

AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 04 November 2021
Time:	4.00pm
Venue:	Online Meeting
Panel Members:	Stephen Alchin (Chairperson) Milan Marecic (Expert Panel Member) Deborah Laidlaw (Expert Panel Member) Cameron Jones (Community Representative)

1. On Site Inspections – Carried out by Panel Members prior to meeting	
2. Opening	
3. Consideration of Items and Verbal Submissions	
LPP058-21	39 Rosa Street Oatley – MOD2020/0228 (Report by Senior Development Assessment)
LPP059-21	9 Marine Drive Oatley NSW 2223 – MOD2021/0101 (Report by Senior Development Assessment Officer)
LPP060-21	7 Loville Street Peakhurst Heights – DA2021/0207 (Report by Senior Development Assessment Planner)
LPP061-21	2-6 Lacey Street, Kogarah Bay – DA2021/0211 (Report by Senior Development Assessment Planner)
LPP062-21	31 Caloola Crescent Beverly Hills NSW 2209 – DA2021/0253 (Report by Senior Development Assessment Officer)
LPP063-21	Lillian Road Reserve & 50 Lillian Road Riverwood – DA2021/0203 (Report by Senior Development Assessment)
4. LPP Deliberations in Closed Session	
5. Confirmation of Minutes	

REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 04 NOVEMBER 2021

LPP058-21

LPP Report No	LPP058-21	Development Application No	MOD2020/0228
Site Address & Ward Locality	39 Rosa Street Oatley Blakehurst Ward		
Proposed Development	Modification to existing residential flat building involving deletion of privacy screens		
Owners	Strata Body Corporate SP100336		
Applicant	Team 2 Architects		
Planner/Architect	Team 2 Architects		
Date Of Lodgement	15/12/2020		
Submissions	14 submissions (4 objections and 10 in support)		
Cost of Works	\$Nil		
Local Planning Panel Criteria	The proposal has been referred to the Georges River Local Planning Panel (LPP) as more than 10 unique submissions have been received and it is in the public interest		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment, State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Georges River Local Environmental Plan 2021, Draft Design and Place State Environmental Planning Policy		
List all documents submitted with this report for the Panel's consideration	Proposed Architectural Plans and Originally Approved Plans Statement of Environmental Effects, Illuminance Measurement Report and Sight Line Analysis Public Submissions		
Report prepared by	Senior Development Assessment		

Recommendation	That the modification application be refused for the reasons referenced at the end of this report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority	

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

Site Plan



Figure 1: Aerial view of the subject site outlined in blue – 39-41 Rosa Street, Oatley

Executive Summary

Proposal

1. Council is in receipt of a Section 4.55(1A) Modification Application to modify the development consent under DA/349/2009 for demolition of existing dwelling and villas and construction of three (3) storey residential flat building comprising eleven (11) units with basement parking, which was approved by Council on 6 October 2010.

2. The proposed modifications involve the deletion of nine originally approved screens on the northern, western and southern facades of the existing residential flat building as outlined below:

Ground Floor:

- Removal of privacy screens from the Northern & Southern windows of bedrooms for 4 units i.e. UG01 (Bed 3), UG02 (Bed 2), UG03 (Bed 2) & UG04 (Bed 3).

First Floor:

- Removal of privacy screens from Northern & Southern windows of bedrooms for 4 units i.e. U105 (Bed 3), U106 (Bed 2), U107 (Bed 2) & U108 (Bed 3).
- Removal of screen to Western window of Bed 2 for U105.

3. The purpose of the proposed modifications is to improve natural light into the affected bedroom windows (and reduce reliance upon artificial lighting throughout the day) given the current screens reduce the aggregate light transmission to less than 10% of the floor area of each room.
4. Notwithstanding the above, whilst the Occupation Certificate issued for the development by Private Certifier Vic Lilli and Partners confirmed that the proposal satisfied the requirements of the Building Code of Australia with respect to light and air, it is noted that the development as constructed incorporated the following modifications (without Council's approval) to the originally approved DA Architectural Plans prepared by MDA Architects:
 - The Bedroom 3 windows of Units G01, G04, U105 and U108 were relocated from walls facing inward towards the lift core, which did not necessitate any screening, to the southern externally facing wall which was to be treated with full length "imitation timber slats" as a decorative façade detail.
 - The western Bedroom 2 windows of Units G01 and U105 were to be treated with a "stacking louver sun shading screen" (as opposed to a privacy screen).
 - The northern Bedroom 2 windows of Units G02, G03, U106 and U107 were to be treated with "imitation timber slats" fixed to the face of the external wall similar to the "timber slat screens" provided to the balconies (which would provide privacy screening as well as allowing light), but suitable louver openings and angles do not appear to have been specified as a part of the Construction Certificate.
 - The screens installed by the builder/developer completely cover the bedroom windows flush with external face of the wall with louvers angled downwards and insufficient openings, which do not allow for light and air as intended.
5. The proposal was accompanied with owner's consent from the Body Corporate and Strata meeting minutes dated 6 October 2020 with a special resolution consenting "to the Owners Corporate preparing and lodging a DA with Georges River Council for removal of the privacy screens".

Site and Locality

6. The site is identified as SP100336, known as 39-41 Rosa Street Oatley.
7. The lot is regular in shape and has a total site area of 1,546sqm with a 29.525m frontage to Rosa Street. The site has a fall of approximately 1.4m from west (rear) to east (front).
8. The site is currently occupied by a three storey residential flat building above basement parking.

9. Adjoining the site is a single storey dwelling to the north at 37 Rosa Street, two and three storey townhouses to the south at 43-45 Rosa Street, and a three-storey residential flat building to the west at 38 Letitia Street.

Zoning and Permissibility

10. The subject site is zoned R3 Medium Density Residential pursuant to the provisions of the Kogarah Local Environmental Plan 2012. Residential flat buildings are permitted with consent in the zone and the proposal is consistent with the objectives of the zone.
11. However, the deletion of the existing screens to the northern and southern bedroom windows on the elevated ground floor and first floor fails to comply with Section 3F-1 Visual Privacy of the Apartment Design Guide and is considered to result in adverse privacy impacts to adjoining properties given a 6m share of the 12m separation requirement has not been provided. It is noted that the incorporation of privacy measures to habitable windows where spatial separation cannot be achieved is common practice and need not eliminate the potential for adequate natural light and air to the occupant. Similarly, the deletion of the approved sun shading device to the western bedroom window fails to comply with Section 4U-2 of the ADG, which would typically allow light and air whilst optimising heat storage in winter and reducing heat transfer in summer.

Submissions

12. The application was notified for a period of fourteen (14) days in accordance with the Kogarah Development Control Plan 2013. Fourteen (14) 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 more than 10 submissions have been received.

Conclusion

14. Having regard to the matters for consideration under section 4.15(1) and S4.55 (1A) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed modification application (MOD2020/0228) is recommended for refusal for the reasons contained within this report.

Report in Full

Proposal

Description of Proposal

15. Council is in receipt of a Section 4.55(1A) Modification Application to modify the development consent DA/349/2009 for demolition of existing dwelling and villas and construction of three (3) storey residential flat building comprising eleven (11) units with basement parking, which was approved by Council on 6 October 2010.
16. The proposed modifications involve the deletion of nine originally approved screens on the northern, western and southern facades of the existing residential flat building as outlined below:

Ground Floor:

- Removal of privacy screens from Northern & Southern windows of bedrooms for 4 units i.e. UG01 (Bed 3), UG02 (Bed 2), UG03 (Bed 2) & UG04 (Bed 3).

First Floor:

- Removal of privacy screens from Northern & Southern windows of bedrooms for 4 units i.e. U105 (Bed 3), U106 (Bed 2), U107 (Bed 2) & U108 (Bed 3).

- Removal of screen to Western window of Bed 2 for U105.
17. The purpose of the proposed modifications is to improve natural light into the affected bedroom windows (and reduce reliance upon artificial lighting throughout the day) given the current screens reduce the aggregate light transmission to less than 10% of the floor area of each room.
18. Notwithstanding the above, whilst the Occupation Certificate issued for the development by Private Certifier Vic Lilli and Partners confirmed that the proposal satisfied the requirements of the Building Code of Australia with respect to light and air, it is noted that the development as constructed incorporated the following modifications (without Council's approval) to the originally approved DA Architectural Plans prepared by MDA Architects:
- The Bedroom 3 windows of Units G01, G04, U105 and U108 were relocated from walls facing inward towards the lift core, which did not necessitate any screening, to the southern externally facing wall which was to be treated with full length "imitation timber slats" as a decorative façade detail.
 - The western Bedroom 2 windows of Units G01 and U105 were to be treated with a "stacking louver sun shading screen" (as opposed to a privacy screen).
 - The northern Bedroom 2 windows of Units G02, G03, U106 and U107 were to be treated with "imitation timber slats" fixed to the face of the external wall similar to the "timber slat screens" provided to the balconies (which would provide privacy screening as well as allowing light), but suitable louver openings and angles do not appear to have been specified as a part of the Construction Certificate.
 - All of the bedroom window screens installed by the builder/developer completely cover the window glazing flush with external face of the wall with louvers angled downwards and insufficient openings, which do not allow for light and air as intended.
19. The proposal was accompanied with owner's consent from the Body Corporate and Strata meeting minutes dated 6 October 2020 with a special resolution consenting "to the Owners Corporate preparing and lodging a DA with Georges River Council for removal of the privacy screens".

The Site and Locality

20. The site is identified as SP100336, known as 39-41 Rosa Street Oatley.
21. The lot is regular in shape and has a total site area of 1,546sqm with a 29.525m frontage to Rosa Street. The site has a fall of approximately 1.4m from west (rear) to east (front).
22. The site is currently occupied by a three storey residential flat building above basement parking.
23. Adjoining the site is a single storey dwelling to the north at 37 Rosa Street, two and three storey townhouses to the south at 43-45 Rosa Street, and a three-storey residential flat building to the west at 38 Letitia Street.



Figure 2: Existing view looking south-west at 39-41 Rosa Street, Oatley



Figure 3: Image of existing screen type to be removed from northern, western and southern bedroom windows under this application

Background

11. Development consent (DA/349/2009) was granted by Council on 6 October 2010 for demolition of existing dwelling and villas and construction of three (3) storey residential flat building comprising eleven (11) units with basement parking at 39-41 Rosa Street Oatley.
12. On 18 June 2018, a Construction Certificate was issued for the development by Private Certifier Vic Lilli and Partners, which confirmed that the proposal satisfied the requirements of the Building Code of Australia with respect to light and air.
13. The accompanying approved Architectural CC Plans, Revision C, dated 1 June 2018, prepared by Team 2 Architects also incorporated modifications (without Council's consent) to the originally approved DA Architectural Plans prepared by MDA Architects for the development as follows:
 - The Bedroom 3 windows of Units G01, G04, U105 and U108 were relocated from walls facing inward towards the lift core, which did not necessitate any screening, to the southern externally facing wall which was to be treated with full length "imitation timber slats" as a decorative façade detail.

- The western Bedroom 2 windows of Units G01 and U105 were to be treated with a “stacking louver sun shading screen” (as opposed to a privacy screen).
 - The northern Bedroom 2 windows of Units G02, G03, U106 and U107 were to be treated with “imitation timber slats” fixed to the face of the external wall similar to the “timber slat screens” provided to the balconies (which would allow light), but suitable louver openings and angles do not appear to have been specified.
14. However, the screens installed by the builder/developer are also inconsistent with both the DA and CC plans given they have been reduced in height and width to completely cover the Bedroom windows flush with the external face of the wall with louvers angled downwards and insufficient openings, which do not allow for light as intended.
 15. On 18 October 2019, the final Occupation Certificate for the development was issued by Private Certifier Vic Lilli and Partners, which confirmed that the development satisfied the requirements of the Building Code of Australia with respect to light and air.
 16. On 16 February 2021, Council wrote to the applicant requesting withdrawal of the application given the deletion of the privacy screens was not supported due to adverse privacy impacts to adjoining properties and the works were considered to necessitate a new DA as a final Occupation Certificate had already been issued.
 17. On 23 February 2021, the applicant requested a meeting with Council to discuss the request to withdraw and the issues raised. Council advised the applicant on the same day that legal advice was being obtained in relation to the modification of a consent where a final occupation certificate had been issued.
 18. On 9 March 2021, Council advised the applicant that a modification application may be considered but that advice should be sought from the certifier as to whether a construction certificate could be issued and a design solution was to be provided ahead of any meeting for replacement privacy screens that balance amenity to occupants and adjoining neighbouring properties.
 19. On 25 March 2021, Council sent a follow-up email to the applicant seeking confirmation that a certifier could issue a construction certificate and an update on a design solution to be provided ahead of any meeting for replacement privacy screens that balance amenity to occupants and adjoining neighbouring properties.
 20. On 23 April 2021, Council's Assessment Officer discussed the application with the applicant and requested a design solution to be provided ahead of any meeting for replacement privacy screens that balance amenity to occupants and adjoining neighbouring properties.
 21. On 28 June 2021, in the absence of any design solution being received from the applicant to progress the matter, Council wrote to the applicant requesting withdrawal of the application noting that Council would be unable to consider any amendments to the application to resolve the issues raised having regard the position of J Sheaham in *AQC Dartbrook Management Pty Ltd v Minister for Planning and Public Spaces [2021] NSWCA112*.
 22. On 5 July 2021, the applicant requested a meeting with Council to discuss the request to withdraw and the issues raised. Council advised the applicant on the same day that a meeting would only be arranged once a design solution was provided as previously

requested for replacement privacy screens that balance amenity to occupants and adjoining neighbouring properties.

23. On 6 August 2021, in the absence of any design solution being received from the applicant to progress the matter, Council's Assessment Officer discussed the application with the applicant and the applicant advised that they were awaiting instructions from the Strata Committee on how to proceed and would provide a further update in the following week.
24. On 13 August 2021, the applicant advised that the Strata Committee had resolved to proceed with an amended design solution ahead of any meeting and an update would be provided once an agreement was reached for the amended design solution.
25. On 18 August 2021, in line with the updated Regulations to allow a Section 4.55 application to be amended before it is determined, the applicant advised that the Strata Committee had resolved to proceed with an amendment to the current application to resolve the issues raised.
26. On 27 August 2021, in the absence of any design solution being received from the applicant to progress the matter, Council's Assessment Officer discussed the application with the applicant and advised that the application would need to be determined by the Local Planning Panel.
27. On 13 September 2021, the applicant provided a draft marked-up drawing indicating the provision of obscure window film to be attached directly to the glazing of the existing sliding windows up to 1.8m high above finished floor level to replace the existing fixed privacy screens. However, this is not considered to be an appropriate design solution given overlooking would arise and suitable fixed privacy screening can be provided consistent with the original approval that achieves a balance between privacy, daylight access and shading.

Planning Assessment

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

Section 4.55 (1A) Modification

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

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

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

26. Comment: The proposed modification is not considered to be of minimal environmental impact given the deletion of the existing screens to the northern and southern bedroom windows on the elevated ground floor and first floor fails to comply with Section 3F-1 Visual Privacy of the Apartment Design Guide and is considered to result in adverse privacy impacts to adjoining properties given a 6m share of the 12m separation requirement has not been provided. It is noted that the incorporation of privacy measures to habitable windows where spatial separation cannot be achieved is common practice

and need not eliminate the potential for adequate natural light and air to the occupant. Similarly, the deletion of the approved sun shading device to the western bedroom window fails to comply with Section 4U-2 of the ADG, which would typically allow light and air whilst optimising heat storage in winter and reducing heat transfer in summer.

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

27. Comment: Whilst the proposed development as modified would generally represent substantially the same development as was originally approved under DA/349/2009, the screens as constructed are inconsistent with the original approval and the originally approved screening devices are considered an essential element of the original approval in terms of façade appearance, privacy mitigation and energy performance and deletion would result in a qualitative change. The development consent for demolition of existing dwelling and villas and construction of three (3) storey residential flat building comprising eleven (11) units with basement parking would remain unchanged and the proposed modification relates to the deletion of screening devices, which is not supported.

(c) *It has notified the application in accordance with:*
 (i) *The regulations, if the regulations so require, or*
 (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

28. Comment: In accordance with the provisions of Councils Public Notification policy, this modification application was notified for a period of 14 days. Fourteen (14) submissions were received.

(d) *Has considered any submissions made concerning the proposed modification*

29. Fourteen (14) submissions were received by Council. The issues raised in the submissions have been addressed later in this report.

(1A) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

28. Comment: The modification application relates to the deletion of screening devices, which have not been constructed in accordance with the original approval under DA/349/2009. The originally approved screening devices are considered an essential element of the original approval in terms of façade appearance, privacy mitigation and energy performance, which were provided in direct response to public submissions raising concerns with overlooking and the proposed deletion of the screens as originally approved would be inconsistent with the reasons for the original grant of consent.

29. The proposal has been considered under the considerations under Section 4.15 of which have been addressed further within this report.

30. Compliance with the relevant State Environmental Planning Policy (SEPP) is summarised in the table and discussed in further detail below.

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

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

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

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

32. The modifications do not adversely impact on the existing stormwater management of the site.

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

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

- 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
- 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.
- The aim of this Policy is to ensure consistency in the implementation of the BASIX scheme throughout the State.

(d) 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.

34. An amended BASIX certificate has not been provided with the modification application, which is considered necessary given:
- The Bedroom 3 windows of Units G01, G04, U105 and U108 were relocated from walls facing inward towards the lift core, which did not necessitate any screening and would have received light, to the southern externally facing wall which was covered with full length “imitation timber slats” as a decorative façade detail.
 - The western Bedroom 2 windows of Units G01 and U105 were to be treated with a “stacking louver sun shading screen” (as opposed to a privacy screen), which would allow light and shading, but would be completed unshaded as proposed.
 - The northern Bedroom 2 windows of Units G02, G03, U106 and U107 were to be treated with “imitation timber slats” fixed to the face of the external wall similar to the “timber slat screens” provided to the balconies (which would allow light and shading) but would be completely unshaded as proposed.

State Environmental Planning Policy No 55 - Remediation of Land

35. State Environmental Planning Policy 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
36. 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.
37. The proposed modifications relate to external facade changes to the already approved built form. The application does not seek to change the existing residential use of the site. As the site has been historically used for residential purposes it is unlikely to be contaminated. Accordingly, this matter was addressed at the DA stage and the consent authority was satisfied that the site is suitable in its current state for the proposed development.
38. This application is not seeking works that result in penetrating the foundation material, in this regard, no further assessment is warranted with regards to site contamination.

State Environmental Planning Policy (Infrastructure) 2007

39. The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:
- (a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and
 - (b) providing greater flexibility in the location of infrastructure and service facilities, and
 - (c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and
 - (d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and
 - (e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and

- (f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and
- (g) providing opportunities for infrastructure to demonstrate good design outcomes.

40. The proposal has been considered in accordance with the applicable provisions of the State Environmental Planning Policy and found to be acceptable.

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

41. The Vegetation State Environmental Planning Policy regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
42. The Vegetation State Environmental Planning Policy applies to clearing of:
- (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
 - (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).*
43. The Vegetation State Environmental Planning Policy repeals clause 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable Development Control Plan.
44. The subject site is currently does not include any significant plants, trees or vegetation. The development will therefore not remove any significant or important vegetation.
45. On this basis, the proposal is consistent with relevant provisions of the Vegetation State Environmental Planning Policy.

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

46. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three (3) or more storeys in height and containing at least four (4) dwellings. Amendment 3 to State Environmental Planning Policy 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, State Environmental Planning Policy 65 applies.
47. Clause 29(2) of State Environmental Planning Policy 65 requires that the consent authority take into consideration the following as part of the determination of the modification application to which State Environmental Planning Policy 65 applies:
- (a) *the advice (if any) obtained from the design review panel, and*
 - (b) *the design quality of the development (as modified) when evaluated in accordance with the design quality principles, and*
 - (c) *the Apartment Design Guide.*
48. The application has been reviewed having regard to the criterion and design principles as set out in the ADG. The tables below provide a comprehensive assessment against the

principles, objectives and controls of State Environmental Planning Policy 65 and the ADG.

Application of State Environmental Planning Policy 65

Clause	Standard	Proposal	Complies
3 - Definitions	<p>Complies with definition of “Residential Apartment Development” (RAD) Section 4 (1) (Application of Policy) of the State Environmental Planning Policy 65 states that the policy “<i>applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:</i></p> <p>(a) <i>the development consists of any of the following:</i></p> <p>(i) <i>the erection of a new building,</i></p> <p>(ii) <i>the substantial redevelopment or the substantial refurbishment of an existing building,</i></p> <p>(iii) <i>the conversion of an existing building, and</i></p> <p>(b) <i>the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2m above ground level (existing) that provide for car parking), and</i></p> <p><i>the building concerned contains at least 4 or more dwellings.”</i></p>	Complies with the definition.	<p>Yes – the residential flat building (RFB) development satisfies the definition of State Environmental Planning Policy 65.</p> <p>The proposal is storeys in scale and contains 11 apartments.</p>

4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the State Environmental Planning Policy includes mixed use developments.	Construction of an RFB development which satisfies the State Environmental Planning Policy's definition of the proposed land use. Refer to definition and explanation above in relation to the applicability of the Policy.	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement not provided. See discussion below.	No

49. A covering letter, dated 11 November 2020, has been provided by Richard Webster of Team2Architects (Registration No. 9940), but this fails to satisfy the requirements of a design verification statement in accordance with Clause 115(3A) of the Environmental Planning and Assessment Regulation 2000 given it does not:

- (a) *verify that he or she designed, or directed the design of, the modification of the development and, if applicable, the development for which the development consent was granted, and*
- (b) *provide an explanation of how—*
 - (i) *the design quality principles are addressed in the development, and*
 - (ii) *in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development, and*
- (c) *verify that the modifications do not diminish or detract from the design quality, or compromise the design intent, of the development for which the development consent was granted.*

50. For determination of applications for development consent modifications, Clause 29 and 30 of State Environmental Planning Policy 65 requires the consent authority to take into consideration the provisions of the Apartment Design Code. Noting that the proposed changes relate to deletion of existing screens only and no changes are proposed to the overall building siting and footprint, building management or external open space, the following table is an assessment against the relevant design criteria of the 'Apartment Design Guide' as required by State Environmental Planning Policy 65. An assessment of the application against the relevant provisions of State Environmental Planning Policy 65 and the Apartment Design Guide (ADG) is provided below.

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

Clause	Standard	Proposal	Complies
3D - Communal open space	No changes to original approval		
3E – Deep Soil zones	No changes to original approval		

3F- Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys) Habitable - 6m Non-habitable – 3m</p>	The originally approved development was coordinated to balance use, privacy, solar access and cross ventilation. Refer to discussion below.	No
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Southern Setback:

The existing setback is 5.85m to habitable rooms, which equates to a 0.15m variation.

However, as noted previously, the Bedroom 3 windows of Units G01, G04, U105 and U108 were relocated (without Council approval) from walls facing inward towards the lift core, which did not necessitate any screening or create any privacy impact, to the southern externally facing wall which is set back 5.85m from the southern boundary and is located opposite habitable windows setback 3.7m to 4.595m as well as private open space area within the adjoining townhouse development at 43-45 Rosa Street.

Therefore, the proposed deletion of the existing fixed screening to these habitable windows as proposed is not supported given direct overlooking would arise to the south and it is considered that a suitable privacy screen with louvers angled at 45 degrees upwards and up to 30% opening could be provided.

Northern Setback:

The existing northern setback to habitable is 4.835m to 5m, which results in a variation of up to 1.165m.

However, as noted previously, the northern Bedroom 2 windows of Units G02, G03, U106 and U107 were to be treated with “imitation timber slats” fixed to the face of the external wall similar to the “timber slat screens” provided to the balconies, which provided privacy screening to the adjoining private open space and adjacent windows of the existing single storey dwelling within 1.7m of the boundary with 37 Rosa Street.

Therefore, the proposed deletion of the existing fixed screening to these habitable windows as proposed is not supported given direct overlooking would arise to the north and it is considered that a suitable privacy screen with louvers angled at 45 degrees upwards and up to 30% opening could be provided.

Western Setback:

The existing western setback to habitable is 7m, which complies.

However, as previously noted, the western Bedroom 2 windows of Units G01 and U105 were to be treated with a “stacking louver sun shading screen” (as opposed to a privacy screen), which would allow for light and shading.

Therefore, the proposed deletion of the existing fixed screening to these habitable windows as proposed is not supported due to excessive heat load and it is considered that a suitable sun shading device could be provided.			
3G – Pedestrian Access and entries	No changes to original approval.		
3H-Vehicle Access	No changes to original approval.		
3J-Bicycle and car parking	No changes to original approval.		
4A- Solar and daylight access	No changes to original approval in terms of living areas and private open space. It is noted that the proposal seeks to improve natural light into habitable bedrooms and reduce reliance upon artificial lighting throughout the day given the current screens reduce the aggregate light transmission to less than 10% of the floor area of the room. However, this arises due to unauthorised work and inconsistencies with the originally approved development and suitable replacement screens can be provided that maintain adequate light and shading.		
4B- 3 Natural Ventilation	No changes in terms of overall apartment layout or depth. It is noted that the proposal seeks to improve natural ventilation into habitable bedrooms given the current screens would obstruct airflow. However, this arises due to unauthorised work and inconsistencies with the originally approved development and suitable replacement screens can be provided with improved airflow.		
4C-Ceiling Heights	No changes to original approval.		
4D- Apartment size and layout	No changes to original approval.		
4E- Private Open space and balconies	No changes to original approval.		
4F- Common circulation areas	No changes to original approval.		
4G- Storage	No changes to original approval.		
4H- Acoustic Privacy	No changes to original approval, although it is noted that the southern bedroom windows as constructed are unauthorised as they were relocated without Council's approval.		
4J – Noise and Pollution	No changes to original approval.		
4K – Apartment Mix	No changes to original approval.		
4L – Ground Floor Apartments	No changes to original approval.		
4M – Facades	Facades should be well resolved with	No changes to the overall streetscape appearance given	Yes

	an appropriate scale and proportion to the streetscape and human scale.	the façade changes relate to side and rear elevations, which are only visible in oblique views.	
4N – roof design	No changes to original approval.		
4O – Landscape Design	No changes to original approval.		
4P- Planting on Structures	No changes to original approval.		
4Q – Universal Design	No changes to original approval.		
4R – Adaptive reuse	Not applicable.		
4S Mixed Use	Not applicable.		
4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	An amended BASIX Certificate was not submitted with the application. Further, the proposed deletion of the approved sun shading device to the western bedroom window and lack of shading to the northern bedroom windows as amended is not supported.	No
4V – Water management and conservation	No changes to original approval.		
4W – Waste Management	No changes to original approval.		
4X – Building Maintenance	No changes to original approval.		

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environmental State Environmental Planning Policy

51. The Draft Environment SEPP 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 Policy's:

- 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.

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

Draft Remediation of Land State Environmental Planning Policy

53. 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.

54. The proposal is not inconsistent with the provisions of this Draft Instrument as there is no evidence this site is contaminated based on previous uses. There is no penetration of foundation material proposed as part of this application therefore not additional assessment is required.

Draft Design and Place State Environmental Planning Policy

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

56. The New South Wales Department of Planning, Industry and Environment exhibited an Explanation of Intended Effect between 26 February 2021 and 28 April 2021 for the proposed Design and Place State Environmental Planning Policy.

57. The Design and Place State Environmental Planning Policy will:

- Establish principles for the design and assessment of places in urban and regional NSW;
- Establish matters for consideration and application requirements that collectively respond to each of the principles;
- Provide a single point of reference for design-related considerations and performance criteria in the planning system;
- Define scales of development – precincts and significant development, and all other development;
- Introduce a robust and consistent design process through requirements for design skills, design evaluation and review, and design excellence;
- Integrate a design-led, place-based approach, which includes embedding the draft Connecting with Country Framework;

- Be supported by existing, revised and new guidance, including a revised Apartment Design Guide (ADG), a new Urban Design Guide (UDG), and revisions to the Building Sustainability Index (BASIX);
- Repeal and replace State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX State Environmental Planning Policy)
- Consolidate design and place requirements in other State Environmental Planning Policy in the future.

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

Kogarah Local Environmental Plan 2012 (KLEP 2012)

59. The subject site is zoned R3 – Medium Density Residential under the provisions of KLEP 2012. The approved use as a residential flat building is a permissible form of development with Council's consent.



Figure 4: Extract from land zoning map with subject site bordered in blue.

60. The objectives of the R3 Medium Density Residential zone under KLEP 2012 are:

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

61. The proposed development as modified satisfies the zone objectives.

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

Clause	Standard	Proposal	Complies
Part 2: Permitted or Prohibited Development			
2.2 Zoning of Land to which Plan applies	R3 Medium Density Residential	The proposal is defined a residential flat building which is a permitted use in the zone under KLEP 2012.	Yes
2.3 Zone objectives and Land use table	Objectives of zone to be satisfied	The proposal generally satisfies the objectives of the zone by providing residential apartments to meet the needs of the community. This is consistent with the zone objectives.	Yes
2.7 Demolition	Demolition requires development consent.	No proposed as part of this application.	N/A
Part 4: Principal Development Standards			
4.3 Height of Buildings	12m as identified on Height of Buildings Map.	No changes to existing approval.	Yes
4.4 Floor Space Ratio	1:1 as identified on Floor Space Ratio Map	No changes to existing approval.	Yes.
4.5 Calculations of Floor space and Site area	Floor space to be calculated in accordance with Clause.	No changes to existing approval.	Yes
4.6 Exceptions to Development Standards	The objectives of this clause are as follows— (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	No changes to existing approval.	N/A
Part 5: Miscellaneous Provisions			
5.6 Architectural roof features	Development that includes an architectural roof feature that exceeds, or causes a building	No changes to existing approval. No architectural roof feature proposed.	N/A

	to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.		
5.10 Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	The subject site is not identified as a heritage item or as land within a heritage conservation area or in the vicinity of a heritage item.	Yes
Part 6: Additional Local Provisions			
6.1 Acid Sulfate Soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by any Acid Sulfate Soils.	Yes
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	No changes to existing approval.	Yes
6.3 Flood Planning	The objectives of this clause are as follows— (a) to minimise	No changes to existing approval. The site is not affected by any flood planning restrictions.	Yes

	<p>the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>to avoid significant adverse impacts on flood behaviour and the environment.</p>		
6.5 Airspace Operations	<p>The objective of this clause is to protect airspace around airports.</p> <p>The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the <i>Airports Act 1996</i> of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division</p>	No changes to existing approval.	Yes

Georges River Local Environmental Plan 2021

63. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.
64. In this regard, the provisions have no determining weight as a result of proposed operation of Clause “1.8A Savings provisions relating to development applications” of the Draft Plan which provides “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

Development Control Plans

Kogarah Development Control Plan 2013 (KDCP 2013)

65. The proposed development is subject to the provisions of Kogarah Development Control Plan 2013 (KDCP 2013). Noting the proposal relates to the removal of screening only, Clause 6A of the State Environmental Planning Policy 65 Apartment Design Guide states that any Development Control Plan provision relating to visual privacy, solar and daylight access and natural ventilation is of no effect and cannot be inconsistent with the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG. Therefore, the relevant environmental management provisions are considered below.

Kogarah Development Control Plan 2013 Compliance Table

Kogarah Development Control Plan 2013 Compliance Table		
PART B – GENERAL CONTROLS		
Required	Proposed	Complies
B7 – Environmental Management		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	<p>The application has not been accompanied by an amended BASIX certificate.</p> <p>In addition, the proposed modifications to the originally approved sub shading device to the western windows and northern windows are not considered to be consistent with these environmental performance requirements.</p>	No

Interim Policy - Georges River Development Control Plan 2020

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

Georges River Development Control 2021

67. The Georges River Development Control Plan came into effect on 8 October 2021 upon the gazettal of the Georges River Local Environmental Plan 2021. However, given the lodgement date of this application, the proposal remains subject to the Kogarah Development Control Plan.

DEVELOPER CONTRIBUTIONS

68. The proposed modifications do not involve any change to the original Section 7.11/7.12 contributions applied as a part of the approved development.

IMPACTS

Natural Environment

69. The proposed works are considered to result in adverse amenity impacts to adjoining properties as well as poor environmental performance due to a lack of suitable privacy and shading devices.

Built Environment

70. The proposed works are considered to result in adverse amenity impacts to adjoining properties as well as poor environmental performance due to a lack of suitable privacy and shading devices.

Social Impact

71. The assessment demonstrates that the proposal in its current form will have an adverse impact on the amenity of neighbouring residential properties.

Economic Impact

72. There is no apparent adverse economic impact that is likely to result within the locality due to the modification.

Suitability of the Site

73. The site is zoned R3 – Medium Density Residential. The proposal is a permissible form of development in this zone and the modifications are not changing the approved use. This immediate precinct is going through a process of change and transition through an increase in FSR and height. However, the modification to the building results in adverse impacts to adjoining properties as well as a poor environmental performance outcome as outlined in this report.

SUBMISSIONS AND THE PUBLIC INTEREST

74. The application was notified in accordance with Kogarah Development Control Plan 2013 for a period of 14 days. Fourteen (14) submissions were received.
75. Ten (10) letters of support were submitted identifying the lack of natural light currently received within the bedrooms due to the existing screens.
76. However, as noted within this assessment, whilst the Occupation Certificate issued for the development by Private Certifier Vic Lilli and Partners confirmed that the proposal satisfied the requirements of the Building Code of Australia with respect to light and air, it is noted that the development as constructed incorporated the following modifications (without Council's approval) to the originally approved DA Architectural Plans prepared by MDA Architects:
- The Bedroom 3 windows of Units G01, G04, U105 and U108 were relocated from walls facing inward towards the lift core, which did not necessitate any screening, to the southern externally facing wall which was to be treated with full length "imitation timber slats" as a decorative façade detail.
 - The western Bedroom 2 windows of Units G01 and U105 were to be treated with a "stacking louver sun shading screen" (as opposed to a privacy screen).
 - The northern Bedroom 2 windows of Units G02, G03, U106 and U107 were to be treated with "imitation timber slats" fixed to the face of the external wall similar to the "timber slat screens" provided to the balconies (which would provide privacy screening as well as allowing light), but suitable louver openings and angles do not appear to have been specified as a part of the CC.

- All of the bedroom window screens installed by the builder/developer completely cover the window glazing flush with external face of the wall with louvers angled downwards and insufficient openings between louvers, which do not allow for light and air as intended.

77. In this regard, the proposed deletion of the existing fixed screening as submitted in line with the owner's consent limited "to the Owners Corporate preparing and lodging a DA with Georges River Council for removal of the privacy screens" is not supported given suitable replacement screening consistent with the original approval (e.g. with louvers angled at 45 degrees upwards and up to 30% opening) could be provided to satisfactorily balance privacy, daylight access and environmental performance.
78. The concerns raised in the four (4) objections are summarised below.

Issues raised	Council comment
Visual privacy	The proposed modifications would result in adverse visual privacy impacts as outlined in this report.
Energy efficiency can be achieved without full removal of the screens	Agreed, noting that the screens as constructed are inconsistent with the original approval and suitable replacement screening can be provided to satisfactorily balance privacy, daylight access and environmental performance.
Inconsistent with the original reasons for approval where privacy concerns to the north and south were specifically resolved with the screening to windows as originally approved.	The proposed modifications are considered to be inconsistent with the original reasons for the grant of consent as outlined in this report.

REFERRALS

79. No referrals were necessitated as a part of the proposal.

CONCLUSION

80. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposed modification is not considered to be an acceptable design outcome for this site and will result in adverse amenity and environmental performance impacts.
81. The proposal has been assessed against the provisions of State Environmental Planning Policy 65, the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013 and is not considered to satisfactorily address the visual privacy and environmental performance requirements of the State Environmental Planning Policy 65 and the Apartment Design Guide.

DETERMINATION AND STATEMENT OF REASONS

Determination

82. THAT pursuant to Section 4.55 of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, refuses Modification Application MOD2020/0228 to modify development consent DA/349/2009 for demolition

of existing dwelling and villas and construction of three (3) storey residential flat building comprising eleven (11) units with basement parking where the modification seeks to remove window screening on SP100336 known as 39-41 Rosa Street Oatley, subject to the reasons for refusal referenced below.

REASONS FOR REFUSAL

1. The proposed development is inconsistent and has not demonstrated compliance with the design quality principles of amenity and sustainability under State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development) and Apartment Design Guide requirements of visual privacy and environmental performance, pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979:
 - a) Clause 29(2)(b) & (c) – Determination of application for development consent modifications; and
 - b) Clause 30(2)(a) & (b) – Standards that cannot be used as grounds to refuse development consent or modification of development consent.
2. The proposed development is inconsistent and has not demonstrated compliance with the following provisions of Kogarah Development Control Plan 2013, pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979:
 - a) Part B7 – Environmental Management
3. The owner's consent was limited to the deletion of the privacy screens only and the proposal was not accompanied with a valid BASIX Certificate or Design Verification Statement contrary to Clause 115 of the Regulations, pursuant to Section 4.15 (1)(a)(iv) of the Environmental Planning and Assessment Act 1979.
4. The proposal will result in adverse amenity and environmental impacts in the locality, pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979.
5. The adverse amenity and 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 [1](#)  Site Plan and Elevations



**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 04 NOVEMBER 2021**

LPP059-21

LPP Report No	LPP059-21	Development Application No	MOD2021/0101
Site Address & Ward Locality	9 Marine Drive Oatley NSW 2223 Peakhurst Ward		
Proposed Development	S4.55 (1A) Modification of Consent No: DA2020/0241 (as modified) for demolition works, retention of existing swimming pool and construction of a dwelling house. The modification seeks the removal of two trees within the rear of the site.		
Owners	Ms B C Hanna and Mr D Elgawly		
Applicant	Mrs. Stephanie Kirovski		
Planner/Architect	Femme Build		
Date Of Lodgement	8/07/2021		
Submissions	Six (6) individual submissions		
Cost of Works	\$770,000.00		
Local Planning Panel Criteria	The application received more than five (5) individual submissions.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy (Coastal Management) 2018, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy No 55 – Remediation of Land, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental planning Policy – Infrastructure 2007, Greater Metropolitan Regional Environmental Plan No 2 - Georges River, State Environmental Planning Policy Infrastructure 2007, Draft Environment State Environmental Planning Policy; Draft Remediation of Land SEPP; Georges River Local Environmental Plan 2021, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No.1 , Georges River Development Control Plan.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Arborist Report, Site photos		
Report prepared by	Senior Development Assessment Officer		

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

Site Plan



Figure 1 Site plan with the allotment outlined in red

1. The Section 4.55 (1A) Modification Application is lodged to modify the original development application (as modified) which granted consent for demolition works, retention of existing swimming pool and construction of a dwelling house on 22 April 2021. A 4.55 (1) minor modification was subsequently lodged to amend the lapsing date. Construction works have not yet commenced. The modification seeks the following:

- Removal of two *Angophora Costata* trees located within the rear yard.

These trees were required to be retained via condition 21 of the development consent.

Site and Locality

2. The lot is irregular in shape and has a total site area of 765.1sqm (by title) and an 18.16m (with splay corner of 0.9m) frontage to Marine Drive. The site slopes up from the street and down from the rear yard toward the rear site boundary.
3. The site is currently occupied by a two storey dwelling house, detached garage and swimming pool.
4. In the wider context, the subject site is located in an established R2 Low Density Residential Area containing single and two storey dwelling houses. The site is located in the Hurstville Foreshore Scenic Protection Area.
5. The site includes a number of large trees within the front setback and at the rear of the site. Some rock outcrops are visible within the front and rear of the site.

Zoning and Permissibility

6. The subject site is zoned R2 Low Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HLEP 2012). The tree removal is ancillary to the primary use of dwelling house which is a permitted use with consent.

Submissions

7. The application was placed on neighbour notification between 29 July 2021 and 12 August 2021. Six (6) submissions were received objecting to the proposal.

Conclusion

8. Having regard to the matters for consideration under section 4.15(1) and S4.55 (1A) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed modification application (MOD2021/0101) is recommended for approval subject to conditions for the reasons contained within this report.

Report in Full Proposal

9. The Section 4.55 (1A) Modification Application is lodged to modify the original development application (as modified) which granted consent for demolition works, retention of existing swimming pool and construction of a dwelling house on 22 April 2021. The modification seeks the following:
 - Removal of two *Angophora Costata* trees located within the rear yard.
10. Under DA2020/0241, the two trees being Trees 21 and 22 with reference to the originally submitted Arborist Report, were required to be retained as a condition of consent (condition 21). The applicant has submitted an additional arborist statement which highlights the reduced life expectancy and declining nature of both trees.

11. The proposal was referred to Council's consultant arborist who reviewed the proposal for the removal of the trees and concluded that the trees are declining in quality and could lead to risk to life and risk to property if not removed or significantly pruned (which will also further reduce the chances of survival of these trees even though some pruning was permitted via condition 8 in the consent issued). Council's arborist recommended that the trees be valued as per the Thyer method of tree valuation with an offset payment (capped at \$10,000 per tree in Council's Fees and Charges) required to be paid prior to any construction certificate being issued.

The Site and Locality

12. The lot is irregular in shape and has a total site area of 765.1sqm (by title) and an 18.16m (with splay corner of 0.9m) frontage to Marine Drive. The site slopes up from the street and down from the rear yard toward the rear site boundary.
13. The site is currently occupied by a two storey dwelling house, detached garage and swimming pool.
14. In the wider context, the subject site is located in an established R2 Low Density Residential Area containing single and two storey dwelling houses. The site is located in the Hurstville Foreshore Scenic Protection Area.
15. The site includes a number of large trees within the front setback and at the rear of the site. Some rock outcrops are visible within the front and rear of the site.



Figure 2 Street view of site as per officer site inspection



Figure 3 Two *Angophora Costata* trees subject to removal under this application.

Background

16. A summary of previous applications associated with the site is provided below:

- Development application (DA2020/0241) for ‘demolition work, retention of existing swimming pool, construction of a dwelling house, construction of a detached outbuilding (gym) and decking’ was approved by the Georges River Local Planning Panel on 22 April 2021. The reasons for approval are listed below:
 - *The proposal is an appropriate response to the zoning of the site.*
 - *The proposed development complies with the requirements of the relevant environmental planning instruments.*
 - *The proposed design has been sensitively considered to be consistent with the existing and desired future character for development in this area.*
 - *The proposal has effective façade modulation and wall articulation that will serve to provide visual interest and reduce the bulk of the building.*
 - *The Panel notes that the proposed garage is setback greater than the existing garage and at distance to minimize excavation and retain existing trees.*
 - *Likewise the Panel notes the retention of significant and mature Angophora trees in the rear garden and that the loss of the mature jacaranda tree will be mitigated by replacement planting in appropriate locations.*

- *The Panel supports the assessment report of Council and accepts that conditions of consent will mitigate any unreasonable amenity impacts to adjoining neighbours.*

Note: It is noted that the description of the original application includes a detached outbuilding (gym), however this item was not supported and was subsequently removed as part of the DA. This modification will amend the description to remove the outbuilding from the description.

- 4.55 (1) Minor Modification application (MOD2021/0116) to amend DA2020/0241 specifically rectify the lapsing date was approved by Council on 3 August 2021.

PLANNING ASSESSMENT

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

ENVIRONMENTAL PLANNING INSTRUMENTS

Environmental Planning and Assessment Act 1979

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

Section 4.55 (1A) Modification

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

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

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

20. Comment: The proposed modification is of minimal environmental impact and relates to the removal of two trees within the rear yard due to the declining nature of the trees. The proposed modifications will retain the approved building envelope. The removal of the trees was assessed by Council's consultant arborist and was supported subject to the payment of tree removal offset fees as per the Thyer method of tree valuation (capped at \$10,000 per tree in Council's Fees and Charges) required to be paid prior to any construction certificate being issued.

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

21. Comment: The proposed development as modified would represent substantially the same development as was originally approved DA2020/0241 (as modified). The original consent granted consent for demolition and construction of a dwelling house and ancillary features, and the proposed modifications are pertinent to the original consent.

(c) It has notified the application in accordance with:

(i) The regulations, if the regulations so require, or

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

22. Comment: In accordance with the provisions of Councils Public Notification policy, this modification application was notified for a period of 14 days. Six (6) submissions were received objecting to the proposed development.

(d) *Has considered any submissions made concerning the proposed modification*

23. Six (6) submissions were received objecting to the proposed development. The issues raised in the submissions have been addressed later in this report.

STATE ENVIRONMENTAL PLANNING POLICIES

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

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

State Environmental Planning Policy No 55 - Remediation of Land

25. State environmental planning policy 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
26. 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.
27. 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.

Deemed State Environmental Planning Policy – Georges River Catchment

28. 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,*

29. The modification does not adversely impact on the existing stormwater management of the site given the works are limited to the removal of two trees within the rear of the site required to be retained via condition 21 of the Development Consent.

State Environmental Planning Policy (Infrastructure) 2007

30. The aim of this Policy is to facilitate the effective delivery of infrastructure across the State by:

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

31. The modification was referred to Ausgrid on in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid advised that no referral is necessary given the absence of electricity assets within the vicinity of the development.

State Environmental Planning Policy Vegetation 2017

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

33. The Vegetation State Environmental Planning Policy applies to clearing of:

- (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
- (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).*

34. The Vegetation State Environmental Planning Policy repeals clause 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable Development Control Plan.
35. The proposal is for the removal of two *Angophora Costata* trees located within the rear yard.
36. Under DA2020/0241, the two trees being Trees 21 and 22 (as referenced in the Arborist Report) were required to be retained by condition 21 of the Development Consent. The applicant has submitted an additional arborist statement which highlights the reduced life expectancy and declining nature of both trees.
37. The proposal was referred to Council's consultant arborist who reviewed the proposal for the removal of the trees and concluded that the trees are declining in quality and could lead to risk to life and risk to property if not removed or significantly pruned (which will also further reduce the chances of survival of these trees even though some pruning was approved via condition 8 of the Development Consent). Council's consultant arborist recommended that the trees be valued as per the Thyer method of tree valuation with an offset payment required to be paid (capped at \$10,000 per tree in Council's Fees and Charges) prior to any construction certificate being issued.

State Environmental Planning Policy (Coastal Management) 2018

38. 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*".
39. Although the location of the proposed tree removal is not within the area nominated as affected by the Coastal Management State Environmental Planning Policy, an assessment was undertaken against the relevant provisions affecting the site.

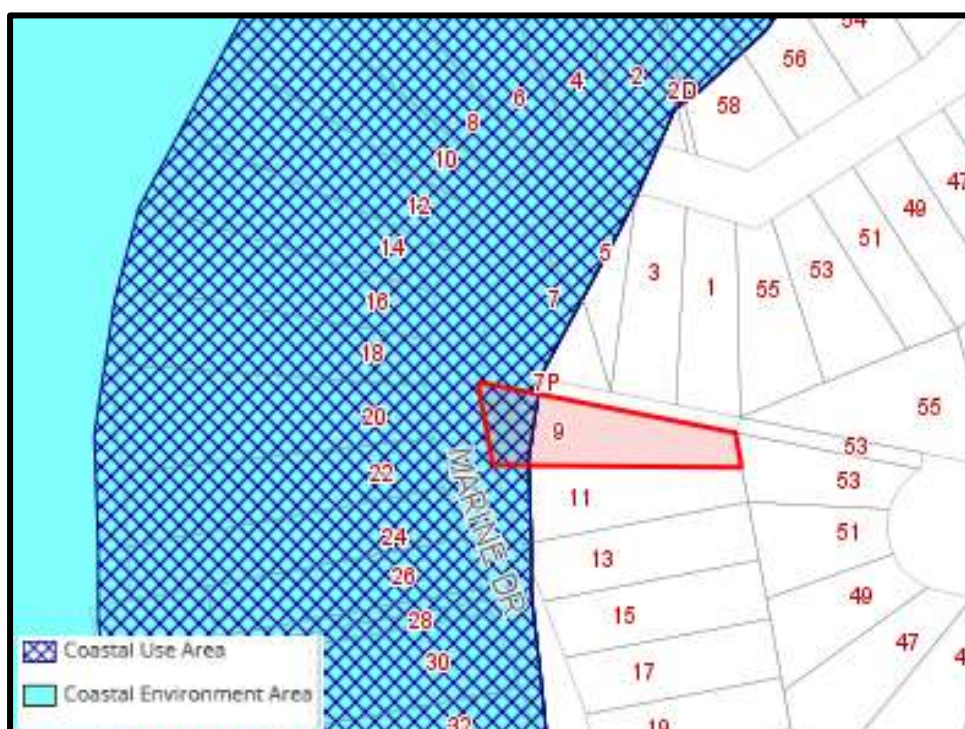


Figure 4: SEPP (Coastal Management) land map (Source Intramaps 2021)

40. The proposal has been assessed under Division 1 – Clause 11, Division 3 - Clause 13; Division 4 - Clause 14 and Division 5 - Clause 15 and 16 of the State Environmental Planning Policy.

Division 3 Coastal Environment 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.
(b) coastal environmental values and natural coastal processes,	Satisfies; the proposed development will have minimal impacts on the coastal environmental values and natural coastal processes.
(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,	Satisfies - the proposed development does not adjoin the waterway, and it is not expected the proposed development will adversely impact the water quality.
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	Satisfies - the development will have minimal impacts on marine and native vegetation.
(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,	Satisfies - the proposed development does not adjoin the waterway. It is not expected the proposed development will adversely impact foreshore open space.
(f) Aboriginal cultural heritage, practices and places,	Satisfies - The works are respectful of the cultural heritage, practices and places.
(g) the use of the surf zone.	Satisfies - Works are not located within the surf zone.
(2) Development consent must not be granted to development on land to which this clause applies unless the	

<p>consent authority is satisfied that:</p> <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 does not adjoin the waterway, 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
<p>(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:</p> <p>(a) has considered whether the 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</p>	<p>Satisfies - the proposed development does not adjoin the waterway, and it is not expected the proposed development will adversely impact access to the waterway.</p> <p>Satisfies - no additional overshadowing will occur as a result of the development.</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 site is not known to contain any items of heritage, and will not adversely affect the adjacent heritage item.</p> <p>Satisfies - development will have minimal impact on the coastal zone and its</p>

adverse impact referred to in paragraph (a), or	processes.
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	Satisfies - development will have minimal impact on the coastal zone and its processes.
(iii) if that impact cannot be minimised - the development will be managed to mitigate that impact, and	Satisfies - impacts are minimal.
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	Satisfies - the application has considered the surrounding coastal area. The proposed development will unlikely result in additional bulk and scale impacts. The approved dwelling will remain as approved.
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 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.	Satisfies - the proposed development is unlikely to increase the risk of coastal 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	Satisfies.

41. Upon thorough assessment for the application under the State Environmental Planning Policy Coastal Management 2018, the proposal reasonably satisfies the objectives and controls of the State Environmental Planning Policy.

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

42. 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.
43. The original BASIX Certificate was not required to be amended.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environmental State Environmental Planning Policy

44. 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.

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

Draft Remediation of Land State Environmental Planning Policy

46. 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.

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

Draft Design and Place State Environmental Planning Policy

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

49. The New South Wales Department of Planning, Industry and Environment exhibited an Explanation of Intended Effect between 26 February 2021 and 28 April 2021 for the proposed Design and Place State Environmental Planning Policy.

50. The Design and Place State Environmental Planning Policy will:

- Establish principles for the design and assessment of places in urban and regional NSW;
- Establish matters for consideration and application requirements that collectively respond to each of the principles;
- Provide a single point of reference for design-related considerations and performance criteria in the planning system;

- Define scales of development – precincts and significant development, and all other development;
- Introduce a robust and consistent design process through requirements for design skills, design evaluation and review, and design excellence;
- Integrate a design-led, place-based approach, which includes embedding the draft Connecting with Country Framework;
- Be supported by existing, revised and new guidance, including a revised Apartment Design Guide (ADG), a new Urban Design Guide (UDG), and revisions to the Building Sustainability Index (BASIX);
- Repeal and replace State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX State Environmental Planning Policy)
- Consolidate design and place requirements in other State Environmental Planning Policies in the future.

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

ENVIRONMENTAL PLANNING POLICIES

Hurstville Local Environmental Plan 2012

52. The subject site is zoned R2 Low Density Residential under the provisions of the Hurstville Local Environmental Plan 2012 (HLEP 2012). The proposed tree removal is ancillary to dwelling house which is a permitted use within consent.
53. The objectives of the R2 Low Density Residential as per clause 2.3 under the HLEP 2012 are:
- *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *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.*

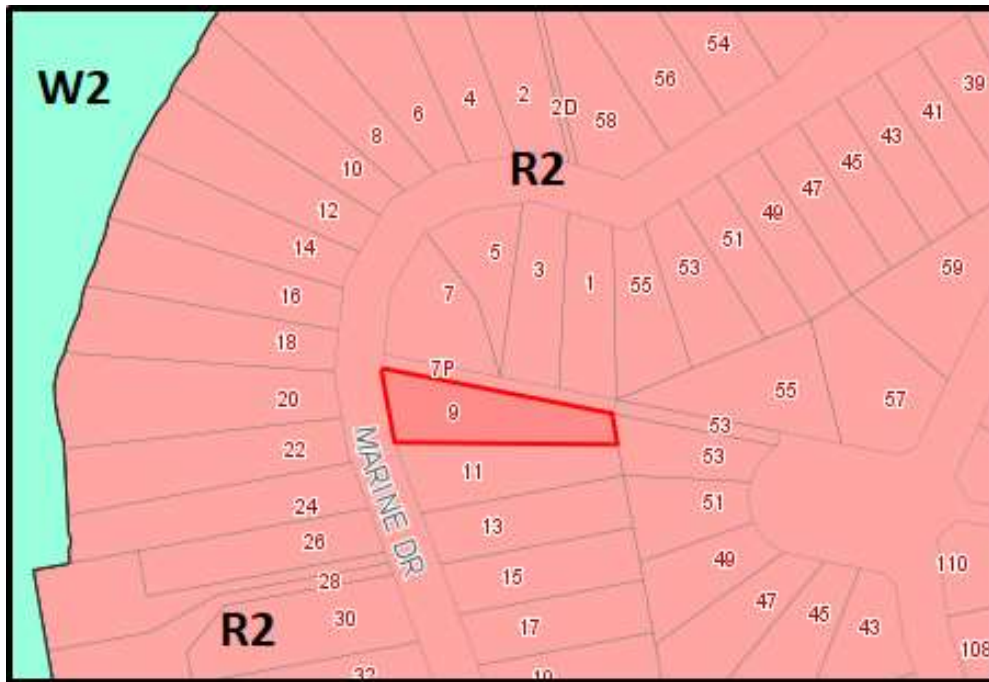


Figure 5 Zoning map as per HLEP 2012 with the site highlighted in red (Source: Intramaps 2021).

54. The modification of the proposed development is not inconsistent with the objectives of the zone as the approved development typology is not changing and will continue to be a dwelling house as originally approved.
55. The modified proposal will not impact upon the ability of the development to meet the objectives of the R2 zone.
56. An assessment with the Hurstville Local Environmental Plan 2012 provisions relevant to the amended plans is detailed within the following table.

HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012 Compliance Table

Clause	Standard	Comment	Complies
Part 2 Permitted or prohibited development			
2.2 – Zone	R2 Low Density Residential	The proposal is for the removal of trees which is ancillary to the primary use of dwelling house.	Yes
2.7 – Demolition	Demolition requires development consent	Removal of trees proposed.	Yes
Part 4 Principal development standards			
4.3 – Height of Buildings	9.0m as identified on Height of Buildings Map	8m, will not be modified by this amendment.	As approved
4.4 – Floor space ratio	0.6:1 (as identified on Floor Space Ratio Map)	372sqm or 0.48:1, will not be modified by this amendment.	As approved
Part 5 Miscellaneous provisions			
5.10 – Heritage Conservation	Consider the effect of development on heritage significance of heritage items and heritage assessment	The site is not listed as a heritage item in schedule 5 or within a heritage conservation area.	Yes

	may be required		
Part 6 Additional local provisions			
6.1 – Acid sulfate soils	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by acid sulfate soils.	Yes
6.4 – Foreshore scenic protection area	<p>(2) This clause applies to land identified as “Foreshore scenic protection area” on the Foreshore Scenic Protection Area Map.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered how the development would—</p> <p>(a) affect the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation, and</p> <p>(b) affect the visual environment, including the views to and from the Georges River, foreshore reserves, residential areas and public places, and</p> <p>(c) affect the environmental heritage of Hurstville, and</p> <p>(d) contribute to the</p>	<p>Land is within the Hurstville Scenic Protection Area.</p> <p>Although the two trees are mature and hold some ecological value, the trees are declining in quality and have been recommended to be removed by Council’s consultant arborist subject to an assessment of tree significance un the Thyer Method of Assessment.</p> <p>The visual environment and views to and from the foreshore are unlikely to be affected. The original application required six (6) new trees be planted, which will eventually contribute to the green canopy when mature.</p> <p>The site is not listed as a heritage item in schedule 5 or within a heritage conservation area.</p> <p>The scenic quality of the area</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	scenic qualities of the residential areas and the Georges River by maintaining the dominance of landscape over built form.	is unlikely to be affected. The original application required six (6) new trees to be planted, which will eventually contribute to the green canopy when mature. The removal of these two trees will be offset by the payment of a tree valuation fee which will be used by Council to plant trees within the local government area.	
6.5 – Gross Floor Area of Dwellings in residential zones	> 630 square metres ≤ 1000 square metres (Site area – 630) × 0.3 + 346.50	372sqm or 0.48:1, will not be modified as part of this application.	As approved
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 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, (d) stormwater drainage or on-site conservation, (e) suitable road and vehicular access.	All services are available to the site.	Yes

GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2021

57. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.
58. 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

59. The proposed development is subject to the provisions of Hurstville Development Control Plan No.1 (Hurstville Development Control Plan No.1). The relevant controls in relation to tree removal were considered.

Applicable Development Control Plan Controls	Development Control Plan Provisions	Development Provisions	Complies
3.0 General Planning Considerations			
3.5 Landscaping	DS3.2 Where significant trees or vegetation are required to be removed to allow for site development, they are to be replaced with the same or similar species achieving the same coverage at maturity.	Given the original DA required the planting of six (6) new trees in addition to a number of trees required to be retained within the front and rear yard, it was recommended by Council's Consultant Arborist to pay an offset fee for the removal of the two trees instead of replacing the trees onsite, given the species and significance of such trees.	Yes, by condition
Chapter 4.4 Dwelling Houses on Standard Lots			
Landscaped areas and private open space	DS10.1. Where located outside the FSPA, a minimum of 20% of site area is landscaped open space. DS10.2. Where located in the FSPA, a minimum of 25% of the site area is landscaped open space. DS10.3. The minimum dimension of landscaped open space is 2m in any direction. DS10.4. A minimum of 15sqm of the landscaped open space	N/A 35%. Complies. 48sqm.	N/A Yes, will not be modified by this application. Yes Yes, will not be modified by this

	<p>is provided between the front setback and the street boundary in the form of a front yard.</p> <p>DS10.5. An area of Principal Private Open Space is to be provided which:</p> <p>a. has a minimum area of 30m²</p> <p>b. has a minimum dimension of 5m</p> <p>c. is located at ground level and behind the front wall of the dwelling</p> <p>d. is directly accessible from a main living area</p>	<p>174sqm and is located at ground level and accessible from main living area.</p>	<p>application.</p> <p>Yes, will not be modified by this application.</p>
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LPP059-21

Views and View Sharing

60. Consideration has been given to view sharing and equitable distribution of views between properties. View sharing assessments seek to strike a balance between facilitating new development, while preserving, as far as practical, access to views from surrounding properties. The Tenacity case view sharing planning principle established by the Land and Environment Court states that views across side boundaries are more difficult to maintain than direct views from the rear of the property.
61. In this case the proposed development is limited to the removal of two trees within the rear of the site. The approved built form encompassing the dwelling house and its ancillary features will not be modified and will remain as approved. In this instance views are unlikely to be reduced as a result of the proposed tree removal.
62. The proposed development is unlikely to result in unreasonable view loss for the adjoining properties given no additional built form is proposed by the application.

Interim Policy Georges River Development Control Plan 2020

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

Georges River Development Control Plan 2021

64. The Georges River Development Control Plan came into effect on 8 October 2021 upon the gazettal of the Georges River Local Environmental Plan 2021. However given the lodgement date of this application, the proposal remains subject to the Hurstville Development Control Plan.

IMPACTS

Natural Environment

65. The proposal is for the removal of two *Angophora Costata* trees located within the rear of the subject site.

66. Under DA2020/0241, the two trees being Trees 21 and 22 as referenced in the originally submitted Arborist Report, were required to be retained via condition 21 of the Development Consent. The applicant has submitted an additional arborist statement which highlights the reduced life expectancy and declining nature of both trees.
67. The proposal was referred to Council's consultant arborist who reviewed the proposal for the removal of the trees and concluded that the trees are declining in quality and could lead to risk to life and risk to property if not removed or significantly pruned (which will also further reduce the chances of survival of these trees, which was included as condition 8 of the consent). Council's arborist recommended that the trees be valued as per the Thyer method of tree valuation with an offset payment required to be paid prior to any construction certificate being issued.

Built Environment

68. The modifications will not result in any amendment to the approved building envelope.

Social Impacts

69. 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.

Economic Impacts

70. The modification is unlikely to result in any unreasonable economic impacts.

Suitability of the site

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

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

72. The application was placed on neighbouring notification between 29 July 2021 and 12 August 2021. Six (6) submissions were received objecting to the proposed development.

Issues raised	Council comment
Deck, pool and pool fencing	Concern was raised with regards to the deck, pool, and pool fencing which were the subject to the DA2020/0241. This modification does not relate to the pool, pool fencing, or decking. These items were not seeking to be modified by this proposal. This modification is limited to tree removal only.
Description of DA	Concern is raised regarding the DA description including 'construction of an outbuilding (gym)'. The description will be update as part of this proposal to be consistent with the approval issued by the Georges River Local Planning Panel which deleted the outbuilding as part of determination of DA2020/0241.
Foreshore scenic protection area considerations and Tree removal	Concern is raised with regards to the application for the removal of the tree being inconsistent with the objectives and controls of clause 6.4 (foreshore scenic protection area) of Hurstville LEP 2012.

	<p>The application has given due consideration to clause 6.4 of Hurstville LEP 2012, and values the objectives and controls of the Foreshore Scenic Protection Area. While the removal of trees will reduce to a certain extent the green canopy within this area, the two <i>Angophora Costata</i> trees however are in decline and will pose a risk to the occupants and to property if retained. The trees require significant pruning which if pruned will further reduce chances of viable survival of the trees. The trees have visible signs of decline and have been supported for removal by Council's consultant arborist subject to an assessment of significance under the Thyer method of assessment.</p> <p>DA2020/0241 will require that six (6) new trees be planted within the site. The trees when mature will contribute to the green canopy iconic to the Foreshore scenic protection area of Oatley.</p>
Excavation	<p>Concern is raised with regards to excavations proposed within the site.</p> <p>No excavations are proposed by this application. The earthworks proposed are ancillary to the tree removal and removal of any roots/sump.</p>

Council Referrals

Development Engineering Team

73. No objections were raised, and no specific conditions of consent have been recommended to be amended, deleted or added.

Consultant Arborist

74. The proposal was assessed by Council's consultant arborist and as a result of the declining quality of the trees, the proposal was supported subject to conditions being amended and a new condition requiring the payment of a tree valuation offset fee as per the thyer method of tree valuation.

External Referrals

Ausgrid

75. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007 for consideration. No objection was received from Ausgrid.

Public Interest

76. The amended proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. Following a detailed assessment, the proposal as modified is considered to be in the public interest.

Section 7.11/7.12 Contributions

77. Section 7.11/7.12 Contributions were applied as part of the development determination and are not required to be amended as part of this modification.

CONCLUSION

78. The application has been assessed having regard to Section 4.15 and Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies and the provisions of the Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No.1 and the Georges River Local Environmental Plan 2021.
79. The proposal on its merits is acceptable for the reasons outlined within this report. The proposal is reasonable given the objectives of the controls have been adequately satisfied and the modification does not result in any unreasonable environmental impacts.
80. Following a detailed assessment contained within this report, it is considered that MOD2021/0101 should be approved subject to the following conditions being amended and added:

Conditions amended	<ul style="list-style-type: none"> - Condition 1 amended to include the new plans. - Condition 9 updated to include tree removal offset fees. - Conditions 20, 21, 22, 37 and 40 amended in relation to tree and landscaping conditions.
Conditions removed	<ul style="list-style-type: none"> - Condition 8 removed in relation to tree pruning for trees T21 and T22.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

81. The reasons for this recommendation are:
- The proposed modification to remove the two *Angophora Costata* trees is considered acceptable in this case due to the declining condition of the trees and the risk they pose to life and property if not removed.
 - The tree removal will be offset with the payment of a tree removal offset fee derived via the Thyer method of assessment which will be used for the planting of trees within the Local Government Area.
 - The proposed modification will not result in unreasonable visual or environmental impacts.
 - The modification remains consistent with the objectives of the zone and the character of the locality.
 - The development is consistent with the Georges River Local Environmental Plan 2021.

Determination

82. THAT pursuant to Section 4.55 (1A) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, grants development consent to modify DA2020/0241 (as modified) being for demolition works, retention of existing swimming pool and construction of a dwelling house. MOD2021/0101 approves the removal of two *Angophora Costata* trees within the rear of the allotment subject to a monetary payment of significance derived by the Thyer method of significance and amend the conditions of consent accordingly as referenced below:

SPECIFIC DEVELOPMENT 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
Proposed Demolition Plan	A.01.0	25/5/21	05	Femme Build
Proposed Site Plan	A.01.1	25/5/21	05	Femme Build
Proposed Environmental Plan	A.01.3	5/3/21	04	Femme Build
Proposed Sediment and Erosion Control Plan	A.01.5	5/3/21	04	Femme Build
Proposed Basement Floor Plan	A.02.1	5/3/21	04	Femme Build
Proposed Ground Floor Plan	A.02.2	5/3/21	04	Femme Build
Proposed First Floor Plan	A.02.3	5/3/21	04	Femme Build
Proposed Roof Plan	A.02.4	5/3/21	04	Femme Build
Proposed Elevations 1 & 2	A.03.1	5/3/21	04	Femme Build
Proposed Elevations 3 & 4	A.03.2	5/3/21	04	Femme Build
Proposed Section and Details	A.04.2	5/3/21	04	Femme Build
Stormwater Drainage Plan	SWDP01	26.11.2020	G	BMV Building Consultants
Stormwater Drainage Plan	SWDP02	26.11.2020	G	BMV Building Consultants
Stormwater Drainage Plan	SWDP03	26.11.2020	G	BMV Building Consultants
Stormwater Drainage Plan	SWDP04	26.11.2020	G	BMV Building Consultants
Stormwater Drainage Plan	SWDP05	26.11.2020	G	BMV Building Consultants
Stormwater Drainage Plan	SWDP06	26.11.2020	G	BMV Building Consultants
Stormwater Drainage Plan	SWDP07	26.11.2020	G	BMV Building Consultants
Stormwater Drainage Plan	SWDP08	26.11.2020	G	BMV Building Consultants
Arborist Statement	AS SGP 05/21	20/05/2021	-	NSW Tree Services

(This condition was amended by MOD2021/0101)

Separate Approvals Required Under Other Legislation

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

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

An application is required to be lodged and approved prior to the commencement of any

of the following works or activities;

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

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

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

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

Requirements of Concurrence, Integrated & Other Government Authorities

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

Prior to the Issue of a Construction Certificate

5. **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, retaining walls or other structures including but not limited to:

- (a) 7 Marine Drive, Oatley; and
- (b) 11 Marine Drive, Oatley; and
- (c) Any 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.

6. **Geotechnical report** - The applicant must submit a Geotechnical Report to the PCA, 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 prior to the issue of the Construction Certificate and is to include:

- a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
- b) Dilapidation Reports on the adjoining properties including, but not limited to 7 Marine Drive, Oatley and 11 Marine Drive, Oatley, 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.

7. **Garage Level & Vehicular Access Grades** - The garage must be constructed at a level that allows for practical entry and exit in accordance with Australian Standards. In this

respect the Finished Floor Level of the **garage must be lowered to have a maximum relative level of 42.75m AHD.**

The applicant must submit a profile (longitudinal section) demonstrating access clearance by the B85 Design Vehicle (85% percentile vehicle in accordance with AS2890.1 2004)" for the entry.

This profile (scale 1:20) is to show levels and grades from road centreline to the proposed internal garage floor level including but not limited to levels of, road centreline, changes of grade on road surface, lip of gutter, invert of gutter, back of vehicular crossing (gutter layback), front of path, back of path and boundary. The profiles provided are to also include the natural surface of the land as well as the proposed design including cut and fill dimensions.

Additional profiles are to be provided on either side of driveway when longitudinal grade of road exceeds 8%.

The profile will be used to assess suitability of proposed internal driveway levels and does not represent final footpath or road levels. The levels on Council's road related area including boundary level will be verified following the submission of an "Application for Driveway Crossing and Associated Works on Council Road Reserve" issued under Section 138 Roads Act

8. ~~**Tree pruning** – Approval is given for the following works to be undertaken to trees on the site:~~

Tree Species / Number of trees	Location of trees	Approved Works
Angophora costata x 2	Closest to dwelling	Pruning class – "S" – Selective pruning – clause 7.2.4 (deadwood only)
All pruning must be conducted in accordance with – AS 4373 – 2007, Pruning of amenity trees.		

This condition was deleted by MOD2021/0101.

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

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

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of	

Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$160.00
Offset Fee for Tree Replacement- T3 (Jacaranda Mimosifolia)	\$3,702.00
Offset Fee for Tree Replacement- T21 (Angophra Costata)	\$1,424.00
Offset Fee for Tree Replacement- T22 (Angophra Costata)	\$2,447.00
DEVELOPMENT CONTRIBUTIONS	
Georges River Council Section 94A Development Contributions Plan 2017	\$7,700.00

General Fees

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

Development Contributions

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

Timing of Payment

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

Further Information

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

(This condition was modified by MOD2021/0101)

10. 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: **\$160.00**
- 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.

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

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.

- 12. BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1093241S must be implemented on the plans lodged with the application for the Construction Certificate.

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

Pool deck	No extension of the pool deck is permitted.
Windows on northern elevation	The ground floor windows on the northern elevation of the approved dwelling are to be fitted with frosted/opaque glass or have a minimum sill height of 1.6m as measured from finished floor level. The first floor windows on the northern elevation are to be fitted with opaque glass or have a minimum sill height of 1.6m as measured from finished floor level.

- 14. 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.

15. Stormwater System

General

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

- (a) All stormwater shall be drained in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.

Gravity to the Kerb and Gutter

All stormwater shall drain by gravity to Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).

Silt Arrestor

A Silt Arrestor Pit must be located inside the property just upstream of the point of discharge from the site. This pit must have minimum dimensions of 450mm x 450mm and shall have a 150mm deep sump and galvanised mesh screen permanently fixed over the outlet pipe or pipes. A minimum of 4 x 30mm diameter seepage holes shall be provided in the pit base. For drainage into the surrounding soil, the pit base shall be constructed on a layer of 200mm thick aggregate base wrapped in geotextile fabric. All non-plastic drainage pits must be benched and streamlined.

- 16. **Compliance with Swimming Pool Act 1992** - The alterations and additions to the dwelling house and/or the construction of the new dwelling house subject of this consent must not generate any non-compliances with the Swimming Pools Act 1992, Swimming Pool Regulation 2008, Building Code of Australia and/or AS 1926.1-2007 - Swimming Pool Safety. Details of compliance to be illustrated on the plans lodged with the application for the Construction Certificate.
- 17. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works.

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

- 18. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).

- 19. Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.
- 20. Landscape Plans** - A detailed landscape plan, drawn to scale, A3 size and coloured, by a qualified landscape architect or an AQF Level 5 landscape designer, must be submitted prior to the issue of the Construction Certificate and signed off as compliant if the following items have been addressed below. The plan must include:
- Reference Georges River Councils, Tree Management Policy, 2019, 2:1 tree replacement. Councils Policy requires that for every tree removed from the site, two (2) trees shall be planted to replace those lost.
 - For the removal of three (3) trees a total of six (6) trees must be represented upon the landscape plan and be minimum 45 litre pot/ bag size.
 - Location of existing and proposed structures, services and existing trees to be retained and /or removed
 - Details of earthworks including mounding and retaining walls, Reduced Levels and planter boxes;
 - Location of proposed six (6) trees and plants proposed as well as a plant schedule showing the plant symbol, botanical name/ common name; quantity; pot size/; and mature height x width.
 - A higher proportionate mix of natives than exotics plantings, with all six (6) trees proposed, able to reach a height at maturity of nine (9) metres.
 - Tree species selection from - Georges River Councils, Tree Management Policy, April 2019, Appendix 1 - Tree Planting.
 - Details of planting specifications, procedures and a maintenance schedule for twelve (12) months;
 - Landscape ratios - pervious to impervious surfaces / deep soil zones
 - Details of drainage and watering systems;
 - Details of garden edging and turf; and
 - Any required fencing, retaining walls and other structures not shown on other approved architectural and engineering plans.
 - The contact details of the landscape architect or AQF Level 5 landscape designer, as well as qualifications.
 - Associations and / or Memberships of Affiliation within the landscape industry.

(This condition was modified by MOD2021/0101)

21. Tree Protection and Retention

The following trees (numbering with reference to original arborist report reference AIA – SAL (U) 10/20 dated 22 April 2020 prepared by NSW Tree Services) shall be retained and protected:

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) TPZ as per AS4970 -2009 Fencing distance from trunk
T1 - <i>Angophora costata</i>	Councils street tree	7.0 metres

<i>T2 - Corymbia gummifera</i>	Within front yard of the site	7.6 metres
The entire front portion, front yard of the site must be fenced off from all construction works, to protect the two (2) trees above. No storage, no preparation of building products and no stockpiling of anything is permitted within the front portion of the site		
<i>T 6&7 - Callistemon viminalis x 2</i>	North side of dwelling	2.5 metres
<i>T8&9 Archontophoenix cunninghamiana x 2</i>	Pool area	3.2 metres
<i>T10 - Callistemon viminalis</i>	Easement pathway, north side, pool area	2.0 metres
<i>T11 & 12 - Archontophoenix cunninghamiana x 2</i>	Easement pathway, north side, pool area	2.5 metres
<i>T13 - Eucalyptus eugenioides</i>	Rear east, past pool area	6.5 metres
<i>T14 - Archontophoenix cunninghamiana</i>	Pool area south side	3.0 metres
<i>T16 - Elaeocarpus reticulatus</i>	Pool area, corner	2.4 metres
The four (4) <i>Angophoras</i> below, located within the rear yard must all be fenced off under the one tree protection fencing across the site from the south side fence to the north side fence and placed in front of the piers for the alfresco area. This area must be isolated from any construction activity, with no storage or preparation of building products.		
<i>T17 - Angophora costata</i>	Open grassed rear yard	8 metres
<i>T18 - Angophora costata</i>	Middle of rear yard	6.5 metres
<i>T 19 - Angophora costata</i>	Middle of rear yard	6.5 metres
<i>T20 - Angophora costata</i>	Co dominant trunks, middle of yard	5.0 metres

- a) The client shall engage a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation, with a letter of engagement forwarded to the nominated PCA.
- b) A certificate of compliance letter from the AQF 5 Arborist must be forwarded to the PCA - Principal Certifying Authority, at 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 two (2) trees located upon the front yard must be isolated from all construction impacts with the entire front portion of the site fenced off.
- i) Within the rear yard, all 4x *Angophora costata* trees must be fenced off from the south side fence to the north side fence with this area isolated from all construction impacts and from storage of anything. A two (2) metre passage is allowed to allow access to the rear yard. Location of the passage shall be as per the recommendation of the engaged AQF 5 Consulting Project Arborist.
- j) A layer of organic mulch 100 millimetres thick shall be placed over the protected areas and no soil or fill should be placed within the protection area.
- k) 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.
- l) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
- m) 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

- n) Excavations around the trees to be retained on site, Councils street verge or the adjoining properties shall be supervised by the AQF 5 Project Arborist to ensure that the root system will not adversely be affected.
- o) All excavations and stormwater piping installations within the tree protection zones of all trees to be retained, must be conducted using hand methods and or *Hydro vac* or *Air spade* type of non-destructive excavations and signed off by the Project Arborist if compliance has been met. No machinery of bucket or trench type are permitted to be used.
- p) 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.

- q) 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.

Pier and Beam / Post and rail -

- r) To preserve the four (4) *Angophora costata* trees within the rear yard, the alfresco room must be built upon isolated individual hand dug piers, with no strip footings permitted, as per proposed elevations plan 1 & 2, Dwg A.03.1 and A.04.2, Rev 04, dated 05/03/21. Soil levels under the Alfresco area must be retained as per prior to development of the site with no fill or cut permitted.
- s) Prior to any works, the proposed alfresco area must have 100mm of mulch laid over the entire area, watered in well, for the protection of the *Angophora* trees close to dwelling. This mulch must be maintained in its location for the entirety of the project..
- t) 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).
- u) Removal or pruning of any other tree (that would require consent of Council) on the site is not approved. All pruning must be undertaken by a minimum certificate Level 3, Licenced and insured Tree surgeon / Arborist in accordance with AS4373 -2007 Pruning of Amenity Trees and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).

(This condition was modified by MOD2021/0101)

22. Tree Removal & Replacement - Tree removal

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
T3- <i>Jacaranda mimosifolia</i>	X1	Front of the site, north side
T4 - <i>Allocasuarina littoralis</i>	X1	Front of the site, south side
T5 - <i>Rondeletia amoena</i>	X1	Side of existing dwelling
T15 - <i>Hakea salicifolia</i>	X1	Close to side pool area, south fence
T21 - <i>Angophora costata</i>	X1	Closest to south side fence close to house
T22 - <i>Angophora costata</i>	X1	Closest to rear of deck
Offset Fees highlighted in condition 9 for the removal of trees T3, T21 and T22 require to be paid prior to the release of any construction certificate.		

General Tree Removal Requirements

- a) All tree removal shall be carried out by a minimum certificate Level 3, Licenced and insured Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - Pruning of Amenity Trees and Tree

Works Industry Code of Practice (Work Cover NSW 1.8.98).

- b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

(This condition was modified by MOD2021/0101)

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

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

For demolition work which involves the removal of asbestos, the asbestos removal work must be carried out by a licensed asbestos removalist who is licensed to carry out the work in accordance with the [NSW Work Health & Safety Act 2011](#) and the NSW [Work Health & Safety Regulation 2011](#) unless specified in the Act and/or Regulation that a license is not required.

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

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

- 24. Demolition 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.

- 25. 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](#).

- 26. Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.
- 27. Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:
- a) Set out before commencing excavation.
 - b) Floor slabs or foundation wall, before formwork or commencing brickwork.
 - c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
 - d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
 - e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
 - f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
 - g) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

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

- 28. 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

- 29. 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.

- 30. Hours of construction for demolition and building work** - Unless authorised by Council:
- Building construction and delivery of material hours are restricted to: 7.00 am to 5.00 pm (inclusive) Monday to Saturday and no work on Sundays and Public Holidays.
 - Demolition and excavation works are restricted to: 8.00 am to 5.00 pm (inclusive) Monday to Friday only. Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site.
- 31. 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. All site works and retaining walls are to be constructed wholly on the subject site, including footings.
- 32. 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.
- 33. 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.
- 34. 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

- 35. Requirements prior to the issue of the Occupation Certificate - Driveways Works** - The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:
- Construction of new vehicle crossings as required by this consent.
 - Replacement of all redundant vehicle crossing laybacks with kerb and guttering, and replacement of redundant concrete with turf.
 - Removal and reconstruction of kerb and gutter as per approved General Arrangement Plan SWDP05 Revision H Prepared by BMY consultants dated 22/12/2020.

36. 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.

37. Completion of Landscape Works

- a) All landscape works and the planting of six (6) trees must be completed before the issue of the Final Occupation Certificate and to the satisfaction of Councils Tree Management Officers, with the nominated PCA signing off if compliance has been met.
- b) A certificate of compliance for the planting of all six trees and shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per these Conditions of Consent and forwarded to the PCA - Principal Certifying Authority forming compliance.

(This condition has been modified by MOD2021/0101)

38. Vehicular crossing - Minor development - The vehicular crossing and/or footpath works shall be constructed by a private contractor at the expense of the applicant, in accordance with the 'Application for Driveway Crossing and Associated Works on Council Road Reserve' approval issued by Council's Assets and Infrastructure Division.

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

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

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

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 adjoining premises assessed pre-construction.

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

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

Operational Conditions (Ongoing)

40. Maintenance of Landscaping

- a) All trees and plants forming part of the landscaping must be maintained.

Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and other operations required to maintain healthy trees, plants and turfed areas.

Tree Protection Measures

- b) A final certificate of compliance letter forwarded to the nominated PCA, once all building and landscape works have been completed, from the engaged AQF 5 Consulting Arborist, that tree protection measures have been installed and maintained for the entirety of the project and report on the condition of the trees that as part of this Consent, were to be protected and retained.

Tree Replacement within subject site

- a) A minimum of 6 x 45 litre size trees, which will attain a minimum mature height of nine (9) metres, must be planted within the property. The trees are to conform to AS2303 - 2018, *Tree stock for landscape use*.
- b) Tree species selected shall be from Georges River Councils Tree Management Policy, April 2019. Appendix 1 - Tree Planting.
- c) If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
- d) A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy, Masterplan, and Tree Management Policy 2019, can be downloaded from Council's website www.georgesriver.nsw.gov.au.

(This condition has been modified by MOD2021/0101)

- 41. **Swimming Pools - Resuscitation Notice** - An expired air resuscitation warning notice complying with the [Swimming Pools Act 1992](#) must be affixed in a prominent position adjacent to the pool.
- 42. **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.
- 43. **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.
- 44. **Private Swimming Pools & Spas - Pump Noise** - The swimming pool/spa pump and associated equipment must be located so that the noise emitted does not exceed 5dB(A) above the background level. If this cannot be achieved, a ventilated and sound-proofed enclosure must enclose the pump to achieve the required noise levels.

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

room is open):

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

Operational Requirements Under the Environmental Planning & Assessment Act 1979

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

46. 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.

47. 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.

48. 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.

49. 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](#).

50. 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.

51. **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

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

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

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

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

END CONDITIONS

NOTES/ADVICES

- 57. 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.

- 58. 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.
- 59. 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.
- 60. 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.

- 61. 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.

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

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

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

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

- 63. Council as PCA - Deemed to Satisfy Provisions of Building Code of Australia -** 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 Building Code of Australia. However, if an alternative fire solution is proposed it must comply with the performance requirements of the Building Code of Australia, 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).

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

ATTACHMENTS

Attachment  1  Architectural plans



REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 04 NOVEMBER 2021

LPP060-21

LPP Report No	LPP060-21	Development Application No	DA2021/0207
Site Address & Ward Locality	7 Loville Street Peakhurst Heights Peakhurst Ward		
Proposed Development	Construction of new dwelling house with attached secondary dwelling		
Owners	Mr G R Thomas		
Applicant	A Sofios		
Planner/Architect	Antonios Sofios		
Date Of Lodgement	28/06/2021		
Submissions	No submissions		
Cost of Works	\$685,575.00		
Local Planning Panel Criteria	The proposal seeks a variation to the maximum FSR standard greater than 10%.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, State Environmental Planning Policy (BASIX) 2004, State Environmental Planning Policy (Affordable Rental Housing) 2009, Draft State Environmental Planning Policy – Remediation of Land, Draft Georges River Local Environmental Plan 2020, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No. 1		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Stormwater Plans, Statement of Environmental Effects, Clause 4.6 Variation Request, Landscape Plan, Survey		
Report prepared by	Senior Development Assessment Planner		

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

<p>Clause 4.6 Exceptions to development standards</p> <p>If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?</p>	<p>Yes – Clause 4.4 FSR</p>
<p>Special Infrastructure Contributions</p> <p>Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p>Not Applicable</p>
<p>Conditions</p> <p>Have draft conditions been provided to the applicant for comment?</p>	<p>No – the application is recommended for refusal</p>

Site Plan



Executive Summary

Proposal

1. Development consent is sought for the construction of a dwelling house and attached secondary dwelling. The primary dwelling and associated garage is located at street level, accessed from Loville Street, and the proposed secondary dwelling and associated garage is located on the lower ground level and is accessed via a right of way over adjoining properties. The right of way is the current legal access for vehicles on to the site.
2. The applicant is seeking a variation to Clause 4.4 Floor space ratio for the site of up to 86sqm or 27% pursuant to Clause 4.6 of the Hurstville Local Environmental Plan 2012.

3. The GFA exceedance arises from the proposed garage and turning area associated with the proposed secondary dwelling.
4. The variation is not supported for reasons discussed in this report, and the application is recommended for refusal.

Site and Locality

5. The lot is an irregular wedge shape and has a total site area of 582sqm (by title) and a 12.19m frontage to Loville Street. The site slopes gently from the street for a distance of around 5m and then steps down steeply over a retaining wall and then slopes again to the rear site boundary.
6. The site is currently vacant.
7. In the wider context, the subject site is located in an established R2 Low Density Residential Area containing single and two storey dwelling houses. The site is located in the Foreshore Scenic Protection Area.

Zoning and Permissibility

8. The site is zoned R2 - Low Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HLEP 2012). Dwelling houses and secondary dwellings are permitted with consent.

Submissions

9. No submissions were received.

Conclusion

10. 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 (DA2021/0207) is recommended for approval subject to conditions of consent.

Report in Full

PROPOSAL

11. Development consent is sought for tree removal, the construction of a dwelling house and a secondary dwelling.
12. A detailed description of the proposal is as follows:
 - Removal of two trees;
 - Construction of a dwelling house and attached secondary dwelling;
 - The dwelling house is located at street level/ground floor, and partly on the lower ground level, and contains a double garage accessed from Loville Street, four bedrooms, laundry and store room, powder room, kitchen, living and dining area and outdoor alfresco balcony facing the rear yard. The lower ground level contains a rumpus room, office and bathroom;
 - The proposed secondary dwelling is located on the lower ground floor beneath the primary dwelling and contains a garage and manoeuvring area accessed from the existing right of way, over adjoining properties, from Loville Street, a studio style arrangement with open plan bedroom/kitchen/living/dining area, robe, laundry and bathroom. The secondary dwelling has access from the garage and via an alfresco area along the southern site boundary.

13. The applicant is seeking a variation to Clause 4.4 Floor space ratio for the site of up to 86sqm or 27% pursuant to Clause 4.6 of the Hurstville Local Environmental Plan 2012.
14. The GFA exceedance arises from the proposed garage and turning area associated with the proposed secondary dwelling.
15. The variation is not supported for reasons discussed in this report, and the application is recommended for refusal.

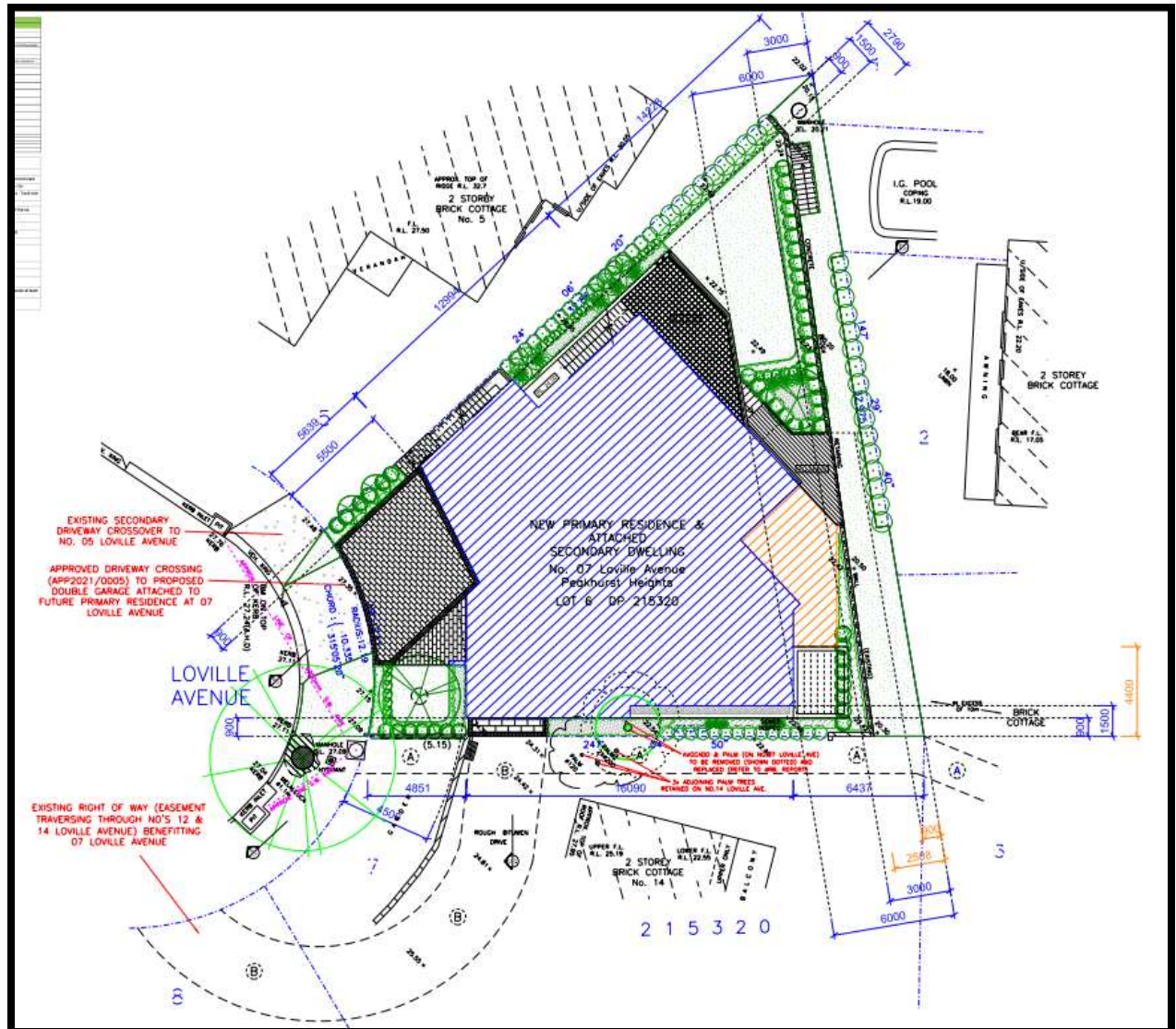


Figure 1: Site Plan

THE SITE AND LOCALITY

16. The lot is an irregular wedge shape and has a total site area of 582sqm (by title) and a 12.19m frontage to Loville Street. The site slopes gently from the street for a distance of around 5m and then steps down steeply over a retaining wall and is relatively flat to the second block retaining wall along the eastern/rear site boundary (Figure 6).
17. The site is currently vacant.
18. In the wider context, the subject site is located in an established R2 Low Density Residential Area containing single and two storey dwelling houses. The site is located in

the Foreshore Scenic Protection Area. Photos of the subject site and immediate neighbours are provided below.



Figure 2: Site from street



Figure 3: Northern neighbour



Figure 4: Southern neighbour



Figure 5: View of ROW from the site



Figure 6: Looking from the site to the street



Figure 7: Northern neighbour



Figure 8: Rear boundary of the site



Figure 9: Neighbour to the rear

Compliance and Assessment

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

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING)

21. This application is subject to the provisions of State Environmental planning Policy (Affordable Rental Housing) 2009 (ARHSEPP). Secondary dwellings are a listed permissible use under the provisions of Hurstville Local Environmental Plan 2012 (LEP). However the provisions of Clause 22 of the State Environmental planning Policy (Affordable Rental Housing) override Clause 5.6 of the LEP.
22. Below is the assessment of the application against the provisions of the Affordable Rental Housing State Environmental Planning Policy.

State Environmental Planning Policy (Affordable Rental Housing) 2009			
Division 2 Secondary Dwellings			
Clause 19 - Definition	<p>Clause 19 - Definition</p> <p>In this Division:</p> <p>development for the purposes of a secondary dwelling includes the following:</p> <p>(a) the erection of, or alterations or additions to, a secondary dwelling,</p> <p>(b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.</p> <p><u>Note</u> - The standard instrument defines secondary dwelling as follows:</p> <p>secondary dwelling means a self-contained dwelling that:</p> <p>(a) is established in conjunction with another dwelling (the principal dwelling), and</p> <p>(b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and</p> <p>(c) is located within, or is attached to, or is separate from, the principal dwelling.</p>	The proposal is for a new dwelling and attached secondary dwelling.	Yes
Clause	This Division applies to land	The zoning of the	Yes

20 – Land to which Division applies	<p>within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but only if development for the purposes of a dwelling house is permissible on the land:</p> <p>(a) Zone R1 General Residential,</p> <p>(b) Zone R2 Low Density Residential,</p> <p>(c) Zone R3 Medium Density Residential,</p> <p>(d) Zone R4 High Density Residential,</p> <p>(e) Zone R5 Large Lot Residential.</p>	land is R2.	
Clause 22 Development may be carried out with consent			
22(2)	A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The site will contain only a principle dwelling and a secondary dwelling.	Yes
22(3)	<p>A consent authority must not consent to development to which this Division applies unless:</p> <p>(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and</p> <p>(b) the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that</p>	<p>Max. FSR 0.55:1 (320sqm) Ppd FSR 0.69:1</p> <p>Secondary Dwelling - 60sqm Plus Garage/Turning area – 88.15sqm</p> <p>Total – 148.15sqm</p>	<p>No – 4.6 variation submitted – refer to assessment in this report.</p> <p>No</p>

	greater floor area.		
Total floor area is not a defined term; in this regard the assessment has been undertaken using the definition of gross floor area under the Hurstville Local Environmental Plan in order to establish the development does not exceed the residential floor space ratio applicable to the site.			
22(4) - A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:			
(a) site area if:			
(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or			
(ii) the site area is at least 450 square metres,			
(b) parking if no additional parking is to be provided on the site.			
22(5) - A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).			

STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND

23. State Environmental Planning Policies 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.

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.

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

24. The trigger for BASIX Certification is when the estimated cost of works for residential development (new dwelling(s)/alterations and additions) is equal to or above \$50,000. BASIX Certification is also triggered when proposing a swimming pool with a volume of 40,000 litres.

A BASIX Certificate dated 16/8/2021, certificate number 1139262M_02, 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

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

The Vegetation State Environmental Planning Policy applies to clearing of:

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

GREATER METROPOLITAN REGIONAL ENVIRONMENTAL PLAN NO 2 — GEORGES RIVER CATCHMENT

29. 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,*
30. The proposed stormwater drainage system has been assessed by Council's Development Engineer and has been found to be satisfactory and conditions of consent can be imposed should the application be approved.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Environment State Environmental Planning Policy

31. 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.

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

Draft Remediation of Land State Environmental Planning Policy

33. 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.*

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

Draft Design and Place State Environmental Planning Policy

35. 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.

HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012

36. The subject site is zoned R2 Low Density Residential under the provisions of the Hurstville Local Environmental Plan 2012. The proposed development is for a dwelling house and secondary dwelling which are permissible land uses in the zone.

37. The extent to which the proposed development complies with the Hurstville Local Environmental Plan 2012 is detailed and discussed in the table below.

Clause	Standard	Proposal	Complies
2.2 Zoning	R2 Low Density Zone	The development type proposed comprises of a dwelling house and	Yes

		secondary dwelling.	
2.3 Zone objectives	Objectives of the R2 Zone.	The density of the proposal is excessive and the variation is found to not be well founded. Therefore the proposal is not consistent with the objective of providing suitable low density residential development.	No
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	8.5m.	Yes
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)	0.7:1	No
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl4.5(b)	The floor space of the dwelling has been calculated in accordance with Clause 4.5 and the “gross floor area” definition within the Hurstville Local Environmental Plan.	Yes
5.4 - Controls relating to miscellaneous permissible uses	(9) Secondary dwellings on land other than land in a rural zone If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater— (a) 60 square metres, (b) 10% of the total floor area of the principal dwelling.	The floor area of the secondary dwelling is 60sqm excluding the garage.	Yes

6.4 – Foreshore Scenic Protection Area (FSPA)	The objectives of clause are:		
	(a) to recognise, protect and enhance the natural, visual, environmental and heritage qualities of the scenic areas of Hurstville and the Georges River,	The proposal is a suitable response to the site as discussed in this report.	Yes
	(b) to protect significant views to and from the Georges River,	There are no views to or from the river from this site.	Yes
	(c) to reinforce the dominance of landscape over built form.	The trees approved for removal are to be replaced 2:1 in accordance with council's tree management policy.	Yes
6.5 – Gross Floor Area of Dwellings in residential zones	<p>The gross floor area calculation</p> <p>≤ 630 square metres $\text{Site area} \times 0.55$ > 630 square metres ≤ 1000 square metres $(\text{Site area} - 630) \times 0.3 + 346.50$</p> <p>$> 1000$ square metres ≤ 1500 square metres $(\text{Site area} - 1000) \times 0.2 + 457.50$</p> <p>$> 1500$ square metres $(\text{Site area} - 1500) \times 0.1 + 557.50$</p>	<p>Maximum: 320sqm Proposed: 406sqm</p>	No – refer to variation discussion.
6.1 – Acid sulfate soils	Class 5	Excavation is not proposed below 5mAHD.	Yes
6.7 – Essential Services	Development consent must not be granted to development unless services that are essential for the development are available	The specified essential services are currently available to the site and can be extended to service the development; conditions could be imposed if the application was to be supported.	Yes

Exception to Development Standards

Detailed assessment of variation to Clause 6.5 Gross floor area of dwellings in residential zones

38. The objectives of Clause 4.6 are as follows

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

39. The proposed development seeks a variation to the development standard relating to FSR (Clause 6.5). The Hurstville Local Environmental Plan 2012 (HLEP) identifies a maximum FSR of 0.55:1 (320.54sqm) for the site and the proposed development seeks consent for a FSR of 0.7:1 (406.28sqm). This amounts to a 26% variation to the control (or 85.74sqm exceedance).
40. The non-compliance is due to the provision of a garage, and associated turning area within the garage, for the proposed secondary dwelling.
41. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the Hurstville Local Environmental Plan 2012.
42. 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”*
43. To support the non-compliance, the applicant has provided a request for a variation to Clause 6.5 in accordance with Clause 4.6 of Hurstville Local Environmental Plan. The Clause 4.6 request for variation is assessed as follows.

Is the planning control in question a development standard?

44. FSR control under Clause 6.5 of the Hurstville Local Environmental Plan 2012 is a development standard. The maximum permissible FSR is 0.55:1.

What are the underlying objectives of the development standard?

45. There are no objectives of Clause 6.5 of HLEP. The clause states:

The maximum gross floor area for development that is a dwelling house on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential with a site area within the specified range in Column 1 of the Table to this clause must not exceed the maximum gross floor area shown opposite that site area in Column 2 of that Table.

Table

Column 1

<630sqm

Column 2

0.55:1

46. The objectives of Clause 4.4 Floor space ratio are used instead for the purposes of assessing the variation request, and are:

- (a) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- (b) *to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic to achieve the desired future character of the locality,*
- (c) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) *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,*
- (e) *to minimise the adverse impact of the development on heritage items,*
- (f) *to establish maximum floor space ratios that ensure the bulk and scale of development is compatible with the major centre status of the Hurstville City Centre.*

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

47. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.
48. 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.*
49. **Applicant's comment:**

"Hurstville Local Environmental Plan 2012, Part 4, Clause 4 indicates that Floor Space Ratio Maps shall be utilised to determine maximum Floor Space Ratio (FSR) requirements for individual properties within respective zones.

Hurstville Floor Space Ratio Map Sheet FSR_002 indicates that the maximum floor space ratio for the site at 07 Loville Avenue, Peakhurst Heights, is 0.6:1.

Notwithstanding the above, Hurstville Local Environmental Plan 2012, Part 6, Clause 5 further conditions floor space ratios for applicable properties, through various formulas based on property site areas.

Consequently, the maximum achievable FSR for the subject site is 0.55:1. It is noted that the subject site, property 07 Loville Avenue Peakhurst Heights, has a total site area of 582.80sqm, therefore suggesting a maximum compliant gross floor area of 320.54sqm for the new build/residence.

The proposed works incorporated within the DA submission, including a new primary residence and attached secondary dwelling totals an overall floor area of 318.13sqm, or resultant FSR of 0.546:1.

Upon previous discussions with Council however, Council has requested, that, parking and turning areas (associated to the Secondary Dwelling) are to be also included in the gross floor area calculations, for the purposes of this DA submission (as the provisions of State Environmental Planning Policy Affordable Rental Housing state that car parking is not a ground for refusal, if there is no additional parking provided on-site). As vehicular access to the parking area (associated to the secondary dwelling) is reliant upon the existing right of way (which traverses through the adjoining two (2) properties), the parking area has been designed to also accommodate adequate vehicular turning/manoeuvring space, to ensure safe front- direction entry and front-direction exiting movements to and from the site.

This parking/turning area therefore accounts for an additional 88.15sqm, thus in turn bringing the overall proposed GFA of the development to 406.28sqm, or an FSR of 0.7:1.

As a consequence of including the parking and turning area for the secondary dwelling as calculable floor area, the proposal exceeds the maximum allowable gross floor area for the site.

Reasons in Support of the Requested Clause 4.6 Variation

Objectives:

to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality.

Although it is understood that the proposal exercises an exceedence to the FSR development standard, it is considered that the overall bulk and scale of the development is sustained as reasonable and appropriate.

This is due to the fact that the overall floor area of the proposed primary and secondary dwelling totals an amount lesser than the maximum allowable floor area for the site. The additional floor area contributing to the exceedence of the development standard, results from the inclusion of the additional parking and turning space area, within the “basement-like” garage, associated to the secondary dwelling. As Council has previously requested that this area (the parking and turning space) is to be included in the gross floor area calculations for the purposes of this application, an additional 88.15sqm is proposed to the floor plate, thus in turn bringing the overall proposed GFA of the development to 406.28sqm, or an FSR of 0.7:1. It is reiterated that exclusion of the parking and turning area within the associated floor area calculations results in a fully compliant scheme when considered with respect to FSR.

Notwithstanding the above, it is affirmed that the parking and turning area associated to the secondary dwelling is fully contained within the proposed building envelope.

This therefore suggests that numerically, a variation in FSR from 0.546:1 (i.e. the resultant FSR with exclusion of the secondary dwelling parking and turning areas) to 0.7:1 (i.e. the resultant FSR with inclusion of the secondary dwelling parking and turning area) does not influence or alter the overall bulk and scale of the proposal. Therefore, it is suggested that the resultant bulk and scale of the proposal is not necessarily reflected accurately through the numeric considerations of GFA and FSR only.

It is therefore suggested, that, additional Council Controls, enforced to moderate density, scale and bulk, should be also considered, along with consideration of the resultant proposed bulk and scale itself, assessed in relation to its immediate context and surrounding properties.

It is noted that existing buildings in the locality, including Loville Avenue, are characterised by single storey and double storey built forms (i.e. low density environments), to provide for the housing requirements and needs of the community/residents. The proposal for the subject site incorporates a maximum of two (2) storeys in height, and, by responding sensitively to the topographical characteristics of the subject site, is consequently viewed as a “single storey” dwelling only, with an overall height of approx. 5.4m, from Loville Avenue/the street interface (it is also noted that the proposal is fully compliant with overall height requirements).

Similarly, the applied setbacks respond appropriately to the proposed form, which complement the rhythm of built form and bulk within the context.

In light of the above, it is considered that the proposal is therefore compatible & in keeping with the bulk and scale of the existing locality.

Furthermore, the proposal exceeds the minimum requirements for calculable landscaped area (by more than 20sqm), which accounts for increased private open spaces also surplus to the minimum Council controls.

As the proposal exceeds the minimum landscaping and private open space requirements prescribed in Council’s controls, it is further considered that the proposed bulk and scale of the proposal is satisfactory – by accommodating a harmonious balance between built form and open/landscaped space across the subject site.

As the associated shadow diagrams also document negligible adverse impacts, pertaining to overshadowing, it is reinforced that i) the proposal is sited and scaled carefully, and ii) the considered bulk and scale of the proposal is compatible within its context. It is also exemplified that the proposal aligns with the desired future character of the locality - providing housing which offers high standards of living amenity, whilst also enhancing the amenity and interrelationship between the adjoining properties, in both the public/semi-private and private domains.

to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic to achieve the desired future character of the locality.

As iterated herein, the surplus GFA attributed from the parking and turning area (associated to the secondary dwelling) does not impact the overall development density and intensity of the land use. This is due to the secondary dwelling parking and turning area being fully enveloped by the proposed building massing. This means that reliance upon FSR and GFA assessments, in this circumstance, does not establish an accurate methodology to assess the density and intensity of the proposal/land use.

As previously noted, the proposal exceeds the minimum numerical controls for landscaping and private open space, and as negligible impacts pertaining to overshadowing are also generated, it is considered that careful planning and design, alongside considerations of additional council controls for regulating overall bulk and scale, result in a sympathetic proposal suitable in its context and in keeping with the objectives and intensity of housing stock in the locale.

It is also noted, that, the secondary dwelling parking and turning area maximises the opportunities of the site, given the availability of the existing right of way easement, which traverses through the adjoining properties (No's 12 and 14 Loville Avenue). As the right of way will accommodate access for one (1) vehicle to the garage area associated with the secondary dwelling only, the generation of vehicle and general pedestrian traffic via the easement will be lessened - as a newly approved driveway crossover from Loville Avenue will service vehicular access associated to the future primary dwelling. Consequently, the proposal considers the availability of the infrastructure empathetically, to complement the existing and desired character of the low density locale, and to further minimise any environmental impacts imposed upon adjoining properties.

to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.

It is noted that the right of way easement, traversing through the adjoining properties, No's 12 and 14 Loville Avenue, will accommodate vehicle and pedestrian access to the secondary dwelling only. The recent driveway application approval mitigates any reliance upon vehicular or pedestrian access for the proposed primary residence via the right of way easement.

This therefore minimises usage of the right of way and subsequently reduces any adverse environmental impacts on the adjoining properties.

It is stressed however that the parking provisions for the secondary dwelling, in this instance, do account for the necessitated housing requirements and amenity of the future elderly resident occupying the secondary dwelling.

Although the provisions of State Environmental Planning Policy Affordable Rental Housing state that car parking is not a ground for refusal, if there is no additional parking provided on-site, it is not deemed suitable, nor viable, to rely upon on-street parking arrangements in this circumstance, as this would then also necessitate additional walking distances in excess of 40m, (i.e. from the commencement of the rough bitumen drive easement to the entry door of the secondary dwelling).

The secondary parking/turning area therefore serves as a fundamental planning element for the proposal which responds i) objectively and sensibly to the housing requirements of the future residents, and ii) practicably to the characteristics of the subject site.

It must also be noted, that, the nearby Melaleuca street tree is proving to be hazardous in nature, as damages to the public footpath/Council assets near the rough bitumen drive easement continue to worsen with uprooting and unevenness of the footpath areas. It is therefore considered in the public interest to reduce any reliance upon pedestrian traffic/movements around this area, to prevent any un-necessitated injury for residents subjected to reliance upon on-street parking arrangements in lieu of private off street parking.

Notwithstanding the above, it is subsequently deemed advantageous and in the public's interest (including that of adjoining properties) to also negate any reliance for on-street parking arrangements, in particularly around the bulbous end of the cul-de-sac, as this in

turn further accommodates safe, unencumbered movements around the public domain for general vehicular circulation and also aids weekly waste collection trucks manoeuvring around the cul-de-sac end.

As previously stated, it is considered that the parking area associated to the secondary dwelling is in fact a housing requirement for the future elderly resident occupying the secondary dwelling. As such, the parking area has been designed to also accommodate adequate manoeuvring space, such that safe front-direction entry and front-direction exiting movements (to and from the subject site) can be exercised. Not only does this planning consideration improve the vehicular access and egress conditions for the future user, and support safer movements through the adjoining properties, it further minimises any potential adverse environmental effects imposed upon the neighbouring properties and residents, influenced by the right of way.

Similarly, forward direction movements at the street interface all in all account for a safer public domain, through increased driver awareness of surroundings and improved sight lines with other road users, pedestrians and residents.

Consequently, it is considered advantageous and in the public's interest, to accommodate the sufficient turning area within the secondary dwelling garage (within the subject site). Although this space, in total, increases the proposed GFA by some 88.15sqm, thus in turn bringing the overall proposed GFA of the development to 406.28sqm, or an FSR of 0.7:1, it is discussed herein that negative environmental impacts imposed by this design decision are in fact negligible. As the exceedence in floor area resulting from the parking/turning space effectively improves the interface between the right of way and adjoining properties, as well as the public domain, adverse environmental effects on the use or enjoyment of adjoining properties and the public domain are mitigated, promoting a preferred planning outcome benefitting all associated stakeholders.

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.

The proposal incorporates a high quality, contemporary architectural design which complements the existing low density residential environment in which it is proposed. The immediate locality, adjoining the Wet Kiln Wetlands, contributes significantly to the Georges River Precinct as an integral component of the Local Government Area, and although the locale is not foregoing substantial transformation, new developments sited sympathetically within their context facilitate an appropriate desirable transition between the existing character of the area.

to minimise the adverse impact of the development on heritage items.

It is noted that the proposal is not sited near any heritage items, and as such, does not generate any adverse impacts towards heritage items within the greater locale.

to establish maximum floor space ratios that ensure the bulk and scale of development is compatible with the major centre status of the Hurstville City Centre.

It is noted that the proposal is not situated within the Hurstville City Centre and as such, is not comparable in this circumstance.

As discussed herein however, it is considered that the application of floor space ratios in this instance, does not accurately illustrate nor reflect the resultant bulk and scale of the development. This is exemplified through the proposal maintaining the same overall form/massing, despite a potential variation in FSR from 0.546:1 (i.e. the resultant FSR with exclusion of the secondary dwelling parking and turning areas) to 0.7:1 (i.e. the resultant FSR with inclusion of the secondary dwelling parking and turning area).

Therefore, as it is considered that the proposal is in keeping with developments in the R2 zone (typically characterised by low density environments), and exemplifies negligible adverse environmental impacts, it is believed that the proposal has been considered carefully and sympathetically to contribute positively to the precinct.”

50. Council is of the opinion that the applicant fails to satisfactorily justify why compliance with the FSR provisions is unnecessary and/or unreasonable pursuant to Clause 4.6.
51. The applicant argues that the development will not result in any bulk and/or scale impacts, Council does not agree with the applicant and is of the opinion that the breach does have a negative impact by way of a larger building form than would otherwise be permitted on the site.
52. The development is currently 88.15sqm over the maximum permitted FSR. The applicant was given an opportunity to reduce the FSR to a maximum of 0.6:1, which, while still resulting in a variation to the 0.55:1 standard, was advised could be suitable for the site given the 0.55:1 standard did not take into consideration the GFA a secondary dwelling in association with a dwelling house would attract when the standard was drafted.
53. Parking for the secondary dwelling is not required under State Environmental Planning Policy (Affordable Rental Housing) 2009 and the applicant was advised a single hardstand parking space could be accommodated on the site for use by the secondary dwelling which would bring the proposal into compliance with the 0.55:1 standard.
54. The applicant advised they would not be amending the plans to comply and requested this report continue to the Panel for determination.
55. The applicant's written submission fails to demonstrate that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case. It also fails to demonstrate sufficient environmental planning grounds to justify varying this development standard. The proposed development is not in the public interest as the proposal fails to comply with the objectives for both FSR and the R2 zone. In addition there is no public benefit to maintain the FSR development standard in the circumstances of this case.
56. In terms of the objectives of the standard, Council considers that variation to the maximum floor space ratio requirement under Clause 4.4 of the LEP would represent an undesirable precedent due to the extent of the breach, and thus it is not considered that the proposal is in the public interest by being consistent with the following objectives of Clause 4.4:
 - (a) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
 - (b) *to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic to achieve the desired future character of the locality,*

57. The proposed variation is not contrary to the objectives of the R2 zone under the LEP.
58. In conclusion the variation to the FSR development standard fails to satisfy all relevant parts of clause 4.6 and therefore the variation cannot be supported. The applicant was given an opportunity to reduce the GFA to comply as the exceedance cannot be supported as it will set an undesirable precedent in the R2 zone, however the applicant chose to keep the design as submitted and have the Panel determine the application in its current form.

Georges River Local Environmental Plan 2021 and Georges River Development Control Plan

59. Consideration is given to the provisions of the Georges River Local Environmental Plan 2021 in the assessment this application.
60. 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.”*
61. The Georges River Development Control Plan has a like provision and as this application was lodged prior to the operation of either of these instruments, the savings provision applies.

DEVELOPMENT CONTROL PLAN

62. 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 both Development Control Plans.

4.0 Specific Controls for Residential Development

4.6 Secondary Dwellings

Site Area			
Clause	Requirement	Proposed	Complies
PC1. Site area and frontage is adequate to enable development that incorporates adequate setbacks, efficient car parking and vehicle access and circulation and achieves a density that is consistent with low density suburban environments	DS1.1 Minimum site area is 450sqm	Site Area: 582sqm	Yes
Floor Area			

PC2. The size of the secondary dwelling maintains a domestic scale and character and is less than the dwelling house	DS2.1 The maximum floor area is 60sqm, or 10% of the total floor area of the dwelling house, whichever is greater.	The maximum floor area: 60sqm (dwelling) plus 88sqm garage area.	No – refer to FSR discussion earlier in this report.
Building Height			
PC3. Building height:	DS3.1 Maximum building height is 1 storey.	Proposed single storey	Yes
	DS3.2 The minimum floor to ceiling height is 2.4m.	2.9m	Yes
	DS3.3 The maximum floor to ceiling height is 3.6m.	2.9m	Yes
Setbacks			
PC4. Setbacks:	DS4.1 The minimum setback to side and rear boundaries is 900mm.	900mm to alfresco.	Yes
	DS4.2 The secondary dwelling is setback behind the main building face to a primary or secondary street.	The secondary dwelling is setback behind the main building face.	Yes
Car Parking			
PC5. Car parking:	DS5.1 Car parking is located behind the main building face to primary or secondary streets.	Car parking is proposed on the lower ground level behind the primary face of the dwelling above however the hard surfaced driveway proposed to access the garage appears misaligned (as shown on the survey submitted with the DA) with the ROW being relied upon for access. Additionally, the proposed garage for the secondary dwelling	Insufficient information provided to confirm suitable access can be achieved.

		results in the FSR being exceeded for the site which is not supported as discussed in this report.	
	DS5.2 Car parking requirements for the principal dwelling must still be achieved.	Two spaces provided for the dwelling at ground level.	Yes
	DS5.3 Car parking does not interfere with the parking and movement of vehicles associated with the dwelling house.	Complies – separate access provided to each garage.	Yes
Landscape Open Space			
PC6. Landscaped open space is provided on site	DS6.1 The landscaped area for a secondary dwelling is shared with the principal dwelling.	The landscaped area is shared with the principal dwelling.	Yes
	DS6.3 The minimum amount of landscaped open space on a site inside the FSPA is 25% of the site area.	The landscaped open space on a site is 28%	Yes
Subdivision			
PC7. To ensure that secondary dwellings are related to the dwelling house.	DS7.1 Subdivision of secondary dwellings is not permitted.	No subdivision proposed.	Yes
Stormwater			
PC8. Stormwater detention is provided on site	DS8.1 Stormwater management is in accordance with the provisions contained in Section 4.4 Dwelling Houses on Standard Lots – PC.11.	The proposed development was referred to Council's drainage Engineer, who have recommended approval subject to the imposed conditions of consent.	Yes

4.4 Dwelling Houses

Applicable Development Control Plan Controls	Development Control Plan Provisions	Development Provisions	Complies
Neighbourhood character	<p>DS1.1 The development application is supported by a Statement of Environmental Effects that:</p> <ul style="list-style-type: none"> a. includes a satisfactory neighbourhood and site description, including the identification of the key features of the neighbourhood and site b. shows how the siting and design response derives from and responds to the key features identified in the neighbourhood and site description c. demonstrates that the residential development proposal respects the existing or preferred neighbourhood character and satisfies objectives of the zone in the LEP 	<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.</p>	Yes
Building Height	<p>DS2.1. Maximum building height is in accordance with the LEP</p> <p>DS2.2. Maximum ceiling height is 7.2m above the existing ground level vertically below that point. Note: maximum ceiling height is measured at the intersection of the upper most ceiling with the internal face of any</p>	<p>The maximum building height is 8.5m.</p> <p>Max. 8m</p>	<p>Yes</p> <p>No – acceptable as overall height complies</p>

	<p>external wall</p> <p>DS2.3. For flat roofed dwellings, maximum height to the top of the parapet of the building is: a. 7.8m above the existing ground level vertically below that point.</p> <p>DS2.4. For steep or sloping sites, the building is sited and designed to be staggered or stepped into the natural slope of the land</p>	<p>Max. 8.5</p> <p>The design steps down the site.</p>	<p>No – acceptable as overall height complies</p> <p>Yes</p>
Setbacks	<p>DS3.1. The minimum front setback to a primary street is: a. 4.5m to the main face of the dwelling or b. 4.5m to the main face of the dwelling where located on a corner site and 5.5m to the garage</p> <p>DS3.2. For properties greater than 15m in width, the minimum setback to a secondary street boundary is 2.0m to the wall of the dwelling</p> <p>DS3.3. For properties 15m or less in width, the minimum setback to a secondary street boundary is in accordance with the side boundary setback requirements.</p> <p>DS3.5. The minimum side setback inside the FSPA is 900mm (ground floor) and 1.5m (first floor).</p> <p>DS3.6. Minimum rear boundary setbacks are:</p>	<p>4.5m</p> <p>5.5m</p> <p>NA</p> <p>NA</p> <p>900mm/1.5m</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>NA</p> <p>Yes</p>

	<p>a 3m for any basement and ground floor level solid wall</p> <p>b. 6m for first floor level solid walls where a first floor balcony is proposed at the rear, 6m from the balustrade</p> <p>DS3.7. For battle-axe lots, minimum side boundary setbacks apply to all boundaries.</p>	<p>2.4m (minor point encroachment due to site shape Min. 4m (point encroachment due to site shape)</p> <p>6m from balcony balustrade</p> <p>NA</p>	<p>No - acceptable</p> <p>No - acceptable</p> <p>Yes</p> <p>NA</p>
Facades	<p>DS4.1. The dwelling house has a front door or window to a habitable room facing the primary street frontage.</p> <p>DS4.2. The dwelling house incorporates at least two of the following building elements facing any street frontage: entry feature or portico awnings or other features over windows eaves and sun shading window planter box treatment bay windows or similar features f. wall offsets, balconies, verandas, pergolas or the like</p> <p>DS4.3. Garage doors are not wider than 6m</p>	<p>Complies</p> <p>Complies</p> <p>Garage door is 5.3m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Solar Access	<p>DS6.1. Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00 am and 3.00 pm on 22 June.</p> <p>DS6.2. Development complies with the Energy Efficiency</p>	<p>Adjoining properties will continue to receive greater than 3 hours during mid-winter.</p> <p>The proposal is BASIX compliant.</p>	<p>Yes</p> <p>Yes</p>

	<p>section in Appendix 1 of this Development Control Plan and BASIX requirements.</p> <p>DS6.3. 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.</p>	The proposal is BASIX compliant.	Yes
Visual Privacy	<p>DS7.1. Windows of proposed dwelling must be offset from neighbouring windows by 1m, especially windows of high-use rooms.</p> <p>DS7.2. Windows for primary living rooms must be designed so that they maintain privacy of adjoining site's principal private open space.</p> <p>DS7.3. Development applications are accompanied by a survey plan or site analysis plan (to AHD) of the proposed dwelling showing the location of adjoining property windows, floors levels, window sill levels and ridge and gutter line levels.</p>	<p>Windows are offset from adjoining properties.</p> <p>The windows for primary living areas face the rear yard of the site.</p> <p>The application includes survey plan and architectural plans indicating the adjoining properties, and window sill levels.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Vehicle access, parking and manoeuvring	<p>DS9.1. Car parking is provided on site in accordance with the following minimum rates:</p> <p>a. for 1 and 2 bedroom dwellings, 1 car parking space</p>	-	-

	<p>b. for 3 or more bedroom dwellings, 2 car parking spaces</p> <p>DS9.2. For all new dwellings, at least 1 car space must be located behind the front building setback</p> <p>DS9.3. Enclosed or roofed car accommodation, including garages and carports, are located at least 1m behind the main setback. Note: Carports forward of the front setback may be considered where no vehicular access behind the front building alignment is available.</p> <p>DS9.4. The maximum width of a garage opening is 6m.</p> <p>DS9.9. Driveway gradients must be constructed in accordance with Australian Standard 2890.1(2004).</p>	<p>2 spaces provided.</p> <p>Both spaces behind the building line.</p> <p>The garage is integrated with the dwelling.</p> <p>5.3m.</p> <p>Complies.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Landscaped areas and private open space	<p>DS10.1. Where located outside the FSPA, a minimum of 20% of site area is landscaped open space.</p> <p>DS10.2. Where located in the FSPA, a minimum of 25% of the site area is landscaped open space.</p> <p>DS10.3. The minimum dimension of landscaped open space is 2m in any direction.</p> <p>DS10.4. A minimum of 15sqm of the landscaped open space</p>	<p>N/A</p> <p>28%.</p> <p>2m.</p> <p>15sqm.</p>	<p>N/A</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>is provided between the front setback and the street boundary in the form of a front yard.</p> <p>DS10.5. An area of Principal Private Open Space is to be provided which:</p> <ul style="list-style-type: none"> a. has a minimum area of 30m² 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 	Private open space is split between alfresco areas and ground level due to the slope of the site.	Yes
Stormwater	<p>DS11.2. Stormwater drainage is to occur by:</p> <ul style="list-style-type: none"> a. drainage by gravity to the adjacent road kerb and Council's drainage system or 	Council's Development Engineers and Drainage Engineers have provided comments and raised no objection in this regard, subject to the recommended conditions relating to this development if the proposal was able to be supported.	Yes
Balconies	<p>DS14.1. 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.</p> <p>DS14.2. Balconies and terraces include fixed planter boxes and / or privacy screens.</p> <p>DS14.3. Fixed planter boxes are at least 1m wide.</p>	<p>Complies</p> <p>Not required</p> <p>NA</p>	<p>Yes</p> <p>Yes</p> <p>NA</p>

	DS14.4. Privacy screens are between 1.5m and 1.8 m high	NA	NA
	DS14.5. Terraces are not visible from the street.	NA	NA
	DS14.6. Roof top terraces are not provided.	NA	NA
	DS14.7. Development applications for terraces and balconies must provide sight line diagrams that demonstrate how privacy issues to neighbouring properties are proposed to be addressed.	Terraces are suitably located to ensure privacy for neighbours.	Yes

Interim Policy Georges River Development Control Plan 2020

63. 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.

Section	Interim Policy Control	Proposal	Complies?
Building Setback (Front)	<input type="checkbox"/> 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	4.5m 5.5 NA	Yes Yes NA
Building Setback (Rear)	<input type="checkbox"/> Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater	3m	No – refer to Development Control Plan

	<input type="checkbox"/> 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	No consistent setback due to cul-de-sac arrangement.	NA
Building Setback (Side)	<input type="checkbox"/> The minimum side setback inside the FSPA is 900mm (ground floor) and 1.5m (first floor) with a minimum of 5.5m in front of any proposed new garage.	900mm/1.5m	Yes
Landscaped area	<input type="checkbox"/> Where located inside the FSPA, a minimum of 25% of the site area is landscaped open space <input type="checkbox"/> The minimum dimension of landscaped open space is 2m, designed in a useable configuration <input type="checkbox"/> A minimum of 15m ² of the landscaped open space is provided between the front setback and the street boundary in the form of a front yard	28% Complies 15sqm	Yes Yes Yes
Private Open Space	<input type="checkbox"/> An area of Principal Private Open Space is to be provided which: a) has a minimum area of 30m ² b) has a minimum dimension of 5m, designed in a useable configuration c) is located at ground level and behind the front wall of the dwelling d) is directly accessible from a main living area	>30sqm Triangle shape due to lot Complies Complies	Yes Yes Yes Yes
Basement/ Land Modification	Basements are permitted where Council's height controls are not exceeded, and it is demonstrated that there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure).	Not proposed.	NA

	<p><input type="checkbox"/> Basements for low grade sites (ie < 12.5% Grade front to rear):</p> <p>a) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition below) and the overall development presents as 2 storeys to the street.</p> <p>b) A basement is not considered a storey if it is:</p> <p>situated partly below the finished ground and the underside of the ceiling is not more than 1m above the natural ground at the external wall for a maximum of 12m in length, with the exception of the façade in which the garage door is located.</p>		
Solar Access	<p>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.</p> <p>Note 1: Development applications for development two storeys and over are to be supported by shadow diagrams demonstrating compliance with this design solution.</p> <p>Note 2: Exemptions will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation</p>	The neighbouring property to the south will receive more than 3 hours sunlight to more than 50% of the private open space area and living room windows.	Yes

IMPACTS***Natural Environment***

64. The proposal seeks to remove two trees from the site and the removal has been assessed and endorsed by Council's Consultant Arborist. If the application was to be supported conditions would be imposed for replacement trees to be provided.
65. The proposed works will not directly impact the natural environment with the built form but will indirectly impact the environment through excavation works and drainage management, which have been designed to minimise impacts.

Built Environment

66. The proposal represents an undesirable planning outcome for the site with respect to its bulk, scale and density and is an inappropriate response to the context of the site and its R2 Low Density Residential zoning.

Social Impact

67. 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.

Economic Impact

68. The proposal is not considered to result in unreasonable material economic impact.

Suitability of the Site

69. The site is zoned R2 Low Density Residential. The proposal is a permissible form of development in this zone however results in an excessive bulk and scale as a result of the proposed GFA relating to the garage and turning area associated with the secondary dwelling. The site can accommodate a primary and secondary dwelling comfortably, compliant with the maximum FSR of 0.55:1 for the site, however the applicant has chosen not to reduce the GFA of the proposal to comply.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

70. 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.

Council ReferralsDevelopment Engineer

71. Council's assessment of the drainage system concluded that the proposal is satisfactory and conditions of consent provided.

Consultant Arborist

72. The proposal seeks to remove two trees from the site and the removal has been assessed and endorsed by Council's Consultant Arborist. If the application was to be supported conditions would be imposed for replacement trees to be provided.

External ReferralsAusgrid

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

Contributions

74. 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 will be imposed should the application be supported.

CONCLUSION

75. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is considered to be an unreasonable redevelopment of the site and the proposed scale and bulk is considered to be excessive for this site and a poor planning outcome. It will be inconsistent with the existing and desired future character of development in the R2 zoned land in this location and immediate locality.
76. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policies, Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1. The proposal exceeds the maximum FSR for the site under Clause 6.5 of the Hurstville Local Environmental Plan and is not supported. The Clause 4.6 variation request is not well founded and there are no environmental planning grounds to support the breach.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

77. The reasons for this recommendation are:
- The proposal is an inappropriate response to the zoning of the site.
 - The proposed development fails to comply with the maximum FSR for the site.
 - The proposed design is inconsistent with the existing and desired future character for development in this area.

Determination

78. THAT Pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979, as amended, the Georges River Local Planning Panel refuse DA2021/0207 for construction of a dwelling house and secondary dwelling on Lot 6 in DP215320 on land known as 7 Loville Avenue, Peakhurst Heights, for the following reasons:

REASONS FOR REFUSAL

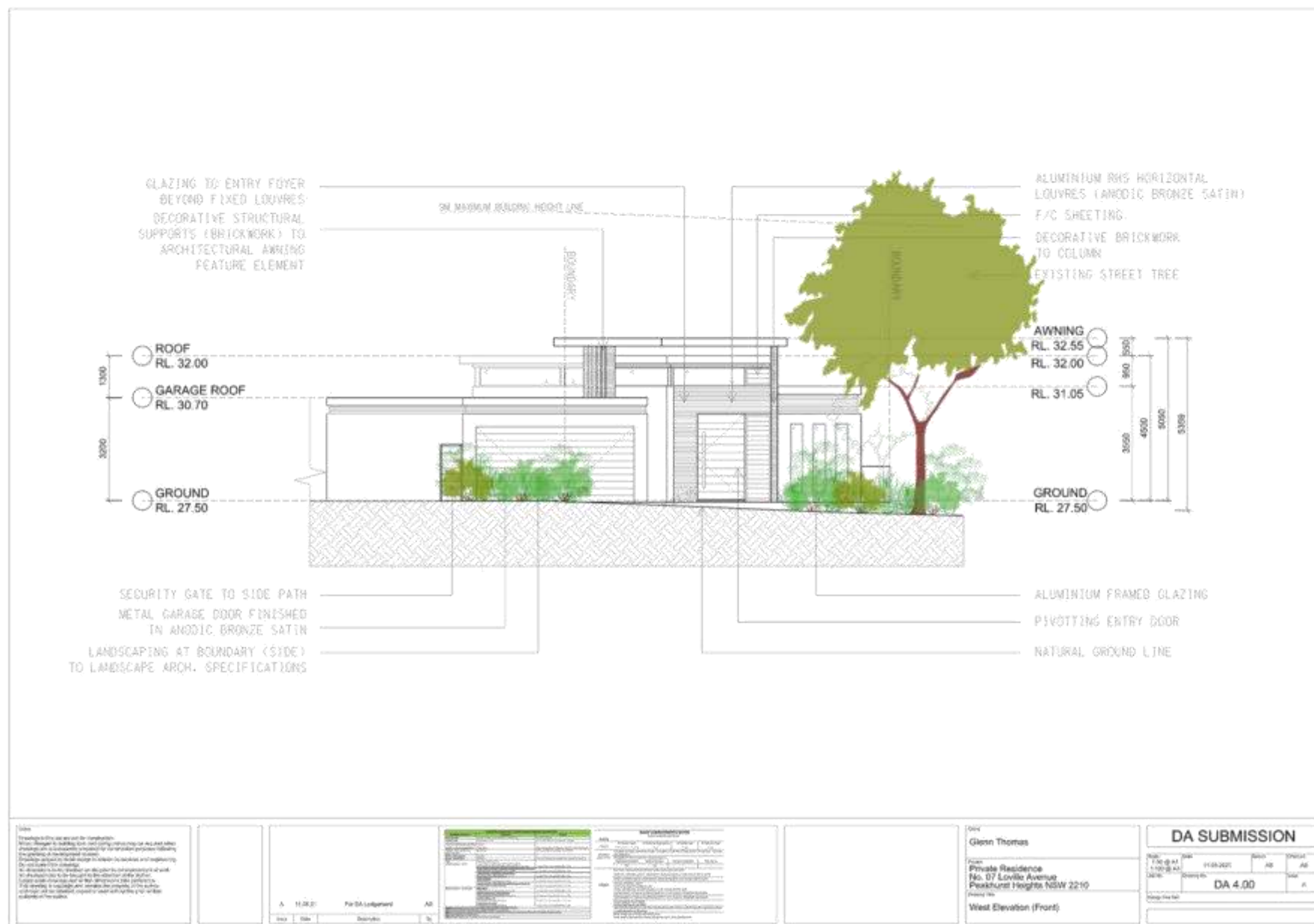
1. The proposed development does not comply with Clause 22(3)(a) of the State Environmental Planning Policy (Affordable Rental Housing) 2009 as the total floor area of the principal dwelling and the secondary dwelling exceeds the maximum floor area allowed for a dwelling house on the land under Hurstville LEP 2012.
2. The proposed development does not comply with the following sections of Hurstville Local Environmental Plan 2012:
 - a. Clause 1.2 – Aims of the Plan;
 - b. Clause 4.4 – Floor Space Ratio
 - c. Clause 6.5 – Gross floor area of dwellings in residential zones and the Clause 4.6 request to vary the standard is not well founded.

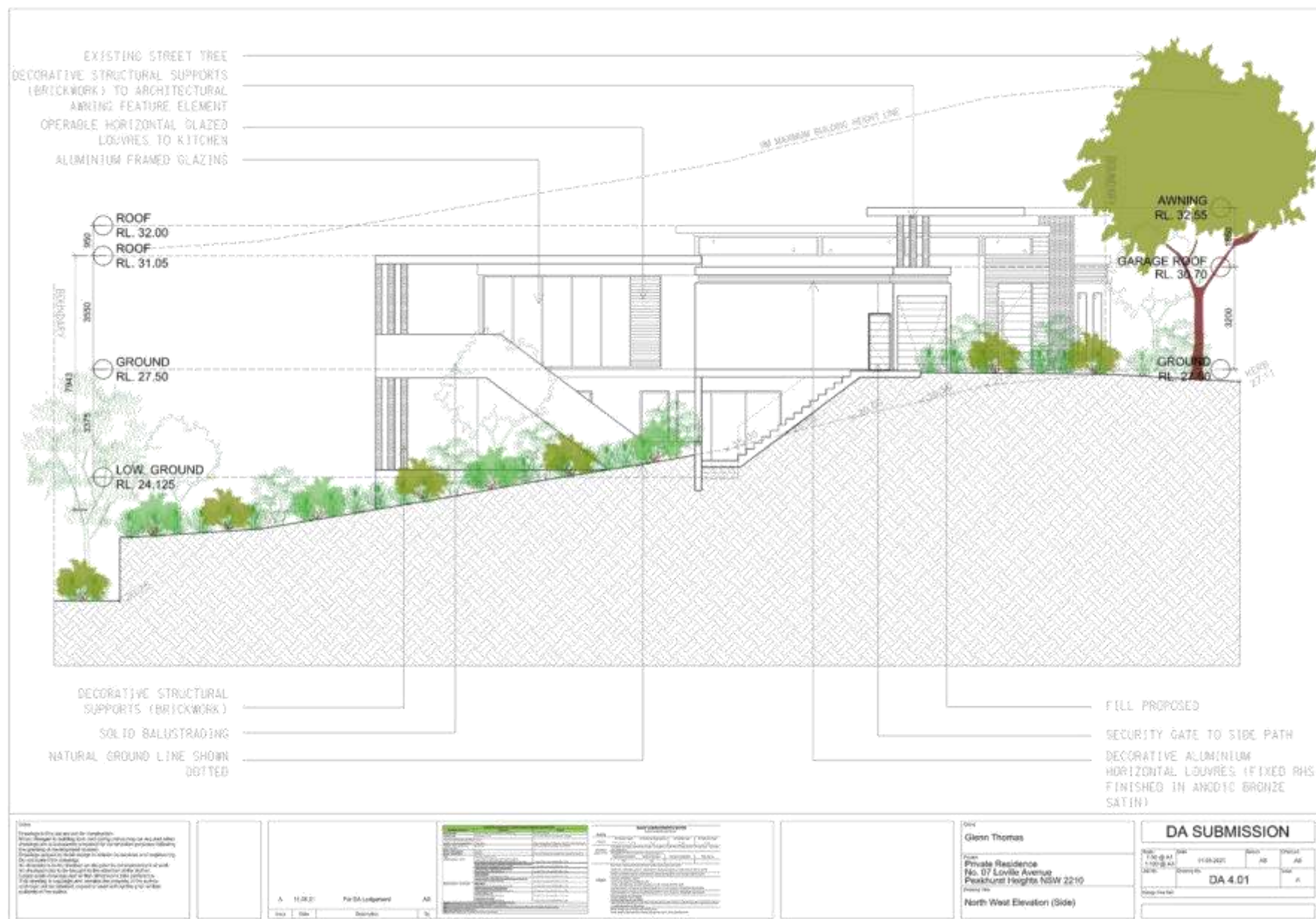
- d. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development represents an undesirable planning outcome for the site with respect to its bulk, scale and density and is an inappropriate response to the context of the site and its R2 Low Density Residential zoning.
3. The proposed garage of the secondary dwelling relies on an easement over the neighbouring properties for access. The survey plan indicates only part of the right of way is surfaced and is misaligned with the right of way. Insufficient information is available to properly assess the suitability of the access the proposed secondary dwelling.
4. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be suitable for the site or its locality and is likely to set an undesirable precedent.
5. Approval of the development would not be in the public interest and contrary to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

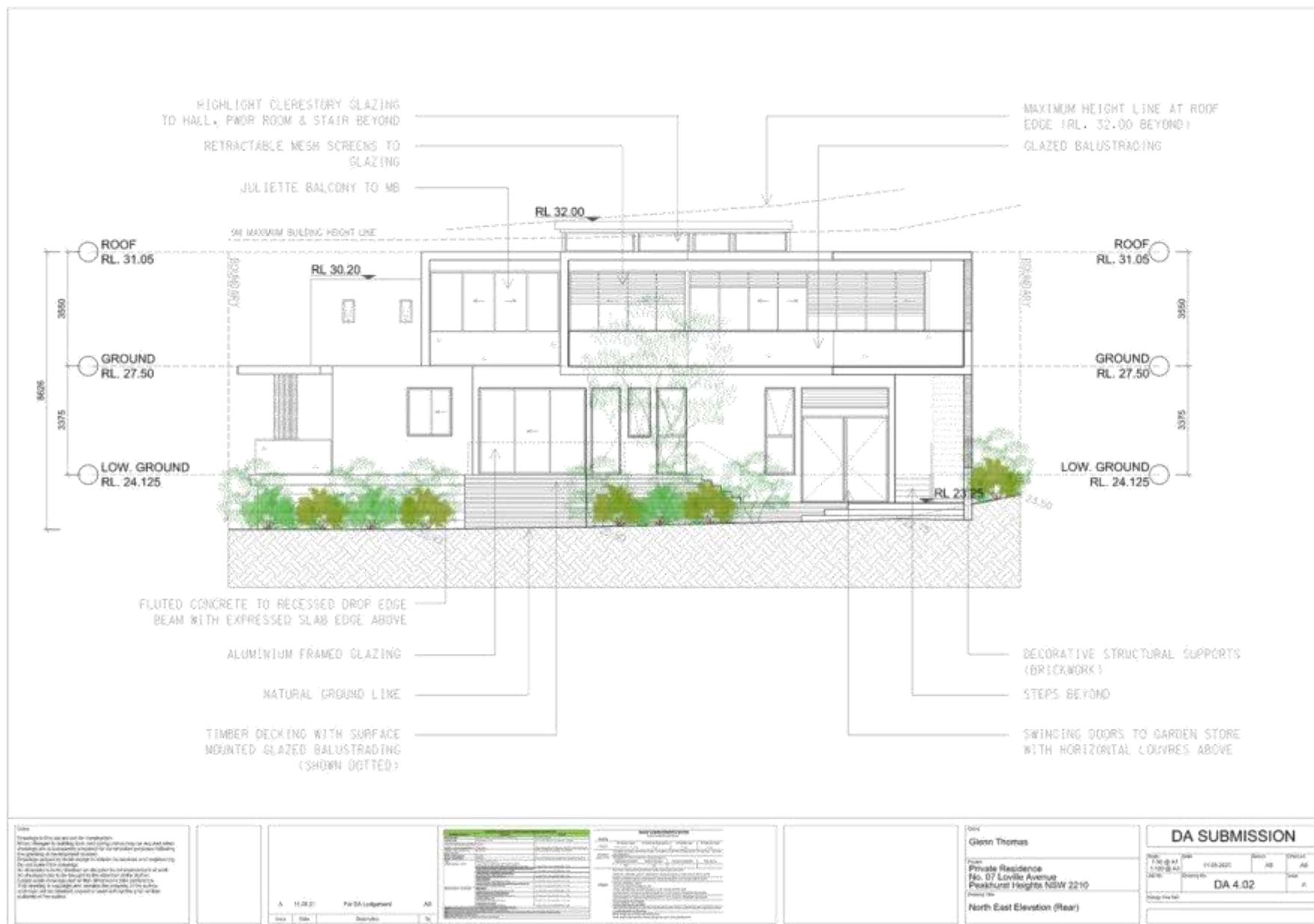
ATTACHMENTS

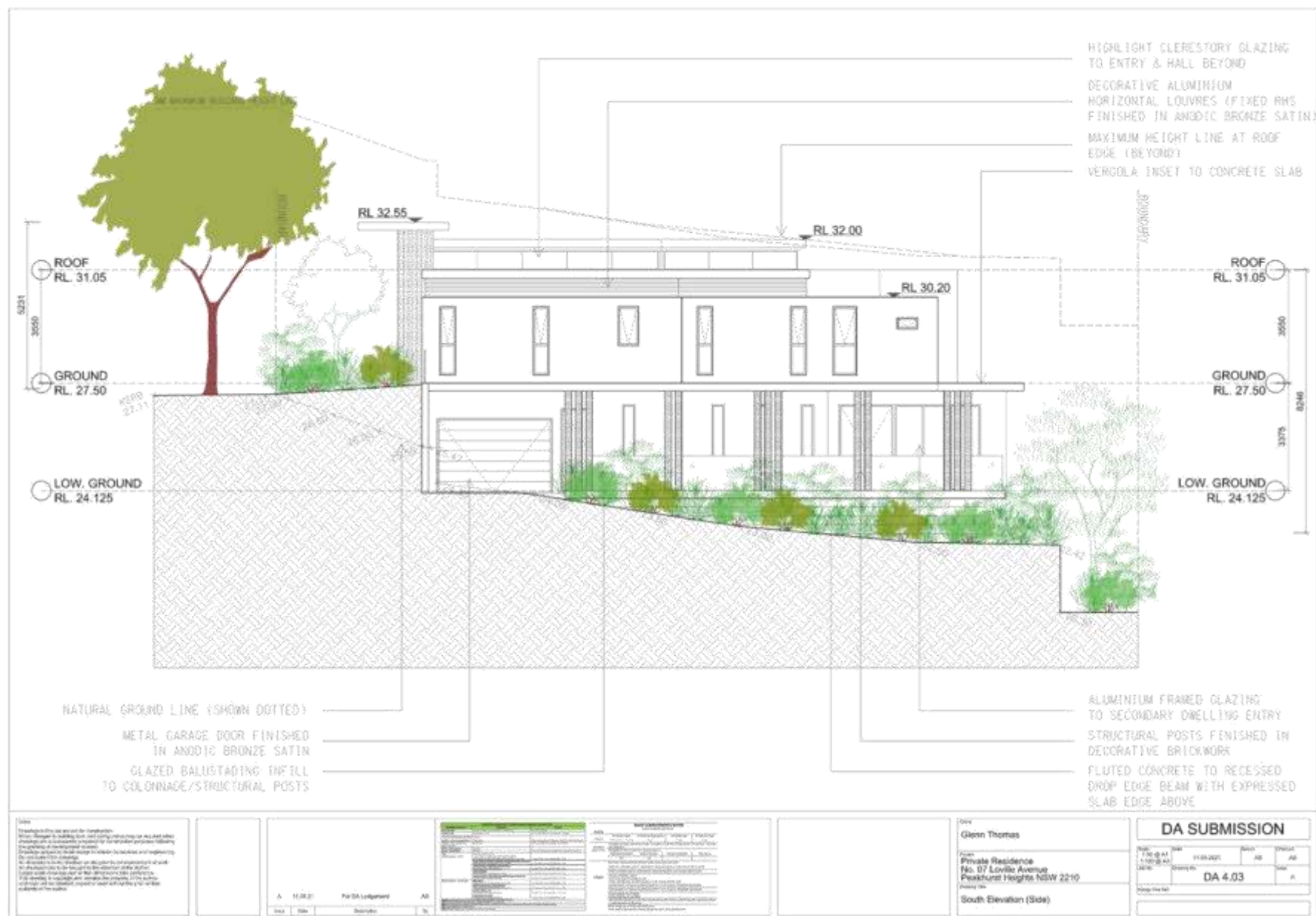
Attachment [↓](#) 1  Site Plan and Elevations











REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 04 NOVEMBER 2021

LPP061-21

LPP Report No	LPP061-21	Development Application No	DA2021/0211
Site Address & Ward Locality	2-6 Lacey Street, Kogarah Bay Kogarah Bay Ward		
Proposed Development	Demolition works and construction of a residential flat building		
Owners	Mr G W Evans		
Applicant	Smith & Tzannes		
Planner/Architect	Smith & Tzannes		
Date Of Lodgement	8/06/2021		
Submissions	No submissions		
Cost of Works	\$7,790,000.00		
Local Planning Panel Criteria	The application relates to development to which the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment, State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Draft Design and Places SEPP, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, and Draft Georges River Local Environmental Plan 2020.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Landscape Plan, Stormwater Plans, Survey, Heritage Report, Geotech Report, Arborist Report, Preliminary Contamination Report.		
Report prepared by	Senior Development Assessment Planner		

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

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	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 with no design changes

Site Plan



Executive Summary Proposal

1. This development application (DA) seeks consent for the demolition of existing structures across five (5) sites, lot consolidation and the construction of a seven (7) storey Residential Flat Building (RFB) comprising a total of 25 apartments including two (2) levels of basement car parking catering for a total of 43 car parking spaces, landscaping and site works.

2. The proposal has two (2) basement car parking levels accommodating one 43 residential car parking spaces including 7 residential visitor spaces. Vehicle access is provided via a two-way driveway from Wyuna Street along the eastern side of the site.
3. The proposed development complies with the maximum floor space ratio (FSR), however the development exceeds the height control with the non-compliance relating only to the roof of the building to varying extents between 0.41m to 1.79m over the maximum 21m height limit. A Clause 4.6 Statement has been submitted which has been assessed in detail later in this report, however it is considered to be well founded and in this individual case is recommended for supported given the nature and degree of variation that has been applied for.

Site and Locality

4. The development site is located on the corner of Wyuna Street and Lacey Street. It consists of three existing allotments known as 2-6 Lacey Street, Beverley Park. These sites are legally identified as Lots 8, 9 and 10 in DP 17618.
5. The consolidated site is regular in shape. It has a total frontage to Lacey Street of 35.016m, a frontage to Wyuna Street of 31.775m and a total site area of 1,216sqm. The land falls gently from the street frontages to the northern corner of the site.
6. Presently situated on the site are three residential dwellings, consisting of one single storey houses with ancillary structures including detached garages, sheds and garden beds.
7. This entire block (surrounded by Princes Highway to the north west, Stubbs Street to the north east, Lacey Street to the south west and Wyuna Street to the south east) has been “up-zoned” to R3 Medium Density Residential with a maximum height of 21m and a maximum Floor Space Ratio (FSR) of 2:1.
8. The adjacent land to the north-east, at Nos. 13-21 Wyuna Street, has approval for a six storey residential flat building under DA2019/0439. The land to the north-west is occupied by a dwelling house and garage at No. 190 Princes Highway, and the land to the north is a dwelling house and gardens known as ‘Sunnyside’ and is a local item of heritage significance.
9. Land on the opposite side of Wyuna Street is zoned R2 Low Density Residential and is characterised by single dwelling houses.

Zoning and Permissibility

10. The subject site is zoned R3 Medium Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves the construction of a residential flat building which is a permissible use in the zone with development consent.

Submissions

11. The DA was publicly notified to neighbours for a period of fourteen (14) days in accordance with the Kogarah Development Control Plan 2013 (Kogarah Development Control Plan 2013). No submissions were received.

Reason for Referral to the Local Planning Panel

12. This application is referred to the Georges River Local Planning Panel for determination as the proposal relates to a Residential Flat Building and the provisions of the State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development apply.

Planning and Design Issues

13. The proposal is an appropriate response to the site when considered against the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. Its bulk and scale is consistent with the desired future character of the area as established by the Kogarah Local Environment Plan 2012 (KLEP) development standards for FSR and height.
14. The proposal exceeds the building height development standard of 21m that applies to the site under KLEP 2012 with point encroachments of the roof encroaching the height limit by a maximum of 1.79m over the 21m height limit. The applicant has submitted a Clause 4.6 Statement which has been assessed in detail as part of this report and is considered to be well founded and is recommended that the height breach be supported.
15. The proposal is fully compliant with the maximum FSR development standard that applies to the site under KLEP 2012. The proposal is therefore consistent with the desired future building density for the site.

Conclusion

16. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The proposal is an appropriate response to the up-zoning of the land in an area that is undergoing a transition to medium density housing including Residential Flat Buildings (RFB). The bulk and scale of the building has satisfactorily been resolved via good articulation, appropriate building setbacks and a mix of materiality and textures. As a result the application is recommended for approval subject to conditions of consent.

Report in Full

DESCRIPTION OF THE PROPOSAL

17. The proposal seeks consent for the demolition of all existing structures and the construction of a seven (7) storey Residential Flat Building (RFB) containing 25 apartments (5 X 1B, 14 X 2B and 6 X 3B units) over two (2) levels of basement car parking for 43 vehicles, landscaping and site works.
18. Amended plans were requested during the assessment of the application to address urban design matters. The amended plans were submitted and form the basis of this report.



Figure 1: Proposed development

19. A detailed description of the proposal is as follows:

Basement C2

- 25 residential car parking spaces, (2 being accessible);
- Residential storage;
- Lift and stair lobbies;
- Plant room;
- Residential bicycle parking spaces.

Basement C1

- 18 car parking spaces comprising of the following:
 - 5 visitors car parking spaces (one space doubles up as a car wash bay);
 - 13 residential car parking spaces, 1 being accessible;
 - Loading bay for private waste vehicle;
- Garbage chute compactor and bin store room;
- Switch room;
- Hydrant pump room;
- Lift and stair lobbies.

Ground Floor Plan

- Four apartments comprising:
 - 3 x 2 bedroom apartments
 - 1 x 3 bedroom apartment
- Dual lane vehicular access from Wyuna Street located on the eastern side of the site.
- Lift lobby and fire stairs.
- Landscaped street setbacks with a centrally located building entry from Lacey Street (secondary entry to the communal open space is also proposed from Lacey Street);
- Communal open space.

Levels 1 – 3

- Four apartments on each level as follows:
 - 3 x 2 bedroom apartments
 - 1 x 3 bedroom apartment
- Lift lobby and fire stairs.

Level 4

- Four apartments as follows:
 - 3 x 1 bedroom apartments
 - 1 x 2 bedroom apartment
- Lift lobby and fire stairs.

Level 5

- Four apartments as follows:
 - 2 x 1 bedroom apartments
 - 1 x 2 bedroom apartment
 - 1 x 3 bedroom (two storey) apartment – lower floor
- Lift lobby and fire stairs.

Level 6

- Two apartments as follows:
 - 1 x 3 bedroom apartment
 - Upper floor of the 3 bedroom apartment of Level 5
- Lift lobby and fire stairs.
- Communal roof top open space area 86sqm.

20. The proposal involves the removal of the 4 trees from the site and one street tree.

DESCRIPTION OF THE SITE AND LOCALITY

21. The development site is located on the corner of Wyuna Street and Lacey Street. It consists of three existing allotments known as 2-6 Lacey Street, Beverley Park. These sites are legally identified as Lots 8, 9 and 10 in DP 17618.
22. The consolidated site is regular in shape. It has a total frontage to Lacey Street of 35.016m, a frontage to Wyuna Street of 31.775m and a total site area of 1,216sqm. The land falls gently from the street frontages to the northern corner of the site.
23. Presently situated on the site are three residential dwellings, consisting of one single storey houses with ancillary structures including detached garages, sheds and garden beds.



Figure 2: The site

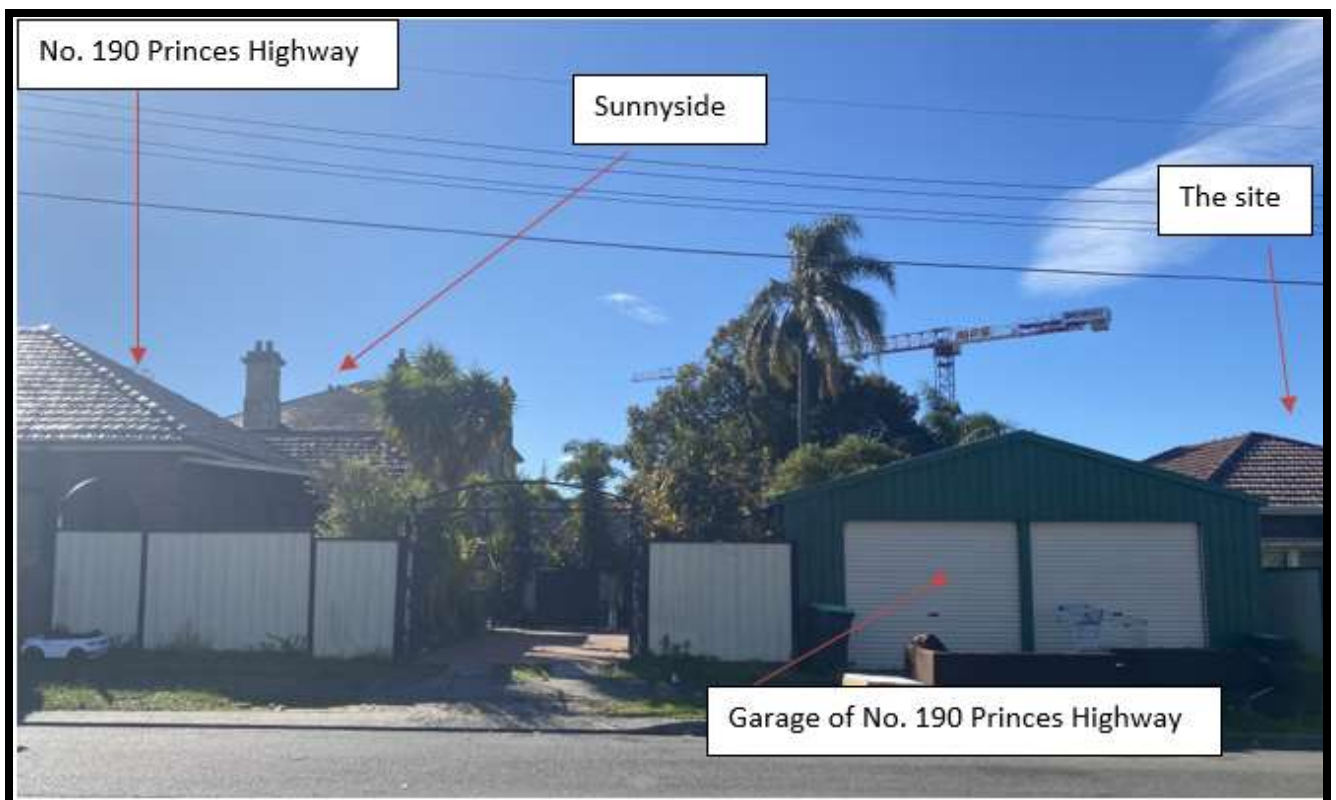


Figure 3: North-western neighbour No. 190 Princes Highway (cnr Lacey Street)

24. The adjacent land to the north-east, at Nos. 13-21 Wyuna Street, has approval for a six storey residential flat building under DA2019/0439. The land to the north-west is occupied by a dwelling house and garage at No. 190 Princes Highway, and the land to the north is a dwelling house and gardens known as 'Sunnyside' and is a local item of heritage significance.



Figure 4: Montage of approved development at 13-21 Wyuna Street (north-eastern neighbour)

25. Land on the opposite side of Wyuna Street is zoned R2 Low Density Residential and is characterised by single dwelling houses.
26. This entire block (surrounded by Princes Highway to the north west, Stubbs Street to the north east, Lacey Street to the south west and Wyuna Street to the south east) has been “up-zoned” to R3 Medium Density Residential with a maximum height of 21m and a maximum Floor Space Ratio (FSR) of 2:1.
27. The immediate precinct is undergoing a process of transition and transformation to larger scale medium density residential developments and larger scale mixed use developments along Princes Highway.

State Environmental Planning Policies (SEPPs)

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

Compliance with State Planning Policies

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

Deemed State Environmental Planning Policy – Georges River Catchment

29. All stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and will satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment subject to conditions.

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

30. A BASIX Certificate has been issued for the proposed development and the commitments required under the certificate have been satisfied. Conditions of consent imposed.

State Environmental Planning Policy No 55 - Remediation of Land

31. State Environmental Planning Policy 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
32. 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.
33. The site has a history of residential uses and as such, site contamination is not suspected. A Preliminary Site Investigation (PSI) Report No E24740.E01_Rev3 dated 9 September 2021 prepared by eiaustralia was submitted with the application, which concludes the site is suitable for its intended use.
34. Based on the information provided, a contingency condition has been included in the recommended conditions detailing what is required to take place should unexpected contamination be found during demolition, excavation and construction.

State Environmental Planning Policy (Infrastructure) 2007

35. The aim of the Infrastructure State Environmental Planning Policy is to facilitate the effective delivery of infrastructure across the State. The Infrastructure State Environmental Planning Policy also examines and ensures that the acoustic performance of buildings adjoining the rail corridor or busy arterial roads is acceptable and internal amenity within apartments is reasonable given the impacts of adjoining infrastructure.
36. Clause 102 of the State Environmental Planning Policy, "Impact of road noise or vibration on non-road development", is relevant to this DA on the basis that the proposal involves the construction of residential accommodation on land that is generally adjacent to the road corridor of Princes Highway (having an annual average daily traffic volume exceeding 20,000 vehicles) and is likely to be adversely affected by road noise or vibration. As a result, the following provisions of Clause 102 of the State Environmental Planning Policy are relevant:
 - (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
 - (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

37. An Acoustic Report (Traffic and Environmental Noise Assessment) was submitted with the DA, dated 22 April 2021 and prepared by Rodney Stevens Acoustics. The report addresses the provisions of the Policy with respect to achieving acoustic compliance. Council's Environmental Health Officer has reviewed the report and provided conditions of consent.
38. The DA was also referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. No objection to the proposal was raised by Ausgrid and no conditions recommended.
39. The provisions and requirements of the Infrastructure State Environmental Planning Policy have been addressed and satisfied by the proposal.

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

40. The Vegetation State Environmental Planning Policy aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
41. The Vegetation State Environmental Planning Policy applies to clearing of:
 - (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
 - (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the Council's Development Control Plan (DCP).*
42. The Vegetation State Environmental Planning Policy repeals clauses 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable Development Control Plan.
43. The proposal involves the removal of 4 trees from the site and one street tree. Council's Consultant Arborist has reviewed the proposed tree removal and raised no objection to approval of the trees on the basis that for every tree to be removed, two (2) are to be planted, plus the planting of 5 street trees. These new trees will satisfactorily offset the loss of the existing trees with quality native replacement plantings.
44. On this basis, the proposal is consistent with relevant provisions of the Vegetation State Environmental Planning Policy.

Draft State Environmental Planning Policies

Draft Environment SEPP

45. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
46. 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.

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

Draft Remediation of Land State Environmental Planning Policy

48. The Department of Planning and Environment has announced a Draft Remediation of Land State Environmental Planning Policy, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.
49. The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.
50. Whilst the proposed State Environmental Planning Policy will retain the key operational framework of State Environmental Planning Policy 55, it will adopt a more modern approach to the management of contaminated land.
51. The site has a history of residential uses and as such, site contamination is not suspected. A Preliminary Site Investigation (PSI) Report No. E24740.E01_Rev3 dated 9 September 2021 prepared by eiaustralia was submitted with the application, which concludes the site is suitable for its intended use.
52. Based on the information provided, a contingency condition has been included in the recommended conditions detailing what is required to take place should unexpected contamination be found during demolition, excavation and construction.

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

53. State Environmental Planning Policy No.65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for RFBs of three or more storeys in height (excluding car parking levels) and containing at least four dwellings. Amendment 3 to State Environmental Planning Policy 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, State Environmental Planning Policy 65 applies.
54. The proposal involves the erection of a new 7 storey RFB (excluding basement car parking) containing 25 apartments and is therefore affected by the State Environmental Planning Policy.

55. In determining DAs to which State Environmental Planning Policy 65 relates, Clause 28(2) of the State Environmental Planning Policy requires that the consent authority take into consideration:
- a) *the advice (if any) obtained from the design review panel, and*
 - b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
 - c) *the Apartment Design Guide.*
56. The proposal was reviewed by Council's Senior Urban Designer each of the nine (9) Design Quality Principles and the provisions of the Apartment Design Guide (ADG). The comments are included and addressed within the table below, along with further comment from Council's Planner.
57. In addition to satisfying the Design Quality Principles, the proposal generally satisfies relevant requirements of the ADG pertaining to design quality and amenity of the apartments. The proposal satisfies the amenity, internal layout and design requirements of the ADG. The Panels comments are summarised and addressed in the table below.

Application of State Environmental Planning Policy 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of "Residential Apartment Development" (RAD)	Complies with definition	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the State Environmental Planning Policy includes mixed use developments.	The erection of an RFB satisfies the State Environmental Planning Policy's definition of this residential land use.	Yes
Design Verification	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect: Peter Smith (Registration No.7024)	Yes

Urban Design Comments	Planner's Comment
<i>It is recommended that amending the proposal to address the existing site topography, even if the topographic changes are not significant, should be taken into consideration.</i>	The minor variation to the height control is acceptable as the breach is limited to point encroachments of the roof and not habitable floor space. Further discussion is provided in the Clause 4.6 assessment section of this report.
<i>The proposal should be amended and the building above the fourth storey should be</i>	The proposed setback of 6m to the NE boundary is discussed in the

<i>setback 9m from the north east boundary.</i>	following table. It is acceptable in this instance as the windows on this elevation are highlight windows, privacy screen are provided to balcony edges, and the approved RFB on the adjacent site is setback 9m at the corresponding levels.
<i>The design should be amended for the basement to be entirely contained within the confines of the building footprint.</i>	Given the square shape of the site and the quality of landscaping along the street frontages, the expanded footprint of the basements are supported in this case and it is considered that requiring a further level of basement parking would not have a significant impact on the availability of landscaping or a better design outcome for the site beyond what is proposed.
<i>The design should be amended to incorporate a visually prominent building entry. Innovation in design to make the building entry aesthetically appealing should be applied. Architectural details, including a canopy at the entrance with the surrounding landscape enhancing the wayfinding should be considered.</i>	The entry lobby and awning on Lacey Street have been widened and a timber batten feature is proposed the height of the building to differentiate the entry from private apartments.
<i>The design should be amended such that the podium adjacent the heritage item relates directly to the height of the heritage item. The podium height of the north west façade should be reduced to maximum 2 storeys with the tower above setback.</i>	Council's Heritage Advisor has raised no concern with the proposed design on relation to the heritage item to then orth.
<i>The design should be amended to provide a better circulation space. Instead of an "L-shaped" circulation corridor, a liner and wider corridor, open at both ends could be a better option than the proposed "L-shaped" corridor.</i>	The L shape provides a simple connection between the main building entry on Lacey Street and the communal open space area in the northern corner of the site. The lift is located close to the front entry for ease of access for visitors to the building.
<i>The design should be amended such that COS is an integral part of the development with easy pedestrian as well sunlight access.</i>	COS is provided on the northern side of the building as well as on Level 6 and is considered a suitable design response for the site.
<i>The building façades, especially the street frontages, should be amended to enhance the streetscape.</i>	The mix of materials and finishes, together with articulated elevations and landscaping will result in a good design outcome for the site.

58. The amended plans, the subject of this assessment report, are considered to be a suitable and acceptable design response for the site.

59. Clause 28 of State Environmental Planning Policy 65 requires the consent authority to take into consideration the provisions of the Apartment Design Code. The table below assesses the proposal against these provisions.

Part 3 and Part 4 – Compliance with the ADG

Clause	Standard	Proposal	Complies
3D - Communal open space	1. Communal open space has a minimum area equal to 25% of the site. Minimum 304sqm	The calculations indicate the total area of communal open space amounts to 327sqm (26% of the site). There are two areas of communal open space provided as part of the development: Ground floor – 241sqm Rooftop – 86sqm	Yes
	2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Well over 50% of the area of communal open space will achieve in excess of 2 hours of solar access during midwinter.	Yes
3E – Deep Soil zones	1. Deep soil zones are to meet the following minimum requirements: Min deep soil area of 7% (85sqm)	Deep Soil Zone (DSZ) calculation = 123sqm (10%)	Yes
	Minimum dimension of 3m	Complies.	Yes
3F- Visual Privacy	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <u>Up to 12m (4 storeys)</u> Habitable - 6m	G – Min. 6m 1 – 3 – Min. 6m 4 & 5 – Min. 6m 6 – Min. 7m	Yes Yes No No Refer to discussion below.

	Non-habitable – 3m <u>Up to 25m (5-8 storeys)</u> Habitable – 9m Non-habitable – 4.5m		
<p>Discussion on separation distances:</p> <p>The proposal fails to meet the required 9m separation distance to the NE boundary at Levels 4, 5 and 6.</p> <p>Despite the numerical non-compliance, the proposal is supported as the windows on the NE elevation are highlight windows, privacy screens are provided to balcony edges and the approved RFB on the adjacent site at Nos. 13-21 Wyuna Street has a setback of 9m to the shared boundary at the corresponding levels, resulting in a suitable design and privacy outcome between the properties.</p>			
3G – Pedestrian Access and entries	<p>Building entries and pedestrian access connects to and addresses the public domain.</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>The building entry is clearly identifiable from Lacey Street.</p> <p>Separate front entries to the ground floor apartments 1, 3 and 4 off Wyuna Street and Lacey Street are provided.</p>	<p>Yes</p> <p>Yes</p>
3H-Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	<p>The dual driveway access to the basement has been provided off Wyuna Street (eastern side of the development site).</p> <p>The size and location of the driveway is considered satisfactory and no conflicts are anticipated with the adjoining development approved next door.</p>	Yes
3J-Bicycle and car parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned and sites within 400m of 	The subject site is not within an “accessible location, pursuant to the ADG and as such compliance with the parking provisions of Part B4 of the Kogarah Development Control Plan 2013 (KDCP) are applicable in this assessment. See below.	N/A

	<p>land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>		
B4 Parking and Traffic Controls of Kogarah Development Control Plan 2013	<p><u>Residential parking:</u> 5 x 1 bedroom units @ 1 space per unit = 5 spaces required</p> <p>14 x 2 bedroom units @ 1.5 spaces per unit = 21 spaces required.</p> <p>6 x 3 bedroom units @ 2 spaces per unit = 12 spaces required</p> <p>Total required resident parking = 38 spaces</p>	38 resident spaces are proposed. 3 of which are accessible.	Yes
	<p><u>Visitor parking:</u> 25 total units @ 1 space per 5 units = 5 spaces required</p>	5 visitor spaces are provided with one space doubling up as a car wash bay.	Yes
	<p><u>Car wash bay:</u> 1 bay, which can also function as a visitor space</p>	1 car wash bay is provided which doubles as a visitor space, nominated as space 1.	Yes
	<p><u>Bicycle Parking:</u> 1 space per 3 dwellings = $25/3 = 8$</p>	8 residential bicycle parking spaces are provided in Basement No C2.	Yes
4A- Solar and daylight access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan	702 (18 apartments) achieve a minimum of 2 hours sunlight in midwinter.	Yes

	<p>Area.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter</p>	<p>4% (81apartment) receives no sunlight due to their location on the southern/street side of the building.</p>	<p>Yes</p>
4B- Natural Ventilation	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p>	<p>100% (25 apartments) are cross ventilated.</p>	<p>Yes</p>
	<p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	<p>The development has been designed to comply with the ADG in that the depth of cross over apartments does not exceed 18m and the design has sensitively considered the location.</p>	<p>Yes</p>
	<p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths</p>	<p>The development provides dual aspect apartments, cross through and corner apartments.</p>	<p>Yes</p>
4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms = 2.7m</p> <p>Non-habitable rooms = 2.4m</p>	<p>The floor to floor heights at each level are 3m in order to cater for slabs, servicing and ducting, however, floor to ceiling heights of 2.7m can be achieved at each level.</p>	<p>Yes</p>
4D-1 Apartment size and layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm</p>	<p>The internal floor areas of each apartment satisfy the requirements of the ADG.</p> <p>1 bedroom = Min. 53sqm 2 bedroom = Min. 75sqm 3 bedroom = Min. 96sqm</p>	<p>Yes</p>
	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p>	<p>Calculated accordingly.</p>	<p>Yes</p>
	<p>Every habitable room</p>	<p>Every Habitable room contains</p>	<p>Yes</p>

	must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	a window in an external wall with glass area greater than 10% of the floor area of the room.	
4D-2 Apartment size and layout	Habitable room depths are limited to a maximum of 2.5 x the ceiling height In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Within prescribed range. Within prescribed range.	Yes Yes
	Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space) Bedrooms have a minimum dimension of 3m (excluding wardrobe space) Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	All master bedrooms have internal areas with a minimum of 10sqm. A minimum dimension of 3m is achieved. Living spaces have a minimum width of 4m. The minimum width of 4m has been achieved.	Yes Yes Yes Yes
4E- Private Open space and balconies	All apartments are required to have primary balconies as follows: - 1 bedroom = 8sqm/2m depth	1 bedroom apartments have minimum areas for their	Yes

	<p>- 2 bedroom = 10sqm/2m depth</p> <p>- 3+ bedroom = 12sqm/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m</p>	<p>balconies of 8sqm depth criterion met.</p> <p>2 bedroom apartments have minimum balcony areas of 10sqm depth criterion met.</p> <p>3 bedroom apartments have minimum balcony areas of 12sqm depth criterion met.</p> <p>All balconies exceed 1m in the area calculated.</p> <p>Ground floor apartments comply with minimum area and dimensions.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	Maximum 4 units per floor.	Yes
4G- Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m³ 2 bedroom – 8m³ 3 bedroom – 10m³</p> <p>At least 50% of storage is to be located within the apartment.</p>	<p>The basement has been designed to provide for individual storage spaces for some apartments. Every apartment includes additional storage areas above the provision of wardrobes in bedrooms.</p> <p>1 bedroom = Minimum 6m³ 2 bedroom = Minimum 8m³ 3 bedroom = Minimum 10m³</p>	Yes - Storage areas are indicated on the floor plans for each apartment which are at least 50% of the total storage provided.
4H- Acoustic Privacy	Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. Window and door openings are generally orientated away from	Achieved	Yes

	<p>noise sources</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas</p> <p>Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources</p>	<p>Achieved</p> <p>Generally acceptable</p>	<p>Yes</p> <p>Yes</p>
4J – Noise and Pollution	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 	<p>The design solutions within the ADG which seeks to minimise noise and acoustic impacts have been considered through the design and layout of apartments.</p>	Yes
4K – Apartment Mix	<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the</p>	<p>The development offers a mix of 1, 2, and 3 bedroom apartments in the following manner:</p> <p>5 x 1 bedroom apartments = 20%</p> <p>14 x 2 bedroom apartments = 56%</p> <p>6 x 3 bedroom apartments =</p>	Yes

	building	24%	
4L – Ground Floor Apartments	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	Four (4) apartments directly address the street and have been designed to provide casual surveillance of the street and privacy for residents.	Yes
4M - Facades	<p>Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.</p>	<p>The facades of the building are well resolved with an appropriate level of articulation including to the street. The proposal adequately addresses Objective 4M-1 of the ADG, which states <i>“Building Facades provide visual interest along the street while respecting the character of the local area.”</i> There is an appropriate degree of expression of vertical scale and modulation within the facades to respect and respond to the existing and future desired streetscape character.</p>	Yes
4N – roof design	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.</p>	<p>The roof design is a mixed flat and pitched roof form which is consistent with the general character and form of the building.</p> <p>The roof includes a secondary area of communal open space to the primary ground floor area which complies with the intention of the ADG.</p>	Yes
4O – Landscape Design	<p>Landscape design is viable and sustainable, contributes to the streetscape and amenity</p>	<p>The landscape design is considered to be well designed with an integrated landscape plan which will improve landscaping across the site and will improve the visual appearance of the development and general nature of the streetscapes that the development adjoins as currently there is limited</p>	Yes

		planting on the street. The conditions includes the planting of 5 street trees.	
4P- Planting on Structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	The design includes a series of planter boxes on structures, adjacent to balconies and bedrooms and the ground floor communal open space. This will enhance the elevations by introducing green walls to the built form.	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory – the design offers a wide variety of apartment styles and forms many of which can be integrated and amalgamated in the future where necessary. Adaptable apartments have been nominated on levels 1, 2 and 3.	Yes
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings - new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	Not applicable.	N/A
4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A compliant BASIX Certificate accompanies the application.	Yes
4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The stormwater and drainage design is considered to be satisfactory and compliant subject to conditions.	Yes
4W – Waste Management	Waste management – storage facilities are	The waste management arrangement is satisfactory.	Yes

	appropriately designed, domestic waste is minimised by convenient source separation and recycling	Private collection of waste will be conditioned.	
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	Suitable materials have been selected for the building finishes.	Yes

Environmental Planning Instruments

Kogarah Local Environmental Plan 2012 (KLEP 2012)

Zoning

60. The subject site is zoned Zone R3 Medium Density Residential under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP2012). Refer to zoning map below. The proposed development is defined as a Residential Flat Building which is a permissible land use in the zone.

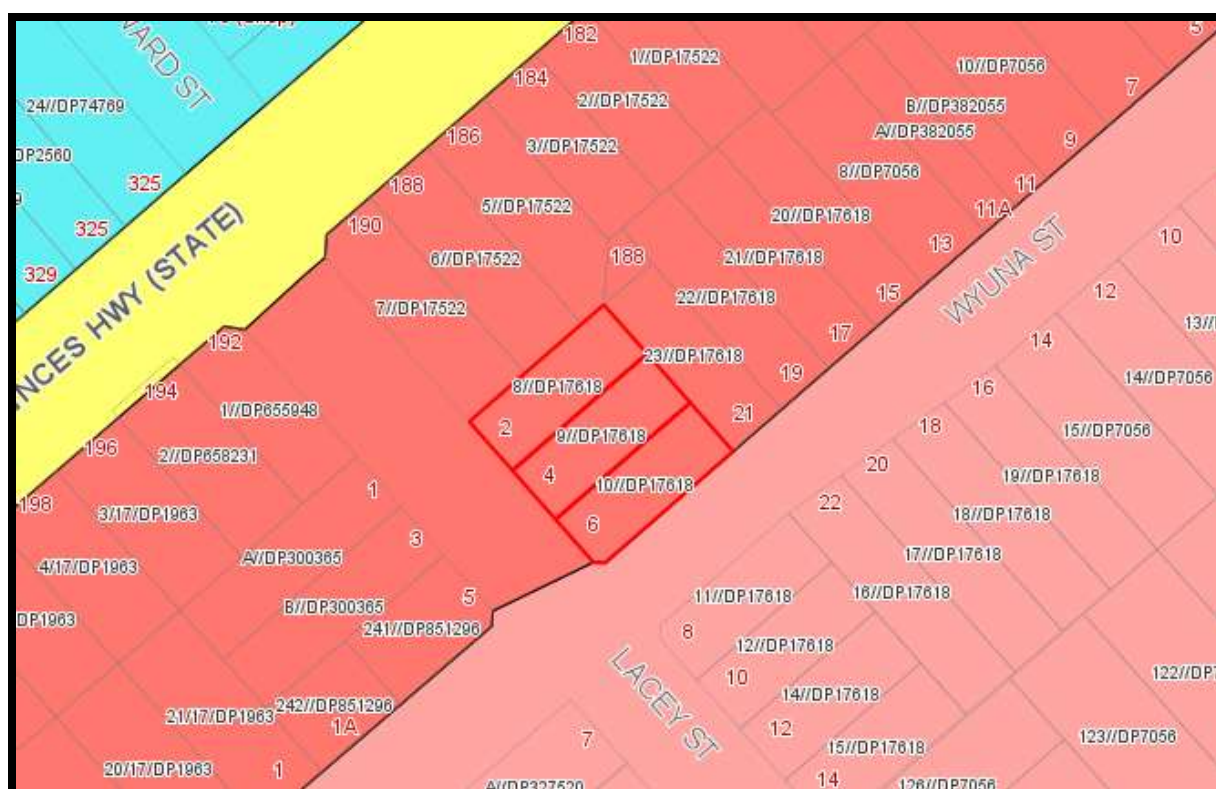


Figure 5: Zoning map the site is outlined in blue

61. The objectives of the zone are as follows:
- *To provide for the housing needs of the community within a medium density residential environment.*
 - *To provide a variety of housing types within a medium density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

62. The proposal satisfies the objectives of the R3 Zone as it will provide for a variety of residential apartments in a medium density residential environment.
63. The extent to which the proposal complies with the relevant standards of Kogarah Local Environmental Plan 2012 (KLEP2012) is outlined in Table 5 below.

KLEP2012 Compliance Table

Clause	Standard	Proposed	Complies
2.2 Zone	R3 Medium Density Residential	The proposal is defined as a Residential Flat Building (RFB) which is a permissible use within the zone.	Yes
2.3 Objectives	Objectives of the Zone	Consistent with zone objectives.	Yes
4.1A Minimum lot sizes for Residential Flat Buildings	Clause 4.1A requires a minimum site area of 1,000sqm for the purpose of RFB's in the R3 zone	The total site area is 1,216sqm.	Yes
4.3 – Height of Buildings	21m as identified on Height of Buildings Map	The building exceeds the 21m height limit. The encroachment includes only the lift overrun which reaches a maximum height of 22.79m. A Clause 4.6 Statement has been submitted and is addressed in detail later in this report.	No
4.4 – Floor Space Ratio	2:1 as identified on Floor Space Ratio Map	1.97:1	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The GFA has been calculated correctly.	Yes
4.6 – Exceptions to Development Standards	The objectives of this clause are as follows: <i>- to provide an appropriate degree of flexibility in applying certain development</i>	The proposal exceeds the height control pursuant to Clause 4.3 of the KLEP and therefore a Clause 4.6 Statement was submitted to justify the non-compliance with the control.	No - A Clause 4.6 Statement has been submitted for the height variation. See the assessment

	<i>standards to particular development, - to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i>		below.
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	The proposal adjoins a Heritage item located at 186-190 Princes Highway identified as 13 “McWilliam House”, a house and garden and the property is of local significance. Council’s Heritage Advisor has reviewed the proposal and raises no concern with the development, subject to a condition in relation to any archaeological finds uncovered during demolition and excavation of the site.	Yes
6.1 Acid Sulphate Soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is not affected by Acid Sulfate Soils under KLEP 2012.	N/A
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	The proposed development includes excavation and associated earthworks to accommodate two (2) levels of basement car parking.	Yes subject to conditions.

6.5 Airspace Operations	The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.	CASA provided comment on the proposal and advised the height of the proposed development is below the Obstacle Limitation Surface (OLS).	N/A
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Exception to Development Standards

Detailed assessment of variation to Clause 4.3 Height of Buildings

64. The objectives of Clause 4.6 are as follows
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
65. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Kogarah Local Environmental Plan 2012 (KLEP) identifies a maximum height of 21m for the site (refer to Figure 7 below) and the proposed development will exceed the height by up to 1.79m which comprises parts of the roof (Figure 8). This amounts to a 8.5% variation to the control. The remainder of the building is below the 21m height limit.
66. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.



Figure 7: Height of buildings map the site is outlined in red

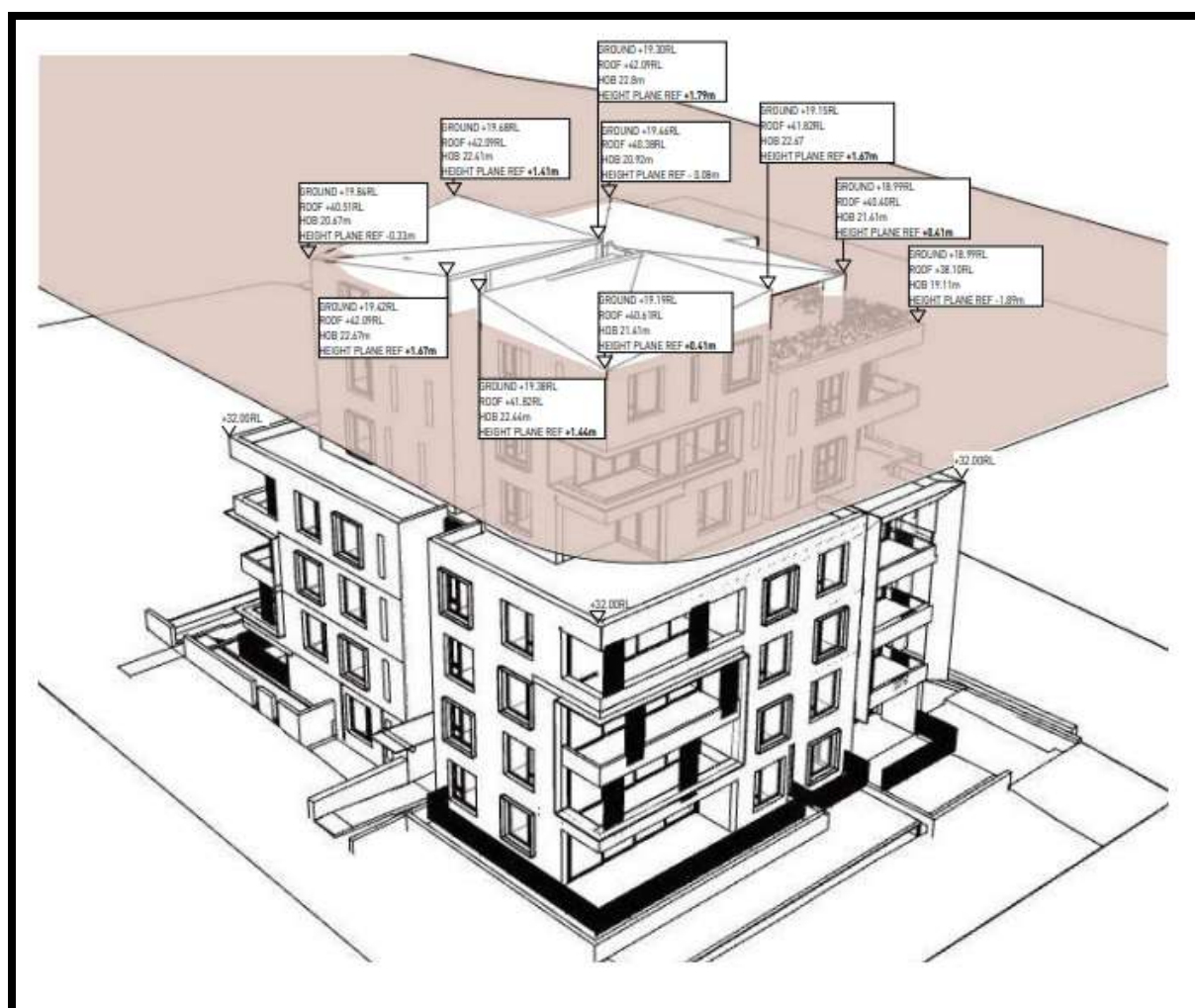


Figure 8: Height blanket diagram

67. Clause 4.6(3) states that:

LPP061-21

“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”*

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

Is the planning control in question a development standard?

69. Height of Buildings control under Clause 4.3 of the KLEP 2012 is a development standard. The maximum permissible height is 21m.

What are the underlying objectives of the development standard?

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

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

71. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.
72. 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.

73. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.

74. Applicant's comment:

"When considering whether a development standard is appropriate and or necessary, the consent authority must take into account the nature of the proposed variation, the site specific context and the design of the proposed development. In this instance it is considered unnecessary to require strict compliance with the standard as:

- *the proposal achieves the objectives of the standard notwithstanding the non-compliance (Wehbe 1)*
- *the particular context and circumstances of the site and existing building, and arrangement of the plan that provides a superior outcome.*
- *the standard is applied consistent with how council have applied the standard in recent and nearby application (Wehbe 4).*

Objectives of the Standard The objectives of Clause 4.3 Height of Buildings are achieved not withstanding the non-compliance with the standard. With respect to the objectives: (a) to establish the maximum height for buildings, The maximum height has been established at 21m for the site. The proposed development provides a residential development and meets the objectives of the R3 Medium Density Residential zone objectives. The proposed development is in line with the type of development envisaged for the site. The degree to which the proposal exceeds the maximum height is relatively minor and importantly is attributed to the ARF and the lift overrun which the ARF screens. It occurs in the centre of the site to minimise overshadowing impacts.

Clause 5.6 Architectural Roof Features states that an ARF 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. The proposed roof structure complies with the objectives of clause 5.6, in that: It creates variety and a point of difference in comparison to other recently approved RFBs in the immediate area, while the pitched roof remains consistent with typical rooflines in the area.

The services (such as lift overruns) are incorporated seamlessly into the roof structure, and don't negatively impact the desired aesthetic of the building when viewed from the surrounding context.

The modulation of the roof is continued closely in the buildings composition. Variation and articulation in the buildings facade is punctuated by different coloured rendered elements that are continued into the varied planes of the roof structure.

The inclusion of the architectural roof feature into the overall design of the building has resulted in a superior design outcome and architectural response, in line with clause 5.6 in that;

- *It is restricted to the uppermost portion of the building.*
- *Is not an advertising structure.*
- *Does not include floor space area, enable additional floor space area, and is not reasonably capable of modification to include floor space area*
- *Causes minimal additional overshadowing (owing in part to the proposals southern corner block position).*
- *All services located on the upper level are contained entirely within the roof feature.*

- *Compliance with clause 5.6 results in a minor but contextual departure from the clause 4.3 HOB development standard.*
- (b) *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,*

The proposed development has minimal impact on the amenity of neighboring properties. The site is located in an area expected to undergo significant change. There are 8 apartment buildings of a similar scale (6-7 storeys) and with a similar visual impact approved or under construction in the streets surrounding the site. The proposed development is appropriately setback from the street, the heritage item and the neighbouring approved residential flat building and is of a scale and bulk envisaged by the controls. It will not have a visual impact incompatible with the desired and emerging medium density character of the area. The massing of the building has been fragmented as the proposal consists of distinct volumes of varying but complimentary colours to further break down building mass.

Shadow diagrams have been prepared that indicate that the proposal results in minimal overshadowing impact. Drawing DA-A-855 provides a comparison between the proposal and the building at the compliant 21m height limit. This drawing illustrates the minor nature of the increase in shadow, with additional shadow generally falling within the road corridor, on the roof of surrounding developments.

The mid-winter shadow is quick moving and has restricted impact on any surrounding development, due to the separation between sites to the south, over the Lacey and Wyuna Street road corridors. Immediate neighbours (with shared boundaries) are to the north-west and north-east of the site, and as such overshadowing impacts from the site are minimal

The extent of the additional shadow is described below;

TIME	COMMENT
9am	Additional shadow falls on the roof of 1a Lacey Street and does not overshadow living room or POS to a greater extent.
10am	The additional shadow falls to the road corridor, the roof of 5 Lacey Street only, and the front setback.
11am	The additional shadow falls to the road corridor, no dwellings are impacted.
12pm	The additional shadow falls to the road corridor, no dwellings are impacted.
1pm	The additional shadow falls to the road corridor, and the roof of 8 Lacey Street. This does not create any additional shadowing to any windows above the shadow created by a building that strictly complies with the height standard. at this time.
2pm	The additional shadow falls to the the roof of 10 Lacey Street. This does not create any additional shadowing to any windows, as they are overshadowed by the roof of 8 Lacey Street at this time.
3pm	The additional shadow falls to the the roof of 12 Lacey Street. This does not create any additional shadowing to any windows, as they are overshadowed by the roof of 10 Lacey Street at this time.

Visual privacy to neighbours has been ensured with appropriate ADG setbacks. In upper level areas close that have the potential to overlook neighbouring properties (namely the development illustrated by the approved DA at 13-21 Wyuna Street), a number of screening features have been employed to mitigate any loss of amenity such as screen planting (please see landscape plans), screening elements to windows, and screening elements to balconies.

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

Objective C seeks to ensure development provides a suitable scale and intensity. The non-compliance of the height does not offend the objective of providing an appropriate scale and intensity of development at the site. The proposal provides a compliant FSR (1.97:1) below the maximum permissible of 2:1 and is therefore demonstrably within the intensity of development intended for the site. The built form, bulk and scale is appropriate for the site and the proposed non-compliance with height will not be perceptible in the streetscape and character of the locality. Further, the scale of the building (7 storeys) is consistent with what is generally accepted within a 21m height limit.

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance. Objectives of the zone The R3 Medium Density Residential zone permits residential flat buildings with consent. The objectives of the zone are achieved notwithstanding the non-compliance with the standard and are as follows;

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

The proposed development will provide increased housing supply for the community within a medium density residential environment. The proposal also provides a variety of housing types ranging from one bedroom to three bedroom apartments, within a large variety of configurations.

The height variation does not contravene any objectives for the zone and for that reason the proposed variation is acceptable.

Consistent application of how council apply the standard

Council have consistently varied the height of building development standard in every development in the vicinity that contains a residential flat building use. This variation has allowed roof forms, lift overruns, parapets, access to communal open space, terraces , roofs and pergolas. The general principle adopted is that in almost all applications the habitable space is located below the height plane. The proposed development is entirely consistent with how council have applied the standard. The only parts of the proposed development that exceed the height limit is the roof and lift over run.

The proposal provides for communal open space that is nestled within the form of the building providing a sun drenched protected space for communal living. A roof provide amenity to this space and exceeds the height limit.

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

75. 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.

76. Applicant's Comment:

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 significant impacts of the proposed non-compliance on the amenity of future building occupants, on area character and on neighbouring properties;

- *The non-compliance is exacerbated by the slope of the site away from Princes Highway with a 1.5m crossfall over the site.*
- *The proposal sets back further than required from the heritage item to give a minimum 9m curtilage.*
- *The variation to building height does not meaningfully impact on solar access, views or outlook and the streetscape appearance is not impacted by the variation. Additional overshadowing is not meaningful (falling on roof tops) owing to the unique corner block position at the southern most point of the block, and the separation from other development due to the Wyuna and Lacey Street road corridors.*
- *As indicated, the proposal provides for a floor space ratio which complies with the maximum permitted and accordingly, the height breach is not associated with additional density beyond what is expected by the controls or planned for the locality.*
- *The additional height is attributed to the ARF which screens the lift overrun and provides a superior and more contextual outcome. It provide for a more interesting roof pitched roof form that takes cues from the pitched roofs that form the character of the area and hides plant an equipment that would otherwise be exposed from view.*

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

77. 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,”*

78. Applicants Comment:

The public benefit is served in the following ways:

- *The minor increase in height allows for an architectural roof feature under clause 5.6 of the KLEP that provides visual interest, screens the lift overrun. This results in a roofline integrated into the facade and architectural expression of the building, and is a superior architectural outcome.*
- *The proposal allows for a generous setback from the heritage item McWilliams House. This ensures that a landscaped curtilage is retained to the item in perpetuity.*
- *Approval for the minor departure from the development standard will not be detrimental to the surrounding area.*

Having regard to the above, it is our opinion that compliance with the maximum height development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and Council has the power to grant the proposed height variation.

1. *to establish the maximum height for buildings,*

79. Officer Comment: The site and its immediately adjoining properties have been recently up scaled to allow for medium to larger scaled development. In part this is due to the location of the sites adjoining a busy roadway as these conditions cater for larger scaled developments. Figure 7 shows the extent of the immediate precinct which allows for a maximum height of 21m.

2. *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,*

80. Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. In terms of visual impact the roof has varied pitches and inclines which reduces its visual appearance from the immediately adjoining streetscapes.

81. The objective seeks to “minimise” the visual impact, it is not requiring it to be eliminated or totally negated, and as such seeing the structure is not a reason for refusal, it’s the impact of the visual interference of this structure that is to be controlled. It can be said that in this case it is point encroachments of the roof which will not be highly visible or an intrusive element given the scale and proportions of the building. It will not be visible from immediately adjoining properties and streetscapes given that it is centrally located and varies in height and incline. There will be no adverse impacts in terms of overshadowing or overlooking to adjoining properties from the encroaching element.

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

82. Officer Comment: New developments of a similar nature have been approved along John Street, Wyuna Street and Princes Highway and have established a precedent for development in the street and immediate precinct. The proposed development is consistent with the pattern of development that is slowly being established in the up-zoned precinct.

83. The proposed encroachment on the maximum height of the building which only relates to point encroachments of the roof can be catered for in this location given the siting, orientation and the fact the buildings comply with the anticipated building envelope which is largely compliant with the ADG and Kogarah Development Control Plan in terms of the separation distances, landscaped area requirements, front setback control etc. The proposed development is considered to satisfy the objectives of the development standard.
84. Officers comment: The exceedance of the control generally satisfies the objectives of the zone for the following reasons:
- *To provide for the housing needs of the community within a medium density residential environment.*
85. The development is providing for the housing needs within a medium density residential environment with a mix of apartment choices and layouts.
- *To provide a variety of housing types within a medium density residential environment.*
86. The development incorporates a diversity of apartment types (offering 1, 2, and 3 bedroom apartments, including adaptable apartments).
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
87. The development is residential in nature and does not include any additional land uses. This objective is offering some greater flexibility in the provision of land uses within this zone and is not a mandatory requirement.
88. The area of non-compliance is considered to be reasonable and will not establish an undesirable precedent. It will not have any adverse effect on the surrounding locality, which is emerging to be characterised by residential development of comparable character. The proposal promotes the economic use and development of the land consistent with its zone and purpose. The Panel is requested to invoke its powers under Clause 4.6 to permit the variation proposed.
89. The public benefit of the variation is that it will appropriately facilitate the provision of medium density housing on a R3 zoned site and provide for a range of housing stock. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.
90. 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 have a better environmental planning outcome than a development that complies with the development standard.

91. The shadow diagrams submitted with the architectural plans demonstrate the non-compliance does not result in any additional shadow beyond a compliant built form due to the shadow being cast from the topmost wall on the south eastern elevation of the building.
92. In this case the proposal seeks to establish the preferred and appropriate design and built form outcome for this site with the building complying in large with the height standard. There will be no adverse amenity or visual impacts generated by the variation and the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request.

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

93. Concurrence from the Secretary has been obtained and can be assumed in this case.
94. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).

Georges River Local Environmental Plan 2021

95. The Georges River Local Environmental Plan 2021 was gazetted on 8 October 2021.
96. In relation to this development site the zoning, height and floor space ratio remain unchanged.
97. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.
98. In this regard, the provisions have no determining weight because of the operation of Clause “1.8A Savings provisions relating to development applications” of the Draft Plan which provides “*If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.*”

Development Control Plans

KOGARAH DEVELOPMENT CONTROL PLAN NO 2013 (KDCP)

99. The following compliance table is an assessment of the proposal against the relevant Development Control Plan controls.

Kogarah Development Control Plan 2013 Compliance Table		
PART B – GENERAL CONTROLS		
Required	Proposed	Complies
B2 Tree Management and Greenweb		
Compliance with provisions of Clause 5.9 Preservation of Trees or Vegetation of KLEP 2012 must	The proposal meets the requirements of State Environmental Planning Policy (Vegetation in non-rural areas) 2017.	Yes

be achieved.		
B3 – Development near busy roads and rail corridors		
Acoustic assessment for noise sensitive development may be required if located in the vicinity of a rail corridor or busy roads	An Acoustic report was prepared by Acoustic Logic and assessed the development against the provisions of Clause 102 of the Infrastructure State Environmental Planning Policy. The acoustic report provided a series of recommendations in the form of implementing construction techniques and materials that will assist in ameliorating acoustic impacts on the internal areas of the building. A detailed discussion regarding the acoustic compliance was conducted earlier in this report and considered adequate subject to conditions.	Yes
B4 Parking and Traffic		
<u>Residential parking:</u> 5 x 1 bedroom units @ 1 space per unit = 5 spaces required 14 x 2 bedroom units @ 1.5 spaces per unit = 21 spaces required. 6 x 3 bedroom units @ 2 spaces per unit = 12 spaces required Total required resident parking = 38 spaces	38 residential spaces provided.	Yes
<u>Visitor parking:</u> 25 total units @ 1 space per 5 units = 5 spaces required	5 visitor spaces provided, one doubling up as a car wash space.	Yes
<u>Car wash bay:</u> 1 bay, which can also function as a visitor space	1 car wash bay is provided which doubles as a visitor space.	Yes
<u>Bicycle Parking:</u> 1 space per 3 dwellings = 8 1 space per 10 dwellings for visitors = 2 spaces Total = 10 spaces required	8 residential bicycle parking spaces are provided in Basement C2. The deficiency of two visitor bike parking spaces is considered acceptable in this case.	Yes
Car park access and layout to comply with relevant Australian Standards	Ramps, parking, aisle widths and parking spaces satisfy the provisions of AS2890.	Yes
B5 – Waste Management and Minimisation		
Submit Waste Management Plan (WMP) Provide a dedicated caged area within the bin room for the storage of discarded bulky items.	WMP was submitted with the DA. The building contains a waste chute and bin store room and a bulky waste store area in Basement Level C1.	Yes
B6 – Water Management		
All developments require consideration of Council's Water Management Policy	The proposed method of stormwater management is considered satisfactory subject to conditions.	Yes

B7 – Environmental Management		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	Design, materials, siting and orientation generally optimise solar efficiency, with a high proportion of north facing window openings. The development is BASIX-compliant.	Yes

Part C2- Medium Density Housing – Kogarah Development Control Plan 2013		
Part 1 Residential Flat Buildings		
Required	Proposed	Complies
1. Minimum site requirements		
1000sqm minimum lot size	1,216sqm	Yes
24m minimum frontage	Wyuna St 31.775m Lacey St 35m	Yes
2. Site isolation and amalgamation		
Adjoining sites not to be left isolated.	The proposal does not cause any site isolation.	Yes
Site amalgamation requirements apply for specific sites.	The site is not subject to any amalgamation requirement.	N/A
3. Building Setbacks		
<u>Front setbacks</u> Up to four (4) storeys – 5m Above four (4) storeys – 8m (increased setback may be required if street is <20m wide)	To Wyuna St and Lacey St: Minimum - 5m Minimum - 8m	Yes Yes
<u>Side boundary setbacks</u> Up to four (4) storeys – 6m	<u>Ground:</u> Minimum – 6m	Yes
Up to four (4) storeys – 6m	<u>Levels 1,2,3:</u> Minimum – 6m	Yes
Above four (4) storeys – 9m	<u>Levels 4,5:</u> Minimum – 6m	No – refer to discussion in ADG table.
Above four (4) storeys – 9m	<u>Level 6:</u> Minimum – 7m	No – refer to discussion in ADG table.
<u>Rear boundary setbacks</u> Up to four (4) storeys – 6m Above four (4) storeys – 12m	Not applicable – corner lot – refer to side setbacks above.	NA
<u>Encroachments into boundary setbacks:</u> Ground floor private open space may encroach up to 2m into the 5m front setback leaving a min 3m of landscaped area to the street.	Not proposed.	Yes
Ground floor private open space		

may encroach up to 3m into the side setback leaving a min 3m of landscaped area to the street.	Not proposed.	Yes
Setbacks are to be landscaped	All setbacks are landscaped.	Yes
Powerlines to be underground	Standard condition imposed.	Yes
Sub-stations, fire booster valves and waste bin storage structures need to be integrated into the development and identified at the DA stage.	Indicated on the plans in a suitable location.	Yes
4. Basement Setbacks		
3m from site boundaries		
South (Wyuna St)	0.2m	No
West (Lacey St)	3m	Yes
North (side)	Max. 0.798m	No
East (side)	1.5m to 3.2m	No
Discussion on basement setbacks:		
<p>Despite the non-compliance of the basement setbacks to the site boundaries other than Lacey Street, the proposal is supported as it meets the objectives of the control, which are:</p> <p>(a) <i>To limit the extent of excavation in the proximity of the site boundaries.</i></p> <p>(b) <i>To provide opportunities for deep soil landscaping and new tree planting.</i></p> <p>(c) <i>To accommodate opportunities for on-site infiltration of stormwater.</i></p> <p>(d) <i>To accommodate landscaping that will contribute to the tree canopy of Georges River and provide shade and screening for residential development and reinforce a landscaped street character.</i></p> <p>Deep soil planting across the entire site is 10%, which exceeds the ADG requirement of 7%. Canopy trees are capable of growing in the Lacey Street setback and five additional street trees are to be planted on Wyuna St and Lacey Street to further increase canopy cover.</p>		
Basement setback areas are to be deep soil areas as defined in the ADG	The basement setback areas provided are deep soil.	Yes
Driveways and crossings are to be located a minimum of 1.5m from a side boundary	2m setback to eastern site boundary	Yes
5. Façade Treatment and Street Corners		
Building facades to be clearly articulated with high quality materials and finishes.	Satisfactory – a mix of rendered masonry, face brick, metal, timber look cladding and glass.	Yes
Modulation and articulation in the building form to be explored.	Satisfactory – the facades are well articulated through different finishes, balconies and setbacks.	Yes
Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding and green walls should be considered as alternatives.	Satisfactory - a mix of materials and finishes are proposed.	Yes

Clear glazing balustrades to be avoided where they are visible from the public domain.	Satisfactory – a mix of glass and metal balustrades are proposed.	Yes
6. Landscaped area and Private Open Space		
A minimum 10% of the site is to be landscaped area that is not impeded by buildings or structures above or below ground level with a minimum dimension of 2m on two axes.	10% and compliant widths achieved.	Yes
Private open space to be adjacent to and visible from the main living area/dining rooms and be accessible	Provided for each apartment.	Yes
Private open space and balconies must comply with Part 4E of the ADG	All apartments comply.	Yes
7. Common Open space		
Common Open Space to be a minimum of 25% of the site area with a minimum dimension of 5m.	Communal open space provided is 327sqm (26%) with a minimum 5m dimension.	Yes
A maximum of 50% of common open space may be provided above ground level.	26% COS is provided on the rooftop.	Yes
At least 50% of the required common open space area is to receive 2 hours of direct sunlight between 9am and 3pm on 21 June.	Greater than 50% of the communal areas will receive more than 2 hours direct sunlight during midwinter.	Yes
A minimum of 50% of the total area of common open space provided at ground level is to comprise unpaved landscape area.	Complies.	Yes
The useable and trafficable area of any rooftop common open space is to be setback a minimum of 2.5m from the edge of the roof of the floor below with landscape planters to prevent overlooking.	Complies – setbacks achieved.	Yes
Roof top open space areas should include equitable access.	Equitable access via lifts and ramps have been provided throughout the development.	Yes
Ancillary structures such as lift overruns and staircases should be centralised to reduce their visual dominance.	Fire stairs and lift over runs are centrally located.	Yes
8. Solar Access		
Where the neighbouring	Given the lot orientation and the	Yes

properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June)	nature of the development approved on the adjoining allotments the minimum solar access can be achieved.	
9. Vehicular access, parking and circulation		
Car parking to be provided in accordance with Part B4 unless objective 3J-1 of the ADG applies.	The development complies with the Kogarah Development Control Plan numerical parking requirements.	Yes
Car parking layout and vehicular access complies with AS2890.1-2004	Complies – will be reinforced via conditions of consent.	Yes
All residential flat buildings to provide car wash bay	A visitor car wash bay has been provided (car space 1). The Kogarah Development Control Plan allows for a visitor space to double as a car wash bay.	Yes
10. Views and view sharing		
Provide for reasonable sharing of views	The location does not have significant views. The development generally complies with height requirements and is reasonable in terms of view sharing.	Yes
11. Dwelling Mix		
Dwellings that propose more than 10 dwellings are to provide a mix of dwellings as follows: Studio apartments and 1 bed apartments - 20% min 2 bed apartments – 30% max 3 bed apartments – 15% min	The proposal includes the following apartments mix: 5 x 1 bedroom apartments = 20% 14 x 2 bedroom apartments = 56% 6 x 3 bedroom apartments = 24%	No however the proposal provides a suitable mix of 1, 2 & 3 bedroom apartments.
12. Adaptable and accessible housing		
(iii) 21-30 units – 3 adaptable units 25 units proposed – 3 adaptable units required Every adaptable unit needs to have an accessible car space.	25 apartments are proposed which requires that 3 adaptable apartments are provided. 3 adaptable apartments are proposed with provision for accessible parking.	Yes Yes

Interim Policy – Georges River Development Control Plan 2020

100. Council at its Environment and Planning Committee Meeting dated 11 June 2019 resolved to adopt the Georges River Interim Policy Development Control Plan.
101. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current Development Control Plan controls will prevail if they are considered best practice. The Interim Policy has no statutory

recognition in the assessment of DAs pursuant to the Environmental Planning and Assessment Act, 1979 (EP&A Act).

102. An assessment of the proposal has been carried out against the provisions of the Interim Policy as set out in the following table.

Interim Policy – Georges River Development Control Plan 2020		
Standard	Proposed	Complies
Site Frontage		
20m	Wyuna St 31.775m Lacey St 35m	Yes
Building Height		
The relevant LEP controls relating to building height will prevail over Development Control Plan controls that relate to height in storeys	The proposal exceeds the height control but is supported by the provision of a Clause 4.6 Statement. This statement is considered to be well founded as discussed in detail earlier in this report.	Yes
Private Open Space		
The ADG requirements prevail over the Development Control Plan controls for private open space	The proposal is fully compliant with the ADG's private open space requirements. Refer to "4E – Private Open Space and Balconies" within the ADG Compliance Table above.	Yes
Communal Open Space		
The ADG requirements prevail over the Development Control Plan controls for COS	The proposal is considered to comply with the requirements of the ADG with respect to COS. Refer to "3D – Communal Open Space" within the ADG Compliance Table above.	Yes
Parking		
In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment): <ul style="list-style-type: none"> • If located in a strategic centre (ie Kogarah CBD and Hurstville CBD) and within 800m of a Railway, the "Metropolitan Regional Centre (CBD)" rates apply. • If located within 800m of a railway and outside the strategic centres the "Metropolitan Subregional Centre" rates apply. • If located outside of 800m of a Railway, the relevant Development Control Plan 	The Kogarah Development Control Plan parking requirements need to be satisfied as the site is not located near a railway station or close to a commercial centre in accordance with the ADG provisions.	The proposal satisfies the numerical requirements of the Kogarah Development Control Plan.

applies.		
Solar Access		
The ADG requirements prevail over the Development Control Plan controls for solar access	The proposal meets the ADG Solar Access requirements as detailed within the ADG Compliance Table above. Refer to “4A – Solar and Daylight Access” within the ADG Compliance Table.	Yes

DEVELOPER CONTRIBUTIONS

103. The proposed development would require payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979. If the development consent is granted a condition outlining the required contributions will be imposed.
104. The table below shows the contributions which are applicable for this development. A condition is imposed if consent is issued that reflects the contributions as stated.

Kogarah Section 94 Contribution Plan No.1 – Road and Traffic Management – Residential	\$4,768.12
Kogarah Section 94 Contribution Plan No.5 – Open Space	\$248,214.92
Kogarah Section 94 Contribution Plan No.9 – Kogarah Libraries – Books	\$5,809.57
Kogarah Section 94 Contribution Plan No.9 – Kogarah Libraries – Building	\$4,142.16
Total Development Contributions payable	\$262,934.77

IMPACTS

Natural Environment

105. The proposed development will not adversely affect the natural environment subject to the site being planted with replacement trees as shown on the approved landscape plan. The removal of existing trees has been reviewed by Council's Consultant Arborist and is deemed acceptable subject to conditions.

106. The proposal includes excavation that has been assessed as being reasonable in the context of the site and consistent with the extent of excavation expected in an R3 Medium area that has seen uplift in building height and FSR to permit the construction of basement car parking. Excavation impacts will be managed through standard conditions of consent that have been imposed to protect the environment with respect to contamination and impact onto adjoining allotments and the public domain.

Built Environment

107. The proposal represents an appropriate planning outcome for the site with respect to its bulk, scale and density, façade articulation and expression and is an appropriate response to the context of the site and its R3 Medium Density Residential zoning.
108. The buildings four (4) storey podium with recessed upper levels will also ensure that it has an appropriate relationship with the lower scaled R2 zoned residential properties on the opposite side of Wyuna Street, and will provide a reasonable transition between those R2 zoned dwelling houses and existing development fronting Princes Highway which is to the north of the site.

Social Impact

109. No adverse social impacts have been identified as part of the assessment. The proposed development, in principle, will cater for a cross-section of the community and will assist with providing for additional housing in the area. The construction of residential apartments on the site is consistent with the residential zoning of the land.

Economic Impact

110. There is no apparent adverse economic impact that is likely to result within the locality due to the construction of additional apartments. The construction of these apartments was to be reasonably expected as a result of the New City Plan's gazettal. The impact of new development on nearby property values is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. It is likely there will be a small positive economic impact as a result of the construction of the development.

Suitability of the site

111. The site is zoned R3 – Medium Density Residential. The proposal is a permissible form of development in this zone and has been designed to reflect the context of the area as it evolves and as it exists. This immediate precinct is going through a process of change and transition and the proposal is in line with the intentions of Council's recent up-zoning of these sites.

SUBMISSIONS AND THE PUBLIC INTEREST

112. The application was neighbour notified in accordance with Kogarah Development Control Plan 2013 for a period of fourteen (14) days. No submissions were received.

REFERRALS**Council Referrals**Development Engineer

113. The application was referred to Council's Development Engineers for comment, they are satisfied with the stormwater drainage arrangement subject to the imposition of conditions of consent should the application be approved.

Traffic Engineer

114. The application was referred to Council's Traffic Engineer for comment. The proposed car parking and access arrangements are considered to be compliant with Council's controls and are satisfactory. Standard conditions are recommended to ensure compliance will be achieved with Australian Standards during and after construction should the application be approved.

Environmental Health Officer

115. Council's Environmental Health Officer has raised no objection to the proposal subject to conditions of consent should the application be approved.

Consultant Arborist

116. Council's Consultant Arborist has raised no objection subject to conditions of consent.

Waste Co-ordinator

117. Private waste collection is proposed for the development which is supported by Council's Waste Co-ordinator in this case. Conditions of consent are imposed should the proposal be approved.

External Referrals

Ausgrid

118. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid did not raise any objection to the proposal, no conditions recommended.

Sydney Airport

119. The application was referred to Sydney Airport. A formal response was provided and concurrence was obtained.

CONCLUSION

120. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is considered to be a reasonable development form given the intensification of site and the proposed additional scale, bulk and height is considered to be an acceptable planning and design outcome for this site and will be consistent with the desired future character of development in the R3 zoned land in this location and immediate locality.
121. The proposal has been assessed against the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013. The proposal satisfies the key planning controls in the Kogarah Local Environmental Plan apart from exceeding the height limit for parts of the roof. A Clause 4.6 Statement has been submitted with the application justifying the variation in this case.
122. The proposed development design satisfies the objectives of both the height control and the zone and the Clause 4.6 Statement is considered to be well founded as there will not be any direct or adverse environmental impacts generated, the proposal satisfies the requirements of Clause 4.6 of the Kogarah Local Environmental Plan 2012.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

123. The reasons for this recommendation are:
- The proposal is an appropriate response to the “up-zoning” of the site (including increased Floor Space Ratio and height limits) afforded by the Kogarah “New City Plan”. The seven (7) storey building will provide an effective transition between future development facing the Princes Highway and two (2) storey low density residential on the opposite side of Wyuna Street.
 - The proposed development complies with the requirements of the relevant environmental planning instruments and development control plan except with the building height of the development which is considered acceptable having regard to the justification provided in the report above.
 - In this case the Clause 4.6 Statement is considered to be well founded and the non-compliance with the height control is reasonable in the circumstances of the case.
 - The proposal generally achieves compliance with the Apartment Design Guide with respect to both internal and external amenity.
 - The proposed design has been sensitively considered to be consistent with the anticipated desired future character for development in this area.
 - 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 aims to provide a high-quality building that will establish a positive urban design outcome, setting the architectural and planning precedent in the area.

Determination

124. 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 DA2021/0211 for site consolidation, tree removal demolition of existing structures and construction of a seven (7) storey Residential Flat Building development comprising 25 residential apartments with basement car parking for 43 vehicles including landscaping and site works on Lots 8, 9 and 10 in DP17618 known as 2-6 Lacey Street, Kogarah Bay, 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
Notes	DA-A-001	19/5/21	C	Smith & Tzannes
Site Plan	DA-A-010	12/4/21	B	Smith & Tzannes
Basement C2	DA-A-100	2/9/21	D	Smith & Tzannes
Basement C1	DA-A-101	2/9/21	D	Smith & Tzannes
Level 0 (Ground)	DA-A-102	2/9/21	D	Smith & Tzannes
Level 1	DA-A-103	19/5/21	C	Smith & Tzannes
Levels 2-3	DA-A-104	19/5/21	C	C
Level 4	DA-A-105	19/5/21	C	Smith & Tzannes
Level 5	DA-A-106	19/5/21	C	Smith & Tzannes
Level 6	DA-A-107	19/5/21	C	Smith & Tzannes
Roof	DA-A-108	2/9/21	D	Smith & Tzannes
Adaptable and Silver Apartments	DA-A-109	12/4/21	B	Smith & Tzannes
Demolition Plan	DA-A-110	12/4/21	B	Smith & Tzannes
Excavation Plan	DA-A-111	12/4/21	B	Smith & Tzannes
Section NE-SW	DA-A-200	19/5/21	C	Smith & Tzannes
Section SW-NE	DA-A-201	19/5/21	C	Smith & Tzannes
Section Entry Ramp	DA-A-202	19/5/21	C	Smith & Tzannes
Section Entry	DA-A-203	19/5/21	C	Smith &

Ramp				Tzannes
Elevation NW	DA-A-204	12/4/21	B	Smith & Tzannes
Elevation SW	DA-A-205	2/9/21	D	Smith & Tzannes
Elevation NE	DA-A-206	12/4/21	B	Smith & Tzannes
Elevation SE	DA-A-207	2/9/21	D	Smith & Tzannes
Façade Details	DA-A-208	12/4/21	B	Smith & Tzannes
Façade Details	DA-A-209	12/4/21	B	Smith & Tzannes
Landscape Plans	Sheets 1-3	6/9/21	F	Paul Scrivener Landscape

Separate Approvals Required Under Other Legislation

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

The following information is to be submitted with a Hoarding Application under Section 68 of the [Local Government Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>> and Section 138 of the [Roads Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>>:

- A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and
- Hoarding plan and details that are certified by an appropriately qualified engineer; and
- The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available at www.georgesriver.nsw.gov.au <<http://www.georgesriver.nsw.gov.au>>) before the commencement of work; and
- Public Risk Insurance Policy with a minimum cover of \$20 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party.

3. **Below ground anchors - Information to be submitted with S68 Application under LGA 1993 and S138 Application under Roads Act 1993 (APR7.8)**

In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application must be lodged with Council under Section 68 of the [Local Government Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>> and the [Roads Act 1993](http://www.legislation.nsw.gov.au/) <<http://www.legislation.nsw.gov.au/>> for approval, prior to commencement of those

works. The following details must be submitted.

- a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.
- b) The applicant has indemnified Council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of council.
- c) Documentary evidence of such insurance cover to the value of \$20 million.
- d) The applicant must register a non-terminating bank guarantee in favour of Council for the amount of **[\$50,000]**. The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
- e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.

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

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

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

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

- (l) If any excavation is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways.

These separate activity approvals must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate. The relevant Application Forms for these activities can be downloaded from Council's website www.georgesriver.nsw.gov.au. For further information, please contact Council's Customer Service Centre on (02) 9330 6400.

5. Vehicular Crossing – Major Development - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:

- (a) New 1.5m wide footpath to be constructed for full frontage of the site in accordance with Council's Specifications for footpath, applying at the time construction approval is sought.
- (b) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
- (c) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
- (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

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

Requirements of Concurrence, Integrated & Other Government Authorities

- 7. Electricity Supply** - An application is required to be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application being lodged with Ausgrid is required to be provided to the Certifying Authority prior to the issue of a Construction Certificate. For further details, you are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services).
- 8. Connection to the network will be required prior to the release of any Occupation Certificate**- Where works within the road reserve are to be carried out by the developer, a Road Opening Permit must be obtained from Council's Customer Service Centre before commencement of work.
- 9. Electricity Supply to Development** - The electricity supply to the Development must be underground.
- 10. Electricity Supply to development** – All existing overhead power lines within or at the

immediate street frontage to the development site shall be relocated underground to Energy Australia standards and specifications. If not practicable to relocate the power line underground, arrangements shall be made with Energy Australia to place the conduit to carry those power lines underground so that they can be utilised at a later date by Energy Australia. In this regard all associated costs shall be borne by the applicant.

11. **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.
12. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the [Sydney Water Act 1994 <http://legislation.nsw.gov.au/>](http://legislation.nsw.gov.au/) must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

13. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the [Sydney Water Act 1994 <http://legislation.nsw.gov.au/>](http://legislation.nsw.gov.au/) must be submitted to the PCA prior to the issue of the Occupation Certificate.

Prior to the Issue of a Construction Certificate

14. **Vehicular Access Grades** - While reconfiguring, realigning and proposing any vehicular access, the applicant must submit a profile (longitudinal section) demonstrating access clearance by the B85 Design Vehicle (85% percentile vehicle in accordance with AS2890.1 2004) for the entry.

This profile (scale 1:20) is to show levels and grades from road centreline to the proposed internal garage floor level including but not limited to levels of, road centreline, changes of grade on road surface, lip of gutter, invert of gutter, back of vehicular crossing (gutter layback), front of path, back of path and boundary. The profiles provided are to also include the natural surface of the land as well as the proposed design including cut and fill dimensions.

Additional profiles are to be provided on either side of driveway when longitudinal grade of road exceeds 8%.

The profile will be used to assess suitability of proposed internal driveway levels and does not represent final footpath or road levels. The levels on Council's road related area including boundary level will be verified following the submission of an "Application for Driveway Crossing and Associated Works on Council Road Reserve" issued under Section 138 Roads Act.

15. **Stormwater System – General** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.
- (a) All stormwater shall be drained in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
 - (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.
16. **Protection of basement from inundation of stormwater waters** - The protection of the underground basement shall be protected from possible inundation by surface waters from the street. Evidence from a professional engineer who specialises in hydraulic engineering that this design requirement has been adhered to shall be submitted with the Construction Certificate application.
17. **On-site Stormwater Detention** - The submitted Concept Stormwater and OSD Plan prepared by Xavier Knight with reference to plans as follows:
- i. **"Stormwater Management Ground Floor Plan", Job No. 210219, Drawing No. C102, Rev 3, Sheet 1**, dated 20/5/2021, prepared by Xavier Knight.
 - ii. **"Stormwater Management Plan Ground Floor Plan", Job No. 210219, Drawing No. C103, Rev 1, Sheet 2**, dated 23/4/2021, prepared by Xavier Knight.
 - iii. **"Drainage Details", Job No. 210219, Drawing No. C200, Rev 1, Sheet 1**, dated 20/5/2021, prepared by Xavier Knight.
 - iv. **"Drainage Details", Job No. 210219, Drawing No. C201, Rev 2, Sheet 2**, dated 12/4/2021, prepared by Xavier Knight.
 - v. **"Stormwater Management Basement Plan", Job No. 210219, Drawing No. C100/C101, Rev 1, Two sheets**, dated 12/4/2021, prepared by Xavier Knight.
- a) The above drainage plans have been assessed as a concept plans 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.
 - b) An OSD facility designed by a professional engineer who specialises in Hydraulic engineering must be designed, approved and installed.
 - c) The required OSD storage requirements and permissible discharge are to be calculated in accordance with Table 3 of Council's Stormwater Management Policy.
 - d) A minimum 34.20 cubic metre OSD volume is to be provided in accordance with the Stormwater Concept Plan and Council's Stormwater Management Policy.

- e) An additional 900x900 square grate is to be installed in between the two proposed grates on the top surface of the OSD tank in order to allow cross ventilation & tank's inspection conveniently from the top of the tank.
- f) A minimum depth of the OSD tank shall be 800mm to be maintained.
- g) The OSD facility shall be designed to meet all legislated safety requirements. A durable metal plate or similar sign is to be placed at the OSD facility and must bear the words:

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

- h) Full details shall accompany the application for the Construction Certificate.

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

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

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

19. Stormwater Drainage Application

This Development Consent does not give approval to undertake new street drainage pits and pipes works on public infrastructure as per Stormwater Drainage Plans below:

- i. ***"Stormwater Management Ground Floor Plan", Job No. 210219, Drawing No. C102, Rev 3, Sheet 1***, dated 20/5/2021, prepared by Xavier Knight.
- ii. ***"Stormwater Management Plan Ground Floor Plan", Job No. 210219, Drawing No. C103, Rev 1, Sheet 2***, dated 23/4/2021, prepared by Xavier Knight.

A separate approval of a Stormwater Drainage Application is required under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993 to undertake:

- (a) Stormwater & ancillary works in the road reserve. This includes new pits/pipes and associated connections to Council's drainage systems.
- (b) Stormwater & ancillary to public infrastructure on private land

The Stormwater Drainage Application approval must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

The Application Form for this activity 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.

20. Driveway Construction Plan Details

Detailed engineering plans for the driveway shall be submitted with the Construction Certificate application for approval that show:

- a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
- b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).
- c) A longitudinal driveway sections are to be prepared by a qualified civil/traffic engineer and be submitted for to and approved by the Certifying Authority. These profiles are to be at 1:100 scale along both edges of the proposed driveway, starting from the centreline of the frontage street carriageway to the proposed basement floor level.
- d) The civil/traffic engineer shall provide specific written certification on the plans that:
 - (i) Vehicular access can be obtained using grades of 25% (1 in 4) maximum; and
 - (ii) All changes in grade (transitions) comply with Australian Standard 2890.1 (2004)

21. Traffic Management – Compliance with AS2890.2

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). A certification is to be submitted from a qualified consulting traffic engineer outlining that traffic management systems design complied with AS2890.2.

22. Structural details - Engineer's details prepared by a practising consulting Structural Engineer being used to construct all reinforced concrete works including but not limited to structural beams, columns, OSD Tank structures design and other structural members. The details are to be submitted to the Certifier for approval prior to construction of the specified works. A copy shall be forwarded to Council where Council is not the Certifier.

23. 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.
- b) No. 190 Princes Highway, Kogarah Bay.

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.

- 24. Structural engineering assessment** - Prior to the issue of any Construction Certificate, a Structural Engineering assessment report accompanied by working drawings and specifications, must be submitted to the satisfaction of Council and must demonstrate the measures that will be implemented, together with the methodology for undertaking excavation works both within the vicinity and adjacent to the heritage item at Nos. 186-188 Princes Highway Kogarah Bay.

The Structural Engineering assessment report, working drawings and specifications, must:

- a) Be prepared by a suitably qualified Structural Engineer with demonstrated experience in dealing with items of heritage significance and heritage fabric; and
- b) Demonstrate that the heritage item can be retained in a safe manner that will not require material affectation (such as deconstruction, new penetrations or the like) to otherwise underpin, support or ensure the retention; and
- c) Demonstrate and certify that the excavation works will not cause the collapse in part or in full of any section of the building, its footings or substrate, as shown on the approved to be retained.

- 25. 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 including, but not limited to (address) and (address) 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.

26. Construction Traffic Management Plan [Large Developments only] - A Construction Traffic Management Plan detailing:

- (a) construction vehicle routes;
- (b) anticipated number of trucks per day;
- (c) hours of construction;
- (d) Access arrangements; and
- (e) Proposed traffic measures to minimise impacts of construction vehicles

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

27. State Environmental Planning Policy 65 Design Verification Statement - A design verification statement, prepared by a qualified designer, shall be submitted to the Certifying Authority verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of [State Environmental Planning Policy No 65 -Design Quality of Residential Flat Development](#).

28. NBN Connection - Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
- (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

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

29. Landscape Plans – All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Paul Scrivener Landscape, Rev F, sheets 1, 2 and 3 dated 06/09/21. The landscaping must be maintained in accordance with the approved plans in perpetuity, subject to the following -

- a) The proposed thirty-one (31) trees and all plant species, pot/ bag size and quantities of plants must be in accordance with the proposed plant schedule upon the landscape plan and planted within the site.
- b) The proposed five (5) street trees values must be paid to Council, for Council to plant upon the street verge.
- c) The applicant must engage with a registered and licenced nursery grower early within the build phase, to ensure all trees and plants, pots / bag sizes and quantities are guaranteed at the time of landscape and planting phase. The landscape Architect must provide a letter of compliance upon receipt of purchasing of all trees and plants.
- d) The thirty-one (31) trees proposed to be planted and upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification;
- e) If the planted trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.

30. Compliance with submitted Arborist Report

- f) The recommendations outlined in the Arborist's Report titled Arboricultural Impact Appraisal and Method statement prepared by Naturally Trees dated 15th April, 2021 must be implemented throughout the relevant stages of construction. Details of tree protection measures to be implemented must be detailed and lodged with the Construction Certificate application for approval and shall be in accordance with Section 4 - *Australian Standard AS 4970-2009: Protection of trees on development sites*.
- g) The tree/s to be retained and protected are listed in the table below.

Tree Species	Location of Tree / Tree No.	Tree Protection Zone (metres) Fencing distance from trunk
T- 1/2 <i>Cupressus Spp</i>	Within adjoining site, No 21 Wyuna St, side fence	2.4m
T3 – <i>Callistemon viminalis</i>	Councils street tree facing No 21 Wyuna St	Trunk wrap as per AS4970, Section 4.5.2
T9 – <i>Syagrus romanzoffiana</i>	Within No 188 Princes Hwy	na
T10 – <i>Cinnamomum camphora</i>	Within No 188 Princes Hwy	12.0m out from trunk, within subject site, NE corner
T11- <i>Jacaranda mimosifolia</i>	Within No 188 Princes Hwy	2.0m out from trunk

- h) The client must 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.
- i) 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, any excavations 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

- j) The tree protection measures must be undertaken in accordance AS4970 - 2009 *Protection of trees on development sites*.
- k) 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.
- l) 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.
- m) 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 Australian Arboricultural Association or Affiliation.
- n) 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.
- o) 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.
- p) 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.
- q) To preserve T3 – Councils street tree, *Callistemon viminalis* no work shall commence nor shall a Construction Certificate be issued (whichever occurs first) until the trunk/ branches are protected, in accordance with AS4970 -2009, *Protection of trees on development sites*, by the wrapping of geo woven fabric around the trunk 4 / 5 times and the placement of two metre long, lengths of 50mm x 100mm timber battens vertically arranged around the trunk, with 100mm spacing's. The timber battens shall be secured by wire/ hoop straps but not secured into the tree itself. The trunk/ branch protection shall be maintained intact

until the completion of all works upon the site.

- r) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
- s) No building products, preparation of building products, storage of materials, stockpiling, site sheds or services shall be installed or placed within the TPZ of the trees to be retained.

Excavation works near tree to be retained

- t) Excavations around the trees to be retained on site, Councils street verge or the adjoining properties must be supervised by the AQF 5 Project Arborist to ensure that the root system will not adversely be affected.
- u) 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.
- v) 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.

31. Tree Removal & Replacement

- a) Tree removal

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
T4 – <i>Callistemon viminalis</i> (Council to remove)	x1	Councils street tree, within Wyuna
T5, 7&8 – <i>Syagrus romanzoffiana</i>	X3	Within site
T6 – <i>Cupressus Spp</i>	X1	Within site

General Tree Removal Requirements

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

Street Tree Removal / Replacement by Council –

- a) Five (5) street trees of species to be determined must be provided in the road reserve fronting the site.

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

Fee Type – Tree planting on public land	Number of trees	Amount per tree
Administration Fee, tree planting and maintenance	X5	\$489.00
Cost of tree removal – T4 <i>Callistemon viminalis</i>	To be determined, please contact Council prior to CC	

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

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

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

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$84,414.00
DEVELOPMENT CONTRIBUTIONS	
Kogarah Section 94 Development Contributions Plan No.1 - Roads and Traffic Management - Residential	\$4,768.12
Kogarah Section 94 Development Contributions Plan No.5 - Open Space 2007	\$248,214.92
Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries - Buildings	\$5,809.57

Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries - Books	\$4,142.16
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General Fees

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

Development Contributions

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

Indexation

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

Timing of Payment

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

Further Information

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

33. **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: \$84,414.00
- 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.

34. **Site Management Plan -**

Major Development

A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:

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

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

35. BASIX Commitments - All energy efficiency measures as detailed in the BASIX Certificate No. 1195247M must be implemented on the plans lodged with the application for the Construction Certificate.

36. 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.

- 37. 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).
- 38. Allocation of street addresses** - In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing & the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street addresses for the subject development must be allocated as follows:

Address Type	Address allocated
Primary Address	6 Lacey Street KOGARAH BAY NSW 2217

Addresses at 6 Lacey Street KOGARAH BAY

Shown on DA Plans		Addresses allocated by Council				
Unit	Level	Unit	Number	Street	Suburb	Complete Address
	Basement C2					
	Basement C1					
001	Level 0 (Ground)	G01	6	Lacey St	KOGARAH BAY	G01/6 Lacey St KOGARAH BAY NSW 2217
002	Level 0 (Ground)	G02	6	Lacey St	KOGARAH BAY	G02/6 Lacey St KOGARAH BAY NSW 2217
003	Level 0 (Ground)	G03	6	Lacey St	KOGARAH BAY	G03/6 Lacey St KOGARAH BAY NSW 2217
004	Level 0 (Ground)	G04	6	Lacey St	KOGARAH BAY	G04/6 Lacey St KOGARAH BAY NSW 2217
101	Level 1	101	6	Lacey St	KOGARAH BAY	101/6 Lacey St KOGARAH BAY NSW 2217
102	Level 1	102	6	Lacey St	KOGARAH BAY	102/6 Lacey St KOGARAH BAY NSW 2217
103	Level 1	103	6	Lacey St	KOGARAH BAY	103/6 Lacey St KOGARAH BAY NSW 2217
104	Level 1	104	6	Lacey St	KOGARAH BAY	104/6 Lacey St KOGARAH BAY NSW 2217
201	Level 2	201	6	Lacey St	KOGARAH BAY	201/6 Lacey St KOGARAH BAY NSW 2217
202	Level 2	202	6	Lacey St	KOGARAH BAY	202/6 Lacey St KOGARAH BAY NSW 2217
203	Level 2	203	6	Lacey St	KOGARAH BAY	203/6 Lacey St KOGARAH BAY NSW 2217
204	Level 2	204	6	Lacey St	KOGARAH BAY	204/6 Lacey St KOGARAH BAY NSW 2217

301	Level 3		301	6	Lacey St	KOGARA H BAY	301/6 Lacey St KOGARAH BAY NSW 2217
302	Level 3		302	6	Lacey St	KOGARA H BAY	302/6 Lacey St KOGARAH BAY NSW 2217
303	Level 3		303	6	Lacey St	KOGARA H BAY	303/6 Lacey St KOGARAH BAY NSW 2217
304	Level 3		304	6	Lacey St	KOGARA H BAY	304/6 Lacey St KOGARAH BAY NSW 2217
401	Level 4		401	6	Lacey St	KOGARA H BAY	401/6 Lacey St KOGARAH BAY NSW 2217
402	Level 4		402	6	Lacey St	KOGARA H BAY	402/6 Lacey St KOGARAH BAY NSW 2217
403	Level 4		403	6	Lacey St	KOGARA H BAY	403/6 Lacey St KOGARAH BAY NSW 2217
403	Level 4		404	6	Lacey St	KOGARA H BAY	404/6 Lacey St KOGARAH BAY NSW 2217
501	Level 5		501	6	Lacey St	KOGARA H BAY	501/6 Lacey St KOGARAH BAY NSW 2217
502	Level 5		502	6	Lacey St	KOGARA H BAY	502/6 Lacey St KOGARAH BAY NSW 2217
503	Level 5		503	6	Lacey St	KOGARA H BAY	503/6 Lacey St KOGARAH BAY NSW 2217
504	Level 5		504	6	Lacey St	KOGARA H BAY	504/6 Lacey St KOGARAH BAY NSW 2217
601	Level 6		601	6	Lacey St	KOGARA H BAY	601/6 Lacey St KOGARAH BAY NSW 2217

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

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

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

- 40. Car Wash Bays** - Plans and specifications of the car washing system which has been approved by Sydney Water must be submitted with the application for the Construction Certificate. All car washing bays shall be contained within a roofed and bunded car wash bay with pre-treatment approved by Sydney Water. The water from the car wash bay must be graded to a drainage point and connected to sewer.

If alternative water management and disposal options are proposed (i.e. where water is recycled, minimised or reused on the site), detailed plans and specifications of the water

recycling system must be submitted with the application for the Construction Certificate for approval.

41. **Asbestos Survey** - An Asbestos Survey prepared by a suitably qualified Occupational Hygienist shall be prepared for the premises. The Survey is to incorporate appropriate Asbestos removal and disposal methods in accordance with the requirements of WorkCover NSW, NSW Environmental Planning and Assessment Amendment (Asbestos) Regulation 2009 and NSW Environment Protection Authority, Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)].

A copy of any WorkCover approval documents is to be included as part of the documentation.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to any works on site commencing or the issue of the Construction Certificate (whichever occurs first).

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

42. **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.

43. **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.

- 44. 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](#).
- 45. Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.
- 46. Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:
- a) Set out before commencing excavation.
 - b) Floor slabs or foundation wall, before formwork or commencing brickwork.
 - c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
 - d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
 - e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
 - f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
 - g) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

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

- 47. 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

48. Archaeological Discovery During Excavation -

- (a) Should any relics be unexpectedly discovered on the site during excavation, all excavation or 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.

49. 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.

50. Hazardous or Intractable Waste – Removal and Disposal - Hazardous or intractable waste arising from the demolition or construction process shall be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and with the provision of:

- Work Health and Safety Act 2011 (NSW) (as amended);
- Work Health and Safety Regulation 2011 (as amended);
- Protection Of the Environment Operations Act 1997 (NSW) (as amended); and
- Protection of the Environment Operations (Waste) Regulation 2014 (as amended)

51. Contaminated Land – Contaminants found during demolition or construction - Any new information that identified during demolition, excavation or construction which has the potential to alter previous conclusions about site contamination and remediation, must be notified to the Principal Certifying Authority (and Council if Council is not the principal certifying authority) immediately.

All works must case and a qualified Land Contamination Consultant, certified under the consultant certification schemes recognised by the NSW EPA, is engaged to assess and provide documentation on the management of the contamination in accordance with any relevant NSW EPA adopted guidelines.

Works on site must not recommence until such time as Council has reviewed the documentation and has accepted the contamination management in writing to the applicant.

- 52. Physical connection of stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land that is the subject of this consent to Council's street gutter in Wyuna Street.
- 53. Damage within Road Reserve and Council Assets** - The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.
- 54. Hours of construction for demolition and building work** - Unless authorised by Council:
- Building construction and delivery of material hours are restricted to: 7.00 am to 5.00 pm (inclusive) Monday to Saturday and no work on Sundays and Public Holidays.
 - Demolition and excavation works are restricted to: 8.00 am to 5.00 pm (inclusive) Monday to Friday only. Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site.
- 55. 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.
- 56. 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.
- 57. 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.
- 58. 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

59. **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.
60. **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.
61. **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:
- (a) No. 190 Princes Highway, Kogarah Bay.
 - (b) Nos. 186-188 Princes Highway, Kogarah Bay.

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

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

62. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.
63. **Acoustic Compliance – General Operation of Premises** - The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the [Protection of the Environment Operations Act 1997](#) (as amended) and [Regulations](#).

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

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

64. **Soil disposal** - Any soil proposed to be disposed off site must be classified, removed and disposed of in accordance with the *EPA Environmental Guidelines; Assessment, Classification and Management of Liquid and Non-Liquid Wastes 1999* and the

Protection of the Environmental Operations Act 1997.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Occupation Certificate.

- 65. State Environmental Planning Policy 65 Design Verification Statement** - The PCA must not issue an Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the PCA has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of [State Environmental Planning Policy No 65—Design Quality of Residential Flat Development](#).
- 66. Restriction to User and Positive Covenant for On-Site Detention Facility** - A Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owners of the land. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

Restrictions on Use of Land

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

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

Positive Covenants

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

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

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

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

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

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) The structural adequacy of the On-Site Detention system (OSD) and the structural certification from qualified consulting structural engineer involved the design of OSD tank structures;
- (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (d) Pipe invert levels and surface levels to Australian Height Datum;
- (e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.
- (f) The Work-As-Executed plans are prepared on the copies of the approved drainage plans issued with the Construction Certificate and variations are marked in red ink;
- (g) The Work-As-Executed plans have been jointly prepared and duly signed by registered surveyor and consulting OSD design engineer certifying the accuracy of dimensions, invert levels, surface levels, storage volume etc;
- (h) This Plan and Certification shall confirm that the design and construction of the stormwater drainage system satisfies the conditions of development consent and the Construction Certificate stormwater design details approved by the Principal Certifier.

Council must advise in writing that they are satisfied with the Works-As-Executed prior to the issue of an Occupation Certificate.

69. Requirements prior to the issue of the Occupation Certificate - Stormwater and Onsite Detention Works - The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:

- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (b) Work as Executed Plans jointly prepared and duly signed by a Chartered Professional Engineer and a Registered Surveyor when all the site engineering works are complete shall be submitted to the PCA and the Council (for Council's final approval of WAE plans) prior to the issue of the Occupation Certificate.

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

- a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- c) Construct any new vehicle crossings required.
- d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
- e) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the Principal certifier prior to the issue of the Occupation Certificate.
- f) The construction of the new footpath shall be completed in accordance with the conditions and specifications of the Section 68 Activity Approval

71. Completion of road related works

- a) Council's Engineering Services Section must advise in writing that the works have been completed to their satisfaction prior to the issue of the Occupation Certificate.
- b) The damage deposit paid to Council will not be released until the works have been completed to Council's satisfaction.

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

- a) Compliance with conditions of development consent relating to stormwater works within Council Roads;
- b) The structural adequacy of the Pit and Pipes systems;
- c) That the works have been constructed in accordance with the approved design;
- d) Pits and Pipe invert levels and surface levels to Australian Height Datum;

Council's Engineering Services section must advise in writing that they are satisfied with the Works-As-Executed prepared by a Registered Surveyor and duly signed prior to the issue of an Occupation Certificate.

73. Traffic Control Devices The internal road network, pedestrian facilities and parking

facilities (including visitor parking and employee parking) shall be designated and line marked in accordance with Australian Standard - AS1742, Manual of Uniform Traffic Control Devices.

If an exit from car park utilises a pedestrian footpath, then a warning system such as flashing light and/or 'alarm sound' must be installed on the subject property to alert pedestrians of vehicles exiting the car park. The Alarm System must be designed and installed in accordance with AS2890.1 -2004.

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

Note: The document/instrument shall be submitted to Council for approval together with other relevant documents prior to lodgement with the NSW Land and Registry Services.

- 75.** A strata plan of subdivision must not be registered until an occupation certificate has been issued.

- 76. Vehicular crossing & Frontage work – Major development** - The following road frontage works shall be constructed in accordance with the specifications issued under the 'Application for Driveway Crossing and Associated Works on Council Road Reserve' approval issued by Council's Assets and Infrastructure Division:

- (a) New 1.5m wide footpath to be constructed for full frontages of the site in accordance with Council's Specifications for footpath, applying at the time construction approval is sought.
- (b) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
- (c) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
- (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

A private contractor shall carry out the above work, at the expense of the applicant and in accordance with Council's Specification for Driveway Crossings and Associated Works. The driveway and road frontage works are to be completed before the issue of the Occupation Certificate.

- 77. Completion of Major Works** - Prior to the issue of a Final Occupation Certificate, the following works must be completed at the applicant's expense to the satisfaction of Council's Engineering Services section:

- (a) Stormwater pipes, pits and connections to public stormwater systems within the road related area;
- (b) Driveways and vehicular crossings within the road related area;
- (c) Removal of redundant driveways and vehicular crossings;
- (d) New footpaths within the road related area;
- (e) Relocation of existing power/light pole
- (f) Relocation/provision of street signs

- (g) New or replacement street trees;
- (h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- (i) New or reinstated kerb and guttering within the road related area; and
- (j) New or reinstated road surface pavement within the road.

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

[Note: The damage deposit paid to Council will not be released until the works have been completed to Council's satisfaction.

78. Completion of Landscape Works

- a) All landscape works, the planting of thirty one (31) trees and all plants upon the site and fees payable for Councils five (5) street tree plantings must be completed before the issue of the Final Occupation Certificate and in accordance with approved landscape plans and specifications, drawn by Paul Scrivener Landscape, Rev F, sheets 1, 2 and 3 dated 06/09/21.
- b) A certificate of compliance for the planting of all thirty one (31) trees and all shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA – Principal Certifying Authority.

Operational Conditions (On-Going)

- 79. 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).
- 80. Maintenance of Sound Attenuation** - Sound attenuation on the premises must be maintained in accordance with the Acoustic Report submitted by Rodney Stevens Acoustic titled Noise Impact Assessment dated 22 April.
- 81. Lighting – General Nuisance** - Any lighting on the site must 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

- 82. Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas.
- 83. Tree Protection Measures**
 - c) A final certificate of compliance letter, once all building and landscape works have been completed, from the engaged AQF 5 Consulting Arborist, that tree protection measures have been installed and maintained for the entirety of the project and report on the condition of the trees that as part of this Consent, were to be protected and retained.

84. Tree Replacement within subject site

- d) If the replacement trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
- e) 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.

85. 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.

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

Operational Requirements Under the Environmental Planning & Assessment Act 1979

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

88. 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.

89. 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.

90. **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.

91. **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](#).

92. **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.

93. **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

94. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
95. **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.
96. **Clause 98A – Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifier and the Principal Contractor.
97. **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.
98. **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.

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

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

All excavations associated with the erection 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 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

- 1. 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.

- 2. 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.
- 3. 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.
- 4. Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au
- 5. 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).

6. **Certified Contaminated Land Consultant** - The Contaminated Land Planning Guidelines, called up by the State Environmental Planning Policy No. 55 requires that a certified contaminated land consultant (in the context of the investigation, assessment, remediation and validation of contaminated land) is a contaminated land consultant, whose qualifications and experience have been confirmed through a recognized certification scheme to have the necessary competencies to carry out work relating to contaminated land to an appropriate standard.

Certification schemes that are recognized by the EPA includes:

- Certified Environmental Practitioner (Site Contamination) (CENVP(SC)) or
- certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM)

Information relating to certified Contaminated Land Consultant or accredited site auditors can be found on the NSW EPA webpage: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/>

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

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

8. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.

9. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.
10. **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.

11. **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.

12. **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).

13. **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. DA2018/0***) and reference this condition number (e.g. Condition 23)

- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.

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

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

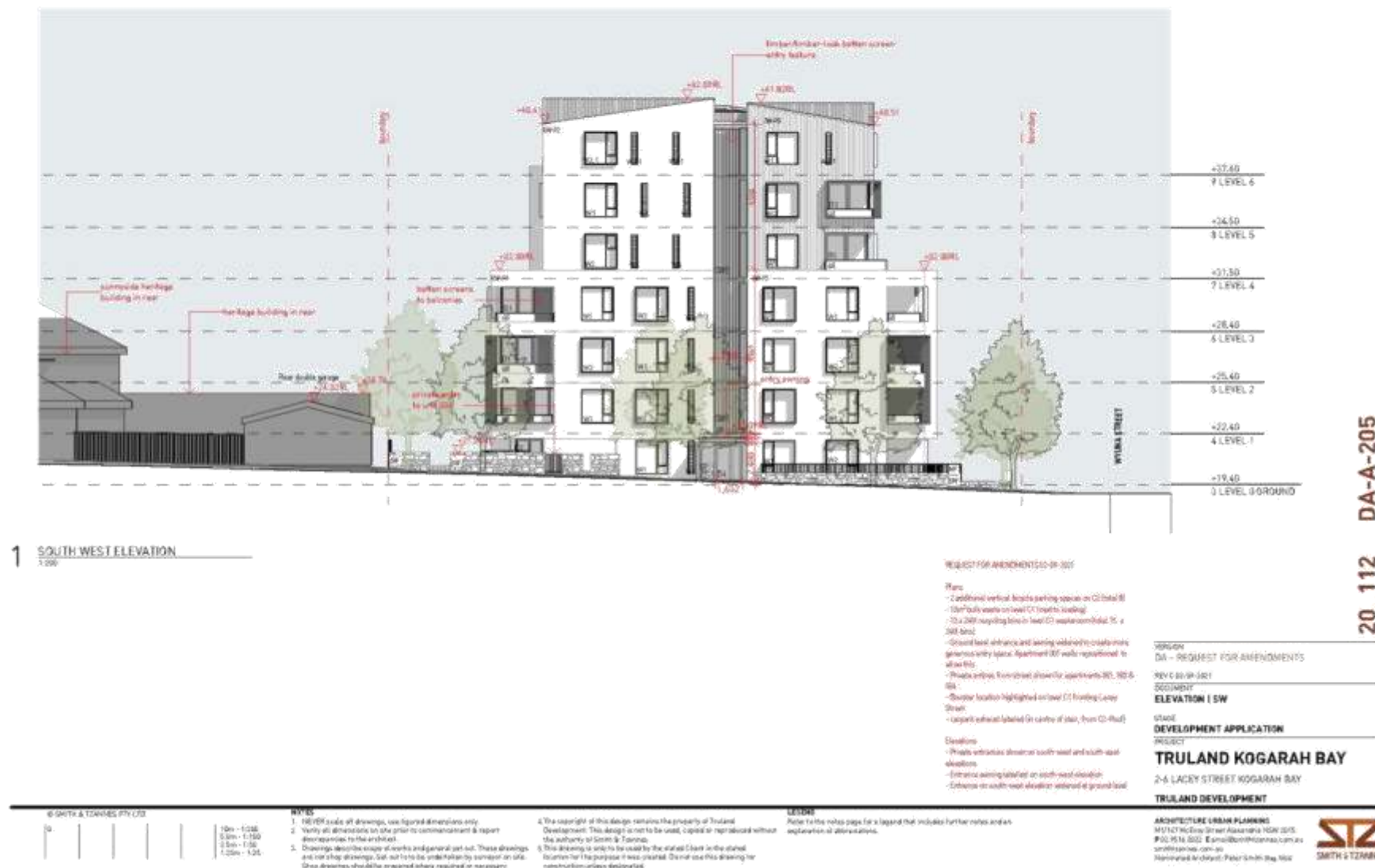
NOTE: A minimum of four weeks should be allowed for assessment.

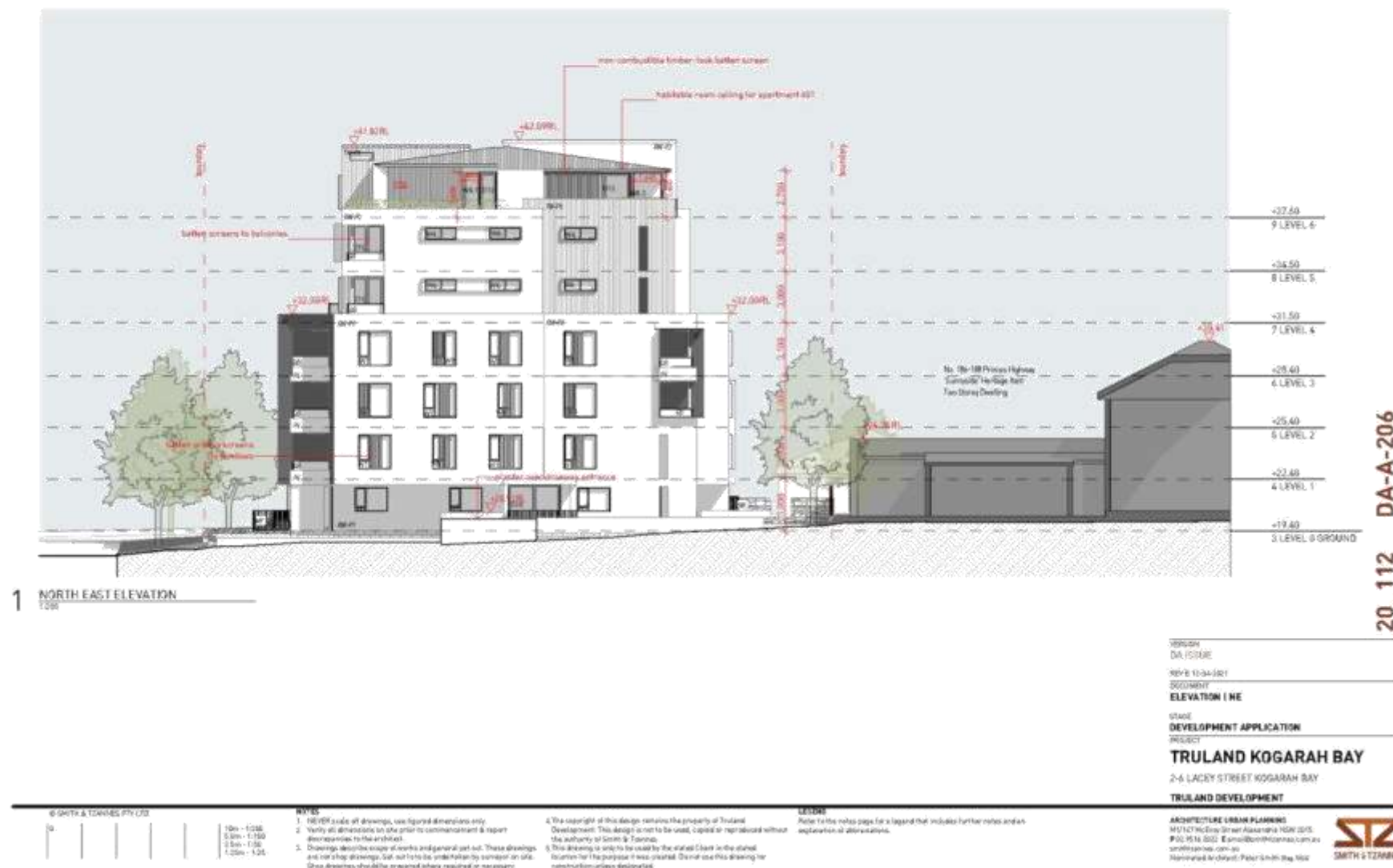
ATTACHMENTS

Attachment [↓](#)1  Site Plan & Elevations











REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 04 NOVEMBER 2021

LPP062-21

LPP Report No	LPP062-21	Development Application No	DA2021/0253
Site Address & Ward Locality	31 Caloola Crescent Beverly Hills NSW 2209 Hurstville Ward		
Proposed Development	Demolition of existing structures and construction of an attached two (2) storey dual occupancy with two (2) rear swimming pools, two (2) rear cabanas and front fencing in addition to landscaping and engineering works		
Owners	Natalie and Ethan Dabbagh		
Applicant	Abraham Nemra		
Planner/Architect	Nemco Design Pty Ltd		
Date Of Lodgement	14/07/2021		
Submissions	No submissions received		
Cost of Works	\$720,500.00		
Local Planning Panel Criteria	General Manager Delegation- Determination by the Local Planning Panel is the application is in the public interest.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 55 - Remediation Of Land; State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy (Infrastructure) 2007; State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017; Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment; Draft Environment State Environmental Planning Policy; Draft Remediation of Land SEPP; Georges River Local Environmental Plan 2021; Hurstville Local Environmental Plan 2012; Hurstville Development Control Plan No 1; Georges River Development Control Plan.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Statement of Environmental Effects, BASIX Certificates, Arborist Report, Survey Plan, Cost Summary Report, Clause 4.6 - Lot Size, stormwater plans		
Report prepared by	Senior Development Assessment Officer		

Recommendation	That the application be refused subject to the reasons stated in the below report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority	

satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - Clause 4.1A of Hurstville Local Environmental Plan 2012 - Minimum lot sizes for dual occupancies and multi dwelling housing
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, the refusal reasons can be viewed when the report is published.

Site Plan

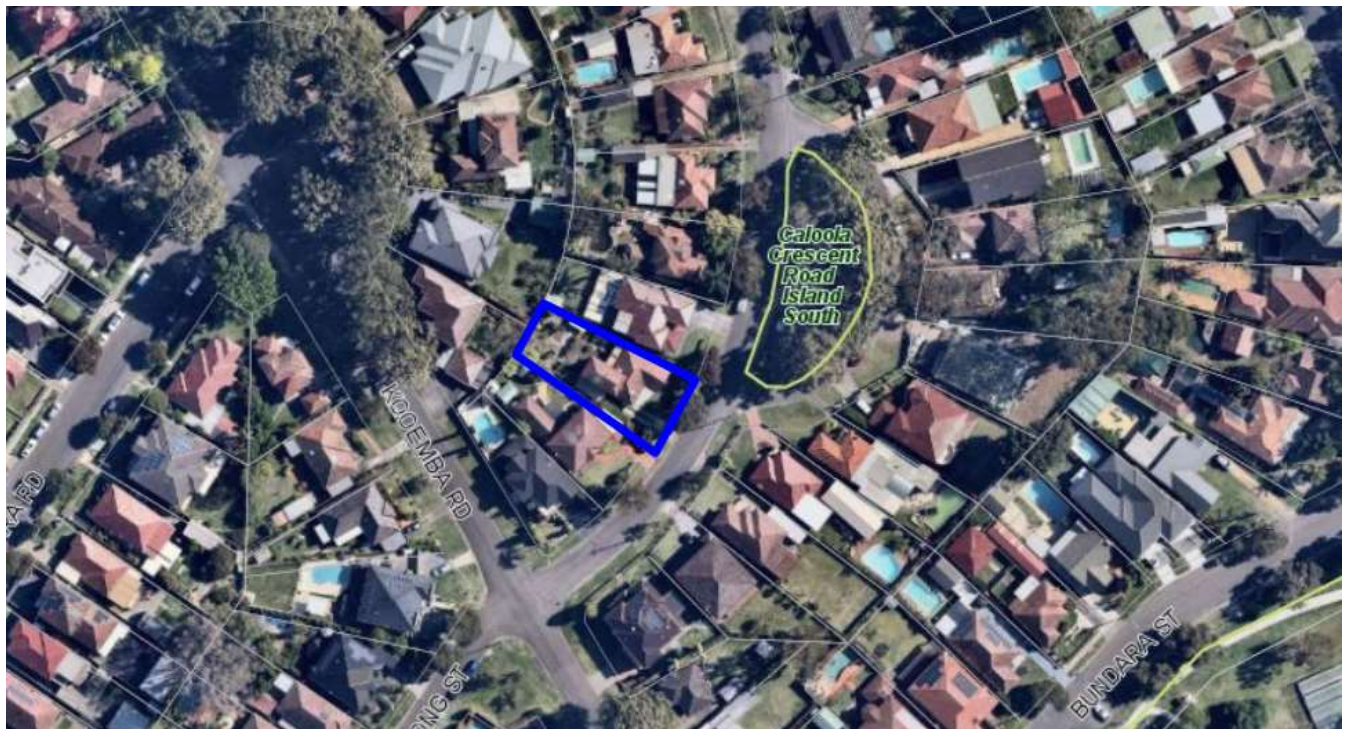


Figure 1: Aerial view of subject site outlined in blue

Executive Summary Proposal

1. The application seeks approval for the demolition of existing structures and construction of an attached two (2) storey dual occupancy with two (2) rear swimming pools, two (2) rear cabanas and front fencing, including landscaping and engineering works at 31 Caloola Crescent Beverly Hills NSW 2209.
2. The proposal fails to provide an adequate Clause 4.6 submission to justify the necessity for the variation of Clause 4.1A of Hurstville Local Environmental Plan 2012 (HLEP 2012) relating to the minimum lot sizes for dual occupancies and multi dwelling housing development standard. The proposal seeks to erect a dual occupancy on a 635.9sqm allotment of land, where the development standard requires a minimum of 650sqm (variation: 2.16%).

Site and Locality

3. The subject site is an irregularly shaped allotment located along the western side of Caloola Crescent. The site has a primary south-eastern frontage of 19.195m to Caloola Crescent, side boundary lengths of 40.23m, a rear boundary of 12.525m and a site area of 635.9sqm. The site observes a gradual slope to the street.
4. The site currently accommodates a two storey clad and brick dwelling, a brick garage along the southern side boundary, two rear sheds, ancillary paving and a street tree within the Council landscape verge.

Zoning and Permissibility

5. The site is zoned R2 – Low Density Residential and a ‘dual occupancy’ is listed as permissible with consent. The proposed demolition works, swimming pools, outbuildings, and front fence are considered ancillary to a ‘dual occupancy’ which is permitted with consent.

Submissions

6. The application was notified to surrounding neighbours for a period of fourteen (14) days between 05 August 2021 and 19 August 2021 in accordance with Council’s Notification Policy. No submissions were received.

Conclusion

7. 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 (DA2021/0253) is recommended for refusal for the reasons contained within this report.

Report in Full

8. Development consent is sought for the demolition of existing structures and construction of an attached two (2) storey dual occupancy with two (2) rear swimming pools, two (2) rear cabanas and front fencing, including landscaping and engineering works at 31 Caloola Street Beverly Hills NSW 2209.
9. Further details of the proposed development are as follows:

Demolition:

Demolition of existing structures being the existing dwelling house, rear sheds, onsite paving, internal driveway and crossing and the removal of one street tree.

Construction:

11. The site currently accommodates a two storey clad and brick dwelling, a brick garage along the southern side boundary, two rear sheds, ancillary paving and a street tree within the Council landscape verge.
12. The immediate area is dominated by residential uses containing a mix of one (1) and two (2) storey residential developments. The area is generally residential in character.
13. In the wider context, the subject site is located diagonally opposite Caloola Crescent Road Island South Reserve and approximately 190m north of Beverly Hills Park.



Figure 3: Street view of subject site from the assessing officer's inspection.

Locality Analysis

14. For the purposes of this assessment, a visual catchment analysis has been conducted in order to identify the character of the local area, and determine the current predominant land uses, and the land uses that would most likely occur in the future with reference to the subdivision pattern and site dimensions.
15. The visual catchment in this case is considered to be all sites across both sides of Caloola Crescent, and the sites along Baranbali Street.



Figure 4: Identified local area within blue line, subject site highlighted in red

16. Within the identified local area are 55 allotments (one having been subdivided) with the large majority containing single dwelling houses.
17. The minimum site characteristics to permit a dual occupancy development under the Hurstville LEP 2012, and the Hurstville Development Control Plan No.1 are 650sqm, with a 15m frontage.
18. Of the 55 allotments, two sites contain or will contain (DA approved site) a dual occupancy being:
 - a. 17 Caloola Crescent: Council approved DA2014/1092 on 16 March 2015 for the construction of a dual occupancy. The development has already been constructed. The site observes largely similar dimensions to that of the 31 Caloola Crescent (subject site), however no development standard variation was required given the site area requirement for dual occupancies at the time was 630sqm.
 - b. 44 Caloola Crescent: The NSW Land and Environment Court approved DA2018/0081 on 26 March 2019 for the construction of a dual occupancy. The development is under construction. The site complies with the required 650sqm minimum site area requirement (being 841sqm) however observes a 12.19m frontage which widens gradually within the site having a 15m frontage at the façade of the development.
19. Of the 55 allotments, only three sites (32, 36 and 48 Caloola) likely satisfy the minimum requirements for dual occupancy development. However, those sites are unusual in shape and it is unknown whether a dual occupancy development on the sites will be viable.



Figure 5 Caloola Crescent looking south



Figure 6 Caloola Crescent looking north



Figure 7 Caloola Crescent looking east



Figure 8 Approved and constructed dual occupancy at 17 Caloola Crescent

Background

20. There are no recent relevant applications pertinent to the subject site.

Compliance and Assessment

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

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

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

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

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

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

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

25. The trigger for BASIX Certification is when the estimated cost of works for residential development (new dwelling(s)/alterations and additions) is equal to or above \$50,000. BASIX Certification is also triggered when proposing a swimming pool with a volume of 40,000 litres or more.
26. Although two BASIX Certificates accompany the proposal, a combined multi dwelling BASIX Certificate requires to accompany the proposal as per the BASIX type requirements (<https://basix.nsw.gov.au/iframe/new-to-basix/dwelling-types.html>).

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

27. The Vegetation State Environmental Planning Policy regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
28. The Vegetation State Environmental Planning Policy applies to clearing of:
- (a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
 - (b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).
29. The objectives of the State Environmental Planning Policy are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is

applicable pursuant to Clause 5(1) of the State Environmental Planning Policy as the site is within both Georges River Council and the R2 Low Density Residential zone.

30. 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).
31. The proposal requires the removal of one (1) street tree. The proposal was referred to Council's Consultant Arborist who assessed the application in addition to the proposed tree removal. The application was supported subject to conditions being recommended.

Greater Metropolitan Regional Environmental Plan No 2 - Georges River Catchment

32. The main aims and objectives of this plan include but are not limited to the following:
 - *To maintain and improve the water quality and river flows of the Georges River and its tributaries and ensure that development is managed in a manner that is in keeping with the national, State, regional and local significance of the Catchment,*
 - *To protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*
 - *To ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
 - *To establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment,*
33. The proposed stormwater drainage system has been assessed by Council's Development Engineer and additional information was requested in relation to the relationship between the OSD tanks beneath the front driveways and the steepness of the proposed driveways. Inconsistency was found between the OSD section plans and the driveway section plans.

State Environmental Planning Policy (Infrastructure) 2007

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

- (f) *providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and*
- (g) *providing opportunities for infrastructure to demonstrate good design outcomes.*

35. The application was referred to Ausgrid on in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid advised that no referral is necessary given the absence of electricity assets within the vicinity of the development.

Draft Environmental Planning Instruments

Draft Environmental State Environmental Planning Policy

36. The Draft Environment SEPP 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.

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

Draft Remediation Of Land State Environmental Planning Policy

38. 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.

39. The proposal is not inconsistent with the provisions of this Draft Instrument as there is no evidence this site is contaminated based on previous uses.

Draft Design and Place State Environmental Planning Policy

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

41. The New South Wales Department of Planning, Industry and Environment exhibited an Explanation of Intended Effect between 26 February 2021 and 28 April 2021 for the proposed Design and Place State Environmental Planning Policy.

42. The Design and Place State Environmental Planning Policy will:
- Establish principles for the design and assessment of places in urban and regional NSW;
 - Establish matters for consideration and application requirements that collectively respond to each of the principles;
 - Provide a single point of reference for design-related considerations and performance criteria in the planning system;
 - Define scales of development – precincts and significant development, and all other development;
 - Introduce a robust and consistent design process through requirements for design skills, design evaluation and review, and design excellence;
 - Integrate a design-led, place-based approach, which includes embedding the draft Connecting with Country Framework;
 - Be supported by existing, revised and new guidance, including a revised Apartment Design Guide (ADG), a new Urban Design Guide (UDG), and revisions to the Building Sustainability Index (BASIX);
 - Repeal and replace State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX State Environmental Planning Policy)
 - Consolidate design and place requirements in other State Environmental Planning Policies in the future.
43. The proposal is not considered to be inconsistent with the provisions of the Draft State Environmental Planning Policy.

LOCAL ENVIRONMENTAL PLAN

Hurstville Local Environmental Plan 2012 (HLEP 2012)

44. The extent to which the proposed development complies with the Hurstville Local Environmental Plan 2012 (Hurstville Local Environmental Plan 2012) is detailed and discussed in the table below.
45. The allotment is zoned R2 – Low Density Residential Zone and ‘dual occupancy’ is a permitted use with consent. It is noted that the proposed demolition works, and the construction of swimming pools, outbuildings, and the front fence are considered ancillary to the primary use of ‘dual occupancy’ and are also a permitted form of development with consent.

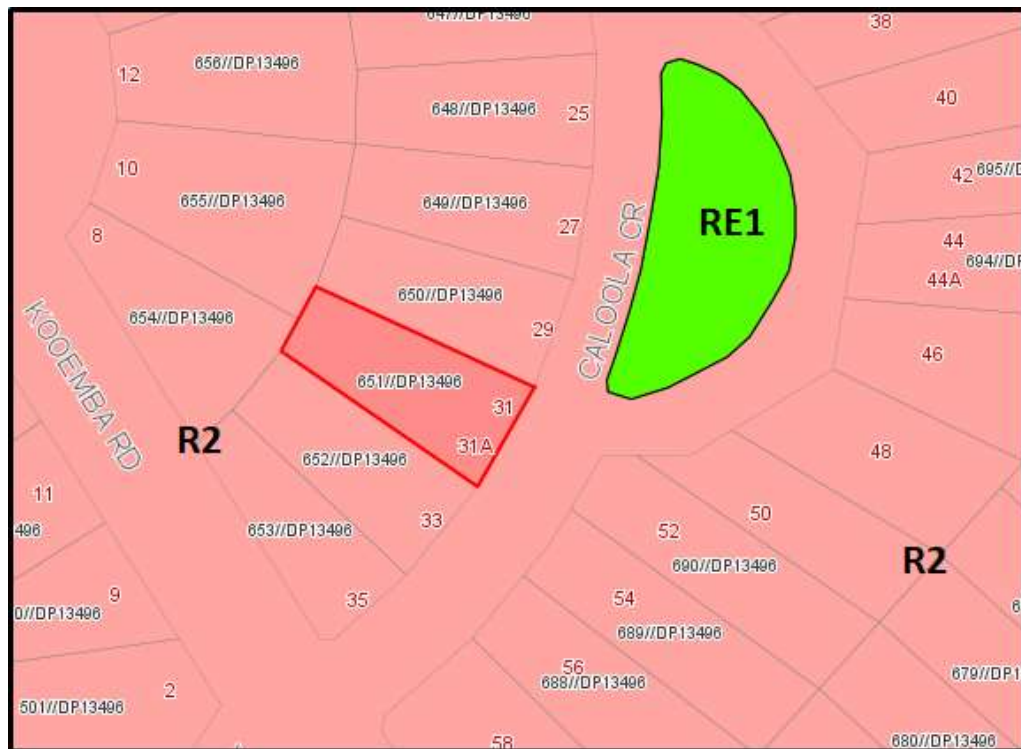


Figure 9 Zoning map as per Hurstville Local Environmental Plan 2012 with the site highlighted in red (Source: Intramaps 2021).

Clause	Standard	Proposed	Complies
Part 1 Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2).	<p>The development is not consistent with the aims of the plan as it fails to satisfy all the aims of the plan mainly:</p> <p>(a) to encourage and co-ordinate the orderly and economic use and development of land that is compatible with local amenity,</p> <p>(c) to provide a range of housing choice that—</p> <p>(i) accords with urban consolidation principles, and</p> <p>(ii) is compatible with the existing environmental character of the locality, and</p> <p>(iii) is sympathetic to adjoining development.</p>	No
1.4 – Definitions	Dual occupancy means a dual occupancy (attached) or a dual occupancy	The proposed development is consistent with the dual occupancy definition.	Yes

	<p><i>(detached).</i></p> <p><i>dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.</i></p>		
Part 2 Permitted or prohibited development			
2.3 – Zone objectives and Land Use Table	<p>Meets objectives of R2- Low Density Residential Zone:</p> <ul style="list-style-type: none"> <i>To provide for the housing needs of the community within a low density residential environment.</i> <i>To enable other land uses that provides facilities or services to meet the day to day needs of residents.</i> <i>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.</i> <i>To ensure that a high level of residential amenity is achieved and maintained.</i> <i>To encourage greater visual amenity through maintaining and enhancing landscaping as a</i> 	<p>The proposal does not satisfy all the objectives of the R2 zone as:</p> <ul style="list-style-type: none"> The proposal will likely compromise the amenity of the surrounding area as a result of setting an undesirable precedent. The proposal does not satisfy the required landscape controls which is contrary to the objectives of the zone which include maintaining landscaping as a major element of the residential environment. 	No

	<p><i>major element in the residential environment.</i></p> <ul style="list-style-type: none"> <i>To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.</i> 		
Part 4 Principal development standards			
4.1A – Minimum lot size for dual occupancies and multi dwelling housing	Dual occupancy – 650sqm if land identified as “G” on lot size map	635.9sqm.	No, refer to clause 4.6
4.1B – Exception to minimum sizes for dual occupancies	Subdivision may be granted if there is a constructed dual occupancy and after the subdivision there will only be 1 dwelling per lot	As there is no lawfully erected dual occupancy on the land, development consent cannot be granted for the subdivision of the land pursuant to this clause.	N/A
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	Dwelling 1: 7.53m Dwelling 2: 7.43m <u>Outbuildings:</u> Dwelling 1: 2.91m Dwelling 2: 2.91m	Yes
4.4 – Floor space ratio	(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. 0.6:1 or 381.54sqm	0.59:1 or 377.8sqm (includes rear outbuilding)	Yes
4.6 – Exceptions to development standards	In accordance with Clause 4.6 (1) through to and including (8)	The proposal is accompanied by a Clause 4.6 variation relating to the site area variation.	No, refer to comment (1)
Part 5 Miscellaneous provisions			

5.10 – Heritage conservation	<p>(2) Requirement for consent Development consent is required for any of the following—</p> <p>(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—</p> <p>(i) a heritage item, (ii) an Aboriginal object, (iii) a building, work, relic or tree within a heritage conservation area,</p>	<p>Site has not been identified as a heritage item nor located in a heritage conservation area as per the Hurstville Local Environmental Plan 2012 Heritage Map.</p> <p>The locality including the site is identified within the NSW National Trust Heritage Register.</p>	Yes
5.21 – Flood planning	As per clause 5.21	The Site is not flood affected.	Yes
Part 6 Additional local provisions			
6.1 – Acid sulfate soils	(2) Development consent is required for the carrying out of works described in the table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.	The site has not been identified as located in an area containing Acid Sulfate soils as per Hurstville Local Environmental Plan 2012 Acid Sulfate Soils Map.	Yes
6.4 – Foreshore scenic protection area	(2) This clause applies to land identified as “Foreshore scenic protection area” on the Foreshore Scenic Protection Area Map.	The Site is not within the identified Foreshore scenic protection area.	N/A
6.7 – Essential services	Development consent must not be granted to development unless the consent authority is satisfied that any of the	<p>All essential services are available for the subject site.</p> <p>The proposed stormwater system was found to be inadequate given</p>	No

	<p>following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the disposal and management of sewage,</p> <p>(d) stormwater drainage or on-site conservation, (e) suitable road and vehicular access.</p>	<p>inconsistency between the submitted OSD section plans and the driveway section plans.</p>	
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LPP062-21

Comment 1: Clause 4.6 Exceptions to Development Standards

46. The application was accompanied by a Clause 4.6 Development Standard variation request (prepared by Nemco Design Pty Ltd dated 07/06/2021). In this instance, the proposal fails to provide an adequate Clause 4.6 submission to justify the necessity for the variation of Clause 4.1A of Hurstville Local Environmental Plan 2012 (HLEP) relating to the minimum lot sizes for dual occupancies and multi dwelling housing development standard. The proposal seeks to erect a dual occupancy on a 635.9sqm while the development standard requires a minimum of 650sqm (variation: 2.16%).

47. Clause 4.6(1):

“The objectives of this clause are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

48. Comment: The proposal seeks to erect a dual occupancy on a 635.9sqm while the development standard requires a minimum of 650sqm (variation: 2.16%). The effect of this non-compliance will result in an undesirable precedent in a locality where the majority of sites do not have the required dimensions for dual occupancy developments. It is not considered appropriate to flexibly apply the standard in the circumstances of this case as the outcome of contravening the development standard is not considered to be in the interest of the public and will have an adverse environmental impact.

49. Clause 4.6(2):

“Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or

any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause”

50. Comment: Clause 4.1A – Minimum lot sizes for dual occupancies and multi dwelling housing is identified as a development standard and is not excluded from the operation of Clause 4.6.

51. Clause 4.6(3):

“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:

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

52. The submitted 4.6 variation has responded to the lot size non-compliance by relying on the following (in addition to other comments found within the submitted clause 4.6):

- *“The proposal is generally compliant with the requirements and controls of Hurstville LEP 2012 and Hurstville Development Control Plan with the exception of the minor variance of 14.1m² for the minimum lot size requirement which equates to a 2.1% variance. The proposal complies with all other applicable development standards.*
- *The proposed subdivision does not change the level of impact of the dual occupancy on the adjoining properties in terms of density, character, privacy, amenity and shadow impacts.*
- *The proposed variation will not detract from the streetscape of Caloola Street and will not impact on the bulk and scale of the development from the street or the adjoining dwellings at the rear. In fact, the proposed development will improve the streetscape and is consistent with the character, size and scale of the adjoining properties. The site has a frontage of 19.2m, which compensates for the lot size variance which also ensures a consistent and improved streetscape.*
- *The future subdivision of each dwelling is of a sufficient size to serve its intended purpose and usage. The approved dual occupancy demonstrated compliance with the landscape, private open space and required car parking areas.*
- *The proposed shortfall of 14.1m² variation to the overall requirement and will not compromise the internal amenity of the development.*
- *Although the proposal departs from the numerical standard, the proposal satisfies the objectives of the standard and hence there is scope on merit grounds in permitting the numerical variance.*
- *The proposed development will not result in any adverse impact on traffic and transport in the immediate vicinity. The site is close to public transport (buses and trains) and its location within the Beverly Hills neighbourhood centre. The proposal provides parking in the garage and driveway and off-street parking is readily available.*
- *The development standard has been virtually abandoned and/or destroyed by the Council’s own actions in approving consents departing from the standard and hence compliance with the standard is unnecessary or unreasonable.*
- *The objectives of Clauses 4.1A and 4.6 have been satisfied.*

- *The proposed variation will maintain a compatible building form to that permissible if the building complied numerically.*
- *There is no net public benefit in maintaining strict compliance with the minimum lot size development standard.*
- *The proposal does not detract from a streetscape perspective.*
- *The proposal satisfies the relevant objectives of the R2 Low Density Residential zone.*
- *The proposed development is permissible in the zone and will deliver a greater diversity of housing.”*

53. Comment: The applicant has provided a written variation request prepared by Nemco Design Pty Ltd. A copy of this Clause 4.6 request for variation is provided for the Panel's consideration.

54. As is highlighted in the below paragraphs, it is contended that the submitted clause 4.6 has not demonstrated sufficient environmental planning grounds to justify variation of the site area development standard. Contrary to what is stated in the submitted clause 4.6, Council has not abandoned the site area control for dual occupancy development and has consistently applied it.

55. Clause 4.6(4):

“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, and”*

56. With regard to the form and content of the Clause 4.6 Variation submission it is considered to have addressed the relevant provisions, objectives, case law and information as per Clause 4.6. However, review of the submission concludes that the submission does not adequately justify the intent and purpose of the works and the necessity for variation of the site area development standard.

57. With regard to the proposal's compliance with the objectives for Clause 4.1A below:

(1) The objective of this clause is to achieve planned residential density in certain zones.

58. The proposal seeks to erect a dual occupancy on a 635.9sqm while the development standard requires a minimum of 650sqm (variation: 14.1sqm or 2.16%). Residential density can be defined as the number of residential dwellings per a defined area.

59. In order to control the number of dwellings erected in certain areas, Council applies a minimum lot size for dual occupancy development, a standard which aims to delineate between a site that is deemed too small to support dual occupancy development, and

sites which are large enough to allow for a balance between built form, landscaping, and character.

60. It is contended that a dual occupancy on the subject site will create an undesirable outcome given the locality predominately contains single dwelling houses on allotments of land, with the majority of the allotments within the immediate vicinity not complying with the 650sqm allotment size required to permit dual occupancy development.
61. Support of such development on an undersized allotment has the potential of changing the streetscape character envisaged by the development standard, being single dwelling houses. It is acknowledged dual occupancies once could be constructed on allotments of land with an area of 630sqm. An amendment to the Hurstville Local Environmental Plan 2012 increased the lot size to 650sqm, this lot area for dual occupancies has also been retained in the recently gazetted Georges River Local Environmental Plan 2021 (8 October 2021). Support of development on this undersized allotment results in a development for and streetscape presentation not envisaged in this streetscape by virtue of the allotment sizes.
62. It is paramount to note that the 650sqm requirement is also a requirement under clause 4.1B the Georges River LEP 2021. Support of this development will not be consistent with the desired future character of the area.
63. It is evident that as a result of the site area departure, the Development Control Plan landscape ratio of 20% (dimension 2m x 2m) has not been met given the proposal only provides for 14.8% deep soil landscaping. In consideration of this, and in addition to the 25% landscaping requirement required under clause 6.12 (5) of the Georges River LEP 2021 (noting that a savings provision applies), it is considered that the development is an overdevelopment of the site and likely to result in an undesirable precedence.
64. The Clause 4.6 variation relies on compliance with two of the five justifications expressed in the Land and Environment Court decision of *Wehbe -v- Pittwater City Council (2007)* which set down criteria to justify a variation under State Environmental Planning Policy No.1 (Development Standards) which has been replaced in Planning Instruments by the standard Clause 4.6. The principals espoused in the Appeal do, however, remain relevant for consideration.
65. The Applicants reliance on the first justification that *“the objectives of the development standard are achieved notwithstanding non-compliance with the standard”* remains questionable as, although the development will appear as a standard dual occupancy on a lot wider than 15m at the building line, the development will promote for a density, scale and form that is not envisaged by the controls and would perpetuate similar proposals which would undermine the intent and objectives of the controls and diminish the amenity and character of the local area.
66. In respect to Prestons CJ judgement the NSW Land and Environment Court has established the five part test (outlined above). In this case the development fails to satisfy the five part test for the following reasons:
 - The objectives of the standard are not considered to be satisfied;
 - The underlying objective of the standard remains relevant and therefore compliance is necessary and warranted;

- The underlying objective has not been defeated or thwarted as recent development applications within the vicinity have been designed to comply with the relevant site area requirements.

67. In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard.

68. The applicant attempted to justify that there are sufficient environmental planning grounds to justify contravening the development standard. Although justification has been provided in relation to the proposal complying with the height controls, setbacks, in addition to privacy, views and overshadowing, the request fails to justify contravening the development standard and fails to adequately demonstrate that there are sufficient environmental planning grounds to justify contravention of the control. For these reasons, it is recommended that the submitted clause 4.6 variation not be supported.

69. The objectives of the R2 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.*

70. The proposed development does not satisfy all the zone objectives as the amenity of the surrounding area will be compromised given the undesirable precedence set by the proposal. In addition, the proposal does not satisfy the landscape requirements contrary to the objective of '*maintain landscaping as a major element of the residential environment*'.

(b) *the concurrence of the Director-General has been obtained.*"

Comment: The concurrence of the Director-General is not required as the non-compliance does not exceeds 10%.

71. Clause 4.6(5):

"In deciding whether to grant concurrence, the Secretary must consider-

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- the public benefit of maintaining the development standard, and*
- any other matters required to be taken into consideration by the Secretary before granting concurrence."*

72. Pursuant to Clause 4.1A(2) of Hurstville Local Environmental Plan 2012 the matter involves a variation of 2.16% and determination of the application has been delegated to the Local Planning Panel to the benefit of the public interest. Therefore the Panel is required to consider the matters for consideration by the Secretary. In this instance the following is relevant:

“the public benefit of maintaining the development standard”

73. Council seeks compliance with the development standards applicable and a variation to the minimum site area requirement is not supported in this instance. Approval of the subject proposal would create an unacceptable and unjustified precedent to vary the standard in the low density residential locality. Being a dual occupancy on an undersized allotment, this would result in an undesirable outcome that would set an undesirable precedent; notwithstanding the frontage being greater than 15m. Council made a conscious decision in late 2019 to increase the allotment sizes relating to dual occupancy development and has maintained this in the gazettal of the Georges River Local Environmental Plan 2021.
74. On the basis of the commentary expressed above, the Clause 4.6 submission is not acceptable and would result in an undesirable precedent with respect to building form, scale and streetscape presentation that would undermine the intent of the development standard as it applies to the low density residential area.
75. Clause 4.6 (6) is not applicable in this case given the site is not within land zoned: Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

Georges River Local Environmental Plan 2021 (GRLEP 2021)

76. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.
77. The proposal does not satisfy clause 4.1B of the GRLEP 2021 in relation to site area (650sqm requirement), and clause 6.12 (5) in relation to minimum landscaping required (25%). The proposal also does not satisfy the respective clause objectives and the objectives of the R2 zone. Although these standards are not applicable as a result of the savings provisions, non-compliance signifies that the development will not be consistent with the desired future character of the area.
78. The provisions of GRLEP 2021 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

79. The proposal has been assessed under the relevant sections of the Hurstville Development Control Plan No.1 as follows.

Development	Standard	Proposed	Complies
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Control Plan Control			
4.3 Dual Occupancy			
PC1 – Min. site area and frontage for dual occupancy:	DS1.1. 630sqm for land located outside of the FSPA DS1.2. a. 15m for an attached dual occupancy	635.9sqm 19.19m	Yes, however LEP controls prevail. Yes
PC2 – Building height	DS2.1. Max. 6.8m wall height DS2.3. Existing ground level is not excavated more than 600mm in accordance with the Exempt and Complying provisions for on-site cut and fill for the finished ground floor level. DS2.7. For flat roofs, the maximum height of the parapet is 450mm, measured from the uppermost ceiling to the highest point on the parapet.	Dwelling 1: 6.93m Dwelling 2: 7.83m No more than 600mm of excavation proposed (Excluding the pools) 600mm	No Yes No
PC3 – Setbacks:			
Front:	DS3.1. 5.5m to the main face of the dwelling	5.7m	Yes
Side:	DS3.5. The minimum side setback outside the FSPA is 900mm (ground floor) and 1.2m (first floor).	<u>Ground floor:</u> North eastern: 0.983m South western: 0.95m <u>First floor:</u> North eastern: 1.487m South western: 1.488m	Yes Yes
Rear:	DS3.9. A minimum rear setback of 7m to the ground floor level solid wall must be provided. DS3.10. A minimum rear setback of 9m to the first floor level solid wall must be provided.	9.1m (to rear alfresco) 13.2m (to rear solid wall) 13.2m	Yes Yes

PC3 – Solar Access	DS4.1. Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00am and 3.00pm on 21 June	The proposed development enables at least 3 hours of sunlight on the windows of the main living areas and adjoining principal private open space of adjacent dwellings between 9:00am and 3.00pm on 21 June.	Yes
PC5 – Visual Privacy	DS5.4. First floor balconies located at the rear of dwellings must incorporate fin walls or privacy screens on the side to prevent over-looking	No rear balconies are proposed. Window locations are acceptable.	N/A Yes
PC6 – Noise	DS6.1. 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.	Pool pumps not shown on plans.	No, however can be conditioned should the application be supported.
PC7 – Vehicle access, parking and manoeuvring	DS7.1. Each dwelling is to provide one (1) garage and one (1) driveway space (unless otherwise provided for in the building envelope). DS7.2. Garages are to be setback a minimum 5.5m from the front property alignment and recessed a minimum 300mm into the facade of the building. DS7.4. Driveways are a minimum width of 3m wide and a maximum of 6m	One shared driveway crossing leads to a single garage per dwelling with a hard stand forward of the garage. Dwelling 1: 6m Dwelling 2: 6m Both garages are setback 300mm from the main building face. 6.0m shared driveway crossing proposed.	Yes Yes Yes
PC9 – Streetscape character	DS9.1. Dual occupancies are to address all street	Both occupancies address Caloola Crescent.	Yes

	<p>frontages.</p> <p>DS9.4. The design of the front of the dual occupancy development is to incorporate at least two of the following design features:</p> <ul style="list-style-type: none"> a. entry feature b. awnings, louvers, shutters or other features over windows c. balcony or window box treatment to any first floor element d. recessed or projection of prominent architectural elements to visibly break up the facade and avoid blank wall appearance e. open verandahs f. use of bay windows or similar features along the façade g. verandahs, pergolas or similar features above garage doors <p>DS9.7. The maximum roof pitch is 35 degrees.</p>	<p>Both occupancies incorporate an entry feature and recessed and projected architectural elements.</p> <p>Flat roof proposed</p>	<p>Yes</p> <p>Yes</p>
PC11 – Balconies	DS11.1. The maximum depth for a rear balcony on the first floor is 2m and it incorporates fin walls or privacy screens to minimise overlooking into the rear yards of other premises	No rear balconies are proposed.	Yes
PC13 – Front fencing	DS13.1. Front fences: a. are a maximum height of 1m.	1m	Yes
PC14 – Landscaped areas and private open space	<p>DS14.1. Where located outside the FSPA, a minimum of 20% of site area is landscaped open space.</p> <p>DS14.5. The minimum dimension of landscaped open space is 2m in any direction.</p>	<p><u>Dwelling 1 and 2</u> 14.8% or 94.2sqm (areas with dimensions less than 2m x 2m excluded).</p> <p>Applicant has relied on adding areas with dimensions less than 2m x 2m.</p>	<p>No</p> <p>No</p>

	<p>DS14.3. An area of Principal Private Open Space is to be provided which:</p> <p>a. is provided at ground level</p> <p>b. has a minimum dimension of 4m x 5m</p> <p>c. is not steeper than 1 in 20</p> <p>d. is directly accessible from a main living area</p> <p>e. may include a covered patio area</p>	<p><u>Dwelling 1 and 2</u> At ground level.</p> <p><u>Dwelling 1</u> In excess of 4.0m x 5.0m.</p> <p><u>Dwelling 2:</u> In excess of 4.0m x 5.0m.</p> <p><u>Dwelling 1 and 2</u> Not steeper than 1 in 20.</p> <p><u>Dwelling 1 and 2</u> Accessed from main kitchen, dining and family area.</p> <p><u>Dwelling 1 and 2</u> Include an alfresco area.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
PC15 – Stormwater	Stormwater management is in accordance with the provisions contained in Section 4.4 Dwelling Houses on Standard Lots	The application has been assessed by Council's Development Engineer. Additional information was requested in relation to the OSD tanks proposed and the steepness of the driveways. Inconsistency was observed between the OSD section plans and the driveway section plans submitted.	No
PC16 – Site utilities	DS16.2. Each dwelling must provide adequate space for the storage of garbage and recycling bins (a space of at least 3m by 1m must be	Space for storage of bins has been provided for both dwellings.	Yes

	provided).		
	DS16.4. Six (6) cubic metres per dwelling is set aside exclusively for general storage. This space may be provided as an extension of a carport or garage, or in the form of an internal cupboard or attic	Storage space for both dwellings has been provided.	Yes
PC4 – Significant trees and vegetation	DS3.1 Site layout and design, including buildings, structures and hardstand, ensures the long term retention and health of existing significant trees and vegetation.	The proposed removal of the street tree been assessed and supported by Council's Consultant Arborist. Conditions have been recommended if the application was to be supported.	Yes
4.7 Outbuildings			
PC2 – Building height	DS2.1. Maximum height is 3m	2.91m for both dwellings.	Yes
PC3 – Setbacks	DS3.1. Minimum setbacks for garages, gyms, cabanas and sheds are 900mm	0.91m from rear boundary. 2.46m from side boundaries.	Yes
PC5 – External finishes and claddings	DS5.1. External finishes and claddings have low reflectivity	If the application is supported, a condition would be imposed requiring low reflectivity materials to be used.	Can be conditioned if the application was supported.
5.6 Swimming Pools & Spas			
PC1 – Pool Siting and Noise Control	DS1.1. In-ground swimming pools shall be built so that the top of the swimming pool is as close to the existing ground level as possible. On sloping sites this will often mean excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool at the low side	The proposed in-ground pools are located close to existing ground level.	Yes
	DS1.5. Filling is not permitted between the	No filling proposed between the pools	Yes

	<p>swimming pool and the property boundary.</p> <p>DS1.7. Swimming pools are to be constructed so that the top of the bond beam is as close to ground level as possible.</p> <p>DS1.10. The swimming pool edge must be at least 1.5 metres from side and rear property boundaries.</p> <p>DS1.12. Council may require mechanical equipment to be suitable acoustically treated so that noise to adjoining properties is reduced.</p> <p>DS1.14. Heated swimming pools must utilise energy for heating from renewable energy sources, such as solar heating, heat pumps and gas heating. Swimming pool covers should be used when the swimming pool is not in use.</p>	<p>and the site boundaries.</p> <p>Part of the proposed in-ground pools will be located approximately 350m above ground level mainly due to the slope observed.</p> <p>In excess of 1.5m from all boundaries (Except internal boundary).</p> <p>No pool pumps shown on plans. Their locations can be conditioned if application was to be supported.</p> <p>Although a BASIX certificate accompanies the application for each dwelling, the BASIX was the incorrect type (two single dwelling BASIX, as opposed to a single multi dwelling BASIX).</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p>
PC2 – Landscaping	<p>DS2.1. Tree and shrub planting is to be provided along the adjoining property boundary lines to achieve a reasonable level of privacy. Refer to Appendix 1 for recommended species to use.</p>	<p>Council's Consultant Arborist recommended that a landscape plan be submitted prior to the issue of a construction certificate.</p>	<p>Can be conditioned if the application was to be supported.</p>

Georges River Development Control Plan 2020 (Interim Policy)

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

81. In relation to the proposed dual occupancy, the proposal does not satisfy the minimum lot size requirement of 650sqm required by the Interim Policy Development Control Plan. All the other controls in relation to frontage, solar access, setbacks and parking are satisfied.

Georges River Development Control Plan 2021

82. The Georges River Development Control Plan became effective on 8 October 2021 upon the gazettal of the Georges River Local Environmental Plan 2021. However given the date the application was lodged the Hurstville Local Environmental Plan 2012 and the Georges River Development Control Plan remain the instruments for assessment of this proposal.

IMPACTS

Natural Environment

83. The development will not result in any significant adverse impacts on the natural environment. As the proposal seeks to remove one (1) street tree, the proposal was referred to Council's Consultant Arborist who supported the application subject to specific landscape conditions being recommended.
84. The proposed stormwater system was found to be inadequate and additional information was requested by Council's Development Engineer in relation to the steepness of the driveways and the ability of the OSD system to satisfactorily drain by gravity to the street. Inconsistency was observed between the proposed driveway section plan and the OSD section plans.

Built Environment

85. The proposed development is considered to adversely impact upon the built environment given the residential density proposed exceeds that defined and consistently applied as per clause 4.1A(2) of Hurstville LEP 2012. The proposal is likely to result in an undesirable precedent which can disrupt the established and future building pattern within the area.
86. The proposal is also contrary to the desired future character of the area given the Georges River Local Environmental Plan 2021 maintains the 650sqm site area control.

Social Impact

87. The assessment demonstrates that the proposal in its current form will have an adverse impact on the character of the locality and the amenity of neighbouring residential properties. The environmental impacts on the social environment are considered to be unreasonable and the application is not supported.

Economic Impact

88. The proposal is not considered to result in unreasonable economic impacts.

Suitability of the Site

89. The site is zoned R2 – Low Density Residential. Whilst the proposal being a dual occupancy and ancillary works, is a permissible form of development in this zone, it is considered that the proposal is not suitable for the site given departure from the site area control applicable to dual occupancies.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

90. The application was notified to surrounding neighbours for a period of fourteen (14) days between 05 August 2021 and 19 August 2021 in accordance with Council's Notification Policy. No submissions were received.

REFERRALS

Council Referrals

Consultant Arborist

91. The application has been assessed and endorsed by Council's Consultant Arborist and relevant tree and landscaping conditions have been recommended if the application is to be supported.

Development Engineering

92. The application has been assessed by Council's Development Engineer. Additional information was requested in relation to the OSD tanks proposed and the steepness of the driveways. Inconsistency was found between the OSD section plans and the driveway section plans.

GIS

93. The application has been referred to Council's GIS team. Street numbering has been allocated for this development should the proposal be supported.

External Referrals

Ausgrid

94. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. A response was received stating that no objections have been raised and no conditions recommended.

Local Infrastructure Contributions

95. The development is subject to Section 7.11 (former Section 94 Contribution) contribution. In accordance with Council's Section 94 Plan, Section 7.11 – Contribution towards provision or improvement of amenities or services is applicable to residential developments.
96. If the application was to be supported, the levied charge in this case is \$20,000.00 which is required to be paid in full prior to the release of any Construction Certificate.
97. It is noted that the proposal has not been accompanied by a Quantity Surveyors Report, and the cost of works submitted (\$720,500) is largely undervalued for the amount of built form proposed.

CONCLUSION

98. Development consent is sought for the demolition of existing structures and construction of an attached two (2) storey dual occupancy with two (2) rear swimming pools, two (2) rear cabanas and front fencing including landscaping and engineering works at 31 Caloola Crescent Beverly Hills NSW 2209.
99. 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 fails to provide an adequate Clause 4.6 variation statement to justify the necessity for the variation of the Hurstville Local Environmental Plan 2012 requirement for site area associated with a dual occupancy development. The proposal also fails to satisfy all the R2 Low Density zone objectives and a number of Development Control Plan controls. The proposed development is not considered to be suitable for the site or

its locality and is likely to set an undesirable precedent with respect to bulk, scale and form.

100. The application is recommended for refusal for the following reasons:

DETERMINATION AND STATEMENT OF REASONS

101. Statement of Reasons

- The proposed development is not considered to be an appropriate scale and form for the site and the character of the locality.
- The submitted clause 4.6 has not adequately not justified the necessity for the variation of clause 4.1A (2) Hurstville LEP 2012 regarding the minimum site area requirement for dual occupancy developments.
- The proposed development will have unacceptable adverse impacts on the built environment.
- The proposed development will result in unacceptable adverse impacts on the amenity of adjoining residents and the locality and is likely to set an undesirable precedent.
- In consideration of the aforementioned reasons, the proposed development is not a suitable and planned use of the site and its approval is not in the public interest.

Determination

102. THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel refuses DA2021/0253 for demolition of existing structures and construction of an attached two (2) storey dual occupancy with two (2) rear swimming pools, two (2) rear cabanas and front fencing including landscaping and engineering works at 31 Caloola Crescent Beverly Hills NSW 2209, for the following reasons:

REASONS FOR REFUSAL

1. **Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 given an incorrect type of BASIX Certificate accompanied the application.
2. **Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Hurstville Local Environmental Plan 2012:
 - a. Clause 1.2 – Aims of Plan.
 - b. Clause 2.3 – Zone Objectives (R2 Low Density Residential);
 - c. Clause 4.1A – Minimum lot sizes for dual occupancies and multi dwelling housing;
 - d. Clause 4.6 – Exceptions to development standards, having regard to lack of adequacy in justifying the need for development standard variation.
3. **Refusal Reason – Development Control Plan** – Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Hurstville Development Control Plan No.1:

- a. Part 4.3 Control PC2 relating to the wall heights;
 - b. Part 4.3 Control PC14 relating to the minimum required deep soil landscaped area and its minimum dimensions;
 - c. Part 4.3 PC15 relating to the stormwater plans.
4. **Refusal Reason – Impact on the Environment** – Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:
- a. Natural Environment: The proposed stormwater plans are found to be inadequate given inconsistency between the submitted OSD section plan (Dwg No. C03 Revision B, dated 1/07/2021, prepared by Nemco Design Pty Ltd) and the driveway section plan (Dwg 'A06.02 Revision A', dated 02/06/2021 prepared by Nemco Design Pty Ltd).
 - b. Built Environment: An adverse impact would result from the proposed development on the built environment as the proposal is likely to result in an undesirable precedent which can disrupt the established building pattern within the area. The proposal is also contrary to the desired future character of the area given the Georges River Local Environmental Plan 2021 maintains the 650sqm site area control.
 - c. Social Impacts: An adverse impact would result from the proposed development on the amenity of the locality and general expectations for a dual occupancy in a low density residential area.
5. **Refusal Reason – Site Suitability** – Pursuant to Section Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be suitable for the site or its locality and is likely to set an undesirable precedent.
6. **Refusal Reason – The Public Interest** – Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

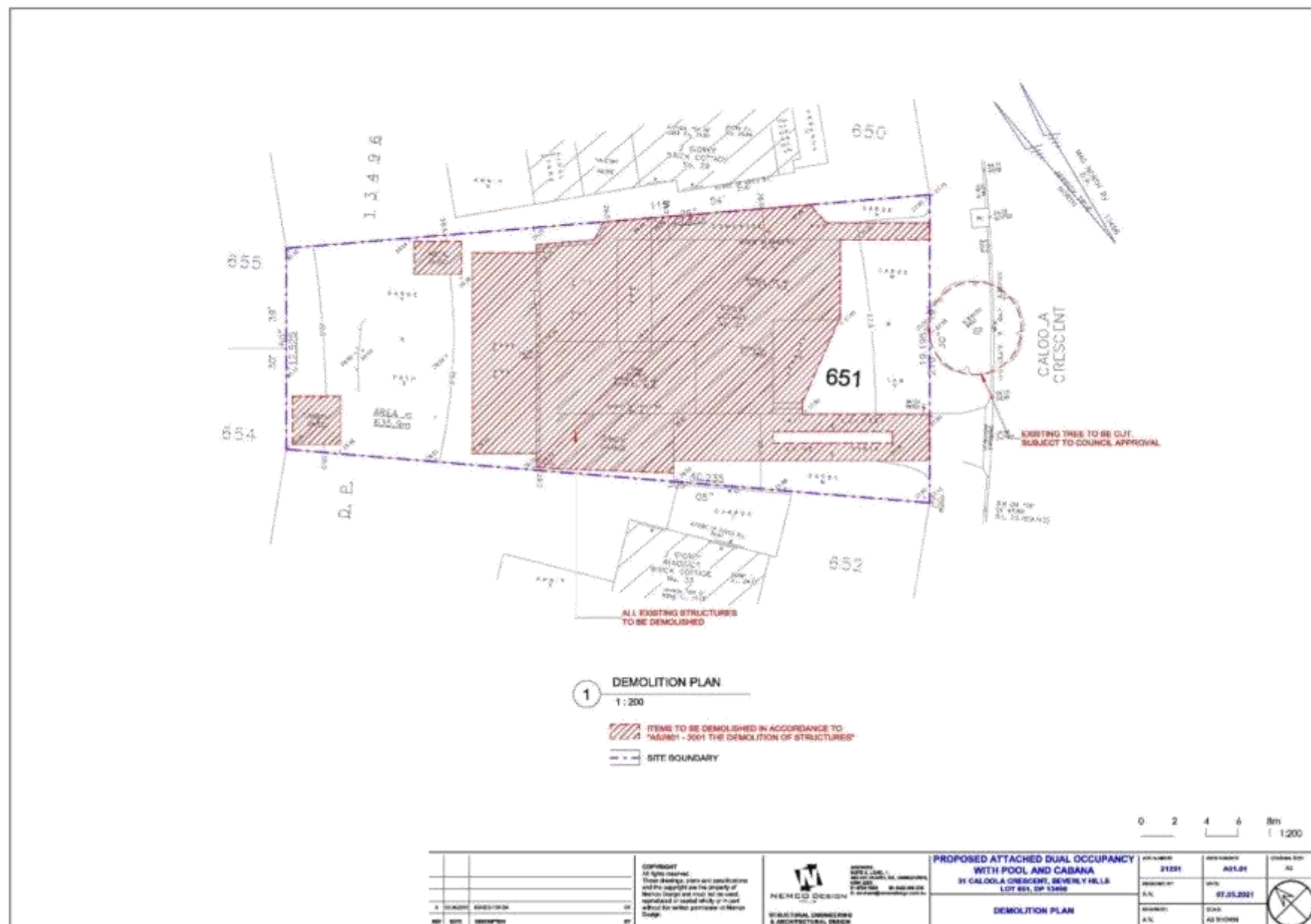
ATTACHMENTS

Attachment  1  Architectural plans- 31 Caloola Crescent Beverly Hills

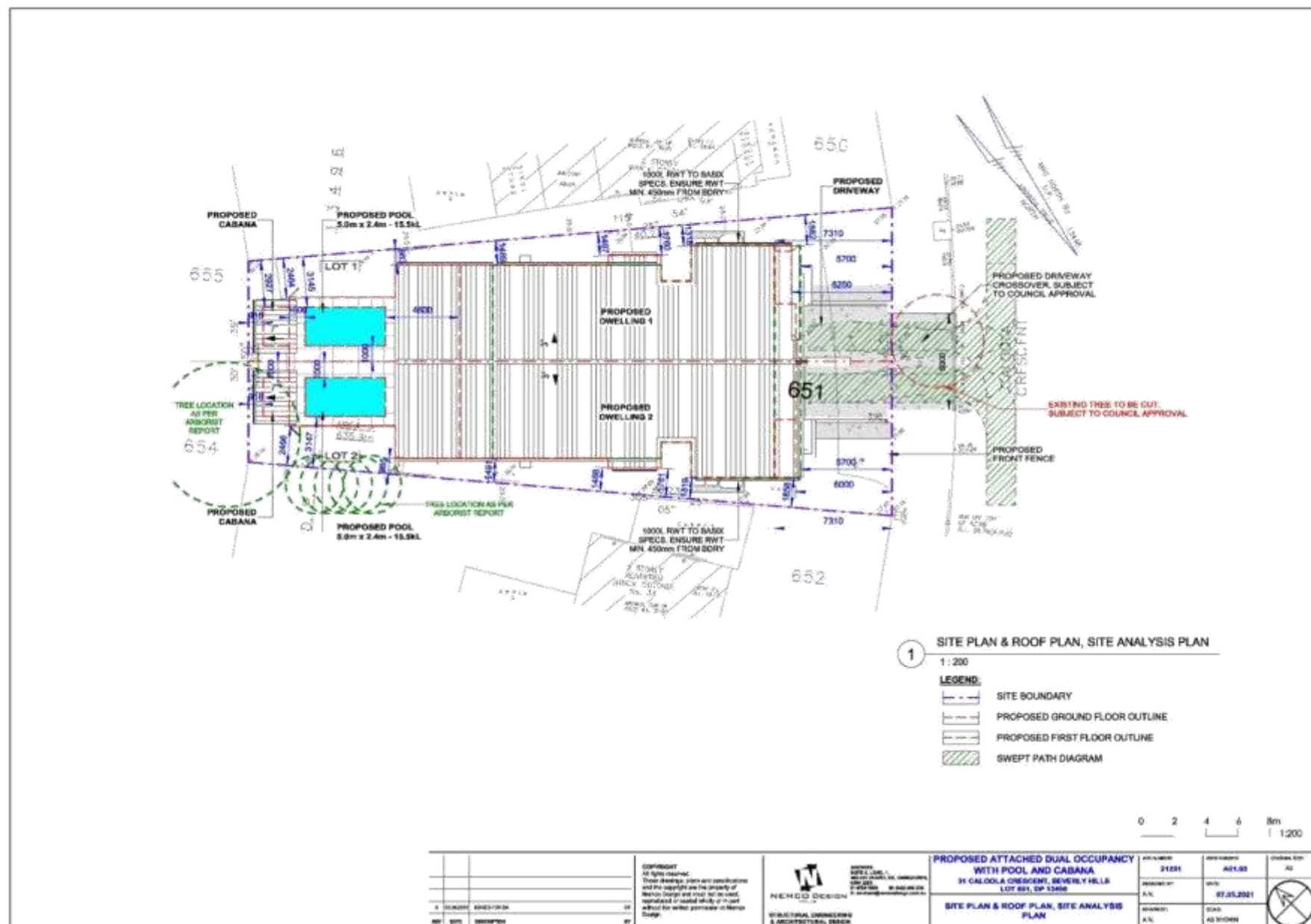


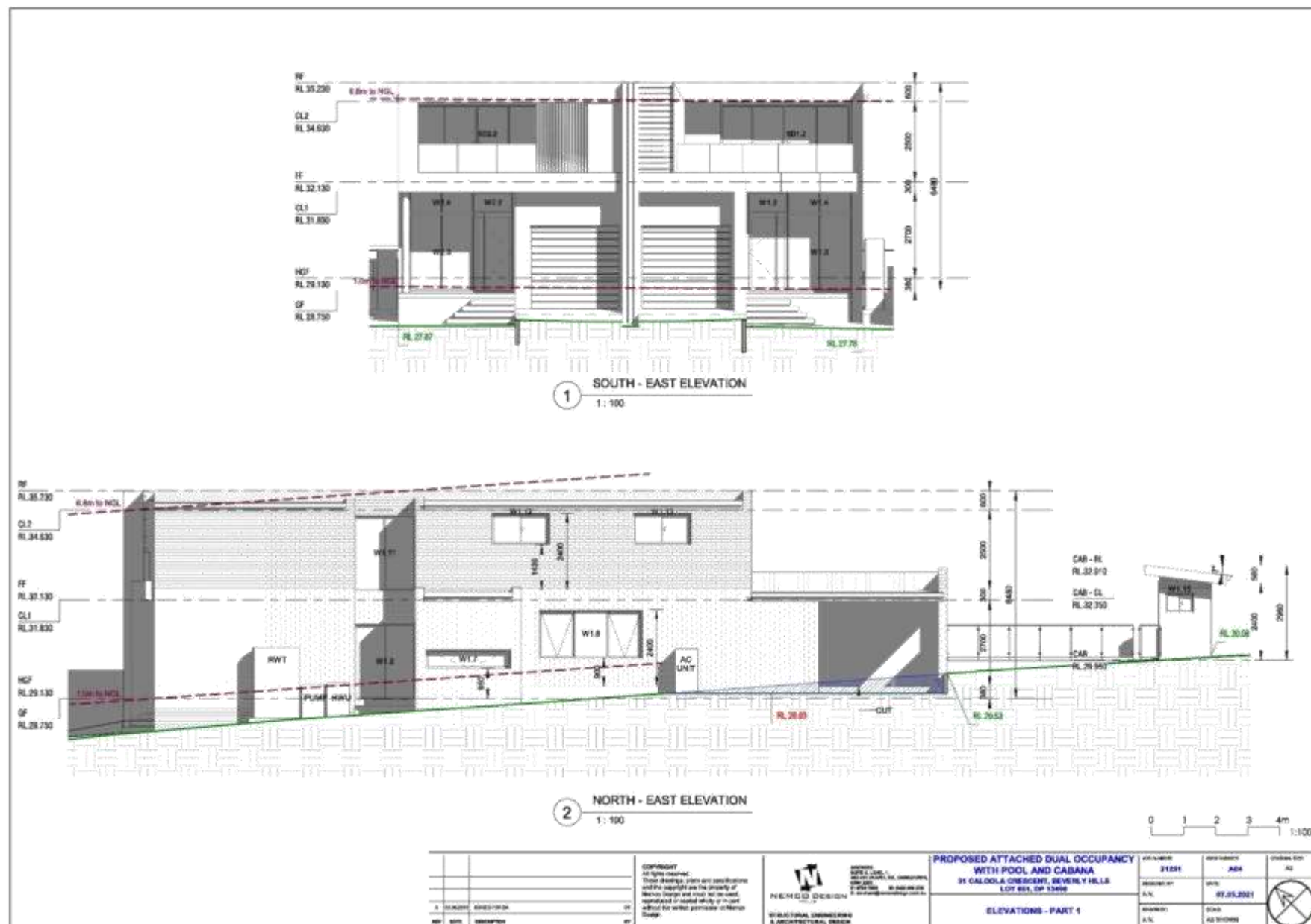
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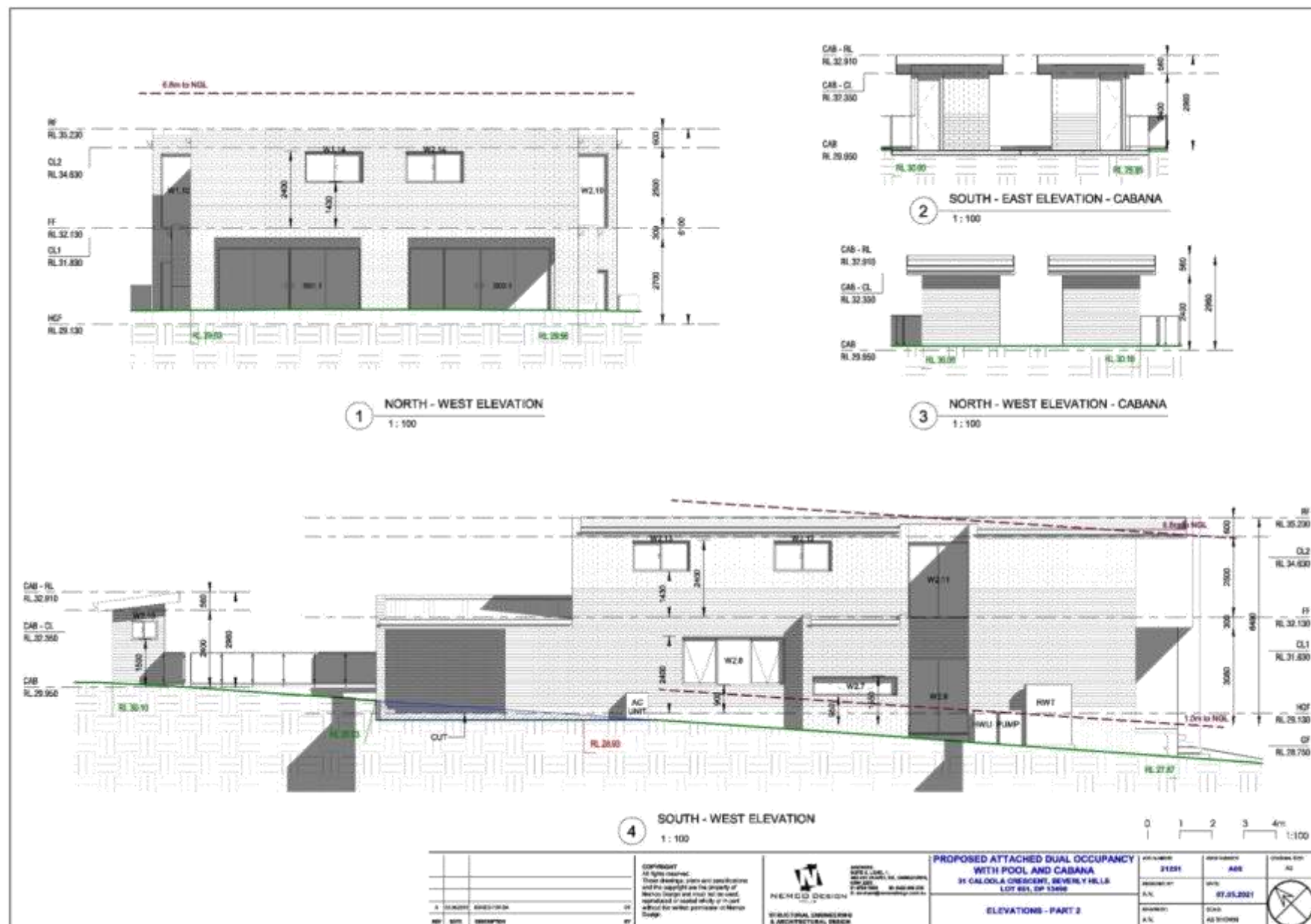
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01: OFF WHITE

02: MONUMENT

03: TIMBER FUTURE

04: TILT GARAGE DOOR

05: ALUMINIUM WINDOWS & DOORS

06: FASCIA & GUTTER

07: GLASS BALUSTRADE

08: COLORBOND ROOF

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BY: NEMCO	DESIGNER: NEMCO



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PROPOSED ATTACHED DUAL OCCUPANCY WITH POOL AND CABANA	
31 CALoola CRESCENT, BEVERLY HILLS LOT 661, DP 134568	
SCHEDULE OF FINISHES	
PROJECT NO:	31051
ARCHITECT:	NEMCO
DATE:	07.05.2021
DESIGNER:	NEMCO
BY:	AS SHOWN

UNION NO:	A12
UNION NO:	A2

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No 33



No 31 CALOOLA CRESCENT



No 29



REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 04 NOVEMBER 2021

LPP063-21

LPP Report No	LPP063-21	Development Application No	DA2021/0203
Site Address & Ward Locality	Lillian Road Reserve & 50 Lillian Road Riverwood Peakhurst Ward		
Proposed Development	Construction of stormwater pipe and scour protection bed within an existing easement to drain water from the development at 40 Lillian Road Riverwood		
Owners	Georges River Council		
Applicant	Vincent Ng		
Planner/Architect	Vincent Ng		
Date Of Lodgement	31/05/2021		
Submissions	Nil		
Cost of Works	\$2,500.00		
Local Planning Panel Criteria	The development is within Council owned land.		
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 (Coastal Management) 2018, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Infrastructure) 2007, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No 1, Georges River Local Environmental Plan 2021		
List all documents submitted with this report for the Panel's consideration	Stormwater Plan Registered Easement Plan – Lot 13 DP 207755		
Report prepared by	Senior Development Assessment		

Recommendation	That the application be approved in accordance with the conditions included in the report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant	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, the applicant will be able to review the conditions when the report is published.

Site Plan



Aerial Photo of Lillian Road Reserve outlined in blue



Location of the approved secondary dwelling seeking to drain through Lillian Road Reserve – outlined in blue



Easements annotated in the green dashed lines

Executive Summary Proposal

1. Council is in receipt of a Development Application (DA2021/0203) seeking consent for construction of drainage pipe and scour protection within an existing easement to drain stormwater from the development at 40 Lillian Road Riverwood. The pipe extends for 1m within the easement up to the existing fence encroachment and discharges into a 800mm concrete scour protection bed and 1.2m rip-rap comprising sandstone rocks evenly graded with the existing surface. The easement is located within Lillian Road Reserve, which is a public reserve in the ownership of Georges River Council.
2. Development Application DA2019/0117 (as amended by MOD2020/0015) granted approval via a deferred commencement determination for construction of a new secondary dwelling at 40 Lillian Road Riverwood. The deferred commencement condition contained in Section A, condition A (b) requires:

“The applicant must obtain separate Development Consent for all drainage works to be carried out within the Easement to Drain Water. The written consent of each of the owners of the property (Council’s Property Unit) burdened by the Easement will be required for the development application to carry out the drainage works on the burdened lot.”

3. This development application (DA2021/0203) has been lodged to satisfy the requirements of the deferred commencement condition to enable the activation of Development Consent DA2019/0117 for the secondary dwelling development.

Site and Locality

4. The subject site is legally described as Lot 13 in DP 207755, known as 50 Lillian Road Reserve.
5. The proposed drainage line is to be laid in the existing 1m wide drainage easement which extends for a length of 3m perpendicular to the north-western boundary of 40 Lillian Road.
6. The development in the immediate vicinity of 50 Lillian Road Reserve consists of one and two storey residential development along Lillian Road and Henry Road.
7. Lillian Road Reserve is grassed and contains trees and pathway adjacent to Salt Pan Creek. It is noted that the existing boundary fence with 40 Lillian Road currently encroaches Lillian Road Reserve by up to 1m in the location of the proposed drainage line and that the site of the easement is currently clear of vegetation. None of the trees within the reserve are proposed to be removed or impacted by the laying of pipes within the registered drainage easement.
8. The images below show the north-western boundary of the lot where the easement is located.



Figure 1: Aerial view of proposed drainage line at subject site



Figure 2: View looking north-west of existing fence encroachment within subject site

Zoning and Permissibility

9. Lillian Road Reserve is zoned RE1- Public Recreation under the provisions of the Hurstville Local Environmental Plan 2012 (HLEP 2012). However, permissibility is gained via State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure State Environmental Planning Policy) which states under Clause 111A that *“Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.”* In accordance with the Infrastructure State Environmental Planning Policy, the proposed application is defined as ‘a stormwater management system’ as it is laying of pipework within a registered drainage easement.

Submissions

10. In accordance with Council’s Notification Policy, the application was notified for 14 days during which time no submissions were received.

Conclusion

11. The proposed development complies with the planning controls and objectives of the State Environmental Planning Policy (Infrastructure) 2007 and Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan. The proposed development does not seek any variations to these environmental planning instruments.
12. Councils Development Engineer reviewed the proposal, and the application is considered to be acceptable subject to conditions of consent.

Report in Full Proposal

13. Council is in receipt of a Development Application (DA2021/0203) seeking consent for construction of drainage pipe and scour protection within an existing easement to drain stormwater from the development at 40 Lillian Road Riverwood. The pipe extends for 1m within the easement up to the existing fence encroachment and discharges into a 800mm concrete scour protection bed and 1.2m rip-rap comprising sandstone rocks evenly graded with the existing surface. The easement is located within Lillian Road Reserve, which is a public reserve in the ownership of Georges River Council.
14. Development Application DA2019/0117 (as amended by MOD2020/0015) granted approval via a deferred commencement for construction of a new secondary dwelling at 40 Lillian Road Riverwood. The deferred commencement condition contained in Section A, condition A (b) requires:

“The applicant must obtain separate Development Consent for all drainage works to be carried out within the Easement to Drain Water. The written consent of each of the owners of the property (Council’s Property Unit) burdened by the Easement will be required for the development application to carry out the drainage works on the burdened lot.”
15. This development application (DA2021/0203) has been lodged to satisfy the requirements of the deferred commencement condition to enable the activation of Development Consent DA2019/0117 for the secondary dwelling development.

Site and Locality

16. The subject site is legally described as Lot 13 in DP 207755, known as 50 Lillian Road Reserve.
17. The proposed drainage line is to be laid in the existing drainage 1m wide easement which extends for a length of 3m perpendicular to the north-western boundary of 40 Lillian Road.
18. The development in the immediate vicinity of 50 Lillian Road reserve consists of one and two storey residential development along Lillian Road and Henry Road.
19. Lillian Road Reserve is grassed and contains trees and pathway adjacent to Salt Pan Creek. It is noted that the existing boundary fence with 40 Lillian Road currently encroaches Lillian Road Reserve by up to 1m in the location of the proposed drainage line and that the site of the easement is currently clear of vegetation. None of the trees within the reserve are proposed to be removed or impacted by the laying of pipes within the registered drainage easement.

Background

20. Georges River Council is the registered proprietor of an open space/bushland recreation reserve legally described in part as Lot 13 in DP207755 and forming part of the Lillian Road Reserve, Riverwood.
21. On 10 February 2020, Council resolved to grant the owner of 40 Lillian Road, Riverwood an easement to drain water from their property to the existing public drainage infrastructure located within the adjoining Reserve mentioned above.
22. The easement to drain water is over a Council owned parcel of “community” classified land and was registered on 16 July 2020.

APPLICABLE PLANNING CONTROLS

Statutory consideration

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

State Environmental Planning Policies (SEPPs)

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

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

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

24. 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*

25. The DA includes a concept stormwater design prepared by Techno Consult Engineering, which demonstrates how the stormwater from the secondary dwelling will be discharged via the proposed pipework into the easement.

26. The stormwater design was referred to Council's Development Engineer for review. No objection was raised with respect to the management and disposal of stormwater subject to the imposition of conditions of consent
27. In summary, the proposal will not contravene the aims, objectives or purpose of the Regional Plan subject to the imposition of those conditions recommended by the Development Engineer.

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

28. State Environmental Planning Policy 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
29. Clause 7 requires contamination and remediation to be considered in determining a DA. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
30. A review of the site history reveals that the existing public reserve use was identified as a public garden recreation area on the original Deposited Plan registered in 1961 and there is no evidence to suggest any contamination. Therefore, the site is considered suitable for the proposal which involves subterranean drainage works only.

State Environmental Planning Policy (Coastal Management) 2018

31. 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"*.
32. The location of the proposed drainage pipe and scour protection bed is identified within the proximity area for coastal wetlands, coastal use area and coastal environment area under the Coastal Management State Environmental Planning Policy. Accordingly, an assessment was undertaken against the relevant provisions affecting the site.

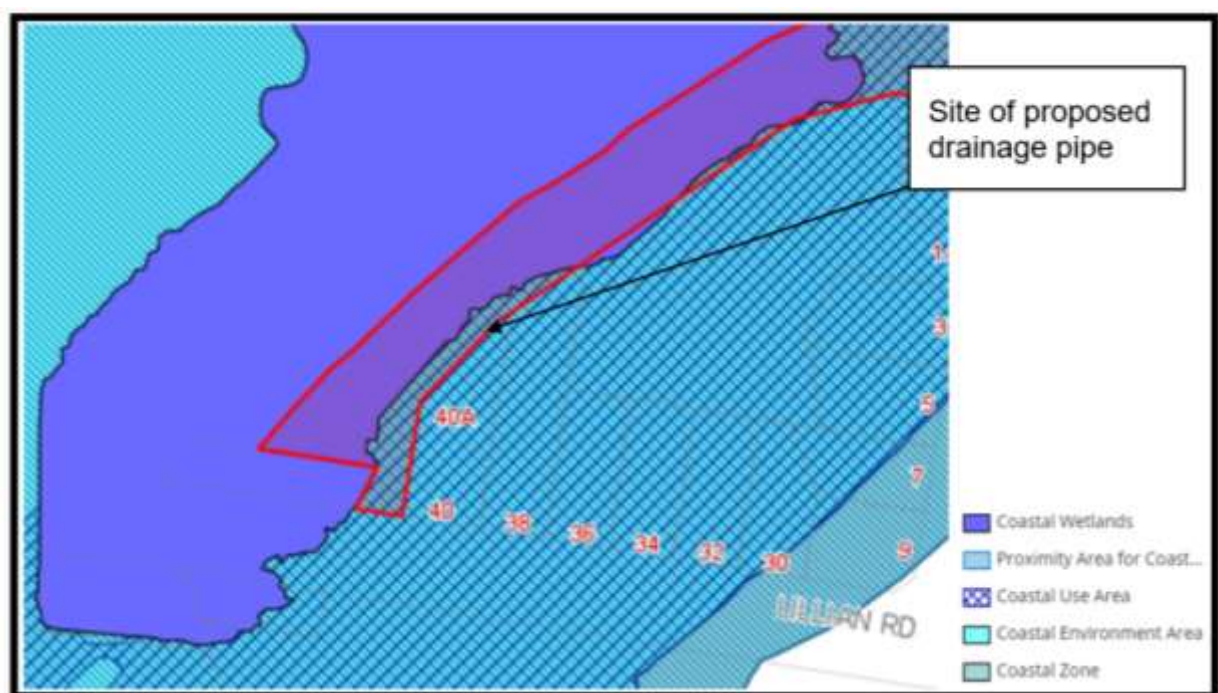


Figure 3: SEPP (Coastal Management) land map (Source Intramaps 2021)

33. The proposal has been assessed under Division 1 – Clause 11, Division 3 - Clause 13; Division 4 - Clause 14 and Division 5 - Clause 15 and 16 of the State Environmental Planning Policy.

Division 3 Coastal Environment 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.
(b) coastal environmental values and natural coastal processes,	Satisfies; the proposed development will have minimal impacts on the coastal environmental values and natural coastal processes.
(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,	Satisfies - the proposed development does not adjoin the waterway, and it is not expected the proposed development will adversely impact the water quality.
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	Satisfies - the development will have minimal impacts on marine and native vegetation.
(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,	Satisfies - the proposed development does not adjoin the waterway. It is not expected the proposed development will adversely impact foreshore open space.
(f) Aboriginal cultural heritage, practices and places,	Satisfies - The works are respectful of the cultural heritage, practices and places.
(g) the use of the surf zone.	Satisfies - Works are not located within the surf zone.
(2) Development consent must not be granted to development on land to which this clause applies unless the	

<p>consent authority is satisfied that:</p> <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 does not adjoin the waterway, 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
<p>(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:</p> <p>(a) has considered whether the 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</p>	<p>Satisfies - the proposed development does not adjoin the waterway, and it is not expected the proposed development will adversely impact access to the waterway.</p> <p>Satisfies - no additional overshadowing will occur as a result of the development.</p> <p>Satisfies - development does not have any 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 site is not known to contain any items of heritage and will not adversely affect the adjacent heritage item.</p> <p>Satisfies - development will have minimal impact on the coastal zone and its</p>

<p>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>processes.</p> <p>Satisfies - development will have minimal impact on the coastal zone and its processes.</p> <p>Satisfies - impacts are minimal.</p> <p>Satisfies - the application has considered the surrounding coastal area. The proposed development being the laying of pipework in a registered easement will not result in additional bulk and scale impacts.</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 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.	Satisfies - the proposed development is unlikely to increase the risk of coastal 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.

34. Upon thorough assessment for the application under the State Environmental Planning Policy Coastal Management 2018, the proposal reasonable satisfies the objectives and controls of the State Environmental Planning Policy.

State Environmental Planning Policy (Infrastructure) 2007

35. The aim of the Infrastructure State Environmental Planning Policy is to facilitate the effective delivery of infrastructure across the State. The Infrastructure State Environmental Planning Policy provided provisions around development likely to affect an electricity transmission or distribution network under Division 5 and also provides provisions around stormwater management systems under Division 20.

36. Clause 45 states that if development will be carried out *“within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists) the consent authority must:*
- (a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
 - (b) take into consideration any response to the notice that is received within 21 days after the notice is given.”*
37. Council provided Ausgrid the opportunity to comment in writing on the proposal but no comments were received at the time of writing of this report (passed 21 days).
38. Clause 111A of the State Environmental Planning Policy, “Development permitted with consent”, is relevant to this Development Application on the basis that the proposal gains its permissibility from this clause. Clause 111A is permissible as *“Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.”* Stormwater Management includes the discharge of stormwater such as drainage works.
39. The proposal is not inconsistent with the Infrastructure State Environmental Planning Policy.

Draft Remediation of Land State Environmental Planning Policy

40. The Department of Planning and Environment has announced a Draft Remediation of Land State Environmental Planning Policy, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.
41. The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.
42. Whilst the proposed State Environmental Planning Policy will retain the key operational framework of State Environmental Planning Policy 55, it will adopt a more modern approach to the management of contaminated land. The Draft State Environmental Planning Policy will not alter or affect the findings in relation to contamination at the site.

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

43. The Vegetation State Environmental Planning Policy aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.
44. The Vegetation State Environmental Planning Policy applies to clearing of:
- (a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*

(b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).*

45. The Vegetation State Environmental Planning Policy repeals clauses 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable Development Control Plan.
46. The proposal does not involve the removal of any trees and suitable conditions will be imposed for the proposal with regards to the protection of trees. On this basis, the proposal is consistent with the relevant provisions of the Vegetation State Environmental Planning Policy.

Draft Environment SEPP

47. The Draft Environment SEPP 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.
48. 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
49. The proposal is consistent with the provisions of this Draft Instrument.

ENVIRONMENTAL PLANNING INSTRUMENTS

Hurstville Local Environmental Plan 2012 (HLEP 2012)

50. The subject site is zoned Zone RE1 – Public Recreation under the provisions of the Hurstville Local Environmental Plan 2012. The proposal is not a listed permissible use under the Hurstville Local Environmental Plan but gains its permissibility via the Infrastructure State Environmental Planning Policy, the development is permissible.

The site is flood prone however due to the nature of the development this matter does not require additional consideration as the works are seeking to control stormwater discharge by piping it through the registered drainage easement.

GEORGES RIVER LOCAL ENVIRONMENTAL PLAN 2021

51. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.
52. In this regard, the provisions have no determining weight as a result of proposed operation of Clause “1.8A Savings provisions relating to development applications” of the

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

DEVELOPMENT CONTROL PLANS

Hurstville Development Control Plan No.1 (HDCP)

53. The proposal is not affected by any of the controls within the Hurstville Development Control Plan, however this work allows for lawful drainage disposal from the approved development at 40 Lillian Road Riverwood (DA2019/0117). These provisions are addressed in more detail within the following table.

Hurstville Development Control Plan Compliance Table		
Required	Proposed	Complies
4.6 Secondary Dwelling		
PC8. Stormwater		
Stormwater management is in accordance with the provisions contained in Section 4.4 Dwelling Houses on Standard Lots – PC.11. Section 4.4 – PC.11. states the following:		
DS11.2 - Stormwater drainage is to occur by: (b)an easement over adjoining properties to Council's drainage system and / or across the site to allow drainage from another lot.	This application – DA2021/0203 allows for the secondary dwelling approved via a deferred commencement determination associated with 40 Lillian Road Riverwood (DA2019/0117) to drain in accordance with this clause.	Complies
DS11.3 – Where drainage by gravity is involved this must not cause ponding/backwater effects on upstream properties.	Councils Development Engineers have provided comments and raised no objection in this regard, subject to the recommended conditions relating to this development.	Complies
DS11.5 - Where drainage by an easement is involved, no buildings are allowed to be constructed over easements.	There are no buildings proposed to be built over, on or within the easement.	Complies
DS11.7 – Development is not to concentrate overland flow of stormwater onto an adjoining property.	Councils Development Engineers have provided comments and raised no objection in this regard, subject to the recommended conditions relating to this development.	Complies

DEVELOPER CONTRIBUTIONS

54. The proposed development will not require payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979.

IMPACTS

Natural Environment

55. The proposal is unlikely to result in adverse impacts to the natural environment subject to the development being conducted in accordance with standard soil erosion and sediment control conditions and a condition that will protect the tree root systems during excavation for the pipe will be imposed. The excavation is minimal and is only for the extent of the easement. Appropriate stormwater conditions have been recommended.

Built Environment

56. The proposal will have no impact regarding the built environment beyond allowing the consent for DA2019/0117 to be activated subject to other conditions.

Social Impact

57. No adverse social impacts have been identified as part of the assessment. The piping within the easement will in principle cater for an approved development which will assist with providing additional housing in the area, subject to the activation of DA2019/0117.

Economic Impact

58. There is no apparent adverse economic impact that is likely to result within the locality due to the construction of the piping in the easement.

Suitability of the site

59. The proposal is a permissible form of development via the State Environmental Planning Policy (Infrastructure) 2007. The site is suitable for the laying of pipework within a registered easement.

SUBMISSIONS AND THE PUBLIC INTEREST

60. The application was notified in accordance with Council's Notification Policy for 14 days, during which time no submissions were received.

REFERRALS

Council Referrals

Development Engineer

61. The DA was referred to Council's Development Engineer for review and comment in relation to the submitted stormwater plans. The application is supported subject to conditions.

External Referrals

Ausgrid

62. The DA was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. At the time of writing this report, no response has been received.

CONCLUSION

63. The proposal has been assessed with regard to the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is an appropriate response to the context and constraints of the site and will result in facilitating drainage associated with an approved development. The application is consistent with the Hurstville Local Environmental Plan 2012, Hurstville Development

Control Plan No.1 and the Infrastructure State Environmental Planning Policy. The proposal will adequately respect the character of the RE1 zoned land and the proposal is appropriate for the site.

64. For the above reasons, the proposal is recommended for approval subject to the conditions included within the recommendation below.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

65. The reasons for this recommendation are:

- The proposal will facilitate lawful drainage associated with an approved secondary dwelling development.
- The proposal complies with State Environmental Planning Policy (Infrastructure) 2007.
- The proposed development is considered to be appropriate for the site. Subject to the implementation of the recommended conditions, the development will not create unreasonable impacts upon the natural or built environment.

Determination

66. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel grant development consent to Development Application DA2021/0203 for the construction of a drainage pipe and scour protection bed within a registered easement within Lillian Road Reserve at Lot 13 DP 207755, 50 Lillian Road Reserve Riverwood, 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
Stormwater Plan	TC-101-01 & 02	25/9/2021	B	Techno Consult Engineering

Separate Approvals Required Under Other Legislation

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

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

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

- (a) The applicant is to lodge a separate Section 68 drainage application of 1993 Local Government Act along with the stormwater plan showing the proposed outlet pipe

location perpendicular to the north-western boundary of property No. 40 Lillian Road Riverwood, size, invert levels, surface levels, length, the longitudinal section of the proposed outlet pipe including all the underground services and the details of the connection to the pit.

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

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

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

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

Prior to the Issue of a Construction Certificate

4. **Detailed Stormwater Drainage Design** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.
 - (a) All stormwater shall be drained in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
 - (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.
5. **Stormwater System – Gravity to the Reserve** - Stormwater shall drain by gravity to Council's reserve towards northern boundary of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).

6. **Energy Dissipating Structure** - An outfall apron with energy dissipating structure at the point of discharge to the reserve from the northern boundary shall be provided. Details shall be shown on the stormwater plan submitted for approval with the Construction Certificate application.
7. **Access to Councils Reserve** - In order to gain access to Councils reserve, prior to the Construction Certificate, the applicant shall submit and have approved an "Access through Council Parks and Reserves" form.
8. **Stormwater Drainage Application** - This Development Consent does not give approval to undertake works on public infrastructure. A separate approval of a Stormwater Drainage Application is required under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993 to undertake:
 - (a) Stormwater & ancillary works in the road reserve. This includes connections to council;
 - (b) Stormwater & ancillary to public infrastructure on private land

The Stormwater Drainage Application approval must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

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

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$168.00

General Fees

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

10. 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.

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

12. 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.

13. Waste Management Plan - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority

prior to the issue of any Construction Certificate.

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

- 14. Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.
- 15. Existing drainage easement, drainage reserve or stormwater drainage system benefiting Council** - Council drainage easement(s) drainage reserve(s) or stormwater system either pass through or are adjacent to the site. No building or other structure must be placed over the drainage easement or stormwater system or within the zone of influence taken from the invert of any pipe.

The applicant must determine the exact location, size and level details of the potentially affected stormwater drainage systems and without causing any damage to the public system ensure its protection. The owner, principal contractor or owner builder must not obstruct or otherwise remove, disconnect or render inoperable the Stormwater Drainage System.

Works such as fences must not obstruct the natural stormwater flowpath or alter the flowpath in such a way as to direct or concentrate stormwater on to neighbouring properties.

The applicant must meet all costs associated with such works.

Note: This condition does not set aside the need to obtain relevant approvals under the [Roads Act 1993](#) or [Local Government Act 1993](#) for works within Roads and other public places

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

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

During Construction

17. **Tree Conditions** - During construction the following conditions shall be complied with;

- a) Excavation works within the easement shall be undertaken and under the guidance of an engaged AQF Level 5 Arborist, to minimise impacts to tree roots,
- b) No roots over 50mm shall be severed or cut and piping shall be redirected below/above roots found. Any roots under 50mm shall be cut perpendicular to the root travel cleanly with sterilised sharp secateurs,
- c) Excavation, pipe work and backfilling shall be completed in a timely manner to ensure exposed roots from trees are kept moist and minimal disturbance to surrounding ground is minimised,
- d) No spoil shall be placed up against tree trunks,
- e) Tree Protection Zones of Trees calculated by the engaged Arborist shall be covered with 75mm of leaf mulch, woven geofabric placed on top and then hardwood planks 200 x 100mm strapped together shall be installed as per AS4970 -2009, Protection of trees on development sites, **4.5.3 Ground Protection** - to minimise impacts to subject trees and to prevent compaction,
- f) The engaged Arborist shall certify in writing that tree protection measures have been viewed and installed **before** works, kept maintained **during** works and to certify **at completion** that works have been completed as per AS4970 -2009,
- g) If the Arborist determines that machine excavation is detrimental to the trees viability, then another method of excavation shall be undertaken such as non-destructive AIR SPADING, PNEUMATIC AIR WAND TYPE of excavation shall be utilised for the protection of trees.

18. **Protection of Assets** - During construction the applicant is to ensure that there is no damage or conflict with the existing underground services and other existing assets within the Council's land.

19. **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.

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

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

21. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway,

kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.

- 22. Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the [Roads Act 1993](#) and/or under Section 68 of the [Local Government Act 1993](#). Penalty infringement Notices may be issued for any offences and severe penalties apply.
- 23. Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

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

Prior to the issue of the Occupation Certificate

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

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

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

- (a) Finished ground levels as per Council approved plans;
- (b) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes within the developed site including the basin;
- (c) The stormwater pit on the top of Council pipe with size and details;

Council must advise in writing that they are satisfied with the Works-As-Executed prior to the issue of an Occupation Certificate.

Operational Conditions (Ongoing)

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

Operational Requirements Under the Environmental Planning & Assessment Act 1979

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

27. 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.

28. 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.

29. Notification Requirements of PCA - No later than two days before the building work commences, the PCA must notify:

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

30. Notice 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.

31. Critical Stage Inspections - The last critical stage inspection must be undertaken by the PCA. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the [Environmental Planning and Assessment Regulation 2000](#).

Prescribed Conditions

32. 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.

33. **Clause 98E - Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.
34. **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.
35. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

36. **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](#).

NOTES/ADVICES

37. **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.

38. **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.

39. **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.
40. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.
41. **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.

42. **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).

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

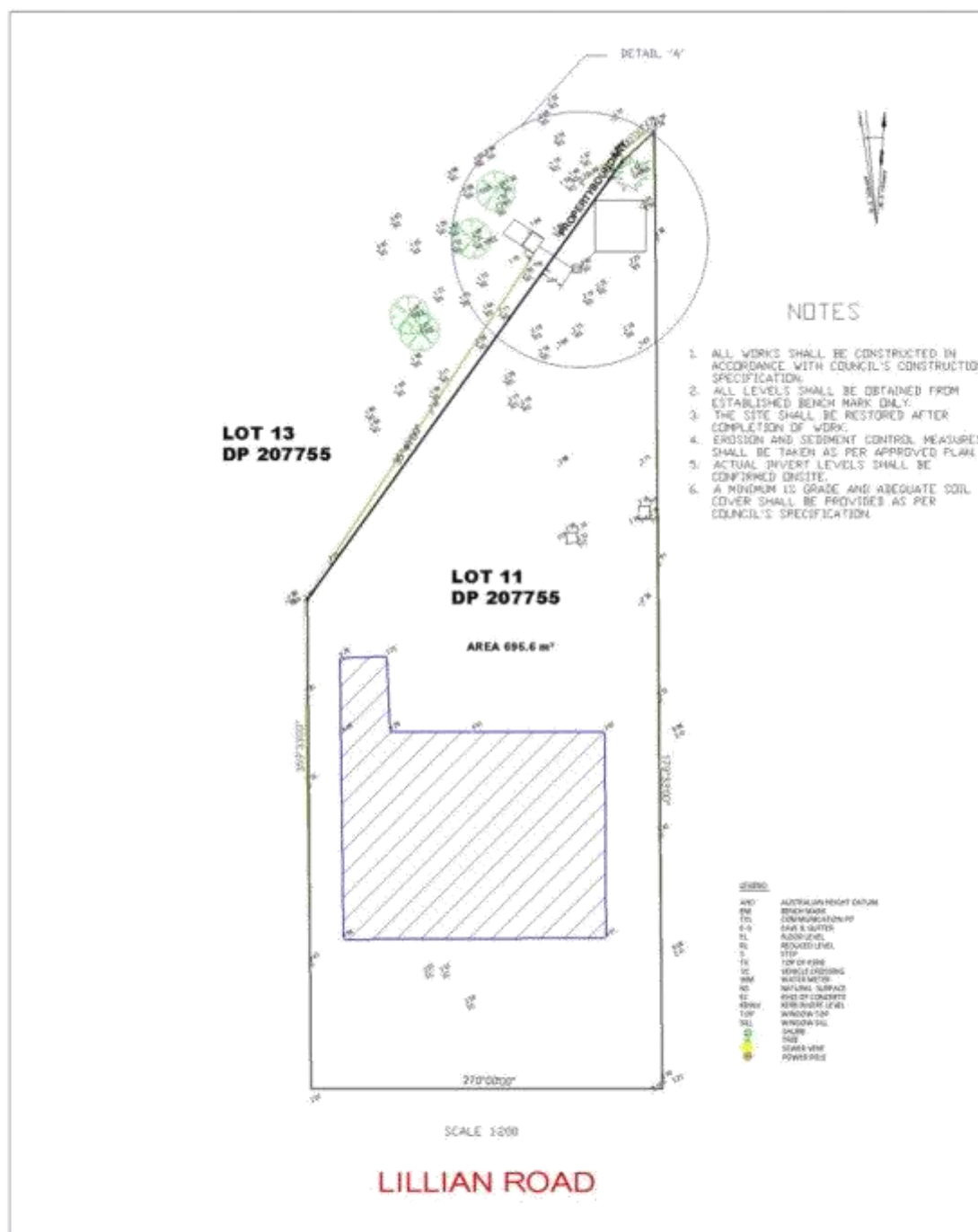
The developer must meet all costs of the extension, relocation or reconstruction of any part of Council's drainage system (including design drawings and easements) required to carry out the approved development.

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

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

ATTACHMENTS

Attachment [↓](#)1  Stormwater Plan



DESIGN BY: SA	DATE: AND	PROJECT: 40 LILLIAN ROAD, RIVERWOOD	Techno Consult Engineering Civil and Environmental Engineering Consultants		TITLE:
DRAWN BY: SA	CHECKED BY: ZA DATE: 26-06-2021	CLIENT: VINCENT	ARB: 40 430 230 Phone: (02) 9520 3851 Mob: 04531 695 49 Email: info@technoconsult.com.au	STORMWATER PLAN	