

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 2 September 2021
Time:	4.00pm
Venue:	Council Chambers, Civic Centre, Hurstville
Panel Members:	Stephen Davies (Chairperson) John Brockhoff (Expert Panel Member) Deborah Laidlaw (Expert Panel Member) George Vardas (Community Representative)

1. On Site Inspections – Carried out by Panel Members prior to meeting	
2. Opening	
3. Consideration of Items and Verbal Submissions	
LPP046-21	49 Jersey Road Mortdale – DA2020/0354 (Report by Senior Development Assessment Officer)
LPP047-21	60 Marine Drive Oatley – DA2021/0131 (Report by Senior Development Assessment Officer)
LPP048-21	22-26 Montgomery Street Kogarah – DA2021/0172 (Report by Senior Development Assessment Officer)
4. LPP Deliberations in Closed Session	
5. Confirmation of Minutes	

REPORT TO GEORGES RIVER COUNCIL

LPP MEETING OF THURSDAY, 02 SEPTEMBER 2021

LPP046-21

LPP Report No	LPP046-21	Development Application No	DA2020/0354
Site Address & Ward Locality	49 Jersey Road Mortdale Mortdale Ward		
Proposed Development	Demolition of existing and construction of child care centre		
Owners	Sharobem Holdings Pty Ltd		
Applicant	Elie Nehme		
Planner/Architect	Planner: BMA Urban / Architect: NDGroup		
Date Of Lodgement	14/09/2020		
Submissions	3 individual objections and 1 petition in objection		
Cost of Works	\$960,000.00		
Local Planning Panel Criteria	General Manager's Delegation the development involves a child care centre		
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 (Infrastructure) 2007, State Environmental Planning Policy (Educational Establishment and Child Care Facilities) 2017, 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 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, Acoustic Report, Traffic Report, Site Investigation Report, Arborist Report, Stormwater Plans, Landscape Plans		
Report prepared by	Senior Development Assessment		

Recommendation	That the application be refused in accordance with the reasons stated in the report
-----------------------	---

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

been attached to the assessment report?	
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, the application is recommended for refusal and the reasons for refusal may be reviewed prior to the meeting

Site Plan



Aerial Photo – site outlined in blue

Executive Summary

Proposal

1. Council is in receipt of a development application (DA/2020/0354) for demolition of existing structures and construction of a two storey child care centre for 35 children above basement parking with associated landscaping, fencing, retaining walls, tree removal, drainage and site works.
2. The proposed development is further described as follows:

Basement Plan

- The provision of a new 5.5m wide driveway entry within the north eastern corner of the site;
- Eight (8) parking spaces being four (4) staff spaces and four (4) drop off spaces one being accessible;

- Four (4) bike racks;
- Garbage store facilities;
- Storeroom;
- Designated pedestrian path; and
- Lift and stair access.

Ground Level Plan

- The provision of three (3) play rooms for eight (8) x 0-2 years, ten (10) x 2-3 years, and seventeen (17) x 3-6 years;
- Two (2) designated outdoor spaces;
- Entry foyer, staff and preparation rooms;
- Bathroom facilities;
- Cot room;
- Storage facilities; and
- Lift and stair access.

First Floor Plan

- The provision of a staff room;
- Office and meeting space;
- Kitchen and WC facilities;
- Laundry and storage facilities; and
- Lift and stair access.

3. The proposal involves a minimum of eight (8) staff inclusive of the centre director and chef. The hours of operation are from 7am to 6pm, Mondays to Fridays.
4. The building has an overall height of 7.95m to the ridgeline based on an existing ground level of RL47.6 and a finished floor level of RL48.45 with minimum ceiling heights of 2.7m.
5. The raised portion of rear outdoor play area has a finished surface level of RL48.42 (referenced on the landscaping plan) requiring retaining walls of up to 1.42m in height based on an existing ground level of RL47.0.
6. Landscaped areas generally 1m wide are proposed along the Jersey Avenue frontage with a 6.65m return along the Junction Road frontage and along the south eastern boundary with a return of approximately 10m along the south western boundary. No tree removal is proposed as a part of the proposal, noting that removal of two trees was previously undertaken under Permit No. TA2020/0094 subject to two native replacement trees for each tree removed.
7. An Acoustic Report was submitted with the application, which requires a 2.1m high acoustic barrier adjacent to the south western and south eastern sides of the outdoor play area and 1.8m high acoustic barriers adjacent to the outdoor play areas facing Junction Road and Jersey Avenue and both sides of the driveway in order to mitigate acoustic impacts to adjoining residential receivers. The Acoustic Report is predicated upon no more than eight (8) x 0-2 year old and fifteen (15) x 3-6 year old children outside within the outdoor play areas at any one time.

Site and Locality

8. The site is legally described as Lot A in DP398563 and is known as 49 Jersey Road Mortdale.
9. The subject site is rectangular corner lot with a total area of 594.4sqm and frontages of 22.3m to Jersey Road and 27.455m to Junction Street.
10. 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 Junction Street.
11. Adjoining the site are a single storey detached dwelling to the south-west at 1 Junction Street, and multiple unauthorised sheds and unauthorised front fencing to the south east at 47 Jersey Avenue. Opposite the site on Junction Street are one and two storey detached dwellings. Opposite the site on the north eastern side of Jersey Avenue are two to four storey residential apartment buildings.
12. The site slopes to the rear from north east to south west with approximately 1.9m of fall. Two existing street trees are located within the site frontage to Jersey Avenue and Junction Street, which are to be retained.

Zoning and Permissibility

13. The site is currently zoned R2 Low Density Residential under the Hurstville Local Environmental Plan (HLEP) 2012. The proposed development is defined as a 'centre-based child care facility', which is permitted with consent in the R2 zone under HLEP 2012.
14. However, the current proposal fails to satisfy Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 in terms of the design quality principles of Built Form, Landscape and Amenity and Parts 3.2, 3.3, 3.4, 3.5 and 3.8 under the Child Care Planning Guideline, and visual privacy, fencing, landscaping, and vehicular access controls of Hurstville Development Control Plan (HDCP) No. 1.
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 "encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment".

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. Three (3) submissions and 1 petition were received objecting to the proposal. The concerns raised in relation to building height and parking are valid grounds of objection which form part of the reasons for refusal of the application.

Reason for referral to the Local Planning Panel

17. 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 child care centre to be determined by the Georges River Local Planning Panel.

Conclusion

18. 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 (DA2020/0354) is recommended for refusal for the reasons referenced at the end of this report.

Report in Full

Proposal

19. Council is in receipt of a development application (DA/2020/0354) for demolition of existing structures and construction of a two storey child care centre for 35 children above basement parking with associated landscaping, fencing, retaining walls, tree removal, drainage and site works.
20. The proposed development is further described as follows:

Basement Plan

- The provision of a new 5.5m wide driveway entry within the north eastern corner of the site;
- Eight (8) parking spaces being four (4) staff spaces and four (4) drop off spaces including an accessible space;
- Four (4) bike racks;
- Garbage store facilities;
- Storeroom;
- Designated pedestrian path; and
- Lift and stair access.

Ground Level Plan

- The provision of three (3) play rooms for eight (8) x 0-2 years, ten (10) x 2-3 years, and seventeen (17) x 3-6 years;
- Two (2) designated outdoor spaces;
- Entry foyer, staff and preparation rooms;
- Bathroom facilities;
- Cot room;
- Storage facilities; and
- Lift and stair access.

First Floor Plan

- The provision of a staff room;
- Office and meeting space;
- Kitchen and WC facilities;
- Laundry and storage facilities; and
- Lift and stair access.

21. The proposal involves a minimum of eight (8) staff inclusive of the centre director and chef. The hours of operation are from 7am to 6pm, Mondays to Fridays.
22. The building has an overall height of 7.95m to the ridgeline based on an existing ground level of RL47.6 and a finished floor level of RL48.45 with minimum ceiling heights of 2.7m.

23. The raised portion of rear outdoor play area has a finished surface level of RL48.42 (referenced on the landscaping plan) requiring retaining walls of up to 1.42m in height based on an existing ground level of RL47.0.
24. Landscaped areas generally 1m wide are proposed along the Jersey Avenue frontage with a 6.65m return along the Junction Road frontage and along the south eastern boundary with a return of approximately 10m along the south western boundary. No tree removal is proposed as a part of the proposal, noting that removal of two trees was previously undertaken under Permit No. TA2020/0094 subject to two native replacement trees for each tree removed.
25. An Acoustic Report was submitted with the application, which requires a 2.1m high acoustic barrier adjacent to the south western and south eastern sides of the outdoor play area and 1.8m high acoustic barriers adjacent to the outdoor play areas facing Junction Road and Jersey Avenue and both sides of the driveway in order to mitigate acoustic impacts to adjoining residential receivers. The Acoustic Report is predicated upon no more than eight (8) x 0-2 year old and fifteen (15) x 3-6 year old children outside within the outdoor play areas at any one time.
26. Extracts of the proposed plans are provided below.

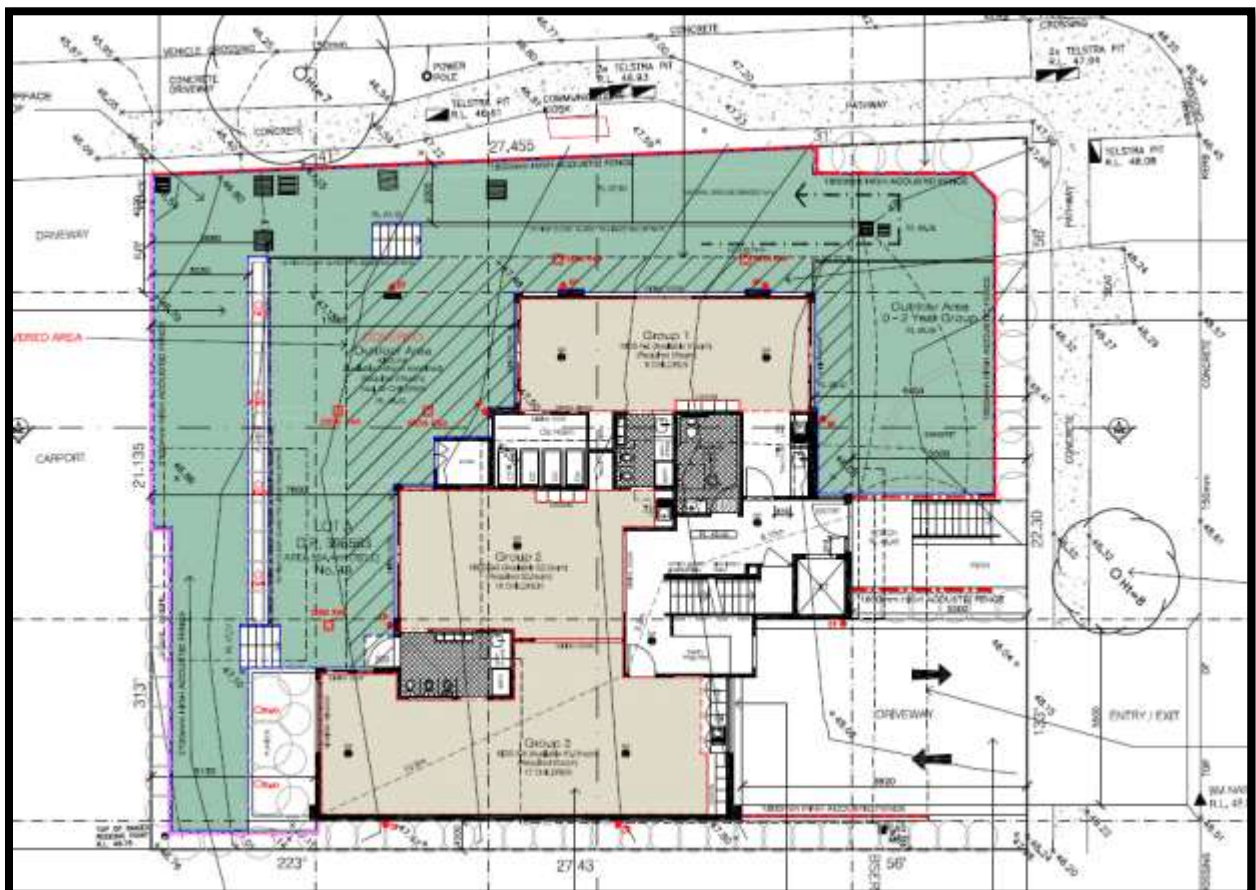


Figure 1: Site Plan at 49 Jersey Avenue Mortdale (Source – NDGroup Architects)

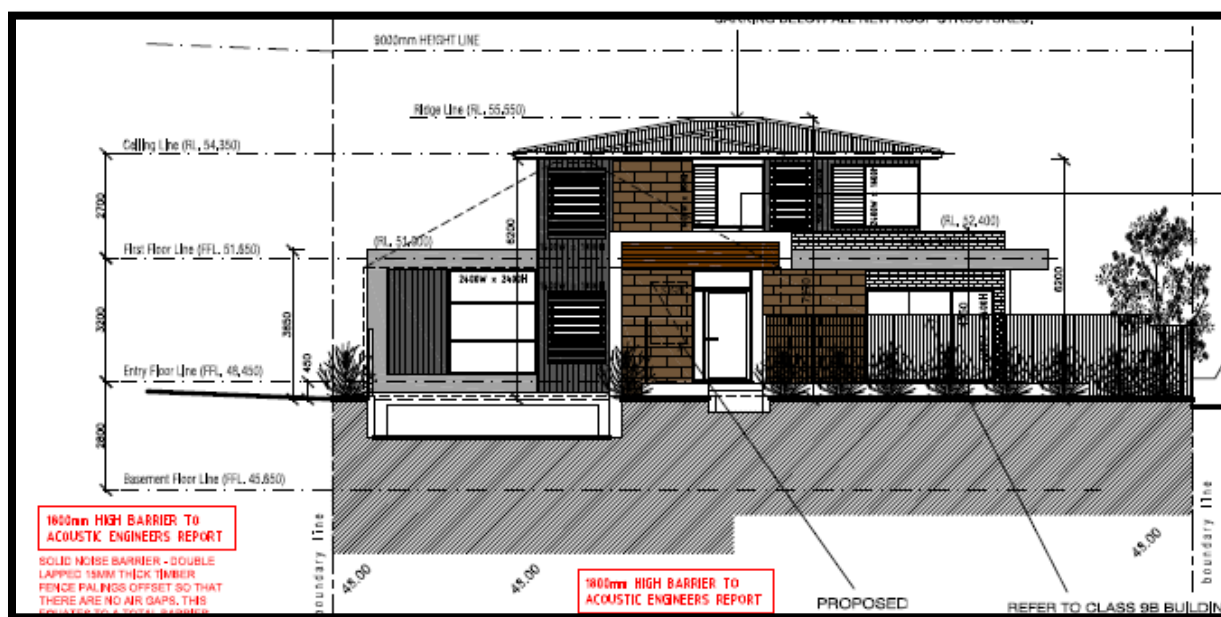


Figure 2: North east (front) Elevation at 49 Jersey Avenue Mortdale (Source – NDGroup Architects)

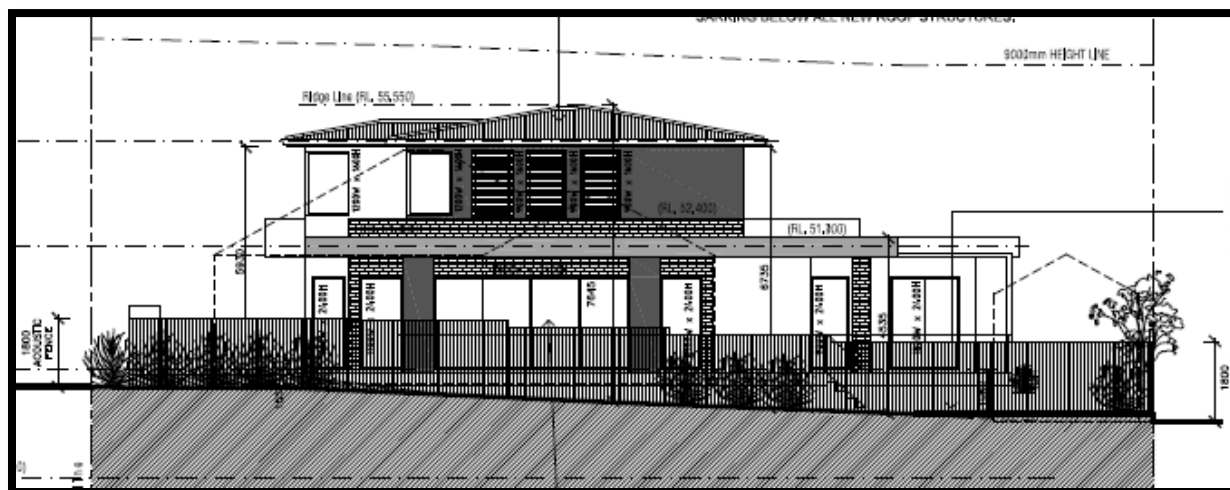


Figure 3: North west (Junction Road frontage) Elevation at 49 Jersey Avenue Mortdale (Source – NDGroup Architects)

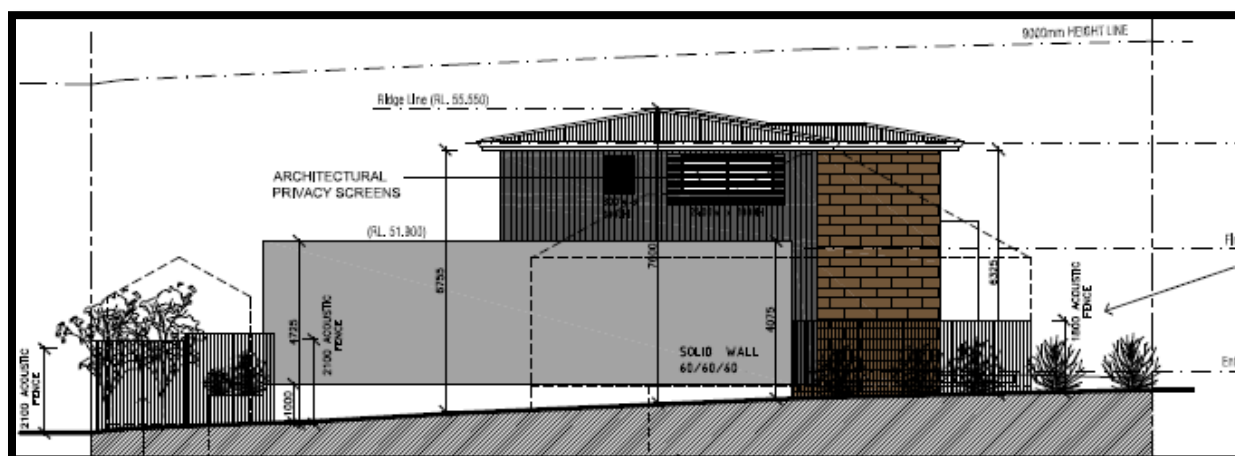


Figure 4: South east (side) Elevation at 49 Jersey Avenue Mortdale (Source – NDGroup Architects)

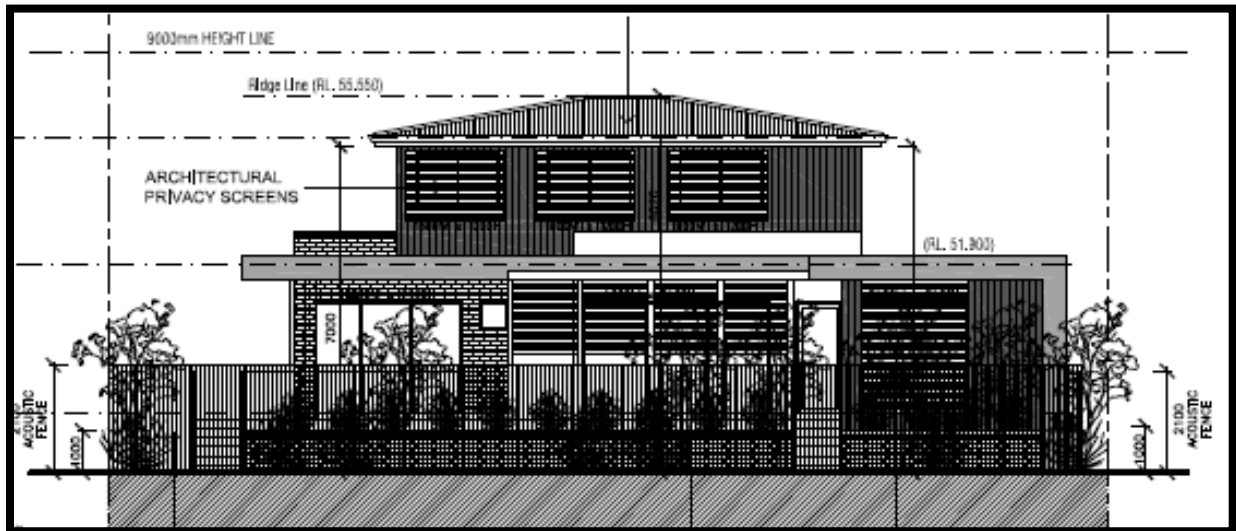


Figure 5: South west (rear) Elevation at 49 Jersey Avenue Mortdale (Source – NDGroup Architects)

Site and Locality

27. The site is legally described as Lot A in DP398563 and is known as 49 Jersey Road Mortdale.
28. The subject site is rectangular corner lot with a total area of 594.4sqm and frontages of 22.3m to Jersey Road and 27.455m to Junction Street.
29. 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 Junction Street.
30. Adjoining the site are a single storey detached dwelling to the south west at 1 Junction Street, and multiple unauthorised sheds and unauthorised front fencing to the south east at 47 Jersey Avenue. Opposite the site on Junction Street are one and two storey detached dwellings. Opposite the site on the north eastern side of Jersey Avenue are two to four storey residential apartment buildings.
31. The site slopes to the rear from north east to south west with approximately 1.9m of fall. Two existing street trees are located within the site frontage to Jersey Avenue and Junction Street, which are to be retained.
32. 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 intersection of Junction Road and Jersey Avenue



Figure 8: Adjoining property at 47 Jersey Avenue looking south west



Figure 9: Adjoining property at 1 Junction Street looking south east



Figure 10: Opposite the site at 72-80 Jersey Avenue looking north east

Background

Site History

33. On 14 February 2020 Tree Permit No. TA2020/0094 was issued for the removal of two (2) existing trees subject to two (2) native replacement trees for each tree removed.

Application History

34. On 17 May 2021, Council wrote to the applicant requesting additional information in relation to streetscape appearance, acoustic screen details to be shown on elevations, accessibility, stormwater, tree and traffic impacts.
35. On 1 July 2021, the applicant submitted amended architectural and drainage plans and an updated Traffic Report.
36. On 3 August 2021, the Applicant submitted an Arboricultural Impact Assessment with root mapping in relation to the street tree to be retained adjacent to the driveway.

Compliance and Assessment

37. 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

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

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017	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

Deemed State Environmental Planning Policy – 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 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.

41. 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 (Educational Establishments and Child Care Facilities) 2017

42. State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education and Child Care SEPP) commenced on 1 September 2017 and aims to facilitate the effective delivery of educational establishments and early education and child care facilities across the State.

43. An assessment of the proposal against the relevant clauses and standards is provided in Table 1 below.

Table 1- Part 3 Early education and care facilities—specific development controls			
Clause	Control	Proposal	Complies
Clause 22 Centre-based child care facility – concurrence of Regulatory Authority required for certain development	<p>(1) This clause applies to development for the purpose of a centre-based child care facility if—</p> <p>(a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space requirements) of the Education and Care Services National Regulations, or</p> <p>(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.</p> <p>(2) The consent authority must not grant development consent to development to which this clause applies except with the concurrence of the Regulatory Authority.</p>	<p>The proposal provides the required amount of indoor and outdoor unencumbered space.</p> <p>A total of 113.75sqm indoor unencumbered space is required and 116.75sqm is provided.</p> <p>A total of 245sqm outdoor unencumbered space is required and 246sqm is provided.</p> <p>Concurrence not required.</p>	Yes
Clause 23 Matters for consideration	Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.	Refer to Table 2 below for an assessment of the proposal against the provisions of the Child Care Planning Guideline	No
Clause 25 – Non-discretionary development standards	(1) The object of this clause is to identify development standards for particular matters relating to a centre-based child care facility that, if complied with, prevent the consent authority from requiring more onerous	The development generally complies with this clause.	Yes

	<p>standards for those matters.</p> <p>(a) location—the development may be located at any distance from an existing or proposed early education and care facility,</p> <p>(b) indoor or outdoor space</p> <p>(i) for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or</p> <p>(ii) for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,</p> <p>(c) site area and site dimensions—the</p>	<p>It is noted that the location may be any distance from an existing or proposed early education and care facility.</p> <p>The proposal complies with the indoor and outdoor unencumbered space requirements.</p> <p>It is noted that the site area and frontage may be any size or dimension.</p> <p>It is noted that the site is not identified as a heritage item or within a conservation area and the colour of the building may be any colour.</p>	
--	--	---	--

	development may be located on a site of any size and have any length of street frontage or any allotment depth, (d) colour of building materials or shade structures—the development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.		
26 Centre-based child care facility — development control plans	<p>(1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility:</p> <ul style="list-style-type: none"> (a) operational or management plans or arrangements (including hours of operation), (b) demonstrated need or demand for child care services, (c) proximity of facility to other early education and care facilities, (d) any matter relating to development for the purpose of a centre-based child care facility contained in: <ul style="list-style-type: none"> (i) the design principles set out in Part 2 of the Child Care Planning Guideline, or (ii) the matters for consideration set out in Part 3 or the regulatory requirements set out in Part 4 of that Guideline (other than those 	<p>The contents of the clause are noted.</p> <p>The proposed child care has been assessed under the SEPP and Child Care Planning Guidelines.</p> <p>The controls within Hurstville DCP, with the exception of building height, side and rear setbacks, and car parking, do not apply to the proposal.</p>	Noted.

	<p>concerning building height, side and rear setbacks or car parking rates).</p> <p>(2) This clause applies regardless of when the development control plan was made.</p>		
--	---	--	--

LPP046-21

44. The below compliance table summarises compliance with the Child Care Planning Guideline as required by clause 23 of the SEPP.

Table 2- Child Care Planning Guideline	
3.1 Site selection and location	
<p>C1- For proposed developments in or adjacent to a residential zone, consider:</p> <ul style="list-style-type: none"> • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity. 	<p>The site is zoned R2 low density residential and adjoins single storey dwelling houses to the south west and south east.</p> <p>Adverse amenity impacts arise to the adjoining residential dwelling to the south east at 34 Milsop Place due to overlooking from the raised outdoor play area at the rear with a finished surface level of RL48.42 not being screened by the proposed 2.1m acoustic barrier at an existing ground level of RL46.8.</p> <p>The proposal is considered to result in adverse streetscape impacts due to the location of outdoor play area with associated 1.8m high acoustic barriers forward of the building line, which is inconsistent with the R2 low density residential context.</p> <p>The proposal is also considered to result in adverse traffic impacts due to non-compliant driveway gradient for the first 6m from the property boundary.</p>
<p>C2- When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are 	<p>Centre-based child care facilities are a permissible land use in the R2 zone and the corner site is considered to be environmentally safe with suitable road frontages.</p>

<p>suitable for the scale and type of development proposed having regard to:</p> <ul style="list-style-type: none"> - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas - where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use - there are suitable drop off and pick up areas, and off and on street parking - the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use - it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. 	
<p>C3 - A child care facility should be located:</p> <ul style="list-style-type: none"> • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like 	<p>The subject site is located near educational establishments, parks and places of public worship, with good access to public transport and local services.</p>
<p>C4 - A child care facility should be</p>	

<p>located to avoid risks to children, staff or visitors and adverse environmental conditions arising from being in proximity to:</p> <ul style="list-style-type: none"> • heavy or hazardous industry, waste transfer depots or landfill sites • LPG tanks or service stations • water cooling and water warming systems • odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses 	<p>The location is suitable and the site is not located within proximity to identified environmental hazards or incompatible uses.</p>
3.2 Local character, streetscape and the public domain interface	
<p>C5- The proposed development should:</p> <ul style="list-style-type: none"> • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas. 	<p>The two storey built form is compatible with the character of the locality and existing streetscape.</p> <p>However, the proposed location of outdoor play areas with associated 1.8m high acoustic barriers forward of the main building line facing Jersey Avenue is not considered consistent with the existing or desired future character of the streetscape and the locality.</p>
<p>C6 - Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing. 	<p>Suitable security, safety and passive surveillance have been provided.</p>
C7, C8	Not applicable
C9 - Front fences and walls within the front setback should be constructed of	Proposed 1.8m acoustic double lapped and capped fencing within the front setback is not

visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.	visually permeable.
C10 - High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.	The site does not adjoin a classified road.
3.3 Building orientation, envelope and design	
C11 - Orient a development on a site and design the building layout to: <ul style="list-style-type: none"> • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	<p>Adverse amenity impacts arise to the adjoining residential dwelling to the south east at 34 Milsop Place due to overlooking from the raised outdoor play area at the rear with a finished surface level of RL48.42 not being screened by the proposed 2.1m acoustic barrier at an existing ground level of RL46.8.</p> <p>The location of the outdoor play area with associated 1.8m high acoustic barriers forward of the main building line facing Jersey Avenue, fails to adequately define the street by facing it.</p>
C12 - The following matters may be considered to minimise the impacts of the proposal on local character: <ul style="list-style-type: none"> • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate 	<p>The two storey built form is compatible with the character of the locality and existing streetscape.</p> <p>However, the proposed location of the outdoor play area with an associated 1.8m high acoustic barriers forward of the main building line facing Jersey Avenue is not considered consistent with the existing or desired future character of the streetscape and the locality.</p>

access for building maintenance • setbacks to the street should be consistent with the existing character.	
C13 - Where there are no prevailing setback controls minimum setback to a classified road should be 10m. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50m, the same setback is required for the predominant adjoining land use.	The building setbacks are consistent with Council's minimum requirements of 5.5m to the primary frontage and 2m to the secondary frontage.
C14 - On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.	The side and rear setbacks are consistent with Council's minimum requirements of 0.9m and 3m, respectively.
C15 - The built form of the development should contribute to the character of the local area, including how it: • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place.	The two storey built form is compatible with the character of the locality and existing streetscape. However, the proposed location of outdoor play areas with associated 1.8m high acoustic barriers forward of the main building line facing Jersey Avenue is not considered consistent with the existing or desired future character of the streetscape and the locality.
C16 - Entry to the facility should be limited to one secure point which is: • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building	Entry is limited to one secure point visible from Jersey street.
C17 - Accessible design can be	Accessibility is provided within the building

<p>achieved by:</p> <ul style="list-style-type: none"> • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.</p>	<p>and the upper outdoor play area.</p> <p>However, accessibility is not achieved to the lower outdoor play area where steps and stepping logs are provided due to the level difference.</p>
3.4 Landscaping	
<p>C18 - Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. 	<p>Landscaped areas generally 1m wide are proposed along the Jersey Avenue frontage with a 6.65m return along the Junction Road frontage and along the south eastern boundary with a return of approximately 10m along the south western boundary. No tree removal is proposed as a part of this proposal, noting that removal of two trees was previously undertaken under Permit No. TA2020/0094 subject to two native replacement trees for each tree removed.</p>
3.5 Visual and acoustic privacy	
<p>C21 - Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"> • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design. 	<p>No direct overlooking of indoor or outdoor play spaces from public areas due to the proposed acoustic fencing.</p>
<p>C22 - Minimise direct overlooking of main internal living areas and private open spaces in adjoining</p>	<p>Adverse amenity impacts arise to the adjoining residential dwelling to the south-east at 34 Milsop Place due to overlooking</p>

developments	from the raised outdoor play area at the rear with a finished surface level of RL48.42 not being screened by the proposed 2.1m acoustic barrier at an existing ground level of RL46.8.
C23 - A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should: <ul style="list-style-type: none"> • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	Proposed acoustic fencing 2.1m high provided to the south western and south eastern boundaries adjacent to residential properties.
C24 - A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters: <ul style="list-style-type: none"> • identify an appropriate noise level for a child care facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	An acoustic report accompanies the application and was assessed and accepted by Council's Environmental Health Team.
3.6 Noise and air pollution	
C25 to C28	The subject site is not adversely affected by external noise and air pollution.
3.7 Hours of operation	
C29 - Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	The centre will operate 7am to 6pm Monday to Friday.
C30 - Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	Not applicable.

3.8 Traffic, parking and pedestrian circulation	
C3 - Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.	<p>Development complies with car parking requirements under the Hurstville Development Control Plan No.1 based on 1 space per 10 children and 1 space per 2 staff.</p> <p>A total of 35 children and 8 staff are proposed.</p> <p>A total of 8 spaces are required and 8 spaces are proposed.</p>
C32	Not applicable.
C33 - A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised.	A Traffic and Parking Assessment Report accompanies the development application. Council's Traffic Engineer does not support the proposal due to a non-compliant driveway gradient for the first 6m within the property boundary.
C34, C35, C37 Controls not applicable.	N/A
C36 - The following design solutions may be incorporated into a development to help provide a safe pedestrian environment: <ul style="list-style-type: none"> • separate pedestrian access from the car park to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities • in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction. 	<p>Council's Traffic Engineer provided the following comments:</p> <ul style="list-style-type: none"> • In accordance with "AS/NZS 2890.1:2004 - Off Street Car Parking, Section 3.3(a)", the first 6m into the property from the street boundary shall be at a maximum grade of 1:20 (5%). The submitted design does not comply. The applicant has designed this area at over 20%, which is 4 times steeper than permitted. <p>This matter cannot be conditioned as a change to the driveway gradient would result in changes to the parking layout, ground floor area and building appearance in order to achieve the required headroom clearance.</p> <p>Therefore, the current proposal cannot be supported due to unsatisfactory basement access arrangements.</p>
C38 - Car parking design <ul style="list-style-type: none"> • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards 	A clearly marked accessible parking space has been provided next to the lift.

<ul style="list-style-type: none"> provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards include wheelchair and pram accessible parking. 	
4.1 Indoor space requirements	
Every child being educated and cared for within a facility must have a minimum of 3.25sqm of unencumbered indoor space.	A total of 113.75sqm indoor unencumbered space is required and 116.75sqm is provided.
<p>It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> a minimum of 0.3sqm per child of external storage space a minimum of 0.2sqm per child of internal storage space 	Suitable storage provided.
4.2 Laundry and hygiene facilities	
<p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p> <p>On site laundry facilities should contain:</p> <ul style="list-style-type: none"> a washer or washers capable of dealing with the heavy requirements of the facility a dryer laundry sinks adequate storage for soiled items prior to cleaning an on site laundry cannot be calculated as usable unencumbered play space for children. 	On site laundry facilities are provided.
4.3 Toilet and hygiene facilities	
Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code	Provided as shown on plans.
4.4 Ventilation and natural light	
Services must be well ventilated, have adequate natural light, and be maintained at a temperature that	Suitable ventilation and natural light provided.

ensures the safety and wellbeing of children	
4.5 Administrative space	
A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	Adequate space for administrative tasks are proposed within the first floor.
4.6 Nappy change facilities	
<p>Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing.</p> <p>Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.</p>	Provided as shown on plans.
4.7 Premises designed to facilitate supervision	
A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.	<p>The proposed layout ensures that hidden corners are avoided and that supervision views are maximised internally and to the upper outdoor play area.</p> <p>However, the proposed lower outdoor play area has not been designed to facilitate supervision due to the level difference and planter structures.</p>
4.8 Emergency and evacuation procedures	
<p>Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>An emergency and evacuation plan should be submitted with a DA.</p> <ul style="list-style-type: none"> the mobility of children and how this is to be accommodated during an evacuation the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding 	Provided as shown on plans.

buildings <ul style="list-style-type: none"> • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios. 	
4.9 Outdoor space requirements	
An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0sqm of unencumbered outdoor space.	A total of 245sqm outdoor unencumbered space is required and 246sqm is provided.
4.10 Natural environment	
The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.	Exploration and leaning within the outdoor play area will be maximised with the use of facilities such as the outdoor play equipment and natural features as shown on the submitted Landscape Plan.
4.11 Shade	
The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	The upper outdoor play area is covered as shown on the plans.
4.12 Fencing	
Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.	The area will include child proof fencing as required by the NCC.
4.13 Soil assessment	
Clause 25 (d) of Education and Care Services National Regulations requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.	A Site Investigation Report prepared by a suitably qualified consultant was submitted, which confirms that the site is suitable for the proposed use.

Education and Care Services National Regulations (2011 SI 653)

45. The National Regulations govern the operation and minimum requirements for child care centres. These legislative and regulatory controls establish minimum provisions in relation to insurance, service agreements and approvals as well as establishing minimum operational requirements.
46. Table 2 above considered the proposal against the provisions of the Child Care Centre Guidelines. Part 4 of the Guidelines relates to compliance with the National Regulations for development proposals and assists applicants and child care providers in applying the national regulations. This part covers minimum requirements for the internal physical environment, external physical environment, provides a best practice example and

includes a checklist to assist with the planning, design and layout of purpose built child care centres or where significant changes are proposed.

47. The regulations provide minimum standards for the following elements of the centre;
- Fencing and barriers that enclose outdoor spaces.
 - Laundry and hygiene facilities,
 - Minimum requirements for unencumbered indoor space,
 - Minimum requirements for unencumbered outdoor space,
 - Toilet and hygiene facilities,
 - Minimum standards for ventilation and natural light,
 - Provision of administration space,
 - Nappy change facilities,
 - Outdoor space and the natural environment,
 - Outdoor space and the provision of shade,
 - Premises designed to facilitate supervision.
48. Of importance to this application is Clause 123 of the National Regulations which specifies minimum “*educator to child ratios*”. Subclause 1 establishes numerical requirements which require the following minimum provisions;
- “(1) *The minimum number of educators required to educate and care for children at a centre-based service is to be calculated in accordance with the following ratios—*
- (a) *for children from birth to 24 months of age—1 educator to 4 children;*
- (b) *for children over 24 months and less than 36 months of age—1 educator to 5 children;*
- (c) *for children aged 36 months of age or over (not including children over preschool age)—1 educator to 11 children;*
- (d) *for children over preschool age, 1 educator to 15 children.*
- (2) *If children being educated and cared for at a centre-based service are of mixed ages the minimum number of educators for the children must meet the requirements of subregulation (1) at all times.”*
49. Part 7.3 of the regulations relates to specific provisions for development in New South Wales. Division 2 (Minimum number of educators and qualifications and training required) establishes Clause 271 which states that
- “Educator to child ratios – children aged 36 months or more but less than 6 years;*
- (1) *Regulation 123 (1)(c) applies as modified by this section.*
- (2) *The educator to child ratio for children aged 36 months or more but less than 6 years of age is 1 educator to 10 children”*
50. In this case, the following table summarises the number of children and the required staffing numbers.

Age of children	Number of children per age category	Staff levels required/proposed
0 - 24 months	8	1 educator per 4 children Required: 2 staff required Proposed: 2 proposed
24 - 36 months	10	1 educator per 5 children

		Required: 2 staff required Proposed: 2 proposed
36 months +	17	1 educator per 10 children Required: 2 staff required Proposed: 2 proposed
Total	35	6 staff required; 6 educators proposed in addition to a manager and chef

LPP046-21

51. Following a detailed assessment against the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 and the Child Care Planning Guideline, the current proposal fails to satisfy Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 in terms of the design quality principles of Built Form, Landscape and Amenity and Parts 3.2, 3.3, 3.4, 3.5 and 3.8 under the Child Care Planning Guideline.
52. As previously noted, whilst the proposal is permitted in the R2 zone and the building is complies with Council's height and setback controls, adverse streetscape impacts arise due to the location of the outdoor play area with 1.8m high acoustic barriers forward of the building line, which is inconsistent with the R2 low density residential context. The relocation of the outdoor play areas away from the front setback would necessitate a re-design of the proposal in order to achieve the unencumbered outdoor space requirements for 35 children.
53. Further, adverse amenity impacts arise to the adjoining residential dwelling to the south-east at 34 Milsop Place due to overlooking from the raised outdoor play area at the rear with a finished surface level of RL48.42 not being screened by the proposed 2.1m acoustic barrier at an existing ground level of RL46.8. This matter cannot be conditioned given this would result in likely additional visual and overshadowing amenity impacts from excessive fence height based on the current proposed finished surface level.
54. In addition, the proposal is considered to result in adverse traffic impacts due to non-compliant driveway gradient for the first 6m from the property boundary. This matter cannot be conditioned as a change to the driveway gradient would result in changes to the parking layout, ground floor area and building appearance in order to achieve the required headroom clearance. Therefore, the current proposal cannot be supported due to unsatisfactory access arrangements.
55. The proposal also fails to provide satisfactory accessibility and supervision to the lower outdoor play area due to ground level differences, which is a poor design outcome.

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

56. 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.
57. 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 6 October 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)

58. 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.
59. 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 proposal was accompanied with a Site Investigation Report prepared by a suitably qualified consultant confirming that the site is suitable for the proposal. 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**

60. 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.
61. The proposal is not inconsistent with the provisions of this Draft Instrument.

Draft Remediation of Land SEPP

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

Draft Georges River Local Environmental Plan 2020

64. 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.
65. Consideration is given to the provisions of Draft GRLEP 2020 in the assessment of this application.
66. 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

67. 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

68. The proposal is characterised as a centre-based child care facility.
69. Centre-based child care facility means—
- “(a) a building or place used for the education and care of children that provides any one or more of the following—
- (i) long day care,
 - (ii) occasional child care,
 - (iii) out-of-school-hours care (including vacation care), (iv) preschool care, or

(b) *an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),*

but does not include—

(c) *a building or place used for home-based child care or school-based child care, or*

(d) *an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or*

(e) *a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*

(f) *a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or*

(g) *a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or*

(h) *a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility."*

70. 'Centre-based child care facilities' are permitted with consent in the R2 zone pursuant to HLEP 2012.

71. 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.*

72. 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".

73. 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 7.6m.	Yes
4.4 Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map	The proposal provides a total gross floor area of 263sqm (or FSR of 0.44:1)	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
Part 5: Miscellaneous Provisions			
5.6 Architectural roof features	Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.	No architectural roof feature proposed.	N/A
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
6.7 – 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

DEVELOPMENT CONTROL PLAN

74. 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.

DCP Provisions	Development Provisions	Complies
3.1 Vehicle Access, Parking and Manoeuvring		
DS1.3 Provide onsite parking based on 1 space per 10 children and 1 space per 2 staff	8 spaces are required and 8 spaces are provided.	Yes
Section 5.3 Child Care Centres (Note: With the exception of building height, side and rear setbacks, and car parking, Council's site area, locational criteria, distance separation, centre capacity, building design, amenity and landscaping controls do not apply as per Clause 26 of SEPP (Educational Establishment and Child Care Facilities) 2017)		
Building Form and Appearance DS6.1. For Residential Zones, the maximum height is: • R2 Low Density Residential: One (1) storey. A variation to this control will only be considered where the centre is located adjacent to commercial or other non-residential zonings and where the proposal complies with the building form objectives.	The proposed building is two storeys, which varies the single storey control. However, the building height complies with the 9m height limit and is consistent with the two storey form permitted for a residential dwelling	No, but acceptable on merit
DS6.4. Where in a residential zone, front setbacks are as follows: • The minimum setback to the primary street frontage is 5.5m in the R2 Low Density Residential zone and 6m in the R3 Medium Density Residential zone (see Section 4.5) • On corner sites, Council will determine the primary frontage and the required front boundary setback will be to that primary frontage. A reduced setback may be allowed to the secondary frontage of not less than 2m.	The building provides a front setback of 5.5m, which complies.	Yes
DS6.5. Where in a residential zone, side setbacks are as follows: • In the R2 Low Density Residential zone: 0.9m	The building provides a secondary setback of 4m, which complies.	Yes
DS6.6. Where in a residential zone, rear setbacks are as follows: • In the R2 Low Density Residential zone: 3m	The building provides a rear setback of 7.6m, which complies.	Yes
DS8.1. A 1m wide landscaped area is required to be provided along the frontage of the site (excludes driveways and pedestrian paths).	Landscaped areas generally 1m wide are proposed along the Jersey Avenue frontage with a 6.65m return along the Junction Road frontage.	Yes

DS8.2. For centres in the R2 Low Density Residential and R3 Medium Density Residential zones, any land within the site that is not required for car parking or other purposes is to be landscaped area	Generally achieved	Yes
DS8.3. Screen planting is to be provided along the side boundaries.	Screen planting approximately 700m wide is provided along the south eastern boundary with a return of approximately 10m along the south western boundary.	No
DS12.5. Fencing around large corner sites must be carefully designed. Where it is essential that side street boundaries be fully fenced, these are to be designed to enable landscaping along the boundary. This may be achieved by: <ul style="list-style-type: none"> • combination brick and timber fences incorporating planter boxes; • fences with varied setbacks, enabling landscaping between the fence and the street; • fences designed in appropriate modules with capping in bricks or timber; • fences which are setback slightly from the boundary to enable mass planting to the street; and • high quality fences which may be considered a landscape element in their own right. 	It is considered that the proposed landscaping does not adequately screen the timber lapped and capped acoustic barriers along the street frontages and side boundaries of the site. In particular, the proposed outdoor play area and acoustic fencing within the front setback area forward of the building line facing Jersey Avenue is considered to result in insufficient landscaped area to soften the appearance of the development as viewed from the street and is not consistent with the character of the R2 zone.	No

Draft Georges River Development Control Plan 2020

75. The Draft Georges River Development Control Plan will not come into effect until the Draft Georges River Local Environmental Plan 2020 is gazetted.

Interim Policy Georges River Development Control Plan 2020

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

IMPACTS

Natural Environment

77. The proposed development is unlikely to result in adverse impacts to the natural environment.

Built Environment

78. 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

79. The proposed development is of a scale and form that is inconsistent with the existing context, which will result in a negative social impact in terms of privacy and amenity impacts and fails to provide suitable accessibility for all users to the site and within the outdoor play area.

Economic Impact

80. The proposal will result in a short term positive economic stimulus due to the employment opportunities created by the construction works and the employment of staff within the centre.

Suitability of the Site

81. The site is zoned R2 Low Density Residential. The proposal will result in visual privacy amenity impacts to adjoining properties arising from raised outdoor ground levels, and unsatisfactory streetscape appearance with outdoor play areas and acoustic barriers within the front setback and insufficient landscaping.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

82. The application was notified for a period of fourteen (14) days between 21 September 2020 and 6 October 2020 in accordance with Council's Notification Policy. Three (3) submissions and 1 petition were received objecting to the proposal. The concerns raised related to traffic, 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.

83. Comments are provided under each of the following objections raised.

Traffic and Parking

84. *There is currently capacity for two small vehicles in front of 49 Jersey Avenue before the 'No Stopping' sign. This appears to be in the same location as where the new driveway will be built. There doesn't appear to be any reference of what will happen to this area. If the driveway will be in that area it appears that by removing two potential on-street parking spaces it will impact the parking in the surrounding area.*
85. *Despite the fact that the traffic report stated the street location is "moderately used at times" I wish to remind council that the majority of Jersey Ave closest to the proposed sight is high density residential i.e. unit blocks. Parking is quite obviously less during times that residents would commute to work in non-COVID times, however parking requirements are in greater demand as a result of high density living. As a corner location I am concerned again for the safety of children, parents and residents as clients of the proposed centre attempt to drop-off their children.*
86. *Traffic – I have been a resident of Jersey Avenue for over 20 years and have noticed over the past 3-5 years a marked increase of traffic traveling along Jersey Ave between Forest Road and Newman Street. Unfortunately this is often at speed and with parked cars along the street in both directions, despite the traffic report's findings, limits the traffic to one lane. The construction of the child care centre at the main and only intersection between Forest Rd and Newman St places children, parents and residents at increased risk in that it increases traffic flow, parking (and one would hope not double parking as many parents do outside of school drop offs). The planned 8 parking spaces whilst meeting legislated requirements does not cater to the capacity of clients who may arrive simultaneously. Perhaps the safest option would be to make Jersey Avenue a no right/left turn off Forest Road and minimise this through traffic as much as possible, and*

thereby redirecting it to the controlled traffic lights at Morts Road and Junction Street. In addition, an increase in traffic flow turning left/right off Forest Rd into Junction St will increase the risk of motor vehicle accidents to an area already very dangerous. I refer to the angle parking spaces on initial entry to Junction Street on turning from Forest Rd. There are frequent nose to rear accidents here as these parking spaces are dangerously close to the corner and make the turn from the main road difficult causing bank ups whilst waiting for people to park. At the very least these should be removed in the more immediate future and these spaces made a no parking area in general, notwithstanding the proposed development.

87. *Increase in Traffic Noise, Air Pollution and Risk of Accident*

88. Comment: The proposal complies with Council's parking requirements and the associated traffic noise and air pollution associated with the proposal is considered to be consistent with the environmental capacity of the street and nature of this permitted form of development.

89. However, Council's Traffic Engineer has reviewed the proposal and raises concern in relation to the driveway gradient, which fails to comply with the Australian Standards and is likely to result in adverse traffic impacts. This matter cannot be conditioned as a change to the driveway gradient would result in changes to the parking layout, ground floor area and building appearance in order to achieve the required headroom clearance.

90. Therefore, the current proposal cannot be supported due to unsatisfactory access arrangements. It is also noted that the proposal would result in the loss of an existing on-street parking space in an area of relatively high demand along this section of Jersey Avenue.

Vacant property

91. *The development plans state that the property at 47 Jersey Avenue is vacant. By looking at the property at this current point in time, it is evident that it is not vacant. It is of concern that the current impact that this 'vacant' property has not been taken into consideration when compiling the relevant assessments for the development application.*

92. Comment: The property currently contains a residential dwelling, which would be demolished as a part of the proposal.

Adjoining site

93. *The resident adjoining the site in Jersey Avenue is a concern and I would recommend you come and observe on a couple of occasions. This person has a constant fleet of half a dozen or so wrecked motor vehicles parked in his driveway, on Jersey Avenue and around the corner in Junction Street. All appear to be unregistered. I have been told by another neighbour that this is not a registered lot and the set-up here is at the back of the house located behind it which faces Milsop Place. There are two quite aggressive dogs at the property who are reactive every time someone passes on either side of Jersey Avenue and I feel these pose a very real threat to any children at the prospective child care centre. Unfortunately, I have to say that the set up here, the resident and the dogs and the general feeling surrounding this property are quite unnerving and bordering undesirable, and should be a consideration of council for the general wellbeing and safety of children as potential residents of a child care facility.*

94. Comment: It is noted that the adjoining property at 47 Jersey Avenue contains a number of unauthorised structures and unauthorised front fencing and suitable investigation will

be undertaken by Council in the event Council receives any further justified complaint. However, the proposal incorporates suitable solid acoustic barriers and secure entries so as to ensure the safety of visitors, staff and children.

Council Referrals

Development Engineering (Stormwater)

95. No objections were raised to the original proposal subject to conditions if the application was to be supported.

Traffic

96. Not supported due to non-compliant driveway gradient.

Waste

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

Landscaping

98. An Arborist's Report was submitted confirming no adverse impacts to the existing street tree to be retained adjacent to the proposed driveway subject to suitable tree protection measures. No objections were raised subject to conditions if the application was to be supported.

Environmental Health

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

External Referrals

Ausgrid

100. 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

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

CONCLUSION

102. The proposal has been assessed against the provisions of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 and other relevant Planning Policies, Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan No.1.
103. The proposal fails to satisfy Clause 23 of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* in terms of the design quality principles of Built Form, Landscape and Amenity and Parts 3.2, 3.3, 3.4, 3.5 and 3.8 under the Child Care Planning Guideline, and visual privacy, fencing, landscaping, and vehicular access controls of Hurstville Development Control Plan (HDCP) No. 1.
104. 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 "encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment".

DETERMINATION AND STATEMENT OF REASONS

105. Statement of Reasons

- The proposal fails to satisfy Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 in terms of the design quality principles of Built Form, Landscape and Amenity and Parts 3.2, 3.3, 3.4, 3.5 and 3.8 under the Child Care Planning Guideline, and visual privacy, fencing, landscaping, and vehicular access controls of Hurstville Development Control Plan (HDCP) No. 1.
- Whilst the proposal is permitted in the R2 zone and the building complies with Council's height and setback controls, adverse streetscape impacts arise due to the location of outdoor play areas with 1.8m high acoustic barriers and insufficient landscaping forward of the building line, which is inconsistent with the R2 low density residential context along this section of street. The relocation of the outdoor play areas away from the front setback would necessitate a re-design of the proposal in order to achieve the unencumbered outdoor space requirements for 35 children.
- Further, adverse amenity impacts arise to the adjoining residential dwelling to the south-east at 34 Milsop Place due to overlooking from the raised outdoor play area at the rear with a finished surface level of RL48.42 not being screened by the proposed 2.1m acoustic barrier at an existing ground level of RL46.8. This matter cannot be conditioned given this would result in likely additional visual and overshadowing amenity impacts from excessive fence height based on the current proposed finished surface level.
- In addition, the proposal is considered to result in adverse traffic impacts due to non-compliant driveway gradient for the first 6m from the property boundary. This matter cannot be conditioned as a change to the driveway gradient would result in changes to the parking layout, ground floor area and building appearance in order to achieve the required headroom clearance. Therefore, the current proposal cannot be supported due to unsatisfactory access arrangements.
- The proposal also fails to provide satisfactory accessibility and supervision to the lower outdoor play area due to ground level differences, which is a poor design outcome.
- 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

106. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel refuse DA2020/0354 for demolition of existing structures and construction of a two storey child care centre above basement parking on Lot A DP398563 on land known as 49 Jersey Avenue Mortdale subject to the reasons for refusal referenced below.

1. The proposed development is inconsistent and has not demonstrated compliance with the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - Clause 23 – Matters for consideration (design quality principles of Built Form, Landscape and Amenity and Parts 3.2, 3.3, 3.4, 3.5 and 3.8 under the Child Care Planning Guideline)

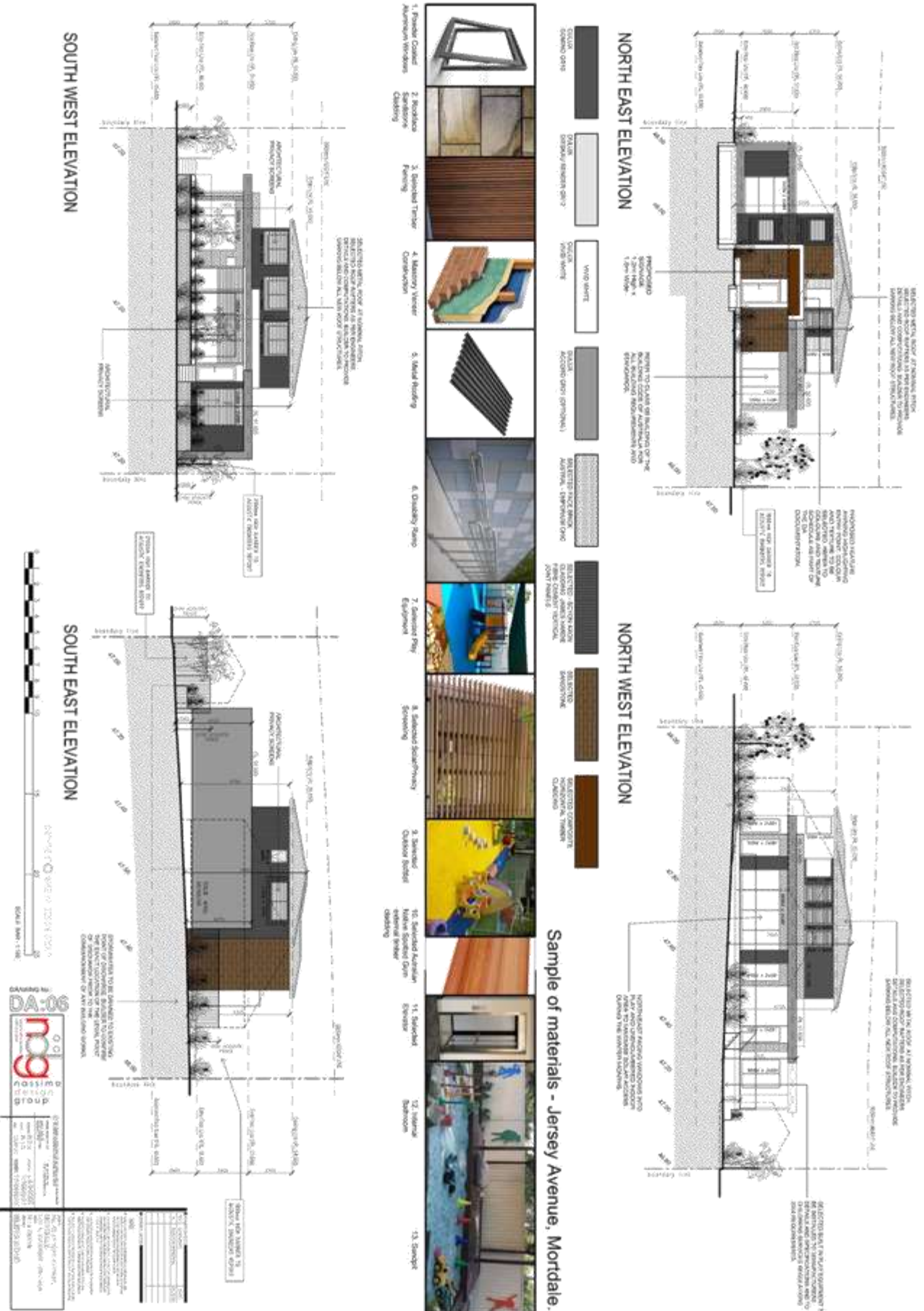
2. The proposed development is inconsistent and has not demonstrated compliance with the Hurstville Local Environmental Plan 2012, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - Clause 1.2 – Aims of the Plan;
 - Clause 2.3 – Zone objectives and Land use Table
3. 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 5.3 – Child Care Centres
4. The proposal will result in adverse environmental impacts in the locality in terms of amenity impacts to adjoining properties, traffic impacts and streetscape impacts, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
5. 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.
6. The public submissions 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 [!\[\]\(a03a7eb2f4046e1d3c76772003e549ea_img.jpg\) 1 !\[\]\(844169987a590ed8c7e31d5d18950e8d_img.jpg\)](#) Site Plan - 49 Jercey Ave Mortdale

Attachment [!\[\]\(cbe2492b119e39e02a1dab2af4a4b296_img.jpg\) 2 !\[\]\(2f36c159ea3670f7a62f64a4f1cf5c05_img.jpg\)](#) Elevations - 49 Jersey Ave Mortdale





REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 02 SEPTEMBER 2021

LPP047-21

LPP Report No	LPP047-21	Development Application No	DA2021/0131
Site Address & Ward Locality	60 Marine Drive Oatley Peakhurst Ward		
Proposed Development	Demolition works and alterations and additions to existing multi storey dwelling house		
Owners	Mrs T and Mr J Kritikos		
Applicant	Mr Jonathon Kritikos		
Planner/Architect	George Fotaras – Design and building solutions		
Date Of Lodgement	22/04/2021		
Submissions	No submissions		
Cost of Works	\$484,000.00		
Local Planning Panel Criteria	The proposal has been referred to the Georges River Local Planning Panel (LPP) as the proposal seeks consent for a variation of greater than 10% to the building height development standard contained within Hurstville Local Environmental Plan 2012		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	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 (Coastal Management) 2018, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Draft Design and Places SEPP Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No 1, 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 Clause 4.6 Statement		
Report prepared by	Senior Development Assessment Officer		

Recommendation	That the application be approved in accordance with the conditions included in this report
-----------------------	--

Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning	Yes

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

Site Plan



Figure 1: Aerial view of subject site outlined in blue

Executive Summary

Proposal

1. Council received a development application seeking planning approval for demolition works, alterations and additions to the existing multi storey dwelling, swimming pool, retaining walls, landscaping and an inclinator.
2. In response to the issues raised by Council and comments provided from internal specialists, the proposal was amended seeking consent for demolition works and alterations and additions to the existing multi storey dwelling only.
3. As part of the amended plans, all the works proposed in the rear yard have now been deleted from this proposal including the swimming pool, retaining walls and terracing,

landscaping works and an inclinor. The proposed development now only seeks approval for the works to the existing dwelling house. The applicant will be lodging a separate application for the other works as described.

Site and Locality

4. The subject development site is identified as Lot 174 DP 11934, known as 60 Marine Drive, Oatley. The site is located on the southern side of Marine Drive between Raymond Street north east and Baker Street to the north west
5. The allotment is an irregular shaped allotment with a primary frontage of 9.145m to Marine Drive. The site has a total site area of 1309sqm (by DP).
6. A multi storey brick dwelling with tile roof is currently located on the site. The site observes a fall from the front to the rear of the allotment of approximately 38m. There are significant trees located on the site. The site falls away significantly from the rear of the dwelling house to the waters edge by approximately 20m. A boatshed is located on the site just above the MHWL.
7. In the wider context, the subject site is located in an established R2 Low Density Residential Area containing other multi storey dwellings on properties with similar site characteristics and topography. The site is located in the Foreshore Scenic Protection Area and is affected by a 15m Foreshore Building Line.

Zoning, Permissibility and HELP (2012) Compliance - LEP

8. The subject site is zoned R2 - Low Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HLEP 2012). Dwelling houses and ancillary development are permitted with consent in the zone. Notwithstanding the permissibility of the proposal, the development is considered to be consistent with the objectives of the zone.
9. The proposal seeks a variation to the maximum building height development standard.
10. The application has been accompanied by a Clause 4.6 exceptions to development standards request for the variation to Clause 4.3 – Height of Buildings development standard. This request has been supported for the reasons contained within this report.

Hurstville Development Control Plan

11. The provisions of Hurstville Development Control Plan No 1 (HDCP) are applicable to the proposed development. The proposal is considered to be an acceptable urban design and planning outcome for the alterations and additions to the existing building on the site and generally satisfies the applicable provisions contained within HDCP.

Submissions

12. The DA was notified to adjoining properties in accordance with the Hurstville Development Control No 1 for a statutory notification period of 14 days. No submissions were received.

Reason for Referral to the Local Planning Panel

13. The proposal has been referred to the Georges River Local Planning Panel (LPP) as the proposal seeks consent for a variation of greater than 10% to the building height development standard contained within Hurstville Local Environmental Plan 2012.

Planning and Design Issues

14. The existing building currently contains four levels and exceeds the maximum building height permitted for the site.
15. The proposal exceeds the overall height control of 9m. A Clause 4.6 Statement has been submitted seeking a variation to the statutory height control (Clause 4.3) of Hurstville Local Environmental Plan 2012 (HLEP). The statement generally justifies the assessment criterion regarding the non-compliance. The issue is discussed in greater detail in the body of this report.
16. The plans have been amended and the proposal is now fully compliant with the maximum FSR development standard that applies to the site under Hurstville Local Environmental Plan. The proposal is therefore consistent with the desired building density for the site.

Conclusion

17. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans and following a detailed assessment, the proposed Development Application (DA2021/0131) is recommended for approval subject to conditions of consent.

Report in Full

DESCRIPTION OF THE PROPOSAL

18. Development consent is sought for demolition works and alterations and additions to the existing multi storey dwelling.
19. The existing dwelling contains the following:

Upper Ground level (entry level)

- Kitchen dining and living room with balcony off living room
- One (1) bedroom
- Entry foyer
- Garage
- WC
- Internal access stairs

Mid Level

- Master bedroom with walk in robe with access to balcony
- Two (2) additional bedrooms with access to balcony
- Rear facing balcony accessed by all three (3) bedrooms
- Bathroom and separate WC
- Sunroom
- Internal access stairs

Ground Floor level

- Ballroom with bar
- Enclosed balcony
- Storage
- Study
- Internal access stairs

- External stairs from rear balcony to lower ground floor

Lower Ground Floor

- Timber viewing deck with steps to the rear yard
- Utility room
- Laundry
- Sub floor storage

20. The following details the proposed changes to each level:

Upper Ground level (entry level) (RL 36.35)

- Replacement of the existing tiled pitch roof with a flat colourbond roof.
- New entry to residence with large round skylight above.
- Level and enclose rear balcony to provide extra space to accommodate vehicles.
- New glazing, panel lift garage door and external finishes to modernise the dwelling.
- Replace existing kitchen with a wet bar.
- New 'man cave' with updated powder room.
- New internal cavity stacker doors within the space.
- New lift to service the existing dwelling.
- New cobblestone to the existing driveway.

Mid Level (RL 33.31)

- Internal wall changes.
- Five (5) bedrooms to be provided on this level.
- New main bathroom and ensuite bathroom.
- Extend balcony to rear in line with existing rear building setback.
- Existing enclosed sunroom converted into bedroom 5.
- Existing bathroom converted into bedroom 4.
- Extend bedroom 2 and bedroom 3 into part of existing balcony to provide extra space for walk in robes.
- Linen and laundry chute installed.
- New glazing.
- New lift to service the existing dwelling

Ground Level (RL 29.95)

- Existing bathroom altered for new main living area.
- New kitchen with walk in butlers kitchen.
- New walk in cellar.
- New powder room.
- Level enclosed balcony and convert to new internal dining and sitting area.
- Extend to rear for new balcony.
- Spiral staircase to level below from balcony.
- Update study area.
- New glazing
- New lift to service the existing dwelling

Lower Ground Level (RL 26.79)

- Internal changes to provide stair and lift access to levels above (within existing building footprint).
- New bathroom and laundry.
- Linen and laundry chute installed.
- Convert utility room to cinema room.

- New extension to create a rumpus room.

BACKGROUND

21. Approval was granted on 3 September 1973 for the construction of the dwelling house under application no DA1034/73.
22. Approval was granted on 23 August 1976 for alterations and additions to the existing dwelling under application DA729/76.
23. DA2021/0131 was lodged seeking approval for demolition works, alterations and additions to the existing dwelling, construction of new swimming pool, inclinator, retaining walls terracing and landscaping works.
24. The proposal was amended during the assessment of the application. As part of the amended plans, all the works proposed in the rear yard have now been deleted from this proposal including the swimming pool, retaining walls and terracing, landscaping works and inclinator. The proposed development under DA2021/0131 now only seeks approval for the alteration and additions works to the existing dwelling house. The applicant will be lodging a separate application for the other works as described

DESCRIPTION OF THE SITE AND LOCALITY

25. The subject development site is identified as Lot 174 DP 11934, known as 60 Marine Drive, Oatley. The site is located on the southern side of Marine Drive between Raymond Street north east and Baker Street to the north west.



Figure 2: Front elevation of existing dwelling house at 60 Marine Drive, Oatley.

26. The allotment is an irregular shaped allotment with a primary frontage of 9.145m to Marine Drive. The site has a total site area of 1309sqm (by DP).

27. A multi storey brick dwelling with tile roofed is currently located on the subject site. The site observes a fall from the front to the rear of the allotment of approximately 38m. There are significant trees located on the site.



Figure 3: Rear elevation of existing building showing the existing lower ground floor and groundfloor level above.



Figure 4: Rear stairs from ground floor level west towards the viewing deck and the neighbouring property at 58 Marine Drive, Oatley.



Figure 5: Eastern elevation of the existing building showing elevated driveway.



Figure 6: Existing viewing deck looking across the site to south west.



Figure 7: Rear elevation of existing dwelling as viewed from the rear of the site.

28. The site falls away significantly from the rear of the dwelling house to the waters edge by approximately 20m. A boatshed is located in the rear yard of the site just above the MHWL (see figure 9).



Figure 8: View looking south towards the water to the rear of the allotment



Figure 9: Existing boatshed located on the subject site.

29. In the wider context, the subject site is located in an established R2 Low Density Residential Area containing other multi storey dwellings on properties with similar site characteristics and topography. The site is located in the Foreshore Scenic Protection Area and is affected by a 15m Foreshore Building Line.

Surrounding Development

30. The subject site is located within an area that contains residential dwelling houses of similar scale and sizes. The properties with frontage to the water contain multi storey dwellings that tend to follow the steep topography of the site where possible.
31. Immediately adjoining the site to the west at 58 Marine Drive is a multi storey dwelling with a detached double garage located on the boundary at the front of the allotment.
32. To the east at 62 Marine Drive is an approved development currently under construction for a multi storey dwelling with swimming pool.



Figure 10: Existing dwelling at 60 Marine Drive with the double garage for 58 Marine Drive to the right.



Figure 11: Looking west across 58 Marine Drive, Oatley.

33. To the north and across the road in Marine Drive are two storey dwelling houses. Marine Drive Reserve is located further to the east along Marine Drive.

COMPLIANCE AND ASSESSMENT

State Environmental Planning Policies

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

Compliance with State Planning Policies

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

State Environmental Planning Policy No 55 – Remediation of Land

35. State Environmental Planning Policy No 55 – Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land. SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
36. Clause 7(1) of the State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55) states that Council cannot consent to development on the land unless:
- "(a) it has considered whether the land is contaminated, and*
- (b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose."*
37. 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.
38. The proposal is therefore considered to be consistent with SEPP 55 and suitable for the proposed development.

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

39. 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.
40. The trigger for BASIX Certification is when the estimated cost of works for residential development (new dwelling(s)/alterations and additions) is equal to or above \$50,000. BASIX Certification is also triggered when proposing a swimming pool with a volume of 40,000 litres.
41. A BASIX Certificate prepared by Design and Build Solution, dated 6 August 2021, certificate number A411134_03, has been submitted with the Development Application satisfying the minimum requirements of State Environmental Planning Policies (Building Sustainability Index: BASIX) 2004.

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

42. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
43. 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).*
44. 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 State Environmental Planning Policy as the site is within both Georges River Council and the R2 Low Density Residential zone.
45. Pursuant to Clause 8(1) of the State Environmental Planning Policy, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
46. The proposed development as amended does not require the removal of any trees; however tree protection measures will be required to be put in place. The application was referred to Council's Consultant Arborist and specific conditions of consent have been recommended if the application is to be supported.

State Environmental Planning Policy (Coastal Management) 2018

47. State Environmental Planning Policy (Coastal Management) 2018 updates and consolidates three previous State Environmental Planning Policies (SEPP 14 Coastal Wetlands, SEPP 26 Littoral Rainforests, SEPP 71 Coastal Protection) into one integrated Policy and is a matter for consideration for the current DA.
48. The Coastal Management State Environmental Planning Policy 2018 aims to: *“Promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 including the management objectives for each coastal management area”*.
49. The subject site has been identified as being located within a Coastal Environment Area, Coastal Use Area and the Coastal Zone as per NSW State Environmental Planning Policy (Coastal Management) 2018 - Maps.

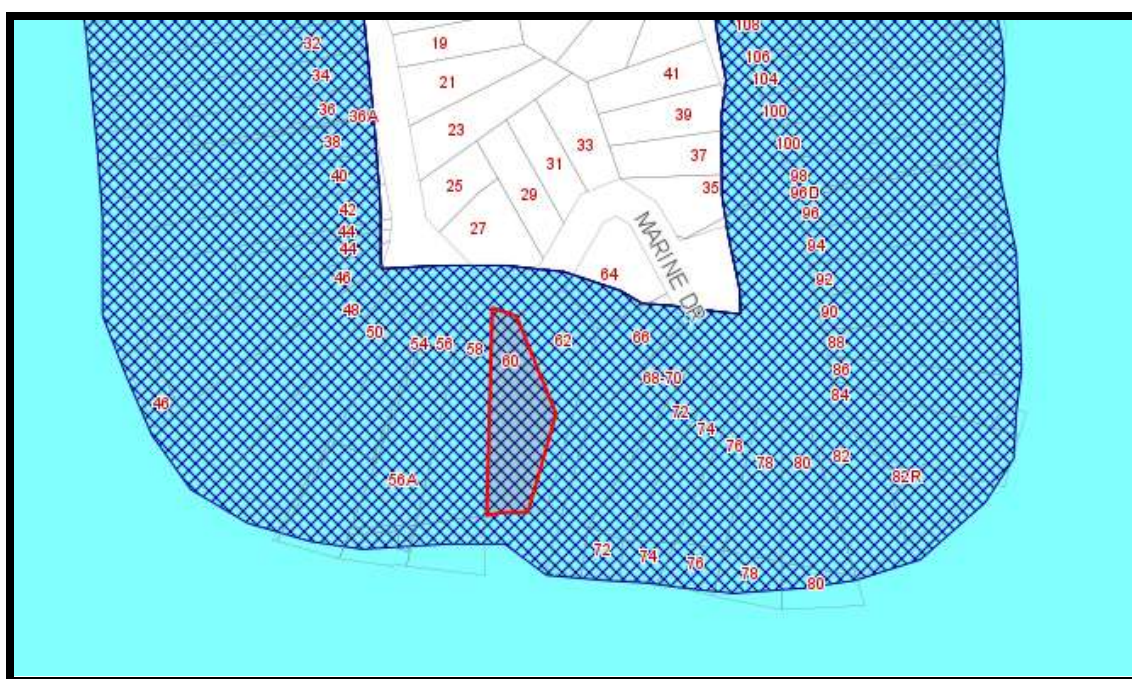


Figure 12: SEPP (Coastal Management) 2018 land map – subject site in red border

50. The proposal has been assessed under the relevant provisions of the Coastal Management SEPP 2018 as applicable to the Coastal Environment Area, Coastal Use Area and Coastal Zone.

Division 3 Coastal Environmental Area	
13 Development on land within the coastal environment area	
Control	Comment and compliance
(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:	
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	Satisfies; the proposed will have minimal impacts on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment.

<p>(b) coastal environmental values and natural coastal processes,</p> <p>(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</p> <p>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</p> <p>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</p> <p>(f) Aboriginal cultural heritage, practices and places,</p> <p>(g) the use of the surf zone.</p>	<p>Satisfies; the proposed development will have minimal impacts on the coastal environmental values and natural coastal processes.</p> <p>Satisfies; the proposed development (construction work) is restricted to the dwelling and it is not expected the proposed development will adversely impact the water quality.</p> <p>Satisfies; the development will have minimal impacts on marine and native vegetation.</p> <p>Satisfies; the proposed development (construction work) is restricted to the dwelling and does not adjoin the waterway. It is not expected the proposed development will adversely impact foreshore open space.</p> <p>Satisfies; The works are respectful of the cultural heritage, practices and places.</p> <p>Satisfies; Works are not located within the surf zone.</p>
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:	
<p>(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or</p> <p>(b) if that impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised - the development will be managed to mitigate that impact.</p>	<p>Satisfies; the proposed development (construction work) is restricted to the building footprint, and it is not expected the proposed development will adversely impact the water quality.</p>
Division 4 Coastal use area 14 Development on land within the coastal use area	
Control	Comment and compliance
(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:	
<p>(a) has considered whether the</p>	<p>Satisfies; the proposed development</p>

<p>proposed development is likely to cause an adverse impact on the following:</p> <p>(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</p> <p>(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,</p> <p>(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,</p> <p>(iv) Aboriginal cultural heritage, practices and places,</p> <p>(v) cultural and built environment heritage, and</p> <p>(b) is satisfied that:</p> <p>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</p> <p>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(iii) if that impact cannot be minimised - the development will be managed to mitigate that impact, and</p> <p>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p>	<p>(construction work) is restricted to the dwelling and no works proposed at the waterfront, it is not expected the proposed development will adversely impact access to the waterway.</p> <p>Satisfies; development does not have unreasonable impacts regarding overshadowing and sightlines.</p> <p>Satisfies; development does not have unreasonable impact on the visual amenity and scenic qualities of the coast, including coastal headlands,</p> <p>Satisfies; The works are respectful of the cultural heritage, practices and places.</p> <p>Satisfies; The works retain the historical connection between the domestic use of the Georges River and connection of people and property to Oatley Bay.</p> <p>Satisfies; development will have minimal impact on the coastal zone and its processes.</p> <p>Satisfies; development will have minimal impacts on the coastal zone and its processes.</p> <p>Satisfies; development will have minimal impacts on the coastal zone and its processes.</p> <p>Satisfies; the application has considered the surrounding coastal area. The proposed development is of a built form unlikely to adversely impact upon the surrounding coastal area with regards to bulk and scale.</p>
Division 5 General 15 Development in coastal zone generally - development not to increase risk of coastal hazards	
Control	Comment and compliance
Development consent must not be granted to development on land within	Satisfies; the proposed development is unlikely to increase the risk of coastal

the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.	hazards.
16 Development in coastal zone generally - coastal management programs to be considered	
Control	Comment and compliance
Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land	Satisfied.

51. Upon thorough assessment for the application under the SEPP Coastal Management 2018, the proposal reasonably satisfies the objectives and controls of the SEPP

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

52. The main aims and objectives of this plan include but are not limited to the following:

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

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

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environmental State Environmental Planning Policy

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

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas;

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

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

Draft Remediation of Land State Environmental Planning Policy

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

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

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

Draft Design and Place State Environmental Planning Policy

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

ENVIRONMENTAL PLANNING INSTRUMENTS

Hurstville Local Environmental Plan 2012 (HLEP 2012)

59. The subject site is zoned R2 Low Density Residential under the provisions of the Hurstville Local Environmental Plan 2012. Refer to zoning map below. The proposed development is for a dwelling house and ancillary structures which are permissible land uses in the zone.



Figure 13: Zoning map. Subject site is shown bordered in red.

60. The objectives of the zone area 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.*

61. The proposed development generally meets the objectives of the zone by providing housing needs of the community. The works to the dwelling are generally within the existing building footprint to minimise any adverse impacts upon the amenity of neighbouring properties from the alterations and additions.

62. The extent to which the proposed development complies with the Hurstville Local Environmental Plan 2012 (HLEP 2012) is outlined in the table below.

HLEP 2012 Compliance Table

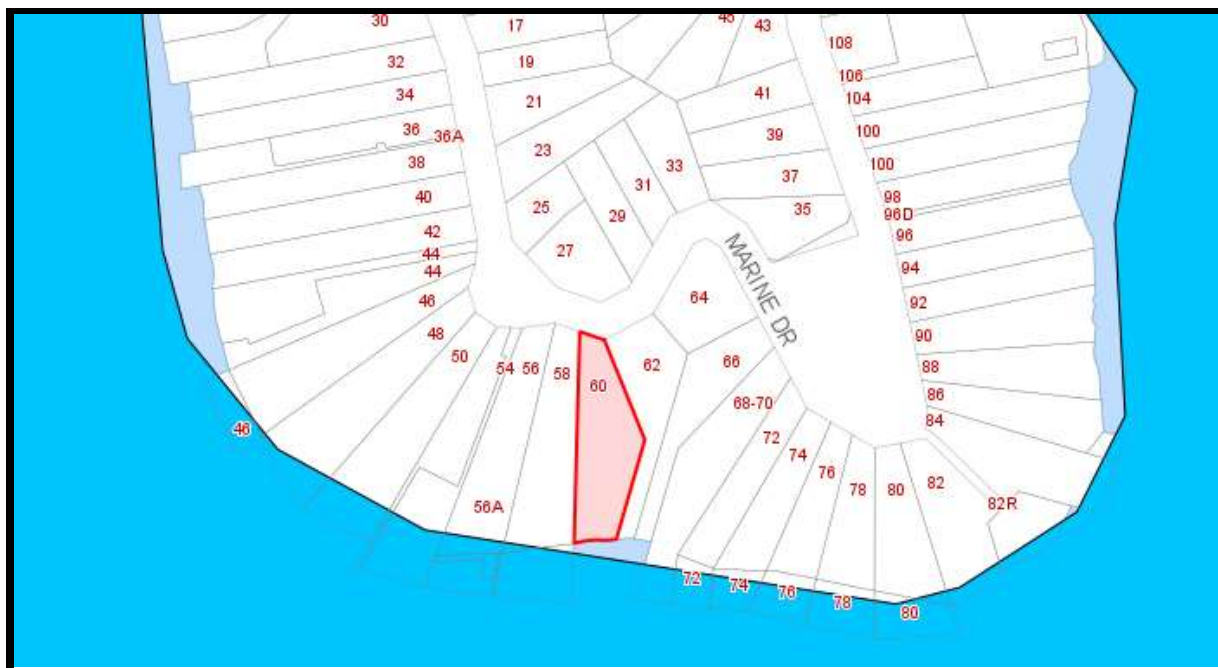
Clause	Standard	Proposal	Complies
Part 2: Permitted or Prohibited Development			
2.2 Zoning	R2 Low Density Zone	The development is a dwelling house which is a permissible use within the zone.	Yes
2.3 Zone	Objectives of the R2	The proposed development	Yes

objectives	Zone.	generally satisfies the zone objectives.	
Part 4: Principal Development Standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	13.06m	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 standards for the maximum building height.			
4.4 – Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map (An assessment under Clause 6.5 – Gross floor area of Dwelling Houses in Residential Zones is referenced later in this table)	As the development is for a dwelling house, the FSR has been assessed under Clause 6.5 <i>Gross floor areas of dwellings in residential zones</i> . See Clause 6.5 below.	N/A Refer to Clause 6.5
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Clause 4.5	The floor space of the dwelling has been calculated in accordance with Clause 4.5 and the “gross floor area” definition within the Hurstville Local Environmental Plan.	Yes
4.6 – Exceptions to Development Standards	A Clause 4.6 variation request has been submitted in relation to the maximum building height.		
Part 5: Miscellaneous Provisions			
5.10 – Heritage Conservation	The objectives of this clause are as follows: (a) To conserve the environmental heritage of Hurstville. (b) To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings	The site is not a heritage item and neither is it located within the vicinity of any heritage items.	Yes

	and views. (c) Conserve archaeological sites, (d) To conserve Aboriginal objects and Aboriginal places of heritage significance.		
5.11 Bush Fire Hazard Reduction	Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.	The site is not identified as bushfire prone land	N/A

Part 6: Additional Local Provisions

6.1 Acid sulfate soils	(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	The subject site is not affected by Acid Sulfate Soils, however it does adjoin land that is identified as Class 1 Acid Sulfate soils. The proposed works do not impact on this area and the objectives of this clause have been achieved.	Yes
------------------------	---	---	-----

**Figure 14:** Map showing Class 1 Acid sulfate soils (blue) adjacent to the subject site

6.2 Riparian land and watercourses	Development consent must not be granted to development on land to which this	The subject site is located within the riparian land and watercourse. The proposed works relate to the existing dwelling and it is not considered that the proposal will	Yes
------------------------------------	--	--	-----

	<p>clause applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or</p> <p>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p>	<p>have an adverse environmental impact.</p>	
--	--	--	--



Figure 15: Map showing the part of the site (green) affected by riparian land and watercourses

6.3 Limited development on foreshore area	<p>Development consent must not be granted for development on land in the foreshore area except for the following purposes:</p> <ul style="list-style-type: none"> (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so, (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access 	The proposed development involves alterations and additions to the existing dwelling house and proposes no new works in the foreshore area.	Yes
---	---	---	-----

	stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).		
6.4 – Foreshore Scenic Protection Area (FSPA)	<p>The objectives of clause are:</p> <p>(a) to recognise, protect and enhance the natural, visual, environmental and heritage qualities of the scenic areas of Hurstville and the Georges River,</p> <p>(b) to protect significant views to and from the Georges River,</p> <p>(c) to reinforce the dominance of landscape over built form.</p>	<p>The proposed development is consistent with the objectives of Clause 6.4.</p> <p>The proposal is a suitable response to the site as discussed in this report.</p> <p>Views to and from the river are not adversely impacted by the proposal.</p> <p>There are no trees proposed for removal under this application.</p>	Yes
6.5 – Gross Floor Area of Dwellings in residential zones	<p>The gross floor area calculation</p> <p>For a site $> 1000\text{sqm} \leq 1500\text{sqm}$ $(\text{Site area} - 1000) \times 0.2 + 457.50$</p> <p>$(1309 - 1000) \times 0.2 + 457.5 = 519.3\text{sqm}$</p>	<p>$(1309 - 1000) \times 0.2 + 457.5 = 519.3\text{sqm}$</p> <p>Maximum: 519.3sqm</p> <p>Proposed: 517.76sqm</p>	Yes
6.7 – Essential Services	Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that		Yes

	adequate arrangements have been made to make them available when required:		
	(a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage,	All utility (essential) services on site (water, sewerage, power, telecommunications) are available.	
	(d) stormwater drainage or on-site conservation,	The application was accompanied by a stormwater plan which was assessed and endorsed by Council's stormwater engineer. Specific conditions of consent have been imposed.	
	(e) suitable road and vehicular access.	The site is serviced by an existing driveway accessed from Marine Drive and will include 2 onsite parking spaces complying with the DCP parking requirements.	

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

Detailed assessment of variation to Clause 4.3 Height of Buildings

63. Clause 4.3 of the Hurstville Local Environmental Plan 2012 (HLEP) 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 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

64. The maximum height permitted within the immediate area is 9m as shown below. The green denotes 9m.

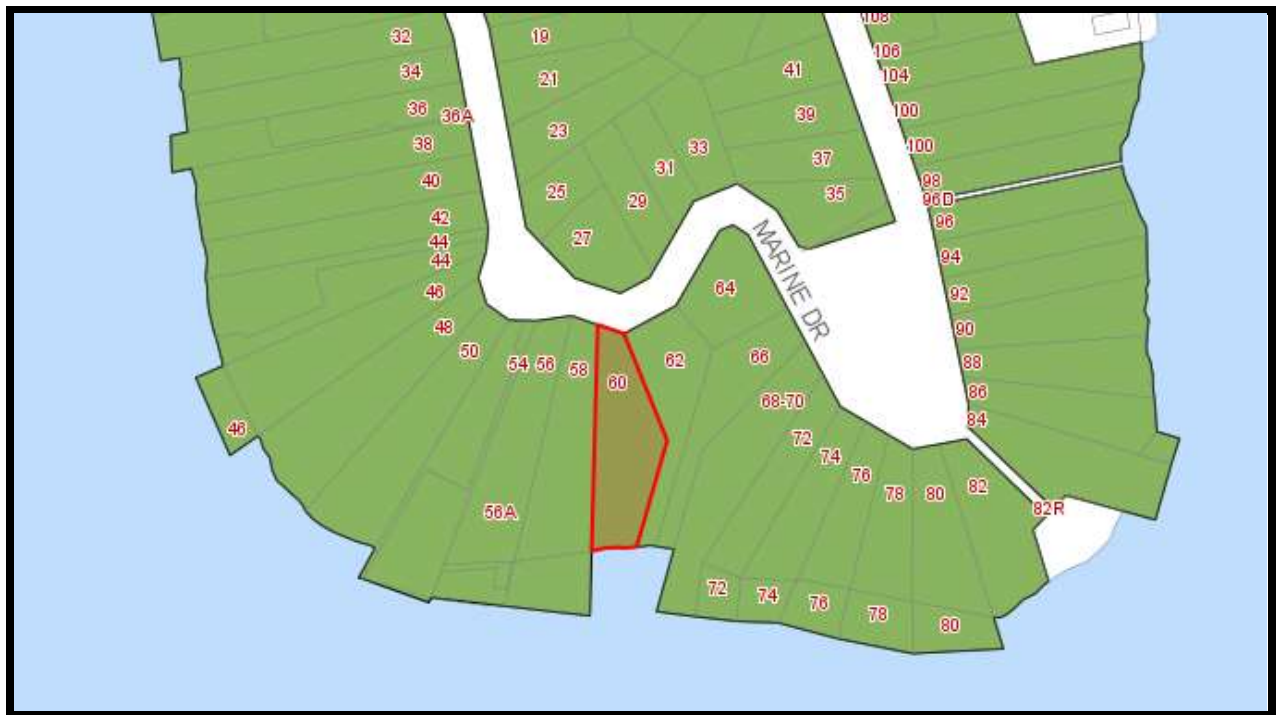


Figure 16: The zoning within the immediate area of the subject site which denotes a 9m height limit

65. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The HLEP identifies a maximum height of 9m for the site (refer to Figure 16 above). The proposed alterations and additions to the existing dwelling will result in the building exceeding the maximum height by 4.06m, which is a 45.1% variation to the development standard. The proposed height breach is a reduction from the existing building which currently exceeds the maximum height by 4.655m (51.7%). The location and extent of the non-compliance is provided in the section below.



Figure 17: Extent of height breach along the south eastern and south western façade (Source: design + building solutions)

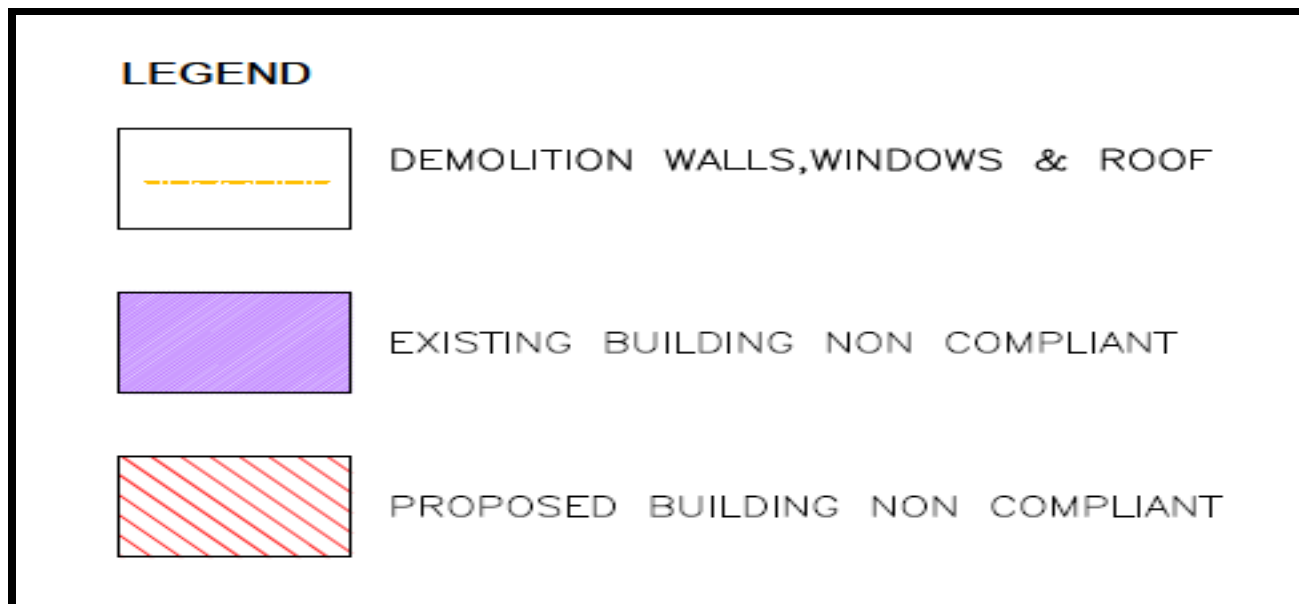


Figure 18: Key to existing and proposed height breaches from figure 17.

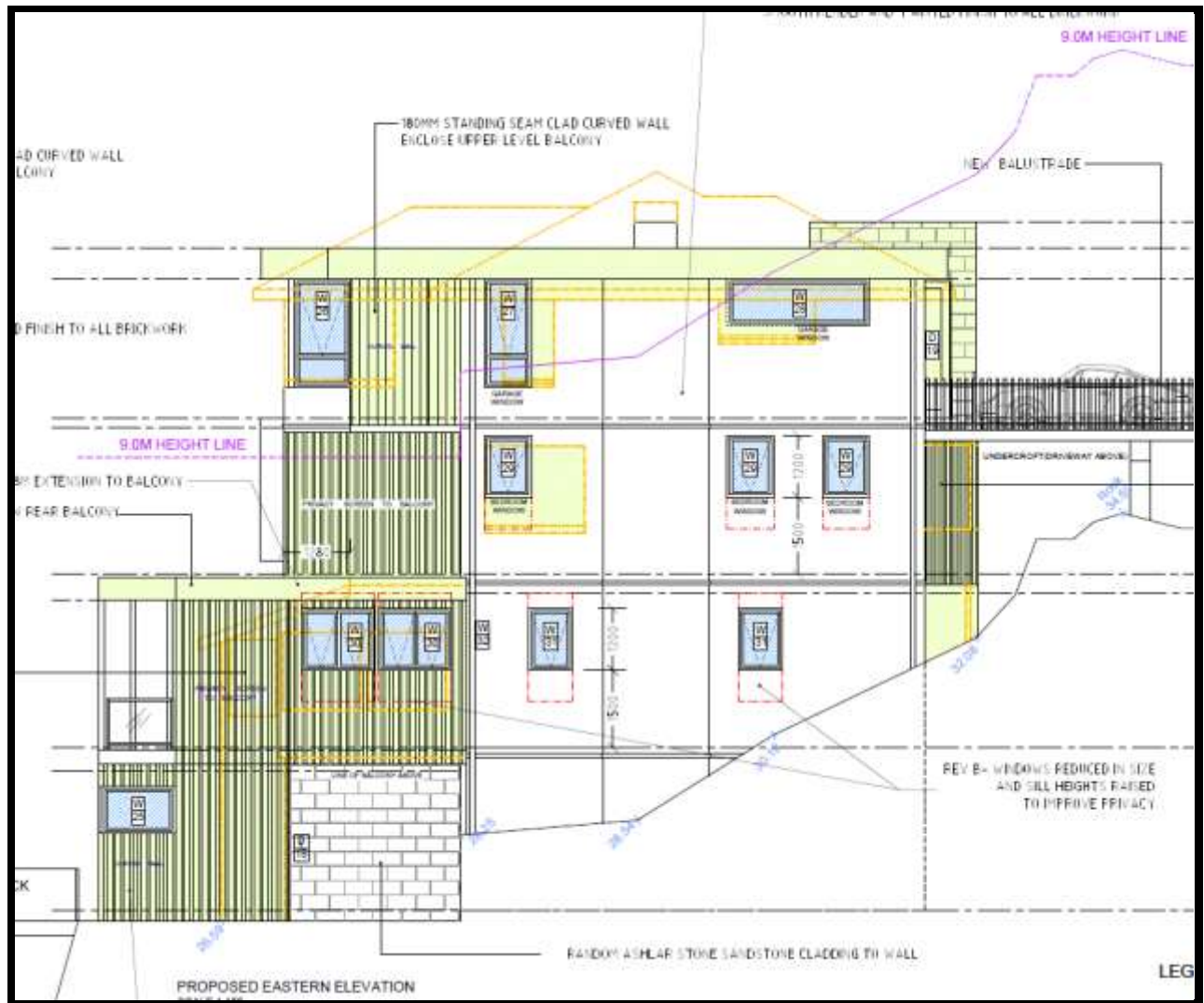


Figure 19: The extent of variation is shown in the east elevation (Source: design + build solutions)

66. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the HLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the applicant's calculations are generally accurate.
67. 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".
68. Clause 4.6(3) states that:

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

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

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

Is the planning control in question a development standard?

70. Height of Buildings limitation under Clause 4.3 of the Hurstville Local Environmental Plan 2012 is a development standard. The maximum permissible height is 9m.

What are the underlying objectives of the development standard?

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

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

72. 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.
73. 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.”

74. The judgment goes on to state that:

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

75. 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."*
76. The Clause 4.6 statement was prepared having regard to the recent court cases and their judgements.
77. Applicants Comments: *"Clause 4.6(3) (a) requires the applicant to provide justification that strict compliance with the height requirement is unnecessary and unreasonable in the exceptional circumstances of the case. In Wehbe v Pittwater Council (2007) NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.*
78. *The Court's recent decision in Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90 has altered the way the five tests ought to be applied, requiring justification beyond compliance with the objectives of the development standard and the zone. That is, more than one of those five grounds, is now arguably required to be made out. It is our opinion that the proposal satisfies a number of the five tests established in Wehbe and, for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant tests will now be considered.*

Test 1 – The objectives of the standard are achieved notwithstanding non-compliance with the standard

79. *As indicated, this request seeks to vary the application of Clause 4.3 to the proposed development. It is our opinion that the objectives of the Height of Buildings development standard are satisfied, when considering the proposal does not increase the existing height of the building.*
- Objective (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality**
80. *As indicated, the proposal will not result in any increase to the existing topmost ridge nor will it result in any external envelope changes on the upper levels that are beyond the existing building height on site. The proposal will reduce the overall height by 1.48m.*
81. *Given the surrounding development is predominantly larger single dwelling houses of similar height and scale, some of which have had their roofs replaced, the proposed works will be consistent with the desired future character of the neighbourhood.*

Objective (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,

82. The new flat roof is lower than existing pitched roof it is replacing. Any loss of view or solar access to existing buildings and open space will be resultant of what already exists on site and not in conjunction with the proposed works. There will be no loss to privacy.

Objective (c) to minimise the adverse impact of development on heritage items

83. Not applicable

Objective (d) to nominate heights that will provide a transition in built form and land use intensity.

84. The proposed development will lower the existing building heights to the site. Therefore, objective (d) is satisfied by the proposal.

Objective (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre.

85. The subject site is not in the Hurstville City Centre.

Objective (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.

86. The proposal is undergoing a transition to new modern buildings. A new building adjoining the site at No. 62 is under construction

Objective (g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public

87. The proposal retains the existing building on the site minimizing the environmental effects of a new build. No landscape works are proposed

Test 2 – The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

88. In our opinion, the underlying objective of the development standard is to replace the existing pitched roof on the existing building to a flat style roof. Therefore, there will be a reduction in the overall height, keeping in line with the locality and preserving the amenity of adjoining properties.
89. Accordingly, in our opinion, the requirement to comply with the maximum height development standard is unnecessary in this circumstance, as the proposal is not altering the existing building height over the LEP maximum of 9.0m. The proposal will not result in any adverse amenity impacts on neighbouring properties; and will be contextually compatible with surrounding dwellings.

Test 3 – The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

90. In our opinion, the underlying objective of the proposal is to ensure the roof is secure and free of any building issues, by its replacement. Compliance with Clause 4.3 of the LEP is unreasonable in this instance, with the area of non-compliance being limited to replacement of an existing roof structure.
91. Officers Comments: In respect to Prestons CJ judgement the NSW Land and Environment Court and in accordance with a recent decision (Initial Action Pty Ltd v

Woollahra Council [2018] NSWLEC 118), the NSW Land and Environment Court has established a “five part test” for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation has established the five part test (as outlined above). In this case it is considered that the proposal satisfies the five part test for the following reasons:

- a. As previously discussed the objectives of the height standard are considered to be satisfied despite the non-compliance.
 - b. The underlying objective of the standard remains relevant and therefore compliance is unnecessary and not warranted.
 - c. In this case the underlying objective will not be defeated or thwarted by the approval of the alterations and additions to the existing building. The height control will not be abandoned or destroyed through this or any recent approvals for similar mixed use developments.
 - d. The proposed scale of the development is consistent with the anticipated height for developments within this zone and precinct especially given the steep topography of the site.
 - e. The zoning of the land is appropriate.
92. The height control objectives articulates the ultimate function of the establishing the height of buildings. The maximum height for buildings on land within the former Hurstville Local Government Area is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 9m and the maximum height of the proposal is 13.06m. The proposal contravenes the standard, as a result the amount and degree of non-compliance and its resultant impact needs to be considered.
93. The underlying purpose is to ensure that any future development is designed in a manner whereby any resulting building height will appropriately respond to both the existing and future context in a controlled manner. The proposal demonstrates that the building will visually adapt with that of neighbouring buildings both current and future and that the resulting height breach has been appropriately integrated into the built form envelope reducing its visual prominence from both neighbouring properties and the public domain.
94. In respect to overshadowing, both immediately adjoining properties 58 and 62 Marine Drive will receive a compliant amount of solar access during midwinter. The proposal complies with the solar access requirements for adjoining properties.
95. The breaching height elements and or structures are suitably integrated into the overall design of the building and are of a form and materiality that do not create any unwarranted visual impact. The areas that exceed the height standard are inconsequential when viewed from the public domain and do not contribute to the scale and density of the building in terms of its visual perception to contributing bulk.
96. Where the building elements and or structures exceed the height standard, they have been designed in a manner where they are of a form, materiality or siting that does not unreasonably contribute to the scale or intensity of development when viewed by the casual observer. The highly articulated facades and extent of modulation provided across the building also serve to reduce the extent of perceivable building volume as it presents along the critical elevations.

97. Overall, the building height breach allows for an improved outcome, and therefore, the proposal continues to align with the zone and height objectives despite the height variation.

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

98. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overshadowing, overlooking or view loss.
99. *Applicant's comments:* As indicated in the Statement of Environmental Effects, the proposal is permissible within the R2 Low Density Residential Zone and is consistent with the zone objectives. Accordingly, in our opinion, the proposal is consistent with the zones objectives.
100. The proposed building height is reduced from 13.655m to 13.06m with a reduction of noncompliance from 51.7% to 45.1%.
101. The proposal relates to the replacement of the existing roof from tiled pitched roof to a new flat style metal roof.
102. The overshadowing impacts as shown by the shadow diagrams submitted show that the proposal has minimal impact to adjoining sites amenity. Shadows on No.62 Marine Drive fall on dense landscaped area and No.58 sloping natural ground at the rear of both sites,

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

103. 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,”*

104. *Applicants comments:* Clause 4.6(4)(a)(ii) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

(4) “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,”

105. *The applicant submits that the consent authority can and should be satisfied with each of these requirements of Clause 4.6(4), for all of the reasons set out in this request, and also having regard to the context of this particular site, in this particular locality.*
106. *As indicated, it is our opinion that the proposal is in the public interest. In accordance with Test 1 in Wehbe and Clause 4.6(4)(a)(ii) an assessment of the proposal against both the objectives of the standard and the zone has been undertaken. The consideration of the objectives of the standard is set out in this submission and in our opinion, the proposal is consistent.*
107. *A detailed assessment of the proposal against the objectives of the zone is undertaken in the submitted Statement of Environmental Effects. From this, it is our opinion that the proposal is consistent with the zone objectives and should be supported.*
108. *For these reasons, the variation is considered appropriate, consistent with the intent of Clause 4.6 and should be supported.”*
109. Officer's Comment: In accordance with the provisions of Clause 4.6(4)(a)(ii) a consent authority must be satisfied that the contravention of a development standard will be in the public interest because the development is consistent with the objectives of the development standard and the objectives of the zone in which the development is proposed to be carried out.
110. The amenity impacts associated with the non-compliance have been considered. In terms of visual impact, there will be no significant adverse impacts in terms of overshadowing or overlooking to adjoining properties.
111. The proposed development is considered to satisfy the objectives of the building height development standard for the following reasons:
 - The proposal (notwithstanding the LEP contravention) is consistent with the objectives of the development standard as provided in clause 4.3 of the HLEP 2012.
 - The development is consistent with the built form envisaged for the precinct.
 - Despite the variation, the bulk and scale of the development is compatible with the existing buildings that have been completed and approved within the immediate area.
 - When considered in the context of the development, the variation although still non-compliant is not discernible from street level as the building presents as a single storey dwelling from Marine Drive.
 - The height variation will not result in any unreasonable adverse amenity impacts such as overshadowing on neighbouring properties or the public domain.
 - The proposal is compliant with the maximum FSR that applies to the site. Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).
 - The height breach does not unreasonably contribute to the extent of overshadowing cast on neighbouring properties nor will it result in any identifiable loss of privacy.

112. The variation to the height would not result in an unreasonable visual impact on neighbouring properties or the streetscape.
113. The R2 Low Density Residential zone objectives require the development to:
- *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.*
114. The exceedance in the building height control generally satisfies the objectives of the zone for the following reasons:
- The development will not result in the removal of any trees ensuring the retention of the significant trees on site.
 - The development does not adversely impact the amenity of neighbouring properties or the public domain and is a suitable response to the topography and natural features of the site.
 - The height non-compliance will not result in unreasonable impacts on neighbouring properties in relation to privacy, overshadowing, visual or acoustic impacts.
 - The alterations and additions are largely within the footprint of the existing dwelling.
115. The area of non-compliance is considered not to be unreasonable and will not establish an undesirable precedent or undermine the objectives of the zone or height control. It will not have any adverse effect on the surrounding locality, which is consistent within the R2 Low Density Residential location. The proposal promotes the economic use and development of the land consistent with its zone and its purpose. The Panel is requested to invoke its powers under Clause 4.6 to permit the variation proposed.
116. The public benefit of the variation is that it will appropriately facilitate the provision of alterations and additions to an existing dwelling and a reduction in the existing height of the building through the incorporation of a flat roof. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 needs to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.
117. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard.

118. The shadow diagrams submitted with the architectural plans demonstrate that the building height, which has been reduced does not result in any significant additional shadowing that would adversely affect neighbouring properties.
119. In this case the proposal seeks to establish the preferred and appropriate design and built form outcome for this site with the existing building height being reduced due to the provision of a colourbond flat roof in lieu of the existing pitched tile roof. The building height still exceeds the maximum permitted. There will be no adverse amenity or visual impacts generated by the variation, the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and a well-founded request.

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

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

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

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

Conclusion – Assessment of Clause 4.6 Request for Variation

122. Despite the non-compliance in terms of the height, the proposed variation is considered to be acceptable and satisfies the provisions of Clause 4.6.
123. The proposed variation satisfies the objectives of the height control. The height of the existing building already exceeded the maximum 9m height control and the amendments, although still non-compliant result in the reduction of the extent of the non-compliance. The proposed height is considered to be consistent with other developments in the immediate locality and the scale of the development is sympathetic with the existing scale and form of existing adjoining developments.
124. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6. The statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).
125. For these reasons the Clause 4.6 Statement is considered to be well-founded and is supported.

Draft Georges River Local Environmental Plan 2020

126. In accordance with Section 4.15 (a)(ii) of the Environmental Planning and Assessment Act 1979, any proposed instrument that is or has been the subject of public consultation is a relevant matter for consideration in the assessment of a development application.
127. The Georges River Local Planning Panel endorsed at its meeting dated 26 June 2020, the Planning Proposal (as amended) to be forwarded to the Department of Planning, Industry and Environment for gazettal in accordance with Section 3.36 of the Environmental Planning and Assessment Act 1979.

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

DEVELOPMENT CONTROL PLAN

Hurstville Development Control Plan No 1 (HDCP)

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

Applicable DCP Controls	Standards	Proposal	Complies
4.4 Dwelling Houses on Standard Lots			
Neighbourhood character			
DS1.1 Development application supported by SEE	<p>The development application is supported by a Statement of Environmental Effects that:</p> <p>a. includes a satisfactory neighbourhood and site description, including the identification of the key features of the neighbourhood and site</p> <p>b. shows how the siting and design response derives from and responds to the key features identified in the neighbourhood and site description</p> <p>c. demonstrates that the residential development proposal respects the existing or preferred neighbourhood character and satisfies objectives</p>	The proposal is supported by an SEE and addresses the key features of neighbourhood character and demonstrates how the siting and design responds to the site.	Yes

	of the zone in the LEP		
Building Height			
DS2.1 Maximum Building Height in accordance with LEP	9m	13.06m The height is reduced given the pitched roof is being replaced with a skillion roof. There are small areas of additional height resulting from the roof change.	No, see Clause 4.6 provided to vary Clause 4.3 of HLEP 2012
DS2.2 Maximum ceiling height is 7.2m	7.2m	12.46m	No, see Clause 4.6 provided to vary Clause 4.3 of HLEP 2012
DS2.3 Flat roofs	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.	13.06m The existing dwelling is being renovated and some additions proposed. The wall heights remain largely unchanged by this application.	No, see Clause 4.6 provided to vary Clause 4.3 of HLEP 2012
DS2.4 Steep or sloping sites	For steep or sloping sites the building is sited and designed to be staggered or stepped into the natural slope of the land.	The dwelling is existing; the works are generally within the footprint of the existing dwelling.	Yes
Setbacks			
DS3.1 Minimum setback to primary street boundary.	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 or c. Within 20% of the average setback of dwellings on adjoining lots.	13.005m – 15.785m 17.235m N/A	Yes Yes N/A
DS3.4 Minimum side setback	The minimum side setback outside the FSPA is 900mm	N/A	N/A

	(ground floor) and 1.2m (first floor). <i>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</i>		
DS3.5 Minimum side setbacks	The minimum side setback inside the FSPA is 900mm (ground floor) and 1.5m (first floor).	Existing setbacks are less than the required setbacks. Side setbacks for all new external works are compliant.	No, however considered acceptable as the areas breaching the setback are existing.

Discussion on side setbacks

The existing dwelling already exhibits point encroachments that are less than the required 900 and 1500mm setbacks as required under the DCP.

The north-eastern corner of the building from the front of the garage and all levels below are setback 770mm from the side boundary. With the irregular nature of the site, the setback increases as you proceed further down the site to the waterway. All new works proposed on the eastern side of the dwelling are located a minimum of 1500mm from the boundary consistent with the DCP requirements.

On the western side of the building the entry level had a 290mm setback, this is proposed to be increased to 1078mm to the external wall of the entry foyer. Directly below this is the existing enclosed sunroom which is also located 290mm from the western boundary, this setback remains. It is noted that this area of the building is not highly visible and sits well below the street level.

Given the location of the building on the site the setback increases as you go further down the site towards the waterway. All new external works exceed the minimum 1500mm criterion.

The proposal meets the objectives of the control which include areas for landscaping, visual privacy, retaining existing patterns of development and maintaining view corridors. The proposal meets the minimum landscaped area, limits windows to active areas in size and number to the side boundaries. The retention of the existing non-compliance is considered worthy of support on merit for the reasons outlined above.

DS3.6 Minimum rear boundary setback	Minimum rear boundary setbacks are:		
--	-------------------------------------	--	--

	(a) 3m for any basement and ground floor level solid wall	38.79m	Yes
	(b) 6m for first floor level solid walls	38.79m	Yes
	(c) where a first floor balcony is proposed at the rear, 6m from the balustrade	38.79m	Yes
Facades			
DS4.1 Front door or window to street frontage	The dwelling house has a front door or window to a habitable room facing the primary street frontage.	<p>The proposed dwelling has a window that faces the primary frontage (north elevation) with the front door being accessed from the eastern side.</p> <p>The configuration of the site and the main access for the site is via an elevated path located alongside the driveway.</p> <p>Although the window is not to a habitable room, the window presents to the street. In addition the access to the front door is evident. This meets the intent and objectives of the clause and provides an acceptable streetscape interface.</p> <p>Notwithstanding the front elevation remains unchanged.</p>	No, however considered acceptable
DS4.2 Building elements	<p>The dwelling house incorporates at least two of the following building elements facing any street frontage:</p> <ul style="list-style-type: none"> a. entry feature or portico b. awnings or other features over windows c. eaves and sun shading d. window planter box treatment 	The existing building generally satisfies this control.	Yes

	e. bay windows or similar features f. wall offsets, balconies, verandas, pergolas or the like.		
DS4.3 Garage door width	Garage doors are not wider than 6m.	Garage door width 4.345m.	Yes
Views			
DS5.1 Development is sited and designed to facilitate view sharing while not restricting the reasonable development of the site.	No design solution is provided and each development application will be assessed on its own individual merit.	To address any potential view loss, consideration has been given to the to the four-step assessment established in <i>Tenacity Consulting v Warringah [2004] NSWLEC 140</i> . (See discussion below).	Yes
<p><u>Discussion on view sharing</u></p> <p>The subject site and surrounding lands are located in close proximity to Jew Fish Point and benefit from views across the Georges River. As part of the development, the LEP and DCP controls seek to ensure the location and design of dwellings reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. The proposed development involves alterations and additions to an existing building. It is noted that no concern has been raised by properties within the vicinity that may have views across the subject site to the Georges River.</p> <p>The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment (taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable). To decide whether or not view sharing is reasonable, the Court adopted a four-step assessment. In assessing any potential view loss, consideration has been given to the to the four-step assessment established in <i>Tenacity Consulting v Warringah [2004] NSWLEC 140</i>.</p> <p>In <i>Tenacity Consulting v Warringah Council</i> (Tenacity Consulting) the court provided a four step assessment process to guide whether or not view sharing is reasonable. In doing so, the court also gave some helpful guidance as to what should be considered as part of each step of an assessment.</p> <p>The four steps and the guidance provided by the Court in <i>Tenacity Consulting</i> is as follows.</p> <p>Step One – Assessment of the views to be affected The first step is the assessment of views to be affected. <i>Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.</i></p> <p>Step Two – Consideration from what part of the property the views are obtained. The second step is to consider from what part of the property the views are obtained.</p>			

For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Step Three – Assessment of the extent of the impact

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Step 4 – Assessment of the reasonableness of the proposal that is causing the impact.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Applying the above principles to the proposed alterations and additions to the existing dwelling it is concluded that the proposed works do not adversely affect the view sharing that currently exists between properties. The proposed works include the change of roof form from a pitched roof to flat roof which results in a reduction in the overall height of the building and the majority of works are contained within the existing building footprint. It is considered that the proposed works do not result in unreasonable adverse impacts upon the view sharing corridors that are existing.

Solar Access

DS6.1 Sunlight to living areas	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	Complies	Yes
---------------------------------------	---	----------	-----

	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		
DS6.2 Energy Efficiency	Development complies with the Energy Efficiency section in Appendix 1 of this DCP and BASIX requirements	The proposal is supported by a compliant BASIX certificate.	Yes
DS6.3 Shading devices	Buildings are encouraged to incorporate window shading devices where necessary to minimise exposure to direct summer sun. Alternatively, windows may be shaded by the planting of large trees, including deciduous species	The proposal is supported by a compliant BASIX certificate.	Yes
Visual Privacy			
DS7.1 Windows to be offset	Windows of proposed dwelling must be offset from neighbouring windows by 1m, especially windows of high-use rooms.	Complies. Highlight windows have been utilised and are also offset from adjoining properties.	Yes
DS7.2 Windows maintain privacy	Windows for primary living rooms must be designed so that they maintain privacy of adjoining site's principal private open space.	Complies	Yes
DS7.3 Survey to AHD provided	Development applications are accompanied by a survey plan or site analysis plan (to AHD) of the	The application includes survey plan and architectural plans indicating the adjoining properties, and window sill levels	Yes

	proposed dwelling showing the location of adjoining property windows, floors levels, window sill levels and ridge and gutter line levels		
Noise			
DS8.1 Noise generators	Noise generators such as plant and machinery including air conditioning units and pool pumps are located away from windows or other openings of habitable rooms, screened to reduce noise or acoustically enclosed.	Sufficient areas within the building to locate these.	Yes
DS8.2 Sites in proximity to a busy road or railway	For sites in proximity to a busy road or railway line, development is to comply with the provisions of State Environmental Planning Policy (Infrastructure) 2007 and the NSW Government's Development Near Rail Corridors and Busy Roads - Interim Guideline	N/A	N/A
Vehicle access, parking and manoeuvring			
DS9.1 Car parking	Car parking is provided on site in accordance with the following minimum rates: a. for 1 and 2 bedroom dwellings, 1 car parking space b. for 3 or more bedroom dwellings, 2 car parking spaces	2 tandem spaces provided. There is also the ability to park on the driveway in front of the dwelling.	N/A Yes
DS9.3 Garages and carports to be 1m behind	Enclosed or roofed car accommodation, including garages	The garage is existing and it is already located forward of the building line. The garage	No, however considered acceptable

building line.	and carports, are located at least 1m behind the main setback. <i>Note: Carports forward of the front setback may be considered where no vehicular access behind the front building alignment is available.</i>	and dwelling are setback a considerable distance from the front boundary and it is considered that the garage will not dominate the front façade and will be in keeping with the existing streetscape character.	as it is existing.
DS9.4 Maximum garage width	The maximum width of a garage opening is to 6m.	The proposed garage width is 4.365m.	Yes
DS9.5 Hard stand car spaces	Hard stand car spaces within the front setback must not have a slope / grade greater than 1:10	Noted and complies.	Yes
DS9.9 Driveway gradients	Driveway gradients must be constructed in accordance with Australian Standard 2890.1:2004.	Reviewed by Council's engineer and deemed to be satisfactory.	Yes
Landscaped areas and private open space			
DS10.1 Open space landscape area required outside FSPA	Where located outside the FSPA, a minimum of 20% of site area is landscaped open space.	N/A	N/A
DS10.2 Open space landscape area required Inside FSPA	Where located in the FSPA, a minimum of 25% of the site area is landscaped open space.	The site is located within the FSPA. 693.54sqm of landscaped area has been provided which equates to 52.98%.	Yes
DS10.3 Minimum dimension of landscaped open space	The minimum dimension of landscaped open space is 2m in any direction.	Minimum 2m dimension is provided.	Yes
DS10.4 Landscaped area in front yard	A minimum of 15sqm of the landscaped open space is provided between the front setback and the street boundary in the form of a front	The proposal provides an area of 118.9sqm in the front yard.	Yes

	yard.		
DS10.5 Private open space to be provided	An area of Principal Private Open Space is to be provided which: a. has a minimum area of 30sqm b. has a minimum dimension of 5m c. is located at ground level and behind the front wall of the dwelling d. is directly accessible from a main living area	The development is a steeply sloping site however does provide areas that can be used for private open space such as the viewing deck and adjoining covered area located off the rumpus room.	Yes
Stormwater			
DS11.2 Stormwater drainage method	Stormwater drainage is to occur by: a. drainage by gravity to the adjacent road kerb and Council's drainage system or b. an easement over adjoining properties to Council's drainage system and / or across the site to allow drainage from another lot or c. a charged stormwater drainage system which drains all the roof run-off up to the road kerb directly in front of the development site. or d. absorption/ infiltration method - Infiltration system such as an absorption trench can be used to manage part of the stormwater discharge from the development site. (refer to Appendix 2: Design of Absorption Trenches)	All stormwater from the site is to drain by gravity to the bay, with the provision of a pollution control pit to the satisfaction of the PCA. All works shall be within the property boundary.	Yes

DS11.4 Drainage by easements	Where drainage by an easement is involved, no buildings are allowed to be constructed over easements	N/A	N/A
DS11.5 Rainwater tanks	On-site retention of roof run-off using rainwater tanks or detention tanks for storage and re-use are encouraged. Overflow from storage facilities must be connected to an appropriate stormwater system as detailed in DS11.2.	N/A	N/A
DS11.6 Pumped out systems	Pumped out system will only be permitted to draining stormwater runoff from basements and associated driveways: where other conventional or alternative methods of stormwater drainage as specified in DS11.2 cannot be achieved. Stormwater from pumped systems shall be discharged to the property's drainage system (not to Council drainage system).	No pump out system proposed.	N/A
DS11.7 Overland Flow	Development is not to concentrate overland flow of stormwater onto an adjoining property	Development does not adversely affect neighbouring properties.	Yes
DS11.8 Stormwater Management	Development applications are to be supported by a Stormwater Management Plan showing how	Concept plans provided and conditions of consent provided by Council's stormwater engineer.	Yes

	surface and roof runoff will be discharged to the street or into an easement. This plan must show the size of all pipes.		
PC 12 - Basements			
N/A - The proposed development does not include any basements.			
PC 13 - Attics			
N/A - The proposed development does not include any attics.			
Balconies and Terraces			
DS14.1 Access to balconies	Access to balconies and terraces is direct from a habitable room at the same floor level. Note: a level difference of one step may be considered for the purpose of rain water protection.	Access to the terraces and balconies are from habitable rooms including bedrooms, rumpus room and the kitchen, living and dining rooms.	Yes
DS14.2 Balconies and terraces	Balconies and terraces include fixed planter boxes and / or privacy screens.	The balconies have been provided with privacy screening to the majority of the balconies to maintain amenity between properties.	Yes
DS14.3	Fixed planter boxes are at least 1m wide.	Noted.	Yes
DS14.4	Privacy screens are between 1.5m and 1.8m high	Noted.	Yes
DS14.5	Terraces are not visible from the street.	Terraces are not visible from the street.	Yes
DS14.6	Roof top terraces are not provided.	No roof top terraces proposed.	N/A
DS14.7 Balconies and terraces sight lines	Development applications for terraces and balconies must provide sight line diagrams that demonstrate how privacy issues to neighbouring properties are proposed to be addressed.	The location of the terraces and balconies will not have an adverse impact on neighbouring properties.	Yes
Alterations and additions			
DS15.1	Alterations and	The proposal complies with	Yes

Alterations and additions	additions comply with the relevant requirements of this DCP for setbacks, car parking and landscaping.	the relevant minimum setback provisions, car parking and landscaping requirements contained within the DCP.	
DS15.2 Alts and Adds – primary setback	Alterations and additions do not intrude within the existing primary street setback.	The proposal complies with the relevant setback provisions within Section DS3.	Yes
DS15.3 Where visible from the street	Where visible from the street, compared to the existing dwelling alterations and additions must have: <ul style="list-style-type: none"> • An equal or lower height • The same roof form • A compatible architectural style • Compatible materials, colours, textures and other external facade details. 	The roof form is being amended from a pitched roof to a flat roof which is not inconsistent with the locality. The works are modernising the existing dwelling to be consistent with recently constructed development in the locality. The alterations and additions are in keeping with the finishes, colours and design of the dwelling.	Yes
DS15.4 Existing vegetation to be retained	Existing significant vegetation is retained where not reasonably required to site development.	The proposal does not involve the removal of any trees. A condition of consent will be imposed requiring the protection of trees within the front and rear yard.	Yes
DS15.5 Replacement plantings required where trees are to be removed.	Where existing significant vegetation is proposed to be removed, replacement plantings are provided on site	No trees are proposed to be removed.	Yes
DS15.6 First floor additions setback	First floor additions are setback a minimum of 900mm from a side boundary	No additions are proposed to be setback less than 900mm, however there are parts of the existing dwelling that are setback less than 900m. See discussion below	Yes

Discussion on existing and proposed setbacksUpper Ground floor (RL 36.35)

The existing dwelling has an existing setback of 770mm in the north-eastern corner at the front of the garage which tapers out exceeding 900mm. All other existing parts of the building and new works exceed 900m from the side boundary.

Mid Level (RL 33.31)

The existing mid level and ground level plan has an existing setback of 770mm in the north eastern corner of the proposed walk in robe (below the garage). In addition, the existing sunroom currently has a setback of 365mm to the north western corner of the building. This level sits below the upper ground floor and is not highly visible from the street (see photos below):



Figure 20: Existing front entry with sunroom below



Figure 21: Existing sunroom on mid level

Ground level (RL 29.95)

The existing ground level plan has a setback of 770mm in the north eastern corner to the proposed cellar (below the garage). All other existing parts of the building and new works exceed 900mm from the side boundary.

Lower Ground level (RL 26.79)

The existing lower ground floor level contains a significant proportion as subfloor area. The subfloor area also exhibits a reduced setback of 770mm in the north eastern corner. All other existing parts of the building and new works exceed 900mm from the side boundary.

<p>DS15.7 Setbacks to first floor</p>	<p>Where an existing single storey dwelling is not setback 900mm from a side boundary, the first floor addition may have the same setback where it:</p> <ul style="list-style-type: none"> • is done to improve the existing residential neighbourhood; or 	<p>The areas where the existing building is located less than 900mm satisfies the requirements within the controls as specified in the DCP. This is discussed in DS15.6 above.</p>	<p>Yes</p>
--	---	--	------------

	<ul style="list-style-type: none"> • is done to provide suitable anchorage points on the external load bearing walls for the additional; and • will not have an adverse amenity impacts on adjoining premises. 		
--	--	--	--

LPP047-21

Interim Policy - Georges River Development Control Plan 2020

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

The aim of an Interim Policy is to set a consistent approach for the assessment of residential development within the Georges River Local Government Area, until such a time as a comprehensive Development Control Plan is prepared and implemented. Comments are made with respect to the proposal satisfying the objectives and controls contained within the Development Control Plan.

Interim Policy – Georges River DCP 2020

Standard	Proposed	Complies
<i>Building Setback (Front)</i>		
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 Or a) Within 20% of the average setback of dwellings on adjoining lots	15.785m 13.005m N/A	Yes Yes N/A
<i>Building Setback (Rear)</i>		
Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater Where the existing pattern of development displays an established rear setback, development should recognise and respond to site features and cross views of neighbouring properties	11.25m required 38.79m provided	Yes
<i>Building Setback (Side)</i>		
The minimum side setback inside FSPA is 900mm (ground floor)	Less than 900mm at some points to the existing building. The new work	No, however the non

and 1.5m (first floor)	complies.	compliant areas are existing.
Landscaped area		
Where located outside the FSPA, a minimum of 20% of site area is landscaped open space	N/A	N/A
• Where located inside the FSPA, a minimum of 25% of the site area is landscaped open space	52.98% (693.54sqm)	Yes
• The minimum dimension of landscaped open space is 2m, designed in a useable configuration	Minimum 2m dimension provided	Yes
• A minimum of 15sqm of the landscaped open space is provided between the front setback and the street boundary in the form of a front yard	Minimum 15sqm provided.	Yes
Private Open Space		
An area of Principal Private Open Space is to be provided which:		
a) has a minimum area of 30sqm	Minimum 30sqm provided.	Yes
b) has a minimum dimension of 5m, designed in a useable configuration	Minimum 5m dimension provided.	Yes
c) is located at ground level and behind the front wall of the dwelling	Located at ground level and behind the front wall of the dwelling.	Yes
d) is directly accessible from a main living area	A terrace and grassed area are provided which is directly accessed via a living room.	Yes
Solar Access		
Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00am and 3.00pm on 21 June.	Due to the orientation of the site the shadowing impacts are minimal and compliant.	Yes
Note 1: Development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design solution.	Shadow diagrams were provided in accordance with the requirements of the DCP.	
Note 2: Exemptions will be considered for developments that comply with all other		

requirements but are located on sites with an east-west orientation		
---	--	--

LPP047-21

Georges River Development Control Plan 2020

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

Developer Contributions

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

MPACTS

Natural Environment

134. The proposed development will not adversely affect the natural environment. The proposal has been amended from the original submission excluding all works in the rear yard. Conditions however will be imposed requiring the protection of the significant trees located in the front and rear of the allotment.
135. The proposed works will not directly impact the natural environment, with the built form works contained predominantly within the existing building footprint.

Built Environment

136. The proposal represents an acceptable planning outcome for the site with respect to its bulk, scale and density and is an appropriate response to the context of the site and its R2 Low Density Residential zoning.
137. The pitched roof is being replaced with a flat roof and the height of the building will be reduced overall as a result.
138. The development will modernise the bulk form presenting to the waterway.

Social Impact

139. The assessment demonstrates that the proposal in its current form will not have an adverse impact on the character of the locality and the amenity of neighbouring residential properties. No adverse social impacts have been identified as part of the assessment. The environmental impacts on the social environment are considered to be reasonable and the application is supported.

Economic Impact

140. There is no apparent adverse economic impact that is likely to result within the locality due to the construction of the proposed dwelling housing development. The proposal is not considered to result in an unreasonable material economic impact.

Suitability of the Site

141. The site is zoned R2 Low Density Residential. The proposal is a permissible form of development within the zone and has been designed to fit predominantly within the footprint of the existing building. It is considered that the proposal will have no unreasonable impacts on the adjoining properties, the waterway or the streetscape in its current form.

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

142. The application was advertised and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. No submissions were received during the neighbour notification period.

REFERRALS**Council Referrals**Development Engineer

143. Council's assessment of the drainage system concluded that the proposal is satisfactory. The dwelling will drain to the bay with the design incorporating a pollution control pit. Conditions of consent have been provided.

Consultant Arborist

144. The plans submitted with the DA originally proposed the removal of three (3) trees. Through amendments to the design, which resulted in the deletion of the swimming pool, inclinator, retaining walls and terracing, the proposed development does not require the removal of any trees. Council's arborist has provided conditions of consent requiring the protection of the significant trees both in the front and rear yard of the subject site.

External ReferralsAusgrid

145. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. A response was received on 26 April 2021 advising that Ausgrid response not required.

CONCLUSION

146. The proposal seeks consent for demolition works and alterations and additions to the existing dwelling at Lot 174 DP in DP 11934 and known as 60 Marine Drive, Oatley.
147. The proposal has been assessed in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act 1979. The proposal is considered to be a reasonable redevelopment of the site and the proposed scale, bulk and height is considered to be an acceptable planning and design outcome for this site and will be consistent with the existing and desired future character of development in the R2 zoned land in this location and the immediate locality.
148. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policies, the Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No 1.
149. The proposal satisfies the key planning controls in the Hurstville Local Environmental Plan apart from Clause 4.3 Height of Buildings development standard. A Clause 4.6 Statement has been submitted with the application justifying the variation in this case is considered to be unreasonable and unnecessary in the circumstances of this case and

sufficient environmental planning grounds have been demonstrated to contravene the control in this instance.

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

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

152. The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments except in the height of the development. A Clause 4.6 variation 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 R2 Low Density Residential zone of Hurstville Development Control Plan in providing suitable housing needs whilst not compromising the amenity of the surrounding area.
- The proposed development is considered to be compatible with surrounding development and surrounding land uses.
- The proposed alterations and additions have been incorporated largely within the existing building footprint and will not unreasonably affect the amenity of any immediately adjoining properties in terms of unreasonable overlooking, overshadowing or view loss.
- The proposal has effective façade modulation and wall articulation that will serve to provide visual interest and reduce the bulk of the building.
- The proposal is not inconsistent with the provisions of the Draft Georges River Local Environmental Plan 2020.

Determination

153. THAT Georges River Local Planning Panel, as the consent authority, support the request for variation under Clause 4.6 of Hurstville Local Environmental Plan 2012, in relation to the Height of Buildings (Clause 4.3) as the variation sought is considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought.
154. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, (as amended), the Georges River Local Planning Panel, grants development consent to Development Application DA2021/0131 for demolition work and alterations and additions to existing dwelling house at Lot 174 in DP 11934 and known as 60 Marine Drive, Oatley, subject to the following conditions of consent:

Development Details

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

Description	Reference No.	Date	Revision	Prepared by
Site Analysis Plan	DA-01 Sheet 1 of 6	03/08/2021	B	Design + building solutions
Floor Plans Existing	DA-02 Sheet 2 of 6	03/08/2021	B	Design + building solutions
Elevations Existing	DA-03 Sheet 3 of 6	03/08/2021	B	Design + building solutions
Floor Plans Proposed	DA-04 Sheet 4 of 6	03/08/2021	B	Design + building solutions
Elevations Proposed	DA-05 Sheet 5 of 6	03/08/2021	B	Design + building solutions
Sections	DA-06 Sheet 6 of 6	03/08/2021	B	Design + building solutions
Deep Soil Plan	Sheet 1 of 1	18/03/2021	A	Design + building solutions
Excavation Plan	Sheet 1 of 1	03/08/2021	B	Design + building solutions
Schedule of Colours and External Finishes	Sheet 1 of 1	03/08/2021	B	Design + building solutions
Building Height Plan	Sheet 1 of 1	03/08/2021	A	Design + building solutions

Separate Approval Required Under Other Legislation

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

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

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

- a. Placing or storing materials or equipment;
- b. Placing or storing waste containers or skip bins;
- c. Erecting a structure or carrying out work;
- d. Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- e. Pumping concrete from a public road;
- f. Pumping water from the site into the public road;
- g. Constructing a vehicular crossing or footpath;
- h. Establishing a “works zone”;
- i. Digging up or disturbing the surface of a public road (eg Opening the road for the purpose of connections to utility providers);
- j. Stormwater and ancillary works in the road reserve;
- k. Stormwater and ancillary to public infrastructure on private land.
- 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 Certifier prior to the issue of the Construction Certificate.

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

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

Requirements of other Concurrence, Integrated & other Government Authorities

4. **Sydney Water – Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in™ agent has appropriately stamped the plans prior to the issue of the Construction Certificate.
5. **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.

Prior to the Issue of a Construction Certificate

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

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

Please contact council prior to the payment of S94 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	\$1900.00
Inspection Fee for Refund of Damage Deposit	\$168.00
DEVELOPMENT CONTRIBUTIONS	
Georges River Council Section 94A Development Contributions Plan 2017	\$4840.00

General Fees

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

Development Contributions

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

Timing of Payment

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

Further Information

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

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

- (a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$1900.00**.
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$168.00**.
- (c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

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

The site management measures are to be implemented prior to the commencement of any works including demolition and excavation. The site management measures are to be maintained throughout the works, to maintain reasonable levels of public health,

safety and amenity. A copy of the Site Management Plan must be kept on site and is to be made available upon request.

9. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. A411134_03, dated 6 August 2021 must be implemented on the plans lodged with the application for the Construction Certificate.
10. **Low Reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
11. **Erosion and Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
 - (a) Compliance with the approved Erosion and Sediment Control Plan
 - (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
 - (c) All clean water runoff is diverted around cleared or exposed areas
 - (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
 - (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
 - (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
 - (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
 - (h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

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

12. **Pre-Construction Dilapidation Report – Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:
 - (a) All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.

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

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

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

13. **Stormwater System** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.
- (a) All stormwater from the site is to drain by gravity to the bay, with the provision of a pollution control pit to the satisfaction of the PCA. All works shall be within the property boundary.
14. **Driveway Construction Plan Details** - Detailed engineering plans for the driveway shall be submitted with the Construction Certificate application for approval that show:
- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
- (b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).
- (c) The full length of the driveway designed with a minimum 150mm thick reinforced concrete and minimum of 2.7m wide pavement/kerb face to kerb face width, and a non-slip surface.
15. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. 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.
16. **Geotechnical Report** - Geotechnical Reports: The applicant must submit a Geotechnical Report, prepared by a professional engineer specialising in geotechnical engineering who holds the relevant Certificate of accreditation as required under the *Building Professionals Act 2005* in relation to dilapidation reports, all site works and construction. This is to be submitted before the issue of the Construction Certificate and is to include:
- (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
- (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the PCA and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
- (c) On-site guidance by a vibration specialist during the early part of excavation.
- (d) Measures to minimise vibration damage and loss of support to other buildings. Where possible any excavation into rock is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures. Where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) the report shall detail the maximum size of hammer to be used and provide all reasonable recommendations to manage impacts.
- (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

17. **Engineers Certificate** - A certificate from a professional Engineer specialising in structural engineering certifying the structural adequacy of the existing structure, to support all proposed additional superimposed loads shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
18. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).
19. **Safety Barrier** - A suitable barrier is to be provided to the upper ground level garage to prevent vehicles from running over the edge of the building in accordance with the provisions of Clause 2.4.5.3 of AS 2890.1:2004. Details are to be shown on the construction certificate plans.
20. **Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.
21. **Tree Protection and Retention** - The following trees shall be retained and protected.

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) TPZ as per AS4970 - 2009 Fencing location out from trunk
<i>Angophora costata</i>	Within front yard of site.	Fencing along side of driveway and fronting the site boundary.
<i>Angophora costata</i>	Within front yard of site.	Fencing side of driveway and fronting the site boundary.
The entire front yard shall be fenced off with no access to the landscaped area. No deliveries, stockpiling, excavations are permitted within the TPZ of any tree.		
<i>Angophora costata</i>	Within rear of site close to rear back retaining walling of house.	12.0m radially out from its trunk.
<i>Banksia integrifolia</i>	Within rear yard.	2.0m radially out from its trunk.
<i>Angophora costata</i>	Within rear yard.	3.5 metres radially out from its trunk.
<i>Angophora costata</i>	Within rear yard.	3.6 metres radially out from its trunk.
<i>Angophora costata</i>	Within neighbouring site, rear yard of No 58 Marine Parade.	4.6 metres radially out from its trunk.
<i>Angophora costata</i>	Within neighbouring site, rear yard of No 58 Marine Parade.	3.0 metres radially out from its trunk.

- a) The client shall engage a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Australian Arboricultural Association or Affiliation, with a letter of engagement forwarded to the nominated PCA, forming compliance.
- b) A certificate of compliance letter from the AQF 5 Arborist must be forwarded to the PCA – Principal Certifying Authority, at a minimum three (3) stages being, before works, during works and once all building works have been completed, that tree protection measures have been installed and being maintained during the building process.

Tree Protection Measures

- c) All trees on Council property, subject site and adjacent sites, to be retained must be protected before site set up and maintained during demolition, excavation and construction of the site.
- d) Although trees may be on adjacent sites, the tree protection fencing must be placed on the nominated distances as per table above, out from the trees trunk, within the subject site to minimise impacts to neighbours trees and kept for the entirety of the project.
- e) The tree protection measures must be undertaken in accordance AS4970 -2009 *Protection of trees on development sites*.
- f) Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation.
- g) The engaged AQF 5 Consulting Project Arborist must be present on-site during the stages of site set up, excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
- h) In accordance with AS 4970-2009 *Protection of trees on development sites*, a protective fence consisting of 2.4 x 1.8 metres high, fully supported chainmesh fence shall be used. The distance of the fence out from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.
- i) The tree protection fencing must be kept in place during demolition, excavation and construction and also have a sign displaying 'Tree Protection Zone – DO NOT ENTER' attached to the fence and must also include the name and contact details of the Project Arborist.
- j) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
- k) No building products, preparation of building products, storage of materials, stockpiling, site sheds or services shall be installed within the TPZ of the trees to be retained.

Excavation works near tree to be retained

- l) There are no landscaping works as part of this consent, with existing ground levels must be retained and not altered within the front yard and within the rear yard.
- m) Stormwater excavations close to Trees 4, 5 and 6 and within their TPZ, must only be conducted by hand, air spade or hydro vac type of non destructive excavations and under the guidance of the engaged AQF 5 Arborist, with a letter of findings with photographs of open trenches attached, ensuring no roots over 50mm are severed. This letter must be provided to the PCA prior to OC and ensuring the trees viability

are not compromised. No bucket type of excavator is permitted.

- n) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the AQF 5 Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.
- o) Tree Protection Zones around the trees to be retained are not to have soil level changes, building product / materials stored or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.
- p) Removal or pruning of any other tree (that would require consent of Council) on the site is not approved. All pruning must be undertaken by a qualified Arborist in accordance with AS4373 -2007 Pruning of Amenity Trees and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).

22. **Tree Removal and Replacement** – No trees are to be removed under this consent. All trees are to be retained and protected.

23. **NBN Connection** - Prior to the issue of the 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).

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

24. **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.

25. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
- (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
 - (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
 - (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
26. **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.
27. **Dial before your dig** - The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Council's Engineers for their records.
28. **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 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.
 - (d) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
 - (e) 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.

29. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The cost associated with the provision or adjustment of services within the road and footway areas is to be at the applicant's expense

During Construction

30. **Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.

31. **Hours of construction for demolition and building work** - 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 7.00am to 5.00pm, 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.

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

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

Prior to the issue of the Occupation Certificate

36. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent must be implemented before issue of any Occupation Certificate.
37. **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.
38. **Tree Protection Measures** – Prior to the issue of the Final Occupation Certificate, the following is required:
- a) A final certificate of compliance letter, once all building 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.
 - b) 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.
39. **Post Construction Dilapidation Report – Private Land** - At the completion of the construction works, a suitably qualified person is to be engaged to prepare a post-construction dilapidation report. This report is to ascertain whether the construction works associated with the subject development created any structural damage to the following adjoining premises:
- The report is to be prepared at the expense of the applicant and submitted to the PCA prior to the issue of the Occupation Certificate. In ascertaining whether adverse structural damaged has occurred to the adjoining premises, the PCA, must compare the post-construction dilapidation report with the pre-construction dilapidation report required by conditions in this consent.
- Evidence confirming that a copy of the post-construction dilapidation report was delivered to the adjoining properties subject of the dilapidation report must be provided to the PCA prior to the issue of any Occupation Certificate.
40. **Minor Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface.
41. **Tree Protection Measures**
- (a) A final certificate of compliance letter, once all building and landscape works have been completed, from the engaged AQF 5 Consulting Arborist to the PCA, 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.
 - (b) 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.

42. **Building - Structural Certificates** - The proposed structure must be constructed in accordance with details designed and certified by the practising qualified structural engineer. In addition, Compliance or Structural Certificates, to the effect that the building works have been carried out in accordance with the structural design, must be submitted to the Principal Certifying Authority prior issue of the Occupation Certificate.
43. **Requirements prior to the issue of the Occupation Certificate** – The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:
- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
 - (b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.

Operational Conditions (Ongoing)

44. **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).
45. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.
46. **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.

47. **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.
48. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.

Operational Requirements under the Environmental Planning And Assessment Act 1979

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

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

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

- (a) appointed a Principal Certifying Authority (PCA) for the building work; and
- (b) if relevant, advised the PCA that the work will be undertaken as an Owner-Builder.

If the work is not going to be undertaken by an Owner-Builder, then the beneficiary of the consent must:

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

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

51. **Notification of Critical Stage Inspections** - No later than two (2) days before the building work commences, the PCA must notify:

- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
- (b) the beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

52. **Notice of Commencement** - The beneficiary of the development consent must give at least two (2) days notice to the Council and the PCA of their intention to commence the erection of a building.

A **Notice of Commencement Form** is attached for your convenience.

53. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifying Authority. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the Environmental Planning and Assessment Regulation 2000.

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

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

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

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

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

Prescribed Conditions

56. **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
57. **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.
58. **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 Certifying Authority and the Principal Contractor.
59. **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.
60. **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.
61. **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 (PRE16.8)

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

62. **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.

63. **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.
64. **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.
65. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au
66. **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.

67. **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.
68. **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.
 - a. 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.
 - b. 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.
 - c. 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.

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

- (a) Complete the 'Stormwater Drainage Application Form' which can be downloaded from Georges River Council's website at www.georgesriver.nsw.gov.au.
- (b) In the Application Form, quote the Development Consent No. (eg. DA2018/****) and reference this condition number (e.g. Condition 23)
- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.

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

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

70. **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 justify 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, must be submitted to the Certifying Authority **with the Construction Certificate Application**.

Should there be any non-compliance, an alternative method of fire protection and structural capacity must be submitted, with all supporting documents prepared by a suitably qualified person.

In the event that full compliance with the BCA cannot be achieved and the services of a fire engineer are obtained to determine an alternative method of compliance with the BCA, such report must be submitted to and endorsed by the Certifying Authority **prior to issue of the Construction Certificate**.

71. **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 an/or a high risk work licence may be required from SafeWork NSW (see www.Safework.nsw.gov.au).

72. **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](http://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).

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

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

ATTACHMENTS

Attachment  1  Site Plan and elevations - 60 Marine Drive Oatley





REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 02 SEPTEMBER 2021

LPP048-21

LPP Report No	LPP048-21	Development Application No	DA2021/0172
Site Address & Ward Locality	22-26 Montgomery Street Kogarah Kogarah Bay Ward		
Proposed Development	Change of use to a food and drink premises and associated fit-out. The site is a heritage item.		
Owners	Fowler Street Pty Ltd and Montgomery Projects Pty Ltd		
Applicant	Ms Toni Cavers		
Planner/Architect	Planner: City Plan Strategy and Development Pty Ltd / Architect: Loucas Architects		
Date Of Lodgement	5/05/2021		
Submissions	No submissions		
Cost of Works	\$30,000.00		
Local Planning Panel Criteria	Works involving demolition to a heritage item. General Manager Delegation - Determination by the LPP is in the public interest		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64); State Environmental Planning Policy (Infrastructure) 2007; State Environmental Planning Policy No 55 - Remediation Of Land; State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; Draft Environment State Environmental Planning Policy; Draft Remediation of Land SEPP; Draft Georges River Local Environmental Plan 2020; Draft Design and Place State Environmental Planning Policy Kogarah Local Environmental Plan 2012; Kogarah Development Control Plan 2013; Draft Georges River Local Environmental Plan 2020.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Statement of Environmental Effects, Heritage Impact Statement, Traffic Report, Site inspection photos		
Report prepared by	Development Assessment Planner		

Recommendation	That the application be approved in accordance with the conditions included in this report.
-----------------------	---

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

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

Site Plan



Figure 1: Aerial view with site shown in red (Source: Intramap 2021)

Executive Summary

Proposal

1. Development consent is sought for a change of use, alterations and an internal fit-out of a terrace for use as a food and drink premises.
2. Site is identified as heritage item being I183 in Schedule 5 of Kogarah LEP 2012 'Leah Building'.

3. The proposal reasonably complies with all the applicable environmental planning instruments, and development standards. A variation is proposed in relation to car parking.

Site and Locality

4. The subject site includes three consolidated allotments and is identified as 22-26 Montgomery Street Kogarah. The site is located on the north eastern side of Montgomery Street Kogarah and forms part of the Kogarah Town Centre.
5. The site has an area of approximately 777.8sqm with a frontage of 17.7m to Montgomery Street and Moorefield Lane. The site falls from Montgomery Street to Moorefield Lane, with the change in level being approximately 2.5m. The site currently accommodates the façade and parts of three (3) heritage listed Victorian Terraces with a centralised and recessed commercial building above as approved by DA2018/0138 (as modified). The site is currently still under construction.
6. The precinct is a combination of low, medium and high scale commercial development. The site is in close proximity to the Kogarah Station, St George Public and Private Hospitals and the St George Technical College.

Zoning and Permissibility

7. The site is zoned B4 – Mixed use under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal is for the internal fit-out and change of use to a "food and drink premises", which is a type of retail premises. A retail premises is a type of commercial premises permissible with consent in the B4 Mixed Use zone

Submissions

8. The application was advertised in accordance with Council's neighbour notification policy and no submissions were received.

Conclusion

9. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed Development Application (DA2021/0172) is recommended for approval subject to conditions referenced at the end of this report.

Report in Full

Proposal

10. Council is in receipt of an application seeking consent for 'for a change of use, alterations and an internal fit-out of a terrace for use as a food and drink premises. The site is identified as a local heritage item I183 'Leah Buildings' listed in Schedule 5 of Kogarah LEP 2012. The proposed works are specifically outlined below:

Construction/Change of Use

11. This proposal seeks to adaptively repurpose the terrace house at 22 Montgomery Street for use as a food and drink premises (café). The works include:
 - Internal alterations to the existing terrace to fit the space as a café including the installation of a display area, café amenities area, cleaning area, waste area, and rear seating area. Alterations also include joinery works, and internal wall render works.

Note: The works will retain the existing fireplaces, and original skirting, mantelpieces, architraves, cornices, and ceiling boards.

- External alteration to the existing terrace area include installation of an under awning business identification sign along the front façade.
12. Some works have commenced including demolition of internal stairs, and demolition of a wall along entrance corridor. This matter being the removal of heritage fabric has been referred to Council's Regulatory Services Team for investigation of the unauthorized work and no longer forms part of this application.

Use and Operational Details

13. This application has been lodged for a change of use and fit-out of a commercial tenancy for use as a food and drink premise (café). The operation of the use will be as follows:
- **Operating hours:** The hours of operation will be Monday to Sunday inclusive from 6:00am until 12:00am (following day).
 - **Staff:** The application has not nominated staffing numbers, however given the small scale of the proposed café and the proximity to public transport and the inability for additional car parking to be provide on site. The proposal is considered to be acceptable in this individual case.
 - **Clients:** Café will cater for the local clientele. Most clients are likely to visit the café by walking, and the majority of clients will be users of the building itself.
 - **Parking:** One (1) on-site car space available within basement for the use of staff allocated a part of the base building approval.
 - **Accessibility:** The building will be refurbished to comply with the requirements of the Building Code of Australia (BCA) / National Construction Code (NCC) 2019. Conditions imposed.
 - **Acoustics:** The original development application (DA2018/0138) has been accompanied by an Acoustic report which will require to be complied with prior to occupation certificate being issued for the base building. Notwithstanding, the café is not considered a noise generating use in addition to being located within a busy town centre location. Conditions relating to acoustics are contained in the recommended conditions at the end of this report.
 - **Waste Management:** A waste management plan has accompanied the application and was assessed by Council's Waste team. Specific conditions have been imposed in this regard.
 - **Security:** The proposed café includes front street access which will increase surveillance of the street.
 - **Loading and Delivery:** The café will not require any major deliveries to the site. The deliveries will be facilitated by small vans and refrigerated trucks. As such, staff will transport a small quantity of stock from time-to-time, and as required. Should any large deliveries be made, they have access to the loading dock which can be accessed from Morefield Lane at the rear.

Site and Locality

14. The subject site includes three consolidated allotments and is identified as 22-26 Montgomery Street Kogarah. The site is located on the north eastern side of Montgomery Street Kogarah and forms part of the Kogarah Town Centre.
15. The site has an area of approximately 777.8sqm with a frontage of 17.7m to Montgomery Street and Moorefield Lane. The site falls from Montgomery Street to Moorefield Lane, with the change in level being approximately 2.5m. The site currently accommodates façade and parts of three (3) heritage listed Victorian Terraces with a centralised and recessed commercial building above as approved by DA2018/0138 (as modified). The site is currently still under construction.
16. To the north of the site is an existing two storey commercial building (20 Montgomery Street) and to the south of the site is a 2 storey commercial building (28 Montgomery Street). Adjoining the site to the east on the opposite side of Moorefield Lane is a commercial building (16 Montgomery Street) and to the west on the opposite side of Montgomery Street is the Court House (25-27 Montgomery Street), a commercial building (29 Montgomery Street) and the NSW Police Service (13 Montgomery Street).
17. The precinct is a combination of low, medium and high scale commercial development. The site is in close proximity to the Kogarah Station, St George Public and Private Hospitals and the St George Technical College.

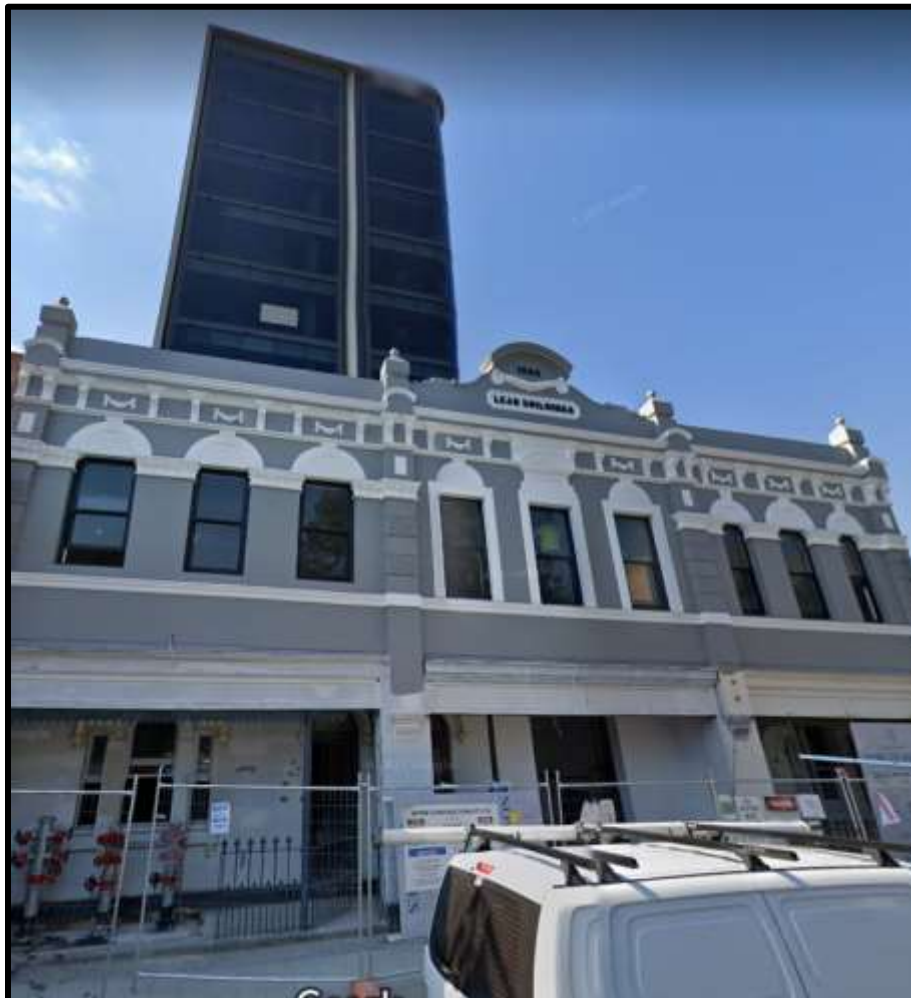


Figure 2: Street view from Montgomery Street- subject terrace located along the left (Google Maps 2021)



Figure 3: Internal layout of Terrace with one of the two fireplaces in view

Background

18. Development Application 'DA2018/0138' was approved through a S34 conciliation conference as part of the appeal of the application to the Land and Environment Court on 5 April 2019 for partial demolition of existing buildings, partial restoration of the heritage listed terraces and construction of a part 10/11 storey and rooftop commercial development and basement car parking.
19. Modification Application 'MOD2019/0117' was approved through a S34 conciliation conference via the Land and Environment Court on 31 October 2019 for modifications to DA2018/0138 including removal of one level of basement car parking, resulting in 4 levels of basement car parking and a total of 56 off-street car parking spaces
20. Modification Application 'MOD2020/0004' was approved by Council on 26 May 2020 for modifications to DA2018/0138 including design changes, and amendment to conditions.
21. Modification Application 'MOD2020/0191' was approved by Council on 10 November 2020 for modifications to DA2018/0138 including design changes to remove the approved perforated metal screens along Moorefield Lane façade.
22. Multiple construction certificates have been issued by the PCA (latest being CC2021/0272) in relation to the works currently underway.
23. As a result of the unauthorised works within the subject terrace which encompasses demolition of the existing heritage fabric relating to the staircase and wall adjacent to entrance, the matter was referred to Council's Compliance Team for investigation (BLD2021/0627). The investigation is ongoing.

Compliance and Assessment

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

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

SEPP Title	Complies
State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64)	Yes
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

State Environmental Planning Policy No 64 - Advertising and Signage (SEPP 64)

26. An under-awning business identification sign (externally illuminated) measuring 0.8m x 0.4m is proposed to be installed along the front façade entrance area.
27. Pursuant to clause 13 of SEPP 64, it is considered that the proposed signage is consistent with the objectives of the policy as set in clause 3(1)(a) in that the proposed signage:
- (i) is compatible with the desired amenity and visual character of an area, and
 - (ii) provides effective communication in suitable locations, and
 - (iii) is of high quality design and finish, and
28. Clause 13(1)(b) requires the consideration of schedule 1 for the assessment of any signage. The compliance table below demonstrates compliance with schedule 1 of SEPP 64.

Schedule 1 Assessment Criteria	Proposal	Complies
1. Character of the area <ul style="list-style-type: none"> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<ul style="list-style-type: none"> Yes, the proposed sign is compatible with the future character of the locality being a business identification sign. Yes, the proposed sign is consistent with the outdoor advertising of the surrounding area which is generally business identification signage within the town centre. 	<p>Yes</p> <p>Yes</p>
2. Special areas <ul style="list-style-type: none"> Does the proposal detract from the amenity or visual quality of any 	<ul style="list-style-type: none"> No, the sign has been assessed by Council's External Heritage Consultant and its size, form 	<p>Yes</p>

<p>environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p> <p>3. Views and vistas</p> <ul style="list-style-type: none"> Does the proposal obscure or compromise important views? Does the proposal dominate the skyline and reduce the quality of vistas? Does the proposal respect the viewing rights of other advertisers? <p>4. Streetscape, setting or landscape</p> <ul style="list-style-type: none"> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? Does the proposal contribute to the visual interest of the streetscape, setting or landscape? Does the proposal reduce clutter by rationalising and simplifying existing advertising? Does the proposal screen unsightliness? Does the proposal protrude above buildings, structures or tree canopies in the area or locality? 	<p>and shape was supported.</p> <ul style="list-style-type: none"> The proposed signage will not be located within any important view corridors. By virtue of the nominated size, location and orientation the signs will not obscure or compromise any potential view. No, the proposed signage will not dominate the streetscape nor does it reduce the quality of the potential views of Montgomery Street. Yes, the proposed signage is restricted to the external façade of the site. The form of the proposed signage is appropriate for the streetscape. The proposed signage will increase the visual interest of the local streetscape and seeks to promote the proposed café. The signs are simple in design and do not result in unnecessary clutter. The proposed signage does not screen unsightliness. No, the signage does not protrude above buildings, structures or tree canopies in the area or locality. 	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
--	--	---

<ul style="list-style-type: none"> Does the proposal require ongoing vegetation management? 	<ul style="list-style-type: none"> No, vegetation is proposed as part of the signage. 	Yes
5. Site and building <ul style="list-style-type: none"> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? 	<ul style="list-style-type: none"> Yes, the proposed signage is of similar scale and size to that existing and located on adjoining sites. 	Yes
<ul style="list-style-type: none"> Does the proposal respect important features of the site or building, or both? 	<ul style="list-style-type: none"> Yes the design and position integrate with the building structure and context. The design and size of the sign has been supported by Council's External Heritage Consultant. 	Yes
<ul style="list-style-type: none"> Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<ul style="list-style-type: none"> The proposed signage serves as a business identification sign for the café. 	Yes
6. Associated devices and logos with advertisements and advertising structures <ul style="list-style-type: none"> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? 	<ul style="list-style-type: none"> The business identification sign is fixed and externally illuminated. 	Yes
7. Illumination <ul style="list-style-type: none"> Would illumination result in unacceptable glare? 	<ul style="list-style-type: none"> The sign will be externally illuminated to mimic 19th century signage. External lighting shall comply with the AS 4282-1997 Control of the obtrusive effects of outdoor lighting. 	Yes
<ul style="list-style-type: none"> Would illumination detract from the amenity of any residence or other form of accommodation? 	<ul style="list-style-type: none"> The sign will only be lit when the premise is in operation and is not anticipated to impact residential development. 	Yes
<ul style="list-style-type: none"> Would illumination affect safety for pedestrians, vehicles or aircraft? 	<ul style="list-style-type: none"> The signage is installed at a height which will allow safe travel for pedestrians, bicyclists and vehicle roads. 	Yes

<ul style="list-style-type: none"> Is the illumination subject to a curfew? 	<ul style="list-style-type: none"> The sign will only be lit when the premise is in operation 	Yes
8. Safety <ul style="list-style-type: none"> Would the proposal reduce the safety for any public road? 	<ul style="list-style-type: none"> No, the proposed signage is not located on an intersection, and will not reduce safety for pedestrians and children, or obscure sightlines. 	Yes
<ul style="list-style-type: none"> Would the proposal reduce the safety for pedestrians or bicyclists? Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? 	<ul style="list-style-type: none"> No, the proposed signage will not reduce safety for pedestrians, particularly children, by obscuring sightlines from public areas. 	Yes

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

29. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
30. The Vegetation SEPP applies to clearing of:
- Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
 - Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).
31. The objectives of the SEPP are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 5(1) of the SEPP as the site is within both Georges River Council and the B4 Mixed use zone.
32. Pursuant to Clause 8(1) of the SEPP, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
33. No trees or vegetation will be impacted by this proposal.

State Environmental Planning Policy No 55 – Remediation of Land

34. 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.

35. The proposed modifications relate to the minor internal alteration and a change of use to the existing terrace. In this regard, no further assessment is warranted with regards to site contamination.

State Environmental Planning Policy (Infrastructure) 2007

36. The application was referred to Ausgrid as per clause 45. No comments were received by Ausgrid.

Draft Environment SEPP

37. 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.

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

Draft Remediation of Land SEPP

39. 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.

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

Draft Design and Place Sepp

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

Kogarah Local Environmental Plan 2012

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

42. The proposal is for the internal fit-out of a "food and drink premises", which is a type of retail premises. A retail premises is a type of commercial premises permissible with consent in the B4 Mixed Use zone. The objectives of the B4 Mixed Use zone are outlined below:

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

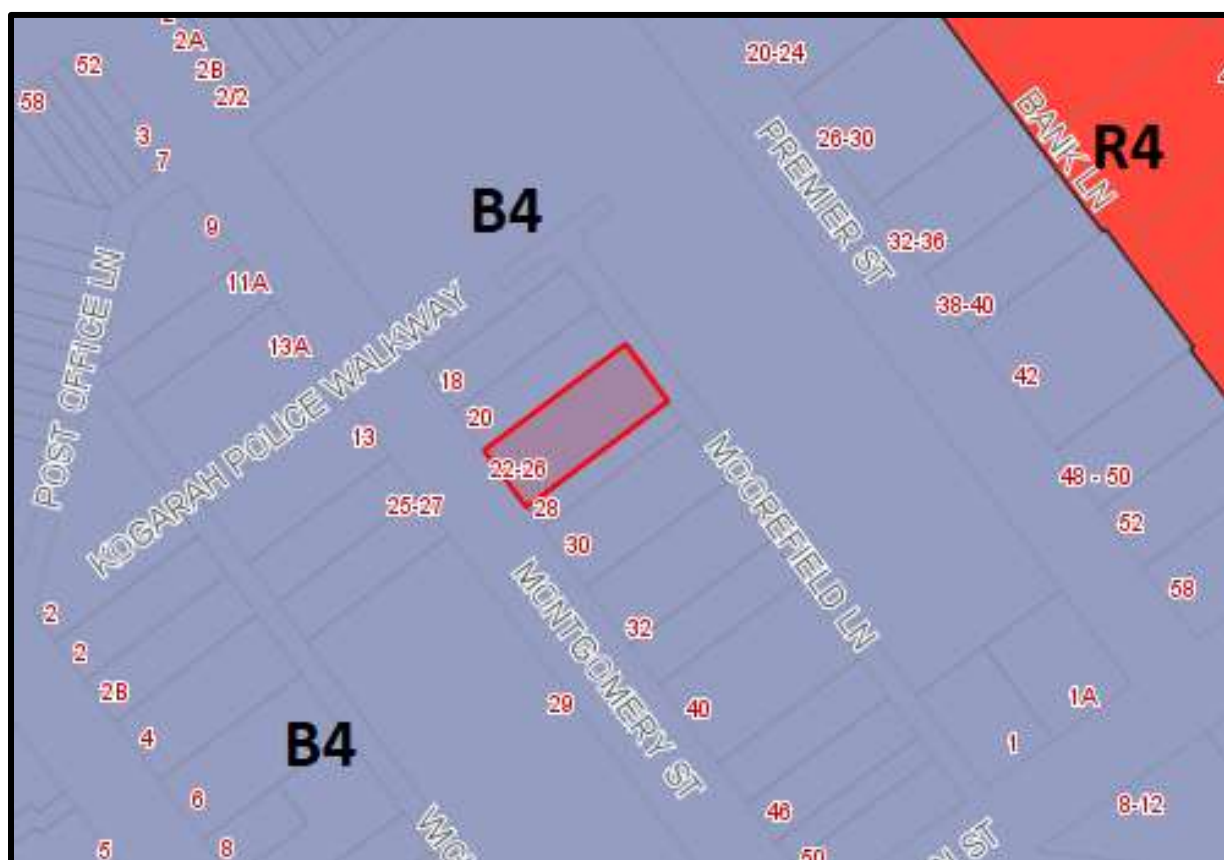


Figure 4: Land Zoning Plan- location of the subject development is within the red highlight

Part 4 - Principal Development Standards

Applicable LEP Clause	Standards	Proposal	Complies
4.3 Height of Buildings	39m	The proposal does not seek to modify the height of the building.	Yes
4.4 Floor Space Ratio	4.5:1	The FSR will remain as existing.	Yes

Part 5 - Miscellaneous Provisions

Applicable LEP Clause	Standards	Proposal	Complies
5.10 Heritage Conservation	(2) Requirement for consent Development consent is required for any of the following	Consent is required for works within the identified heritage item being 1183 'Leah Building'.	Yes
	(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,	The Statement of Cultural Significance taken from the State Heritage Inventory (SHI) Database is reproduced as follows: <i>'The Leah Buildings are locally significant as they represent an intact group of two storey Victorian residences constructed 1888. They are part of the grand developments that occurred with the establishment of the Kogarah Township Estate Subdivision Est 1884. They also represent the shift in settlement from the road to the railway.'</i>	
	(5) Heritage assessment. The consent authority may, before granting consent to any development— (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage	The application was accompanied by a heritage impact statement which was assessed by Council's External Heritage Consultant. Based on the External Heritage Consultant advice, the proposed use will assist in the activation of this part of the street and creates a good use of an area adjacent to the lobby in terms of activation and passive surveillance. The works will not have detrimental	Yes, conditions imposed

	<p>management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	<p>impacts on the heritage item subject to the recommended conditions.</p> <p>It is noted that the plans have been amended in order to satisfy the requirements of the External Heritage Consultant.</p> <p>The site is also opposite to local heritage item I84 - Kogarah Courthouse. The proposal will not result in adverse impacts to the heritage item.</p>	
5.21 Flood planning	<p>(1) The objectives of this clause are as follows—</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,</p> <p>(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.</p>	<p>Site has not been identified as being flood affected.</p>	Yes

Part 6 - Additional Local Provisions

Applicable LEP Clause	Standards	Proposal	Complies
6.1 Acid Sulfate Soils	(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	The site is not identified as located on land containing Acid Sulfate Soils.	Yes

LPP048-21

DRAFT GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2020

43. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
44. 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

45. The proposal has been assessed under the relevant sections of Kogarah Development Control Plan 2013 (KDCP) as follows.

Applicable DCP Controls	Standards	Proposal	Complies
B- General Controls			
B4 - Parking and Traffic	Kogarah Town Centre (commercial)- Refer to Part E1	Assessed in Part E below	N/A
D – Commercial and Industrial			
Section not applicable.			
Part E: Kogarah Town Centre			
2.3 Montgomery Street Precinct			
<p>The proposed café provides a form of retail development on Montgomery Street. Montgomery Street presents an established variety of other commercial, medical, and civic uses. The intended use of the existing terrace as a café complements the existing uses in the street and provides revival of the heritage item, accessible to local clientele.</p> <p>The heritage character of the terrace is intended to remain and become an active element of the streetscape to re-establish the built form within the town centre.</p> <p>The proposed internal fit-out for the purpose of a food and drink premise is considered</p>			

to comply with the Future Character Principle and is intended to a positive addition to the Montgomery Street Precinct.

3.9 Parking
Provision in the
Kogarah Town
Centre
3.9.1 Car Parking

(4) For commercial/ retail development and other land uses parking is to be provided at the following rate:
(i) 1 space per 40m² for any floor space at ground floor level.
(5) 1% of all car parking spaces are to be designated “accessible” spaces for people with mobility impairments, with a minimum of 1 space for facilities such as medical suites.

Based on the size of the café (including seating area) 2 car spaces will be required.

1 car space has been allocated for the café within basement 1 as part of the base building approval. The car space will be utilized by staff.

A Traffic Report has been prepared by Varga Traffic Planning to support the 1 car parking shortfall proposed. The shortfall was deemed acceptable given the following considerations:

1. The proposed café is intended to cater for an entirely local clientele.
2. The café is not intended to become a "destination". Most clients will be users of the building.
3. The site is located less than 200m walking distance of Kogarah railway station.

Taking into consideration the type of use proposed, in addition to the strategic location of the café in a town centre and in close proximity to public transport options, it is considered that the 1 car space shortfall is considered acceptable given the majority of

Yes, variation accepted

LPP048-21

<p>3.9.2 Bicycle Parking</p>	<p>(ii) 1 bike space per 10 car spaces for the first 200 spaces then 1 space per 20 car spaces thereafter, for commercial and retail land uses.</p>	<p>clients are likely to walk to the café with the majority likely to be users of the commercial building.</p> <p>Variation: 50%</p> <p>Provided as required by DA2018/0138 as modified.</p> <p>Bicycle parking provided in basement as per DA2018/0138. No parking provided as part of this application.</p>	<p>Yes, as approved</p>
<p>4.8 Visual and Acoustic Privacy</p>	<p>(9) Design restaurants and cafes to diminish the impact of noise associated with late night operation on nearby residents.</p>	<p>The café forms part of a larger commercial premises and is wholly contained within the building (including seating area). Residential development is present in the area, but not within the building as it is entirely commercial in nature. Other sensitive uses are not within proximity to the proposal. The base building will be required to comply with the acoustic requirements imposed as conditions under DA2018/0138. The café is not considered a noise generating use in addition to being located within a busy town centre location. Notwithstanding conditions relating to acoustic compliance have been included as recommended conditions of consent.</p>	<p>Yes</p>

Part F1 Advertising and Signage			
3.1 All Advertising Signs	(1) Advertising must relate to the use of the premises and products sold on the premises.	Signage is limited to the name of the proposed business.	Yes
	(2) Signage must be sympathetic to, and integrated with, the architecture and structure of the supporting building and not be the dominant visual element on a building.	Signage location has been assessed and accepted by Council's External Heritage Consultant.	Yes
	(3) The proposed advertising sign must be compatible with the streetscape, setting or landscape, and not dominating in terms of its scale, proportion and form.	Signage is compatible with the commercial/ retail character of Montgomery Street.	Yes
	(4) Lettering, materials and colours must complement the existing building or place.	Materials and colours complement the building and the streetscape.	Yes
	(5) Signage must not project above any parapet or eave.	Sign is below the roofed porch area adjacent to the entrance door. The signage location has been assessed and accepted by Council's External Heritage Consultant.	Yes
	(6) Signage must not be located where it will adversely impact views or vistas or cause significant overshadowing.	Signage will have minimal impact on views or vistas, and overshadowing.	Yes
	(7) The main facades of buildings between the first floor and parapet must be uncluttered and generally free of signage.	No signage is proposed above the awning fascia. The signage location has been assessed and accepted by Council's External Heritage Consultant.	Yes

	(10) All advertising and signage must be displayed in English but may also include a translation in another language. Any translated message must be accurate and complete, and using wording and/or numbering that is not larger than the English message.	To be conditioned.	Yes, by condition
--	---	--------------------	-------------------

LPP048-21

Environmental Impacts

46. The proposed use involves fit-out works for the purpose of a café (food and drink premise) and will pose minimal impacts on the site topography and appearance. In addition, the proposal the subject of this application will not have a significant impact on the natural and built environment of the locality. The proposal will also not result in unreasonable impacts to the heritage item. The proposal was assessed by Council's External Heritage Consultant and was supported.
47. From a social perspective, the development is unlikely to result in adverse social impacts.
48. In economic terms, the use of the building will contribute positively to the variety of uses located within the local area and create a positive economic impact through providing an in-demand service to the local community and employment opportunities.

Suitability of the Site

49. The site is zoned B4 – Mixed use, and the proposal is a permissible form of development in the zone. It is considered the proposal will not result in an adverse impact on the adjoining properties or the streetscape. The proposal is considered to be a suitable form of development. The proposal was assessed by Council's External Heritage Consultant and was supported.
50. The site is not contaminated, flood affected, bushfire affected, or affected by acid sulfate soils. The site includes an adequate vehicular crossing along the rear service lane.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

51. The application was advertised in accordance with Council's neighbour notification policy and no submissions were received.

Council Referrals

Environmental Health Team

52. No objections were raised, and specific conditions of consent have been recommended and included in the conditions referenced at the end of this report.
53. No concern was raised with regards to the late hours of operation due to the local area being predominately commercial in nature, the use including all seating being internal of the building, and due to the building (including the subject tenancy) having required to be designed in accordance to AS2822:1985 Acoustic- methods of assessing and predicting

speech privacy and speech intelligibility as was required and recommended by the Acoustic report that accompanied the original DA2018/0138. Conditions of compliance were previously imposed under DA2018/0138.

External Heritage Consultant

54. The application was referred to Council's appointed External Heritage Consultant for comment. The works the subject of this application was supported subject to conditions.

External Referrals

Ausgrid

55. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. No objection was received and no conditions recommended.

Local Infrastructure Contributions

56. The development is subject to Section 7.12 (former Section 94A Contribution) contribution as the proposed cost of works, registered with Council exceeds \$100,000.00. In accordance with Council's Section 94A Plan, Section 7.12 – Fixed Development Consent Levies are applicable to all developments.
57. In this case no levies were charged given the cost of works do not exceed \$100,000.00.

CONCLUSION

58. Development consent is sought for a change of use, alterations and an internal fitout of a terrace for use as a food and drink premises at 22-26 Montgomery Street Kogarah.
59. The proposal has been assessed in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979. As discussed throughout this report, the proposal is considered to be compatible with the character of the local area and reasonably complies with the relevant requirements. The car parking variation is considered acceptable as highlighted in the report. The proposal also satisfies the B4 mixed use zone objectives, in addition to complying with the relevant development standards. The proposed development is considered to be suitable for the site and its locality and is appropriately located within an accessible distance from local public transport and the commercial centre.
60. The proposal will not result in any unreasonable impacts to the amenity of adjoining properties subject to the conditions of consent recommended below.
61. The application is recommended for approval subject to conditions.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

- The proposed use is permissible in the subject zone.
- The proposal will not result in adverse impacts to the heritage item.
- The proposal to adaptively reuse parts of the heritage item for the purposes of a food and drink premise is consistent with the objectives of the B4 Mixed Use zone.
- The proposed development will not result in unreasonable impacts to the natural and built environment.
- The proposed development will not result in unreasonable amenity impacts to the adjoining neighbours.
- The proposed development is in the public interest.

- The proposal is consistent with the Draft Georges River Local Environmental Plan 2020.

Determination

63. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel grant consent to DA2021/0172 for a change of use, alterations and an internal fit-out of a terrace for use as a food and drink premises at 22-26 Montgomery Street, Kogarah, subject to the following conditions:

Development Details

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

Description	Reference No.	Date	Revision	Prepared by
Ground Floor Plan	Project Pn-16006 drawing A-0700	13/08/2021	C	Loucas Architects
South western Elevation	Project Pn-16006 drawing A-2000	13/07/2021	B	Loucas Architects
Section Plan	Project Pn-16006 drawing A-2500	13/08/2021	C	Loucas Architects
Heritage Impact Statement	\\nbs-fs01\Synergy\Projects\15\15220\04_Correspondence\Authorities\210315_MontgomeryCafe_HIS.docx	17/03/2021	-	NBRSArchitecture

2. **Limiting Approved Works** - This consent does not encompass any demolition works given this site is a heritage item.

Separate Approvals Required Under Other Legislation

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

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

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

- Placing or storing materials or equipment;
- Placing or storing waste containers or skip bins;

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

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

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

4. **Trade Waste Agreements** A Trade Waste Agreement with Sydney Water may be required. Details of any work required to comply with the agreement must be detailed on the plans lodged with the Construction Certificate. If no trade waste agreement or grease trap is required, a letter from Sydney Water to this effect must be submitted with the application for the Construction Certificate.

Prior to the Issue of a Construction Certificate

5. **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.
6. **Engineer’s Certificate (already demolished structures)** - A certificate from a professional Engineer specialising in structural engineering certifying the structural adequacy of the existing structure, to support all proposed additional superimposed loads shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

7. **Building Works To Comply With BCA – Heritage Buildings-** Any building works required to ensure compliance with the BCA or new building standards not specified in the submitted/approved plan must not damage existing fabric and building features. If such upgrading works will potentially impact on existing fabric and features, details of the works must be submitted and approved by Council's Heritage Advisor prior to issue of a Construction Certificate.
8. **General Heritage-**
- (a) The proposed works are to be carried out in a manner that minimises, alterations and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item. No demolition or removal of heritage fabric is permitted.
 - (b) The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction.
 - (c) All conservation and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 1999.
 - (d) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.
 - (e) Windows and doors to be retained in situ.
 - (f) The face brickwork/stone/tiles must not be rendered, painted or coated.
 - (g) Where internal partitions meet external walls they must abut window mullions, columns or other such building elements and not glazing.
9. **Heritage Interpretation Plan -**
- (a) An interpretation plan for the subject heritage terrace must be prepared by a suitably qualified and experienced heritage practitioner or historian and submitted to Council prior to a Construction Certificate being issued..
 - (b) The interpretation plan must detail how information on the history and significance of the subject heritage terrace will be provided for the public and make recommendations regarding public accessibility, signage and lighting. Public art, details of the heritage design, the display of selected artefacts are some of the means that can be used.
 - (c) The plan must specify the location, type, making materials and contents of the interpretation device being proposed.
 - (d) Prior to the occupation certificate being issued the approved interpretation plan must be implemented.
10. **Access for Persons with a Disability -** Access for persons with disabilities must be provided direct to the site, including to all common areas, foyers, retail areas, carpark and required sanitary facilities in accordance with 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 access and egress.

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

11. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors, common areas, stairs and ramps as well as floor surfaces in all wet rooms including in any residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2004 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the 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 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).

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.

Timing of Payment

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

Further Information

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

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

Construction Certificate.

14. **Food Premises-** The following information shall be provided and shown on the Construction Certificate Plans:

(a) Plans and Specifications

Details of the construction and fit out of food premises must be submitted to Council's Environmental Health Officer. The plans and specifications must demonstrate compliance with the:

- i. [Food Act 2003](#) (as amended)
- ii. [Food Regulation 2015](#) (as amended)
- iii. Food Standards Code as published by Food Standards Australia
- iv. New Zealand and Australian Standard AS4674:2004 Design, Construction and fit out of food premises (as amended)

Council's Environmental Health Officer must provide written verification that the plans and specification are considered satisfactory prior to the issue of a Construction Certificate for the proposal.

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

- (a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: \$1,900.00
- (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: \$168.00
- (c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

16. **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.

17. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.

A copy shall be forwarded to Council where Council is not the PCA.

18. **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.
19. **Tree Removal and Replacement** - No trees are to be removed under this consent.

During Construction

20. **Archaeological Discovery During Construction works-**

- (a) Should any relics be unexpectedly discovered on the site during construction, all disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with section 146 of the Heritage Act 1977.
- (b) Should any Aboriginal objects be unexpectedly discovered then all excavation or disturbance of the area is to stop immediately and NSW Government Office of Environment and Heritage is to be informed in accordance with Section 89A of the National Parks and Wildlife Act 1974.
- (c) Should any archaeological remains or Aboriginal objects be discovered, a copy of recording of the finds and the final archaeological summary report is to be submitted to Council prior to the Occupational Certificate;
- (d) If the discovery is on Council's land, Council must be informed.

21. **Hours of construction for demolition and building work** - Unless authorised by Council:

- a) Building construction and delivery of material hours are restricted to: 7.00am to 5.00pm (inclusive) Monday to Saturday and no work on Sundays and Public

Holidays.

- b) Demolition and excavation works are restricted to: 8.00am to 5.00pm (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.

22. **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.
23. **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.
24. **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.
25. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

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

Prior to the issue of the Occupation Certificate

26. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any commercial/retail/residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.
27. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the [Environmental Planning and Assessment Regulation 2000](#), on completion of building works and prior to the issue of an Occupation Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 174

of the [Environmental Planning and Assessment Regulation, 2000](#). In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:

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

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.

28. **Food Premises – Inspection & Registration** - Prior to the issue of any Occupation Certificate or occupation or use of any food premises:

- (a) An inspection of the fit out of the Food Premises must be arranged with Council's Environmental Health Officer;
- (b) A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and

The Food Premises must notify and register its business details with Georges River Council as required under section 100 of the [Food Act 2003](#)

Operational Conditions (Ongoing)

29. **Ongoing Waste conditions** -

- (a) Waste bins are to remain within the private property at all times ahead of and post collection.
- (b) Waste management to be in accordance to the approved waste management plan.

30. **No Structures on Street-Facing Roof Plane or Awning** - No solar hot water heater storage tanks, solar panels, ventilators, air conditioning units, satellite dishes and antennae or the like are to be placed on roof planes, parapets or street awnings of the building along Montgomery Street.

31. **Food premises – maintenance of food premises** - The food premises must be maintained in accordance with the [Food Act 2003](#) (as amended), [Food Regulation 2015](#) (as amended); the Food Standards Code as published by Food Standards Australia & New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises (as amended)*.

32. **Food premises – Storage of waste – used cooking oil** - Used oil shall be contained in a leak proof container and stored in a covered and bunded area prior to off-site disposal. Copies of receipts for the disposal of used cooking oil shall be kept on-site and made available to Council Officers upon request.

33. **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).

34. **Noise Levels** - The LA10 noise level emitted from the premises, measured between the hours of 7am and 12 midnight, must not exceed the background noise level in any octave band frequency (centred on 31.5Hz to 8 kHz inclusive) by more than 5 dB, when measured at the boundary of any adjoining residence.
35. **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.

36. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
37. **Food premises - Garbage Odour** - A waste contractor shall be engaged to remove all waste from the garbage storage area on a regular basis so that no overflow of rubbish will occur. Practical measures are also to be taken to ensure that odour emission from the garbage storage area does not cause offensive odour as defined under the provision of the [Protection of the Environment Operations Act, 1997](#) (as amended).
38. **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.
39. **Operational details** - The food and drink premise (café) shall operate in accordance with the following:
- (a) Hours of operation: Monday to Sunday inclusive from 6:00am until 12:00am (the following day).
 - (b) All deliveries to the food and drink premise (café) shall be made via Moorefield Lane.
 - (c) One (1) car space within the site's basement is to be provided to the food and drink premise (café) at all times.
 - (d) Signage:
 - i. The signage approved along the front facade is to be limited to the purposes of business identification signage only. No third-party advertisement is permitted.

- ii. The signage is to be limited to the name of the business and/or a logo.
 - iii. Signage must be displayed in English but may also include a translation in another language. Any translated message must be accurate and complete, and using wording and/or numbering that is not larger than the English message.
 - iv. The sign must not include any moving items and is not permitted to produce any sound.
 - v. No signage or decals (or similar) shall be installed along the internal or external façade of any glazed elements (windows and door) along the front façade.
 - vi. Signage lighting component shall be turned off when the business is not in operation. All electrical wiring shall be concealed.
40. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.
41. **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.
42. **Heritage Fabric** – No works are to be carried out in a manner that minimises, results in alterations and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item. No demolition or removal of heritage fabric is permitted.

Operational Requirements Under the Environmental Planning and Assessment Act 1979

43. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
44. **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.

45. **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.

46. **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.

47. **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](#).

48. **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.

49. **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

50. **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.
51. **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.

52. **Clause 98E - Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.

Advice

53. **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.

54. **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.
55. **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.
56. **Council Appointed as the PCA** - Should the Council be appointed as the Principal Certifier 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 justify 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, including in relation to the provision of egress and the protection of openings etc. must be submitted with the Construction Certificate Application.

57. **FR NSW comments** - Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation 2000 to seek written comment from FR NSW about any Fire Engineered Solution developed to meet the performance requirements under Category 2 Fire Safety Provisions.

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

58. **Liquor Licence** - If alcohol is proposed to be served/consumed within the premise, an application may be required to be made to NSW Office of Liquor and Gaming for a Liquor Licence under the Liquor Act 2007.
59. **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 Basix Certificate. 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.
60. **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).
61. **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.

62. **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.

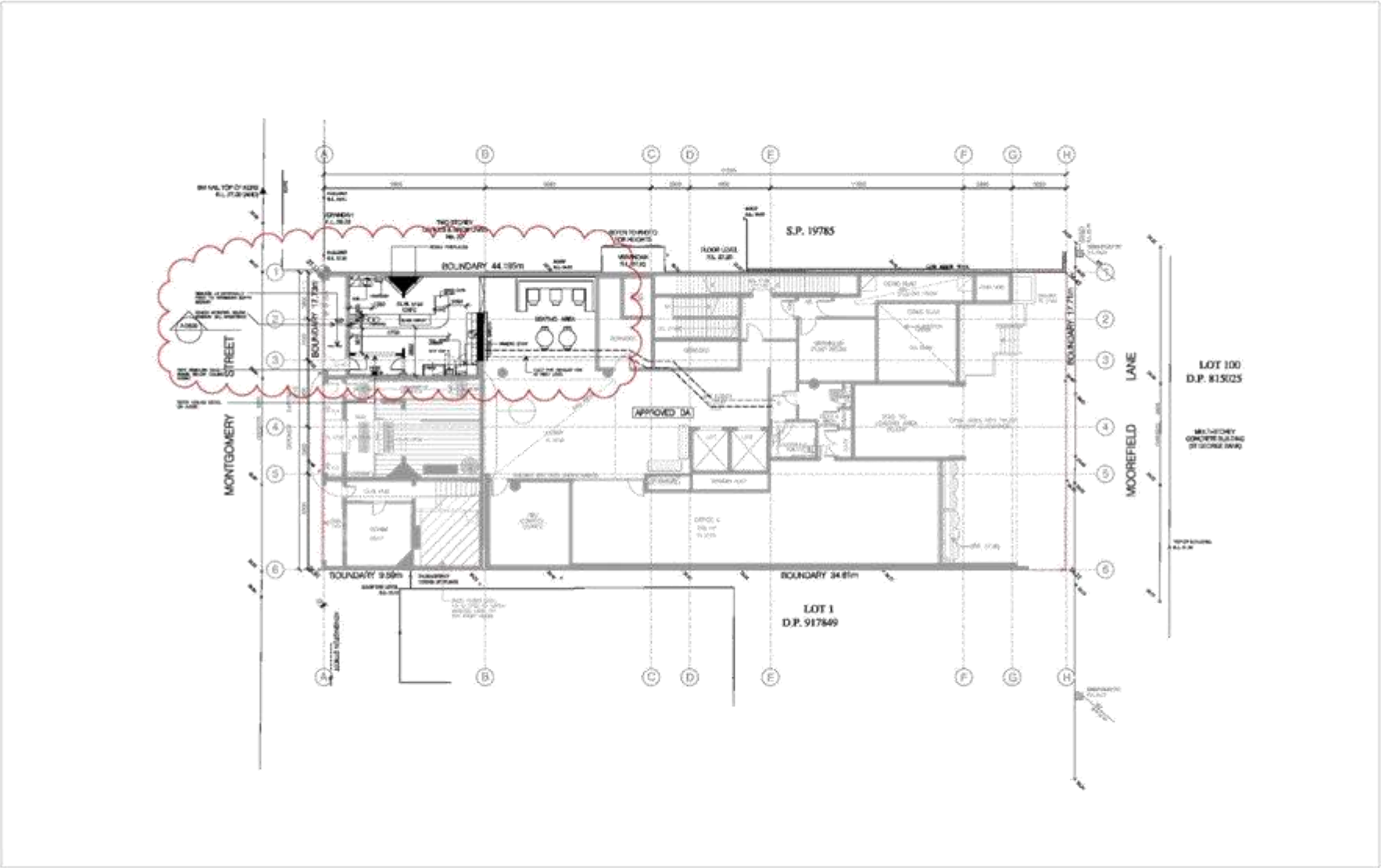
All interest earned on security deposits will be used to offset the Security Deposit Administration and Compliance fee. Where interest earned on a deposit is not sufficient to meet the fee, it will be accepted in full satisfaction of the fee.

63. **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.
64. **Site Safety Fencing** - Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of any work and maintained throughout any demolition and construction work.

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

ATTACHMENTS

Attachment [↓](#) 1  Architectural plans - 22-26 Montgomery St Kogarah



Scale: 1:100 (GFA) 1:200 (GFA)

Date: 18-Aug-21

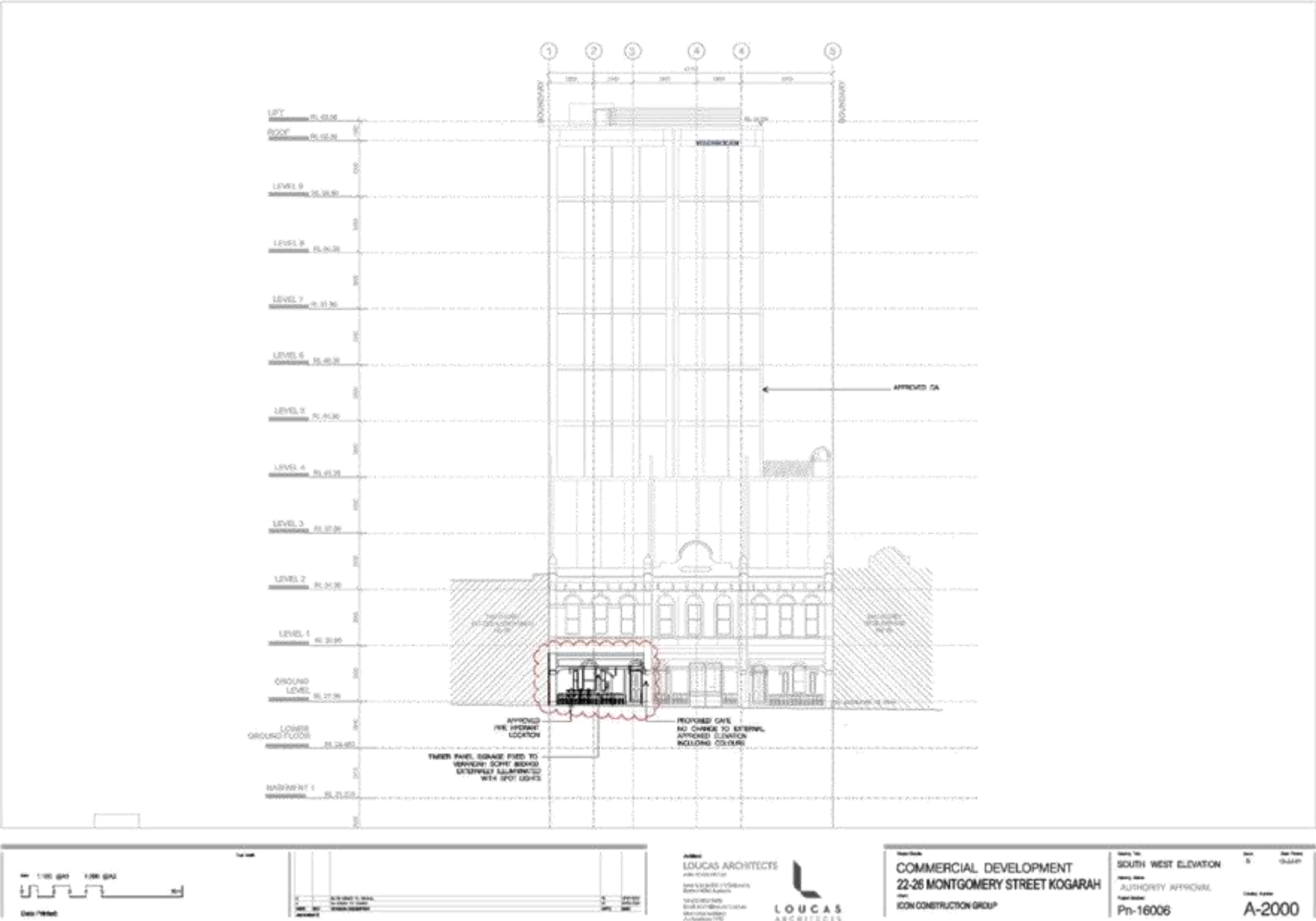
100%_2020_22-26 Montgomery St Kogarah Ground Floor Plan - Commercial Development - 22-26 Montgomery St Kogarah

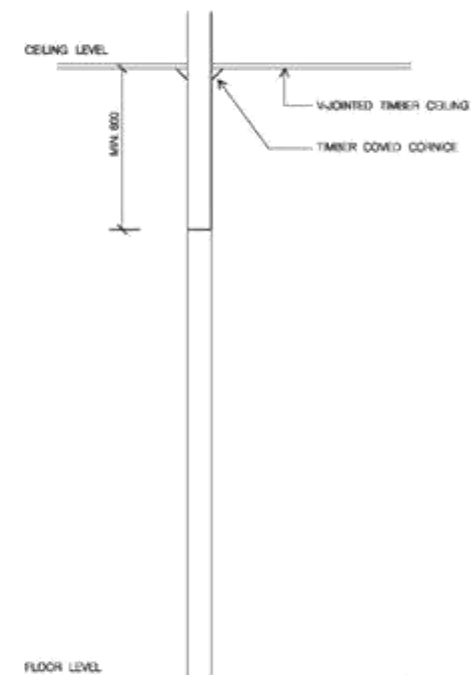
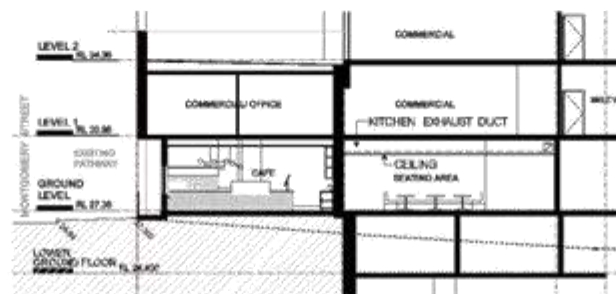
Architect: LOUCAS ARCHITECTS

100%_2020_22-26 Montgomery St Kogarah Ground Floor Plan - Commercial Development - 22-26 Montgomery St Kogarah

Commercial Development
22-26 MONTGOMERY STREET KOGARAH
ICON CONSTRUCTION GROUP

Ground Floor Plan
Authority Approval
Ph-16006
A-0700





CEILING JUNCTION DETAIL



LOUCAS ARCHITECTS
www.loucasarchitects.com

1000 G Street, NW, 10th Floor
Washington, DC 20001-4242

301-462-1000
301-462-1001
301-462-1002
301-462-1003
301-462-1004
301-462-1005
301-462-1006
301-462-1007
301-462-1008
301-462-1009
301-462-1010
301-462-1011
301-462-1012
301-462-1013
301-462-1014
301-462-1015
301-462-1016
301-462-1017
301-462-1018
301-462-1019
301-462-1020
301-462-1021
301-462-1022
301-462-1023
301-462-1024
301-462-1025
301-462-1026
301-462-1027
301-462-1028
301-462-1029
301-462-1030
301-462-1031
301-462-1032
301-462-1033
301-462-1034
301-462-1035
301-462-1036
301-462-1037
301-462-1038
301-462-1039
301-462-1040
301-462-1041
301-462-1042
301-462-1043
301-462-1044
301-462-1045
301-462-1046
301-462-1047
301-462-1048
301-462-1049
301-462-1050
301-462-1051
301-462-1052
301-462-1053
301-462-1054
301-462-1055
301-462-1056
301-462-1057
301-462-1058
301-462-1059
301-462-1060
301-462-1061
301-462-1062
301-462-1063
301-462-1064
301-462-1065
301-462-1066
301-462-1067
301-462-1068
301-462-1069
301-462-1070
301-462-1071
301-462-1072
301-462-1073
301-462-1074
301-462-1075
301-462-1076
301-462-1077
301-462-1078
301-462-1079
301-462-1080
301-462-1081
301-462-1082
301-462-1083
301-462-1084
301-462-1085
301-462-1086
301-462-1087
301-462-1088
301-462-1089
301-462-1090
301-462-1091
301-462-1092
301-462-1093
301-462-1094
301-462-1095
301-462-1096
301-462-1097
301-462-1098
301-462-1099
301-462-1100
301-462-1101
301-462-1102
301-462-1103
301-462-1104
301-462-1105
301-462-1106
301-462-1107
301-462-1108
301-462-1109
301-462-1110
301-462-1111
301-462-1112
301-462-1113
301-462-1114
301-462-1115
301-462-1116
301-462-1117
301-462-1118
301-462-1119
301-462-1120
301-462-1121
301-462-1122
301-462-1123
301-462-1124
301-462-1125
301-462-1126
301-462-1127
301-462-1128
301-462-1129
301-462-1130
301-462-1131
301-462-1132
301-462-1133
301-462-1134
301-462-1135
301-462-1136
301-462-1137
301-462-1138
301-462-1139
301-462-1140
301-462-1141
301-462-1142
301-462-1143
301-462-1144
301-462-1145
301-462-1146
301-462-1147
301-462-1148
301-462-1149
301-462-1150
301-462-1151
301-462-1152
301-462-1153
301-462-1154
301-462-1155
301-462-1156
301-462-1157
301-462-1158
301-462-1159
301-462-1160
301-462-1161
301-462-1162
301-462-1163
301-462-1164
301-462-1165
301-462-1166
301-462-1167
301-462-1168
301-462-1169
301-462-1170
301-462-1171
301-462-1172
301-462-1173
301-462-1174
301-462-1175
301-462-1176
301-462-1177
301-462-1178
301-462-1179
301-462-1180
301-462-1181
301-462-1182
301-462-1183
301-462-1184
301-462-1185
301-462-1186
301-462-1187
301-462-1188
301-462-1189
301-462-1190
301-462-1191
301-462-1192
301-462-1193
301-462-1194
301-462-1195
301-462-1196
301-462-1197
301-462-1198
301-462-1199
301-462-1200
301-462-1201
301-462-1202
301-462-1203
301-462-1204
301-462-1205
301-462-1206
301-462-1207
301-462-1208
301-462-1209
301-462-1210
301-462-1211
301-462-1212
301-462-1213
301-462-1214
301-462-1215
301-462-1216
301-462-1217
301-462-1218
301-462-1219
301-462-1220
301-462-1221
301-462-1222
301-462-1223
301-462-1224
301-462-1225
301-462-1226
301-462-1227
301-462-1228
301-462-1229
301-462-1230
301-462-1231
301-462-1232
301-462-1233
301-462-1234
301-462-1235
301-462-1236
301-462-1237
301-462-1238
301-462-1239
301-462-1240
301-462-1241
301-462-1242
301-462-1243
301-462-1244
301-462-1245
301-462-1246
301-462-1247
301-462-1248
301-462-1249
301-462-1250
301-462-1251
301-462-1252
301-462-1253
301-462-1254
301-462-1255
301-462-1256
301-462-1257
301-462-1258
301-462-1259
301-462-1260
301-462-1261
301-462-1262
301-462-1263
301-462-1264
301-462-1265
301-462-1266
301-462-1267
301-462-1268
301-462-1269
301-462-1270
301-462-1271
301-462-1272
301-462-1273
301-462-1274
301-462-1275
301-462-1276
301-462-1277
301-462-1278
301-462-1279
301-462-1280
301-462-1281
301-462-1282
301-462-1283
301-462-1284
301-462-1285
301-462-1286
301-462-1287
3

COMMERCIAL DEVELOPMENT
22-26 MONTGOMERY STREET KOGARAH
ICON CONSTRUCTION GROUP

SECTION
AUTHORITY APPROVAL
Pn-16006