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## AGENDA - LPP

**Meeting:** Georges River Local Planning Panel (LPP)

**Date:** Thursday, 19 May 2022

**Time:** 4.00pm

**Venue:** Online Meeting

**Participants:** Stephen Davies (Chairperson)  
Julie Walsh (Expert Panel Member)  
Paul Vergotis (Expert Panel Member)  
Erin Sellers (Community Representative)

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**1. On Site Inspections – Carried out by Panel Members prior to meeting**

**2. Opening**

**3. Consideration of Items and Verbal Submissions**

**LPP021-22 40 Algernon Street Oatley – DA2021/0273**  
(Report by Senior Development Assessment Officer)

**LPP022-22 61-65 Kingsway, Kingsgrove – DA2021/0175**  
(Report by Senior Development Assessment Planner)

**LPP023-22 52 Lansdowne Parade, Oatley – DA2021/0486**  
(Report by Senior Development Assessment Planner)

**4. Local Planning Panel Deliberations in Closed Session**

**5. Confirmation of Minutes**

# REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 19 MAY 2022

LPP021-22

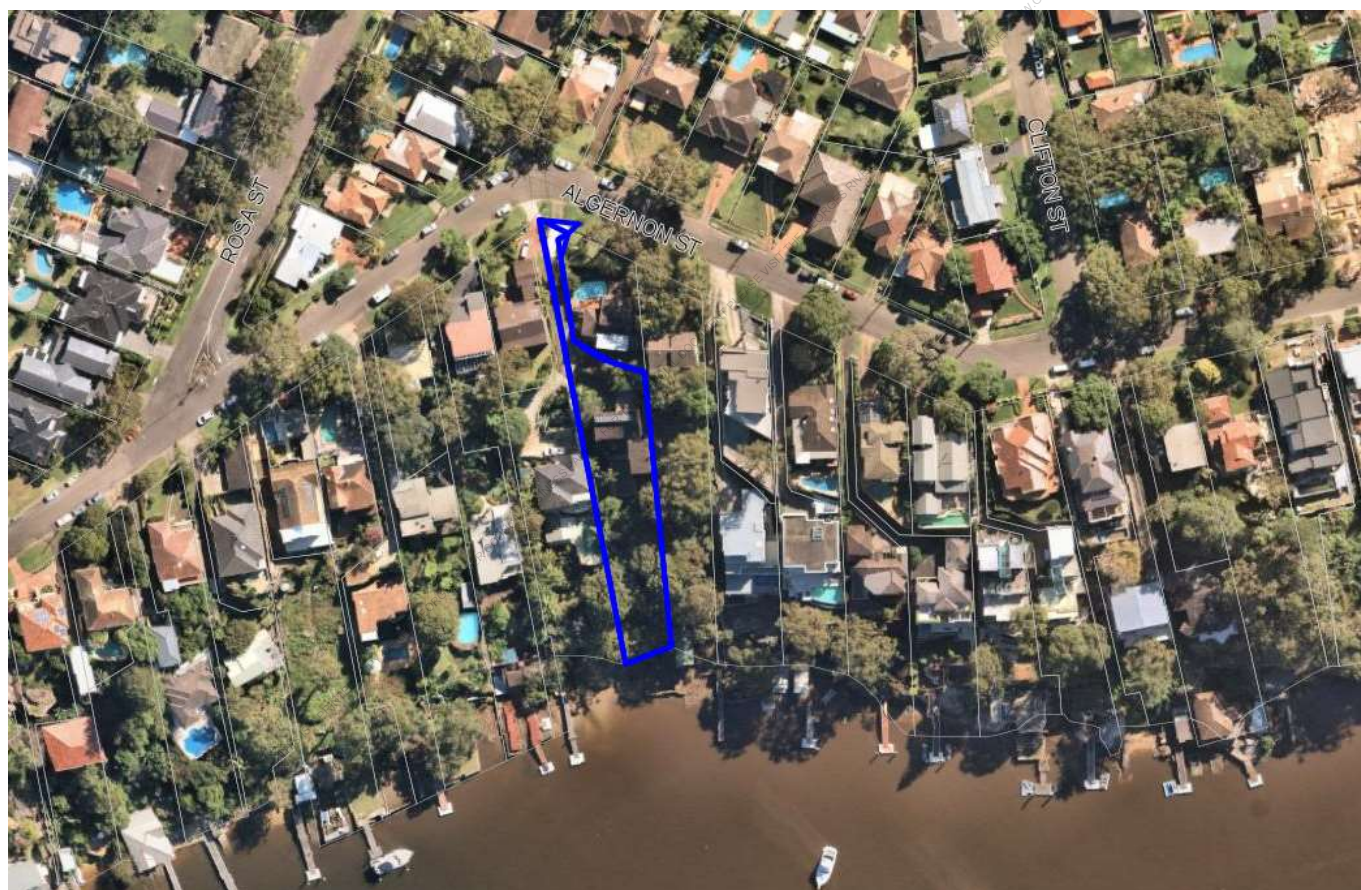
<b>LPP Report No</b>	<b>LPP021-22</b>	<b>Development Application No</b>	<b>DA2021/0273</b>
<b>Site Address &amp; Ward Locality</b>	40 Algernon Street Oatley NSW 2223 Blakehurst Ward		
<b>Proposed Development</b>	Two lot Torrens title subdivision in addition to driveway and landscaping works.		
<b>Owners</b>	Mr. Ross Green		
<b>Applicant</b>	Mr. Ross Green		
<b>Planner/Architect</b>	Planner: Winphil Pty Ltd / Architect: J.P. Bates and Inwood (surveyor)		
<b>Date Of Lodgement</b>	20/07/2021		
<b>Submissions</b>	Five submissions		
<b>Cost of Works</b>	\$5,500.00		
<b>Local Planning Panel Criteria</b>	General Manager delegation: Receipt of five or more submissions		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004,  Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013		
<b>List all documents submitted with this report for the Panel's consideration</b>	Subdivision plan, Statement of Environmental Effects, Drainage plan, Arborist Report, Survey plan, Title searches, Historical S88Bs and Surveys		
<b>Report prepared by</b>	Senior Development Assessment Officer		

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

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

### Site Plan



**Figure 1:** Aerial view of subject site outlined in blue

## Executive Summary

### Proposal

1. Development consent is sought for a two lot Torrens title subdivision in addition to driveway and landscaping works.

2. The application seeks to subdivide the existing 1,618.3sqm lot into two lots being lot 1 (918.3sqm including access handle) and lot 2 (700sqm) which adjoins the waterway. The subdivision seeks to create over lot 1 a raised driveway (approximately up to 3.4m above existing ground level in places) in the form of a right of carriageway to service lot 2. The new right of carriageway will extend from an existing shared right of carriageway connecting to Algernon Street.
3. In addition to the subdivision works, the application proposes drainage works, the removal of five trees, and cross easements/services works.

### Site and Locality

4. The site is known as 40 Algernon Street Oatley and is formally identified as lot 122 DP547754. The battle axe irregular allotment is accessed via a 7.32m wide shared access handle along the western boundary connecting to Algernon Street. The site area is 1,618.3sqm (by DP). The site slopes toward the south onto the waterway with a height difference of approximately 34m.
5. The site currently contains a two-storey dwelling, with an existing rear swimming pool. The site is affected by a 30m foreshore building line extending northwards from the mean high-water mark.
6. The site contains a number of trees, and sandstone features along the foreshore area adjoining the waterway. A sewer line traverses across the site within its top half.
7. The sites adjoining are a variety of one, two and three storey residential houses. The area can be characterized as transitional with a majority of older style developments punctured by newer developments with a larger footprint. The area is generally residential in character.

### Zoning and Permissibility

8. The site is zoned R2 – Low Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). Subdivision of land is permitted with consent pursuant to clause 2.6 of KLEP 2012.

### Submissions

9. The application was notified in accordance with Council's neighbour notification policy between 12 August 2021 and 26 August 2021 and five submissions were received objecting to the development. The issues raised in brief include:
  - a. Vehicular access and parking;
  - b. Construction of dwelling on new lot;
  - c. Services and driveway;
  - d. Tree removal; and
  - e. Sharing of easements and right of carriageway;

### 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 (DA2021/0273) is recommended for refusal for the reasons outlined in the report below.



## Report in Full Proposal

11. Development consent is sought for a two lot Torrens title subdivision in addition to driveway and landscaping works.
12. The application seeks to subdivide the existing 1,618.3sqm lot into two lots being lot 1 (918.3sqm including access handle) and lot 2 (700sqm) which adjoins the waterway. The subdivision seeks to create over lot 1 a raised driveway (approximately up to 3.4m above existing ground level in places) in the form of a right of carriageway to service lot 2. The new right of carriageway will extend from an existing shared right of carriageway connecting to Algernon Street.
13. In addition to the subdivision works, the application proposes drainage works, the removal of five trees, and cross easements/services works.
14. The existing dwelling and pool will form part of the newly created lot 1.
15. The proposed driveway servicing lot 2 is mostly raised and located above existing ground level and will require retaining walls for support.

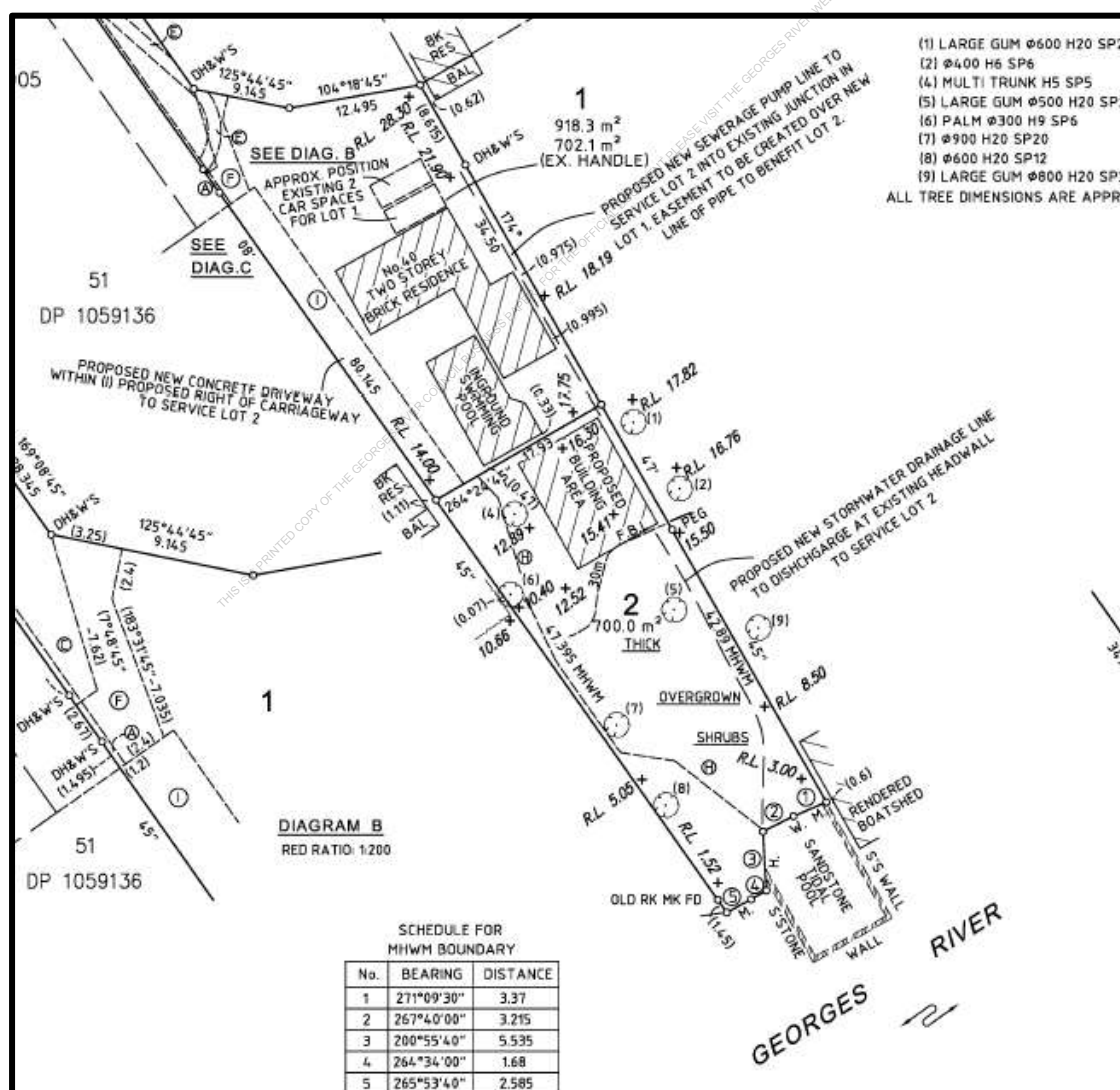


Figure 2: Proposed subdivision plan

## The Site and Locality

16. The site is known as 40 Algernon Street Oatley and is formally identified as lot 122 DP547754. The battle axe irregular allotment is accessed via a 7.32m wide shared access handle along the western boundary connecting to Algernon Street. The site area is 1,618.3sqm (by DP). The site slopes toward the south onto the waterway with a height difference of approximately 34m.
17. The site currently contains a two-storey dwelling, with an existing rear swimming pool. The site is affected by a 30m foreshore building line extending northwards from the mean high-water mark.
18. The site contains a number of trees, and sandstone features along the foreshore area adjoining the waterway. A sewer line traverses across the site within its top half.
19. The sites adjoining are a variety of one, two and three storey residential houses. The area can be characterized as transitional with a majority of older style developments punctured by newer developments with a larger footprint. The area is generally residential in character.

## Background

20. The development history of the site is summarised below:
  - DA56/95 was approved by Council on 10 April 1995 for erection of a dual occupancy development comprising the erection of a detached dwelling house and Torrens title subdivision which included a raised driveway for vehicular access to the rear.
  - Consent DA56/95 was not activated within the required 2 year period. The applicant sought to extend the consent with Council however this request was refused. The applicant appealed to the Land and Environment Court for a 1 year extension and subsequently consent was granted by the Court for the time extension (*Janette Marie Green v Kogarah Municipal Council [1998] NSWLEC 142*).
  - Development consent DA56/95 lapsed given no works commenced within required timeframe. The lapsing of the consent/substantial commencement matter was appealed to the Land and Environment Court and the matter was dismissed (*Ross Winston Green v Kogarah Municipal Council [1999] NSWLEC 256*).
  - The Land and Environment Court decision to dismiss the 1999 appeal, was itself appealed to the NSW Court of Appeals. Appeal was dismissed. (*Green v Kogarah Municipal Council [2001] NSWCA 123*).
  - Tree Removal Application (TA2021/0418) was approved by Council to remove and prune a number of trees.
  - The original application lodged sought to locate parking to service lot 2 at the top portion of lot 1 and proposed a pedestrian access right of carriageway over lot 1 to service lot 2. Although Council did not request that a driveway be added to service lot 2, amended plans submitted altered the subdivision proposal to propose a driveway to service lot 2.

One of Council's issues which was raised with the applicant on several occasions is the issue relating to the intensification of the use of the right of carriageway which currently appears to service properties other than 40 Algernon Street including 42A and 40A Algernon Street. Based on documents available to Council including title searches obtained, survey plans and S88B instruments, it appears that the existing right of carriageway (affecting the main driveway) may be a shared asset between 40, 40A and 42A Algernon Street. Council's requested confirmation from the applicant with regards to a recent S88B instrument that can verify the arrangements relating to the right of carriageway however the request was not fulfilled by the applicant.

Although the S88B instruments and surveys available to Council are dated and do not clearly identify the burden/benefit relationships between 40, 40A, and 42A Algernon Street, Council cannot be reasonably satisfied in this instance that the subject site (40 Algernon Street) is not burdened by a right of carriageway benefiting 40A and 42A Algernon Street.

In this instance, no owner's consent has been obtained from the property(s) that potentially benefit from this right of carriageway (40A and 42A Algernon Street). The applicant was requested to submit information to show the parties who benefit from the right of carriageway however the request was not fulfilled by the applicant.



**Figure 3:** View of existing dwelling





**Figure 4:** View of existing rear yard (lot 2 driveway is proposed to eventuate in this location)

### Planning assessment

21. The site has been inspected and the proposed development has been assessed under the provisions of Section 4.15(1) of the environmental planning and assessment act 1979.

### State Environmental Planning Policies

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

State Environmental Planning Policy	Complies
State Environmental Planning Policy (Resilience and Hazards) 2021	No
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	N/A
State Environmental Planning Policy (Biodiversity and Conservation) 2021	No
State Environmental Planning Policy (Transport and Infrastructure) 2021	Yes

### State Environmental Planning Policy (Resilience and Hazards) 2021

23. The Resilience and Hazards SEPP has replaced and repealed the following SEPPs:
- State Environmental Planning Policy (Coastal Management) 2018;
  - State Environmental Planning Policy No 33—Hazardous and Offensive Development; and
  - State Environmental Planning Policy No 55—Remediation of Land.

### Chapter 2 Coastal management

24. Chapter 2 of the SEPP relating to coastal management applies to the site.

25. The subject site has been identified as being located in a coastal vulnerability area and a coastal environmental area as per the SEPP Maps.
26. The proposal has been assessed under Division 3 - Clause 2.10, Division 4 - Clause 2.11, and Division 5 clauses 2.12 and 2.13 of the SEPP.

### Division 3 Coastal Environmental Area

#### 2.10 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,	Unsatisfactory. The proposed subdivision is likely to result in adverse ecological impacts due to extensive earthworks required to create the driveway servicing lot 2, and the unsatisfactorily traffic and drainage proposals. These aspects are discussed in detail in the subsequent sections of this report.
(b) coastal environmental values and natural coastal processes,	Unsatisfactory. Subdivision proposal unlikely to impact environmental values, however future construction of dwelling on lot 2 may result in adverse environmental impacts.
(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,	Satisfactory. Water quality unlikely to be impacted by the proposal.
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	Satisfactory. Proposal intends to remove a number of trees however this was supported by Council's Senior Landscape and Arboriculture Assessment Officer. No marine vegetation likely to be impacted by the proposal.
(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	Unsatisfactory. proposal removes connection between the existing dwelling house and the foreshore.



<p>disability,</p> <p>(f) Aboriginal cultural heritage, practices and places,</p> <p>(g) the use of the surf zone.</p>	<p>Satisfactory. The works are respectful of cultural heritage, practices and places.</p> <p>Satisfactory. Works are not located within the surf zone.</p>
<p>(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:</p> <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>Unsatisfactory. The proposed subdivision is likely to result in adverse ecological impacts due to extensive earthworks required to create the driveway servicing lot 2, and the unsatisfactorily traffic and drainage proposals.</p>
<p><b>Division 4 Coastal use area</b></p> <p><b>2.11 Development on land within the coastal use area</b></p>	
<b>Control</b>	<b>Comment and compliance</b>
<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>Unsatisfactory. Proposal removes connection between the existing dwelling house (lot 1) and the foreshore.</p> <p>Satisfactory. Development does not result in unreasonable impacts regarding overshadowing the foreshore and sightlines.</p>

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	Satisfactory. development does not result in unreasonable impact on the visual amenity and scenic qualities of the coast, including coastal headlands.
(iv) Aboriginal cultural heritage, practices and places,	Satisfactory. The works are respectful of the cultural heritage, practices and places.
(v) cultural and built environment heritage, and	Unsatisfactory. Proposal removes connection between the existing dwelling house (lot 1) and the foreshore.
(b) is satisfied that:	
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or	Satisfactory. the application has considered the surrounding coastal area. The proposed development is of a built form unlikely to adversely impact upon the surrounding coastal area with regards to bulk and scale.
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	
(iii) if that impact cannot be minimised -the development will be managed to mitigate that impact, and	
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	

**Division 5 General****2.12 Development in coastal zone generally - development not to increase risk of coastal hazards****Control**

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.

**Comment and compliance**

Satisfactory. the proposed development is unlikely to increase the risk of coastal hazards.

**2.13 Development in coastal zone generally - coastal management programs to be considered****Control**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has

**Comment and compliance**

Satisfactory.

taken into consideration the relevant provisions of any certified coastal management program that applies to the land	
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27. Upon thorough assessment for the application under the Chapter, the proposal does not satisfy all the required controls of the Chapter 2.

#### Chapter 4 Remediation of Land

28. Chapter 4 of the SEPP relating to remediation of land applies to the site.
29. Chapter 4 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 4.6 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
30. 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. The development exists and no reported contamination was found during construction. There are no works affecting the foundation material, in this regard no further investigation is warranted. There is no indication that the land is contaminated. The criterion of Chapter 4 has been satisfied.

#### **2007 State Environmental Planning Policy (Transport and Infrastructure) 2021**

31. The Transport and Infrastructure SEPP has replaced and repealed the following SEPPs:
- *State Environmental Planning Policy (Infrastructure) 2007;*
  - *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017;*
  - *State Environmental Planning Policy (Major Infrastructure Corridors) 2020; and*
  - *State Environmental Planning Policy (Three Ports) 2013.*

#### Chapter 2 Infrastructure

32. The application was referred to Ausgrid pursuant to clause 2.48 of the SEPP. No objection was received from Ausgrid.

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

33. 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.
34. Application was not required to be accompanied by a BASIX Certificate given no residential building works are proposed.

#### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

35. The Biodiversity and Conservation SEPP has replaced and repealed the following SEPPs:
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;*
  - *State Environmental Planning Policy (Koala Habitat Protection) 2020;*

- State *Environmental Planning Policy* (Koala Habitat Protection) 2021;
- Murray *Regional Environmental Plan No 2—Riverine Land*;
- State *Environmental Planning Policy No 19—Bushland in Urban Areas*;
- State *Environmental Planning Policy No 50—Canal Estate Development*;
- State *Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*;
- Sydney *Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)*;
- Sydney *Regional Environmental Plan (Sydney Harbour Catchment) 2005*;
- Greater Metropolitan *Regional Environmental Plan No 2—Georges River Catchment*; and
- Willandra Lakes *Regional Environmental Plan No 1—World Heritage Property*.

## Chapter 2 Vegetation in non-rural areas

36. Chapter 2 of the SEPP relating to vegetation in non-rural areas applies to the site.
37. Chapter 2 regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
38. Chapter 2 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).
39. The objectives of the Chapter 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 2.3 of the SEPP as the site is within both Georges River Council and the R2 Low Density Residential zone.
40. The proposal was referred to and assessed by Council's Senior Landscape and Arboriculture Assessment Officer and was supported subject to conditions. Five trees within the location of the proposed driveway were supported for removal.
41. The proposal did not propose tree replacement planting to offset the removal of the five trees. For the removal of five trees, 10 trees must be planted within the site.

## Chapter 11 Georges Rivers Catchment

42. Chapter 11 of the SEPP relating to the Georges Rivers Catchment applies to the site.
43. The application has been assessed by Council's Senior Development Engineer and the application was not supported for the reasons stated in the DCP table below.

## **Kogarah Local Environmental Plan 2012**

44. The extent to which the proposed development complies with the Kogarah Local Environmental Plan 2012 (KLEP 2012) is detailed and discussed in the table below.
45. The allotment is zoned R2 – Low Density Residential Zone, and subdivision of land is permitted as per clause 2.6- *Subdivision—consent requirements* of the LEP.

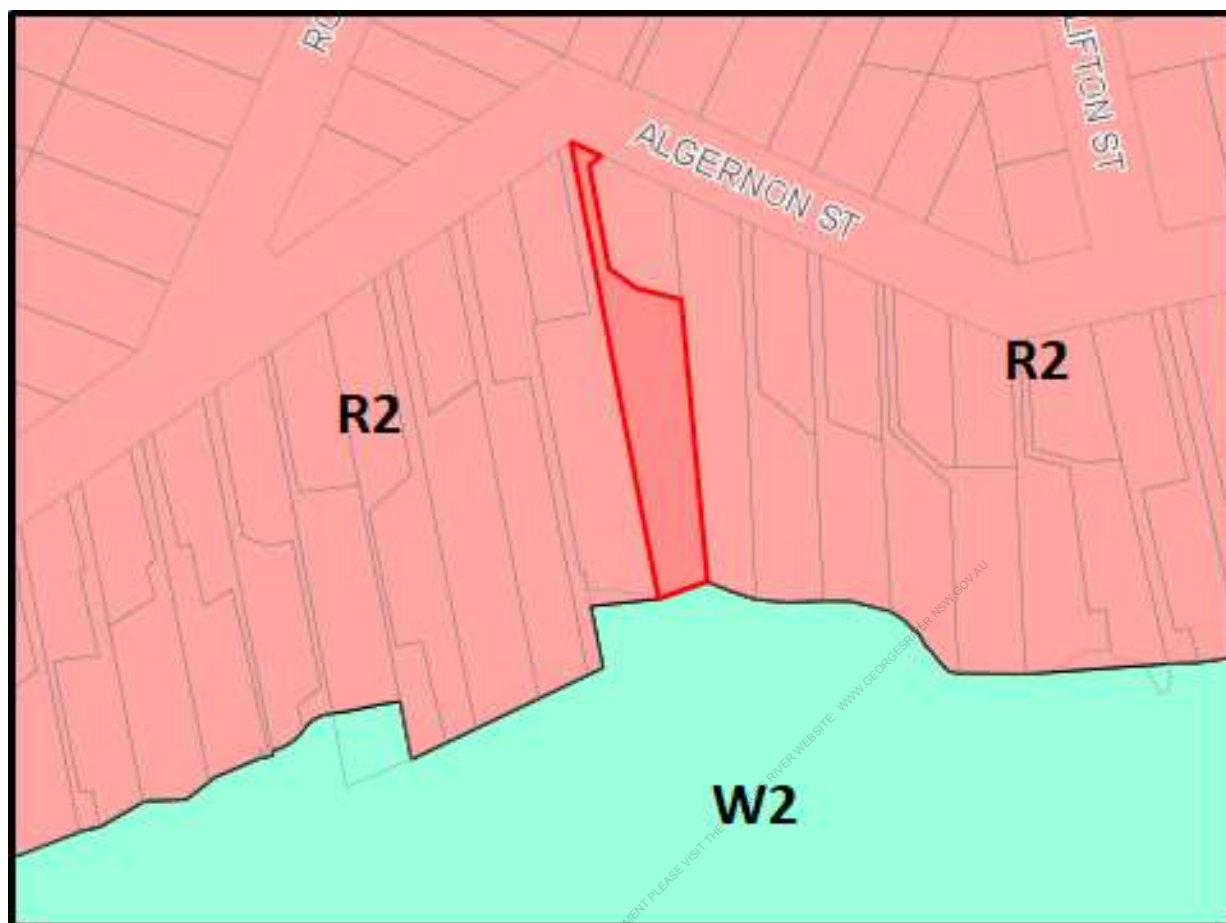


Figure 5: Zoning map with the site outlined in red

Clause	Standard	Proposed	Complies
<b>Part 1 Preliminary</b>			
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 does not achieve all the aims including:</p> <p>(a) to guide the orderly and sustainable development of Kogarah,</p> <p>(d) to protect and enhance Kogarah's natural environment, foreshores and waterways,</p>	No
<b>Part 2 Permitted or prohibited development</b>			
2.3 – Zone objectives and Land Use Table	<p>Meets objectives of R2- Low Density Residential Zone:</p> <ul style="list-style-type: none"> <li>To provide for the housing needs of</li> </ul>	The proposal is not considered to satisfy the zone objectives as the proposal intends on intensifying the use of the existing right of	No



	<p><i>the community within a low density residential environment.</i></p> <ul style="list-style-type: none"> <li><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> </ul>	carriageway which potentially benefits (40A and 42A Algernon Street) without obtaining consent from the owner of the land(s).	
2.6 – Subdivision—consent requirements	(1) Land to which this Plan applies may be subdivided, but only with development consent.	Consent is sought for subdivision	Yes
<b>Part 4 Principal development standards</b>			
4.1 – Minimum subdivision lot size	<p>(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.</p> <p><u>700sqm</u></p> <p>(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</p> <p>(4A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included when calculating the size of the lot for the purposes of this clause.</p>	<p>Site area: 1618.3sqm</p> <p>The lots proposed area:</p> <ul style="list-style-type: none"> <li>- Lot 1: 918.3sqm (702.1sqm excluding existing access handle onto Algernon Street, however including access handle leading to lot 2)</li> <li>- Lot 2: 700sqm</li> </ul>	Yes
4.3 – Height of	9m as identified on	The proposed	Yes

Buildings	Height of Buildings Map	driveway profile leading to lot 2 shows that the driveway will be approximately up to 3.4m above existing ground level. No details have been shown with regards to any retaining walls, kerb/guard rails, whether filling is proposed or whether the driveway will be suspended.	
4.4A – Exceptions to floor space ratio for residential accommodation in Zone R2	(2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.	Although no new dwellings are proposed, the FSR of lot 1 requires to be submitted given the new and reduced lot size. No information with regards to the FSR of lot 1 were submitted.	No, insufficient information
<b>Part 5 Miscellaneous provisions</b>			
5.7 – Development below mean high water mark	(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).	The proposed development will not be located below the mean high water mark and will therefore satisfy the objectives of this control.	Yes
5.10 – Heritage conservation	In accordance with Clause 5.10 (1)	The site is not a heritage item and not located within the vicinity of any heritage items. The site is not in a heritage conservation area.	Yes
5.11 – Bush Fire Hazard Reduction	Bush fire hazard reduction work authorised by the <i>Rural Fires Act 1997</i> may be carried out on any land without development	Noted.  The site is not mapped as being affected by bushfire.	Yes

	consent.		
5.21 – Flood planning	As per clause 5.21	The site is not mapped as being affected by flooding.	N/A
<b>Part 6 Additional local provisions</b>			
6.1 – Acid Sulfate Soils	(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.	The lower part of the site (along the foreshore) is located in a Class 1 Acid Sulfate Soils area; however no works are located within this location.	Yes
6.2 – Earthworks	(2) Development consent is required for earthworks unless— (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or	Earthworks proposed to create new driveway servicing lot 2.	
	(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—  (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,	The proposal was accompanied by drainage plans however the proposal was not supported by Council's Senior Drainage Engineer and additional information was requested.	No
	(b) the effect of the development on the likely future use or redevelopment of the land,	The proposal has not considered the use of the access handle and amenity issues relating to the use of the	No

		driveway including vehicle noise, smoke, and vehicular safety and manoeuvring.	
	(c) the quality of the fill or the soil to be excavated, or both,	No geotechnical report submitted.	No
	(d) the effect of the development on the existing and likely amenity of adjoining properties,	The elevated nature of the driveway is likely to result in adverse amenity issues to properties west.	No
	(e) the source of any fill material and the destination of any excavated material,	Details not provided; however extensive fill works required due to elevated nature of driveway.	No
	(f) the likelihood of disturbing relics,	Unlikely as no Council records are available with regards to existing relics in the area.	Yes
	(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,	The proposal is likely to result in adverse impact on the foreshore area. Little details have been submitted with regards to the potential built form that could exist on lot 2 taking into consideration limiting factors such as the 30m foreshore building line, TPZ of existing trees within proposed footprint of proposed dwelling, stability of land (due to slope), manoeuvring of cars to exit in a forward direction.	No
	(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	Submitted arborist report states that the proposed building footprint on lot 2 currently encroaches the TPZ of tree 1 approximately 25%	No

		(page 21 of report). The arborist recommends that the building be moved away so that the TPZ encroachment is closer to 10%. The plans did not demonstrate if this is feasible with regards to the 30m foreshore building line, vehicle manoeuvring, and earthworks needed.	
6.4 – Limited development on foreshore area	(1) The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.	The subject site is located within a designated Foreshore Area which extends 30m north starting from the mean high-water mark. Although the plans purport that no structures on lot 2 will encroach upon the foreshore building line, little detail has been provided with regards to vehicular manoeuvring, and the relocation of the proposed building footprint in light of the arborist report recommendations.	Yes





Figure 6: 30m Foreshore Area with lot identified in red

### Georges River Local Environmental Plan 2021

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

47. As per the new controls, the site remains affected by a 700sqm minimum lot size, a 30m foreshore building line, the site has now been identified as being within a Class 5 acid sulfate soils area, and within the foreshore scenic protection area which requires 25% landscaping for dwelling house developments and an increase side setbacks.
48. In this regard, the provisions have no determining weight as a result of the operation of Clause “1.8A Savings provisions relating to development applications” of the 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

49. The proposed development is subject to the provisions of Kogarah Development Control Plan 2013. The following comments are made with respect to the proposal considering the objectives and controls contained within Kogarah DCP 2013.

Kogarah DCP 2013 Part C1- Low Density Housing			
Clause	Standard	Proposed	Complies
<b>1.3 Open Space</b>			
	(1) 15% of the site area must be deep soil landscaped area.	No details provided on the plans in relation to landscaping available on lot 1. Lot 2 is mostly landscaped.	No, Insufficient information
	(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	POS of lot 1 will be maintained.	Yes
<b>1.4 Vehicular access, parking and circulation</b>			
	(1) Car parking is to be provided in accordance with the requirements in Section B4.  2 car spaces	No car parking facilities have been shown that service lot 2, and no transitions and manoeuvring spaces have been shown within lot 2 to enable cars to leave in a forward direction.	No
	(12) Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1-2004.	The application was referred to Council's Senior Traffic and Parking Assessment Officer and the proposal was not supported. The below comment was provided.	

		The additional information requested was not provided by the applicant as the application is recommended for refusal.	
<p><b>Additional information requested by Council's Senior Traffic and Parking Assessment Officer:</b></p> <ol style="list-style-type: none"> <li><i>The proposed 25% gradient on the ramp terminating at the new, northern property boundary will require a transition section of 12.5% (1 in 8) for 2m into the new lot before entering into any garage or accessing any turning/manoeuvring area. The plan of subdivision in this very steep topography should not only show the 12.5% transition section but in addition provide information as to the location, dimensions and levels of the area proposed to be used for vehicle manoeuvring.</i></li> <li><i>A driveway constructed on such a steep gradient would very likely require a concrete wall or crash barrier to be installed on the western side to prevent vehicles being driven off it and onto the neighbouring property.  This additional wall/barrier will result in the driveway having an increased height when viewed from the west.  In this regard, it is considered the subdivision application should include a typical section of the driveway where it is proposed infill areas, to more accurately determine the overall structure and heights and the impact the proposal may have on the neighbouring property with respect to shadowing, visual impact etc.</i></li> <li><i>The driveway profile should include existing and proposed levels to more accurately determine the height of the driveway and its support structures.</i></li> </ol>			
<b>B2 – Tree Management and Greenweb</b>			
	1.3 Trees and development sites	<p>Application was referred to Council's Senior Landscape and Arboricultural Assessment Officer and was supported subject to conditions being recommended.</p> <p>Although the referral was satisfactory, conditions were recommended for the planting of 10 trees to offset the removal of 5 trees in accordance with Council's Tree Management Policy.</p>	Yes

<b>B4 – Parking and Traffic</b>			
Design & Layout of Car Parking Areas	(1) Internal car park layouts, space dimensions, ramp grades, access driveways, internal circulation aisles and service vehicle areas shall be designed in accordance with the requirements set out in AS 2890.1 (2004) and AS 2890.2 (2002) for off street parking and commercial vehicles.	No car parking facilities have been shown that service lot 2, and no transitions and manoeuvring spaces have been shown within lot 2 to enable cars to leave in a forward direction. This aspect of the application has been considered in further detail under control 1.4 above.	No
<b>B6 – Water Management</b>			
	On site Water Management & Stormwater Controls	<p>The original drainage plans were assessed, and additional information was requested by Council's Senior Development Engineer. Amended plans were submitted in that regard.</p> <p>The amended plans were referred to Council's Senior Development Engineer and the application was not supported with additional information being requested as detailed below.</p> <p>The additional information requested was not forwarded to the applicant given the other details requested to facilitate the assessment of the proposal were not forthcoming, and the application is recommended for refusal.</p>	No
<p><u>Additional information requested by Council's Senior Development Engineer in relation to amended proposal:</u></p> <ol style="list-style-type: none"> <li><i>The amended drainage plans are unsatisfactory and following issues to be addressed in amended plans;</i> <ol style="list-style-type: none"> <li><i>The existing drainage line from Lot 1 is to be repositioned and relocated</i></li> </ol> </li> </ol>			

*within proposed Lot 2 driveway and turning areas at the front and shall be located along western site boundary of Lot 2 from where a formal drainage easement benefitting Lot 1 must be created.*

- b) Existing pipe draining Lot 1 cannot be used for this new subdivision proposal and must be replaced with a minimum 150uPVC as the existing pipe is a very old, clay pipe and cracked, partially or fully blocked with silt or clay materials and is not efficient and sustainable throughout the life cycle of the development.*
  - c) Upstream overland flow from new battle axe handle driveway and Lot 1 (in case of drainage system failure and overwhelming localized storm event and thunderstorms) must be managed through Lot 2 leading to the river and amended drainage plan is to be submitted to demonstrate that the overland flow path is created and manage the outlined drainage issues.*
  - d) 400 wide and 400 deep heavy duty grated drain must be installed at the western corner of Lot 1 across the driveway to intercept and manage frequent overland flow from upstream of Lot 2 along the driveway.*
  - e) Creation of an easement plan for Lot 2 right of carriageway and for the overland flow (from the battle axe handle along with upstream Lot 1) to the river and a new uPVC pipeline with 1% AEP storm event design capacity servicing both lots.*
- 2. Civil design plan is required to be submitted addressing following issues:*
- a) Submit a traffic report to manage the vehicles entering and leaving the site in a forward direction and a driveway profile from the centreline of the front street.*
  - b) Civil design plan must show driveway within Lot 2 along with turning bay for vehicles leaving the site in a forward direction.*
- 3. A clear and transparent proposed subdivision plan showing existing and proposed easements/carriageway rights along with information addressing the abovementioned issues for Council Officer review.*

#### **Kogarah DCP- Part C4 – Oatley Point Reserve to Neverfail Bay**

<b>Clause</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>Clause 10.10 – Subdivision</b>			
	<p>(1) Land subdivision of properties fronting the foreshore should be designed to ensure that:</p> <p>(i) all properties, both existing and proposed, achieve/retain a level of amenity commensurate with the locality and the desired character of the area;</p>	<p>The driveway within lot 1 servicing lot 2 is not considered to be an acceptable design solution given its elevated nature being approximately 3.4m above existing land levels. The driveway is also likely to appear higher due to structural works and transitions needed as well as crash barriers, retaining walls,</p>	No



		<p>and a dividing fence. The elevated nature of the driveway will likely result in adverse visual impacts and overshadowing in addition to adverse acoustic and light spill impacts from vehicle headlights.</p>	
	<p>(ii) the impact on the environment of the completed development (including buildings to be constructed on the proposed lots) is consistent with the overall objectives of the Locality. In this regard, a comprehensive site analysis is to be submitted with all applications for land subdivision within this locality.</p>	<p>The proposal has not detailed the method of construction of the proposed dwelling on lot 2 and the application is limited by showing the footprint of the dwelling only. No details have been shown in relation to parking and manoeuvring of vehicles. It is noted that the proposed footprint of the dwelling on lot 2 was not supported by the applicants Arborist Report and the recommended changes were not reflected on the plans.</p> <p>The application was not accompanied by a site analysis plan detailing the requirements found in clause 10.10 (2) and (3) of the DCP.</p> <p>The application has not provided sufficient detail to demonstrate the proposed lot can be adequately accessed and serviced.</p>	No

### Georges River Development Control Plan 2021

50. 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 Kogarah Local Environmental Plan 2012 and the Kogarah Development Control Plan 2013 remain the instruments for assessment of this proposal.

## **Impacts**

### ***Natural Environment***

51. The development is considered to result in adverse impacts on the natural environment as a result of the extensive earthworks required for the construction of the driveway servicing lot 2. In addition, potential impacts from the future development of lot 2 in relation to earthworks needed for the construction of the dwelling and manoeuvring area.

The lack of detail in relation to the proposed application has not been able to demonstrate the development needed to create lot 2 will not have an acceptable impact on the natural environment.

### ***Built Environment***

52. Although the proposal achieves the minimum lot size requirement, the elevated nature of the proposed driveway servicing lot 2 and the structural nature of the development to facilitate vehicle accommodation and lot servicing is likely to result in adverse visual, bulk, overshadowing, and acoustic impacts to properties west of the site. There is insufficient detail provided with the application for the assessing officers to be satisfied with the proposed built form needed to service Lot 2.

53. The subject site is located within a designated Foreshore Area which extends 30m north starting from the mean high-water mark. Although the plans purport that no structures on lot 2 will encroach upon the foreshore building line, little detail has been provided with regards to vehicular manoeuvring, and the relocation of the proposed building footprint in light of the arborist report recommendations.

### ***Social and Economic Impact***

54. The assessment demonstrates that the proposal in its current form is likely to 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. Furthermore, the site appears to be benefited and burdened by easements for services and rights of carriageway. Given this application seeks to intensify the use of the carriageway and services easements owners consent is required. At this time no owners consent has been provided in relation to the other owners or beneficiaries of the easements and right of carriageway being 40A and 42A Algernon Street.

The applicant was requested to provide details in relation to the burdened and benefited allotments and the legalities of these affectations, however this information was not provided.

55. The proposal is unlikely to result in any unreasonable economic impacts.

### ***Suitability of the Site***

56. Although the proposal achieves the minimum lot size requirement, the various site constraints including the steepness of the sites topography, TPZ's of existing trees, the 30m foreshore building line, and lack of owner's consent for use of the existing right of carriageway, result in the site being deemed unsuitable for the proposed development at this time.

## Submissions

57. The application was notified in accordance with Council's neighbour notification policy between 12 August 2021 and 26 August 2021, five submissions were received objecting to the development. The issues raised include:

- i. Vehicular and parking: The submissions raised concerns with regards to the lack of vehicular manoeuvring space for lot 2.

Comment: Council's assessment of the application notes that the necessary information required to demonstrate compliance in this regard did not accompany the application.

- ii. Construction of a dwelling on the new lot: The submissions raised concern with regards to the construction works of the future dwelling on lot 2.

Comment: Council notes that the application has not detailed the method of access and construction of the future dwelling on lot 2, and that the application lacked detail required in this regard as per Part C4 of the Kogarah DCP 2013.

- iii. Services and driveway: The submissions raised concerns with regard to the new services needed to service lot 2 including the new driveway and the impacts that would result from construction of such services.

Comment: Council notes that the provision of essential services to the site are likely to result in adverse environmental impacts particularly in relation to the driveway which is elevated and will result in adverse amenity impacts.

- iv. Tree removal: The submissions raised concerns with regards to unauthorised tree removal that may have occurred on the site.

Comment: Council notes the submission, and the matter has been reported to Council's compliance team for follow up.

- v. Sharing of easements and right of carriageway: Concern was raised with regard to the lack of consent from neighbours benefiting from the existing right of carriageway.

Comment: Council officers acknowledge that ambiguity exists relating to the right of carriageway affecting the main driveway, which is shared between 40, 40A, and 42A Algernon Street. Council requested the applicant provided the 88B instrument outlining the burdened and benefited arrangements surrounding the right of carriageway, however this information was not forthcoming.

From the information available to the assessing officers there are rights of carriageway in place as annotated on plans, but there is not supporting instrument to provide the necessary clarity in this regard.

## Referrals

### Council Referrals

#### Senior Landscape and Arboricultural Assessment Officer

58. The application has been assessed by Council's Senior Landscape and Arboricultural Assessment Officer, the application is considered acceptable subject to conditions. (at this time drainage arrangements have not been resolved, this may impact vegetation should a revised design be proposed).

#### Senior Development Engineer

59. The application has been assessed by Council's Senior Development Engineer and the application was not supported for the reasons stated in the DCP table above.

#### Senior Traffic and Parking Assessment Officer

60. The application has been assessed by Council's Senior Traffic and Parking Assessment Officer and the application was not supported for the reasons stated in the DCP table above.

### External Referrals

#### Ausgrid

61. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. No comments were received from Ausgrid.

### Public Interest

62. The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. Following a detailed assessment, the proposal is not considered to be in the public interest and is recommended for refusal.

### Local Infrastructure Contributions

63. No section 7.11 contributions have been levied in this instance as the application is recommended for refusal.

### Conclusion

64. The application seeks approval for a two lot Torrens title subdivision in addition to driveway and landscaping works at 40 Algernon Street Oatley.
65. The proposal on its merits is deemed to be an unacceptable response to the site due to the impacts generated by the proposed driveway and its associated built form, lack of owner's consent for use and intensifying the use of the right of carriageway that appears to be shared by other allotments under reciprocal rights of access and the lack of detail to allow for a reasonable assessment of the application in relation to stormwater and traffic/parking. The proposal is not consistent with the objectives of the controls and will result in an adverse impact on the environment and the amenity of adjoining land uses.
66. Following a detailed assessment contained within this report, it is considered that DA2021/0273 should be refused for the reasons highlighted below.

### Statement of Reasons and Determination

#### Statement of Reasons

- The proposed subdivision is not considered to be an appropriate response for the site and its constraints and the character of the locality.

- The proposal lacks clear detail with regards to the burden/benefit relationships affecting the right of carriageway within the main driveway leading to Algernon Street, which is required in this case due to intensification of the use of the potentially shared right of carriageway and the lack of owner's consent.
- The proposed development will have unacceptable adverse impact on the natural and built environments.
- The proposed development will result in unacceptable adverse impacts on the amenity of adjoining residents and the locality and is likely to set an undesirable precedent.
- In consideration of the aforementioned reasons, the proposed development is not suitable for the site.

### Determination

68. Pursuant to Section 4.16 (1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel, refuses Development Application DA2021/0273 seeking consent for a two lot Torrens title subdivision in addition to driveway and landscaping works at Lot 122 DP547754, known as 40 Algernon Street Oatley, for the following reasons:
1. 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 the State Environmental Planning Policy (Resilience and Hazards) 2021:
    - a. Clause 2.10 and 2.11 of Chapter 2- Coastal Management.
  2. 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 the Kogarah Local Environmental Plan 2012:
    - a. 1.2 – Aims of the Plan.
    - b. 2.3 – Zone objectives.
    - c. 6.2 – Earthworks.
  3. 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 Kogarah Development Control Plan 2013:
    - a. Part B4 (4) – Design and Layout of Car Parking Areas, in relation to lack of manoeuvring space for lot 2.
    - b. Part B6 (1) – On-site Water Management and Stormwater Controls, in relation to insufficient stormwater plans.
    - c. Part C4 – Oatley Point Reserve to Neverfail Bay – Clause 10.10 (Subdivision).
  4. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the following aspects of the environment:

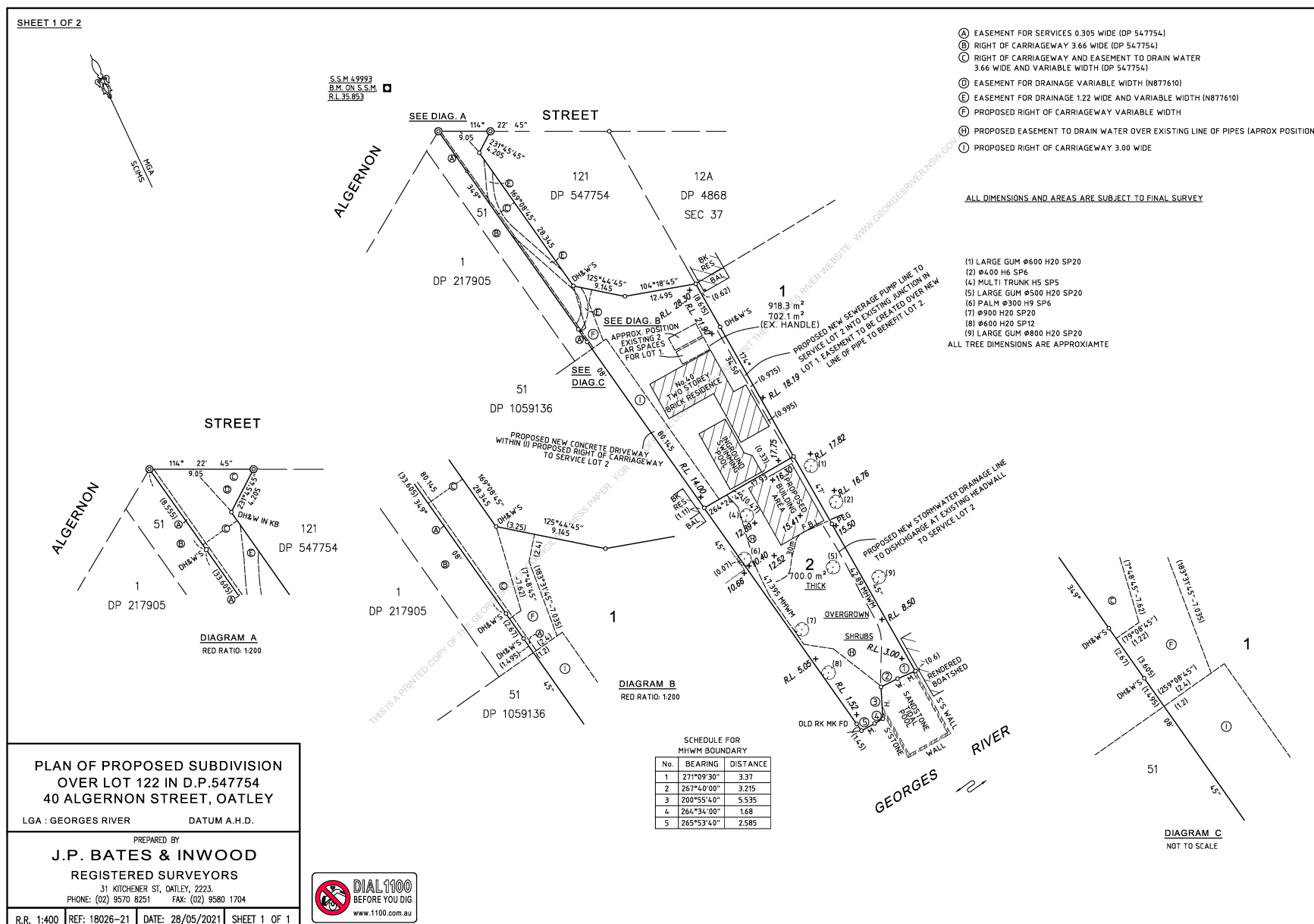
- a. Natural Environment: The development will result in adverse impacts on the natural environment as a result of the extensive earthworks required for the construction of the driveway servicing lot 2. In addition, potential impacts from the future development of lot 2 in relation to earthworks needed for the construction of the dwelling and vehicle manoeuvring area.
- b. Built Environment: An adverse impact will result from the proposed development on the amenity of adjoining premises due to the elevated nature of the proposed driveway and its structural supports servicing lot 2.

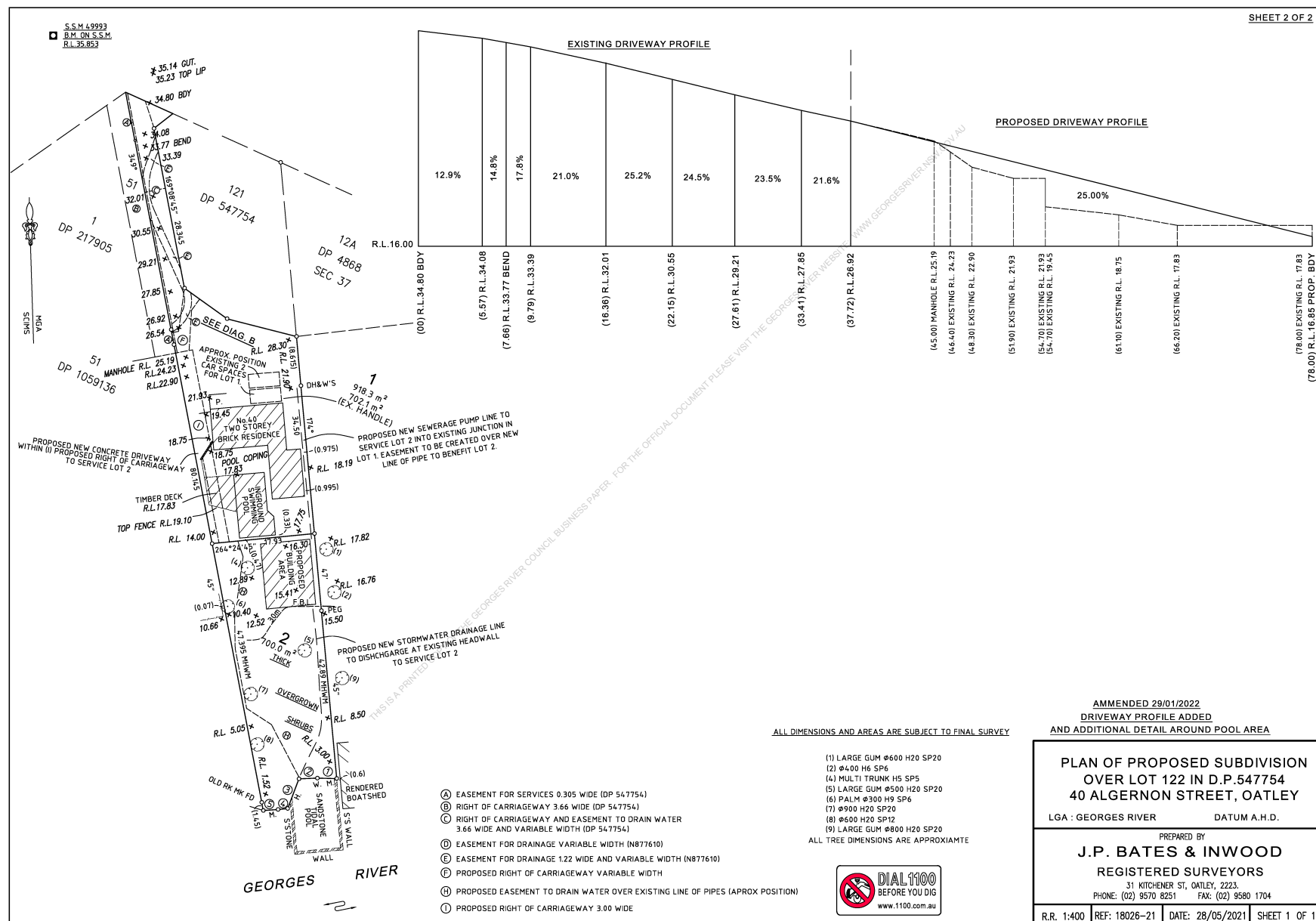
No adequate concept architectural plans have accompanied the application in relation to locating a dwelling on lot 2 taking into consideration the physical site constraints and the provisions of the Georges River LEP 2021 and Georges River DCP 2021 criterion. There is a 30m foreshore building line requirement, no compliant vehicle parking and manoeuvring area nominated, together with the recommendations of the submitted Arborist Report. In light of the level of uncertainty of development on lot 2, the proposal fails to represent an orderly development of the land contrary to section 1.3 (c) of the Environmental Planning and Assessment Act 1979 No 203.

- c. Social Impacts: An adverse impact will result from the proposed development on the amenity of the locality and adjoining neighbours. Furthermore, the application was not accompanied by documentation which reasonably satisfies Council's assessing officers as to the burden/benefit relationships surrounding the right of carriage way affecting the main driveway onto Algernon Street and the necessary owners consent given the intensification of the use of the carriageway.
5. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be suitable for the site or its locality and is likely to set an undesirable precedent.

## ATTACHMENTS

Attachment [1](#)  Subdivision plans- DA2021/0273







# REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 19 MAY 2022

LPP022-22

<b>LPP Report No</b>	<b>LPP022-22</b>	<b>Development Application No</b>	<b>DA2021/0175</b>
<b>Site Address &amp; Ward Locality</b>	61-65 Kingsway, Kingsgrove Hurstville Ward		
<b>Proposed Development</b>	Demolition works and construction mixed use development containing commercial premises and a boarding house. The proposal is integrated development under the Water Management Act 2000		
<b>Owners</b>	Edgware Corporate P/L		
<b>Applicant</b>	Steve Siganakis		
<b>Planner/Architect</b>	Catalyze Property Consulting/ CMT Architects		
<b>Date Of Lodgement</b>	5/05/2021		
<b>Submissions</b>	No submissions		
<b>Cost of Works</b>	\$5,112,800.00		
<b>Local Planning Panel Criteria</b>	Variation sought to Clause 4.3 -Height of Building standard in excess of 10% Variation sought to Clause 4.4 – Floor Space and 4.4A Non-residential floor space ratios in excess of 10% Application relates to a Boarding House		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No. 1, Georges River Local Environmental Plan 2021.		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans, Landscape Plan, Stormwater Plans, Survey, Clause 4.6 Variation Requests – height and commercial floor space, DSI, Arborist Report, Acoustic Report, BCA Report, Traffic and Parking Report, Statement of Environmental Effects		
<b>Report prepared by</b>	Senior Development Assessment Planner		

<b>Recommendation</b>	That the application be refused for the reasons in this report.
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<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
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<p><b>Legislative clauses requiring consent authority satisfaction</b></p> <p>Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?</p>	<p><b>Yes</b></p>
<p><b>Clause 4.6 Exceptions to development standards</b></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><b>Yes</b></p> <p><b>4.3 - Height of buildings</b></p> <p><b>4.4A – Non-residential floor space ratios</b></p> <p><b>No variation submitted in relation of Clause 4.4</b></p>
<p><b>Special Infrastructure Contributions</b></p> <p>Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p><b>Not Applicable</b></p>
<p><b>Conditions</b></p> <p>Have draft conditions been provided to the applicant for comment?</p>	<p><b>No – the application is recommended for refusal</b></p>

### Site Plan



## Executive Summary

### Proposal

1. Development consent is sought for demolition works and construction mixed use development containing a ground floor commercial tenancy and a boarding house over semi-basement and basement parking. No tree removal is proposed as part of this application.
2. The proposed development contains one basement parking level, a ground floor (semi-basement) with parking, service areas, a commercial tenancy and an entry lobby for the boarding rooms above. Levels 1, 2 and 3 contain a total of 34 boarding rooms, associated communal spaces and a manager's room.
3. Pedestrian and vehicular access to the site is obtained from Kingsway with a service entrance provided to the service lane to the rear. The lower basement is accessed via a car lift from the ground floor/semi basement.
4. Above the ground floor, the building form consists of two wings containing boarding rooms organised either side of an open communal courtyard and circulation area located centrally within the site.
5. The boarding house component of the proposal includes a mix of double and single occupancy rooms with a total occupancy of 62 tenants and a Manager).



Figure 1 Photomontage of the proposal from Kingsway

### Site and Locality

6. The site is identified as Lots 30, 31 and 32 in Section 3 of DP 11417 and is known as 61-65 Kingsway, Kingsgrove.
7. The lot is a regular shape with a site frontage to Kingsway of 18.285m, a secondary frontage to an unnamed rear laneway of 18.285m and an overall site area of 680.1sqm.

8. The site is currently occupied by a two storey commercial building, with a ground floor car park area accessed from Kingsway and an open car parking area accessed from the rear laneway. The building is built with nil setbacks to each side boundary.
9. While the existing site is wholly developed, the highest point of the rear laneway at the rear of the site is located approximately 2.8m above the lowest level in the Kingsway at the front of the site, meaning an equivalent fall between the rear lane and Kingsway across the site.
10. The site is unencumbered by services/easements.
11. The neighbouring property to the east is No. 59 Kingsway which contains a single storey commercial building, and the land to the west is occupied as an open at grade council-owned car park.
12. Development in the block within which the site is located, bounded by the rear lane, Kings Place, Kingsway and Maluka Place consists of a row of buildings with a light low density commercial/office character.
13. Development on the southern side of the laneway is characterised by garages adjacent to the laneway that service the retail premises and shop-top housing facing Stoney Creek Road and forming a row of mid-20<sup>th</sup> century attached local shops.
14. Development on the northern side of the Kingsway, opposite the site, contains low density residential development, including dual occupancies and dwelling houses.
15. The site does not contain any vegetation, however a street tree is located at the front of the property along Kingsway, and a small copse of trees is situated at the rear of 59 Kingsway.

### **Zoning and Permissibility**

16. The site is zoned B2 Local Centre under the provisions of the Georges River Local Environmental Plan 2021 (GRLEP 2021) and the Hurstville Local Environmental Plan 2012 (HLEP 2012). Commercial premises and boarding houses are permitted with consent in this zone under both instruments.
17. It is noted that pursuant to Clause 1.8A of the Georges River Local Environmental Plan, the application is required to be assessed as if that instrument had not commenced.

### **Background**

18. The applicant was requested to submit amended plans and additional information to address the following issues in August 2021:
  - Lack of commercial floor space;
  - Exceedance of overall floor space;
  - Breach of height limit;
  - Parking arrangements;
  - Solar access to communal areas;
  - Design of certain units, private open space, communal areas, materials and finishes, landscaping and streetscape presentation;
  - Response to the character of the area;
  - Groundwater during excavation;
  - Stormwater management;

- Traffic impacts and loading bays;
  - Waste management; and
  - Operational plan of management.
19. The applicant was provided a period of 28 days to submit the required information and design changes and was granted an extension of a further 3 weeks at the request of the applicant.
20. On 18 October 2021, the applicant submitted floor plans and elevations only.
21. The applicant was advised on 21 October 2021 that as the submitted information was incomplete and inadequate for assessment purposes, the plans submitted were not accepted in accordance with Cl. 55 of the EP&A Regulations and no further information would be requested. The applicant was advised to withdraw the DA.
22. No response was forthcoming from the applicant until further amended plans were lodged on the Portal by the applicant on three occasions during November 2021.
23. No correspondence was sent to the assessing officer from the applicant at any time after the floor plans and elevations were emailed to Council on 18 October 2021.
24. As such, the plans assessed as part of this report are the plans originally submitted with the DA in May 2021.

### **Planning and Design Issues**

25. The proposal has been assessed against the provisions of the SEPP (Affordable Rental Housing) 2009, Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1.
26. The proposal fails to comply in full with the SEPP and fails to satisfy the maximum height, floor space ratio and non-residential floor space planning controls contained in the Local Environmental Plan. The breach of the maximum building height and FSR standards is not considered to provide an appropriate design and built form outcome within the context of the site, and the proposal fails to provide sufficient commercial floor space required for development on this site.
27. Accordingly, the breaches are not considered to be in accordance with the objectives of the standard, noting particularly that breaches are inconsistent with the objectives of the height, FSR and non-residential floor space standards, and accordingly cannot be supported.

### **Submissions**

28. No submissions were received during the 14 day notification period.

### **Conclusion**

29. 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 (DA2021/0175) is recommended for refusal for the reasons discussed in this report.

## Report in Full

### Description of the Proposal

30. The application proposes demolition works and construction mixed use development containing a commercial tenancy and a boarding house.
31. Pedestrian and vehicular access to the site is obtained from Kingsway with a service entrance provided to the service lane to the rear. The lower basement is accessed via a car lift from the ground floor/semi basement.
32. Above the ground floor, the building form consists of two wings containing boarding rooms organised either side of an open communal courtyard and circulation area located centrally within the site.
33. The boarding house component of the proposal includes a mix of double and single occupancy rooms with a total occupancy of 62 tenants and a manager.
34. Further details of the proposal are as follows:

#### Basement Level

- 14 car parking spaces including three accessible spaces, six regular spaces and 8 car parking spaces in mechanical car stackers;
- One car wash bay;
- Nine motor bike spaces;
- Room for a future sub-station;
- Services room;
- Car-lift from the ground level above; and
- A lift core and fire stairs.

#### Ground Floor Plan

- 5 car parking spaces;
- 9 bicycle spaces;
- Two lift cores and fire stairs;
- Car lift to the basement parking level;
- Turning bay;
- Service areas;
- Waste rooms;
- Commercial tenancy (62sqm);
- Entry lobby;
- Vehicular access from Kingsway.

#### Level 1

- 11 boarding rooms (3 x single rooms and 8 x double rooms), a manager's room, common open space and an internal common area.

#### Level 2

- 14 boarding rooms (3 x single rooms and 11 x double rooms).

#### Level 3

- 9 boarding rooms (all double rooms).



**Description of the Site and Locality**

35. The site is identified as Lots 30, 31 and 32 in Section 3 of DP 11417 and is known as 61-65 Kingsway, Kingsgrove.
36. The site is currently occupied by a two storey commercial building, with a ground floor car park area accessed from Kingsway and an open car parking area accessed from the rear laneway. The building is built with nil setbacks to each side boundary.
37. While the existing site is wholly developed, the highest point of the rear laneway at the rear of the site is located approximately 2.8m above the lowest level in the Kingsway at the front of the site, meaning an equivalent fall between the rear lane and Kingsway across the site.
38. The site is unencumbered by services/easements.
39. The neighbouring property to the east is No. 59 Kingsway which contains a single storey commercial building, and the land to the west is occupied as an open at grade council-owned car park.
40. Development in the block within which the site is located, bounded by the rear lane, Kings Place, Kingsway and Maluka Place consists of a row of buildings with a light low density commercial/office character.
41. Development on the southern side of the laneway is characterised by garages adjacent to the laneway that service the retail premises and shop-top housing facing Stoney Creek Road and forming a row of mid-20<sup>th</sup> century attached local shops.
42. Development on the northern side of the Kingsway, opposite the site, contains low density residential development, including dual occupancies and dwelling houses.
43. The site does not contain any vegetation, however a street tree is located at the front of the property along Kingsway, and a small copse of trees is situated at the rear of 59 Kingsway.
44. The lot is a regular shape with a site frontage to Kingsway of 18.285m, a secondary frontage to an unnamed laneway of 18.285m and a site area of 680.1sqm. The site is occupied by a two storey commercial building, with an open car parking area accessed from the laneway. The building is built with nil setbacks to each side boundary.
45. The neighbouring property to the east is No. 59 Kingsway which contains a single storey commercial building, and the land to the west is occupied as an open air council-owned car park.
46. Development on the southern side of the laneway is characterised by garages adjacent to the laneway that service the shop-top housing facing Stoney Creek Road.
47. Development on the northern side of the Kingsway, opposite the site, contains low density residential development, including dual occupancies and dwelling houses.



Figure 2 The site as viewed from Kingsway



Figure 3 Kingsway looking east





Figure 4 Rear of the site as viewed from adjacent council car park



Figure 5 Development on opposite side of the laneway, looking east



Figure 6 Development on the opposite side of the laneway, looking west



Figure 7 Residential development on the northern side of Kingsway, opposite the site

### State Environmental Planning Policies (SEPPs)

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



State Environmental Planning Policy Title	Complies
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Yes
State Environmental Planning Policy (Resilience and Hazards) 2021	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Yes
State Environmental Planning Policy (Industry and Employment) 2021	Yes
State Environmental Planning Policy (BASIX) 2004	Yes
State Environmental Planning Policy (Affordable Rental Housing) 2009	Yes
State Environmental Planning Policy (Housing) 2021	Savings provisions apply

### State Environmental Planning Policy (Biodiversity and Conservation) 2021

49. The relevant parts of the above Policy that apply to this application are Chapter 2 – Vegetation in non-rural areas, and Chapter 11 – Georges River Catchment.

#### Chapter 2 - Vegetation in Non-Rural Areas

50. Chapter 2 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.
51. This chapter applies to clearing of:
- Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
  - Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).*
52. No trees are proposed for removal as part of the application.

#### Chapter 11 – Georges River Catchment

53. The site is not situated in the Georges River Catchment; accordingly the provisions of Chapter 11 do not apply in this instance.

### State Environmental Planning Policy (Resilience and Hazards) 2021

54. Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 is relevant to the proposal.
55. Chapter 4 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.
56. Clause 4.6 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.
57. A review of historic aerial photography indicates that the site has historically been used for commercial purposes. A Detailed Site Investigation Report was submitted with the application which concludes the site is suitable for the proposed use in its present condition.

58. This notwithstanding, a review of this report by Council's Environmental Health Officer has identified that the assessment of ground water contamination in the provided report is insufficient. This forms part of the reasons for refusal of this application.

#### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

59. Compliance with SEPP (Transport and Infrastructure) 2021 has been considered. Ausgrid was consulted as required by Chapter 2. No objection was raised and no conditions required.

#### **State Environmental Planning Policy (BASIX) 2004**

60. 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.
61. A valid BASIX Certificate has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

#### **State Environmental Planning Policy (Housing) 2021**

62. Clause 2 of Schedule 7A Savings and transitional provisions of the SEPP states that the Policy does not apply to *a development application made, but not yet determined, on or before the commencement date*.
63. The SEPP further states that *"the provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply"* in such circumstances.
64. In this regard, the subject application was lodged prior to the commencement date of this SEPP, and is not yet determined. Accordingly, the provisions of this SEPP do not apply, however the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009, which was repealed immediately prior to the commencement of this SEPP, continue to apply to the proposal and is assessed later in this report.

#### **State Environmental Planning Policy (Affordable Rental Housing) 2009**

65. This application was lodged when State Environmental Planning Policy (Affordable Rental Housing) 2009 was in effect, which aims to provide a consistent planning regime for the provision of affordable rental housing.
66. The proposal seeks consent for a boarding house pursuant to the provisions of the SEPP, specifically Division 3 – Boarding Houses. An assessment of the proposal against the relevant provisions of the SEPP is provided in the following table.

Clause	Standards	Proposal	Complies
<b>26 – Land to which Division applies for the purpose of a boarding house with consent</b>	<ul style="list-style-type: none"> <li>R1 General Residential</li> <li>R2 Low Density Residential</li> <li>R3 Medium Density Residential</li> <li>R4 High Density Residential</li> <li>B1 Neighbourhood</li> </ul>	Site is zoned B2 Local Centre	Yes

Clause	Standards	Proposal	Complies
	Centre <ul style="list-style-type: none"> <li>• <b>B2 Local Centre</b></li> <li>• B4 Mixed Use</li> </ul>		
<b>27 – Development to which Division applies</b>	Not applicable – the site is in the B2 zone.	NA	NA
<b>29 - Standards that cannot be used to refuse consent</b> Council cannot refuse a development application for a boarding house under the ARHSEPP 2009 on any of the following grounds:			
Floor Space Ratio	If the density and scale of the buildings as a FSR is not more than the existing maximum FSR for any form of residential accommodation permitted - 1.5:1.	Permitted: 1,020sqm (1.5:1)  Proposed: 1,103sqm (1.622:1)	No - the application can be refused on the basis of density and scale.
Height	If the building height is not more than the maximum height permitted under another EPI for any building on the land: Maximum of 9m under the HLEP 2012	10.492m	No - the application can be refused on the basis of building height.
Landscaped Area	If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located	Landscaped front setbacks are not evident or common in the immediate locality, however the scheme would benefit from the provision of planter boxes on the front facade to improve the streetscape appearance of the building.	Yes
Solar Access	Where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter	Insufficient information is provided to establish whether the communal areas achieve this control.  The internal common area has no windows to receive sunlight and the communal open space is located between the two buildings on Level 1 of the development, with	No - the application can be refused on the basis of solar access

Clause	Standards	Proposal	Complies
		the northern building casting shadow over the open space.	
Private Open Space	<p>If at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20sqm with a minimum dimension of 3m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8sqm with a minimum dimension of 2.5m is provided adjacent to that accommodation.</p>	<p>Provided on Level 1.</p> <p>A balcony is provided however it is only 6.9sqm in area.</p>	<p>Yes</p> <p>No – the application can be refused on the basis of private open space to the manager's room.</p>
Accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least—</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	<p>Minimum 12sqm</p> <p>Minimum 16sqm</p>	<p>Yes</p> <p>Yes</p>
Parking	0.5 parking spaces provided for each boarding room (34 x 0.5 = 17 spaces)	8 spaces provided + 8 stacker spaces.	No - refer to discussion below (application can be refused on the basis of insufficient parking)



Clause	Standards	Proposal	Complies
	Not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site	A manager's space is nominated on the plans.	Yes
<b>Discussion on car parking</b>  The boarding rooms require a total of 17 parking spaces.  16 are provided (8 regular spaces and 4 stacker spaces), leaving a shortfall of one space, assuming each stacker accommodates two cars.  Insufficient information is provided with the application to determine whether the stackers can accommodate two vehicles and no specification details have been provided with regards for their operation.  Accordingly the application can be refused on the basis of insufficient car parking.			
<b>Clause 30 – Standards for Boarding Houses</b> A consent authority must not consent to development for boarding houses unless it is satisfied of each of the following:			
Communal living	(a) If a boarding house has 5 or more boarding rooms, at least one communal living room will be provided	One (1) communal area proposed on the first floor, however it is not a dedicated communal living room, forming part of a corridor space to a lobby area this it is not considered that the standard is met.	No
Size of boarding rooms	(b) No boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25sq	The largest boarding room is 16sqm.	Yes
Maximum occupancy	(c) No boarding room will be occupied by more than 2 adult lodgers	A condition would be imposed to enforce this. The proposed occupancy complies with this requirement.	Yes
Kitchen and bathroom facilities	(d) Adequate bathroom and kitchen facilities will be available within the boarding house for the	All rooms have a kitchen and bathroom facilities.	Yes

Clause	Standards	Proposal	Complies
	use of each lodger		
Boarding house manager	(e) If the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager	Boarding house manager's room provided.	Yes
Bicycle and motor cycle spaces	(h) At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms ( $34/5 = 7$ spaces)	9 motorcycle spaces and 9 bicycle storage spaces provided in the parking areas.	Yes

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### Character assessment

67. Under clause 16A of the State Environmental Planning Policy (Affordable Rental Housing) 2009, a consent authority must not consent to a development if the design is incompatible with the *character of the local area*. No guidelines were developed to inform how to apply the compatibility test. A number of court cases have provided some guidance as to how to assess the “character” of a local area and what to consider ensuring an affordable housing development is suitable.
68. In considering compatibility with neighbouring character, in *Sterling Projects v The Hills Shire Council* [2011] the Commissioner said that “*character is not limited to a consideration of streetscape but includes the wider context of the site, in particular the characteristics of the properties which adjoin the site*”.
69. In the recent decision of *Louden Pty Ltd v Canterbury-Bankstown Council* [2018] clause 16A played a prominent role in Commissioner Gray’s judgement. Commissioner Gray stated that all buildings of all typologies must be incorporated into the assessment of the local area character. This assessment concurs with Commissioner Roseth SC who in *Project Venture Developments v Pittwater Council* [2005] stated that “*compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*” Therefore in order to establish a local character in a mixed, diverse area the plans should reasonably match other structures in the vicinity and should consider such aspects as building forms, setbacks and scale.
70. The subject site is located in a pocket of commercially zoned, B2 Local Centre land, bordered by Kings Place, Kingsway, Maluka Place and Stoney Creek Road, surrounded by land zoned R2 Low Density Residential, containing predominantly dwelling houses.
71. The built form of the B2 zoned land is predominantly two storeys and contains commercial development fronting the Kingsway and older style two storey shop-top housing on the southern side of the laneway and fronting Stoney Creek Road.

72. In establishing whether the proposal is in keeping with the character of the area, the proposal provides suitable nil setbacks to the side boundaries considering the adjacent land uses, and its front and rear setbacks are considered appropriate, however the inadequate provision of non-residential floor space and the use of the ground floor predominantly for services and car parking (with only a token retail/commercial tenancy provided) is inconsistent with surrounding development and the intent of the B2 Local Centre zone under the HLEP 2012 with regards to providing a range of business, retail community and entertainment uses and to encourage employment opportunities in accessible locations.
73. With regards to the GRLEP 2012, the proposal is inconsistent with the future desired character of the zone as it is inconsistent with the objectives identified above (which continue to apply) and will, by failing to provide commercial/retail uses, impact on the future vibrancy and economic vitality of the subject B2 zoned centre.
74. In terms of the built form, the substantial encroachment of the third floor above the maximum 9m height limit, is out of character for the locality and is also inconsistent with the future desired character outlined in the planning controls.
75. Given the above, the height, scale and form of the development, and the inappropriate use mix, the proposal is an inappropriate response to the site and its immediate context of the site.
76. The proposal is not consistent with the current, or future, desired character of the locality.
77. As such the proposal fails to satisfy the objectives and intent of Clause 16A.

### **Environmental Planning Instruments**

#### **Georges River Local Environmental Plan 2021 (GRLEP 2021)**

78. The GRLEP 2021 applies to the site, however Clause 1.8A of the Plan states:

*“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”*

As the subject application was made before commencement of the Plan, and has not been determined, the application is required to be assessed against the Hurstville Local Environmental Plan 2012.

It is noted that the uses proposed remain permissible in the zone, and the height, floor space ratio (overall and non-residential) remain unchanged with regards to the subject site.

#### **Hurstville Local Environmental Plan 2012 (HLEP 2012)**

##### **Zoning**

79. The subject site is zoned Zone B2 Local Centre under the provisions of the Hurstville Local Environmental Plan 2012 (HLEP2012). Refer to zoning map below. Commercial premises and boarding houses are permissible land uses in the zone.



Figure 8 Zoning map (site edged red)

80. The objectives of the zone are as follows:

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

81. The proposal fails to satisfy the objectives of the B2 Zone in that the amount of commercial floor space is reduced from the existing amount currently on the site.

82. The extent to which the proposal complies with the relevant standards of Hurstville Local Environmental Plan 2012 (HLEP2012) is outlined in the table below.

Clause	Standard	Proposed	Complies
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The proposal is considered to be inconsistent with the aims of the plan as, if approved it would serve to undermine planning controls seeking the orderly and economic use on the land on which it exists.	No
1.4 – Definitions	<i>Boarding House</i>	The proposed development meets the	Yes

	<i>Commercial Premises</i>	definitions of a boarding house and a commercial premises.	
2.3 - Zone objectives and Land Use Table	Site is zoned B2.  Development must be permissible with consent.	The proposal is permissible with consent.	Yes
2.7 - Demolition	Demolition is permissible with consent	The application seeks development consent for demolition as part of this proposal.	Yes
4.3 – Height of Buildings	9m	10.492m	No – refer to Clause 4.6 assessment following this table.
4.4 – Floor Space Ratio	1.5:1:1 (Site area 1.5x 680m <sup>2</sup> = 1,020m <sup>2</sup> )	1151.9m <sup>2</sup> – 1.69:1  The applicant has not included storage areas within the building or the breezeway on the second floor and ground floor areas that are not excluded under the definition.	No – No Clause 4.6 request provided.
4.4A Non-residential floor space ratios	(1A) The objective of this clause is to encourage an appropriate mix of residential and non-residential uses in order to ensure a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of the business zones.  (1) Despite clause 4.4, development consent must not be granted for development on land in Zone B1 Neighbourhood Centre or Zone B2	Required: 204sqm Proposed: 62sqm	No – refer to Clause 4.6 assessment following this table.

	Local Centre unless the non-residential floor space ratio is at least <b>0.3:1</b> .		
4.6 Exceptions to development standards	Written request for variation must be considered.	The development seeks a variation to Clause 4.3 Height of Buildings and Clause 4.4A.	No – refer to assessment following this table.
6.6 Active street frontages	<p>(1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B2 Local Centre, Zone B3 Commercial Core and Zone B4 Mixed Use.</p> <p>(2) This clause applies to land identified as “Active street frontage” on the Active Street Frontages Map.</p> <p>(3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.</p> <p>(4) Despite subclause (3), an active street frontage is not required for any part of a building</p>	<p>The site is zoned B2.</p> <p>The site is identified on this map.</p> <p>The proposal has an active frontage as a commercial tenancy and lobby is proposed on the ground floor at the street front (Kingsway).</p> <p>Noted.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>-</p>



	<p>that faces a service lane or is used for any of the following—</p> <p>(a) entrances and lobbies (including as part of mixed use development),</p> <p>(b) access for fire services,</p> <p>(c) vehicular access.</p> <p>(5) In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of business premises, retail premises or medical centres.</p>	<p>A small commercial tenancy is proposed on the ground floor.</p>	Yes
6.7 Essential Services	<p>Essential services relating to water, electricity, sewerage, storm water or on site conservation and suitable road and vehicular access to be provided</p>	<p>Essential services can be extended to service this development, however, due to the insufficiency of detail on the provided stormwater drainage design, it has not been demonstrated that adequate arrangements for stormwater drainage from the site have been demonstrated.</p>	No

#### Clause 4.4 – Floor Space Ratio exceedance

83. The proposal exceeds the maximum floor space ratio identified as applicable to the site under Clause 4.4 of the HLEP 2012 by 12.9% (equivalent to 131.8m<sup>2</sup>). The exceedance appears to result from the applicant's misclassification of upper level storage rooms and corridors, and ground floor areas as being excluded from the floor space calculation.
84. The result of this is that the development exceeds the maximum permitted floor space ratio. There appears to be no justification for this with regards to the objective of the clause and the zone and as such the variation would be unlikely to be supported.
85. Regardless, no Clause 4.6 variation request has been submitted in relation to this variation. The application cannot be approved, and this forms part of the reasons for refusal.

## Exception to Development Standards – Clause 4.3 – Height of Buildings

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

86. The objectives of Clause 4.6 are as follows
- to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
87. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Hurstville Local Environmental Plan 2012 (HLEP) identifies a maximum height of 9m for the site and the proposed development will exceed the height by up to 1.492m which comprises up to half the height of the third floor, which contains nine (9) boarding rooms and the lift overrun. This amounts to a 16.6% variation to the control. The remainder of the building is below the 9m height limit.
88. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the HLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the applicant's calculations are generally accurate.

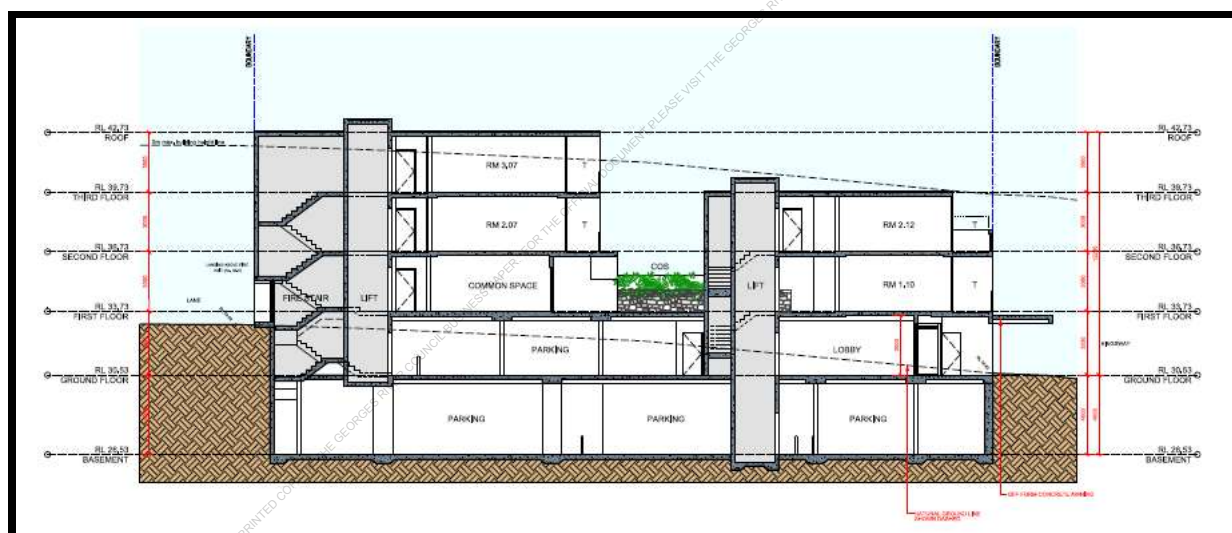


Figure 9 Section showing extent of height breach

89. 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”*
90. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of HLEP. The Clause 4.6 request for variation is assessed as follows.

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

91. Height of Buildings control under Clause 4.3 of the HLEP 2012 is a development standard. The maximum permissible height is 9m.

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

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

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

93. 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.
94. 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.
95. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.

96. Applicant's comment:

- *The height variation is essentially as a result of the design maintaining a three storey built form over the topography of the Site; which has a fall from the laneway to Kingsway and a cross fall from west to east.*
- *The section of the building with the height exceedance is greatest is located on an internal section of the building and will not be plainly visible from the surrounding streetscape.*
- *This scale of development is an appropriate outcome in the context of surrounding sites, it is considered that the proposed height will not be overbearing in the streetscape but will sit comfortably and appropriately alongside its neighbours.*
- *The proposed variation is not responsible for any unreasonable adverse impacts to surrounding properties including privacy, overshadowing and view loss. The minimal additional shadow cast by the height exceedance is shown in red in the following Figures.*



Figure 6 - 9am June - Shadow Diagram



Figure 7 - Noon June - Shadow Diagram



Figure 8 - 3pm June - Shadow Diagram

- *The height variation allows for the built form to effectively and efficiently follow the topography of the Site and enable the Site to be efficiently and effectively utilised for a boarding house.*
- *The height variation is well integrated into the high-quality, articulated design of the proposal and ensures that the built form will contribute positively to the locality.*
- *To achieve strict compliance would require the loss of a level from the development, which would render it inconsistent with the character and vision that Council has been articulated for the precinct via the development controls.*
- *Given the central location and abundant services this Site enjoys, the loss of density to achieve strict compliance with a development standard is not sensible planning.*
- *Further, the proposed development is consistent with the established centre hierarchy.*

*Based on the above assessment, it is considered that strict compliance with the height standard is unreasonable and unnecessary in this instance.*

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

97. Having regards to Clause 4.6(3) (b) and the need to demonstrate that there are sufficient environmental planning grounds to contravening the development standard, it is considered that the breach arises purely from the third level of boarding rooms, and not for any site specific reasons, and results in adverse apparent and actual visual bulk and scale and other associated environmental impacts upon neighbouring properties.

98. Applicant's Comment:

- *The location of the largest height variation ensures that it will not be clearly visible from the public domain and will therefore not be responsible for any unreasonable streetscape impacts.*
- *The height will not be responsible for any unreasonable overshadowing or privacy impacts to neighbouring properties.*
- *The height variation will not obstruct views.*
- *The additional height facilitates the delivery of a building which has a high-quality expression and high level of amenity for future occupants.*

- *The height variation has been well integrated into the high-quality and articulated design aesthetic of the built form and will positively contribute to locality.*

*Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height variation in this instance.*

**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**

99. 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,”*

100. Applicant’s Comment:

*The proposed development satisfies the purpose of the control and achieves the objectives of the HOB as it:*

- *is compatible with the height, bulk and scale of the existing development in the locality,*
- *is compatible with the future character of the locality, as the height variation from the street is barely perceivable over the 9m building height for the locality,*
- *minimises visual impact, has no impact on views, results in no loss of privacy or solar access to existing development and to public areas and public domain, including parks, streets and lanes,*
- *has no impact on heritage items,*
- *provides an appropriate scale of built form and land use intensity,*
- *has no adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

*The proposed development satisfies the objectives of the B2 Local Centre zone as it:*

- *will provide additional residents that will support the range of retail, business, entertainment and community uses that exist in the commercial centre,*
- *will provide employment opportunities in the commercial/business suite located on the ground floor, and*
- *maximises public transport patronage and encourage walking and cycling.*

*Furthermore, the proposed variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height variation.*

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*



101. Officer comment: An assessment of the proposal against the objectives of the height standard follows.
102. Officer Comment: The site and surrounding locality all have maximum height limits of 9m. Although the proposed use is permissible in the B2 zone, the height breach is inconsistent with the prevailing surrounding streetscape and the future character defined in the planning controls.
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,*
103. Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. The third floor to which the exceedance applies, is proposed on a nil setback to the laneway, resulting in a three storey wall of windows, meaning it will not minimise the visual, shadowing and privacy impacts on the residential units on the first floor of the buildings on the southern side of the laneway.
- (c) *to minimise the adverse impact of development on heritage items,*
104. Officer Comment: The site is not in proximity to any heritage items.
- (d) *to nominate heights that will provide a transition in built form and land use intensity,*
105. Officer Comment: The site and surrounding locality all have maximum height limits of 9m. The portion of the building in excess of the maximum height of building standard is inconsistent with the form of surrounding buildings, exacerbated by its positioning on the high side of the site and is visually prominent.
- (e) *to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,*
106. Officer Comment: The site is not located in Hurstville City Centre.
- (f) *to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,*
107. Officer Comment: The locality is well established with development below the 9m height limit and any there are no site constraints on the site or on surrounding land that would justify any breach of the height control in future.
- (g) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*
108. Officer Comment: The third floor is proposed on a nil setback (as are levels one and two) to the laneway, resulting in a three storey wall of windows, meaning it will have an unreasonable visual, shadow and privacy impact on the residential units on the first floor of the buildings on the southern side of the laneway, thereby resulting in an adverse environmental effect on the use of those properties.
109. Officer comment: An assessment of the proposal against the objectives of the zone follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
110. The additional height provides for residential accommodation and as such does not contribute to the attainment of this objective, noting additionally that the overall development resulting in a net loss of business floor space.
- *To encourage employment opportunities in accessible locations.*
111. The additional height does not accommodate any additional employment opportunities.
- *To maximise public transport patronage and encourage walking and cycling.*
112. The site is located close to bus stops on Stoney Creek Road and services within the Local Centre surrounding the site, as such the provision of accommodation in this location is not inconsistent with this objective.
- *To maintain a commercial and retail focus for larger scale commercial precincts.*
113. The additional height does not provide for commercial or retail focus, consisting of boarding house rooms, and the overall proposal will result in a net loss of commercial floor space compared with the existing development on the site.
114. The area of non-compliance is not considered to be reasonable and will establish an undesirable precedent. It will have adverse effects on the surrounding locality, in terms of streetscape and visual bulk.
115. There is no public benefit of the variation as the breach occurs as a direct result of the third floor of boarding rooms, not because of any site constraint or environmental planning ground. 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.
116. 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.
117. In this case the large portion of the proposal in excess of the maximum building height is not considered to provide an appropriate design and built form outcome within the context of the site, noting particularly the visual impact, bulk and position of the proposal, all of which impact on the streetscape, the view of the proposal from adjoining sites.
118. Accordingly, the breach sought is not considered to be appropriate, and is not consistent with the objectives of the zone or Clause 4.3, and accordingly cannot be supported.

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

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

**Exception to Development Standards – Clause 4.4A Non-residential floor space ratios****Detailed assessment of variation to Clause 4.4A Non-residential floor space ratios**

120. 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.*

121. The proposed development seeks a variation to the development standard relating to non-residential floor space ratios (Clause 4.4A). The Hurstville Local Environmental Plan 2012 (HLEP) identifies a minimum FSR for non-residential uses of 0.3:1 (204sqm for this site). The proposed development only provides 62sqm (0.091:1). This amounts to a 69.6% variation to the control.

122. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the HLEP.

123. 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”*

124. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.4A in accordance with Clause 4.6 of HLEP. The Clause 4.6 request for variation is assessed as follows.

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

125. The non-residential floor space ratios control under Clause 4.4A of the HLEP 2012 is a development standard. The minimum amount of non-residential floor space to be provided is 0.3:1 for the site.

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

126. The objectives of non-residential floor space ratios standard under Clause 4.4A of HLEP 2012 is *to encourage an appropriate mix of residential and non-residential uses in order to ensure a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of the business zones.*

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

127. 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.
128. 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.
129. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.
130. Applicant's comment:
- *The location of the Site on Kingsway is the secondary frontage of the local centre with Stoney Creek Road being the primary frontage. On this basis a lower quantum of non-residential floor space is appropriate to hierarchy of this business centre and the non-commercial suite that is proposed is of a size to ensure it is able to be feasibility occupied, and not left vacant.*
  - *The proposal provides non-residential floorspace in optimum location on the Site, being at ground level on the street frontage and activates this frontage and provides employment opportunities.*
  - *The residential use, being a boarding house, will directly generate employment for the on-site manager and other cleaning and repair services that would not usually be expected by standard apartments and other residential uses.*

*To achieve strict compliance by expanding the commercial suite footprint at ground level would significantly reduce the amount of onsite parking available.*

*Providing a non-commercial use at first floor level would likely require an independent use to the ground floor use and the feasibility of this occurring in a fringe location in a local centre is marginal.*

*Given the Site's location and services it enjoys, the proposed use provides a good balance of residential use and commercial activity.*

*As such, in all of the circumstances of this case, a development, which complies with the standard, is unreasonable and unnecessary.*

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

131. Having regards to Clause 4.6(3) (b) and the need to demonstrate that there are sufficient environmental planning grounds to contravening the development standard, it is considered there are no constraints to justify not providing the required amount of commercial floor space as part of the development. The control does not require the commercial floor space to be provided at ground level and existing development on the site and surrounding sites on Kingsway contains buildings with commercial tenancies at ground and first floors.

132. The proposal reduces the amount of commercial floor space from the currently on the site and this is in direct conflict with the objectives of both the zone and standard.

133. Applicant's Comment:

- *the Site is not on the primary commercial frontage of the local centre;*
- *the proposal does provide an element of non-residential floor space that will provide an active street frontage and employment; and*
- *the residential development that is proposed will directly generate employment opportunities and by its nature, being smaller individual households, provide more commercial activity to support the local centre.*

*Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the variation in this instance.*

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

134. Clause 4.6(4) states that:

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

*(b) the consent authority is satisfied that:*

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

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

135. Applicant's Comment:

*The objectives of Clause 4.4A Non-residential floor space ratios is as follows:*

*(1A) The objective of this clause is to encourage an appropriate mix of residential and non-residential uses in order to ensure a suitable level of nonresidential floor space is provided to promote employment and reflect the hierarchy of the business zones.*

*The proposed development satisfies the purpose of the control and achieves the objectives of the clause as:*

- *It provides non-residential floorspace in optimum location on the Site, being at ground level on the street frontage, thus providing employment opportunities and activating the commercial street frontage;*
- *the residential use, being a boarding house, will directly generate employment for the on-site manager and other cleaning and repair services that would not usually be expected by apartments and most other residential uses.*
- *The location of the Site on Kingsway is the secondary frontage of the local centre with Stoney Creek Road being the primary frontage. On this basis a lower quantum of non-residential floor space is appropriate to hierarchy of the business zone and is of a size to ensure it is able to be feasibility occupied, and not left vacant.*
- *Expanding the footprint of the non-residential use at ground level would significantly reduce the amount of onsite parking available and providing non-commercial floor space in this location at first floor level is not considered commercially feasible.*

*The proposed development satisfies the objectives of the B2 Local Centre zone as it:*

- *will provide additional residents that will support the range of retail, business, entertainment and community uses that exist in the commercial centre,*
- *will provide employment opportunities in the commercial/business suite located on the ground floor, and*
- *provides maximise public transport patronage and encourage walking and cycling.*

*Furthermore, the proposed variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the variation.*

136. Officer comment: An assessment of the proposal against the objective of the standard follows:

*(1A) The objective of this clause is to encourage an appropriate mix of residential and non-residential uses in order to ensure a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of the business zones.*

137. Officer Comment: The proposal includes just one 62sqm commercial tenancy on the ground floor which fails to meet the minimum non-residential floor space control of 204sqm for the site. The proposal results in a significant net reduction to the amount of commercial floor space on the site when compared to the existing development form, and provides a predominantly residential development in a business zone, and therefore fails to meet this objective.

138. Officer comment: An assessment of the proposal against the objectives of the zone follows:

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



139. The proposal will result in a significant net loss of commercial floor space, including as it does just one 62sqm commercial tenancy on the ground floor. The proposal does not therefore provide sufficient capacity for the future use of the site for the uses specified in the objective and the variation proposed is thus inconsistent with the objective.
- *To encourage employment opportunities in accessible locations.*
140. As the proposal will result in a significant net loss of employment floor area on the site, resulting in less opportunities for the generation of employment on site, variation to the standard proposed is contrary to this objective.
- *To maximise public transport patronage and encourage walking and cycling.*
141. The site is located close to bus stops on Stoney Creek Road but by removing opportunities for business and employment uses in a local centre, will limit opportunities for the growth of that centre to meet the future needs of the local community in the locality, thereby generating the need for vehicle movements to access services beyond the locality. The variation therefore is not consistent with this objective.
- *To maintain a commercial and retail focus for larger scale commercial precincts.*
142. The failure to satisfy the development standard which specifically requires the provision of a minimum level of non-residential floor space, and the net loss of commercial floor space that will result from the proposal (existing as opposed to proposed), means that the variation sought is inconsistent with attainment of the above objective.
143. The non-compliance is not therefore considered to be consistent with the objective of the standard or the zone.
144. There is no public benefit of the variation. 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.
145. 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.
146. In this case the non-compliance has no justification relative to the objectives of the zone and the standard, resulting in a development that will not only deliver a net loss of commercial floor space on the site, but also fails to satisfy the minimum standard of non-residential floor space as outlined in the HLEP 2012. Accordingly, the breach sought is not considered to be well founded, and accordingly cannot be supported.

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

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

148. Given the variations to the building height (Clause 4.3), floor space ratio (Clause 4.4) and non-residential floor space ratio (Clause 4.4A) sought are inconsistent with the objectives of the relative standards and the objectives of the zone, the proposal is inconsistent with the requirements of the plan and the outcome inconsistent with the relevant objectives. Accordingly approval of the proposal would represent an undesirable precedent and the matters outlined form part of the reasons for refusal of this application.
149. Given no Clause 4.6 variation request has been submitted in relation to the variation sought to Clause 4.4, it is noted that the proposal does not satisfy the legal prerequisite for such a variation, and accordingly cannot be approved. This also forms part of the reasons for refusal of this application.
150. It is finally noted that the lack of detail provided in the submitted stormwater drainage design means it has not been demonstrated that adequate arrangements have been made for the drainage of stormwater from the site, a consent prerequisite under Clause 6.7 Essential Services of the HLEP 2012.

### Development Control Plans

#### Hurstville Development Control Plan No. 1

151. An assessment of the proposed development against the relevant controls in the HDCP No. 1 is detailed in the compliance table below.

Development	Requirements	Proposed	Complies
<b>3.0 General Planning Considerations</b>			
3.1 Vehicle access and car parking rates	Underground parking areas are to be concentrated under building footprints so as to maximise deep soil landscaping.	The basement design allows for a deep soil area in the SE corner however the first floor is built over the area and as such it will not form a landscaped area.	No
	Driveways to underground car parks are to be designed so as to minimise the visual impact on the street, and to maximise pedestrian safety.	The driveway is suitably located.	Yes
	Pedestrian access to the development should be separate and clearly defined.	Pedestrian and vehicular access is separate.	Yes
	Access ways to underground car parking areas is to be located away from doors and windows to habitable rooms wherever possible.	Access to the basement parking area is via the central lift and stair core.	Yes

Development	Requirements	Proposed	Complies
	Basement car parking is preferable in commercial and residential flat buildings.	Basement parking is proposed.	Yes
Car Parking Rates (Table 1 – business zones)	Business/Office: 1/60sqm 62sqm requires 2 spaces	2 spaces	Yes
3.3 Access and Mobility	In developments containing five or more dwellings, a minimum of one adaptable dwelling, designed in accordance with relevant Australian Standards must be provided for every ten dwellings or part thereof.	3 rooms are accessible.	Yes
	Access to required adaptable dwellings and relevant parking spaces Appropriate access for all persons through the principal entrance of the building and access to any common facilities shall be provided.	All parts of the building are accessible.	Yes
	One accessible space is dedicated to each adaptable apartment	5 accessible spaces are provided.	Yes
3.4 Crime Prevention through Design	Ensure that the way in which the site, and the buildings within the site, are laid out enhance security and feelings of safety	The development has been well considered to cater for CPTD principles in terms of lighting the location, accessibility and legibility of services and uses.	Yes
3.5 Landscaping	Development contributes to the creation of a distinct, attractive landscape character for streets and neighbourhoods	No landscaping is proposed.	No
3.6 Public Domain	Development contributes to the creation of attractive, comfortable and safe streets that comprise consistent and high quality paving, street furniture and street tree plantings.	The proposal reasonably addressed the public domain of Kingsway, but no detail is provided as to public domain	No

Development	Requirements	Proposed	Complies
		improvements adjacent to the site, or with regards to the precise treatment of the street edge.	
3.7 Stormwater	<p>Stormwater discharge for development sites is not to exceed the 5 year ARI storm event.</p> <p>An on-site stormwater detention system is provided that reduces the flow rate of stormwater discharge. Stormwater quality</p> <p>The quality of stormwater leaving development sites is consistent with water quality standards set by the Environment Protection Authority and ANZECC.</p>	Council's Development Engineer has advised that the provided stormwater plan is insufficiently detailed to enable an assessment of its adequacy.	No

152. The proposal provides no landscaping visible from the public domain, no enhancement to the public domain, and does not provide sufficient detail with regards to the street edge relationship at the front and rear of the proposal. Additionally, insufficient detail is provided in the submitted stormwater plans to assess the adequacy of the stormwater design proposed. The proposal is therefore not satisfactory with regards to the HDCCP No.1.

## IMPACTS

### **Natural Environment**

153. The proposal has been assessed and endorsed by Council's Consultant Arborist but does not sufficiently demonstrate that its stormwater will be appropriately managed. If the application was to be supported conditions would be imposed with regards to landscaping and tree protection, but the provided stormwater arrangements are inadequate for approval at this time.

### **Built Environment**

154. The proposal fails to satisfy the height, FSR and commercial floor space planning controls in the Local Environmental Plan. The breach of the maximum building height and FSR standards is not considered to provide an appropriate design and built form outcome within the context of the site, and the proposal fails to provide sufficient commercial floor space required for development on this site.
155. In terms of internal planning, the proposed rear lift does not connect to the lower level of car parking, necessitating the use of two lifts for access to that area. This is considered a poor amenity outcome and forms part of the reasons for refusal.

**Social Impact**

156. The proposal will provide a different type of housing in the locality, however this benefit is off set by the substantial loss of commercial floor space resulting in a loss of opportunities for business development, employment and service delivery into the future from the local area. In this regard any benefit from the provision of such housing is offset by this failure.

**Economic Impact**

157. The subject site is zoned for business uses that generate local employment and provide local services to the community. The proposed development, by significantly reducing the commercial floor space compared to that presently on the site, and by failing to provide the minimum standard outlined in the HLEP 2012 will prevent the site contributing to the economic future of the zone as intended under the LEP.
158. Additionally, given the precedent such a variation may set with regards to the application of minimum non-residential floor space requirements across the Local Government Area under the HLEP 2012, and the GRLEP 2021 that contains like controls, which are intended to prevent the loss of commercial uses in business zones undergoing renewal, the proposal has potential to undermine the integrity of commercial zones in the area covered by the Plans.
159. Both specifically, and as a precedent, the proposal therefore would result in the undermining of controls intended to ensure a significant commercial use in business zones, thereby undermining the economic purpose of these zones.

**Suitability of the Site**

160. The site is zoned B2 Local Centre. The proposal is a permissible form of development in this zone, however it is considered that the proposal will have an adverse impact on the locality in relation to height and lack of commercial floor space and is not supported for these reasons.

**Submissions and the Public Interest**

161. The proposal was notified to adjoining neighbours on for a period of fourteen (14) days. No submissions were received.

**Council Referrals****Consultant Arborist**

162. No objections subject to conditions if the application were to be supported.

**Environmental Health Officer**

163. Insufficient information is provided in the Detailed Site Investigation report in relation to groundwater and no information has been submitted in relation to mechanical ventilation of the development.

**Development Engineer**

164. Insufficient information has been submitted to enable a proper assessment of the stormwater management system proposed, including dimensions of the drainage system and on site detention system design.
165. These form part of the reasons for refusal.

### Traffic Engineer

166. Insufficient information has been provided to analyse the traffic impacts of the proposal, the stacked parking system including specification and operation details, and no loading facilities are provided for the commercial tenancy.
167. No detail is further provided in the Plan of Management with respect to the management of the car lift and stackers, and the education of potential occupants as to their operation.
168. This forms part of the reasons for refusal.

### **External Referrals**

#### Ausgrid

169. The application was referred to Ausgrid as per Chapter 2 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. No conditions required.

### **Contributions**

170. The development is subject to Section 7.11 contributions and a condition of consent would be imposed for payment if the application were to be approved.

### **Conclusion**

171. 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 not considered to be an appropriate response to the land. As a result the application is recommended for refusal for the reasons outlined at the end of this report.
172. The proposal has been assessed against the provisions of the Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1. The proposal fails to satisfy the height, FSR and commercial floor space planning controls in the Local Environmental Plan. The breach of the maximum building height and FSR standards is not considered to provide an appropriate design and built form outcome within the context of the site, and the proposal fails to provide sufficient commercial floor space as required for development on this site.
173. Accordingly, the breaches are not considered to lack justification with regards to the objective of the zone and standard that apply, and accordingly the application cannot be supported.

### **Determination and Statement of Reasons**

#### Statement of Reasons

174. The reasons for this recommendation are:
- The proposed exceedance of the height standard is inconsistent with the objectives of Clause 4.3 of the HLEP 2012 and approval of the variation would set an undesirable precedent;
  - The proposed exceedance to the Floor Space Ratio requirement of Clause 4.4 of the HLEP 2012 appears to lack justification and no a variation request as required under Clause 4.6 has been submitted;
  - The proposed failure to provide the minimum non-residential floor space requirement contained in Clause 4.4A of the HLEP 2012 is inconsistent with the objectives of the zone and the standard and would set an undesirable precedent;



- The application lacks sufficient detail to demonstrate that suitable stormwater drainage is available, or suitable arrangements have been made in this regard as required under Clause 6.7 of the HLEP 2012.
- The proposal fails to provide a dedicated communal living room as required under Clause 30 (1) (a) of State Environmental Planning Policy (Affordable Rental Housing) 2009.
- The provided Detailed Site Investigation lacks sufficient detail with regards to groundwater contamination to enable it to be concluded (as a consent authority) that the site will be suitable for the proposed use as outlined by Clause 4.6 of SEPP (Resilience and Hazards) 2021.
- Insufficient detail has been provided to enable a conclusion as to the traffic impact of the proposal to be assessed.
- Insufficient detail has been provided as to the functionality and practicality of the proposed use of car stackers within the development, with no specifications, dimensions (including depth of excavation required) and details submitted to enable a conclusion on the adequacy, practicality, or functionality, or the scope of works necessary to implement this system to be reached. Further, no detail as to how short-to-medium term occupants of the boarding house will be familiarised with the operation of the stacker and lift system has been provided in the Plan of Management.
- The proposed development will have unacceptable adverse impacts on the built environment due to its breach of the height standard in a location due north of shop-top housing dwellings.
- In consideration of the aforementioned reasons, the proposed development is not a suitable and planned use of the site.

### Determination

175. Pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, refuses Development Application DA2021/0175 for demolition works and construction mixed use development containing a commercial tenancy and a boarding house at Lots 30, 31 and 32 in DP11417, known as 61-65 Kingsway, Kingsgrove for the following reasons:

1. **State Environmental Planning Policy (Resilience and Hazards) 2021** – Pursuant to Clause 4.6, it has not been demonstrated that the site in its present condition is, or can be made suitable for the development proposed as the provided detailed site investigation fails to give sufficient consideration to existing site groundwater conditions.
2. **State Environmental Planning Policy (Affordable Rental Housing) 2009** – Pursuant to Clause 30 1(a) of the Policy, no dedicated communal room has been provided of the use of occupants.
3. **Hurstville Local Environmental Plan 2012-** Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 4.4 Floor space ratio and a Clause 4.6 variation request has not been submitted.

4. **Hurstville Local Environmental Plan 2012-** Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development fails to satisfy the objectives of the B2 Local Centre zone as the amount of commercial floor space is reduced by the proposed development significantly from that existing, thereby impacting on the generation of employment, and delivery of services in the local area.
5. **Hurstville Local Environmental Plan 2012 -** Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 4.3 Height of buildings and the Clause 4.6 variation request is not justified with regards to the objectives of the standard and will result in adverse environmental impacts due to the visual dominance of the breach.
6. **Hurstville Local Environmental Plan 2012 -** Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 4.4A Non-residential floor space ratios and the Clause 4.6 variation request is not justified with regards to the objectives of the zone or the standard.
7. **Hurstville Local Environmental Plan 2012 –** Pursuant to Section 4.15(a) (i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy Clause 6.7 Essential Services as it has not been demonstrated that sufficient stormwater drainage is available, or that suitable arrangements have been made available to facilitate the drainage of stormwater from the site.
8. **Impacts on the Built Environment -** Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information is provided to determine whether the proposed development meets the relevant planning controls in relation to:
  - a) Parking including specifications relating to the car stacker system and plan of management details as to how site users will be inducted into the use of the system;
  - b) Solar access to communal areas;
  - c) Groundwater during excavation;
  - d) Stormwater management;
  - e) Traffic impacts and loading bays; and
  - f) Waste management.
  - g) Internal accessibility to the lower basement from the rear boarding rooms.
9. **Suitability of Site -** Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development as:
  - (a) The development fails to achieve suitable levels of amenity for future residents and adjoining allotments as a result of insufficient building separation, inappropriate privacy treatments and building layout.
  - (b) The site is zoned for the primary purpose of facilitating retail and commercial land uses and the proposal, in resulting in a net loss to existing non-residential gross floor area on the site, and in failing to provide the minimum non-residential gross floor area required in the zone, is unsuitable for a site in this zone.

**10. Undesirable Precedent** –Approval of the proposal would set an undesirable precedent with regards to the application of key development standards and the integrity of the B2 Local Centre zone.

**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.

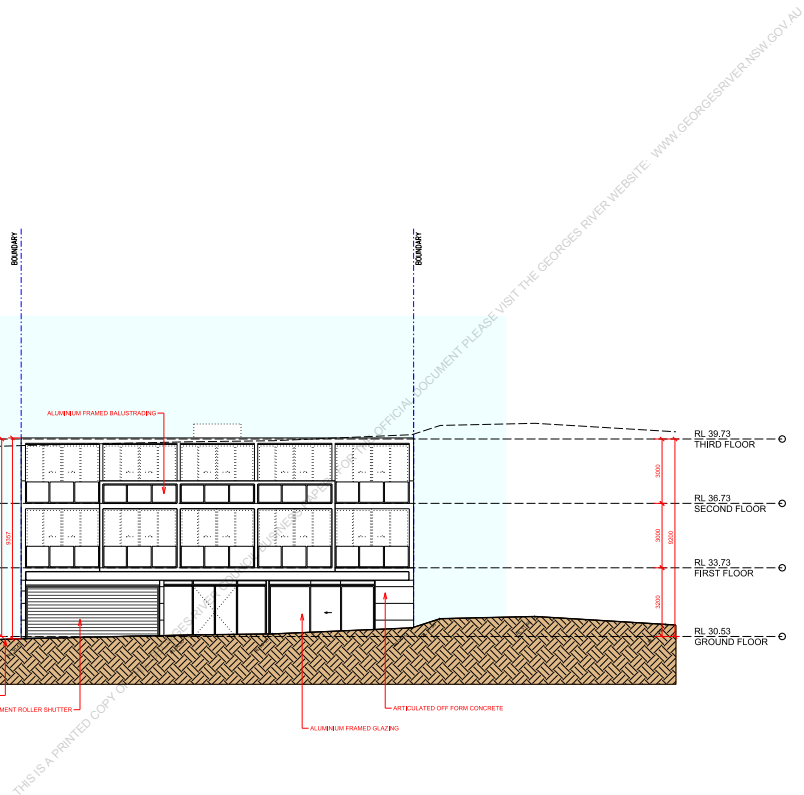
LPP022-22

## ATTACHMENTS

- Attachment [1](#)  Site Plan
- Attachment [2](#)  Elevations and Sections

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Client	EDGEWARE CORPORATION PTY LTD
Project	Boarding House Development No. 61-65 Kingsway Kingsgrove NSW 2208
Drawing Title	NORTH ELEVATION

Scale 1:100 @ A1 1:200 @ A3	Date 17.04.20	Drawn TO	Checked CT
Job No. 00 00 00	Drawing No. <b>DA 4.00</b>	Issue B	
Design File Ref: v			
Design Architect: Chris Tsioulos - Reg. No. 5143			
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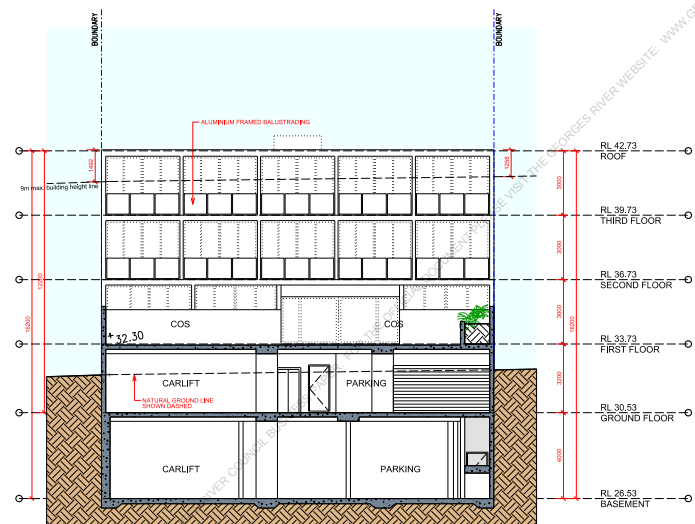
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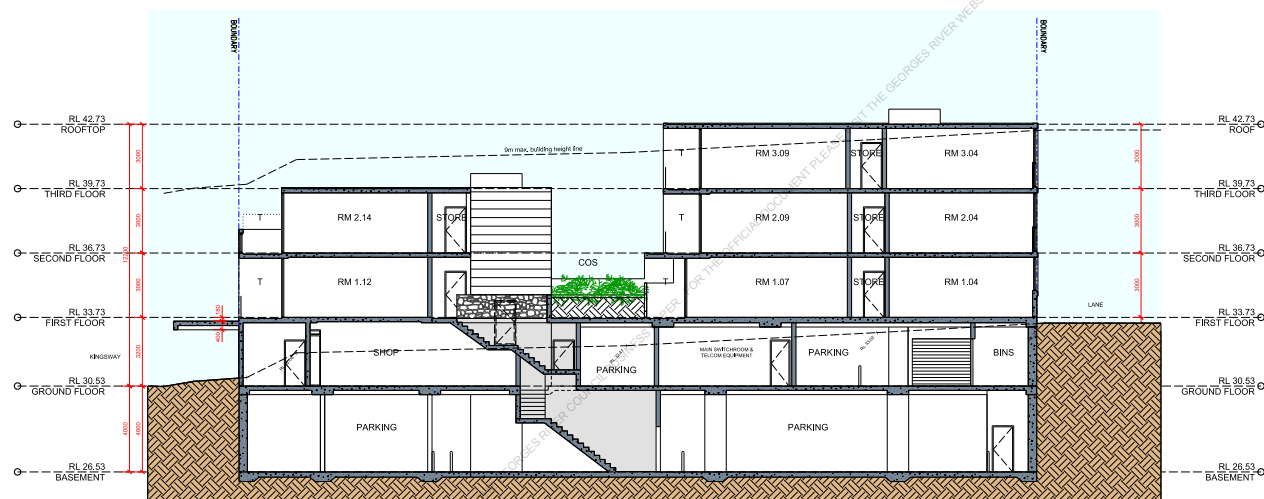
Client	EDGEWARE CORPORATION PTY LTD
Project	Boarding House Development No. 61-65 Kingsway Kingsgrove NSW 2208
Drawing Title	SOUTH ELEVATION

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**Notes**

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All dimensions to be checked on site prior to commencement of work.  
All discrepancies to be brought to the attention of the Architect.  
Larger scale drawings and written dimensions take preference.  
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C	31.12.20	For DA Submission	TO
B	23.10.20	For DA Submission	TO
A	20.06.20	For DA Submission	TO
Issue	Date	Description	By



## DA SUBMISSION

Client:	EDGEWARE CORPORATION PTY LTD
Project:	Boarding House Development No. 61-65 Kingsway Kingsgrove NSW 2208
Drawing Title:	SECTION CC

Scale 1:100 @ A1 1:200 @ A3	Date 20.05.20	Drawn TO	Checked CT
Job No. 00 00 00	Drawing No. DA 4.06		Issue C

Design Architect: Chris Tsioulos - Reg. No. 5143  
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# REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 19 MAY 2022

LPP023-22

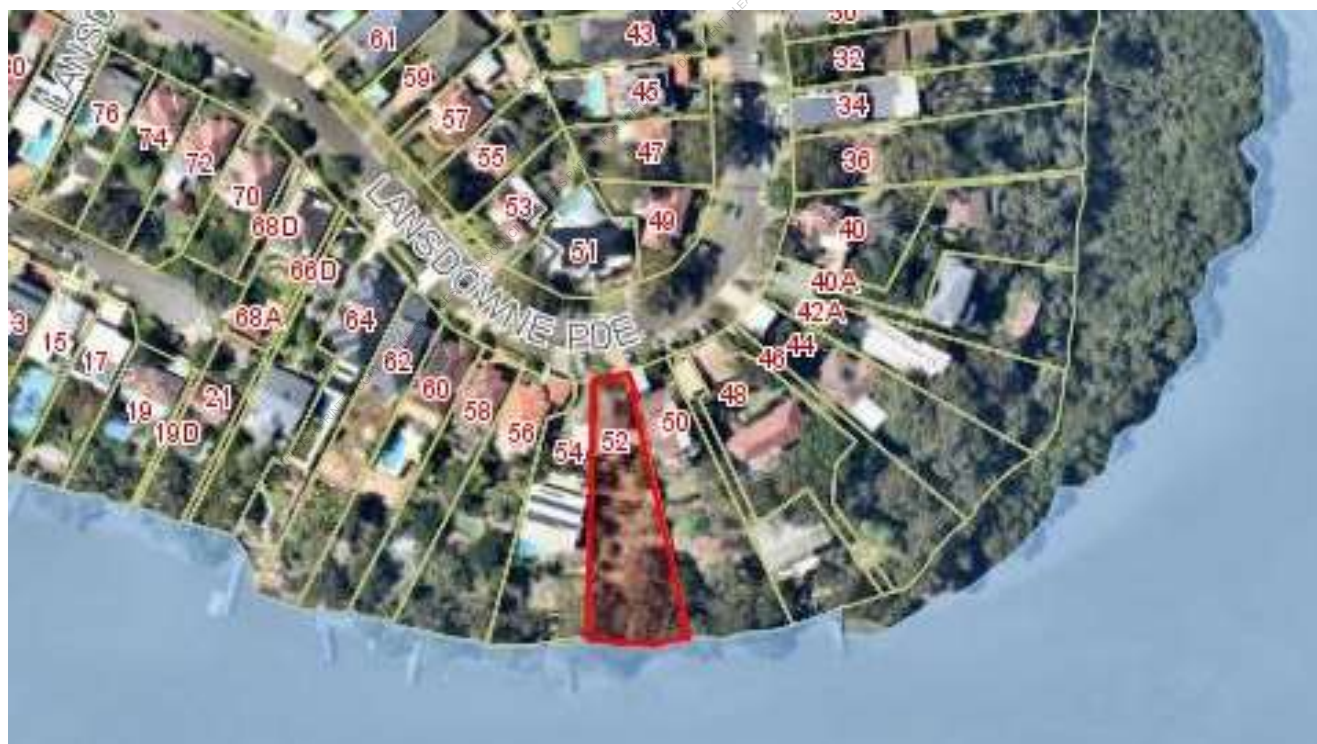
<b>LPP Report No</b>	<b>LPP023-22</b>	<b>Development Application No</b>	<b>DA2021/0486</b>
<b>Site Address &amp; Ward Locality</b>	52 Lansdowne Parade, Oatley Peakhurst Ward		
<b>Proposed Development</b>	Demolition works and construction of a dwelling house, outbuilding and swimming pool		
<b>Owners</b>	Mr C Bazergy and Mrs T Bazergy		
<b>Applicant</b>	Mr C Bazergy		
<b>Planner/Architect</b>	Rockeman Town Planning / AMG Developments		
<b>Date Of Lodgement</b>	8/11/2021		
<b>Submissions</b>	No submissions		
<b>Cost of Works</b>	\$1,500,000.00		
<b>Local Planning Panel Criteria</b>	The application seeks consent to vary the height of building standard of 38%.		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Transport and Infrastructure) 2021 Georges River Local Environmental Plan 2021, Georges River Development Control Plan 2021		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans, Statement of Environmental Effects, Clause 4.6 Variation Request – height of building, Geotechnical Report, Arborist Report, Survey Plan		
<b>Report prepared by</b>	Senior Development Assessment Planner		

<b>Recommendation</b>	That the application be supported subject to the conditions in this report.
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<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
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<b>Legislative clauses requiring consent authority satisfaction</b>  Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
<b>Clause 4.6 Exceptions to development standards</b>  If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - Clause 4.3 Height of buildings
<b>Special Infrastructure Contributions</b>  Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
<b>Conditions</b>  Have draft conditions been provided to the applicant for comment?	No - conditions have been attached

### Site Plan



### Executive Summary Proposal

- Development consent is sought for demolition works, tree removal, construction of a dwelling house, outbuilding and swimming pool. The proposal is described in further detail as follows:



- Demolition of the existing dwelling;
  - Removal of 12 site trees (predominantly exotic garden plantings);
  - Swimming pool;
  - Outbuilding containing a rumpus room, bathroom and study;
  - New dwelling containing:
    - o Stair and lift access from the rumpus level;
    - o Three bedrooms, one with an ensuite, a balcony and a bathroom on the lower ground level;
    - o Double garage, laundry, bathroom, kitchen, dining and living area plus balcony on the ground level; and
    - o Master suite with balcony, and bedroom with balcony on the first floor.
2. The proposal seeks consent to vary the maximum height limit of 9m for the site, with the proposal having a maximum height of 12.5m (3.5m breach and 38% variation). The plans submitted with the application originally proposed a height variation of up to 66% but the extent of the breach was reduced at the request of Council during the assessment of the application.
3. The request is well founded as the site slopes steeply from the street to the river over the depth of the site, as well as in the location of the proposed building footprint.

### Site and Locality

4. The site is legally described as Lot 1 in DP209514 and is known as No. 52 Lansdowne Parade, Oatley.
5. The lot is an irregular shape having a frontage to Lansdowne Parade of 8.5m and a site area of 1,138sqm. The land slopes steeply from the street to the Georges River, with a fall of 30m over the length of the site.
6. The site is subject to a 15m foreshore building line, with the foreshore area relatively undisturbed and well vegetated, apart from a shed and access stairs to the foreshore.
7. In the wider context, the subject site is located in an established R2 Low Density Residential Area containing multi-level, waterfront dwelling houses.

### Zoning and Permissibility

8. The site is zoned R2 - Low Density Residential under the provisions of Georges River Local Environmental Plan 2021 (GRLEP 2021). Dwelling houses are permitted with consent.

### Submissions

9. No submissions were received.

### Reason for Referral to the Local Planning Panel

10. This application is referred to the Georges River Local Planning Panel for determination as the proposal seeks consent to vary the 9m height control by 38%.

## Planning and Design Issues

11. The proposal exceeds the building height development standard of 9m that applies to the site under GRLEP 2021 by a maximum of 3.5m over the 9m 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.
12. The proposal is fully compliant with the maximum FSR development standard that applies to the site under GRLEP 2021. The proposal is therefore consistent with the desired future building density for the site.

## Conclusion

13. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed Development Application (DA2021/0486) is recommended for approval subject to conditions of consent.

## Report in Full Proposal

14. Development consent is sought for demolition works, tree removal, construction of a dwelling house, outbuilding and swimming pool. The proposal is described in further detail as follows:
  - Demolition of the existing dwelling;
  - Removal of 12 site trees (predominantly exotic garden plantings);
  - Swimming pool;
  - Outbuilding containing a rumpus room, bathroom and study;
  - New dwelling containing:
    - o Stair and lift access from the rumpus level;
    - o Three bedrooms, one with an ensuite, a balcony and a bathroom on the lower ground level;
    - o Double garage, laundry, bathroom, kitchen, dining and living area plus balcony on the ground level; and
    - o Master suite with balcony, and bedroom with balcony on the first floor.

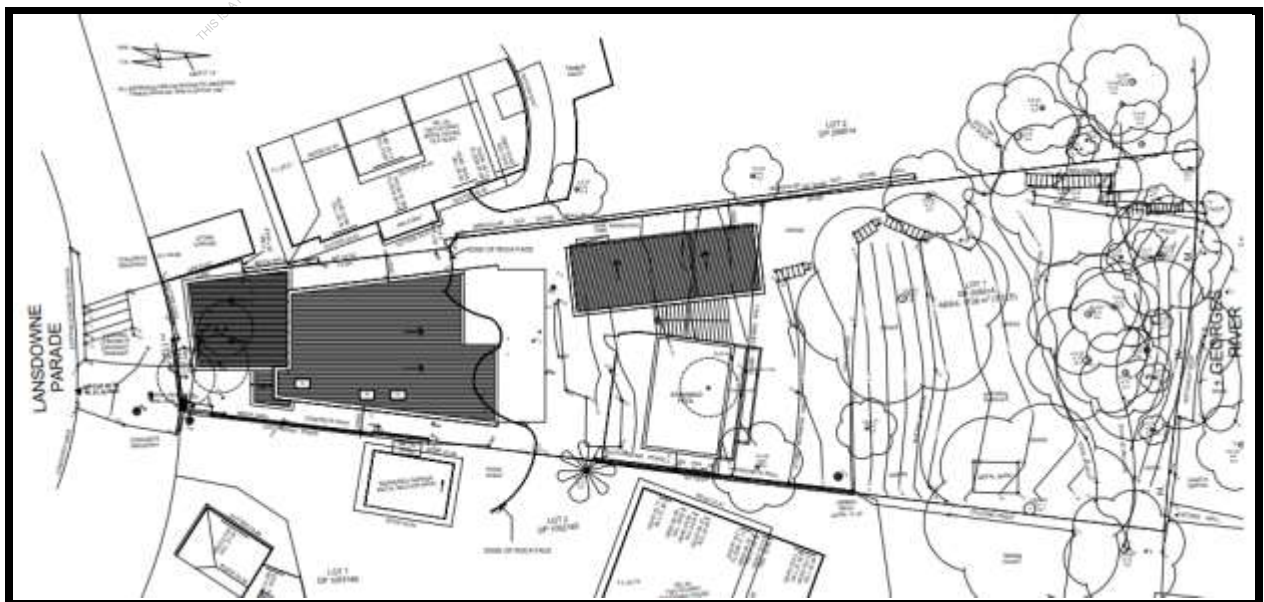


Figure 1: Site Plan

### The Site and Locality

15. The site is legally described as Lot 1 in DP209514 and is known as No. 52 Lansdowne Parade, Oatley. The lot is an irregular shape having a frontage to Lansdowne Parade of 8.5m and a site area of 1,138sqm. The land slopes steeply from the street to the Georges River, with a fall of 30m over the length of the site.
16. The site is subject to a 15m foreshore building line, with the foreshore area relatively undisturbed, apart from a shed and access stairs to the foreshore, and is well vegetated.
17. In the wider context, the subject site is located in an established R2 Low Density Residential Area containing multi level, waterfront dwelling houses.



Figure 2: The site from Lansdowne Parade



**Figure 3: Looking south the Georges River from the site**

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Figure 4: Looking south-west to No. 50 Lansdowne Pde



Figure 5: Looking south-east to 54 Lansdowne Pde



Figure 6: The existing rockshelf on the site

### Compliance and Assessment

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

### State Environmental Planning Policies (SEPPS)

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

State Environmental Planning Policy Title	Complies
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Yes
State Environmental Planning Policy (Resilience and Hazards) 2021	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Yes
State Environmental Planning Policy (BASIX) 2004	Yes

**State Environmental Planning Policy (Biodiversity and Conservation) 2021**

20. The relevant parts of the above Policy that apply to this application are Chapter 2 – Vegetation in non-rural areas, and Chapter 11 – Georges River Catchment.

**Chapter 2 - Vegetation in Non-Rural Areas**

21. Chapter 2 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.
22. This chapter 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 (Development Control Plan).*
23. Tree removal forms part of the application, but no significant vegetation is proposed for removal.

**Chapter 11 – 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 stormwater design was reviewed by Council's Engineering Section at lodgement. No objection was raised with respect to the management and disposal of stormwater.
26. The proposal is consistent with the objectives and purpose of Chapter 11 of the SEPP.

**State Environmental Planning Policy (Resilience and Hazards) 2021**

27. Chapter 2 and Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 are relevant to the proposal.
28. Chapter 2 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".*



29. The subject site is mapped as a Coastal Environment area and a Coastal Use area. These have the following management objectives under the State Environmental Planning Policy:
- (a) to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,
  - (b) to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,
  - (c) to maintain and improve water quality and estuary health,
  - (d) to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,
  - (e) to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,
  - (f) to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.
30. The following is an assessment of the matters for consideration listed under the State Environmental Planning Policy as applicable to the Coastal Environment Area and Coastal Use Area.

State Environmental Planning Policy Control	Proposal	Complies
<b>13. Development on land within the coastal environment area</b>		
(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,	Surface water runoff is to be managed in accordance with the approved stormwater management plan and relevant conditions imposed. The proposal is generally satisfactory subject to conditions.	Yes
(b) coastal environmental values and natural coastal processes,	The proposal is used for residential purposes and will not unacceptably impact the coastal environmental values and there is not impact on coastal processes.	Yes
(c) the water quality of the marine estate (within the meaning of the Marine	Appropriate standard conditions to be imposed to ensure water quality is	Yes

<b>State Environmental Planning Policy Control</b>	<b>Proposal</b>	<b>Complies</b>
Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	maintained. The site is not located on any of the sensitive coastal lakes identified in Schedule 1.	
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	There will be no unreasonable impact upon these features.	Yes
(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,	There is currently no public access to the foreshore from the site.	NA
(f) Aboriginal cultural heritage, practices and places,	The allotment is not known as a place of Aboriginal significance. There is no impact in terms of Aboriginal heritage.	Yes
(g) the use of the surf zone.	The development is not located near the surf zone.	NA
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:		
(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	The proposal is generally satisfactory in terms of impact as discussed throughout this report	Yes
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposal is generally satisfactory and has been designed to reduce impacts.	Yes
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact	The proposal is generally satisfactory and has been designed to minimise impacts.	Yes
<b>14 Development on land within the coastal use area</b>		
(1) Development consent must not be granted to development on land		

<b>State Environmental Planning Policy Control</b>	<b>Proposal</b>	<b>Complies</b>
that is within the coastal use area unless the consent authority:		
(a) has considered whether the proposed development is likely to cause an adverse impact on the following:		
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	There is no public access in this location.	Yes
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	The proposal will not impact any public space.	Yes
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	No impact.	Yes
(iv) Aboriginal cultural heritage, practices and places,	The property is not a known site of Aboriginal heritage.	Yes
(v) cultural and built environment heritage, and	The site does not contain or adjoin any heritage items.	Yes
(b) is satisfied that:		
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or	Proposal is generally satisfactory in terms of impact as discussed throughout this report.	Yes
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The development does not result in any unreasonable impacts.	Yes
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	The development does not result in any unreasonable impacts.	Yes
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	Development is generally satisfactory in terms of the built form controls in the LEP and DCP.	Yes

31. Chapter 4 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 4.6 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.

33. A review of historic aerial photography indicates that the site has historically been used for residential purposes. Residential usage is not typically associated with activities that would result in the contamination of land. On this basis, the site is likely to be suitable for residential development in its current state for the development proposed with respect to contamination.

#### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

34. Compliance with SEPP (Transport and Infrastructure) 2021 has been considered. Ausgrid was consulted as required by Chapter 2. No objection was raised and no conditions required.

#### **State Environmental Planning Policy (BASIX) 2004**

35. 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.
36. A valid BASIX Certificate has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

#### **Georges River Local Environmental Plan 2021**

37. The subject site is zoned R2 Low Density Residential under the provisions of the Georges River Local Environmental Plan 2021. The proposed development is for a dwelling house and swimming pool which are permissible land uses in the zone.
38. The extent to which the proposed development complies with the Georges River Local Environmental Plan 2021 is detailed and discussed in the table below.

Clause	Standard	Proposed	Complies
<b>Part 1 – Preliminary</b>			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is consistent with the aims of the plan.	Yes
1.4 - Definitions	Dwelling House means:  <i>a building containing only one dwelling.</i>	The proposed development is consistent with the definition.	Yes
<b>Part 2 - Permitted or prohibited development</b>			
2.3 - Zone objectives and Land Use Table	Meets objectives of R2-Low Density Residential Zone.	The proposal meets all objectives.	Yes
	Development must be permissible with consent	The proposal is permissible with development consent.	Yes
<b>Part 4 - Principal Development Standards</b>			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The proposal has a maximum overall	No – refer to Clause 4.6

Clause	Standard	Proposed	Complies
		height of 12.5m.	assessment
4.4 – Floor Space Ratio	0.55:1 as identified on Floor Space Ratio Map	Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential, Clause 4.4A applies.	Refer to Clause 4.4A
4.4A - Exceptions to floor space ratio—certain residential accommodation	<p>(2) The maximum floor space ratio for a dwelling house on land identified as “Area 1” on the <a href="#">Floor Space Ratio Map</a> must not exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>Site area</p> <ul style="list-style-type: none"> <li>Maximum floor space ratio less than 650 square metres 0.55:1</li> <li>less than 1,000 square metres but not less than 650 square metres [(lot area – 650) × 0.3 + 357.5] ÷ lot area:1</li> <li><b>less than 1,000 square metres but not less than 1,500 square metres [(lot area – 1,000) × 0.2 + 462.5] ÷ lot area:1</b></li> <li>not less than 1,500 square metres [(lot area – 1,500) × 0.1 + 562.5] ÷ lot area:1</li> </ul> <p>(3) The maximum floor space ratio for residential accommodation on land identified as “Area 2” on the Floor Space Ratio Map must not exceed 0.6:1.</p> <p>Site area:1,138sqm</p>	<p>A maximum gross floor area of 490.1sqm is permitted.</p> <p>The proposal provides 367sqm which is compliant with this requirement, resulting in an FSR of 0.32:1</p>	Yes

Clause	Standard	Proposed	Complies
	0.43:1 or 490.1sqm		
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 breach of the height of building standard under Clause 4.4A.	Refer to the Clause 4.6 assessment below.
<b>Part 5 - Miscellaneous Provisions</b>			
5.7 – Development below mean high water mark	(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water).	The proposal does not involve works below the Mean High Water Mark.	Yes
5.10 – Heritage conservation	In accordance with Clause 5.10 (2)	The site is not a heritage item and not located within the vicinity of any heritage items. Site is not in a heritage conservation area.	Yes
5.11 – Bush Fire Hazard Reduction	Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.	The subject land is not within a bush fire prone area.	Yes
<b>Part 6 - Additional Local Provisions</b>			
6.1 – Acid sulfate soils	<p>(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.</p> <p><b>Class 5:</b> Works within 100 metres of adjacent Class 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 2, 3 or 4</p>	<p>Subject site is located in a Class 5 Acid Sulfate Soils Area.</p> <p>Excavation is not proposed below 5m AHD therefore an Acid Sulfate Management Plan is not required.</p>	Yes

Clause	Standard	Proposed	Complies
	land.		
6.2 – Earthworks	<p>(2) Development consent is required for earthworks unless—</p> <p>(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or</p> <p>(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.</p>	The proposed earthworks are ancillary to the proposed development and are acceptable for this form of development.	Yes
6.3 – Stormwater Management	<p>(2) In deciding whether to grant development consent for development, the consent authority must be satisfied that the development—</p> <p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater detention or retention to minimise stormwater runoff volumes and reduce the development's reliance on mains water, groundwater or river water, and</p> <p>(c) avoids significant adverse impacts of stormwater runoff on adjoining properties, native bushland, receiving waters and the downstream stormwater system or, if the impact cannot be reasonably avoided,</p>	Council's Development Engineer supports the proposal subject to conditions of consent and is satisfied that the identified matters are suitably addressed by the proposal.	Yes



Clause	Standard	Proposed	Complies
	<p>minimises and mitigates the impact, and</p> <p>(d) is designed to minimise the impact on public drainage systems.</p>		
<b>6.4 - Foreshore area and coastal hazards and risk</b>	<p>(2) This clause applies to the following land—</p> <p>(a) land identified on the Coastal Hazard and Risk Map,</p> <p>(b) land identified on the Foreshore Building Line Map.</p> <p>(3) Development consent must not be granted for development on land to which this clause applies except for the following purposes—</p> <p>(a) the alteration, or demolition and rebuilding, of an existing building if the footprint of the building will not extend further forward than the footprint of the existing building into—</p> <p>(i) the foreshore building line, or</p> <p>(ii) the land identified on the <a href="#">Coastal Hazard and Risk Map</a>,</p> <p>(b) the erection of a building if the levels, depth or other exceptional features of the site make it appropriate to do so,</p> <p>(c) boat sheds, cycling paths, fences, sea walls, swimming pools, water recreation structures or walking tracks.</p> <p>(4) In deciding whether to grant development consent, the consent authority must consider the following matters—</p> <p>(a) whether the development addresses the impacts of sea level</p>	<p>No work is proposed below the foreshore building line.</p>	<p>Yes</p>

Clause	Standard	Proposed	Complies
	<p>rise and tidal inundation as a result of climate change,</p> <p>(b) whether the development could be located on parts of the site not exposed to coastal hazards,</p> <p>(c) whether the development will cause congestion or generate conflict between people using open space areas or the waterway,</p> <p>(d) whether the development will cause environmental harm by pollution or siltation of the waterway,</p> <p>(e) opportunities to provide reasonable, continuous public access along the foreshore, considering the needs of property owners,</p> <p>(f) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(5) In this clause—  <b>foreshore area</b> means the land between the foreshore building line and the mean high water mark of the nearest bay or river.  <b>foreshore building line</b> means the line shown as the foreshore building line on the Foreshore Building Line Map.</p>		
<b>6.5 - Riparian land and waterways</b>	<p>(2) This clause applies to land identified as “Sensitive land” on the Riparian Lands and Waterways Map.</p> <p>(3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must</p>	<p>The proposal does not involve works beyond the 15m FBL and is unlikely to affect the waterway.</p>	<p>Yes</p>

Clause	Standard	Proposed	Complies
	<p>consider the following—</p> <p>(a) whether the development is likely to have an adverse impact on the following—</p> <p>(i) the water quality and flows within the waterway,</p> <p>(ii) the stability of the bed, shore and banks of the waterway,</p> <p>(iii) the future rehabilitation of the waterway and riparian areas,</p> <p>(iv) the biophysical, hydrological or ecological integrity of adjacent coastal wetlands, including the aquatic and riparian species, habitats and ecosystems of the waterway,</p> <p>(v) indigenous trees and other vegetation,</p> <p>(vi) opportunities for additional planting of local native riparian vegetation,</p> <p>(b) whether the development is likely to increase water extraction from the waterway,</p> <p>(c) whether the development will cause environmental harm by pollution or siltation of the waterway,</p> <p>(d) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid significant adverse environmental impact, or</p> <p>(b) if that impact cannot</p>		

Clause	Standard	Proposed	Complies
	<p>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>		
<b>6.6 - Foreshore scenic protection area</b>	<p>(2) This clause applies to land identified as “Foreshore scenic protection area” on the Foreshore Scenic Protection Area Map.</p> <p>(3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must be satisfied that the development would facilitate the following—</p> <p>(a) the protection of the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation,</p> <p>(b) the avoidance or minimisation of the disturbance and adverse impacts on remnant vegetation communities, habitat and threatened species and populations,</p> <p>(c) the maintenance and enhancement of native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native flora and fauna movement through biodiversity corridors,</p> <p>(d) the achievement of no net loss of significant</p>	<p>The proposal is considered a suitable design of for the constraints of the site and seeks to retain natural features of the site where possible, including all the existing native and endemic trees on site and the existing rock outcrops.</p>	Yes

Clause	Standard	Proposed	Complies
	vegetation or habitat, (e) the avoidance of clearing steep slopes and facilitation of the stability of the land, (f) the minimisation of the impact on the views and visual environment, including views to and from the Georges River, foreshore reserves, residential areas and public places, (g) the minimisation of the height and bulk of the development by stepping the development to accommodate the fall in the land.		
<b>6.10 - Design excellence</b>	(2) This clause applies to development on land referred to in subclause (3) involving— (a) the erection of a new building, or (b) additions or external alterations to an existing building that, in the opinion of the consent authority, are significant. (3) This clause applies to development on the following land— (a) land identified on the Foreshore Scenic Protection Area Map if the development is for one or more of the following purposes— (i) bed and breakfast accommodation, (ii) health services facilities, (iii) marinas, <b>(iv) residential accommodation, except for secondary dwellings,</b> (b) .... (4) Development consent	The proposal is considered a suitable design of for the constraints of the site and seeks to retain natural features of the site where possible, retains a single storey appearance from the street which is in keeping with the character of the immediate locality, and proposes a built form that steps with the site and will not result in adverse impacts for neighbours or visual impact when viewed from the river.	Yes

Clause	Standard	Proposed	Complies
	<p>must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.</p> <p>(5) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—</p> <p>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</p> <p>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</p> <p>(c) whether the development detrimentally impacts on view corridors,</p> <p>(d) how the development addresses the following matters—</p> <p>(i) the suitability of the land for development,</p> <p>(ii) existing and proposed uses and use mix,</p> <p>(iii) heritage issues and streetscape constraints,</p> <p>(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</p> <p>(v) bulk, massing and modulation of buildings,</p> <p>(vi) street frontage heights,</p> <p>(vii) environmental impacts such as sustainable design, overshadowing and solar</p>		

Clause	Standard	Proposed	Complies
	<p>access, visual and acoustic privacy, noise, wind and reflectivity,</p> <p>(viii) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of pedestrian networks,</p> <p>(ix) the impact on, and proposed improvements to, the public domain,</p> <p>(x) achieving appropriate interfaces at ground level between the building and the public domain,</p> <p>(xi) excellence and integration of landscape design,</p> <p>(xii) the provision of communal spaces and meeting places,</p> <p>(xiii) the provision of public art in the public domain,</p> <p>(xiv) the provision of on-site integrated waste and recycling infrastructure,</p> <p>(xv) the promotion of safety through the application of the principles of crime prevention through environmental design.</p>		
<b>6.12 - Landscaped areas in certain residential and environment protection zones</b>	<p>(2) This clause applies to land in the following zones—</p> <p>(a) Zone R2 Low Density Residential,</p> <p>(b) Zone R3 Medium Density Residential,</p> <p>(c) Zone R4 High Density Residential,</p> <p>(d) Zone E2 Environmental Conservation.</p> <p>(3) Despite subclause (2), this clause does not apply to development referred to in <i>State Environmental Planning Policy No 65</i>—</p>	The proposal provides 61% landscaped area and does not involve the removal of any trees or natural site features.	Yes



Clause	Standard	Proposed	Complies
	<p><i>Design Quality of Residential Apartment Development</i>, clause 4.</p> <p>(4) Development consent must not be granted to development on land to which the clause applies unless the consent authority is satisfied that the development—</p> <p>(a) allows for the establishment of appropriate plantings—</p> <p>(i) that are of a scale and density commensurate with the height, bulk and scale of the buildings to which the development relates, and</p> <p>(ii) that will maintain and enhance the streetscape and the desired future character of the locality, and</p> <p>(b) maintains privacy between dwellings, and</p> <p>(c) does not adversely impact the health, condition and structure of existing trees, tree canopies and tree root systems on the land or adjacent land, and</p> <p>(d) enables the establishment of indigenous vegetation and habitat for native fauna, and</p> <p>(e) integrates with the existing vegetation to protect existing trees and natural landscape features such as rock outcrops, remnant bushland, habitats and natural watercourses.</p> <p>(5) Development consent must not be granted to development on land to which this clause applies unless a percentage of the site area consists of landscaped areas that is at</p>		

Clause	Standard	Proposed	Complies
	<p>least—</p> <p>(a) for a dwelling house located on land outside the Foreshore Scenic Protection Area—20% of the site area, or</p> <p><b>(b) for a dwelling house located on land within the Foreshore Scenic Protection Area—25% of the site area, or</b></p> <p>(c) ....</p> <p>(7) In this clause—  <b>Foreshore Scenic Protection Area</b> means land shown on the <a href="#">Foreshore Scenic Protection Area Map</a>.</p>		

### Exception to Development Standards

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

39. 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.*
40. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Georges River Local Environmental Plan 2021 (GRLEP 2021) identifies a maximum height of 9m for the site and the proposed development will exceed the height by up to 3.5m which predominantly comprises the balcony of the ground floor level of the dwelling. This amounts to a 38% variation to the control. The remainder of the building is below the 9m height limit.

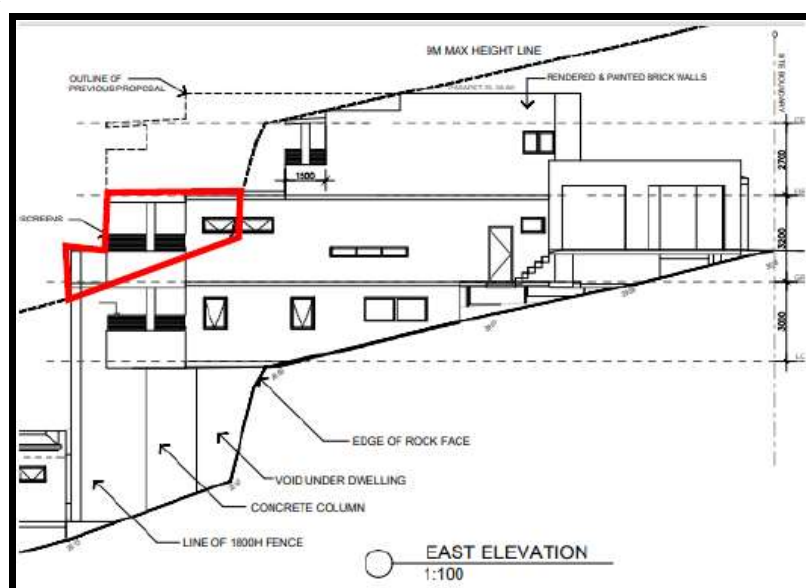


Figure 7: Elevation showing height breach

41. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the GRLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.
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 4.3 in accordance with Clause 4.6 of GRLEP. The Clause 4.6 request for variation is assessed as follows.

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

44. Height of Buildings control under Clause 4.3 of the GRLEP 2021 is a development standard. The maximum permissible height is 9m.

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

45. The objectives of Height of Buildings standard under Clause 4.3 of GRLEP 2021 are:
- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
  - (b) *to minimise the impact of overshadowing, visual impact, disruption of views and loss of privacy on adjoining properties and open space areas,*
  - (c) *to ensure an appropriate height transition between new buildings and—*
    - (i) *adjoining land uses, or*
    - (ii) *heritage items, heritage conservation areas or Aboriginal places of heritage significance.*

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

46. 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.
47. 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.*

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

49. Applicant's comment:

*The subject application relies on the first and fourth of the Wehbe Tests being, the objectives of the standard are achieved notwithstanding non-compliance and strict compliance would be unnecessary and unreasonable as the proposal imitates the bulk and density of the adjoining eastern property. The variation to the 9m height of buildings standard is exceeded through the steep gradient of the topography of the land and the finish of the rock outcrop partially throughout the proposed floor plan in which the development is sited on. The proposal maintains a compliant building envelope on the three proposed levels and a density and scale that is modest in comparison to the site area and reflective of newly developed dwellings in the immediate locality. The proposal maximises the development density on the site whilst minimising impact on the natural constraints of the site with nil to minimal excavation and fill and maintaining a consistent and compatible visual relationship between new development and the existing character of the foreshore locality.*

**Bulk and Scale** - *the proposed variation to the height of building development standard would be a common characteristic of any redevelopment of the properties along the southern side of Lansdowne Parade. The variation would allow for a compatible height and density along the foreshore without impacting the streetscape and a adequate dwelling to be achieved on the narrow frontage. The properties on the southern side of Lansdowne Parade include stepped levels within the slope of the land that are approximately 5-6 metres above natural ground level. Although the proposed variation is numerically excessive the variation would result in a development that would be consistent with the height and density of No.50 Lansdowne Parade and the variation does not contribute to an excessive bulk and scale from the streetscape nor foreshore.*

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

50. Having regards to Clause 4.6(3) (b) and the need to demonstrate that there are sufficient environmental planning grounds to contravening the development standard, it is considered that the design of the dwelling responds to the topography of the site, and the breach is a direct result of the location of the cliff face and the available space to propose the footprint of the dwelling.
51. The built form of the dwelling is appropriate for the site and is in keeping with the existing and desired future character for residential development in this locality.

52. Applicant's Comment:

*Furthermore, neither the LEP, nor any other environmental planning instrument or the Department of Planning and Infrastructure's August 2011 document entitled "Varying Development Standard: A Guide" provides a specific definition of the term "environmental planning grounds". Nevertheless, the matter of Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (30 January 2015) provides some supportive guidance on the principal of "environmental planning grounds" and in accordance with Commissioner Pearson's comments, we therefore acknowledge that "environmental planning grounds" must be specific to the proposed development on the subject site and would be matters arising from S.4.15 Evaluation Criteria in the EPA Act, 1979.*

*Based on that methodology, the environmental planning ground which support variation to the standard in this instance are:*

- *The development application responds to the objective of Clause 4.3 of the GRLEP 2021 and has been designed to ensure the proposal does not pose any adverse impacts on to the adjoining properties, foreshore and streetscape;*
- *The bulk, scale and massing of the proposal is consistent with adjoining properties;*
- *The site is permissible and suitable for the proposed development;*
- *The variation stems from the natural constraints of the land including the steep topography and existing rock outcrop;*
- *Non-compliance with the standard would not result in any unreasonable environmental planning impacts, view loss or impact on the foreshore or scenic protection and would not constitute a disorderly and uneconomic development outcome;*
- *The proposal achieves the objectives and the key provisions of the DCP including building floor space ratio and setbacks;*
- *The character of the area remains unaffected as the resultant development;*
- *The proposal maintains a two (2) story form from the street;*
- *The design maintains the 'Oatley west' character consistent with the desired outcome of the current and draft legislation and development control plans;*
- *The design incorporates a building mass that can achieve a compliant height and comparable density to adjoining properties which responds to the sites topography and context through the use of stepped building elements, compliant floor to floor ceiling heights and an attentive window design. The proposed building mass is balanced and proportionate that is suitable to the sites context and locality; and*
- *The proposal remains within the public interest due to the lack of impact and overall compliance with the remaining development standards and controls.*

**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**

## 53. 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,”*

54. The objectives of the standard are:

*(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

55. Officer Comment: The site and its immediately adjoining properties are zoned for low density development. The design of the dwelling is inconsistent with the desired future character of the locality, which is characterised by steeply sloping sites. The local topography results in dwellings having multiple levels. The dwelling complies with the maximum floor space standard and side setbacks, and the bulk of the dwelling complies with the height standard, resulting in an appropriate response to the site constraints and a dwelling of a bulk and scale that meets the existing and desired future character of the area.

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

56. Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. In terms of visual impact the area that breaches the height limit cannot be seen from the street, will not be noticeable from adjoining properties or the waterway given the size of the property and location of the breach at the central level of the dwelling.

57. The objective seeks to “minimise” the visual impact, it is not requiring it to be eliminated or totally negated, and as such seeing the breach 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 a small section of the central level of the dwelling 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 at the rear of the dwelling. There will be no adverse impacts in terms of overshadowing or overlooking to adjoining properties from the encroaching element.

*(c) to ensure an appropriate height transition between new buildings and—*

*(i) adjoining land uses, or*

*(ii) heritage items, heritage conservation areas or Aboriginal places of heritage significance.*

58. Officer Comment: The bulk of the dwelling complies with the 9m height limit at the rear of the dwelling, which is considered an appropriate design outcome for the site given the steep slope of the site from the street to the river. The site does not adjoin any heritage items or places of significance.

59. Officers comment: An assessment of the proposal against the objectives of the zone follows:

- *To provide for the housing needs of the community within a low density residential environment.*

60. The development meets this objective.

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

61. 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.
- *To promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity.*
62. The height breach will have no adverse impacts on the neighbouring properties or the character of the locality. The design responds to the topography of the site as far as possible.
- *To provide for housing within a landscaped setting that enhances the existing environmental character of the Georges River local government area.*
63. The proposal provides the required amount of landscaped area pursuant to the LEP standard and all but one tree in the rear yard are proposed for retention keeping the landscaped foreshore area intact.
64. There is no public benefit of the variation. 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.
65. 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.
66. In this case the portion of the proposal in excess of the maximum building height is considered an appropriate design and built form outcome within the context of the site, noting particularly the visual impact, bulk and position of the proposal, all of which will not impact on the neighbouring properties, streetscape or view from the water.
67. Accordingly, the breach sought is considered to be well founded and accordingly can be supported.
68. The proposal is therefore considered to suitably respond to the requirements of the Georges River Local Environmental Plan 2021.

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

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

**GEORGES RIVER DEVELOPMENT CONTROL PLAN 2021**

70. The proposed development is subject to the provisions of the Georges River Development Control Plan 2021. The following comments are made with respect to the proposal considering the objectives and controls contained within the DCP.

**6.1.2 Single Dwellings**

<b>Control</b>	<b>Proposal</b>	<b>Compliance</b>
<b>Streetscape Character and Built Form</b>		
1. New buildings and additions are to consider the Desired Future Character statement in Part 5 of this DCP.	Complies.	Yes
2. New buildings and additions are to be designed with an articulated front façade.	Complies.	Yes
3. Developments on sites with two (2) or more frontages are to address all frontages.	NA	NA
4. Dwelling houses are to have windows presenting to the street from a habitable room to encourage passive surveillance.	The narrow frontage and site topography results in the need for the garage to be located in-front of the dwelling and as such habitable rooms do not overlook the street.	Acceptable given site constraints and local context.
5. Development must be sensitively designed so as to minimise adverse impacts on the amenity and view corridors of neighbouring public and private property while maintaining reasonable amenity for the proposed development and is to balance this requirement with the amenity afforded to the new development.	Complies.	Yes
6. The maximum size of voids at the first floor level should be a cumulative total of 15m <sup>2</sup> (excluding voids associated with internal stairs).	Complies.	Yes
<b>Building Scale and Height</b>		
1. New buildings are to consider and respond to the predominant and desired future scale of buildings within the neighbourhood, and consider the topography and form of the site.	Complies.	Yes
2. On sites with a gradient or cross fall greater than 1:10, dwellings are to adopt a split level approach to minimise excavation and fill. The	The design of the dwelling is appropriate for the available area of land to build the dwelling.	Yes



Control	Proposal	Compliance
<p>overall design of the dwelling should respond to the topography of the site.</p> <p>3. A maximum of two (2) storeys plus basement is permissible at any point above ground level (existing). Basements are to protrude no more than 1m above existing ground level.</p> <p>4. Where topography conditions require a basement, the area of the basement should not exceed the area required to meet the car parking requirements for the development, access ramp to the parking and a maximum 10m<sup>2</sup> for storage and 20m<sup>2</sup> for plant rooms. Additional basement area to that required to satisfy these requirements may be included as floor space area when calculating floor space ratio.</p> <p>5. Where the entry to the basement carpark is visible from the street, the entry should be recessed a minimum of 1m (from the edge of the external wall or balcony) from the levels above and the external walls of the garage differentiated from the walls above through articulation and external materials.</p>	<p>The dwelling achieves a maximum two storey built form with the exception of the lift and stair core that provides access from the dwelling to the rear yard, pool area and outbuilding.</p> <p>NA</p> <p>NA</p>	<p>Acceptable</p> <p>NA</p> <p>NA</p>
<b>Setbacks</b>		
<p>Front Setbacks</p> <p>1. The minimum setback from the primary street boundary is:</p> <p>i. 4.5m to the main building wall / facade;</p> <p>ii. 5.5m to the front facade of a garage or carport; or</p> <p>iii. Where the prevailing street setback is greater than the minimum, the average setback of dwellings on adjoining lots is to be applied.</p>	<p>6m</p> <p>1m</p> <p>The prevailing setback is characterised by garages at the street boundary with dwelling located behind due to the subdivision pattern and topography of the immediate</p>	<p>Yes</p> <p>No</p> <p>Yes</p>

Control	Proposal	Compliance
	locality.	
Side and Rear Setbacks		
1. Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is the greater (excluding detached secondary dwellings – see Point 12 in Section 6.1.2.12- Secondary Dwellings of this DCP).	28m	Yes
2. The minimum side setbacks for ground and first floor are:		
i. 900mm for lots up to 12.5m in width measured at the front building line for the length of the development.	NA	NA
ii. 1.2m for lots greater than 12.5m in width measured at the front building line for the length of the development.	NA	NA
iii. 1.5m for all lots within the Foreshore Scenic Protection Area measured at the front building line for the length of the development.	Garage: 0.2m to 2.6m Dwelling: 900mm – 1.5m	No  No – refer to justification for setbacks above.
3. Where alterations and additions (ground and first floor) to an existing dwelling are proposed, an existing side setback less than the setback required in Control 3 can be maintained, provided the reduced setback does not adversely affect compliance with the solar access and landscaped area controls or adversely impact upon the visual and acoustic amenity of neighbouring dwellings.	NA	NA
4. For battle-axe lots, minimum side and rear boundary setbacks apply, except the front setback of the battle-axe lot without a street frontage, where a minimum setback of 4.0m is to be provided as illustrated in Figure 1.	NA	NA
5. Any garages or parking structures fronting rear lanes may	NA	NA

Control	Proposal	Compliance
encroach upon the rear setback areas but are still to provide a minimum setback of 1m from the lane.		
<b>Private Open Space</b>		
1. Private open space is to be located at the rear of the property and/or behind the building line and is to have a minimum area of 60m <sup>2</sup> with minimum dimensions of 6m and located on the same level (not terraced or over rock outcrops).	Complies.	Yes
2. Private open space is to be provided for all dwellings, (with the exception of secondary dwellings, which are able to share the private open space of the principal dwelling).	Complies.	Yes
3. Private open space is to be located so as to maximise solar access.	Existing south facing allotment.	-
4. Private open space is to be designed to minimise adverse impacts upon the privacy of the occupants of adjacent buildings.	Complies.	Yes
<b>Landscaping</b>		
1. Landscaped area (has the same meaning as GRLEP 2021) is to be provided in accordance with the table contained within Clause 6.12 Landscaped areas in certain residential and environmental protection zones of GRLEP 2021.	Complies 61%.	Yes
2. Provide a landscape setting within the primary and secondary street frontages, where hard paved areas are minimised. At a maximum, impervious areas, including hard paving, gravel, concrete or other material that does not permit landscaping, are to occupy no more than 40% of the street setback area.	A landscaped front setback is not possible given the narrow frontage and available area for the garage and dwelling to be provided, nor is it a feature of this side of Lansdowne Street.	Acceptable given site constraints.
3. The front setback area is to have an area where at least one	A landscaped front setback is not possible given the narrow	Acceptable given site

Control	Proposal	Compliance
(1) tree capable of achieving a minimum mature height of 10m with a spreading canopy can be accommodated. A schedule of appropriate species to consider is provided in Council's Tree Management Policy.	frontage and available area for the garage and dwelling to be provided.	constraints.
<b>Excavation (Cut and Fill)</b>		
1. Any excavation must not extend beyond the building footprint, including for any basement car park.	NA	NA
2. The depth of cut or fill must not exceed 1.0m from existing ground level, except where the excavation is for a basement car park.	The area of proposed excavation is acceptable for the site given the steep slope and rockshelf which remains intact as part of the proposal.	Yes
3. Developments should avoid unnecessary earthworks by designing and siting buildings that respond to the natural slope of the land. The building footprint must be designed to minimise cut and fill by allowing the building mass to step in accordance with the slope of the land.	Complies.	Yes
<b>Vehicular Access, Parking and Circulation</b>		
1. Car parking is to be provided in accordance with the requirements in Part 3 of this DCP.	2 spaces required and provided.	Yes
2. A dwelling is to provide one (1) garage and one (1) tandem driveway parking space forward of the garage (unless otherwise accommodated within the building envelope).	Double carport is proposed.	Yes
3. Driveways, garages and basements should be accessed from a secondary street or rear lane where this is available.	NA	NA
4. Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane.	NA	NA

Control	Proposal	Compliance
5. Driveway crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	Complies.	Yes
6. The maximum driveway width between the street boundary and the primary building setback alignment of the garage is 4.0m.	5m to service the double carport.	Acceptable
7. Basements are permitted where the LEP height development standard is not exceeded, and it is demonstrated that there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure). (i) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition in the LEP) and the overall development presents as two (2) storeys to the street.	Not proposed.	NA
8. Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1 (latest edition).	Complies.	Yes
9. The maximum width of a garage opening is 6m.	Carport opening is 5m.	Yes
<b>Visual Privacy</b>		
1. Windows from active rooms are to be offset with windows in adjacent dwellings, or appropriately treated so as to avoid direct overlooking onto neighbouring windows.	Complies.	Yes
2. For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties.	Privacy screens proposed.	Yes

Control	Proposal	Compliance
3. Upper level balconies should not project more than 1500mm beyond the main rear wall alignment so as to minimise adverse visual privacy impacts to adjoining properties.	The balcony widths range from 1.5m to 3m in width to serve as primary open space balconies, which is acceptable in this location given the limited area available directly off living areas for private open space.	Acceptable
4. Windows for primary living rooms must be designed so that they reasonably maintain the privacy of adjoining main living rooms and private open space areas.	Complies.	Yes
5. Development applications are to be 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.	Complies.	Yes
<b>Noise</b>		
1. Noise generators such as plant and machinery including air conditioning units and pool pumps are located away from windows or other openings in habitable rooms; they are to be screened to reduce noise or acoustically treated.	Can be conditioned.	Yes
<b>Solar Access</b>		
1. New buildings and additions are sited and designed to facilitate a minimum of 3 hours direct sunlight between 9am and 3pm on 21 June onto living room windows and at least 50% of the minimum amount of private open space.	Complies.	Yes
2. To facilitate sunlight penetration to adjoining development, building bulk may be required to be articulated to achieve the required sunlight access.	Not required.	NA
3. Direct sunlight to north-facing windows of habitable rooms and 50% of the principal private open space area of adjacent dwellings	Complies.	Yes

Control	Proposal	Compliance
<p>should not be reduced to less than 3 hours between 9.00am and 3.00pm on 21 June.</p> <p>4. Note: Variations will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation or steeply sloping sites with a southerly orientation away from the street.</p> <p>5. Shadow diagrams are required to show the impact of the proposal on solar access to the principal private open space and living rooms of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams. It may also be necessary to provide elevations or views from sun diagrams to demonstrate appropriate solar access provision to adjoining development.</p>	<p>Noted.</p> <p>Provided.</p>	<p>-</p> <p>Yes</p>
<b>Materials, Colour Schemes and Details</b>		
<p>1. Large expansive surfaces of predominantly white, light or primary colours which would dominate the streetscape or other vistas should not be used.</p> <p>2. New development should incorporate colour schemes that have a hue and tonal relationship with the predominant colour schemes found in the street.</p> <p>3. Matching buildings in a row should be finished in the same colour or have a tonal relationship.</p> <p>4. All materials and finishes utilised should have low reflectivity.</p>	<p>Not proposed.</p> <p>Complies.</p> <p>NA</p> <p>Complies.</p>	<p>Yes</p> <p>Yes</p> <p>NA</p> <p>Yes</p>
<b>Site Facilities</b>		
<p>1. All dwellings are to be provided with adequate and practical internal and external storage (garage, garden sheds, etc.).</p>	<p>Complies.</p>	<p>Yes</p>



Control	Proposal	Compliance
2. Provision for water, sewerage and stormwater drainage for the site shall be nominated on the plans to Council's satisfaction.	Already serviced.	Yes
3. Each dwelling must provide adequate space for the storage of garbage and recycling bins (a space of at least 3m x 1m per dwelling must be provided) and are not to be located within the front setback.	Complies.	Yes
4. Letterboxes are to be located on the frontage where the address has been allocated in accordance with Australia Post requirements.	Complies.	Yes

#### 6.4..4 Swimming Pools and Spas

Control	Proposal	Compliance
1. Swimming pools/spas are to be located to the rear of properties.	Complies.	Yes
2. For corner allotments or where the property has two street frontages, swimming pools/spas are not to be located in the primary frontage.	NA	NA
3. Swimming pools/spas must be positioned a minimum of 900mm from the property boundary with the water line being a minimum of 1500mm from the property boundary.	Complies.	Yes
4. In-ground swimming pools shall be built so that the top of the swimming pool coping is as close to the existing ground level as possible. On sloping sites this will often require excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool consistent with the low side.	The southern edge of the pool is out of ground due to the sloping land but is screened with landscaping.	Yes

Control	Proposal	Compliance
5. Swimming pools/spas are to be no more than 500mm above existing ground level.	2.1m – acceptable for a sloping site – see below.	Acceptable.
6. On steeply sloping sites, Council may consider allowing the top of the swimming pool at one point or along one side to extend up to 1m above existing ground level, provided that the exposed face of the swimming pool wall is treated to minimise impact. The materials and design of the retaining wall should be integrated with and complement the style of the swimming pool.	Acceptable height out of ground for the site and will have no adverse visual impacts on the waterway, which is 27m from the pool.	Acceptable.
7. Decking around a swimming pool must not be more than 600mm above existing ground level.	Not proposed.	Yes
8. Filling is not permitted between the swimming pool and the property boundary. The position of the swimming pool, in relation to neighbours and other residents, must be considered to minimise noise associated with activities carried out in the swimming pool or from the swimming pool equipment, such as cleaning equipment.	Not proposed.	Yes
9. Council may require mechanical equipment to be suitably acoustically treated so that noise to adjoining properties is reduced.	Can be conditioned.	Yes
10. A pool fence complying with the legislation is to separate access from the residential dwelling on the site to the pool.	Complies.	Yes
11. Safety and security measures for swimming pools	Complies.	Yes

Control	Proposal	Compliance
<p>must comply with the relevant requirements of the Swimming Pools Act 1992 and any relevant Australian Standards.</p> <p>12. A spa is not required to be surrounded by a child resistant barrier provided that the spa is covered or secured by a child-safe structure (e.g. door, lid or mesh) that is fastened to the spa pool by a child-resistant device at all times when the spa pool is not in actual use and complies with Swimming Pools Act 1992 and any relevant Australian Standards.</p>	NA	NA

#### 6.4.3 Outbuildings

Control	Proposal	Compliance
1. Outbuildings are not to be located within the front building line setback and must be set back a minimum of 900mm from all site boundaries. Windows and glass doors must face into the yard of the subject site or be appropriately treated to reduce visual impacts if facing a neighbouring property.	Located in rear yard.	Yes
	Setback 1.5m Highlight windows proposed to side boundary.	Yes
2. Outbuildings must not be used as a secondary dwelling or dual occupancy.	Can be conditioned.	Yes
3. Outbuildings must be positioned so they do not overshadow habitable areas or open space of adjoining properties.	Complies.	Yes
4. The sum of the floor space of all outbuildings on a site (excluding carports and open structures such as pergolas, awnings and the like) must not exceed 30m <sup>2</sup> .	48.6sqm – a condition has been imposed to reduce this GFA to 30sqm to comply with this control.	Refer to condition 10.
5. The maximum height of	Reducing the size of	Acceptable

Control	Proposal	Compliance
outbuildings is 3.5m to the ridge and 2.5m to the underside of the eaves, above existing ground level.	the rumpus building through reducing the length will result in a maximum height of 5m which is acceptable for the site.	
6. Landscaped area for single dwellings (as defined in the GRLEP 2021) is to be provided in accordance with the table contained within Clause 6.12 Landscaped areas in certain residential and environmental protection zones of the GRLEP 2021.	Complies.	Yes
7. The minimum setbacks for garages, gyms, cabanas and sheds are 900mm from all boundaries.	1.5m to outbuilding.	Yes
8. Outbuildings, other than garages, where located on rear laneways, are to be setback a minimum of 1m from the laneway boundary.	NA	NA
9. External finishes and claddings of ancillary structures and outbuildings are to have low reflectivity finishes.	Can be conditioned.	Yes

71. The proposal is therefore considered appropriate with regards to the GRDCP2012

## IMPACTS

### **Natural Environment**

72. The proposal has been assessed and endorsed by Council's Consultant Arborist. If the application was to be supported conditions would be imposed for tree protection.
73. The trees to be removed consist of exotic garden specimens situated adjacent to the building footprint, with no impact on the bushland at the waterfront of the site.
74. The proposed landscape plan includes the planting of 8 new trees and a number of ground covers and shrubs.
75. The proposed works will not adversely impact the natural environment.

### **Built Environment**

76. 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**

77. 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**

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

**Suitability of the Site**

79. The site is zoned R2 Low Density Residential. The proposal is a permissible form of development in this zone and is of a suitable bulk and scale for the site and locality.

**Submissions, Referrals and the Public Interest**

80. The application was notified 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 Referrals**Development Engineer

81. The proposal has been assessed and endorsed by Council's Development Engineer, subject to conditions of consent.

Consultant Arborist

82. The proposal has been assessed and endorsed by Council's Arborist, subject to conditions of consent.

**External Referrals**Ausgrid

83. The application was referred to Ausgrid. No objection was raised and no conditions of consent required.

**Contributions**

84. The development is subject to Section 7.12 contributions as the proposed cost of works exceed \$100,000.00. A condition of consent requiring payment of the contribution will be imposed should the application be supported.

**Conclusion**

85. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979 and the provisions of the relevant State Environmental Planning Policies, Georges River Local Environmental Plan 2021 and Georges River Development Control Plan 2021.
86. The proposal is considered to be a reasonable redevelopment of the site and the proposed scale and bulk is considered to suitable for this site and a suitable planning outcome. It will be consistent with the existing and desired future character of development in the R2 zoned land in this location and immediate locality.

## Determination and Statement of Reasons

### Statement of Reasons

87. The reasons for this recommendation are:

- The proposal is an appropriate response to the site and the existing dwelling house given the site constraints.
- The proposed design is consistent with the existing and desired future character for development in this area.

### Determination

88. That Georges River Local Planning Panel support the request for variation under Clause 4.6 of Kogarah Local Environmental Plan 2012, in relation to the Height of Building (Clause 4.3) development standard, as the variation sought satisfies the objectives of the standard and sufficient environmental planning grounds have been provided in the written request for variation justifying that compliance would be unnecessary and unreasonable in the circumstances of the case. The proposal is also in the public interest and it satisfies the objectives of the zone resulting in no adverse environmental impacts but rather a superior design outcome.

89. Pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979, as amended, the Georges River Local Planning Panel approve DA2021/0486 for Demolition works and construction of a dwelling house, outbuilding and swimming pool on Lot 1 in DP209514 on land known as 52 Lansdowne Parade, Oatley, subject to the following conditions:

### Development Details

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

Description	Reference No.	Date	Revision	Prepared by
Site Plan/Roof Plan	1/5	2.4.2022	A	A.M.G Developments Pty Ltd
Rumpus Floor Plan	2/5	2.4.2022	A	A.M.G Developments Pty Ltd
Floor Plans	3/5	2.4.2022	A	A.M.G Developments Pty Ltd
Elevations 1	4/5	2.4.2022	A	A.M.G Developments Pty Ltd
West Elevation/Section	5/5	2.4.2022	A	A.M.G Developments Pty Ltd

Plans relied on: *Stormwater plan Dwg No. 2226 - S1/3 and S2/3, Revision C, dated 13/04/2022 prepared by John Romanous & Associates*

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

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

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

3. **Driveway Crossing - Minor Development** - Constructing a driveway crossing and/or footpath requires a separate approval under Section 138 of the [Roads Act 1993](#) prior to the commencement of those works.

To apply for approval, complete the “Application for Driveway Crossing and Associated Works on Council Road Reserve” issued under Section 138 Roads Act.” which can be downloaded from Georges River Council’s Website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au). Lodge the application form, together with the associated fees at Council’s Customer Service Centre, during business hours. Refer to Section P1 and P2, in Council’s adopted *Fees and Charges* for the administrative and inspection charges associated with Driveway Crossing applications.

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

The design boundary level is to be received from Council prior to construction of the internal driveway.

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

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

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

#### **Prior to the Issue of a Construction Certificate**

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

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

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

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



Fee Type	Fee
<b>GENERAL FEES</b>	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://portal.longservice.nsw.gov.au/bci/levy/">https://portal.longservice.nsw.gov.au/bci/levy/</a>	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$160.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Georges River Council Local Development Contributions Plan 2021	\$15,000.00

### 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 Local Development Contributions Plan 2021.

#### Timing of Payment

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

#### Further Information

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

### 7. **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.

## 8. 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.

9. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1203001S\_02 must be implemented on the plans lodged with the application for the Construction Certificate.

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

<b>Outbuilding Size</b>	The outbuilding containing the rumpus and study must be reduced in length and size to be no more than 30sqm in accordance with the GRDCP 2021 control in Chapter 6.4.3.4.
<b>Schedule of Finishes</b>	An updated schedule of finishes consistent with the approved plans is required to be submitted, with the colour, tone and materiality consistent with those shown in the schedule of finishes submitted to Council as part of the original application package, on the plan titled Elevations 1 and annotated External Finishes Schedule, Drawing 52Lans-21, drawing 4 of 5 dated September 2021.

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

- Compliance with the approved Erosion & Sediment Control Plan
- Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
- All clean water runoff is diverted around cleared or exposed areas
- Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
- All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
- Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway

- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) Compliance with [Managing Urban Stormwater - Soils and Construction \(Blue Book\) produced by Landcom 2004](#).

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

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

- (a) All stormwater shall drain by gravity to an energy dissipating structure at the point of discharge to the River located within the property boundary with the provision of a pollution control pit.
- (b) The PCA shall ensure that the proposed energy dissipating structure/scour protection shall be located within the boundary of the site.
- (c) The PCA shall ensure that the construction of the proposed energy dissipating structure is subject to the satisfactory approval of the relevant foreshore authority.

- 13. 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.

- 14. 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.

- 15. Swimming Pools - Use and Maintenance** - The following apply to the construction, use and maintenance of swimming pools and spas:

- (a) no ground level may be raised or filled except where shown specifically on the approved plans;
- (b) all pool/spa waste water is to be discharged to the sewer according to the requirements of Sydney Water;
- (c) the swimming pool must not be used for commercial or professional purposes;
- (d) drain paved areas to the landscaped areas or a suitable lawful drainage system; and

(e) arrange any external pool/spa lighting to minimise glare nuisance to adjoining owners.

- 16. 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).
- 17. 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.
- 18. Tree Protection Plan** - The following trees are to be retained and protected as part of the proposed works:

Tree ID Number and Species	Location of Tree
<i>T1 – Angophora costata</i>	Rear yard
<i>T2 – Mangifera indica</i>	Rear yard
<i>T4 – Callistemon citrinus</i>	Rear yard
<i>Angophora costata</i>	SW corner of rear yard beside existing shed
<i>All existing trees</i>	Located within Zone C on the Landscape Plan L01/2-K25608 dated 29.6.2021

A tree protection plan and specification prepared by a minimum AQF Level 5 Arborist in accordance with *AS 4970-2009: Protection of trees on development sites* must be lodged for approval prior to the issue of a construction certificate. The plan is required to include the following as a minimum:

- Name of AQF Level 5 Arborist, contact information, plan number and date
- Scale
- North point
- Location of all existing trees to be retained and protected including the extent of their TPZ areas
- Locations and dimensions of tree protection measures including fencing, trunk, and ground protection
- Specifications for tree protection measures

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

- 19. 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](http://www.SafeWork.nsw.gov.au).

**20. 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.

**21. 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](#).

**22. 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.

**23. 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.

- 24. 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

- 25. 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.
- 26. Hours of construction for demolition and building work** - Unless authorised by Council:
- a. Building construction and delivery of material hours are restricted to: 7.00 am to 5.00 pm (inclusive) Monday to Saturday and no work on Sundays and Public Holidays.
  - b. Demolition and excavation works are restricted to: 8.00 am to 5.00 pm (inclusive) Monday to Friday only. Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site.

- 27. 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.
- 28. 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.
- 29. 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.
- 30. 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.
- 31. Swimming Pools - Filling with water** - The pool/spa shall not filled until the safety fences have been completed in accordance with the approved plans and specifications and inspected by the PCA.
- 32. 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.
- 33. Tree Removal & Replacement** - Permission is granted for the removal of the following trees located within the development site:

Tree ID Number and Species	Location
T5 – <i>Angophora costata</i>	Rear yard
T7 – <i>Mangifera indica</i>	Rear yard
T8 – <i>Camellia sasanqua</i>	Rear yard
T9 – <i>Camellia japonica</i>	Rear yard
T10 – <i>Camellia japonica</i>	Rear yard
T11 – <i>Camellia japonica</i>	Rear yard
T12 – <i>Camellia japonica</i>	Rear yard
T13 – <i>Dicksonia antarctica</i>	Rear yard
T17 – <i>Camellia sasanqua</i>	Front yard
T18 – <i>Camellia japonica</i>	Front yard
T19 – <i>Plumeria rubra</i>	Front yard
T20 – <i>Plumeria rubra</i>	Front yard



- a) All tree removal shall be carried out by a minimum AQF Level 3 Arborist with appropriate insurance. Tree removal are to be undertaken safely and in compliance with AS 4373-2007 - *Pruning of Amenity Trees* and *Tree Works Industry Code of Practice (Work Cover NSW 1.8.98)*.
- b) 2 x 45 litre replacement trees must be provided within the site. The species must be selected from Georges River Tree Management Policy 2019, Appendix 1 and must reach a minimum height of 10 metres at maturity. The trees are to conform to AS2303:2018 *Tree stock for landscape use*.

- 34. Project Arborist** - Trees numbered 1, 2 and 4, the *Angophora costata* adjacent to the existing shed, and all trees within Zone C on the on the Landscape Plan L01/2-K25608 dated 29.6.2021 specified for retention are to be inspected, monitored and remedial work undertaken as required during and after completion of development works by a qualified AQF Level 5 Project Arborist. Regular inspections and documentation from the Arborist to the PCA are required at the following hold points:

Hold Point	Action Required by AQF Level 5 Project Arborist
1. a) Prior to commencement of demolition/construction works.	Site meeting with builder to discuss and confirm understanding of tree protection measures required.
1. b) Prior to commencement of demolition/construction works.	Supervise, photograph, and certify installation of tree protection measures. Tree protection measures are to be installed as per the approved tree protection plan and specification.
2. Works within TPZ areas	Supervise, direct and photograph all approved works within TPZ areas.
2. Once per month during construction	Inspect, photograph and report on tree health and condition, maintenance of tree protection measures and remedial tree works as required.
3. a) Prior to issue of Occupation Certificate	Final inspection of trees to be retained and provision of follow up report detailing activities during construction including any damage to the trees and any remedial work required to ensure the ongoing health and structural stability of the trees and/or replacement trees required. Any recommendations for remedial work and/or replacement trees will be required to be approved by the PCA and actioned prior to the issue of an occupation certificate for the development
3. b) Prior to issue of Occupation Certificate	Certify that replacement trees have been planted as per the requirements of this consent and are in good health. Any recommendations for remedial work will be required to be approved by the PCA and actioned prior to the issue of an occupation certificate for the development.



- 35. Landscape Works** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Michael Sui Landscape Architects L01/2-K25608, dated 29.11.2021. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -
- a) The applicant must engage a licensed and reputable nursery grower early within the build phase and purchase all trees and plant material early to ensure that all tree and plant material, pot/bag sizes and quantities are guaranteed at the time of the landscape and planting phase.
  - b) All trees proposed upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*. All tree and plant material purchased for the proposed works must be inspected and certified for compliance by an AQF 5 Horticulturist and confirmed with a letter to the PCA.

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

- 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** - All landscape works, the planting of all tree and plant material in accordance with approved landscape plans and specifications, drawn by Michael Sui Landscape Architects L01/2-K25608, dated 29.11.2021, must be completed prior to the issue of a final occupation certificate for the site. A certificate of compliance for the planting of all trees and shrubs proposed for the site must be prepared by an AQF 5 Horticulturist and forwarded to the PCA.
- 38. Completion of Tree Works** - All Project Arborist works set out in the table of hold points must be completed prior to the issue of a final occupation certificate for the site.
- 39. 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.

- 40. 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.

## Operational Conditions (On-Going)

### 41. Ongoing Tree Maintenance Works

- a) All newly planted trees must be maintained until they reach a height where they are protected by Councils Tree Management Controls. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying trees and other operations required to maintain healthy trees.
- b) If any 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 and pot/bag size. 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.

### 42. 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.

### 43. 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.

### 44. 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.

### 45. 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

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

### 47. 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.

**48. 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.

**49. 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.

**50. 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](#).

**51. 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.

**52. 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

53. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
54. **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.
55. **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.
56. **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](#).
57. **Clause 98C - Entertainment Venues** - Schedule 3A of the [Environmental Planning and Assessment Regulation 2000](#) outlines the prescribed conditions which apply to Entertainment Venues.
58. **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

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. **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.

5. **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.

6. **Stormwater & Ancillary Works - Applications under Section 138 Roads Act and/or Section 68 Local Government Act 1993** - To apply for approval under Section 138 of the Roads Act 1993 and/or Section 68 Local Government Act 1993:
  - (a) Complete the Stormwater Drainage Application Form which can be downloaded from Georges River Council's website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).
  - (b) In the Application Form, quote the Development Consent No. (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.

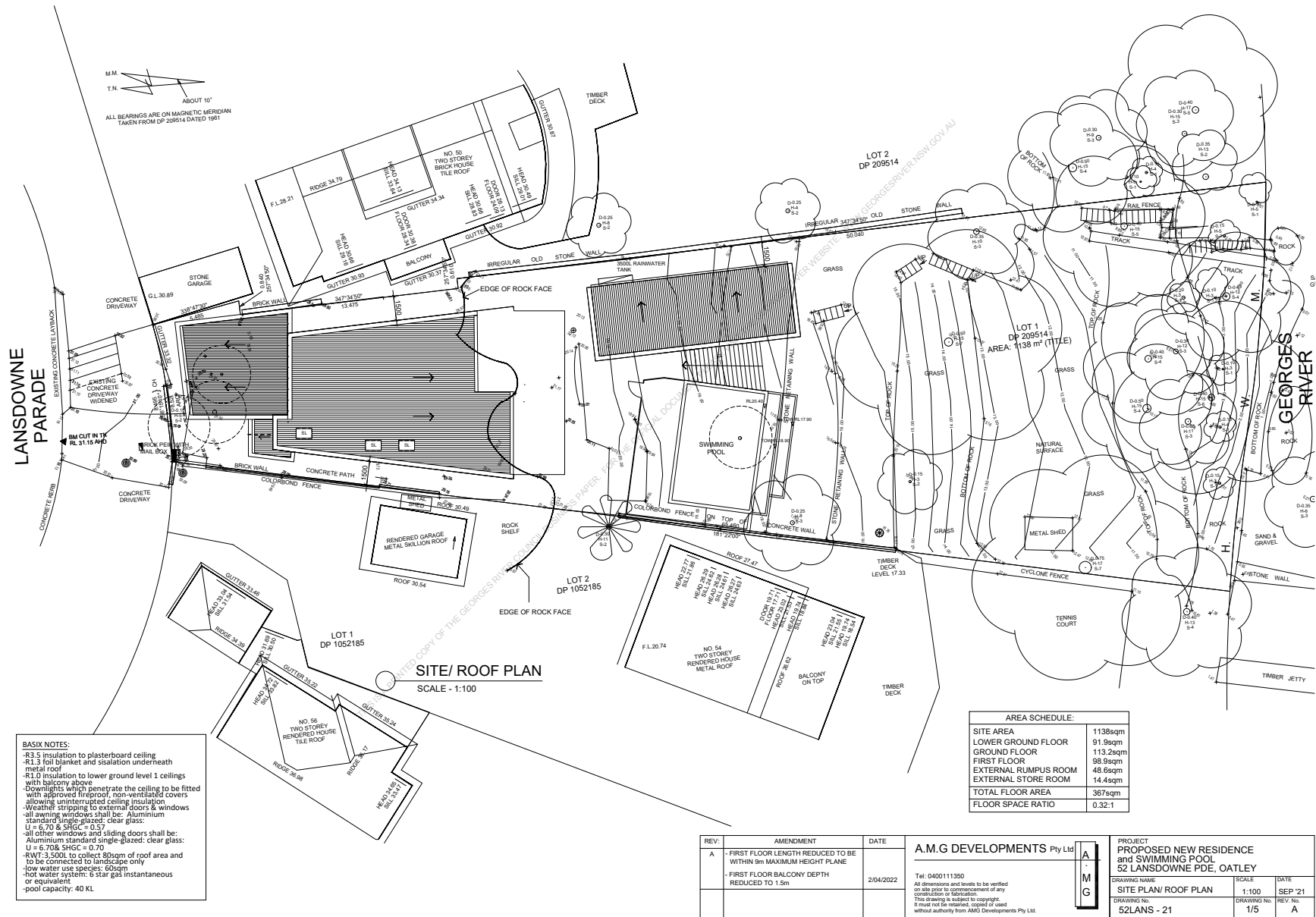
The preparation of all engineering drawings (site layout plans, cross sections, longitudinal sections, elevation views together with a hydraulic grade analysis) and specifications for the new stormwater drainage system to be arranged by the applicant. The design plans must be lodged and approved by Council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

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

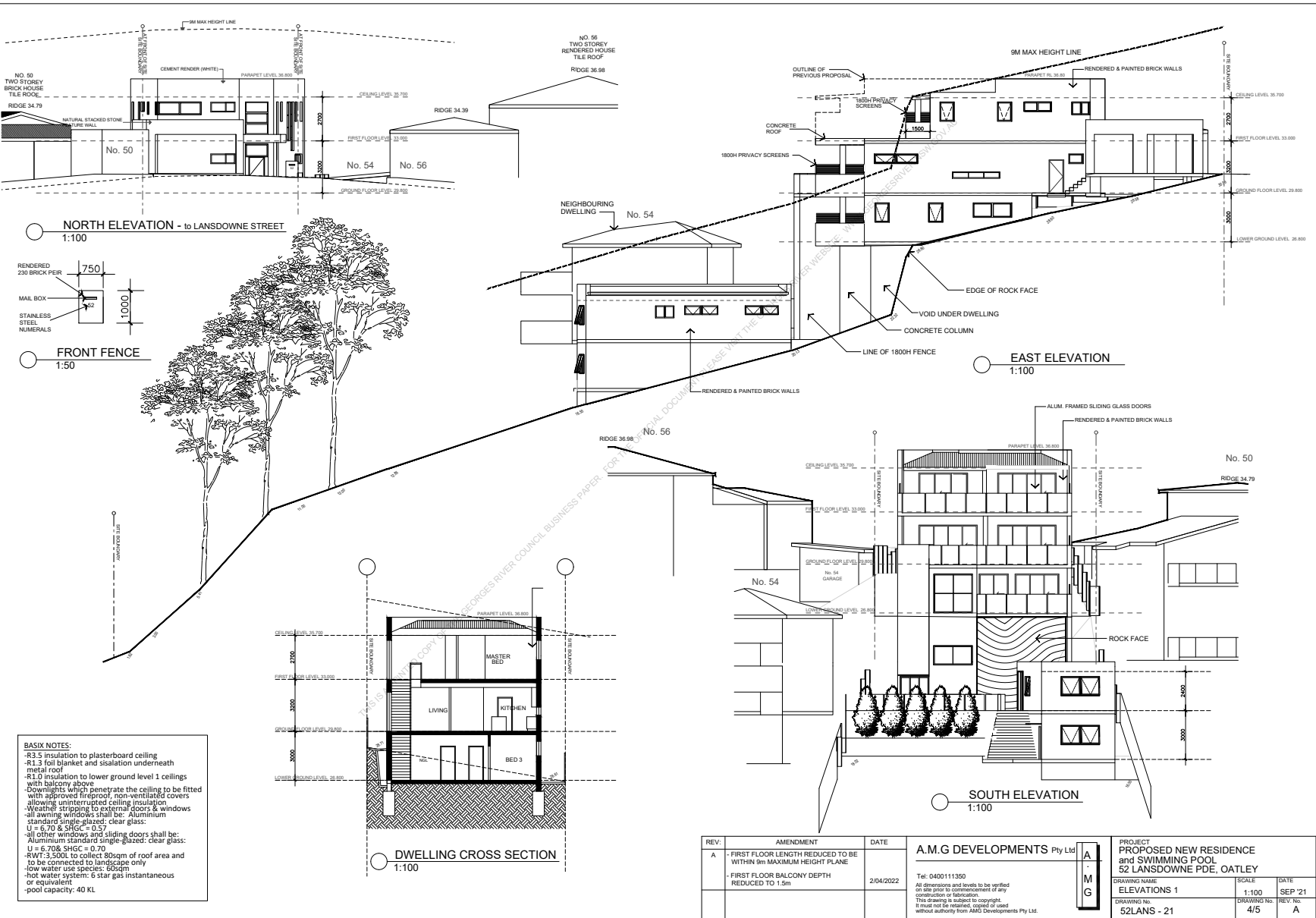
7. **Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
8. **Site Safety Fencing** - Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of any work and maintained throughout any demolition and construction work.  
  
A demolition licence and/or a high risk work license may be required from SafeWork NSW (see [www.SafeWork.nsw.gov.au](http://www.SafeWork.nsw.gov.au)).
9. **Register your Swimming Pool** - All swimming pools in NSW are required to be registered. Fines apply for pools that are not registered. To register please visit: [swimmingpoolregister.nsw.gov.au](http://swimmingpoolregister.nsw.gov.au).

## ATTACHMENTS

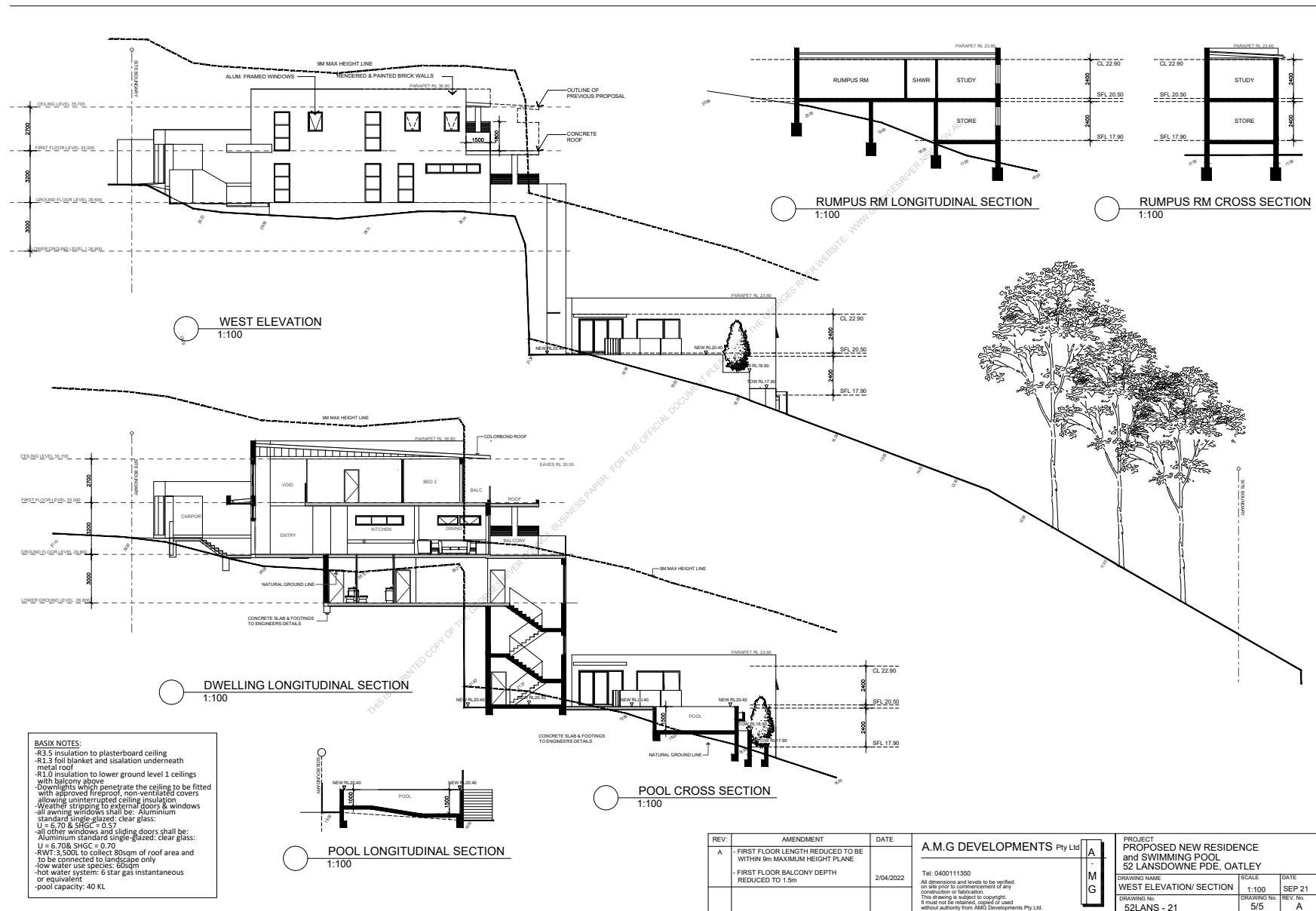
Attachment [↓](#) 1  Site Plan and Elevations











REV:	AMENDMENT	DATE	A.M.G. DEVELOPMENTS Pty Ltd		
A	- FIRST FLOOR LENGTH REDUCED TO BE WITHIN 8m MAXIMUM HEIGHT PLANE.	2/04/2022	A M G	PROJECT PROPOSED NEW RESIDENCE AND SWIMMING POOL 52 LANSDOWNE PDE, OATLEY	
	- FIRST FLOOR BALCONY DEPTH REDUCED TO 1.5m			DRAWING NAME WEST ELEVATION/ SECTION	SCALE 1:100
Tel: 0400111350 All dimensions and levels to be verified on site prior to commencement of any construction or fabrication. This drawing is subject to copyright. It must not be retained, copied or used without authority from AMG Developments Pty Ltd.				DRAWING NO. 52LANS - 21	DATE SEP 21
					REV. NO. A