(1) of the State Environmental Planning Policy, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
28. As part of the proposal, no trees have been nominated for removal.

## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

### **Draft Environmental State Environmental Planning Policy**

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

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



31. The Draft Remediation of Land State Environmental Planning Policy was exhibited from 31 January 2018 to 13 April 2018. The proposed remediation of land State Environmental Planning Policy will:
- *Provide a state-wide planning framework for the remediation of land;*
  - *Maintain the objectives and reinforce those aspects of the existing framework that have worked well;*
  - *Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land;*
  - *Clearly list the remediation works that require development consent;*
  - *Introduce certification and operational requirements for remediation works that can be undertaken without development consent.*
32. A review of the site history indicates that the site has been used for industrial purposes for extended periods of time. A Preliminary Site Investigation Report was submitted with the DA which concluded:
- *Based on the findings of this PSI, the potential for exposure to CoPC at the Site is considered to be low. However, the following potentially complete SPR linkages are considered to exist at the Site:*
    - *Potential for site maintenance and construction workers to contact PACM and/or CoPC and/or hazardous materials in building materials during planned works.*
    - *Potential for site maintenance and construction workers to contact impacted soils.*
    - *Potential for site maintenance and construction workers to contact impacted groundwater (if encountered).*
    - *Potential for general environmental impacts to soil and/or groundwater.*
33. A Detailed Site Investigation Report is required to satisfy Council that the requirements of the Draft SPP are met.

### HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012

34. The subject site is zoned IN2 Light Industrial under the provisions of the Hurstville Local Environmental Plan 2012. The proposed development is for a self storage facility and which is an innominate permissible land use in the zone.



Figure 7: Zoning map

35. The objectives of the zone are:
- *To provide a wide range of light industrial, warehouse and related land uses.*

- To encourage employment opportunities and to support the viability of centres.
- To minimise any adverse effect of industry on other land uses.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To support and protect industrial land for industrial uses.
- To enable industrial development which does not pollute or adversely affect adjoining land, air or water.
- To ensure industrial development creates areas that are pleasant to work in, safe and efficient in terms of transportation, land utilisation and service distribution.

36. The proposed change of use is not inconsistent with the objectives of the zone.
37. The extent to which the proposed development complies with the Hurstville Local Environmental Plan 2012 is detailed and discussed in the table below.

Clause	Standard	Proposal	Complies
2.2 Zoning	IN2 Light Industrial Zone	The development type proposed is a self storage facility.  The use is an innominate permissible use.	Yes
2.3 Zone objectives	Objectives of the IN2 Zone.	The proposed use of the site for self-storage is not inconsistent with the zone objectives.	Yes
4.3 – Height of Buildings	10m as identified on Height of Buildings Map	12m	No Refer to 4.6 assessment
4.4 – Floor Space Ratio	1:1 (2,626sqm) as identified on Floor Space Ratio Map	Proposed: 2,044.54sqm or 0.779:1	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl4.5(b)	The floor space of the dwelling has been calculated in accordance with Clause 4.5 and the “gross floor area” definition within the Hurstville Local Environmental Plan.	Yes
6.7 – Essential Services	Development consent must not be granted to development unless services that are essential for the development are available	The specified 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

### Exception to Development Standards

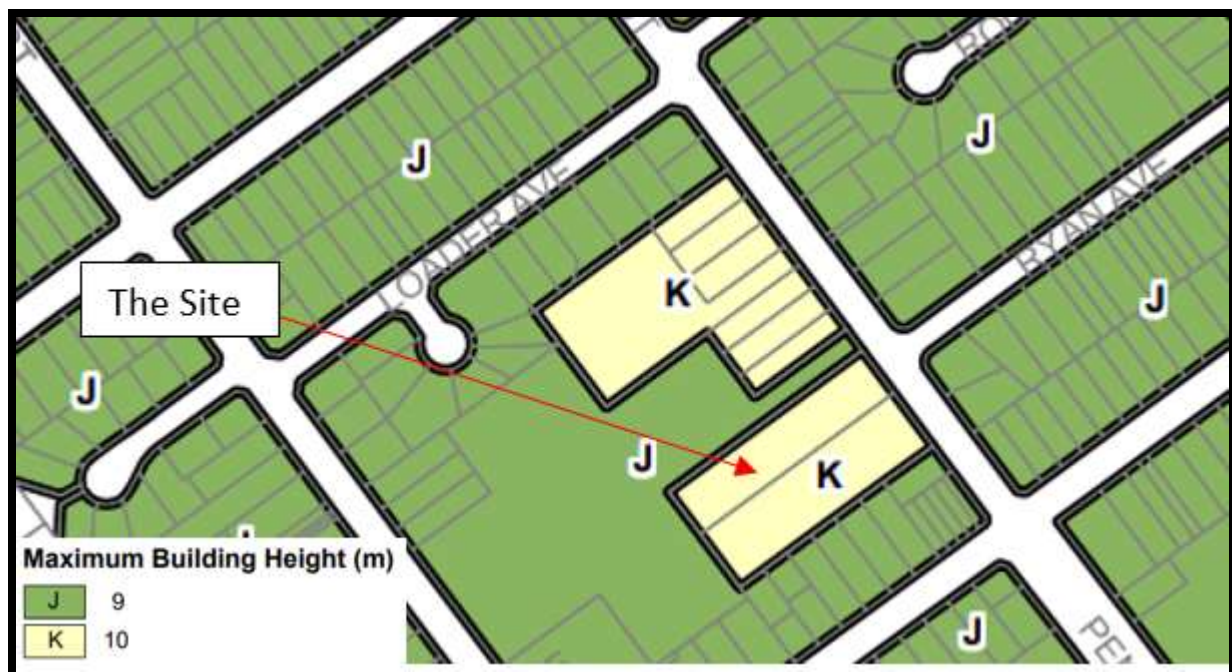
#### Detailed assessment of variation to Clause 4.3 Height of Buildings

38. The objectives of Clause 4.6 are as follows

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

39. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Hurstville Local Environmental Plan 2012 (HLEP) identifies a maximum height of 10m for the site (refer to Figure 8 below) and the proposed development will exceed the height by 2m. This amounts to a 20% variation to the control.
40. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the Hurstville Local Environmental Plan. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.



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

41. 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”*
42. 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 Hurstville Local Environmental Plan. The Clause 4.6 request for variation is assessed as follows.

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

43. Height of Buildings control under Clause 4.3 of the Hurstville Local Environmental Plan 2012 is a development standard. The maximum permissible height is 10m.

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

44. The objectives of Height of Buildings standard under Clause 4.3 of Hurstville Local Environmental Plan 2012 are:
- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
  - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,*
  - (c) to minimise the adverse impact of development on heritage items,*
  - (d) to nominate heights that will provide a transition in built form and land use intensity,*
  - (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,*
  - (f) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,*
  - (g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

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

45. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.
46. 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.*
47. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements. The complete submission is annexed to this report and has also been provided to Panel separately. Relevant sections are reproduced in the below assessment.
48. Applicants comment:  
**Objective 4.3(1)(a)**

49. *This objective seeks to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.*

**Comment:**

50. *The built form will be compatible with the height, bulk and scale of the existing character (in particular, nearby development) and also the desired future character of the locality.*
51. *Additionally, the desired future character for industrial lands, seeks an 'up zoning' in height as identified within the draft Georges River Local Environmental Plan 2020 (GRLEP), which will seek to increase the maximum permissible height of all IN2 zoned lands to achieve a height of 12m-16m depending on location. As such the proposal is consistent with the desired future character of industrial zoned lands.*
52. *The site is within the IN2 zone and the adjoining. The properties have a maximum height limit of 9m and 10m, respectively. However, further down Penshurst Street the maximum permissible heights are 12m, 15m and 19m.*
53. *It is also important to note the site is very close (some 2 streets away) to the King Georges Road business precinct, where the maximum permissible height limit is 12m and 15m respectively.*
54. *When all of the foregoing is taken into account, we submit that the proposal will be consistent with the surrounding similar type developments on Penshurst street.*

**Objective 4.3(1)(b)**

55. *This objective seeks to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes.*

**Comment:**

56. *The built form will not create significant additional overshadowing of neighbouring properties. See, in that regard, the shadow diagrams accompanying the development application.*
57. *In addition, the design of the building is such that there will be no loss of privacy, no disruption to views, and no loss of solar access to existing development or to public areas and the public domain, including parks, streets and lanes.*
58. *The overall appearance of the building, when viewed from the street front, will be improved as a result of the carrying out of the proposed alterations and additions due to the current decrepit state of the site.*

**Objective 4.3(1)(c)**

59. *This objective seeks to minimise the adverse impact of development on heritage items.*

**Comment:**

60. *The proposed development will have no adverse impact on heritage items.*

**Objective 4.3(1)(d)**

61. *This objective seeks to nominate heights that will provide a transition in built form and land use intensity.*



**Comment:**

62. *The height exceedance will not militate against there being a sought-after transition in built form and land use intensity. The GRLEP 2020, states that the current height controls on IN2 zoned lands do not allow appropriate development to occur as such the height increase will facilitate a height that provides a transition of built form when compared to the surrounding developments that will enable appropriate land use intensification, whilst protecting and enhancing industrial lands from being rezoned to residential.*
63. *Below please see confirmation of industrial height increase from Planning Proposal Report (PP2019/0004)- Georges River Local Environmental Plan 2020, PG 40-41*

*It is also proposed to amend the height controls of the IN2 zone to 12m except for the Kingsgrove Industrial Precinct and part of Peakhurst Industrial Precinct where the height control will be increased to 16m. The increase in heights enables industrial lots to achieve an FSR of 1:1 and provide flexibility in built form for different land uses. Further justification for this amendment can be found in Appendix 3. The increase to 16m is appropriate at Kingsgrove as it has a limited interface with residential zones. Whilst the Peakhurst Industrial Precinct does have a residential interface, this Planning Proposal seeks to apply the lower height control of 12m to the perimeter of the Precinct.*

**Objective 4.3(1)(e)**

64. *This objective seeks to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre.*

**Comment:**

65. *Despite the height exceedance, the building as altered will nevertheless achieve an appropriate urban form consistent with the major centre status of the Hurstville City Centre. Additionally, the proposed height increase will be of a compatible built form when compared to the surrounding industrial and residential uses.*
66. *The below image from page 12 of APPENDIX 3 – Development Standards Justification of Planning Proposal (PP2019/0004) for the draft Georges River Local Environmental Plan 2020, shows Council's intentions to increase height for all IN2 zoned land ranging from 12m-16m depending on location to achieve an appropriate urban form.*



**Objective 4.3(1)(f)**

67. *This objective seeks to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation.*

**Comment:**

68. *The height exceedance will not militate against there being a sought-after appropriate transition of the kind described in the objective.*

**Objective 4.3(1)(g)**

69. *This objective seeks to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

**Comment:**

70. *As already mentioned, the carrying out of the proposed development will result in only minor overshadowing of neighbouring properties, and will not result in there being any loss of privacy or loss of solar access to either the existing development or public areas and the public domain, including parks, streets and lanes. In short, the development will not have any appreciable adverse effects on the use or enjoyment of adjoining properties.*

**5.3.1 Consistency with the aims of HLEP**

71. *In Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21 at 27 Pearlman CJ expressed the following opinion as respects the meaning of the word 'consistent':*

*The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.*

72. *Compliance with the height of buildings development standard is also considered to be unreasonable in the circumstances of the proposed development by reason of the fact that the proposed development supports the achievement of a number of the aims of HLEP.*
73. *HLEP aims to make local environmental planning provisions for land in the former local government area of Hurstville in accordance with the relevant standard environmental planning instrument: see clause 1.2(1), HLEP.*
74. *The particular aims of HLEP are as follows (refer clause 1.2(2), HLEP):*
- (a) *to encourage and co-ordinate the orderly and economic use and development of land that is compatible with local amenity,*
  - (b) *to provide a hierarchy of centres to cater for the retail, commercial, residential accommodation and service needs of the Hurstville community,*
  - (c) *to provide a range of housing choice that:*
    - (i) *accords with urban consolidation principles, and*
    - (ii) *is compatible with the existing environmental character of the locality, and*
    - (iii) *is sympathetic to adjoining development.*
  - (d) *to conserve, protect and enhance the environmental heritage, cultural heritage and aesthetic character of Hurstville,*
  - (e) *to maintain and enhance the existing amenity and quality of life of the Hurstville community,*



- (f) *to ensure development embraces the principles of quality urban design,*
- (g) *to ensure development is carried out in such a way as to promote the efficient and equitable provision of public services, infrastructure and community facilities,*
- (h) *to protect and enhance areas of remnant bushland, natural watercourses, wetlands and riparian habitats,*
- (i) *to retain, and where possible extend, public access to foreshore areas and link existing open space areas for environmental benefit and public enjoyment,*
- (j) *to ensure development embraces the principles of ecologically sustainable development,*
- (k) *to strengthen the role of Hurstville City Centre as a major business, retail and cultural centre of southern Sydney,*
- (l) *to encourage a range of employment, services, housing and recreation to meet the needs of existing and future residents of the Hurstville City Centre,*
- (m) *to concentrate intensive land uses and trip-generating activities in locations most accessible to transport and centres,*
- (n) *to foster economic, environmental and social well-being so that the Hurstville City Centre continues to develop as a sustainable and prosperous place to live, work and visit.*

75. *Not all of the above aims of HLEP are relevant to the proposed development (for example, those aims relating directly to the Hurstville City Centre). Be that as it may, we respectfully submit that the proposed development is consistent with such of the aims as are of relevance to the proposed development and is not inconsistent with any of the other aims.*

76. *Now, addressing those aims of HLEP that, in our opinion, are directly relevant to the nature and scope of the proposed development, we submit that the development will, in particular:*

- *encourage and co-ordinate the orderly and economic use and development of land that is compatible with local amenity (cf cl. 1.2(2)(a)) in that the proposed alterations and additions will significantly improve both the overall appearance and the functionality of the existing industrial building and its appearance from the surrounding streetscape;*
- *not derogate from the environmental heritage, cultural heritage and aesthetic character of Hurstville (cf cl. 1.2(2)(d));*
- *help to ensure development embraces the principles of quality urban design (cf cl. 1.2(2)(f); and*
- *embrace the principles of ecologically sustainable development (cf cl. 1.2(2)(j)).*
- *to encourage a range of employment, services, housing and recreation (cf cl. 1.2(2)(l) to meet the needs of existing and future residents of the Hurstville City Centre. This is achieved by providing a business 'Use' which is compatible with the community needs.*
- *Will not impact on the biodiversity significant of the LGA, as such will protect and enhance areas of remnant bushland, natural watercourses, wetlands and riparian habitats. (cf cl. 1.2(2)(h))*

- *It will provide a business, that is compatible with the LGA and strengthen the area as a business Hub. (cf cl. 1.2(2)(k))*
- *Will achieve in creating a land use that foster economic growth whilst considerate of environmental considerations ill providing a benefit to the community with minimal social impacts to ensure the LGA develops into a sustainable area, by creating a safe environment to live, work and visit. (cf cl. 1.2(2)(n))*

77. *In short, we are of the opinion that the proposed development is consistent with such of the aims of HLEP as are of relevance to the development.*

78. Officer Comment: An assessment of the Applicant's written request against the requirements of Clause 4.6(3)(a) is as follows.

79. In relation to how the proposal meets the relevant zone objectives:

- The Applicant asserts the proposal is *compatible with the height, bulk and scale* of the existing and desired future character of the locality because the Draft Georges River LEP 2020 proposed to increase the height limit on all industrially zoned land to 12m-16m depending on location, and therefore the proposal is consistent with the desired future character of industrial zoned lands, references maximum permissible heights "further down Penshurst Street" of 12m, 15m and 19m, and notes the proximity of the site to the "King Georges Road business precinct" where the maximum heights are 12m and 15m.
- The Applicant fails to acknowledge the dominant character of the immediate locality is low density residential land which is characterised by one and two dwelling houses, villas and dual occupancies. No assessment of the character of the immediate area surrounding the site is provided, rather the permissible heights of land 550m away on King Georges Road and unknown land on Penshurst Street is provided as justification.
- With respect to *visual impact, views, privacy and solar access* the Applicant states there will be no impact and the proposal is an improvement of the building. It is agreed there will be no impact on privacy or views on adjoining land.
- The shadow diagrams provided to support the claim that there is no adverse impact on the solar access on neighbours are, at best, basic, and offer very little in the way of assessing the impact on neighbouring residential properties:

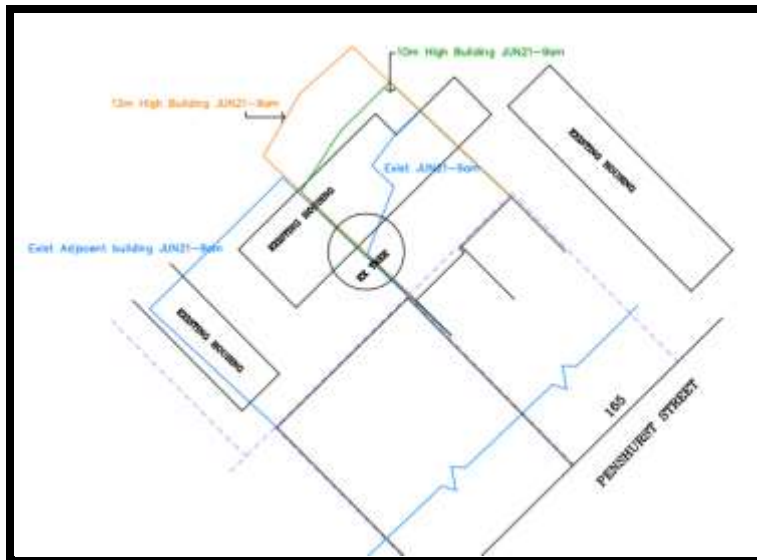


Figure 9: 9am Winter shadow analysis

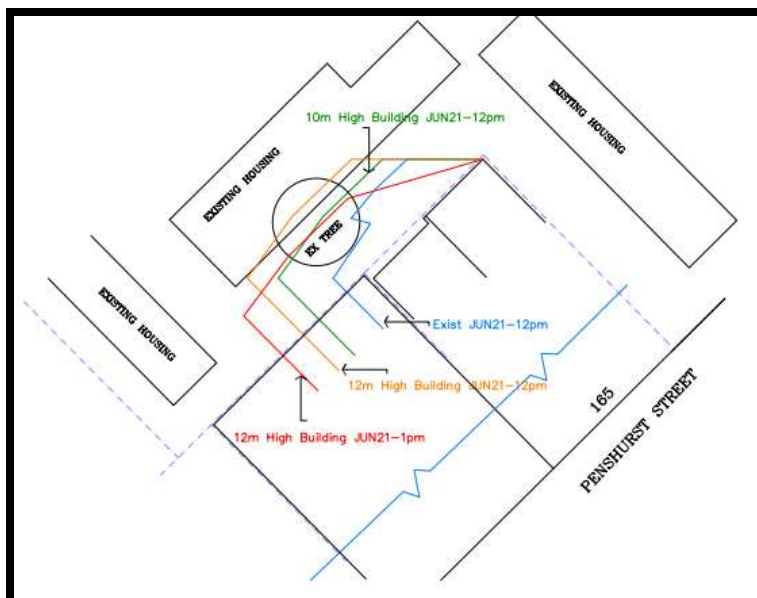
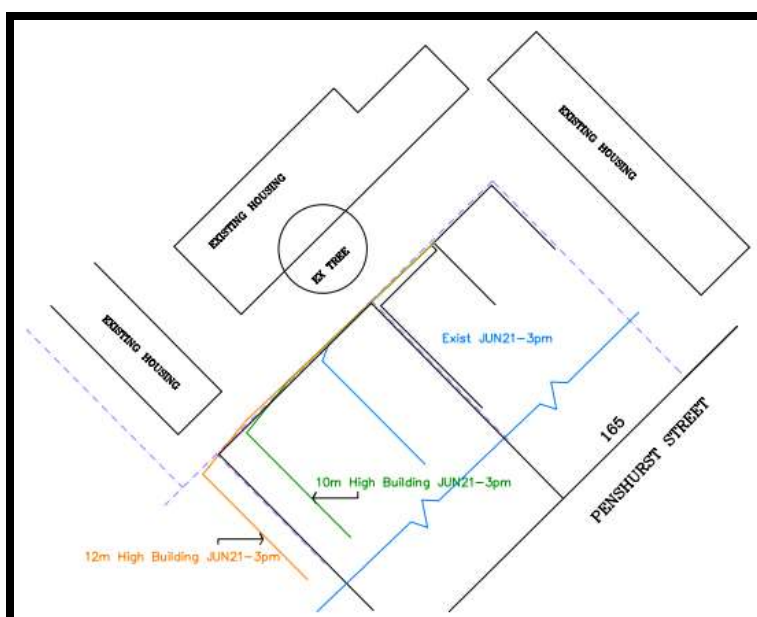


Figure 10: 12pm Winter shadow analysis



**Figure 11:** 3pm Winter shadow analysis

- The Applicant relies on the Draft LEP Planning Proposal to justify the height increase in relation to *transition in built form and land use intensity*. No assessment has been provided as to how the proposed increased height relates to surrounding built form or land use.
- Objective (e) relates to development in the Hurstville City Centre and does not relate to the subject site. The Applicant however again repeats the Draft LEP Planning Proposal intention to increase height in industrial zones to 12m-16m.

80. Without an assessment of the impacts of the proposal on the immediate locality and an analysis of the site and its surrounds, the Applicant has failed to adequately demonstrate how the variation meets the relevant objectives of the height standard.

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

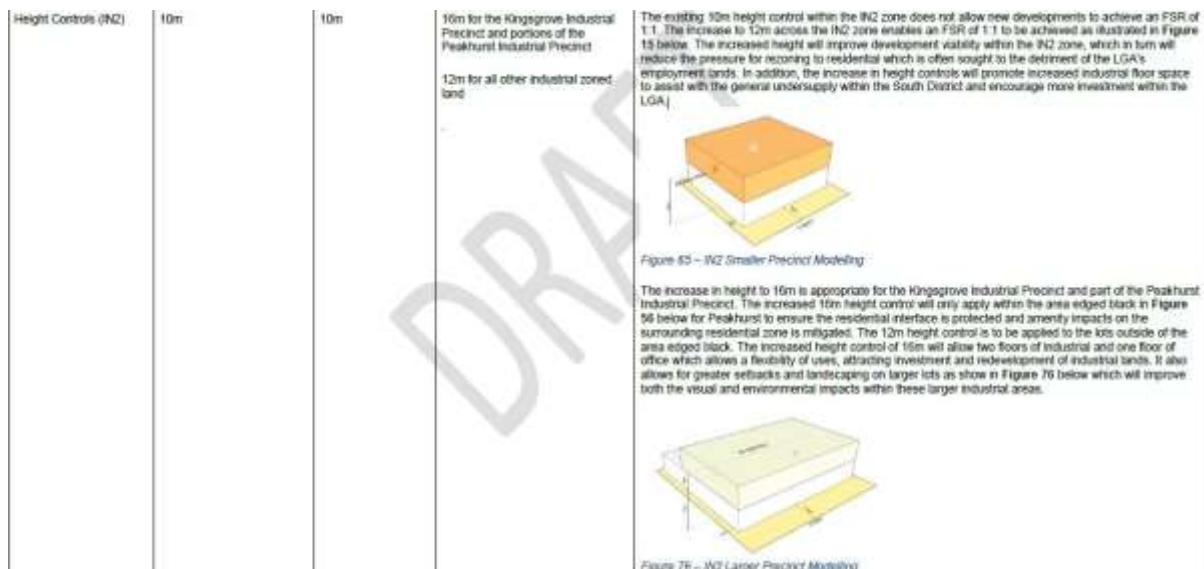
81. Having regard to Clause 4.6(3)(b) the written 4.6 variation requires fails to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

82. Applicants Comment:

- *The height departure will not appreciably additionally impact any adjoining or nearby development*
- *The height departure will result in there being only minor additional overshadowing of adjoining and nearby premises.*
- *The height departure will not result in there being any significant loss of privacy or loss of solar access to either the existing development or public areas and the public domain, including parks, streets and lanes.*
- *The height departure will result in there being more internal ceiling height for additional storage area so facilitating an appropriate land use servicing the local area.*
- *The height departure will not result in the built form of the development being incompatible with the height, bulk and scale of development in the existing locality (in particular, nearby development).*
- *The overall appearance of the building, when viewed from the street front, will be improved as a result of the carrying out of the proposed alterations and additions.*
- *The site is very close (some two streets away) to the King Georges Road business precinct, where the maximum permissible height limit is 12m and 15m respectively. As such business development of this height in the precinct is not unprecedented.*
- *The proposed development will not overly dominate the natural environment or surrounding built elements.*
- *The proposed height increase is consistent with the proposed GRLEP 2020, which is proposed to be made in December 2020 or January 2020.*
- *The draft GRLEP 2020, states that the current height controls on IN2 zoned lands do not currently allow appropriate development to occur.*
- *The existing 10m height control within the IN2 zone does not allow new developments to achieve an FSR of 1:1. The increase to 12m across the IN2 zone enables an FSR of 1:1 to be achieved.*
- *The increased height will improve development viability within the IN2 zone, which in turn will reduce the pressure for rezoning to residential which is often sought to the detriment of the LGA's employment lands.*
- *In addition, the increase in height controls will promote increased industrial floor space*

to assist with the general undersupply within the South District and encourage more investment within the LGA.

- The below image from page 12 of APPENDIX 3 – Development Standards Justification of Planning Proposal (PP2019/0004) for the new Georges River Local Environmental Plan 2020, shows Councils intentions to increase height for all IN2 zoned land ranging from 12m-16m depending on location.



- The proposal is consistent with Council future desired character for industrial lands, as it enables sustainable development to occur to encourage investment within the LGA.
- The site is located within an IN2 zoning which under the 2020 GRLEP will permit a maximum 12m building height, with which the proposal is inconsistent.

83. On its face, and looked at solely in numerical terms, the departure from, relevantly, the height of buildings development standard contained in clause 4.3A(2)(a) is not insignificant, particularly as respects the standard specified in clause 4.3A(2)(a)). However, when dealing with numerical non-compliances with development standards, each such non-compliance is a question of fact and degree and each case must be considered based on its own circumstances. In paragraph 3 of Circular B1 from the former Department of Planning, the Department stated:

*As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small **in others it may be numerically large**, but nevertheless be consistent with the purpose of the standard. [Emphasis added]*

84. We respectfully submit that the words of the Department quoted above are especially relevant to the numerical departures in this case. In this case, the departure from the control contained in clause 4.3(2) of HLEP could be seen to be 'numerically large' but, in and of itself, that is not a good reason, in planning terms or law, for rejecting a clause 4.6 written request.
85. Now, there is a common view abroad, namely, that any variation of a development standard greater than 10% cannot be approved under SEPP No 1 or clause 4.6. This view is not generally or ordinarily correct, although it does apply in respect of that category

*of clause 4.6 variation where subdivision into two or more lots is proposed in certain zones (refer clause 4.6(6) of HLEP).*

86. *The '10% opinion' is also said to arise from the then Department of Planning and Infrastructure Circular PS 08-14 of November 2008, in which it was stated that all development applications with SEPP 1 variations [sic] greater than 10% must be determined by full council rather than by the General Manager or staff members. This was a response to the findings of an ICAC investigation into corruption allegations affecting Wollongong City Council. As is clear from a proper reading of the Circular, it mostly affects the process for approval of non-compliant development applications rather than the nature of SEPP No 1 objections that may be agreed to by a council or the Court on appeal.*
87. *In all the circumstances, we respectfully submit to Council that there are sufficient environmental planning grounds to justify contravening the height of buildings development standard in this particular instance.*

### **5.3 Clause 4.6(4)(a)(i): Matters required to be addressed by clause 4.6(3)**

88. *As Preston CJ made clear in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [24], that which is to be tested against the requirements in cl 4.6(4)(a) and (b) is solely that element of the proposed development which exceeds the salient development standard. (See also Huajun Investments Pty Ltd v City of Canada Bay Council (No 3) [2019] NSWLEC 42 per Moore J at [154].)*
89. *The consent authority is to be satisfied (NOTE: that means 'reasonably satisfied', see R v Connell; Ex parte Hetton Bellbird Collieries Ltd (1944) 69 CLR 407) that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of HLEP, namely, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (refer clause 4.6(3)(a)), and that there are sufficient environmental planning grounds to justify contravening the development standard (refer clause 4.6(3)(b)).*

#### **Comment:**

90. *In light of the material contained in sections 5.3 and 5.4 of this written request, we respectfully submit that Council can be reasonably satisfied that the request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of HLEP.*
91. *In summary, the Applicant states the following as environmental planning grounds to justify the numerical non-compliance:*
- a) No additional impacts on adjoining development;
  - b) Minor additional shadowing of adjoining premises
  - c) No significant loss of privacy or solar access to private or public land;
  - d) More ceiling height for additional storage area;
  - e) Compatible built form;
  - f) Improved appearance of the building from the street;
  - g) Close proximity of the site to King Georges Road and land with height limits of 12m and 15m;
  - h) No dominance of the natural or built environment;
  - i) Consistent with Draft LEP height limit;
  - j) 10m height does not permit FSR of 1:1 – a 12m height will permit 1:1 to be achieved;

- k) Increased height will improve development viability in IN2 zone and reduce pressure for rezoning to residential;
  - l) Increased height will promote increased industrial floor space to assist with undersupply; and
  - m) The proposal is consistent with desired future character for industrial lands, enables sustainable development to encourage investment.
92. Points (a) through (f) relate broadly to the proposal itself, however it is not agreed that the proposal will improve the appearance of the building to the street, or to adjoining properties for that matter, rather the 'alterations and additions' serve to increase the volume of the building to accommodate more storage space. No evidence is provided that the built form is improved visually, the street façade is not activated and no information is provided in the way of montages, materials or finishes. In any case, additional volume and appearance are not sufficient environmental planning grounds.
93. Specifically, additional height to create additional internal storage space promotes the development as a whole and does not address the breach, and it is not necessary to breach the height to improve the appearance of the built form.
94. Minor additional shadowing of neighbouring properties (based on very limited physical evidence by way of architectural drawings) is an outcome of the proposal but not a justification for the breach and is not a sufficient environmental planning ground.
95. Points (g) through (m) do not relate specifically to the height breach and are not sufficient environmental planning grounds to justify the breach.

***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***

96. 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,"*

97. Applicants Comment:

***Objective 1***

98. *This objective seeks to minimise any adverse effect of industry on other landuses.*

***Comment:***

99. *The proposed development will not appreciably impact any adjoining or nearby development.*
100. *The height departure will result in there being only minor additional overshadowing of adjoining premises and will not result in there being any loss of privacy or loss of solar access to either the existing development or public areas and the public domain, including parks, streets and lanes.*



101. *In addition, the height departure will not result in the built form of the development being incompatible with the height, bulk and scale of the existing character (in particular, nearby development) and also the desired future character of the locality.*

102. *Accordingly, we submit that this objective is satisfied.*

**Objective 2**

103. *This objective seeks to encourage employment opportunities and to support the viability of centres.*

**Comment:**

104. *The carrying out of the proposed alterations and additions will make the proposed operation more efficient and effective, thus helping to lift the productivity of the facility. This should assist in increasing employment opportunities.*

105. *Accordingly, this objective is satisfied.*

**Objective 3**

106. *This objective seeks to minimise any adverse effect of industry on other land uses.*

**Comment:**

107. *The site is zoned IN2 Light Industrial but interfaces other land zoned residential. This zone interface has the potential to create conflicts in land uses. However, the carrying out of the proposed alterations and additions is not expected to have any appreciable adverse impacts on the use and enjoyment of nearby residentially zoned land.*

108. *Furthermore, the site, involves adaptive reuse of an old, run down site which is in much need of improvement to facilitate a safe and pleasant environment particularly near to residential development. The proposed use will be low impact.*

109. *Accordingly, we submit that this objective is satisfied.*

**Objective 4**

110. *This objective seeks to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

**Comment:**

111. *In our opinion, this zone objective is not directly relevant to the proposed development, however the land use does provide services for local residents.*

**Objective 5**

112. *This objective seeks to support and protect industrial land for industrial uses.*

**Comment:**

113. *The carrying out of the proposed alterations and additions will make the existing operation more efficient and effective and will also create a more user friendly industrial facility, thus supporting this industrially zoned site for ongoing industrial uses.*

114. *Additionally, the proposal is consistent with the relevant Section 9.1 Ministerial directions, specifically 1.1 Business and Industrial Zones;*

**1.1 Business and Industrial Zones**

**Objectives:**

- (a) encourage employment growth in suitable locations,
- (b) protect employment land in business and industrial zones, and
- (c) support the viability of identified centres.

115. The above objective has been identified in March 2020 within the Planning Proposal, APPENDIX 6 – Consistency with S9.1 Ministerial Directions for the proposed Georges River Local Environmental Plan 2020 (PP2019/0004). The objective is a key focus of Council's strategic direction to maintain and enhance industrial lands and to protect industrial land from being rezoned to residential.

116. Accordingly, we submit that this objective is satisfied.

**Objective 6**

117. This objective seeks to enable industrial development which does not pollute or adversely affect adjoining land, air or water.

**Comment:**

118. In view of the nature of the existing and proposed development, there is little potential for the development to pollute or adversely affect adjoining land, air or water.

119. The proposal involves relevant upgrades to the sites current condition improving stormwater handling which will mitigate impacts on the surrounding lands. It is a low intensity use the is expected to create minimal amenity issues.

120. Accordingly, we submit that this objective is satisfied.

**Objective 7**

121. This objective seeks to ensure industrial development creates areas that are pleasant to work in, safe and efficient in terms of transportation, land utilisation and service distribution.

**Comment:**

122. The carrying out of the proposed alterations and additions will make the existing operations not only more efficient and effective, as well as safer and more secure, but also aesthetically pleasing and more pleasant to work in, and also more visually attractive. The resultant development will

also be more efficient in terms of transportation, land utilisation and service distribution, noting that the site is in close proximity to major roads such as King Georges Road, Canterbury Road and the M5 Motorway.

123. Accordingly, we submit that this objective is satisfied.

124. Officers comment: The exceedance of the control is not inconsistent with the zone objectives.

125. The area of non-compliance is considered to be unreasonable and will establish an undesirable precedent given the current planning controls applicable to the site. The written request to vary the height standard is not well founded as it fails to provide sufficient environmental planning grounds to justify the breach. Rather it depends on the Draft George River LEP 2020 planning proposal.

126. Clause 1.8A of the draft LEP states:

*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.*

127. Accordingly the development standards in the Draft LEP do not remove the need to comply with, or in the alternative, demonstrate the requirements of Clause 4.6 have been suitably addressed, neither of which have occurred in this instance. Accordingly, the variation is not well founded and cannot be supported.

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

128. Concurrence from the Secretary has been obtained and can be assumed in this case.

129. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 however the statement is considered to not be well founded as there are insufficient environmental planning grounds to justify contravening the standard.

**Draft Georges River Local Environmental Plan 2020**

130. The Local Planning Panel considered the report on the outcomes of the Public Exhibition and Finalisation of Georges River Local Environmental Plan 2020 (DLEP2020) on 25 and 26 June 2020. In relation to this development site the zoning and floor space ratio are unchanged, however the height limit increases from 10m to 12m.

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

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

**DEVELOPMENT CONTROL PLAN**

**Hurstville Development Control Plan No 1**

133. The proposed development is subject to the provisions of the Hurstville Development Control Plan. The following comments are made with respect to the proposal considering the objectives and controls contained within the plan.

**3.1 Vehicle Access, Parking and Manoeuvring**

134. The proposal has been considered in accordance with the following controls.

Applicable DCP Controls	Standards	Proposal	Complies
PC1 General	Layout, Circulation, Access and Egress  DS1.5 Compliance with AS2890.1 2004 and AS2890.2 for design and	Proposal to comply with Australian Standards.	Yes

	layout of parking facilities		
	Stencilling of Driveways DS1.7 Driveways are to be plain concrete.	Driveway is to be plain concrete.	Yes
	Ramps, Transitions and Driveway Alignment levels to be obtained by engineering department	A condition would be included if the application were to be approved.	Yes
Discussion on parking	Parking for People with a Disability DS1.16 Parking complies with AS 1428 Design for access and mobility and AS/NZS 2890.6	One (1) accessible space proposed at the rear of the site - refer to discussion below.	No – refer to discussion below.
<p><u>Discussion on car parking</u></p> <p>In accordance with the Hurstville DCP No. 1, the use (warehouse) requires parking to be provided at a rate of 1 space per 300sqm floor area, which equates to 7 spaces for the proposal. The plans indicate 3 spaces at the front of the site and 4 spaces at the rear of the site.</p> <p>However the SEE submitted with the DA states “there is some space at the rear of the site which, although used and intended to be used for the most part as a loading zone, is used from time to time as space for informal parking....formal provision for onsite car parking is proposed at the front of the site in the form of car spaces for visitors and workers.”</p> <p>The parking at the rear of the site contains the only accessible parking space on the site. Relocation of that space to the front parking area would reduce the parking to two spaces.</p> <p>The formal parking provided on site is insufficient for the proposed use and this forms one of the reasons for refusal of the application.</p>			
	Car Washing Area DS1.20 Car wash bays to collect waste water and discharge to sewer in accordance with Sydney Water requirements.	Car wash bay not required	N/A
PC2 Environmental Design	DS2.1 Landscape plan to be provided	Landscape plan not provided.	No
	DS2.4 Parking areas to incorporate 150mm concrete kerb or edge treatment	Details not provided	No
	Drainage DS2.5 All parking areas are to have adequate drainage	Details not provided	No
Car parking rates – land located inside a business or industrial zone	Industrial warehouse 1 space per 300sqm = 7 min	3 spaces at front 4 spaces at rear – however SEE states will not be used for parking,	No – refer to earlier discussion on car parking

		rather loading area	
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### 3.3 Access and Mobility

135. One (1) accessible space has been provided on site however Access Report was not provided with the DA to confirm compliance with the relevant standards. It is also noted that the accessible space is located at the rear of the site where the applicant states in the SEE submitted with the DA will not be used as parking, but as a loading/unloading area.

### 3.4 Crime Prevention Through Environmental Design

136. The proposal is inconsistent with the principles contained within Crime Prevention Through Environmental Design. The proposal does not contain any opportunities for natural and passive surveillance of the public domain or the access driveway from the street to the loading areas at the rear of the site as the office spaces are located internally within each building.

### 3.5 Landscaping

137. The proposed landscaped area (29sqm or 1% of the site area) in the front setback does not meet the minimum DCP requirements for 10% landscaped area or a 3m wide strip (and no parking in the front setback). No Landscape Plan was submitted with the DA.

### 3.6 Public Domain

138. The proposal is consistent with the existing presentation of the building to the public domain, however no improvement has been made to activate the front façade or improve the presentation to Penshurst Street.

### 3.7 Stormwater

139. The proposal has been reviewed by Council's Development Engineer. The proposal fails to meet the requirements of Sections 3, 4 and 7 of the Georges River Stormwater Management Policy.

## 5.1 Light Industrial Areas

Applicable DCP Controls	Standards	Proposal	Complies
PC1. Density	FSR 1:1	0.779:1	Yes
PC3. Setbacks	4.5m	9m (existing)	Yes
	DS3.2 3m landscape strip in front setback	4m x 7.3m provided in south-eastern corner	No
PC4. Building Design	DS4.1 10m height of building	12m	No – refer to height discussion under LEP section of this report
	DS4.2 Materials schedule to be provided	A schedule of materials and finishes has not been provided.	No
	DS4.3 Materials to include face brick, concrete, metal and cladding	The plans indicate a mix of metal sheeting and brick, however very little detail is provided on the	No detail provided

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		plans and a materials and finishes schedule was not provided to allow a proper assessment of the visual impact of the proposed increase in height and associated changes in external finishes of the building.	
	DS4.4 Non-reflective material not greater than 20% on wall	Insufficient information has been provided to enable an assessment.	No detail provided
	DS4.6 Fencing not in landscape setback area	Fencing not proposed	Yes
	DS4.9 Buildings present satisfactory to street. No blank facades.	The front façade is not blank and contains a roller door and fire exit door.	Yes
	DS4.10 Architectural cutes to be integrated into design.	No architectural features are proposed.	N/A
PC5. Landscaping	DS5.1 Landscape plan to be provided	Landscape plan not provided – no additional landscaping proposed other than the existing in the front setback	No
	DS5.2 Survey plan to identify location of trees	Two trees shown on architectural plan; no Landscape Plan provided.	No
	DS5.3 Compatible species	Two trees shown on architectural plan; no Landscape Plan provided.	No
	DS5.4 Landscaping in front setback area to soften entrance	Two trees shown on architectural plan; no Landscape Plan provided.	No
	DS5.6 Species to grow to a consistent height	Two trees shown on architectural plan; no Landscape Plan provided.	No
	DS5.7 Building and driveways are to be setback 4m from trees and groups of trees assessed as significant.	Two trees shown on architectural plan; no Landscape Plan provided.	No
	DS5.8 Protective measures around trees to be provided with the development application.	Two trees shown on architectural plan; no Landscape Plan provided.	No

	DS5.10 Outdoor eating and sitting area to be provided at a rate of 1m <sup>2</sup> per employee with a minimum of 10sqm.	Not provided.	No
PC6. Vehicle Access and Parking	DS6.1 Car parking and loading bays to comply with Section 3.1 Vehicle Access, Parking and Manoeuvring.	Does not comply – refer to earlier discussion at Section 3.1.	No
	DS6.2 Access and Mobility provisions must comply with Section 3.3 Access and Mobility	Insufficient information provided to assess compliance.	Inadequate information
	DS6.3 Parking is to be provided at the rear of buildings or below ground level where possible	Car parking in front setback and at the rear of the site	No
	DS6.4 Design and Layout of parking facilities in accordance with relevant Australian Standards	Compliance with Standard.	Yes
PC7 Acoustics	DS7.1 Noise levels are not to exceed specific limits at boundary	No acoustic report provided	Insufficient information
	DS7.2 Acoustic report to be provided	No acoustic report provided	No
	DS7.3 Hours operation not adjoining or opposite residential are limited to 7.00am – 7.00pm Monday to Saturdays. Closed Sunday.	7.00am – 4.00pm Monday to Friday. 7.00am – 12.00pm Saturday Closed Sunday.	Yes
PC8 Energy Efficiency	DS8.1 Passive solar design to be incorporated into design	Not proposed	No
	DS8.2 ceiling insulation to be provided	Details not provided.	Insufficient information
	DS8.3 Use of solar hot water heaters and collectors	Details not provided.	Insufficient information
	DS8.4 Windows to be appropriately sized and shaded for heat load	Windows not proposed	N/A
	DS8.5 External shading devices	One awning proposed at rear of the site in front of one of the loading bays.	Yes
	DS8.6 Low energy fittings and appliances to be used	Details not provided.	Insufficient information
	DS8.7 minimisation of	Details not provided.	Insufficient



	water consumption dual flushing toilets and indigenous planting of species		information
	DS8.8 Position of service and metres	Details not provided.	Insufficient information
	DS8.9 Substation requirements to be satisfied.	Details not provided.	Insufficient information
PC9 Waste Management	DS9.1 Adequate storage area to be provided.	One bin area shown on plan – no waste management plan submitted	Insufficient information
	DS9.2 Garbage area to be provided capable of accommodating trade waste		
	DS9.3 Garbage areas and bulk waste to be shown on plans.		
	DS9.4 Garbage areas constructed of concrete floors		
	DS9.5 Garbage areas to have safe access.		
	DS9.6 Collection of waste roadway curves a minimum 11m radius		
	DS9.7 Sites of disposal of excavated material, demolition to be specified by the applicant within the DA		
	DS9.8 Proposal to comply with waste management policy		

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### Georges River Development Control Plan 2020

140. The Georges River Development control Plan was made by the Georges River Local Planning Panel on 24 March 2021.

141. This does not come into effect until the Georges River Local Environmental Plan is gazetted.

### Interim Policy Georges River Development Control Plan 2020

142. The proposed development is not subject to the provisions of the Interim Policy Georges River Development Control Plan 2020.

### IMPACTS

#### **Natural Environment**

143. No trees are impacted by the proposal and no adverse impacts on the natural environment have been identified.

#### **Built Environment**

144. The proposal complies with the maximum FSR development standards of Hurstville Local Environmental Plan 2012, however proposed a 2m breach of the 10m height of building standard.
145. The request to vary the height standard is not well founded and not supported.

### ***Social Impact***

146. No adverse social impacts have been identified as part of the assessment. The proposed self storage use would provide a benefit for a cross-section of the community however, the built form is not an appropriate outcome for the site.

### ***Economic Impact***

147. 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***

148. The site is zoned IN2 Light Industrial. The proposal is an innominate permissible land use within the zone, subject to development consent, however the request to vary the height standard is not well founded and not supported.

## **SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST**

149. The application was advertised and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. 11 submissions were received during the neighbour notification period.

### Self storage not being a permissible use in the zone

150. Comments: Self storage is an innominate permissible land in the IN2 Light Industrial zone. This means, as it is not listed as a prohibited land use in the Hurstville LEP 2012, the use is permissible with consent.

### Parking deficiency

151. Comments: In accordance with the Hurstville DCP No. 1, the use (warehouse) requires parking to be provided at a rate of 1 space per 300sqm floor area, which equates to 7 spaces for the proposal. The plans indicate 3 spaces at the front of the site and 4 spaces at the rear of the site, however the Statement of Environmental Effects submitted with the DA indicates the four spaces at the rear are 'informal' and will be used as a loading/unloading area. This forms one of the reasons for refusal of the application.

### Height non-compliance

152. Comments: The proposal seeks approval to vary the 10m height limit and proposes a height of 12m based on the proposed height limit for the site under the Draft Georges river LEP 2020. Council does not support the variation under the Hurstville LEP 2012 and this forms one of the reasons for refusal of the application.

### Delivery times

153. Comments: The proposed hours of operation are stated as 7am to 4pm (Mon to Fri), 7am to 12pm (Sat) and closed Sundays which are compliant with the maximum hours of operation for light industrial uses of 7am to 7pm (Monday to Saturday/Closed Sundays) in accordance with the Hurstville DCP No. 1.

### Asbestos contamination

154. Comments: Should the application be approved, conditions of consent would be included in relation to the management of asbestos in accordance with the relevant safety standards and guidelines.

Acoustic impacts

155. Comments: The applicant failed to provide an acoustic assessment report with the application. As such Council is unable to provide an assessment of the potential impacts, which forms one of the reasons for refusal of the application.

**Council Referrals**

Development Engineer

156. The proposal fails to meet Section 3, 4 and 7 of the Georges River Stormwater River Management Policy. This forms one of the reasons for refusal of the application.

Traffic Engineer

157. No objection raised, subject to conditions of consent should the application be approved.

Environmental Health Officer

158. A Detailed Site Investigation Report is required to satisfy the provision of SEPP 55. This forms one of the reasons for refusal of the application.

**External Referrals**

Ausgrid

159. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. No objection was raised and no conditions of consent required.

APA Group

160. No objection was raised and no conditions of consent required.

**Contributions**

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

**CONCLUSION**

162. The proposal has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act. The proposal is found to be an unsuitable development of the site.
163. The proposal has been assessed against the provisions of both Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1. The 2m breach of the 10m maximum height of buildings standard is not well founded and not supported.
164. The proposal fails to comply with various controls of Hurstville Development Control Plan No. 1 including the stormwater management, car parking, access and mobility, building design, acoustic impacts, energy efficiency and waste management.
165. For the above reasons, the proposal is recommended for refusal.

**DETERMINATION AND STATEMENT OF REASONS**Statement of Reasons

166. The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments except the height of the development. The 2m breach of the 10m maximum height of buildings standard is not well founded and not supported.
- The proposed development is not considered to be an appropriate scale and form for the site and the character of the locality given the current planning controls applicable to the site and the proposal.
- The application fails to demonstrate compliance with stormwater and drainage controls.
- 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

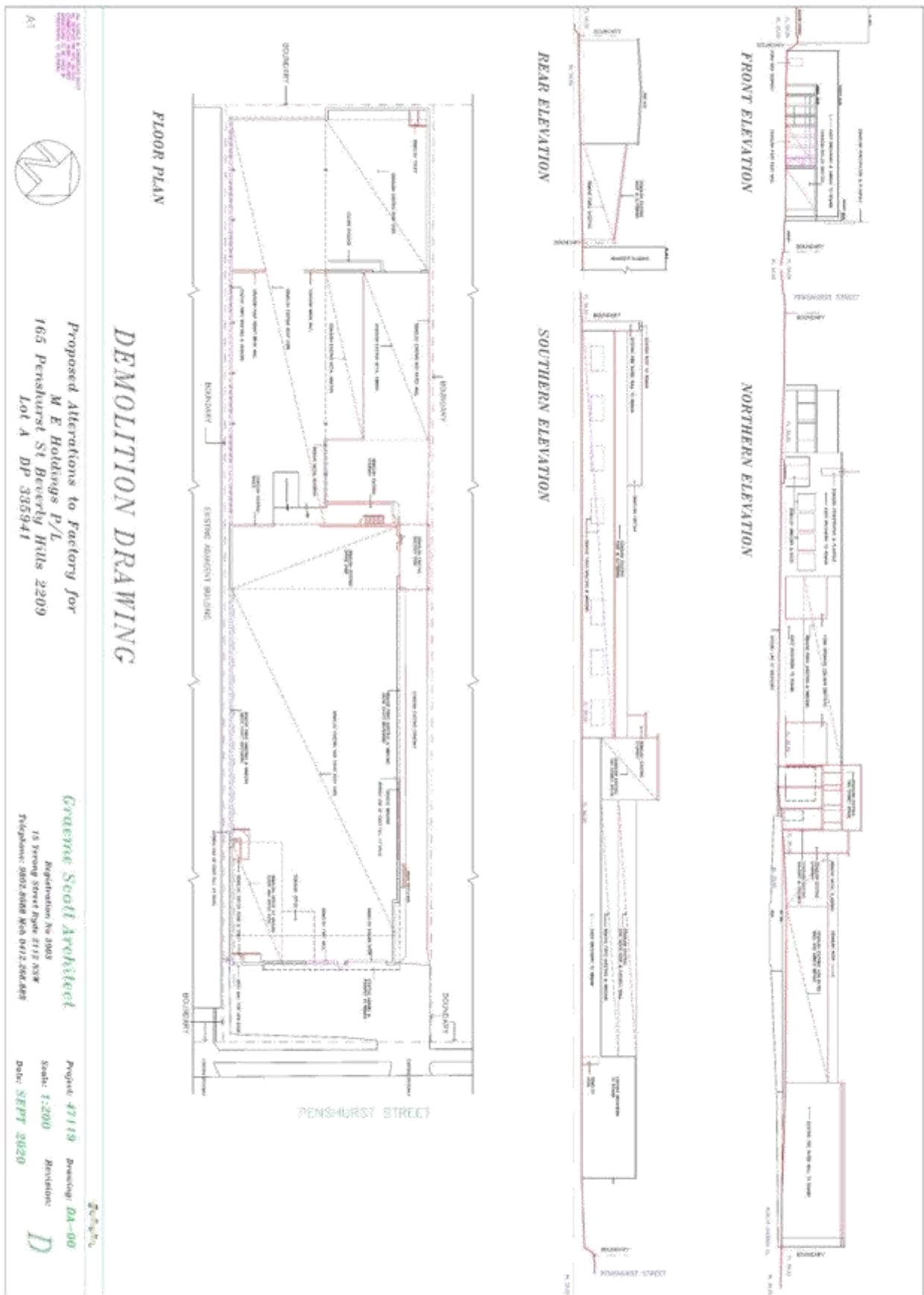
167. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended), Georges River Council refuse development consent to Development Application DA2021/0078 for alterations and additions to an industrial building and use of the premises as a self-storage facility at Lot A in DP335941 known as 165 Penshurst Street, Beverly Hills, for the following reasons:

1. The proposed development fails to demonstrate compliance with State Environmental Planning Policy No. 55 – Remediation of Land as a detailed site contamination report was not submitted with the application.
2. 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 4.3 – Height of buildings and the Clause 4.6 request to vary the standard is not well founded.
3. 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. 3.3 - Access
  - c. 3.6 – Public Domain;
  - d. 3.7 – Stormwater;
  - e. 5.1 – Building Design, Vehicle Access and Parking, Acoustics, Energy Efficiency and Waste Management.
4. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the 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 streetscape presentation. In addition, the proposed stormwater system fails to adequately drain the development.

- b. Social Impacts: An adverse impact would result from the proposed development on the amenity of the locality and general expectations for development adjacent to a low density residential area.
- 5. 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.
- 6. 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.

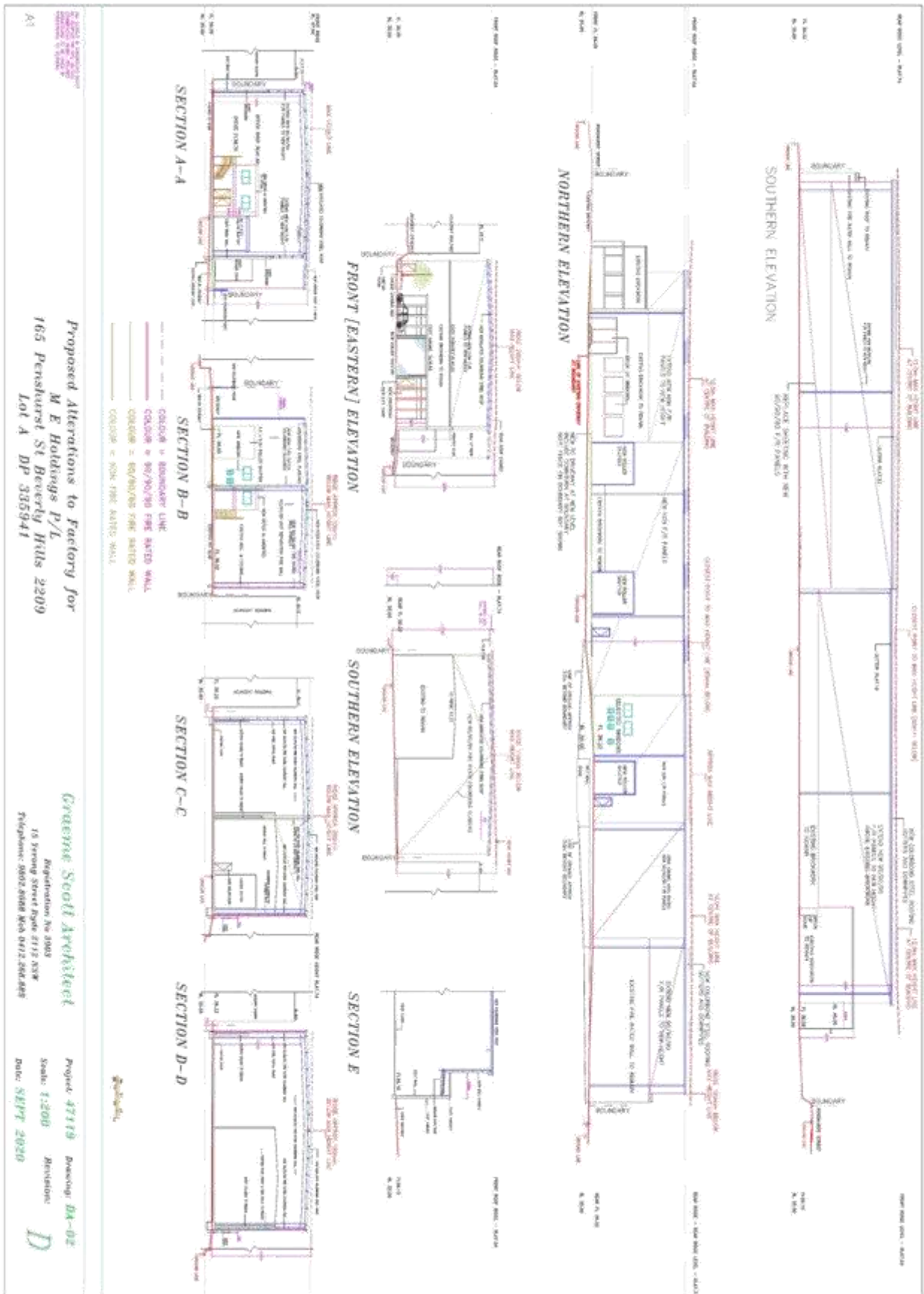
**ATTACHMENTS**

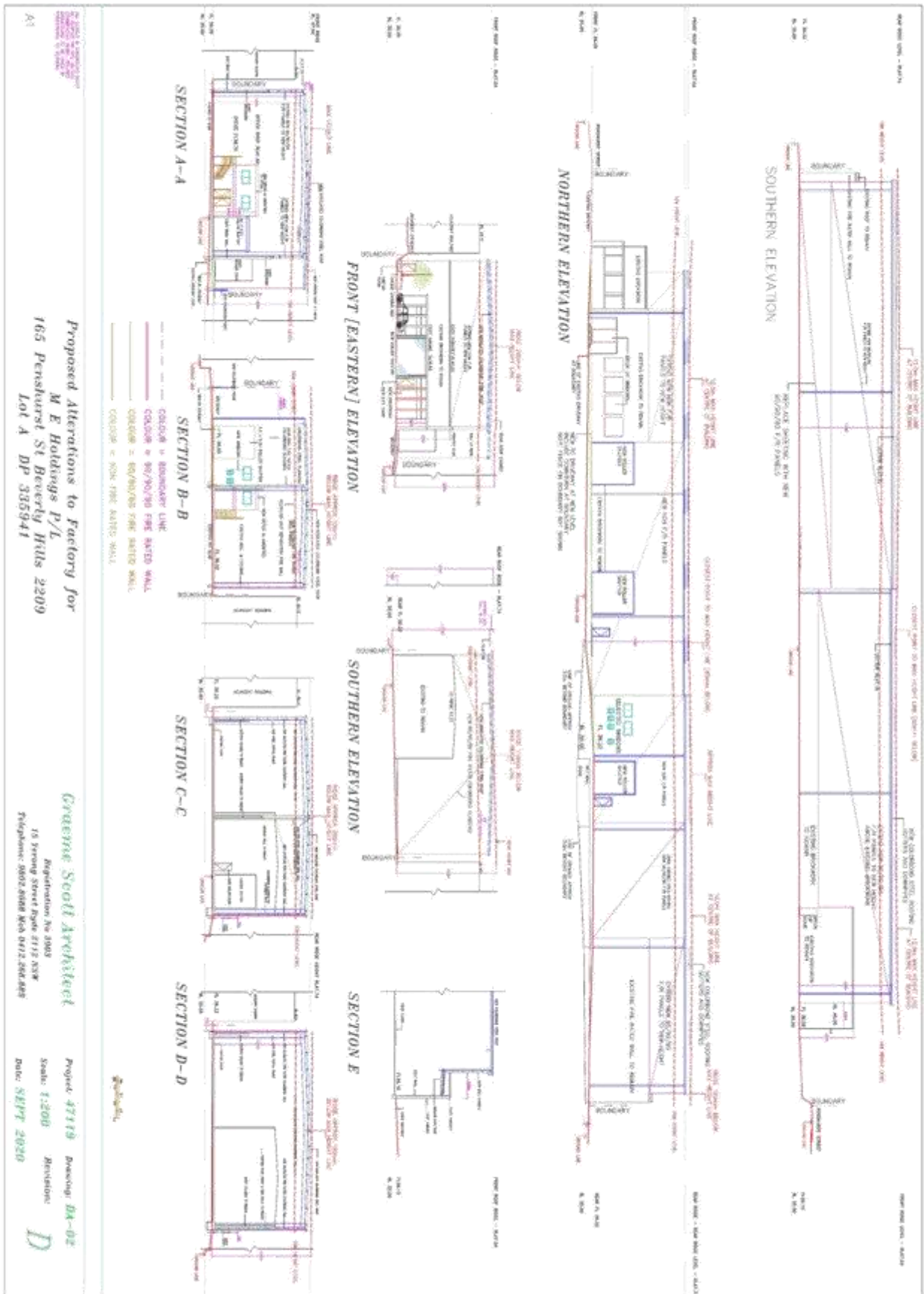
Attachment [↓](#) 1  Plans and Elevations - 165 Penshurst St Beverly Hills

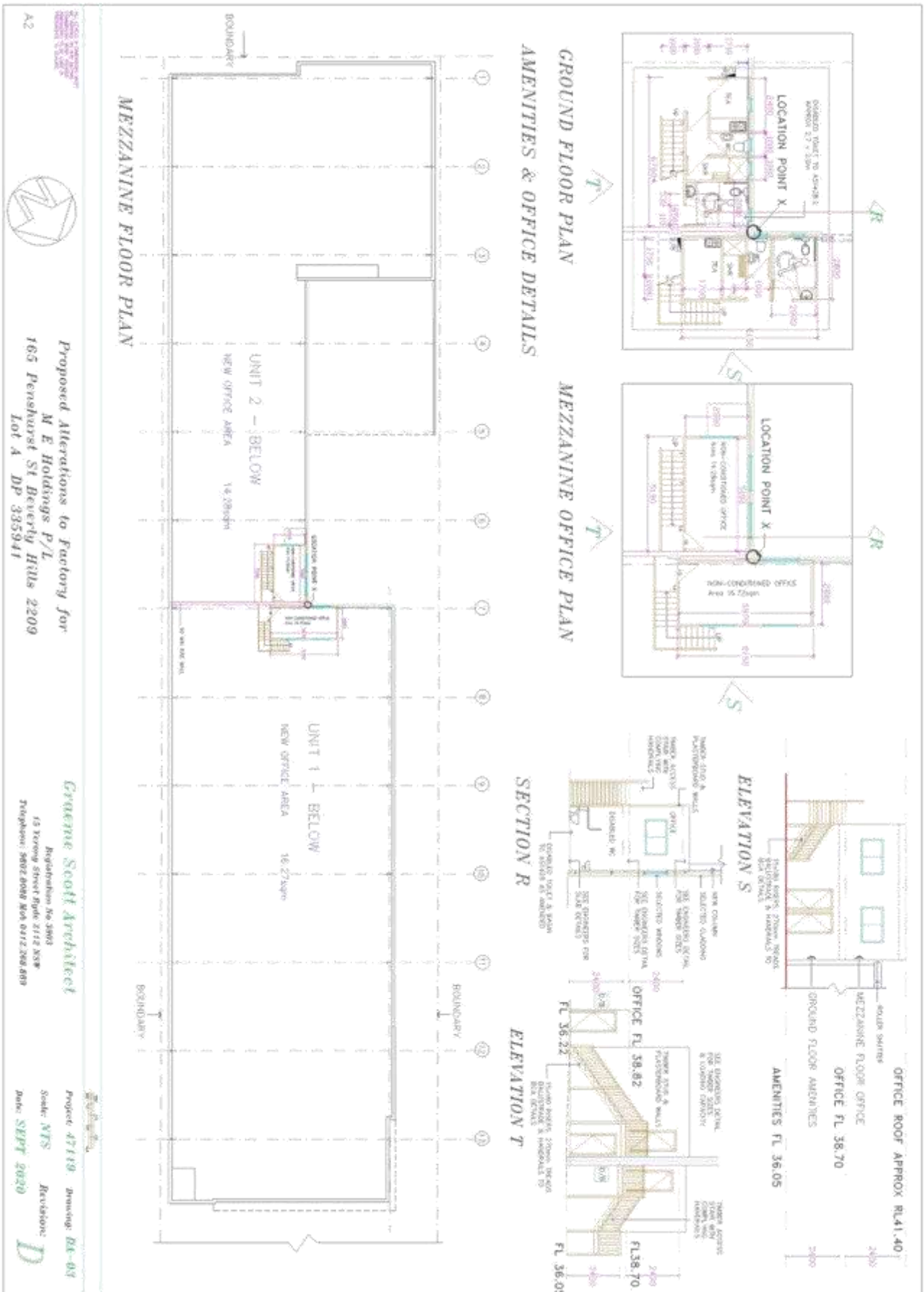


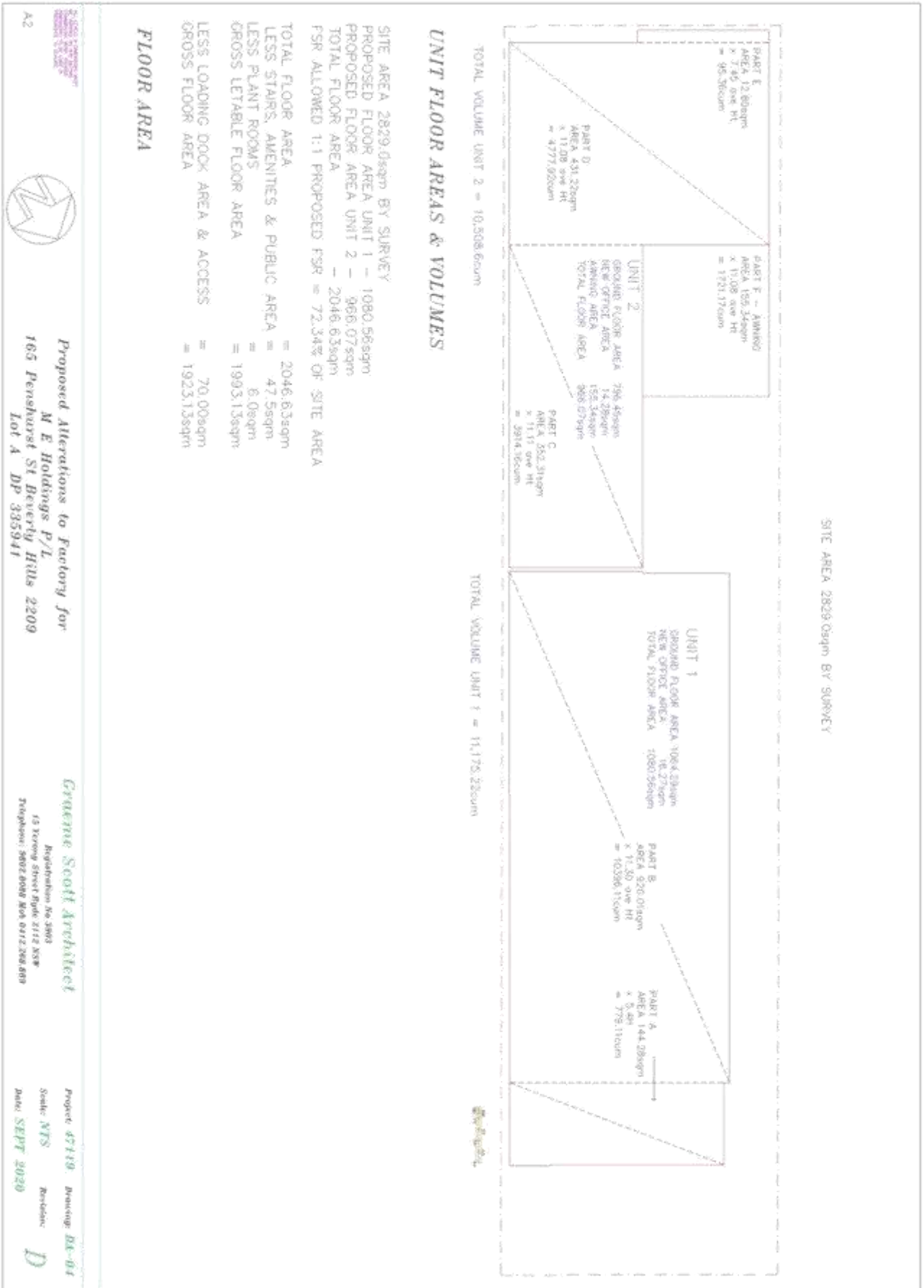
















**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 15 JULY 2021**

LPP030-21

<b>LPP Report No</b>	<b>LPP030-21</b>	<b>Development Application No</b>	<b>MOD2020/0234</b>
<b>Site Address &amp; Ward Locality</b>	120 and 120A Railway Parade Mortdale Blakehurst Ward		
<b>Proposed Development</b>	Modification to DA2017/0468 being an approved attached dual occupancy. The modifications seek consent for works already undertaken including enclosing the BBQ area, converting one car space to a study room and the addition of a rear balcony along the first floor of each dwelling		
<b>Owners</b>	Ms Xiaofen Mao		
<b>Applicant</b>	Eli Gescheit		
<b>Planner/Architect</b>	Planner: Navon Solutions / Architect: unknown		
<b>Date Of Lodgement</b>	17/12/2020		
<b>Submissions</b>	No submissions		
<b>Cost of Works</b>	Nil as works already completed		
<b>Local Planning Panel Criteria</b>	Variation to a development standard by more than 10%		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy No 55 – Remediation of Land, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental planning Policy – Infrastructure 2007, Greater Metropolitan Regional Environmental Plan No 2 - Georges River, State Environmental Planning Policy Infrastructure 2007, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Draft Environment State Environmental Planning Policy; Draft Remediation of Land SEPP; Draft Design and Place State Environmental Planning Policy; Draft Georges River Local Environmental Plan 2020, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Draft Georges River Development Control Plan.		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans; Statement of Environmental Effects, original approved plans (DA2017/0468)		
<b>Report prepared by</b>	Development Assessment Planner		

<b>Recommendation</b>	That part of the works proposed by the application be approved in accordance with the conditions included in the report. The remainder of the works are not supported.
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<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority</b>	

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

### Site Plan

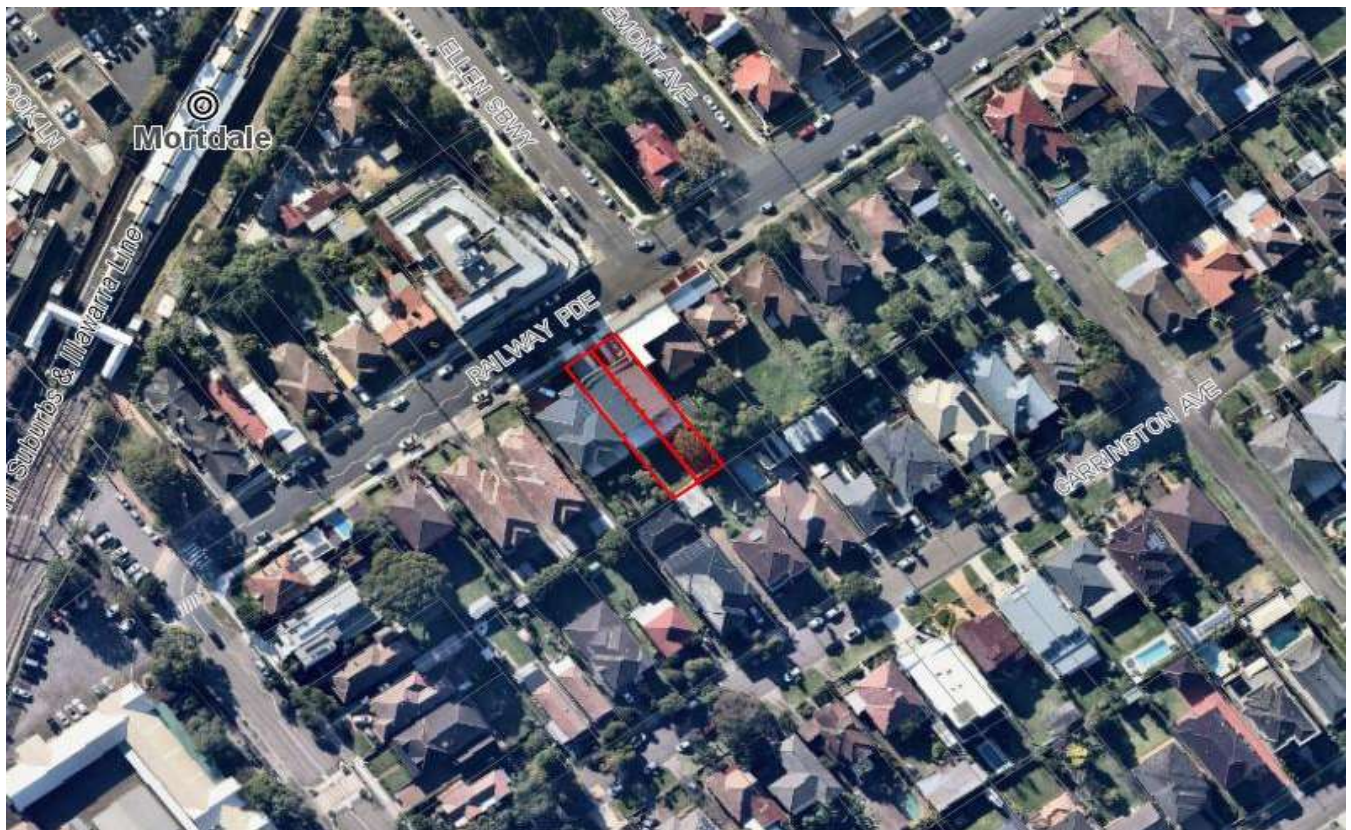


Figure 1 Site plan with the allotments outlined in red

## Executive Summary

### Proposal

- The Section 4.55 (1A) Modification Application is lodged to modify the original development application (DA2017/0468) which granted consent to the construction of an attached dual occupancy. The modification seeks the following amendments:



- Modification to the basement levels of both occupancies to convert the approved alfresco/BBQ area to an enclosed kitchen and bathroom and reconfiguration of approved layout.
  - Modification of ground floor of both occupancies to convert part of the approved double garages to a single garage and study room.
  - Modification of first floor of both occupancies to reconfigure the layout of the rear bedroom and balcony.
2. The modification to the basement and ground floor area have not been supported due to non-compliance with the required floor space ratio (clause 4.4A of KLEP 2012) with no real justification as to the variation provided and the adverse amenity impacts for future occupants. A condition has been imposed excluding these modifications from the approval. In addition the matter will be referred to Council's Compliance Unit to pursue the removal of the works not supported.

### Site and Locality

3. The site comprises two (2) allotments being 120 (Lot 1/DP1268608) and 120A (Lot 2/DP1268608) Railway Parade Mortdale as the subdivision of the dwelling has been effected. Each allotment contains an occupancy constituting the attached dual occupancy approved under DA2017/0468. The site observes a north western frontage to Railway Parade, a combined frontage of 15.24m, and a combined site area of 673.5sqm (120 Railway being 335.6sqm, 120A Railway being 337.9sqm). The site slopes to the rear.
4. The built form is contemporary in design with a parapet roof and rendered/clad finish. Both dwellings have separate driveways and pedestrian entries onto Railway Parade.
5. The locality is eclectic in nature with the adjoining sites containing a mix of dwelling house and commercial buildings and residential flat buildings. Opposite the site on Railway Parade is a B2 Local Centre zone containing a multi storey mixed use building with other approvals granted for shop top housing developments.
6. The site is void of significant trees except for a tree in the rear which will be retained and is void of any significant topographic features. Fronting the site is a power pole that will remain as existing.

### Zoning and Permissibility

7. The subject site is zoned R2 Low Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves seeking consent for alterations and additions to an approved dual occupancy which has been subdivided and are individual dwellings. Given the dual occupancy has been subdivided; the modification involves alteration works to two semi-detached dwelling. Semi-detached dwellings are a permitted use with consent as per KLEP 2012.

### Submissions

8. The application was placed on neighbouring notification between 24 December 2020 and 14 January 2021. No submissions were received objecting to the proposed development.

### Conclusion

9. Having regard to the matters for consideration under section 4.15(1) and S4.55 (1A) of the Environmental Planning and Assessment Act 1979 and following a detailed

assessment, the proposed modification application (MOD2020/0234) is recommended for partial approval subject to conditions for the reasons contained within this report.

## Report in Full

### Proposal

10. The Section 4.55 (1A) Modification Application is lodged to modify the original development application (DA2017/0468) which granted consent for the construction of an attached dual occupancy. It is noted that the dual occupancy has been subdivided and each dwelling is on its own lot. In detail, the modification seeks the following:

#### Basement floor

- Modification of the basement levels of both occupancies to convert the approved alfresco/BBQ area to an enclosed kitchen and bathroom,
- Reconfiguration of the approved layout (storage room and wine cellar).

#### Ground floor

- Modification of the ground floor of both occupancies to convert part of the approved double garage to a single garage and study room.
- Addition of a glass balustrade adjacent to the retreat area along the side facades of both occupancies.

#### First floor

- Modification of the first floor of both occupancies to reconfigure the layout of the rear bedroom and balcony.

Note: The modification to the basement and ground floor area have not been supported due to non-compliance with the required floor space ratio (clause 4.4A of KLEP 2012) with no acceptable justification as to the variation provided and adverse amenity impacts for future occupants. A condition has been imposed excluding these modifications from the approval. In addition Council's Compliance Unit will be advised on the non-support of these changes for action to be commended for the work to be removed and development being brought back into compliance with the approval granted.

11. Parts of the works are retrospective in nature, as the rear alfrescos have already been enclosed. The matter relates to the unauthorised enclosure of the rear alfrescos which has been the subject of an investigation by Council's Compliance team for investigation.

### The Site and Locality

12. The site comprises two allotments being 120 (Lot 1/DP1268608) and 120A (Lot 2/DP1268608) Railway Parade Mortdale. Each allotment contains a dwelling which constituted the attached dual occupancy approved under DA2017/0468. The site observes a north western frontage to Railway Parade, a combined frontage of 15.24m, and a combined site area of 673.5sqm (120 Railway being 335.6sqm, 120A Railway being 337.9sqm). The site slopes to the rear.
13. An attached and subdivided dual occupancy is located on the site. The development form is contemporary in design with a parapet roof and rendered/clad finish. Both dwellings have separate driveways and pedestrian entries onto Railway Parade.
14. The locality is eclectic in nature with the adjoining sites containing a mix of dwelling houses, residential flat buildings and commercial buildings. Opposite the site across

Railway Parade is a B2 Local Centre zone containing a multi storey mixed use building and other approved development for shop top housing.

15. The site is void of significant trees except for a tree in the rear which will be retained and is void of any significant topographic features. Fronting the site is a power pole that will remain as existing.



**Figure 2** Street view of site as per Officer inspection



**Figure 3** View of the development from the rear yard.

## Background

16. The site has seen a number of applications including:
  - a. Development Application 'DA2017/0468' granted consent for the construction of a dual occupancy on 1 March 2018.
  - b. Construction Certificate 'CC2018/0332' was issued by Ace Building Approvals (PCA) on 31 August 2018.
  - c. Occupation Certificate 'OCC2020/0259' was issued by Ace Building Approvals (PCA) on 28 May 2020.
  - d. Development Application 'DA2020/0233' was approved for the subdivision of an existing dual occupancy on 30 June 2020.
  - e. Subdivision Certificate 'SC2020/0167' was approved on 24 November 2020.
  - f. Application was referred to Council's Compliance team under 'BLD2021/0384' due to non-compliance with the approved plans regarding enclosing the rear alfresco area and internal configuration.

## PLANNING ASSESSMENT

17. The site has been inspected and the proposed development has been assessed under the provisions of Section 4.15(1) and Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979.

## ENVIRONMENTAL PLANNING INSTRUMENTS

### Environmental Planning and Assessment Act 1979

18. The proposal in part is considered to be consistent with the Objectives of the Act.

### Section 4.55 (1A) Modification

19. The proposal has been considered against relevant statutory provisions of Section 4.55 (1A) as follows:

*(1A) Modifications involving minimal environmental impact. A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

*(a) Is satisfied that the proposed modification is of minimal environmental impact*

20. Comment: The proposed modification is of minimal environmental impact and relates to various internal and external modification works. The proposed modifications will retain the approved building envelope.
21. Notwithstanding the above, the removal of the rear sheltered private open space area of both occupancies (rear alfresco) results in adverse amenity impacts for the occupants given the occupants will not have access to a primary sheltered open space area with the rear yard access. Enclosure of the alfresco areas also results in a breach of clause 4.4A of KLEP 2012 (floor space ratio for residential accommodation in Zone R2) with no acceptable justification provided for the exceedance.

22. Conversion of part of the approved garages to study rooms in each dwelling will result in less sheltered car spaces available to the occupants. Although the car parking rates of 1.5 car spaces/dwelling will still comply given hardstand parking is available, the overall FSR for each occupancy will breach clause 4.4A of KLEP 2012 (floor space ratio for residential accommodation in Zone R2) with no acceptable justification provided for the exceedance.
23. The other internal layout reconfiguration works along the basement and first floor are acceptable.
24. The alterations to each of the first floors is acceptable and is of minimal environmental impact. Reconfiguration of the storage and wine cellar room in each dwelling is also acceptable.
- (b) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
25. The proposed development as modified would represent substantially the same development as was originally approved DA2017/0468.
- (c) *It has notified the application in accordance with:*
- (i) *The regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *Has considered any submissions made concerning the proposed modification*
26. The application was placed on neighbouring notification between 24 December 2020 and 14 January 2021. No submissions were received objecting to the proposed development.

## STATE ENVIRONMENTAL PLANNING POLICIES

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

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

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

28. 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.

29. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
30. The proposed modifications primarily relate to internal and external changes to the existing development. Given the proposal is within the approved layout it is unlikely that the land is contaminated. In this regard, no further assessment is warranted with regards to site contamination and the objectives of SEPP 55 are considered to be satisfied.

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

31. The original BASIX Certificate was not required to be amended.

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

32. The main aims and objectives of this plan include but are not limited to the following:
  - *To maintain and improve the water quality and river flows of the Georges River and its tributaries and ensure that development is managed in a manner that is in keeping with the national, State, regional and local significance of the Catchment,*
  - *To protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*
  - *To ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
  - *To establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment,*
33. The modifications do not adversely impact the existing stormwater management of the site given all proposed works are within the existing building envelope.

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

34. The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:
  - (a) *improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
  - (b) *providing greater flexibility in the location of infrastructure and service facilities, and*
  - (c) *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
  - (d) *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
  - (e) *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
  - (f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and*
  - (g) *providing opportunities for infrastructure to demonstrate good design outcomes.*



35. The modification was referred to Ausgrid on in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. No comments were received from Ausgrid.

### **State Environmental Planning Policy Vegetation 2017**

36. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
37. The Vegetation SEPP applies to clearing of:
- (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
  - (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).*
38. The Vegetation SEPP repeals 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.
39. The proposal was not required to be referred to Council's Consultant Arborist given all works are within the existing building envelope. No trees are proposed to be removed.

### **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

#### **Draft Environment State Environmental Planning Policy**

40. 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.
41. The proposal is not inconsistent with the provisions of this Draft Instrument.

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

42. 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.

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

### **Draft Design and Place State Environmental Planning Policy**

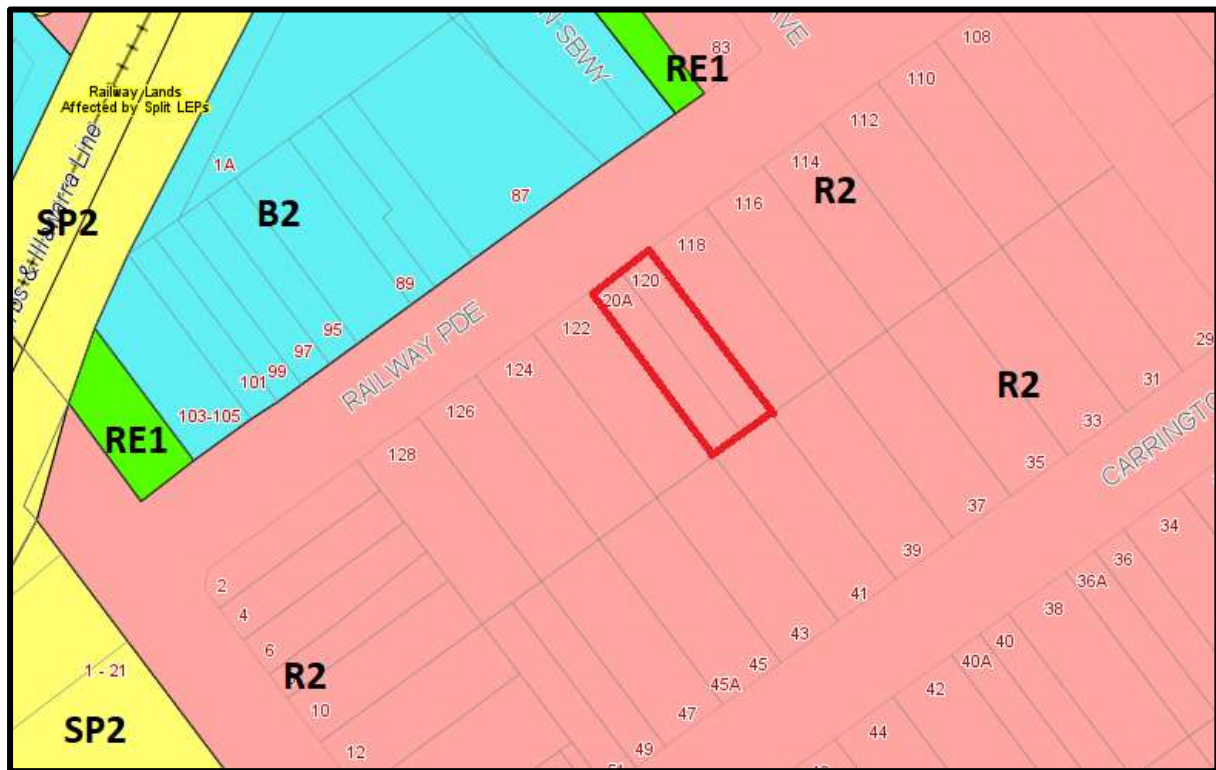
44. Consideration is given to the provisions of the Draft Design and Place State Environmental Planning Policy in the assessment of this application.
45. The New South Wales Department of Planning, Industry and Environment is exhibiting an Explanation of Intended Effect between 26 February 2021 and 28 April 2021 for the proposed Design and Place State Environmental Planning Policy.
46. The Design and Place SEPP will:
- Establish principles for the design and assessment of places in urban and regional NSW;
  - Establish matters for consideration and application requirements that collectively respond to each of the principles;
  - Provide a single point of reference for design-related considerations and performance criteria in the planning system;
  - Define scales of development – precincts and significant development, and all other development;
  - Introduce a robust and consistent design process through requirements for design skills, design evaluation and review, and design excellence;
  - Integrate a design-led, place-based approach, which includes embedding the draft Connecting with Country Framework;
  - Be supported by existing, revised and new guidance, including a revised Apartment Design Guide (ADG), a new Urban Design Guide (UDG), and revisions to the Building Sustainability Index (BASIX);
  - Repeal and replace SEPP No 65 – Design Quality of Residential Apartment Development and SEPP (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)
  - Consolidate design and place requirements in other SEPPs in the future.
47. The proposal is not considered to be inconsistent with the provisions of the Draft State Environmental Planning Policy.

### **ENVIRONMENTAL PLANNING POLICIES**

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

48. The subject site is zoned R2 Low Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves alteration and addition to an approved dual occupancy development. Given the dual occupancy has been subdivided; the modification involves an assessment of alterations and additions undertaken to each dwelling without prior consent being granted. The dwelling are not considered to be two semi-detached dwellings. Semi-detached dwellings are a permitted use with consent as per KLEP 2012.
49. The objectives of the R2 Low Density Residential as per clause 2.3 under the KLEP 2012 are:

- 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.



**Figure 4** Zoning map as per KLEP 2012 with the site highlighted in red (Source: Intramaps 2021).

50. An assessment with the KLEP 2012 provisions relevant to the amended plans is detailed within the following table.

**KLEP 2012 Compliance Table**

Clause	Standard	Comment	Complies
<b>Part 2 Permitted or prohibited development</b>			
2.3– Zone	R2 Low Density Residential	<p>The proposal is seeking consent for alterations and additions (works already completed) to an approved attached dual occupancy.</p> <p>The works proposed within the basement is considered to reduce occupant amenity due to the removal of the sheltered private open space, which is contrary to the first objective of the R2 zone.</p> <p>The nature of the proposed works within the ground floor are unacceptable as the works result in a breach in FSR under Clause 4.4A. The</p>	<p>No</p> <p>No</p>

		breach has not been supported by adequate justification and substantial basis on which a variation is required.	
		The works along the first floor are acceptable.	Yes
2.7 – Demolition	Demolition requires development consent	Internal demolition works to the layout of the basements is sought under this modification.	Yes

#### Part 4 Principal development standards

4.3 – Height of Buildings	9.0m as identified on Height of Buildings Map	As approved and is not being modified.	As approved
4.4A Floor space ratio	<p>(2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>Site area for 120 (Lot 1): 335.6sqm</p> <p>- FSR: 184.58sqm or 0.55:1</p> <p>Site area for 120A (Lot 2): 337.9sqm</p> <p>- FSR: 185.84sqm or 0.55:1</p>	<p>120 Railway (Lot 1):</p> <p>- 208.4sqm or 0.62:1</p> <p>120A Railway (Lot 2):</p> <p>- 208.4 or 0.61:1</p>	<p>No, refer to comment (1)</p> <p>No, refer to comment (1)</p>

#### Comment 1- FSR

The original dual occupancy was approved with an FSR of 382.071sqm or 0.57:1. The maximum permitted FSR at the time was 0.6:1. The maximum permitted FSR at the time was higher than the requirements of clause 4.4A (2) due to a discrepancy related to clause 4.4A (3) which included all R2 sites. The discrepancy was rectified in mid-2018.

*“4.4A(2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause. (In this case - Site area less than 650 square metres, maximum floor space ratio 0.55:1)*

*“4.4A(3) Despite subclause (2), the maximum floor space ratio for residential accommodation on land identified as “Area 1” on the Floor Space Ratio Map is not to exceed 0.6:1.”*

The proposed additional FSR is in breach of clause 4.4A by 12.9% for lot 1 and 12.13% for lot 2. The reason for the variation has not been justified within the submitted Statement of Environmental Effects and with no basis for the exceedance, the variation is not supported. It is considered that the removal of the basement private open space area to convert to a bathroom/kitchen reduces the amenity of the occupants due to loss of quality of living and recreational areas.

The variations are a sign of overdevelopment of the site and due to lack of strong merit in support of the variation, the proposed support of the changes to the basement and ground floor levels of both occupancies is not supported. A condition for the exclusion of these works from the approved plans has been imposed. The wine cellar and storage room reconfiguration works are acceptable and supported.

It is noted that the rear alfresco areas have been enclosed, the matter will be referred to Council's Compliance Unit for pursuance of the removal of the unauthorised works.

#### **Part 5 Miscellaneous provisions**

5.10 – Heritage Conservation	Consider the effect of development on heritage significance of heritage items and heritage assessment may be required.	The site is not listed as a heritage item in schedule 5 or within a heritage conservation area.	Yes
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#### **Part 6 Additional local provisions**

6.1 – Acid sulfate soils	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by acid sulfate soils.	Yes
6.2 Earthworks	(2) Development consent is required for earthworks unless— (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.	No earthworks are proposed as part of this application.	N/A
6.3 Flood planning	(2) This clause applies to — (a) land identified as “Flood planning area”	The proposed development is not located in a mapped flood prone area.	Yes

	on the Flood Planning Map, and (b) other land at or below the flood planning level.		
6.4 Limited development on foreshore area	(1) The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.	Site is not within a foreshore area.	N/A

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### DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020

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

### DEVELOPMENT CONTROL PLANS

#### Kogarah Development Control Plan 2013

53. The proposed development is subject to the provisions of Kogarah Development Control Plan 2013 (KDCP 2013).
54. The below DCP assessment does not consider matters which had been already assessed and approved under DA2017/0468. The assessment below relates only to the modifications proposed.

Clause	Standard	Proposed	Complies
<b>1.2 Building Scale and Height</b>			
1.2.1 Floor space Requirements	(1) The floor space ratio for dwelling houses must comply with the requirements in the table below:  Less than or equal to 650m <sup>2</sup> : 0.55:1	120 Railway (Lot 1): - 208.4sqm or 0.62:1  120A Railway (Lot 2): - 208.4 or 0.61:1	No
<b>1.4 Vehicular access, parking and circulation</b>			
(1) Car parking is to be provided in accordance with the requirements in Section B4.	1.5 car space per dwelling	1 car space provided within each garage and one on grade space forward of each garage.	Yes, however due to FSR exceedance the garage modifications



			are not supported.
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### **Interim Policy Georges River Development Control Plan 2020**

55. The proposal has been considered in accordance with the relevant provisions within the Georges River Council Interim Development Control Plan 2020. No specific clauses apply to the proposal.

### **Georges River Development Control Plan 2020**

56. The Georges River Development Control Plan was made by the Georges River Local Planning Panel on 24 March 2021. This does not come into effect until the Georges River Local Environmental Plan is gazetted.

### **IMPACTS**

#### ***Natural Environment***

57. The modified works are contained within the existing building footprint. The amended proposal will not result in changes to stormwater disposal or impact on any neighbouring or street trees.

#### ***Built Environment***

58. The modifications within the basement and ground floor of both occupancies result in a breach of the FSR which results in the reduction of occupancy amenity through the removal of outdoor recreation areas and an increase in bulk through the enclosure of this space. The variations are not supported due to insufficient justification and merit to warrant a development standard variation. The conversion of the previously approved private open space area into an enclosed kitchen and bathroom will reduce resident amenity and recreation space and is not supported.
59. The works proposed within the first floor are acceptable. Reconfiguration of the storage and wine cellar spaces is also acceptable.
60. Due to enclosing the rear alfresco areas without consent, the matter will be referred back to Council's Compliance Unit to pursue the removal of the unauthorised work and the reinstatement of the development in accordance with the approved plans.

#### ***Social and Economic Impacts***

61. The modifications to be supported are unlikely to result in any unreasonable social and economic impacts.

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

62. The development subject to the removal of the work not supported remains a suitable development for the site having regard to the land shape, topography, the built form and relationship to adjoining developments.

### **SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST**

63. The application was placed on neighbouring notification between 24 December 2020 and 14 January 2021. No submissions were received objecting to the proposed development.

#### **Council Referrals**

64. The application was not required to be referred to any internal teams.

#### **External Referrals**

### Ausgrid

65. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007 for consideration. Ausgrid did not object to the development or recommend any conditions.

### **Public Interest**

66. The amended proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. Following a detailed assessment, the proposed works within the basement and ground floor as modified are considered to be contrary to the public interest due to breach in the FSR and then increase in bulk and scale to there rear and the reduction on occupant amenity die to there being no undercover recreation area for the occupants and with no planning or architectural merit in the exceedance. The proposal will result in an undesirable precedence if the support of these unauthorised works are supported.
67. The reconfiguration of the storage and wine cellar rooms within the basement and the works within the first floor are acceptable and are not contrary to the public interest.

### **Section 7.11/7.12 Contributions**

68. Section 7.11/7.12 Contribution are not applicable to this modification.

### **CONCLUSION**

69. The application has been assessed having regard to Section 4.15 and Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies and the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013 and the Draft Georges River Local Environmental Plan 2020.
70. The proposal within the basement and ground floor of both occupancies has not been supported due to the lack of justification and merit to warrant a variation to clause 4.4A (Floor space) of Kogarah Local Environmental Plan 2012. The proposed works within the first floor of both occupancies is reasonable given the objectives of the controls have been adequately satisfied and the modification does not result in any unreasonable amendment to the built form or operation of the development or unreasonable impacts onto the adjoining allotments. Reconfiguration of the storage and wine cellar rooms is also acceptable.
71. Following a detailed assessment contained within this report, it is considered that MOD2020/0234 should be approved subject to the exclusion of the works associated with the BBQ area enclosure within the basement of each occupancy, and the construction of the study room within the ground floor of each occupancy which resulted in the removal of a car parking spaces associated with each dwelling. A number of conditions have been modified and added as referenced at the end of this report. (determination).

### **DETERMINATION AND STATEMENT OF REASONS**

#### Statement of Reasons

72. The reasons for this recommendation are:
- Although the development is considered to be substantially the same, the proposed modification to amend part of the basement floor and ground floor of both occupancies is not supported due to lack of justification and merit to warrant a development standard variation to clause 4.4A (Exceptions to floor space ratio for residential accommodation in Zone R2) of KLEP 2012.

- The removal of the rear private open space of both occupancies to their conversion to enclosed kitchens and bathrooms results in reduced occupant amenity and recreation area and is not supported.
- The modifications of the first floor of both occupancies are acceptable and will not result in unreasonable adverse noise or acoustic impacts. Reconfiguration of the storage and wine cellar rooms in each dwelling is acceptable and will not result in adverse impacts.
- The modifications to the first floor of both occupancies remains consistent with the objectives of the zone and the character of the locality and results in a development that is considered to be substantially the same.

### Determination

73. That pursuant to Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 (as amended), the Georges River Local Planning Panel grant partial approval to MOD2020/0234 which seeks to modify the development consent of DA2017/0468 as follows:

#### Conditions to be modified:

- Condition 1: Approved plans amended to make reference to the new plans.
- Condition 9: Required design change condition being amended to make reference to reverting the BBQ areas (basement level) and study rooms (ground floor) back to what was approved under DA2017/0468. These works are not supported by this determination.

#### Conditions to be added:

- Condition 40A: Condition added in relation to noise.
- Condition 40B: Condition added in relation to outdoor lighting.

### **CONDITIONS OF CONSENT (MOD2020/0234) modifying DA2017/0468**

#### **GENERAL CONDITIONS**

These conditions have been imposed to ensure that the development is carried out in accordance with the approved plans and to ensure that the appropriate fees and bonds are paid in relation to the development.

1. **Approved Plans** - The development 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	Issue	Prepared by
<i>Site Plan</i>	<i>07</i>	<i>21/03/2021</i>	<i>1</i>	<i>---</i>
<i>Basement Plan</i>	<i>00</i>	<i>21/03/2021</i>	<i>1</i>	<i>---</i>
<i>Ground Floor Plan</i>	<i>01</i>	<i>21/03/2021</i>	<i>1</i>	<i>---</i>
<i>First Floor Plan</i>	<i>02</i>	<i>21/03/2021</i>	<i>1</i>	<i>---</i>
<i>East &amp; West Elevations</i>	<i>03</i>	<i>21/03/2021</i>	<i>1</i>	<i>---</i>
<i>North &amp; South Elevations</i>	<i>04</i>	<i>21/03/2021</i>	<i>1</i>	<i>---</i>

Section	05	25/01/18	---	Tobias Chan
Roof Plan	20	04/09/15	---	Tobias Chan
Landscape Plan	LP01	04/10/17	---	Affordable Design Studio
Planting Schedule & Details	LP02	04/10/17	---	Affordable Design Studio
Stormwater Drainage Concept Plan & Details	17556-C01	23/09/17	A	Feng Consulting Engineers

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**(This condition is amended as part of MOD2020/0234 (DA2017/0468))**

## **SEPARATE APPROVALS UNDER OTHER LEGISLATION**

These conditions have been imposed to ensure that the applicant is aware of any separate approvals required under other legislation, for example: approvals required under the Local Government Act 1993 or the Roads Act 1993.

2. **Section 138 Roads Act 1993 and Section 68 Local Government Act 1993** - Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

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

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

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

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

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

3. **Vehicular Crossing - Minor Development** - Constructing a vehicular crossing and/or footpath requires a separate approval under Section 138 of the Roads Act 1993 prior to

the commencement of those works.

To apply for approval, complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Georges River Council's Website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au). Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Section P1 and P2, in Council's adopted Fees and Charges for the administrative and inspection charges associated with Vehicular Crossing applications.

An approval for a new or modified vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out in accordance with Council's specifications applicable at the time, prior to the issue of an Occupation Certificate.

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

#### REQUIREMENTS OF OTHER GOVERNMENT AGENCIES

These conditions have been imposed by other NSW Government agencies either through their role as referral bodies, concurrence authorities or by issuing General Terms of Approval under the integrated development provisions of the Environmental Planning and Assessment Act 1979.

5. **Sydney Water - Tap in TM** - The approved plans must be submitted to a Sydney Water Tap in TM to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in TM agent has appropriately stamped the plans prior to the issue of the Construction Certificate.
6. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

7. **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 Certificate.

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

These conditions either require modification to the development proposal or further investigation/information prior to the issue of the Construction Certificate to ensure that there is no adverse impact.

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

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

Please contact Council prior to the payment of Section 94 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:

<b>Fee Type</b>	<b>Fee</b>
<b>GENERAL FEES</b>	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://portal.longservice.nsw.gov.au/bci/levy/">https://portal.longservice.nsw.gov.au/bci/levy/</a>	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$150.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Kogarah Section 94 Development Contributions Plan No.1 - Roads and Traffic Management - Residential	\$892.53
Kogarah Section 94 Development Contributions Plan No.5 - Open Space 2007	\$10,310.24
Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries - Buildings	\$345.57
Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries - Books	\$246.39

### **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.

Further Information

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

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

- a) The individual garages are to be setback 6.2m and 7.2m respectively from the street frontage boundary.
- b) The southwestern dwelling is to be reduced in height such that no point on its roof exceeds RL51.1 based on Australian Height Datum.
- c) The dividing wall between the dwellings is to be reduced in height such that no point on its parapet exceeds RL51.1 based on Australian Height Datum.
- d) The rear first floor balconies of both dwellings and associated balustrades enclosing these balconies are to be deleted.
- e) The 1.8m high privacy screens at first floor level to the rear of the building are to be deleted.
- f) The external sliding doors associated with bedroom 3 of both dwellings are to be modified to windows with minimum sill heights of 1m.
- g) The outer perimeters of the recessed side balconies at the ground floor level of both dwellings are to include privacy screens of 1.35m in height and translucent material (i.e. frosted glass) for the entirety of those perimeters.
- h) The proposed fill as depicted on the side elevations is not to extend beyond the footprint of the ground floor level of the building.
- i) ***The areas highlighted in yellow on the approved basement plan (project number 02, drawing 00, dated 21/03/2021) are not approved and the floor plan is to be returned to the open BBQ areas as per the approved plans of DA2017/0468.***
- j) ***The study rooms on the approved ground floor plan (project number 02, drawing 01, dated 21/03/2021) are to be removed and the floor plan returned to the car parking spaces within the approved garage area as per the approved plans of DA2017/0468.***

**(This condition is amended as part of MOD2020/0234 (DA2017/0468))**

10. **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 excavation and 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 excavation) and must remain until works are completed and all exposed surfaces are landscaped/sealed.

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

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

The Detailed Stormwater Plan is to be certified by a professional engineer specialising in hydraulic engineering. A Statement that the stormwater system has been designed in accordance with the document 'Water Management Policy. Kogarah Council. August 2006' and satisfies the provisions and objectives of that policy must be included with the Stormwater Detailed Plan.

The Detailed Stormwater Plan is to address the following issues:

- a) The proposed design levels are to be removed from the strip drains on both driveways at the front boundary. A note is to be included that states that 'The driveway boundary levels are to be in accordance with the Council plan as issued through the Driveway Application process.'
- b) The design top water level of each On-site Detention system is to be no higher than 300mm below all adjacent finished floor levels.
- c) The plan is to show detail of how the runoff from all roof and hard paved areas is to be collected and discharged to the stormwater system.
- d) Overland flow routes are to be detailed from the On-site Detention systems to the street gutter in case of the systems becoming blocked or reaching capacity.

The Detailed Stormwater Plan is to be certified by a professional engineer specialising in hydraulic engineering. A Statement, that the stormwater system has been designed in accordance with the document 'Water Management Policy. Kogarah Council. August 2006' and satisfies the provisions and objectives of that policy along with the requirements stated above must be included with the Detailed Stormwater Plan.

12. **On Site Detention** - A 6m<sup>3</sup> On-Site Detention system with a Maximum Site Discharge of 6.5 Litres per Second is to be provided for each dwelling in accordance with the Stormwater Concept Plan and associated Design Assessment Report. The overflow is to be directed to the site drainage system.

A minimum 9000L of rainwater tank storage for reuse is to be provided for each dwelling in accordance with the Concept Stormwater Plan. The overflow from the tank is to be directed to the site's drainage system. The rainwater tank system is to be installed in accordance with the Australian Government, National Water Commission's "HB 230-2008 Rainwater Tank Design and Installation Handbook". The rainwater is to be connected to a minimum of the flushing for one toilet and for outside irrigation.

13. **Stormwater Drainage** - All roof water and surface water from paved or concreted areas are to be disposed of in accordance with the Detailed Stormwater Plan by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3:2015.

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

- (a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$1,900.00**
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$150.00**
- (c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

15. **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 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.

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

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

17. **Traffic Management - Compliance with AS2890** - The internal driveways shall be

designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities).

18. **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 and/or extraction works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.
19. **Tree Protection and Retention** - The existing tree located at the rear of the site (as detailed on the approved landscape plan) is to be retained and protected and such details are to be included on the Construction Certificate plans.

#### **General Tree Protection Measures**

- (a) All trees to be retained shall be protected and maintained during excavation and construction on the site.
- (b) The tree protection measures must be undertaken in accordance AS4970 -2009 Protection of trees on development sites.
- (c) Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a suitably qualified Arborist (AQF Level 5 or above in Arboriculture).
- (d) The Arborist must be present on-site during the stages of construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone to implement the tree protection measures as required.
- (e) Unless otherwise specified in AS 4970-2009, a protective fence consisting of 1.8 metres high, fully supported chainmesh fence shall be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ required by the above standard. 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.
- (f) No services shall be installed within the TPZ of the tree unless approved by Council. This fence shall be kept in place during construction and also have a sign displaying 'Tree Protection Zone' attached to the fence and must also include the name and contact details of the Project Arborist.

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

- (g) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not adversely be affected.
- (h) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.
- (i) Tree Protection Zone around the trees to be retained are not to have soil level changes or services installed in this area. Any structures proposed to be built in this

area of the trees are to utilise pier and beam or cantilevered slab construction.

Details satisfying this condition shall be shown on the Construction Certificate plans.

20. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 853910M must be implemented on the plans lodged with the application for the Construction Certificate.

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

These conditions have been imposed to ensure that all pre-commencement matters are dealt with and finalised prior to the commencement of work.

21. **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 Council’s Engineers for their records.
22. **Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:
- (a) Set out before commencing excavation.
  - (b) Floor slabs or foundation wall, before formwork or commencing brickwork.
  - (c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
  - (d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
  - (e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
  - (f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
  - (g) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

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

23. **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 WORK**

These conditions have been imposed to ensure that there is minimal impact on the adjoining development and surrounding locality during the construction phase of the development.

24. **Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works

(including 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.

25. **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.
26. **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.

27. **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.
28. **Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council and subject to compliance with the design changes required by other conditions of this development consent.

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

These conditions have been imposed to ensure that all works have been completed in accordance with the Development Consent prior to the issue of the Occupation Certificate.

29. **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.*
30. **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.
31. **Works as Executed and Certification of Stormwater works** - Prior to the issue of an Occupation Certificate, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be forwarded to the PCA and Council, from a professional engineer specialising in hydraulic engineering.

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

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

- (a) The location of any detention basin/s with finished surface levels;
- (b) Finished site contours at 0.2 metre intervals (if applicable)
- (c) Volume of storage available in any detention areas;
- (d) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
- (e) The orifice size/s (if applicable);
- (f) Details of any infiltration/absorption systems; and (if applicable);
- (g) Details of any pumping systems installed (including wet well volumes) (if applicable).

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

- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (c) Construct any new vehicle crossings required.
- (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
- (e) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.

33. **Vehicular crossing - Minor development** - The vehicular crossing and/or footpath works shall be constructed by a private contractor at the expense of the applicant, in accordance with the Vehicular Crossing Approval issued by Council's Engineering Services Division and in accordance with Council's Specification for Vehicular Crossings and Associated Works and the issued.

Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

NOTE: No stencilled or coloured concrete may be used outside the boundary of the property.

The work must be completed before the issue of an Occupation Certificate.

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



35. **Completion of Landscape Works** - All landscape works must be completed before the issue of the Final Occupation Certificate.
36. **Driveways and parking spaces - Minor Development** - Internal driveways are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface.

### ONGOING CONDITIONS

These conditions have been imposed to ensure that the use or operation of the development does not adversely impact on the amenity of the neighbourhood or environment.

37. **Stormwater Drainage** - All roof water and surface water from paved or concreted areas are to be disposed of in accordance with the Detailed Stormwater Plan by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3:2015.
38. **Non-Trafficable Roofs** - The concrete roof slabs immediately adjacent to the rear of the first floor level of both dwellings are to be non-trafficable.
39. **Use of Dwellings** - No parts of the dwellings are to be used, or adapted for use, as separate domiciles.
40. **Use of Basement Floor Levels** - No parts of the basement floor levels are to be used as a 'habitable room' as defined in the Building Code of Australia.
- 40A. **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).*

(This condition is added as part of MOD2020/0234 (DA2017/0468))

- 40B. **Outdoor Lighting** - *To avoid annoyance to the occupants of adjoining premises or glare to motorist on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.*

(This condition is added as part of MOD2020/0234 (DA2017/0468))

### ADVICE

This advice has been included to provide additional information and where available direct the applicant to additional sources of information based on the development type.

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

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

42. **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.

43. **Torrens Title Subdivision of a Dual Occupancy Development** - A separate development application is required to be lodged with Council for the Torrens Title Subdivision of a Dual Occupancy. Development consent for Torrens Title Subdivision cannot be granted until after the final Occupation Certificate has been issued for the Dual Occupancy Development.

44. **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.

45. **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:

(a) Complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Georges River Council's Website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).

(b) In the Application Form, quote the Development Consent No. (eg. 2012/DA) 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 Vehicular Crossing applications.

An approval for a new or modified vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out by a private contractor in accordance with Council's specifications prior to the issue of an Occupation Certificate.

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

carry out the approved development.

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

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

46. **Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.

#### **Schedule B – Prescribed Conditions**

Prescribed conditions are those which are mandated under Division 8A of the *Environmental Planning and Assessment Regulation 2000* and given weight by Section 80A (11) of the Environmental Planning and Assessment Act 1979.

Detailed below is a **summary** of all the prescribed conditions which apply to development in New South Wales. Please refer to the full details of the prescribed conditions as in force, at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

It is the responsibility of the beneficiary of this consent to determine which prescribed conditions apply.

47. **BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
48. **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.
49. **Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifying Authority and the Principal Contractor.
50. **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.
51. **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.

52. **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.

### **Schedule C – Operational & Statutory Conditions**

These conditions comprise the operational and statutory conditions which must be satisfied under the Environmental Planning and Assessment Act 1979 and the Environmental Planning & Assessment Regulation 2000. Please refer to the full details of the Act and Regulations as in force, at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

It is the responsibility of the beneficiary of this consent to determine which operational and statutory conditions apply.

53. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited certifier.

An application form for a **Construction Certificate** is attached for your convenience.

54. **Appointment of a Principal Certifying Authority** - The erection of a building must not commence until the beneficiary of the development consent has:

- (a) appointed a Principal Certifying Authority (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, then the beneficiary of the consent 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 Principal Certifying Authority for your development.

55. **Notification of Critical Stage Inspections** - No later than two (2) 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 beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

56. **Notice of Commencement** - The beneficiary of the development consent must give at least two (2) 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.

57. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifying Authority. 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.

58. **Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the principal certifying authority at least 48 hours before each required inspection needs to be carried out.




Where Georges River Council has been appointed PCA, forty eight (48) hours notice in writing, or alternatively twenty four (24) hours notice by facsimile or telephone, must be given to when specified work requiring inspection has been completed.

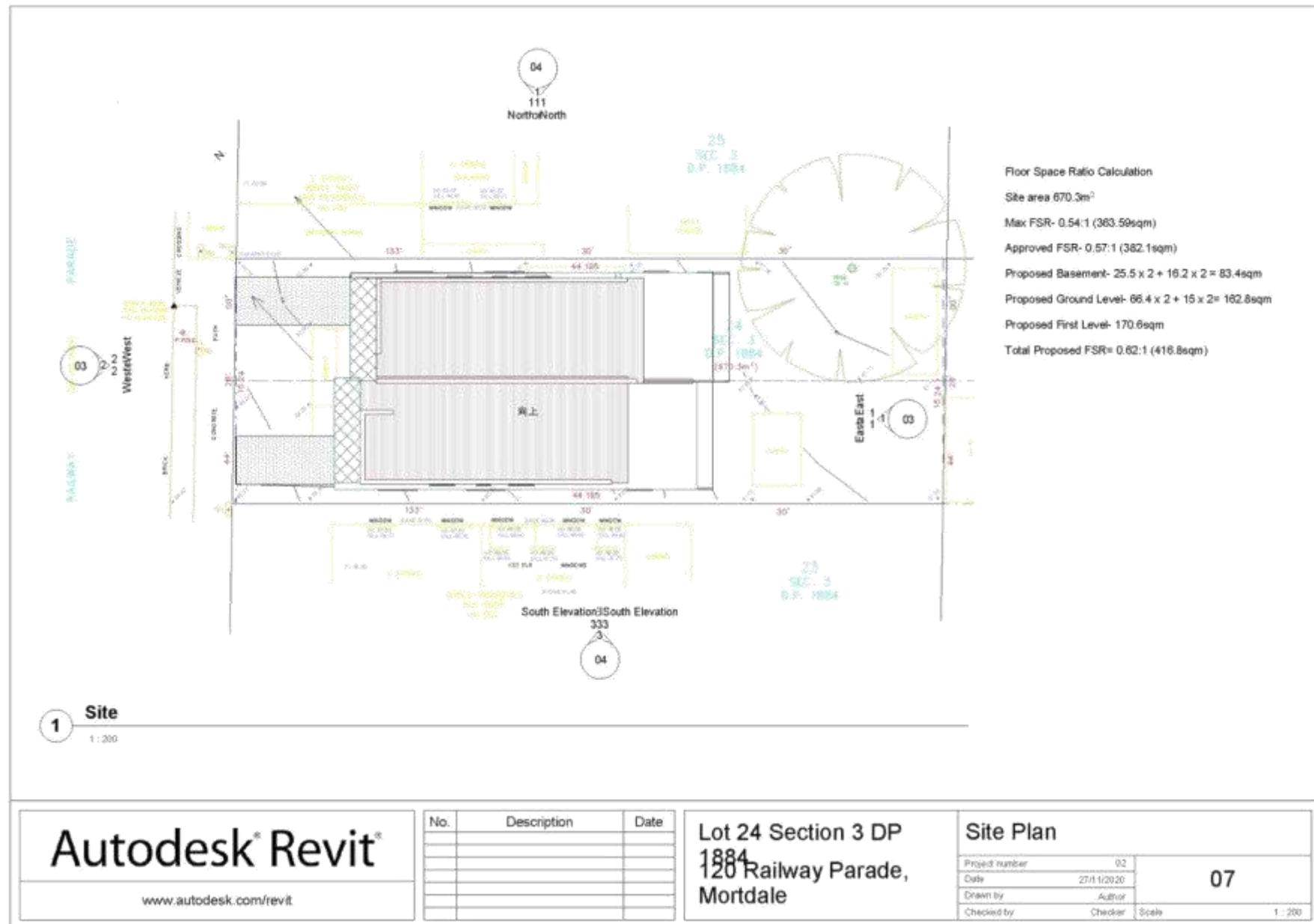
59. **Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part.

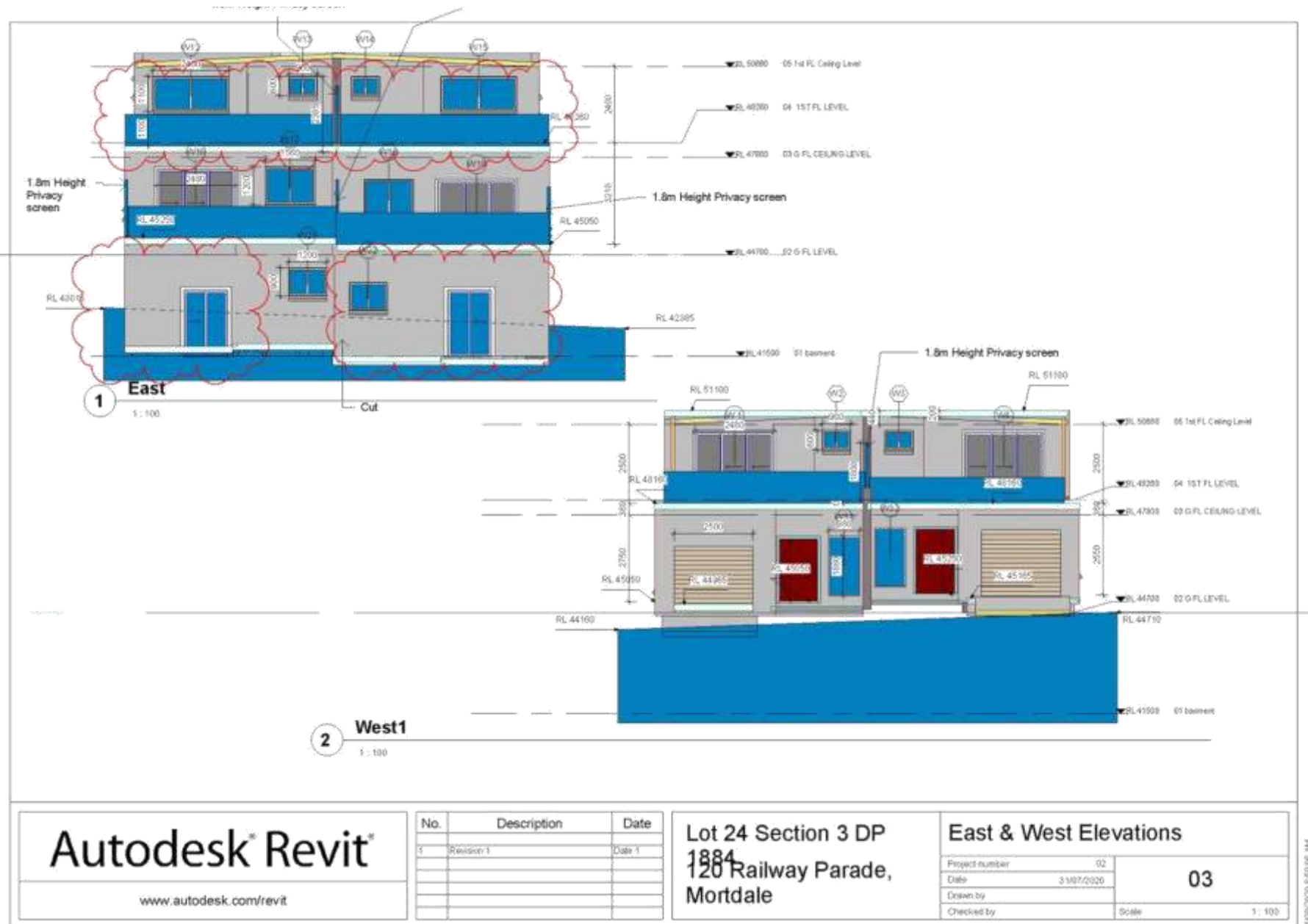
Only the Principal Certifying Authority appointed for the building work can issue the Occupation Certificate.

An **Occupation Certificate** Application Form is attached for your convenience.

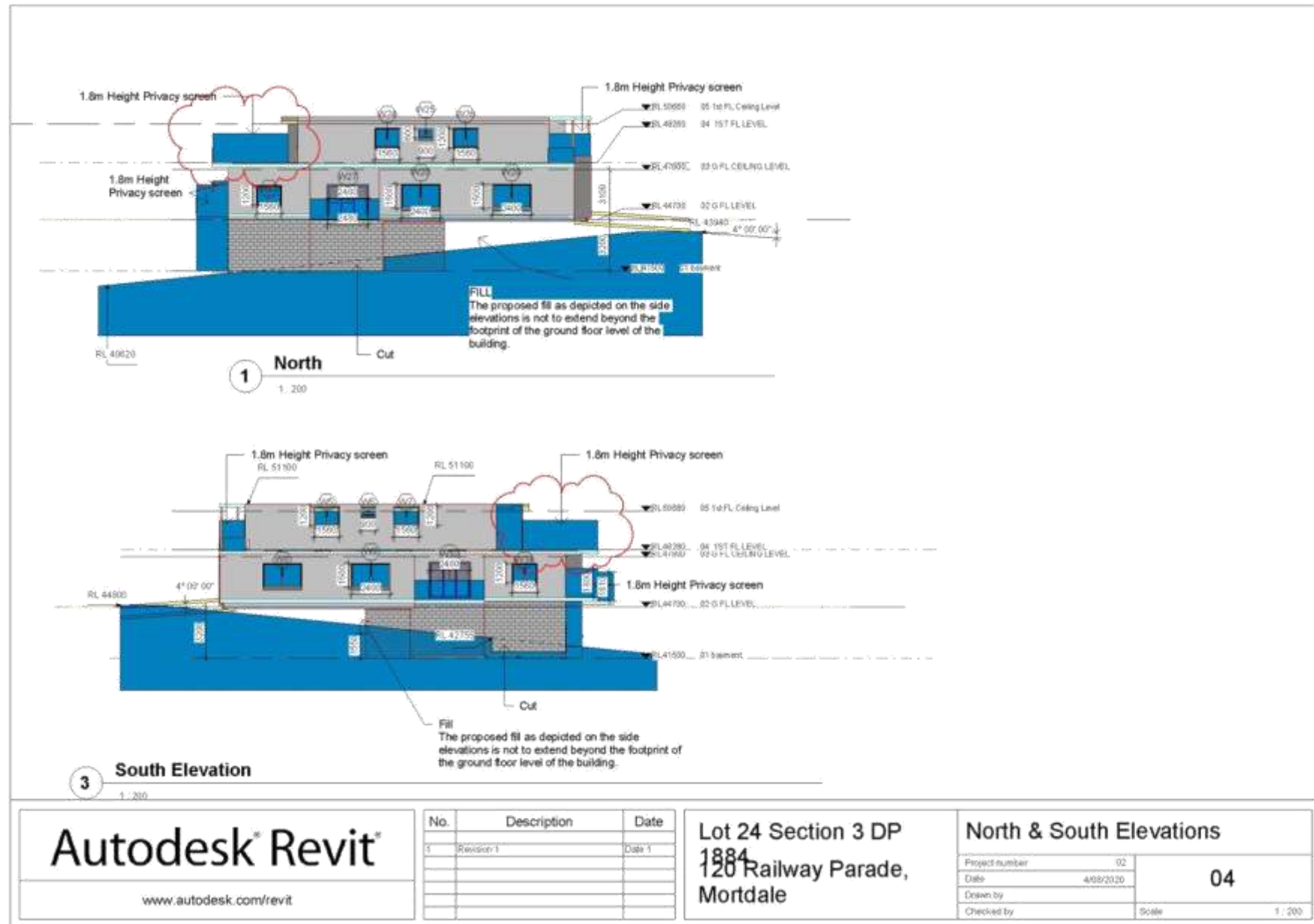
## ATTACHMENTS

- Attachment [1](#)  Site Plan - 120-120A Railway Pde Mortdale
- Attachment [2](#)  Eastern and Western Elevation Plan - 120-120A Railway Pde Mortdale
- Attachment [3](#)  Northern and Southern Elevation Plan - 120-120A Railway Pde Mortdale









# REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 15 JULY 2021

LPP031-21

<b>LPP Report No</b>	<b>LPP031-21</b>	<b>Development Application No</b>	<b>DA2021/0110</b>
<b>Site Address &amp; Ward Locality</b>	32-38 Montgomery Street Kogarah Kogarah Bay Ward		
<b>Proposed Development</b>	Alterations to the approved mixed-use development by converting the first floor commercial level to four (4) residential apartments new apartments comprising of 3 x 2 bedroom ('dual-key' apartments) and 1 x 1 bedroom apartment		
<b>Owners</b>	NGA Pyrmont Pty Ltd		
<b>Applicant</b>	Lateral Estate		
<b>Planner/Architect</b>	Planning Ingenuity		
<b>Date Of Lodgement</b>	12/03/2021		
<b>Submissions</b>	Nil		
<b>Cost of Works</b>	\$1,584,000.00		
<b>Local Planning Panel Criteria</b>	The proposal is subject to the requirements of State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development, State Environmental Planning Policy BASIX 2004, State Environmental Planning Policy (Infrastructure) 2007; State Environmental Planning Policy No 55 - Remediation Of Land; State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment; Draft Environment State Environmental Planning Policy; Draft Remediation of Land SEPP; Draft Design and Place State Environmental Planning Policy; Kogarah Local Environmental Plan 2021; Development Control Plan 2013. Draft Georges River Local Environmental Plan 2020 and Draft Georges River Development Control Plan.		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans and Design Verification Statement Statement of Environmental Effects Parking and Traffic Assessment BASIX Certificate		
<b>Report prepared by</b>	Senior Development Assessment Planner		

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

about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>No</b>
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	<b>Not Applicable</b>
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	<b>No, standard conditions have been attached with no design changes. The conditions can be reviewed when the report is published.</b>

### Site Plan



**Figure 1:** Subject site highlighted in blue (courtesy: Six maps)

## Executive Summary Proposal

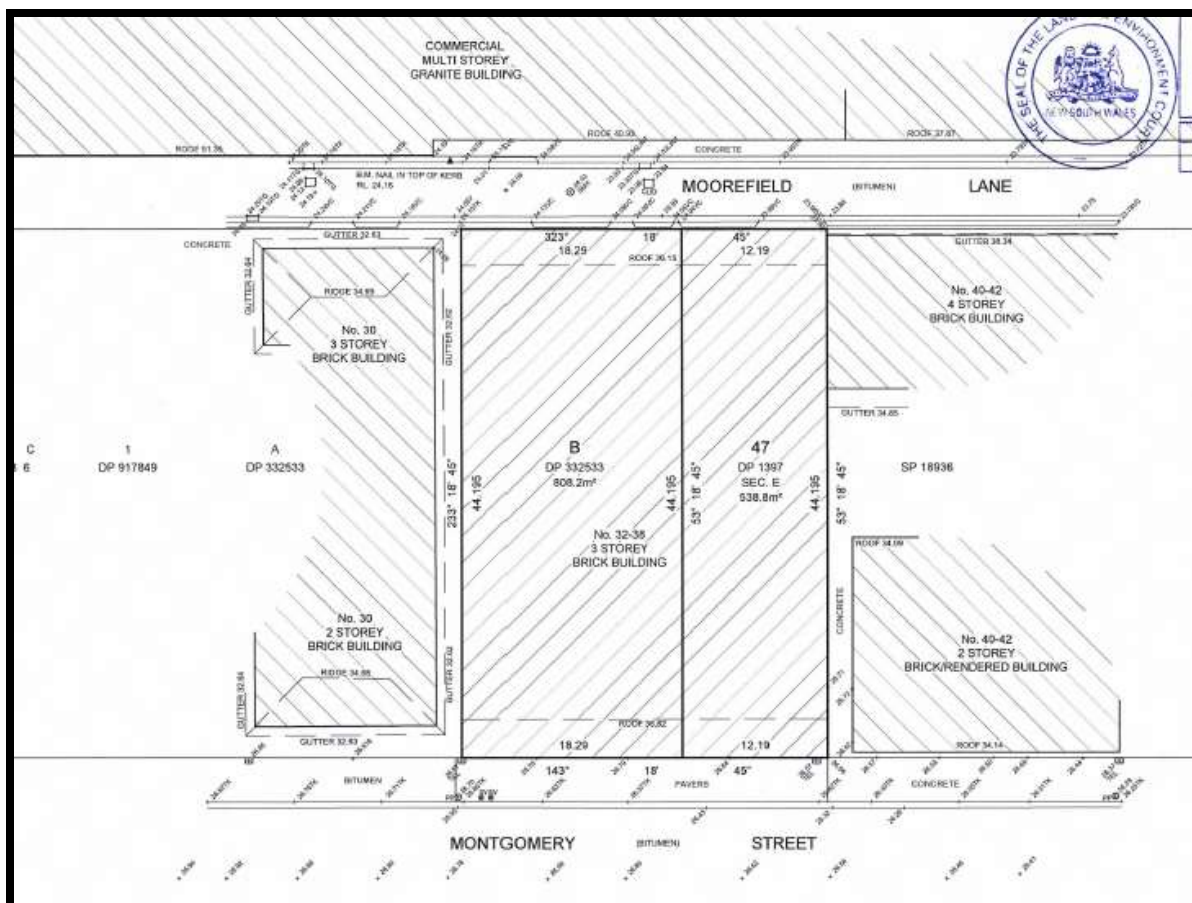
- The development application (DA2021/0110) seeks consent for alterations to the approved mixed-use development at 32-38 Montgomery Street, Kogarah by converting the approved commercial tenancies on the first floor to four (4) residential apartments.

2. On 11 April 2018 Council received an application (DA2018/0139) to demolish the existing buildings on site and construct a part twelve (12) part thirteen (13) storey mixed-use development, basement car parking, landscaping and associated site works.
3. A Class 1 Appeal was lodged with the Land and Environment Court (*Lateral Estate Pty Ltd v Georges River Council* [2019] NSWLEC 1366). The proposal was modified and an agreement with reached during the Section 34 Conference. The Appeal was upheld and the Court granted development consent to the development on 6 August 2019.
4. Subsequent to the approval being granted a number of modification applications have been lodged and approved (MOD2019/0245 and MOD2020/0148). These applications are discussed in more detail in the background section to this report.
5. The proposed changes requested as part of this application do not fall within the requirements of Section 4.55 of the Environmental Planning and Assessment Act, (EP&A Act) as the works are not considered to be “*substantially the same*” as the approved development (DA2018/0139). The works in accordance with DA2021/0110 only involve a small section of the whole redevelopment approved under DA2018/0139 being changes to the approved level 1 use fronting Montgomery Street.
6. Given this application is only seeking small scale alterations to the “approved” development, the works need to be tied back to the original consent (DA2018/0139) to ensure consistency in the development and construction process.
7. Section 4.17(1)(b) of the Environmental Planning and Assessment Act permits an alteration or modification application to an existing consent. The intention of this provision is to allow for a series of development consents to operate on one site which are all inter-related. The use of this section of the Act for this purpose was confirmed by the court judgement *Waverley Council v C M Hairis Architects* [2002] NSWLEC 180 at [30] and *Lindsay Bennelong Developments v City of Sydney City Council* [2016]. A condition will be imposed which will tie the two developments together and will require DA2018/0139 to be modified to be consistent with this development consent in accordance with Clause 97 of the Environmental Planning Regulations 2000. In terms of the Section 7.11 contributions a condition will include the additional monetary contributions that are required to be paid for the four (4) additional dwellings.
8. The Applicant has submitted formal legal advice in relation to this matter prepared by Mills Oakley and this issue will be discussed in greater detail later in this report.

### Site and Locality

9. The subject site comprises of two allotments known as Lots 1 and 2 in DP 1257940 (formerly Lot B in DP 332533 and Lot 47 Section E in DP 1397) and is located on the north eastern side of Montgomery Street in Kogarah. To the rear of the site is Moorefield Lane. The site is a regular shaped allotment with a frontage of 30.48m to Montgomery Street, depth of 44.195m and total site area of 1,347sqm. An extract of the survey plan submitted with DA2018/0139 is shown below at Figure 2.





**Figure 2:** Extract of the survey plan of the subject site submitted with DA2018/0139

10. The site is located within the Kogarah Town Centre. Adjoining the site is a mixture of land uses predominantly shop top housing and a series of mixed-use developments.

### Zoning and Permissibility

11. The site is zoned B4 Mixed use in accordance with the provisions of the Kogarah Local Environmental plan 2012. The zone permits residential, retail and commercial uses in the form of shop top housing and residential flat buildings are permissible in this zone in accordance with the current controls. The elimination of the commercial element at the first floor and its conversion to residential is permissible and will generally satisfy the objectives of the zone which are;
- *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.*
12. Despite the commercial component at the first floor level of the development changing to residential, the general aims and objectives of the zone are maintained through the provision of a retail component at the ground floor level which will activate the street frontage and will still be consistent with the character of development in the street and immediate area.

13. Council has prepared a Draft Local Environmental Plan 2020 (Draft LEP) which seeks to amalgamate and harmonise the existing planning instruments of the former Kogarah and Hurstville LGA's into one consolidated plan. The Draft LEP is currently with the Department Planning Industry and Environment (DPIE) and its gazettal is imminent. Consideration of the draft provisions is provided later in this report. Whilst this plan does not rezone the site, it includes a number of new planning controls which will ensure that there is more commercial development in the Town Centre. A Clause has been integrated to ensure a minimum amount of commercial use is integrated within the development (through GFA provisions) and RFB's are no longer permitted in the key town centres. This issue is discussed later in this report.

### Submissions

14. The proposal was notified for a 14 day period in accordance with the provisions of Kogarah Development Control Plan (KDCP). No submissions were received during the notification period.

### Conclusion

15. 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 (DA2021/0110) is recommended for approval subject to the conditions referenced at the end of this report.

### Report in Full Proposal

16. The proposal involves alterations to the development (DA2018/0139) in the form of converting the floor area of the three (3) approved commercial tenancies on the first-floor of the development to four (4) residential apartments. No changes are proposed to the approved built form and there are no changes proposed to the height and building envelope. The changes are internal and In order to facilitate these design changes, modifications to the basement levels, lower ground floor and ground floor are proposed.
17. The following alterations are proposed:

#### Level 3 – Basement

- Deletion of the business lift and lobby and replace with storage space.

#### Level 2 - Basement

- Deletion of the business lift and lobby and replace with storage space.
- Alterations to the car parking arrangement with the provision of thirty (30) residential car parking spaces including two (2) accessible spaces.

#### Level 1 - Basement

- Deletion of the business lift and lobby and replace with storage space.
- Alterations to the plant and mechanical room.
- Allocation of twelve (12) retail car parking spaces including one (1) accessible space.
- Allocation of fifteen (15) residential including two (2) accessible spaces.

#### Lower ground level

- Alterations to the car parking level including ten (10) residential visitor spaces including one (1) car wash bay

- Deletion of the business lift and lobby and replace with storage space.

#### Ground Floor

- Delete the business lift and lobby and increase the retail tenancy
- Minor alterations to the internal walls

#### Level 2

- Delete the commercial floor space and replace with;
  - 1 x 1 bedroom apartment
  - 3 x 2 bedroom dual key apartments
- Changes to window openings
- Inclusion of private courtyards to the apartments.

18. The proposed changes do not alter the approved built form and building envelope in accordance with the approval (DA2018/0139).

#### **The Site and Locality**

19. The subject site is known as 32-38 Montgomery Street, Kogarah and is formally referred to as Lot 1 and Lot 2 DP 1257940 (formerly known as Lot B in DP 332533 and Lot 47 Section E DP 1397).
20. The site is bounded to the north east by Moorefield Lane and situated between Kensington Street to the south east and Post Office Lane to the north west. It is located on the eastern side of the rail corridor and within 250m of Kogarah Railway Station. The development site forms part of the Kogarah Town Centre.
21. The rectangular site has an area of approximately 1,347sqm with a frontage of 30.48m to Montgomery Street and a rear boundary of 30.48m to Moorefield Lane with an allotment depth of 44.195m. The site falls from Montgomery Street to Moorefield Lane, within the change in level being approximately 2.76m.
22. The development will be replacing an existing three (3) storey mixed use building with commercial tenancies located on the ground floor fronting Montgomery Street and residential apartments located on the two (2) levels above. The building occupies the entire site. Vehicular access to the site is currently via Moorefield Lane. Refer to Figures 3 and 4.



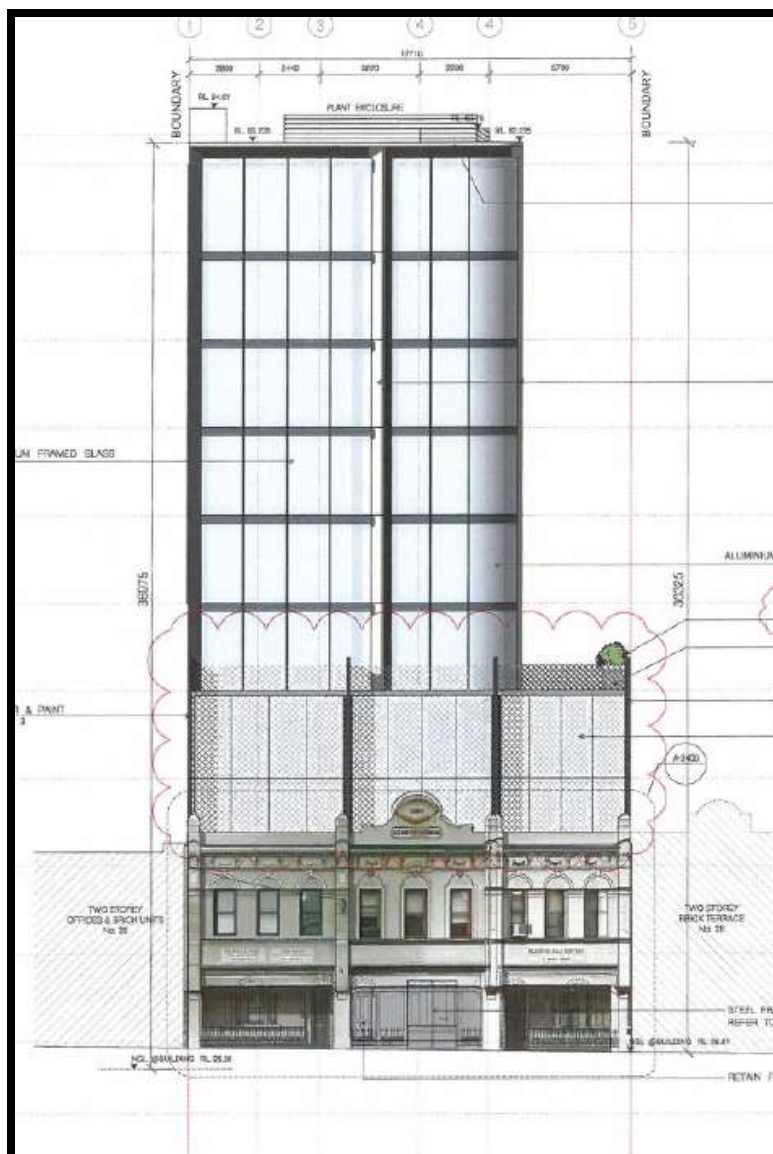


**Figure 3:** Site photo showing existing building along Montgomery Street



**Figure 4:** Site photo showing existing building along Moorefield Lane

23. Adjoining the site to the north west is a two storey brick commercial building (30 Montgomery Street), the building is known as Bethlehem House (aged care facility) containing a commercial building which also provides parking from Moorefield Lane.
24. Adjoining the site to the south is a two storey commercial building (40-42 Montgomery Street) known as the Kogarah Specialist Centre.
25. To the west on the opposite side of Montgomery Street is a commercial building being the Department of Technical Education (29-39 Montgomery Street).
26. Further to the north of the site at 22-26 Montgomery Street is a set of heritage listed terraces. Development consent has been granted to enable the partial restoration of the terraces in conjunction with a multi storey commercial building which has been constructed and recently completed (refer to Figure 5 below).



**Figure 5:** Photomontage of the approved commercial development at 22-26 Montgomery Street (DA2018/0138)

27. Montgomery Street contains a mixture of single storey to multi storey buildings which are predominantly commercial in nature including the St George Bank building, the Kogarah Police Station, the heritage listed Kogarah Court House and St George TAFE.

28. The precinct is made up of a combination of low, medium and large-scale commercial development with the site being in close proximity to the rail line, St George Public and Private Hospitals and the St George Technical College.

### Background

29. The following is a summary of the development history pertaining to the site:
30. DA2018/0139 – On 9 August 2019 the Land and Environment Court approved the mixed-use development which proposed the construction of a part 12, part 13 storey “shop-top” housing building containing 61 apartments with retail tenancies on the ground floor and first-floor commercial space. Figure 6 below shows the approved front elevation of the approved development.

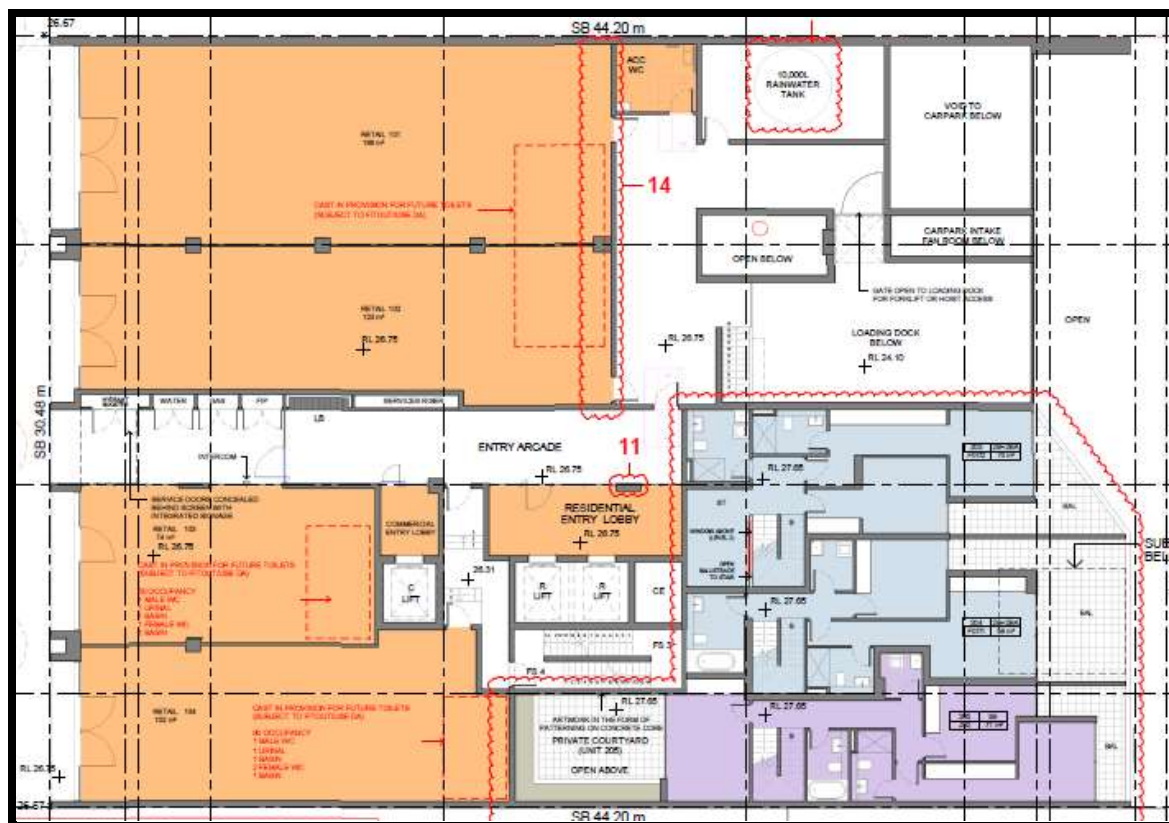


**Figure 6:** Photomontage of the approved commercial development at 32-38 Montgomery Street (DA2018/0138)

31. On 1 November 2019 the land property details were updated and the legal description of the site was changed and is now known as Lot 1 and Lot 2 DP 1257940.
32. MOD2019/0245 – On 5 June 2020 Council granted approval to a Section 4.56 modification application to alter the building in the following manner;
- Maximum building height changes from 43.47m to 44.31m.
  - Increase in floor levels to accommodate change in sprinkler system.
  - Consolidation of the fire stairs.
  - Total communal open space provided changes from 792sqm to 726sqm.
  - Retail and commercial areas have changed.



33. **MOD2020/0148** – On 5 November 2020, the Georges River Local Planning Panel granted approval for a Section 4.56 modification to DA2018/0139 which proposed the following works;
- Various internal changes and reconfiguration of the layout between basement 3 and level 2 of the building;
  - Extending the footprint of basement 3 to create structural uniformity with levels above and provide additional parking for three vehicles (residential) within this level;
  - Minor reduction in size of commercial tenancies 101, 102, and 104 within the ground floor level (level 1);
  - Deletion of commercial tenancy 105 within the ground floor (level 1) and conversion of residential apartments 203 and 204 within level 2 to three (3) x two (2) storey residential apartments partially utilising the space of commercial tenancy 105; and
  - External façade changes accommodating the proposed modifications including materials and finishes as referenced in the Court approved conditions of consent.
34. No changes were proposed to levels 3 and above. The height and FSR of the building will remain as approved by MOD2019/0245. However, there is a reduction in the commercial floor space and an increase in the residential floor space of the development. The changes to the internal layout that were approved at Levels 1 and 2 are shown in Figures 6 and 7 below.



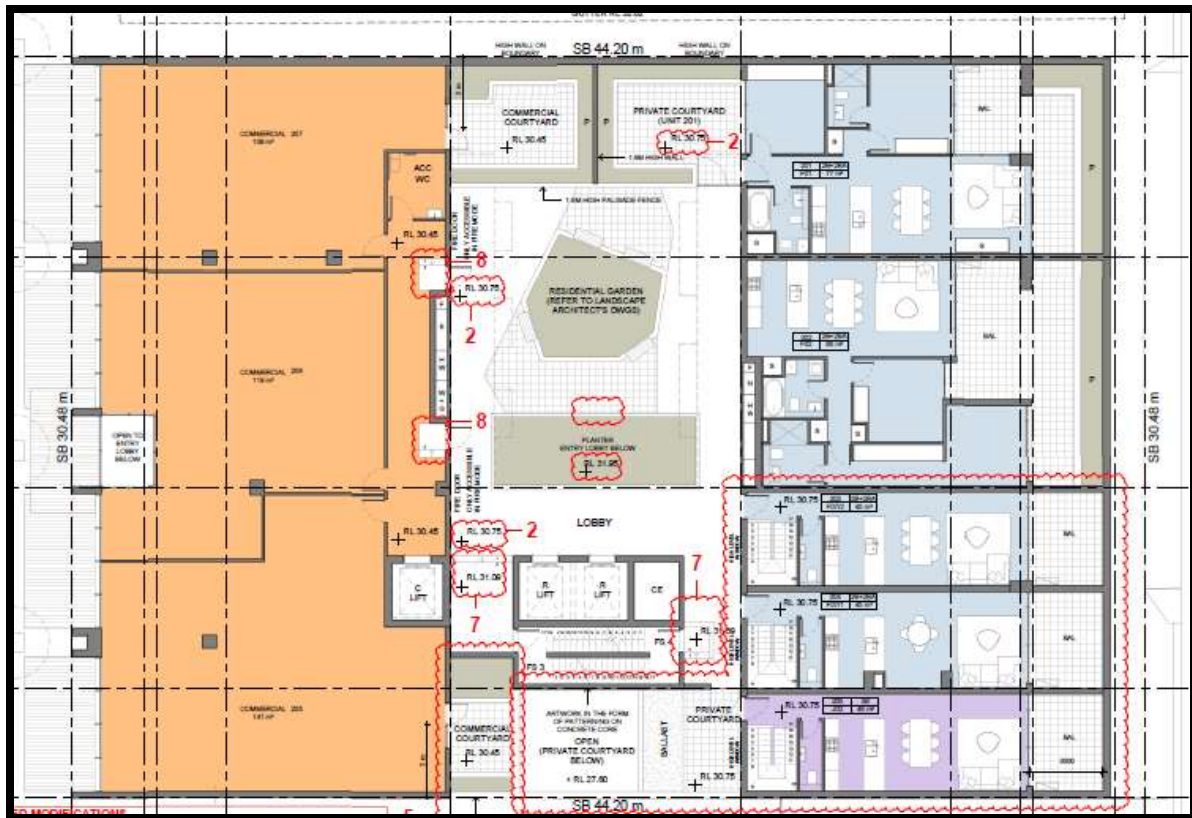


Figure 7: Layout of Level 2 floor plan as approved by Mod2020/0148

35. The proposed application seeks to convert the remaining commercial floor space on Level 2 to residential units. The conversion of this space to residential use is discussed in greater detail later in this report. Although the conversion of commercial space to residential was approved under a Section 4.56 modification, which is similar to the current proposal, the Applicant is concerned that the issue of whether the alterations are “*substantially the same*” may come into play and jeopardise the determination of the application. By modifying the proposed development as an “amending DA” this reduces the potential risk and uncertainty as part of the assessment process.

## PLANNING ASSESSMENT

36. The site has been inspected and the proposed development has been assessed under the provisions of Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

## ENVIRONMENTAL PLANNING INSTRUMENTS

### Environmental Planning and Assessment Act 1979

37. The proposal is considered to be consistent with the Objectives of the Act.

### Environmental Planning and Assessment Regulation 2000

38. The proposal is considered to have met the statutory requirements under Schedule 1 of the Regulation.
39. The application has been accompanied by a design verification statement prepared by the appointed qualified designer pursuant to clause 115 (3) and (3A).

## STATE ENVIRONMENTAL PLANNING POLICIES

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

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

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

41. 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.
42. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
43. The proposed modifications primarily relate internal and slight external changes to the building with all excavation and earthworks occurring in accordance with DA2018/0139. The issue of contamination was considered in the assessment of this application and appropriate conditions were imposed in case unexpected finds occurred.
44. In this regard, no further assessment is warranted with regards to site contamination and the objectives of SEPP 55 are considered to be satisfied.

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

45. The main aims and objectives of this plan include but are not limited to the following:
  - *To maintain and improve the water quality and river flows of the Georges River and its tributaries and ensure that development is managed in a manner that is in keeping with the national, State, regional and local significance of the Catchment,*
  - *To protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*
  - *To ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
  - *To establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment,*
46. The changes do not adversely impact on the existing stormwater management and approved stormwater arrangement for the development.

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

47. The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:
- (a) *improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and*
  - (b) *providing greater flexibility in the location of infrastructure and service facilities, and*
  - (c) *allowing for the efficient development, redevelopment or disposal of surplus government owned land, and*
  - (d) *identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and*
  - (e) *identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and*
  - (f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and*
  - (g) *providing opportunities for infrastructure to demonstrate good design outcomes.*
48. The DA was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. On 9 April 2021, Ausgrid advised that no impact to Ausgrid assets is anticipated with this proposal.

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

49. BASIX Certificate No. 913143M\_10 and updated 18 February 2021 prepared by Efficient Living Pty Ltd proposal which meets the provisions and minimum requirements of BASIX in terms of water, thermal comfort and energy efficiency.

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

50. 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.
51. Table 1 below summarises the application of SEPP 65 and whether the development satisfies the definitions of this policy.

**Table 1: Application of SEPP 65**

<b>Clause</b>	<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
3 - Definitions	Complies with definition of "Residential Apartment Development"	The proposal complies with this definition.	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB	This is a modification of an approval for the erection of a mixed-use development.	Yes



52. Clause 29(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 (as modified) when evaluated in accordance with the design quality principles, and*
  - (c) *the Apartment Design Guide.*
53. The proposal has been assessed against the provisions in Part 3 and 4 of the SEPP and Table 2 and 3 below considers the proposal against the principles, objectives and controls of State Environmental Planning Policy 65 and the ADG.

**Table 2: SEPP 65 - Schedule 1 Design quality principles**

<b>Clause</b>	<b>Council's comments</b>	<b>Complies</b>
1 – Context and neighbourhood character	<p>The proposed additional apartments will not significantly alter the overall design of the approved built form which was previously assessed and considered to fit within the context of the surrounding area.</p> <p>The building still provides an active street frontage to Montgomery Street with the provision of four (4) retail tenancies on the ground floor of a reasonable size (87sqm and greater in floor area for each tenancy). The proposal will retain a podium area and will be consistent with the varied character of development in the streetscape.</p>	Yes
2 – Built form and scale	<p>The approved mixed use/shop top housing building is located in an area undergoing change and therefore is compatible with the future character of the area given the uplift presently being experienced.</p> <p>The proposal is not affecting the overall built form and approved building envelope other than slightly altering the fenestration at the first floor level to Montgomery Street to include balconies to this frontage.</p>	Yes
3 – Density	The proposal complies with the Floor Space Ratio control as per Kogarah LEP 2012.	Yes
4 – Sustainability	<p>The development as modified makes efficient use of natural resources, energy and water throughout its full life cycle. It will meet the benchmarks of 25% energy reduction and 40% water reduction set out in the Building and Sustainability Index (BASIX).</p> <p>The development as modified is designed to incorporate ESD principles. This is achieved by the creation of a central area of open space, effectively creating an attractive and functional breezeway. These elements, approved as part of the original application will remain features of the development</p>	Yes

	and will add to the amenity of the proposed new apartments.	
5 – Landscape	The landscaped area remains as approved.	Yes
6 – Amenity	The proposed development aims to remove the first floor commercial tenancies and add four (4) residential apartments, and have been designed to achieve the amenity objectives and controls of the AGD.	Yes
7 – Safety	<p>The main entrances to the building will remain as approved.</p> <p>The first floor being converted to residential uses will improve the safety and surveillance of the street as it will be occupied for longer periods during the day and night.</p>	Yes
8 – Housing diversity and social interaction	<p>The proposal will increase the number of one and two (2) bedroom apartments.</p> <p>The proposed apartment mix is as follows:</p> <p>66 apartments in total  4 x 1 bedroom (6%)  58 x 2 bedroom (88%)  4 x 3 bedroom (6%)</p> <p>The two bedroom apartments are designed as “dual key” apartments and therefore provide for a greater amount of versatility and flexibility in the design and residential options that are available. This design offers the following alternate options;</p> <p>The 2 bedroom apartments can provide for the following design options;  1 x 1 bedroom and 1 x studio (apartment 209)  1 x 1 bedroom and 1 x studio (apartment 208)  1 x 1 bedroom and 1 x studio (apartment 206)</p> <p>The proposed arrangement allows for some studio apartments to be integrated into the design which is a desirable outcome and provides for a greater unit mix.</p> <p>The approved apartment mix is as follows:</p> <p>61 apartments in total  4 x 1 bedroom (6.5%)  54 x 2 bedroom (88.5%)  3 x 3 bedroom (4.9%)</p>	Yes
9 – Aesthetics	It is considered that the proposed change is consistent with that of the approved mixed-use/shop top housing building form.	Yes

54. Table 3 below is an assessment of the scheme against the design provisions of Part 3 and Part 4 of the Apartment Design Guide.

**Table 3: Assessment against Part 3 and Part 4 of the ADG**

Objective	Standard	Proposal	Complies
<b>Part 3 Siting the development</b>			
3D – Communal and Public 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> <p>The communal open space is to be a minimum of 25% of the site, which equates to 513.6sqm for the subject site.</p>	<p>The proposal does not involve amending the communal open space as approved. The primary area of open space is proposed on the roof and this includes a total of 360sqm with an enclosed pool area of some 172sqm. These two spaces alone amount to 532sqm which exceeds the minimum required.</p> <p>In addition to this there is a central area of communal open space on Level 2 of some 150sqm. The total amount of communal open space is approximately 682sqm which is over 50% of the site area.</p> <p>The areas provided are well designed and functional spaces.</p>	Yes
	<p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter)</p>	<p>The communal open space is located on the rooftop which receives adequate levels of solar access given its unobstructed location.</p>	Yes
3E – Deep Soil Zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>Where site area is between 650sqm and 1500sqm = 3m minimum dimension</p> <p>Deep soil = min 7%</p>	<p>The proposal does not change the location of deep soil landscaping approved under the DA as the extent of modification works are located within the approved building footprint.</p> <p>The building is within the Kogarah Town Centre and it is difficult to cater for any deep soil area given the nature of the area and need to excavate the site to cater for car parking. Exemptions are provided for developments that</p>	Yes

		cannot meet the requirements given the site constraints, which was taken into consideration when the developments envelope was approved.	
3F – Visual Privacy	1. Separation between windows and balconies is provided to ensure visual privacy is achieved.	No change is proposed to the approved building envelope and building footprint. The anticipated built form in a commercial area stipulates a nil side boundary setback. No change is proposed.	Yes
3G – Pedestrian access and entries	Building entries and pedestrian access connects to and addresses the public domain	The main building pedestrian entry points will not be modified by this application and will remain as approved.  The originally proposed commercial lift has been removed and access to the new apartments will be via the main residential entry.	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	This element remains unaltered by this proposal.  Vehicular access to the property is via Moorefield Lane at the rear and remains unaltered by this application.	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 Area;  - The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant Council,	The proposal refers to the RMS Guide for Traffic Generating Development (GTTGD) given the site's location less than 800m from a Kogarah Station. Given the subject site is located within Kogarah which is designated as a Strategic Centre under <i>Sydney: A Plan for Growing Sydney, the technical note titled "Car parking requirements in SEPP 65"</i> by the Department of Planning and Environment details that rates for Metropolitan Regional (CBD) Centre apply to the subject site.  <b><u>Residential</u></b>  <b><u>Metropolitan regional centres (CBD):</u></b> 0.4 spaces per 1 bedroom apartment	Yes

	<p>whichever is less</p> <p>The car parking needs for a development must be provided off street</p>	<p>0.7 spaces per 2 bedroom apartment 1.2 spaces per 3 bedroom apartment +1 space per 7 apartments (visitor parking)</p> <p>4 x 0.4 = 1.6 spaces 58 x 0.7 = 40.6 spaces 4 x 1.2 = 4.8 Visitor 66/7 = 9.4</p> <p>Total = 57 spaces are required for the residential component, a minimum of 10 are to be visitor spaces.</p> <p>For the retail component, the rates are prescribed in part E1-Kogarah Town Centre of Kogarah DCP as follows:</p> <p><b><i>(i) 1 space per 40sqm for any floor space at ground floor level.</i></b> <b><i>(ii) 1 space per 50sqm for all other floor space above ground floor level.</i></b></p> <p>Based on the proposed ground floor retail space: 460sqm</p> <p>Car spaces required: 11.5 (rounded to 12).</p> <p>The proposed design includes the following layout:</p> <p>B1 = 3 residential visitor spaces 12 retail spaces 12 residential spaces</p> <p>B2 = 30 residential spaces B3 = 28 residential spaces LG = 10 residential visitor spaces</p> <p>In total the following breakdown is provided:</p> <p>13 visitor spaces (residential) 12 retail spaces 70 residential spaces</p>	
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		<p>The amount of car parking provided exceeds the parking for the residential component and complies for the retail component and is considered satisfactory.</p> <p>In relation to accessibility, 1% of all car spaces are required to be accessible as per Kogarah DCP.</p> <ul style="list-style-type: none"> <li>- Residential: (70 car spaces provided) 7 accessible spaces are provided which is compliant.</li> </ul> <p>Retail: 12 car spaces provided for the development and provides:</p> <ul style="list-style-type: none"> <li>- 1 accessible car space which is compliant.</li> </ul> <p>The approved development provides for 95 car spaces. The total number of spaces has not altered although their configuration and layout across the 3 basement levels has changed via the two approved modification applications.</p> <p>This is further discussed in the DCP section of this report.</p>	
<b>Part 4 Designing the building</b>			
4A – Solar Access	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 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 at mid-winter</p>	<p>The private open space areas of proposed apartments 206, 207, 208 and 209 will not receive the minimum amount of solar access required in accordance with the SEPP being 2 hours during the day in midwinter. This is due to the orientation of the apartments being south west.</p> <p>Although the apartments fail to comply with the minimum solar access requirements, there are other benefits to their design which compensates for this loss. Firstly, they are orientated to face the street and the physical</p>	No but satisfactory

		separation between the units and adjoining developments across the road is over 6m so the apartments will receive a good, open outlook and receive natural light if not direct sunlight. They are generally smaller apartments and due to the dual key, flexible arrangement are more likely to cater for singles or couples as occupants as opposed to families. Also, the apartments have access to private internal, central courtyards so there is a little more opportunity to make use of private open space areas. Although not receiving direct sunlight, the amenity of the apartments is acceptable and they are generally well considered spaces.	
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 new apartments have dual aspects and will achieve the minimum requirements because they are orientated towards the street and also to the central open courtyard area and lobby.</p> <p>The cross-ventilation requirements are considered to be satisfactory.</p>	Yes
4C – Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms = 2.7m</p> <p>Non-habitable rooms = 2.4m</p>	<p>The floor level of Level 2 is RL30.75 and the floor level of Level 3 is RL34.15 amounting to a floor to floor height of 3.4m. With the exclusion of the slab between floors, the floor to ceiling height will exceed 2.8m. A condition will ensure this is achieved and will ensure the minimum floor to ceiling of 2.8m is provided.</p>	Yes
4D 1 – Apartment size and layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom: 50sqm</p> <p>2 bedrooms: 70sqm</p>	<p>The internal floor space and area requirements have been met and the following requirements have been catered for:</p> <p>Apartment 206 (2 bedrooms): 81sqm</p>	Yes



	<p>3 bedrooms: 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	<p>Apartment 207 (1 bedroom): 63sqm</p> <p>Apartment 208 (2 bedrooms): 103sqm</p> <p>Apartment 209 (2 bedrooms): 94sqm</p> <p>The remainder of the apartments within the building at the upper levels remain unchanged.</p> <p>It should also be noted that Apartments 206, 208 and 209 are dual key apartments which can be converted into a 1 x 1 bedroom apartment and a studio apartment. There are no minimum area requirements for a studio under the ADG.</p> <p>Sizes take into consideration additional bathrooms.</p> <p>All habitable rooms include a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.</p> <p>Windows openings to all rooms are large and generous in size exceeding the ADG requirements.</p> <p>Part 4D of the apartment design guide also considers layouts if dual key apartments are proposed. Objective 4D-3 states “apartment layouts are designed to accommodate a variety of household activities and needs”. It goes on further in the design guidance by encouraging apartment layouts to be flexible over time and to consider, design solutions such as;</p> <ul style="list-style-type: none"> <li>- Dual master apartments</li> <li>- Different spaces for a variety</li> </ul>	
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		<p>of uses</p> <ul style="list-style-type: none"> <li>- Dual key apartments</li> </ul> <p>The proposal satisfies this objective and design criteria.</p>	
4D 2 – Apartment rooms, location and sizes	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>The combined depth of the habitable rooms for all new apartments 206, 207, 208, and 209 is in accordance with objective 4D.</p> <p>The living, dining, and kitchen area combined have a depth of 8.0m (excluding the kitchen stove space).</p>	Yes
4D 3 – Apartment rooms, location and sizes	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>	<p>Master bedrooms (including ensuite) are greater than 10sqm. All bedrooms are 9sqm or greater (as per scaled calculations).</p> <p>All proposed bedrooms have dimensions 3.0m or greater (as per scaled calculations).</p> <p>All the living rooms have a minimum width of 4m apart from apartment 207. Its living room has a width of 3.8m just short of the 4m requirement. This apartment is compensated by having a larger and wider kitchen and dining space which can also be classified as a living area. Otherwise, the proposed layout and design of the units is considered acceptable.</p> <p>The width of the studio apartments is less than the 3.6m however the design of these spaces needs to be considered</p>	Yes

		differently than anticipated under the ADG. The studios are essentially part of the larger apartments they are not designed to be considered in isolation.	
4E – Private Open Space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <p>2 bedroom apartments: 10sqm and 2m</p> <p>3+ bedroom apartments: 12sqm 2.4m</p>	<p>Apartment 206 has a central private courtyard of 11sqm and a front balcony 9sqm</p> <p>Apartment 207 has a front balcony with area of 10.6sqm.</p> <p>Apartment 208 has a front balcony with area of 11sqm</p> <p>Apartment 209 has a front balcony with area 9.2sqm and an internal private courtyard of 30sqm.</p> <p>Although two of the balconies are smaller than the 10sqm required, this is not considered to be a substantial deficiency. These units also have direct access to the central area of common open space at Level 2 which is a very functional area with landscaping and seating and access to the roof top area of open space the purpose and objectives of the ADG are considered to be satisfied.</p>	Yes
4F – Circulation spaces	The maximum number of apartments off a circulation core on a single level is eight	<p>On Level 2 there are a total of 9 apartments that access the lift lobby. However, the building has been designed so that the lobby is broken up into two circulation spaces with 4 apartments accessing one corridor and 5 apartments accessing the other.</p> <p>There are two lifts and the central courtyard separates the circulation spaces which are considered to be a well designed and considered space which will avoid conflicts between occupants entering and leaving the apartments on this floor.</p>	No but satisfactory
4G – Storage	In addition to storage in kitchens, bathrooms and	At least 4m <sup>3</sup> of storage within each of the two (2) bedroom	Yes

	<p>bedrooms, the following storage is provided:</p> <p>2 bedrooms - 8m<sup>3</sup></p> <p>50% of storage to be located within basement</p>	<p>apartments (under stairs and within wardrobes). The additional storage is within the basement.</p> <p>The amended basement layout shows sufficient amounts of new storage areas to cater for the 4 new apartments as the lift to the commercial tenancies has been removed and additional space is available in the basement levels. A condition will require each new apartment to have a designated storage space within the basement.</p>	
4K – Apartment Mix	A variety of apartment types is provided	<p>The proposal will contribute to the diversity of the apartment composition as follows:</p> <ul style="list-style-type: none"> <li>• The proposed dual key apartments provide much greater flexibility and versatility in the design and type of apartments on offer in this complex.</li> <li>• It will introduce studio apartments as an alternative design option which is not common in new developments in the area and is desirable given the close proximity to the hospital and associated services.</li> </ul>	Yes
4M – Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	<p>The fenestration to the front of the building at the first-floor level has been amended to include less glazing but still resemble a commercial “feel”. However it was considered that the enclosed nature of the façade to create winter gardens or loggias, added bulk to the building and it is considered that opening up these spaces would improve their visual appearance and create a lighter, residential feel.</p> <p>The front balcony spaces are largely enclosed and have been included in the GFA calculations however opening these spaces</p>	Yes

		<p>up and creating open style balconies creates lighter features and provides greater articulation and interest to this level. Currently the enclosed look creates visual bulk.</p> <p>This issue was discussed with the Applicant (after liaison with the Architect) who opposes the opening up of this part of the façade for the following reasons;</p> <ul style="list-style-type: none"> <li>- The building was approved with a glazed first floor level creating a well defined space.</li> <li>- The proposal is a minor change to this approved form and retains the visual appearance of the building as approved.</li> <li>- The intended design outcome for development in the town centre should be a more commercial, enclosed feel to define this first floor level and create a consistent two-storey appearance.</li> <li>- The wintergarden and loggia design option provides greater versatility to the design and for use in conjunction with the apartments, it increases privacy allows for utilisation in inclement weather conditions and reduces acoustic impacts of the street.</li> <li>- The integration of louvres will lighten the façade and provide some greater articulation as these features can be partially or wholly opened up.</li> </ul> <p>These design reasons are considered reasonable and it is acceptable to retain the intended/proposed design.</p>	
4N – Roof Design	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use</p>	No changes are proposed to the roof.	Yes

	roof space for residential accommodation and open space are maximised. Incorporates sustainability features.		
4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The amended proposal does not result in any changes to the landscape areas provided.	Yes
4P – Planting on structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces.	The landscape design approved as per the original DA and subsequent modification remains unaltered by this proposal.	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Design and mix of apartments allows for different occupants with a range of lifestyle needs. Lift access is provided to all apartments.	Yes
4R – Adaptive Reuse	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse	The proposal forms part of a new development and not an adaptive reuse of a building.	Yes
4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	The proposal incorporates a compliant BASIX Certificate, with the commitments in the design to provide appropriate energy efficiency features.	Yes
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	Waste facilities are provided which are accessible to all residents. There is a bin storage room on level 0 which can cater for the additional apartments.	Yes

4X – Building Maintenance	Building maintenance – building design provides protection from weathering, enables ease of maintenance, material selection reduces ongoing maintenance cost	The apartment will comprise the same materials as approved in the original DA.	Yes
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LPP031-21

55. As demonstrated above, the proposal generally complies with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development. Any minor matters can be resolved through conditions of consent as referenced above.

### **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

#### **Draft Environmental State Environmental Planning Policy**

56. 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.

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

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

58. 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.

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

#### **Draft State Environmental Planning Policy – Design and Place**

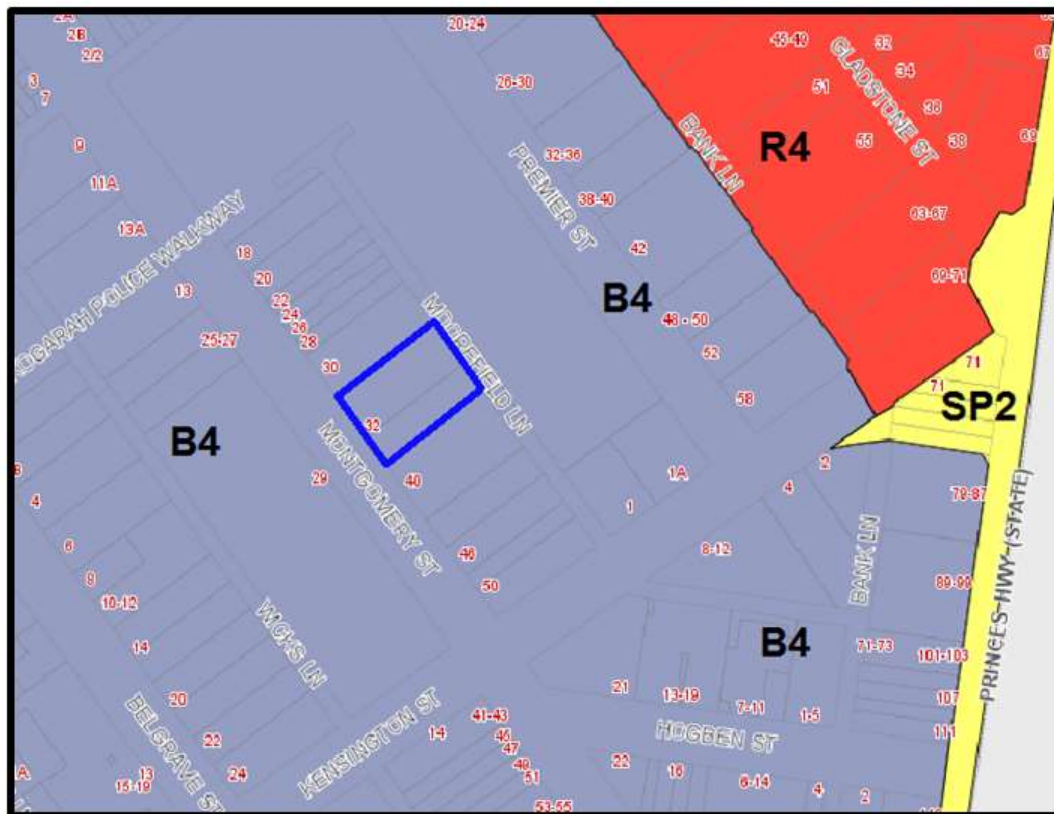
60. The Draft Design and Place SEPP aims to simply and consolidate how we deliver good design in New South Wales and will apply to a large proportion of future developments.



61. The Draft SEPP seeks to replace SEPP 65 by updating the provisions of the Apartment Design Guide, creating new Urban Design guidelines as well as establishing new provisions for sustainability in Residential Buildings which intend to replace BASIX.
62. The SEPP is currently in its infancy however has established the 5 pillars and principles that underpin the policy. These include;
1. *Design places with beauty and character*
  2. *Design inviting public spaces*
  3. *Design productive and connected places*
  4. *Design sustainable and greener places*
  5. *Design resilient and diverse places.*
63. The endorsement and implementation of the Policy is scheduled for the end of 2021. The proposed development is not considered to be antipathetic to the intentions and purpose of this draft provision and policy.

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

64. The subject site is zoned B4 Mixed Use under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP 2012). The approved use as a mixed-use/shop top housing development comprising commercial premises and a residential flat building is a permissible form of development with Council's consent.
65. The objectives of the B4 Mixed Use zone as per clause 2.3 under the KLEP 2012 are:
- *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.*



**Figure 8:** Zoning map as per KLEP 2012 with the site highlighted in blue (Source: Intramaps 2020).

66. The proposed development generally satisfies the objectives of the zone as the approved development typology is not changing and will continue to be a mixed-use/shop top housing development comprising of residential apartments and retail premises.
67. The application is accompanied by a Commercial Market Appraisal prepared by Atlas Economics and dated 1 March 2021. The report states that “Marketing for the sale of the retail and commercial components of the Development commenced in mid-2020. To date, no pre-sales or pre-commitments of the office component has been secured with very little interest observed.” The report goes on to state that “Kogarah is identified as a Strategic Centre in the South District Plan (GSC, 2018b) and denoted an employment target requiring some 4,200 to 8,700 additional jobs over the coming years to 2036.

*This employment target is built upon in the Georges River Centres Strategy (Georges River Council, 2020), which concludes the Kogarah Town Centre will require some 44,000sqm of additional employment floor space by 2036. To facilitate this, the draft Georges River Local Environmental Plan 2020 (set to replace the Kogarah LEP 2012) recommends that a minimum non-residential floor space control of FSR 1:1 apply to all business zoned land in the Kogarah Town Centre.”*

68. Further to the comments above the report states that the removal of the commercial floor space in this location is considered acceptable for the following reasons;
  - Historically Kogarah was known as an area that catered for the finance industry i.e. banks, accountants and other financial institutions. This is no longer the case or trend.
  - It has now become a designated Health precinct however most health care providers and operators focus on being located within close proximity to St George Hospital.
  - The type and size of the commercial space offered at the subject site is not large enough to attract a well established company or organisation.

- There is ample commercial development coming through the pipeline for the future i.e. 22-26 Montgomery Street is a large-scale commercial development with large floorplates.
  - Given the current conditions through the pandemic many potential occupiers are hesitant to take up any current or longer-term leases.
  - Kogarah has experienced a downturn in demand for commercial space during 2020.
69. The economic justifications presented as part of this report are considered reasonable and the Draft LEP when gazetted (this is considered imminent as the LEP is currently with DPIE for gazettal), will provide some definitive requirements for the provision of a minimum amount of retail/commercial floor space in the commercial area (B4 zone). This will mean all future developments will need to satisfy these minimum requirements. Currently the B4 zone encourages a variety and diversity of uses but does not stipulate a minimum requirement for commercial/retail floor space.
70. The proposed development is not considered to adversely impact upon the ability of the development to meet the objectives of the B4 zone.
71. The site is within 250m of the Kogarah Railway Station and contained within the Kogarah Town Centre which makes the location highly accessible. The development will create employment opportunities in an accessible location with the ability to utilise more sustainable methods of transport given the close proximity of the site to the railway station and town centre.
72. An assessment with the KLEP 2012 provisions relevant to the amended plans is detailed in Table 4 below.

**Table 4: KLEP 2012 Compliance Table**

Clause	Standard	Comment	Complies
<b>Part 2 Permitted or prohibited development</b>			
2.2 – Zone	B4 Mixed Use	The proposal is for a mixed use development comprising retail and residential uses.  Both retail and residential uses are permissible in the B4 zone and a sole Residential Flat Building (RFB) is also permissible.	Yes
2.7 – Demolition	Demolition requires development consent	No consent for demolition is sought as part of this proposal. If consent is issued then a condition will ensure this application is tied back to DA consent DA2018/0139.	Yes
<b>Part 4 Principal development standards</b>			
4.3 – Height of Buildings	39m as identified on Height of Buildings Map	The height of building will remain as approved.	Yes
4.4 – Floor space ratio	4.5:1 (as identified on Floor Space Ratio Map)	The FSR will remain as approved and compliant with the FSR control; it is merely a	Yes

		<p>change from commercial to residential floor space in this application. The changes are internal and will not add to the visual bulk or scale of the building as approved under DA2018/0139.</p> <p>The calculation of floor space and discussion of the Gross Floor Area (GFA) is discussed in greater detail below.</p>	
<b>Part 5 Miscellaneous provisions</b>			
5.10 – Heritage Conservation	Consider the effect of development on heritage significance of heritage items and heritage assessment may be required	<p>The subject site is within the vicinity of the following heritage items:</p> <ul style="list-style-type: none"> <li>- Leah Buildings at 22-28 Montgomery Street (Item 183) and</li> <li>- Kogarah Courthouse at 25-27 Montgomery Street Kogarah (Item 184).</li> </ul> <p>The proposed application was accompanied by a Heritage Impact Statement prepared by GBA Heritage and dated 11 March 2021. The report was not referred to Council's Heritage Advisor as the development is within the vicinity of items and the works are considered to be small scale and will not adversely impact on the heritage significance of adjoining items. A detailed discussion and assessment is provided below.</p>	Yes
<b>Part 6 Additional local provisions</b>			
6.1 – Acid sulfate soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by acid sulfate soils.	Yes
6.2 – Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes,	The proposed development includes excavation and associated earthworks to accommodate three (3) levels of basement car parking. The proposed development is not	Yes

	neighbouring uses, cultural or heritage items or features of the surrounding land	proposing to change the general nature and amount of excavation but rather alter the layout of the basement which is considered to be minor in the scope of overall works.	
6.3 – Flood planning	<p>The objectives of this clause are as follows:</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p>	The subject land is not identified as being affected by flooding.	Yes
6.5 – Airspace Operations	The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.	Approval has been previously provided permitting the building to be at a maximum height of 69.61m (AHD). The current modification does not seek to amend the height of the building.	Yes

### Gross Floor Area

73. The building footprint, built form and envelope as approved has not changed apart from internal reconfiguration of spaces and the removal and adjustment in the layout of services, infrastructure and facilities.
74. The main internal changes involve changing the use of the commercial space on the first floor to residential. There is no change at this level in GFA as there is no additional space proposed although the removal of the commercial lift and lobby has created some more “open” space which is not additional as the lift was not included as floor space. At the

ground level the retail space has been reduced in size and reconfigured. The introduction of fire stairs and an exit to the front of the site has reduced the overall retail area. Originally two large retail tenancies were approved however this application proposes 4 smaller tenancies. The floor space of the original retail area was 531sqm and combined with the commercial component was 938sqm. The proposal reduces the retail space to 461sqm with some additional floor space dedicated to services and plant room. The removal of the commercial lift and lobby space in the basement is now converted to storage space which is excluded in the GFA calculations.

75. There was concern about the excess lift space (which is to be removed) on the ground floor not being included in floor space as it now forms part of the retail space but the GFA calculations have included this element in the GFA. As such the development as proposed will have a GFA of 6,061sqm which amounts to an FSR of 4.5:1 and is compliant and in accordance with the approved DA. There is no additional bulk, scale or change to the building envelope proposed.

### Heritage conservation

76. In accordance with Clause 5.10 of the KLEP the proposed development is located within the vicinity of two heritage items which are included in Schedule 5 of the KLEP. These items are;

- *Item 83 Terraces, “Leah Buildings” 22–28 Montgomery Street*
- *Item 84 Kogarah Courthouse, 25–27 Montgomery Street*

77. Clause 5.10 of the KLEP requires the consent authority to consider the impact of development on the integrity of these adjoining items. The application was not referred to Council’s Heritage Officer given the minor nature of the works. The application is accompanied by a Heritage Impact Statement (HIS) prepared by GBA Heritage and dated 11 March 2021. The proposed development suggests minor changes to the front façade of the building at the first-floor level. The photo montage provided at Figure 9 below indicates the visual difference in the design as proposed in relation to what has been approved. The change to the façade at this level is small scale and replaces a glazed façade with a louvered window above spandrel panels which reflect the residential design.



**Figure 9:** The approved first floor finish and design (left) and the proposed alterations to the first floor design, as proposed (right) (courtesy: GBA Heritage, 2021)

78. The Heritage report makes the following comments *“The primary heritage issue that has been discussed in the previous application is the way the street level façade of the new building relates to the existing heritage context in Montgomery Street, most particularly the group of three Victorian Italianate two storey terraced houses at 22-26 Montgomery Street, to the north west of the subject site. Immediately adjacent to the group is another, two storey Victorian terraced house (28 Montgomery St) that is set well back from the street frontage with a small café operation in its forecourt.*
79. *In the previous approval, the urban design liaison between the parties resulted in the street level façade of the new building being reduced to two storeys and provided an articulated rhythm that reflects the urban scale and rhythm established by the nearby terraced houses.*
80. *The articulation of the two storey street façade was achieved by the introduction of profiled columns, each with an inset some 600 x 600mm. This resulted in the main part of the upper façade being divided into three distinctive sections, reflecting the tripartite arrangement of the upper facades of the historic three terraced houses.*
81. *The lower, street level façade of the building brought the shop-front glazing line to the rear face of the three columns that delineate the façade above. The setback reflects the setback of the ground floor façade of the three terraced houses, and the powerful role of the party walls, creating a subtle but important depth in the streetscape at the pedestrian level.”*
82. The report concluded to say *“The proposed change of use at first floor level and the resulting internal changes, including those at basement level, will have no impact on the subject building’s relationship to the heritage context of Montgomery Street.*
83. *The most relevant issues associated with the heritage context arise from the minor alterations to the first floor level façade. The below comparison of the previously approved facade and the proposed façade (Figure 2) demonstrates that the exterior changes are minor in nature. The alterations involve the addition of louvered windows above the spandrel panels to reach ventilation requirements associated with the proposed residential use.*
84. *As demonstrated, the overall proportions and arrangement of the ground and first floor façade remains unchanged and thus will continue to reflect the scale and rhythm of the three terraced houses at 22-26 Montgomery Street. This will continue the agreed relationship between the subject building and the heritage context.”*
85. It was considered that the balconies along the first floor should be opened up so that they are recessed elements and open features rather than representing loggias and fully enclosed wintergardens. This would reduce the visual bulk and scale of the development; lighten the appearance of this level whilst still retaining a clearly defined two storey podium. This proposed design change to the front façade at the first floor level was suggested to the Applicant and their Architect and they provided a justification against this suggested change for the following reasons:
  - *The proposed partial enclosure of the space with louvres to create wintergardens and loggias will be sympathetic with the existing design of buildings where most on the first floor have commercial tenancies which are enclosed.*



- *The loggias are included as floor space and provide versatility to this space and provide an additional acoustic screening from the activity along this roadway.*
- *The glazed design with louvres will not be visually bulky and will be similar to the intent of the original design. The louvres provide a softer visual appearance than solid glazing that was originally approved.*
- *It will be provide better privacy and also discretely screen the residential units and the balconies rather than opening them up and exposing these elements.*

86. The justification provided by the Applicant is considered to be satisfactory and consistent with Council's intent for these first floor levels to be commercial in nature and the proposed treatment reflects the existing and desired future planning outcome.
87. The proposed development and subsequent changes will not adversely affect the heritage significance of the items within the vicinity of the site and the proposed development satisfies the objectives and provisions of Clause 5.10 of the KLEP 2012.

### **Dual applications on the site**

88. It is possible to have a number of development consents relating to one site however there is a risk of inconsistencies occurring. Section 4.17 (former S80A(1)) of the EP&A Act allows for a consent authority to place a condition on a development consent requiring the modification or surrender of any existing development consents. This condition aims to resolve any inconsistencies that may exist.
89. This issue was considered by the Land and Environment Court in *Waverley Council v C M Hairis Architects*. In this case Council argued that the Applicant should lodge a Modification application for the main (approved DA) or submit a whole new DA for all the works. That proposal like the subject one proposed changes that could be argued are not considered "substantially the same" and hence a new DA amending the original application was proposed.
90. The Court in this case stated that there is no legal impediment to the number of development consents or applications that can be submitted for one site. This meant that the first consent and second consent could exist and be operative at the same time. The Court required that the Council place a condition on the second consent requiring the Applicant to modify the first consent to ensure that any inconsistency is removed or approve the second consent with no requirement to modify the first consent. Given that in this case, the change of use to residential at the first floor level in lieu of the commercial space requires the first DA to be modified and integrate these works as they would form part of the construction work for the new building. By modifying the original DA2018/0139 to include the works proposed in accordance with this consent (if consent is issued) this would create a more consolidated and integrated development.
91. Condition 2 has been imposed which requires the original DA2018/0139 to be modified prior to the issuing of the construction certificate and would remove any inconsistencies in the approvals.

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

92. 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.*

93. Despite the Draft plan having minimal weight in the assessment of this application; it is important in this case to consider the future implications of controls that may be imminently implemented and their impacts to this development. The proposed removal of commercial space in the Town Centre is on the whole an undesirable planning outcome given that the purpose and intention of the B4 zone is to encourage employment activities and commercial/retail uses however the current zoning controls do not exclude the construction of an RFB which is not the intention of the zone. It's ultimately encouraging mixed uses with some residential land uses to assist in the activation of the centre but predominantly encouraging commercial and retail activities so the loss of an commercial or employment generating floor space is disadvantageous to the centre from a planning perspective. However this issue has been rectified in the Draft LEP, by the provision of Clause 4.4B (Non-residential floor space ratios) which stipulates that minimum proportion of the FSR needs to be dedicated to "non-residential" uses. This forces the development to include a minimum percentage of non-residential component and encourages a mix of uses. The B4 zone in the Draft LEP also prohibits RFB's. These provisions tighten the desire to expand and diversify land uses within the B4 zone. Although this application will not be able to capitalise on these new controls and it is likely this development in its current form is of the last developments to have the proportion of residential to non-residential.
94. It should also be noted that the development retains a substantial amount of retail floor space on the ground floor amounting 460sqm of floor space in the form of 4 individual tenancies.

## DEVELOPMENT CONTROL PLANS

95. The proposed development is subject to the provisions of Kogarah Development Control Plan 2013 (KDCP 2013). Table 5 below outlines compliance with these controls.

**Table 5: Kogarah DCP 2013 Part E1 Kogarah Town Centre**

Clause	Standard	Proposed	Complies
<b>Part B1 Heritage Items and Heritage Conservation Areas</b>			
Heritage	Ensure development protects and enhances the environmental and cultural heritage of Kogarah	This issue has been discussed in greater detail above and although the subject site is not a classified item or located within a conservation area, it is located within the vicinity of items of local significance.  The proposal will not adversely affect the heritage significance of the items.	Yes
<b>Part B Tree Preservation and Greenweb</b>			
Tree preservation	Development approval is required to ringbark, remove, cut down or destroy any tree that has a height greater than	The existing site contains a three-storey mixed use development that covers the whole site area and there are no existing trees or vegetation.	Yes

	3.5m or branch spread exceeding 3m in diameter.	The proposal will not undermine the approved landscaping design for the development.	
	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
<b>Part E1 – Kogarah Town Centre</b>			
2.3 – Montgomery Street Precinct	<p><b>Land Uses</b> Reinforce Montgomery Street as a major mixed use, active street, encompassing retail, commercial and medical/civic uses with retail shop fronts along much of its length.</p> <p><b>Street Frontage</b> Address the street, at the station end of Montgomery Street up to the TAFE building, with small scale retail and commercial development at ground level.</p> <p>Provide predominantly commercial and medical uses associated with the two hospitals at the hospital end of Montgomery Street between Kensington Street and South Street.</p> <p>Emphasise the intersection of Kensington Street and Montgomery Street with taller</p>	<p>The proposed changes to the building are considered minor and will not unreasonably affect the approved building footprint and envelope. The development will not be altered along the Montgomery Street interface. Although there will be a loss in the first-floor commercial component the ground floor retail space will be retained.</p> <p>The retail element on the ground floor will be retained which will activate the street frontage and satisfy this provision.</p> <p>N/A as this site is not located within this designated block.</p> <p>The subject site is not located on a significant corner and this provision is not considered to be relevant. DA2018/0139 has established the anticipated and</p>	Yes

	<p>corners, reinforcing Kensington Street as the major north-east, south-west boulevard in the town centre.</p> <p>Redevelop the southern side of Montgomery Street between Kensington and South Street, with buildings having the lower three or four-storeys built to the proposed building alignment.</p> <p>Setback the upper storeys 3m from the alignment or mark storeys 3 or 4 with a strong cornice line.</p> <p><b>Pedestrian movement</b> Create a pedestrian link adjacent to the courthouse, from Belgrave Street to Moorefield Lane.</p> <p>Provide pedestrian amenity in the form of continuous awnings along retail and commercial frontages. A diverse range of canopies, awnings, balconies, bay windows and signs will assist in creating a colourful and visually rich townscape character.</p>	<p>desired built form for this mid-block site. No change is proposed to the approved built form.</p> <p>The subject site is not located within this area.</p> <p>The building has been designed and approved to include a two storey podium which reinforces the street level scale and Levels 3-13 have been setback behind the podium so that there is separation and the bulk of the upper level is recessed and visually reduced.</p> <p>MOD2020/0148 removed the commercial component of the development on the lower ground floor and first floor level at the rear off the Lane and this will improve activation, safety and surveillance of Moorefield Lane.</p> <p>The issue of a new awning and streetscape and public domain works and infrastructure embellishments were considered as part of the original DA2018/0139.</p>	
<b>3. Built Form</b>			
3.8 – Floor to	Floor to ceiling	The floor to ceiling levels comply	Yes

Ceiling Heights	<p>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.</p> <p>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.</p>	<p>with the provisions of the ADG and will be no lower than 2.8m for the new apartments and the retail tenancies on the ground floor will have a minimum height of 3m.</p> <p>As previously mentioned the floor to ceiling height of the first floor is a minimum of 2.8m which satisfies the DCP.</p>	
3.9 – Parking Provision in the Kogarah Town Centre	<p>3.9.1 Car Parking Residential parking is to be provided in developments at the following rates:</p> <p>1 resident car space is to be provided on-site for each dwelling.</p> <p>1 visitor car space is to be provided on-site for each 5 dwellings</p> <p>For commercial/retail development and other land uses parking is to be provided at the following rate:</p> <p><b>(i) 1 space per 40sqm for any floor space at ground floor level.</b></p> <p>(ii) 1 space per 50sqm for all other floor space above</p>	<p>As per ADG objective 3J the proposal refers to the RMS Guide for Traffic Generating Development (GTTGD) given the site's location less than 800m from a Kogarah Station. In this regard, the ADG rates take precedence over Council's residential car parking rates. This is assessed in detail under objective 3J of the ADG.</p> <p><b>Note:</b> Although the proposal provides in excess of the metropolitan car parking requirements, it is important to consider what the parking provisions are in accordance with</p> <ul style="list-style-type: none"> <li>- Retail: <math>461\text{sqm}/40 = (11.5)</math> 12 spaces required</li> <li>- Residential 66 apartments x 1 space = 66 car spaces required</li> <li>- Visitor: <math>66/5</math> spaces = (13.2) 14 spaces required.</li> </ul> <p>Total of 92 spaces are required</p>	Yes

	<p>ground floor level.</p> <p>1% of all car parking spaces are to be designated “accessible” spaces for people with mobility impairments, with a minimum of 1 space for facilities such as medical suites.</p>	<p>and a total of 95 spaces are provided so well within Council’s numerical requirements for off-street car parking.</p> <p>A minimum of 1 space is to be provided as an “accessible” space. The development designates a total of seven (7) accessible spaces within the development which is compliant.</p>	
3.9.2 – Bicycle Parking	<p>(1) Bicycle storage is to be provided at the rate of:</p> <p>(i) 1 secure bicycle storage facility per 2 residential units</p> <p>(ii) 1 bike space per 10 car spaces for the first 200 spaces then 1 space per 20 car spaces thereafter, for commercial and retail land uses.</p>	<p>Part 3J-2 of the ADG provides that: “<i>Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas</i>”.</p> <p>Although no bicycle rates apply in the ADG, based on the DCP rates, the development is required to provide 33 bicycle spaces.</p> <p>The development provides 29 bicycle spaces, representing a short fall of 4 spaces.</p> <p>It is noted that the original application as approved provided 24 bicycle spaces. The current application proposes 4 new units catering for 5 additional bicycle spaces bringing the total to 29.</p> <p>Given the original proposal was supported with only 24 bicycle spaces, it is considered that the five (5) additional bicycle spaces is acceptable.</p> <p>DCP variation: 12.1%</p>	Acceptable

96. Controls found in KDCP 2013 Part E1 (4) Urban Design are overridden by the ADG thus were not considered as part of the assessment of this modification.

### Car Parking

97. The approved development (DA2018/0139) provided for a total of 96 car parking spaces broken up into 73 residential spaces and 23 retail/commercial spaces. The current proposal which includes 4 new apartments in lieu of commercial space proposes a total of 95 car parking spaces with 83 dedicated to residential apartments and 12 for the retail

tenancies. This allows for a greater amount of parking for the residential component. A condition will require a minimum of 2 car parking space be dedicated for each new apartment and the remainder can be dedicated back to the other residential apartments. The commercial part of the development amounted to some 407sqm of floor space which generated the need for 8 on site car parking spaces. So the allocation of spaces to the new units exceeds the controls but is consistent with the demand generated by the commercial component. Given also that 3 of the apartments are 'dual key' apartments and could be divided into 2 smaller apartments having 2 spaces per unit makes sense and is a logical distribution of space and services.

98. In terms of traffic generation, the traffic assessment that accompanies the application prepared by Transport and Traffic Planning associates and is dated 27 May 2021, considers the traffic generated by the new apartments as opposed to that created by the commercial tenancies. Utilising the RMS Guide to Traffic Generating Developments, The commercial tenancies generated 6.6vtph (vehicular trip movements per hour) per AM and PM peak periods whilst the residential units generate 0.76vtph in the AM and 0.6vtph in the PM peak. This results in less movements generated by the residential use as opposed to a commercial use as it is likely there is more activity.
99. The traffic and parking assessment confirms that the development complies with the parking standards and numerical requirements and the traffic generated by the change of use is considered reasonable and will not adversely affect the amenity of the street and immediate locality. The site is also very accessible.

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

100. The proposal has been considered in accordance with the relevant provisions within the Georges River Council Interim Development Control Plan 2020 relating to residential flat buildings. No specific clauses apply to the proposal, and any reference to the ADG has been assessed above.

#### **DRAFT GEORGES RIVER DEVELOPMENT CONTROL PLAN 2020 (GRDCP)**

101. Council has prepared the draft GRDCP 2020 which aims to harmonise controls within the LGA to create an integrated, consolidated document which will complement the provisions in the Draft GRLEP 2020 with gazettal of this instrument imminent.
102. The GRDCP 2020 will become effective upon gazettal of the GLEP 2020. The proposed development would need to generally satisfy the provisions of Part 3 – General Planning considerations, Part 7 – Business Precinct and Part 8 – Kogarah Town Centre which outlines controls for developments in business zones and within the Kogarah Town Centre. The development is not considered to be inconsistent with the overall objectives and purpose of the draft plan.

#### **IMPACTS**

##### ***Natural Environment***

103. The proposed works are considered to be a change of use within an approved building envelope. The proposal will not result in any changes to stormwater disposal or impact on any neighbouring allotment or the public domain. The proposed design planning outcome that is anticipated is considered to be a reasonable response for this site.

##### ***Built Environment***



104. The proposal does not affect the approved built form, building envelope or footprint and will be in accordance with DA consent DA2018/0139 granted. The proposal will not have an adverse or detrimental impact on the streetscape.

### ***Social Impacts***

105. The proposal will not result in any unreasonable social impacts given the mixture of uses contained in the proposal. Whilst the modification seeks to remove some commercial floor space this loss is compensated by the provision of four diverse apartments which fall within the affordable category due to their size and orientation and the fact they are able to become smaller or larger due to their dual key design and layout which will allow for greater versatility in the housing stock that is offered in this locality and the precinct.

### ***Economic Impacts***

106. The proposal is unlikely to result in any unreasonable economic impacts given the mixed nature of the use. The removal of the commercial component which in theory and given the site's location is undesirable has been justified by a detailed economic assessment which confirms there is ample new commercial floor space being delivered in the immediate area and the development maintains satisfaction with the objectives of the B4 zone and is a permissible use in the zone.

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

107. It is considered that the proposal is consistent with the approved development and will not impact upon the approved building form and scale. The development remains a suitable development for the site having regard to the land shape, topography, the built form and relationship to adjoining developments.

## **SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST**

108. The application was notified to adjoining owners, occupiers, for a period of 14 days. No submissions were received.

### **Council Referrals**

#### Team Leader - Subdivision and Development (Stormwater and Subdivision)

109. The application was reviewed and due to the nature of works proposed Council's Engineers raised no objection to the proposal and did not include any conditions as the original development consent DA2018/0139 address the stormwater and drainage criterion.

#### Heritage Advisor

110. Due to the minor nature of the works, the application was not required to be referred to Council's Heritage Advisor and a detailed assessment in accordance with Clause 5.10 of the KLEP is included and formed part of this report.

#### Traffic Engineer

111. The application was referred to Council's Traffic Engineer for comment. Given that the changes are minor and the development does not decrease the amount of car parking that was originally approved, and the layout and parking and access arrangement remain largely unchanged and compliant with Australian Standards no objection was raised to the scheme subject to the implementation of the following condition;

*"The Body Corporate and/or Strata Management of the development is to ensure that all visitor spaces are to be kept free for visitors of the development by ensuring residents are not parked in these spaces. All visitor spaces are to remain as common property on the strata plan and clearly included prior to registration".*

112. This condition has been included as part of this consent.

### **External Referrals**

#### Ausgrid

113. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007 for consideration. In response, no objection was received in relation to the proposed modifications.

### **Public Interest**

114. The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. Following a detailed assessment, the proposal is considered to be in the public interest and worthy of support.

### **Section 7.11 Contributions**

115. Development consent No. DA2018/0139 outlines the monetary contribution that is payable for the originally approved mixed use development. The two recent modification applications have revised the Section 7.11 Contribution amount and the updated approval requires a payment of \$939,904.01 which is applicable.

116. Given this application is simply for a change of use from a commercial use, this consent includes a condition that requires a contribution to be paid for the 3 x 2 bedroom dwellings and 1 x 1 bedroom dwelling. Since this application does not exceed \$10million the contribution will need to be paid to Council prior to the issuing of the Construction Certificate as it is not covered by the COVID 19 emergency planning provisions and exemptions.

117. A total contribution of \$72,167.47 is applicable for this development.

### **CONCLUSION**

118. The application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies and the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013 and Draft Kogarah Local Environmental Plan 2020.

119. The proposal on its merits is considered to be an acceptable planning and urban design outcome (subject to the imposition of conditions) for the reasons outlined within this report. The proposal is reasonable given the objectives of the controls have been adequately satisfied and the proposal does not result in any unreasonable amendment to the built form or operation of the development.

### **DETERMINATION AND STATEMENT OF REASONS**

#### Statement of Reasons

120. The reasons for this recommendation are:

- The proposed development generally complies with the requirements of the relevant environmental planning instruments and development control plan.
- The proposal to amend the layout of the approved mixed use building is considered to meet the objectives of the B4 zone.
- The proposal provides a mixed use development that responds to community needs and demands.

- The proposed changes are largely internal and will not alter the bulk, scale and built form as approved in accordance with Development consent DA2018/0149 and will remain consistent with the character of development the locality.
- The proposed development generally satisfies the provisions and controls stipulated as part of the KDCP.
- The development is in the public interest as it provides smaller, flexible apartments that could be more affordable and the proposal is suitable for the site.

### Determination

121. That pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel, grant development consent to development application DA2021/0110 for alterations to the mixed use development by converting the first floor commercial area to four (4) new apartments comprising of 3 x 2 bedroom ('dual-key' apartments) and 1 x 1 bedroom apartment at Lot 1 and 2 in DP 1257940 and known as 32-38 Montgomery Street, 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, except as amended by conditions of this consent:

Reference Number	Description	Date	Revision	Prepared by
DA009	Site Plan	10 March 2021	A	Stanisic Architects
DA010	Montgomery Street Elevation	10 March 2021	A	Stanisic Architects
DA100	Basement 3 Plan	10 March 2021	A	Stanisic Architects
DA101	Basement 2 Plan	10 March 2021	A	Stanisic Architects
DA102	Basement 1 Plan	10 March 2021	A	Stanisic Architects
DA103	Level 0 (LG) Plan	10 March 2021	A	Stanisic Architects
DA104	Level 1 (G) Plan	10 March 2021	A	Stanisic Architects
DA105	Level 2 Plan	10 March 2021	A	Stanisic Architects
DA201	South West Elevation	10 March 2021	A	Stanisic Architects
DA205	Section AA	10 March 2021	A	Stanisic Architects
DA207	Section CC	10 March 2021	A	Stanisic Architects
DA208	Section DD	10 March 2021	A	Stanisic Architects
DA209	Section EE	10 March 2021	A	Stanisic Architects
913143M_12	BASIX Certificate	18 February	-	Efficient Living

		2021		Pty Ltd
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### Documents Relied Upon

Reference Number	Description	Date	Revision	Prepared By
N/A	Statement of Environmental Effects	11 March 2021	A	Planning Ingenuity
N/A	Legal Advice	1 March 2021	A	Mills Oakley
N/A	Commercial Market Appraisal	March 2021	A	Atlas Economics
N/A	Design Verification Statement	10 March 2021	A	Stanisic Architects
N/A	Heritage Impact Statement	11 March 2021	A	GBA Heritage
N/A	Basix Certificate and NATHERS assessment	18 February 2021	G	Efficient Living

LPP031-21

2. **Modification to DA2018/0139** – Prior to issuing a Construction Certificate in accordance with this consent, a notice of modification to development consent DA2018/0139 must be lodged with Council, to comply with the requirements of clause 97 of the Environmental Planning and Assessment Regulations 2000 which will ensure there is no inconsistency between the two consents.

A condition to DA2018/0139 consent will need to be imposed and will read along the lines of;

*“Despite any other provision of this Development Consent DA2018/0139, this consent does not authorise or require anything that is inconsistent with the work approved in accordance with Development Consent DA2021/0110 and to the extent of any inconsistency the latter consent prevails”.*

A Construction Certificate for the proposed works can be issued once the consent authority has determined the modification.

3. **Building Code of Australia & Home Building Act 1989** – The proposed development shall satisfy the provisions of 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.
4. **Fit out of retail premises** - No approval is granted for the use or fit-out of any of the retail 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.

### Separate Approvals Required Under Other Legislation

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](mailto:hans.pilly.mootanah@rms.nsw.gov.au) to obtain concurrence for the hoarding structure.

6. **Section 138 Roads Act 1993 and Section 68 Local Government Act 1993** - Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

Separate approval is required under Section 138 of the Roads Act 1993 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](http://www.georgesriver.nsw.gov.au). For further information, please contact Council's Customer Service Centre on (02) 9330 6400.

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

7. **Sydney Water - Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in™ agent has appropriately stamped the plans prior to the issue of the Construction Certificate.
8. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 <http://legislation.nsw.gov.au/> 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) <http://www.sydneywater.com.au> then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

9. **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.
10. **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

### Prior to the Issue of a Construction Certificate

11. **Fees to be paid** - The fees listed in the table below must be paid in accordance with the conditions of this consent and Council's adopted Fees and Charges applicable at the

time of payment (available at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au)).

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

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

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

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

Fee Type	Fee
<b>GENERAL FEES</b>	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://portal.longservice.nsw.gov.au/bci/levy/">https://portal.longservice.nsw.gov.au/bci/levy/</a>	
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Kogarah Section 94 Development Contributions Plan No 5 – Open Space	\$67,801.74
Kogarah Section 94 Development Contributions Plan No 8 – Kogarah Town Centre – Traffic Facilities	\$1,227.20
Kogarah Section 94 Development Contributions Plan No 8 – Kogarah Town Centre – Community Facilities	\$1,208.74
Kogarah Section 94 Development Contributions Plan No 9 – Kogarah Libraries – Buildings	\$1,126.54
Kogarah Section 94 Development Contributions Plan No 9 – Kogarah Libraries - Books	\$803.25
<b>Total S94 Contributions</b>	<b>\$72,167.47</b>

### General Fees

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

### Development Contributions

The Section 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](http://www.georgesriver.nsw.gov.au).

12. **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.
13. **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*.
14. **BASIX Commitments** – All energy efficiency measures as detailed in the BASIX Certificate No.913143M\_12 must be implemented on the plans lodged with the application for the Construction Certificate.
15. **Natural Cross Ventilation requirement** - In order to achieve the minimum natural cross ventilation performance as per the ADG Guidelines, each of the windows belonging to Apartments 206, 207, 208 and 209 that discharge air into the central atrium space or to the south east aspect are to have a minimum ventilating area of no less than the greater of 5% of the floor area of the room required to be ventilated and a total openable area per aspect of 0.4sqm and the following design provisions apply;
  - (a) These windows must not be obstructed by fly screen mesh, louvres or the like.
  - (b) The top of the central atrium must not be covered other than to the extent shown on the drawings nominated in condition 1.
  - (c) No obstruction is to be introduced between fire stairs/lift core and the apartments on any of the levels between a height of 1.6m and the height of the soffit or slab.
16. **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.
17. **Access for Persons with a Disability and Adaptable Housing** - Access for persons with disabilities must be provided throughout the site, including to all common rooms,

lobby areas, commercial premises and sanitary facilities in accordance with the requirements of the Premises Standards, the Building Code of Australia and AS 1428.1. Details must be submitted with the Construction Certificate Application other than a construction certificate for demolition, excavation, shoring and piling.

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

18. **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 (other than a Construction Certificate for demolition, excavation, shoring and piling).

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 (other than a Construction Certificate for demolition, excavation, shoring and piling).

19. **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.
20. **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.
21. **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.
22. **Allocation of car parking spaces** – Each new dwelling, apartment 206, 207, 208 and 209 shall have two (2) car spaces for its private use and these spaces shall be line marked and dedicated to each apartment on the construction certificate plans and also on the strata plan.
23. **Visitor spaces** - The Body Corporate and/or Strata Management of the development is to ensure that all visitor spaces are to be kept free for visitors of the development by ensuring residents are not parked in these spaces. All visitor spaces are to remain as common property on the strata plan and clearly included prior to registration.
24. **Storage** – Each new apartment (206, 207, 208 and 209) shall have a designated storage

space within the basement. The space for each apartment shall be included on the construction certificate plans.

25. **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.
26. **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.
27. **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 unit addresses for the subject development must be allocated as advised by Georges River Council.

#### **Unit Addresses**

- The Applicant is to liaise with Council's Property Section to obtain the allocation of address for each unit.

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

28. **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.
29. **Materials, colours and finishes** – The proposed materials, colours and finishes shall be consistent with those approved in DA consent DA2018/0139.

30. **Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.
31. **NBN Connection** - Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:
- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
  - (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

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

### During Construction

32. **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.

33. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.
34. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the [Roads Act 1993](#) and/or under Section 68 of the [Local Government Act 1993](#). Penalty infringement Notices may be issued for any offences and severe penalties apply.
35. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

Copies of all receipts for the disposal, or processing of all such materials shall be submitted to the PCA and Council, where Council is not the Principal Certifying Authority.

36. **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.
37. **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.
38. **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 Montgomery Street and the rear laneway.

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

39. **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.
40. **BASIX Compliance Certificate** - A Compliance Certificate must be provided to the PCA regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.
41. **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.
42. **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.
43. **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.

44. **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.
45. **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*.
46. **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.
47. **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*.
48. **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.

49. **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.

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

- a) Residential dwellings: 69 car parking spaces
- b) Commercial/Retail: 12 car parking spaces
- c) Visitors Spaces: 14 car parking spaces (includes visitor/car wash bay)
- d) Visitor/Car wash bay: 1 car parking space.

51. **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.



52. **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.
53. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to Ausgrid (or relevant electricity provider).
54. **Allocation of street and unit addresses** - All street and unit 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.

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

55. **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).
56. **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.
57. **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.
58. **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.
59. **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.
60. **Visitors Parking** - All allocated car parking spaces shall be freely available for the visitors of the proposed development.
61. **Entering & Exiting of vehicles** - All vehicles shall enter and exit the site in a forward direction.
62. **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.

63. **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.

64. **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.

65. **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 approved bins as per the Australian Standards.

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

66. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
67. **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.

68. **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.

69. **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.

70. **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.

71. **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.

72. **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**

73. **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
74. **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.
75. **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.
76. **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.
77. **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.

## END CONDITIONS

### NOTES/ADVICES

78. **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

79. **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.
80. **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.
81. **Access to NSW Legislation (Acts, Regulations and Planning Instruments)** – NSW Legislation can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).
82. **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.

83. **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.
84. **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.

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

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)).
  - (b) Department of Environment and Conservation NSW, Noise Policy Section web page ([www.environment.nsw.gov.au/noise](http://www.environment.nsw.gov.au/noise)).
  - (c) New South Wales Government Legislation home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).
  - (d) Australian Acoustical Society - professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).
  - (e) Association of Australian Acoustical Consultants - professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).
  - (f) Department of Gaming and Racing - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).
86. **Acoustical Engineer Contacts & Reference Material** - Further information including lists of Acoustic Engineers can be obtained from:
- (a) *Australian Acoustical Society—professional society of noise-related professionals* ([www.acoustics.asn.au](http://www.acoustics.asn.au))
  - (b) *Association of Australian Acoustical Consultants—professional society of noise related professionals* ([www.aaac.org.au](http://www.aaac.org.au))
  - (c) *NSW Industrial Noise Policy – Office of Environment & Heritage* ([www.environment.nsw.gov.au](http://www.environment.nsw.gov.au))
87. **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.
88. **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.

89. **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.

90. **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.

91. **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.

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



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

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

- (a) Complete the Stormwater Drainage Application Form which can be downloaded from Georges River Council's website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).
- (b) In the Application Form, quote the Development Consent No. (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.

94. **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/>

95. **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.

## ATTACHMENTS

Attachment [↓](#) 1 

Site plan - 32-38 Montgomery Street Kogarah

Attachment [↓](#) 2 

Section AA - 32-38 Montgomery Street Kogarah

Attachment [↓](#) 3 

Montgomery street view - 32-38 Montgomery Street Kogarah

