

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 19 August 2021
Time:	4.00pm
Venue:	Council Chambers, Civic Centre, Hurstville
Panel Members:	Stephen Davies (Chairperson) John Brockhoff (Expert Panel Member) Marcus Sainsbury (Expert Panel Member) Cameron Jones (Community Representative)

1. On Site Inspections – Carried out by Panel Members prior to meeting	
2. Opening	
3. Consideration of Items and Verbal Submissions	
LPP041-21	54 and 54A Noble Street Allawah – REV2021/0001 (Report by Senior Development Assessment Officer)
LPP042-21	5 Millett Street Hurstville – DA2020/0185 (Report by Senior Development Assessment)
LPP043-21	4 Marie Dodd Crescent Blakehurst – MOD2020/0223 (Report by Principal Planner)
LPP044-21	73 Waitara Parade Hurstville Grove – DA2021/0092 (Report by Development Assessment Planner)
4. LPP Deliberations in Closed Session	
5. Confirmation of Minutes	

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 19 AUGUST 2021**

LPP041-21

LPP Report No	LPP041-21	Development Application No	REV2021/0001
Site Address & Ward Locality	54 and 54A Noble Street Allawah Kogarah Bay Ward		
Proposed Development	Review of Determination DA2019/0314 - for demolition of existing structures, lot consolidation and the construction of a four (4) storey Residential Flat Building containing seven (7) apartments with basement car parking for ten (10) vehicles, associated landscaping and site works		
Owners	Sam Pambris, Acuity Property Group Pty Ltd and Mr E Kritikos		
Applicant	Cornerstone Design		
Planner/Architect	Planner: BMA Urban Architect: Cornerstone Design		
Date Of Lodgement	18/01/2021		
Submissions	Two (2) written submission and one (1) petition received		
Cost of Works	\$2,434,828.87		
Local Planning Panel Criteria	The application seeks consent for development to which the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies and a variation to a development standard by more than 10%. The original development application was also refused by the Georges River Local Planning Panel (LPP) on 17 September 2020. Pursuant to S8.3 (5) of the Environmental Planning and Assessment Act 1979, the S8.2 Review is to be determined by the Georges River Local Planning Panel.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment, State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Draft Georges River Local Environmental Plan 2020, Draft Design and Place State Environmental Planning Policy		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects and Clause 4.6 Statement Traffic and Parking Report and Flood Report Architectural and landscape plans Site investigation and Remedial Action Plan		
Report prepared by	Senior Development Assessment Officer		

Recommendation	That the application be approved in accordance with the conditions included in the report.
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<p>Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?</p>	<p>Yes</p>
<p>Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?</p>	<p>Yes</p>
<p>Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?</p>	<p>Yes – Clause 4.1A Minimum allotment size</p>
<p>Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p>Not Applicable</p>
<p>Conditions Have draft conditions been provided to the applicant for comment?</p>	<p>No, standard conditions have been attached which can be reviewed when the report is published.</p>

Site Plan



Aerial photo – the subject site is outlined in blue.

**Executive Summary
 Proposal**

1. Council is in receipt of an application to Review a Determination in accordance with the provisions of Section 8.2 of the Environmental Planning and Assessment Act 1979. Development Application DA2019/0314 was refused by the Local Planning Panel on 17 September 2020.
2. This application proposed the demolition of existing structures, lot consolidation and the construction of a four (4) storey Residential Flat Building containing eight (8) apartments with basement car parking for twelve (12) vehicles, associated landscaping and site works. The application was refused on the following grounds:
 1. *The written requests under Clause 4.6 of the Kogarah Local Environmental Plan 2012 seeking to justify a contravention of Clause 4.3 Height Control and Clause 4.1A Minimum Lot Size for RFB's development standard fails to satisfy, adequately address and demonstrate that:*
 - (a) *Compliance with the standard/s is unreasonable or unnecessary in the circumstances of the case; and*
 - (b) *There are sufficient environmental planning grounds to justify the contravention.*
 - i) *The proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.*
 2. *The proposal fails to satisfy the provisions of Clause 6.3 of Kogarah Local Environmental Plan 2012 in relation to Flood Planning as it has not been established that the development is compatible with the flood hazard of the land or incorporates appropriate measures to manage risk of life from flood and there is no jurisdiction to approve the application.*
 3. *The scale and the height of the building is inconsistent with the established character and is out of context with the 3-4 storey scale of existing development within the locality.*
 4. *The number of car parking spaces provided for the development is inadequate.*
 5. *The development is an overdevelopment of the site having regard to the area and site width.*
3. A photomontage of the originally proposed building is provided as Figure 1 below.



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



Figure 2: 3D Montage of the amended proposed RFB refused under DA2019/0314 (Courtesy: Cornerstone Design, March 2020, Issue B)

Site and Locality

4. This application applies to land known as 54 and 54A Noble Street, Allawah which is legally described as Lot A and B DP 381675. The site includes a set of single storey semi-detached dwelling houses each with vehicular access off Noble Street. The development site is a regular shaped allotment with a frontage of 15.24m to Noble Street, depth of 40.235m and a total site area of 613.2sqm.
5. The site is burdened by a stormwater drainage easement located along the north western boundary which is highlighted on the amended survey plan dated 26 November 2018.
6. The site is isolated and sits between a larger 4 storey Residential Flat Building (RFB) (50-52 Noble Street) and a 3 storey RFB (56 Noble Street). The streetscape and immediate locality comprises of medium density developments predominantly residential in nature.

7. The site is within close proximity to the Allawah Train Station and small commercial centre.

State Environmental Planning Policies

8. The proposal has been considered to be satisfactory in respect to the following policies which have been considered in respect to the application:

- State Environmental Planning Policy No.55 – Remediation of Land.
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
- State Environmental Planning Policy (Building and Sustainability Index:2004).
- State Environmental Planning Policy (Infrastructure) 2007.
- State Regional Environmental Plan No 2 – Georges River Catchment.
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
- Draft Environment State Environmental Planning Policy.
- Draft Remediation of Land SEPP.
- Draft Design and Place State Environmental Planning Policy.

Zoning and KLEP (2012) Compliance LEP

9. The subject site is zoned R3 Medium Density Residential. The proposal is defined as a Residential Flat Building (RFB) which is permissible with consent in the zone. The proposal satisfies the R3 zone objectives. The proposed development is compliant with the maximum 15m height control and the maximum Floor Space ratio of 1.5:1 for the site. The application does however seek to vary the minimum lot size development standard.
10. The application has been accompanied by a Clause 4.6 - Exceptions to development standard request for the variation to Clause 4.1A – Minimum Lot sizes for multi dwelling housing, residential flat buildings and seniors housing development standard.

Submissions

11. The DA was notified to adjoining properties in accordance with the Kogarah Development Control Plan 2013 (DCP2013) for a statutory notification period of 21 days. A total of two (2) submissions were received in response. One of the submissions provided an attached petition with 18 signatures objecting to the proposal.
12. The concerns raised in the submissions related to the potential for direct overlooking, overshadowing, the bulk and scale of the building is inconsistent with the height and character of development in the street, non compliant FSR, inability for vehicles to manoeuvre within the basement and the proposal removes on street car parking spaces. These issues are addressed in more detail later in this report.
13. The amended plans were not renotified as they did not result in an increase in environmental impacts as referenced in the Kogarah Development Control Plan 2013.

Reason for Referral to the Local Planning Panel

14. This application is referred to the Georges River Local Planning Panel (LPP) for consideration and determination, as the original application was refused by the LPP in September 2020. Pursuant to Section 8.3(5) of the Environmental Planning and Assessment Act 1979, the Section 8.2 Review is to be undertaken by the Georges River Local Planning Panel.

Planning Issues

15. The amended proposal is an appropriate response to the site when considered against the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. Its bulk and scale are consistent with the desired future character of the area as established by the Kogarah Local Environmental Plan 2012 (KLEP) development standards for FSR and height.
16. The development fails to provide the minimum lot size requirement of Clause 4.1A – Minimum Lot sizes for multi-dwelling housing, residential flat buildings and seniors housing contained within Clause 4.1A of Kogarah Local Environmental Plan 2012. A Clause 4.6 Statement has been submitted justifying the extent of the variation. In this case, the Clause 4.6 for Minimum Lots size is reasonable and well-founded given the site cannot be physically amalgamated or consolidated with the adjoining sites.

Conclusion

17. The application has been assessed having regard to the Matters for Consideration under Section 4.15 and Section 8.2 of the Environmental Planning and Assessment Act, 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plans. The proposal is a reasonable planning and urban design outcome in the context of the site.
18. The Clause 4.6 Objection in relation to the minimum lot size development standard is considered to be well-founded.
19. As a result the Section 8.2 Review (REV2021/0001) application is recommended for approval subject to conditions in accordance with the reasons included in this report.

Report in Full

Description of Proposal

20. Council is in receipt of a Section 8.2 Review application relating to a development application (DA) that seeks consent for the proposed demolition of existing structures, lot consolidation and the construction of a four (4) storey Residential Flat Building containing seven (7) apartments with basement car parking for ten (10) vehicles, associated landscaping and site works.



Figure 3: Photomontage of the amended development as proposed under S8.2 Application (Source – Cornerstone Design 2021)

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21. Further details of the proposal are as follows:

Basement Plan

A total of ten (10) car parking spaces broken up into the following configuration;

- Ten (10) resident spaces including one (1) accessible space. Six (6) spaces are designed in a tandem form dedicated to apartments G.01, G.02 and 2.01.
- Lift lobby and fire stair access
- Space for storage and services
- Garbage waste room
- Meters and NBN cupboards.
- Bicycle parking for four (4) bicycles

Ground Floor Plan

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

First Floor (repeated)

- 1 x three (3) bedroom apartment (1.01) (adaptable)

- 1 x two (2) bedroom apartment (1.02) (liveable)
- Main lift lobby and fire stairs.

Second Floor

- 1 x three (3) bedroom apartment (2.01)
- 1 x two (2) bedroom apartment (2.02)
- Main lift lobby and fire stairs

Third Floor

- 1 x two (2) bedroom apartment (3.01)
- Main lift lobby and fire stairs
- Communal open space area
- Accessible WC
- BBQ including an open style pergola feature

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

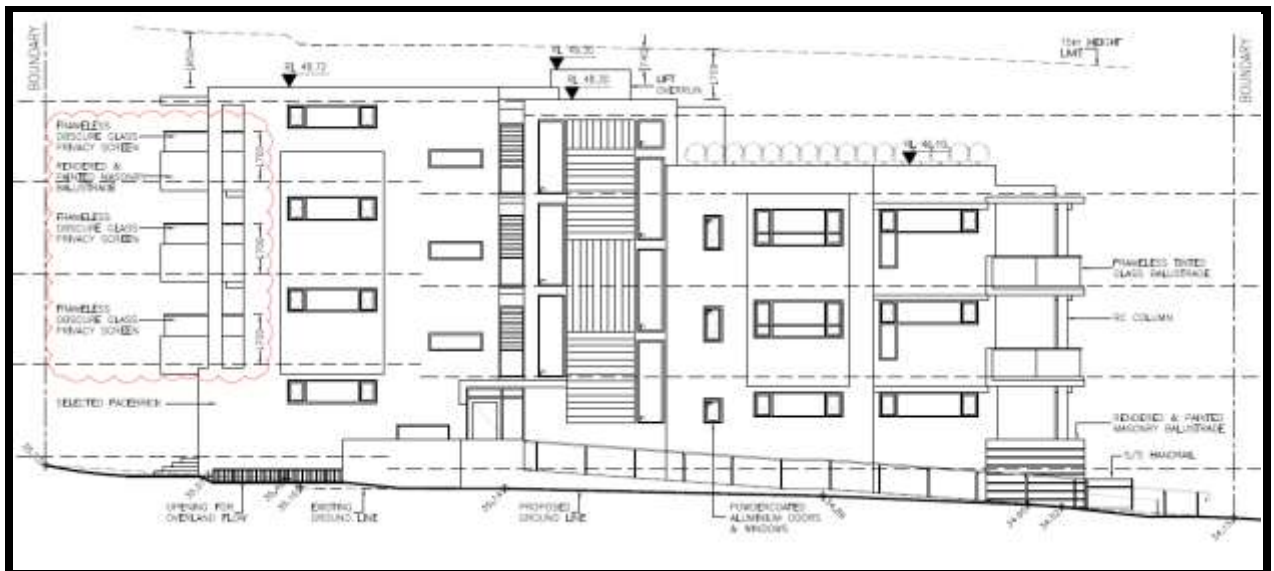


Figure 4: Amended north western elevation Issue E (Courtesy: Cornerstone, July 2021)



Figure 5: Amended south eastern elevation Issue E (Courtesy: Cornerstone, July 2021)

Development Summary

23. A numerical summary of the development application refused (DA2019/0314) by the LPP and the review application (REV2021/0001) are detailed in the table below.

Element	DA2019/0314	REV2021/001
Site Area	613.2sqm	613.2sqm
Gross Floor Area	778.65sqm	690.95sqm
Floor Space ratio	1.27:1	1.13:1
Height	17.405m (RL 52.3)	14.405m (RL 49.3)
Storeys	4 storeys with roof top communal open space	4 storeys
Apartments	Eight (8)	Seven (7)
Apartment Mix	<ul style="list-style-type: none"> • 5 x 2 bedrooms • 3 x 3 bedrooms 	<ul style="list-style-type: none"> • 4 x 2 bedrooms • 3 x 3 bedrooms
Adaptable apartments	1 (12.5%)	1 (14.3%)
Car parking	12 spaces comprising <ul style="list-style-type: none"> • 11 residential spaces • 1 visitor space 	10 spaces comprising: <ul style="list-style-type: none"> • 10 residential spaces
Bicycle Parking	4 spaces	4 spaces
Communal Open Space	125.15sqm (20.4% of site)	93.93sqm (15.32% of site)
Deep Soil Area	107.89sqm (17.6% of site)	139.35sqm (22.7% of site)
Solar access for apartments	87.5% - 2 hours	85.7% - 2 hours
Cross ventilation for apartments	100%	100%

DESCRIPTION OF THE SITE AND LOCALITY

24. The subject site is known as 54-54A Noble Street, Allawah. The allotments and their legal description are noted below:

- 54 Noble Street, Allawah- Lot A DP 381675
- 54A Noble Street, Allawah – Lot B DP 381675



Figure 6: Aerial view of subject site outlined in blue (Source Intramps 2021)

25. The development site has a combined frontage to Noble Street of 15.24m and depth of 40.235m with a total site area of 613.2sqm. The site falls from the rear with an RL35.99 to RL34.20 at the front being a level difference of 1.78m from the rear to the front.
26. The subject site comprises of two (2) allotments known as 54 and 54A Noble Street Allawah comprising of a set of single storey semi-detached cottages.
27. The site is burdened by a stormwater drainage easement along the north western side of the allotment which runs the length of the site. The easement cannot be built over, upon or within. The site has also been identified as being flood prone.
28. Noble Street is tree lined and dominated by medium density RFB developments. One characteristic feature is that most of the buildings are constructed of red, cream or white face brickwork and all constructed around the 1960's, 1970's and the early 1980's. The immediate locality is characterised by medium density residential developments.
29. Situated on 54 Noble Street is a single storey semi-detached cottage including a stormwater drainage easement along the northern side of the property, with a small metal shed at the rear and a driveway crossing at the front with access to a small hardstand car parking space at the front of the property. On 54A Noble Street, is the other half of the pair of semi-detached cottages and a metal shed at the rear and a carport at the front of the dwelling.



Figure 7: The subject site, 54 and 54A Noble Street Allawah

30. Immediately to the east is a four storey RFB at 50-52 Noble Street which dates back to the 1960/70's. To the west is a three storey RFB at 56 Noble Street and to the north at the rear is a three storey block of apartments located at 43-45 Illawarra Road. The rear yard of this property faces the subject site.



Figure 8: Adjoining development to the south, 56 Noble Street Allawah



Figure 9: Adjoining development to the north, 50-52 Noble Street Allawah



Figure 10: Development at the rear of the subject site, 43 and 47 Illawarra Street.

- 31. Across the road at 65 and 67 Noble Street are two and three storey blocks of apartments.



Figure 11: Development to the west, across the road from the subject development

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

Background

33. DA2019/0314 sought consent for the demolition of existing structures, lot consolidation and the construction of a four (4) storey Residential Flat Building containing eight (8) apartments with basement car parking for twelve (12) vehicles, associated landscaping and site works. The application was refused by the Local Planning Panel at its meeting held on 17 September 2020 for the following reasons:
1. *The written requests under Clause 4.6 of the Kogarah Local Environmental Plan 2012 seeking to justify a contravention of Clause 4.3 Height Control and Clause 4.1A Minimum Lot Size for RFB's development standard fails to satisfy, adequately address and demonstrate that:*
 - (a) *Compliance with the standard/s is unreasonable or unnecessary in the circumstances of the case; and*
 - (b) *There are sufficient environmental planning grounds to justify the contravention.*
 - i) *The proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.*
 2. *The proposal fails to satisfy the provisions of Clause 6.3 of Kogarah Local Environmental Plan 2012 in relation to Flood Planning as it has not been established that the development is compatible with the flood hazard of the land or incorporates appropriate measures to manage risk of life from flood and there is no jurisdiction to approve the application.*
 3. *The scale and the height of the building is inconsistent with the established character and is out of context with the 3-4 storey scale of existing development within the locality.*
 4. *The number of car parking spaces provided for the development is inadequate.*
 5. *The development is an overdevelopment of the site having regard to the area and site width.*
34. The subject Section 8.2 application (REV2021/0001) was lodged on 11 November 2020 seeks to review the decision to refuse DA2019/0314. The review period lapses on 17 September 2021 pursuant to period granted by Environmental Planning and Assessment Act 1979 No 203 (COVID-19 provisions).

Division 8.2 Reviews

35. Division 8.2 of the Environmental Planning and Assessment Act requires the following provisions (Section 8.3) to be considered in the assessment of an application to review a determination:
- (1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*
 - (2) *A determination or decision cannot be reviewed under this Division:*
 - (a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*

(b) after the Court has disposed of an appeal against the determination or decision.

(3) In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

36. The statutory considerations pursuant to Section 8.2 Reviews have been met. The application has been lodged within an appropriate timeframe and is considered to be substantially the same as the original application (DA2019/0314).

DISCUSSION ON REASONS FOR REFUSAL AND THE REVIEW APPLICATION

37. The Applicant has made the following amendments to the design and lodged the modified plans on 18 January 2021 in conjunction with the Section 8.2 review application. The changes that have been made include the following:

Basement car park level

- Removal of a parking space to accommodate a deep soil planting at the rear of the allotment.
- Removal of the visitor/car wash bay and replacement with the garbage room/waste and the provision of a formal open lobby area with the lift entry located along the south eastern side.
- The bollard within the aisle and adjoining the lift has been removed.
- Increase in car parking space widths due to the narrow aisle width to comply with the requirements of AS2890.

Ground floor

- Removal of additional ramp adjacent to the drainage easement to allow the planting of an additional tree.
- Increase in deep soil planting to the north western part of the site which has allowed the planting of additional trees and shrubs at the rear of the allotment.
- Obscure glazing provided to balustrade of apartment G.01.
- Window in dining room increased in size (glazing obscure up to 1.5m in height).

First floor and second floor

- Provision of privacy screens to the northern and southern sides of the rear balconies.
- Provision of obscure glazing to windows within the stairwell.
- Window in dining room increased in size (glazing obscure up to 1.5m in height).

Third Floor

- Removal of a two bedroom apartment from the front of the allotment.
- Relocation of the communal open space from the rooftop (fourth level) in place of the apartment.
- Provision of privacy screens to the northern and southern sides of the rear balconies.
- Provision of obscure glazing to windows within the stairwell.
- Window in dining room increased in size (glazing obscure up to 1.5m in height).

Fourth Floor

- Removal of rooftop communal open space.
- This has resulted in the reduction in the maximum height of the building from RL 52.30 to RL 49.30 (lift over run).

38. In response to the refusal reasons issued by the Panel, the below table summarises how the amended design has taken into consideration the Panels reasons for refusal.

Comments on reasons for refusal

Reason for refusal	Applicants comments	Officer comment
<p>Refusal Reason 1 The written requests under Clause 4.6 of the Kogarah Local Environmental Plan 2012 seeking to justify a contravention of Clause 4.3 Height Control and Clause 4.1A Minimum Lot Size for RFB's development standard fails to satisfy, adequately address and demonstrate that:</p> <p>(a) Compliance with the standard/s is unreasonable or unnecessary in the circumstances of the case; and</p> <p>(b) There are sufficient environmental planning grounds to justify the contravention.</p> <p>i) The proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.</p>	<p>The proposal is accompanied by a revised clause 4.6 variation in address of the shortfall in lot size (Annexure B). The building has now been designed so as to wholly comply with the 15m prescribed LEP height for the land.</p>	<p>The proposal has been amended and the building height is now compliant with the maximum 15m height control.</p> <p>A revised Clause 4.6 has been submitted for the variation to the lot size and it is considered to adequately demonstrate that the standard is unreasonable or unnecessary, the development is in the public interest, it is consistent with the zone and development standard objectives and there are sufficient environmental planning grounds to support the variation to the lot size.</p> <p>This is further discussed and assessed within the detailed assessment of the Clause 4.6 later in the report.</p>
<p>Refusal Reason 2 The proposal fails to satisfy the provisions of Clause 6.3 of</p>	<p>The proposal is accompanied by the original flood planning information and</p>	<p>The flood report has been reviewed by Council's Flooding Engineer, no objection is raised to the proposal or the flood report subject to conditions</p>

<p>Kogarah Local Environmental Plan 2012 in relation to Flood Planning as it has not been established that the development is compatible with the flood hazard of the land or incorporates appropriate measures to manage risk of life from flood and there is no jurisdiction to approve the application.</p>	<p>revised stormwater plans prepared by John Romanous and Associates addressing the flood liable land controls where applicable to the redevelopment of this site.</p>	<p>of development consent.</p>
<p>Refusal Reason 3 The scale and the height of the building is inconsistent with the established character and is out of context with the 3-4 storey scale of existing development within the locality.</p>	<p>The proposal now presents a scale that ranges between three (3) and four (4) storeys.</p>	<p>The development is now a four storey building, however at the fourth level to the front of the building an apartment has been removed and an area of communal open space has been provided. This reduces the height of the building to now comply with the LEP development standard, softens the building through landscaping and enabling the upper level of the building to be recessed, reduces the bulk when viewed from the street. The amended built form is now consistent with the established and desired streetscape character.</p>
<p>Refusal Reason 4 The number of car parking spaces provided for the development is inadequate.</p>	<p>A shortfall in one (1) visitor space results. This shortfall is in line with the deferred commencement condition originally imposed by Council.</p>	<p>The number of apartments has been reduced from eight (8) to seven (7) and two parking spaces have been removed in order to accommodate the garbage bin storage area, provide an area of deep soil at the rear for tree planting and provide suitable vehicle access and swept paths within the basement. The development requires 10 spaces for the residential apartments and two visitors' spaces. All 10 spaces have been provided for the residents only with no visitors parking. Although non-compliant, given the site constraints with the drainage easement and the site being flood affected, it is considered reasonable to support this variation. This is discussed further in the report.</p>

<p>Refusal Reason 5 The development is an overdevelopment of the site having regard to the area and site width.</p>	<p>The development is 228.85sqm below the FSR prescribed to the land and wholly complies with the 15m KLEP 2012 prescribed height. The proposed development is not deemed as an overdevelopment of the site.</p>	<p>The amended plans lodged with the review application result in a compliant FSR and building height. The bulk and scale of the building has been reduced and the proposed building form is now consistent and compatible with the streetscape.</p>
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State Environmental Planning Policies

39. Compliance with the relevant State Environmental Planning Policies (SEPP) is summarised in the table, and discussed in more detail below.

Summary of SEPPs and general compliance

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

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

40. The main aims and objectives of this plan are:

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

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

42. This application has been referred to Council's Engineering Section for comment. Standard conditions have been included that provide details in respect to the new stormwater pipe requirements.
43. The proposal however is not considered to have an adverse impact on the waterway and the Georges River catchment. The proposal aims to protect the existing water quality and use and functionality of the wider catchment.

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

44. The aim of this policy is to facilitate the effective delivery of infrastructure across the State. The policy also examines and ensures that the acoustic performance of buildings adjoining the rail corridor or busy arterial roads is acceptable and internal amenity within apartments is reasonable given the impacts of adjoining infrastructure.
45. The DA was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid has provided a response and raised no objection to the proposal.

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

46. Regulations under the Act have established a scheme to encourage sustainable residential development (the BASIX scheme) under which:
- (a) an application for a development consent, complying development certificate or construction certificate in relation to certain kinds of residential development must be accompanied by a list of commitments by the applicant as to the manner in which the development will be carried out, and*
 - (b) the carrying out of residential development pursuant to the resulting development consent, complying development certificate or construction certificate will be subject to a condition requiring such commitments to be fulfilled.*
- (2) *The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.*
- (3) *This Policy achieves its aim by overriding provisions of other environmental planning instruments and development control plans that would otherwise add to, subtract from or modify any obligations arising under the BASIX scheme.*
47. An updated BASIX Certificate has been issued for the proposal as amended. The BASIX Certificate No.101871M_04 is dated 23 December 2020 and the proposal in its amended form meets the minimum provisions and requirements of BASIX in terms of water, thermal comfort and energy efficiency.

State Environmental Planning Policy No 55 - Remediation of Land

48. SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
49. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated. In accordance with SEPP 55 the site must be assessed and rated suitable for the proposed development prior to a determination being made.
50. A Preliminary Site Investigation (PSI) Stage 1 report was prepared by Alliance Geotechnical (AG), dated 27 June 2019. As part of the investigation a conceptual site

model (CSM) was derived for the site which identified two potential areas of environmental concern (AEC's) AEC01 and AEC02 which are shown in Figure 6 below.



Figure 12: Location of the two potential AEC's on the site (Courtesy: Alliance Geotechnical, June 2019)

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

54. AG considered that an *“intrusive assessment of these AEC’s on the form of a Detailed Site Investigation is not warranted”*. Despite this recommendation the report could not say that the site is suitable for the intended land use and development. Council’s Environmental Health Section requested that a Detailed Site Investigation (DSI) be conducted as a precautionary measure considering that some AEC have been identified.
55. Following this a site investigation was undertaken and Remedial Action Plan was prepared by Canopy Enterprises and dated 18 August 2020. As part of this report a Remedial Action Plan (RAP) was developed in accordance with the relevant regulatory requirements to address the identified contention issues and render the site suitable for the proposed land use. This report was referred to Environmental Health for comment. The report provided a detailed assessment of the site and potentially contaminated site material. It recommended the following;
56. *“On the basis of the work undertaken to date, the contaminants of concern are PAHs (specifically the carcinogenic PAHs) and potentially asbestos containing material (ACM) although it is noted that ACM has not been found in the soils on the site to date. Ash and slag material was noted in a sample obtained from fill material at the Site and although analysis of the material did not show heavy metals concentrations of concern, heavy metals should still be considered as a CoPC at the Site. Should fill material be encountered in any of the areas requiring sampling, the full range of suggested analytes as outlined above is required to be analysed.”*
57. The proposed methodology comprises the following sequence of steps:
- *Sampling, testing and validation of soil contaminants within areas of the footprint of the former building;*
 - *Confirmation of the classification of all filling and natural soils to be removed from the site prior to the commencement of excavation;*
 - *Excavation of soil/fill from within the basement area and disposal of the excavated materials at a suitably licenced facility;*
 - *Provide a Validation Report for the site and, where required, an Environmental Management Plan (EMP) which includes any future long-term (ongoing) management requirements post development. Following the completion of the remediation works and the receipt of any related analytical results from the validation sampling, a Validation Report will be prepared in general accordance with the requirements of the NSW OEH Guidelines for Consultants Reporting on Contaminated Sites (2011).*
58. This investigation has been undertaken in consideration of and deference to the relevant guidelines and regulatory documents as presented in Section 7 (among others), with a regard for the project and site specific circumstances. In particular *the Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites (EPA 2020) (Reporting Guidelines) and SEPP 55.*
59. Based on the available data presented in the report and subject to the recommendations as stated in SI-RAP herein and actions being satisfactorily implemented, it is Canopy’s opinion in alignment with Clause 7 (1)(c) of SEPP 55, that contamination at the site is not present at levels that would preclude the site from being made suitable for the proposed land use.

60. The application is accompanied by a Remedial Action Plan prepared by Canopy Enterprises. The report concluded that the site can be made suitable for the intended land use subject to appropriate remediation in accordance with the RAP and SEPP 55. The application was assessed by Council's Environmental Health Officer and was supported subject to specific conditions.
61. The full suite of findings and conclusions and recommendations are outlined in Table 1 of Section 3.1 of the Canopy Report, however the salient points can be summarised as follows:

- “1. The site is approximately 615sqm and is located in a predominantly suburban residential area;*
- 2. The site's history can reasonably be summarised as land that was used for residential purposes since at least the 1940's. Research into the history of the Site did not indicate that the site was used for purposes that would be considered to be of a nature that would cause excessive contamination;*
- 3. No stress was observed in the vegetation and no surface staining, olfactory or other evidence of contamination was encountered with the exception of ash material identified in one sample where fill material was encountered;*
- 4. The subsurface of the site was found to natural sandy and clays underneath a layer of topsoil loam. A fill layer of approximately 0.3 m thickness was encountered in one soil boring only;*
- 5. Four boreholes were drilled across the site as part of the investigation's supplementary sampling program;*
- 6. A total of eight samples was submitted to the laboratory and select samples were analysed for analytes of concern as part of the investigation;*
- 7. Results of the laboratory analysis undertaken showed concentrations of all analytes to be below the adopted site criteria for residential land use;*
- 8. It is recommended that*
 - the remaining data gaps outlined in Section 9.1.3 are closed via the implementation of the attached Remediation Action Plan (RAP);*
 - A validation report is prepared outlining the results of the works undertaken during the implementation of the RAP; and*

Subject to the satisfactory implementation of the Remedial Action Plan during the preconstruction phase as outlined herein it is considered can be made suitable for the proposed land use.”

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

62. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
63. 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).*

64. 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.
65. The subject site is currently does not include any significant plants, trees or vegetation. The development will therefore not remove any significant or important vegetation.
66. On this basis, the proposal, is consistent with relevant provisions of the Vegetation State Environmental Planning Policy.

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

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

Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of “Residential Apartment Development” (RAD) Section 4 (1) (Application of Policy) of the SEPP 65 states that the policy <i>“applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential</i>	Complies with the definition.	Yes – the residential flat building (RFB) development satisfies the definition of SEPP 65. The proposal is 4 storeys in scale and contains 7

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

71. A design verification statement has been provided by Nicholas Lycenko (Registration No. 3010) in accordance with Clause 50 of the Environmental Planning and Assessment Regulation 2000.
72. The architectural plans that that were submitted with the original Development application were referred to the Design Review Panel (DRP) on 12 September 2019. The Panel considered the development against each of the nine (9) Design Quality Principles and raised no objection to the proposed development subject to some changes being made to the design.
73. The plans were amended several times prior to determination of the DA and as a result a number of design changes were recommended as part of a deferred commencement consent. Although the application was refused it was anticipated that incorporating these design changes into a revised scheme would provide a development with a form consistent and in keeping with the streetscape character and in context with its surroundings.
74. The review application was not referred back to the DRP and as such there are no new DRP comments. The previous DRP comments have however been included within the documentation provided to the Panel as part of the report.
75. The architectural plans submitted with the review application are considered to appropriately and adequately respond to the design quality principals. The amendments made are a significant improvement from the plans that were originally refused under the development application.
76. Clause 28 and 30 of SEPP 65 requires the consent authority to take into consideration the provisions of the Apartment Design Guide. The table below assesses the proposal against these provisions, with relevant assessment comments provided where non-compliances are proposed.

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

Clause	Standard	Proposal	Complies
Part 3 – Siting the development			
3D-1 Communal and public open space	Communal open space has a minimum area equal to 25% of the site. Site area of 613.2sqm Communal open space to be provided is 153.3sqm. <ul style="list-style-type: none"> Where communal open space cannot be provided at ground level, it should be provided on a podium or roof. Where developments are unable to achieve 	A minimum area of 153.3sqm needs to be dedicated as communal open space. The development provides an area of 93.3sqm of communal open space to the rooftop terrace on level 3.	No, see discussion below.

	<p>the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • Provide communal spaces elsewhere such as a landscaped roof top terrace or a common room. • Provide larger balconies or increased private open space for apartments. • Demonstrate good proximity to public open space and facilities and/or provide contributions to public open space. 		
<p><u>Communal Open Space</u></p> <p>The subject site is 613.2sqm and therefore to provide communal open space equal to 25%, the site is required to provide an area of 153.3sqm. The proposed development provides a 93.93sqm communal roof top open space area, which equates to 15.3%.</p> <p>The development only caters for 7 apartments and this communal open space is considered appropriate for this size of development. There are areas of open space located along the southern and eastern boundaries that could have been assigned as communal open space, however it is considered more appropriate that these areas be assigned as private open space for the ground floor apartments given their accessibility and also to maintain privacy and amenity for these apartments. This will provide an additional 30.44sqm of private open space for apartment G.01 and an additional 139.8sqm of private open space to apartment G.02. The provision of the additional private open space areas and access for the ground floor apartments provides better amenity for those apartments. It is considered that the shortfall in the communal open space is appropriate, given the number of apartments only containing 7 and that the ground floor apartments have their own additional spaces.</p> <p>It is also noted that there is a park (Meade Reserve) in close proximity in Woids Avenue that could be utilised by the residents.</p>			
	<p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>	<p>The rooftop communal open space will achieve a minimum of 2 hours of solar access throughout the day in mid winter.</p>	<p>Yes</p>
<p>3E-1 Deep Soil Zones</p>	<p>1. Deep soil zones are to meet the following minimum requirements:</p>	<p>Based on the site area of 613.2sqm a minimum of 43sqm of deep soil area is</p>	<p>Yes</p>

	<p>Where the site is less than 650sqm a minimum deep soil area of 7% is required.</p> <p>Note: No minimum dimension is specified for lots less than 650sqm.</p>	<p>required.</p> <p>The proposed development provides 139.35sqm of deep soil.</p>	
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Comment on Deep Soil Zones

The building has been redesigned and the amount of deep soil provided has increased from 107.89sqm to 139.35sqm through the reduction in the basement excavation at the rear of the site. This now allows the planting of trees and shrubs to provide some screening and assist in maintaining amenity between the subject site and the property to the rear.

<p>3F-1 Visual Privacy</p>	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>No separation is required between blank walls.</p> <p>-Up to 12m (4 storeys) Habitable rooms and balconies = 6m Non-habitable rooms = 3m</p>	<p>North – along the northern side the building is setback between 3.05m and 3.48m. The design fails to achieve the 6m minimum.</p> <p>South – along the southern side the building is setback between 2.42m and 4.05m. The design fails to achieve the minimum 6m separation distance between buildings.</p> <p>Eastern (rear) – the building is setback between 3.9m and 5.54m. The building fails to meet the minimum 6m separation distance.</p> <p>Due to the isolated nature of the site and the allotments narrow width, the design cannot physically achieve the minimum separation distances. A detailed assessment of the non-compliance is discussed below.</p>	<p>No</p> <p>No</p> <p>No</p>
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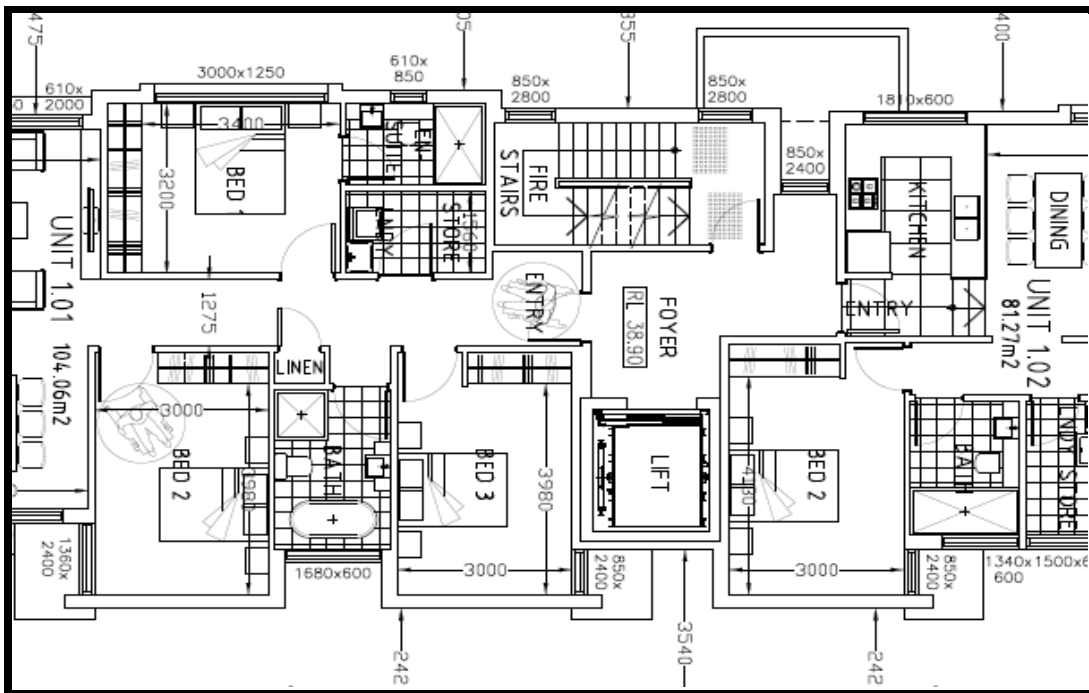
Non-compliance with separation distances

Objective 3F-1 of the ADG states that “*Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy*”. Given that the site is isolated and cannot be integrated with any adjoining property, the visual and amenity impacts of the new built form will need to be very sensitively considered and treated.

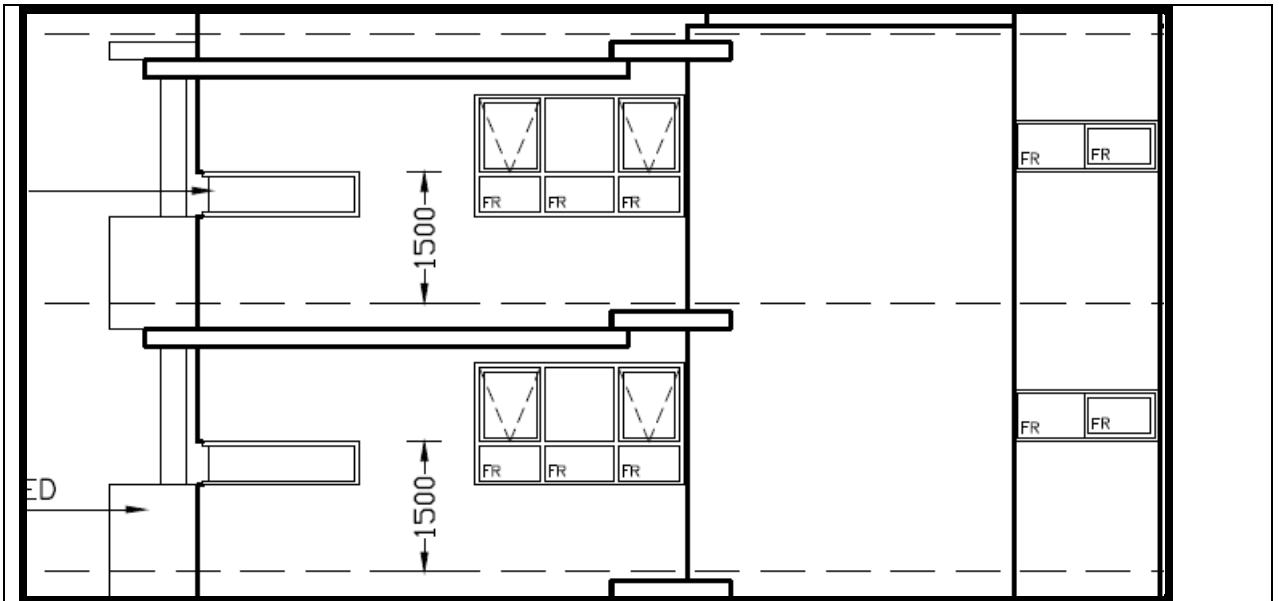
The height and scale of the building has been substantially reduced so that the visual appearance of the building is more in keeping with the scale and form of immediately adjoining three to four storey flat buildings. The building now sits below the maximum building height and well below the maximum FSR. It is further acknowledged this site is narrow and constrained (flooding/easements) and in this case cannot achieve the full development potential of the site.

Despite the purpose of the separation distances to protect and preserve privacy it also aims to provide adequate setbacks between buildings so there is space provided for the provision of meaningful landscaping elements and general separation so that the visual bulk and scale of the building is reduced.

Along the southern side the windows to the bedrooms have been reorientated to face the north east or south western side on Level 1 (see below), given this elevation is orientated to the south the windows will allow for more sunlight to access the rooms as opposed to a south facing highlight window which is the other alternative design solution.

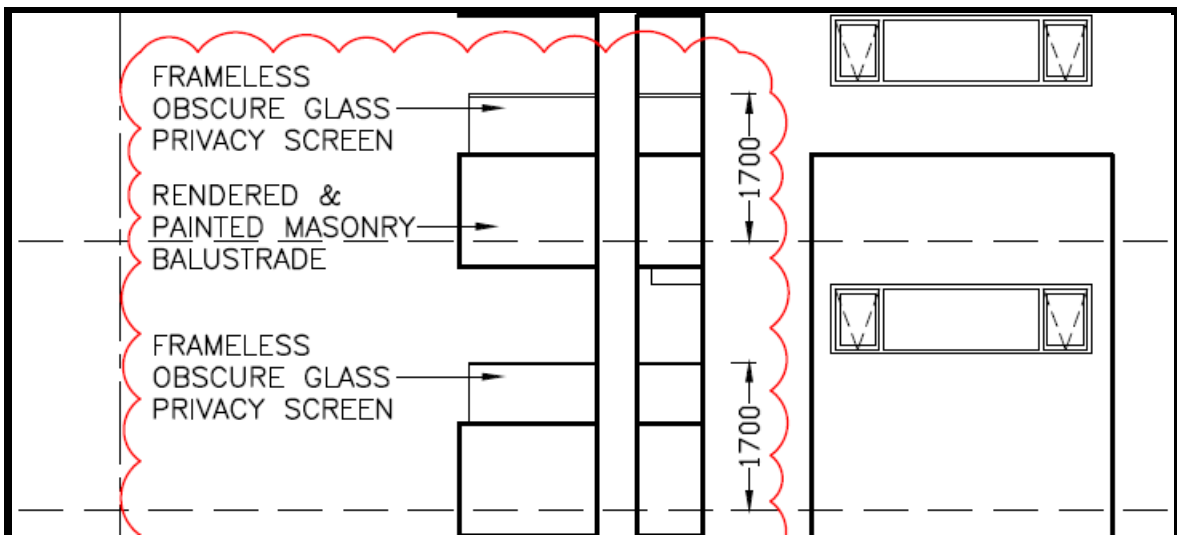


The design of the building has been modified to reduce the potential for overlooking by introducing highlight windows along the northern and southern elevations. The use of blank walls to the majority of bedrooms on the southern elevation also assists in this regard and windows within the dining rooms at the front of the building show obscure/frosted glazing to windows sill heights below 1.5m (see below).

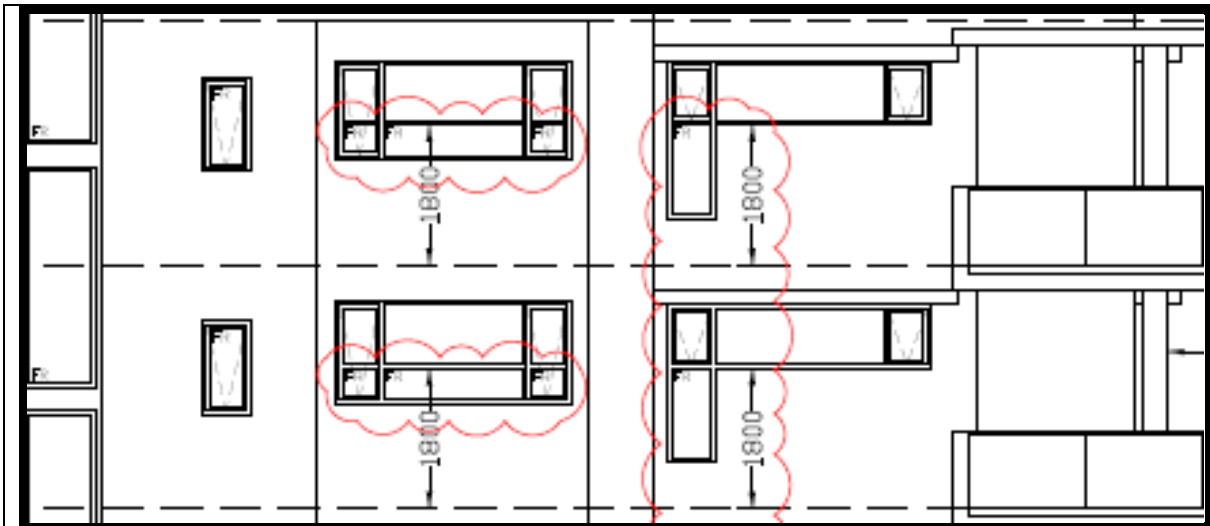


Standard size windows remain in some rooms (bedrooms 2 and 3 to apartment G.01 and bedroom 2 to apartment 3.01). The bedrooms windows for apartments G.01 and G.02 are not considered to present any significant privacy issues given the use as a bedroom and that they are located on the ground floor. The window for apartment 3.01 given it is a bedroom window and its line of sight will be at the roof of the adjoining property at 56 Noble Street is not considered to have any adverse privacy or overlooking impacts.

In relation to the windows in the northern elevation, these windows are within 6m being the AGD required setback. 50- 52 Noble Street includes a series of windows along their south east and north west elevation, which could contribute to some potential for overlooking. The windows located at the rear of the development are highlight windows with sill heights at 1.7m (see below).



The standard sized bedroom windows located in apartment 1.01 and 2.01 at the front portion of the building now have the lower pane of the windows shown as frosted/obscure glazing to a height of 1.8m. The vertical window in the living rooms is also frosted to a height of 1.8m (see below). This will reduce the potential for any direct overlooking.



This is a unique site given that it is isolated and given its isolation, development to its full potential in terms of maximum building height and FSR cannot be achieved given the site contains of an easement and flooding impacts.

The reduction in the density and reduced bulk, scale and height has created a more appropriate building form for this site and has resolved some areas of non-compliance including creating a compliant height and scale which is going to be more reflective of the existing character and nature of development in the precinct.

The provision of deep soil areas at the rear and the planting of some taller vegetation in this area will screen the lower levels of the building reducing the impact for overlooking. In addition 1.7m high privacy screens will be required to the southern and northern sides of the rear balconies to ensure overlooking from the rear balconies is minimised.

<p>3G – Pedestrian access and entries</p>	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Access, entries and pathways are accessible and easy to identify</p>	<p>The entry to the building is via the accessible ramp from Noble Street, with entry to the building from the northern side of the building.</p>	<p>Yes</p>
<p>3H – Vehicle Access</p>	<p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</p>	<p>The driveway access to the basement has been provided off the south western corner of the site.</p>	<p>Yes</p>
<p>3J-1 Bicycle and car parking</p>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; - The minimum car 	<p>The Guide to Traffic Generating Developments defines medium density development as “A medium density residential flat building is a building containing at least 2 but less than 20</p>	<p>The site is located within an “accessible” area and the ADG provisions are</p>

	<p>parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant Council, whichever is less.</p>	<p><i> dwellings. This includes villas, town houses, flats, semi-detached houses, terrace or row houses and other medium density developments. This does not include aged or disabled persons' housing.</i></p> <p>High density development relates to developments exceeding 20 dwellings.</p> <p>In this case the development is within 800mm distance of the Allawah Train Station and therefore the medium density requirements are applicable.</p> <p>This requires the following;</p> <ul style="list-style-type: none"> • 1 space per unit plus • 1 space for every 5 x 2 bedroom apartments • 1 additional space for every 2 x 3 bedroom apartments • 1 space for every 5 apartments for visitor parking. <p>On this basis the following off-street parking is required;</p> <ul style="list-style-type: none"> • 7 apartments = 7 spaces plus • 1 space for the 5 x 2 bedroom apartments = 1 space plus • 1.5 spaces for the 3 bedroom apartments <p>Total residential = (9.5) 10 spaces</p> <p>Total visitor spaces 7/5 = 2 spaces</p> <p>A total of 12 spaces are</p>	<p>applicable</p> <p>No – the development is short by two spaces.</p>
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		<p>required to be provided.</p> <p>10 spaces have been provided and are allocated to the residents only.</p>	
<p><u>ADG Car Parking Provisions</u></p> <p>The ADG parking provisions are based on the Guide to Traffic Generating Developments, 2002 provisions. The Guide assists in calculating the minimum car parking spaces required by the development and also calculates potential traffic generation. In respect to car parking numbers required, there are two categories that the proposal could fall under Medium Density Residential or the High Density Residential development.</p> <p>Medium Density development under the guide is defined as a Residential Flat Building containing less than 20 dwellings. The development falls within this category as the site is located within an “accessible” location. The ADG parking provisions are very generous and flexible as opposed to Councils parking requirements and this is due to the “accessible” nature of the site. The proposed development generates the need for 12 off-street parking spaces (10 residents and 2 visitors). Only 10 spaces have been provided, being a shortfall of two spaces.</p> <p>The basement has been redesigned in the amended scheme resulting in the loss of parking spaces to provide a deep soil zone at the rear and to accommodate a suitably sized garbage bin storage room. In addition due to the narrow width of the site, parking spaces have been increased in width to allow suitable turning and manoeuvrability within the basement. The parking layout and swept paths have been reviewed by Council’s Traffic Engineer and now considered to satisfy the requirements of AS2890.</p> <p>Given the above, the basement can only accommodate 10 spaces. These spaces will be assigned to the apartments and will not permit additional spaces for visitor car parking spaces to be integrated given the narrow nature of the basement and the tandem parking spaces (which have to be dedicated to a single unit). In this case it is considered more beneficial that the occupants of the building have access to car parking spaces as opposed to visitors. This is considered to be acceptable and reasonable outcome.</p>			
<p>Part 4 – Designing the building</p>			
<p>4A-1 Solar and daylight access</p>	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area.</p>	<p>Six (6) of the seven (7) apartments receive a minimum of 2 hours direct sunlight in mid winter. This equates to 85.7%.</p>	<p>Yes</p>
	<p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-</p>	<p>All units receive some direct sunlight. Only one unit does not receive 2 hours of direct sunlight. This is achieved.</p>	<p>Yes</p>

	winter		
4B-3 Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	All the apartments are cross ventilation as they have three orientations with openings along each side. The open plan nature of the living/dining spaces provides for effective cross ventilation. As a result 100% of apartments are cross ventilated in accordance with the provisions of objective 4B-3 of the ADG.	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	The development does not include any cross-over or cross through apartments.	Yes
4C-1 Ceiling heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> • Habitable rooms 2.7m • Non-habitable rooms 2.4m • For 2 storey apartments: 2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area • Attic spaces: 1.8m at edge of room with a 30 degree minimum ceiling slope • If located in mixed use areas - 3.3m for ground and first floor to promote future flexibility of use <p>These minimums do not preclude higher ceilings if desired.</p>	Each residential level has a minimum floor to floor height of 3.1m.	Yes
4D-1	Apartments are		Yes.

Apartment size and layout	<p>required to have the following minimum internal areas:</p> <p>Studio = 35sqm 1 bedroom = 50sqm 2 bedroom = 70sqm</p> <p>3 bedroom = 90sqm</p> <p>Note: The minimum internal areas include only one bathroom.</p> <p>Additional bathrooms increase the minimum internal area by 5sqm each</p>	<p>2 bedroom apartments</p> <ul style="list-style-type: none"> • G.02 - 80.68sqm • 1.02 – 81.27sqm • 2.02 – 81.27sqm • 3.01 – 77.79sqm <p>3 bedroom apartments</p> <ul style="list-style-type: none"> • G.01 – 100.1sqm • 1.01 – 104.06sqm • 2.01 – 104.06sqm <p>Each unit has an additional bathroom in the form of an ensuite, this generates the need for the floor space of each apartment to be increased by 5sqm ie 2 bedroom apartments need to exceed 75sqm in internal area and 3 bedroom apartments are to exceed 95sqm. The apartments comply and exceed these minimum internal areas.</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	Every habitable room has window openings larger than 10% of the floor area of the room area.	Yes
4D-2 Apartment size and layout	Habitable room depths are limited to a maximum of 2.5m x the ceiling height	All within the defined range.	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	In all units where the living, dining and kitchen are combined, the room depths are less than the maximum permitted.	Yes

4D-3 Apartment size and layout	Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)	Main bedrooms range in area from 10.77sqm to 12.51sqm. All other bedrooms have areas greater than 9sqm.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	All bedrooms have minimum dimensions of 3m.	Yes
	Living rooms or combined living and dining rooms have a minimum width of: - 4m for 2 and 3 bedroom apartments	The living rooms have minimum width of 4m in all apartments.	Yes
	The width of cross over or cross through apartments are at least 4m internally to avoid deep narrow apartment layouts.		
4E-1 Private Open space and balconies	All apartments are required to have primary balconies as follows: Two (2) bedroom apartments require 10sqm with min depth 2m Three (3) bedroom apartments require 12sqm with minimum 2.4m depth The minimum balcony depth to be counted as contributing to the balcony area is 1m.	All balconies exceed this minimum depth 2 bedroom apartments: G.02: 139sqm/ >2m 1.02: 10.8sqm/ 2.69m 2.02: 10.8sqm/ 2.69m 3.01: 10.8sqm/ 2.69m 3 bedroom apartments G.01: 14.36sqm/ 2.81m 1.01: 13.32 / 2.88m 2.01: 13.32 / 2.88m	Yes
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m	The apartments located on the ground floor all have a minimum private open space area of 15sqm and a minimum depth of 3m. G.01: 14.36sqm balcony and private courtyard having an area of 30.44sqm.	Yes

		G.02: 139sqm/>3m	
4F-1 Common circulation spaces	The maximum number of apartments off a circulation core on a single level is eight	There is one main lift lobby which provides access to two apartments on each level.	Yes
4G-1 Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: 1 bedroom: 6m ³ 2 bedroom – 8m ³ 3 bedroom – 10m ³ At least 50% of storage is located within the apartment	All units have compliant total storage volumes as per the Apartment Design Guide (ADG) volumes. 2 bedroom apartments: G.02: 8.51 m ³ 1.02: 8.51 m ³ 2.02: 8.51 m ³ 3.01: 8.17 m ³ 3 bedroom apartments G.01: 10.87 m ³ 1.01: 10.14 m ³ 2.01: 10.87 m ³ Achieved.	Yes
4H Acoustic Privacy	Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. Window and door openings are generally orientated away from noise sources Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas Storage, circulation areas and non-habitable rooms should be located to buffer noise from external	The development has been sensitively designed to respect the context of the area. This application is not accompanied by an Acoustic report given the RFB proposes seven (7) new apartments within a residential environment which is considered to be a small scale redevelopment of a site. The siting of the main living spaces which face the street is the most appropriate orientation and reduce overlooking and transmission of noise. The apartments facing the rear have living spaces facing the rear which is appropriate.	Yes

	sources	In addition the building must comply with the specific requirements of the NCC – BCA.	
4J Noise and Pollution	Design solutions to mitigate noise include: limiting the number and size of openings facing noise sources providing seals to prevent noise transfer through gaps using double or acoustic glazing, acoustic louvres or enclosed balconies (winter gardens) using materials with mass and/or sound insulation or absorption properties e.g. solid balcony balustrades, external screens and soffits	Noise mitigation has been addressed by the provision of smaller window openings along the side elevations and orientation of balconies to the front and rear.	Yes
4K Apartment Mix	A range of apartment types and sizes is provided to cater for different household types now and into the future	The development offers a mix of 2 and 3 bedroom apartments. <ul style="list-style-type: none"> • 4 x 2 bedroom apartments (57.1%) • 3 x 3 bedroom apartments (42.9%) The mix is considered to be acceptable and appropriate.	Yes
4L Ground Floor Apartments	Direct street access should be provided to ground floor apartments Privacy and safety should be provided without obstructing casual surveillance.	Direct street access can not be achieved in this case as the ground floor is elevated due to the issues relating to flooding. The design is considered acceptable and reflective of similar adjoining properties (50-52 Noble Street that has its main entry along the northern side).	Yes
4M Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and	The façade treatment incorporates a range a materials and finishes that provide a sense of identify and the overall aesthetic is	Yes

	human scale.	considered to be well resolved and is consistent with the desired streetscape character.	
4N Roof	Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.	The proposed flat roof form is contemporary in nature. The design has incorporated an integrated roof element to define the building edge.	Yes
4O Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The proposal was assessed by Council's Consultant Arborist and was found to be acceptable subject to conditions.	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 proposal was assessed by Council's Consultant Arborist and was found to be acceptable subject to conditions. The landscape plan includes planter boxes around the edges of the ground floor courtyard spaces and the perimeter of the rooftop communal open space.	Yes
4Q Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs.	The design of the apartments is relatively flexible allowing for a variety of different people and lifestyles to occupy the apartments. The development provides for 1 adaptable unit as required by the DCP. Unit 1.01 has been designed to be adaptable.	Yes
4U Energy Efficiency	Development incorporates passive environmental design, passive solar design to	The development incorporates BASIX commitments in the design to provide appropriate	Yes

	optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	energy efficiency features. A compliant BASIX certificate accompanies this application.	
4V Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The development provides appropriate stormwater measures. Council's Development Engineers are satisfied with the stormwater and flooding design subject to conditions. A compliant BASIX certificate accompanies this application.	Yes
4W Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The basement includes a designated garbage bin storage area for waste management. In this location, the facilities will have no adverse impact to the streetscape.	Yes
4X Building maintenance	Building maintenance – building design provides protection from weathering, enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates large expanses of brickwork which allows for minimal long term maintenance of the building. This is considered to be a durable, long-lasting finish.	Yes

77. The main areas of non-compliance with the ADG (physical separation distances and car parking numbers) are driven by the narrow width of this isolated site. It is accepted that this site is isolated and therefore can only accommodate a smaller scale medium density development that is very sensitively and carefully designed to ensure it respects the siting and scale of adjoining properties.
78. The reduction in one unit and the reconfiguration of the basement car park, the reduction in the height of the building, whilst also providing deep soil zones at the rear, which enables suitable screen planting, provides a more sympathetic and reasonable redevelopment of this constrained isolated site.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environmental State Environmental Planning Policy

79. 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.

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

Draft Remediation of Land State Environmental Planning Policy

1. 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.

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

Draft Design and Place State Environmental Planning Policy

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

83. 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.

84. Consideration is given to the provisions of the Draft Design and Place State Environmental Planning Policy in the assessment of this application.

85. The proposal is not considered to be inconsistent with the provisions of the Draft State Environmental Planning Policy.

Environmental Planning Instruments

Kogarah Local Environmental Plan 2012 (KLEP)

Zoning

86. The subject site is zoned R3 – Medium Density Residential pursuant to Kogarah Local Environmental Plan 2012 (KLEP) as shown in Figure 13 below.

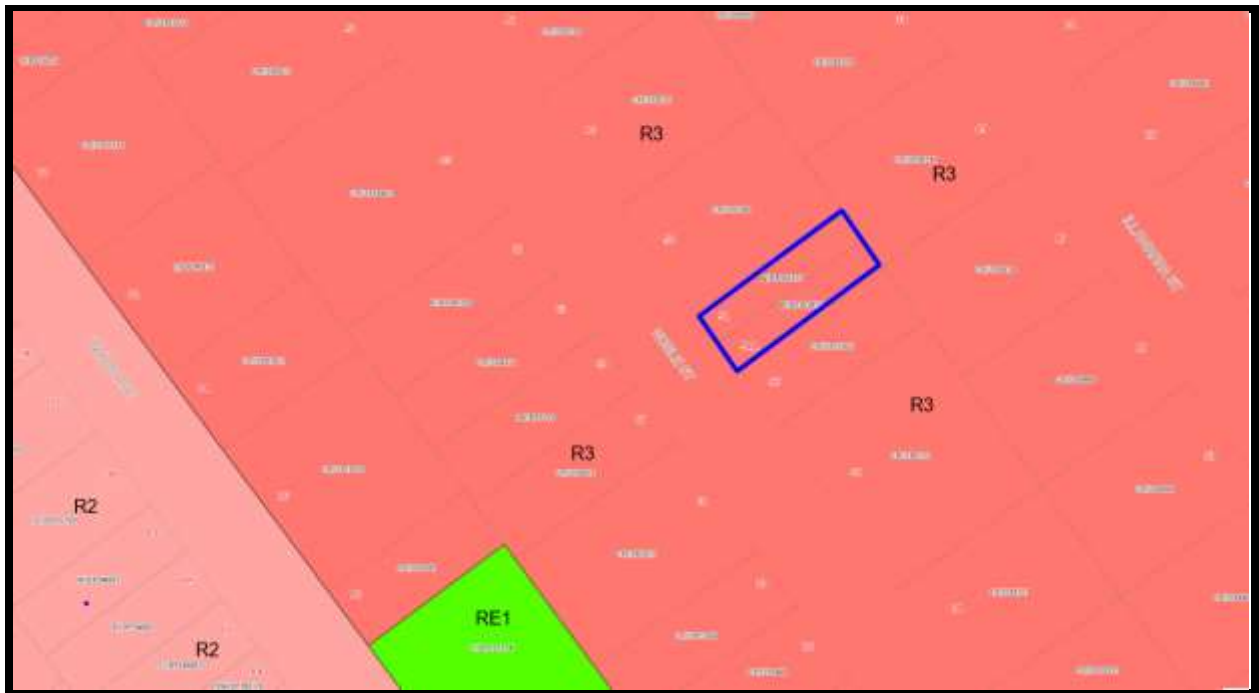


Figure 13: Zoning map with the subject site outlined in blue

87. The objectives of the zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

88. The proposed Residential Flat Building (RFB) is a permissible land use in the zone. The proposal generally satisfies the zone objectives in that the development will provide additional housing needs for the community within a medium density residential

environment through the construction of a four storey RFB consistent with other RFB's within the immediate vicinity.

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

KLEP Compliance Table

Clause	Standard	Proposal	Complies
2.2 Zoning of land to which Plan applies	R3 Medium Density Residential	The proposal is defined as a residential flat building which is a permitted land use in the R3 Medium Density Residential zone under KLEP 2012.	Yes
2.3 – Zone objectives and Land Use Table	Objectives of the zone to be satisfied	The proposal generally satisfies the objectives of the zone	Yes
2.7 Demolition requires development consent	Demolition requires development consent	Consent for demolition of existing structures is sought.	Yes
Part 4: Principal Development Standards			
4.1A – Minimum Lot Size	A minimum site area of 1,000sqm applies to RFB's in the R3 Medium Density zone	The subject site is isolated and has a site area of 613.2sqm.	No – see discussion below regarding Clause 4.6 Statement which has been submitted,
Note: A clause 4.6 objection has been submitted requesting a variation to the development standard for the minimum lot size.			
4.3 – Height of Buildings	15m as identified on Height of Buildings Map	14.405m	Yes
4.4 – Floor Space Ratio	1.5:1 as identified on Floor Space Ratio Map	The FSR has been reduced from that originally proposal and is now proposed to be 1.13:1.	Yes
4.5 Calculation of floor space ratio and site area.	Floor space is to be calculated in accordance with clause.	Floor space has been calculated in accordance with this clause.	Yes
4.6 – Exceptions to development standards	A Clause 4.6 variation request has been submitted in relation to the minimum lot size.		
Part 5: Miscellaneous Provisions			
5.10 –	The site is not a	The Allawah Hotel at 270	Yes

Heritage Conservation	designated heritage item and is not located within a Conservation Area	Railway Parade is the closest heritage item (known as I1) however the subject site is not within the immediate vicinity or within the visual catchment of this item. The proposal will not alter or affect the historic significance of this item.	
Part 6: Additional Local Provisions			
6.1 - Acid Sulphate Soils (ASS)	The objective of this clause is “ <i>to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</i> ”	The subject site is not affected by Acid Sulfate soils.	Yes
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The proposal includes the provision of a basement car park. This is a standard amount of excavation and site works to accommodate a development of this scale and density. The proposed earthworks are not considered to be unreasonable for the use sort.	Yes
6.3 – Flood Planning	The subject site is located within a flood prone area and is affected by the 1:100 floods. The application is accompanied by a flood study and the building has been designed to allow for overland flow to travel through the site by the introduction of openings along the north-western side of the building at the ground floor level. The application has been referred to Council’s	Council’s Stormwater Engineer has reviewed the application and design of the stormwater/drainage system and has provided conditions of consent. Council’s Stormwater Engineer specialising in flooding has not raised any issues in relation to the treatment of stormwater proposed to assist with the natural overland flow path to be maintained following	Yes

	Engineer specialising in flood assessments.	construction. Standard conditions are imposed if consent is granted.	
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Clause 4.6 Exception to Development Standards

Detailed assessment of variation to Clause 4.1A (Minimum Lot sizes for Multi-unit dwelling housing, Residential Flat Building and seniors housing)

90. Clause 4.1A of Kogarah Local Environmental Plan 2012 (KLEP 2012) relates to the minimum lot size required for multi dwelling housing, residential flat building and seniors housing. This requires that a minimum lot size of 1000sqm is provided for a residential flat building in the R3 Medium Density Residential zone (see table below).

Minimum lot size requirements under Clause 4.1A

4.1A Minimum lot sizes for multi dwellings, residential flat buildings and seniors housing.		
Column 1	Column 2	Column 3
Multi dwelling housing	Zone R3 Medium Density Residential	800sqm
Residential flat building	Zone R3 Medium Density Residential	1000sqm
Seniors housing	Zone R2 Low Density Residential Zone R3 Medium Density Residential	1000sqm 1000sqm

91. The proposed development seeks a variation to the development standard relating to the minimum lot size stipulated in Clause 4.1A of KLEP 2012. Clause 4.1A of KLEP 2012 requires a minimum site area of 1,000sqm for a residential flat building (RFB) in the R3 Medium Density zone. The subject site has an area of 613sqm which is below the requirement. The site area is deficient by 387sqm which is a variation of 39% to the development standard.
92. Any variation to a development standard can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. In assessing the variation, the provisions identified in Clause 4.6 need to be considered.
93. Clause 4.6 (1) outlines the objectives of the standard which are to “provide an appropriate degree of flexibility in applying certain development standards to particular development” and “to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”

Clause 4.6 Exceptions to development standards

94. 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.
95. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.1A in accordance with Clause 4.6 of KLEP 2012. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

96. Yes, Clause 4.1A, the Minimum Lot Size control is a development standard.

What is the extent of the variation?

97. The development control requires a minimum site area of 1,000sqm for an RFB proposed in the R3 zone. The site area in this case amounts to 613.2sqm which is a deficiency of 386.8sqm in area and a variation of 39% to the standard.
98. To achieve compliance with the control the subject site would need to be amalgamated with an adjoining site to achieve the minimum lot size. In this case all immediately adjoining properties have been redeveloped as medium density housing developments in the form of 3-4 storey walk up blocks of apartments and the opportunity for amalgamation in this case is impractical and unrealisable.

What is the underlying objective or purpose of the standard?

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

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

101. 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.
102. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

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

103. The judgement goes on to state that:

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

104. 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."*

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

106. Applicants comment: In dealing with the “unreasonable and unnecessary” requirement of clause 4.6, Preston CJ identifies the 5 options typically available to an applicant in *Wehbe v Pittwater* [2007] NSW LEC 827 which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

107. Preston CJ at [16] states as follows:

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

108. In *Wehbe*, Preston CJ provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

109. In *Initial Action* the Chief Judge also clarified the following, with respect to the 5-part *Wehbe* test (at [22]):

“It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.”

110. The five methods outlined in *Wehbe* are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).

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

111. In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The Objectives of the development standard are achieved notwithstanding the non – compliance (First Method)

112. The sole objective of the control on minimum lot sizes for multi dwelling housing, residential flat buildings and seniors housing is:

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

113. *This objective seeks to ensure that lot sizes for residential accommodation, more specifically residential flat building development is consistent with the strategic direction for planned residential density. In this regard, the site is zoned R3 medium density residential, and has an FSR control of 1.5:1. As such, this provides the best indicator of what exactly the planned residential density for the site is, namely residential development that achieves something in the order of an FSR of 1.5:1. The proposal achieves an FSR of 1.13:1. The development, therefore assists in meeting the sole objective of the control, and is certainly 'consistent' with it, for the purposes of clause 4.6 of the KLEP.*

114. *The corollary is that if strict compliance were required, the result would be that the site could not achieve (or would be highly unlikely to achieve) its planned residential density.*

115. *Further, the proposal is notably compliant with the FSR standard, and is also compliant with the height standard. In this regard, there is no tangible nexus between the lot size shortfall and the extent of available FSR and height sought. The proposal is also largely consistent with the finer grain controls of the DCP where relevantly applicable. In this regard, the proposed variation to the standard will have no bearing on the development's ability in appropriately responding to the LEP and DCP standards and controls applicable to the land, notwithstanding the numerical variation to the lot size standard*

116. *It is also submitted that the well articulated building facades inclusive of the diverse range of material combinations, serve to provide a development scale and form congruous with the medium density scale and character of the setting. The design, layout and built form of the development is an appropriate response to the site and its context where it will remain in unity with the planned residential density envisaged for the area despite the shortfall in site area.*

2. *When considered within the framework of these objectives, the purpose of the lot size standard also requires that appropriate consideration be given to the likely adverse*

amenity impacts of the development and amenity of the area. In response, the proposal has been designed as far as practical with the intent of mitigating any adverse impact on immediately adjoining lands in terms of solar access and privacy.

117. *The design itself is commensurate of the local character where it responds to its proximity to the Allawah Local Centre and Hurstville's CBD providing opportunity for a contemporary and appropriately scaled residential flat building in the locality. Furthermore, the built form characteristics of the proposal are not inconsistent with that observed by a number of recent identifiable developments within the sites local context approved in accord with the height and FSR increases afforded by the LEP. In this regard, it is anticipated that the built form and scale of undeveloped sites both within the immediate and local context will gradually change as these remaining parcels will be redeveloped in accord with the current allowable building height and floor space ratio development standards made available to the lands*
118. *On this basis, the proposal is consistent with this objective, because the built form is suitably accommodated on the site, and without external impact”.*
119. Assessment Officer's comment: The objective of the control is to achieve a “planned” residential density in certain zones. The emphasis is on “planned” as this is the intended outcome for development. Sites should be large enough (minimum 1,000sqm) in order to comply with the planning controls and achieve good urban design and built form outcomes that can be translated across streetscapes and localities to maintain consistency in design and building envelopes. This control also assists in directing future development and creating a systematic approach to RFB development in the R3 zone.
120. This site being “isolated” cannot be amalgamated with adjoining sites which have been redeveloped to achieve RFB's of a medium density and are strata subdivided. A reasonable expectation is that purchasing these redeveloped sites is unviable and unreasonable and unlikely. The issue then is to consider whether the development control is a prohibition or a development standard. In accordance with the judgement for *Principal Healthcare P/L v Council of the City of Ryde* “It found that the instrument does not act to prohibit developments, but rather permit developments if certain criteria are met”. In this case the control is considered a development standard that can be varied as the land use proposed is permissible and this is one numerical standard that needs to be satisfied in order for the proposed RFB to be considered.
121. Given that the site is isolated can a RFB be constructed on this smaller site? The site can be redeveloped for the purposes of an RFB but the design may need to be modified and the full redevelopment potential of the site may not be achieved on a smaller, constrained site such as the subject site. A merit based assessment needs to be considered on all the other development controls and whether the proposed scheme complies with these.
122. The amended design in summary is considered to be an appropriate sized development of the site, given the size of the site and the other environmental constraints that burden it. It is concluded that this is an isolated site and given the nature of adjoining and surrounding development and the immediate context and location of the site a RFB in the form proposed can be constructed on this site as an infill development.

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

123. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. It is

considered that the Clause 4.6 Statement lodged with the review application addresses all the information required pursuant to Clause 4.6, and the statement is considered to be well founded and there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the minimum lot size control.

124. 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,”*

125. Applicants comment: *Clause 4.6(3)(b) of the KLEP 2012, requires the consent authority to be satisfied that the applicant’s written request has adequately addressed clause 4.6(3)(b), by demonstrating:*

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

127. *The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in (Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118).*

128. *In this instance, the relevant aspect of the development is the 386.8m² departure or 38.6% variation from the 1000m² minimum site area requirement as identified within the standard. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned R3- Medium Density Residential.*

129. *In this regard, the proposed development is of a form and scale that is not incompatible with that envisaged by the planning strategies applicable to the land. Furthermore, the additional development capacity made available to the site provided for by the numerical site area shortfall to the standard, is sustainable given its proximity to public transport, facilities and services available within the Allawah Town Centre and Hurstville CBD.*

130. *In terms of scale, the development’s characteristics ensure that there is no potential for this development to have a jarring effect in the streetscape, given the appropriately arranged built form designed in response to the constrained nature of the land and evolving immediate and broader context.*

131. *In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act*

under S1.3 in order to demonstrate that grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in the table below we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the minimum site area per dwelling development standard.

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

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

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

133. *Based on the above, the consent authority can be satisfied that there the proposed development remains consistent with the Objects of the Act despite the land area shortfall.”*
134. *Officer Comment: The non-compliance must not “hinder the attainment of the objects specified in Section 1.3 of the Act.”*
135. Section 1.3 of the Environmental Planning and Assessment Act 1979 (as amended) provides the objects of Act:
136. The objects of this Act are as follows:
- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
 - (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
 - (c) to promote the orderly and economic use and development of land,*
 - (d) to promote the delivery and maintenance of affordable housing,*
 - (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
 - (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
 - (g) to promote good design and amenity of the built environment,*
 - (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
 - (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
 - (j) To provide increased opportunity for community participation in environmental planning and assessment.*
137. The proposed non-compliance with the minimum lot size should not obstruct the attainment of the objects nominated in section 1.3 of the Environmental Planning and Assessment Act 1979 (“the Act”). The proposal represents an infill development that is generally anticipated within the streetscape and locality. To enforce strict compliance with Clause 4.1A of the KLEP will not promote the orderly or economic development of the land, as it would hinder the redevelopment of the site as an RFB.
138. The proposed variation will not contravene these Objects of the Act. The variation to the numeric control does not assess or consider the other related impacts of the development of the site which are assessed and considered separately. In its amended

form the development is considered to be a development that is appropriate for the site and context. It will not result in unacceptable amenity impacts to neighbouring developments and the streetscape.

- 139. To enforce strict compliance with this control would be to compromise on the economic and social potential of the subject property. Strict compliance is therefore not consistent with the aims and objectives of section 1.3 of the Act.
- 140. It is believed that the proposed development as amended in this review application would satisfy the objective behind the Council’s minimum lot size control by creating a more sensitively “planned” residential density.
- 141. Non-compliance with the development standard does not raise any matter of local, state or regional environmental planning significance. Strict compliance with clause 4.1A of the Plan would hinder the attainment of the objects listed in section 1.3 of the Act.”

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

142. Clause 4.6 (4) states that:

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

(b) the consent authority is satisfied that:

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

143. Clause 4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause; namely that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

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

145. *In Part 4 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The applicant repeats and adopts those reasons. The proposal, inclusive of the noncompliance, is also consistent with the objectives of the R3 Medium Density Residential as detailed below.*

Zone R3 Medium Density Residential Objectives

Objective	Comment
<i>To provide for the housing needs of the community within a medium density residential environment.</i>	<i>The proposal provides for seven (7) new dwellings in a residential flat building format in a well serviced location located in proximity to a variety of public transport options, expanses of public open space and</i>

	<p><i>services facilities.</i></p> <p><i>The siting arrangement, built form and architectural language of the development is consistent with that likely to be encountered in a medium density residential setting and is proportionate with that observed within the evolving context.</i></p>
<p><i>To provide a variety of housing types within a medium density residential environment.</i></p>	<p><i>The dwelling mix being 3 x 3 bedroom and 4 x 2 bedroom apartments is considered to be broad enough in that will cater for a variety of households within the local area. Moreover, the proposed development includes a number of larger three (3) bedroom dwelling options that have been lacking in approved and current developments within the local and wider areas</i></p>
<p><i>To enable other land uses that provide facilities or services to meet the day to day needs of the residents</i></p>	<p><i>The proposal does not offer the provision of other land uses on the land apart from seven (7) new dwellings in a residential flat building arrangement. Notwithstanding, access to services are located within proximity to the site both within the Allawah Local Centre the Hurstville’s CBD.</i></p>

146. Assessment Officer’s comment: The general nature of the proposed RFB satisfies the intentions for development in this zone and the associated objectives.

147. The objectives of the R3 Medium Density Residential zone pursuant to KLEP are;
- *To provide for the housing needs of the community within a medium density residential environment.*
 - *To provide a variety of housing types within a medium density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of the residents.*

To provide for the housing needs of the community within a medium density residential environment.

148. The redevelopment of this site will contribute to the housing needs of the community within the medium density precinct.

To provide a variety of housing types within a medium density residential environment.

149. The development incorporates a mix of two and three bedroom apartments which will satisfy the demand for this form of development in the area.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

150. The development is residential in nature and does not include any additional land uses. This objective is offering some greater flexibility in the provision of land uses within this zone broadly.

151. The site is accessible and well located and although does not provide any other land uses that provide facilities or services to meet the day to day needs of residents in the

area it is very well located and serviced by the small Allawah Town Centre that is within walking distance from the site.

152. As such the proposal is considered to be in the public interest given that it satisfies the objectives of the R3 zone.

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

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

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

154. There is no public benefit in maintaining strict compliance with the development standard in this unique case given that doing so would unreasonably restrict the development potential of the site by way of sterilising a form of development that is encouraged and permitted by the zoning. The proposed isolated nature of the site will permit an infill RFB development of the proposed scale and form.
155. In this case there is no public benefit in imposing the control as the RFB proposed for the site will satisfy the objectives of the zone which including catering for the housing needs of the community within a medium density residential setting. Importantly, the numerical shortfall in site area required for the provision of this form of development, will not present any unreasonable impacts upon adjoining development or the public domain over what generally be considered acceptable given the characteristics of the land and its relationship with neighbouring development.
156. In this case it is considered acceptable and reasonable to vary the control and allow for an RFB development on this smaller site.

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

157. The Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the Environmental Planning and Assessment Regulation 2000 (the EP&A Regulation) on 21 February 2018 which delegated concurrence on behalf of the Secretary to the consent authority for exceptions to development standards for applications made under cl4.6. Based on this notice, the Secretary's concurrence can be assumed in this case.

Conclusion – Assessment of Clause 4.6 Request for Variation

158. Despite the non-compliance in terms of the lot size, the proposed variation is considered to be acceptable and satisfies the provisions of Clause 4.6.
159. The proposed variation satisfies the objective of the minimum lot size control as the density of the proposed development is consistent with the desired density within the zone.
160. It is considered that that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.1A, minimum lot size control).

161. For these reasons the Clause 4.6 Statement is considered to be well-founded and is supported.

Draft Georges River Local Environmental Plan 2020

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

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

Development Control Plans

Kogarah Development Control Plan 2013 (KDCP)

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

Compliance with Part B General Controls of KDCP provisions

Part B - General Controls		
Required	Proposed	Complies
B1 Heritage Items and Heritage Conservation Areas		
Ensure development protects and enhances the environmental and cultural heritage of Kogarah	The site is not a heritage item or located within a Conservation Area. The closest item is the Allawah Hotel which is located within the small Town Centre of Allawah. The site is some distance from this property and will not affect the visual catchment or the significance of this item.	Yes
B2 Tree Management and Greenweb		
The objectives of this part include the following: <ul style="list-style-type: none"> • Ensure the protection of existing trees which contribute to the visual amenity and environment of the City of Kogarah; • Protect trees within and adjacent to development sites; • Maximise healthy tree canopy coverage across 	There are no significant trees existing on site that are proposed to be removed.	Yes

<p>the City of Kogarah</p> <p>Development consent or a Council permit is required to ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree, whether on private or public land, which has:</p> <p>(i) A height greater than 3.5m, or (ii) A branch spread exceeding 3m in diameter</p>		
<p>B3 – Developments near busy roads and rail corridors</p>		
<p>Acoustic assessments for noise sensitive developments as defined in clause 102 of the Infrastructure SEPP may be required if located in the vicinity of busy, arterial roads.</p>	<p>Noble Street is not a classified arterial road or main road so this provision is not applicable to this development,</p>	<p>N/A</p>
<p>B4 Parking and Traffic</p>		
<p>Car parking is to be provided as a maximum in accordance with Part B4 unless Objective 3J-1 of the ADG applies. The ADG applies to this site and takes precedence as the development is located within an accessible location.</p> <p>For development in the following locations:</p> <p>On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</p> <p>On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated.</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car</p>	<p>KDCP Requirements</p> <ul style="list-style-type: none"> • 2 bedroom apartment = 1.5 spaces • 3 bedroom apartment = 2 spaces • 1 visitor space/5 units or part thereof, <p>Required 4 x 2 bedroom apartments = 6 spaces 3 x 3 bedroom apartments = 6 spaces 7/5 visitor spaces = 1.4 spaces</p> <p>Total = 14 spaces required (12 resident and 2 visitor) required under the DCP</p> <p>As the site is located in accessible location, the ADG requirements prevail over the DCP.</p> <p>The site is located within 800m of Allawah Station and therefore the Medium Density requirements are applicable. Given this development is within an accessible area under SEPP 65 and the ADG, the requirements of the RMS Guide for Traffic Generating Development outlines the assessment criterion.</p>	<p>No. The site is located within an accessible area and therefore compliance with the ADG is required. It is noted that the proposal is short by two visitors spaces when assessed against the RMS provisions. See discussion earlier in this report.</p>

<p>parking requirement prescribed by the relevant council, whichever is less</p> <p>The car parking needs for a development must be provided off street</p>	<p>This requires the following:</p> <ul style="list-style-type: none"> • 1 space per unit plus • 1 space for every 5 x 2 bedroom apartments. • 1 additional space for every 2 x 3 bedroom apartments. • 1 space for every 5 apartments for visitor parking. <p>On this basis the following off street parking is required:</p> <ul style="list-style-type: none"> • 7 apartments = 7 spaces • 1 space for the 4 x 2 bedroom apartments = 1 space • 1.5 spaces for the 3 x 3 bedroom apartments = 2 spaces <p>Total residential spaces required = 10</p> <p>Total visitors spaces 7/5 = 2 spaces</p> <p>Total spaces required= 12 spaces (10 resident and 2 visitor)</p> <p>A total of 10 spaces have been provided and are all assigned to the residential apartments. The proposal does not comply with the ADG and has been discussed previously in the ADG table.</p> <p>One (1) accessible space is required which is catered for and provided in the basement.</p>	
<p><u>Car wash bay:</u> 1 bay, which can also function as a visitor space</p>	<p>Not provided.</p>	<p>No</p>
<p><u>Bicycle Parking:</u> 1 space per 3 dwellings = 3</p>	<p>3 residential bicycle spaces are provided. Can be conditioned to be lined marked.</p>	<p>Yes</p>
<p><u>Bicycle parking - Visitors</u> 1 space per 10 dwellings for visitors = 1 space</p>	<p>1 visitors bicycle space is provided. Can be conditioned to be lined marked.</p>	<p>Yes</p>
<p>Car park access and layout to comply with relevant Australian Standards</p>	<p>The internal layout and size of car parking spaces in the basement levels has been reviewed by Council's Traffic Engineer and found to be satisfactory.</p>	<p>Yes</p>
<p>B5 – Waste Management</p>		
<p>Submit a Waste Management Plan (WMP).</p>	<p>The application was accompanied by a Waste Management Plan. Council's</p>	<p>Yes</p>

	<p>Coordinator Environmental Sustainability and Waste has reviewed the waste management propose for the development and has raised no objection to the proposal subject to conditions provided.</p>	
<p>B6 – Water Management</p>		
<p>All developments require consideration of Council’s Water Management Policy</p> <p>Drainage easements servicing stormwater pipes and/or overland runoff from catchments upstream of the development site are to be managed according with Council’s guidelines.</p> <p>Discharge of stormwater runoff from a development site is to be undertaken in accordance with the design practice note, Site Drainage and Flood Management regarding direct discharge to kerb, discharge to a Council owned stormwater conduit, discharge to natural areas, discharge through private property and discharge within the development site.</p>	<p>The subject site is located within a flood prone area and the flood study has been reviewed by Council’s Flood Engineer. The flood study is considered to be acceptable for assessment. However amendments are required which can be adequately addressed as part of the Construction Certificate plan and documentation preparation in accordance with the specific conditions provided by Councils Flood Engineer.</p> <p>The general stormwater and drainage arrangement is considered satisfactory and standard conditions are imposed in relation to this issue.</p>	<p>Yes subject to conditions</p>
<p>B7 – Environmental Management</p>		
<p>Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques</p>	<p>The application is accompanied by a BASIX certificate which confirms compliance with the minimum requirements.</p> <p>Design, materials, siting and orientation generally optimise solar efficiency, with a high proportion of north-facing window openings. Glazing is minimised on the southern and western elevations.</p> <p>The rear apartments have been orientated and designed to face north.</p>	<p>Yes</p>

165. The proposal is subject to the provisions of Part C2- Medium Density Housing. Assessment against the relevant controls has been undertaken below.

Compliance with Part C2 of KDCP 2013 provisions

Part C2 – Medium Density Housing – Kogarah DCP 2013			
Residential Flat Buildings			
1. Minimum site requirements			
1 (1)	Minimum lot size is 1000sqm.	The site area proposed is 613sqm as previously discussed this is an “isolated” site and amalgamation is not considered to be physically possible in this case given that the adjoining developments have been redeveloped.	No, but considered satisfactory in this case. See the Clause 4.6 section above in this report.
1 (2)	Minimum lot width is 24m	Site width is 15.24m, this site is isolated	No however amalgamation is unfeasible and unattainable at this time.
2. Site isolation and amalgamation			
3(ii)	The development of an isolated site is not to detract from the character of the streetscape and is to achieve a satisfactory level of amenity including solar access, visual and acoustic privacy.	The site is isolated. The proposal has been amended and the size and scale of the development and its form is consistent with the streetscape.	Yes
3. Building Setbacks and street interface			
Front Setbacks			
(1)(i)	Street setback: up to a building height of four storeys, a minimum setback of 5m is to be provided.	5.01m to the external balcony perimeter and 6m to the closest part of the wall (adjoining the kitchen) which technically complies with the 5m setback. The front setback of the building is consistent with the adjoining established front building setbacks.	Yes
Side boundary setbacks			
(2)(i)	Minimum setback of 6m from side boundary between ground floor level and up to four storeys.	Setbacks vary between 2.42m to 4.05m	No, see discussion below
Side boundary setback variation			
The issue of separation distances has been addressed earlier in this report as part of			

the assessment against the provisions of the ADG. The site is only 15.24m in width and achieving the setbacks is virtually impossible. The removal of one unit and the reduction in height of the building to be below the maximum 15m height limit has reduced the scale and density to create a more sensitive development. The use of highlight windows, obscure glazing and blank walls also assists in minimising impacts associated with privacy or overlooking.			
(2)(ii)	Upper level setbacks are 9m above four storeys.	Building is only 4 storeys.	N/A
Rear boundary setbacks			
(3)(i)	Minimum 6m setback from a rear boundary between ground floor level and up to four storeys.	Balconies – 3.9m External wall – 5.18 to 5.54m	No, see discussion below
<u>Rear boundary setback variation</u> Although the proposed building fails to meet the minimum 6m rear setback control of the DCP, the inclusion of a deep soil zone with associated tree planting will assist in providing screening and minimising amenity impacts, especially at the lower levels. It is also noted that the building at the rear (43 Illawarra Street) is setback approximately 9m from the rear boundary, which provides a total separation in excess of 12m between properties.			
(3)(ii)	Upper level setbacks are 9m above four storeys.	Building is only 4 storeys.	N/A
Encroachments into boundary setbacks			
(5)(i)	Ground floor private open space (POS) may encroach up to 2m into the 5m front setback leaving a minimum 3m of landscaped area to the street.	The POS on the ground floor does not encroach on the 5m front setback.	Yes
(5)(ii)	Ground floor private open space may encroach up to 3m into the side and rear setbacks leaving a minimum 3m of landscaped buffer.	The private raised ground floor courtyards located outside bedroom 2 of apartment G.01 will be conditioned to include a 1m wide planter box which will restrict access to the edge of the courtyards and provide some natural landscape screening.	Yes
Substation, hydrant booster and waste bin storage structures			
(8)	Sub-stations, fire booster valves and waste bin storage structures need to be integrated into the development and identified at the DA stage.	Hydrant booster shown on plans.	Yes

4. Basement Setbacks			
(1)	Basements are to be set back a minimum of 3m from the site boundaries.	The site is narrow and to ensure vehicle manoeuvrability within the basement, it can be reduced in width. The amended plans have reduced the length of the basement providing additional deep soil at the rear of the site.	No, however is considered acceptable on merit.
(2)	The basement setback areas are to be deep soil areas as defined in the Apartment Design Guide.	The basement provides deep soil zones at the front and rear of the site.	Yes
(3)	Driveways and driveway crossings are to be located a minimum of 1.5m from a side boundary	The site is narrow given it is an isolated site and is unable to setback the driveway 1.5m from the side boundary.	No, however considered acceptable on merit.
(6)	Basements fronting the primary street address are not to project more than 500mm above ground level (existing) at the street setback alignment.	There is a small section of the basement which protrudes above the minimum 500mm, this is largely a result of the flood prone nature of the site and need to raise the ground floor level in order to cater for an overflow pipe to be integrated into the design. This is a small balcony off the bedroom to G.01. The space is small includes a planter box along the boundary and given it is off a secondary space it is unlikely to generate adverse amenity impacts.	No, however considered acceptable on merit.
5. Facade Treatment and Street Corners			
(1)	Building facades must be clearly articulated and employ high quality materials and finishes that enhance and complement the streetscape character	The front façade of the building is suitably articulated and the choice of materials will compliment and maintain the streetscape character.	Yes
(3)	Human scale at street level must be created through the use of scale, rhythm, materiality and/or landscaping	The front façade has been redesigned and the materiality of the built form altered to reflect the character of adjoining development.	Yes

(4)	Essential services such as substations and fire hydrants must be integrated into the design of the façade.	The hydrant booster has been shown on the plans and is located adjacent to the front pedestrian entrance. Given the site constraints with the drainage easement along one boundary and the driveway along the other side this location is considered acceptable.	Yes
(5)	Development must not rely solely on the use of two-dimensional colour and materials to create visual interest. Modulation and articulation in the building form must be explored.	The design includes a variety of finishes and colours that intend to be reflective of the character of the brown face brickwork RFB's in the street.	Yes
(6)	Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding and green walls should be considered as alternatives to blank walls	The proposal does not include large areas of blank walls and the use of different façade treatments provide a visual interest to the building.	Yes
(7)	Clear glazing balustrades are discouraged when visible from the public domain. Screening of balconies by way of adjustable or fixed panels or incorporation of solid upturns at the base of the balustrade should be included where there are issues of privacy when viewed from lower levels, and/or excessive exposure to solar impacts.	The proposal incorporates a mix of balustrade treatments.	Yes
6. Landscape Treatment and Private Open Space			
(1)	Deep soil is to be provided within the	The ADG takes precedent over the DCP. For sites less than	No, however compliant with

	setbacks areas as required in figures 3a, 3b, 4 and 5 and consistent with Part 3E of the NSW State Government's Apartment Design Guide. To be included as deep soil as required by Part 3E of the Apartment Design Guide, the deep soil area must have a minimum dimension of 3.0m on any axis. Planting in the deep soil areas is to include trees that achieve a minimum mature height of 6.0m.	650sqm, there is no minimum dimension specified for deep soil although a minimum 7% is required. The ADG does not exclude services such as the stormwater easement which does not permit any built structures over it but does permit some landscape features. These can only be small scaled plants so the intention of the deep soil area along the northern boundary cannot be utilised to its full potential given it is an easement.	the ADG.
(2)	The visual appearance of developments is to be softened through the incorporation into the design planter boxes and similar design treatments that will support landscaping in a minimum soil depth of 800mm	A number of planer boxes have been provided to soften the building and break up the building mass.	Yes
(3)	Where landscaping is included on balconies and terraces, the functional area of the private open space is not to be reduced to below the minimum requirements of Part 4E of the Apartment Design Guide	All functional areas of private open space maintain the minimum requirements of the ADG.	Yes
(4)	Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible	All nominated areas of private open space are accessible via the main living and dining rooms.	Yes

	from those areas		
(5)	Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year round use	The plan allows northern solar access to most apartments.	Yes
(6)	Unpaved or unsealed landscaped areas should be maximised and designed to facilitate on-site infiltration of stormwater.	The proposal provides over 140sqm (23%) of landscaped area in excess of the ADG requirements of 7%.	Yes
(7)	Existing significant trees and vegetation must be incorporated into the proposed landscape treatment	The subject site does not contain any large or significant trees or vegetation.	Yes
7. Common Open Space			
(1)	Common open space to a minimum area of 25% of the site area and with a minimum dimension of 5m is to be provided	The proposal provides 93.93sqm (15.23%) of communal open space on the roof level. This has been discussed in the ADG table.	No, however considered acceptable on merit.
(3)	At least 50% of the required common open space area is to receive 2 hours of direct sunlight between 9am and 3pm on 21 June	Complies.	Yes
(6)	Roof top common open space areas should include equitable access for all residents, and must be designed to ensure that noise and overlooking will be avoided, by way of screening and setbacks from boundaries.	The rooftop communal open space is provided with equitable access and an accessible WC.	Yes
(8)	Ancillary structures on the roof such as	The building is fully compliant with the maximum height limit.	Yes

	lift overruns and staircases should be centralised to reduce their visual dominance. Balustrades should be visually recessive	The lift over run is located towards the middle of the building which reduces any perceived bulk from the street.	
8.Solar Access			
(1)	Shadow diagrams are to be submitted for the winter solstice (21 June) to demonstrate impacts at a minimum of 9am, midday and 3pm	Shadow diagrams have been submitted and these are considered to be compliant as all immediately adjoining properties will receive a minimum of 3 hours of solar access during midwinter.	Yes
(2)	Shadow diagrams should include elevational diagrams identifying the habitable rooms and private open space areas of the adjoining dwellings, and view from the sun diagrams, identifying solar access compliance to the proposed development	Provided.	Yes
9.Vehicular access, parking and circulation			
(1)	Car parking is to be provided as a maximum in accordance with the requirements in Part B4 unless Objective 3J-1 of the Apartment Design Guide applies. Car access areas and garages doors do not visually dominate either the development or the streetscape.	This is discussed previously in the ADG Table and Part B4 of KDCP 2013. The ADG takes precedence as the development is located within an accessible location.	No
(5)	Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and	The crossing is located so that on street parking is maximised.	Yes

	removal or damage to existing street trees is avoided		
(6)	Driveways should be designed to avoid a straight, long “gun barrel” appearance by using appropriate landscaping and variations in alignment	The design of the driveway is governed by the site constraints however generally satisfies this control.	Yes
(7)	Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1-(latest edition).	Parking layout and vehicular access requirements have been designed to comply with AS2890. Councils Traffic Engineer has reviewed the plans and the proposal now satisfies AS2890.	Yes
(9)	Tandem parking (one space immediately behind another) may be used where two spaces are provided and allocated to a single, specific dwelling.	Tandem parking has been provided however the two tandem spaces are allocated to a single apartment.	Yes
(10)	All residential flat developments must provide a car wash bay which: (i) is roofed and bunded to exclude rainwater. (ii) has clearly visible signs which indicate that no degreasing or mechanical work is to be undertaken in the car wash bay. (iii) has a fixed basket trap for floor waste. (iv) includes a 1000 litre general purpose pit.	No car wash bay is provided and no visitor spaces are provided as the tight nature and width of the site doesn't allow for these to be catered for unless some apartments won't receive a dedicated car space and this is considered more important. Given the small scale nature of the development (7 apartments), it is unlikely this development will generate a large amount of visitors and it is considered more beneficial to provide occupants of the apartments with designated parking as opposed to irregular visitors.	No but considered acceptable in this case and the small scale nature of the development.
(16)	Separate pedestrian access to buildings should be provided	A separate pedestrian access to the building is provided off Noble Street.	Yes

	which does not rely upon access from a basement as the sole pedestrian access location		
10.Views and view sharing			
	Development shall provide for the reasonable sharing of views.	There will be no view loss generated by the proposal.	Yes
12.Adaptable and Accessible Housing			
(1)	The minimum number of adaptable units designed in accordance with AS4299 - 1995 Adaptable Housing must be incorporated into the developments included in this section: 5-10 units – 1 adaptable apartment	The development will comprise of one (1) adaptable apartment (apartment 1.01) in accordance with the DCP requirement. One (1) liveable apartment is also nominated.	Yes
(2)	The adaptable units must comply with the relevant Australian Standards and be certified as “adaptable housing units” and every adaptable unit needs to have an accessible car space	An accessible car space has been provided.	Yes
(3)	Developments must be designed and constructed to comply with: (i) AS 1428.1 – 1993 Design for Access and Mobility Part 1 (ii) AS 1428 – 1993 Design for Access and Mobility Part 2 Enhanced and Additional Requirements – Buildings and Facilities. (iii) Relevant provisions of the	Access report provided with the application indicating compliance can be achieved.	Yes

	Building Code of Australia		
(4)	Notwithstanding compliance with the above, the development is to be designed to meet the needs of people with disabilities, including: (i) The provision for a continuous accessible path of travel from all public roads and public spaces as well as unimpeded internal access; (ii) The provision in design for ease of use and comfort through appropriate gradients, rest areas, circulation space and user friendly entrances; (iii) Safety design measures, including contrasting colour for points of danger and slip resistant surfaces; and (iv) Legible design features such as signs and indicators to assist the location of handrails and guardrails.	The development has been designed to generally comply and cater for people with a disability, however standard conditions will be imposed if consent is issued to ensure the completed building satisfies Australian Standards and Building Regulations with respect to disabled access in and around the building.	Yes

Interim Policy – Georges River Development Control Plan 2020

166. Council at its Environment and Planning Committee Meeting dated 24 June 2019 resolved to adopt the Georges River Interim Policy Development Control Plan which became effective on 22 July 2019.
167. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current Development Control Plan controls will prevail if they are considered best practice. The Interim Policy has no statutory recognition in the assessment of DAs pursuant to the Environmental Planning and Assessment Act, 1979 (EP&A Act).
168. The Policy focuses on streamlining controls relating to Dual occupancy, Multi-Dwelling and Residential Flat Building development to provide for consistency when assessing

these developments throughout the amalgamated LGA. The table below outlines the compliance of the proposal against the interim provisions.

Compliance with the Interim Policy Compliance Table

Interim Policy – Georges River Development Control Plan 2020		
Standard	Proposed	Complies
Site Frontage		
Kogarah - 20m min frontage width for an RFB development	15.24m	No – this is an isolated site and amalgamation is highly unlikely or physically possible in this case.
Building Height		
The relevant LEP controls relating to building height will prevail over Development Control Plan controls that relate to height in storeys. KLEP permits 15m	The proposal has been assessed against the Kogarah Local Environmental Plan 2012 height standard. The proposal complies with the maximum building height. 14.405m proposed	Yes
Private Open Space		
The ADG requirements prevail over the Development Control Plan controls for private open space	The proposal is fully compliant with the ADG's private open space requirements. Refer to "4E – Private Open Space and Balconies" within the ADG Compliance Table above.	Yes
Communal Open Space		
The ADG requirements prevail over the Development Control Plan controls for COS under the Interim Policy	The ADG requires a COS of 25%. The proposal provides a roof top communal open space of 93.93sqm (15.31%).	No, see discussion in the ADG table.
Parking		
In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment): <ul style="list-style-type: none"> If located in a strategic centre (<i>i.e.</i> Kogarah CBD and Hurstville CBD) and within 800m of a Railway, the "Metropolitan Regional Centre (CBD)" rates apply. If located within 800m of a railway and outside the strategic centres the "Metropolitan Subregional 	The site is located within 800m of the Allawah Train station and is located within 400m of a commercial zone. The proposed car parking numbers do not comply with the provisions of the ADG. The proposal is short by 2 car spaces.	No, see discussion in ADG table.

Centre” rates apply. • If located outside of 800m of a Railway, the relevant Development Control Plan applies.		
Solar Access		
The ADG requirements prevail over the Development Control Plan controls for solar access under the Development Control Plan	The proposal complies with the ADG solar access provisions.	Yes

169. The proposal is generally consistent with the purpose and intentions of the Interim Policy.

Georges River Development Control 2020

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

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

DEVELOPER CONTRIBUTIONS

172. The proposed development would require payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979. If the development was to be approved a condition outlining the required contributions will need to be imposed.

173. A total S7.11 contribution of \$58,861.35 is applicable and has been based on two (2) credits for the two (2) existing lots/dwellings on site and the generation based on 4 x 2 bedroom dwellings and 3 x 3 bedroom dwelling proposed. A standard condition is imposed if consent is to be issued.

IMPACTS

Natural Environment

174. The proposed development is unlikely to result in adverse impacts to the natural environment as the proposal does not seek the removal of any existing significant trees or vegetation. The proposed development as amended has reduced the scale and form of the development and the visual qualities of the streetscape and landscaping setting by the provision of a deep soil zone at the rear as it has introduced more planting and greenery across the Site.

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

176. The development has also had regard to the drainage of the site and ensuring that this appropriately addressed.

Built Environment

177. The review application has amended the proposed development by the removal of a unit on the second floor and replacing this area with a communal open space area, increased the amount of deep soil landscaping at the rear, reconfiguration of the basement level to

now provide compliant access and egress. This has resulted in the reduction in the perceived bulk and scale of the building. The proposed building is now more consistent with the form and scale and character of existing developments in the streetscape and immediately adjoining the site. This will now achieve a better built form for this particularly constrained and isolated site.

Social Impact

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

Economic Impact

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

Suitability of the site

180. It is considered that the proposed development is of scale and design that is suitable for the site. The site is zoned R3 – Medium Density Residential and the use is a permissible form of development in this zone. Having regards to its size, shape, topography, vegetation and relationship to adjoining developments, the subject site does not contain any impediments that would preclude it or compromise its suitability for the intended land use as proposed.

SUBMISSIONS AND THE PUBLIC INTEREST

181. The application was neighbour notified in accordance with Kogarah DCP 2013 for a period of 21 days. A total of two (2) submissions were received in response. One of the submissions provided an attached petition with 18 signatures objecting to the proposal.

182. The concerns raised are summarised below.

Building exceeds the height limit

183. Officer Comment: The amended proposal has been reduced in height and is now fully compliant with the maximum 15m height limit.

Unreasonable overshadowing and solar access loss

184. Officer Comment: The submitters are concerned with the large amount of overshadowing cast by the building. The building has been reduced in height and is fully compliant with the maximum building height permitted in the LEP. The shadow diagrams indicate that the immediately adjoining properties will receive a minimum of 3 hours of solar access throughout the day in midwinter which is considered to be within the required limits.

Loss of privacy through windows on the northern elevation

185. Officer Comment: Concern has been raised by a resident in the RFB at 50 Noble Street that they will suffer loss of privacy from the windows on the northern elevation. The amended plans include highlight windows to habitable rooms and obscure glazing will be provided to glazing below 1.5m in height. Bathroom windows and the windows within the stairwell will also be obscure glazing. It is anticipated these measures will assist in minimising amenity impacts.

Out of character and over development

186. Officer Comment: Concern has been raised that the proposed development is out of character and an over development of the site. The proposed development has been

amended and is now fully compliant with the maximum height and maximum FSR that is permitted on the subject site. The four storey building is now of a scale, form and density that is a more sympathetic design response for the site. The removal of the roof terrace above the third floor and relocating this terrace to the third floor and removing a unit results in a lower scale development that is more acceptable and consistent within its context.

Adverse impact on street parking and non compliance with AS2890

187. Officer Comment: There will be an increase in the demand for on-street parking however this is public parking and is available for the community at large. The benefit the development will have is by the removal of one vehicular crossing from the site which will permit an additional on-street car parking space. This may not totally compensate for the demand, but it will increase on street car parking nonetheless. The proposed basement level has been amended and has been reviewed by Council's Traffic Engineer. The car parking arrangement and design has been considered by Council's Traffic Engineer who does not raise any objection to the proposed works and states that the proposed development is generally compliant with AS2890.
188. In relation to parking, the building will provide 10 parking spaces for the residents which is compliant with the parking requirements of the RMS for resident parking. The development fails to comply with visitor parking requirements and no parking will be provided for visitors. In this case it is considered more important to ensure that the functionality, manoeuvrability and efficiency of the basement is maximised at the expense of the visitor spaces. It is considered more important to ensure there is more parking for occupants as they will place more pressure on on-street parking than visitors who largely come for short terms and visits.

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

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

REFERRALS

Council Referrals

Development Engineer

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

Flood Engineer

192. Council's Flood Engineer specialising in flooding reviewed the amended plans and has raised no objection subject to the conditions of consent he has provided.

Traffic Engineer

193. The application was referred to Council's Traffic Engineer for comment. Council's Traffic Engineer raised no objection to the proposal as the amended plans and reconfiguration of the basement now meets the requirements of AS2890.

Environmental Health Officer

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

Consultant Arborist

195. Council's Consultant Arborist has reviewed the landscape plans submitted with the review application. No objection is raised to the proposal subject to conditions of development consent.

Coordinator Environment Sustainability and Waste

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

External ReferralsAusgrid

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

CONCLUSION

198. The proposal seeks consent for demolition of existing structures, lot consolidation, and the construction of a four storey Residential Flat Building containing seven (7) apartments with basement car parking for ten (10) vehicles, associated landscaping and site works on Lots A and B in DP 381675 known as 54 and 54A Noble Street, Allawah
199. The proposal has been assessed in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979. As discussed throughout this report, the proposal is considered a form of development which is compatible with its surrounding environment. The proposal is not considered to exacerbate physical environmental impact of the adjoining and immediate locality. In addition, it is considered that the proposed is within character and is capable of existing harmoniously within its surroundings.
200. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policies, Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013.
201. The proposal satisfies the key planning controls in the Local Environmental Plan apart from the minimum allotment size for Residential Flat Buildings (Clause 4.1A). A Clause 4.6 Statement has been submitted with the application justifying the variation, in this case it is considered to be unreasonable and unnecessary in the circumstance of this case and sufficient environmental Planning grounds have been demonstrated to contravene the control in this instance.

202. Following an assessment varying the minimum allotment size provision is considered acceptable given that the site cannot be consolidated or amalgamated with adjoining sites.

203. The application is recommended for approval subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

204. The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments except in relation to the minimum lot size (Clause 4.1A) control. A Clause 4.6 exception has been submitted in support of the application which is considered acceptable having regard to the justification provided in the report above.
- The proposed development satisfies the objectives of the R3 Medium Density zone of Kogarah Local Environmental Plan 2012 by providing a variety of housing types to meet the needs of the community within the medium density environment.
- The proposed development is not considered to be incompatible with surrounding development and surrounding land uses and is an acceptable response to the zoning, context, site area, dimension and orientation of the allotment.
- The building will not unreasonably affect the amenity of any immediately adjoining properties in terms of unreasonable overlooking, overshadowing or view loss.
- The proposed development is well considered and sensitively designed so that it will not result in any unreasonable impact on the natural and built environment.
- The proposed development is not considered incompatible with the character of the locality and is capable of existing harmoniously with its surroundings.
- The proposed development is consistent with the desired future character of the precinct by providing a residential flat building consistent with the scale and size of adjoining development.
- The proposal is not inconsistent with the provisions of the Draft Georges River Local Environmental Plan 2020.
- Although the proposal fails to satisfy a number of planning controls in minimum allotment size, separation distances, setbacks, car parking and the Kogarah Development Control Plan provisions for Residential Flat Building's this is an isolated site that is unlikely to be amalgamated or consolidated with the immediately adjoining sites. It is for this reason there is a reasonable expectation for the site to be redeveloped for medium density development otherwise it will be sterilised and underdeveloped.
- The proposal is not inconsistent with the provisions of the Draft Georges River Local Environmental Plan 2020.

Determination

205. THAT the Georges River Local Planning Panel, as the consent authority, support the request for variation pursuant to Clause 4.6 of Kogarah Local Environmental Plan 2012, in relation to the minimum lot size (Clause 4.1A) control as the variation sought is considered to be well founded and in the public interest and compliance in this case is unreasonable or unnecessary as there will not be any direct or adverse environmental impacts generated by the variation sought.

206. THAT the Georges River Local Planning Panel, as the consent authority, pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979 (as

amended) grant development consent to Review Application REV2021/0001 for demolition, lot consolidation and construction of a four (4) storey residential flat building containing seven (7) apartments with basement car parking for a total of ten (10) vehicles, landscaping and associated site works on Lot A and B in DP 381675 known as 54 and 54A Noble Street, Allawah, subject to the following conditions of consent

DEVELOPMENT DETAILS

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

Description	Reference No.	Date	Revision	Prepared by
Site Analysis Plan	DA 01	20/11/2020	C	Cornerstone Design
Basement Plan	DA 02	20/07/2021	G	Cornerstone Design
Site/Ground Floor Plan and First floor Plan	DA 03	23/07/2021	G	Cornerstone Design
Second Floor Plan and Third Floor Plan	DA 04	20/07/2021	E	Cornerstone Design
Roof Plan	DA 05	23/07/2021	E	Cornerstone Design
Elevations South West Elevation North West Elevation	DA 06	26/07/2021	F	Cornerstone Design
Elevations North East Elevation South East Elevation	DA 07	20/07/2021	E	Cornerstone Design
Section and driveway profile	DA 08	20/07/21	F	Cornerstone Design
Deep Soil Plan & Excavation Plan	DA 21	20/07/21	D	Cornerstone Design
Erosion and Sediment Control Plan	DA 22	20/07/2019	A	Cornerstone Design
Storage Calculations	DA 24	23/07/2021	B	Cornerstone Design
Landscape Plan Ground Floor Plan and Third Floor Plan	19-3968 L01	01/07/2021	C	Zenith Landscape Design
Landscape Plan Existing Tree Plan	19-3968 L02	01/07/2021	C	Zenith Landscape Design

SEPARATE APPROVALS REQUIRED BY OTHER LEGISLATION

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

Separate approval is required under Section 138 of the Roads Act 1993 and/or Section

68 of the Local Government Act 1993 for any of the following activities carried out in, on or over a public road (including the footpath) listed below. This approval is to be obtained from RMS.

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

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

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

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

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

The following details must be submitted:

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

4. **Vehicular Crossing – Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:
- Construct a 1.2m wide footpath for the full length of the frontage of the site in accordance with Council's Specifications applying at the time construction approval is sought.
 - The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
 - Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

5. **Road Opening Permit** - A Road Opening Permit must be obtained from Council for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.
6. **Building – Hoarding Application** - Prior to demolition of the buildings on the site or the commencement of work above ground level a separate application for the erection of an A class (fence type) or a B class hoarding or C type scaffold, in accordance with the requirements of Work Cover Authority of NSW, must be erected along that portion of the footway/roadway where the building is within 3.0 metres of the street boundary. An application for this work under Section 68 of the Local Government Act 1993 and the Roads Act 1993 must be submitted for approval to Council.

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

- A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and
- Hoarding plan and details that are certified by an appropriately qualified engineer; and
- 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
- 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; and

REQUIREMENTS OF CONCURRENCE, INTEGRATED AND OTHER GOVERNMENT AUTHORITIES

7. **Sydney Water – Tap in TM** - The approved plans must be submitted to a Sydney Water Tap inTM to determine whether the development application will affect Sydney Water's

sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au 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 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 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. **Electricity Supply** - An application is required to be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application being lodged with Ausgrid is required to be provided to the Certifying Authority prior to the issue of a Construction Certificate. For further details, you are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services).
10. **Electricity Supply to Development** – The electricity supply to the development must be underground.
11. **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

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

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

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

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

the form of payment that will be accepted by Council.

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$18,836.64 (Calculation is based on \$1236 per metre of street frontage as follows: Noble Street – 15.24m)
Inspection Fee for refund of Damage Deposit	\$742.00
DEVELOPMENT CONTRIBUTIONS	
Kogarah Section 94 Development Contributions Plan No.1 – Roads and Traffic Management - Residential	\$570.59
Kogarah Section 94 Development Contributions Plan No.5 – Open Space	\$55,872.95
Kogarah Section 94 Development Contributions Plan No.9 – Kogarah Libraries - Books	\$1,006.35
Kogarah Section 94 Contributions Plan No.9 – Kogarah Libraries - Building	\$1,411.46
Total Development Contributions (this excludes General Fees – damage deposit and inspections)	\$58,861.35

General Fees

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

Development Contributions

The Section 7.11 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

Indexation

The above contributions will be adjusted after 1 May 2020, at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant Section 94 Development Contributions Plan.

Timing of Payment

The development contribution that is required to be paid in accordance with this

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

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

Further Information

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

13. **Damage Deposit - Major Works** In order to insure against damage to Council property the following is required:
- i. Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$18,836.64**
 - ii. Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee (for two inspections) to enable assessment of any damage and repairs where required: **\$742.00.**
14. **Use of Rooftop open space** - A Plan of Management (POM) for use of rooftop open space must be submitted to the satisfaction of the Principal Certifying Authority with a copy provided to Council prior to the issuing of the Construction Certificate. The POM must outline the following:
- (i) The hours of use of the rooftop deck which shall be restricted from 8am until 10pm;
 - (ii) The maximum number of users at any one time shall be specified (for this development a maximum of 10 persons at any one time is recommended) given the size of the space;
 - (iii) Include provisions to maximise the safety (fire safety and general safety) for users of this area.
 - (iv) no amplified music is permitted;
 - (v) identify other measures to ensure that the amenity and safety of persons within the development and in nearby existing and future development is maintained.
 - (vi) Location and type of signage to be installed in the building to notify residents and visitors in respect to the use of this space.
 - (vii) The approved POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision and a sign in the front entry of the building shall be included to ensure the use of this space is monitored and understood by all occupants.
15. **Driveway access/sight lines** - Driveway access to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.

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

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

16. **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*.

17. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Zenith Landscape Designs, Ref No 19 – 3968 L01 and LO2 Rev C dated 1 July 2021. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -

- a) The proposed five (5) trees and plant species, pot/ bag size being 45 litre and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives;
- b) All five (5) trees proposed upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification;
- c) If the planted five (5) trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
- d) Root Barrier must be installed upon and within the stormwater easement located along the total length of the northern side of the property. Root Barrier must be installed by an Accredited Root Barrier installer and signed off by the installer to the PCA forming compliance and ensuring correct methods are utilised.
- e) The proposed ‘SG’ - *Syncarpia glomulifera* proposed within the rear back north corner, close to the stormwater easement, must be planted along the back fence and no closer than 6 metres from the easement.

18. **Tree Removal & Replacement** – The following provisions must be satisfied;

a) Tree removal

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
<i>Metrosideros excelsa</i>	X1	Front yard of site
<i>Lagerstroemia indica</i>	X1	Within site, side south fence
<i>Camellia japonica</i>	X3	Within site, rear yards

General Tree Removal Requirements

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

Street Tree Removal / Replacement by Council –

- (a) One (1) street tree of species must be provided in the road reserve fronting the site.
- (b) Council shall be appointed to remove and plant all tree/s on public land. All costs associated with the removal of the tree/s and the planting of replacement trees shall be met by the applicant. Fees and charges outlined in the table below are subject to change and are set out in the current version of Council's 'Schedule of Fees and Charges', applicable at the time of payment.
- (c) The fees must be paid in accordance with the conditions of this consent. The fee payable is to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.
- (d) The fees payable will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant conditions set out in this consent.

Fee Type – Tree planting on public land	Number of trees	Amount per tree
Administration Fee, tree planting and maintenance	X1	\$452.00
Cost of tree removal		N/A
Cost of Stump Grinding		N/A

Summary	
Number of trees removed from site	X5
Number of trees to be planted within the site per these Conditions of Consent	X4
Number of trees the applicant shall pay for and Council to plant upon Councils street verge	X1

19. **Additional Flood Assessment requirements** – The issues relating to the management of flooding across the site have not been fully satisfied and the following information is required:

- (a) The Flood Assessment report dated 28 June 2019 by WMA Water will need to be updated to address the following:
- i. The report is to verify that the proposed ground floor level's and design is appropriate with respect to its protection from flooding with an allowance for 500mm freeboard in the 1% AEP event.
 - ii. The report is to verify that the driveway ramp design with a crest at RL 34.25m AHD will protect the basement from flooding up to the 1% AEP event. The report is to also specify the minimum levels or height above finished ground for any ventilation openings to the basement.
 - iii. The report is to include design requirements including dimensions of the open sub-floor and dimensions of openings in the walls at the rear of the building to allow for the modelled overland flow.

- iv. The extents and design requirements of any required or proposed boundary walls, retaining walls, fences or gates at the property boundaries.
- v. Confirmation of the extents of the overland flow path(s) through the site and design requirements for ground surface types, any proposed planting and any proposed fences or gates or within the overland flow path(s).

In preparing this amended report it will need to be taken into consideration that the flood depths as determined in the Kogarah Bay Creek FRMS&P TUFLOW report by WMA Water on the driveway at No. 50-52 Noble Street are significantly larger than those indicated along the north western setback and rear yard of the proposed developing site. It is also noted that there is a masonry wall separating the two properties that will affect the overland flow through the site.

- (b) A plan within or referenced in the Flood Assessment report will need to include design spot ground levels for all areas within the site including adjacent to the building, along boundaries under the open structure at the rear of the building, on paths and landscaped areas, and at the top and bottom ends of the proposed 300mm overland flow diversion pipe.
- (c) Full design details will need to be provided of the 300mm overflow pipe that includes the following:
 - i. Design details of the pit inlet system and surrounding area at the upstream end of the pipe
 - ii. Design details of the outlet structure and surrounding area at the downstream end of the pipe. It will need to be shown that the outlet structure will be installed in a way that will not reduce the amenity of the building and the front building setback, will be able to be easily maintained, will spread the outflow and will not cause scour.
 - iii. Calculations that verify the pipe including the inlet and outlet designs will cater for the modelled 1% AEP overland flow on the south eastern setback of the new building.
 - iv. It will need to be shown that the pipe can be installed without affecting the adjacent parking space(s).
 - v. It will need to be shown that there will not be any flow through the overflow pipe in large storm events.

All design features within the amended flood report including those as detailed in (a), (b) and (c) above to allow for the overland flow through the site are to be clearly and consistently specified on updated architectural, landscape and stormwater plans.

- 20. **Reconstruction of Council's Stormwater System** - The full extent of Council's stormwater pipe through the site is to be reconstructed. The plan S2022-S1/1 Revision D dated 5 July 2021 by John Romanous and Associates Pty Ltd has been approved as a concept plan only. Detailed plans of these works must be approved through Council's Stormwater Drainage Application process prior to the issue of a Construction Certificate.
- 21. **Support for Easement Pipes**
 - (a) All footings within 2.0 metres of the drainage easement shall be designed in such a manner that they are supported by foundations set at a minimum of 300mm below pipe invert levels or founded on sound rock.
 - a. Alternatively, the footings of the building or any structure shall be designed not to affect the zone of influence taken from the invert of any pipe.

- (b) The walls of any dwelling, pool or structure adjoining the easement shall be designed to withstand all forces should the easement be excavated to existing pipe invert levels.
- (c) No building or other structure must be placed over the drainage easement or stormwater system or within the zone of influence taken from the invert of any pipe.

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

22. **Open Structure of sub floor** - The sub-floor area of the rear of the building is to be built as an open structure to act as an overland flow path in accordance with the approved plans and the flood report. Any proposed bars, louvres etc. at the eastern, western and northern façades adjacent to the sub floor are to be approved and certified as appropriate by the consultant flood engineer.
23. **Work procedure and protection of Council's stormwater system** - A suitably qualified structural engineer is to provide certification including a works procedure statement for excavation and construction works. It is to be certified that the works will not cause additional loading or cause damage to Council's stormwater system. The structural engineer is to also determine an exclusion zone adjacent to the stormwater channels where there is to be no stockpiling or machinery. A copy of the current Product and Public liability insurance of 20 million dollars of the principal contractor undertaking the building works is to be forwarded to Council.
24. **Stormwater System** - The submitted stormwater plan has been assessed as a concept plan only.

Description	Reference No.	Date	Revision	Prepared by
Stormwater Drainage Basement Floor	2022 – S1/4	05.07.2021	D	John Romanous & Associates Pty Ltd
Stormwater Drainage Ground Floor	2022 – S2/4	05.07.2021	D	John Romanous & Associates Pty Ltd
Stormwater Drainage First Floor Second Floor	2022 – S3/4	05.07.2021	D	John Romanous & Associates Pty Ltd
Stormwater Drainage Third Floor Roof	2022 – S4/4	05.07.2021	D	John Romanous & Associates Pty Ltd

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

- (a) There shall be no damage to the adjoining driveway crossing. All damages are to be rectified to its original condition at the cost of the applicant.
- (b) The PCA shall ensure that the approved drainage design levels are surveyed during construction by a registered surveyor.
- (c) The PCA shall ensure that a drainage engineer shall supervise the construction of the OSD stormwater system on site and certify his supervision in writing and state his

satisfaction of the constructed site stormwater system is built as intended in this consent.

- (d) The stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.

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

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

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

Protection of basement from inundation of stormwater waters - The underground basement shall be protected from possible inundation by surface waters from the street.

Evidence from a professional engineer who specialises in hydraulic engineering that this design requirement has been adhered to shall be submitted with the Construction Certificate application demonstrating compliance with this requirement to the satisfaction of the Principal Certifying Authority.

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

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

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

26. **Pump-Out System Design for Stormwater Disposal** - The design of the pump-out system for storm water disposal will be permitted for drainage of basement areas and the section of driveway that cannot drain from the site by gravity only, and must be designed in accordance with the following criteria:

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

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

27. **Contamination** - Prior to the issue of any Construction Certificate for above ground building works, the site must be remediated in accordance with the recommendations of the approved Site Investigation & Remedial Action Plan (RAP) prepared by Canopy Enterprises Pty Ltd dated 18 August 2020.
- a. The applicant must engage an appropriately qualified and experienced supervising environmental consultant to supervise all aspects of site remediation and validation. The environmental consultant must supervise all aspects of the remediation and validation works in accordance with the approved Remediation Action Plan.
 - b. Any reports relating to contamination must be prepared, or reviewed and approved by an appropriately qualified and certified environmental consultant. The front cover of the report must include the details of the consultant's certification.
 - c. Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to Council and the Principal Certifying Authority in writing.
 - d. Any variations to the approved Remediation Action Plan must be prepared, or reviewed and approved by an appropriately qualified and certified environmental consultant, and submitted to Council prior to the commencement of such work.

Remediation Works

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

- The Managing Land Contamination: Planning Guidelines SEPP 55 Remediation of Land; and,
- The EPA Guidelines made under the Contaminated Land Management Act 1997;
- In accordance with the Remedial Action Plan.

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

The Validation Report will confirm that the site has been remediated to a suitable standard and in accordance with the process stipulated in the Site Investigation and Remedial Action Plan prepared by Canopy Enterprises Pty Ltd dated 18 August 2020

and that the site is suitable for the proposed use.

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

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

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

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

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

30. **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.
31. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1018717M_04 and dated 23 December 2020 prepared by Max Brightwell must be implemented on the plans lodged with the application for the Construction Certificate.
32. **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.
33. **Acoustic attenuation for apartments adjoining lift core** – Where bedrooms within apartments that adjoin the internal lift core; appropriate noise attenuation measures are to be applied to prevent transmission of noise in accordance with the Building Code of Australia (BCA)
34. **Dial before your dig** - The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" shall be forwarded to the Principal

Certifying Authority (PCA) and provided to Council with the construction certificate plans and documents.

35. **Site Management Plan** - Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:

- (a) location of protective site fencing;
- (b) location of site storage areas/sheds/equipment;
- (c) location of building materials for construction, e.g. stockpiles
- (d) provisions for public safety;
- (e) dust control measures;
- (f) method used to provide site access location and materials used;
- (g) details of methods of disposal of demolition materials;
- (h) method used to provide protective measures for tree preservation;
- (i) provisions for temporary sanitary facilities;
- (j) location and size of waste containers/skip bins;
- (k) details of proposed sediment and erosion control measures;
- (l) method used to provide construction noise and vibration management;
- (m) construction and demolition traffic management details.

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

36. **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.

37. **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).

38. **Parking and Layout** - The design of the development shall comply with the following requirements with details demonstrating this submitted to the satisfaction of the Principal

Certifying Authority prior to the release of a Construction Certificate;

- The layout of the proposed car parking and loading areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) shall be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018.
 - Bicycle parking associated with the subject development shall be in accordance with AS 2890.3 (Bicycle Parking Facilities).
 - Driveway access is to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.
 - Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distance requirements stipulated in the *Australian Standards AS2890.1*.
 - All vehicles shall enter and exit the premises in a forward direction.
39. **Mechanical ventilation** – Any proposed mechanical ventilation system will need to satisfy Council's requirements and those stipulated by the National Construction Code and AS1668.2-2002. Details of the proposed Mechanical Ventilation system shall be provided to the Certifier and shall be sensitively located to minimise visual appearance of these ancillary structures and in a way to minimise any noise or visual impacts from adjoining properties.
40. **Geotechnical Reports** - The applicant must submit a Geotechnical Report, prepared by a suitably qualified Geotechnical Engineer who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted to the satisfaction of the Principal Certifying Authority **before the issue of the Construction Certificate** and is to include:
- (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
 - (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the Certifying Authority and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
 - (c) On-site guidance by a vibration specialist during the early part of excavation.
 - (d) Rock breaking techniques. Rock excavation is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures.
 - (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.
41. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical Engineer's report.

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

42. **Slip Resistance** – All pedestrian surfaces in areas such as foyers, public corridors, common areas and stairs as well as floor surfaces in the wet rooms in any residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2013 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.
43. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).
44. **Development Engineering - Driveway Construction Plan Details** - Detailed engineering plans for the driveway shall be submitted with the Construction Certificate application for approval that show:
- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
 - (b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).
 - (c) A longitudinal driveway sections are to be prepared by a qualified civil/traffic engineer and be submitted for to and approved by the Certifying Authority. These profiles are to be at 1:100 scale along both edges of the proposed driveway, starting from the centreline of the frontage street carriageway to the proposed garage/parking level. The civil/traffic engineer shall provide specific written certification on the plans that:
 - i. Vehicular access can be obtained using grades of 25% (1 in 4) maximum and
 - ii. All changes in grade (transitions) comply with Australian Standard 2890.1 (2004) – “Off-street car parking” to prevent the scraping of the underside of the vehicles.
45. **Construction Traffic Management Plan (CTMP)** - A Construction Traffic Management Plan is to be prepared detailing:
- (a) construction vehicle routes;
 - (b) anticipated number of trucks per day;
 - (c) hours of construction activity;
 - (d) Access arrangements; and
 - (e) Proposed traffic measures to minimise impacts of construction vehicles must be submitted for the approval of Council's Engineers. Council's Engineers must specify in writing that they are satisfied with the Traffic Management Plan prior to the issue of the Construction Certificate.

The CTMP shall be sent to Georges River Council email to

mail@georgesriver.nsw.gov.au Attention: Traffic Section - Construction Traffic Management Plan for DA2018/0366.

46. **Waste Management Plan** – an updated/revised Waste Management Plan shall be prepared and lodged to the satisfaction of the Certifier prior to the issuing of the Construction Certificate and shall outline waste management and removal during construction and ongoing occupation of the building.
47. **Waste Storage** - The plans shall include details of the waste storage area as below to the satisfaction of the Principal Certifying Authority prior to the release of a Construction Certificate. The waste storage area shall not be visible from the street. The waste storage area shall be located within the lot/building in accordance with the approved plans.

The waste storage area shall be large enough to accommodate the required number of bins for the development and located in an area to suitably facilitate servicing on waste collection day. The path to the bin room is to be at least 1.0metre wide and kept clear and unobstructed at all times. All garbage rooms must have double doors to allow the access of bins from the basement to kerbside.

Residential Waste

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

Putrescible Waste

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

Recycling Waste

- (b) A minimum of 7 x 240L recycling bins.

Green Waste

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

48. **Waste room design** - The waste room will contain the following to minimise odours, deter vermin, protect surrounding areas, and make it a user friendly and safe area:
- waste room floor to be sealed;
 - waste room walls and floor surface is flat and even;
 - all walls painted with light colour and washable paint;
 - equipment electric outlets to be installed 1700mm above floor levels;
 - The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
 - light switch installed at height of 1.6m;
 - waste rooms must be well lit (sensor lighting recommended);
 - optional automatic odour and pest control system installed to eliminate all pest types and assist with odour reduction - this process generally takes place at building handover - building management make the decision to install;
 - all personnel doors are hinged and self-closing;
 - waste collection area must hold all bins - bin movements should be with ease of access;
 - Conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.
 - Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.

- Cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners.

This information shall be reflected on construction drawings submitted to the certifying authority to the satisfaction of the Principal Certifying Authority.

49. **Access for Persons with a Disability and Adaptable Housing** – Access for persons with disabilities must be provided direct to the site, including to the foyer, carpark and to sanitary facilities in accordance with the requirements of the Premises Standards, the Building Code of Australia and AS 1428.1. Details must be submitted with the Construction Certificate Application.

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

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

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

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

51. **Erosion & Sedimentation Control** - Erosion and sediment controls must be provided to ensure:

- (a) Compliance with the approved Erosion & Sediment Control Plan
- (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
- (c) All clean water runoff is diverted around cleared or exposed areas
- (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
- (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
- (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

These measures are to be implemented prior to the commencement of work (including demolition and excavation) and must remain until works are completed and all exposed surfaces are landscaped/sealed.

52. **Pre-Construction Dilapidation Report – Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises.

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

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

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

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

Primary Address

- 54 Noble Street ALLAWAH NSW 2218

Unit Addresses

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

Unit description on DA plans	Proposed street address to comply with AS/NZS 4819:2011 and NSW Addressing Manual
Unit G.01	G01/54 Noble Street, Allawah NSW 2218
Unit G.02	G02/54 Noble Street, Allawah NSW 2218
Unit 1.01	101/54 Noble Street, Allawah NSW 2218
Unit 1.02	102/54 Noble Street, Allawah NSW 2218
Unit 2.01	201/54 Noble Street, Allawah NSW 2218
Unit 2.02	202/54 Noble Street, Allawah NSW 2218
Unit 3.01	301/54 Noble Street, Allawah NSW 2218

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

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

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

55. **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).
56. **Building - Structural Engineers Details - Supporting excavations and adjoining land** - Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer's details relating to the method of supporting the excavation must be submitted.
57. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Certifier for approval prior to construction of the specified works. A copy shall be forwarded to Council where Council is not the Certifier.
58. **Dilapidation Report on Public Land** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site. The report must include the following:
- (i) Photographs showing the existing condition of the road pavement fronting the site
 - (ii) Photographs showing the existing condition of the kerb and gutter fronting the site
 - (iii) Photographs showing the existing condition of the footpath pavement fronting the site
 - (iv) Photographs showing the existing condition of any retaining walls within the footway or road,
 - (v) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
 - (vi) The full name and signature of the structural engineer.

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

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

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

59. **Demolition and Asbestos** - The demolition work shall comply with the provisions of Australian Standard AS2601:2001 - Demolition of Structures, NSW Work Health & Safety Act 2011 and the NSW Work Health & Safety Regulation 2011. The work plans required by AS2601:2001 shall be accompanied by a written statement by a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the safety statement shall be submitted to the Principal Certifier prior to the commencement of works.

For demolition work which involves the removal of asbestos, the asbestos removal work must be carried out by a licensed asbestos removalist who is licensed to carry out the

work in accordance with the NSW Work Health & Safety Act 2011 and the NSW Work Health & Safety Regulation 2011 unless specified in the Act and/or Regulation that a license is not required.

All demolition work including the removal of asbestos, shall be undertaken in accordance with the Demolition Code of Practice (NSW Work Cover July 2015).

Note: Copies of the Act, Regulation and Code of Practice can be downloaded free of charge from the SafeWork NSW website: www.SafeWork.nsw.gov.au.

60. **Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the Work Health and Safety Regulation 2011.
61. **Demolition Notification Requirements** - The developer/builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
- Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
- On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
62. **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.
63. **Site sign – Soil and Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.
64. **Physical connection of stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's drainage system.
65. **Utility Services** - The applicant shall undertake and bear all costs associated with the

liaison, approval and relocation of any utility services. All correspondence and approvals between the Applicant and utility authorities shall be provided to the Council in conjunction with engineering documentation for the stormwater drainage works.

DURING CONSTRUCTION

66. **Site contamination – Discovery of Additional information** – If any new information is discovered during demolition or construction (unexpected finds) that has the potential to alter previous conclusions about site contamination and remediation, all works must cease the site made secure and the Council and the Principal Certifying Authority (if Council is not the PCA) must be notified as soon as practicable and appropriate action taken, reporting and approvals obtained.
67. **Hazardous or Intractable Waste – Removal and Disposal** - Hazardous or intractable waste arising from the demolition or construction process shall be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and with the provision of:
- Work Health and Safety Act 2011 (NSW) (as amended);
 - Work Health and Safety Regulation 2011 (as amended);
 - Protection Of the Environment Operations Act 1997 (NSW) (as amended); and
 - Protection of the Environment Operations (Waste) Regulation 2014 (as amended)
68. **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.
69. **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.
70. **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.
71. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt. Copies of all receipts for the disposal, or processing of all such materials shall be submitted to the Principal Certifier, and Council, where Council is not the Principal Certifier.

72. **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.
73. **Registered Surveyors Report - During Development Work** - A report must be submitted to the Principal Certifier at each of the following applicable stages of construction:
- (i) Set out before commencing excavation;
 - (ii) Floor slabs or foundation wall, before formwork or commencing brickwork;
 - (iii) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans;
 - (iv) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey;
 - (v) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries;
 - (vi) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge of all structures.

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

PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

74. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX and in the plans approved with the Development Consent, must be implemented before issue of any Occupation Certificate.
75. **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.
76. **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.
77. **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.
78. **Traffic Light system** – A Traffic light system must be installed to govern the single lane basement access ramp as stipulated in the traffic report submitted 11 May 2021 by Stanbury Traffic Planning
79. **Flood Prone Land – Certification of overland flow path** - Prior to the issue of the Occupation Certificate, it is required that a professional engineer specialising in flood modelling certifies that:

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

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

80. **Restriction to Use of Land and Positive Covenant for Overland Flow Path** - A Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the overland flow path on the owners of the land. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

Restriction on Use of Land

The registered proprietor(s) shall not make or permit or suffer the making of any alterations to the overland flow path, which is on the lot(s) burdened and identified in the report, prepared and certified by, Reference No., dated and approved under REV2021/0001 (DA2019/0314), without the prior consent in writing of Georges River Council.

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

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

Positive Covenants for Overland Flow Path

1. The registered proprietor of the lot(s) hereby burdened will in respect of the overland flow path:
 - a) Keep the overland flow path free from rubbish and debris;
 - b) Maintain the overland flow path clear from any obstructions at the sole expense of the registered Proprietors so that it functions in a safe and efficient manner;
 - c) Permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant; and
 - d) Comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.
2. Pursuant to Section 88F (3) of the Conveyancing Act 1919 the Council shall have the following additional powers:
 - a) in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above, the Council or its authorised

agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above; and

- b) the Council may recover from the registered proprietor in a Court of competent jurisdiction:
- (i) any expense reasonably incurred by it in exercising its powers under subparagraph (a) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (a) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work
 - (ii) legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release, vary or modify the Positive Covenant referred to is Georges River Council

81. **Flood Emergency Response Plan** - A Flood Emergency Response Plan is to be prepared by a suitably qualified stormwater engineer that addresses the site specific flood risks up to the PMF flood event including evacuation procedures that is in accordance with the requirements of *Managing the floodplain: a guide to best practice in flood risk management in Australia Handbook 7* by the Australian Emergency Management Institute.
82. **Completion of Landscape Work**- All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Zenith Landscape Design, Ref No 19 – 3968 L01 & L02, Rev C and dated 01/07/2020. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -
- a) All landscape works, the planting of five (5) trees within the site and the fee payable for Councils street tree must be completed before the issue of the Final Occupation Certificate and to the satisfaction of Councils Tree Management Officers.
 - b) A certificate of compliance for the planting of all five (5) trees and shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan (Rev C, 01/07/21) and specifications and forwarded to the PCA – Principal Certifying Authority.
 - c) The engaged root barrier installer must provide a letter of completion to the PCA, detailing with photographic evidence, that root barrier was installed over the stormwater easement prior to landscaping, for the protection of stormwater piping within easement, from roots.
83. **Post Construction Dilapidation report** – At the completion of the construction works, a suitably qualified person is to be engaged to prepare a post-construction dilapidation report. This report is to ascertain whether the construction works associated with the subject development created any structural damage to the five adjoining premises.

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

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

84. **Consolidation of Sites** - The site shall be consolidated into one allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan shall be registered at the NSW Land and Property Information prior to the issue of an occupation certificate.
85. **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.*

86. **Maintenance Schedule for On-site Stormwater Management** - A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule shall outline the required maintenance works, how and when these will be done and who will be carrying out these maintenance works.

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

- a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate
- b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- c) Construct any new vehicle crossings required.
- d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
- e) A Section 73 (Sydney Water) Compliance Certificate for the Subdivision shall be issued and submitted to the PCA prior to the issue of the Occupation Certificate.
- f) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.

88. **Vehicular crossing and Frontage work** – The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:

- (a) Construct a 1.2m wide footpath for the full length of the frontage of the site in accordance with Council's Specifications applying at the time construction approval is sought.

- (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
- (c) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

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

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

89. **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) If applicable 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 and all associated paving;
- (e) Relocation of existing power/light pole if applicable;
- (f) Relocation/provision of street signs
- (g) New or replacement street trees;
- (h) New footway verges, if a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- (i) New or reinstated kerb and guttering within the road related area; and
- (j) New or reinstated road surface pavement within the road.

Council's Engineering Services Section 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.

90. **Dilapidation Report on Public Land** - Upon completion of works, a follow up dilapidation report must be prepared on the items of Council infrastructure adjoining the development site. The dilapidation report must be prepared by a professional engineer specialising in structural engineering, and include:

- (i) Photographs showing the condition of the road pavement fronting the site;
- (ii) Photographs showing the condition of the kerb and gutter fronting the site;
- (iii) Photographs showing the condition of the footway including footpath pavement fronting the site;
- (iv) Photographs showing the condition of retaining walls within the footway or road;

- (v) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (vi) The full name and signature of the professional engineer.

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

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

91. **Stormwater drainage works – Works As Executed** - Prior to the issue of the Occupation Certificate, storm water drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to Council detailing:
- (a) Compliance with conditions of development consent relating to stormwater;
 - (b) The structural adequacy of the On-Site Detention system (OSD);
 - (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations; and
 - (d) Pipe inverts levels and surface levels to Australian Height Datum.
92. **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*.
93. **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.
94. **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*.
95. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the *Environmental Planning and Assessment Regulation 2000*, on completion of building works and prior to the issue of an Occupation Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 174 of the *Environmental Planning and Assessment Regulation, 2000*. In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state that:

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

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

96. **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.

97. **Structural Certificate During Construction** - The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate.

OPERATIONAL CONDITIONS (ONGOING)

98. **Open structure** - The sub-floor area of the rear of the building is to be built as an open structure to act as an overland flow path in accordance with the approved plans.
99. **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).
100. **Communal Open Space** - A Plan of Management for the use of this space shall be adhered to for the perpetuity of the development. The Strata Manager shall ensure that the plan is provided to all residents and occupants of the development and a sign shall be installed communal open space areas to highlight the hours of use of the area and any other operational restrictions ie keeping the space clean, rules around using the BBQ's.
101. **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.

102. **Safety** - All communal entrances for the building will be capable of being secured. Entry doors are to be self-closing and signs are to be displayed requesting that building occupants not wedge doors open.
103. **Security** - If any security screens/grilles are installed, they are to be openable from within the building.
104. **Building identification** - The numbering is to be constructed from durable materials and shall not be obscured by vegetation and consistent with the signage of the adjoining building.
105. **Deliveries** – No deliveries to the premises shall be made direct from a public space or street inclusive of footpaths, nature strip, roadway and car parks.
106. **Entering & Exiting of vehicles** - All vehicles shall enter and exit the site in a forward direction.
107. **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.
108. **Responsibility of Owners Corporation** - The Owners Corporation shall be responsible for presenting all approved waste and recycling receptacles for collection, and returning all receptacles to the Main Waste Collection Room, as soon as practicable after they have been serviced.

The Owners Corporation shall also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory requirements, relevant health and environmental standards, and to the satisfaction of Council.

109. **Maintenance of Landscaping**

- a) All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and other operations required to maintain healthy trees, plants and turfed areas.
- b) A final certificate of compliance letter, once all building and landscape works have been completed, from the engaged AQF 5 Consulting Arborist, that tree protection

measures have been installed and maintained for the entirety of the project and report on the condition of the trees that as part of this Consent, were to be protected and retained.

- c) If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
- d) A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy, Masterplan, and Tree Management Policy 2019, can be downloaded from Council's website www.georgesriver.nsw.gov.au.

110. **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.

111. **Activities and Storage of Goods Outside Buildings** - There will be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.

112. **Allocation of Car Parking Spaces** - A total of (10) car parking spaces, and a minimum of four (4) bicycle parking spaces associated with the development is to be allocated as follows, sign posted and/or line marked accordingly:

- Residential dwellings: 10 spaces
- The three tandem car parking spaces must each be allocated to a single unit.

All car parking spaces will be numbered and marked accordingly and all other spaces shall be marked and signposted accordingly.

113. **Waste Management** - 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

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.

The site contact will be restricted from presenting bins earlier than 12 hours prior to collection and will be required to remove bins from the public kerbside no later than 12 hours post collection. Council may vary bin collection days at its discretion and the site contact will be required to adjust their bin presentation service accordingly. The site contact once the site is operational and all residents will be required to adhere to the terms and conditions of Council's waste collection service. In the event these terms and conditions are not adhered to, the waste collection service may be cancelled at Council's discretion, requiring the site to engage the services of a private waste collection contractor.

For a development of up to 20 units, a minimum of 4sqm should be dedicated on the ground floor for the storage of bulky waste. A bulky waste storage area should account for double doors to ensure that large items can be easily moved (mattresses, furniture etc). Council is aware that the bin storage space has not been catered for on the ground floor, nor within 15m of the kerbside layback. For this reason, Council will support interim storage space (4sqm) within the basement area for bulky goods. In the event the bulky waste generation exceeds the allowable limits provided under Council's bulky waste collection service, the development may be required to engage the services of a private waste contractor to provide on-call bulky waste removal services.

OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

114. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
115. **Appointment of a Principal Certifier** - The erection of a building must not commence until the applicant has:
- i) appointed a Principal Certifier for the building work; and
 - ii) if relevant, advised the Principal Certifier that the work will be undertaken as an Owner -Builder.

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

- i) appoint a Principal Contractor to undertake the building work. If residential building work (within the meaning of the Home Building Act 1989) is to be undertaken, the Principal Contractor must be a holder of a contractor licence; and
 - ii) notify the Principal Certifier of the details of any such appointment; and
 - iii) notify the Principal Contractor of any critical stage inspections or other inspections that are required to be carried out in respect of the building work.
116. **Notification of critical Stage Inspections** - No later than two days before the building work commences, the Principal Certifier must notify:
- a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
 - b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.
117. **Notice of Commencement** - The applicant must give at least two days notice to the Council and the Principal Certifier of their intention to commence the erection of a building.
118. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifier. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the Environmental Planning and Assessment Regulation 2000.

119. **Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the Principal Certifier at least 48 hours before each required inspection needs to be carried out. Where Georges River Council has been appointed as the Principal Certifier, 48 hours notice in writing, or alternatively 24 hours notice by facsimile or telephone, must be given when specified work requiring inspection has been completed.
120. **Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue the Occupation Certificate.

PRESCRIBED CONDITIONS

121. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
122. **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.
123. **Clause 98A – Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifier and the Principal Contractor.
124. **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.
125. **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.
126. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

END CONDITIONS

NOTES/ADVICES

127. **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.

128. **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.
129. **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.
130. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au
131. **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.

132. **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.
133. **Noise** - Noise related conditions - Council will generally enforce noise related conditions in accordance with the Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the

Protection of the Environment Operations Act 1997.

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
- (b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
- (c) New South Wales Government Legislation home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 (www.legislation.nsw.gov.au).
- (d) Australian Acoustical Society - professional society of noise-related professionals (www.acoustics.asn.au/index.php).
- (e) Association of Australian Acoustical Consultants - professional society of noise related professionals (www.aaac.org.au).
- (f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).

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

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

135. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.

136. **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.

137. **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.

138. **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).

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

- (i) Complete the “Stormwater Drainage Application Form” which can be downloaded from Georges River Council’s Website at www.georgesriver.nsw.gov.au
- (ii) In the Application Form, quote the Development Consent number and reference this condition number (e.g. Condition 10)
- (iii) Lodge the application form, together with the associated fees at Council’s Customer Service Centre, during business hours. Refer to Council’s adopted Fees and Charges for the administrative and inspection charges associated with Stormwater applications.

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

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

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

140. **Council as PCA - Compliance with the BCA** - Should the Council be appointed as the Principal Certifying Authority in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement.

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.





141. **Energy Efficiency Provisions** - Should Council be appointed as the Principal Certifying

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

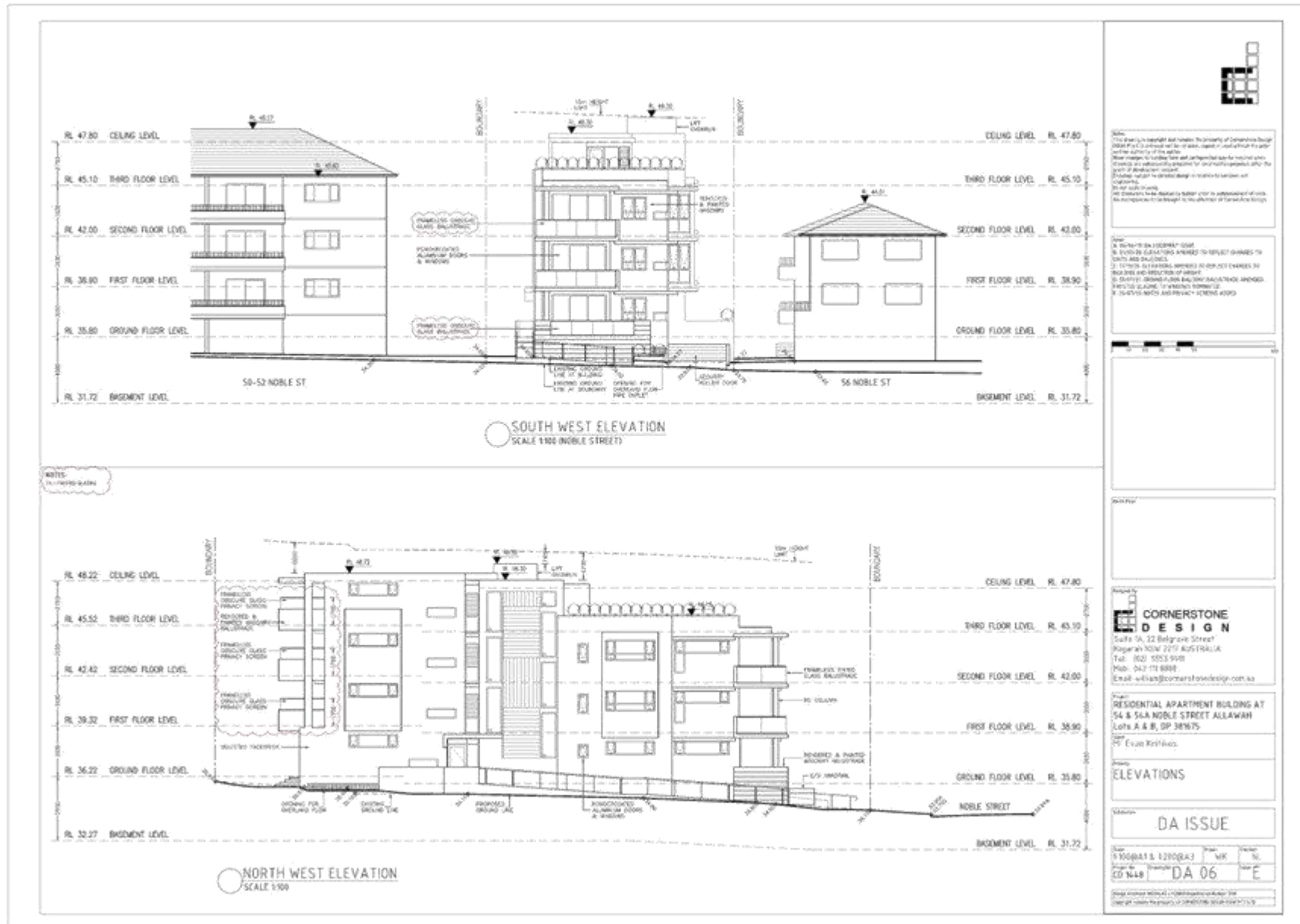
142. **Land Contamination** - Note: A Certified Contaminated Land Consultant is a Certified Environmental Practitioner (Site Contamination) (CENVP(SC)) or certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM)

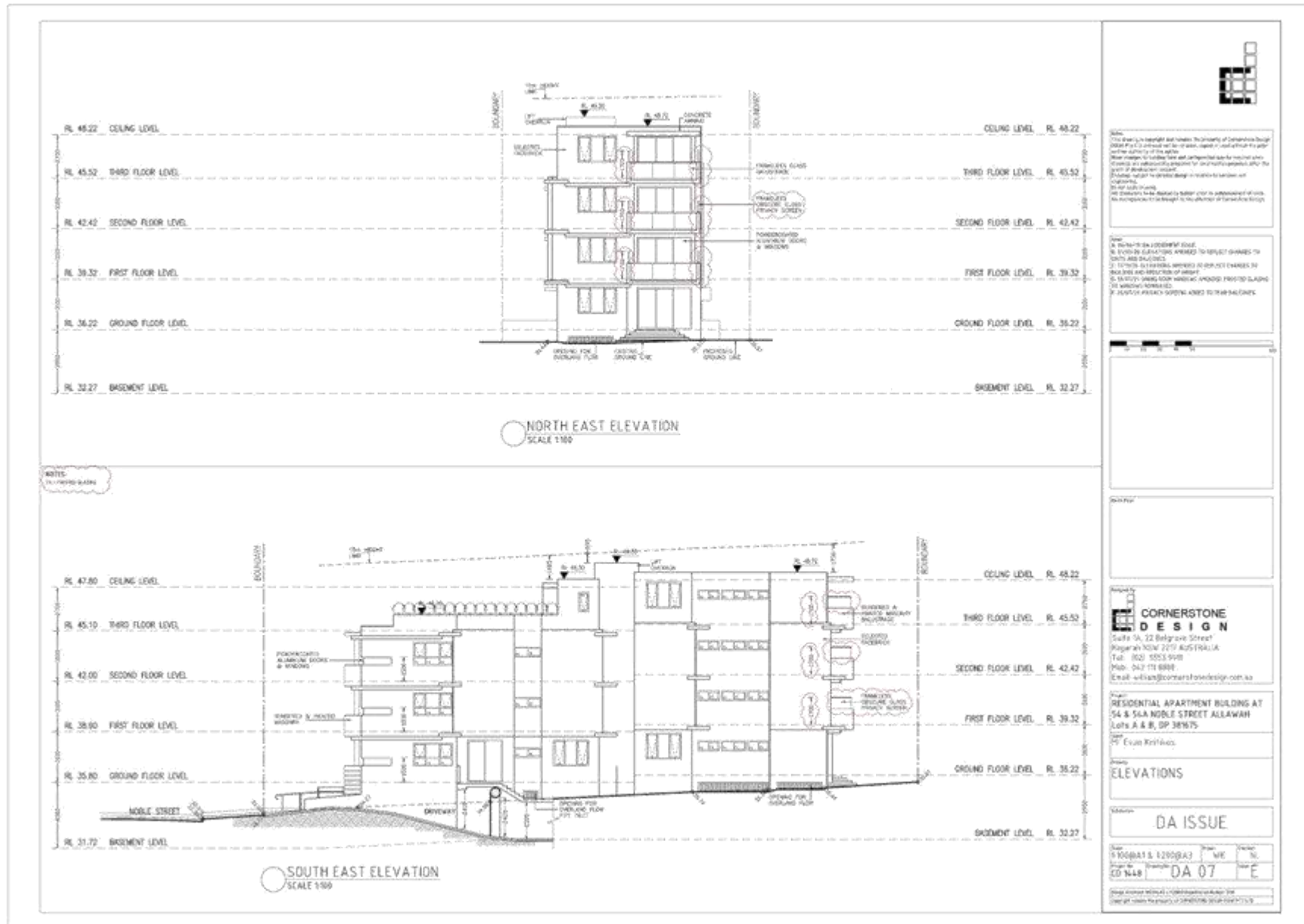
Information relating to certified contaminated land consultant or accredited site auditors can be found in EPA webpage: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/>

ATTACHMENTS

- Attachment [↓](#) 1  Site Analysis Plan - 54-54A Noble St Allawah
- Attachment [↓](#) 2  Elevations - south west and north west - 54-54A Noble St Allawah
- Attachment [↓](#) 3  Elevations - south east and north east - 54-54A Noble St Allawah
- Attachment [↓](#) 4  Photo Montage - 54-54A Noble St Allawah









**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 19 AUGUST 2021**

LPP042-21

LPP Report No	LPP042-21	Development Application No	DA2020/0185
Site Address & Ward Locality	5 Millett Street Hurstville Hurstville Ward		
Proposed Development	Demolition works and construction of a boarding house		
Owners	Wai Shing Choi		
Applicant	James Kim		
Planner/Architect	Planner: Just Property and Planning / Architect: Play Co Pty Ltd		
Date Of Lodgement	20/04/2021		
Submissions	One (1) objection		
Cost of Works	\$993,793.00		
Local Planning Panel Criteria	The General Manager's Delegation requires any DA for a boarding house to be referred to the Panel for determination.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy (BASIX) 2004, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Affordable Rental Housing) 2009, Draft Environment State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan 2012, Draft Georges River Local Environmental Plan 2020, Draft Georges River Development Control Plan 2020 Draft Housing State Environmental Planning Policy 2021, Draft Design and Place State Environmental Planning Policy		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Elevations and Sections, Statement of Environmental Effects, Plan of Management, Arborist Report, BASIX Certificate, Acoustic Report, Traffic Report, Fire Engineering Report		
Report prepared by	Senior Development Assessment		

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

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

Site Plan



Aerial Photo – site outlined in blue

Executive Summary Proposal

1. Council is in receipt of a development application (DA/2020/0185) for demolition of existing structures and construction of a two storey boarding house with associated parking, landscaping, fencing, retaining walls, solar panels, tree removal, drainage and site works.
2. The proposal, as originally submitted, involved:

- A total of ten (10) boarding rooms comprising two (2) double lodger and six (6) single lodger rooms on the first floor and a split-level ground floor with two (2) single lodger accessible rooms.
 - A total of five (5) at-grade parking spaces occupying the full width of the building footprint under a cantilevered portion of the first floor, and two (2) motorcycle spaces located within a 4.5m the front setback.
 - Vehicular and pedestrian access via a single 3m wide driveway through the shared zone of the accessible car space with the main building entry located on the southern side of the upper ground level behind the parking area.
 - Communal living room on lower ground floor of 16.6sqm and approximately 2.3m dimension.
 - Internal chairlift for access between ground level and lower ground level.
 - Communal open space, waste storage and two (2) bicycle spaces on rear deck adjacent to living area with a useable area of approximately 4m x 6m and finished floor level of RL61.15 raised up to 900mm above existing ground level.
 - OSD tank under rear deck with top of water level of RL60.7 and top of pit of RL61.0.
 - External ramp along the south eastern side of the building to communal open space and lower ground level communal living room.
3. Following concerns raised in Council's request for additional information, dated 2 February 2021, relating to streetscape appearance, useability of communal living area, pedestrian conflict, accessibility, visual privacy, and acoustic impacts, amended architectural plans, and BASIX Certificate were provided by the Applicant on 23 February 2021. No revised stormwater or landscape plans were provided and the updated Acoustic Report does not reflect the amended proposal. This assessment is based on the amended plans submitted to Council.
4. The proposal as amended involves:
- A total of ten (10) boarding rooms comprising a first floor with two (2) double lodger and five (5) single lodger rooms and a split-level ground floor with three (3) single lodger rooms (inclusive of two accessible rooms).
 - A total of two (2) parking spaces with shared zone located in a garage occupying the full width of the ground floor facing the street, and two (2) motorcycle spaces and two (2) bicycle spaces located within an 8.1m front setback.
 - Vehicular access via a single 3m wide driveway widening to 4.8m at the garage door.
 - Separate pedestrian access to the main entry facing the street through the shared zone within the garage.
 - Communal living room on lower ground floor of 19.1sqm and widened to 3m dimension, but north western window deleted.
 - Communal open space and waste storage on rear deck adjacent to living area with a useable area of approximately 7m x 5m and a finished floor level of RL60.64 raised 400mm above existing ground level. Note, the deck and lower ground communal living room level conflicts with the OSD design level.
 - External ramp along the north-western side of the building to communal open space and lower ground level communal living room.
 - An increase to landscaped area within the front setback.
 - Increases to the proposed finished upper ground floor level from RL61.15 to RL62.46 and finished first floor level from RL65.57 to RL65.87.
 - A 1.2m reduction in rear first floor setback.
 - An increase in building and wall height from approximately 9.06m to 9.14m to top of skillion roof on north western side based on an existing ground level of RL60.4 at the

rear of the building and to the top of the solar panel structures based on an existing ground level of RL60.8.

- An increase in total gross floor area from 281.5sqm (or FSR of 0.557:1) to 300sqm (or FSR of 0.594:1).

5. The applicant seeks a reduction in car parking on the basis that the development (as amended) will be carried out by or on behalf of a social housing provider. However, the development as originally proposed was not submitted on this basis and Council has not received any evidence to date to be satisfied that the amended proposal is to be carried out by or on behalf of a social housing provider. Further, it is noted that the purported Provider is unknown and there is no basis to allow reduced parking provision for a boarding house that is merely to be managed by a social housing provider for 10 years subject to an arrangement made by an Applicant/Owner at some future time.

Site and Locality

6. The site is legally described as Lot B in DP311929 and is known as 5 Millett Street Hurstville.
7. The subject site is regular in shape with a total area of 505.4sqm and frontage of 10.36m and depth of 48.77m.
8. The site is currently occupied by an existing single storey detached dwelling with associated structures, driveway and landscaping. Existing vehicular access is available from a single driveway off Millett Street.
9. Adjoining the site are single storey villas to the north-west and south west and single storey detached dwellings to the south east. Opposite the site on the north eastern side of Millett Street are one and two storey detached dwellings and a six storey private hospital known as Hurstville Private Hospital.
10. The site slopes to the rear from north east to south west with approximately 3.2m of fall and has a cross-fall from south east to north west of up to 0.6m. An existing easement for drainage is located on the adjoining property adjacent to the rear south western boundary, but the subject site does not currently benefit from the use of this easement. An existing tree is located adjacent to the south eastern boundary with 3 Millett Street and a street tree is located in front of the site.

Zoning and Permissibility

11. The site is currently zoned R2 Low Density Residential under the Hurstville Local Environmental Plan (HLEP) 2012. The proposed development is defined as a 'boarding house, which is permitted with consent in the R2 zone under HLEP 2012 and Clause 28, Division 3 of State Environmental Planning Policy (Affordable Rental Housing) 2009.
12. The proposal complies with the maximum FSR of 0.6:1 for any permitted residential accommodation, landscaped area, communal private open space, accommodation size, motorcycle and bicycle parking and maximum number rooms in the R2 zone under Division 3 of State Environmental Planning Policy (Affordable Rental Housing) 2009.
13. However, the proposal fails to comply with the building height, solar access and parking 'standards that cannot be used to refuse consent' under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards, it is considered that the variations are unacceptable due to adverse streetscape, amenity and traffic impacts.

14. Further, whilst the overall siting of the building complies with Council's controls and there is no site area control for boarding houses, the design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the physical bulk and scale, visual privacy, overshadowing and acoustic amenity impacts to adjoining properties arising from non-compliant building and wall height and excessive raised ground levels and unsatisfactory streetscape appearance dominated by the garage.
15. In this respect, the proposal also fails to have adequate regard to the objectives of the R2 low density residential zone pursuant to Clause 2.3 of HLEP 2012 to "ensure that a high level of residential amenity is achieved and maintained" and "does not compromise the amenity of the surrounding area".

Submissions

16. The application was notified for a period of fourteen (14) days between 25 May 2020 and 9 June 2020 in accordance with Council's Notification Policy. One (1) submission was received objecting to the proposal. The concerns raised in relation to building height and parking are valid grounds of objection that warrant refusal of the application.
17. The amended plans received by Council necessitated re-notification from 20 May 2021 to 3 June 2021, during which time no submissions were received.

Reason for referral to the Local Planning Panel

18. This application is referred to the Georges River Local Planning Panel for consideration and determination in accordance with the General Manager's Instrument of Delegation requiring any DA for a boarding house to be determined by the Panel.

Conclusion

19. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed Development Application (DA2020/0185) is recommended for refusal for the reasons referenced at the end of this report.

Report in Full

Proposal

20. Council is in receipt of a development application (DA/2020/0185) for demolition of existing structures and construction of a two storey boarding house with associated parking, landscaping, fencing, retaining walls, solar panels, tree removal, drainage and site works.
21. The proposal, as originally submitted, involved:
 - A total of ten (10) boarding rooms comprising two (2) double lodger and six (6) single lodger rooms on the first floor and a split-level ground floor with two (2) single lodger accessible rooms.
 - A total of five (5) at-grade parking spaces occupying the full width of the building footprint under a cantilevered portion of the first floor, and two (2) motorcycle spaces located within a 4.5m the front setback.
 - Vehicular and pedestrian access via a single 3m wide driveway through the shared zone of the accessible car space with the main building entry located on the southern side of the upper ground level behind the parking area.

- Communal living room on lower ground floor of 16.6sqm and approximately 2.3m dimension.
 - Internal chairlift for access between ground level and lower ground level.
 - Communal open space, waste storage and two (2) bicycle spaces on rear deck adjacent to living area with a useable area of approximately 4m x 6m and finished floor level of RL61.15 raised up to 900mm above existing ground level.
 - OSD tank under rear deck with top of water level of RL60.7 and top of pit of RL61.0.
 - External ramp along the south eastern side of the building to communal open space and lower ground level communal living room.
22. Following concerns raised in Council's request for additional information, dated 2 February 2021, in relation to streetscape appearance, useability of communal living area, pedestrian conflict, accessibility, visual privacy, and acoustic impacts, amended architectural plans, and BASIX Certificate were provided by the Applicant on 23 February 2021. No revised stormwater or landscape plans were provided and the updated Acoustic Report does not reflect the amended proposal. This assessment is based on the amended plans submitted to Council.
23. The proposal as amended involves:
- A total of ten (10) boarding rooms comprising a first floor with two (2) double lodger and five (5) single lodger rooms and a split-level ground floor with three (3) single lodger rooms (inclusive of two accessible rooms).
 - A total of two (2) parking spaces with shared zone located in a garage occupying the full width of the ground floor facing the street, and two (2) motorcycle spaces and two (2) bicycle spaces located within an 8.1m front setback.
 - Vehicular access via a single 3m wide driveway widening to 4.8m at the garage door.
 - Separate pedestrian access to the main entry facing the street through the shared zone within the garage.
 - Communal living room on lower ground floor of 19.1sqm and widened to 3m dimension, but north western window deleted.
 - Communal open space and waste storage on rear deck adjacent to living area with a useable area of approximately 7m x 5m and a finished floor level of RL60.64 raised up to 400mm above existing ground level. Note, the finished floor level deck and lower ground communal living room conflicts with the originally submitted OSD design level.
 - External ramp along the north-western side of the building to communal open space and lower ground level communal living room.
 - An increase to landscaped area within the front setback.
 - Increases to the proposed finished upper ground floor level from RL61.15 to RL62.46 and finished first floor level from RL65.57 to RL65.87.
 - A 1.2m reduction in rear first floor setback.
 - An increase in overall building and wall height from approximately 9.06m to 9.14m to top of skillion roof on north-western side based on an existing ground level of RL60.4 at the rear of the building and to the top of the solar panel structures based on an existing ground level of RL60.8.
 - An increase in total gross floor area from 281.5sqm (or FSR of 0.557:1) to 300sqm (or FSR of 0.594:1).
24. The applicant seeks a reduction in car parking on the basis that the development (as amended) will be carried out by or on behalf of a social housing provider. However, the development as originally proposed was not submitted on this basis and Council has not

received any evidence to date to be satisfied that the amended proposal is to be carried out by or on behalf of a social housing provider. Further, it is noted that the purported Provider is unknown and there is no basis to allow reduced parking provision for a boarding house that is merely to be managed by a social housing provider for 10 years subject to an arrangement made by an Applicant/Owner at some future time.

25. The initial proposal was accompanied with a Fire Engineering Report requiring the provision of permanent fire screens, fixed in place to fully cover all windows facing the side boundaries, which are reflected on the amended plans.
26. The initial proposal was also accompanied with an Acoustic Report and Plan of Management. Whilst the Acoustic Report was not updated to reflect the amended proposal, it is noted that relevant recommendations of Section 4.4 are unclear as to whether the 1.8m acoustic barriers along the side and rear boundaries should be provided from the proposed finished ground levels in order to adequately mitigate acoustic impacts to adjoining residential receivers.
27. Based on the submitted plans, the 1.8m boundary fencing is at existing ground level, which results in the top of the fence being approximately 0.9m above the proposed finished ground levels along the northern access ramp. Further, the Plan of Management does not reflect the noise management recommendations under Section 4.4 of the Acoustic Report given it is unclear how the house rules will be enforced, including restrictions on use of indoor and outdoor communal areas between 10pm and 7am, and noise rules implemented, in the absence of an onsite manager and only contactable between 8am and 6pm Monday to Saturday.
28. An existing tree located within the site adjacent to the south eastern boundary with 3 Millett Street and a street tree within the site frontage are proposed to be removed and replacement planting with 8 canopy trees up to a mature height of 9m is proposed.
29. In order to achieve the proposed design levels for access and drainage, fill up to 900mm high is proposed within the north western side setback with associated retaining walls and fill up to 1.4m is proposed within the building footprint for the upper ground level.
30. Extracts of the proposed plans are provided below.

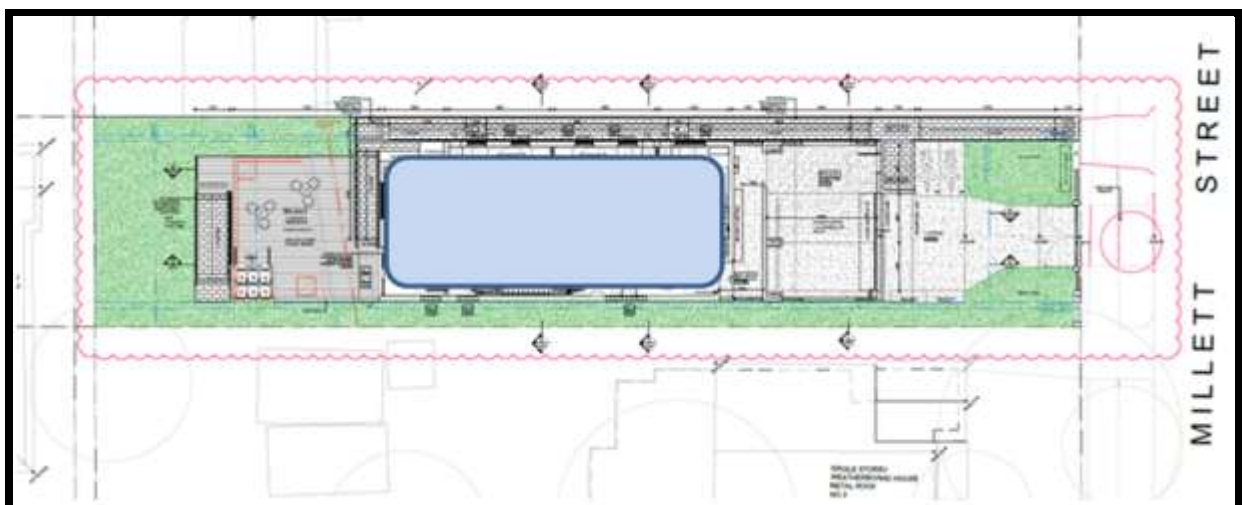


Figure 1: Site Plan at 5 Millett Street Hurstville (Source – Play Co Architects)

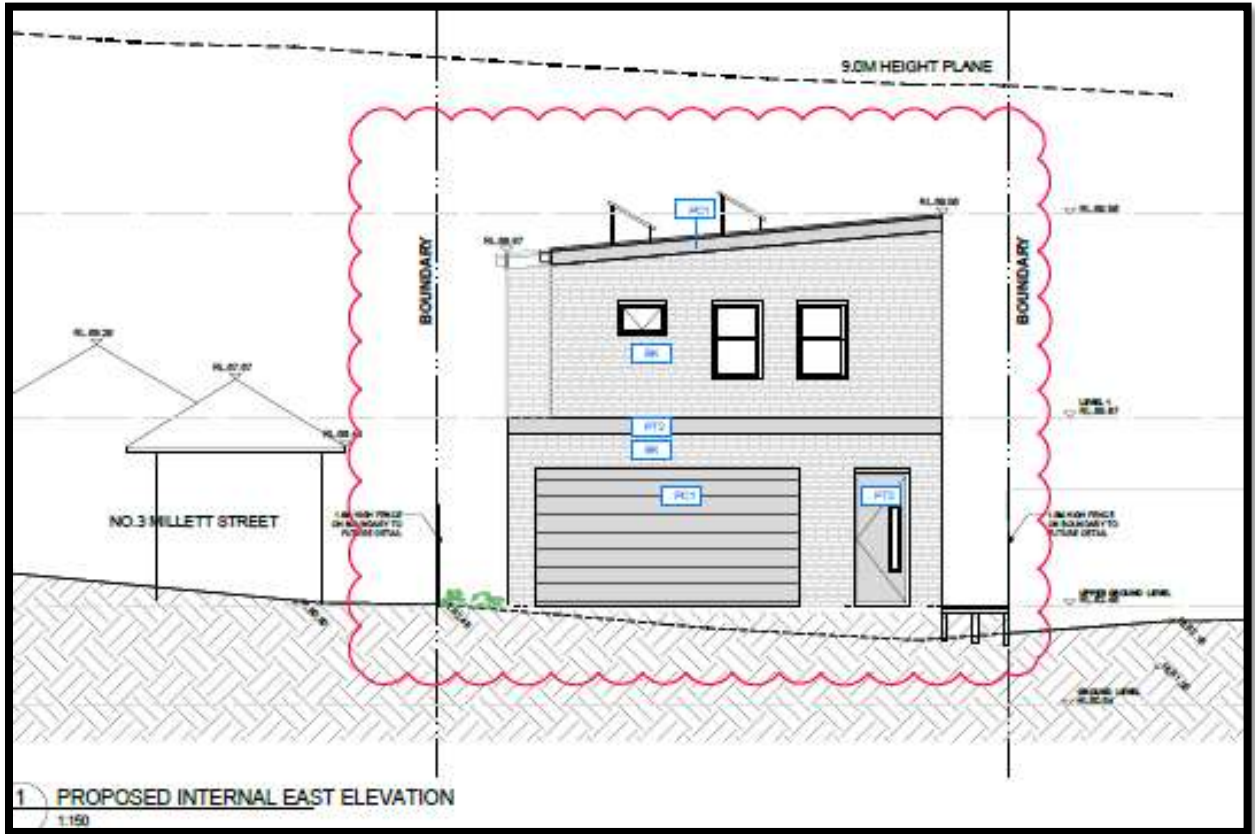


Figure 2: North east (front) Elevation at 5 Millett Street Hurstville (Source – Play Co Architects)

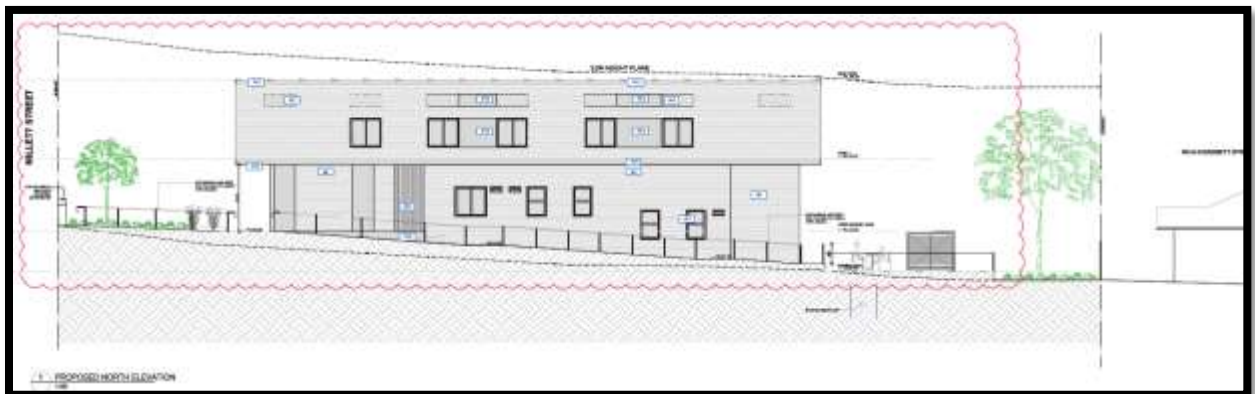


Figure 3: North west (side) Elevation at 5 Millett Street Hurstville (Source – Play Co Architects)

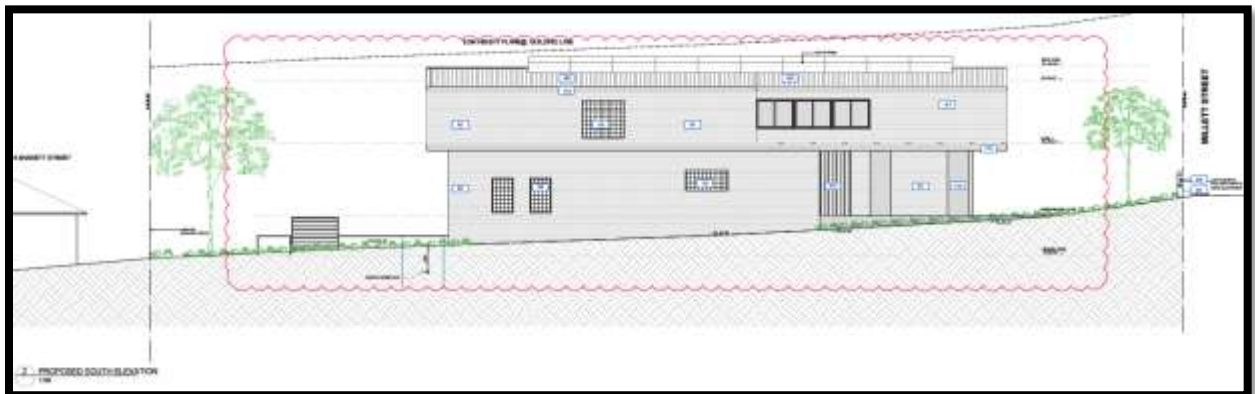


Figure 4: South east (side) Elevation at 5 Millett Street Hurstville (Source – Play Co Architects)

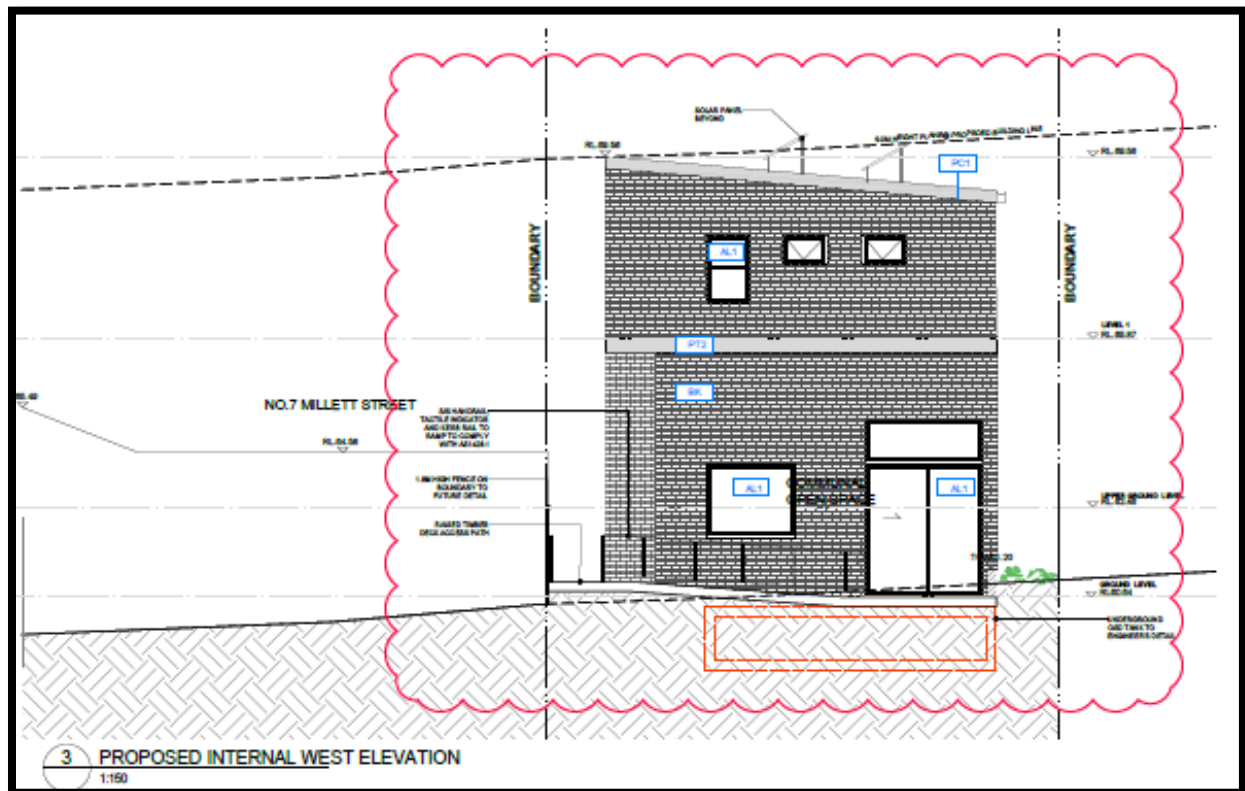


Figure 5: South west (rear) Elevation at 5 Millett Street Hurstville (Source – Play Co Architects)

The Site and Locality

31. The site is legally described as Lot B in DP311929 and is known as 5 Millett Street Hurstville.
32. The subject site is regular in shape with a total area of 505.4sqm and frontage of 10.36m and depth of 48.77m.
33. The site is currently occupied by an existing single storey detached dwelling with associated structures, driveway and landscaping. Existing vehicular access is available from a single driveway off Millett Street.
34. Adjoining the site are single storey villas to the north west and south west and single storey detached dwellings to the south east. Opposite the site on the north eastern side of Millett Street are one and two storey detached dwellings and a six storey private hospital known as Hurstville Private Hospital.
35. The site slopes to the rear from north east to south west with approximately 3.2m of fall and has a cross-fall from south east to north west of up to 0.6m. An existing easement for drainage is located on the adjoining property adjacent to the rear south western boundary, but the subject site does not currently benefit from the use of this easement. A sewer line traverses across the rear of the site. An existing tree is located adjacent to the south eastern boundary with 3 Millett Street and a street tree is located in front of the site.
36. An aerial photo and views of the subject site and surrounds are provided below.



Figure 6: Aerial view of the subject site outlined in blue



Figure 7: Subject site as viewed from the street



Figure 8: Adjoining property at 7 Millett Street looking west



Figure 9: Adjoining property at 3 Millett Street looking south



Figure 10: Opposite the site at 6 and 6A Millett Street and Hurstville Private Hospital looking north east

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Background

Application History

37. On 2 February 2021, Council wrote to the applicant requesting additional information in relation to streetscape appearance, useability of communal living area, pedestrian conflict, accessibility, visual privacy and acoustic impacts.
38. On 23 February 2021, the applicant submitted amended architectural plans, and BASIX Certificate. No revised stormwater or landscape plans were provided and the updated Acoustic Report does not reflect the amended proposal. The applicant also indicated that it was intended to provide written evidence that the development (as amended) will be carried out by or on behalf of a social housing provider.
39. On 1 April 2021, the Applicant advised by email that they had “discussed with the Social Housing Provider, and have agreed in principle that they will manage and operate the properties for a period of 10 years from construction completion, and they will provide the management plan after development approval”.
40. Council has not received any written evidence to date to be satisfied that the amended proposal is to be carried out by or on behalf of a social housing provider. Further, it is noted that the purported Provider is unknown and there is no basis to allow reduced parking provision for a boarding house that is merely to be managed by a social housing provider for 10 years subject to an arrangement made by an Applicant/Owner at some future time.

Compliance and Assessment

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

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

State Environmental Planning Policy
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Complies

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy (Affordable Rental Housing) 2009	No
State Environmental Planning Policy (Infrastructure) 2007	Yes
State Environmental Planning Policy No.55 – Remediation of Land	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes

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Deemed State Environmental Planning Policy – Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

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

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

44. The stormwater design was referred to Council's Development Engineer for review. The disposal of stormwater is considered to be consistent with the Council requirements for the disposal of stormwater within the catchment.

45. In summary, the proposal is consistent with the aims, objectives or purpose of the Regional Plan if affected in accordance with the recommended conditions of consent.

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

46. A BASIX Certificate has been issued for the proposed development and the commitments required under the certificate have been satisfied.

State Environmental Planning Policy (Affordable Rental Housing) 2009

47. The aim of this policy is to facilitate the effective delivery of affordable rental housing across the State.

48. Clause 26 states that the provisions under Division 3 Boarding houses applies to land within Zone R2 Low Density Residential and Clause 27 states that this Division applies to development for the purposes of boarding houses.

49. The proposed development is defined as a 'boarding house' and the land is within the R2 zone (which also permits boarding houses) under HLEP 2012 and, as such, the proposal may be carried out with consent pursuant to Clause 28, Division 3 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

50. An assessment of the proposal against the relevant clauses and standards is as follows:

Clause	Standard	Proposal	Complies
Clause 29: Standards that cannot be used to refuse consent			
29(1)(a) Floor Space Ratio	A maximum FSR of 0.6:1 is permitted as boarding houses are a form of residential accommodation that area identified as a permitted use on the land in the R2 zone under HLEP2012	The proposal provides a total gross floor area of 300sqm (or FSR of 0.594:1)	Yes
29(2)(a) Building height	A maximum building height of 9m is permitted under HLEP 2012	The proposal provides a maximum overall height of 9.14m to top of parapet on north western side based on an existing ground level of RL60.4 at the rear of the building. This equates to a variation of 1.55%, which is not considered acceptable given the variation arises from excessive ceiling heights, which are unnecessary and results in adverse streetscape and amenity impacts.	No – see discussion below
29(2)(b) Landscaped area	If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located.	The proposed landscape treatment of the front setback area comprises two canopy trees, shrubs and turf and occupies over 50% of the minimum 4.5m front setback area and exceeds the 15sqm landscape area with 2m dimension required for single dwellings under Controls DS10.3 and DS10.4 of Section 4.0 HDCP No. 1 and is therefore consistent with the low density zoning of the locality.	Yes
29(2)(c) Solar access	At least 3 hours direct sunlight to a communal living room between 9am and 3pm in mid-winter	The amended proposal does not achieve any direct sunlight to the rear communal living room in midwinter given the deletion of the north western window.	No, see further discussion below
29(2)(d)(i) Private open space	At least one private open space area (other than the front setback area) of at least 20sqm with a	The rear communal open space area is greater than 20sqm with a minimum dimension of at least 3m.	Yes

	minimum dimension of 3m for the use of lodgers		
29(2)(e)(iia)	At least 0.5 parking spaces for each boarding room where not carried out by a social housing provider	A total of 5 parking spaces are required and 2 are provided, resulting in a shortfall of 3 spaces. The proposed variation is considered unacceptable as it is likely to result in loss of on-street parking and adverse traffic impacts.	No, see further discussion below
29(2)(f)	Each boarding room has a gross floor area (excluding any private kitchen or bathroom) of at least 12sqm for single lodger rooms and 16sqm for double lodger rooms	The proposed room sizes range from 12.1 to 15.3sqm for single lodger rooms and 16.7 to 20.7sqm for double lodger rooms.	Yes
29(3)	A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Noted. Each room is provided with private kitchen and bathroom facilities.	Yes
29(4)	A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in sub-clause (1) or (2)	Noted. The proposal fails to comply with the building height, solar access and parking ' <i>standards that cannot be used to refuse consent</i> ' under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards. It is considered that the variations are unacceptable due to adverse streetscape, amenity and traffic impacts resulting from the non-compliances.	No, see discussion below.
Clause 30 Standards for boarding houses (must not consent unless each of the following are satisfied)			
30(1)(a)	At least one communal living room will be provided if a boarding house has 5 or more boarding rooms	A communal living room at the rear of the boarding house has been provided.	Yes
30(1)(b)	No boarding room will	No boarding room exceeds	Yes

	have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25sqm	25sqm.	
30(1)(c)	No boarding room will be occupied by more than 2 adult lodgers	No boarding room will be occupied by more than 2 adult lodgers	Yes
30(1)(d)	Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger	Private kitchen and bathroom provided for each room.	Yes
30(1)(e)	If the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The proposal will accommodate a total capacity of 12 lodgers.	N/A
30(1)(f)	At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms	2 motorcycle and 2 bicycle spaces required and provided.	Yes
30AA Boarding houses in Zone R2 Low Density Residential			
30AA	A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.	A total of 10 rooms are proposed.	Yes
30A Character of local area			
30A	A consent authority must not consent to development to which this Division applies	Whilst the overall siting of the building complies with Council's low density residential controls for a dwelling and there is no	No, see discussion below

	unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	site frontage or area control for boarding houses, the design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the physical bulk and scale, visual privacy, overshadowing and acoustic amenity impacts to adjoining properties arising from excessive building bulk, wall height and raised ground levels, and unsatisfactory streetscape appearance dominated by the garage.	
52 No subdivision of boarding houses			
52	A consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house.	Noted. Subdivision is not proposed.	Yes

51. The proposal complies with the maximum FSR of 0.6:1 for any form of residential accommodation permitted on the land, noting that boarding houses are a form of residential accommodation permitted on land in the R2 zone pursuant to HLEP 2012 and not subject to the gross floor area requirements for dwelling houses under Clause 6.5 of HLEP 2012. Further, whilst dual occupancy development would not be permitted on a site area of less than 650sqm pursuant to Clause 4.1A of HLEP 2012, a minimum site area requirement does not apply to boarding houses.
52. However, the proposal fails to comply with the building height, solar access and parking 'standards that cannot be used to refuse consent' under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards, it is considered that the variations are unacceptable due to adverse streetscape, amenity and traffic impacts.
53. The applicant seeks to apply the reduced parking rate of 0.2 car spaces per room under Clause 29(2)(e)(i) on the basis that the development (as amended) will be carried out by or on behalf of a social housing provider. However, the development as originally proposed was not submitted on this basis and Council has not received any evidence to date to be satisfied that the amended proposal is to be carried out by or on behalf of a social housing provider. Further, it is noted that the purported Provider is unknown at this time and there is no basis to allow reduced parking provision for a boarding house that is merely to be managed by a social housing provider for 10 years subject to an arrangement made by an Applicant/owner at some future time. Therefore, the proposal is not considered to be carried out by or on behalf of a social housing provider.
54. Further, whilst the overall siting of the building is not inconsistent with Council's controls for a dwelling house and there is no site frontage or area control for boarding houses, the

design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the physical bulk and scale, visual privacy, overshadowing and acoustic amenity impacts to adjoining properties arising from excessive building bulk, wall height and raised ground levels, and unsatisfactory streetscape appearance dominated by the garage.

55. The dwelling house controls under Section 4.4 of Hurstville Development Control Plan (HDCP) No. 1 have been used to establish compatibility and impacts on adjoining allotments given there are no specific controls for boarding houses in the HDCP, noting the R2 zoning, lot size and the character of the streetscape.
56. In assessing the compatibility of the proposal in the urban context, the planning principles under *Project Ventures v. Hornsby Council* provide that compatibility is made up of the physical impacts such as visual privacy, overshadowing and acoustic amenity impacts to adjoining properties and whether the visual appearance, in terms of building height, siting and landscaping, will be in harmony with the streetscape context in the visual catchment.
57. The submitted shadow diagrams indicate that the adjoining property at 3 Millett Street will not maintain at least 3 hours solar access to main living area windows and adjoining private open space between 9am and 3pm at midwinter contrary to Control DS6.1 of Section 4.4, HDCP No. 1. This is not considered acceptable as it arises due to excessive ceiling heights of up to 3.7m, which unnecessarily adds to the non-compliant overall building height and wall height.
58. It is noted that the amended proposal results in lesser visual privacy impacts to adjoining properties compared with the originally submitted proposal given the lowering of the rear deck, relocation of the main entry and side access from the south eastern side adjacent to the detached single storey dwelling at 3 Millett Street to the north western side adjacent to the driveway of 7 Millett Street. However, the raised rear deck up to 400mm above existing ground level allows direct overlooking above the 1.8m boundary fencing to adjoining private open space to the south east. Whilst the site adjoins a driveway within the adjoining property at 7 Millett Street to the north west, the proposed extent of raised ground levels up to 900mm above existing ground level along the north western boundary is considered to result in unnecessary additional overlooking to adjoining living area windows facing the driveway to the north west. The proposed boundary fencing along the north western boundary also fails to provide suitable acoustic attenuation to adjoining residential receivers contrary to the Acoustic Report because the top of the fence would be approximately 0.9m above the proposed finished ground level.
59. In terms of visual appearance, the building complies with Council's building setback controls for residential dwellings and provides acceptable landscaping as viewed from the street. However, the proposed wall height of 9.14m to the top of the parapet skillion roof fails to comply with Control DS2.3 of Section 4.4, HDCP No. 1, which permits a maximum wall height of 7.8m. This equates to a variation of 17.17%, which is not considered acceptable given adverse bulk and scale and amenity impacts arise, noting this section of the street is characterised by single storey dwellings within the R2 zone and buildings that reflect the natural slope of the land consistent with Control DS2.4 of Section 4.4, HDCP No. 1.
60. The wall height variation, combined with the variation to the permitted 9m height of building under Clause 4.3 of HLEP 2012 discussed further below, results in an excessive building height that is not consistent with the predominant existing single storey and dwelling character within the R2 zone along this section of the street.

61. The proposed width of the double garage occupies 60% of the front façade width and is not set back 1m behind the main building line, which is contrary to Control DS3.1 of Section 4.4, HDCP No. 1 and inconsistent with the existing pattern of development along this section of the street comprising single width garages, or garages set back behind the main building line, as minor subservient built form elements.
62. Therefore, the proposal is not considered to be compatible with the character of the local area.

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

63. The aim of this policy is to facilitate the effective delivery of infrastructure across the State. The policy also identifies relevant considerations in the assessment of development adjacent to particular types of infrastructure and provides for consultation with relevant public authorities.
64. Clause 34(7) states that development for the purpose of a solar energy system may be carried out by any person with consent on any land. Accordingly, the subject application seeks consent for the proposed photovoltaic solar panels.
65. The application was referred to Ausgrid in accordance with Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007 and a response was received on 1 June 2020 stating that no comments were required given no assets in the vicinity of the proposal.

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

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

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environmental SEPP

68. 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.

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

Draft Remediation of Land SEPP

70. 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.

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

Draft Housing SEPP

72. The Draft Housing SEPP is currently on exhibition from 31 July 2021 to 29 August 2021. The proposed Housing SEPP will require that boarding houses are for the purpose of affordable rental housing and managed by a registered community housing provider and introduce a definition for 'co-living housing', which may be carried out by private developers, but would only be permitted where residential flat buildings or shop top housing are permitted. Therefore, whilst it is considered that little to no determinative weight would apply due to the early stage of the SEPP; the current proposal is inconsistent with the provisions of this Draft Instrument.

Draft Georges River Local Environmental Plan 2020

73. The Local Planning Panel considered the report on the outcomes of the Public Exhibition and Finalisation of Georges River Local Environmental Plan 2020 (GRLEP) 2020 on 25 and 26 June 2020. In relation to this site, the permitted height of building, zoning and floor space ratio remain unchanged.

74. Consideration is given to the provisions of Draft GRLEP 2020 in the assessment of this application.

75. 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 Draft GRLEP 2020, which provides "*If a development application has been made before 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.*"

HURSTVILLE LOCAL ENVIRONMENTAL PLAN (HLEP) 2012

76. The subject site is zoned R2 Low Density Residential under the provisions of the HLEP 2012 as shown in the figure below.

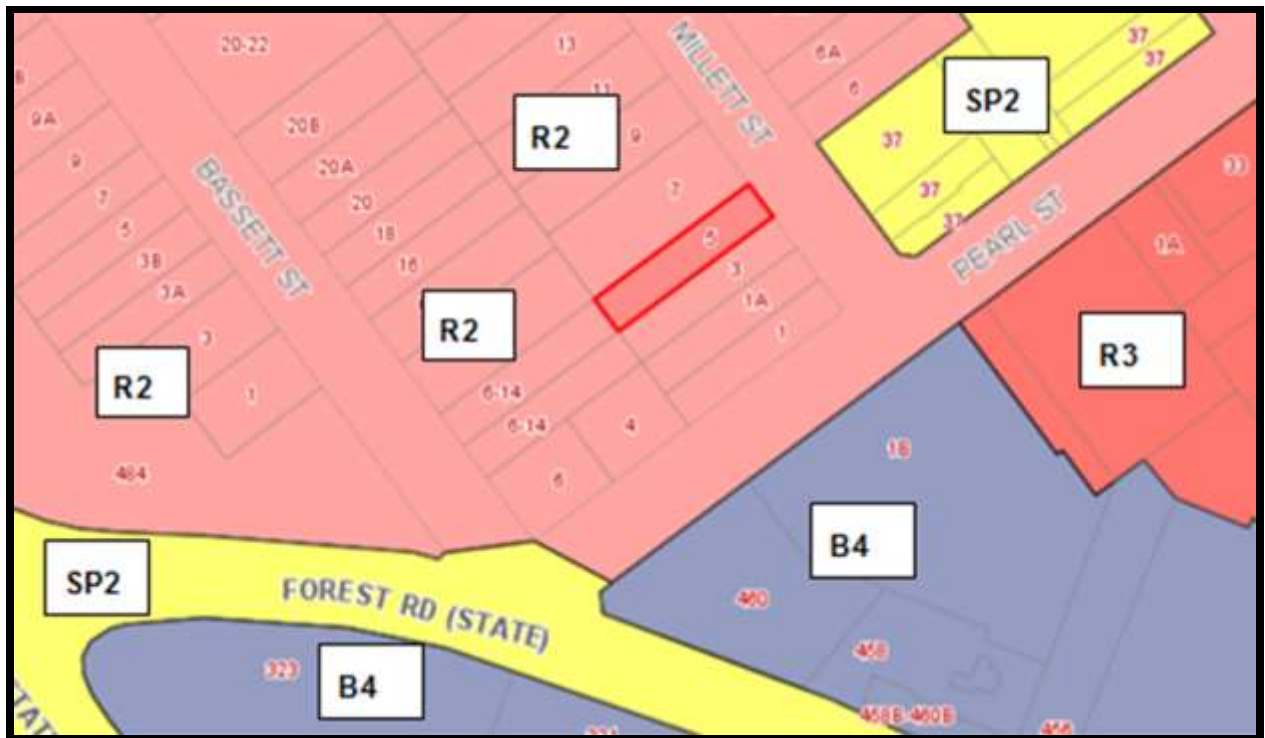


Figure 11: Zoning Map – Subject site outlined in red

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77. The proposal is characterised as a boarding house.

78. A 'boarding house' is defined as:

boarding house means a building that—

- (a) is wholly or partly let in lodgings, and
- (b) provides lodgers with a principal place of residence for 3 months or more, and
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Note—

*Boarding houses are a type of **residential accommodation**—see the definition of that term in this Dictionary.*

79. 'Boarding houses' are permitted with consent in the R2 zone pursuant to HLEP 2012.

80. The objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

- *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
- *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*

81. The proposal is not consistent with the objectives of the R2 low density residential zone pursuant to Clause 2.3 of HLEP 2012 to “ensure that a high level of residential amenity is achieved and maintained” and “does not compromise the amenity of the surrounding area”.
82. An assessment of the proposal against the relevant LEP clauses and standards is as follows:

Clause	Standard	Proposal	Complies
Part 2: Permitted or Prohibited Development			
2.2 Zoning	R2 Low Density Residential Zone	The proposal is a permitted form of development.	Yes
2.3 Zone objectives	Objectives of the R2 Zone	The proposal fails to have adequate regard to the zone objectives.	No
Part 4: Principal Development Standards			
4.3 Height of Buildings	9m as identified on Height of Buildings Map	The proposal provides a maximum overall height of 9.14m to the top of the parapet on north eastern side based on an existing ground level of RL60.4 at the rear of the building. This equates to a variation of 1.55%, which is not considered acceptable given the variation arises from excessive ceiling heights, which are unnecessary, and results in adverse streetscape and amenity impacts. No Clause 4.6 variation request has been submitted to support this breach.	No – Refer to discussion under SEPPARH and below
4.4 Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	The proposal provides a total gross floor area of 300sqm (or FSR of 0.594:1)	Yes
4.5 Calculations of Floor space and Site area	Floor space to be calculated in accordance with Clause	Floor space has been calculated in accordance with this clause.	Yes
4.6 Exceptions to Development Standards	A clause 4.6 variation request has not been submitted in relation to the proposed building height. Refer to discussion under Clause 29(4) of the Affordable Rental Housing SEPP, which prevails to the extent of any inconsistency.		
Part 5: Miscellaneous Provisions			
5.6 Architectural roof features	Development that includes an architectural roof	No architectural roof feature proposed.	N/A

	feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.		
Part 6: Additional Local Provisions			
6.1 Acid Sulfate Soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not identified as being affected by Acid Sulfate Soils.	N/A
6.5 Gross floor areas of dwellings in residential zones	The maximum floor area for a dwelling house on land in Zone R2 is 0.55:1 on a site area of less than or equal to 630sqm	The site is less than 630sqm, but the proposal is not for a dwelling house and no minimum site area applies to boarding houses.	N/A
6.7 – Essential Services	Development consent must not be granted to development unless services that are essential for the development are available	Essential services are currently available to the site.	Yes

83. Clause 4.3 of HLEP 2012, which relates to the maximum permitted building height for a site and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 9m Building Height is defined as:

“Building height (or height of building) means:

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

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

84. The maximum permitted heights within the immediate area are shown below.



Figure 12: Extract from the HLEP 2012 height of buildings map, site outlined in red

85. The submitted plans do not accurately show the proposed non-compliance.

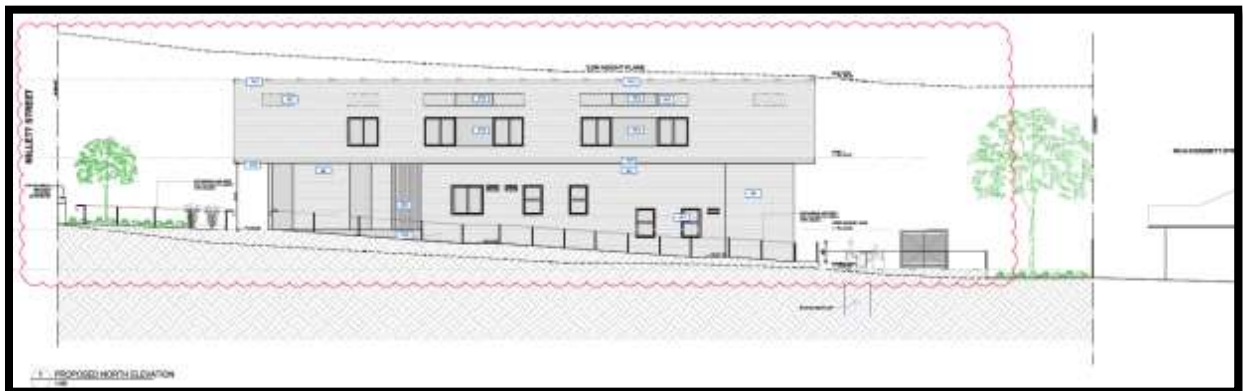


Figure 13: North west (side) Elevation at 5 Millett Street Hurstville (Source – Play Co Architects)

- 86. The proposal provides a maximum overall height of 9.14m to top of parapet on north western side based on an existing ground level of RL60.4 at the rear of the building. This equates to a variation of 1.55%, which is not considered acceptable given the variation arises from excessive ceiling heights, which are unnecessary and results in adverse streetscape and amenity impacts.
- 87. No Clause 4.6 request has been submitted. However, in assessing the proposed variation it is considered that the proposal fails to satisfy the objectives of the zone and height of building development standard.

88. The objectives of Clause 4.3 - Height of Buildings are as follows:
- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
 - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,*
 - (c) to minimise the adverse impact of development on heritage items,*
 - (d) to nominate heights that will provide a transition in built form and land use intensity,*
 - (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,*
 - (f) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,*
 - (g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*
89. The proposed development is considered to not satisfy the objectives of the building height development standard for the following reasons:
- The bulk and scale of the proposed development is not compatible with the existing low density single storey context and would be visible from street level.
 - The proposal results in unreasonable adverse amenity impacts in terms of overshadowing and overlooking on neighbouring properties.
 - The proposal would result in an unreasonable visual impact on neighbouring properties and the streetscape.
 - The bulk and form of the development is not consistent with the existing context and what is anticipated for the locality.
 - The height variation is unnecessary due to excessive internal ceiling heights and the application can be readily amended to comply.
90. The objectives of the zone are as follows:
- *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*
 - *To ensure that a high level of residential amenity is achieved and maintained.*
 - *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
 - *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*
91. The proposal is not consistent with the objectives of the R2 low density residential zone pursuant to Clause 2.3 of HLEP 2012 to “ensure that a high level of residential amenity is achieved and maintained” and “does not compromise the amenity of the surrounding area”.

- 92. 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 DCP.
- 93. The dwelling house controls under Section 4.4 of Hurstville Development Control Plan (HDCP) No. 1 have been used to establish compatibility and impacts on adjoining allotments given there are limited specific controls for boarding houses in the HDCP, noting the R2 zoning, lot size and the character of the streetscape.

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DCP Provisions	Development Provisions	Complies
3.1 Vehicle Access, Parking and Manoeuvring		
<p>DS1.3 Provide onsite parking based on 1 space per 3 beds plus 1 space per 2 employees</p>	<p>4 spaces are required and 2 spaces are provided.</p>	<p>No – refer to discussion under SEPPARH</p>
3.4 Crime Prevention Through Environmental Design		
Site and Building Layout		
<p>DS1.4 Entrances should be located in prominent positions, be easily recognisable through design features and directional signage and should allow users to see into the building before entering.</p>	<p>The proposal maintains an entry facing the street, but it does not allow users to see into the building before entering as access is via the garage facade and the design incorporates solid barriers and indirect path to the internal building entry.</p>	<p>No</p>
<p>DS1.5 Pathways within and to the development should be direct and all barriers along the pathways should be permeable including landscaping and fencing.</p>	<p>As noted above, the design incorporates solid barriers and indirect path to the internal building entry.</p>	<p>No</p>
<p>DS1.14 Garages and carports should not dominate the front façade of the building.</p>	<p>The garage dominates the front façade, which limits opportunity for passive surveillance.</p>	<p>No</p>
Lighting		
<p>DS2.1 Dwelling and commercial unit main entries should be well lit at night. DS2.3 All lighting must be vandal resistant and easy to maintain.</p>	<p>Can be conditioned if the application was to be supported.</p>	<p>No</p>
<p>DS2.4 Direct lights towards access/egress routes and possible hiding places to illuminate potential offenders, rather than towards buildings or resident observation points.</p>	<p>Can be conditioned if the application was to be supported.</p>	<p>No</p>
Landscaping		
<p>DS2.19 Avoid medium height vegetation</p>	<p>Suitable landscaping</p>	<p>Yes</p>

<p>with concentrated top to bottom foliage. Plants such as low hedges and shrubs, creepers, ground covers and high canopied vegetation are good for natural surveillance. Refer Figure 1 – Vegetation placement for passive surveillance.</p> <p>Fencing DS4.1 Front fences are to be predominantly open in design to allow sight through the fences eg picket fences, wrought iron.</p> <p>Security and Operational Management DS5.1 Locks are to be fitted on all doors and windows to the Australian Standard. DS5.5 Entry doors are to be self-closing and signs displayed requesting building occupants not to leave doors wedged open. DS5.6 Consider installing user/sensor electronic security gates at car park entrances, garbage areas and laundry areas etc., or provide alternative access controls.</p> <p>Building Identification DS6.2 Each building entry must clearly state the dwelling or unit numbers accessed from that entry.</p>	<p>provided as shown on the submitted Landscape Plan.</p> <p>Low front fence provided.</p> <p>Can be conditioned if the application was to be supported.</p> <p>Can be conditioned if the application was to be supported.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>3.5 Landscaping and 3.6 Public Domain</p>		
<p>DS8.1 Development that involves landscaping is to be supported by a:</p> <ul style="list-style-type: none"> a. a survey plan showing the location of existing trees, their type and condition and what are being proposed to be removed b. concept level landscape plan showing the extent, function and character of landscaped area c. detailed landscape plan showing excavation, location of site services, proposed levels, drainage, construction detail; and a detailed planting schedule <p>DS1.8 Street trees are to be provided on all streets to achieve the following outcomes:</p> <ul style="list-style-type: none"> a. coordinated palette of climatically responsive species b. reinforce the street hierarchy and create distinct places c. be robust and low-maintenance d. be planted in a coordinated, regularly 	<p>A Landscape plan was submitted and suitable replacement planting provided on site and within the street frontage. Council’s Consulting Arborist has raised no objections subject to conditions.</p>	<p>Yes</p>

<p>spaced and formalised manner e. increase the comfort of the public domain for pedestrians f. enhance the environmental performance of the precinct by increasing opportunities for energy efficiency, reducing the heat island effect and providing habitat for wildlife</p>		
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3.7 Stormwater Management

<p>DS1.5 A development application is supported by a concept stormwater management plan showing how surface and roof waters are to be discharged by gravity to the street or easement and the size of all pipes. DS1.15 Developer required creating an easement over the adjoining downstream property/s to drain stormwater by gravity across the downstream properties to the road kerb or Council’s drainage system. Note: A drainage application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993 is required to get approval to connect to Council’s drainage system. DS1.16 Where an easement is required over downstream properties for drainage purposes: a. it is to have a minimum width of 1m and a separate Development Application is required for the installation of the pipeline within easement. b. a letter of consent from the owner(s) of the downstream properties is to be submitted with the Development Application for installation of the pipeline within easement. The applicant is to provide Council with evidence that the easement has been registered with the Registrar General. DS1.19 The rate of discharge of roof and pavement runoff from the site is to be controlled by the provision of an onsite detention system. DS1.20 On site detention facility shall be designed in accordance with Hurstville City Council’s ‘Drainage and On-Site Detention Policy’.</p>	<p>A stormwater drainage plan was submitted as a part of the application. Council’s engineers reviewed the initial proposal and raised no objections subject to conditions. As previously noted, the amended proposed was not accompanied by amended stormwater plans and there is a conflict between the built form and the OSD design levels.</p>	<p>No</p>
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Section 4.4 Dwelling Houses on Standard Lots (Note: a merit assessment has been undertaken under Section 4.4 in the absence of any controls applicable to boarding houses given the R2 zoning, lot size and the character of the streetscape.)

<p>Building Height DS2.1. Maximum building height is in accordance with the LEP</p> <p>DS2.3. For flat roofed dwellings, maximum height to the top of the parapet of the building is: a. 7.8m above the existing ground level vertically below that point (Refer Figure 1)</p> <p>DS2.4. For steep or sloping sites, the building is sited and designed to be staggered or stepped into the natural slope of the land</p>	<p>The proposed building height of 9.14m to the top of the parapet skillion roof fails to comply with the 9m height limit of the HLEP.</p> <p>This wall height seeks a variation of 17.17% to the 7.8m requirement.</p> <p>The building does not reflect the natural slope of the land given fill of up to 1.4m within the building footprint.</p>	<p>No</p> <p>No</p> <p>No</p>
<p>Setbacks DS3.1. Minimum setback from the primary street boundary is: a. 4.5m to the main building face b. 5.5m to the front wall of garage, carport roof or onsite parking space (Refer Figure 2) or c. within 20% of the average setback of dwellings on adjoining lots. DS3.4. The minimum side setback outside the FSPA is 900mm (ground floor) and 1.2m (first floor). Note: Council may permit a variation to the minimum side setbacks for irregular shaped lots if it can be demonstrated that this will result in the retention of principal private open space or significant trees and the achievement of the performance criteria. DS3.6. Minimum rear boundary setbacks are: a. 3m for any basement and ground floor level solid wall b. 6m for first floor level solid walls c. where a first floor balcony is proposed at the rear, 6m from the balustrade</p>	<p>The building complies with the setback requirements; however the garage has not been set back behind the main building face.</p>	<p>Yes No for the garage.</p>
<p>Facades DS4.3. Garage doors are not wider than 6m</p>	<p>The garage door is 4.8m wide, but the garage occupies the full width of the building façade facing the street.</p>	<p>Yes</p>

<p>Solar access DS6.1. Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00 am and 3.00 pm on 22 June. Note 1: Development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design solution. Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation.</p>	<p>The proposal does not maintain at least 3 hours sunlight to living area windows and private open space of the adjoining property to the south-east known as 3 Millett Street.</p>	<p>No</p>
<p>Vehicular access and parking DS9.3. Enclosed or roofed car accommodation, including garages and carports, are located at least 1m behind the main setback. Note: Carports forward of the front setback may be considered where no vehicular access behind the front building alignment is available. DS9.4. The maximum width of a garage opening is 6m.</p>	<p>Proposed garage is not 1m behind the building line.</p> <p>The garage door is 4.8m wide, but the garage occupies the full width of the building façade facing the street.</p>	<p>No</p> <p>Yes</p>
<p>Landscaped areas DS10.3. The minimum dimension of landscaped open space is 2m in any direction. DS10.4. A minimum of 15m² of the landscaped open space is provided between the front setback and the street boundary in the form of a front yard.</p>	<p>Refer to assessment under SEPPARH. As noted previously, the proposed landscape treatment of the front setback area comprises two canopy trees, shrubs and turf and occupies over 50% of the minimum 4.5m front setback area with a minimum dimension of 2m.</p>	<p>Yes</p>

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Interim Policy Georges River Development Control Plan 2020

94. The Interim DCP does not contain controls relevant to the proposed development.

IMPACTS

Natural Environment

95. The proposed development is likely to result in adverse impacts to the natural environment due to excessive fill up to 1.4m high within the building footprint and 0.9m outside the building footprint.

Built Environment

96. As discussed within this report, the proposed development is not consistent with the existing built form context and will result in adverse impacts to the built environment.

Social Impact

97. The proposed development is of a scale and form that is inconsistent with the existing context, which will result in a negative social impact.

Economic Impact

98. The proposal will result in a short term positive economic stimulus due to the employment opportunities created by the construction works.

Suitability of the Site

99. The site is zoned R2 Low Density Residential. The proposal will have adverse impacts on the adjoining properties and the streetscape due to the physical bulk and scale, visual privacy, overshadowing and acoustic amenity impacts to adjoining properties arising from excessive building bulk, wall height and raised ground levels, and unsatisfactory streetscape appearance dominated by the garage.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

100. The application was notified for a period of fourteen (14) days between 25 May 2020 and 9 June 2020 in accordance with Council's Notification Policy. One (1) submission was received objecting to the proposal. The concerns raised related to zone compatibility, building height, parking and ongoing management are valid grounds of objection. The application was renotified from 20 May 2021 to 3 June 2021 and no submissions were received.
101. Comments are provided under each of the following objections raised.

Zoning

Current Zoning & Proposed Zoning for Draft LEP both sit at R2 Low Density Residential which I agree on- Does this mean the land zoning changes to meet the building?

102. Comment: The proposal does not result in a change to the R2 zoning for the land. Boarding Houses are a permitted form of residential development in the R2 zone of the Hurstville Local Environmental Plan 2012 and the Draft Georges Local Environmental Plan 2020.

Draft LEP

The Draft LEP has not been finalised for recommendation.

103. Comment: The proposal does not result in a change to the R2 zoning for the land under the Draft Georges Local Environmental Plan 2020. Boarding Houses are a permitted form of residential development in the R2 zone under Hurstville Local Environmental Plan 2012.

DA lodgement

Why has a DA been submitted 4 building blocks in from the corner? If approval is granted, does this allow whoever owns 1, 1A, 3 Millett St and 4 Pearl St to develop same type of buildings or pave the way for even larger structures.

104. Comment: Council has no control over the lodgement of a DA on private land. Boarding Houses are a permitted form of residential development in the R2 zone. Any DA is subject to a separate full and proper assessment of merit against the relevant planning controls applicable at the time of lodgement. A range of uses are permissible on R2 – Low Density zoned land.

Boarding house ownership

Boarding houses are rental only and usually owned by a business. No opportunity for individual owner/occupier like you get in single dwellings such as villas.

105. Comment: Boarding houses by definition are required to be let in lodgings and cannot be individually owner occupied no subdivision is not permitted under Clause 52 of the Affordable Rental Housing SEPP. The ownership of a private boarding house is a property matter.
106. 'Villas' are a form of multi dwelling housing which is not a permitted use in the R2 low density zone.

Height of building

Developers declare the building won't go higher than 9m, but plans can always be changed to suit their needs.

107. Comment: The proposal does comply with the 9m height limit and is a valid ground of objection and is part of the reasons for refusal of the proposal.

Parking

Disruption to the area during building with both delivery and private vehicles vying for parking space. The area is already saturated with vehicles parked in the surrounding streets with residents from Highpoint Apartments, Staff, Day Patients and Visitors to Hurstville Private Hospital. Limited parking for the property will only push more vehicles out onto the street. The road was never repaired after the Hospital built in 2015.

108. Comment: The proposal does not comply with the parking requirements of the Affordable Rental Housing SEPP and is a valid ground of objection and is part of the reasons for refusal of the proposal.
109. If the application was to be supported it is acknowledged there would be some impact on the car parking during the development construction.

Waste

Garbage bin night will be interesting with the rubbish overflowing onto the street along with all the shopping trolleys left out the front of the premises for those who don't have cars. The area is shabby enough now.

110. Comment: The proposal provides a waste storage area within the rear of the site for ongoing waste management compliant with Council's controls.

Council ReferralsDevelopment Engineering (Stormwater)

111. No objections were raised to the original proposal subject to conditions. However, as previously noted, the amended proposal was not accompanied by revised stormwater plans and the built form conflicts with the OSD design levels.

Traffic

112. Not supported due to parking shortfall resulting in likely adverse traffic and on-street parking impacts in an area of high demand.

Building

113. No objections were raised subject to conditions if the application was to be supported.

Landscaping

114. No objections were raised subject to conditions if the application was to be supported.

Environmental Health

115. No objections were raised subject to conditions if the application was to be supported.

External Referrals

Ausgrid

116. The application was referred to Ausgrid in accordance with Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007 and a response was received on 16 June 2020 stating that no comments were required given there are no assets in the vicinity of the proposal.

Local Infrastructure Contributions

117. The development would be subject to Section 7.12 contributions, but this is not applicable given the proposal is recommended for refusal.

CONCLUSION

118. The proposal has been assessed against the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009, Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan No.1.

119. The proposal fails to comply with the building height, solar access and parking 'standards that cannot be used to refuse consent' under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards, it is considered that the variations are unacceptable due to adverse streetscape, amenity and traffic impacts.

120. Further, the design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the physical bulk and scale, visual privacy, overshadowing and acoustic amenity impacts to adjoining properties arising from excessive building bulk, wall height and raised ground levels, and unsatisfactory streetscape appearance dominated by garage.

121. The proposed development design fails to have adequate regard to the R2 zone objectives for the site and is not considered to be suitable for the site given adverse impacts arises and, as such, approval is not in the public interest.

122. The proposed development cannot be approved as it breaches the maximum 9m height of building by 1.55% as stipulated by Clause 4.3, and has not been accompanied by a Clause 4.6 request to vary this standard under Hurstville Local Environmental Plan 2012.

DETERMINATION AND STATEMENT OF REASONS

123. Statement of Reasons

- The proposal fails to comply with the building height, solar access and parking 'standards that cannot be used to refuse consent' under Clause 29(2) of the SEPP. Although Clause 29(4) of the SEPP allows consent to be granted even if the development does not comply with these standards, it is considered that the variations are unacceptable due to adverse streetscape, amenity and traffic impacts.
- Further, the design of the development is not considered to be compatible with the character of the local area, contrary to Clause 30A of the SEPP. This is due to the physical bulk and scale, visual privacy, overshadowing and acoustic amenity impacts to adjoining properties arising from excessive building bulk, wall height and raised ground levels, and unsatisfactory streetscape appearance dominated by the garage.

- The Applicant has not submitted any evidence to date to be satisfied that the amended proposal is to be carried out by or on behalf of a social housing provider. Further, it is noted that the purported Provider is unknown and there is no basis to allow reduced parking provision for a boarding house that is merely to be managed by a social housing provider for 10 years subject to an arrangement made by an Applicant/owner. Therefore, the proposal is not considered to be carried out by or on behalf of a social housing provider.
- The proposal fails to have adequate regard to the objectives of the R2 low density residential zone pursuant to Clause 2.3 of Hurstville Local Environmental Plan 2012 to “ensure that a high level of residential amenity is achieved and maintained” and “does not compromise the amenity of the surrounding area”.
- The proposed development cannot be approved as it breaches the maximum 9m height of building by 1.55% as stipulated by Clause 4.3, and has not been accompanied by a Clause 4.6 request to vary this standard under Hurstville Local Environmental Plan 2012.
- The proposal is not considered to be suitable for the site given adverse impacts arising and as such, approval is not in the public interest.

Determination


124. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Environmental Planning Panel refuses DA2020/0185 for demolition of existing structures and construction of a two-storey boarding house with associated parking, landscaping, fencing, retaining walls, solar panels, tree removal, drainage and site works on Lot B DP311929 on land known as 5 Millett Street, Hurstville, subject to the reasons for refusal below:

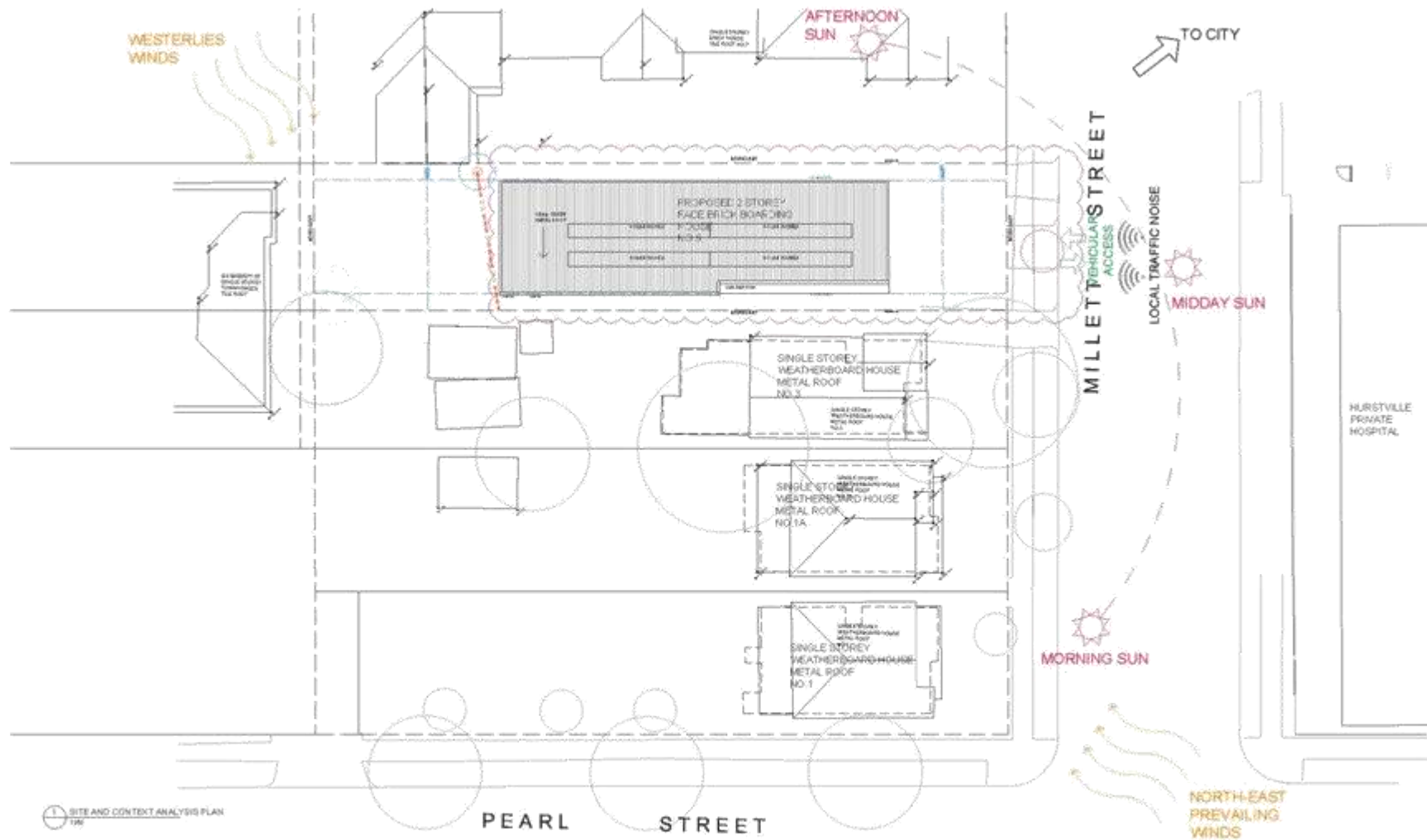
1. The proposed development is inconsistent and has not demonstrated compliance with the State Environmental Planning Policy (Affordable Rental Housing) 2009, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) Clause 29 – Standards that cannot be used to refuse
 - b) Clause 30A – Character of Local Area
2. The proposed development is inconsistent and has not demonstrated compliance with the Hurstville Local Environmental Plan 2012, pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - c) Clause 1.2 – Aims of the Plan;
 - d) Clause 2.3 – Zone objectives and Land use Table;
 - e) Clause 4.3 – Height of Building;
3. The proposed development cannot be approved as it breaches the maximum 9m height of building by 1.55% as stipulated by Clause 4.3, and has not been accompanied by a Clause 4.6 request to vary this standard under Hurstville Local Environmental Plan 2012.
4. The proposed development is inconsistent and has not demonstrated compliance with the following provisions of Hurstville Development Control Plan No. 1, pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979:

- a) Part 3.1 – Vehicular Access and Parking
 - b) Part 3.4 – Crime Prevention Through Environmental Design
 - c) Part 4.4 – Dwelling Houses on Standard Lots
5. The proposal will result in adverse environmental impacts in the locality, pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
 6. The adverse environmental impacts of the proposal mean that the site is not considered to be suitable for the development as proposed, pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
 7. The public submission raised valid grounds of objection and approval of this application is considered contrary to the public interest, pursuant to Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

Attachment [↓](#) 1  Site plan - 5 Millett Street Hurstville

Attachment [↓](#) 2  Elevation plans - 5 Millett Street Hurstville



1 SITE AND CONTEXT ANALYSIS PLAN
 1/20

NOTES

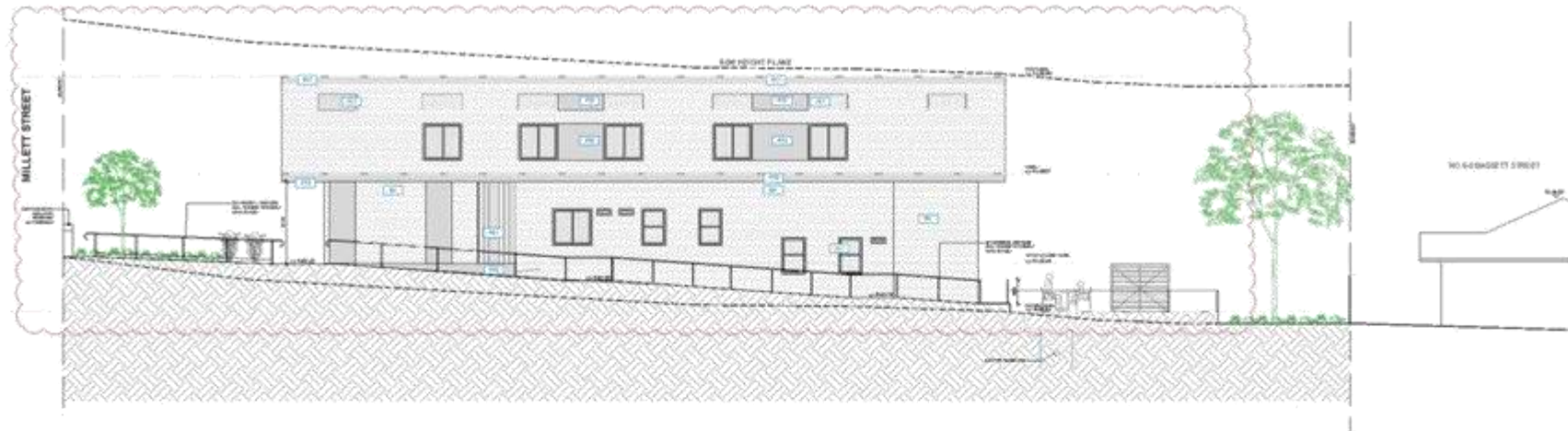
- ALL WORKS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA, ADDITIONAL STATEWIDE STRUCTURE REGULATIONS AND LOCAL AUTHORITY REQUIREMENTS.
- CONTRACTORS TO ENSURE CONSISTENCY BETWEEN SIMILAR MATERIALS IN NEIGHBOURHOOD.
- PREPARE A MEASUREMENT ALL DIMENSIONS & DISTANCES AS REQUIRED TO RECEIVE NEW FINISHES TO BE INSTALLED TO THE SPECIFICATIONS.
- ALL DIMENSIONS TO BE CHECKED ON SITE BEFORE COMMENCEMENT OF WORK. ALL DIMENSIONS MUST BE LABELED & MARKED ON THE WORK TO CONSTRUCTION & MAINTAINERS OF ANY REAL.
- THE DRAWING IS A CONTRACT AND THE LIABILITY OF THE AUTHOR SHALL REMAIN UNLESS, COVERED OR USED WITHOUT EXPRESS PERMISSION OF THE ARCHITECT AND THAT THE PLAN IS.

REV.	DATE	DESCRIPTION
01	21/08/2021	PRELIMINARY
02	30/08/2021	PRELIMINARY
03	30/08/2021	PRELIMINARY
04	20/09/2021	FINAL SET FOR COORDINATION
05	20/09/2021	REVISION 04 - PRELIMINARY
06	18/09/2021	REVISION 04 - FINAL
07	18/09/2021	NOTED ON DRAWING
08	20/09/2021	REVISED ON DRAWING

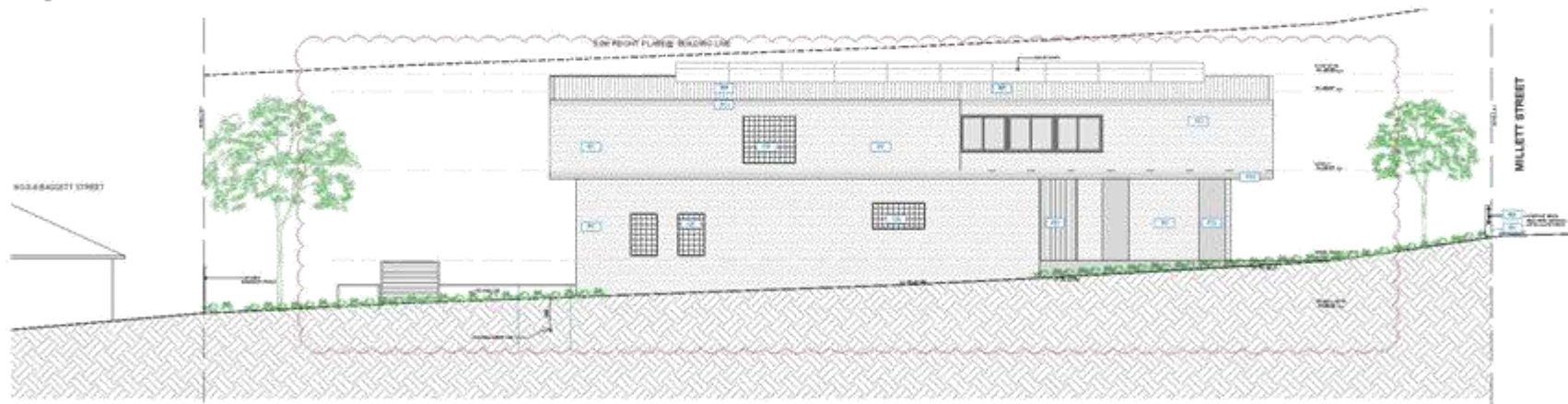
PROJECT
HURSTVILLE BOARDING HOUSE
 5 MILLETT STREET HURSTVILLE
 CLIENT
 JONES WIN PLY LTD
 38 CLAREMONT STREET
 PENGURST NSW 2222

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PROJECT NUMBER	0406	PROJECT ADDRESS	5 MILLETT STREET HURSTVILLE		
DRAWING NUMBER	AD10	DRAWING TITLE	SITE AND CONTEXT ANALYSIS PLAN		
SCALE	1:250	PAPER SIZE	A0	REVISION	0
DRAWN BY	BN	REVIEWED BY	NK	PROJECT STATUS	DATE



1 PROPOSED NORTH ELEVATION
 1/20



2 PROPOSED SOUTH ELEVATION
 1/20

NOTES

- ALL WORKS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA, ADDITIONAL STATEWIDE DEVELOPMENT REGULATIONS AND LOCAL AUTHORITY REQUIREMENTS.
- CONTRACTOR TO ENSURE CONSISTENCY BETWEEN SIMILAR MATERIALS IS MAINTAINED.
- PREPARE A BULK ORDER ALL SUPPLIERS & CONTRACTORS REQUIRED TO RECEIVE NEW FINISHES TO BE INSTALLED TO THE SPECIFICATIONS.
- ALL FINISHES TO BE CHECKED ON SITE BEFORE COMMENCEMENT OF WORK. ALL DIMENSIONS MUST BE CHECKED & CORRECTED ON SITE PRIOR TO CONSTRUCTION & MANUFACTURE OF ANY IRON.
- THE DRAWING IS A CONTRACT AND THE LIABILITY OF THE ARCHITECT SHALL BE LIMITED TO THE WORK SHOWN HEREIN. THE ARCHITECT SHALL NOT BE RESPONSIBLE FOR THE DESIGN OF ANY STRUCTURE OR SERVICE NOT SHOWN HEREIN.

REV.	DATE	DESCRIPTION
P1	01/10/2017	PRELIMINARY
P2	05/09/2017	PRELIMINARY
P3	10/09/2017	PRELIMINARY
P4	20/09/2017	FINAL SETS FOR CONSTRUCTION
A	20/10/2017	REVISED DA - PRELIMINARY
B	18/09/2018	REVISED DA - FINAL
C	18/09/2018	REVISED DA - PRELIMINARY
D	20/09/2018	REVISED DA - PRELIMINARY

PROJECT
HURSTVILLE BOARDING HOUSE
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PROJECT NUMBER	PROJECT ADDRESS	DRAWING TITLE			
P040	5 MILLETT STREET HURSTVILLE	PROPOSED NORTH SOUTH ELEVATIONS			
DRAWING NUMBER	SCALE	PAPER SIZE	REVISION	DATE	ISSUE
A301	1:150	A0	D		
DRAWN BY	REVIEWED BY	PROJECT STATUS			
BN	NK	DA ISSUE			



NOTES

- ALL WORKS TO BE IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA, ADDITIONAL STATEMENT OF WORKS REGULATIONS AND LOCAL AUTHORITY REQUIREMENTS.
- CONTRACTOR TO ENSURE CONSISTENCY BETWEEN UNLAP MATERIALS IS MAINTAINED.
- PREPARE A BULK ORDER ALL SUPPLIERS & CONTRACTORS AS REQUIRED TO RECEIVE NEW FINISHES TO BE INSTALLED TO THE SPECIFICATIONS.
- ALL FINISHES TO BE CHECKED ON SITE BEFORE COMMENCEMENT OF WORK. ALL DIMENSIONS MUST BE CHECKED & CORRECTED ON SITE PRIOR TO COMMENCEMENT OF WORK.
- THE DRAWING IS A CONTRACT DOCUMENT. THE LIABILITY OF THE ARCHITECT SHALL BE LIMITED TO THE WORK SHOWN ON THIS DRAWING. THE ARCHITECT SHALL NOT BE RESPONSIBLE FOR THE WORK OF ANY OTHER CONTRACTOR OR SUB-CONTRACTOR.

REV DATE DESCRIPTION

REV	DATE	DESCRIPTION
P1	21/08/2021	PRELIMINARY
P2	30/08/2021	PRELIMINARY
P3	30/08/2021	PRELIMINARY
P4	30/08/2021	FINAL SET FOR CONSTRUCTION
A	20/10/2021	REVISED DA - PRELIMINARY
B	18/09/2021	REVISED DA - FINAL
C	18/09/2021	REVISED DA - PRELIMINARY
D	20/09/2021	REVISED DA - PRELIMINARY

PROJECT
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PROJECT NUMBER	9060	PROJECT ADDRESS	5 MILLETT STREET HURSTVILLE		
DRAWING NUMBER	A302	DRAWING TITLE	PROPOSED EAST WEST ELEVATIONS		
SCALE	1:50	PAPER SIZE	A0	REVISION	0
DRAWN BY	BN	REVIEWED BY	NK	PROJECT STATUS	ISSUE

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 19 AUGUST 2021**

LPP043-21

LPP Report No	LPP043-21	Development Application No	MOD2020/0223
Site Address & Ward Locality	4 Marie Dodd Crescent Blakehurst Blakehurst Ward		
Proposed Development	Modification of consent DA670/2000 for internal and external alterations and additions to approved multi dwelling housing including partial demolition and reconstruction of heritage item		
Owners	Amooni Group		
Applicant	Mr Nasser Hussien		
Planner/Architect	Architect: CAE Architecture		
Date Of Lodgement	13/11/2020		
Submissions	One (1) submission received		
Cost of Works	\$2,240,000.00		
Local Planning Panel Criteria	Council delegations – public interest		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Environmental Planning and Assessment Regulation 2000, Environmental Planning and Assessment Act 1979, State Environmental Planning Policy No. 55 – Remediation of Land, State Environmental Planning Policy BASIX: 2004, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Georges River Interim Policy 2020, Draft Georges River Local Environmental Plan 2020, Draft Georges River Development Control Plan 2020		
List all documents submitted with this report for the Panel's consideration	Architectural plans, Statement of Environmental Effects, Heritage Impact Statement, Shadow diagrams		
Report prepared by	Principal Planner		

Recommendation	THAT the application be approved in accordance with the conditions included in the report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it	Not Applicable

<p>been attached to the assessment report?</p>	
<p>Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p>Not Applicable</p>
<p>Conditions Have draft conditions been provided to the applicant for comment?</p>	<p>No, standard conditions have been attached and can be reviewed when the report is published.</p>

Site Plan

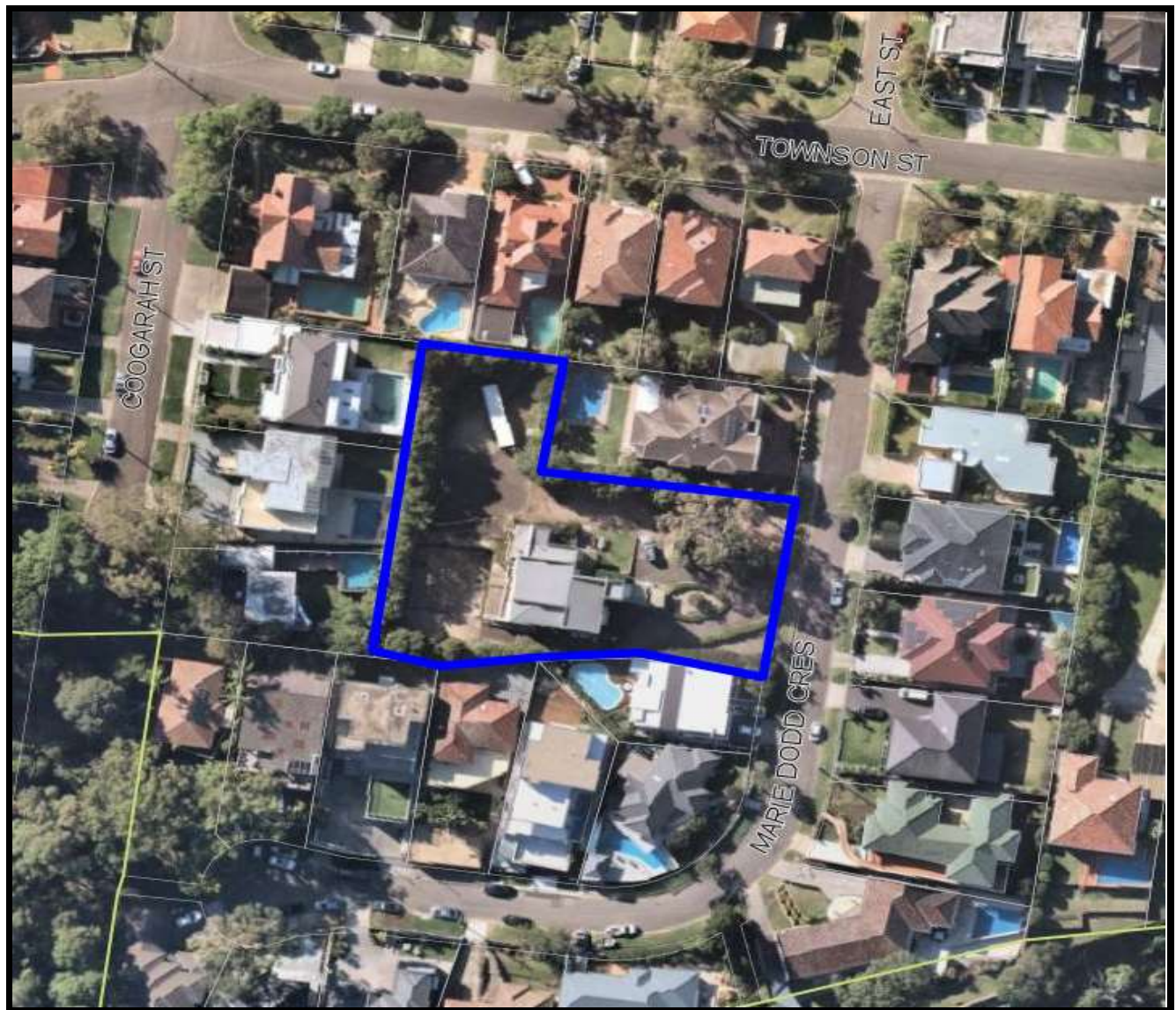


Figure 1 – Aerial Photograph of subject site (Source: Intramaps, 2021).

EXECUTIVE SUMMARY

Proposal

1. Modification application (MOD2020/0223) was submitted to Council on 11 November 2020 seeking consent pursuant to Section 4.56 and Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 seeking amendment to internal and external alterations and additions approved as part of DA670/2000 for multi dwelling housing

including partial demolition and reconstruction of heritage item on land known as 4 Marie Dodd Crescent, Blakehurst.

2. It is important to note that at the time of lodgement of this application, the existing heritage building on site, known as “*Braeside Castle*”, was in its original state. Since lodgement of this modification the Braeside Castle building has been substantially demolished as a result of construction work on site (See Figures 4 and 5 below). This building approved for use as Townhouses 1 and 2 within the heritage fabric. A new basement was to be constructed below this building to accommodate parking for Townhouses 1 and 2. As a result of the damage to this building, this modification cannot consider any amendments to the heritage item that no longer remains intact. The applicant has been advised that this modification application MOD2020/0223 will assess any modifications proposed, however the assessment and any determination of MOD2020/0223 will **exclude** any works proposed to townhouses 1 and 2 – at basement, ground and first floor levels. The applicant has been advised that any modifications to the heritage item, will need to be considered as part of MOD2021/0072 which seeks consent to secure the remaining heritage fabric of Braeside Castle, and they are in agreement to this. This MOD2021/0072 relating to heritage is discussed further below in the background section below.
3. The proposed modifications for alterations are largely internal, there are a number of changes proposed to windows, these proposed modifications aim to improve the amenity and functionality of the townhouses through creating functional living spaces. It is noted that the proposed modification does not seek additional floor space or an increase in height of building previously approved.
4. The site contains a heritage item known as “*Braeside Castle*” which includes the ‘house and garden’. During the processing of this modification application, the applicant advised Council of structural damage to the heritage item. Council served an emergency stop work order for the existing remnant structure to be retained. This matter is currently being investigated by Council’s compliance unit and is the subject of a separate modification application which remains under assessment (MOD2021/0072).
5. The applicant submitted a later modification (MOD2021/0072) specifically dealing with the reconstruction of the heritage item, described on their application form as “*Council seeks modification to the current conditions of consent to permit the deconstruction and reconstruction of the existing three-storey component of Braeside Castle (Townhouse 1), referred to as the ‘tower’, and collapsed wall.*” As discussed in paragraph 2 above, this building has been substantially demolished. MOD2021/0072 will now address all heritage related issues regarding this demolition including Townhouses 1 and 2, and associated basement, enabling an holistic assessment of the damage to Braeside Castle and any heritage requirements regarding its reconstruction. This application will be reported to the Georges River Local Planning Panel at a later date.

Reason for Referral to the Local Planning Panel

6. The application has been referred to the Georges River Local Planning Panel (LPP) in accordance with Council delegations. As the subject site is listed as a heritage item, the matter is referred to the Panel as this is considered to be in the public interest.

Background

7. On 3 July 2000, Council refused DA122/00 for alterations and additions in the form of the construction of a tennis court at the rear of the property.

8. On 18 January 2001 the Applicant withdrew DA412/00 which sought development consent for the construction of a tennis court and cabana at the rear of the subject site.
9. Development Application DA670/00 for the construction of seven (7) townhouses on the site was lodged with Council on 1 December 2000. Council at its meeting of 2 April 2001 considered the proposed development and resolved to refuse the application.
10. On 19 January 2001 the applicant lodged an appeal to the Land and Environment Court against Council's non-determination of the application. The hearing for the application was held in June/July 2001 with the Land and Environment Court granting consent to the proposed development on 23 August 2001. Figure 2 below shows the approved Landscape Plan detailing the general layout of the development.



Figure 2 – Court approved Landscape Plan showing the approved layout of the development (source: DM Taylor Landscape Architects, 21/11/2000).

11. A Section 4.56 (former Section 96(2) Modification) Application was lodged on 10 March 2005 which was approved by Council on 10 August 2005. The changes involved the following works:
 - Compliance with Development Consent Conditions.
 - Addition of residential lifts and improved stair access for residents.
 - Internal changes to improve apartment layout, and
 - Compliance with the Building Code of Australia, construction and servicing requirements.

12. An additional Section 4.56 (former Section 96(2) modification) application was lodged with Council on 27 April 2007 for internal alterations, changes to windows and door openings and also proposing an altered roofline and floor levels to Townhouse 7. This modification was approved by Council on 23 December 2008.
13. A Pre-lodgement application was submitted regarding the proposed development (PRE2019/0078). The key issues outlined in the pre-lodgement included the following:
 - The Applicant to ensure compliance with “existing use rights” for permissibility to be established.
 - Assessment of the potential impact on heritage significance of the site.
 - A detailed assessment and consideration of the increase in the floor space and associated impacts, articulation, built form and visual impacts.
14. An additional Section 4.56 (former Section 96(2) modification) application was lodged with Council on 27 April 2007 for internal alterations, changes to windows and door openings and also proposing an altered roofline and floor levels to Townhouse 7. This modification was approved by Council on 23 December 2008.
15. A Section 4.56 Modification (MOD2019/0247) was approved on 7 May 2020 which granted approval for modification of DA670/2000 – the modifications include changes to the internal layout of some townhouses including additional floor space, enclose the top terraces associated with Townhouses 5 and 6 for use as bedrooms, changes to some window locations and new swimming pools to Townhouses 5, 6 and 7.
16. This subject 4.56(2) modification was lodged on 13 November 2020, which seeks internal and external alterations and additions to approved multi dwelling housing on land known as 4 Marie Dodd Crescent, Blakehurst.
17. On 21 January 2021, the applicant advised Council that the part of the heritage item had undermined and much of the building falling down.
18. On 24 January 2021, Council issued a Stop Demolition Emergency Order 4 which ordered;
 1. *Cease demolishing, or not to demolish, a building known as House and garden, “Braeside Castle” item 16 of the Kogarah Local Environmental Plan 2012 (2013 EPI 26).*
 2. *Obtain a structural report for the remaining structure from a suitably qualified engineer and provide engineer detail to protect/retain the remaining structure from further damage or deterioration.*
 3. *Provide an safety area to engineer detail to eliminate any risk from the remaining structure to neighbouring properties or persons contracted to work in the vicinity.*
19. On 12 February 2021, the applicant advised Council that this MOD2021/0223 no longer seeks consent for the changes to Townhouses 1 and 2 (at ground, first and second floor) located in the partially demolished “Braeside”. *The applicant now only seeks to modify the basements of these dwellings.*
20. Any changes to the heritage item – ie Townhouses 1 and 2 at ground, first and second floor level will be subject to a separate modification application.
21. The applicant submitted a later modification (MOD2021/0072) on 13 May 2021, specifically dealing with the reconstruction of the heritage item. This modification has not been

determined and is currently under assessment, and will be forwarded to the Georges River Local Planning Panel for determination at a later date.

Site and Locality

22. The subject site is an “L” shaped allotment located on the western side of Marie Dodd Crescent, Blakehurst with a total site area of 2,885sqm with a frontage of 34.14m to Marie Dodd Crescent with the remainder of the site boundaries adjoining eleven (11) residential properties.
23. Existing onsite is a three (3) storey residence dating back to circa 1930 and is known as “Braeside” or “Tanners Farm”. The building and site is nominated as a Local Heritage Item pursuant to Schedule 5 of the Kogarah Local Environmental Plan 2012 (refer to Figure 3 below). Council’s site inspection in December 2020 indicated that works had commenced on site.



Figure 3 – Subject site – heritage item and immediately adjoining properties (Source: Intramaps, 2021).

Zoning and Permissibility

24. The site is zoned ‘R2 – Low Density Residential’ pursuant to the provisions of the Kogarah Local Environmental Plan. The proposal is defined as “Multi-dwelling housing” which is a prohibited land use in the zone.
25. The approval relied upon “Existing use rights” for its permissibility with the applicant providing sufficient evidence to demonstrate that “physical commencement” had occurred and the original approval (DA670/2000) has been enacted and taken up and the consent is valid.

Submissions

26. The development application was publicly exhibited in accordance with the provisions of the Kogarah Development Control Plan 2013. In response, one (1) submission was

received which raised concerns relating to privacy which has been addressed in further detail later in this report.

Conclusion

27. The application has been assessed having regard to the Matters for Consideration under Section 4.56 and 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plans and is supported subject to modified conditions regarding amended plans.

REPORT IN FULL

Description of the proposal

28. The proposed development involves reconfiguring the internal layouts of the townhouses to improve their internal amenity and functionality.
29. The applicant seeks the proposed modifications:
- Townhouse 5 and 6
First floor: highlight window changes to the eastern and western elevations.
 - Townhouse 7
Ground floor: reduction of study room size, window adjustment to the living room.
30. The applicant also seeks the following amendments, however as per paragraph 2 above, these proposed changes relate to the heritage item which has been substantially demolished during construction, therefore the following modifications **are not** considered as part of this application being MOD2020/0223:
- Townhouse 1 (Conversion of “Braeside Castle” to accommodate this dwelling and Townhouse 2):
Basement: reconfiguration of storage area, internal stair and lift.
Ground floor: reconfiguration of internal living areas.
First floor: reconfiguration of bedrooms, bathroom and stair layout.
 - Townhouse 2 (Conversion of “Braeside Castle” to accommodate this dwelling and Townhouse 1)
Basement: deletion of toilet, reconfiguration of storage area, internal stair and lift.
Ground floor: deletion of bedroom and internal reconfiguration of internal living areas.
First floor: reconfiguration of bedrooms, bathroom and stair layout.

Description of the site and locality

31. The subject site is an “L” shaped allotment located on the western side of Marie Dodd Crescent. It has a total site area of 2,885sqm comprising of a frontage width of 34.14m to Marie Dodd Crescent and abuts the rear yard of some eleven (11) adjoining residential properties. Existing onsite is a three storey residence dating back to circa 1930’s and is known as “Braeside” or “Tanners Farm”. The building and site is designated as a Local Heritage Item pursuant to Schedule 5 of the KLEP 2012.
32. The legal description of the site is Lot A in DP29102.
33. The land falls gently towards the southern side of the site, with a small rock ledge traversing the centre of the property. There are a number of trees and shrubs along the eastern and western boundaries and a substantial tree to the Marie Dodd frontage.



Figure 4: Original heritage item site known as “Braeside” (Source: GRC, 2020). This heritage item has been substantially demolished (without consent) as a result of construction works on site. This is the subject to a separate modification application which remains under assessment.



Figure 5: Photograph provided by the applicant regarding the undermining and fallen elements of the heritage item (sent by applicant on 21 January 2020).

34. Immediately to the north of the site is 2 Marie Dodd Crescent which is a contemporary three storey dwelling house. To the south, east and west are a series of larger scale modern two storey dwelling houses. The rear yard of these properties abut the subject site.
35. The rear yards of 76, 78 and 80 Townson Street adjoin the subject site to the north-west. To the south, east and west are the rear yards of 8, 10 and 10A Coogarah Street which adjoin the site. These properties are also elevated some 2-3m above the existing ground floor of the subject site.
36. To the east, across the road are 1, 3, 5 and 7 Marie Dodd Crescent are large modern, detached contemporary dwelling houses. To the south, the rear yards of 6, 10, 12 and 14 abut the subject site.
37. The site is located within a predominantly low scale residential area comprising detached dwelling houses, many of which have undergone recent improvements and some replaced with larger modern contemporary homes.

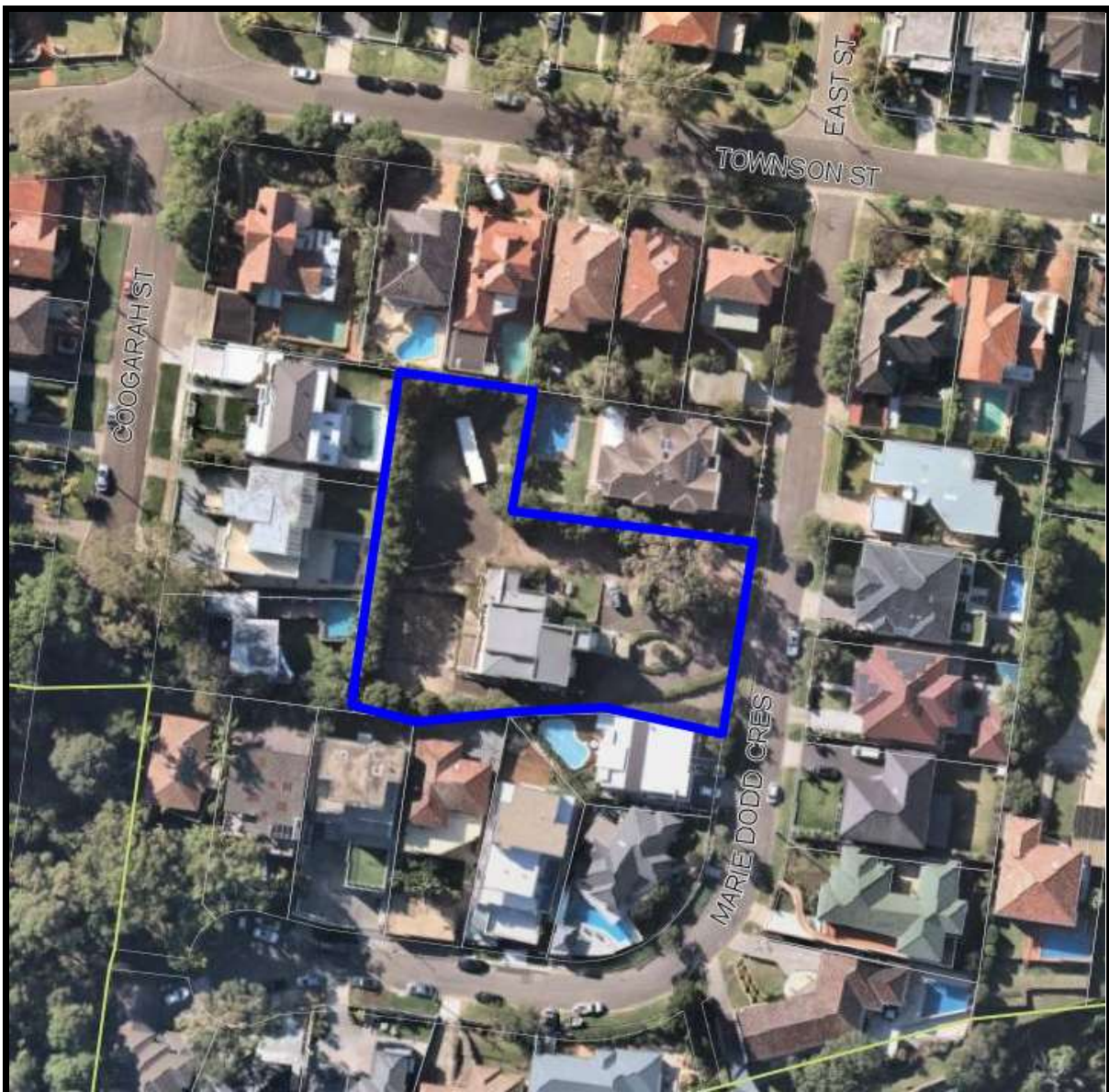


Figure 6: Aerial view of the subject site (Highlighted in Blue Outline) (Source: Intramaps, 2021).

Planning Assessment

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

Environmental Planning Instruments

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

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

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

40. The modification does not alter the approved building footprint, as a result there are no changes to the stormwater and drainage arrangement and it is considered that the proposal is consistent with the aims, objectives and purpose of the Regional Plan.

State Environmental Planning Policies

41. Compliance with relevant State Environmental Planning Policies is summarised in the table as follows and discussed in more detail thereafter.

State Environmental Planning Policy	Complies
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	N/A – the original approval predated this SEPP.
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
State Environmental Planning Policy Infrastructure	Yes
Draft Environment – State Environmental Planning Policy	Yes
Draft Remediation of Land State Environmental Planning Policy	Yes

State Environmental Planning Policy No 55 - Remediation of Land

42. 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.

43. 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.
44. The issue of contamination is assumed to have been considered at the time of the original assessment. The subject site has a long history of residential use and therefore it is unlikely the site is contaminated. Earthworks have commenced on site in accordance with DA consent (670/2000).

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

45. The State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 aims to ensure consistency in the implementation of a scheme to encourage sustainable residential development throughout New South Wales (also referred to as the 'BASIX scheme').
46. This SEPP came into effect on 1 July 2004, four years after consent was granted to the Townhouse development. BASIX relates to Development Applications or amendments to development applications where a BASIX certificate exists and Complying Development Certificates. Given that the originally approved development was not the subject of a BASIX assessment and resulting certificate, this SEPP is not relevant to this development.
47. The proposed modifications significantly improve the internal amenity, functionality, layout and overall useability of all internal spaces which are more aligned with a traditional townhouse with basement below and residential levels relating to the respective townhouses above. These design changes are aligned with the ideology of this SEPP.

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

48. The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP') regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
49. 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).
50. The Vegetation SEPP repeals clauses 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan, with the regulation of the clearing of vegetation (including native vegetation) below the BOS threshold being through any applicable DCP.
51. The proposed amendments do not seek any significant changes to landscaping arrangements as the extent of works are contained within the approved building footprints.

Draft Environmental Planning Instruments

Draft Environment SEPP

52. 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.

53. The proposal is generally consistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

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

55. The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.

56. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land.

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

COMPLIANCE AND ASSESSMENT

Environmental Planning and Assessment Act, 1979 (as amended) No.203

58. The development has been assessed under the relevant Section 4.15 "Matters for Consideration" of the Environmental Planning and Assessment Act 1979.

Section 4.56 - Modification by consent authorities of consents granted by the Court

59. Given the original application was approved by the Land and Environment Court any modifications need to be assessed in accordance with the provisions of Section 4.56 of the Act. The following provisions of this section need to be satisfied by the application;

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

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

(b) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, and

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

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed

- modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

60. The proposed changes are considered to be “substantially” the same as the approved scheme as the changes are internal and fenestration. There will be no additional overlooking and minimal shadowing impacts given the siting of the townhouses, noting that the site is lower than the immediate neighbouring properties.
61. There is minimal change to the approved building footprint, bulk and scale. The proposed changes do not alter or affect the approved overall height of the development.
62. The application has been notified in accordance with Council’s DCP provisions for notification, the requirements and provisions of Section 4.56 of the Act have therefore been appropriately met.

Local Environmental Plan – Kogarah Local Environmental Plan 2012 (KLEP)

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

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

64. The subject site is zoned R2 Low Density Residential. The proposed development is defined as a “*multi-dwelling housing*” development. “*Multi-unit housing*” relates to a development with “*three or more dwellings (whether attached or detached) on one lot of land, each with access at ground floor level, but does not include a residential flat building*”. This residential land use is prohibited in the zone pursuant to the current provisions of the KLEP 2012.

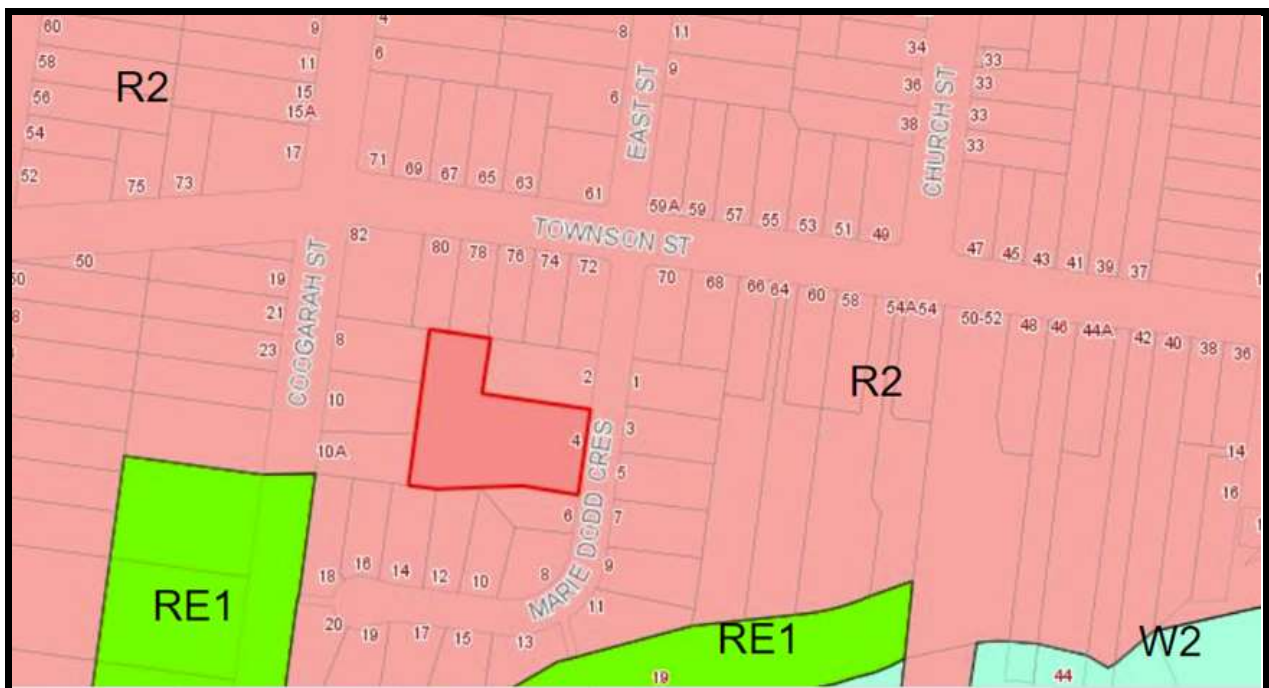


Figure 7: Zoning Extract – site outlined in red (Source: Intramaps, 2021).

Permissibility – Existing use rights

65. Under the former Kogarah Local Environmental Plan 1998, villa and townhouse developments (multi-unit housing) were a permitted land use in the Residential 2(a) Low Density zone and the approved townhouse development (DA670/2000) was consistent with these provisions.
66. The approved development has been considered within previous modification (MOD2019/0247) under the provisions of an “existing use” and “existing use right” provisions were assessed in accordance with Division 4.11 of the Environmental Planning and Assessment Act (Act). The proposal is permissible with consent as a result.

Part 4 – Principal Development Standards

67. The following Table below summarises compliance with the principle development standards within the KLEP2012.

Applicable LEP Clause	Development Standards	Development Proposal	Complies
4.3 Height of Buildings	“J” 9m height limit	7.5m to 8.45m (max)	Yes
4.4 Floor Space Ratio 4.4A Exceptions to floor space ratio for residential accommodation in Zone R2	“E” a 0.55:1 maximum FSR limit 4.4A(2) establishes a maximum FSR for residential accommodation based on site area. In this case the maximum FSR is 0.23:1.	Proposed: 0.41:1 Previously approved at 0.41:1 Originally approved at 0.38:1	Yes (no additional floor space proposed as part of this modification)
6.1 Acid Sulphate Soils	Not affected	N/A	N/A
6.3 Flood Planning	Not affected	N/A	N/A

Part 5 – Miscellaneous Provisions

68. The following Table below summarises compliance with the miscellaneous provisions within the KLEP2012.

Applicable LEP Clause	LEP Provisions	Development Provisions	Complies
5.4 Controls relating to miscellaneous permissible uses	Not applicable to residential accommodation as proposed	N/A	N/A
5.6 Architectural roof features	Not relevant to the proposed development.	N/A	N/A
5.7 Development below mean high water mark	N/A as the site is not within a Foreshore area or adjoining a waterway.	N/A	N/A
5.10 Heritage Conservation	Designated as a Local Heritage Item No (16) and defined		Yes The modification

	<p>as house and garden known as “<i>Braeside Castle</i>”.</p> <p>Effect of the proposed development on heritage significance of the dwelling.</p> <p>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).</p> <p>Heritage assessment</p> <p>The consent authority may, before granting consent to any development—</p> <ul style="list-style-type: none"> on land on which a heritage item is located, or on land that is within a heritage conservation area, or on land that is within the vicinity of land referred to in paragraph (a) or (b), <p>require a heritage management document to be prepared that assesses the extent</p>		<p>application was accompanied by a Heritage Impact Statement which was considered and assessed by Council’s Heritage Advisor who raised no objection to the proposed works on heritage grounds.</p> <p>This is discussed in greater detail below. It is noted that all works which relate to the heritage building area not assessed as part of this application as a separate modification is currently under assessment to address the undermining of the heritage building.</p>
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LPP043-21

	to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.		
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LPP043-21

Gross Floor Area, Bulk and Scale

69. Pursuant to Clause 4.4(A)(2) of the KLEP 2012 the maximum floor space ratio that is permissible for this site is 0.23:1 which is relative to the development type proposed (residential accommodation). This calculation is based on the equation that is provided as part of this clause and relates to a sliding scale based on the site area. It is noted that the proposal does not seek any additional floor space than that previously approved.

70. The proposed changes do not involve the increase in floor area.

Building Height

71. The proposed changes do not propose any further modifications or increase to the heights of the dwellings and heritage item. It is noted that the Braeside Castle forms a maximum height of building on the site which has been undermined and partially demolished. This unauthorised demolition is the subject of a regulatory action and a separate modification application to retain and rebuild the heritage form and fabric..

Heritage Conservation

72. The subject site is listed as a local heritage item in Schedule 5 of the KLEP and known as “*Braeside Castle*”. Clause 5.10 of the KLEP establishes planning principles and objectives when considering development to a Heritage Item or development within a conservation area. The application was referred to Council’s Heritage Advisor for comment.

73. A Heritage Impact Statement was prepared by (GBA Heritage dated October 2020).

74. Council’s Heritage Advisor has commented on the proposal as follows;

“Statement of Cultural Significance:

No.4 Marie Dodd Crescent is locally significant as it reflects a number of development overlays within the Georgetown Estate subdivision Est pre1885. It has been documented that this building was highly modified during the war as it was used as a battlement. Note: Grand carriage loop and drive. Mature shrubs and herbaceous plantings. Also front stone fence with iron infill.

Consideration of the proposed development:

This proposal involves the design changes to the approved multi-dwelling housing development on the site, specifically, the modifications involve changes to the internal layout of Units 2, 5 and 6, together with various other minor modifications to the configuration of fenestration to Units 1 and 2.

While the proposed modifications are considered to generally retain the overall quantum of development as previously approved by the Court, the modifications nonetheless involve material changes to the built form and setting surrounding the heritage item (Units 1 and 2).

A Heritage Impact Statement has been submitted (GBA Heritage, October 2020) and has been reviewed. The HIS results in a finding that the proposed modification works will have a minimal and therefore acceptable heritage impact. I agree with the HIS assessment and concur that the proposed modifications are acceptable and will not involve any unacceptable impacts to significant fabric, retaining the overall quantum of the development as originally approved.

Recommendation:

The proposed modifications are supported on heritage grounds and there are no additional conditions recommended”.

75. These comments were provided at a time when the heritage item remained intact and was not undermined and partially demolished.
76. The comments are relevant to the other work that is not the subject of the heritage item. All works the subject of the heritage item are not assessed as part of this application. A separate application has been lodged with Council to address the undermining and partial demolition of the heritage item. This will be the subject of a separate report to the Georges River Local Planning Panel for determination.

Development Control Plans

Kogarah Development Control Plan 2013

77. The proposed development is subject to the provisions of the Kogarah Development Control Plan 2013 (KDCP2013). The following table outlines compliance with the main provisions of this policy.

Applicable DCP Controls	DCP Provisions	Development Provisions	Complies
3.1 Vehicle Access, Parking and Manoeuvring	<p>This section of the DCP outlines the minimum requirements for car parking and vehicular access to and from the site.</p> <p>Dwelling (3 bedrooms and over): 2 spaces per dwelling Visitor spaces: 1 space per 4 dwellings (or part thereof)</p>	<p>No change proposed to the approved car parking requirements. Each dwelling includes a double garage catering for 2 off street car parking spaces.</p> <p>The development complies and has approved two (2) visitor spaces at the front of the site.</p> <p>The driveway access to the site and access to the garages is not being altered or changed as part of this modification.</p>	Yes
3.5 Landscaping	The size and dimensions	There is no change	Yes

	of landscaping areas are adequate to minimise the visual impact of buildings and structures and provides areas of a high level of utility and amenity	proposed to the landscaping within the site given that the location of the approved building footprints remain are unchanged. It is noted as mentioned throughout this report the heritage building has been undermined and partially demolished and the subject to a separate modification application and assessment.	
3.6 Public Domain	<p>Development that proposes works in the public domain is to obtain all necessary council and statutory authority approvals before work commences.</p> <p>Where Council has prepared a streetscape design manual for a street or area detailing public domain requirements, works are consistent with the requirements of the manual.</p>	No changes proposed in relation to public domain works.	Yes
3.7 Stormwater	<p>Stormwater flows are managed within the drainage sub-catchment the site is located.</p> <p>Original or existing stormwater flow patterns are formalised and are not significantly altered in terms of direction and fall.</p>	No change proposed to the approved stormwater and drainage plans.	Yes
C2 Medium Density Housing			
Site Isolation and amalgamation requirements	In considering an application for medium density development, Council will consider the impact of the proposed development on adjoining allotments of land that will	N/A	N/A

	be left as isolated sites and their future development capacity.		
Minimum site and density requirements	Not applicable to this proposal as the Table in Section 4 and the associated controls relate to multi-dwelling housing in the R3 zone (this site is within an R2 zone) and/or is identified in Schedule 1, Clauses 16 or 18 in the KLEP 2012.	This site is not located within a R3 zone and is not identified in Schedule 1 of the KLEP 2012.	N/A
Height and Building Envelope requirements	Controls in this section are not applicable in this case as it relates to development in the R3 zone.	No change proposed to the approved height of the development.	N/A
Building setbacks			
Front	For residential flat development and multi dwelling housing, a maximum of 75% of the width of the building must be setback a minimum of 5m, with the remainder 25% being setback a minimum of 7m	No change proposed to the front setback which exceeds the 7m referenced. The heritage item is setback some 29m and Townhouse 3 will be setback in excess of 15m.	Yes
Side setbacks	As per requirements for dwellings where they front the street For dwellings not fronting the street, 3m plus ¼ the amount that the wall exceeds 3m	No change proposed as part of this modification.	Yes
Rear setback	3m plus ¼ the amount that the wall height exceeds 3m	No change proposed as part of this modification.	As approved
Site coverage	Minimum 40% of the Site Based on a site area of 2885sqm site coverage should not exceed 1,154sqm.	The site coverage is unchanged at 839.31sqm equating to 30%	Yes
Open Space	40sqm per dwelling at ground level with minimum dimensions of 4m.	No reduction to approved open space as previously approved.	Yes

	<p>Optional additional 12sqm balcony with minimum dimensions of 3m</p> <p>Must be larger on the southern side: 3m + h</p>	No additional balcony area proposed.	
Vehicular access, parking and circulation	<p>Car parking is to be provided in accordance with the requirements in Part B4.</p> <p>(2) Vehicular access points should be clearly visible from the street with adequate sign posting or design cues to alert drivers to their availability.</p>	No changes proposed to the car parking, access and vehicular arrangements. The amendments to the basement below the heritage building are no longer part of this modification and are the subject of the additional amendment lodged with Council which is presently under assessment.	Yes
Solar Access	<p>Where private open space is proposed on the southern side of the building, the distance from the southern boundary of the open space to the nearest wall to the north must be a minimum of 3m + h, where h is the height of the wall.</p> <p>Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June).</p> <p>Shadow diagrams are to be submitted for the winter solstice (21 June) and the spring equinox (22 September).</p> <p>Shadow diagrams are</p>	<p>The height of the approved development is not proposed to change.</p> <p>There is no change to the southern setback.</p> <p>Immediately adjoining properties to the south will receive in excess of 50% of solar access to their private areas</p>	Yes

	required to show the impact of the proposal on the sunlight to the open space of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams.	of open space between 9am to 3pm in midwinter which is unchanged as part of this modification.	
Views and view sharing	Development shall provide for the reasonable sharing of views.	No change to the overall height of the development and as such no views or outlook will be impacted.	Yes
Adaptable and Accessible Housing	<p>The minimum number of adaptable units designed in accordance with AS4299 - 1995 Adaptable Housing must be incorporated into the above developments:</p> <p>(i) 3-10 units – 1 adaptable unit</p> <p>Developments must be designed and constructed to comply with:</p> <p>(i) AS 1428.1 – 1993 Design for Access and Mobility Part 1</p> <p>(ii) AS 1428 – 1993 Design for Access and Mobility Part 2 Enhanced and Additional Requirements – Buildings and Facilities.</p>	<p>The proposed development does not include an adaptable dwelling as it was approved prior to this requirement being implemented however the development is generally accessible as it includes ramps and where possible at grade ramps. Lift access is provided to the dwellings of which such access amenity is unchanged as part of this modification.</p>	Partial non-compliance but acceptable given there is no change proposed in respect to the approved development given the extent of modification works sought.

Streetscape Character and window locations and design

78. The proposed modification seeks to generally retain the approved built form with minor changes to the windows as a result of the internal reconfiguration of the dwellings which is considered be acceptable and does not result in any adverse character or amenity impacts.

Open Space/landscaping

79. The proposed modification does not seek any external changes which result in the reduction of open space or landscaped areas than that of the previous approval.

Privacy

80. The proposed development satisfies the relevant objectives and controls of the DCP. The proposal retains all habitable rooms such as lounge rooms, dining rooms, study rooms,

kitchens and the like on the ground floor. The proposal seeks passive habitable use rooms on the first floor being bedrooms and bathrooms only.

81. The changes are relatively minor and there is no perceived adverse overlooking or privacy impacts generated by the modifications.

Interim Policy – Georges River Development Control Plan 2020

82. An assessment of the proposal has been carried out against the provisions of the Interim Policy in respect to Multi Dwelling Housing provisions as set out in the following table.

Standard	Proposed	Complies
Site Frontage		
20m	34.14m	Yes
Building Setbacks (front)		
<p>A maximum of 75% of the width of the building must be setback a minimum of 5m, with the remainder 25% being setback a minimum of 7m.</p> <p>Where a multi dwelling development has a frontage to two streets, then the setback to the secondary street shall be 4.5m.</p>	20m-28m	Yes
Solar Access		
<p>Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June).</p> <p>Note 1: Development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design Interim Policy – Georges River Development Control Plan 2020 July 2019 Page 8 of 8 solution.</p> <p>Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation</p>	<p>Due to the orientation of the site the shadowing impacts are minimal and compliant.</p> <p>There are no physical changes to the bulk, scale, height and visual appearance of the development of that previously approved.</p> <p>As such the proposal will not alter the shadow impact already assessed as part of the previous modification given that the proposal seeks to retain the approved built form.</p>	Yes

Developer Contributions

83. The proposed modification will not require any adjustment to the original payment of developer contributions under Section 7.11 (former Section 94 Contributions) of the Environmental Planning and Assessment Act 1979 as the proposal is not increasing the density of the development nor is it altering the number bedrooms of the dwellings whereby all dwellings will remain as three bedroom dwellings).

IMPACTS

Natural Environment

84. The proposed development does not involve any additional or new earthworks works. The proposal is largely reflective of the originally approved development scheme and previous modification.

Built Environment

85. The proposed development is unlikely to have an adverse impact on the built environment. The proposed development is substantially the same as the approved development and built form and the changes are largely internalised and will not be readily visible from the street or neighbouring properties.

Social Impacts

86. The proposed modification has no perceived adverse social impacts given the residential nature of the use.

Economic Impacts

87. The proposed modification has no perceived adverse economic impacts given the residential nature of the use.

Suitability of the Site

88. The subject site has no impediments that preclude it from being developed for the proposed development in accordance with the original Land and Environment Court approval (DA670/2000) and the fact the development has proven it has “existing use rights” this type and form of development is consistent with the original consent which is recognised to be valid which has been previously established.

SUBMISSIONS AND THE PUBLIC INTEREST

89. In accordance with the provisions of Council’s Public Notification pursuant to the Kogarah Development Control Plan 2013 provisions, the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment. In response, one (1) submission was received.

Privacy impact

90. Concerns were raised in relation to privacy impact generated by the proposed Townhouse 5 highlight window which will overlook into an adjoining residential property which includes; a backyard, and swimming pool. It was requested that privacy screening to be installed along the east facing windows.
91. The modification seeks to retain low habitable use rooms on the first floor which results in minimising privacy impacts. Highlight windows are proposed with a 1.6m highlight window above the finished floor level. This sill height proposed is considered to be acceptable in relation to minimising over looking impacts. No screening is recommended.

Referrals

Council Referrals

Heritage Consultant

92. Councils Heritage consultant reviewed the proposed modifications including the works to Townhouses 1 and 2 (referred to as Units 1 and 2 by the consultant) (which no longer form part of this application). Overall the heritage consultant advises that *“The proposed modifications are supported on heritage grounds and there are no additional conditions recommended”*.
93. It is noted that these comments were received prior to the undermining and partial demolition of the heritage building. As a result the works associated with the heritage building have been removed from this application and are the subject of a separate modification application which is currently under assessment and will be forwarded to the Georges River Local Planning Panel for determination at a separate time.

CONCLUSION

94. The proposal has been assessed having regard to Section 4.56 and Matters for Consideration in accordance with Section 4.15 of the Environmental Planning and Assessment Act, 1979 which seeks consent for internal and external alterations and additions to approved DA670/2000 for multi dwelling housing.
95. The proposed amendments are considered to be small scale and will not generate any adverse amenity or environmental impacts. Accordingly, the application is recommended for approval subject to modified conditions of consent, with particular reference to modification of Schedule A, Condition 1.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

96. The reasons for this recommendation are:
- The proposed changes are considered to be *“substantially the same”* as the originally approved multi-dwelling housing development in accordance with Section 4.56 of the Environmental Planning and Assessment Act, 1979 and the subsequent amendments.
 - The proposed changes are small scale and will improve the overall functionality and internal amenity of the dwellings.
 - The changes will not create any adverse amenity or environmental impacts to immediately adjoining properties in terms of overshadowing or overlooking.
 - The proposed alterations will not change the scale and height of the development as approved and the built form will largely remain unchanged.
 - The proposal satisfies the objectives pursuant to the Kogarah Local Environmental Plan 2013 and Kogarah Development Control Plan 2013.

Determination

97. That the Georges River Council Local Planning Panel, as the consent authority, pursuant to Section 4.56 of the Environmental Planning and Assessment Act, 1979, grant approval to the requested modifications (MOD2020/0223) for internal and external alterations and additions to approved multi dwelling housing development the subject of Development Consent DA670/00, for the construction of seven (7) townhouses approved by the Land and Environment Court dated 23 August 2001 and subsequent amendments on Lot A DP 29102 known as 4 Marie Dodd Crescent, Blakehurst.

GENERAL CONDITIONS

Conditions endorsed by the Court**Schedule A - Site Specific Conditions**

1. The building subject of this approval being carried out in accordance with the plans and specifications accompanying Development Application 670/00 submitted 1 December 2000 and identified by DA00-DA10 Issue No. DA2A dated 21 May 2001, **in Exhibit 10, by Hill Thalys Architecture and Urban Projects** and landscape plan LA01C dated 21 May 2001, **in Exhibit 18, and landscape plan in Exhibit 26, both by D M Taylor Landscape Architects Pty Limited** and as amended by the following plans;

LPP043-21

- Construction of building works being carried out in accordance with the stamped approved plans accompanying this Section 96 modification to Development Consent No 670/00 submitted by Hill Thalys and identified by S96/01 – S96/08 Issue 7 dated 4 March 2005 except where amended by the consent conditions or any modified or additional conditions specified hereunder.

(This condition is amended as part of Modification 670/00/1)

- Construction of building works being carried out in accordance with the stamped approved plans accompanying the Section 96 consent dated 10 August 2005 and plans modifying townhouse 7 submitted by Hill Thalys and identified as Drawing No. CC01-CC04 dated 23 April 2007 issue G except where amended by the consent conditions or any modified or additional conditions specified hereunder.

(This condition is amended as part of Modification 670/00/2)

- Development works being carried out in accordance with the stamped approved plans accompanying the **Section 4.56 application dated 7 March 2020 (Issue B)** and identified as Drawing No.DA01-DA21 prepared by CAE Architecture and Landscape Plans prepared by iScape dated December 2019 except where amended by the conditions specified hereunder.

(This condition is amended as part of MOD2019/0247 (DA670/00))

- **Development works being carried out in accordance with the stamped approved plans accompanying the Section 4.56 application as per the following table, except where amended by the conditions specified hereunder:**

Description	Reference No.	Date	Revision	Prepared by
Site Plan	DA01	05/08/2021	D	CAE Architecture
Proposed Unit 1-2 & 7 Basement	DA02	05/08/2021	D	CAE Architecture
Proposed Unit 3-4 Basement Plan	DA03	05/08/2021	D	CAE Architecture
Proposed Unit 5-6 Basement Plan	DA04	05/08/2021	D	CAE Architecture
Proposed Unit 3-4 Ground Floor	DA05	05/08/2021	D	CAE Architecture

Proposed Unit 5-6 (Ground Floor	DA06	05/08/2021	D	CAE Architecture
Proposed Unit 7 (Ground Floor	DA07	05/08/2021	D	CAE Architecture
Proposed Unit 3-4 (First Floor	DA08	05/08/2021	D	CAE Architecture
Proposed Unit 5-6 (First Floor	DA09	05/08/2021	D	CAE Architecture
Proposed Unit 7 (First Floor	DA10	05/08/2021	D	CAE Architecture
Unit 1, 3-4 Eastern Elevation	DA11	05/08/2021	D	CAE Architecture
Unit 1-2, 7 Northern Elevation, Unit 1-2, 7 Southern Elevation	DA12	05/08/2021	D	CAE Architecture
Unit 2 & 4 Western Elevation	DA13	05/08/2021	D	CAE Architecture
Unit 3-4 Northern Elevation, Unit 3-4 Southern Elevation	DA14	05/08/2021	D	CAE Architecture
Unit 5-6 Northern Elevation, Unit 5-6 Southern Elevation	DA15	05/08/2021	D	CAE Architecture
Unit 5-7 Eastern Elevation, Unit 6-7 Western Elevation	DA16	05/08/2021	D	CAE Architecture

part of MOD2020/0223 (DA670/00))

2. The erection of a building in accordance with a Development Consent must not be commenced until:
 - * detailed plans and specifications of the building have been endorsed with a construction certificate by:
 - Council; or
 - an accredited certifier.
 - * the person having the benefit of the development consent has:
 - appointed a Principal Certifying Authority (PCA); and
 - notified Council (if Council is not the PCA) *in writing* of the appointment; and
 - given at least 2 days notice to Council of their intention to commence the erection of the building.
3. Any Construction Certificate issued in respect of this Development Consent only remains valid while the Development Consent is valid.
4. If the building is designed using *Building Code of Australia* (BCA) performance criteria, documentary evidence of compliance with the relevant BCA objectives is to be provided to Council with the Construction Certificate.

5. Prior to the issue of any Construction Certificate for this development the following is required:

Payment of a restoration deposit	\$4,385.00
Payment of PCA and Inspection Fee of:	\$3,290.00
Payment of a Long Service Levy of:	\$1,880.00 \$3,290.00
Driveway (Self-Design) Inspection Fee	\$150.00
Asset Inspection Fee:	\$110.00
Payment of a footpath levels fee of:	\$165.00
Payment of Section 94 Contributions of:	
- Roads and Traffic	\$125.84 \$157.87
- Local Open Space Embellishment	\$26,026.00 \$31,888.56
- District Open Space Embellishment	\$9,299.14 \$11,393.85
- Kogarah Libraries	\$2,846.70
Provision of details for Bureau of Statistics	

(This condition is amended as part of modification 670/00/2)

6. The approved plans relating to any Construction Certificate issued in respect of this Development Consent must be submitted to Sydney Water at least fourteen (14) days prior to commencement of work. The closest office of Sydney Water is at 564 Princes Highway, Rockdale.
7. Prior to the commencement of works, the Principal Certifying Authority must be informed in writing pursuant to Clause 29 of the *Local Government (Approvals) Regulation NSW 1993* of:

- * the name and contractor licence number of the licensee who has contracted to do or intends to do the work; or
- * the name and permit number of the owner-builder who intends to do the work.

Further, if a contract is entered into for the work to be done by a different licensee or arrangement for doing the work are otherwise changed, the Principal Certifying Authority is to be immediately informed in writing of sufficient particulars for it to update its records.

8. Approval is subject to the condition that the builder or person who does the residential building work complies with the applicable requirements of Part 6 of the *Home Building Act 1989* whereby a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work. It is the responsibility of the builder or person who is to do the work to satisfy the Principal Certifying Authority that they have complied with the applicable requirements of Part 6. The Principal Certifying Authority must not carry out any inspections in relation to the building works until a copy of the insurance certificate is received, and a copy is given to Council.
9. The following list of inspections should be the minimum number carried out during the course of this development and prior to the issue of any Occupation Certificate:
- * Erosion and sediment control measures.
 - * Earthworks/excavation.
 - * Building set out.

- * Concrete reinforcement.
 - * Timber and/or steel framework.
 - * Wet areas.
 - * Stormwater disposal.
 - * Mechanical work.
 - * Hydraulic work.
 - * Work associated with driveways and parking bays, including pavement and finishing.
 - * Landscaping work.
 - * External building finishes.
 - * Completion/Final.
10. A Compliance Certificate shall be issued prior to occupation and use of the building certifying that all building works and associated development have been constructed in accordance with the development consent and construction certificate.
 11. Underground pipes and cables may be affected by excavation works. Excavators are requested to contact NSW Dial Before You Dig Service by phoning 1100 at least two (2) days before work commences.
 12. No trees as defined by Council's Tree Preservation Order being removed from the site without the prior written approval of Council.
 13. No work in connection with the demolition of existing buildings: excavation or earth works on or adjacent to the site; use of power operated plant such as compressors, jack hammers, bulldozers, excavators and/or loaders, woodworking machines, (ie, saws, planers, etc.) use of explosive fixing guns, use of concrete or cement mixers, floating and/or trowelling machines, vibrators, concrete delivery wagons, hoists or winches, use of welding and/or riveting machines and the like, removal or placing of concrete forms; placing or tying of steel reinforcement of structural members; fixing of timber framework; stacking or handling of bricks or blocks; or any other building activity involving objectionable noise being carried out between the hours of 7.00 pm to 7.00 am, Mondays to Saturdays inclusive and no such work being carried out on Sundays, Good Friday and Christmas Day.
 14. This Development Application approval or any related Construction Certificate does not allow for any form of road or footpath opening to be made external to the subject property boundary. Should such an opening be required a separate application will have to be approved through the Engineering Services Section. Applications may be made at Council's Customer Service Centre at 84 Railway Parade, Kogarah.
 15. Erosion and sediment control measures are to be undertaken during the course of construction, in accordance with "*Sediment and Erosion Control Guidelines*". Failure to implement and maintain appropriate measures will result in a \$750.00 Penalty Infringement Notice (individual) or \$1,500.00 (corporations) being issued and/or the incurring of a maximum penalty of \$120,000.00 (individual) and \$250,000.00 (corporation) through the Land and Environment Court.
 16. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
 17. 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.

18. 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 must be provided; and
 - * adequate provision must be made for drainage.
19. If the work involved in the erection or demolition of a building:
- * is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or
 - * involves the enclosure of a public place:
 - a hoarding or fence must be erected between the work site and the public place;
 - if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place;
 - if the work site is likely to be hazardous to persons in the public place, it must be kept lit between sunset and sunrise;
 - any such hoarding, fence or awning is to be removed when the work has been completed.
20. A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- * stating that unauthorised entry to the work site is prohibited; and
 - * showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours; and
 - * showing the name and telephone number of the builder or owner-builder, if not the same as (b); and
 - * the licence number of the builder or permit number of the owner-builder.
21. Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
- Each toilet provided:
- * must be a standard flushing toilet; and
 - * must be connected:
 - to a public sewer; or
 - if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
 - if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.
- The provision of toilet facilities must be completed before any other work is commenced.
22. All building work must be carried out in accordance with the provisions of the Building Code of Australia, except where an exemption is in force under clause 80H or 80I of the

Environmental Planning and Assessment Amendment Regulation 1998 subject to the terms of any condition or requirement referred to in clause 80H(6) or 80I(4).

23. The owner and/or builder is requested to install approved smoke detectors at suitable locations within the building. For further advice please contact Council's Development & Health Department.
24. A suitable clothes line facility being provided within the courtyard to each villa/townhouse.
25. Television antennas being provided and located where possible within the roof space and all ducting associated with the antennas being concealed.
26. The site and size of proposed household mail boxes being in accordance with the requirements of Australia Post.
27. The proposed building not being erected at a height greater than that indicated on the approved plan.
28. Any lighting of the premises shall be installed so as to avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads. Flashing lights or moving signs are prohibited.
29. Pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*, payment shall be made to Council of \$125.84 as a contribution for Roads and Traffic Management facilities levied under Section 94 Contributions Plan No. 1 – Roads and Traffic Management. This Plan may be inspected at the Kogarah Council Civic Centre, 2 Belgrave Street, Kogarah.

The Section 94 Contribution is based on a potential additional population of 17.6 persons.

This contribution will be indexed from the date of consent to allow for cost increases and must be paid prior to the issue of the required Construction Certificate/Subdivision Certificate.

30. Pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*, payment shall be made to Council of a contribution in respect of the following:-

Local Open Space Embellishment	\$26,026.00
District Open Space Embellishment	\$9,299.14
Total	\$35,325.14

These amounts have been levied under Section 94 Contributions Plan No. 5 – Open Space – Residential Development. This Plan may be inspected at the Kogarah Council Civic Centre, 2 Belgrave Street, Kogarah.

The Section 94 contribution is based on a potential additional population of 17.6 persons.

This Contribution will be indexed from the date of consent to allow for cost increases and must be paid prior to the issue of the required Construction Certificate.

31. Pursuant to Section 94 of the *Environmental Planning and Assessment Act 1979*, payment shall be made to Council of ~~\$2,690.59~~ **\$2,846.70** as a contribution for Library Facilities levied under Section 94 Contributions Plan No. 9 – Kogarah Libraries. This Plan may be inspected at the Kogarah Council Civic Centre, 2 Belgrave Street, Kogarah.

The Section 94 contribution is based on a potential additional population of 17.6 persons.

This contribution will be indexed from the date of consent to allow for cost increases and must be paid prior to the issue of the required Construction Certificate.

(This condition was amended by modification 670/00/2)

32. The proposed internal vehicular driveway being constructed in accordance with Council's standard gradient requirements in accordance with Australian Standard AS 2890.1.
33. All existing vehicular crossing adjacent to the subject premises that have become redundant shall be removed and the footway and kerb and gutter reinstated at the developer/applicant's expense.
34. The developer bearing the cost of the construction of two heavy duty driveways and open crossings, the closure of any redundant driveways plus all associated bitumen and turf restorations. In addition, the developer bearing the cost of restoring any roadway etc, damaged by public authorities in the course of providing services to the proposed development or by the developer during the course of construction. In this regard, the developer should provide a bond or Bank Guarantee of \$4,385.00.
35. All roof water and service water from paved or concreted areas are to be disposed of in accordance with the stormwater details prepared by Harrison Friedmann & Associates dated 25 November 2000, subject to the following conditions:
- * a developer is to take out a road opening permit prior to any works across Council's reserve;
 - * certification, by the design engineer, with regard to the stormwater treatment system is to be submitted to the Council at the completion of all drainage works;
 - * pit form work is to be inspected prior to the pouring of concrete;
 - * a works-as-executed plan, certified by the design engineer, is to be submitted to Council at the completion of all drainage works;
 - * an inspection of the completed system is to be carried out by an accredited certifier;
 - * a positive covenant is to be placed over the on-site detention system and stormwater treatment to ensure its maintenance and operation of the design capacity; and
 - * regular inspections, cleaning and maintenance (every six months) on the detention and treatment systems are to be carried out. Such a requirement is to be incorporated into the positive covenant.
36. The *Corymbia citriodora* at the front of the property is to be retained. All other existing shrubs and trees are not significant and therefore may be removed to accommodate the proposed development. Conditions for retention are stated below.

37. The *Corymbia citriodora* at the front of the property shall be preserved and protected during construction and demolition. A protective fence (1.5 metres high) shall be erected around the base of the tree at minimum distance 2 metres. A layer of organic mulch 100 millimetres thick shall be placed over the protected area. There shall be no services directed through the drip line of the tree.
38. The *Callistemon sp.* on Council's nature strip in front of the proposed development shall be preserved and protected during construction and demolition. A protective fence (1.5 metres high) shall be erected around the base of the tree at a minimum distance of 3 metres. A layer of organic mulch 100 millimetres thick shall be replaced over the protected area. There shall be no soil, fill, spoilage, cutting or excavating within the protected area. There shall be no services directed through the drip line of the tree.
39. A street tree of similar species to that of the existing one shall be planted on the nature strip in front of the development. The tree shall be NATSPEC grown tree, as per the NATSPEC for "Purchasing Landscape Trees". The tree shall have a minimum pot/container size of 75 litres.
- * The cost of the tree shall be borne by the developer.
 - * The tree shall be staked as per usual practice.
 - * The tree shall be planted prior to the final building inspection.
 - * The developer/owner shall contact service providers and Kogarah Council to identify all underground services prior to planting the tree.
 - * The developer/owner shall incur all costs for damage to Council property, private property and any utility service.
 - * The developer/owner and/or tradespersons working on the developer's behalf shall have a current Public Liability Insurance Policy valued to \$10 million.
 - * The work shall be done in accordance with all WorkCover Authority guidelines and requirements.
 - * Barriers shall be used to secure the immediate area.
 - * Signs shall be erected informing the public to keep clear of the site.
 - * This area shall be cleaned up and left in a tidy state.
40. If any branches of neighbouring trees need to be pruned to accommodate the proposed development, a separate application shall be submitted in writing to Council, requesting permission to prune. In addition, the applicant shall notify the owner of the tree about the proposed pruning. No pruning work shall take place until a written confirmation from Council has been received.
41. The existing trees on the property can be pruned to accommodate the proposed development. Trees are to retain their shape, height and character after pruning. Dead wooding of canopy should be ensured. The canopy of tree can be raised until clearance is achieved. A qualified and experienced arborist should do pruning.
42. The planter boxes shall be constructed as per the details on the landscape plan. These shall have drainage cells, filter fabric and waterproofing membrane and shall drain to appropriately positioned drainage outlets. The planter boxes shall have a minimum depth of 600mm and minimum width of 600mm.
43. The garden beds shall be mulched using organic leaf/pine bark mulch or similar approved material. The mulch shall spread a minimum of 100 millimetres thick over the entire garden bed areas.

44. The ground cover plants shall be planted in accordance with the approved landscaping plan.
45. All plant material shall be of high quality, free of pests, diseases and any structural defects.
46. Advanced trees shall be staked using at least two hardwood stakes, 2 metres high x 50mm x 50mm. These stakes shall be driven into the ground outside of the tree's rootball area. Hessian tie or similar shall be used to secure the trees.
47. An automatic irrigation system shall be installed along the entire planter box and garden bed areas. The system shall be designed to comply with AS 2698, AS2698.1-1994, AS2698.2-1985, AS2698.3-1990, Water Board regulations and any other relevant authorities.
48. The brick edging shall be placed as according to the landscape plan.
49. The turf shall be free of weeds, pests and disease. The area to be turfed shall be levelled prior to laying turf. The preparation shall be according to the landscape plan. The turf shall be butted flush and finished with a suitable top dressing material.
50. Walls separating sole occupancy units need to comply with the construction and Fire Resistance Levels (FRLs) required by [Volume 2, Section 3.7.1.8]. No changes to the plans are necessary to accommodate this.
51. A plan of management to Council's satisfaction in regard to the excavation to be carried out on site is to be lodged with the Construction Certificate.
52. That a *Eucalyptus pilularis* and *Eucalyptus piperita* be included in the plant schedule along the western boundary.
53. That demolition approval is granted for the partial demolition of the existing building in accordance with the approval plus and heritage impact assessment prepared by Architectural Projects to permit construction of the proposed development.
54. That dilapidation reports with respect to the following properties be lodged with the Construction Certificate, subject to the agreement of the owners:
 - * 2, 6, 10, 12 and 14 Marie Dodd Crescent;
 - * 76, 78 and 80 Townson Street.
 - * 8, 10 and 10A Coogarah Street.
55. A rainwater collection tank is to be incorporated into the stormwater details prepared by Harrison Friedman & Associates dated 25 November 2000 and lodged with the Council with the Construction Certificate.
56. A new lapped and capped fence 1.8 metre in height shall be erected to replace the existing paling fence on the boundary with No 6 Marie Dodd Crescent.
57. The southern driveway of the subject premises to be amended to generally comply with the driveway realignment plan dated July 2001 by Hill Thalys. Details of the amendment to be lodged with the Council with the Construction Certificate in Exhibit 16, Annexure D.

58. No landscaping shall be carried out on the 600mm buffer on the southern side of the access driveway adjacent to Townhouses No 1 and 2 except in consultation with the owners of No 6 Marie Dodd Crescent.
59. The *pittosporum tree* on the northern boundary behind No 78 Townson Street to be retained in the landscape plan.
60. The windows to the north facing bedrooms of Townhouses No 5 and 6 shall have the lower half to be of fixed translucent glazing.
61. The windows to the south facing rooms on the ground floor of Townhouse No 7 shall have fixed translucent glazing in any part of the windows within 1.7 metres of the floor level.
62. That the louvres proposed along the southern side of the driveway to Townhouses No 5 and 6 be deleted and the natural rock outcrop be retained.

New Condition

63. The installation of the lifts within the townhouse is not to result in an increase in the approved height of the townhouses.

(This condition was added as part of modification 670/00/2)

New Conditions

64. The following windows shall be constructed of obscure glazing to minimise overlooking and preserve and maintain internal privacy;
 - The new windows to the WC and Laundry on the ground floor to Unit 2.
 - The new windows to the WC and Laundry on the ground floor to Unit 7.
 - Bathroom and ensuite windows on the first floor level to Units 3 and 4.
 - Bathroom windows at the first floor level to Units 5 and 6.
 - Ensuite adjoining the master bedroom at the first floor level to Unit 7.

(This condition is added as part of MOD2019/0247 (DA670/00))

65. The following design changes are required to ensure the originally approved architectural integrity and presentation of the development is maintained;
 - All window and door openings to the heritage item (Units 1 and 2) and the height of this building shall reflect the approved plans prepared by Hill Thalys, Drawing No.s S96/01 – S96/08 and dated 4 March 2005.
 - The southern facing windows to the formal living area (ground floor) and to the master bedroom on the first floor level to Unit 7 shall have the same proportions and be aligned.
 - The southern facing windows to the study (ground floor) and to the staircase on the first floor level shall have the same proportions and be aligned.
 - The window along the southern side to the casual dining area on the ground floor of Unit 7 shall be the same as the upper level double window proposed to the first floor ensuite along the southern side and these two windows shall be aligned.
 - The roof and parapet height and roof detailing for Unit No.7 shall be consistent with the design details in plans drawn by Hill Thalys Drawing No.s S9602, S9603, S9604 and dated 23 April 2007.

- All the proposed materials, finishes and colours shall be consistent with the originally approved design.

(This condition is added as part of MOD2019/0247 (DA670/00))

66. **Landscaping** – The fencing to the north of the swimming pool to Townhouse 7 shall be deleted and relocated to be aligned with the edge of the entry gate. The fencing along the southern side of Townhouses 5 and 6 shall be deleted and reduced so that the open “central garden” area shall be reinstated as per the design detail in the originally approved Landscape Plan prepared by D.M Taylor dated 21/11/2000. This central communal garden space between Townhouses 5, 6 and 7 shall be treated and designed as per this plan and shall include an area of deep soil planting, grass and inclusion of two larger trees as depicted in that plan.

(This condition is added as part of MOD2019/0247 (DA670/00))

67. **Swimming Pools – Use and Maintenance** - The following apply to the construction, use and maintenance of swimming pools and spas:
- (a) no ground level may be raised or filled except where shown specifically on the approved plans;
 - (b) all pool/spa waste water is to be discharged to the sewer according to the requirements of Sydney Water;
 - (c) the swimming pool must not be used for commercial or professional purposes;
 - (d) drain paved areas to the landscaped areas or a suitable lawful drainage system; and
 - (e) arrange any external pool/spa lighting to minimise glare nuisance to adjoining owners.

(This condition is added as part of MOD2019/0247 (DA670/00))

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

(This condition is added as part of MOD2019/0247 (DA670/00))

69. **Swimming Pools – Resuscitation Notice** - An expired air resuscitation warning notice complying with the [Swimming Pools Act 1992](#) must be affixed in a prominent position adjacent to the pool.

(This condition is added as part of MOD2019/0247 (DA670/00))

70. **Private Swimming Pools & Spas – Pump Noise** - The swimming pool/spa pump and associated equipment must be located so that the noise emitted does not exceed 5dB(A) above the background level. If this cannot be achieved, a ventilated and sound-proofed enclosure must enclose the pump to achieve the required noise levels.

(This condition is added as part of MOD2019/0247 (DA670/00))

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

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

(This condition is added as part of MOD2019/0247 (DA670/00))

Advices and notes

72. **Register your Swimming Pool** - All swimming pools in NSW are required to be registered. Fines apply for pools that are not registered. To register please visit: swimmingpoolregister.nsw.gov.au

(This condition is added as part of MOD2019/0247 (DA670/00))

73. **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.

(This condition is added as part of MOD2019/0247 (DA670/00))

74. **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.

(This condition is added as part of MOD2019/0247 (DA670/00))

75. **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.

(This condition is added as part of MOD2019/0247 (DA670/00))

KOGARAH Council



Standard Development Conditions

These Conditions apply to all construction works within Kogarah Municipality that are the subject of a valid Development Consent issued by Kogarah Council. These Conditions apply regardless of whether Kogarah Council or a private accredited certifier is the nominated Principal Certifying Authority for the development.

Conditions

COMPLIANCE WITH APPROVED PLANS

1. Construction of building works given Development Consent must be carried out in accordance with the stamped approved plans and specifications accompanying the submitted Development Application, except where amended by the conditions attached to the Development Consent.
2. Any changes to the approved development may require formal approval from Council in the form of a Section 96 modification under the Environmental Planning & Assessment Act, 1979. The Applicant or Developer is to consult with Council Officers prior to any changes being carried out. Failing to do so may result in construction work delays or even the requirement to demolish any unauthorised work.
3. The erection of a building which is the subject of a Development Consent must not be commenced until:
 - (i) detailed plans and specifications of the building have been endorsed with a construction certificate by:
 - Council; or
 - an accredited certifier.
 - (ii) the person having the benefit of the development consent has:
 - appointed a Principal Certifying Authority (PCA); and
 - notified Council (if Council is not the PCA) in writing of the appointment;
 - given at least 2 days notice to Council of their intention to commence the erection of the building. Notice may be in writing or by phone.
4. Any Construction Certificate issued in respect of a Development Consent only remains valid while the Development Consent is valid.
5. All building work must be carried out in accordance with the provisions of the Building Code of Australia, except where an exemption is in force under clause 80H or 80I of the *Environmental Planning and Assessment Amendment Regulation 1998* subject to the terms of any condition or requirement referred to in clause 80H(6) or 80I(4).
6. If a building is designed using Building Code of Australia performance criteria, documentary evidence of compliance with the relevant BCA objectives is to be provided to Council with the Construction Certificate.

Standard Development Conditions

KOGARAH Council

LPP043-21

BUILDER OR OWNER-BUILDER DETAILS

7. Prior to the commencement of works, the Principal Certifying Authority must be informed in writing of:-
- the name and contractor licence number of the licensee who has contracted to do or intends to do the work;
 - the name and permit number of the owner-builder who intends to do the work, with a copy of the permit submitted; &
 - the date of their intention to commence the erection of the building.

Further, if a contract is entered into for the work to be done by a different licensee or arrangement for doing the work are otherwise changed, the Principal Certifying Authority is to be immediately informed in writing of sufficient particulars for it to update its records.

HOME WARRANTY INSURANCE

8. The builder or person who does the residential building work must comply with the applicable requirements of Part 6 of the Home Building Act, 1989. This means a person must not contract to do any residential building work unless a contract of insurance that complies with this Act is in force in relation to the proposed work.

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

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

INSPECTIONS

9. inspections of the work in progress by the Principal Certifying Authority must be undertaken. The recommended minimum number and type of inspections is detailed in the Development Consent. If these inspections are not carried out, delays, additional costs and possibly demolition of works may result. If Council is the Principal Certifying Authority, inspections can be requested by calling the Customer Service Centre on 9330 9400. To enable prompt service, bookings for inspections should be made during the previous working day.

DIAL BEFORE YOU DIG

10. Underground pipes and cables may be affected by excavation works. Excavators are requested to contact NSW *Dial Before You Dig* Service by phoning 1100 at least two (2) days before work commences.

PERMITTED HOURS OF WORK

11. The following is only permitted to take place on or adjacent to the development site between the hours of 7:00 am to 5:00pm on Monday to Friday and 7.00am to 1.00pm on Saturdays and not at all on Sundays and Public Holidays:

- use of power operated tools or machinery;
- use of power operated plant such as compressors, jack hammers, bulldozers, excavators and/or loaders;
- use of woodworking machines (i.e. saws, planers etc.);

Standard Development Conditions

KOGARAH Council

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- use of explosive fixing guns;
- use of concrete or cement mixers;
- use of floating and/or trowelling machines, vibrators, concrete delivery wagons, hoists or winches;
- use of welding and/or rivetting machines and the like,
- removal or placing of concrete forms;
- placing or tying of steel reinforcement of structural members;
- nailing and fixing of timber framework;
- stacking or handling of bricks or blocks;
- or any other building activity creating objectionable noise.
- Any heavy vehicles including delivery of excavation and other plant and equipment including construction vehicles are restricted to the following hours:
 - 7.00am to 5.00pm - Monday to Friday
 - 7.00am to 1.00pm - Saturdays
 With no delivery of heavy vehicles on Sundays or Public Holidays.

SYDNEY WATER

12. The approved plans relating to any Development Consent must be submitted to Sydney Water Quick Check agent or Customer Centre to determine whether the development 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 stamped. For Quick Check agent details please refer to "Your Business" section of Sydney Water's web site at www.sydneywater.com.au or telephone 13 20 92. A Quick Check agent or Sydney Water

must stamp the plans before the issue of a Construction Certificate.

ROAD OPENING

13. A Development Consent or any related Construction Certificate does not allow for any form of road or footpath opening to be made external to the subject property boundary. Should such an opening be required a separate application will have to be approved through the Engineering Services Section. Applications may be made at Council's Customer Service Centre at 84 Railway Parade, Kogarah.
14. The applicant/developer shall bear the cost of restoring any footpath, roadway, etc damaged by public authorities in the course of providing services to the proposed building works.

EROSION & SEDIMENT CONTROL

15. Erosion and sediment control measures are to be undertaken during the course of construction, in accordance with "Sediment and Erosion Control Guidelines". Failure to implement and maintain appropriate measures may result in a \$750 Penalty Infringement Notice (individual) or \$1,500 (corporations) being issued and/or the incurring of a maximum penalty of \$120,000 (individual) and \$250,000 (corporation) through the Land and Environment Court.

PROTECTION OF BUILDING SITE

16. All excavations and backfilling associated with the erection or demolition of a building must be

Standard Development Conditions

KOGARAH Council

executed safely and in accordance with appropriate professional standards.

17. 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.
18. Excavation works - 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.
19. A hoarding or fence must be erected between the work site and the public place if:
 - the work involved in the erection or demolition of a building is likely to cause obstruction or inconvenience to pedestrian or vehicular traffic in a public place; or
 - if it involves the enclosure of a public place.
20. If necessary an awning is to be erected which is sufficient to prevent any substance from or in connection with the work from falling into a public place.
21. Any such hoarding, fence or awning is to be removed when the work has been completed.
22. If the work site is likely to be hazardous to persons in a public place, it must be kept lit between sunset and sunrise.
23. A sign must be erected in a prominent position on any work site on which work involved in the

erection or demolition of a building is being carried out:

- stating that unauthorised entry to the work site is prohibited; and
 - showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours; and
 - showing the name and telephone number of the builder or owner-builder, if not the same as above;
 - the licence number of the builder or permit number of the owner-builder, and
 - showing the name and telephone number of the Principal Certifying Authority (PCA) whether it be Kogarah Council or a Private Certifier.
24. The applicant is to indemnify Council against any injury to persons or damage to property occurring in any public place adjacent to the development site caused by the operation of mechanical equipment or the delivery of materials associated with works on the development site.
 25. All building materials or waste containers must be stored within the confines of the site. The storage of such building materials, waste containers or equipment associated with the project upon the public roadway, including the pedestrian footway or unpaved verge, is prohibited.

Standard Development Conditions

KOGARAH Council

LPP043-21

SITE TOILETS

26. Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.
- Each toilet provided must be a standard flushing toilet and must be connected:
 - to a public sewer; or
 - if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
 - if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.
 - The provision of toilet facilities must be completed before any other work is commenced.

NEW MAIL BOXES

27. Mail boxes should have minimum dimensions 330mm x 230mm x 160mm high and be erected so the aperture is between 0.9m and 1.2m above the ground.

Street numbers should be prominently displayed on or near the boxes.

All mail boxes need to be located on the footpath boundary of the property within easy reach for the postie.

28. In multi-unit buildings the location of mail boxes needs approval from an Australia Post local delivery centre representative. Under no circumstances are they allowed in driveways or any other area used by motor vehicles. Nests of mail boxes for multiple dwellings need to have apertures between 0.6m and 1.6m above the ground.


LANDSCAPE AND TREE MANAGEMENT

29. No trees as defined by Council's Tree Preservation Order are to be removed from the site unless specifically permitted for removal in the Development Consent or by the separate prior written approval of Council.
30. Any landscape works are to be in strict accordance with the approval plans and details specified within Council's Landscape and Tree Management Guidelines (available at the Customer Service Centre).
31. The removal, replacement, retention or pruning of existing trees on site or within Council's nature strip are subject to approval from Council and are to be carried out in accordance with the requirements within Council's Landscape and Tree Management Guidelines (available at the Customer Service Centre).

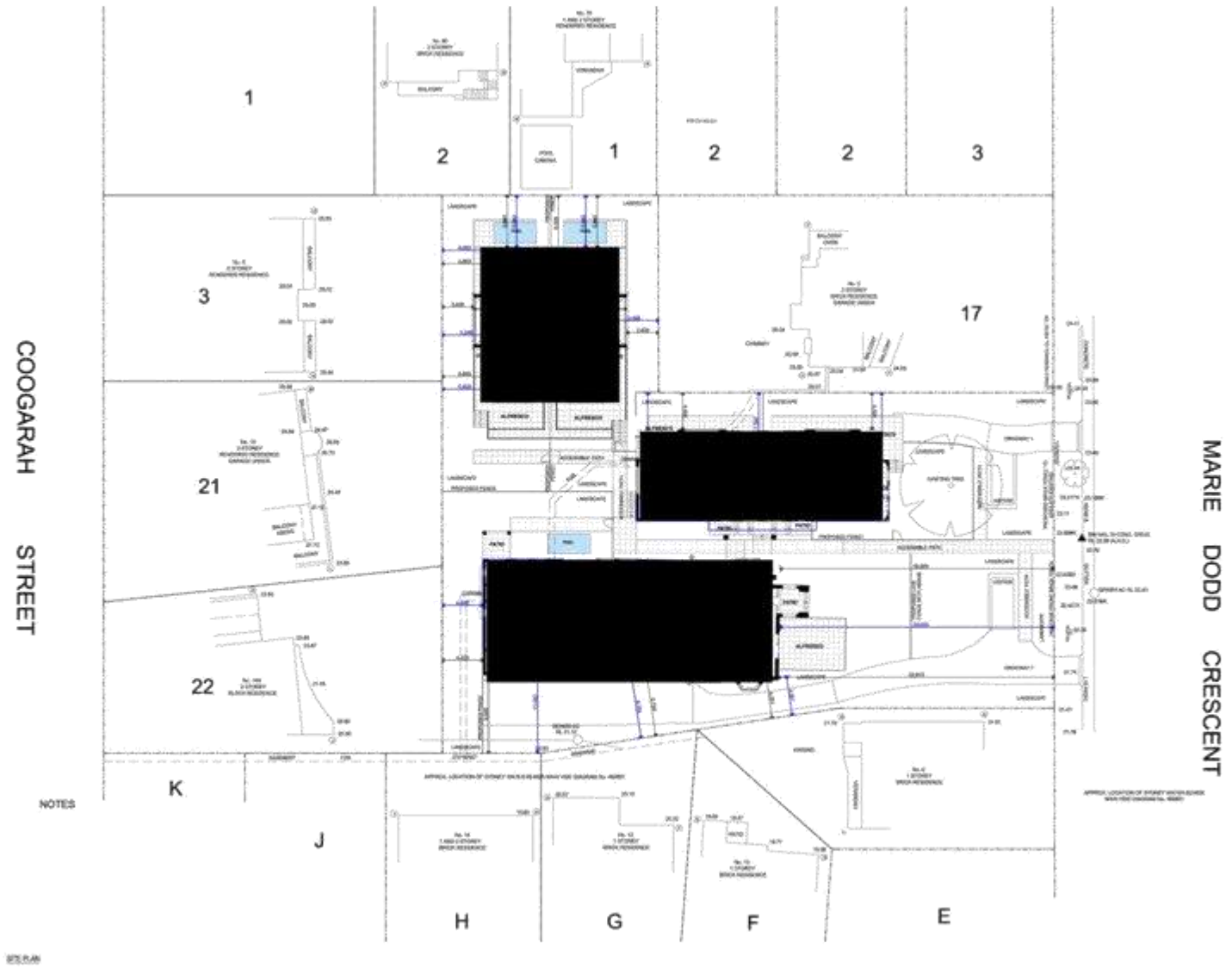
AIR CONDITIONERS

32. A separate Development Application is required for the installation of an air-conditioning unit/system on any property within Council, unless all the criteria contained within the Exempt and Complying Development Control Plan is satisfied. Clarification should be sought from Council in all instances.

ATTACHMENTS

Attachment [↓](#) 1 

Site Plan and Elevations - 4 Maree Dodd Crescent Blakehurst



COOGARAH STREET

MARIE DODD CRESCENT

NOTES

22/8/21

<p>DATE: 22/8/21 PREPARED BY: [Redacted] CHECKED BY: [Redacted] APPROVED BY: [Redacted]</p>	<p>NO. 10 4 MARIE DODD CRESCENT BLAKEHURST NSW 1571</p>	<p>NO. 10 4 MARIE DODD CRESCENT BLAKEHURST NSW 1571</p>	<p>NO. 10 4 MARIE DODD CRESCENT BLAKEHURST NSW 1571</p>	<p>NO. 10 4 MARIE DODD CRESCENT BLAKEHURST NSW 1571</p>	<p>NO. 10 4 MARIE DODD CRESCENT BLAKEHURST NSW 1571</p>	<p>NO. 10 4 MARIE DODD CRESCENT BLAKEHURST NSW 1571</p>	<p>NO. 10 4 MARIE DODD CRESCENT BLAKEHURST NSW 1571</p>
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CAE CAE ARCHITECTURE
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 PH: 02 9439 4000
 FAX: 02 9439 4001
 WWW.CAEARCHITECTURE.COM.AU



UNIT 1, 3-4 EASTERN ELEVATION
 1:100

**EASTERN ELEVATION TO UNIT
 1-2 TO REMAIN UNCHANGED**



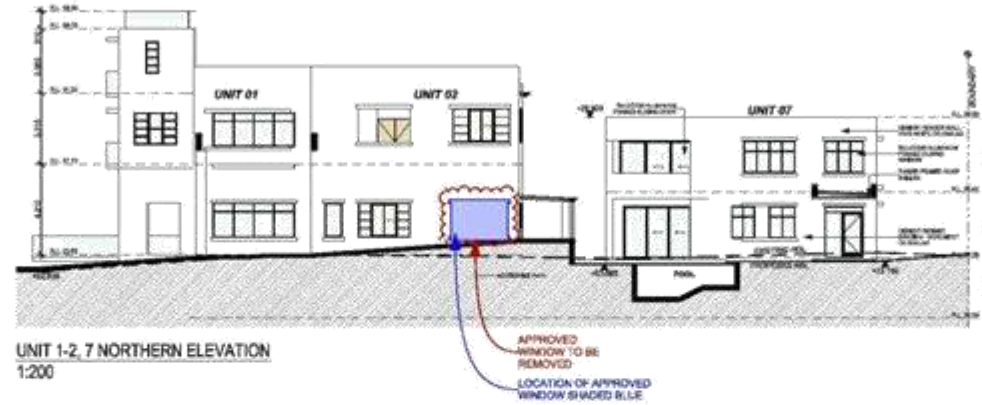
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01/03/2021	ISSUE AMENDMENT FOR COUNCIL INFORMATION	A	
02/03/2021	ISSUE FOR MODIFICATION APPLICATION	C	

ADDRESS	PROJECT	CLIENT	DESIGNED BY	DRAWN BY	CHECKED BY
4 MARIE DODD CRESCENT, BLAKEHURST	MULTI-DWELLING HOUSING	GEORGES RIVER COUNCIL	CAE ARCHITECTURE	BLH	BLH

DRAWING TITLE	DRAWING NO	DATE
UNIT 1, 3-4 EASTERN ELEVATION	2415	20/08/21

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DATE	DESCRIPTION	ISSUE
13/03/20	ISSUE FOR DEVELOPMENT APPLICATION	A
01/03/20	ISSUE AMENDMENT FOR COUNCIL INFORMATION	B
07/03/20	ISSUE FOR MODIFICATION APPLICATION	C

ADDRESS	4 MARIE DODD CRESCENT, BLAKEHURST
PROJECT	MULTI-UNIT RESIDENCING
LGA	GEORGES RIVER COUNCIL
STRAT	DEVELOPMENT APPLICATION
CLIENT	COFF INCENTIV
DESIGNED BY	CAE ARCHITECTURE
DRAWN BY	BLH
CHECKED BY	BLH

DRAWING TITLE	UNIT 1-2, 7 NORTHERN ELEVATION, UNIT 1-2, 7 SOUTHERN ELEVATION
DRAWING NO	2014

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DATE	08/21

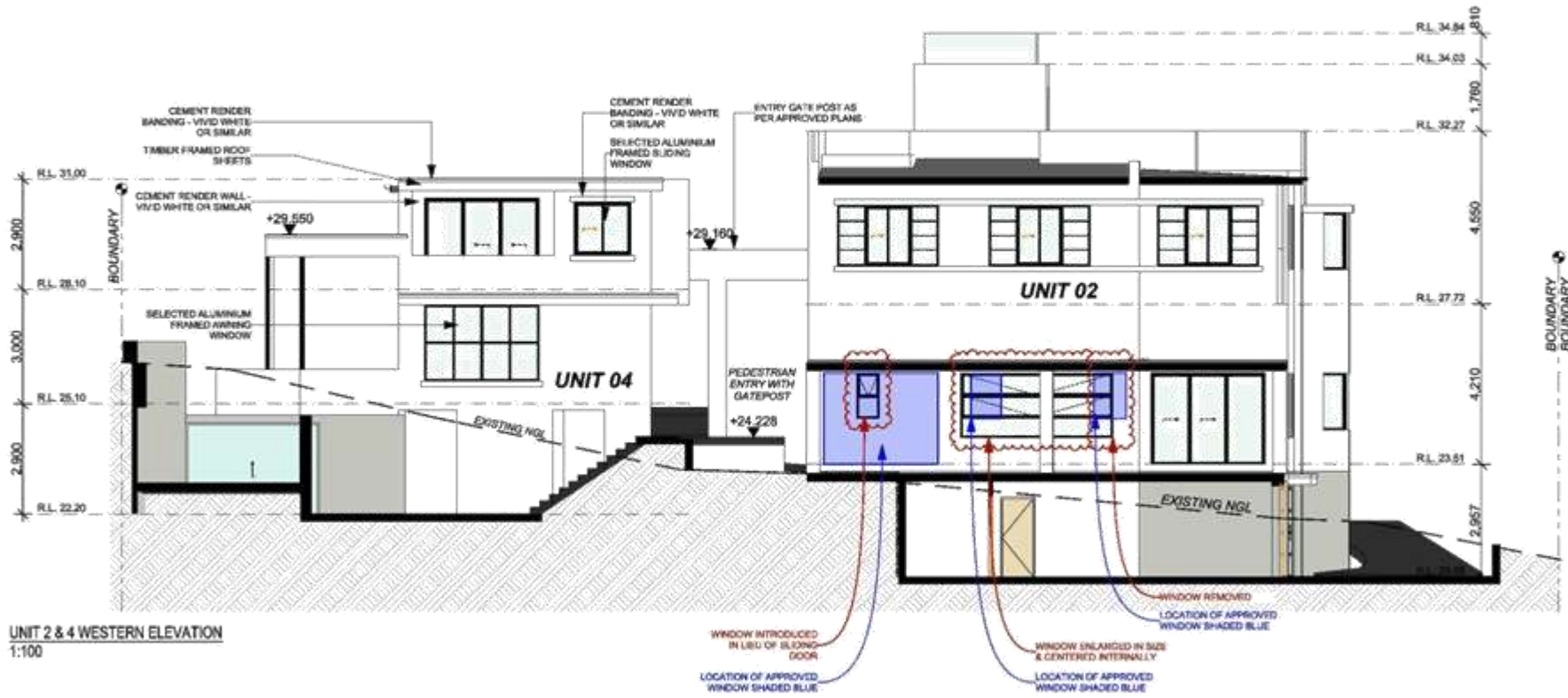
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UNIT 2 & 4 WESTERN ELEVATION
 1:100

DATE	DESCRIPTION	BY	CHKD BY
19/08/2021	ISSUE FOR DEVELOPMENT APPLICATION	A	
01/03/2020	ISSUE AMENDMENT FOR COUNCIL INFORMATION	A	
02/08/2019	ISSUE FOR MODIFICATION APPLICATION	C	

ADDRESS	4 MARIE DODD CRESCENT, BLAKEHURST
PROJECT	MULTI-DWELLING HOUSING
LGA	GEORGES RIVER COUNCIL
STAGE	DEVELOPMENT APPLICATION
CLIENT	COV BUILDING
DESIGNED BY	CAE ARCHITECTURE
DRAWN BY	BLH
CHECKED BY	BLH

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DRAWING NO	044

SCALE	1:100
DATE	19/08/2021

CAE ARCHITECTURE

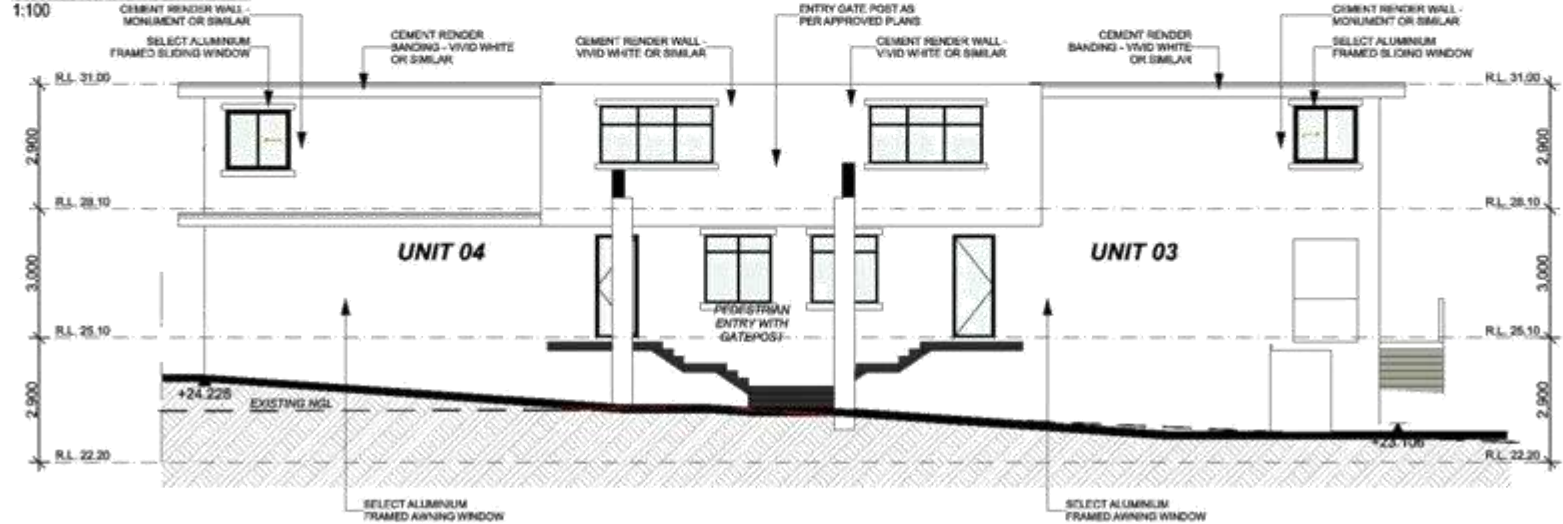
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NOTES

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UNIT 3-4 NORTHERN ELEVATION
1:100



UNIT 3-4 SOUTHERN ELEVATION
1:100



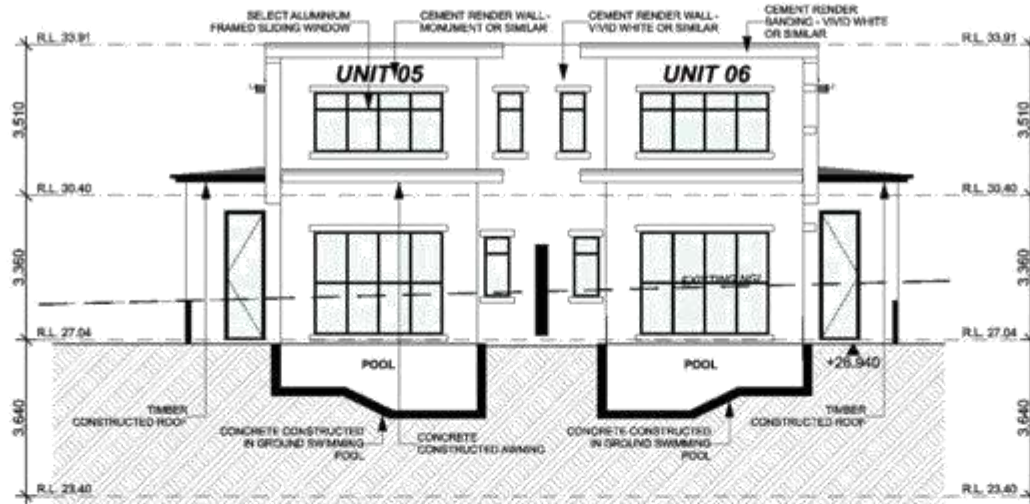
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02	REVISION FOR COUNCIL INFORMATION	19/08/2021
03	REVISION FOR MODIFICATION APPLICATION	19/08/2021

ADDRESS	4 MARIE DODD CRESCENT, BLAKEHURST
PROJECT	MULTI-DWELLING HOUSING
LGA	GEORGES RIVER COUNCIL
STAGE	DEVELOPMENT APPLICATION
CLIENT	COE ARCHITECTURE
DESIGNED BY	COE ARCHITECTURE
DRAWN BY	BLH
CHECKED BY	BLH

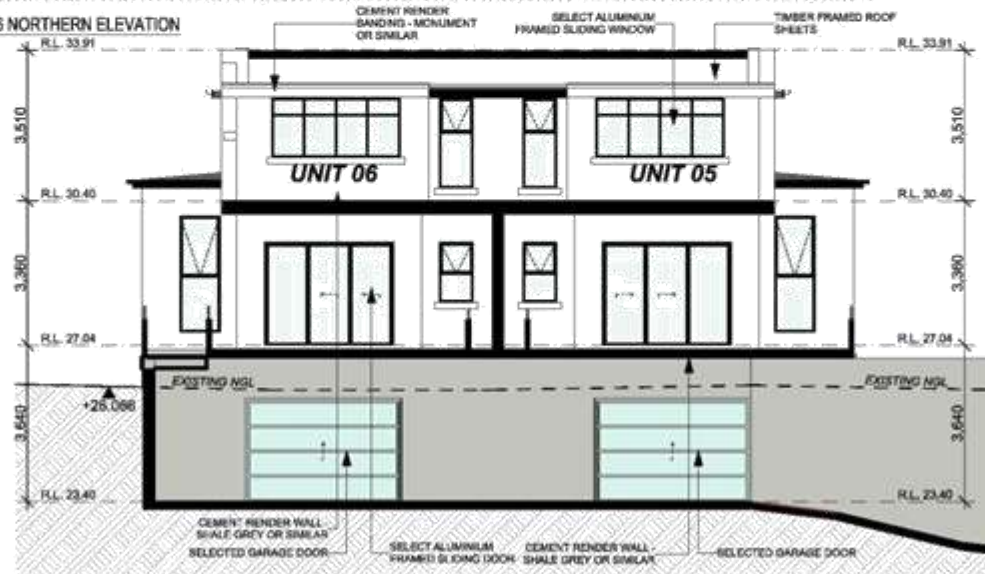
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DATE	19/08/2021

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UNIT 5-6 NORTHERN ELEVATION
1:100



UNIT 5-6 SOUTHERN ELEVATION
1:100



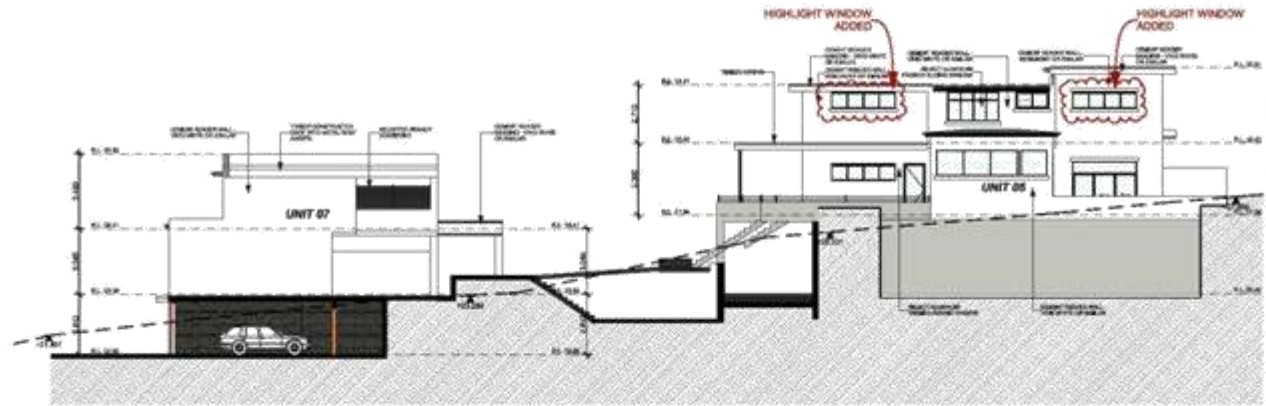
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01/03/20	ISSUE FOR COUNCIL INFORMATION	B
07/03/20	ISSUE FOR MODIFICATION APPLICATION	C

ADDRESS	4 MARIE DODD CRESCENT, BLAKEHURST
PROJECT	MULTI-DWELLING HOUSES
LGA	GEORGES RIVER COUNCIL
STRAP	DEVELOPMENT APPLICATION
CLIENT	COE ARCHITECTURE
DESIGNED BY	CAE ARCHITECTURE
DRAWN BY	BLH
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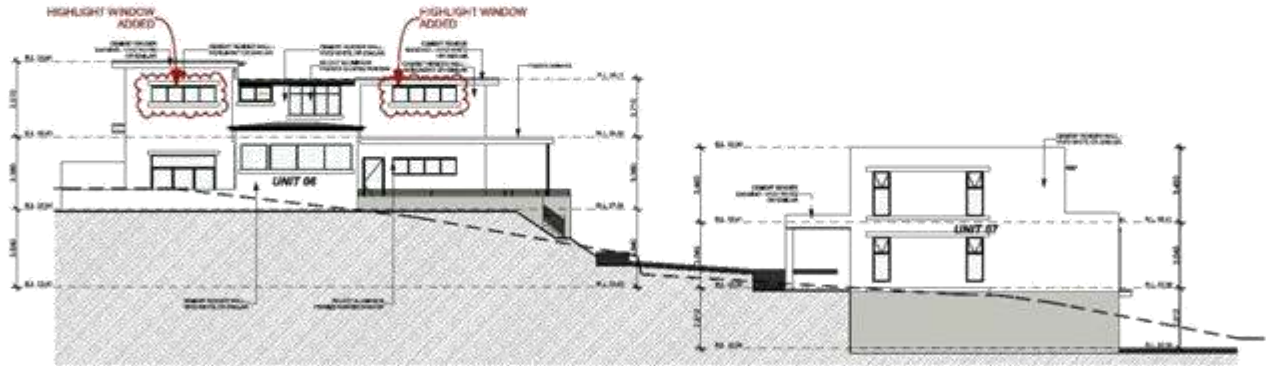
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UNIT 5-7 EASTERN ELEVATION
 1:200



UNIT 6-7 WESTERN ELEVATION
 1:200



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01/23/21	ISSUE FOR DEVELOPMENT APPLICATION FOR COUNCIL INFORMATION	B	BLH	BLH
01/28/21	ISSUE FOR MODIFICATION APPLICATION	C	BLH	BLH

ADDRESS	4 MARIE DODD CRESCENT, BLAKEHURST
PROJECT	MULTI-UNIT RESIDENCE
LGA	GEORGES RIVER COUNCIL
STAGE	DEVELOPMENT APPLICATION
CLIENT	COFF INCENTIVE
DESIGNED BY	CAE ARCHITECTURE
DRAWN BY	BLH
CHECKED BY	BLH

DRAWING TITLE	UNIT 5-7 EASTERN ELEVATION, UNIT 6-7 WESTERN ELEVATION
DRAWING NO	044
SCALE	1:200
DATE	01/28

NOTES
 1. DO NOT SCALE FROM DRAWING. USE DIMENSIONS SHOWN ON THIS DRAWING TO VERIFY DIMENSIONS.
 2. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
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**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 19 AUGUST 2021**

LPP044-21

LPP Report No	LPP044-21	Development Application No	DA2021/0092
Site Address & Ward Locality	73 Waitara Parade Hurstville Grove Blakehurst Ward		
Proposed Development	Double carport forward of the dwelling house and an awning at the rear of the dwelling		
Owners	Rodwane Zoabi		
Applicant	Linda Ibrahim		
Planner/Architect	Architect - ZTA Group Pty Ltd		
Date Of Lodgement	1/03/2021		
Submissions	Nil		
Cost of Works	\$15,000.00		
Local Planning Panel Criteria	The application is referred to the Panel for review and determination as the application is considered to a matter in the public interest in accordance with Council Officer delegations of 3 February 2020		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Draft Environment State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan, Draft Georges River Local Environmental Plan 2020 and Draft Georges River Development Control Plan 2020.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans		
Report prepared by	Development Assessment Planner		

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

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

Site Plan



Figure 1 - The subject allotment is outlined in blue

Executive Summary

Proposal

1. The subject development application (DA) seeks consent for the construction of a double carport in a bridged form within the front setback and an awning over an existing courtyard at the rear of the property known as 73 Waitara Parade, Hurstville Grove.
2. The subject site has been the subject of multiple development applications. DA2019/0448 was for 'construction of an in-ground swimming pool, a decking area and a front fence'. It is noted that there will be additional details required on a Construction Certificate applicant for DA2019/0448. The applicant has advised that the purpose of this double carport is to provide shelter for vehicles from falling branches. There is an existing garage within the dwelling, which from the plans provided appears to have been converted to other uses. The applicant has stated that the existing steep grade of the driveway does not allow for their vehicle to enter the garage (noting the garage does not

appear to exist). The entry to this garage is proposed to be bricked up under DA2019/0448.

Site and Locality

3. The subject allotment is legally identified as Lot 1, DP 29599, 73 Waitara Parade, Hurstville Grove. The site is a regular shaped allotment with a 19.2m frontage to Waitara Parade, a 27.43m side northern boundary, a 27.43m side southern boundary, a 19.2m rear western boundary for a total site area of 526sqm.
4. Currently situated on the site is a two storey brick dwelling with a tile roof and a swimming pool. The subject site has a drainage easement that runs along the rear boundary.
5. Adjacent to the subject site is a range of single, double and multi-level dwellings of similar scale and character. No trees are proposed for removal under this application.

Zoning and Permissibility

6. The site is zoned R2 – Low Density Residential under the Kogarah Local Environmental Plan 2012, the proposed development being ancillary development to a dwelling is permissible with development consent in the zone.

Submissions

7. The application was neighbour notified in accordance with the provisions of Kogarah Development Control Plan 2012 and Council's Community Engagement and Participation Plan from 1 April to 19 April 2021. No submissions were received.

Reason for Referral to Local Planning Panel

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

Conclusion

9. Having regard to the matters for consideration Part 4.15 of the Environmental Planning and Assessment Act 1979, Development Application No. DA2021/0092 is recommended for approval subject to the conditions referenced below.

Report in Full

Proposal

10. The subject development application (DA) seeks consent for the construction of a double carport in a bridged form within the front setback of the site and a awing over an existing courtyard at the rear of the property on the first floor level.
11. Throughout the assessment of DA2019/0448 a garage was removed from the proposal due to it being non-compliant with the Australian Standards and in relation to the grades of the garage. This garage was proposed in a similar location to the proposed double carport.
12. Throughout the assessment of this application, the applicant was requested to remove the carport due to the non-compliances is posed, along with some clarification of other aspects of the proposal. The applicant was unwilling to amend the proposal to delete the double carport and the amended plans reflect this.
13. The proposal as referenced in the revised plans are specifically outlined below:

- Construction of a 5.741m x 7.279m carport within the front setback on the western side of the site with no side setback and a 900mm setback,
- Construction of a 5.049m x 2.349m awning over an existing courtyard with a 730mm side setback.

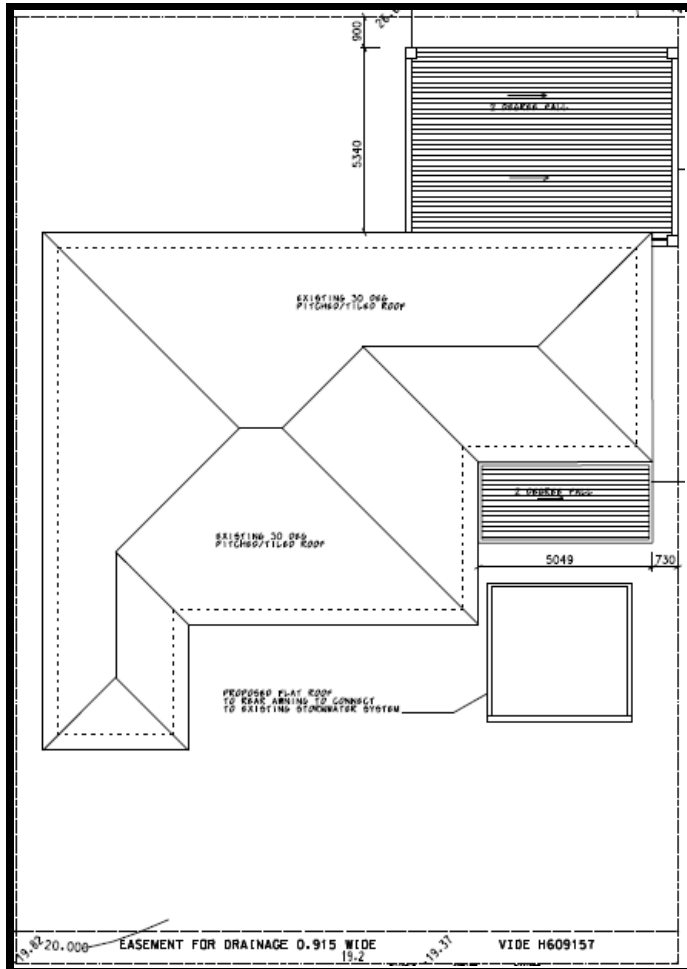


Figure 2 – Proposed site plan

The Site and Locality

14. The site is identified as Lot 1, DP 29599, 73 Waitara Parade, Hurstville Grove. The site is located on the western side of Waitara Parade between Spalding Crescent to the north and Whitfield Parade to the south.
15. The site is a regular shaped allotment with a 19.2m frontage to Waitara Parade, a 27.43m side northern boundary, a 27.43m side southern boundary, a 19.2m rear western boundary and a total site area of 526sqm. Currently situated on the site is a two storey brick dwelling with a tile roof and a swimming pool. The subject site has a drainage easement that runs along the rear boundary.
16. The site has a fall of 7.18m measured from the front boundary (RL 27.00) to the rear boundary (RL 19.82).
17. There area is generally residential in character in which the subject site adjoins both traditional and modern dwellings. There is a seniors living development within close proximity to the south west.

Background

Subject Site

18. The subject site has approval under DA2019/0448 for 'construction of an in-ground swimming pool, a decking area and a front fence'.
19. The previous development application proposed a garage with the front setback that was removed due to a lack of compliance with the relevant Australian Standards and problems with the grade of the driveway.
20. As a result of the removal of the garage a change in the grade of the driveway was not approved. This is supported by the approved southern elevation of DA2019/0448. A front fence was approved with a widened driveway which is demonstrated on the approved site plan of DA2019/0448.

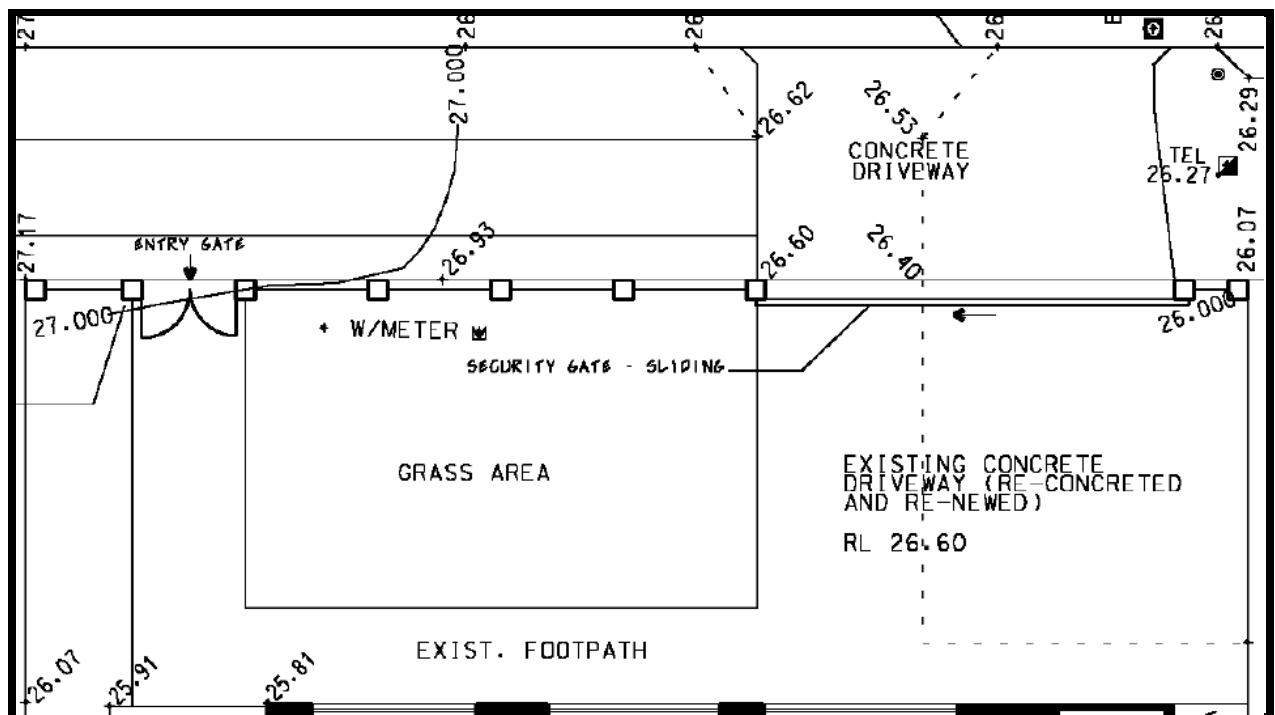


Figure 3 – Part of the approved site plan under DA2019/0448

Current Development Application – DA2021/0092

21. This development application was lodged on 11 March 2021. A site inspection was undertaken which occurred on 29 April 2021. On 4 June 2021 the applicant was advised that the double carport was unable to be supported and it was requested that this be deleted from the proposal, the plans needed to be amended to accurately annotate the trees on the plans and for the plans to be consistent with the previous approval.
22. As a result of the required removal of the carport, a meeting occurred in which discussions from the applicant provided some alternatives which included a single carport or utilising different materials. The alternatives were not supported by Council and the applicant indicated that there were examples in the locality and why was this application not supported. As part of the discussions the applicant was advised that under Council delegation the application would be put before the Georges River Local Planning Panel for determination.

23. Amended plans were provided on 2 July 2021. The carport remains on the amended plans. The tree has now been annotated on the plans. These amended plans are the basis of this report.
24. The assessment of this application has resulted in carport not being supported in this location as it is contrary to the current planning controls and the objectives of the zoning. Carports within the front setback are not a desired precedent within the current controls and the desire streetscape presentation under the controls within Draft Local Environmental Plan 2020 and Draft Georges River Development Control Plan 2020.

APPLICABLE PLANNING CONTROLS

Statutory Consideration

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

Environmental Planning Instruments

Deemed State Environmental Planning Policy – Georges River Catchment

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

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

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

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

28. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
29. 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).*

30. The objectives of the SEPP are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 5(1) of the SEPP as the site is within both Georges River Council and the R2 Low Density Residential zone.
31. Pursuant to Clause 8(1) of the SEPP, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
32. The application does not involve any vegetation removal, as such the proposal is considered satisfactory having regard to State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

State Environmental Planning Policy No 55 – Remediation of Land

33. 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.
34. 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.
35. The site has a history of residential uses and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regard to site contamination, and further, there is only minimal excavation proposed (for example, for footings for the proposed carport and awning).

Draft Remediation of Land SEPP

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

Draft Environment SEPP

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.

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

KOGARAH LOCAL ENVIRONMENTAL PLAN 2012

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

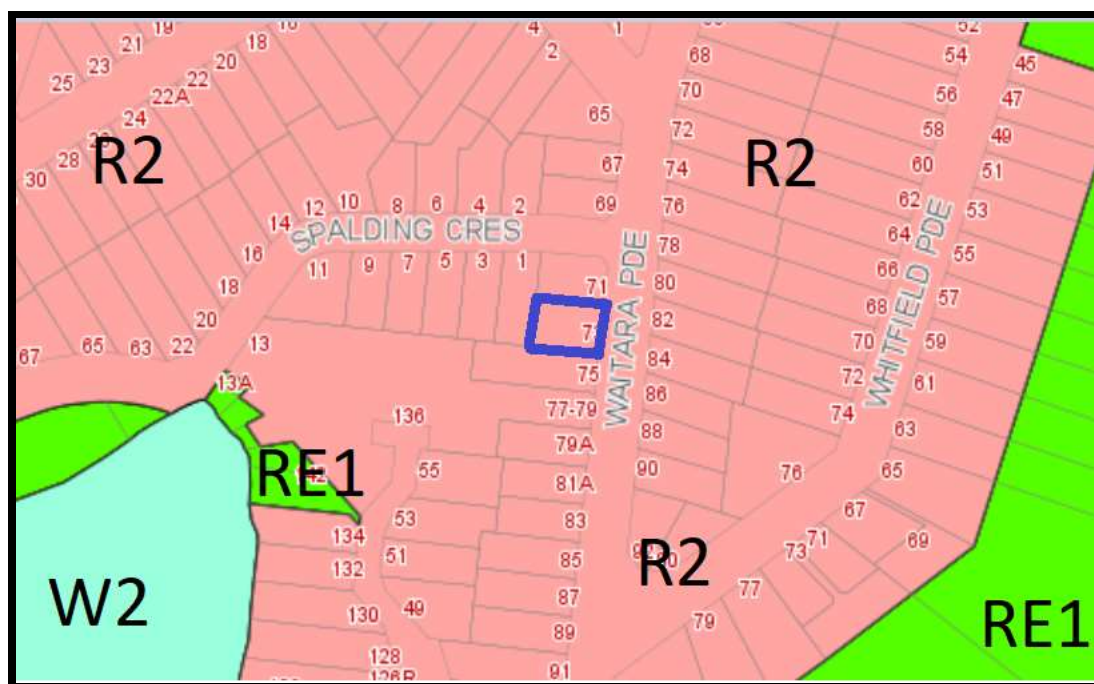


Figure 4 – Zoning map with the subject site outlined in blue

Aims of Plan

44. The particular aims of the Kogarah Local Environmental Plan 2012 in relation to Clause 1.2 (2) are as listed below:
- *To guide the orderly and sustainable development of Kogarah,*
 - *To encourage a diversity of housing choice suited to meet the needs of the current and future residents of Kogarah,*
 - *To promote economic development and facilitate the continued growth of commercial, medical-related and industrial employment-generating opportunities,*
 - *To protect and enhance Kogarah's natural environment, foreshores and waterways,*
 - *To provide high quality open space and a range of recreational areas and facilities suited to meet the needs of the residents of Kogarah and its visitors,*
 - *To conserve Kogarah's environmental heritage.*

45. The development satisfies the aims of the plan.

Zone Objectives

46. The objectives of the R2 zone as identified in KLEP 2012 are as listed below:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Clause	Standard	Proposed	Complies
Part 1 – Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is considered to be consistent with the aims of the plan.	Yes
1.4 - Definitions	Dwelling House means: <i>a building containing only one dwelling.</i>	The proposed development is ancillary to a dwelling house and will remain consistent with the definition.	Yes
Part 2 - Permitted or prohibited development			
2.3 - Zone objectives and Land Use Table	Meets objectives of R2-Low Density Residential Zone.	The proposal fails to meet the objectives.	Yes
	Development must be permissible with consent	The proposal is permissible with development consent.	Yes
Part 4 - Principal Development Standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The proposal has a maximum overall height of 3.67m. Measured from the existing driveway level- RL28.58 - RL24.91.	Yes
4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential, Clause 4.4A applies. However the FSR is not proposed to be altered as a result of this proposal.	Refer to Clause 4.4A
4.4A –	2) Despite clause 4.4 (2),	The proposed	N/A

Exceptions to floor space ratio for residential accommodation in Zone R2	<p>the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>Site area</p> <ul style="list-style-type: none"> • Maximum floor space ratio less than 650sqm 0.55:1 • less than 800sqm but not less than 650sqm $[(\text{lot area} - 650) \times 0.3 + 357.5] \div \text{lot area}:1$ • less than 1,000sqm but not less than 800sqm $[(\text{lot area} - 800) \times 0.2 + 402.5] \div \text{lot area}:1$ • less than 1,500sqm but not less than 1,000sqm $[(\text{lot area} - 1,000) \times 0.15 + 442.5] \div \text{lot area}:1$ • not less than 1,500sqm $[(\text{lot area} - 1,500) \times 0.1 + 517.5] \div \text{lot area}:1$ <p>Site area: 526sqm</p> <p>0.55:1 or 289.3sqm</p>	development will not alter the FSR.	
4.6 – Exceptions to development standards	In accordance with Clause 4.6 (1) through to and including (8)	No development standards are proposed to be varied.	N/A
Part 5 - Miscellaneous Provisions			
5.7 – Development below mean high water mark	(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).	The proposal does not involve works below the Mean High Water Mark.	N/A
5.10 – Heritage conservation	In accordance with Clause 5.10 (2)	The site is not a heritage item and not	N/A

		located within the vicinity of any heritage items. Site is not in a heritage conservation area.	
5.11 – Bush Fire Hazard Reduction	Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.	The subject land is not within a bush fire prone area.	N/A
Part 6 - Additional Local Provisions			
6.1 – Acid sulfate soils	(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. Class 5: Works within 100 metres of adjacent Class 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 2, 3 or 4 land.	The subject site is not affected by acid sulfate soils.	N/A
6.2 – Earthworks	(2) Development consent is required for earthworks unless— (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.	The proposed earthworks are ancillary to the proposed development and are acceptable for this form of development.	Yes
6.3 – Flood planning	(2) This clause applies to— (a) land identified as	The proposed development is not located in a mapped flood prone area.	N/A

	“Flood planning area” on the Flood Planning Map, and (b) other land at or below the flood planning level.		
6.4 – Limited development on foreshore area	In accordance with Clause (2) and (3)	The proposed development is not located in the foreshore area.	Yes

47. The proposed development does not satisfy all the R2 Low Density Residential zone objectives. This is due to the carport will a 900mm setback is not consistent with the built form envisaged in low density environments.

Draft Georges River Local Environmental Plan 2021

48. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2021 in the assessment this application.
49. 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

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

Interim Policy Georges River Development Control Plan 2020

51. The proposed development is subject to the provisions of the Interim Policy Georges River DCP 2020. Only the applicable aspects have been assessed with respect to the Interim DCP. All other aspects have been thoroughly assessed under Kogarah DCP 2013. The aim of an Interim Policy is to set a consistent approach for the assessment of residential development within the Georges River Local Government Area, until such a time as a comprehensive DCP is prepared and implemented. Comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.

Control	Standard	Proposed	Complies
Dwelling houses			
Front Setbacks	Minimum setback from the primary street boundary is: a) 4.5m to the main building face b) 5.5m to the front wall of garage, carport roof or onsite parking	N/A the façade of the dwelling remains unaltered. 900mm	N/A No, discussion below

	space or a) Within 20% of the average setback of dwellings on adjoining lots.	The adjoining properties have compliant front setbacks to the facades of the built form.	N/A
Rear Setbacks	a) Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater.	The rear setback will not be altered.	N/A
Side Setbacks	a) The minimum side setback outside the FSPA is 900mm (ground floor) and 1.2m (first floor).	<u>Side setback</u> The attached bridged double carport has a 0m southern side setback to the boundary.	No, discussion below
Landscaping	Where located outside the FSPA, a minimum of 20% of site area is landscaped open space	The landscaped area is not proposed to be altered as the width of the driveway was approved under DA2019/0448 and the awning at the rear will be over an existing court yard area.	N/A
Private Open Space	An area of Principal Private Open Space is to be provided which: a) has a minimum area of 30sqm b) has a minimum dimension of 5m, designed in a useable configuration c) is located at ground level and behind the front wall of the dwelling d) is directly accessible from a main living area.	The PPOS will not be altered as a result of the proposal.	N/A

C1- Low Density Housing

Control	Standard	Proposed	Complies
1.2 Building Scale and Height			
1.2.1 Floor space Requirements	(6) The overall building should present a building mass that is in proportion with the	The proposed building mass is not considered to be in proportion with the lot size or provide	No

	<p>allotment size, provides opportunities for modulation and articulation of the building and does not detract from the satisfaction of any other applicable design principle.</p>	<p>cohesion from the existing front setback of the building. The carport is proposed in a bridged form and the details provide do not appear to show the extent of the supporting elements and the slab thickness to facilitate this carport. In addition there will need to be reinforcement to the southern side of the carport to prevent a vehicle driving off the edge. There will need to be wheel stops of the equivalent at the dwelling interface to ensure that a vehicle will not drive into the dwelling. This will result in a bulkier structure than that present on the plans. For this reason the carport is not supported in this location.</p>	
<p>1.2.2 Building Heights</p>	<p>(1) The maximum building height must comply with the requirements specified in table below:</p> <p>Dwelling Type Single dwelling;</p> <p>Maximum Height 7.2m to the underside of the upper ceiling; 7.8m to the top of the parapet;</p>	<p>3.52m</p> <p>3.67m measured from the lowest point of the driveway to the top of the structure being RL28.58 - RL24.91.</p>	<p>Yes</p> <p>Yes</p>
<p>1.2.4 Building Setbacks</p>	<p>1.2.4.2 Front Setbacks</p> <p>(1) Where the setback</p>		

	<p>of an adjacent building is greater than 5m, an appropriate setback may be achieved by ensuring development is set back:</p> <p>1- the same distance as one or the other of the adjoining buildings, provided the difference between the setbacks of the two adjoining buildings is less than or equal to 2.0m (Figure 9); or</p> <p>2-Where the setbacks of the adjacent buildings are 0m-5.0m, an appropriate setback may be achieved by ensuring development is setback the same distance as one or the other of the two adjoining</p> <p>1.2.4.3 Side & Rear Setbacks</p> <p>(1) The side and rear boundary setbacks should comply with the table below.</p> <p>Rear Setback Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater.</p> <p>Side Setbacks For buildings having a wall height of 3.5m or less, the minimum side boundary setback is 900mm.</p> <p>For buildings having a wall height of greater than 3.5m, the</p>	<p>The adjoining setbacks are 4.5m and 13.47. The proposed setback is 900mm and therefore non-compliant. It is to be noted that this clause is superseded by Councils Interim policy.</p> <p>The rear setback is not proposed to be altered.</p> <p>N/A</p> <p>The side setback is proposed to be 0m to the southern side of</p>	<p>No – see discussion below.</p> <p>N/A</p> <p>N/A</p> <p>No, discussed below</p>
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	<p>minimum side boundary setback is 1200mm.</p>	<p>the double carport. The site setback of the awning is 730mm from the southern boundary and is in this location as it will align with the existing external wall of the dwelling.</p>	
<p>1.2.5 Fenestration and External Materials</p>	<p>(1) New buildings and alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.</p> <p>(3) The roof should be similar to the angle of pitch, materials and colour of roofs in the streetscape.</p>	<p>The alteration and additions will result in a carport that is not complementary in its presentation to the dominant character of the streetscape. The non-compliance with the setback results in the roof being a dominate structure in the streetscape and is not supported.</p> <p>The immediate vicinity demonstrates both pitched and parapet roofs, however a majority of the development within the visual catchment has a compliant setback. The non-compliance with the setback results in the roof being a dominate structure in the streetscape and not supported.</p>	<p>No – see discussion below.</p> <p>No – see discussion below.</p>
<p>1.2.6 Street Edge</p>	<p>(1) New developments should provide front fencing that complements fencing within the streetscape.</p> <p>(3) Existing vegetation in the front building line setback or on the street verge that contributes to the character of the streetscape should be preserved.</p> <p>(4) The driveway</p>	<p>A fencing was approved under DA2019/0448.</p> <p>The existing palm tree is proposed to be retained.</p> <p>The width of the</p>	<p>N/A</p> <p>Yes</p> <p>N/A</p>

	location should not result in the removal of any street trees or removal of substantial trees on the site.	driveway at the boundary alignment is not proposed as part of this application. However it is acknowledged that a front fence and access point was approved as part of DA2019/0448.	
1.3 Open Space			
1.3 Open Space	<p>(1) 15% of the site area must be deep soil landscaped area.</p> <p>(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.</p> <p>(5) Existing significant trees and vegetation must be incorporated into proposed landscape treatment.</p>	<p>The landscaped area remains unaltered by this proposal.</p> <p>The PPOS is not proposed to be altered as a result of this application.</p> <p>No trees have been nominated for removal. The application was referred to Council’s Consultant Arborist and the development supported subject to specific conditions of consent should the double carport be approved. No street trees were nominated for removal.</p>	<p>N/A.</p> <p>N/A</p> <p>Yes</p>
1.4 Vehicular access, parking and circulation			
	(1) Car parking is to be provided in accordance with the requirements in Section B4.	The site currently contains a driveway access and an existing garage door to a car parking space which would meet the DCP criterion as it is existing. The floor plan however seems to indicate the garage space has been deleted and is no longer able to be used for vehicle accommodation. On this basis the applicant	No

	<p>(4) Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.</p> <p>(5) Garaging should be setback behind the primary façade.</p> <p>(6) The maximum driveway width between the street boundary and the primary building façade is 4m.</p>	<p>has detailed that the grade of the current driveway is to steep on which to park his vehicles resulting in the proposed double garage constructed in a bridge form so that the spaces are largely at grade when entering from Waitara Parade.</p> <p>The vehicular crossing is not proposed under this application The fence and the access point was approved under DA2019/0448.</p> <p>The proposed carport is located forward of the primary dwelling façade and has a width of 7.729m.</p>	<p>N/A</p> <p>No, discussion below</p> <p>N/A</p>
1.5 Privacy			
1.5.1 Visual Privacy	<p>(1) Windows from active rooms are to be offset between adjacent dwellings so as to avoid direct overlooking onto neighbouring windows.</p> <p>(2) Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m</p>	<p>No change is proposed to the windows or ground levels at the rear.</p> <p>The awning at the rear of the property is proposed over an existing court yard.</p>	<p>N/A</p> <p>N/A</p>

	from any adjoining property boundary.		
1.6 Solar Access			
	(1) At least 50% of the primary private open space of the proposed development should have access to a minimum of four hours of sunlight between 9am–3pm on 21 June.	The proposal will have no unreasonable impact on the solar access of the adjoining properties. The solar access of the private open space of the subject site would not be affected as result of the carport.	Yes
	(3) Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on 21 June (Figure 21).	The proposal will have no unreasonable impact on the solar access of the adjoining properties It is acknowledged that if the carport was to be supported there would be addition impacts to the property to the south. However compliance with this control would still be maintained.	Yes
1.7 Views and view sharing			
	(1) Development shall provide for the reasonable sharing of views. Note: Assessment of applications will refer to the Planning Principle established by the Land and Environment Court in Tenacity Consulting vs Warringah Council (2004) NSWLEC140	The proposed development is not expected to impact any adjoining properties or public space access to view corridors.	Yes

LPP044-21

Carport

52. The proposed carport forward of the front building line is not supported as it is non-compliant with the Kogarah Development Control Plan 2013, the Georges River Interim Development Control Plan and the Draft Georges River Development Control Plan. The objectives of the Kogarah Development Control *Part 1.4.2.4 - Front Setbacks* state the following:

- *Ensure front building setbacks are representative of the character of the area*

53. The proposed setback is 900mm from the street boundary and the double carport has dimension of 5.741m x 7.279m. It is acknowledged that older housing stock that predated these controls currently has garages that sit forward of the dwelling facades due to site topography but have been integrated into the development design and along with front landscaped areas and entry points. There is also a carport on the same side of Waitara Parade within the front setback constructed as part of a multi unit house development around 2004/2005. A review of the strata plan indicated this carport at the time this development was constructed was not built to the front boundary alignment. These examples have been referenced by the applicant as to examples as to character and what the proposed double garage in an elevated bridged form is consistent with the streetscape. From the assessing officers perspective the design is not in keeping with the desired character of the streetscape presentation required by the KDCP and the Interim DCP and is not consistent with the Draft GRDCP 2020 which has been endorsed by the Georges River Local Planning Panel to be the Development Control Plan to support the Draft Georges River Local Environmental Plan 2020 when the instrument is gazetted and made.
54. The low density zoning of this precinct envisages development to be setback from all boundaries and provide an open area forward of development with the vehicle accommodation reading from the public domain as a recessive element of the development, not the predominate building form as proposed in this application where there is no setback to the southern boundary and a nominal 900mm setback to the front boundary alignment.
55. The predominate setbacks of the properties within the visual catchment is compliant with the current controls and the future desired character.
56. The current and future controls are consistent in that this type of development in this proposed location is not permitted. The limited setback does not provide any relief to the streetscape with a structure at 2.81m (when viewed at street level) in height within 900mm to the front boundary and a nil setback to the southern side boundary is considered to dominate the streetscape interface.
57. The proposal will result in an undesirable precedent of bulking structures at the street boundary where the controls current and in the draft instrument do not permit structures in this location.
58. The plans provided do not demonstrate that a double carport in a bridged arrangement to elevate the carport where it adjoins the dwelling will be an acceptable level of amenity in relation to the visual appearance from the adjoining allotment and the public domain. It has been recommended via conditions that the double carport not be approved as part of this application.

IMPACTS

Natural Environment

59. The proposed works will not directly impact the natural environment.

Built Environment

60. The built form of the proposed double carport is of a bulk and scale that is not compatible or desirable in the location. It is considered that in order to maintain the existing streetscape and not introduce new non-compliant elements forward of the dwelling house the double carport will be conditioned to be deleted. There will be minimal adverse

impacts on the built environment as a result of the awning over a courtyard area at the rear of the dwelling.

Social Impact

61. The assessment demonstrates that the double carport proposed as part of this proposal will have an adverse impact on the character of the locality and the amenity of neighbouring residential properties. Therefore a condition has been recommended for the removal of the double carport proposed within the front setback.

Economic Impact

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

Suitability of the Site

63. The site is zoned R2 low density residential. Whilst the proposal being ancillary works, is a permissible form of development in this zone, it is considered that the proposed carport will have an adverse impact on the adjoining properties and the streetscape in its current form and ultimately resulting in the site not being suitable for a carport in the proposed location. The awning is deemed to be appropriate on the site.

SUBMISSIONS

64. The proposal as modified has been notified in accordance with the provision of Kogarah Development Control Plan and Council's Community Engagement and Participation Plan and no submissions were received.

PUBLIC INTEREST

65. The proposed carport is not considered to be in the public interest. The rear awning is considered appropriate in its location.

REFERRALS

Consulting Arborist

66. Council's Consulting Arborist has no objection to the proposal and has provided conditions. These conditions are only relevant if the carport was to be supported. As a result they have not been referenced in the conditions contained at the end of this report. Council's Arborist has no objection to the awning in the rear with respect to landscaping matters.

Stormwater Engineer

67. The Stormwater Engineer had no issue with the proposed development subject to a condition being imposed regarding the connection of the additional roof water to the easement in the rear of the site.

CONCLUSION

68. The application has been assessed having regard to Evaluation under Section 4.15 (1) of the Environmental Planning and Assessment Act 1979, the provisions of the applicable State Environmental Planning Policies, Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan.
69. Following a detailed assessment it is considered that Development Application No. DA2021/0092 approve the rear awning over the existing courtyard area and the double carport proposed in an elevated bridged form be deleted via a condition of consent.

DETERMINATION AND STATEMENT OF REASONS

70. Statement of Reasons

- The proposed double carport in a bridged form is inconsistent with the objectives and controls contained in the Kogarah Local Environmental and the Development Control Plan 2013.
- The proposed awning over the existing courtyard area is consistent with the objectives and controls contained in the Kogarah Local Environmental and the Development Control Plan 2013.
- The proposal as conditioned to delete the double carport will result in minimal adverse impacts on the adjoining allotments and the public domain.

Determination

71. Pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended), the Georges River Local Planning Panel grant development consent to Development Application No. DA2021/0092 an awning over an existing courtyard at the rear of the property known as Lot 1, DP 29599, 73 Waitara Parade, Hurstville Grove, subject to the conditions below:

Development Details

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

Description	Reference No.	Date	Revision	Prepared by
Site Plan	DA 07	01/10/2020	-	ZTA
Proposed Site and Ground Plan	DA 02	29/06/2021	-	ZTA
Proposed Elevations and Sections	DA 04	29/06/2021	-	ZTA
Proposed Site Plan	DA 01	29/06/2021	-	ZTA

Separate Approvals Required Under Other Legislation

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

Requirements of Concurrence, Integrated & Other Government Authorities

3. **Sydney Water - Tap inTM** - The approved plans must be submitted to a Sydney Water Tap inTM to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap inTM agent has appropriately stamped the plans prior to the issue of the Construction Certificate.

Prior to the Issue of a Construction Certificate

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

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

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

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$168.00

General Fees

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

5. **Damage Deposit - Minor Works** - In order to insure against damage to Council property the following is required:
- Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: \$1,900.00
 - Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: \$168.00
 - Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

6. **Site Management Plan - Minor Development** - A Site Management Plan detailing all weather access control points, sedimentation controls, fencing, builder's site sheds office, amenities, materials storage and unloading arrangements must be submitted with the application for the Construction Certificate.
7. **Required design changes** - The following changes are required to be made and shown on the Construction Certificate plans:

Carport	The plans are to be amended so that the carport and any works within the front setback are deleted from the proposal. This consent only provides approval for the awning at the rear.
Encroachment of structures	No part of any structure (including gutters and eaves) may encroach or overhang any property boundary.

8. **Erosion & Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
- Compliance with the approved Erosion & Sediment Control Plan
 - Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
 - All clean water runoff is diverted around cleared or exposed areas
 - Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
 - All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
 - Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
 - All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
 - Compliance with [Managing Urban Stormwater - Soils and Construction \(Blue Book\) produced by Landcom 2004](#).

These measures are to be implemented prior to the commencement of work (including demolition and excavation) and must remain until works are completed and all exposed surfaces are landscaped/sealed.

9. **Stormwater System** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a qualified engineer, shall be submitted for approval with the Construction Certificate.
- All stormwater shall drain by gravity to the existing drainage pipe within the existing easement in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
10. **Stormwater Drainage Plan Details** - Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a

professional engineering specialising in hydraulic engineering shall be submitted with the Construction Certificate application.

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's relevant policies.

11. **Compliance with Swimming Pool Act 1992** - The alterations and additions to the dwelling house and/or the construction of the new dwelling house subject of this consent must not generate any non-compliances with the Swimming Pools Act 1992, Swimming Pool Regulation 2008, Building Code of Australia and/or AS 1926.1-2007 - Swimming Pool Safety. Details of compliance to be illustrated on the plans lodged with the application for the Construction Certificate.
12. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.

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

13. **Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

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

14. **Demolition & Asbestos** - The demolition work shall comply with the provisions of Australian Standard AS2601:2001 - Demolition of Structures, NSW [Work Health & Safety Act 2011](#) and the NSW [Work Health & Safety Regulation 2011](#). The work plans required by AS2601:2001 shall be accompanied by a written statement by a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the safety statement shall be submitted to the PCA prior to the commencement of works.

For demolition work which involves the removal of asbestos, the asbestos removal work must be carried out by a licensed asbestos removalist who is licensed to carry out the work in accordance with the [NSW Work Health & Safety Act 2011](#) and the NSW [Work Health & Safety Regulation 2011](#) unless specified in the Act and/or Regulation that a license is not required.

All demolition work including the removal of asbestos, shall be undertaken in accordance with the [Demolition Code of Practice](#) (NSW Work Cover July 2015).

Note: Copies of the Act, Regulation and Code of Practice can be downloaded free of charge from the SafeWork NSW website: www.SafeWork.nsw.gov.au.

15. **Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the [Work Health and Safety Regulation 2011](#).

16. **Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.\
17. **Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:
- a) Set out before commencing excavation.
 - b) Floor slabs or foundation wall, before formwork or commencing brickwork.
 - c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
 - d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
 - e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
 - f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
 - g) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

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

During Construction

18. **Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.
19. **Hours of construction for demolition and building work** - Unless authorised by Council:
- a. Building construction and delivery of material hours are restricted to: 7.00 am to 5.00 pm (inclusive) Monday to Saturday and no work on Sundays and Public Holidays.
 - b. Demolition and excavation works are restricted to: 8.00 am to 5.00 pm (inclusive)

Monday to Friday only. Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site.

20. **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.
21. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.
22. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the [Roads Act 1993](#) and/or under Section 68 of the [Local Government Act 1993](#). Penalty infringement Notices may be issued for any offences and severe penalties apply.
23. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

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

Operational Conditions (Ongoing)

24. **Double Carport** – No approval is granted to the double carport proposed as part of this application.
25. **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.
26. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.

Operational Requirements Under the Environmental Planning & Assessment Act 1979

27. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
28. **Appointment of a PCA** - The erection of a building must not commence until the applicant has:

- (a) appointed a PCA for the building work; and
- (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

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

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

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

29. **Notification Requirements of PCA** - No later than two days before the building work commences, the PCA must notify:

- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
- (b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

30. **Notice of Commencement** - The applicant must give at least two days notice to the Council and the PCA of their intention to commence the erection of a building.

A Notice of Commencement Form is attached for your convenience.

31. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the PCA. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the [Environmental Planning and Assessment Regulation 2000](#).

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

Where Georges River Council has been appointed as the PCA, 48 hours notice in writing, or alternatively 24 hours notice by facsimile or telephone, must be given when specified work requiring inspection has been completed.

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

Only the PCA appointed for the building work can issue the Occupation Certificate.

An Occupation Certificate Application Form is attached for your convenience.

Prescribed Conditions

34. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
35. **Clause 98 - Building Code of Australia & Home Building Act 1989** - Requires all building work to be carried out in accordance with the Building Code of Australia. In the case of residential building work to which the Home Building Act 1989 relates, there is a requirement for a contract of insurance to be in force before any work commences.
36. **Clause 98A - Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the PCA and the Principal Contractor.
37. **Clause 98B - Home Building Act 1989** - If the development involves residential building work under the [Home Building Act 1989](#), no work is permitted to commence unless certain details are provided in writing to Council. The name and licence/permit number of the Principal Contractor or Owner Builder and the name of the Insurer by which work is insured under Part 6 of the [Home Building Act 1989](#).
38. **Clause 98E - Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.
39. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

40. **Clause 98E - Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.

Advice

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

such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

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

42. **Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
43. **Lapsing of Consent** - This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.
44. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

The required Long Service Levy payment can be direct to the Long Service Corporation via their web site <https://online.longservice.nsw.gov.au/bci/levy>. Payments can only be processed on-line for the full levy owing and where the value of work is between \$25,000 and \$6,000,000. Payments will be accepted for amounts up to \$21,000, using either MasterCard or Visa.

45. **Security deposit administration & compliance fee** - Under Section 97 (5) of the [Local Government Act 1993](#), a security deposit (or part) if repaid to the person who provided it is to be repaid with any interest accrued on the deposit (or part) as a consequence of its investment.

Council must cover administration and other costs incurred in the investment of these monies. The current charge is \$50.00 plus 2% of the bond amount per annum.

The interest rate applied to bonds is set at Council's business banking facility rate as at 1 July each year. Council will accept a bank guarantee in lieu of a deposit.

All interest earned on security deposits will be used to offset the Security Deposit Administration and Compliance fee. Where interest earned on a deposit is not sufficient to meet the fee, it will be accepted in full satisfaction of the fee.

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



undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.

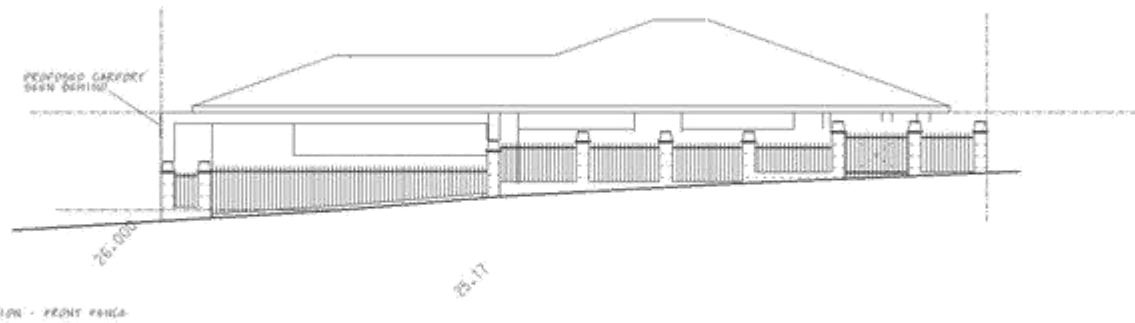
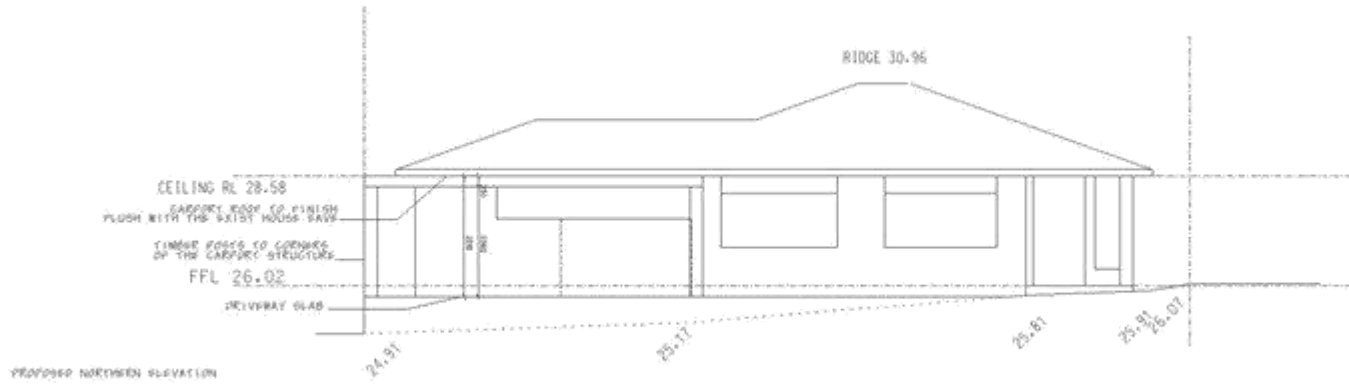
47. **Site Safety Fencing** - Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of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

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

48. **Register your Swimming Pool** - All swimming pools in NSW are required to be registered. Fines apply for pools that are not registered. To register please visit: swimmingpoolregister.nsw.gov.au.

ATTACHMENTS

- Attachment [↓](#) 1  Site plan - 73 Waitara Pde Hurstville Grove
- Attachment [↓](#) 2  Northern elevation - 73 Waitara Pde Hurstville Grove



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LEGEND		SYMBOLS		DESCRIPTION	
1. FLOOR LINE	2. FLOOR FINISH	3. FLOOR FINISH	4. FLOOR FINISH	5. FLOOR FINISH	6. FLOOR FINISH
7. FLOOR FINISH	8. FLOOR FINISH	9. FLOOR FINISH	10. FLOOR FINISH	11. FLOOR FINISH	12. FLOOR FINISH
13. FLOOR FINISH	14. FLOOR FINISH	15. FLOOR FINISH	16. FLOOR FINISH	17. FLOOR FINISH	18. FLOOR FINISH
19. FLOOR FINISH	20. FLOOR FINISH	21. FLOOR FINISH	22. FLOOR FINISH	23. FLOOR FINISH	24. FLOOR FINISH
25. FLOOR FINISH	26. FLOOR FINISH	27. FLOOR FINISH	28. FLOOR FINISH	29. FLOOR FINISH	30. FLOOR FINISH
31. FLOOR FINISH	32. FLOOR FINISH	33. FLOOR FINISH	34. FLOOR FINISH	35. FLOOR FINISH	36. FLOOR FINISH
37. FLOOR FINISH	38. FLOOR FINISH	39. FLOOR FINISH	40. FLOOR FINISH	41. FLOOR FINISH	42. FLOOR FINISH
43. FLOOR FINISH	44. FLOOR FINISH	45. FLOOR FINISH	46. FLOOR FINISH	47. FLOOR FINISH	48. FLOOR FINISH
49. FLOOR FINISH	50. FLOOR FINISH	51. FLOOR FINISH	52. FLOOR FINISH	53. FLOOR FINISH	54. FLOOR FINISH
55. FLOOR FINISH	56. FLOOR FINISH	57. FLOOR FINISH	58. FLOOR FINISH	59. FLOOR FINISH	60. FLOOR FINISH

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SCALE	PROJECT	DRAWING TITLE
1:50	73 WAITARA PDE HURSTVILLE GROVE	PROPOSED ELEVATIONS
DRAWN BY S.Z.	DATE 0.01	DRAWING NO. DA-05
CHECKED BY S.Z.		DATE 08