
AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 04 August 2022
Time:	4.00pm
Venue:	Blended Meeting Online and Dragon Room Level 1, Georges River Civic Centre Corner Dora and MacMahon Streets, Hurstville
Participants:	Stephen Davies (Chairperson) Ian Armstrong (Expert Panel Member) Paul Vergotis (Expert Panel Member) Jenny Simpson (Community Representative)

1. On Site Inspections – Carried out by Panel Members prior to meeting	
2. Opening	
3. Consideration of Items and Verbal Submissions	
LPP034-22	20A Algernon Street, Oatley (Report by Senior Development Assessment Planner)
LPP035-22	977 Forest Road, Lugarno (Report by Independent Assessment)
LPP036-22	426-428 Princes Highway, Blakehurst (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, 04 AUGUST 2022

LPP Report No	LPP034-22	Development Application No	DA2021/0180
Site Address & Ward Locality	20A Algernon Street, Oatley Peakhurst Ward		
Proposed Development	Construction of a dwelling house, swimming pool and driveway		
Owners	Raga Diab		
Applicant	Amin Nasser		
Planner/Architect	BMA Urban/ Katris Architects		
Date Of Lodgement	6/05/2021		
Submissions	14 submissions		
Cost of Works	\$985, 925.12		
Local Planning Panel Criteria	More than 5 submissions were received and the applicant is requesting a variation to the Foreshore Building Line.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Georges River Local Environmental Plan 2021.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Landscape Plan, Stormwater Plans, Survey, Arborist Report, Flora and Fauna Report, Vegetation Management Plan, Statement of Environmental Effects, Clause 4.6 Variation Request – Foreshore building line, Submissions		
Report prepared by	Senior Development Assessment Planner		

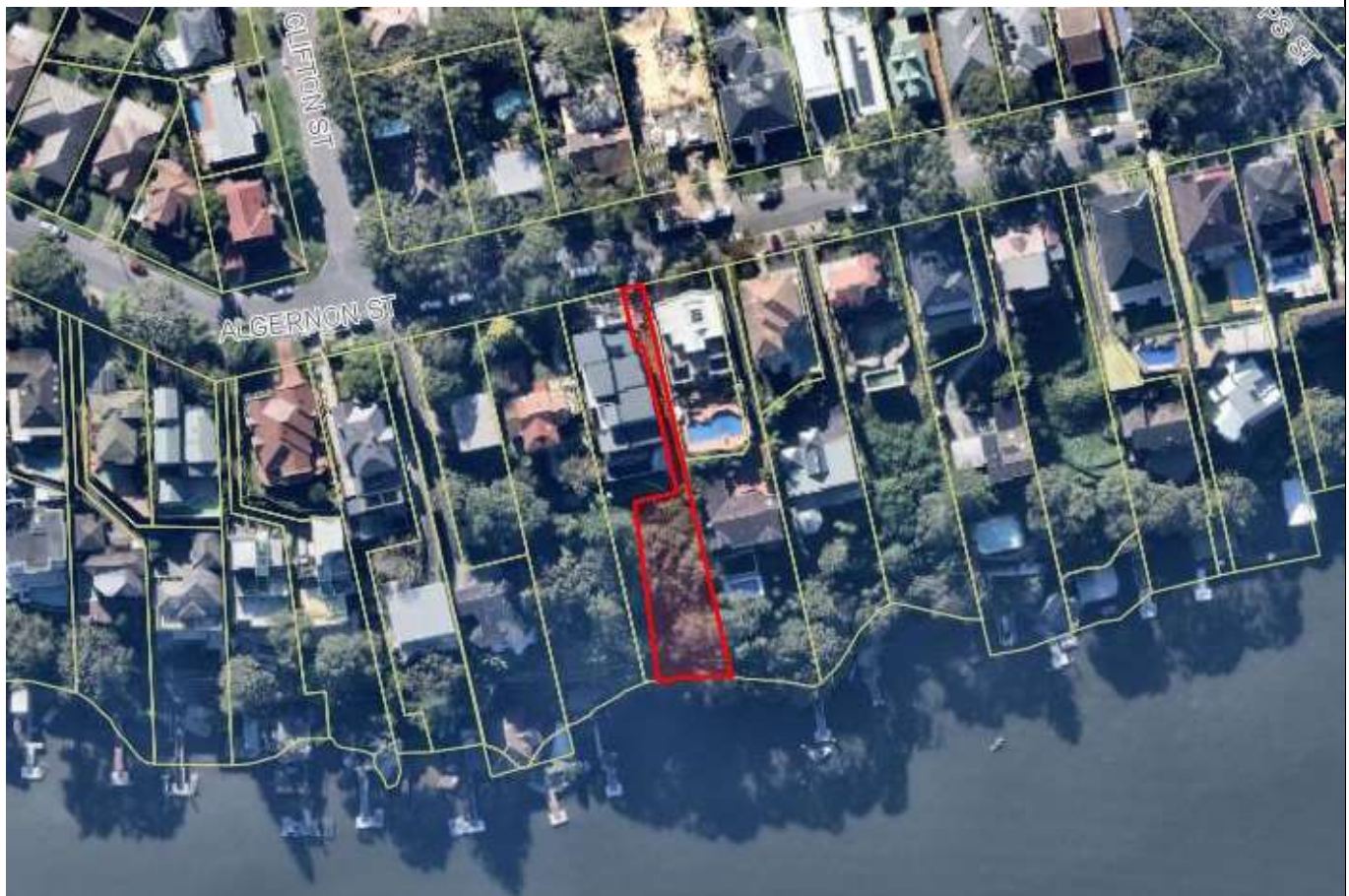
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Recommendation	That the application be refused for the reasons in this report.
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Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters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

Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - Clause 6.4 Limited development on foreshore area
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No – the application is recommended for refusal

Site Plan



Executive Summary

Proposal

1. This development application (DA) seeks consent for construction of a driveway, dwelling house and swimming pool. The dwelling contains carparking and entry to the dwelling at the upper level, four bedrooms, bathroom, kitchen, living, dining and balcony on the middle level, and two bedrooms, bathrooms, living area, bar, swimming pool and deck on the lower level.

2. A driveway and retaining wall are to be constructed over the existing access handle to Algernon Street.
3. The application proposes to retain the existing trees in the foreshore area and drainage is by gravity to the pollution control pit within the property prior to discharge to the bay.
4. The site forms part of a Green Web habitat reinforcement corridor and contains a vegetated riparian zone.
5. The site is constrained by a 30m foreshore building line and the dwelling is proposed to breach the line by 46%.

Site and Locality

6. The development site is located on the southern side of Algernon Street. The site is legally identified as Lot 2 in DP1019189.
7. The site is irregular in shape with an access handle from Algernon Street and a rear boundary with the Georges River. The area of the site is 846.1sqm and slopes from the street to the river with a fall of approximately 13m from the end of the access handle to a rock outcrop at the rear of the site adjoining the river.
8. The site is currently vacant with the foreshore area containing a number of trees. The site forms part of a Green Web habitat reinforcement corridor and contains a vegetated riparian zone.
9. The subject site and adjoining properties are subject to a 30m foreshore building line measured from the Mean High Water Mark.
10. The adjacent land to the west is known as No. 20 Algernon Street. The dwelling on No. 20 Algernon Street is located at street level and waterfront access has been retained to the west of the subject site.
11. The adjacent land to the east is known as Nos. 18 and 18A Algernon Street, with a dwelling located at street level (No. 18) and a dwelling located with river frontage (No. 18A).

Zoning and Permissibility

12. The subject site is zoned R2 Low Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves construction of a dwelling house and swimming pool which is a permissible use in the zone with development consent.

Background

13. DA2019/0290 proposed a similar development to the subject application. Assessment of that proposal resulted in the applicant withdrawing the DA at the request of the assessing officer due to the difficulties encountered in achieving a suitable design that accommodated the existing trees on the site and was in keeping with the foreshore setting.
14. The application was lodged on 10 May 2021. Neighbour notification took place between 10 June and 24 June 2022.

15. Amended plans and additional information was requested on 17 September 2021, including:
- a. A Clause 4.6 variation request for the breach of the foreshore building line;
 - b. A view impact assessment;
 - c. Provision of a Vegetation Management Plan, revised Arborist Report and amended Landscape Plan;
 - d. Design changes to address privacy concerns;
 - e. Provision of a Preliminary Acid Sulfate Soils Report;
 - f. Clarification and additional plan details such as RLs and siting of neighbouring structures;
 - g. 3D perspectives; and
 - h. Fencing details in the rear yard.
16. Amended plans and additional information was submitted on 2 November 2021 which form the basis of this assessment.

Submissions

17. The DA was publicly notified to neighbours for a period of fourteen (14) days. 14 submissions were received raising concerns including development in foreshore, privacy, tree loss, design, height, scale and the bulk of the dwelling. These issues are discussed in greater detail in the body of this report.

Reason for Referral to the Local Planning Panel

18. This application is referred to the Georges River Local Planning Panel for determination as more than five objections were received, and the proposal seeks consent for a variation to the foreshore building line.

Planning and Design Issues

19. The application proposes a significant encroachment into the foreshore area. Under Clause 6.4 of the KLEP 2012 development consent must not be granted on land in the foreshore area for the erection of a building except where exceptional circumstances make it appropriate to do so and the design is compatible with the foreshore locality.
20. The proposed development significantly breaches the 30m foreshore building line on the site. A more sensitive design, and one that does not seek to maximise the available floor space area and that results in less of a breach of the foreshore building line can be achieved on the site. The design of the present proposal is such that its appearance is not compatible with the surrounding area as viewed from the waterway and adjacent foreshore areas.
21. It is acknowledged that although the site is suitable for the construction of a dwelling, the scale of that proposed in this proposal and its lack of an appropriate response to its context will result in an unsatisfactory outcome relative to the surrounding natural and built environment.
22. The proposal does not represent an appropriate planning outcome for the site on design grounds given the context of the site within the foreshore area.

Conclusion

23. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans.
24. The proposal as put forward is an inappropriate response to the site, noting the significant breach of the foreshore building line. A more sensitive design, and one that does not seek to maximise the available floor space area that resulted in less of a breach of the foreshore building line can be achieved on the site.
25. As a result, the application is recommended for refusal for the reasons outlined at the end of this report.

Report in Full

Description of the Proposal

26. The proposal seeks consent for construction of a dwelling house, driveway and swimming pool. A detailed description of the proposal is as follows:

Driveway – A driveway and retaining wall are proposed along the existing access handle from the street to the proposed dwelling.

Car Parking Level – Vehicular access to the dwelling is proposed from the access handle from Algernon Street to a car parking level containing two parking spaces and manoeuvring area. Also on this level is the bin store area, entry to the dwelling with stair and lift access to the levels below.

Upper Ground Level – This level contains three bedrooms, one with an ensuite bathroom, the master bedroom with walk in robe, ensuite bathroom and balcony, laundry, kitchen, stairs and lift, living and dining area and rear-facing balcony.

Lower Ground Level – two bedrooms, one with an ensuite bathroom, stairs and lift, bathroom, living and bar area, swimming pool and deck with stair access to the rear yard. A portion of the rear yard, 3m from the rear deck and pool edge, is fenced with a palisade fence to delineate the vegetation management zones.

Vegetation Management – The rear yard has two vegetation management zones – one for construction and landscaping and one for revegetation. The construction zone aims to remove priority weeds and vegetation cover and the revegetation zone aims to provide a stable watercourse and riparian corridor.

27. The proposed development significantly breaches the 30m foreshore building line on the site. A more sensitive design, and one that does not seek to maximise the available floor space area and that results in less of a breach of the foreshore building line can be achieved on the site. The design of the present proposal is such that its appearance is not compatible with the surrounding area as viewed from the waterway and adjacent foreshore areas.

Description of the Site and Locality

28. The development site is located on the southern side of Algernon Street. The site is legally identified as Lot 2 in DP1019189.

29. The site is irregular in shape with an access handle from Algernon Street and a rear boundary with the Georges River. The area of the site is 846.1sqm and slopes from the street to the river with a fall of approximately 13m from the end of the access handle to a rock outcrop at the rear of the site adjoining the river.
30. The site is currently vacant with the foreshore area containing a number of trees. The site forms part of a Green Web habitat reinforcement corridor and contains a vegetated riparian zone.
31. The subject site and adjoining properties are subject to a 30m foreshore building line measured from the Mean High Water Mark.
32. The adjacent land to the west is known as No. 20 Algernon Street. The dwelling on No. 20 Algernon is located at street level and waterfront access has been retained to the west of the subject site.
33. The adjacent land to the east is known as Nos. 18 and 18A Algernon Street, with a dwelling located at street level (No. 18) and a dwelling located with river frontage (No. 18A).



Figure 1: The site and neighbouring properties viewed from the river



Figure 2: The site and neighbouring properties viewed from the river

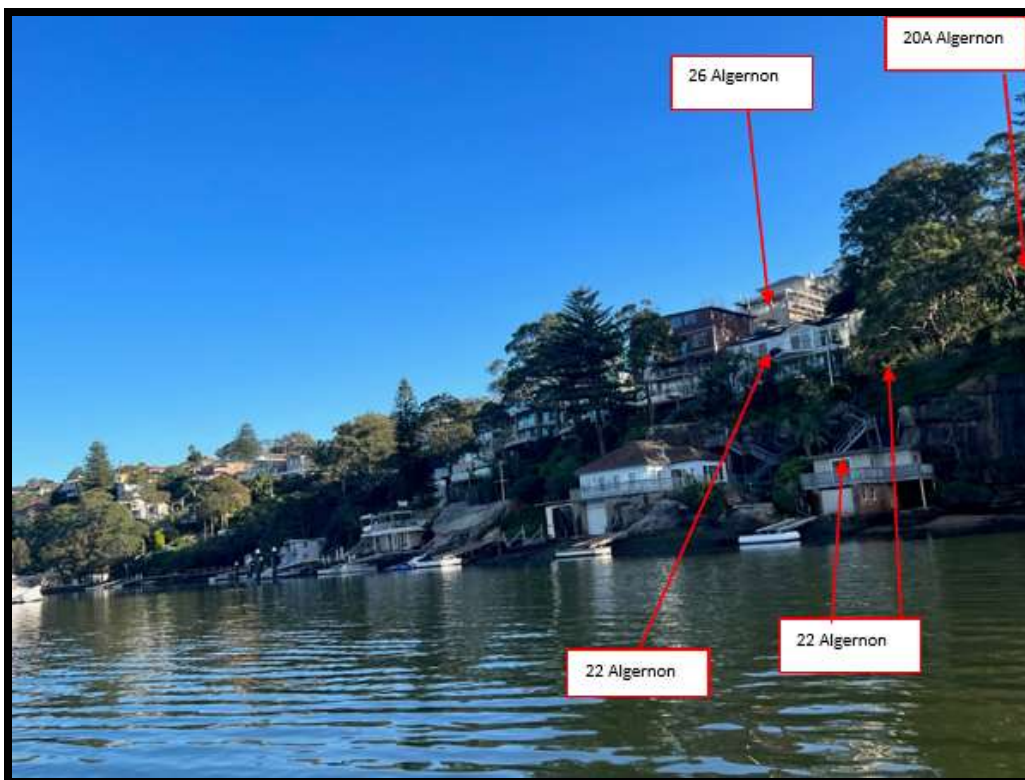


Figure 3: The site and neighbouring properties viewed from the river



Figure 4: Looking south along the access handle (20 Algernon on the right)



Figure 5: Looking south from the site

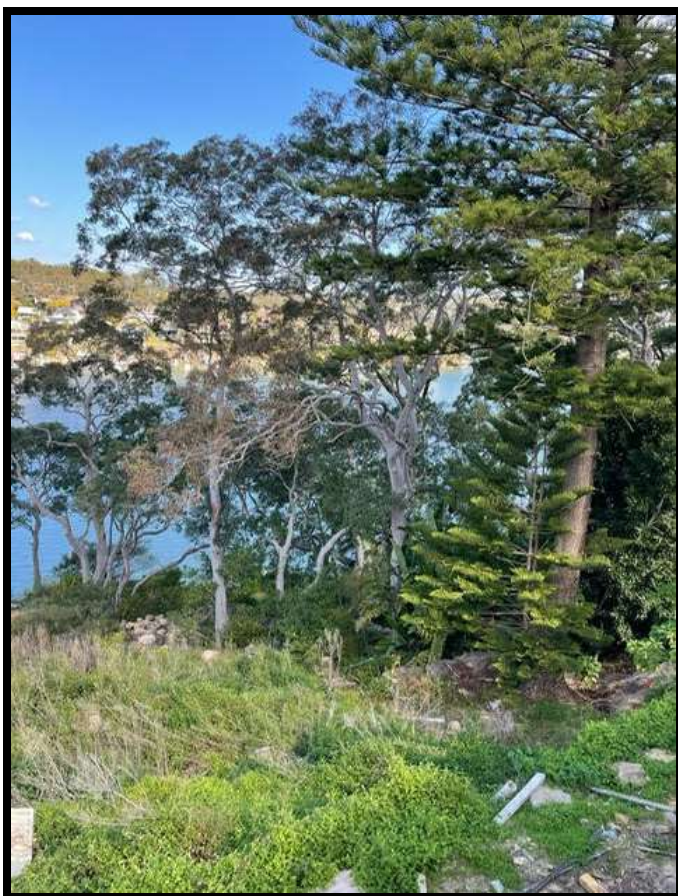


Figure 6: Looking west from the site



Figure 7: Looking east from the site

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State Environmental Planning Policies (SEPPs)

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

State Environmental Planning Policy Title	Complies
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

35. 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

36. 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.
37. 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).*
38. No tree removal is proposed as part of the application, and vegetation management zones are proposed for weed removal and riparian corridor management.

Chapter 11 – Georges River Catchment

39. The primary relevant aims and objectives of this plan are:
- *to maintain and improve the water quality and river flows of the Georges River and its tributaries and ensure that development is managed in a manner that is in keeping with the national, State, regional and local significance of the Catchment,*
 - *to protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*
 - *to ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
 - *to establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment,*
40. The stormwater design was reviewed by Council's Engineers at lodgement. No objection was raised with respect to the management and disposal of stormwater.
41. The proposal is consistent with the objectives and purpose of Chapter 11 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

42. Chapter 2 and Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 are relevant to the proposal.
43. 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”.*
44. 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.

45. 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
13. Development on land within the coastal environment area		
(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 Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	Appropriate standard conditions to be imposed to ensure water quality is maintained. The site is not located on any of the sensitive coastal lakes identified in Schedule 1.	Yes
(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.	Yes

State Environmental Planning Policy Control	Proposal	Complies
	There is no impact in terms of Aboriginal heritage.	
(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 not supported due to the encroachment and visual impact of the dwelling on the foreshore area.	No
(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 not supported due to the encroachment of the dwelling on the foreshore area and it is not considered that the design response appropriately to the context.	No
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact	The proposal is not supported due to the encroachment of the dwelling on the foreshore area and does not mitigate its impact.	No
14 Development on land within the coastal use area		
(1) Development consent must not be granted to development on land 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	The proposal will have adverse visual impacts from the waterway.	No

State Environmental Planning Policy Control	Proposal	Complies
headlands,		
(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	The proposal is not supported due to the encroachment of the dwelling on the foreshore area.	No
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposal is not supported due to the encroachment of the dwelling on the foreshore area.	No
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	The proposal is not supported due to the encroachment of the dwelling on the foreshore area.	No
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	The proposal is not supported due to the encroachment of the dwelling on the foreshore area.	No

46. The proposal is therefore not satisfactory having regard to its visual impact on the visual amenity and scenic qualities of the coast as required under Clause 14 of the SEPP.
47. 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.
48. 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.
49. 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

50. 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

51. 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.
52. A valid BASIX Certificate has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

Environmental Planning Instruments

Kogarah Local Environmental Plan 2012 (KLEP 2012)

Zoning

53. The subject site is zoned R2 Low Density Residential under the provisions of the Kogarah Local Environmental Plan 2012 (KLEP2012). Refer to zoning map below. The proposed development is defined as a dwelling house and ancillary development which is a permissible land use in the zone.



Figure 7: Zoning map (KLEP 2012)

54. The objectives of the R2 zone are as follows:
- *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
55. The proposal satisfies the objectives of the R2 Zone, however the breach of the foreshore building line is not supported as discussed later in this report.

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

KLEP2012 Compliance Table

Clause	Standard	Proposed	Complies
2.2 Zone	R2 Low Density Residential	The proposal is a permissible use within the zone.	Yes
2.3 Objectives	Objectives of the Zone	Consistent with the zone objectives.	Yes
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The maximum height of the building is 9m.	Yes
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 for residential accommodation in Zone R2	<p>2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>Site area</p> <ul style="list-style-type: none"> less than 1,000 square metres but not less than 800 square metres $[(\text{lot area} - 800) \times 0.2 + 402.5] \div \text{lot area}:1$ <p>Site area: 846sqm</p> <p>0.486:1 or 411.7sqm</p>	<p>The maximum permitted FSR/GFA is:</p> <p>0.486:1 or 411.7sqm.</p> <p>The applicant has calculated the GFA as 356.3sqm (excluding the parking area).</p>	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The GFA has been calculated in accordance with this criterion.	Yes
4.6 – Exceptions to	The objectives of this clause are as	The proposal breaches the foreshore building line on the	Refer to the assessment

Clause	Standard	Proposed	Complies
Development Standards	follows: - <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i> (b) - <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i>	site. A Clause 4.6 Statement has been submitted for the variation.	following this table.
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.	N/A
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
6.1 – Acid sulfate soils	(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.	Subject site is located in a Class 5 Acid Sulfate Soils Area. The excavation proposed is not below 5m AHD therefore an Acid Sulfate Management Plan is not required.	Yes

Clause	Standard	Proposed	Complies
	Class 5: Works within 100 metres of adjacent Class 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 2, 3 or 4 land.		
6.2 – Earthworks	(2) Development consent is required for earthworks unless— (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.	The proposed earthworks are ancillary to the proposed development and are acceptable for this form of development.	Yes
6.3 – Flood planning	(2) This clause applies to— (a) land identified as “Flood planning area” on the Flood Planning Map, and (b) other land at or below the flood planning level.	The proposed development is not located in a mapped flood prone area.	Yes
6.4 – Limited development on foreshore	(2) Development consent must not be granted to	The site is mapped with a 30m foreshore building line. The proposed dwelling is setback a	No. Refer to

Clause	Standard	Proposed	Complies
area	<p>development on land in the foreshore area except for the following purposes—</p> <p>(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,</p> <p>(b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,</p> <p>(c) boat sheds, sea retaining walls, wharves, slipways, jetties, works to enable pedestrian access to the waterway, swimming pools, fences, cycleways or walking trails.</p> <p>(3) Development consent must not be granted under this clause unless the consent authority is satisfied that—</p> <p>(a) the development will contribute to achieving the objectives for the zone in which the land is located, and</p> <p>(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and</p> <p>(c) the development will not cause</p>	<p>minimum 14m from the rear boundary and encroaches the FBL by 16m, a 46% variation.</p> <p>NA</p> <p>There are no exceptional site features to justify the extent of the breach. Refer to further discussion following this table.</p> <p>Not proposed.</p> <p>The proposal fails to satisfy this clause as discussed in the variation assessment following this table.</p>	<p>Clause 4.6 variation assessment following this table.</p>

Clause	Standard	Proposed	Complies
	<p>environmental harm such as—</p> <p>(i) pollution or siltation of the waterway, or</p> <p>(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or</p> <p>(iii) an adverse effect on drainage patterns, and</p> <p>(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and</p> <p>(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and</p> <p>(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and</p> <p>(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse</p>		

Clause	Standard	Proposed	Complies
	impact on the amenity or aesthetic appearance of the foreshore, and (h) sea level rise or change of flooding patterns as a result of climate change has been considered.		

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Exception to Development Standards

Detailed assessment of variation to Clause 6.4 Limited development on the foreshore

57. 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.*
58. The proposed development seeks a variation to the development standard relating to development in the foreshore area (Clause 6.4). The Kogarah Local Environmental Plan 2012 (KLEP) identifies a foreshore building line of 30m for the Site, figure below.



Figure 8: Foreshore Building Line Map (KLEP 2012)

59. The proposed development encroaches the FBL by 16m at all levels of the proposal. This breach amounts to a 46% variation of the control. The extent of the breach is shown in the figure below.

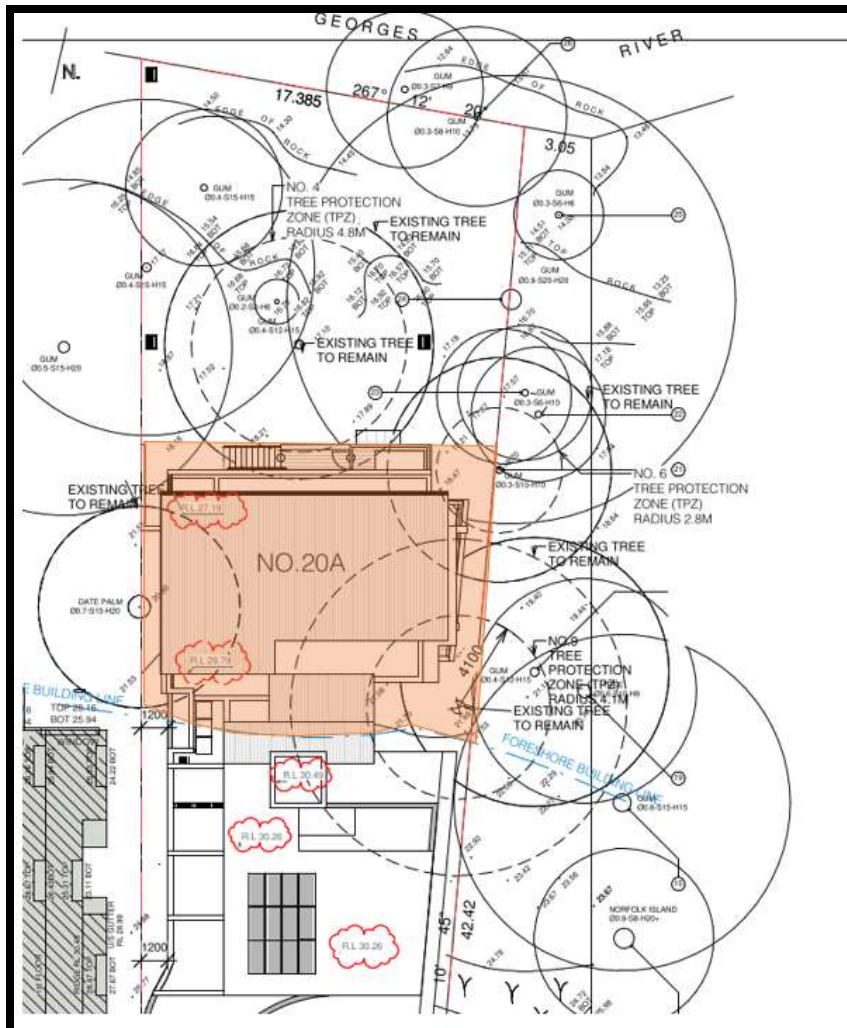


Figure 9: Site Plan showing the extent of the encroachment beyond the 30m FBL

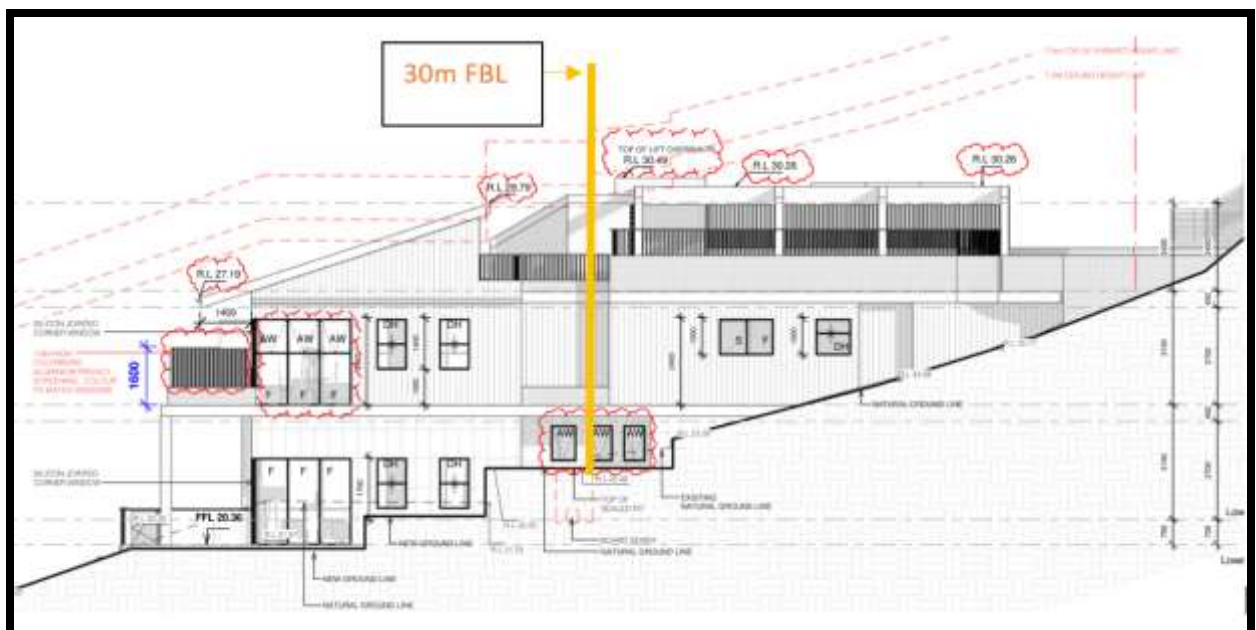


Figure 10: East Elevation showing the extent of the encroachment beyond the 30m FBL

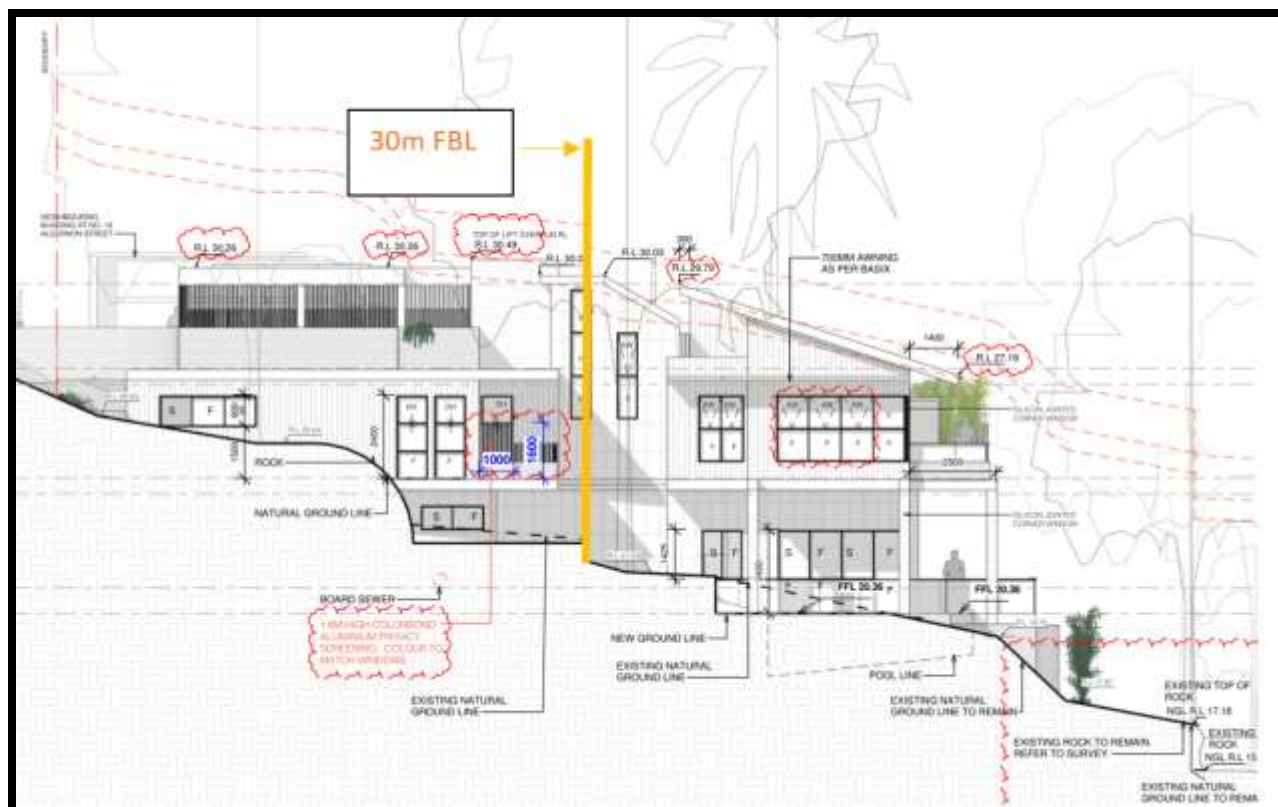


Figure 11: West Elevation showing the extent of the encroachment beyond the 30m FBL



Figure 12: Aerial photo overlaid with foreshore building line map to show location of surrounding dwellings and proposed building footprint

60. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. An assessment of the proposal against the survey plan was conducted to indicate the Applicant's FBL notation on the plan is generally accurate.

61. 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”*
62. To support the non-compliance, the applicant has provided a request for a variation to Clause 6.4 in accordance with Clause 4.6 of KLEP. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

63. The 30m foreshore building line affecting the site pursuant to Clause 6.4 of the KLEP 2012 is a development standard.

What are the underlying objectives of the development standard?

- (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.*
- (2) *Development consent must not be granted to development on land in the foreshore area except for the following purposes—*
 - (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
 - (b) *the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
 - (c) *boat sheds, sea retaining walls, wharves, slipways, jetties, works to enable pedestrian access to the waterway, swimming pools, fences, cycleways or walking trails.*
- (3) *Development consent must not be granted under this clause unless the consent authority is satisfied that—*
 - (a) *the development will contribute to achieving the objectives for the zone in which the land is located, and*
 - (b) *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
 - (c) *the development will not cause environmental harm such as—*
 - (i) *pollution or siltation of the waterway, or*
 - (ii) *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - (iii) *an adverse effect on drainage patterns, and*
 - (d) *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
 - (e) *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
 - (f) *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*

- (g) *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) *sea level rise or change of flooding patterns as a result of climate change has been considered.*

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

64. 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.
65. 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.*
66. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.

Applicant's comment:**The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)**

The sole objective of the control 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.

- *ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.*

In address of this objective, we firstly rely on the detail provided in address of Clause 6.4 Limited Development on the Foreshore Area identified on pages **21 through to 23** of the SEE prepared by BMA Urban dated 3 February June 2021. In summary:

- The development will not adversely impact on natural foreshore processes or affect the significance and amenity of the area;
- There is no existing public access to the intertidal area where such access would cause adverse environmental impact;
- The development will not have any adverse impact on water quality and will improve the quality of urban run-off entering waterways by implementing a new stormwater system;
- There foreshore is already highly modified in its existing form;
- The development will retain contributory vegetation along foreshore area,
- The development is supported by a landscape plan that seeks to supplement retained vegetation;
- The development minimises any adverse visual impact of development when viewed from adjacent land and waterways by using a design and materials that complement the natural landscape of the foreshore area;
- The extent of cut and fill is minimised resulting in no discernible change to the natural topography of the foreshore area; and
- The development has no impact upon the public use of waterways.

Reference is also made to **Figures 29 and 30** located on **page 53** of this variation request which clearly demonstrates that a number of dwellings and ancillary structures are already currently located between the foreshore building line and mean high water mark. The approval and subsequent construction of these defining dwellings and or structures along the foreshore which in many cases sit well below the discernible rock outcrop that creates a natural divide between the land and water interface, further exemplifies that natural foreshore processes are not disrupted by development and or their ancillary structures. Furthermore, the proposed dwelling is of a built form, scale and materiality that does not unreasonably impose on its setting but rather, settles behind the extent of retained natural vegetation reducing any ability for it to have a jarring impact on the foreshore. In this regard, the extent of dwelling breach beyond the FBL will not result in any discernible visual impact nor will it result in an adverse impact to either the significance or amenity of the area.

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

67. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there will be negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overlooking, view loss and visual amenity from adjoining sites and the waterway.

Applicant's Comment:

This clause 4.6 written request repeats and adopts what is stated at **Section 4** above. Furthermore, the application relies upon the unique circumstances whereby any development on the land with an allowable FSR of 0.486:1 or 411.72m² and height limit of 9m, cannot be constructed to any reasonable capacity solely on the area of land located outside of the FBL. The variation does not establish a precedent in the locality that would derogate from the objectives of the zone. The corollary is that if strict compliance were required, the result would be that the site could not provide (or would be highly unlikely to provide) a residential density capable of providing for the housing needs of the community in a low density residential environment.

Although more general in nature, It is also relevant to observe that the proposed development is of a form and scale that is not incompatible with that envisaged by the planning strategies applicable to the land. It is also submitted that the well articulated building facades inclusive of the diverse range of material combinations serve to provide a development scale and form congruous with that of the setting.

The design, layout and built form of the development most notably identified by the FBL breaching elements, are an appropriate response to the site and its context where they will remain in unity with the planned residential density envisaged for the site. Also of note, the defining foreshore both immediate and broader, already presents with a strong built form presentation below the FBL and therefore, any breaching elements will not appear as ill coordinated or jarring to the waterscape character.

Furthermore, the breaching elements have been designed as far as practical with the intent of mitigating any adverse impact on immediately adjoining lands in terms of solar access and privacy.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **the table below** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation.

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	This object is not relevant to this development.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustinment of the economic health of the area.
(c) to promote the orderly and economic use and development of land,	The proposed development will promote the orderly and economic use of the land by way of providing a land use intensity consistent with that envisaged by Council.
(d) to promote the delivery and maintenance of affordable housing,	This object is not relevant to this development.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposal seeks to retain a notable extent of endemic vegetation while no impact on threatened species or ecological communities is likely to result.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	This object is not relevant to this development.
(g) to promote good design and amenity of the built environment,	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves to positively influence the future amenity of the dwelling occupants while adopting an architectural form and language, with an overall silhouette, height and land use intensity compatible with both the established and emerging foreshore character.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to this development.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development has been publicly notified in accordance with Council's DCP requirements.

Based on the above, the consent authority can be satisfied that the proposed development notwithstanding the Foreshore Building Line breach, remains consistent with the Objects of the Act.

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

68. 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,”*

Applicants Comment:

In Part 4 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The applicant repeats and adopts those reasons. The proposal, inclusive of the non-compliance, is also consistent with the objectives of the R2 Low Density Residential as detailed below:

Zone R2 –Low Density Residential Objectives

Objective	Comment
To provide for the housing needs of the community within a low density residential environment.	<p>The proposal provides for a new detached dwelling being the most common development typology in a low density residential setting.</p> <p>The siting arrangement, built form and architectural language of the development is consistent with that likely to be encountered in a low density residential setting and is proportionate with that observed within the existing and evolving context.</p>
To enable other land uses that provide facilities or services to meet the day to day needs of the residents	Not applicable to this development.

69. The objective of the standard is:

- (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.*

Officer Comment:

70. Under Clause 6.4 of the KLEP 2012 development consent must not be granted on land in the foreshore area for the erection of a building except where exceptional circumstances make it appropriate to do so and the design is compatible with the foreshore locality.

71. The significant breach of the foreshore building line and its visual prominence when viewed from the waterway and adjoining sites is therefore contrary to the objectives of the control.
72. The foreshore building line standard is the primary planning control applicable to the site to which development must respond and to which the design of the dwelling should consider. In addressing this matter in their variation request, the applicant states (Council Officer's underline):

“..... a number of dwellings and ancillary structures are already currently located between the foreshore building line and mean high water mark. The approval and subsequent construction of these defining dwellings and or structures along the foreshore which in many cases sit well below the discernible rock outcrop that creates a natural divide between the land and water interface, further exemplifies that natural foreshore processes are not disrupted by development and or their ancillary structures. Furthermore, the proposed dwelling is of a built form, scale and materiality that does not unreasonably impose on its setting but rather, settles behind the extent of retained natural vegetation reducing any ability for it to have a jarring impact on the foreshore. In this regard, the extent of dwelling breach beyond the FBL will not result in any discernible visual impact nor will it result in an adverse impact to either the significance or amenity of the area.”

73. This statement is not accepted. It is considered, rather, that as demonstrated in Figure 12 above, while there are examples of existing dwellings forward of the FBL, none exhibit the extent of encroachment of the FBL when compared to the proposed dwelling (excluding waterfront structures such as boatsheds), either in terms of height or extent, and the site has no particular feature that would mitigate the usual impacts of the breach on the foreshore.
74. Additionally, noting that the objectives of the control seek to protect the amenity of the area, consideration must also be given to impacts in this regard on adjoining private properties. The proposed design, as shown in Figures 10 and 11 above, results in a bulky design on the side elevations and an adverse visual impact for the eastern neighbours in particular, whose dwelling and private open space adjoin the proposed dwelling.
75. Accordingly, the objective of the development standard is not met.

Zone Objectives

76. The objectives of the zone are:
 - *To provide for the housing needs of the community within a low density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
77. The development is providing for the housing needs of the community.
78. 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. In this regard, the proposal satisfies the zone objective.
79. The above notwithstanding, as the objective of the development standard is considered that the proposed variation is unreasonable and will establish an undesirable precedent and will have adverse visual impacts on the surrounding locality.
80. 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.

81. 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.
82. In this case the proposal fails to establish an appropriate design and built form outcome for this site with the building significantly breaching the standard and no attempt made to lessen the breach or contain the footprint of the building as far as possible within the FBL. There will be adverse amenity and visual impacts generated by the variation and the proposal fails to satisfy the objectives of the development standard. In this case the justification to vary the FBL is considered to be unreasonable and not well-founded.

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

83. Concurrence from the Secretary has been obtained and can be assumed in this case.
84. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 however the statement is considered to not be well founded as there are insufficient environmental planning grounds to justify contravening the standard.

Georges River Local Environmental Plan 2021

85. The Georges River Local Environmental Plan 2021 was gazetted on 8 October 2021.
86. In relation to this development site the zoning, height and floor space ratio remain unchanged.
87. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.
88. In this regard, the provisions have no determining weight because of the operation of Clause "1.8A Savings provisions relating to development applications" of the Draft Plan which provides "*If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.*"
89. Additionally, the GRLEP 2021 contains development standards for protection of the foreshore area and the site continues to be affected by the 30m foreshore building line under the new LEP.

Development Control Plans

Kogarah Development Control Plan No 2013 (KDCP)

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

C1- Low Density Housing

Control	Standard	Proposed	Complies
1.2 Building Scale and Height			
1.2.1 Floor space Requirements	(5) Blank walls and flat facades should be avoided. Walls longer than 10m should be articulated by a minimum 300mm projection or indentation in the façade.	The proposed development is sufficiently articulated.	Yes
	(6) The overall building should present a building mass that is in proportion with the allotment size, provides opportunities for modulation and articulation of the building and does not detract from the satisfaction of any other applicable design principle.	The proposed building mass is excessive for the foreshore location.	No – refer to earlier discussion on FBL breach.
	(7) Where proposed development includes a two (2) residential level element, then the second level should not extend beyond 60% of the depth of the allotment measured from the street boundary. Where side boundaries are of varying length, the second level is limited to a line across the block between the points on both boundaries.	60% depth = 25m Dwelling = 25m	Yes, however FBL breached.
1.2.2 Building Heights	(1) The maximum building height must comply with the requirements specified in table below: Dwelling Type Single dwelling;		

Control	Standard	Proposed	Complies
	Maximum Height 7.2m to the underside of the upper ceiling; 7.8m to the top of the parapet;	7.566m 7.866m	No No The non-compliance adds to the bulk of the dwelling.
1.2.3 Rhythm of the Built Elements in the Streetscape	(1) The primary building façade should not exceed 40% of the overall width of the total frontage. (2) The secondary building façade should be set back a minimum of 1.5 metres from the primary building façade. (3) Where the dominant built form in the streetscape provides for a pitched hip or gable ended presentation to the street, the new buildings and/or additions should reflect that roof form.	NA – no street frontage NA NA	NA NA NA
1.2.4 Building Setbacks	1.2.4.2 Front Setbacks (1) Where the setback of an adjacent building is greater than 5m, an appropriate setback may be achieved by ensuring development is set back: (i) the same distance as one or the other of the adjoining buildings, provided the difference between the setbacks of the two adjoining buildings is less than or equal to 2.0m	NA	NA

Control	Standard	Proposed	Complies
	<p>(Figure 9); or</p> <p>1.2.4.3 Side & Rear Setbacks</p> <p>(1) The side and rear boundary setbacks should comply with the table below.</p> <p>Rear Setback Buildings are to have a minimum rear setback of 15% (6.3m) of the average site length, or 6m, whichever is greater.</p> <p>Side Setbacks For buildings having a wall height of 3.5m or less, the minimum side boundary setback is 900mm.</p> <p>For buildings having a wall height of greater than 3.5m, the minimum side boundary setback is 1200mm.</p>	<p>14m</p> <p>NA</p> <p>1.2m</p>	<p>Yes (note 30m FBL applies and the dwelling breaches the FBL)</p> <p>NA</p> <p>Yes</p>
1.2.5 Fenestration and External Materials	<p>(1) New buildings and alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.</p> <p>(2) Garage doors should not dominate the street front elevation (Figure 16).</p> <p>(3) The roof should be</p>	<p>NA – no street frontage</p> <p>NA</p> <p>NA</p>	<p>NA</p> <p>NA</p> <p>NA</p>

Control	Standard	Proposed	Complies
	<p>similar to the angle of pitch, materials and colour of roofs in the streetscape (Figure 14).</p> <p>(4) The colours of garages, window frames, and balustrading on main facades and elevations are to be integrated with the external design of the building.</p> <p>(5) Glazing shall be limited to a maximum 35% of the total area of the overall street front façade. This includes both primary and secondary façade bays (Figure 15).</p> <p>(6) Where garaging is in the front façade it should be limited to a maximum of two garage bays, with separate garage door openings of a maximum width of 3m.</p>	<p>Acceptable</p> <p>NA</p> <p>NA</p>	<p>Yes</p> <p>NA</p> <p>NA</p>
1.2.6 Street Edge	<p>(1) New developments should provide front fencing that complements fencing within the streetscape.</p> <p>(2) Fencing is to be consistent with the requirements of Section 4.2.</p> <p>(3) Existing vegetation in the front building line setback or on the street verge that contributes to the character of the streetscape should be preserved.</p>	NA – no street frontage	

Control	Standard	Proposed	Complies
	(4) The driveway location should not result in the removal of any street trees or removal of substantial trees on the site.		
1.3 Open Space			
1.3 Open Space	(1) 15% of the site area must be deep soil landscaped area.	339sqm or 40%	Yes
	(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	The proposed development includes a satisfactory area for private open space.	Yes
	(3) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year round use.	The proposed private open space is appropriately located.	Yes
	(4) Where soil and drainage conditions are suitable, unpaved or unsealed landscaped areas should be maximised and designed to facilitate on site infiltration of stormwater.	Deep soil areas are maximised.	Yes
	(5) Existing significant trees and vegetation must be incorporated into proposed landscape treatment.	Existing significant trees to be retained.	Yes
1.4 Vehicular access, parking and circulation			
	(1) Car parking is to be provided in accordance with the requirements in Section B4.	The proposed development is satisfactory having regard to Section B4 of the KDCP 2013.	Yes

Control	Standard	Proposed	Complies
		2 car spaces required and have been provided.	
	(4) Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	NA	NA
	(5) Garaging should be setback behind the primary façade.	NA	NA
	(6) The maximum driveway width between the street boundary and the primary building façade is 4m.	NA	NA
1.5 Privacy			
1.5.1 Visual Privacy	(1) Windows from active rooms are to be offset between adjacent dwellings so as to avoid direct overlooking onto neighbouring windows.	Complies.	Yes
	(2) Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m from any adjoining property boundary.	2.5m wide and suitably treated through setbacks and privacy screens to the edges.	Yes
	(3) The area of balconies or terraces greater than 1.5m	The areas of balconies great than 1.5m above ground level do not	Yes

Control	Standard	Proposed	Complies
	<p>above ground level is limited to a cumulative total of 40m² per dwelling.</p> <p>(5) 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 (Figures 18 and 19).</p>	<p>exceed 40sqm.</p> <p>The proposed development is considered to have been appropriately treated to prevent any privacy concerns.</p>	Yes
1.6 Solar Access			
	<p>(1) At least 50% of the primary private open space of the proposed development should have access to a minimum of four hours of sunlight between 9am–3pm on 21 June.</p> <p>(3) Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on 21 June (Figure 21).</p>	<p>The proposed private open space will receive the minimum 4hours sunlight between 9am–3pm on 21 June.</p> <p>Neighbouring properties will receive a minimum of 3 hours sunlight between 9am–3pm on 21 June to at least 50% of the neighbouring existing primary private open space or windows to main living areas.</p>	<p>Yes</p> <p>Yes</p>
1.7 Views and view sharing			
	<p>(1) Development shall provide for the reasonable sharing of views. Note: Assessment of applications will refer to the Planning Principle established by the Land and Environment Court in Tenacity Consulting vs Warringah Council</p>	<p>The proposed development is not expected to impact any adjoining properties or public space access to view corridors.</p>	Yes – refer below

Control	Standard	Proposed	Complies
	(2004) NSWLEC140		

View Impact Assessment

91. The subject site and surrounding lands benefit from views to the south, south-east and south-west to Georges River. The DCP seeks to ensure the location and design of dwellings must reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.
92. The owners of No. 18A Algernon Street have objected to the proposal on the grounds of view loss. An assessment of the view impacts on adjacent properties is provided below.
93. In assessing the view impacts, consideration has been given to the to the four-step assessment established in *Tenacity Consulting v Warringah [2004] NSWLEC 140*:
The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.
94. **Comment:** Existing views in a southerly, south-easterly and south-westerly direction from No. 18A Algernon St and adjacent sites include a land and water interface to Georges River (Figure 12). The proposal will not impact on the existing views from No. 18A in a southerly or south-easterly direction as the subject site is located to the west of No. 18A. The proposal will have a minor impact on existing views from No. 18A in a south-westerly direction as detailed further in this assessment. The proposal will not impact the views from other adjacent properties due to existing development patterns and site topography.



Figure 12: Aerial photo of site and surrounds

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

95. **Comment:** The views from No. 18A to the south-west are obtained over the subject site and across boundaries of adjacent properties to the south-west. The views are gained from dwelling and private open space area at the rear of the dwelling. As the views are obtained across a boundary and over other properties, the expectation that this view can or should be protected is considered to be less likely.

The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas. The impact may be assessed quantitatively, but in many cases this can be meaningless. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

96. **Comment:** In terms of classification of impact, the proposal is likely to have a minor impact on the existing views to the south-west from No. 18A given that they are obtained over the vacant site and the existing views to the south and south-east are unaffected by the proposal.

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

97. **Comment:** The proposal significantly breaches the foreshore building line affecting the site and adjoining properties in this locality. The extent of the breach is significant, 46%, and is not supported in this case, however the view impacts are minor for 18A Algernon Street and other adjacent properties will not be impacted.
98. The proposal results in an unacceptable built form in the context of the site and given the foreshore location of the land.

4.6 Swimming pools, spas and enclosures

Control	Standard	Proposed	Complies
	(1) Swimming pools/spas should be located at the rear of properties.	The proposed pool is located in the rear yard of the property.	Yes
	(3) Swimming pools/spas must be positioned a minimum of 900mm from the	The proposed pool waterline is located at least 1.5m from all boundaries.	Yes

Control	Standard	Proposed	Complies
	property boundary with the water line being a minimum of 1500mm from the property boundary.		
	(4) In-ground swimming pools shall be built so that the top of the swimming pool is as close to the existing ground level as possible. On sloping sites this will often require excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool at the low side.	The pool is proposed at ground level.	Yes
	(7) 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 natural 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.	The proposal for the pool is satisfactory.	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	The proposal does not include fill between the pool and the boundary.	Yes

Control	Standard	Proposed	Complies
	activities carried out in the swimming pool or from the swimming pool equipment, such as cleaning equipment.		
	(10) A pool fence complying with the legislation should separate access from the residential dwelling on the site to the pool.	Pool fencing is in accordance with the relevant Australian Standards have been proposed. If the application was to be supported a condition would be imposed accordingly.	Yes
	(11) Safety and security measures for swimming pools must comply with the relevant requirements of the Swimming Pools Act and any relevant Australian Standards.	Pool to comply with NCC and relevant Australian Standard.	Yes

C4 – Foreshore Locality Controls**10. Oatley Bay (Oatley Point Reserve to Neverfail Bay)****Area 10(a)**

Control	Proposed	Complies
<u>Land based development above the FBL</u>		
The following controls apply to land based development above the FBL and are in addition to any other controls contained within this DCP:		
(1) Buildings should be sited on the block to retain existing ridgeline vegetation, where possible. Siting buildings on existing building footprints or reducing building footprints to retain vegetation is highly recommended. In this regard, Council may consider variations to setback and height requirements to retain existing ridgeline vegetation, particularly where it provides a backdrop to the waterway, but only where it can be demonstrated that the variations: (i) do not increase the visual impact of the dwelling, when viewed from the water; (ii) still achieve a built form that is in scale and proportion with the site and adjoining	The existing vegetation on the site is to be retained. The height and setbacks are compliant.	Yes

development; and (iii) the overall development complies with the floorspace requirements as contained in Part C1 Section 1.2.1.		
(2) On sites where the slope exceeds 1:8 (12.5%), dwellings should not have the appearance from any elevation of being more than three levels from the water. Such designs should be stepped, with the bulk of the development setback as far from the water as possible.	The dwelling has a two-storey appearance from the water however the dwelling has not been designed to minimise the bulk nor attempted to locate it as far from the water as possible.	No
(3) The maximum number of storeys at any point is two (2). However, in certain circumstances, Council may permit a variation to this requirement where the design of the dwelling results in a reduced building footprint and site coverage and results in the following: (i) The preservation of topographic features of the site, including rock shelves and cliff faces; (ii) The retention of significant trees and vegetation, particularly in areas where the loss of this vegetation would result in the visual scarring of the landscape, when viewed from the water, and (iii) Minimised site disturbance through cutting and/or filling of the site (See Figure 46-48).	The dwelling is three storeys within the central part of the house. Preserved. All trees are to be retained. Cut is not excessive.	Yes
(4) Facades and rooflines of dwellings facing the water are to be broken up into smaller elements with a balance of solid walls to glazed areas. Rectangular or boxy shaped dwellings with large expanses of glazing and reflective materials are not acceptable. In this regard, the maximum amount of glazed area to solid area for façades facing the foreshore is to be 50%-50%.	The rear façade has an acceptable balance of solid and glazed elements.	Yes
(5) Colours that harmonise with and recede into the background landscape are to be used. In this regard, dark and earthy tones are recommended and white and light coloured roofs and walls are not permitted. To ensure that colours are appropriate, a schedule of proposed colours is to be	Suitable colours and materials are proposed including timber and greys.	Yes

submitted with the Development Application and will be enforced as a condition of consent.		
(6) Swimming pools and surrounds should be sited in areas that minimise the removal of trees and limit impact on natural landform features (rock shelves and platforms).	The construction of the pool does not require tree removal and does not impact in natural site features.	Yes
(7) On steeper slopes, preference is given to the retention of natural stable rock ledge escarpments, as opposed to introducing retaining walls. In circumstances where it is appropriate, a landscape batter may be preferable to retaining walls in the creation of terraced areas.	All rock outcrops are retained.	Yes
(8) Adequate landscaping shall be provided to screen undercroft areas and reduce their impact when viewed from the water.	No screen planting is proposed in front of the undercroft beneath the pool deck.	No
(9) Where there is a strong design character in existing buildings, new dwellings must, when viewed from the waterway incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with that character.	There is no strong design character in existing buildings.	NA
(10) Blank walls facing the waterfront shall not be permitted. In this regard, walls are to be articulated and should incorporate design features, such as: (i) awnings or other features over windows; (ii) recessing or projecting architectural elements; or (iii) open, deep verandas.	Blank walls are not proposed.	Yes

Developer Contributions

99. The proposed development would require payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979. If the development consent is granted a condition outlining the required contributions will be imposed.

Impacts

Natural Environment

100. The proposed development will adversely affect the natural environment as the proposal significantly breaches the foreshore building line. A more sensitive design, and one that does not seek to maximise the available floor space area that resulted in less of a breach of the foreshore building line can be achieved on the site.

Built Environment

101. The proposal does not represent an appropriate planning outcome for the site on design grounds given the context of the site within the foreshore area.

102. It is acknowledged that although the site is suitable for the construction of a dwelling, the scale of that proposed in this proposal and its lack of an appropriate response to its context will provide an unsatisfactory outcome relative to the surrounding natural and built environment.

Social Impact

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

Economic Impact

104. There is no apparent adverse economic impact that is likely to result within the locality.

Suitability of the site

105. The site is zoned R2 Low Density Residential. The proposal is a permissible form of development in this zone however does not reflect the context of the foreshore locality and is unsuitable for the site.

Submissions and the Public Interest

106. The application was neighbour notified for a period of fourteen (14) days. One submission was received. The issues raised in the submissions are addressed below:

Issue	Comment
<i>Development beyond the foreshore building line</i>	The significant breach of the FBL is not supported and forms one of the reasons for refusal of the application.
<i>Extent of excavation</i>	The extent of excavation is not unreasonable for the slope of the site, however a more sensitive design is required in relation to reducing the breach of the foreshore building line, which in turn may alter the extent of cut and fill.
<i>Tree removal and earthworks already undertaken without approval</i>	Council's Compliance Unit have undertaken investigation in relation to these matters.
<i>View impacts on 18A Algernon St</i>	A minor view impact will likely occur as a result of the proposal breaching the foreshore building line as significantly as proposed. The breach of the FBL forms one of the reasons for refusal of the application.
<i>Privacy Impacts on 18A Algernon St</i>	Privacy impacts on the adjoining properties are likely due to the number of side-facing windows and the extent of the dwelling beyond the foreshore building line, which forms one of the reasons for refusal of the application.
<i>Perception of scale</i>	The bulk of the dwelling beyond the FBL forms one of the reasons for refusal of the application.
<i>Overshadowing impacts</i>	The proposal complies with the DCP control that requires north-facing neighbouring living areas and private open spaces receive a minimum of 3 hours sunlight during mid winter.
<i>Removal of the Date Palm on the</i>	The Date Palm is not proposed for removal. The applicant has clarified this through the submission of additional information during the assessment of the application.

Referrals

Council Referrals

Development Engineer

107. Council's Development Engineer has raised no objection to the proposal subject to conditions of consent should the application be approved.

Senior Environment Officer

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

Consultant Arborist

109. Council's Arborist has raised no objection to the proposal subject to conditions of consent should the application be approved.

External Referrals

Ausgrid

110. The application was referred to Ausgrid in accordance with Clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid did not raise any objection to the proposal, no conditions recommended.

Conclusion

111. The proposal has been assessed against the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013.

112. The proposal as put forward is an inappropriate response to the site, noting the significant breach of the foreshore building line. A more sensitive design, and one that does not seek to maximise the available floor space area that resulted in less of a breach of the foreshore building line can be achieved on the site.

113. Accordingly the application cannot be supported and is recommended for refusal.

Determination and Statement of Reasons

Statement of Reasons

114. The reasons for this recommendation are:

- The proposal is inconsistent with the objectives and controls of Clause 6.4 Limited development on the foreshore.
- The proposed development will have unacceptable adverse impacts on the natural and built environments.
- In consideration of the aforementioned reasons, the proposed development is not a suitable and planned use of the site.

Determination




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 DA2021/0180 for construction of a dwelling house, swimming pool and driveway on Lot 2 in DP1019189 for the following reasons:

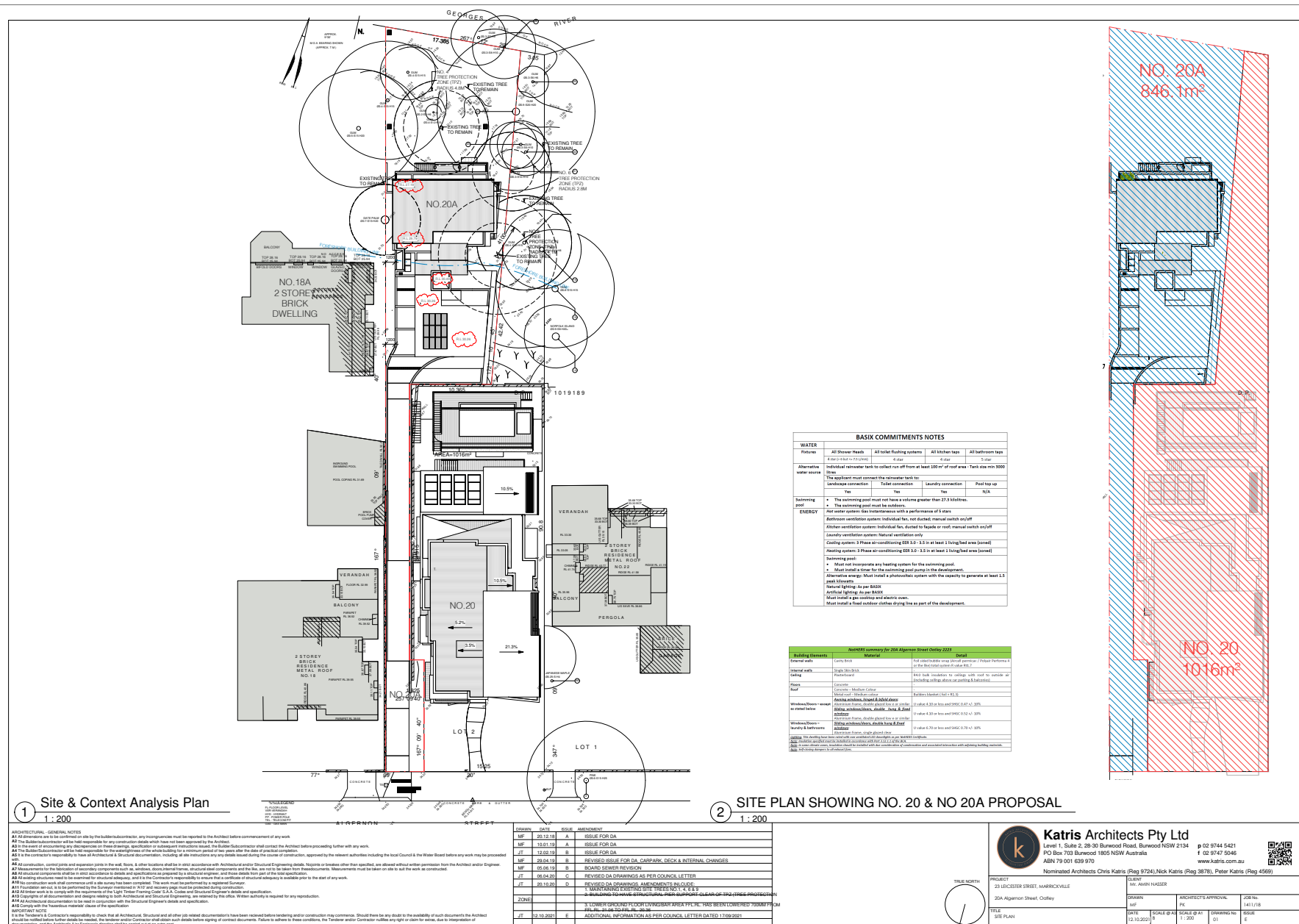
1. **State Environmental Planning Policy** – Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Chapter 4 – Coastal management in State Environmental Planning Policy (Resilience and Hazards) 2021.

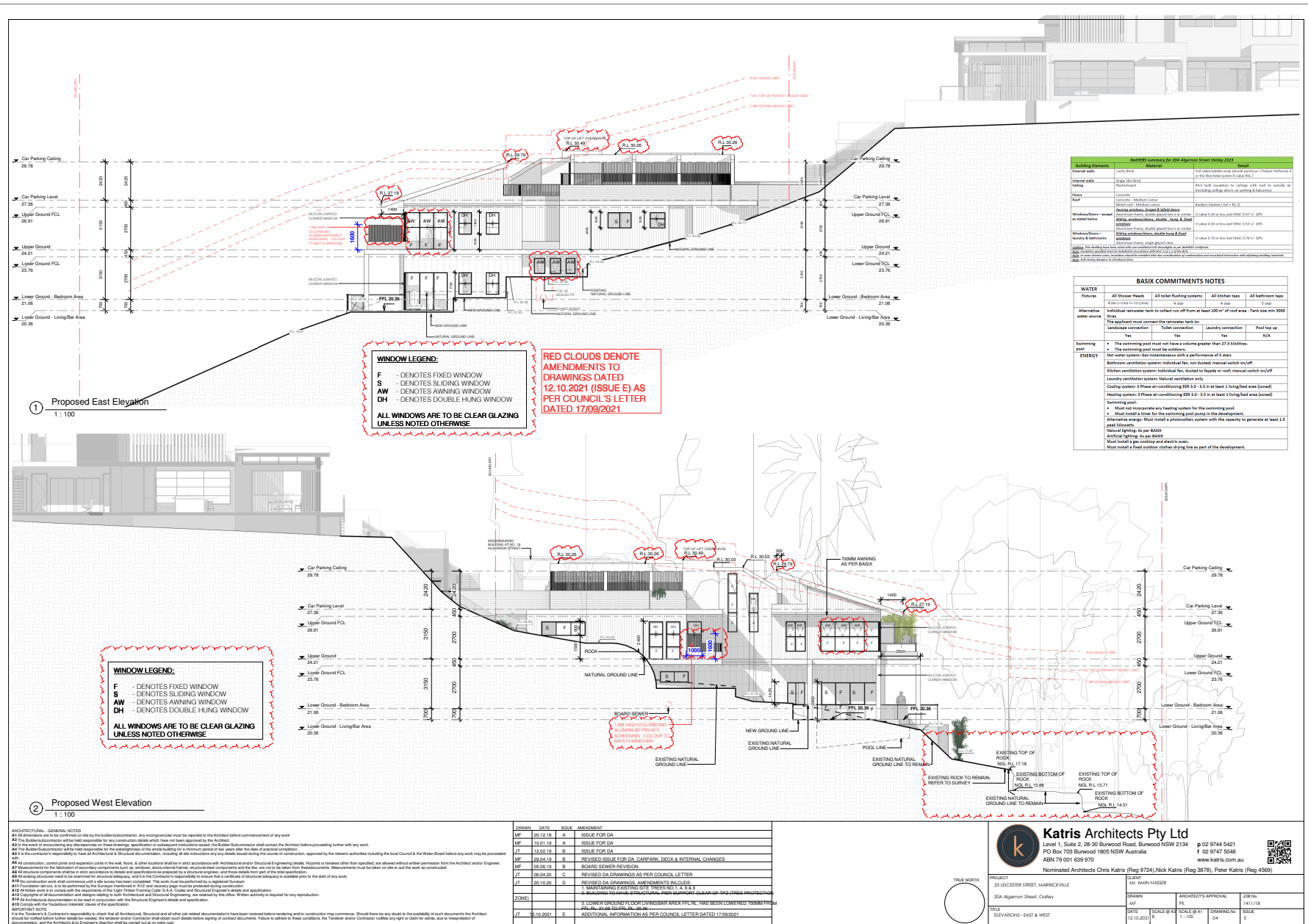
2. **Local Environmental Plan** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 6.4 Limited development on the foreshore of Kogarah Local Environment Plan 2012.
3. **Impacts on the Built Environment** - Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the character of the foreshore area.
4. **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 the extent of the breach of the foreshore building line is inconsistent with the character of the foreshore area.

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.

ATTACHMENTS

- Attachment [↓1](#)  Site Plan
- Attachment [↓2](#)  Elevations
- Attachment [↓3](#)  Elevations







REPORT TO GEORGES RIVER COUNCIL LPP MEETING OF THURSDAY, 04 AUGUST 2022

LPP035-22

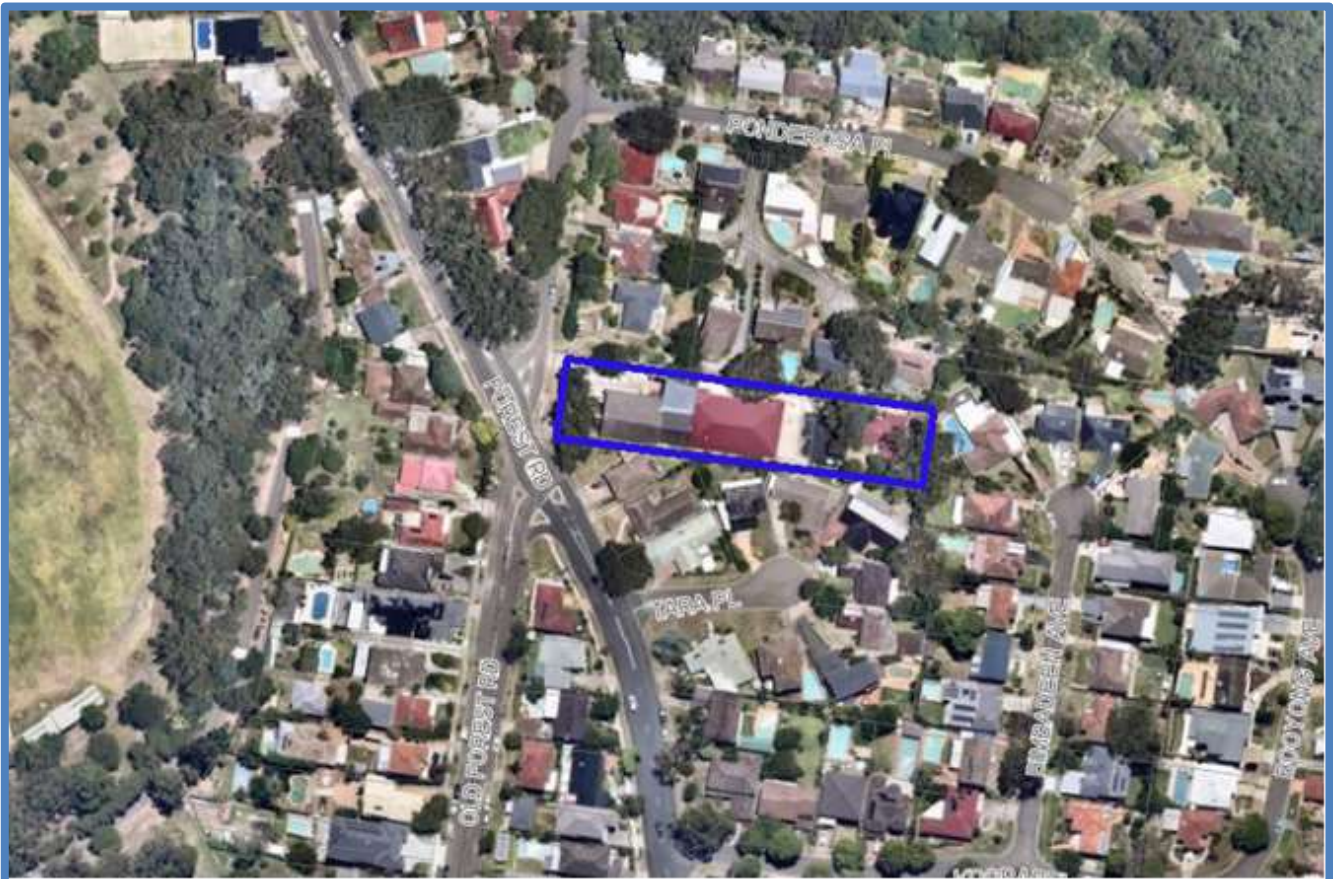
LPP Report No	LPP035-22	Development Application No	DA2021/0047
Site Address & Ward Locality	977 Forest Road, Lugarno Peakhurst Ward		
Proposed Development	Childcare Centre		
Owners	Congregational Christian Church Samoa Parish of Sydney		
Applicant	Mr T S Malifa		
Planner/Architect	Architect – JMH Living Design; Planner – Lee Environmental Planning.		
Date Of Lodgement	8/12/2020		
Submissions	For original DA: Twenty seven (27) unique submissions and two (2) proformas; One submission post LPP meeting		
Cost of Works	\$213,792.57		
Local Planning Panel Criteria	2(b) - Contentious Development - more than ten (10) submissions received and Childcare Centre (General Managers Delegation)		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental planning Policy (Transport and Infrastructure) 2021, Hurstville Local Environmental Plan 2012, Georges River Local Environmental Plan 2021, Hurstville Development Control Plan No. 1.		
List all documents submitted with this report for the Panel's consideration	LPP Report and Minutes of 7 April 2022 Statement of Environmental Effects, Architectural Plans, Landscape plan, Acoustic Report, Accessibility Report, Noise Management Plan Submission received following meeting on 7 April 2022 BCA Report, Supplemnetary Acoustic Statement, Acoustic Certification, Emergency Plan, Green Travel Plan, Plan of Management		
Report prepared by	Senior Development Assessment Planner		

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

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

Site Plan



Executive Summary

1. This report has been prepared following the deferral of the subject application (DA2021/0047) by the Local Planning Panel (the Panel) at its meeting on 7 April 2022.

2. The subject site is known as 977 Forest Road, Lugarno.
3. The proposal is for the addition of a childcare centre to the lower ground floor of an existing church, including outdoor play space for 34 children.
4. The application was considered by the Panel on 7 April 2022. The Panel resolved to defer consideration of the application to allow the applicant to submit additional information.
5. The report and minutes of the meeting on 7 April 2022 have been provided to the Panel separately.
6. The Panel deferred their decision due to “*Insufficient information for the Panel to make a determination.*” and requested the applicant provide the following within 90 days (6 July 2022) of the LPP meeting on 7 April 2022:

1. BCA Compliance Report and Upgrading Criterion

The applicant is to provide a Building Code of Australia/National Construction Code report prepared by an appropriately qualified Building Certifier that details the current non-compliances of the area where the childcare centre is to be fitted out and used, together with pedestrian access to this space, and including accessible parking provision.

This report is to address the following:

- *All non-compliances that exist addressing Section, C, D, E and F of the Code.*
- *The upgrading criterion that needs to be undertaken; and*
- *Any performance solutions that will be implemented as part of the process and a statement from an appropriately qualified professional as to the nature of the performance solution sought.*

Should the outcomes of this report require additional mechanical ventilation to be implemented, the details and location of condenser units are to be annotated on the plans and the acoustic report will need to be updated to address the additional noise resulting from the building upgrades.

If the report results in the base building and external elements needing to be amended and or demolished and rebuilt to provide compliance, this work will need to form part of the application and be provided on the plans with all impacted plans and documents updated for consistency.

If unencumbered space is impacted by the upgrade works, consideration needs to be given to the child numbers and compliance with the Childcare SEPP and Guideline.

2. Plan of Management

Submission of a Plan of Management satisfying the matters set out below as a minimum:

- (i) *Hours of operation to be:*
 - (a) *Monday to Friday 7am to 6pm.*

- (b) *Saturdays, Sundays and Public Holidays – **closed**.*
- (ii) *Between the approved operating hours of Monday to Friday 7am – 6pm, ALL indoor and outdoor areas of the childcare centre shall be used exclusively for the approved use of the childcare centre;*
- (iii) *No other use of the site other than the childcare centre, is permitted during the peak drop off and pick up times on Monday to Friday, between: 7am to 10am and 2:30pm – 6pm;*
- (iv) *All events and other uses of the site on Monday to Friday, are to occur between 10:30am and 2pm only. This is to enable setup and pack down, and dismissing of crowds prior to 2:30pm;*
- (v) *Other uses and activities Monday to Friday (including but not limited to weddings, funerals, community gatherings, youth group, counselling, worship, singing/choir, health and wellness) carried out within the site shall cease by 6:30am (30 minutes prior) to the opening of the centre at 7am, and shall not commence until 6:30pm (30 minutes) after the closing of the childcare centre;*
- (vi) *Number of Children: the maximum number of children at the centre is thirty – four children (34), consisting of:*
 - (a) *Twelve (12) children aged between 0 -2 years*
 - (b) *Twelve (12) children aged 2 – 3 years*
 - (c) *Ten (10) children aged between 3 – 5 years*
- (vii) *Restrictions on the use of the carpark in the front setback of the site: The car park within the front setback of the site is not to be used by staff or the residents of the dwelling at the rear of the site. These spaces are to remain free and unobstructed during the hours of operation of the childcare centre during:*
 - (a) *Drop off and pick up times - Monday to Friday 7am to 10am and 2:30 – 6pm, and*
 - (b) *10:30am-2:30pm for any other uses on the site.*
- (viii) *Use of staff carparking at the rear of the site;*
 - (a) *The marked car parking at the rear of the site, adjacent to the outdoor play area, is for staff parking only and shall not be used for residential purposes.*
 - (b) *All vehicles associated with the dwelling at the rear of the site shall use the parking along the northern boundary within the curtilage of the dwelling, including the garage and on driveway parking. Any vehicles associated with the residential use shall not obstruct access to the rear marked car park.*
- (ix) *Delivery Vehicles (excluding Waste Collection Vehicles):*
 - (a) *Delivery - including loading and unloading is to be undertaken wholly within the rear parking area of the site.*
 - (b) *No deliveries, loading and unloading are to occur in the front parking area of the site.*
 - (c) *No deliveries, loading or unloading associated with the premises are to take place outside the approved hours of delivery, being 10am - 2pm, Monday to Friday.*
- (x) *Evacuation measures/procedures for flood/inundation events, including a Flood Emergency and Evacuation Management Plan attached to it;*

- (xi) *Details as to how the operation of the child care centre is to comply with noise levels and relevant recommendations as per the acoustic report submitted with the application: Proposed Child Care Centre. 977 Forest Road, Lugarno. Acoustic Report" Ref: 1018046 R01N 977 Forest Road Lugarno ENV.docx dated 13 October 2021 undertaken by Acousticworks;*
- (xii) *The response to the request for information Letter: Reference: 1018046 L05A 977 Forest Road Lugarno ENV RFI response.doc, dated 13 October 2021, prepared by Acoustic Works, is to be amended to review the hours of play to ensure they are between the proposed operating hours of 7am to 6pm Monday to Friday;*
- (xiii) *Details regarding the use of the store room, nappy change room, bottle room and cot room, for the sole purpose of the child care centre only;*
- (xiv) *Outdoor play space staff supervision plans;*
- (xv) *Clear identification of hours for outdoor play, including any noise levels required to be compiled with;*
- (xvi) *Clear identification of the number of children and age groups permitted outdoors at any one time;*
- (xvii) *Clear identification of the number of visitor and staff parking spaces, including pick up and drop off times;*
- (xviii) *Clear identification of areas of restricted staff parking at the rear carparking area of the site, in order to improve the availability of parking for users of the childcare centre wholly within the site in the marked front car park;*
- (xix) *Details of waste collection, including persons responsible for putting out/collecting bins;*
- (xx) *Measures to discourage kerbside parking by child care centre staff and visitors in surrounding streets;*
- (xxi) *Measures on how the operator of the childcare centre and owner of the site and property manager will effectively manage and respond to resident complaints:*
 - (a) *keeping a complaints register; and*
 - (b) *provisions for regular reporting to Georges River Council, including if complaints are made;*
- (xxii) *Details of how each parent /carer is to receive a formal induction into the childcare centre and advised on the Policies and Procedures in the Plan of Management;*
- (xxiii) *A green travel plan is to be included in the Plan of Management.*

7. On 5 July 2022 the applicant provided the following additional information:
 - a. Architectural Plans Revision C;
 - b. BCA report;
 - c. Supplementary Acoustic Statement;
 - d. Acoustic Certification;
 - e. Emergency Plan;
 - f. Green Travel Plan; and
 - g. Plan of Management.
8. The additional BCA Report was reviewed by Council's Building Surveyor who, in summary, provided the following advice (the full advice has been provided to the Panel under separate cover):

“The addendum to this report does have some regard to BCA report criterion set out in the minutes of the LPP of 7/4/22 however note that this is not a comprehensive assessment and neither of the authors appear to be appropriately qualified in terms of fire safety related performance solutions.

It is recommended that a BCA report that has regard to current plans under assessment, the existing building and LPP criterion, from a qualified professional in fire safety and other non-compliant matters requiring performance solutions be submitted in order to complete Building Surveyor comments for the proposed development.

A disabled access report has not been provided and should be requested to ascertain if significant design changes are required to the development The emergency Plan submitted appears to be a Fact Sheet for general guidance in preparing such a plan and not a plan that is specific to this development.”

9. The supplementary acoustic material submitted does not address the requirements of the Panel.
10. The Emergency Plan submitted does not address the requirements of the Panel. The applicant has submitted a fact sheet for Emergency Plans. Further detail is discussed later in this report.
11. The Green Travel Plan submitted does not address the requirements of the Panel. The document lacks detail and fails to address a number of key elements of a Green Travel Plan. Further detail is discussed later in this report.
12. The Plan of Management submitted generally provides the information required by the Panel in their decision to defer the determination of the application, subject to minor edits, which could be conditioned if the application were to be approved.

Zoning and Permissibility

13. The subject site is zoned R2 Low Density Residential under the provisions of Hurstville Local Environmental Plan 2012 (HLEP 2012). The proposal involves alteration and additions to an existing place of public worship. The alteration and addition works are ancillary to the primary use of place of public worship which is a permitted use with consent as per HLEP 2012).
14. A “*centre-based child care facility*” is a permissible use within the zone with development consent, and the proposed use is permissible as it falls under this definition.

Submissions

15. The original application as lodged was placed on neighbour notification between 25 February 2021 and 11 March 2021. Twenty seven (27) unique submissions and two (2) proforma letters, were received objecting to the proposed development. These matters were discussed in the report presented to the LPP on 7 April 2022.
16. On 24 April 2022, an objector to the DA, wrote to Council regarding the outcome of the LPP meeting of 7 April 2022, this is discussed in further detail below.

Conclusion

17. The development application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plans.
18. The submission of additional information in response to the minutes of the LPP meeting of 7 April 2022 fails to provide the required level of information and as a result the application is recommended for refusal for the reasons outlined at the end of this report.

Report in Full

19. The proposal is for a 34 place child care centre located at the lower ground floor of an existing place of public worship, with indoor play areas located within an existing approved Sunday school area (approved under 06/DA-372 as modified), and conversion of an existing paved area into outdoor play space.
20. The proposed operational details are as follows:
 - Hours of Operation: 7:00am to 6pm, Monday to Friday.
 - Number of Children: Thirty- Four (34) children aged 0 year to 5 years of age.
 - Number of Staff: Seven (7).
21. The parking is proposed as follows – six (6) spaces at the rear of the childcare centre for staff parking, and five (5) spaces in the front setback for visitor/parent parking.
22. A site plan is provided in Figure 1 below:



Figure 1: Site plan

Background

23. A summary of previous applications associated with the site are provided below:

Application	Decision	Date determined	Event
06/DA-372 (20060372)	Approved - Deferred commencem ent	7 March 2007	Deferred commencement development consent granted for an extension to the existing church building.
	Activated	21 May 2007	Deferred commencement activated. Additional conditions imposed (37A, 64A, 79A).
07/CC-162	Approved	13 March 2008	Council issued Construction Certificate issued for 06/DA-372.
11/DA-236	Refused	15 July 2011	Development application for a

Application	Decision	Date determined	Event
			childcare centre for 46 children refused.
06/DA-372 REV 01	Approved	12 April 2012	Modification to 06/DA-372 approved to increase floor area of lower floor and increase excavation for new hall and use lower floor for Sunday school classes.
06/DA-372 REV 02	Approved	19 June 2012	Modification to 06/DA-372 for church extension - change roof materials from tile to colorbond.
PRE2014/0010	Formal advice provided	17 September 2014	Pre-lodgement application for a childcare centre within the place of public worship.
OCC2014/0194	Approved (Interim Occupation Certificate)	15 July 2015	Council issued Interim Occupation Certificate issued for 06/DA-372 (limited to Church hall only).
DA2015/0443	Refused	23 December 2015	Development application for fit out and use of ground floor of existing church as a childcare centre for 34 children, associated landscaping and car parking works .
REV2016/0030	Expired	29 March 2017	Section 82A Review of Determination - Fit out and use of ground floor of existing church building to be used as a childcare centre, associated landscaping and car parking works.
Appeal 2017/103967	Appeal dismissed	19 June 2017	<p>Appeal lodged after S82A application (to DA2015/0443) was not determined within required period.</p> <p>Appeal dismissed as Class 1 appeal was not lodged within the statutory period.</p> <p>https://www.caselaw.nsw.gov.au/decision/59475045e4b058596cba7b67</p>
DA2018/0570	Rejected	07 January 2019	Development application for Early Childhood Education facility within the existing building.
DA2019/0042	Refused	12 November 2019	Child-care centre at the ground floor of the existing Place of Public Worship.
REV2020/0001	Refused	8 May 2020	Review of Determination of Application No: DA2019/0042 Fit-out and use of the ground floor of

Application	Decision	Date determined	Event
			<p>an existing church building to be used as an early childhood education facility for 34 children, associated landscaping and car parking works.</p> <p>Application was initially deferred by the Local Planning Panel for the lodgement of additional information.</p>
PRE2020/0079	Formal advice provided	31 August 2020	Fit-out and use of the ground floor of an existing church building to be used as an early childhood education facility for 34 children, associated landscaping and car parking works.
MOD2020/0209	Approved	20 May 2021	Modification for Consent No: DA2006/DA-372 for extension to existing church building to provide partitioning inside the lower ground area.

24. The history of the current application is as follows:
- The application was lodged February 2021;
 - Additional information was requested of the applicant on 2 July 2021 including:
 - o Evacuation Plan;
 - o Detailed Site Contamination Plan;
 - o Stormwater Plans;
 - o Flood Report;
 - o Acoustic Report;
 - o Noise Management Plan; and
 - o BCA Report.
 - Additional information was submitted by the applicant in August and October 2021.
 - The application was heard at the LPP meeting of 7 April 2022 (with a recommendation for approval), where it was deferred and additional information requested.
 - Additional information was submitted in July 2022, which is the subject of this report.

Planning Assessment

25. 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.
26. A full assessment against all relevant Legislation, Environmental Planning Instruments, and Policies was undertaken as part of the LPP report prepared for 7 April 2022.

Assessment of Additional Information

27. The following table summarises the information submitted and an assessment by Council staff. The information submitted is not an adequate response to the requests of the Panel.

Information Requested	Submission	Comment
BCA Compliance Report and Upgrading Criterion	Letter prepared by My Building Certifier	<p>The letter fails to address the proposed plans for which consent is sought as part of this application. Council's Building Surveyor has reviewed the additional information submitted and identified key issues for why the application cannot be supported.</p> <p>The issues identified will require alteration to the layout of the premises for use as a child care centre.</p> <p>In the absence of plans that demonstrate compliance with the BCA, staff have no confidence that the proposal can achieve the level of compliance required by the Child Care Planning Guidelines were the plans to be amended to address the BCA issues at Construction Certificate stage.</p> <p>In this regard it is not considered that the plans provide any certainty with regard to compliance with the matters for consideration under S4.15 of the EP&A Act, 1972.</p> <p>The Panel's request has not been satisfied.</p>
Plan of Management	Plan of Management submitted.	<p>Generally satisfactory however the following corrections are required and could be conditioned if the application were to be approved:</p> <p>(iii) 109am to be 6pm and 2,30pm to be 2.30pm.</p> <p>(iv) 2.30pm to be 2.00pm.</p> <p>(v) 6.309pm to by 6.30pm.</p> <p>(x) The Evacuation Plan has not been submitted – refer below.</p> <p>(xi) Details have not been provided as to how the centre will comply with noise levels.</p> <p>(xvi) The number of children during each play time must be specified.</p> <p>(xix) The name of the applicant should be replaced with 'Property Manager'.</p> <p>(xx) No measures are described to</p>

Information Requested	Submission	Comment
		discourage kerbside parking. (xxxiii) The Green Travel Plan is unsatisfactory – refer below. The Panel's request has not been satisfied.
Additional information as part of POM:		
Flood Evacuation and Emergency Management Plan	Fact Sheet on Evacuation Plans	The applicant has submitted a fact sheet on evacuation plans for child care centres, not an Evacuation Plan for the proposed centre. A Flood Evacuation and Emergency Management Plan should contain site specific information on flood behaviour, flood warnings, flood management design features, flood and emergency responses. The Panel's request has not been satisfied.
Green Travel Plan	Green Travel Plan	Council's Senior Traffic Engineer has reviewed the GTP and provided the comments below. The Panel's request has not been satisfied.
<p><u>Comments on Green Travel Plan:</u></p> <p>The document lacks detail and needs to be expanded to address the following essential elements of a Green Travel Plan:</p> <ul style="list-style-type: none"> (i) Define the direction and purpose of the travel plan and set targets that are specific, measurable, achievable and time bound. (ii) List actions that will help achieve the targets. Actions should provide incentives for using sustainable transport initiatives. (iii) Include a strategy for promoting and marketing the actions. (iv) Indicate financial support and human resources that will aid the implementation, monitoring, reviewing and continual improvement of the plan. (v) Indicate a proposed monitoring and review process that sets out a systematic approach to measuring the impact of the plan. Nominate a person/position in the centre that will be the travel plan coordinator. <p>The "MAP" included in the applicant's plan should not just show bus stops but should include bus route maps and how those routes link to other transport nodes such as Riverwood Station on the T8 rail line and Mortdale Station on the T4 line.</p>		

28. The applicant also submitted Architectural Plans Revision C. The Panel did not request amendments to the plans and other than an incomplete reference to changes on Sheet 02-03 of the Revision C amended plans, there is no comprehensive description of all changes or the clear reasons for them. Furthermore, they are not identified by clouding using standard architectural drawing conventions and the plans are unacceptable as the basis for a proper assessment.

Submissions

29. A further submission was received by Council, in response to the Panel meeting held on 7 April 2022.
30. The new planning related issues raised in relation to the determination meeting of 7 April 2022, are as follows:

Issue 1: The applicant did not request consent to conduct any concurrent church activities on the site however several conditions of consent relate to other uses on the site.

Issue 2: The acoustic report submitted by the applicant assesses the acoustic impact of the childcare centre only, however given the recommended conditions approval for other uses on the site a revised acoustic report should be provided. There should also be a revised traffic assessment submitted given to the other uses permitted by the recommended conditions.

Issue 3: Why is there no recommended condition of consent that requires “no drop off or pick ups” to occur in the cul-de-sacs in the vicinity of the site.

Comment: As part of the original assessment prepared for the LPP on 7 April 2022, Council considered that in order to address the objector concerns regarding other uses of the site, in addition to the Child Care centre, that conditions of consent would be recommended regarding use of the remainder of the site, whilst the Childcare Centre was in operation between 7am and 6pm Monday to Friday. The inclusion of these conditions was considered reasonable in order to reduce impacts upon residential amenity.

Section 7.12 Contributions

31. Section 7.12 contributions are applicable in this instance in accordance with the Georges River Council Local Infrastructure Contributions Plan 2021 (section 7.11 and section 7.12) and would be conditioned if the application were to be approved.

Conclusion

32. The development application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plan and Development Control Plans.
33. The submission of additional information in response to the minutes of the LPP meeting of 7 April 2022 fails to provide the required level of information and as a result the application is recommended for refusal for the reasons outlined at the end of this report.

Determination And Statement of Reasons

Statement of Reasons

34. The reason for this recommendation is:

- The additional information submitted following deferral of the determination by the Panel on 7 April 2022 is insufficient in detail for the extent of the proposed works and to understand the interrelationship of uses on the site.

Determination

35. 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 DA2021/0047 for a fit out of part of an existing building, for a 34 place childcare centre, at Lot 2 DP 405732, known as 977 Forest Road, Lugarno, for the following reasons:

- 1. Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, *Educations and Care Services National Regulations* and the *Child Care Planning Guidelines NSW 2017* as they relate to provisions in terms of ensuring and illustrating that the internal floor space is appropriately designed to be naturally ventilated and naturally lit.
- 2. Adequacy of Information** - Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development fails to demonstrate compliance with relevant standards and controls in relation to:
 - i. Acoustic impacts on neighbouring properties;
 - ii. Emergency flood evacuation;
 - iii. Solar access and natural ventilation.
- 3. Impacts on the Environment** - Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the built environment as the proposal fails to adequately demonstrate the building is suitable for the use of child care centre.
- 4. Public interest** - Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent within the locality.

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.

ATTACHMENTS

Attachment [1](#)  Architectural Plans

Attachment [2](#)  Landscape Plan



STREET VIEW

DRAWING LIST				
SHEET NUMBER	SHEET NAME	AMENDMENT	DESCRIPTION	SHEET ISSUE DATE
01 - 01	COVER SHEET		DEVELOPMENT APPLICATION	30.9.2021
02 - 01	SITE PLAN		DEVELOPMENT APPLICATION	30.9.2021
02 - 02	DEMOLITION PLAN, WASTE MANAGEMENT PLAN AND EVACUATION / ESSENTIAL SERVICES PLAN		DEVELOPMENT APPLICATION	30.9.2021
02 - 03	FLOOR PLANS		DEVELOPMENT APPLICATION	30.9.2021
02 - 04	FLOOR PLANS		DEVELOPMENT APPLICATION	30.9.2021
02 - 05	EXISTING ENTRY & EXIT		DEVELOPMENT APPLICATION	30.9.2021
02 - 06	PROPOSED VISITOR / CHILDCARE PARKING - ENTRY / EXIT		DEVELOPMENT APPLICATION	30.9.2021
02 - 07	PROPOSED CHURCH / CHILDCARE STAFF REAR PARKING - ENTRY / EXIT		DEVELOPMENT APPLICATION	30.9.2021
02 - 08	DRIVEWAY PLAN AND SECTIONS		DEVELOPMENT APPLICATION	30.9.2021
02 - 09	AREA PLANS		DEVELOPMENT APPLICATION	30.9.2021
03 - 01	ELEVATIONS		DEVELOPMENT APPLICATION	30.9.2021
03 - 02	SECTIONS		DEVELOPMENT APPLICATION	30.9.2021
04 - 01	SHADOW DIAGRAMS - SUMMER SOLSTICE		DEVELOPMENT APPLICATION	10.12.2020
04 - 02	SHADOW DIAGRAMS - WINTER SOLSTICE		DEVELOPMENT APPLICATION	10.12.2020
04 - 03	SHADOW DIAGRAMS - EQUINOX		DEVELOPMENT APPLICATION	10.12.2020
05 - 01	PERSPECTIVES		DEVELOPMENT APPLICATION	10.12.2020

8...30.9.2021
- DECORATIVE PAINTED PATTERNS ADDED TO ACOUSTIC WALLS
- VISIBILITY CHARTS AND AND CHILDCARE KITCHEN ARE SEPARATE
- VEHICLE TURNING PATHS ARE REMOVED FROM FIRST AND GROUND FLOOR
PLANS
A...10.12.2021
- MORE WALL TO INCREASE OUTDOOR PLAY SPACE TO ACCOMMODATE
LANDSCAPE DESIGN
- CLIMB EVACUATION PLAN

AMENDMENTS

PROPOSED CHILDCARE CENTRE WITHIN EXISTING CHURCH FACILITIES

FOR

T MALIFA

AT

977 FOREST ROAD LUGARNO NSW 2210

DEVELOPMENT APPLICATION

30.09.2021

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JMH Living Design

ABN 41 280 852 869

John Hatch - Principal

Mobile: 0447 481 736

E-mail: john@jmlivingdesign.com.au

Website: www.jmlivingdesign.com.au

Office

Location: 1st Floor, 8 Park Lane,

Cambridge, NSW 2299

Postal Address: PO Box 74,

Cambridge, NSW 1450

Telephone: (02) 9540 3426

Industry Member

of

bda

BUILDING DESIGNERS

ASSOCIATION OF AUSTRALIA

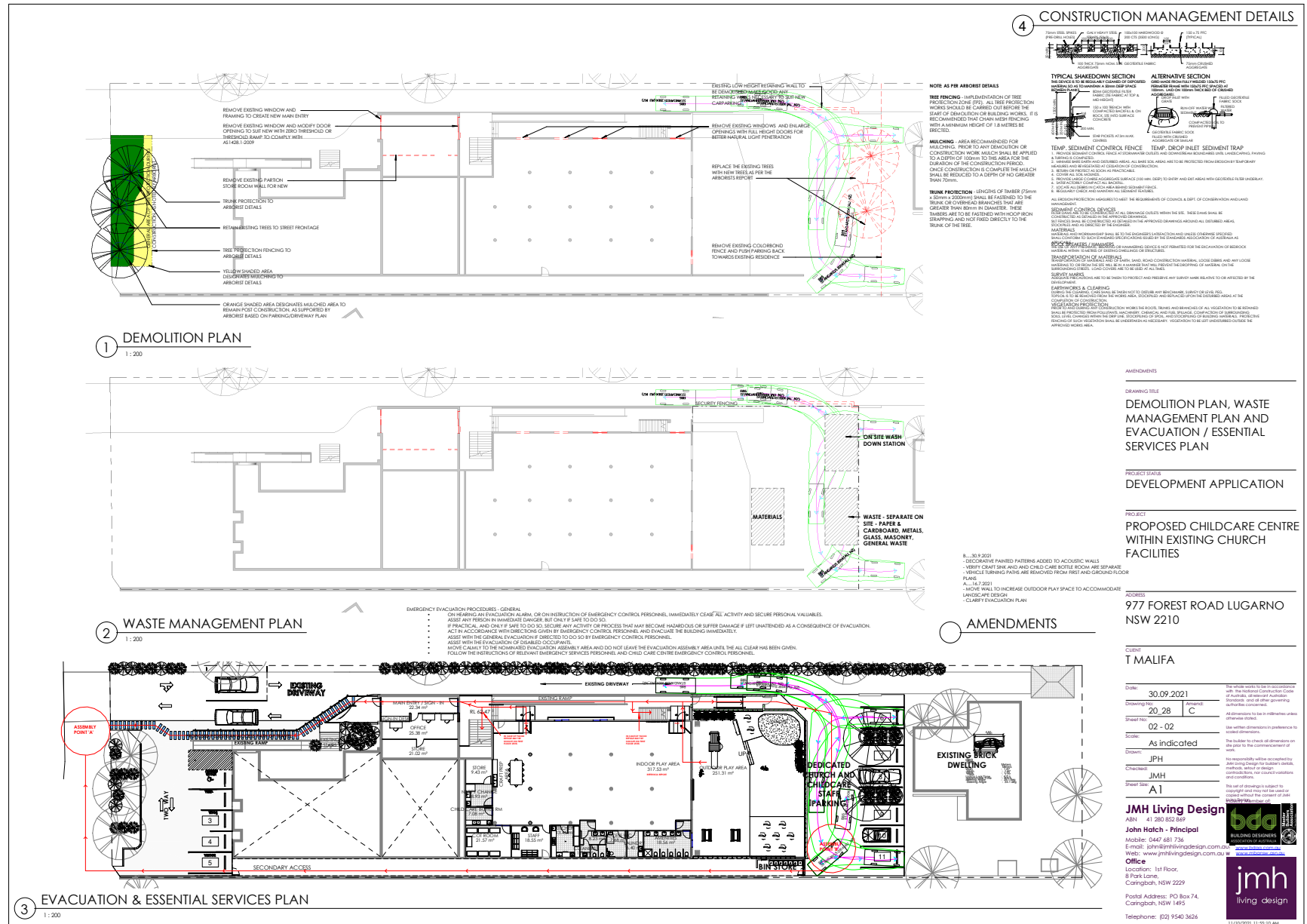
Master

Builders

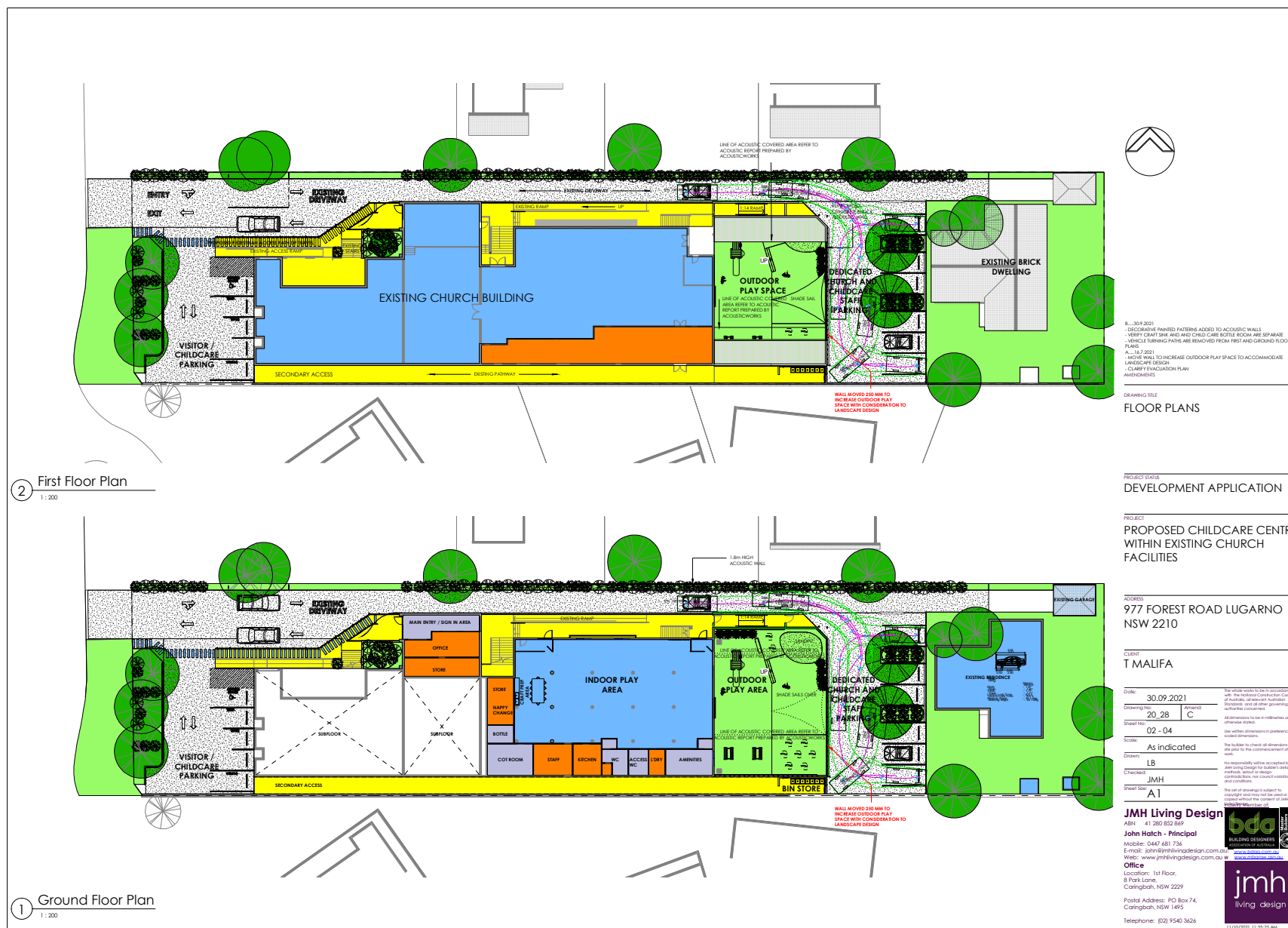
Association

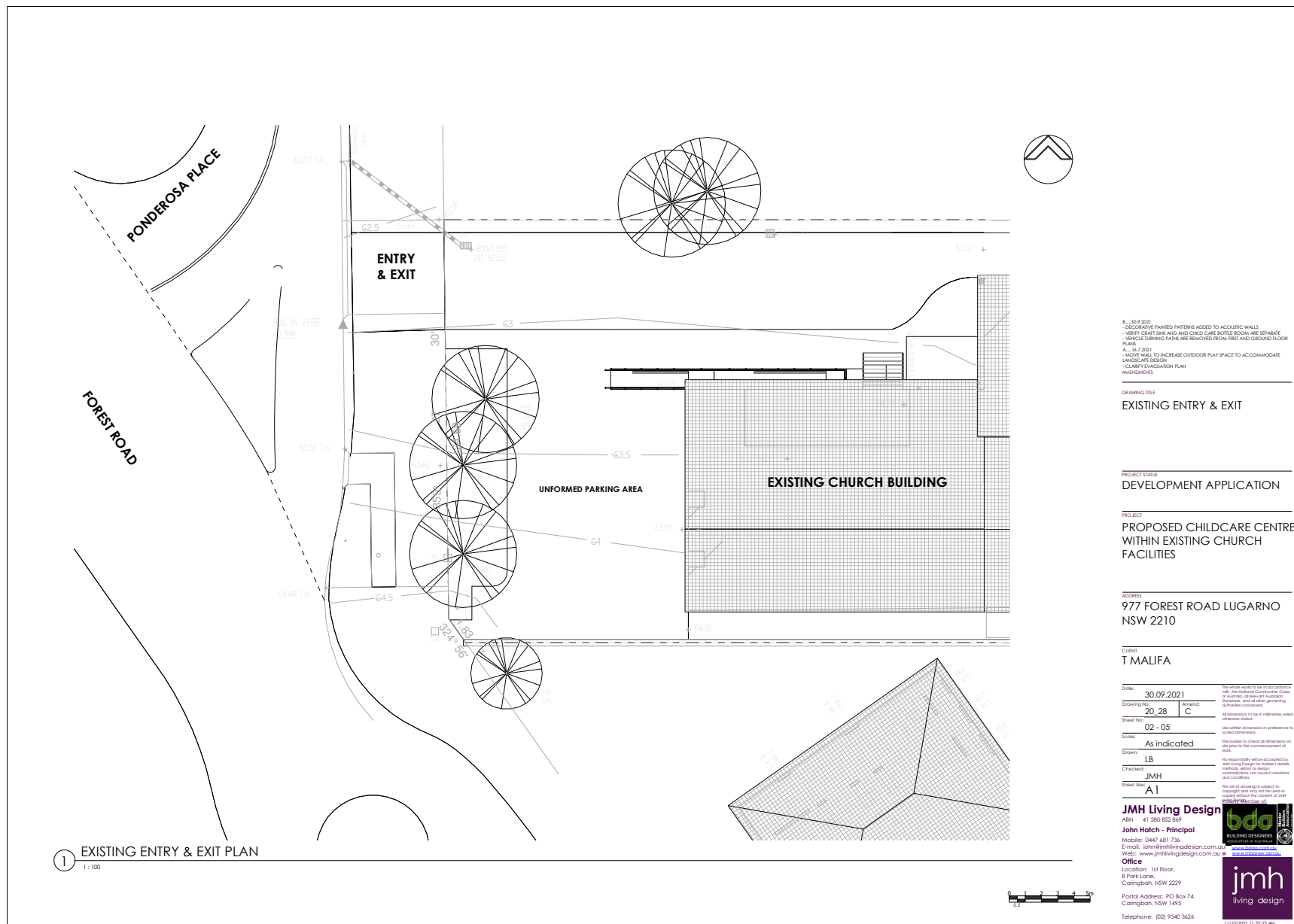
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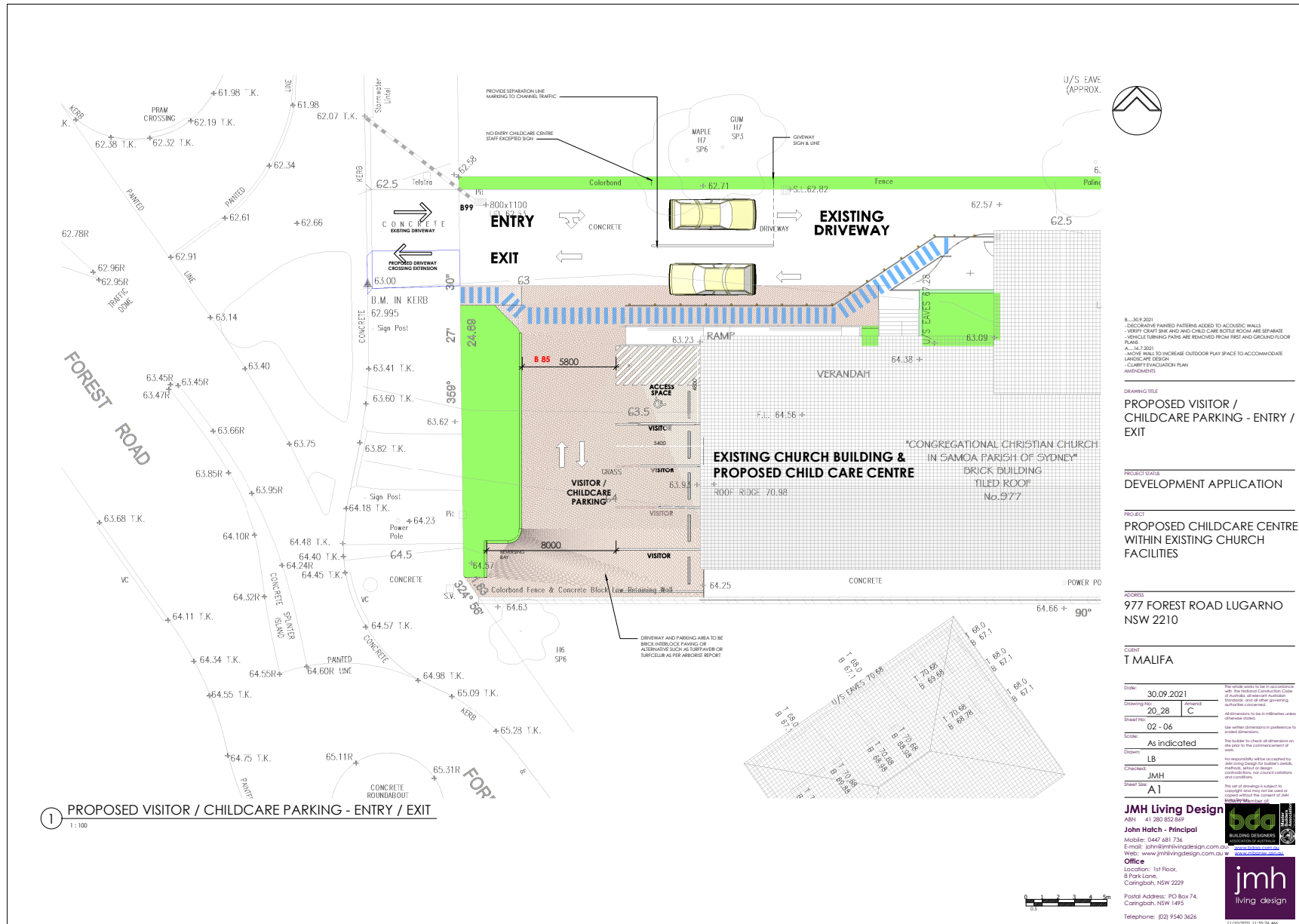


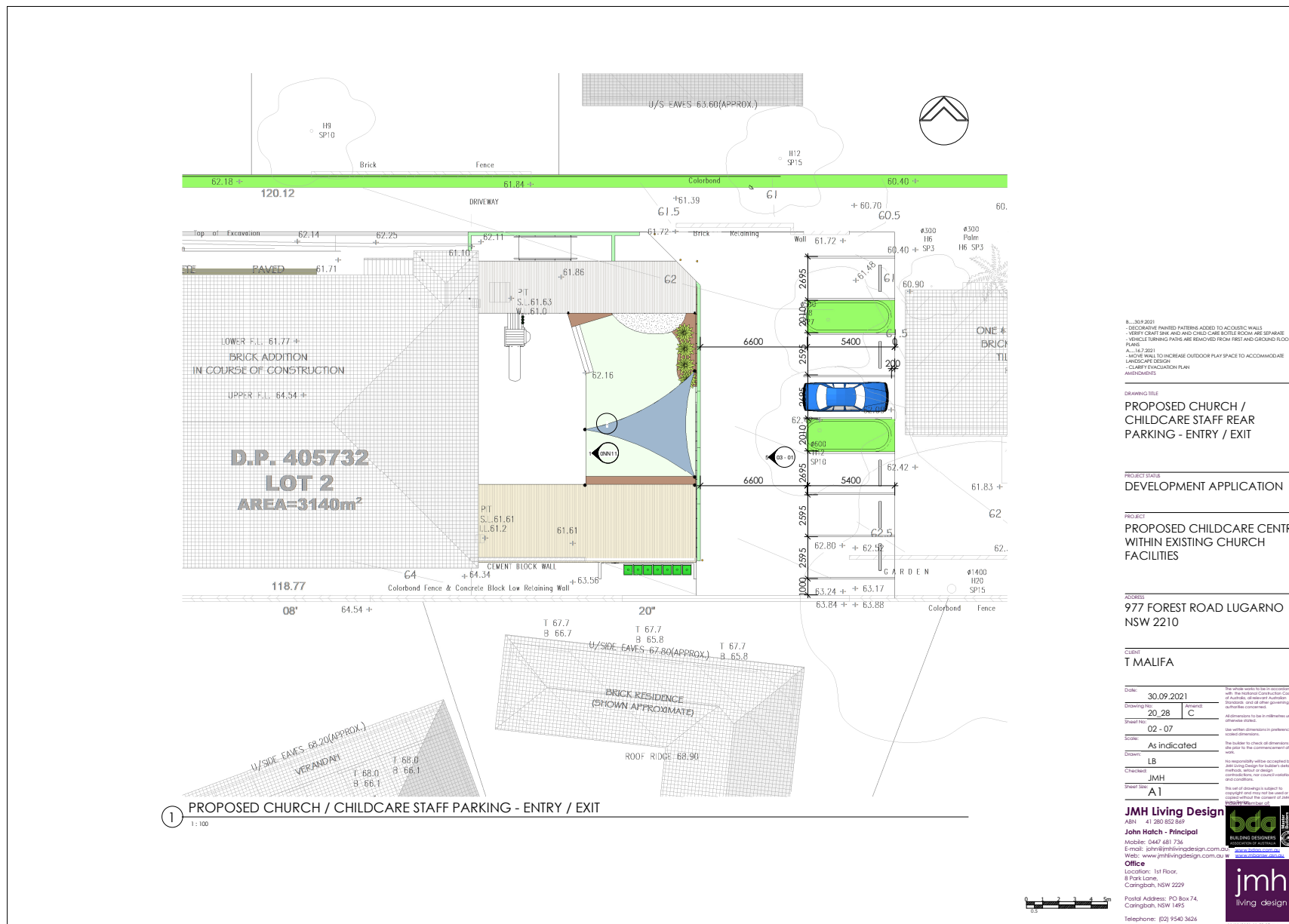


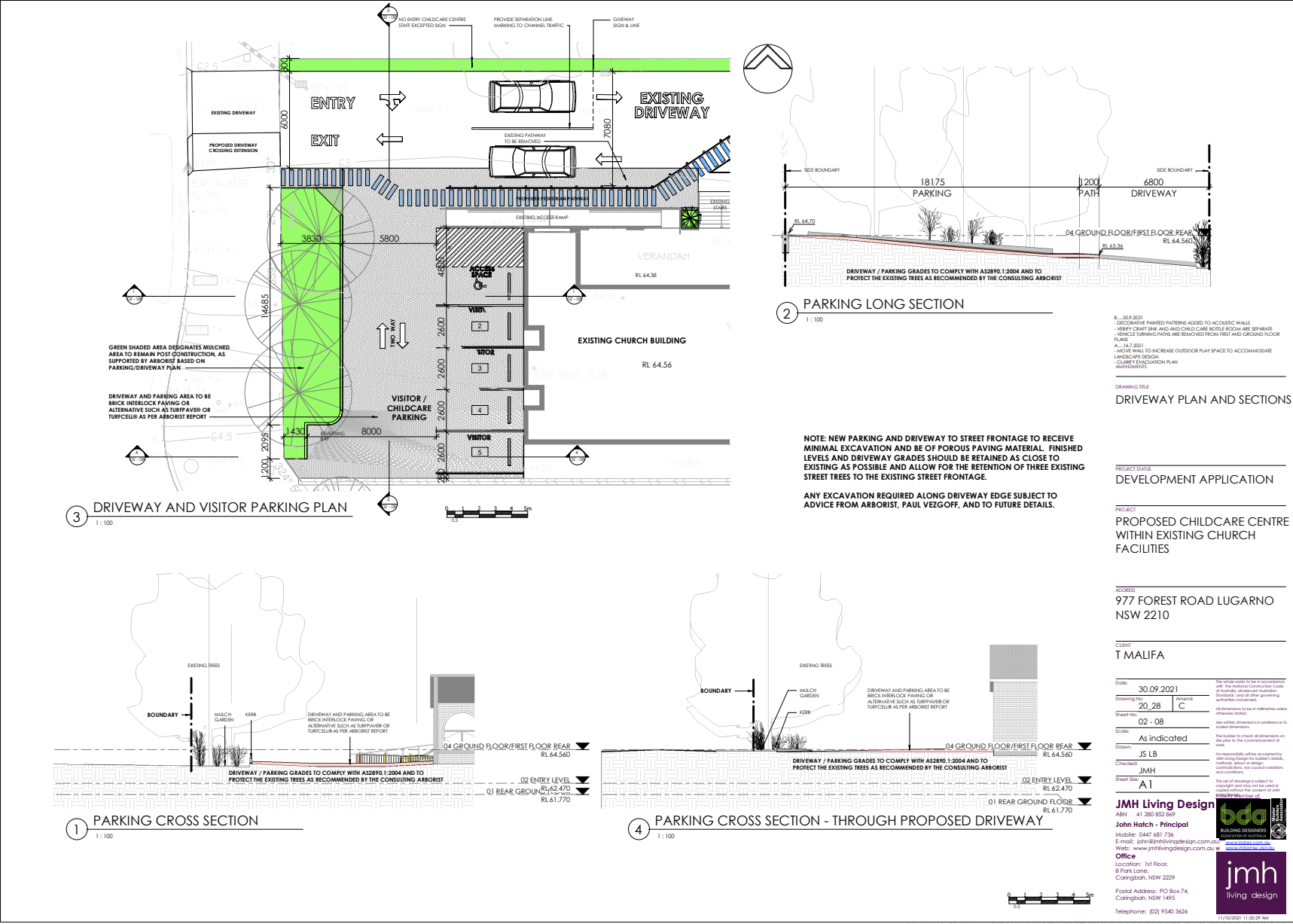


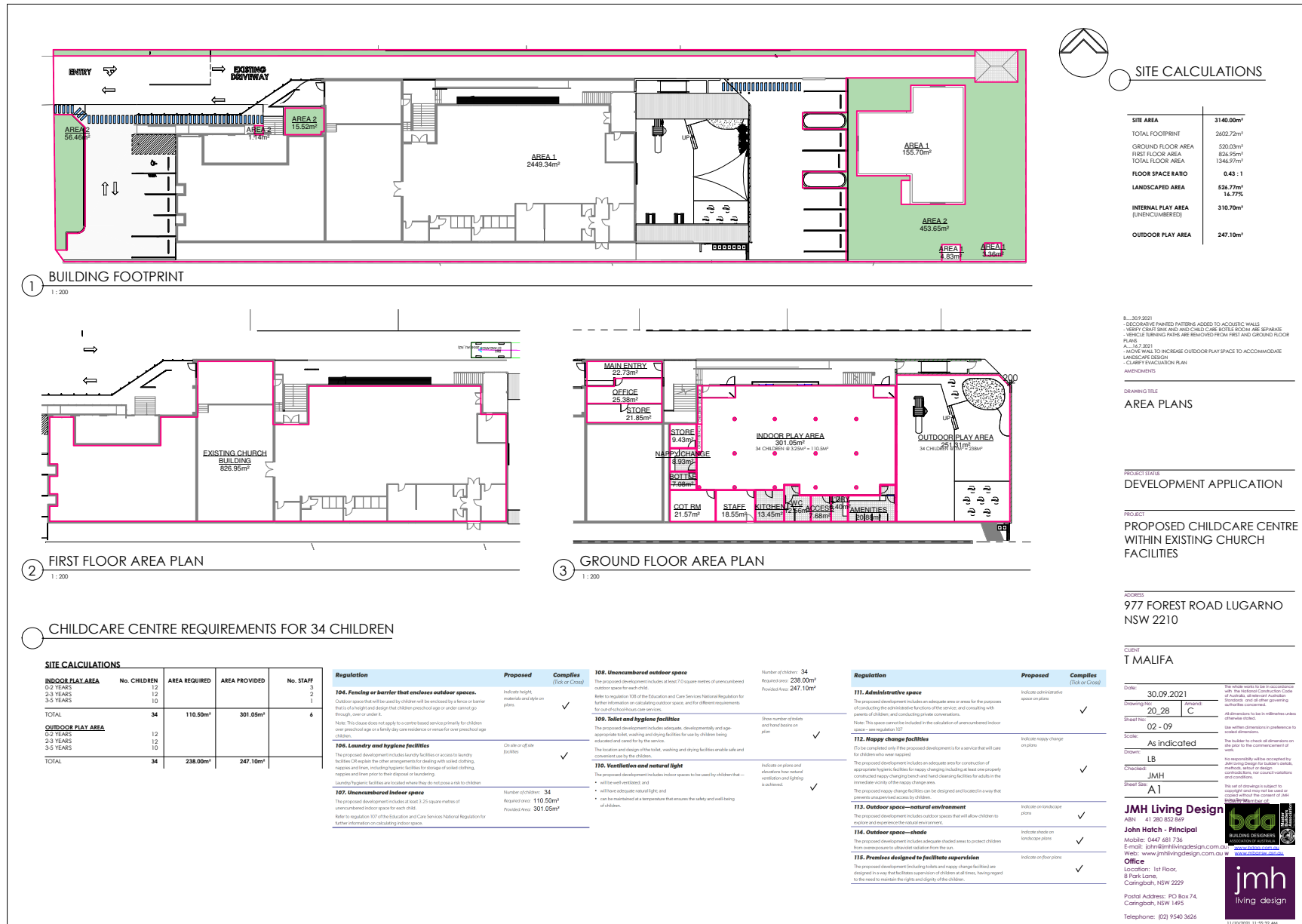


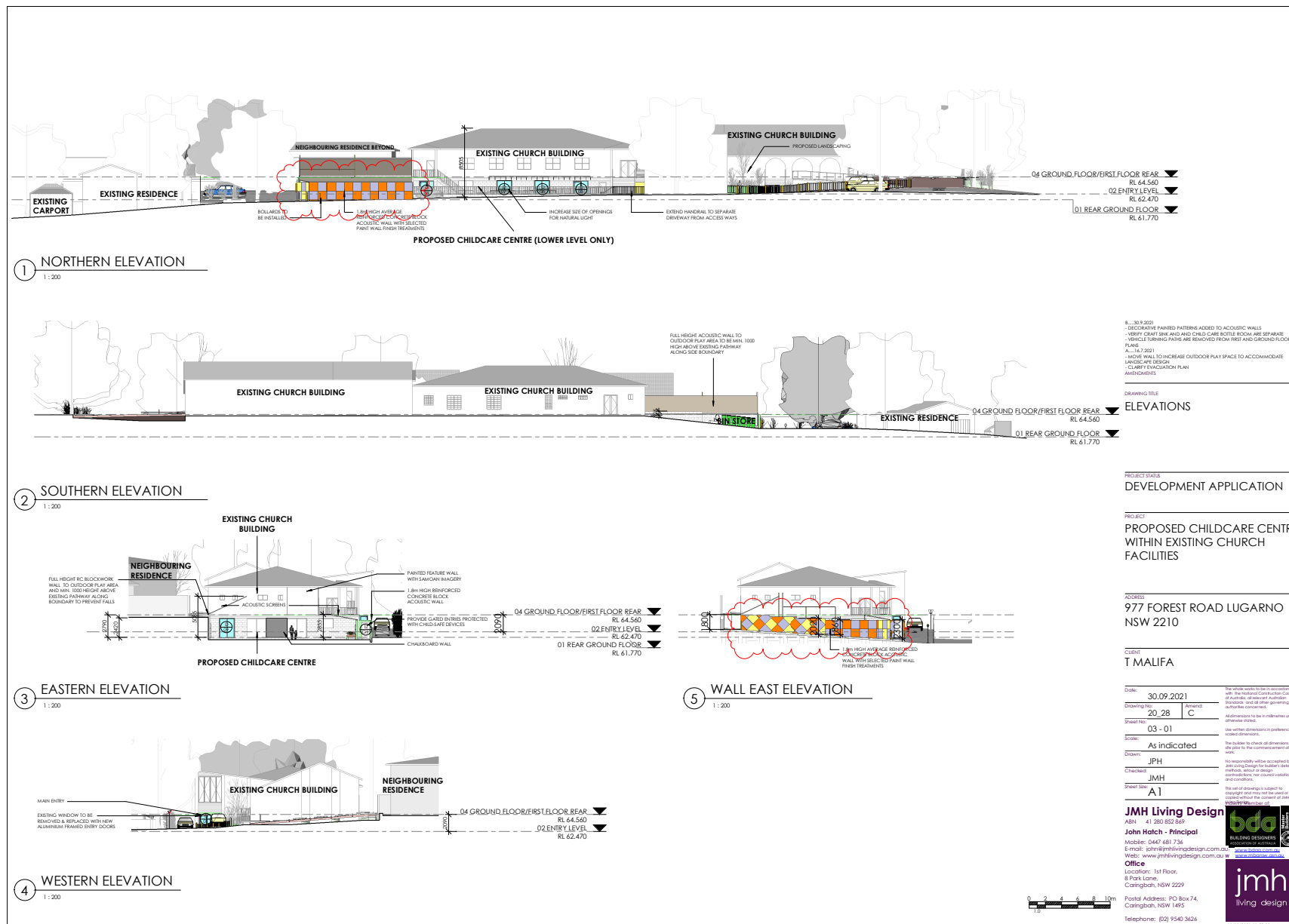


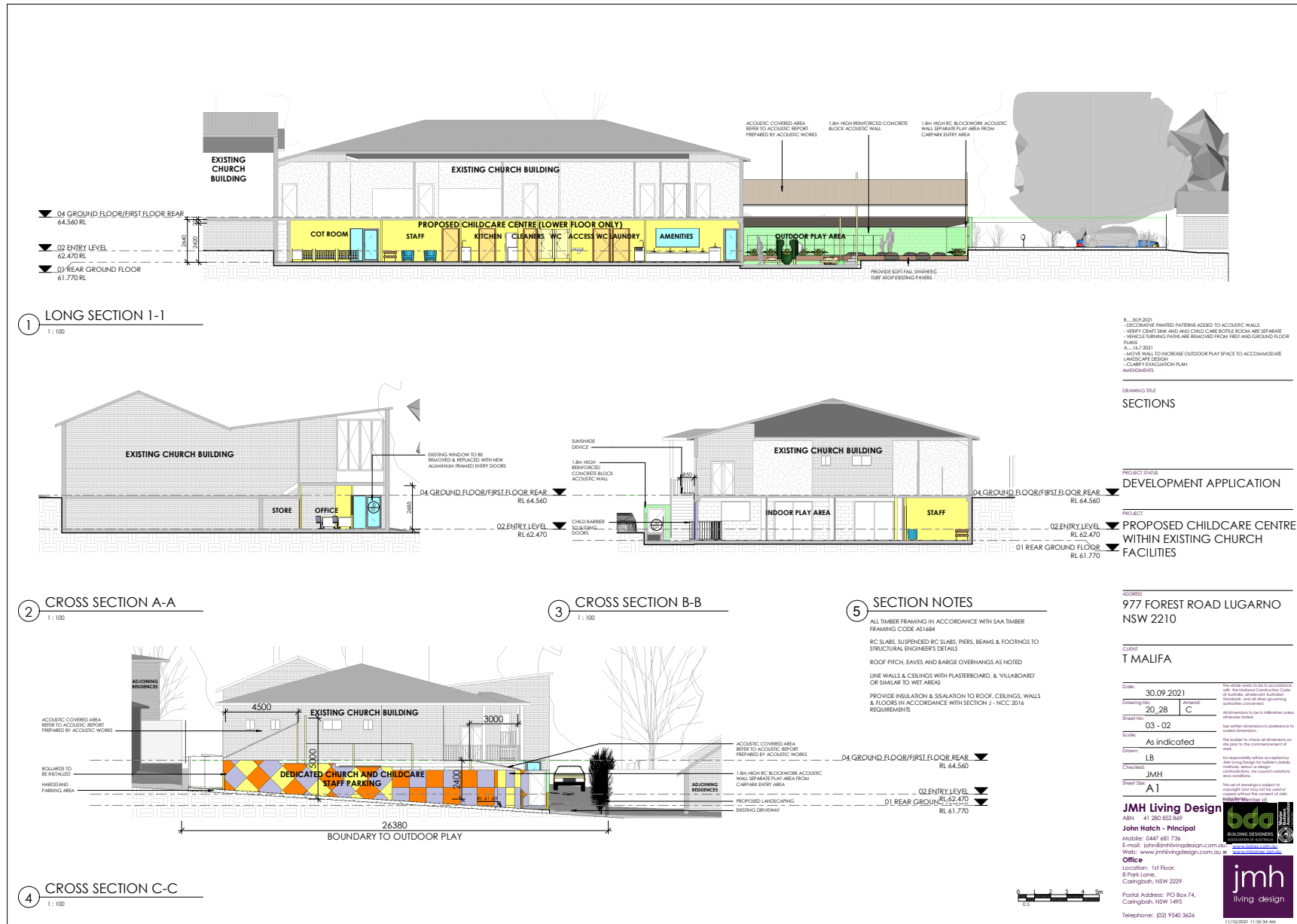


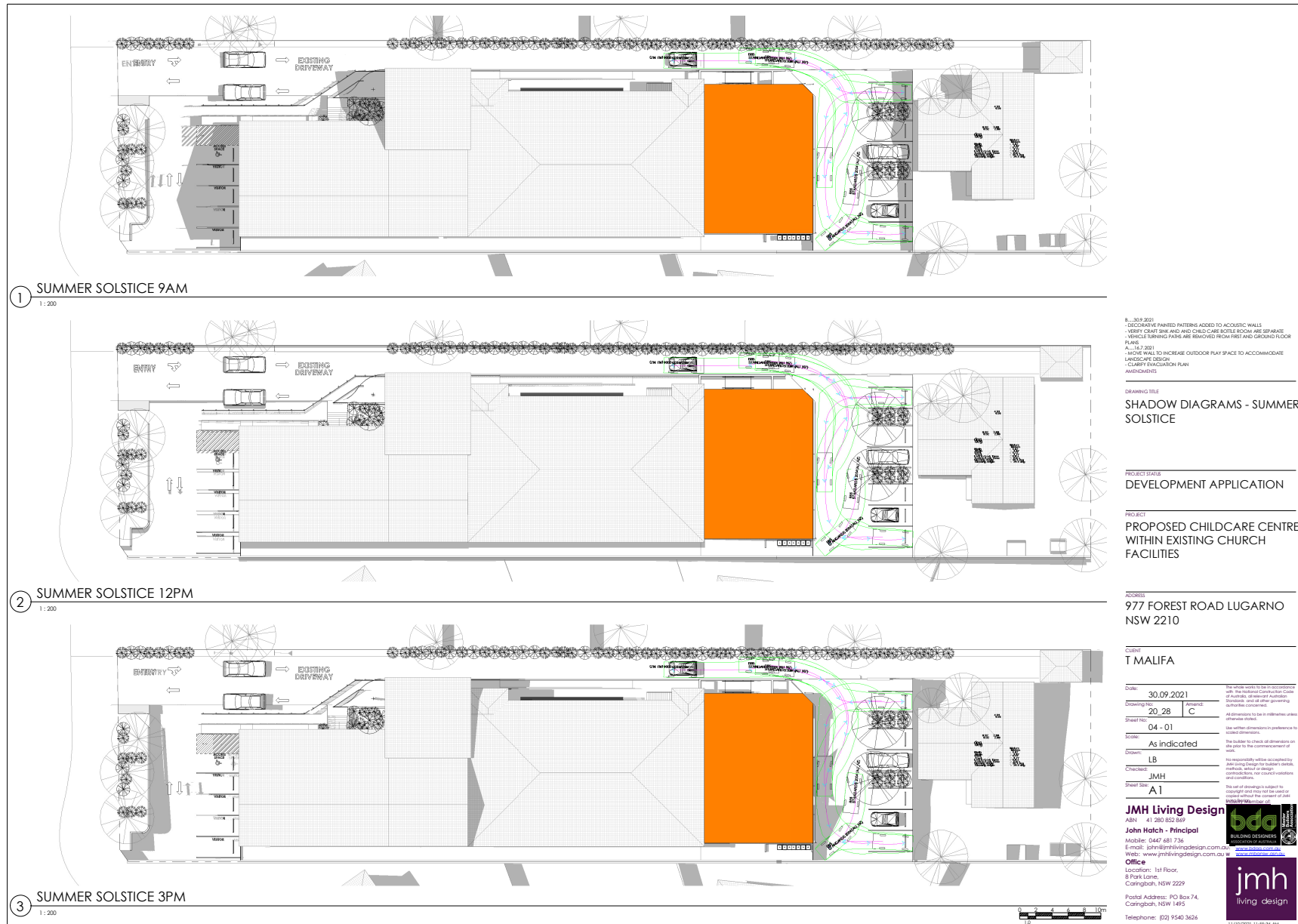




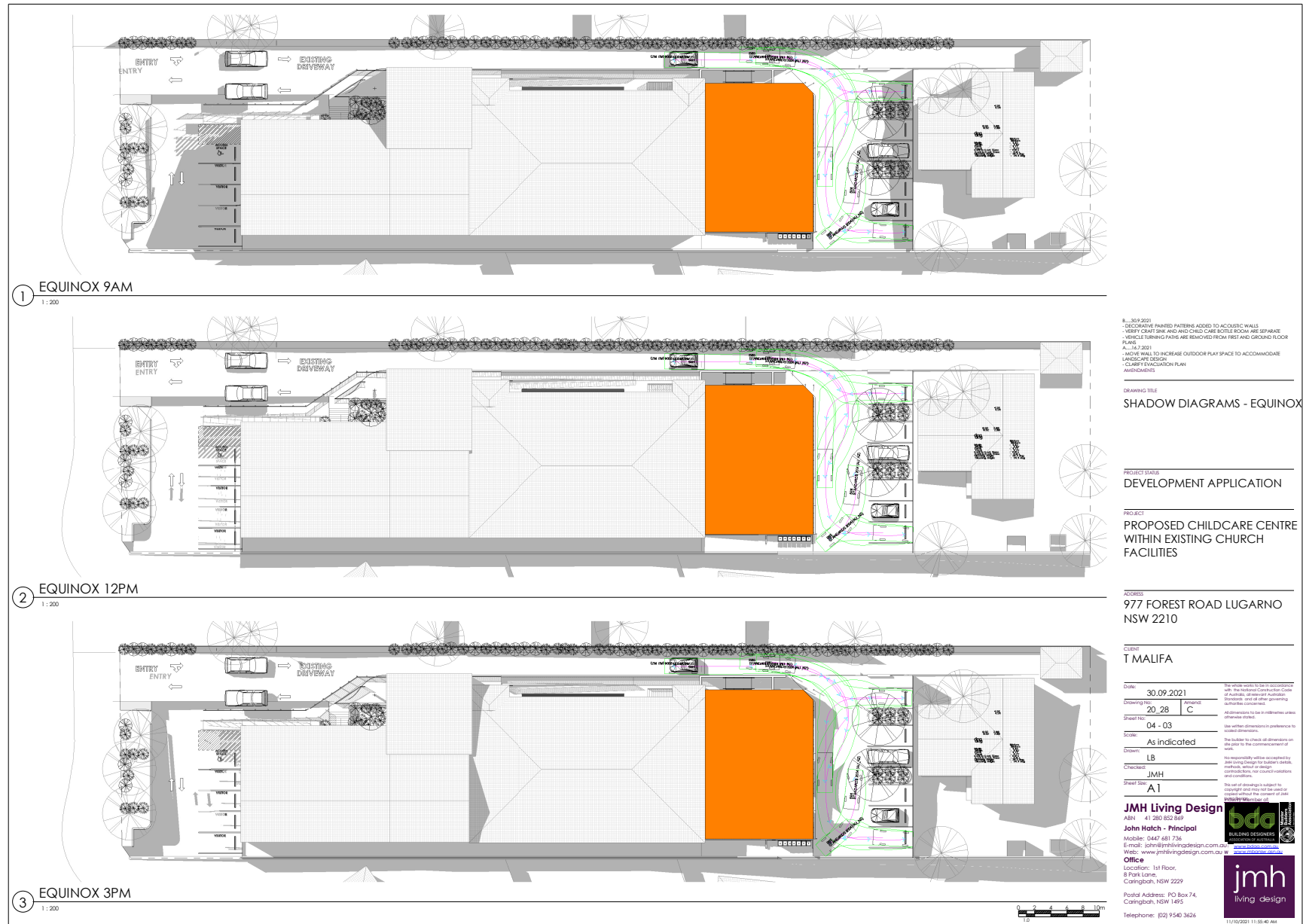


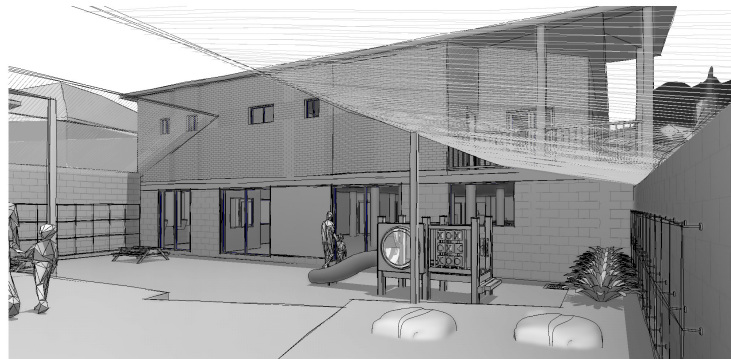




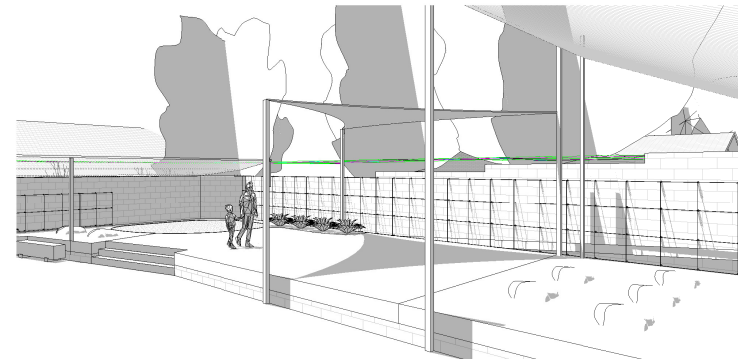




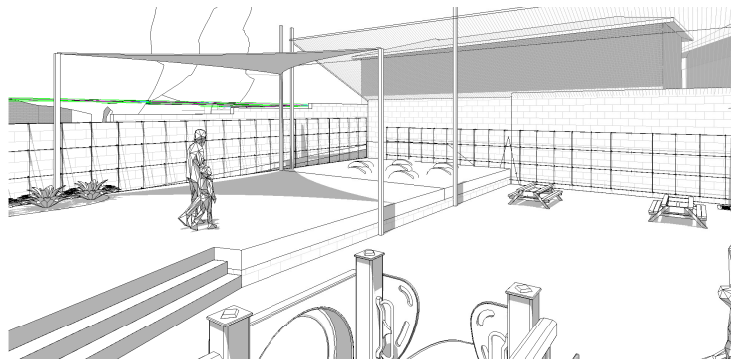




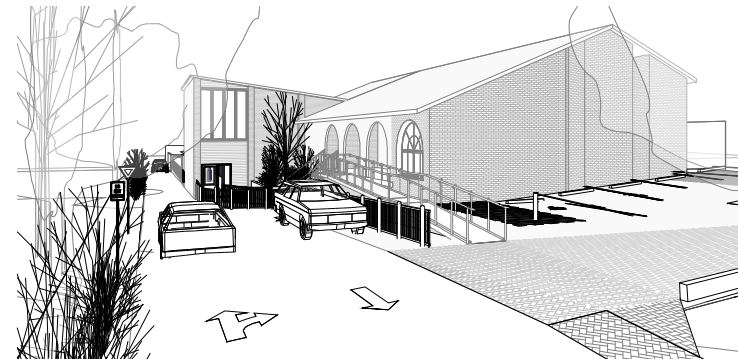
① OUTDOOR PLAY AREA NORTH EAST VIEW



② OUTDOOR PLAY AREA EASTERN VIEW



③ OUTDOOR PLAY AREA SOUTH EAST VIEW



④ VIEW FROM FOREST ROAD

B...30.9.2021
- DECORATIVE PAINTED PATTERNS ADDED TO ACoustic WALLS
- VERIFY CHART SHIN AND CHILD CARE BOTTLER ROOM ARE SEPARATE
- VEHICLE TURNING PATHS ARE REMOVED FROM FIRST AND GROUND FLOOR
PLANS
A...16.11.2021
- ADJUST WALLS TO INCREASE OUTDOOR PLAY SPACE TO ACCOMMODATE
LANDSCAPE DESIGN
- CLARIFY EVACUATION PLAN

AMENDMENTS

AMENDMENTS

PERSPECTIVES

PROJECT STATUS

DEVELOPMENT APPLICATION

CURRENT
T MALIFA

PROJECT

PROPOSED CHILDCARE CENTRE WITHIN EXISTING CHURCH FACILITIES

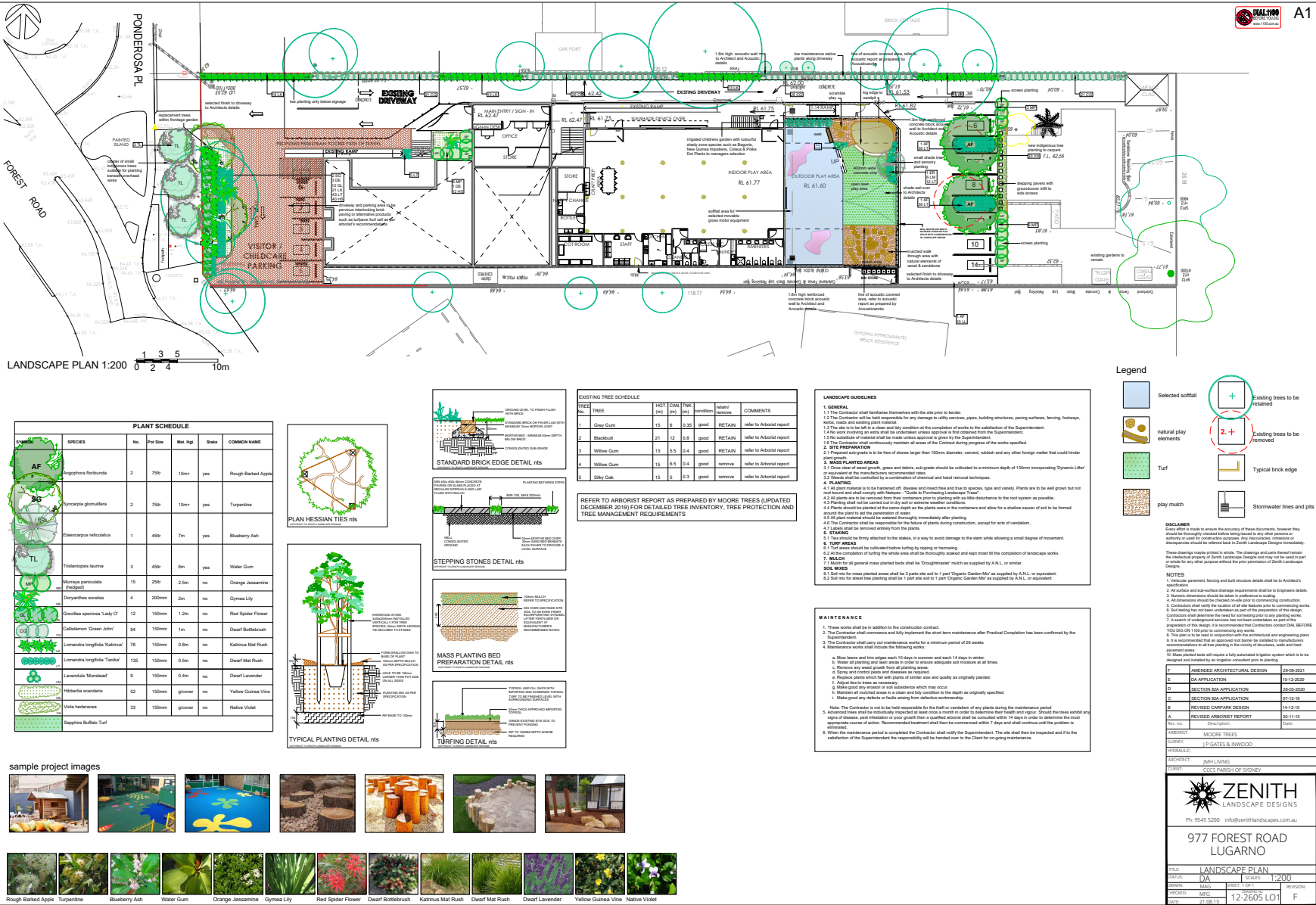
ADDRESS
977 FOREST ROAD LUGARNO
NSW 2210

DATE: 30.09.2021
DRAWING NO: 20_28
SHEET NO: 05 - 01
SCALE: 1 : 10
DRAWN: LB
CHECKED: JMH
SHEET SIZE: A1

The whole works to be in accordance
with the Standard Code of Practice
of Australia, all relevant Australian
Standards, and all other governing
and controlling documents.
All dimensions to be in millimetres unless
otherwise stated.
Use metric dimensions in preference to
imperial dimensions.
This set of drawings is to be used in
conjunction with the contract of sale
and conditions of sale.

JMH Living Design
ABN: 41 280 852 869
John Hatch - Principal
Mobile: 0447 681 736
Email: john@jmlivingdesign.com.au
Web: www.jmlivingdesign.com.au
Office
Location: 1st Floor,
8 Park Lane,
Caringbah, NSW 2229
Postal Address: PO Box 74,
Caringbah, NSW 1495
Telephone: (02) 9540 3626
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**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 04 AUGUST 2022**

LPP036-22

LPP Report No	LPP036-22	Development Application No	DA2021/0388
Site Address & Ward Locality	426-428 Princes Highway, Blakehurst Blakehurst Ward		
Proposed Development	Demolition works and construction of a residential flat building		
Owners	Julie, Dawn and Grant McInness and Marianne Casimatis		
Applicant	Julie McInness		
Planner/Architect	Planning Ingenuity / Arkhaus		
Date Of Lodgement	7/10/2021		
Submissions	Five (5) submissions		
Cost of Works	\$16,965,151.00		
Local Planning Panel Criteria	The application relates to development to which the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies and the application has been lodged under Section 4.55(2) of the Act.		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy (Biodiversity and Conservation) 2021, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development), State Environmental Planning Policy (Transport and Infrastructure) 2021, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Georges River Local Environmental Plan 2021.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Landscape Plan, Stormwater Plans, Statement of Environmental Effects, Clause 4.6 Variation Request – Height of building, Survey, Geotechnical Report, Traffic Report, Acoustic Report, Contamination Report, Submissions		
Report prepared by	Senior Development Assessment Planner		

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

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?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes - Clause 4.3 Height of buildings
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	No – the application is recommended for refusal

Site Plan



Executive Summary

Proposal

1. This development application (DA) seeks consent for the demolition of existing structures across two sites, lot consolidation and the construction of a 6 storey Residential Flat Building (RFB) comprising a total of 45 apartments including two (2) levels of basement car parking catering for a total of 82 car parking spaces, landscaping and site works.



Figure 1: Photomontage of proposed development from Princes Highway

2. The proposed development complies with the maximum floor space ratio (FSR), however the development exceeds the height control with the non-compliance relating to part of one Level 5 apartment, lift overrun and the rooftop communal open space. The extent of the breach is a maximum 2.3m over the maximum 21m height limit. A Clause 4.6 Statement has been submitted which has been assessed in detail later in this report, however it is considered to not be well founded and in this case is not supported.

Site and Locality

3. The development site is located on the eastern side of Princes Highway. It consists of two existing allotments known as 426-428 Princes Highway, Blakehurst. These sites are legally identified as Lots 3 and 4 in DP 9209.
4. The consolidated site is an irregular shape. It has a frontage to Princes Highway of 31m, a rear boundary to Kogarah Bay and a total site area of 2,140sqm. The land falls from the street to the bay having a fall of around 7.8m.
5. Presently situated on the site are two detached dwellings, a swimming pool and ancillary development. No. 428 Princes Highway also contains a commercial premises at street level being used as a bait shop.
6. This section of Princes Highway is classified as a State road. A slip lane exists to serve Nos. 430-436 Princes Highway, south of the site, but vehicular access to the subject site is directly from the highway.

7. The site is located within a pocket of land occupied by residential dwellings, zoned R4 High Density Residential under Georges River LEP 2021, which sits between two areas of land zoned for public recreation. The land to the north is known as No. 424 Princes Highway and is occupied by a dwelling house. A Development Application (DA2022/0054) for a residential flat building was recently lodged on this site but was assessed to be an unsuitable design outcome for the site and the applicant was advised to, and did, withdraw the application in July 2022.
8. Land to the south of the site, between 430-436 Princes Highway, is occupied by residential dwellings and zoned R4 High Density Residential under Georges River LEP 2021.
9. Land on the opposite side of Princes Highway is residential land zoned R2 Low Density Residential Georges River LEP 2021.

Zoning and Permissibility

10. The subject site is zoned R4 High Density Residential under Georges River LEP 2021, however the application was lodged prior to the effect of GRLEP 2021 and was zoned R3 Medium Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves the construction of a residential flat building which is a permissible use in the zone with development consent.

Submissions

11. The DA was publicly notified to neighbours for a period of fourteen (14) days in accordance with the notification policy. Six (6) submissions were received.

Reason for Referral to the Local Planning Panel

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

Planning and Design Issues

13. The proposal is an inappropriate response to the site when considered against the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. Its bulk and scale is inconsistent with the desired future character of the area as established by the Kogarah Local Environment Plan 2012 (KLEP) development standards for building height.
14. The proposal fails to comply with the building height development standard of 21m that applies to the site under Kogarah Local Environmental Plan 2012. This variation includes, part of a residential unit, lift overrun and fire stairs and rooftop communal open space. The height to the top of the lift overrun is 23.3m equating to a 10.9% variation of the height control.
15. A variation request to the building height development standard has been submitted pursuant to Clause 4.6 of Kogarah Local Environmental Plan 2012. This is not supported for the reasons provided in this report.
16. Direct vehicular access to the site from Princes Highway is proposed and not supported. The design is unsafe for both traffic and pedestrians.

17. The proposal is an inappropriate response to the site topography and foreshore location, lacks deep soil areas on the side boundaries to accommodate substantial landscaping, has poor physical and visual connection between the street and the building.
18. The façade treatment, lack of articulation and non-compliant setbacks contributes to a poor design outcome which is not in keeping with the desired future character for the locality, which is exacerbated by the extent of the basement walls above natural ground level, resulting in inappropriate bulk and scale.
19. The proposed development fails to meet the ADG controls for communal open space, visual privacy, pedestrian and vehicular access and solar access.
20. The proposed design, mass and form of the building is considered inconsistent with the desired future form of development in the locality. The proposal is considered to establish an undesirable design precedent in the area and is not considered to be in the public interest.
21. The proposal also fails to comply with various built form controls of Kogarah Development Control Plan 2013 as discussed within the report.

Conclusion

22. The application has been assessed having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Policies, Local Environmental Plan and Development Controls. The proposal is an unreasonable planning and urban design outcome in the context of the site and performs poorly against the design quality principles of State Environmental Planning Policy No 65. As a result the Application is recommended for refusal.

Report in Full

Background

23. Planning and urban design comments were provided by Council in a Pre DA meeting in 2020. Significant issues were raised at the PreDA stage, which included:
 - a) Building height;
 - b) Bulk and scale;
 - c) Streetscape and contextual fit;
 - d) Façade composition;
 - e) Building separation;
 - f) Overshadowing;
 - g) Apartment size and layout;
 - h) Ground floor residential amenity and excavation;
 - i) Private open space;
 - j) Communal open space;
 - k) Front Setback;
 - l) Building entry and way finding;
 - m) Adaptable housing & Housing choice;
 - n) Site services;
 - o) Isolated site;
 - p) Waste management;
 - q) Public art;
 - r) Landscaping;
 - s) Traffic; and

t) Storm water management.

24. Following an assessment of the application by Council staff and receipt of comments from external referral agencies, the applicant was provided with a letter containing advising the design failed to meet several applicable State and local planning controls, non-compliance with which was not supported, noting inconsistencies between the plans submitted with the application, information provided on plans and insufficient details on the architectural plans to enable a proper assessment of the proposal. This letter was dated 3 June 2022.
25. The issues identified included non-compliances with the ADG, Kogarah LEP 2012 and Kogarah DCP 2013, urban design, landscaping and stormwater concerns, waste and traffic issues, and confirmation from Transport for NSW that the design of vehicular access from the highway is not supported.
26. Given the complexity of the issues identified, and the likelihood that only an entirely different design response is likely to satisfactorily address the issues at hand, the applicant was advised there is no possibility for a suitable design option to be realised within a reasonable development assessment timeframe and the application should be withdrawn.
27. The applicant advised on the 15 June 2022 that they would not withdraw the application.

Description of the Proposal

28. The proposal seeks consent for the demolition of all existing structures and the construction of a 6 storey Residential Flat Building (RFB) containing 45 apartments (3 X 1B, 29 X 2B and 13 X 3B units) over two (2) levels of basement car parking for 82 vehicles, landscaping and site works.
29. A detailed description of the proposal is as follows:

Basement Level

- 50 residential car parking spaces, (four being accessible spaces);
- Residential storage;
- Two lift cores; and
- One stair core.

Lower Ground Floor

- 32 car parking spaces (two being accessible spaces);
- Loading bay;
- Waste room;
- Bulky waste room;
- Bicycle parking;
- Two lift cores;
- One stair core;
- 3 x 2 bedroom apartments; and
- Communal open space.

Ground Floor Plan

- Nine apartments comprising:
 - 3 x 1 bedroom apartments
 - 5 x 2 bedroom apartments

- 1 x 3 bedroom apartment
- Dual lane vehicular access from Princes Highway located on the southern side of the site;
- Two lift lobbies and fire stairs;
- Ramp access for pedestrians from Princes Highway along the northern side of the site.

Levels 1 – 3

- Eight apartments on each level as follows:
 - 6 x 2 bedroom apartments
 - 2 x 3 bedroom apartments
- Two lift lobbies and fire stairs.

Level 4

- Six apartments as follows:
 - 3 x 2 bedroom apartments
 - 3 x 3 bedroom apartments
- Two lift lobbies and fire stairs.

Level 5

- Three apartments as follows:
 - 1 x 2 bedroom apartment
 - 2 x 3 bedroom apartments
- Communal open space; and
- Two lift lobbies and fire stairs.

Description of the Site and Locality

30. The development site is located on the eastern side of Princes Highway. It consists of two existing allotments known as 426-428 Princes Highway, Blakehurst. These sites are legally identified as Lots 3 and 4 in DP 9209.
31. The consolidated site is an irregular shape. It has a frontage to Princes Highway of 31m, a rear boundary to Kogarah Bay and a total site area of 2,140sqm. The land falls from the street to the bay having a fall of around 7.8m.
32. Presently situated on the site are two detached dwellings, a swimming pool and ancillary development. No. 428 Princes Highway also contains a commercial premises at street level being used as a bait shop.



Figure 2: The site viewed from Princes Highway



Figure 3: Rear of the site looking west



Figure 4: Looking south from the waterfront



Figure 5: No. 426 Princes Highway and Nos. 424 Princes Highway (northern neighbour)



Figure 6: Looking north from the waterfront (building in background is the Kogarah Bay Sailing Club)

33. This section of Princes Highway is classified as a State road. A slip lane exists to serve Nos. 430-436 Princes Highway, south of the site, but vehicular access to the subject site is directly from the highway.
34. The site is located within a pocket of land occupied by residential dwellings, zoned R4 High Density Residential under Georges River LEP 2021, which sits between two areas of land zoned for public recreation. The land to the north is known as No. 424 Princes Highway and is occupied by a dwelling house. A Development Application (DA2022/0054) for a residential flat building was recently lodged on this site but was assessed to be an unsuitable design outcome for the site and the applicant was advised to, and did, withdraw the application in July 2022.
35. Land to the south of the site, between 430-436 Princes Highway, is occupied by residential dwellings and zoned R4 High Density Residential.
36. Land on the opposite side of Princes Highway is residential land zoned R2 Low Density Residential.

State Environmental Planning Policies (SEPPs)

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

State Environmental Planning Policy Title	Complies
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 No. 65 (Design Quality of Residential Apartment Development)	Yes

State Environmental Planning Policy (Biodiversity and Conservation) 2021

38. 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

39. 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.
40. 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).*
41. Three small trees are proposed as part of the application and no objection to their removal has been raised.

Chapter 11 – Georges River Catchment

42. 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,*
43. The stormwater design was reviewed by Council's Development Engineer who does not support the proposed stormwater management system.

44. The proposal is not consistent with the objectives and purpose of Chapter 11 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

45. Chapter 2 and Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 are relevant to the proposal.
46. 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”*.
47. 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.
48. 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
13. Development on land within the coastal environment area		
(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,	The proposal does not comply with Council's Stormwater Management Policy.	No
(b) coastal environmental values and natural coastal processes,	The proposal is used for residential purposes and will not unacceptably impact the coastal	Yes

State Environmental Planning Policy Control	Proposal	Complies
	environmental values and there is not impact on coastal processes.	
(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	Appropriate standard conditions to be imposed to ensure water quality is maintained. The site is not located on any of the sensitive coastal lakes identified in Schedule 1.	Yes
(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 unsatisfactory in terms of impact as discussed throughout this report.	No
(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 unsatisfactory in terms of impact as discussed throughout this report.	No
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact	The proposal is unsatisfactory in terms of impact as discussed throughout this report.	No
14 Development on land within the coastal use area		
(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:		

State Environmental Planning Policy Control	Proposal	Complies
(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	The proposal is unsatisfactory in terms of impact as discussed throughout this report.	No
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposal is unsatisfactory in terms of impact as discussed throughout this report.	No
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	The proposal is unsatisfactory in terms of impact as discussed throughout this report.	No
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	The proposal is unsatisfactory in terms of impact as discussed throughout this report.	No

49. The proposal does not comply with Clause 13 of the SEPP as it does not have a stormwater drainage design that suitably manages stormwater discharge from the site. Details of this are provided in the referral section of this report.
50. 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.
51. 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.

52. 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

53. Compliance with SEPP (Transport and Infrastructure) 2021 has been considered as the site has frontage to Princes Highway. Clause 101 is relevant to the subject proposal.
54. Transport for NSW has reviewed the proposal and does not support the design if the vehicular access from Princes Highway. The comments provided stated:

TfNSW has reviewed the submitted application and notes that the development proposes a driveway along the current service road which may impact Princes Highway. In this regard, TfNSW does not provide concurrence under section 138 of the *Roads Act 1993*, at this stage, for the proposed development for the following reasons:

- The driveway should be relocated to the most southern side of the property on Princes Highway to ensure the vehicle movements do not impact the safety and efficiency of Princes Highway (classified road).
- TfNSW has been advised as to Council's intentions to extend the current Service Road to facilitate access arrangements. Any strategy to extend the existing service road to accommodate the turning movements into and out of the site through a service road arrangement will need to be shown on the plans.
- The applicant shall provide driveway and basement car parking plans (including clearances) to demonstrate that all service vehicles (including delivery by removalist trucks and garbage trucks) are undertaken internally without relying on the Princes Highway corridor.
- Updated swept path and sight line plans shall be provided to demonstrate that proposed vehicle movements into the site do not impact the safety and efficiency of Princes Highway (classified road). Vehicles shall be able to manoeuvre concurrently and within the building boundary.

55. With regard to the first dot point in the advice from TfNSW, it is noted that the driveway is already proposed on the southern side of the site. In any case, Council's Senior Traffic Engineer has assessed the proposal and advised the vehicular access to and from the site is unsafe and unsatisfactory and investigations into the extension of the existing slip lane/deceleration lane northward should be undertaken to ensure safe access to and from Princes Highway. The applicant of the withdrawn DA on the site to the north at 424 Princes Highway was provided the same advice at Pre DA stage by Council and TfNSW.
56. Council's assessment of the application has confirmed that the proposal fails to meet the requirements of Clause 101 of the SEPP and is not supported by Council's Senior Traffic Engineer as discussed later in this report.
57. Ausgrid was consulted as required by Chapter 2. No objection was raised and no conditions required.

State Environmental Planning Policy (BASIX) 2004

58. 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.
59. 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 No 65 — Design Quality of Residential Apartment Development

60. State Environmental Planning Policy No.65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for RFBs of three or more storeys in height (excluding car parking levels) and containing at least four dwellings. Amendment 3 to State Environmental Planning Policy 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, State Environmental Planning Policy 65 applies.
61. The proposal involves the erection of a new 6 storey RFB (excluding basement car parking) containing 45 apartments and is therefore affected by the State Environmental Planning Policy.
62. In determining DAs to which State Environmental Planning Policy 65 relates, Clause 28(2) of the State Environmental Planning Policy requires that the consent authority take into consideration:
- a) *the advice (if any) obtained from the design review panel, and*
 - b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
 - c) *the Apartment Design Guide.*

Application of State Environmental Planning Policy 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of “Residential Apartment Development” (RAD)	Complies with definition	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the State Environmental Planning Policy includes mixed use developments.	The erection of an RFB satisfies the State Environmental Planning Policy’s definition of this residential land use.	Yes
Design Verification	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect: Evan Nguyen (Registration No.11281)	Yes

63. The proposal was reviewed by Council’s Senior Urban Designer each of the nine (9) Design Quality Principles and the provisions of the Apartment Design Guide (ADG). In summary, the comments provided are as follows:

The proposal in its current form is not supported as it is not considered to be a good urban design response to the existing and emerging context and an overdevelopment of the site. For the proposal to be considered, the design should take into consideration the following recommendations, which are further discussed in detail in the following sections:

- 1. It is recommended that the proposal be amended to provide a more appropriate response to the existing site topography. To truly address existing topography and minimise impact on the foreshore, the buildings should be further split to have at least three different FFLs.*
- 2. The design should be amended for the basement to be predominantly below the natural ground to comply with the KDCP 2013 as well as to minimise the visual impact of the bulk and scale on the foreshore.*
- 3. If the basement is more than 1m above natural ground, it should be included in the FSR calculations.*
- 4. The design should be amended for the vehicular access ramp to be integrated with the building's façade design. This will provide opportunity for deep soil planting within the side setbacks that will not only enhance the streetscape but also the amenity of the future residents.*
- 5. The design should be amended for the basements to be totally contained within the building footprint. This may result in the design requiring an additional basement floor to provide for the required parking demand.*
- 6. The design should be amended such that the main residential building entry and lobby have direct access from the street to provide a direct physical and visual connection between the street and the building. It should also be ensured that the entry is a clearly identifiable element.*
- 7. The ground floor units should also have direct access from the street.*
- 8. The proposed design should be amended to comply with the KDCP 2013 and ADG requirements for setbacks and building separation, including the encroachment of private open space permissible into the setbacks. The proposal should present a 4 storey street wall to Princes Highway and the levels above should have a minimum 8m setback to the princes Highway boundary.*
- 9. The design should be amended to present a more appropriate built form to the streetscape and the foreshore. The design should avoid monotonous and bulky façade by using of appropriate articulation, façade treatment and setbacks.*
- 10. The design should be amended such that majority of the residents have direct and equitable access from the common circulation and lobby areas to the COS. Any changes to the design should also maximise sunlight access to COS in accordance with the ADG.*
- 11. The design should include measures such that rooftop COS cannot be converted to POS for the sole use of Unit 5.01.*
- 12. As per Recommendation 4; the design should be amended for the basement to be fully contained with the building footprint. This will allow opportunity to provide deep soil planting within the front and side setbacks that will enhance the landscape and foreshore setting of the area.*
- 13. As per Recommendation 6; the design should be amended for the POS to comply with the setback requirements. As per Recommendation 1, the design should also address existing topography for the POS to be on ground or close to ground. This will maintain privacy as well as allow opportunity for deep soil that will provide a visual barrier and enhance the landscape setting of the area.*
- 14. The design should be amended for the ground level floor to ceiling heights to comply with the ADG.*

15. *It is recommended that the architectural expression of the elevations and overall built form be amended to enhance the streetscape and the foreshore setting.*

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

Part 3 and Part 4 – Compliance with the ADG

Clause	Standard	Proposal	Complies
3D - Communal open space	1. Communal open space has a minimum area equal to 25% of the site. Minimum 535sqm	The calculations indicate the total area of communal open space amounts to 384sqm (17% of the site). There are two areas of communal open space provided as part of the development: Ground floor – 206sqm Rooftop – 178sqm	No – refer to discussion below.
	2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Over 50% of the area of communal open space will achieve in excess of 2 hours of solar access during midwinter.	Yes

Discussion on communal open space:

The proposed amount of communal open space fails to achieve the required 25% of the site area, instead providing just 17% of the site area as communal open space, partly at ground level adjacent to the bay and partly on the rooftop of the eastern (waterfront) building.

In addition to not providing the required amount of communal open space, the access to each space is poorly considered and is not equitable or direct.

Access to the ground level communal open space is via a side passage on each side of the eastern building from the lower ground floor level, past bedroom and living room windows and private terraces, and then via steps to the gardens. The gardens are not accessible for people with limited mobility and access to them results in acoustic and privacy impacts from Units LG.01 and LG.03.

The rooftop communal open space is located on the eastern building only. Residents of the western building must take the lift to the ground floor, exit the building and re-enter the eastern building, past three private terraces, to take the lift to the roof level.

The design fails to meet the objectives and numerical control of the ADG and results in a poor amenity outcome for future residents.

Clause	Standard	Proposal	Complies
3E – Deep Soil zones	1. Deep soil zones are to meet the following minimum requirements: Min deep soil area of 7% (149sqm) Minimum dimension of 6m	Deep Soil Zone (DSZ) calculation = 204sqm (9.5%) Complies.	Yes Yes
3F- Visual Privacy	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <u>Up to 12m (4 storeys)</u> Habitable - 6m Non-habitable – 3m <u>Up to 25m (5-8 storeys)</u> Habitable – 9m Non-habitable – 4.5m	Western building (to north bdy/to south bdy) LG:NA G: 2m/1m to POS Min. 6m to external wall 1: 5m/6m 2: 5m/6m 3: 5m/6m 4: 9m/9m 5: 9m/9m Eastern building (to north bdy/to south bdy) LG: 3m/4m G: 3m/4m 1: 3m/4m 2: 3m/4m 3: 3m/4m 4: 3m/4m 5 (COS): 5m/6m	NA No Yes No/Yes No/Yes No/Yes Yes Yes No No No No No No No

Discussion on separation distances:

The eastern/waterfront building fails to meet the required separation distances for both northern and southern elevations. The western/street-facing building fails to meet the separation distances from the Ground to the Third floor to the northern side boundary.

The justification for the non-compliances in the Statement of Environmental Effects is as follows:

Section 3F 'Visual privacy' of the ADG prescribes boundary setbacks to ensure visual privacy. The majority of the proposed building up to level 3 has a minimum setback of 6m from the side boundaries for habitable rooms and balconies. A setback of at least 9m is provided to most habitable rooms and balconies for Levels 4 and 5. However, the apartments with primary orientation to the eastern elevation (waterway) do not meet the recommended side setback. The windows to these elevations which are oriented towards the side boundaries are secondary and will incorporate privacy screening to mitigate potential impacts on the adjacent sites, noting that there is no existing

Clause	Standard	Proposal	Complies
<p><i>development on adjacent sites in the vicinity of this portion of the proposed building. In the circumstances, the setbacks are considered acceptable on merit and can satisfy the visual privacy objective in Section 3F of the ADG, being “adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy”.</i></p> <p>This justification is not supported as the land adjacent to the site is also zoned R4 High Density Residential and future residential flat development is expected on these sites. The fixed screening does not extend to the sides of the balconies of the eastern building and will do little to mitigate overlooking impacts for the sixteen north-facing balconies of the western building. In addition, the design results in poor internal amenity for the units by restricting outlook and solar access.</p>			
3G – Pedestrian Access and entries	<p>Building entries and pedestrian access connects to and addresses the public domain.</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>The building entry is poorly located on the northern side of the building via narrow passages and provides an unclear and unsafe entry sequence due to the lack of natural surveillance and entrapment points. Two side paths are provided for access to the building.</p>	<p>No</p> <p>Yes</p>
3H-Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	The design of the vehicular access to the site is not supported by TfNSW or Council's Senior Traffic Engineer and does not activate the street edge.	No
3J-Bicycle and car parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned and sites within 400m of land zoned B3 Commercial Core, 	The subject site is not within an “accessible location, pursuant to the ADG and as such compliance with the parking provisions of Part B4 of the Kogarah Development Control Plan 2013 (KDCP) are applicable in this assessment. See below.	N/A

Clause	Standard	Proposal	Complies
	<p>B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>		
B4 Parking and Traffic Controls of Kogarah Development Control Plan 2013	<p><u>Residential parking:</u> 3 x 1 bedroom units @ 1 space per unit = 3 spaces required</p> <p>29 x 2 bedroom units @ 1.5 spaces per unit = 44 spaces required.</p> <p>13 x 3 bedroom units @ 2 spaces per unit = 26 spaces required</p> <p>Total required resident parking = 73 spaces</p>	82 spaces provided.	Yes
	<p><u>Visitor parking:</u> 45 total units @ 1 space per 5 units = 8 spaces required</p>	8 spaces provided.	Yes, however not nominated on the plans.
	<p><u>Car wash bay:</u> 1 bay, which can also function as a visitor space</p>	A car wash bay is not provided.	No
	<p><u>Bicycle Parking:</u> 1 space per 3 dwellings = $45/3 = 15$</p>	Eight racks are shown on the lower ground floor basement level.	No
4A- Solar and daylight access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the	64% (29 apartments) achieve a minimum of 2 hours sunlight in midwinter.	No

Clause	Standard	Proposal	Complies
	<p>Sydney Metropolitan Area.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter</p>	8% (4 apartments) receives no sunlight.	Yes
<p>Discussion on solar access:</p> <p>The proposal fails to meet the solar access requirements and falls short of meeting the 70% required number of units by 3 units. The justification in the SEE states:</p> <p><i>29 apartments (64%) receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. The shortfall is due to the orientation of the site and the design of a number of apartments with primary openings and orientation towards the east and south-east to maximise views and exposure to the waterway. While strict compliance with this requirement of the ADG is not achieved, the objectives are satisfied.</i></p> <p>Insufficient information is provided as to how the objectives of the ADG are met despite the numerical non-compliance, however there is no reason that compliance should not be able to be achieved.</p>			
4B- Natural Ventilation	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p> <p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths</p>	<p>68% (31 apartments) are cross ventilated.</p> <p>The development has been designed to comply with the ADG in that the depth of cross over apartments does not exceed 18m and the design has sensitively considered the location.</p> <p>The development provides dual aspect apartments, cross through and corner apartments.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms = 2.7m</p> <p>Non-habitable rooms = 2.4m</p>	2.7m	Yes

Clause	Standard	Proposal	Complies
4D-1 Apartment size and layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm</p>	<p>The internal floor areas of each apartment satisfy the requirements of the ADG.</p> <p>1 bedroom = Min. 50sqm 2 bedroom = Min. 75sqm 3 bedroom = Min. 100sqm</p>	Yes
	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p>	<p>Calculated accordingly.</p>	Yes
	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	<p>Every Habitable room contains a window in an external wall with glass area greater than 10% of the floor area of the room.</p>	Yes
4D-2 Apartment size and layout	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p>	<p>Within prescribed range.</p>	Yes
	<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Within prescribed range.</p>	Yes
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p>	<p>All master bedrooms have internal areas with a minimum of 10sqm.</p>	Yes
	<p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or</p>	<p>A minimum dimension of 3m is achieved.</p>	Yes

Clause	Standard	Proposal	Complies
	combined living/dining rooms have a minimum width of: -3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments	Living spaces have a minimum width of 4m.	Yes
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	The minimum width of 4m has been achieved.	Yes
4E- Private Open space and balconies	All apartments are required to have primary balconies as follows: - 1 bedroom = 8sqm/2m depth	1 bedroom apartments have minimum areas for their balconies of 8sqm depth criterion met.	Yes
	- 2 bedroom = 10sqm/2m depth	2 bedroom apartments have minimum balcony areas of 10sqm depth criterion met.	Yes
	- 3+ bedroom = 12sqm/2.4m	3 bedroom apartments have minimum balcony areas of 12sqm depth criterion met.	Yes
	The minimum balcony depth to be counted as contributing to the balcony area is 1m	All balconies exceed 1m in the area calculated.	Yes
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m	Ground floor apartments comply with minimum area and dimensions.	Yes
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	Maximum 5 units per lift per level.	Yes
4G- Storage	In addition to storage in kitchens, bathrooms	The basement has been designed to provide for	Yes - Storage

Clause	Standard	Proposal	Complies
	<p>and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m³ 2 bedroom – 8m³ 3 bedroom – 10m³</p> <p>At least 50% of storage is to be located within the apartment.</p>	<p>individual storage spaces for some apartments. Every apartment includes additional storage areas above the provision of wardrobes in bedrooms.</p> <p>1 bedroom = Minimum 6m³ 2 bedroom = Minimum 8m³ 3 bedroom = Minimum 10m³</p>	<p>areas are indicated on the floor plans for each apartment which are at least 50% of the total storage provided.</p>
4H- Acoustic Privacy	Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. Window and door openings are generally orientated away from noise sources	Achieved	Yes
	Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas	Achieved	Yes
	Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	Generally acceptable	Yes
4J – Noise and Pollution	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar 	The design solutions within the ADG which seeks to minimise noise and acoustic impacts have been considered through the design and layout of apartments.	Yes

Clause	Standard	Proposal	Complies
	<p>access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer</p> <ul style="list-style-type: none"> landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 		
4K – Apartment Mix	<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building</p>	<p>The development offers a mix of 1, 2, and 3 bedroom apartments in the following manner:</p> <p>3 x 1 bedroom apartments = 6.7% 29 x 2 bedroom apartments = 64.4% 13 x 3 bedroom apartments = 28.9%</p>	Yes
4L – Ground Floor Apartments	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	Two ground floor apartments have frontage to the street but surveillance will not be achieved due to a lower ground level that street level, landscaping and fencing to the courtyard areas.	No
4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The design is an inappropriate built form response to the streetscape and the foreshore. It is monotonous and bulky and lacks articulation, façade treatment and suitable setbacks.	No – refer to Urban Design comments.
4N – Roof design	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and</p>	<p>The roof design is a flat roof form which is consistent with the general character and form of the building.</p> <p>The roof includes an area of communal open space which complies with the intention of the ADG,</p>	<p>Yes</p> <p>No – the rooftop communal open</p>

Clause	Standard	Proposal	Complies
	open space are maximised. Incorporates sustainability features.	however for residents who occupy the front building do not have direct lift access to the rooftop communal open space area and are required to take the lift the ground floor, exit the building and use the lift in the rear building to access to the rooftop communal open space.	space area is not directly access to all residents.
4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	A suitable landscape design is proposed.	Yes
4P- Planting on Structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	The design includes a series of planter boxes on structures, adjacent to balconies and bedrooms and the ground floor communal open space.	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory – the design offers a variety of apartment styles however adaptable units are only proposed on the lower ground floor and ground floor.	Yes
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings - new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	Not applicable.	N/A
4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for	A compliant BASIX Certificate accompanies the application.	Yes

Clause	Standard	Proposal	Complies
	mechanical ventilation		
4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The stormwater and drainage design is unsatisfactory and requires redesign to comply with Council's Stormwater Management Policy.	No
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The waste management arrangement is unsatisfactory.	No
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	Suitable materials have been selected for the building finishes.	Yes

Environmental Planning Instruments

Georges River Local Environmental Plan 2021

65. The Georges River Local Environmental Plan 2021 was gazetted on 8 October 2021.
66. In relation to this development site the zoning, height and floor space ratio remain unchanged. The site will also continue to have a 7.6m foreshore building line.
67. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.
68. In this regard, the provisions have no determining weight because of the operation of Clause “1.8A Savings provisions relating to development applications” of the Draft Plan which provides “If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.”

Kogarah Local Environmental Plan 2012 (KLEP 2012)

Zoning

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

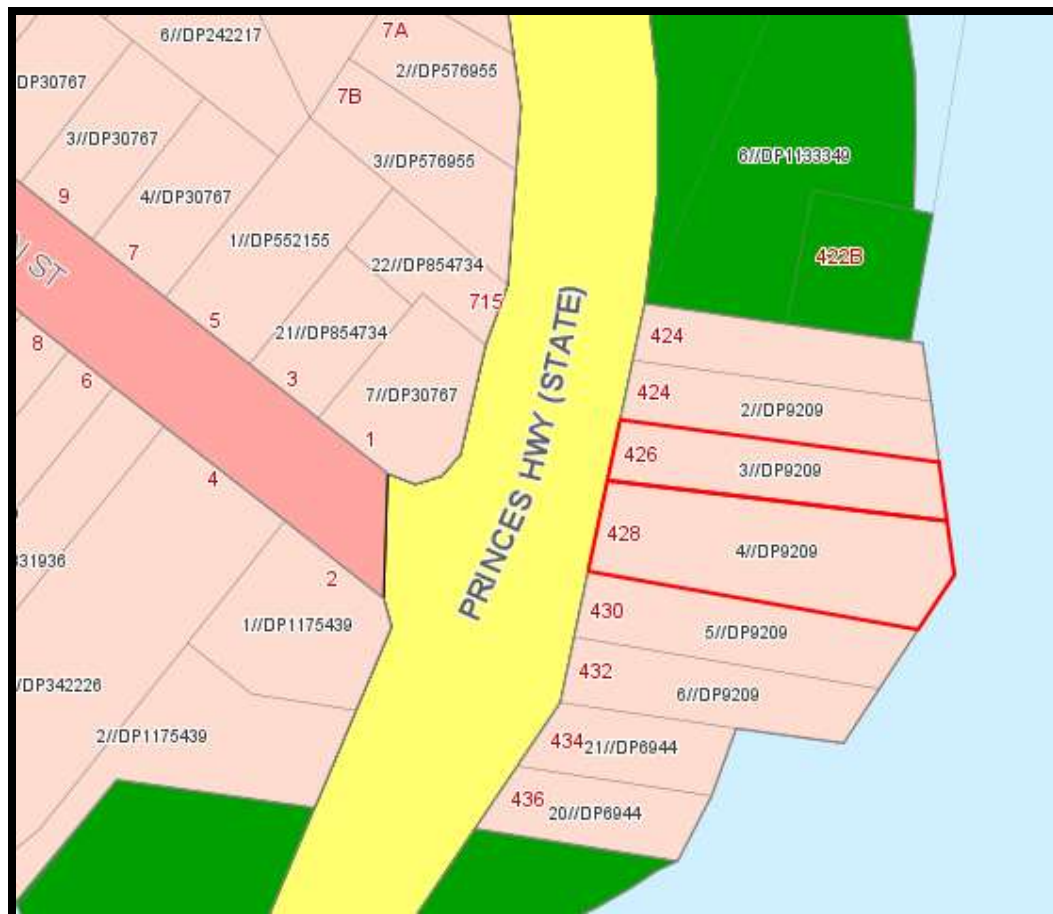


Figure 7: Zoning map (KLEP 2021)

70. The objectives of the zone are as follows:
- To provide for the housing needs of the community within a medium density residential environment.
 - To provide a variety of housing types within a medium density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
71. The proposal satisfies the objectives of the R3 Zone as it will provide for a variety of residential apartments in a medium density residential environment, however the built form of the proposal is an unsuitable design outcome for the site.
72. The extent to which the proposal complies with the relevant standards of Kogarah Local Environmental Plan 2012 (KLEP2012) is outlined in the table below.

KLEP2012 Compliance Table

Clause	Standard	Proposed	Complies
2.2 Zone	R3 Medium Density Residential	The proposal is defined as a Residential Flat Building (RFB) which is a permissible use within the zone.	Yes
2.3 Objectives	Objectives of the Zone	Consistent with zone objectives.	Yes
4.1A Minimum lot sizes for	Clause 4.1A requires a minimum site	The total site area is 2,140sqm.	Yes

Clause	Standard	Proposed	Complies
Residential Flat Buildings	area of 1,000sqm for the purpose of RFB's in the R3 zone		
4.3 – Height of Buildings	21m as identified on Height of Buildings Map	The building exceeds the 21m height limit. The encroachment includes the lift overrun and parts of Level 5 which reach a maximum height of 23.3m. A Clause 4.6 Statement has been submitted and is addressed in detail later in this report.	No
4.4 – Floor Space Ratio	2:1 as identified on Floor Space Ratio Map	1.85:1	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The GFA has been calculated correctly.	Yes
4.6 – Exceptions to Development Standards	The objectives of this clause are as follows: - <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i> - <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i>	The proposal exceeds the height control pursuant to Clause 4.3 of the KLEP and therefore a Clause 4.6 Statement was submitted to justify the non-compliance with the control.	See the assessment below.
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	No work is proposed below the MHWL.	Yes

Clause	Standard	Proposed	Complies
	tidal influence (including the bed of any such water).		
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	NA	NA
6.1 Acid Sulphate Soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage	The site is Class 5.	Yes – conditions imposed if approved.
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	The proposed development includes excavation and associated earthworks consistent with the type of development proposed.	Yes
6.4 Limited development of foreshore area	(2) Development consent must not be granted to development on land in the foreshore area except for the	The site has a 7.6m foreshore building line. The works proposed below the FBL include landscaping and pathways for the communal open space area.	Yes

Clause	Standard	Proposed	Complies
	<p>following purposes—</p> <p>(a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,</p> <p>(b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,</p> <p>(c) boat sheds, sea retaining walls, wharves, slipways, jetties, works to enable pedestrian access to the waterway, swimming pools, fences, cycleways or walking trails.</p> <p>(3) Development consent must not be granted under this clause unless the consent authority is satisfied that—</p> <p>(a) the development will contribute to achieving the objectives for the zone in which the land is located, and</p> <p>(b) the appearance of any proposed structure, from both the</p>		

Clause	Standard	Proposed	Complies
	<p>waterway and adjacent foreshore areas, will be compatible with the surrounding area, and</p> <p>(c) the development will not cause environmental harm such as—</p> <p>(i) pollution or siltation of the waterway, or</p> <p>(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or</p> <p>(iii) an adverse effect on drainage patterns, and</p> <p>(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and</p> <p>(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and</p> <p>(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of</p>		

Clause	Standard	Proposed	Complies
	<p>the land on which the development is to be carried out and of surrounding land will be maintained, and</p> <p>(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and</p> <p>(h) sea level rise or change of flooding patterns as a result of climate change has been considered.</p>		
6.5 Airspace Operations	<p>The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations</p>	<p>CASA provided comment on the proposal and advised the height of the proposed development is below the Obstacle Limitation Surface (OLS).</p>	N/A

Clause	Standard	Proposed	Complies
	made for the purposes of that Division.		

Exception to Development Standards

Detailed assessment of variation to Clause 4.3 Height of Buildings

73. 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.*
74. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Kogarah Local Environmental Plan 2012 (KLEP) identifies a maximum height of 21m for the site (refer to Figure below) and the proposed development will exceed the height by up to 2.3m which comprises part of Unit 5.01, the lift overrun and rooftop communal open space. This amounts to a 10.9% variation to the control. The remainder of the building is below the 21m height limit.
75. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the KLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.



Figure 8: Height of buildings map (the site is outlined in red)

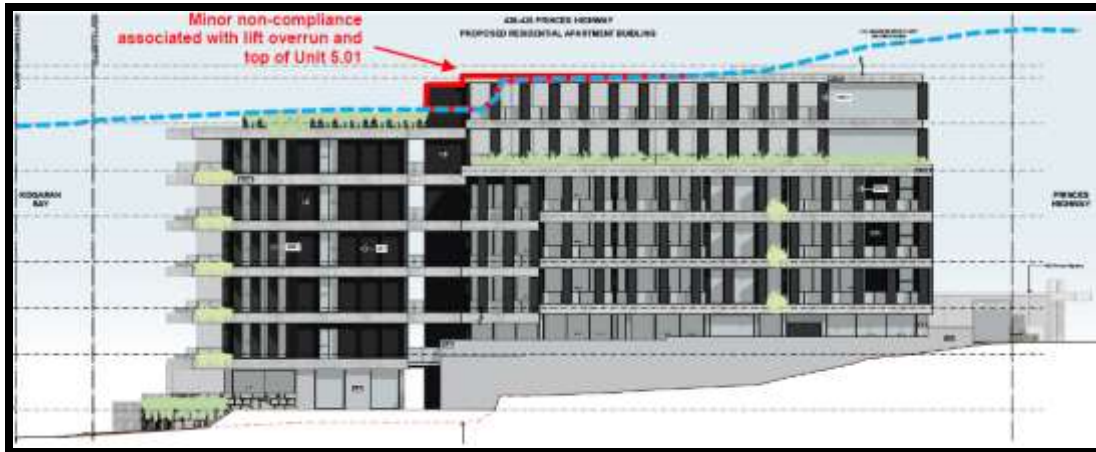


Figure 9: Elevation showing height non-compliance (Source: SEE by Planning Ingenuity)

76. 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”*
77. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of KLEP. The Clause 4.6 request for variation is assessed as follows.

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

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

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

80. 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.
81. 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.

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

83. Applicant's comment:

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- *the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);*
- *there are no additional significant adverse impacts arising from the proposed non-compliance; and*
- *important planning goals are achieved by the approval of the variation.*

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

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

84. Clause 4.6(3)(b) requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

85. Applicant's Comment:

The following planning grounds are submitted to justify contravening the maximum building height:

1. *The height breach is located at the centre of the site and is a result of the topography of the site, given the existing ground level dips at this point. The majority of the proposed building complies with the height control, and only at this central portion of the site does the height exceed the standard.*
2. *The area of the height breach related to the lift overrun and top of Unit 5.01 is setback at least 9m from the north and south site boundaries and at least 25m and 30m from the east (waterfront) and west (Princes Highway) site boundaries respectively. This ensures that the height breach will be obscured from the public domain, will be visually recessive and not discernible to the casual observer.*

3. *At the street frontage, the maximum building height is 18.7m which is significantly below (2.3m) the 21m height control. Similarly, at the waterfront, the height is 19.8m which is also below (1.2m) the height control. Accordingly, given also that the area of the height breach is setback as identified in Point 2 above, the proposal will appear as a height compliant building when viewed from the public domain at ground level from both Princes Highway and from the waterfront.*
4. *The proposal complies with the FSR development standard. The proposed height variation does not result in any additional GFA and therefore does not contribute to the perceivable visual bulk of the proposal nor impact on the character and amenity of adjoining properties.*
5. *The proposed building design provides a high level of amenity to the occupants and it is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties and on the character of the locality. Specifically:*
 - a. *The height breach creates no significant additional overshadowing to adjoining properties when considering the extent of overshadowing against the backdrop of the applicable planning controls. The height breach is centrally located on the site and flanked by built form that complies with the height of buildings development standard. The elements of the building that breach the height limit would have insignificant or nil additional impacts on the overshadowing of adjoining properties;*
 - b. *The height breach does not result in any significant additional privacy impacts given that it is only the very upper portion of Unit 5.01 and the lift overrun which is above the height limit. The area of the height breach within Unit 5.01 is predominantly a solid external wall, with only a very small portion of one window over the height limit from which views would not be obtained. Therefore the extent of privacy impacts caused by the height breach will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building. The loss of privacy caused by the non-compliant elements would be insignificant or nil; and*
 - c. *The height breach does not result in any significant additional view loss. The proposed development will not result in any material loss of views or outlook when compared to a building with a compliant height. The extent of view loss caused by the non-compliant element would be insignificant or nil.*
6. *The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 7 below);*
7. *The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:*
 - a. *The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c));*
 - b. *The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).*
8. *The variation to the height of buildings development standard will give better effect to the aims of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65). In particular:*
 - a. *The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i)); and*
 - b. *Approval of the proposed variation will support a variety of housing types by providing a well-located development that will be a better choice for families (clause 2(3)(g)).*

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development. Insistence on compliance with the height control will result in the removal of the lift overrun and part or all of Unit 5.01, which is a disproportionate outcome given the non-compliance is due to the topography of the site and that there are no significant adverse impacts associated with the height breach. The additional height does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed in such a way to ensure the additional height is not visually discernible from the public domain.

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

86. 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,”*

87. Applicants Comment:

Objective (a) – “to establish the maximum height of buildings”

This objective articulates the ultimate function of the height of buildings development standard. The maximum height for buildings on land within the former Kogarah Local Government Area is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 21m and the maximum height of the proposal is 23.3m. The development standard provides for a six storey form across the site, which the proposed development complies. A small non-compliance is created due to the site topography at this point where the existing ground level dips.

The proposal contravenes the standard, which has prompted the preparation of this written variation request. Despite the nature and scale of development proposed by this development application, Clause 4.3 achieves the objective of establishing a maximum building height for the site, using the Height of Buildings Map as a mechanism to do so. This written request identifies the extent of variation proposed and explains why the variation is acceptable in the circumstances.

For these reasons the proposed height is consistent with Objective (a).

Objective (b) – “to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas”

This objective envisages that building heights must be controlled to minimise the impact to the amenity of neighbouring properties.

In relation to solar access, the elements above the 21m height limit create no significant additional overshadowing to adjoining properties when considering the extent of overshadowing against the backdrop of applicable planning controls. That is, the height breach of the lift overrun and awning is located centrally within the site and will not cast significant shadows onto the neighbouring properties between 9am and 3pm in midwinter. The shadow diagrams indicate that any overshadowing associated with the proposed non-compliance is relatively minor.

In terms of visual impact, the proposed height variation is limited to elements located centrally within the site. The area of the height breach is set back at least 9m from the north and south site boundaries and at least 25m and 30m from the east (waterfront) and west (Princes Highway) site boundaries respectively. The considerable setback of these elements and predominant building bulk which is compliant with the height development standard ensures that the height breach will be obscured when viewed from the public domain. To the casual observer on Princes Highway or from the water, the non-complaint elements will not be visually discernible or obtrusive.

With regards to privacy, the height breach does not result in any significant additional privacy impacts given that it is only the very upper portion of Unit 5.01 and the lift overrun which is above the height limit. The area of the height breach within Unit 5.01 is predominantly a solid external wall, with only a very small portion of one window over the height limit from which views would not be obtained.

As such, as the built form predominant built form is compliant with the relevant building controls set by the KLEP 2012, KDCP 2013 and the ADG. This ensures that despite the 2.3m height breach, the proposal is consistent with Objective (b).

Objective (c) – “to provide appropriate scale and intensity of development through height controls”

This objective seeks to ensure development provides a suitable scale and intensity within the R3 zone. The 21m height of buildings control effectively anticipates that a six storey building can be constructed on the site. The proposed development provides a six storey building and is only in breach of the height limit due to the site topography with the very central part of the development breaching the height control due to the dip in ground level at this point. As such, the six storey appearance will result in a built form which is reasonably anticipated and generally compliant with the 21m height of buildings development standard. The proposal therefore represents the desired future character of the locality.

The proposed height breach is located centrally within the site and will be obscured when viewed from the public domain. At the street frontage, the maximum building height is 18.7m which is significantly below (2.3m) the 21m height control. Similarly, at the waterfront, the height is 19.8m which is also below (1.2m) the height control. Accordingly, given also that the area of the height breach is significantly setback (at least 9m from the north and south site boundaries and at least 25m and 30m from the east (waterfront) and west (Princes Highway) site boundaries respectively), to the casual observer on Princes Highway and from the water, the proposed development will read as a height compliant building that is consistent with the future character of the locality. The proposed height and form is considered to be compatible with other recently developed properties, including No. 468-474 Princes Highway, Blakehurst (the “Upper Deck” development) which had a Clause 4.6 variation to support non-compliant building heights (24.415m maximum height or 16.3% variation to the height standard).

Therefore the proposal will be entirely compatible with the streetscape and represents the desired future character of the locality. It will certainly not be visually discernible in the streetscape or obtrusive where viewed from any surrounding properties. On balance, the proposal is considered to achieve a planning purpose of providing a high quality residential flat building, in a suitable locality in close proximity to services and transport. These benefits are in the absence of any significant additional adverse streetscape or amenity impacts.

The proposal is therefore consistent with objective (c), despite the minor height breach.

Objectives of the Zone

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone R3 are as follows:

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

The proposed development will provide for the housing needs of the community. The height variation provides for lift access which is essential to the amenity for future occupants of the building within the medium density environment.

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

The proposed development will provide 3 x 1 bedroom, 29 x 2 bedroom and 13 x 3 bedroom apartments within an accessible location as required within the medium density zone.

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

This objective is not relevant to the proposal.

The proposed development, including those parts of the building that breach the height of buildings development standard, is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

88. The objectives of the standard are:
 - (a) *to establish the maximum height for buildings,*
 - (b) *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,*
 - (c) *to provide appropriate scale and intensity of development through height controls.*
89. The proposed development fails to satisfy the objectives of the building height development standard for the following reasons:
 - The development is inconsistent with the built form envisaged for the locality.
 - The bulk and scale of the development is incompatible for the site and its foreshore setting, including at the upper levels of the building that do not comply with the required separation distances to the side boundaries, creating adverse visual impacts from the waterway and foreshore areas.

- When considered in the context of the development, the variation is unreasonable and unnecessary and the visual impacts generated by the structures are highly visible from the river and adjacent properties.
90. The objectives of the R3 Medium Density Residential zone are:
- *To provide for the housing needs of the community within a medium density residential environment.*
 - *To provide a variety of housing types within a medium density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
91. The exceedance of the building height control generally satisfies the objectives of the zone for the following reasons:
- The development is providing for the housing needs of the community with a mix of apartment choices.
92. Whilst generally satisfying the objectives of the zone, the area of non-compliance is considered to be unreasonable and will establish an undesirable precedent and undermine the objectives of the height control.
93. The public benefit of the variation is that it will appropriately facilitate the provision of medium density housing on a R3 zoned site and provide for a range of housing stock. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.
94. 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.
95. The breach includes habitable floor space which is not supported and generates an adverse visual impact from adjacent properties and the waterway.
96. There will be adverse amenity and visual impacts generated by the variation. The proposal fails to satisfy the objectives of the building height development. In this case the justification to vary the height control is considered to be unreasonable and not well founded and also does not adequately represent the numeric breach of the development.

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

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

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

Development Control Plans

Kogarah Development Control Plan No 2013 (KDCP)

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

Kogarah Development Control Plan 2013 Compliance Table		
PART B – GENERAL CONTROLS		
Required	Proposed	Complies
<i>B2 Tree Management and Greenweb</i>		
Compliance with provisions of Clause 5.9 Preservation of Trees or Vegetation of KLEP 2012 must be achieved.	<p>The proposal fails to meet the requirements of State Environmental Planning Policy (Vegetation in non-rural areas) 2017.</p> <p>The DCP requires open space areas to enhance and link existing vegetation and habitat on the site and adjacent sites.</p> <p>The proposed landscape scheme does not provide a suitable mix of indigenous species and no landscaping is proposed along the side boundaries.</p>	No
<i>B3 – Development near busy roads and rail corridors</i>		
Acoustic assessment for noise sensitive development may be required if located in the vicinity of a rail corridor or busy roads	Conditions would be imposed if the application was to be supported.	Yes
<i>B4 Parking and Traffic</i>		
<u>Residential parking:</u> 3 x 1 bedroom units @ 1 space per unit = 3 spaces required 29 x 2 bedroom units @ 1.5 spaces per unit = 44 spaces required. 13 x 3 bedroom units @ 2 spaces per unit = 26 spaces required Total required resident parking = 73 spaces	82 residential spaces provided.	Yes
<u>Visitor parking:</u> 45 total units @ 1 space per 5 units = 9 spaces required	9 visitor spaces provided.	Yes but not nominated on the plans.
<u>Car wash bay:</u> 1 bay, which can also function as a visitor space	Not provided.	No

<u>Bicycle Parking:</u> 1 space per 3 dwellings = 15 1 space per 10 dwellings for visitors = 5 spaces Total = 20 spaces required	8 residential bicycle parking spaces are provided.	No
Car park access and layout to comply with relevant Australian Standards	Ramps, parking, aisle widths and parking spaces satisfy the provisions of AS2890.	Yes
<i>B5 – Waste Management and Minimisation</i>		
Submit Waste Management Plan (WMP) Provide a dedicated caged area within the bin room for the storage of discarded bulky items.	The waste management plan for the development is not supported – refer to reasons at the end of this report.	No
<i>B6 – Water Management</i>		
All developments require consideration of Council's Water Management Policy	The proposed method of stormwater management is unsatisfactory – refer to reasons at the end of this report.	No
<i>B7 – Environmental Management</i>		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	Design, materials, siting and orientation generally optimise solar efficiency, with a high proportion of north facing window openings. The development is BASIX-compliant.	Yes

Part C2- Medium Density Housing – Kogarah Development Control Plan 2013

Required	Proposed	Complies
1. Minimum site requirements		
1000sqm minimum lot size	2,140sqm	Yes
24m minimum frontage	31m	Yes
2. Site isolation and amalgamation		
Adjoining sites not to be left isolated.	The proposal does not cause any site isolation by way of site area or frontage, however the property owners and the owners of the adjacent site at 424 Princes Highway were both advised in the Pre DA stage that amalgamation with each others sites would result in a better planning outcome for the sites. In addition, had the design been worthy of support, public foreshore access could have been negotiated to link the public reserves to the north and south of this pocket of R3 land.	Yes
Site amalgamation requirements apply for specific sites.		N/A
	The site is not subject to any amalgamation requirement. This notwithstanding, failure to amalgamate the site with adjoining	

Required	Proposed	Complies
	allotments, or at least coordinate the design and access approach means that access and the foreshore constraints applicable to the site will constrain development options resulting in a sub-par planning outcome.	
3. Building Setbacks		
Front setbacks Up to four (4) storeys – 5m Above four (4) storeys – 8m (increased setback may be required if street is <20m wide)	Minimum – 5.8m Minimum – 6.6m	Yes No
Side boundary setbacks Up to four (4) storeys – 6m Up to four (4) storeys – 6m Above four (4) storeys – 9m Above four (4) storeys – 9m	Western building (to north bdy/to south bdy) LG:NA G: 2m/1m to POS Min. 6m to external wall 1: 5m/6m 2: 5m/6m 3: 5m/6m 4: 9m/9m 5: 9m/9m Eastern building (to north bdy/to south bdy) LG: 3m/4m G: 3m/4m 1: 3m/4m 2: 3m/4m 3: 3m/4m 4: 3m/4m 5 (COS): 5m/6m	No
Rear boundary setbacks Up to four (4) storeys – 6m Above four (4) storeys – 12m	Not applicable – boundary to bay.	NA
Encroachments into boundary setbacks: Ground floor private open space may encroach up to 2m into the 5m front setback leaving a min 3m of landscaped area to the street. Ground floor private open space may encroach up to 3m into the side setback leaving a min 3m of landscaped area to the street.	Up to 1m 1m – 2m	No No
Setbacks are to be landscaped	Only the rear COS	No
Powerlines to be underground	Standard condition imposed.	Would be conditioned if approved.
Sub-stations, fire booster valves	A 'kiosk' is shown on public land	No

Required	Proposed	Complies
and waste bin storage structures need to be integrated into the development and identified at the DA stage.	on the Landscape Plan. No additional details is provided with regard to this notation.	
4. Basement Setbacks		
3m from site boundaries	Nil to front and side	No
Discussion on basement setbacks: The lack of setbacks provided to the side and front boundaries is not supported as there is no deep soil area provided for landscaping to be established, it constrains the future development of adjacent sites and is an unsuitable design response for a site outside of a town centre.		
Basement setback areas are to be deep soil areas as defined in the ADG	Only rear COS	No
Driveways and crossings are to be located a minimum of 1.5m from a side boundary	<1m.	No
5. Façade Treatment and Street Corners		
Building facades to be clearly articulated with high quality materials and finishes. Modulation and articulation in the building form to be explored. Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding and green walls should be considered as alternatives. Clear glazing balustrades to be avoided where they are visible from the public domain.	The façade design is monotonous and bulky and an inappropriate design outcome, and has a defensive appearance to the public domain.	No
6. Landscaped area and Private Open Space		
A minimum 10% of the site is to be landscaped area that is not impeded by buildings or structures above or below ground level with a minimum dimension of 2m on two axes.	13% and compliant widths achieved.	Yes
Private open space to be adjacent to and visible from the main living area/dining rooms and be accessible	Provided for each apartment.	Yes
Private open space and balconies must comply with Part 4E of the ADG	All apartments comply.	Yes

Required	Proposed	Complies
7. Common Open space		
Common Open Space to be a minimum of 25% of the site area with a minimum dimension of 5m.	Communal open space provided is 384sqm (17%) with a minimum 5m dimension. Ground floor – 206sqm Rooftop – 178sqm	No
A maximum of 50% of common open space may be provided above ground level.	46% COS is provided on the rooftop.	Yes
At least 50% of the required common open space area is to receive 2 hours of direct sunlight between 9am and 3pm on 21 June.	Greater than 50% of the communal areas will receive more than 2 hours direct sunlight during midwinter.	Yes
A minimum of 50% of the total area of common open space provided at ground level is to comprise unpaved landscape area.	Complies.	Yes
The useable and trafficable area of any rooftop common open space is to be setback a minimum of 2.5m from the edge of the roof of the floor below with landscape planters to prevent overlooking.	Complies – setbacks achieved.	Yes
Roof top open space areas should include equitable access.	Equitable access via lifts and ramps have been provided throughout the development.	Yes
Ancillary structures such as lift overruns and staircases should be centralised to reduce their visual dominance.	Fire stairs and lift over runs are centrally located.	Yes
8. Solar Access		
Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June)	Given the lot orientation and the nature of the development on the adjoining allotments the minimum solar access can be achieved.	Yes
9. Vehicular access, parking and circulation		
Car parking to be provided in accordance with Part B4 unless objective 3J-1 of the ADG applies.	The development complies with the Kogarah Development Control Plan numerical parking requirements.	Yes
Car parking layout and vehicular access complies with AS2890.1-2004	Complies – will be reinforced via conditions of consent.	Yes

Required	Proposed	Complies
All residential flat buildings to provide car wash bay	No car wash provided.	No
10. Views and view sharing		
Provide for reasonable sharing of views	The proposal allows for reasonable view sharing.	Yes
11. Dwelling Mix		
Dwellings that propose more than 10 dwellings are to provide a mix of dwellings as follows: Studio apartments and 1 bed apartments - 20% min 2 bed apartments – 30% max 3 bed apartments – 15% min	The proposal includes the following apartments mix: 3 x 1 bedroom apartments = 6.7% 29 x 2 bedroom apartments = 64.4% 13 x 3 bedroom apartments = 2.9%	No No No
12. Adaptable and accessible housing		
(iii) 41-50 units – 5 adaptable units 45 units proposed – 5 adaptable units required Every adaptable unit needs to have an accessible car space.	4 adaptable apartments are proposed with provision for accessible parking.	No

C4 – Foreshore Locality Controls

a) Carss Park – Carss Park to Shiprights Bay Area 4(c)

100. These controls relate to dwelling house developments in the foreshore area as the controls did not anticipate residential flat development in this locality at the time the DCP was published. Therefore some controls are not relevant.

Control	Proposed	Complies
4.7 Land/Water Interface Development Development between MHWM and the FBL:	Landscaping is proposed between the MHWM and the FBL.	Yes
4.8 Water Based Development Development below the MHWM.	No work is proposed below the MHWM.	Yes
4.9 Land Based Development		
(1) Buildings should be sited on the block to retain existing ridgeline vegetation, where possible. Siting buildings on existing building footprints or reducing building footprints to retain vegetation and the natural landform is highly recommended. In this regard, Council may consider variations to setback and height requirements to retain existing ridgeline vegetation, particularly where it provides a	No significant vegetation is affected.	Yes

backdrop to the waterway, but only where it can be demonstrated that the variations: (i) do not increase the visual impact of the dwelling when viewed from the water; (ii) still achieve a built form that is in scale and proportion with the site and adjoining development; and (iii) the overall development complies with the floorspace requirements as contained in Part C1 Section 1.2.1.		
(2) On sites where the slope exceeds 1:8 (12.5%), dwellings should not have the appearance from any elevation of being more than three levels from the water. Such developments should be stepped, with the bulk of the development setback as far from the water as possible	NA	NA
(3) The maximum number of storeys at any point is two (2). However, in certain circumstances, Council may permit a variation to this requirement where the design of the dwelling results in a reduced building footprint and site coverage and results in the following: (i) Preservation of topographic features of the site, including rock shelves and cliff faces; (ii) Retention of significant trees and vegetation, particularly in areas where the loss of this vegetation would result in the visual scarring of the landscape, when viewed from the water; and (iii) Minimised site disturbance through cutting and/or filling of the site (Refer to Figure 12-14).	NA	NA
(4) Facades and rooflines of dwellings facing the water are to be broken up into smaller elements with a balance of solid walls to glazed areas. Rectangular or boxy shaped dwellings with large expanses of glazing and reflective materials are not acceptable. In this regard, the maximum amount of glazed area to solid area for façades facing the foreshore is to be 50%-50%.	The façades are not supported as discussed in this report. The rear elevation is dominated by glazing which does not comply with the intent of this control.	No
(5) Colours that harmonise with and recede into the background landscape are to be used. In this regard, dark and earthy tones are recommended and white and light coloured roofs and walls are not permitted. To ensure that colours are appropriate, a schedule of proposed colours is to be submitted with the Development Application and will be enforced as a	Suitable colours have been selected however the rear elevation is dominated by glazing which is not a suitable design response for the foreshore setting.	No

condition of consent.		
(6) Swimming pools and surrounds should be sited in an area that minimises the removal of trees and limits impact on the natural landform features (rock shelves and platforms).	NA	NA
(7) On steeper slopes, preference is given to the use of stable rock ledges and escarpments, as opposed to retaining walls. In circumstances where it is appropriate, a landscape batter is preferable to retaining walls.	The proposal fails to suitably address the topography of the site.	No
(8) Adequate landscaping shall be provided to screen undercroft areas and reduce their impact when viewed from the water.	Insufficient landscaping is proposed to the front and side of the building.	No
(9) Where there is a strong design character in existing buildings, new dwellings must, when viewed from the waterway, incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with that character.	The proposal is not in keeping with the desired future character of the area. The building is too bulky, provides no meaningful landscaping, fails to comply with setbacks to the side boundaries and is an overdevelopment of the site given its natural and planning constraints.	No
(10) Blank walls facing the waterfront shall not be permitted. In this regard, walls are to be articulated and should incorporate design features, such as: (i) awnings or other features over windows; (ii) recessing or projecting architectural elements; or (iii) open, deep verandas.	The extent of the basement walls above natural ground level are not supported.	No

Developer Contributions

101. The proposed development would require payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979. If the development consent is granted a condition outlining the required contributions will be imposed.

Impacts

Natural Environment

102. The site contains few trees which are required to be removed as part of the development however the lack of deep soil to the front and side of the building results in insufficient landscaping across the site. The site is mapped within a Green Web Habitat Reinforcement Corridor and development of such sites should revegetate open space areas with indigenous species to link existing areas of vegetation and habitat.
103. The site is located within a pocket of residentially zoned land between areas of public reserve to the north and south. Any approval for development on this site and other properties within the pocket will be required to provide substantial indigenous landscaping and public access to the foreshore to link the two reserves and revegetate the area.

Built Environment

104. The siting, scale, bulk, and massing of the development are generally inconsistent with that anticipated for the site and represents a design that does not contribute positively to the character of the area.
105. The proposal exceeds the building height development standard of Kogarah Local Environmental Plan 2012. The variation to the building height has been assessed and is not supported, in this circumstance, the current form of the building, the development as a whole cannot be supported. The proposal is inconsistent with State Environmental Planning Policy 65 Design Quality Principles and does not reflect the desired future planning and design outcome for the site in its current form.
106. The proposed vehicular access to the site is unsafe for vehicles and pedestrians. This forms of the reasons for refusal of the application.
107. Accordingly the proposal is inconsistent with the existing and future desired character of the locality and is recommended for refusal.
108. It is noted that the sites are greatly constrained by their State Road frontage and waterfront rear boundary. It is considered that a better planning outcome would be achieved by development of a coordinated design response with adjoining properties.

Social Environment

109. No adverse social impacts have been identified as part of the assessment. The provision of additional dwellings would in principle provide for additional housing for a cross-section of the community. However, the built form is not an appropriate outcome for the site and does not accommodate the provision of public access to the foreshore.

Economic Environment

110. The proposed development will have no adverse economic impact.
111. The proposed development will provide temporary employment through the construction of the development.

Suitability of the Site

112. The site is zoned R3 Medium Density Residential. The proposal is a permissible land use within the zone, subject to development consent.
113. The development does not respond to the constraints of the site, in particular topography, foreshore setting and context, as evidenced by its various non-compliances with relevant building envelope controls as detailed previously within the report.

Submissions and the Public Interest

114. The application was neighbour notified in accordance with Council's notification policy for a period of fourteen (14) days. Five submissions were received. The issues are summarised below. One submission was in support of the proposed development.

Submission	Comment
Traffic impacts for Princes Highway	The proposal is unsafe for pedestrians and traffic and this forms one of the reasons for refusal of the application.
View impacts from properties on Townson Street	Given the orientation of the site and the permissible height limit of 21m for the site and adjoining properties, views will be impacted from properties on the western side of Princes Highway, however it is noted that the proposal is below the height limit at the front elevation. In any case, the application is recommended for refusal for a number of reasons.
Overshadowing, Non-compliant Building Separation and Southern setback	Due to the orientation of the site and adjoining properties, overshadowing to the south is to be expected, however the non-compliant setbacks are not supported and this forms one of the reasons for refusal of the application.

Referrals

Council Referrals

Development Engineer

115. The application was referred to Council's Development Engineers for comment, who does not support the proposed stormwater management design for the following reasons:

- There is inadequate detail information provided in submitted drainage plans, and Greenview Consulting engineers have failed to undertake their due diligence drainage design delivery.
- Given the type of development, a rainwater tank (5000L minimum) is required to be provided with detail layout consisting of size, cross sections, surface/invert levels, connecting inflow pipes, outflow pipes with downstream pit connection to be clearly documented in the plan. Rain water tank to be used for landscaping and irrigation purposes and environmental benefit of minimizing potable water usage out of the development.
- Drainage plans must document transparently in each sheet all downpipes, drainage pits sizes, grated drains surface (not GL) and invert levels, pipe sizes ensuring that these will be installed satisfactorily (not waiting for CC stage). How are all downpipes connected to rain water tank also to be documented (Refer to sheets C02 3, C03 3, C04 3, C05 3). All grated drains must be sized 300mm wide and 300mm deep as minimum.
- Basement pump pit design details and engineering calculations are incomplete and unsatisfactory. Minimum volume shall be 3.0 cubic metre with 1.0 metre deep. The pump sump to be 330mm deep with two 900x900 grates to install on the opposite

corners of the pump pit (refer to sheet C02 3) for maintenance and inspection purposes.

- Site boundary silt arrestor pit (P1) requires 375 RCP outlet pipe discharges to the bay. Note: the pipe outfall detail shall be integrated with site boundary pit. Provide photographic evidence of existing property boundary alignment and interface with the bay and need to confirm whether any property protection sea wall is warranted or not right at this stage.
- There will be quite significant amount of discharge that will be generated from the development. Hence the rain water tank outlet pipe and pipelines sizes shall be 300mm minimum.
- All pits and pipes detail information (sizes, surface/invert levels, grades etc) for basements, lower ground floor and ground floor, up to roof must be presented where these are shown in their respective sheets not somewhere else.
- Scour protection works should be sufficiently detailed at this stage with outlet pipe (375 RCP), rock sizes with site outlet pit along with showing the bay not watercourse. Provide silt arrestor pit SL/IL, size, inlet/outlet pipe etc.
- Final drainage design plan must be consistent and integrated with final architectural plan and landscaping/deep soil plan and these plans shall be submitted for Council review and approval.

Traffic Engineer

116. The application was referred to Council's Traffic Engineer for comment. The proposal is not support for the following reasons:

- Vehicular Access
 - Entry Movements
- The proposal for the entry and exit driveways to be at the very northern/start end of a service road, which in its current constructed form has a narrow entry width and close proximity to a large radius change of alignment/bend on the Princes Highway, is considered unsatisfactory on traffic and pedestrian safety grounds.
- Although there is an existing driveway at a location similar to that proposed, that driveway provides access only to and from a single vehicle garage associated with a single residential dwelling.
- Vehicle movements associated with the proposed development will increase across the footpath and concern is raised for there to be an increased potential for rear end type crashes occurring as vehicles exit the southbound, kerbside lane of the Princess Highway then reduce speed very quickly and possibly come to a complete stop only after travelling a distance of some 5-6m along the service road.
- The driveway is also in close proximity to "The Bridge Seafoods", a busy seafood retail business providing both fresh and cooked seafood. There is therefore potential for customers of that business to be on or near the proposed driveway restricting movements across the footpath and resulting in entering vehicles having to stop on the service road.
- It is considered it will be particularly hazardous if two vehicles exit the kerbside lane of the Princes Highway one behind the other as the second vehicle will also be required to slow or come to a stop whilst still being fully or partially positioned in the highway kerbside lane, a lane which carries high volumes of traffic including a high percentage of heavy vehicles such as buses, semi-trailers and B-Double trucks potentially travelling at or near 70kph.
- Observations at the site reveal that although the speed limit is 70kph, there are incidences of drivers exceeding that limit when changing from the centre lane to the kerbside lane in order to overtake slower vehicles.

- Due to the curvature /bend on the highway, drivers in the kerbside lane have a reduced sighting of those entering the service road until they are very close to them.
- Any vehicle travelling slowly or stopped in the kerbside lane of the highway significantly increases the risk of a rear end crash occurring involving a multiple number of vehicles and serious injuries.
 - Exit Movements
- The proposed exit driveway location is also considered unsatisfactory on traffic safety grounds.
- Drivers exiting the site are doing so only some 10m from the point where vehicles exit the highway at speed into the start of the service road.
- Due to there being an increase in the number of vehicles entering the service road from the development site, there is an increased potential for a crash to occur between those exiting the site onto the service road and those entering the service road from the highway at speed.
- The Traffic and Parking Assessment report prepared by TTPA, Transport and Traffic Planning Associates (Ref: 20148 “E” dated September 2021) makes no reference to potential issues relating to entry/exit from the service roadway even though it is considered safety issues are evident.
- Included in the report is a “Swept Path Analysis of a 99th Percentile Vehicle Entering the site” - Drawing Sp1. This drawing does not provide any information on existing kerb lines and lane lines on the Princes Highway or the service road to determine if vehicle movements can take place as indicated.
- It is recommended to improve vehicular access and safety that changes be made to the configuration of the service road so that the service road is extended to fully cover the frontage of the site and reduce the potential for crashes for both entry movements to and exit movements from the site.
NOTE: Council is currently assessing a similar, RFB development application at the adjoining site to the south at 424 Princes Highway – DA2022/0054.
- Vehicular access to and from that site is not supported as proposed for traffic and pedestrian safety reasons and may benefit from vehicular access via an improved/extended deceleration lane along its frontage.
- It is recommended the applicant's for both developments be contacted and advised vehicular access and servicing of both sites is unsatisfactory as proposed and that a full deceleration lane is required across both frontages.
 - Waste Collection
- The proposal is for waste and recyclables to be collected via a private waste contractor using a small rigid vehicle (SRV- 6.4m length) to access waste bins in the upper level of the basement car parks.
- The Owners Corporation in the future may opt to cease using a private contractor to collect waste and recyclables when it is found they are paying a fee for the contractor's service as well as a fee component in their rates to Council.
- It is likely the Owners Corporation will opt for Council to service the site. Council does not use an SRV for domestic waste collection and only operates larger, 12.5m long, medium rigid vehicles (MRV's).
- It is not appropriate or safe to remove waste from the kerbside on the Princes Highway or from the northern end of the service road and hence provision should be made within the site for the collection of waste and recyclables with that MRV entering and exiting the site in a forward direction.
 - Removalist Vehicles

- Provision should be made within the site for the access of removalist vehicles. A facility provided for a waste vehicle in 2 above could also be used for removalist vehicles.

Environmental Health Officer

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

Consultant Arborist

118. Council's Landscape Arborist and Senior Environment Officer have reviewed the proposal and do not support the landscape design. The issues identified with the design have been identified as:

- The tree located within the front yard of 424 Princes Hwy, approximately 1m from the side fence and from the proposed basement may be impacted significantly as the basements are proposed to the boundary. This tree would have a Tree Protection Zone of approximately 7.8 metres radially out from its trunk.
- The applicant was advised by Council in the letter following the Pre DA meeting that an Arborist Report for the impacts that may present to the trees on the adjacent northern property would be required. Despite this advice, one was not provided.
- From the proposed basement plans, no deep soil is allocated for the front or side boundaries. The lawn areas in each apartment looks tokenistic and especially the lawn areas proposed on the south side of the proposed building, with little to no sun (morning and afternoon, summer only), these areas will become boggy and eventually concreted or tiled. The only deep soil allocation is for the east waterfront side of the site.
- Due to the site being located within Council's Green Web 'Habitat Reinforcement Corridor' landscaped areas must comprise of species indigenous to the Georges River Council area, listed in Council's Tree Management Policy (Appendix 1 – Tree Planting).
- Development must also allocate one boundary of the site to planting of indigenous vegetation of a mix of canopy species (over 3m height at maturity) and understorey species (less than 3m height at maturity. This requirement looks to be mostly met on the northern site boundary, with the only change needed being the replacement of proposed *Lagerstoemia* species with indigenous species over 3m at maturity, such as *Glochidion ferdinandii* or *Melaleuca quinquenervia*.
- Throughout the site, the proposed species *Livistona australis* and *Lagerstoemia* species will need to be replaced with locally indigenous species. The currently proposed species will also not provide adequate shading and cooling for the habitat reinforcement corridor, so alternative species should seek to remediate that.

Waste Co-ordinator

119. The waste management for the proposal is not supported for the following reasons:

- The applicant has used an incorrect calculation of recycling generation in the WMP (page 21). The rate for recycling generation is 120L per week per unit. The applicant must provide an updated correct WMP allowing for recycling generation at 120L per week per unit, and allow to applicable bin storage onsite for collection service frequencies offered by Council.
- For a development of 45 residential units, the following bin numbers must be enabled onsite to storage and contain the waste to be generated by residents of all 45 units:

- 5 x 1100L general waste bins OR 9 x 660L general waste bins, serviced once weekly.
 - 23 x 240L commingled recycling bins, serviced once weekly.
- The applicant does not allow any approved method for the collection, storage and transport of both general waste and commingled recycling bins from each occupied floor to the central bin storage area in the lower ground. The applicant needs to allow for either: dual chutes (recycling and general waste in separate chutes), a single chute with diverter technology OR bin storage cupboard on each occupied floor to cater for the separated storage of both general waste and commingled recycling, at two days volumes to be generated on each occupied floor. Bins stored on each floor will be rotated by an onsite building manager/cleaner at least twice weekly from each occupied floor to the central bin storage area.
- Given the applicant has not catered for any of the above three options, Council may not be able to provide a waste collection service to the development once occupied. The method of residents using the lift well to transport waste and recycling to the lower ground bin storage area is not accepted. It is not acceptable to Council that residents transport loose/unbagged waste likely to cause spills through stairwells and/or lifts from each occupied level to the basement bin storage area, nor is it an approved method for transporting waste as per State best practice guidelines.
- For Council or a private waste contractor to provide a 'Wheel In Wheel Out' (WIWO) service, the bin storage area must be on the ground floor and to be easily accessible by waste contractors – within 15 metres of the kerbside and the path of travel being level and on impervious surfaces (any keys/security codes provided for access to secure area if required). Waste collection contractors cannot travel into basement areas to retrieve bins for servicing. The WIWO service provided through the Council waste service is subject to a Risk Assessment after the site is operational. It is the responsibility for the Site/Building Manager to maintain the waste storage areas as clean and tidy. The WIWO service can be cancelled at Council's discretion in which circumstance the site may be required to arrange bin presentation on the kerbside. The alternative to this service is a site manager or other delegated person being responsible for presenting bins kerbside no earlier than 12 hours prior to waste collection and returning bins from the kerbside no later than 12 hours post collection. Further, if this alternative is considered by the applicant, the adequate storage space on impervious surfaces will need to be allocated at the kerbside (if using 660/1100L bins) and indicated on the plans. The applicant must outline how bins will be presented at the designated waste collection point ahead of and post collection.
- Further, the applicant has not allowed or depicted on the architectural plans where the bulky waste for 45 residential units (which could be up to 135m² in volume at any one time) will be stored at the kerbside concurrently with the bins required for use by the development. The kerbside storage space must be outlined on the architectural plans and acknowledged within the Waste Management Plan. The applicant has not outlined where on private property the bins will be placed ahead of collection. Princes Highway is a major arterial road and it is unacceptable to propose on-road standing of a waste collection vehicle, with operators loading a vehicle from the rear without safety measures in place.

- The development has not allowed for the management of garden organic waste. The applicant should outline a proposed management/storage method for garden organic waste originating from the common landscaped areas. These methods should be outlined within a WMP. In the event the applicant does not allow for garden organic bin storage onsite, the development will be conditioned to obtain private landscaper or waste management services for the management and removal of organic waste onsite at cost to the Strata/Body Corporate.
- Further, the applicant has allowed for storage of bulky waste on the lower ground floor – and allowed for 10m². The storage GFA is acceptable for a development of 45 residential units. However, the positioning of the bulky waste storage area is not acceptable in the basement area. This is because waste collection contractors are unable to travel by foot into underground carparking areas and lift large bulky items for a distance of further than 15m for a collection vehicle.
- Additionally, the development has not allowed height clearance in the basement of 4m to enable a waste collection vehicle to stand near to the bulky waste storage area. The bulky waste storage area has accounted for double doors to ensure that large items can be easily moved (mattresses, furniture etc), which is acceptable to Council.
- Vehicular access to the site is via a combined entry/exit from Princes Highway. There is no proposal for a waste collection vehicle to provide onsite services. The Waste Management Plan, nor the Architectural Plans outline the designated waste collection point. The Waste Management Plan must outline how a waste collection vehicle – both specifications for a rear AND side loader due to the proposed use of 1100L and 240L bins – will be standing at or near the site in order to undertake waste collection services. The Waste Management Plan must also outline the proposed waste collection location – this is not outlined within the WMP.
- The applicant has not outlined where on private property the bins will be placed ahead of collection. Princes Highway is a major arterial road and it is unacceptable to propose on- road standing of a waste collection vehicle, with operators loading a vehicle from the rear without safety measures in place.
- There are numerous inconsistencies throughout the WMP, largely around the proposed method of collection of waste from the site. As one example, the WMP proposes private contractor in section 5.6.2 then mentions numerous times in section 5.6.3 that services will be undertaken by Council. The applicant must review the proposed method of collection of wastes from the site and provide an updated and correct WMP for Council's review.
- The applicant then proposes onsite collection of waste from the loading dock, which is at the opposite end of the lower ground to the waste storage areas. Details of vehicle turning circles, height clearance of the lower ground and a loading dock management plan should be provided to Council for review.
- Further, receptacles for the management of any waste items likely to become litter from communal areas must be contained in bins. Bins located in common areas must be displayed on updated Architectural Plans and noted within an updated WMP.

External Referrals

Ausgrid

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

Sydney Airport

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

Transport for NSW

122. The application was referred to Transport for NSW. A formal response was provided as follows:

TfNSW has reviewed the submitted application and notes that the development proposes a driveway along the current service road which may impact Princes Highway. In this regard, TfNSW does not provide concurrence under section 138 of the *Roads Act 1993*, at this stage, for the proposed development for the following reasons:

- The driveway should be relocated to the most southern side of the property on Princes Highway to ensure the vehicle movements do not impact the safety and efficiency of Princes Highway (classified road).
- TfNSW has been advised as to Council's intentions to extend the current Service Road to facilitate access arrangements. Any strategy to extend the existing service road to accommodate the turning movements into and out of the site through a service road arrangement will need to be shown on the plans.
- The applicant shall provide driveway and basement car parking plans (including clearances) to demonstrate that all service vehicles (including delivery by removalist trucks and garbage trucks) are undertaken internally without relying on the Princes Highway corridor.
- Updated swept path and sight line plans shall be provided to demonstrate that proposed vehicle movements into the site do not impact the safety and efficiency of Princes Highway (classified road). Vehicles shall be able to manoeuvre concurrently and within the building boundary.

Upon receipt of amended plans that reflect the abovementioned requirements, TfNSW will review and provide a response accordingly.

123. With regard to the first dot point in the advice from TfNSW, it is noted that the driveway is already proposed on the southern side of the site. In any case, Council's Senior Traffic Engineer has assessed the proposal and advised the vehicular access to and from the site is unsafe and unsatisfactory and investigations into the extension of the existing slip lane/deceleration lane northward should be undertaken to ensure safe access to and from Princes Highway. The applicant of the withdrawn DA on the site to the north at 424 Princes Highway was provided the same advice at Pre DA stage by Council and TfNSW.

Conclusion

124. This development application (DA) seeks consent for the demolition of existing structures across two sites, lot consolidation and the construction of a 6 storey Residential Flat Building (RFB) comprising a total of 45 apartments including two (2) levels of basement car parking catering for a total of 82 car parking spaces, landscaping and site works.
125. The proposal has been assessed in accordance with the matters for consideration under Section 8.2 and Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979. The proposal is considered to be an unreasonable intensification of the site. It represents an unacceptable planning and design outcome for this site and will adversely affect both the character of the immediate locality and the residential amenity of the area.
126. The proposal is an inappropriate response to the site when considered against the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. Its bulk and scale is inconsistent with the desired future character of the area as established by the Kogarah Local Environment Plan 2012 (KLEP) development standards for building height.

127. The proposal fails to comply with the building height development standard of 21m that applies to the site under Kogarah Local Environmental Plan 2012. This variation includes, part of a residential unit, lift overrun and fire stairs and rooftop communal open space. The height to the top of the lift overrun is 23.3m equating to a 10.9% variation of the height control.
128. A variation request to the building height development standard has been submitted pursuant to Clause 4.6 of Kogarah Local Environmental Plan 2012. This is not supported for the reasons provided in this report.
129. The proposal is an inappropriate response to the site topography and foreshore location, lacks deep soil areas on the side boundaries to accommodate substantial landscaping, has poor physical and visual connection between the street and the building.
130. The façade treatment, lack of articulation and non-compliant setbacks contributes to a poor design outcome which is not in keeping with the desired future character for the locality, which is exacerbated by the extent of the basement walls above natural ground level, resulting in inappropriate bulk and scale.
131. The proposed development fails to meet the ADG controls for communal open space, visual privacy, pedestrian and vehicular access and solar access.
132. The proposed design, mass and form of the building is considered inconsistent with the desired future form of development in the locality. The proposal is considered to establish an undesirable design precedent in the area and is not considered to be in the public interest.
133. In addition, the functionality of the proposal in terms of traffic, waste, stormwater, the suitability of the landscape design for a property in the 'Green web' area all mean that the proposal is not able to be supported.
134. The proposal also fails to comply with various built form controls of Kogarah Development Control Plan 2013 as discussed within the report.
135. For the above reasons, the proposal is recommended for refusal.

Determination and Statement of Reasons

Statement of Reasons

136. The reasons for this recommendation are:
 - The proposal fails to respond to both the existing context of the streetscape and the desired future character of the area.
 - The proposal is an inappropriate response to the site topography and foreshore location, lacks deep soil areas on the side boundaries to accommodate substantial landscaping, has poor physical and visual connection between the street and the building.
 - The façade treatment, lack of articulation and non-compliant setbacks contributes to a poor design outcome which is not in keeping with the desired future character for the locality, which is exacerbated by the extent of the basement walls above natural ground level, resulting in inappropriate bulk and scale.
 - The proposed development fails to satisfy the objectives of Clause 4.3 (Height of Buildings) control within the KLEP, the exceedance in the height of the building will adversely affect the future and desired character of the locality.

- The Clause 4.6 Exception to Development Standard for the variation for Clause 4.3 Height of Building development standard is not supported in its current form. The Clause 4.6 Statement is not considered to be well founded and the non-compliance with the height control is unreasonable and unnecessary in the circumstances of the case.
- Direct vehicular access to the site from Princes Highway is unsafe and not supported.
- Stormwater management fails to meet Council's Stormwater Management Policy.
- Waste Management is poorly considered and not supported.
- The proposal is considered to establish an undesirable precedent in the area and will not be in the public interest.

Determination

137. 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 DA2021/0388 for demolition works and construction of a residential flat building on Lots 3 and 4 in DP 9209 known as 426-428 Princes Highway, Blakehurst, for the following reasons:

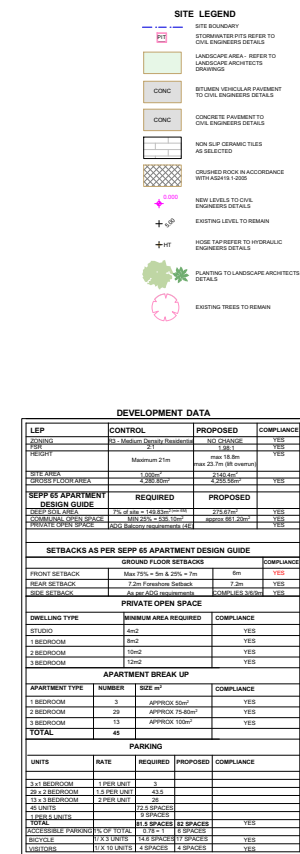
1. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal provides poor amenity in relation to the quality and accessibility of communal open space, visual privacy, pedestrian and vehicular access and solar access having regard to the Apartment Design Guide (ADG) and State Environmental Planning Policy No. 65 Design Quality of Residential Flat Buildings.
2. The proposal is unsatisfactory having regard to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development exceeds the height limit for the site. The Clause 4.6 Statement in respect to the non-compliance with Clause 4.3 Height of Building standard is not considered to be well founded or in the public interest.
3. 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 built environment with respect to the impact upon the streetscape, amenity for future occupants and to adjoining properties.
4. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 in that the proposed development in its current form is not suitable for the site.
5. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 with regard to vehicular access, stormwater management, waste management and landscaping.
6. The proposed development fails to satisfy the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the proposed built form of the development does not reflect the desired future character for development in the locality.
7. The proposed development fails to satisfy the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 in that the proposed

development in its current form, given its siting, location, design and massing is considered to be an inappropriate outcome for the site and will establish an undesirable precedent in the area which will not be in the public interest.

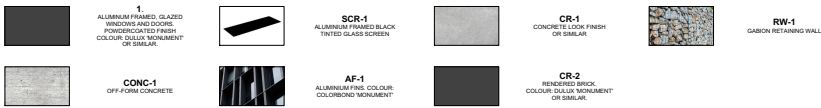
Appeal Rights - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.

ATTACHMENTS

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



DRAWING: SITE PLAN		Drawn: EN	Job No: 2014	Drawing No: A004	Project Name: 
JOB File: C:\pant\A004\02\dwg\SitePlan.dwg					
Nominated	Nicholas Lycanilo nlycanilo@wpi.edu	Scale:	No. of sheets: 1	Amendment: 0	



1. DRAWINGS NOT TO BE SCALED. WRITTEN DIMENSIONS TO BE USED ONLY IF DISCREPANCIES EXIST. CONTRACT ARIKHAUS.
2. ALL WORKS TO BE COMPLETED IN ACCORDANCE WITH THE NATIONAL CONSTRUCTION CODE, AUSTRALIAN STANDARDS AND RELEVANT BY-LAWS.
3. BUILDER TO CHECK & VERIFY ALL DIMENSIONS & LEVELS PRIOR TO COMMENCEMENT OF WORK.
4. ALL PROPOSED ITEMS ARE TO BE INSTALLED IN ACCORDANCE WITH MANUFACTURERS DETAILS AND SPECIFICATIONS.
5. STATUTORY AUTHORITY APPROVALS AND SPECIFICATIONS THAT FORM PART OF CONSTRUCTION METHODS ARE TO BE ADHERED TO.
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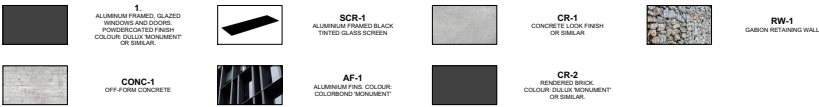
ARKHAUS

J.M, G.M, M.C

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Suite 4.03/ 77 Dunning Avenue, Rosebery NSW 2018

Issue	Amendment	Date	Rev	Chg
P1	PRELIMINARY ISSUE	27/04/2021		
P2	REVISED DRAWING/ISSUES	14/05/2021		
P3	REVISED DRAFT FOR CONSULTANTS	29/07/2021		
P4	REVISED DRAFT FOR CONSULTANTS	05/07/2021		
P5	REVISED DRAFT FOR CONSULTANTS	23/07/2021		
P6	REVISED DRAFT FOR CONSULTANTS	11/08/2021		
A	DEVELOPMENT APPLICATION	23/08/2021		

PROJECT:	NEW RESIDENTIAL FLAT BUILDING
ADDRESS:	LOT 3 & 4 D.P 9209
ADDRESS:	426 - 428 PRINCES HIGHWAY BLAKEHURST NSW 2221
DRAWING:	ELEVATIONS
Drawn:	BN
Job No:	2014
Drawing No:	A401
Project North:	B
Scale:	As shown @ A1
No. of sheets:	16 of 42



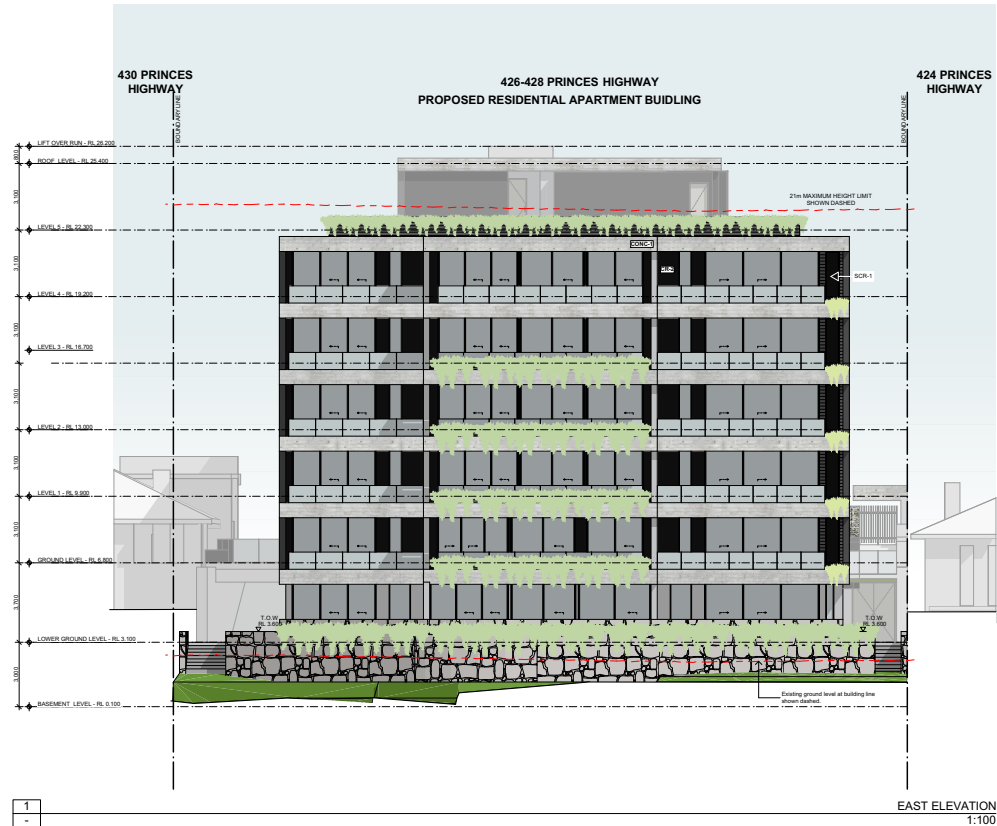
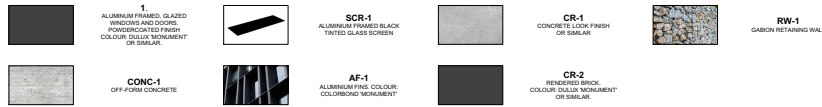
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3. BUILDER TO CHECK & VERIFY ALL DIMENSIONS & LEVELS PRIOR TO COMMENCEMENT OF WORK.
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Client:
J.M, G.M, M.C

Issue: Amendment
1. PRELIMINARY ISSUE
2. PRELIMINARY ISSUE
3. PRELIMINARY ISSUE
4. PRELIMINARY ISSUE
5. PRELIMINARY ISSUE
6. PRELIMINARY ISSUE
7. PRELIMINARY ISSUE
8. PRELIMINARY ISSUE
9. PRELIMINARY ISSUE
10. PRELIMINARY ISSUE

PROJECT: NEW RESIDENTIAL FLAT BUILDING
ADDRESS: LOT 3 & 4 D.P.9209
426 - 428 PRINCES HIGHWAY BLAKEHURST NSW 2221
DRAWING: ELEVATIONS
Scale: As shown @ A1
No. of sheets: 17 of 42
Drawing No: A402
Project North



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AND RELEVANT BY LAWS.
4. BUILDER TO CHECK & VERIFY ALL DIMENSIONS & LEVELS PRIOR TO COMMENCEMENT OF WORK.
5. ALL PROPERTIES ARE TO BE INSTALLED IN ACCORDANCE WITH MANUFACTURERS DETAILS AND SPECIFICATIONS.
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7. THESE DRAWINGS HAVE BEEN PREPARED BY AIRHAUS, THE DESIGN AND DETAILS CONTAINED ON THESE DRAWINGS ARE
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ARKHAUS

Client:

J.M, G.M, M.C

Issue	Amendment
P1	PRELIMINARY ISSUE
P2	PRELIMINARY ISSUE
P3	REVISED DRAWING NUMBERS
P4	UPDATED DRAFT FOR CONSULTANTS
P5	UPDATED DRAFT FOR CONSULTANTS
P6	RAMP AMENDMENT
A	DEVELOPMENT APPLICATION
B	DEVELOPMENT APPLICATION

Date	Down	Ch
6/04/2021		
27/04/2021		
14/05/2021		
3/06/2021		
8/07/2021		
22/07/2021		
11/08/2021		
2/09/2021		

PROJECT: **NEW RESIDENTIAL FLAT BUILDING**
ADDRESS: LOT. 3 & 4 D.P 9209
426 - 428 PRINCES HIGHWAY BLAKEHURST NSW 2221
DRAWING: **ELEVATIONS** Drawn: Job No:

DRAWING: ELEVATIONS		Drawn:	Job No:	Drawing No:	Project North:
JOB File: C:\paw\01\A403\Drawings\Temp Folder\2014.6.26 - 408 Plot.dwg\24.dwg		EN	2014	A403	
Nominated Architect	Nicholas Lycenko NSWIAIB No. 3010	 Architect Registration Board	Scale: As shown @ A1	No. of sheets: 18 of 42	Amendment: B



ARKHAUS

Issue	Amendment
P1	PRELIMINARY ISSUE
P2	PRELIMINARY ISSUE
P3	REVISED DRAWING NUMBERS
P4	UPDATED DRAFT FOR CONSULTANTS
P5	UPDATED DRAFT FOR CONSULTANTS
P6	RAMP AMENDMENT
A	DEVELOPMENT APPLICATION

Date	Draw	Ch
6/04/2021		
27/04/2021		
14/05/2021		
3/06/2021		
8/07/2021		
22/07/2021		
11/08/2021		

PROJECT: **NEW RESIDENTIAL FLAT BUILDING**
ADDRESS: LOT. 3 & 4 D.P 9209
426 - 428 PRINCES HIGHWAY BLAKEHURST NSW 2221
DRAWING: **ELEVATIONS** Drawn: Job No:

DRAWING: ELEVATIONS		Drawn: EN	Job No: 2014	Drawing No: A404	Project North
JOB File: C:\pwin\A404\2014\2014-426-428-Procurement.dwg					
Nominated	Nicholas Lyman nicholas@nsw.gov.au		Scale: 1:1	No. of sheets: 1 of 1	Amendment: B