
AGENDA - LPP

Meeting:	Georges River Local Planning Panel (LPP)
Date:	Thursday, 1 September 2022
Time:	4.00pm
Venue:	Blended Meeting Online and Georges River Civic Centre Corner Dora and MacMahon Streets, Hurstville
Participants:	Sue Francis (Chairperson) Paul Vergotis (Expert Panel Member) Marcus Sainsbury (Expert Panel Member) George Vardas (Community Representative)

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

2. Opening

3. Consideration of Items and Verbal Submissions

LPP042-22	87 Woniora Road, Hurstville – DA2021/0294 (Report by Principal Planner)
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LPP043-22	21 Hogben Street, Kogarah – REV2022/0001 (Report by Principal Planner)
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LPP044-22	46 - 48 Lawrence Street, Peakhurst – DA2021/0472 (Report by Principal Planner)
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LPP045-22	27-33 Nielsen Avenue, Carlton – MOD2022/0087 (Report by Principal Planner)
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4. Local Planning Panel Deliberations in Closed Session
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5. Confirmation of Minutes

**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 01 SEPTEMBER 2022**

LPP042-22

LPP Report No	LPP042-22	Development Application No	DA2021/0294
Site Address & Ward Locality	87 Woniora Road, Hurstville Hurstville Ward		
Proposed Development	Demolition and construction of a boarding house		
Owners	Astron Properties Pty Ltd		
Applicant	Astron Properties Pty Ltd		
Planner/Architect	Cracknell & Lonergan		
Date Of Lodgement	10/08/2021		
Submissions	Ten (10)		
Cost of Works	\$9,130,000.00		
Local Planning Panel Criteria	The application is for the construction of a boarding house		
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 (Affordable Rental Housing) 2009, 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 – Building Height, Arborist Report, Heritage Impact Assessment, Survey, Submissions		
Report prepared by	Principal Planner		

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

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 and the construction of a five (5) storey boarding house comprising of 53 boarding rooms, plus a Manager's Room, communal living room with basement car parking for 27

vehicles, landscaping and site works, pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009.

2. A Clause 4.6 Statement has been submitted in relation to a variation to the maximum height development standard in Kogarah LEP 2012, which has been assessed in detail later in this report and is considered to be well founded and in this case is recommended for support given the nature and degree of variation that has been applied for.

Site and Locality

3. The subject site is located on the south-western side of Woniora Road almost opposite the intersection with Finney Street. The subject site is known as 87 Woniora Road, Hurstville and is legally described as Lot 1 in DP1608.
4. The site is regular shape having a frontage to Woniora Road of 20.115m, side boundary lengths of 50.29m, giving a site area of 1,012sqm. The site slopes to Woniora Road, with a steady fall (rear to front) of 6.8m. The site contains 2 small trees, one a Canary Island Date Palm and the other a dead tree that remains standing on the site. The site is not impacted by any known easements or infrastructure.
5. Presently situated on the site is a single storey dwelling house with ancillary structures in the rear yard.
6. The neighbouring properties along Woniora Road are occupied by a church to the south-east at No. 89 Woniora Road, and a school to the north-west at No. 83 Woniora Road. To the rear, the site adjoins a property containing a dwelling house at 1 Gallipoli Street. A strand of trees situated within 83 Woniora Road adjoin in close proximity to the site.
7. The church at No. 89 Woniora is effectively isolated between the subject site and the residential development to the west.
8. The site, and all surrounding properties (except the adjoining school which is zoned SP2 Educational Establishment), are zoned R4 High Density Residential with a maximum height of 15m and a maximum floor space ratio of 1.5:1 applicable.
9. Across Woniora Road from the site is a 4 storey residential flat building, forming part of a still transitioning R4 zone.
10. The site is located 450m walking distance from Hurstville Railway Station and Hurstville City Centre.

Zoning and Permissibility

11. As the application was submitted prior to the commencement of the Georges River Local Environmental Plan (GRLEP), the application is subject to the savings provision under 1.8A of that instrument. As such, the application is required to be assessed as if the GRLEP had not commenced. The controls applicable prior to the commencement of the GRLEP was the Kogarah Local Environmental Plan 2012 (KLEP 2012).
12. The subject site is zoned R3 Medium Density Residential under the provisions of the KLEP 2012. The proposal involves the construction of a boarding house which is a permissible use in the zone with development consent.
13. It is noted that under the GRLEP, the site zoning is R4 High Density Residential.

14. The proposed development fails to satisfy the relevant objectives contained within the KLEP and is not consistent with the requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009 which applies to the site by virtue of Schedule 7A of State Environmental Planning Policy (Housing) 2021 as the application was lodged prior to commencement of that Policy.

Submissions

15. The DA was publicly notified to neighbours between 18/8/21 and 15/9/21 in accordance with the Kogarah Development Control Plan 2013 (KDCP 2013). Ten (10) submissions were received raising concerns with impacts on the adjoining school and place of worship, parking and traffic congestion, privacy, design, height, scale and the bulk of the scheme, together with the social impacts of the proposed use of the building as a boarding house. These issues are discussed in greater detail in the body of this report.

Reason for Referral to the Local Planning Panel

16. This application is referred to the Georges River Local Planning Panel (LPP) for determination as the proposal relates to a boarding house. It is also referred as ten (10) unique submissions were received in response to the application, which requires LPP determination under the applicable Ministerial Directions.

Planning and Design Issues

17. The proposal is consistent with the Aims of SEPP (Affordable Rental Housing) providing for rental housing in close proximity to places of work and with the objectives of the KLEP 2012 providing a diversity of housing choice for the needs of current and future residents, however the proposal is not compatible with the existing or future character of the locality.
18. The existing character of adjoining sites is low density, providing low-storey buildings, but the future character as outlined in the KDCP and (GRLEP) and (GRDCP) consists of development providing separation to adjoining sites in the way of setbacks of 6m (Ground to Fourth storey) and 9m above four storeys, providing for high density development surrounding by landscaped breaks between built forms. In addition, larger scale development in the precinct is required to provide front setbacks of 5m to 8m and a site width of 24m.
19. In this instance, little side setback is provided, and that which is available is constrained by the positioning of a basement which extends to the side boundaries of the property, resulting in a situation where substantial softening landscaping is not capable of being achieved.
20. The proposed design results in an outcome not consistent with the prevailing character of the precinct as insufficient separation is provided around the building to site boundaries, while balconies and windows are also provided for the full elevation of the building meaning that the building form effectively depends upon borrowed amenity from adjoining properties while imposing substantial impacts upon neighbouring properties.
21. The proposed development, by way of its orientation, lack of setback, and general proportion imposes significant impacts on the adjoining property at No. 89 Woniora Road. In addition, as this site has a width of just 19m, the proposal will isolate this site by precluding its development for the purposes of a residential flat building into the future, as that site has no practical amalgamation alternative available.

22. While it is acknowledged that that site is presently used as a place of worship, it is zoned R4 and the proposal unreasonably constrains the development potential of that property and will eventually deliver an unacceptable urban relationship.
23. In this regard, it has not been demonstrated in this application that negotiation was undertaken to acquire the site, there is no evidence of offers, rejections or valuations for the site, nor an indicative design of a reasonable outcome as amalgamation was not realized.
24. In order to accommodate orderly development, the proposed development will require substantial modification to accommodate an appropriate outcome on the adjoining site.

Conclusion

25. 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.
26. Although the site is well located and appropriately zoned for a boarding house development, the proposal is not considered to be an appropriate response to the land and surrounding context.
27. 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

28. The application proposes the demolition of existing structures, removal of two (2) trees and the construction of a five (5) storey boarding house containing 53 boarding rooms and a Manager's Room over basement parking for 27 vehicles, landscaping and site works.
29. Further details of the proposal are as follows:

Basement Level

- 16 car parking spaces including four accessible spaces;
- 4 motor bike spaces;
- Two plant rooms; and
- Two lift core and two fire stairs.

Ground Floor Plan

- 11 car parking spaces;
- 9 motor bike spaces;
- 9 bicycle spaces;
- Two lift core and two fire stairs;
- Manager's Room and adjacent private open space;
- Waste room;
- Entry lobby;
- Vehicular access from Woniora Road;
- Landscaped front setback with pedestrian access on the northern side of the site.

Levels 1 - 3

- 15 boarding rooms per floor, including two adaptable rooms, 6 x single rooms and 9 x double rooms per floor.

Level 4

- Eight (8) boarding rooms, including one adaptable room, 5 x single rooms and 3 x double rooms; and
- A communal room and adjacent balcony overlooking Woniora Road.

Landscaping

- At ground level, the planting of 7 trees, along with shrubs, hedging and ground covers. The main planting area are the front and rear setbacks, with a hedge proposed the length of the northern boundary.
- Planting in planter boxes on the fourth floor, along the northern balconies and the communal open space area fronting Woniora Road.

Stormwater works

- Drainage of the basement via a pump out system with collection points in the centre of the driveway aisle.
- Overland flow from adjoining sites is proposed to be collected by a 600mm wide x 150mm deep intercepting channel (framed by retaining walls) proposed for the width of the site adjacent to the rear boundary and connecting to the site stormwater system on the north western corner of the site.
- The site is proposed to drain to Woniora Road via 2 on-site detention basins, an underground tank situated under and around the rear deck of Room 110, and an above ground basin co-located with the front setback landscaped area.



Figure 1 Photomontage of the proposal looking south on Woniora Road

DESCRIPTION OF THE SITE AND LOCALITY

30. The site is regular shape having a frontage to Woniora Road of 20.115m, side boundary lengths of 50.29m, giving a site area of 1,012sqm. The site slopes to Woniora Road, with a steady fall (rear to front) of 6.8m. The site contains 2 small trees, one a Canary Island Date Palm and the other a dead tree that remains standing on the site. The site is not impacted by any known easements or infrastructure.

31. Presently situated on the site is a single storey dwelling house with ancillary structures in the rear yard.
32. The neighbouring properties along Woniora Road are occupied by a church to the south-east at No. 89 Woniora Road, and a school to the north-west at No. 83 Woniora Road. To the rear, the site adjoins a property containing a dwelling house at 1 Gallipoli Street. A strand of trees situated within 83 Woniora Road adjoin in close proximity to the site.
33. The site, and all surrounding properties (except the adjoining school which is zoned SP2 Educational Establishment), are zoned R4 High Density Residential with a maximum height of 15m and a maximum floor space ratio of 1.5:1 applicable.
34. Across Woniora Road from the site is a 4 storey residential flat building, forming part of a still transitioning R4 zone.
35. The site is located 450m walking distance from Hurstville Railway Station and Hurstville City Centre.



Figure 2 The existing dwelling on the subject site

36. The adjacent site to the south-east is occupied by a church and is zoned R4 High Density Residential. As No. 89 Woniora Road has a width of just 19m, the proposal will isolate this site by precluding its development for the purposes of a residential flat building into the future, as that site has no practical amalgamation alternative available (Figure 4).
37. While it is acknowledged that that site is presently used as a place of worship, it is zoned R4 and the proposal unreasonably constrains the development potential of that property and will eventually deliver an unacceptable urban relationship.
38. In this regard, it has not been demonstrated in this application that negotiation was undertaken to acquire the site, there is no evidence of offers, rejections or valuations for the site, nor an indicative design of a reasonable outcome as amalgamation was not realized.
39. In order to accommodate orderly development, the proposed development will require substantial modification to accommodate an appropriate outcome on the adjoining site.



Figure 3 The church on No. 89 Woniora Road (south-west neighbour)



Figure 4 Aerial photo indicating isolated lot



Figure 5 The school at No. 83 Woniora Road (north-west neighbour)



Figure 6 Development on the opposite side on Woniora Road (corner of Finney Street)



Figure 7 Development on the opposite side on Woniara Road (corner of Finney Street)

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State Environmental Planning Policies (SEPPs)

40. Compliance with the relevant SEPPs is summarised in the following table and discussed in further detail below it.

State Environmental Planning Policies (SEPPs)

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

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

42. 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

43. 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.
44. This chapter applies to clearing of:
- (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*

- (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).*

45. The tree removal proposed as part of the application is supported by Council's Arborist.

Chapter 11 – Georges River Catchment

46. 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,*

47. The stormwater design was reviewed by Council's Engineering Section at lodgement. No objection was raised with respect to the management and disposal of stormwater.

48. The proposal is consistent with the objectives and purpose of Chapter 11 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

49. Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 is relevant to the proposal.

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. Ausgrid was consulted as required by Chapter 2. No objection was raised and no conditions required. The site is not situated near any other infrastructure for which further consideration is required.

State Environmental Planning Policy (BASIX) 2004

54. 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.
55. A valid BASIX Certificate has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy (Housing) 2021

56. State Environmental Planning Policy (Housing) 2021 (SEPP Housing) commenced on 26 November 2021 and repealed State Environmental Planning Policy (Affordable Rental Housing) 2009.
57. The above notwithstanding, Schedule 7A Savings and Transitional Provisions of SEPP Housing states:
- (1) *This Policy does not apply to the following matters—*
 - (a) *a development application made, but not yet determined, on or before the commencement date,*
 - (2) *The provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).*

As the application was lodged prior to commencement of SEPP Housing, the saving is applicable and as such SEPP Affordable Rental Housing remains the relevant instrument of assessment in this instance.

State Environmental Planning Policy (Affordable Rental Housing) 2009

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

Clause	Standards	Proposal	Complies
26 – Land to which Division applies for the purpose of a boarding house with consent	<ul style="list-style-type: none"> • R1 General Residential • R2 Low Density Residential • R3 Medium Density Residential • R4 High Density Residential • B1 Neighbourhood Centre • B2 Local Centre • B4 Mixed Use 	Site is zoned R3 Medium Density Residential	Yes
27 – Development to which Division applies	Not applicable – the site is in the R3 zone.	N/A	NA

Clause	Standards	Proposal	Complies
29 - Standards that cannot be used to refuse consent Council cannot refuse a development application for a boarding house under the ARHSEPP 2009 on any of the following grounds:			
Floor Space Ratio	If the density and scale of the buildings as a FSR is not more than the existing maximum FSR for any form of residential accommodation permitted (2:1 inclusive of additional permitted 0.5:1)	Permitted: 2,024sqm (2:1) Proposed: 1,664sqm (1.67:1)	Yes
Height	If the building height is not more than the maximum height permitted under another EPI for any building on the land: Maximum of 15m under the KLEP 2012	15.25m	No – refer to discussion in LEP section of this report
Landscaped Area	If the landscape treatment of the front setback area is compatible with the streetscape in which the building is located	Landscaped front setback area is consistent with the character of the streetscape.	Yes
Solar Access	Where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter	3 hours of direct sunlight is achieved as it is located with a northern aspect.	Yes
Private Open Space	If at least the following private open space areas are provided (other than the front setback area):		Yes
	(i) one area of at least 20sqm with a minimum dimension of 3m is provided for the use of the lodgers,	Located with rear setback and the area and dimensions comply.	Yes
	(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8sqm with a minimum dimension of 2.5m is provided adjacent to that accommodation.	Located on the ground floor at the front of the building accessed directly from the manager's room. The area and dimensions comply.	No – located in front setback – refer to discussion below

Clause	Standards	Proposal	Complies
Discussion on Manager's private open space The Manager's Room and private open space is proposed on the ground floor at the front of the building. The control requires open space for the residents and the Manager to be located in areas other than the front setback. The location of the Manager's Room and private open space is not supported as it results in poor amenity having no privacy from the street and residents of the boarding house due to its proximity to the entry to the building, and in addition encroaches on the prevailing setback of development to the south-east.			
Accommodation size	if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least— (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.	Minimum 15.1sqm Minimum 16.8sqm	Yes Yes
Parking	0.5 parking spaces provided for each boarding room (53 x 0.5 = 27 spaces) Not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site	27 spaces provided A Manager space is not nominated on the plans – a condition of consent is recommended that one (1) space be sign-posted for use by the Manager.	Yes
Clause 30 – Standards for Boarding Houses A consent authority must not consent to development for boarding houses unless it is satisfied of each of the following:			
Communal living	(a) If a boarding house has 5 or more boarding rooms, at least one communal living room will be provided	One (1) communal room provided on Level 4.	Yes
Size of boarding rooms	(b) No boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25sq	The largest boarding room is 23.4sqm.	Yes
Maximum occupancy	(c) No boarding room will be occupied by more than 2 adult lodgers	Complies – condition imposed to reinforce this.	Yes

Clause	Standards	Proposal	Complies
Kitchen and bathroom facilities	(d) Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger	All rooms have a kitchen and bathroom facilities.	Yes
Boarding house manager	(e) If the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager	Boarding house manager's room provided.	Yes
Bicycle and motor cycle spaces	(h) At least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms ($53/5 = 11$ spaces)	11 motorcycle spaces and 11 bicycle storage spaces provided in the parking areas.	Yes

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Character assessment

59. Under clause 16A of the State Environmental Planning Policy (Affordable Rental Housing) 2009, a consent authority must not consent to a development if the design is incompatible with the *character of the local area*. No guidelines were developed to inform how to apply the compatibility test. A number of court cases have provided some guidance as to how to assess the “character” of a local area and what to consider ensuring an affordable housing development is suitable.
60. In considering compatibility with neighbouring character, in *Sterling Projects v The Hills Shire Council* [2011] the Commissioner said that “*character is not limited to a consideration of streetscape but includes the wider context of the site, in particular the characteristics of the properties which adjoin the site*”.
61. In the decision of *Louden Pty Ltd v Canterbury-Bankstown Council* [2018] clause 16A played a prominent role in Commissioner Gray’s judgement. Commissioner Gray stated that all buildings of all typologies must be incorporated into the assessment of the local area character. This assessment concurs with Commissioner Roseth SC who in *Project Venture Developments v Pittwater Council* [2005] stated that “*compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*” Therefore, in order to establish a local character in a mixed, diverse area the plans should reasonably match other structures in the vicinity and should consider such aspects as building forms, setbacks and scale.
62. The subject site is located within a locality that is characterised by residential flat buildings to the north, north-east and north-west on land zoned R4 High Density Residential, bordered by Woniora Road, Gallipoli Street and Alma Street. The character of the locality to the south, south-east and south-west is lower density as it comprises of small scale residential developments predominantly in the form of detached dwelling houses as it is zoned R2 Low Density Residential. In addition, the development immediately adjacent to the site comprises a school and a church, which further diversifies the character of existing development in the immediate locality.

63. The proposal is consistent with the Aims of SEPP (Affordable Rental Housing) providing for rental housing in close proximity to places of work and with the objectives of the KLEP 2012 providing a diversity of housing choice for the needs of current and future residents, however the proposal is not compatible with the existing or future character of the locality.
64. The existing character of adjoining sites is low density, providing low-storey buildings, but the future character as outlined in the KDCP and (GRLEP) and (GRDCP) consists of development providing separation to adjoining sites in the way of setbacks of 6m (Ground to Fourth storey) and 9m above four storeys, providing for high density development surrounding by landscaped breaks between built forms. In addition, larger scale development in the precinct is required to provide front setbacks of 5m to 8m and a site width of 24m.
65. In this instance, little side setback is provided, and that which is available is constrained by the positioning of a basement which extends to the side boundaries of the property, resulting in a situation where substantial softening landscaping is not capable of being achieved.
66. The proposed design results in an outcome not consistent with the prevailing character of the precinct as insufficient separation is provided around the building to site boundaries, while balconies and windows are also provided for the full elevation of the building meaning that the building form effectively depends upon borrowed amenity from adjoining properties while imposing substantial impacts upon neighbouring properties.
67. The built form proposes a lack of separation to the adjacent building to the south-east and is out of proportion for the size of the land upon which it is proposed.
68. As such the proposal fails to satisfy the objectives and intent of Clause 16A.

Environmental Planning Instruments

Georges River Local Environmental Plan 2021 (GRLEP)

69. The current planning provisions applying to the site are those in the GRLEP. This LEP commenced on 8 October 2021.
70. The GRLEP contains provision 1.8A which states:
- If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.*
71. As the application was lodged prior to the commencement of the GRLEP, the application must be assessed on the basis that the plan had not commenced, and so the provisions of the KLEP 2012 apply.
72. It is noted that while the GRLEP rezoned the subject site from R3 to R4, the height and floor space ratio applicable, did not change and a boarding house remains permissible in the zone.

Kogarah Local Environmental Plan 2012 (KLEP 2012)

Zoning

73. 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 boarding house which is a permissible land use in the zone.

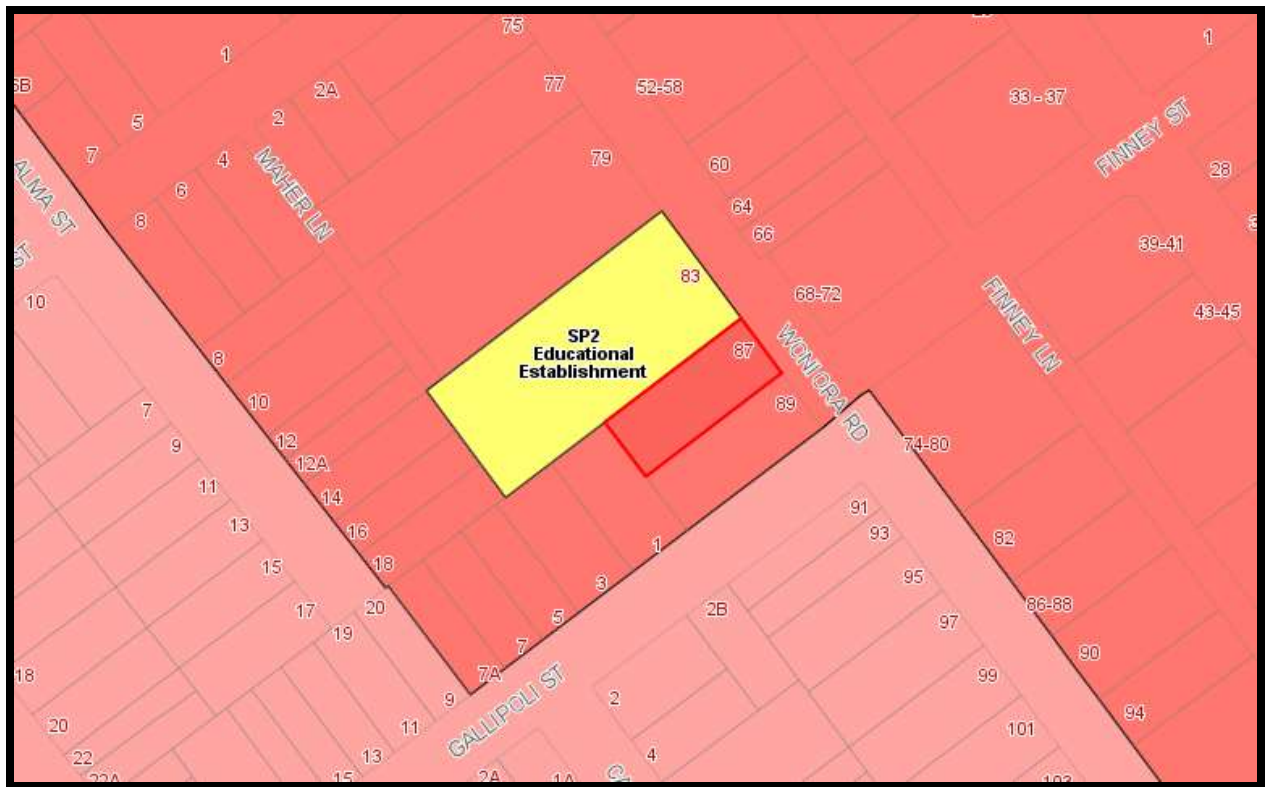


Figure 8 Zoning map (site edged red)

74. 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.*
75. The proposal satisfies the objectives of the R3 Zone as it will provide for the housing needs of the community in a medium density residential environment.
76. 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 boarding house which is a permissible use within the zone.	Yes
2.3 Objectives	Objectives of the Zone	Consistent with zone objectives.	Yes

Clause	Standard	Proposed	Complies
4.3 – Height of Buildings	15m as identified on Height of Buildings Map	The maximum height is 15.25m The building exceeds the maximum height permitted, with the height exceedance equating to only the lift overrun and a small section of the roof. A Clause 4.6 Statement has been submitted and is addressed in detail later in this report.	No – refer to discussion following this table.
4.4 – Floor Space Ratio	1.5:1 as identified on Floor Space Ratio Map	1.67:1 complies with the ARHSEPP.	Bonus FSR utilised pursuant to the SEPP – refer to SEPP compliance table.
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The FSR has been calculated accordingly.	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 building exceeds the maximum height permitted, this height exceedance relates to the lift overrun and a small section of the roof. A Clause 4.6 Statement has been submitted for the height variation.	Refer to the assessment following this table.
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah,	The site is adjacent to a locally listed heritage item, being the Woniora Road School (I148). Council's Heritage	Yes

Clause	Standard	Proposed	Complies
	(ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	Advisor has reviewed the proposal and supports the design on heritage grounds, subject to conditions of consent.	
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	The proposed development includes excavation and associated earthworks to accommodate basement car parking.	Yes subject to conditions.

Exception to Development Standards

Detailed assessment of variation to Clause 4.3 Height of Buildings

77. 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.*
78. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Kogarah Local Environmental Plan 2012 (HLEP) identifies a maximum height of 15m for the Site and the proposed development will exceed the height by 0.25m which comprises the lift overrun and a small section of roof. The remainder of the building is below the 15m height limit. This height breach amounts to a maximum 1.6% variation of the control.
79. 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.
80. 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*

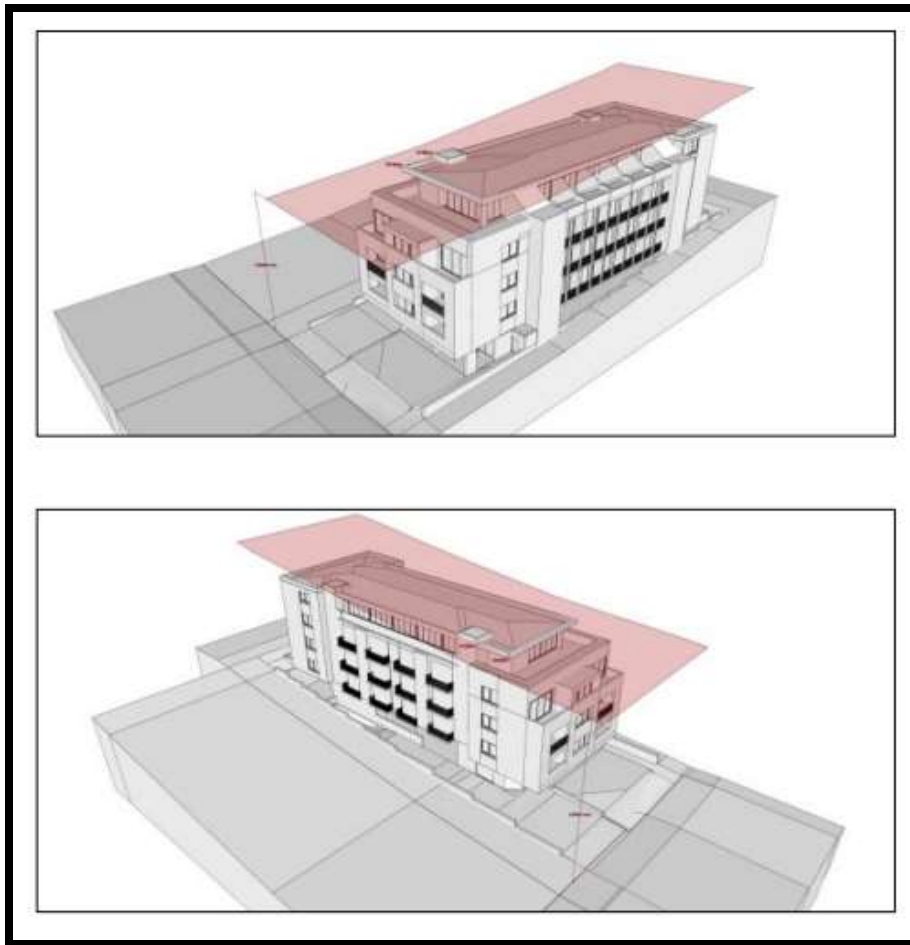


Figure 9 Height plane diagram showing height non-compliance

81. 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?

82. Height of Buildings control under Clause 4.3 of the KLEP 2012 is a development standard. The maximum permissible height is 15m.

What are the underlying objectives of the development standard?

83. 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))

84. 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.

85. Preston CJ in the judgment 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.
86. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgments.
87. Applicant's comment:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the very minor numerical variation.

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

The objectives and purpose of the building height control remain relevant, and the proposed development is generally consistent with the objectives of the building height control, notwithstanding the very minor numerical variation.

3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the very minor numerical variation.

Further, strict compliance with the building height control would require the floor to ceiling heights at the upper level to be reduced, and/or the internal lift located towards the front of the building to be removed.

Finally, modifying the proposed building to achieve strict compliance with the building height control would diminish the architectural quality and composition of the building whilst achieving no material benefits in terms of the amenity of surrounding properties, or the visual character of the public domain.

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;*

The building height control has not been abandoned, however the Council has consistently applied a reasonable and flexible approach to the building height control in circumstances where the objectives can be achieved notwithstanding a very minor numerical variation.

Further, the objectives of Clause 4.6 of the LEP includes to provide “*an appropriate degree of flexibility in applying certain development standards to particular development*”.

5. *Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The zoning of the land remains relevant and appropriate. Irrespective, strict compliance with the building height control would require the floor to ceiling heights at the upper level to be reduced, and/or the internal lift located towards the front of the building to be removed.

Further, modifying the proposed building to achieve strict compliance with the building height control would diminish the architectural quality and composition of the building whilst achieving no material benefits in terms of the amenity of surrounding properties, or the visual character of the public domain.

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

88. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overshadowing, overlooking or view loss.

89. Applicant's Comment:

The proposed numerical variation to the building height control is reasonable and appropriate in the particular circumstances on the basis that:

- Clause 29(4) of the SEPP specifies that *"a consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2)"*, and the SEPP prevails to the extent of any inconsistency with the LEP;
- the extent of variation to the building height control in the LEP is very minor and limited to 291mm to 415mm, representing a maximum variation of less than 2.8%;
- the very minor nature of the variation is such that the visual difference between the proposed building and a compliant building could be unlikely to be visually discernible;
- the substantial majority of the proposed building complies with the building height control, and the portion of the building that extends above the building height control is limited to the upper portion of the lift overrun, and the outer edge of the parapet on the north-eastern façade above the common room at the upper level;
- the proposed development complies with the FSR control incorporated in Clause 29(1) of the SEPP, and the consent authority must not refuse consent to development on the basis of

- FSR if the proposed development complies with the applicable FSR control;
- the proposed development will contribute to the availability of affordable housing in the locality, and strict compliance with the building height control would reduce the amenity of the boarding house rooms, and/or reduce the number of boarding rooms able to be accommodated on the site;
 - strict compliance with the building height control would diminish the architectural quality and composition of the building whilst achieving no material benefits in terms of the amenity of surrounding properties, or the visual character of the public domain;
 - the proposed building has been carefully designed to reflect the sloping topography of the site, and the ground floor level of AHD 55.1 is dictated by the flood planning level, including the 500mm freeboard requirement;
 - the very minor variation to the building height control directly promotes the orderly and economic development of the site having regard to the required flood planning level, and the ability to contribute to the availability of affordable housing;
 - the very minor variation to the building height control promotes good design and amenity of the built environment by maintaining the floor to ceiling heights at the upper level, and maintaining the internal lift located towards the front of the building;
 - the building form is capable of being accommodated on the site without imposing any significant or unreasonable impacts on the amenity of any adjoining property, or the public domain more generally;
 - the proposed development is consistent with good design and the amenity of the built environment which is a recently incorporated object of the Act: *"(g) to promote good design and amenity of the built environment"*;
 - the proposed development is consistent with, or not antipathetic to, the relevant objectives of the [then] R3 – Medium Density Residential zone; and
 - the proposed development is generally consistent with, or not antipathetic to, the objectives of the building height control, notwithstanding the very minor numerical variation.

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

90. 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,”*

91. Applicant’s Comment:

The proposed development is generally consistent with the objectives of the building height control, notwithstanding the very minor numerical variation.

In the circumstances, the proposed development does not affect the public benefit of maintaining compliance with the building height control in other instances.

In that regard, the objectives of Clause 4.6 of the LEP includes to provide *“an appropriate degree of flexibility in applying certain development standards to particular development”*.

92. The proposal meets the objectives of the standard as follows:

(a) to establish the maximum height for buildings,

93. Officer Comment: The site and its immediately adjoining properties all have a maximum height of 15m.

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

94. Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. In terms of visual impact the structure is setback from the front and side elevations which reduces its visual appearance from the immediately adjoining streetscape and adjacent properties.

95. The objective seeks to “minimise” the visual impact, it is not requiring it to be eliminated or totally negated, and as such seeing the structure is not a reason for refusal, it’s the impact of the visual interference of this structure that is to be controlled. It can be said that in this case it is a minor section of the roof and top of the lift overrun which will not be highly visible or an intrusive element given the scale and proportions of the building. It will

not be visible from immediately adjoining properties and streetscapes given that it is setback from the front and side elevations. There will be no adverse impacts in terms of overshadowing or overlooking to adjoining properties from the encroaching elements.

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

96. Officer Comment: Development on the north-eastern side of Woniora Road have established a precedent for development in the street and immediate precinct for medium density residential development of a similar height and scale to the proposed boarding house. The proposed development is consistent with the pattern of development that has been established in the precinct.
97. The proposed encroachment on the maximum height of the building which only relates to a small section of roof and the top of the lift overrun can be catered for in this location given the siting, orientation and the fact the building complies with the anticipated built form for development in the R3 zone.
98. The proposed development is considered to satisfy the objectives of the development standard.

Zone Objectives

99. Officers comment: The exceedance of the control generally satisfies the objectives of the zone for the following reasons:
- *To provide for the housing needs of the community within a medium density residential environment.*
100. The development is providing for the housing needs of a cross section of the community within a medium density residential environment with the provision of 54 boarding rooms.
- *To provide a variety of housing types within a medium density residential environment.*
101. The development incorporates a diversity of boarding rooms (offering single and double rooms, including adaptable apartments).
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
102. 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.
103. The area of non-compliance is considered to be reasonable and will not establish an undesirable precedent. It will not have any adverse effect on the surrounding locality. The proposal promotes the economic use and development of the land consistent with its zone and purpose. The Panel is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

104. 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 54 new boarding rooms. 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.
105. 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.
106. In this case the proposal seeks to establish an appropriate design and built form outcome for this site with the building complying in large with the height standard. There will be no adverse amenity or visual impacts generated by the variation and the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request.

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

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

Georges River Development Control Plan 2021 (GRDCP)

109. The GRDCP commenced on 8 October 2021 concurrently with the GRLEP and is the present DCP that relates to the subject property.

110. Clause 1.7 of the GRDCP states:

If an application has been made before the commencement of the DCP in relation to land to which the DCP applies, and the application has not been finally determined before that commencement, the application must be determined as if the DCP had not commenced. All applications received after the commencement date of an amendment to the DCP are subject to the DCP as amended.

111. As the subject application was made prior to the commencement of the GRDCP the application is assessed as if the policy had not commenced. Accordingly, the application is assessed against the Kogarah Development Control Plan 2013 which applied prior to commencement of the GRDCP.

Kogarah Development Control Plan 2013 (KDCP 2013)

112. 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
B4 Parking and Traffic		
Not applicable – refer to SEPP (ARH) 2009 controls.		
B5 – Waste Management and Minimisation		
Requirement	Proposal	Complies
Submit Waste Management Plan (WMP)	An appropriate WMP was submitted with the DA.	Yes
Provide a dedicated caged area within the bin room for the storage of discarded bulky items.	Not provided.	No
B6 – Water Management		
All developments require consideration of Council's Water Management Policy	The proposed method of stormwater management is considered satisfactory subject to conditions.	Yes
B7 – Environmental Management		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	Design, materials, siting and orientation generally optimise solar efficiency, and the development is BASIX compliant.	Yes

113. Boarding houses do not have any DCP specific controls for assessment under the KDCP 2013, as a result the assessment criterion in Chapter C2 of KDCP 2013 for residential flat buildings for areas of assessment not covered by the SEPP have been used as a guide for assessment given the predominance of the surrounding development is residential flat buildings and streetscape consistency is of relevance.

Part C2- Medium Density Housing – Kogarah DCP 2013

Part 1 Residential Flat Buildings

Required	Proposed	Complies
1. Minimum Site Requirements		
(1) Minimum lot size is 1,000sqm.	1,012sqm.	Yes
(2) Minimum lot width is 24m.	20.115m.	No
(3) For sites which allow development greater than four storeys, greater site width may be necessary to accommodate the greater setbacks required by the Apartment Design Guide.	Not applicable to boarding houses.	NA
2. Site Isolation and Amalgamation		
(1) Development for the purpose of residential flat buildings is not to result in the creation of an isolated	The proposed development, by way of its orientation, lack of setback, and general proportion imposes significant impacts on the	No

Required	Proposed	Complies
<p>site that could not be developed in compliance with the relevant planning controls, including the Kogarah LEP 2012 and this DCP.</p> <p>(2) Where amalgamation of the isolated site is not proposed, applicants will be required to demonstrate that:</p> <p>(i) negotiations between the owners of the properties commenced at an early stage that was prior to the lodgement of the Development Application.</p> <p>(ii) Where no satisfactory result is achieved in relation to amalgamating the land, the Development Application submission must include evidence of the negotiations with the owners of the adjoining properties. The submission must include details of the financial offers to such owners. This must be based on the development potential of the combined site, not just the adjoining site if developed independently. Such offers are to be reasonable and are to be based on at least one recent independent valuation prepared by a suitably qualified valuer and include other expenses likely to be incurred by the owner of the potentially isolated site in the process of the sale of the property.</p> <p>(3) Council will request the proponent to fund a second valuation to be undertaken on behalf of the owner of the site that would be isolated as a result of a proposed</p>	<p>adjoining property at No. 89 Woniora Road. In addition, as this site has a width of just 19m, the proposal will isolate this site by precluding its development for the purposes of a residential flat building into the future, as that site has no practical amalgamation alternative available.</p> <p>While it is acknowledged that that site is presently used as a place of worship, it is zoned R4 and the proposal unreasonably constrains the development potential of that property and will eventually deliver an unacceptable urban relationship.</p> <p>In this regard, it has not been demonstrated in this application that negotiation was undertaken to acquire the site, there is no evidence of offers, rejections or valuations for the site, nor an indicative design of a reasonable outcome as amalgamation was not realized.</p> <p>In order to accommodate orderly development, the proposed development will require substantial modification to accommodate an appropriate outcome on the adjoining site.</p>	

Required	Proposed	Complies
<p>development. The valuation may be independently reviewed by Council at the applicant's expense.</p> <p>(i) Where amalgamation of the isolated site is not achieved through negotiations, applicants will be required to demonstrate that an orderly and economically viable development of the separate sites can be achieved. Applicants will be required to prepare a concept design for the isolated site compliant with the Apartment Design Guide, and at the same density as proposed in the Development Application, indicating height, setbacks, resultant site coverage (building and basement), sufficient to understand the relationship between the application and the isolated site. The concept design will be required to demonstrate the likely impacts the developments will have on each other, such as solar access, visual and acoustic privacy, the impact of development of the isolated site on the streetscape and the compliance with the required car parking rates. The concept plans will be placed on Council records in order to form the basis for any future development proposals on the isolated site.</p> <p>(ii) The development of an isolated site is not to detract from the character of the streetscape and is to achieve a satisfactory level of amenity including solar access, visual and acoustic privacy.</p>		

Required	Proposed	Complies
3. Building Setbacks		
<u>Front setbacks</u> Up to four (4) storeys – 5m	4.7m	Acceptable
<u>Side boundary setbacks</u> Up to four (4) storeys – 6m	NW: Min. 2.1m	No
Up to four (4) storeys – 6m	SE: Min. 3m	No
<u>Rear boundary setbacks</u> Up to four (4) storeys – 6m	Ground: 4.2m – 6.1m Levels 1-3: 6m	Acceptable Yes
<u>Encroachments into boundary setbacks:</u> Ground floor private open space may encroach up to 2m into the 5m front setback leaving a min 3m of landscaped area to the street.	Not proposed.	Yes
Ground floor private open space may encroach up to 3m into the side setback leaving a min 3m of landscaped area to the street.	Not proposed.	Yes
Setbacks are to be landscaped	All setbacks are landscaped.	Yes
Powerlines to be underground	Standard condition imposed.	Yes
Sub-stations, fire booster valves and waste bin storage structures need to be integrated into the development and identified at the DA stage.	Indicated on the plans in a suitable location.	Yes
4. Basement Setbacks		
3m from site boundaries	Nil to 6.1m Substantial areas of deep soil provided at the front and rear setbacks for landscaping.	Acceptable.
Basement setback areas are to be deep soil areas as defined in the ADG	The basement setback areas provided are deep soil.	Yes
Driveways and crossings are to be located a minimum of 1.5m from a side boundary	Nil. The remainder of the front setback is provided as landscaped area, with landscaping provided on the	Acceptable

Required	Proposed	Complies
	other side boundary between the access path and fence.	
5. Façade Treatment and Street Corners		
Building facades to be clearly articulated with high quality materials and finishes.	Satisfactory – a mix of rendered masonry, face brick, metal, cladding and glass.	Yes
Modulation and articulation in the building form to be explored.	Satisfactory – the facades are well articulated through different finishes, balconies and setbacks.	Yes
Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding and green walls should be considered as alternatives.	Satisfactory - a mix of materials and finishes are proposed.	Yes
Clear glazing balustrades to be avoided where they are visible from the public domain.	Metal balustrades are proposed.	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)	The only neighbouring residential properties are to the south east and south west. All will continue to receive a minimum 50%	Yes
10. Views and view sharing		
Provide for reasonable sharing of views	The location does not have significant views. The development generally complies with height requirements and is reasonable in terms of view sharing.	Yes
12. Adaptable and accessible housing		
(vi) 51+ units - 6 adaptable units + 10% of additional dwellings beyond 60 (rounded up to the nearest whole number).	53 apartments are proposed which requires that 6 adaptable apartments are provided.	Yes
53 rooms proposed – 6 adaptable rooms required	7 adaptable apartments are proposed with provision for	Yes

Required	Proposed	Complies
Every adaptable unit needs to have an accessible car space.	accessible parking for 4 cars.	

DEVELOPER CONTRIBUTIONS

114. The proposed development requires payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979 should the application be approved.

IMPACTS

Natural Environment

115. The proposed development will not adversely affect the natural environment subject to the site being planted with replacement trees as shown on the approved landscape plan. The removal of existing trees has been reviewed by Council's Consultant Arborist and is deemed acceptable.
116. The proposal includes excavation that has been assessed as being unreasonable in the context of the site given and inconsistent with the extent of excavation expected in an R3 Medium Density Residential area to permit construction of basement car parking.

Built Environment

117. The proposal represents an inappropriate planning outcome for the site with respect to its bulk, scale and density, and is inconsistent with the existing and desired future character of the locality.

Social Impact

118. No adverse social impacts have been identified as part of the assessment.

Economic Impact

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

Suitability of the site

120. The site is zoned R3 – Medium Density Residential. The proposal is a permissible form of development in this zone however has not been designed to reflect the context of the area as it evolves and exists and is unsuitable for the site.

SUBMISSIONS AND THE PUBLIC INTEREST

121. The application was neighbour notified in accordance with Kogarah DCP 2013 between 18/8/21 and 15/9/21. Ten submissions were received as a result of the notification period. In summary the following issues and concerns were raised.

Submission	Comment
Lack of parking in the area	<p>The proposal provides the threshold number of parking spaces for the development in accordance with the State Environmental Planning Policy (Affordable Rental Housing) 2009.</p> <p>As this is provided, the application cannot be refused on the grounds of car parking.</p>

Submission	Comment
Privacy impacts for neighbours	<p>The amended design achieves suitable separation from the adjacent residential neighbour to the rear, having a setback of 6m from the rear boundary to the rooms on the upper levels.</p> <p>In terms of properties either side of the site, to the north the site adjoins a school car park while to the south the site adjoins a place of worship, neither of which have private use areas in the view line of the proposed balconies and windows.</p>
Noise pollution	<p>A Plan of Management has been prepared for the operation of the boarding house, including use of the communal indoor and outdoor areas to limit the number of people using the area at any one time, and limiting the hours of use of the communal areas.</p> <p>A boarding house, as a residential use, is not expected to result in unreasonable noise impacts to adjoining properties that is indifferent to that generated by a residential flat building.</p>
Additional traffic	Council's Traffic Engineer has reviewed the proposal and does not consider that the development will have adverse impacts on traffic in the locality.
Rubbish and litter	The development includes a bin storage area capable of accommodating the required number of bins to service the residents.
Safety of school students from the types of people living in the boarding house	This matter is not a planning consideration pertinent to the assessment of the subject application.
Overshadowing of adjoining properties	In accordance with the DCP control (for residential flat buildings as there are no boarding house controls in the DCP), the proposal ensures a minimum of 3 hours sunlight is retained to the living area windows and private open space areas of adjoining properties in midwinter. The uplift in this area would ultimately result in additional overshadowing, however provisions are in place so an acceptable level of sunlight is afforded to the impacted allotments in accordance with the design criterion.
Loss of property value	Property values are not a consideration under the Environmental Planning Assessment Act 1979.
Possible noise complaints from residents against the church	The possibility of noise complaints is not a planning consideration pertinent to the assessment of the application. If the application were to be supported conditions of consent would be imposed in relation to acoustic impacts.

Submission	Comment
Exhaust fumes from the driveway affecting the church	Noting the relatively small size of the car park areas proposed, and the open nature of the driveway, it is not considered that vehicles enter and exiting the site will create any significant concentration of exhaust fumes from the driveway.
The separation controls for flat buildings should be applied to the proposal	The setbacks to the side boundaries are appropriate given the non-residential uses of the adjacent properties, and the building is setback 6m at the upper levels from the rear boundary which adjoins residential land.
Bulk and scale are not compatible	The floor space complies with the maximum floor space permitted for any development on the site however the proposed built form is considered unacceptable for the size of the allotment.
The application does not consider the draft LEP or draft DCP	The application was lodged under the Kogarah LEP 2021 and the Kogarah DCP 2013 and is not required to comply with the controls in the Georges River LEP or DCP.
Adverse impacts on the health and welfare of the school students	The use of the site as a boarding house is not considered to have an adverse social impact for surrounding residents or students.
Method of waste collection unclear	Waste bins will be placed on the kerb for collection by the boarding house Manager and returned to the bin store room after collection.
Existing boundary fencing is inadequate	Council is not involved in dividing fence matters. Landowners can come to an agreement between themselves on fencing upgrades.
Impact on trees on the school site	Council's Arborist has reviewed the proposal and support the development subject to conditions of consent.
Plan of management does not reference the school	The Plan of Management is required only for the operation of the boarding house to control visitors, house rules, complaints management, hours of use of communal open space etc. However, as the use is fundamentally residential in character, it is not anticipated that it will have a significant noise or amenity impact on the adjoining property.
Heritage impacts	Council's Heritage Advisor has reviewed the proposal and supports it on heritage grounds.
Construction, vibration and noise management	Standard conditions of consent will be imposed if the application is approved for construction noise and vibration management during excavation.

REFERRALS**Council Referrals****Development Engineer**

122. Council's Development Engineer has raised no objection subject to conditions of consent being imposed if approval is granted.

Traffic Engineer

123. Council's Traffic Engineer has raised no objection subject to conditions of consent being imposed if approval is granted.

Consulting Arborist

124. Council's Consulting Arborist has raised no objection subject to conditions of consent being imposed if approval is granted.

Heritage Advisor

125. Council's Heritage Advisor supports the proposal on heritage grounds, subject to conditions of consent.

External Referrals**Ausgrid**

126. The application was referred to Ausgrid in accordance with State Environmental Planning Policy (Transport and Infrastructure) 2021. No objection was raised by Ausgrid.

CONCLUSION

127. 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.
128. Although the site is well located and appropriately zoned for a boarding house development, the proposal is not considered to be an appropriate response to the land and surrounding context.
129. The proposal fails to provide suitable levels of privacy, setbacks to boundaries for excavation and building separation, is out of character for the locality and results in the isolation of the adjacent property to the south-east and also fails to provide appropriate future amenity for occupants.
130. As a result, the application is recommended for refusal.

DETERMINATION AND STATEMENT OF REASONS**131. Statement of Reasons**

- The proposal is an inappropriate response to the existing and desired future character for development in this area.
- It has not been demonstrated in this application that negotiation was undertaken to acquire the adjacent site at No. 89 Woniora Road, Hurstville.
- In order to accommodate orderly development, the proposed development will require substantial modification to accommodate an appropriate outcome on the adjoining site.

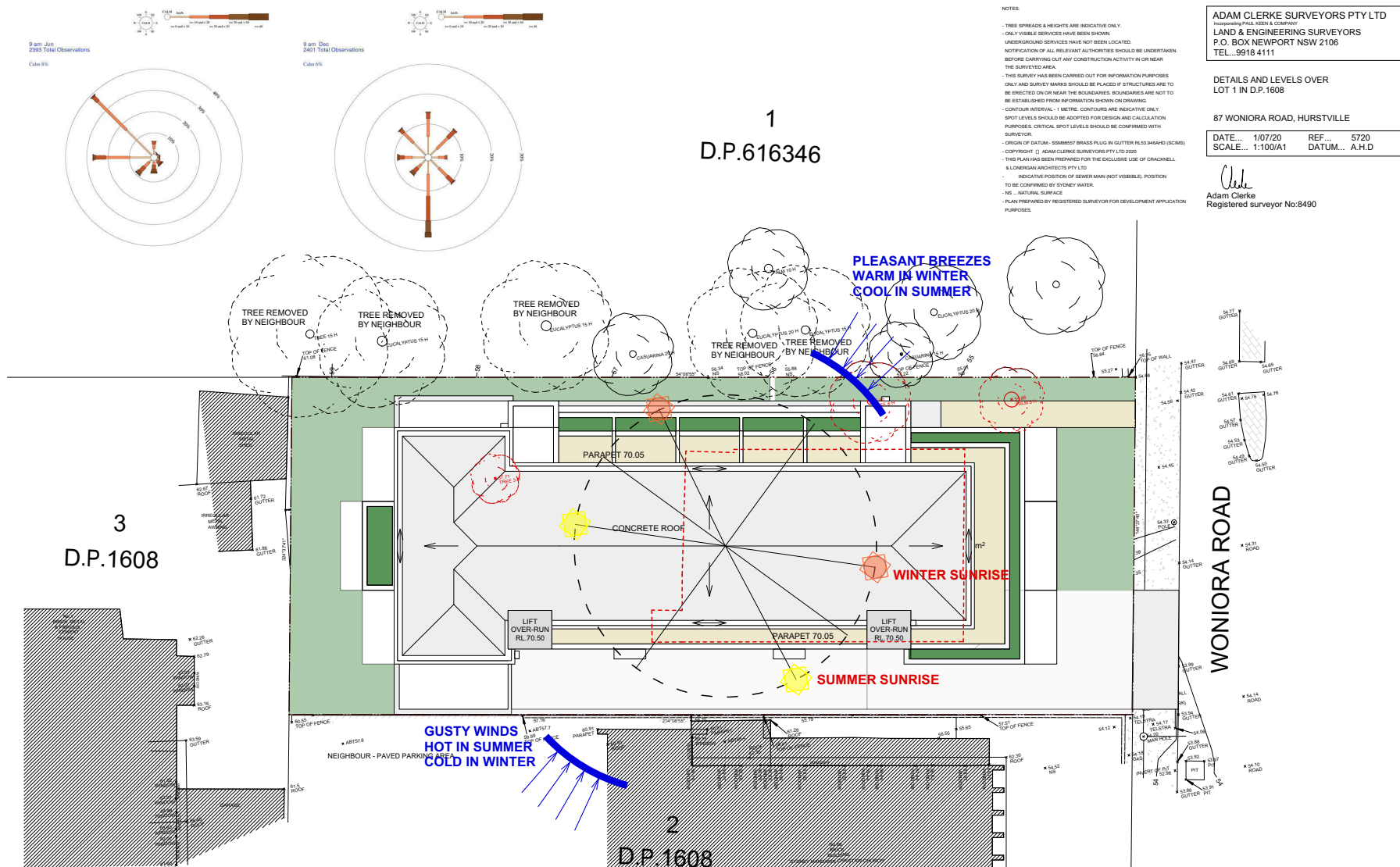
Determination

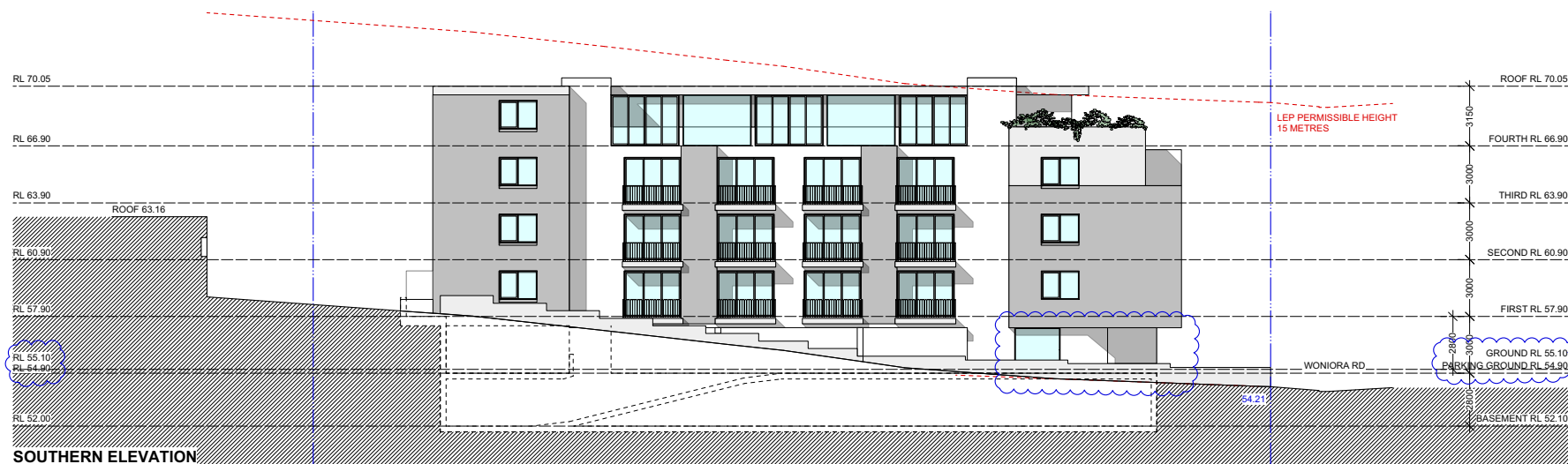
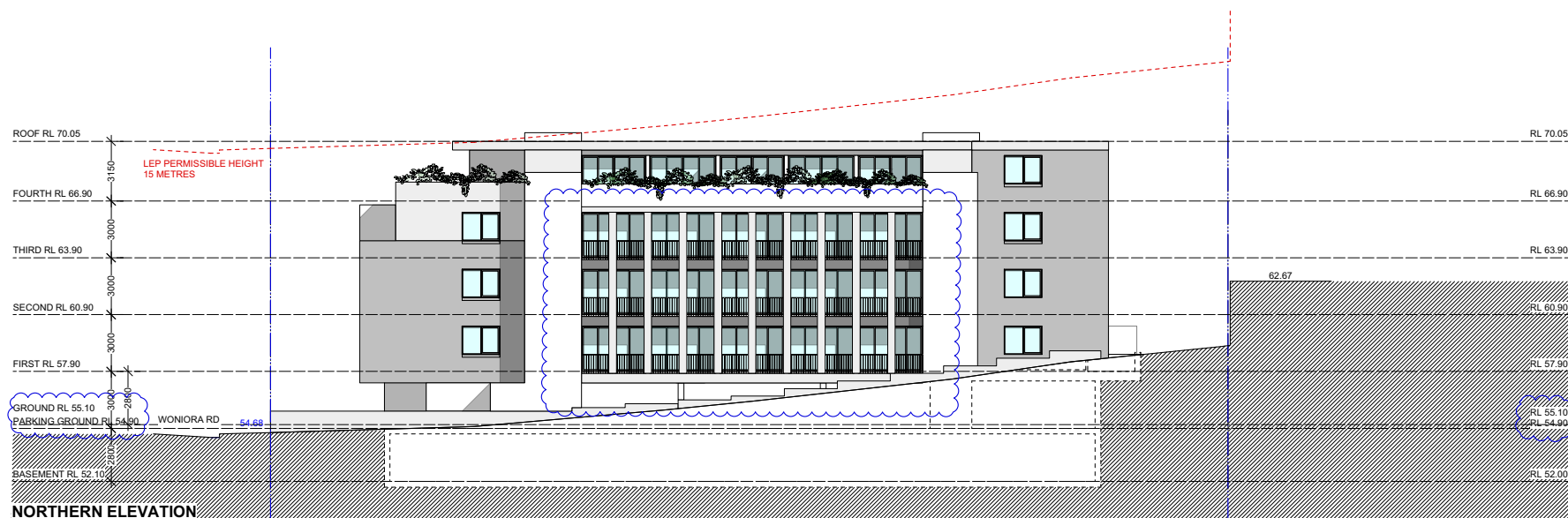
132. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, refuses development consent to Development Application DA2021/0294 for demolition works and construction of a boarding house on Lot 1 in DP 1608 known as 87 Woniora Road, Hurstville, for the following reasons:
1. **State Environmental Planning Policy (Affordable Rental Housing) 2009** - Pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Clause 16A of the SEPP in that the proposal is inconsistent with the existing and desired future character of the locality.
 2. **State Environmental Planning Policy (Affordable Rental Housing) 2009** - Pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development will result in poor internal amenity for residents as a result of the lack of building separation to the adjoining land to the south-east.
 3. **State Environmental Planning Policy (Affordable Rental Housing) 2009** - Pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, the Manager's area of private open space is inappropriately located in the front setback and will result in a poor amenity outcome the Manager.
 4. **Development Control Plan** - Pursuant to Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with Kogarah Development Control Plan 2013 with regard to site isolation.
 5. **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 existing and desired future character of the locality, and will result in adverse amenity for future residents of the development.
 6. **Impacts on the Natural Environment** - Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed basement setbacks are inappropriate and are not sufficient to enable deep soil planting around the building, and not at all on the south-eastern boundary.
 7. **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 it is inconsistent with the existing and desired future character of the locality.
133. **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.

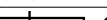


ATTACHMENTS

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




LPP042-22





ARCHITECT	BASIX / NATHERS CERTIFICATION		NOTES	DATE	REVISION	TITLE	NORTHERN & SOUTHERN ELEVATIONS			
 CRACKNELL & LONERGAN ARCHITECTS PTY LTD ABN 55 100 940 501 Nominated Architect: Peter J Lonerган NSW Architects Registration No. 5363 156A CHURCH STREET NEWTOWN NSW 2042 PHONE +61 2 9565 1554 email@cracknellonerган.com.au	BASIX NO. 1133551M		<p>FOR DEVELOPMENT APPLICATION ONLY NOT FOR CONSTRUCTION</p> <p>- Drawings are to be read in conjunction with other consultants drawings and details.</p> <p>- All survey information and proposed building and finished surface levels shown are based on levels obtained from Surveypoint drawing.</p>  	09/07/2020	DA-A	CONCEPT DESIGN	PROJECT	SEPPARH2009 New Generation Boarding House		
				24/08/2020	DA-A	PRELIMINARY CONSULTANTS ISSUE	ADDRESS	87 WONIORA ROAD, HURSTVILLE		
				30/09/2020	DA-A	DEVELOPMENT APPLICATION ISSUE FOR CONSULTANTS	STAGE	DEVELOPMENT APPLICATION		
				09/12/2021	DA-B	DEVELOPMENT APPLICATION (RESPONSE TO RFI)	CLIENT	Peter Zorbas		
				31/01/2022	DA-C	DEVELOPMENT APPLICATION (ELEVATION AMENDMENTS)	SCALE	1:200 @A3, 1:100@A1	DRAWN BY	CC/HC



ARCHITECT		BASIX / MATTERS CERTIFICATION		NOTES		DATE		REVISION		TITLE		EASTERN & WESTERN ELEVATIONS		DA		
<div></div> <div>CRACKNELL & LONERGAN ARCHITECTS PTY LTD</div> <div>ABN 55 100 940 501 Nominated Architect: Peter J Lonerган NSW Architects Registration No. 15863 156A CHURCH STREET NEWTOWN NSW 2042 PHONE +61 2 9565 1554 email@cracknellonerган.com.au</div>		BASIX NO. 1133551M		<div>FOR DEVELOPMENT APPLICATION ONLY NOT FOR CONSTRUCTION</div> <div><div>- Drawings are to be read in conjunction with other consultants drawings and reports.</div><div>- All survey information and proposed building and finished surface levels shown are based on levels obtained from Surveyors drawing.</div></div>		09/07/2020		DA-A		CONCEPT DESIGN		PROJECT		SEPPARH2009 New Generation Boarding House		<div>202</div> <div>ISSUE</div> <div>C</div>
						24/08/2020		DA-A		PRELIMINARY CONSULTANTS ISSUE		ADDRESS		87 WONIORA ROAD, HURSTVILLE		
						30/09/2020		DA-A		DEVELOPMENT APPLICATION ISSUE FOR CONSULTANTS		STAGE		DEVELOPMENT APPLICATION		
						09/12/2021		DA-B		DEVELOPMENT APPLICATION (RESPONSE TO RFI)		CLIENT		Peter Zorbas		
						31/01/2022		DA-C		DEVELOPMENT APPLICATION (ELEVATION AMENDMENTS)		SCALE		1:200 @A3, 1:100@A1		
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**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 01 SEPTEMBER 2022**

LPP043-22

LPP Report No	LPP043-22	Development Application No	REV2022/0001
Site Address & Ward Locality	21 Hogben Street, Kogarah Kogarah Bay Ward		
Proposed Development	Review of Determination of DA2020/0190 - demolition and construction of a mixed use development		
Owners	Michael Murr		
Applicant	Michael Murr		
Planner/Architect	Maximus Developments Australia / Equinox Designs		
Date Of Lodgement	21/05/2020		
Submissions	Two (2)		
Cost of Works	\$14,069,355.00		
Local Planning Panel Criteria	The application seeks consent for development to which the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies.		
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, Statement of Environmental Effects, Clause 4.6 Statement - Clause 4.3 Height of Buildings, Traffic and Parking Report, Landscape Plans, Response to Request for Information Letter		
Report prepared by	Principal 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	Yes

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. The application seeks consent for the demolition of existing structures, and construction of a twelve (12) storey mixed use development with commercial use at the ground floor and residential uses above; five (5) levels of basement, roof top communal open space, landscaping and subdivision (strata and stratum).

2. The proposal includes 50 residential units (10 x Studio units, 29 x 2B units and 11 x 3B units, two x retail tenancies and parking for 73 cars.

Site and Locality

3. The subject development site is known as 21 Hogben Street, Kogarah and is legally described as SP5400.
4. The subject site has four (4) separate street frontages and shares only one common boundary with the property to the east. The street frontages and their respective widths are detailed below:
 - Hogben Street frontage - 33.12m.
 - Montgomery Street frontage - 10.21m.
 - Kensington Street frontage - 42.89m.
 - Moorefield Lane frontage - 8.51m.
 - Eastern boundary - 36.575m
5. The development site is an irregular shaped allotment located on the eastern corner where Hogben Street, Montgomery Street and Kensington Street intersect.
6. The site has a total area of 980.2sqm has a fall from the south-west corner at the intersection of Kensington and Montgomery Street towards the north-east corner of the site along Moorefield Lane by approximately 2.5m.
7. Situated on the site is an existing three (3) and four (4) storey residential flat building comprising nine (9) apartments with a flat roof located over ground level garages. Existing vehicular access to the subject site is from Hogben Street and Moorefield Lane via the existing driveway located along the eastern boundary.
8. Adjoining the site to the east is a mixed development at 13-19 Hogben Street, being six storeys high with ground level commercial uses and residential units above.
9. The site is located within the Kogarah Town Centre in the Montgomery Street Precinct. Montgomery Street is a key precinct in the formation of Kogarah's identity. Its intersection with Railway Parade at the railway station, places it in the heart of the town centre. Montgomery Street has a main street, small scale shopping character near its intersection with Railway Parade.
10. The site is also located in the Kensington Street Precinct. Kensington Street is the only north-east to south-west street linking Gray Street to the Princes Highway and is located on the highest point in the town centre. It has a major role in the Kogarah Centre.

Zoning and Permissibility

11. The site is zoned B4 Mixed Use pursuant to the provisions of the Kogarah Local Environmental Plan 2012.
12. The proposal satisfies the B4 zone objectives. The proposed mixed use development includes a number of uses including residential flat buildings, shop top housing and commercial premises which are all permitted uses within the zone.

13. The application has been accompanied by Clause 4.6 - Exceptions to development standards requests for variations to Clause 4.3 – Height of buildings development standard.

Kogarah Development Control Plan 2013 (KDCP)

14. The provisions of Part B and Part E1 – Kogarah Town Centre of Kogarah Development Control Plan 2013 are applicable to the proposed development. The proposal is considered to be an unacceptable urban design and planning outcome for the site and fails to satisfy the applicable provisions contained within the KDCP.

Specific Precinct Requirements

Montgomery Street Precinct and Kensington Street Precinct

15. In addition to the general controls of KDCP, the Kogarah Town Centre DCP contains Local Precinct character statements and requirements. The subject site is located within the Montgomery Street Precinct and the Kensington Street Precinct. The proposal does not reasonably satisfy the objectives of these precincts which results in an inappropriate built form in relation to the applicable planning controls.
16. A detailed assessment of the proposal against these controls is provided later in this report.

Submissions

17. The application was advertised from 27 January 2022 to 10 February 2022 in accordance with Councils Community Engagement Strategy, two (2) submissions were received that raised concern with traffic and parking, and being out of character for the area.

Reason for referral to the Local Planning Panel

18. This application is referred to the Georges River Local Planning Panel (the Panel) for consideration and determination in accordance with a Section 9.1 Environmental Planning and Assessment Act Ministerial Direction, as the proposal relates to a Residential Flat Building in which the provisions of State Environmental Planning Policy – Design Quality of Residential Flat Development apply.
19. DA2020/0190 was refused by the Local Planning Panel on 16 September 2021 and therefore this S8.2 application is required to be determined by the Panel.

Background

20. A Pre-Lodgement application meeting was held with Council staff in January 2019 and again in March 2019, and issues of concern raised with the applicant included bulk and scale, height and FSR variations, streetscape response and contextual fit, amenity impacts, deep soil provision, building alignment and waste management.
21. The original DA (DA2020/0190) was lodged in May 2020 and refused by the Georges River Local Planning Panel in September 2021 for reasons including non-compliance with the ADG (building separation, balcony sizes, apartment functionality, floor to floor heights), the height variation proposed, streetscape impacts, amenity for future and neighbouring residents, not being in keeping with the existing or desired character of the area and resulting in an inappropriate built form outcome for the site given its excessive bulk and massing.
22. The current application (REV2022/0001) was lodged in January 2022. The applicant was requested to provide additional information and amended plans in March 2022 to address concerns with street address, bulk, scale, massing, façade treatment, apartment layout

and amenity, servicing arrangement, waste management, commercial layout, storage requirements, parking matters and accuracy of plans and documentation.

23. A meeting was held with Council staff, the applicant and their consultants in April 2022 to discuss the concerns Council raised in the letter sent in March.
24. The applicant submitted amended plans and information in June 2022 and none of the issues raised in the letter were adequately addressed, if at all. Further detail is provided in the body of this report in these issues.

Planning and Design Issues

25. 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 are inconsistent with the desired future character of the area as established by the Kogarah Local Environment Plan 2012 (KLEP) development standards for building height.
26. The applicant has not provided documentation to address whether the existing units are affordable rental housing in accordance with Part 3 of SEPP (Housing) 2021.
27. The proposal fails to comply with the building height development standard of 39m that applies to the site under Kogarah Local Environment Plan 2012. This variation includes, roof above Unit 112, lift overrun, fire stairs and awning over the rooftop communal open space area. The height to the top of the lift overrun is 42.9m equating to a 10% variation of the height control.
28. A variation request to the building height development standard has been submitted pursuant to Clause 4.6 of Kogarah Local Environment Plan 2012. This is not supported for the reasons provided in this report.
29. The awning located over part of the roof top communal open space has been reduced in size from the refused application, however, remains dominant when viewed from Hogben Street and presents as an additional level rather than a recessive structure as desired. This element is not considered an architectural roof feature.
30. The proposal fails to provide adequate building modulation and articulation to all street frontages. The continuous unarticulated street wall results in a bulky and dominant streetscape that does not respond to the human scale.
31. The proposed development fails to provide the minimum required storage area requirements of Part 4G of the ADG for the Studio apartments.
32. The proposed design, mass and form of the building is considered inconsistent with the established and future form of mixed use developments in the precinct. The proposed development will not be sympathetic with the development in the street and immediate locality. The proposal is considered to establish an undesirable design precedent in the area and is not considered to be in the public interest.

Conclusion

33. 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

Proposal

34. Development consent is sought for demolition works, lot consolidation, and construction of a twelve (12) storey shop top housing development containing retail floor space on the ground floor (two tenancies) and 50 apartments above five (5) levels of basement car park containing 73 car spaces, landscaping, site works and stratum subdivision.
35. A detailed breakdown of the proposed development is as follows:

Basement Level 5

- 16 residential car spaces including two (2) accessible spaces;
- Two (2) motorcycle spaces;
- Two (2) waiting bays;
- 2 x Fire stairs and 2 x lift access;
- Storage space;
- Car park exhaust;
- General services.

Basement Level 4

- 16 residential car spaces including two (2) accessible spaces;
- Two (2) motorcycle spaces;
- Two (2) waiting bays;
- 2 x Fire stairs and 2 x lift access;
- Storage space;
- Car park exhaust; and
- General services.

Basement Level 3

- 14 residential car spaces including two (2) accessible spaces;
- Three (3) visitors car spaces;
- Two (2) motorcycle spaces;
- Two (2) waiting bays;
- 2 x Fire stairs and 2 x lift access;
- Storage space;
- Seventeen (17) residential bicycle spaces;
- Six (6) visitor bicycle spaces;
- Car park exhaust; and
- General services.

Basement Level 2

- Seventeen (17) retail car spaces including one accessible space;
- One residential car space;
- Two (2) waiting bays.
- Two (2) motorcycle spaces.
- 2 x Fire stairs and 2 x lift access;
- Storage;
- Car park exhaust;
- General services.

Basement Level 1

- Five (5) car spaces allocated to 13/19 Hogben Street (DA under assessment for additional units at 13-15 Hogben Street);
- Five (5) visitor car spaces including two (2) accessible spaces, one visitor/electric vehicle space and a visitors/car wash bay;
- Six visitor bicycle spaces;
- One (1) waiting bay;
- 2 x Fire stairs and 2 x lift access;
- General services;
- Main switchboard room;
- Fire Pump Room;
- OSD;
- Commercial waste room;
- Bulky waste storage room;
- Residential waste and recycling bin storage room including dual chute waste system;
- Creation of an opening between 13-19 Hogben Street and 21 Hogben Street with provision of access stairs to the parking spaces allocated for 13-19 Hogben Street.

Ground Floor Plan

- Residential lobby entry from Hogben Street;
- Two retail tenancies – floor areas not provided on the plans;
- Provision of an accessible WC for use by the public;
- Commercial bicycle spaces;
- Car park exhaust;
- General services;
- Fire hydrant booster located on Moorefield Lane;
- 2 x Fire stairs and 2 x lift access;
- Vehicular access from Moorefield Lane.
- Turning area for service vehicles from Hogben Street;
- Waste chutes riser.

Level 1

- Residential apartments comprising the following:
 - o 3 x studio apartments.
 - o 2 x 2 bedroom apartments (including one adaptable).
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 2

- Residential apartments comprising the following:
 - o 3 x studio apartments.
 - o 3 x 2 bedroom apartments (including two (2) adaptable).
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 3

- Residential apartments comprising the following:
 - o 2 x studio apartments.
 - o 3 x 2 bedroom apartments.
 - o 1 x 3 bedroom apartment.
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 4

- Residential apartments comprising the following:
 - o 2 x studio apartments.
 - o 3 x 2 bedroom apartments.
 - o 1 x 3 bedroom apartment.
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 5

- Residential apartments comprising the following:
 - o 1 x studio apartment.
 - o 3 x 2 bedroom apartments.
 - o 1 x 3 bedroom apartment.
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 6

- Residential apartments comprising the following:
 - o 3 x 2 bedroom apartments.
 - o 1 x 3 bedroom apartment.
- Dual chute garbage system.
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 7

- Residential apartments comprising the following:
 - o 3 x 2 bedroom apartments.
 - o 1 x 3 bedroom apartment.
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 8

- Residential apartments comprising the following:
 - o 3 x 2 bedroom apartments.
 - o 1 x 3 bedroom apartment.
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 9

- Residential apartments comprising the following:
 - o 3 x 2 bedroom apartments.
 - o 1 x 3 bedroom apartment.
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 10

- Residential apartments comprising the following:
 - o 3 x 2 bedroom apartments.
 - o 1 x 3 bedroom apartment.
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 11

- Residential apartments comprising the following:
 - o 2 x 3 bedroom apartments.
- Dual chute garbage system;
- 2 x Fire stairs and 2 x lift access;
- Car park exhaust;
- General services.

Level 12

- Roof top communal open space awning over a BBQ area, accessible WC, tables and chairs;
- Services;
- Car park exhaust;
- 2 x Fire stairs and 2 x lift access.

The Site and Locality

36. The subject development site is known as 21 Hogben Street, Kogarah and legally described as SP5400.
37. The subject site has four (4) separate street frontages and shares only one common boundary with the property to the east. The street frontages and their respective widths are detailed below:
- Hogben Street frontage - 33.12m.
 - Montgomery Street frontage - 10.21m.

- Kensington Street frontage - 42.89m.
 - Moorefield Lane frontage - 8.51m.
 - Eastern boundary - 36.575m.
38. The development site is an irregular shaped allotment located on the eastern corner where Hogben Street, Montgomery Street and Kensington Street intersect.
39. The site has a total area of 980.2m² has a fall from the south-west corner at the intersection of Kensington and Montgomery Street towards the north-east corner of the site along Moorefield Lane by approximately 2.5m.
40. Situated on the site is an existing three (3) and four (4) storey residential flat building comprising nine (9) apartments with a flat roof located over ground level garages. Existing vehicular access to the subject site is from Hogben Street and Moorefield Lane via the existing driveway located along the eastern boundary.
41. The site is located within the Kogarah Town Centre in the Montgomery Street Precinct. Montgomery Street is a key precinct in the formation of Kogarah's identity. Its intersection with Railway Parade at the railway station places it in the heart of the town centre. Montgomery Street has a main street, small scale shopping character near its intersection with Railway Parade.
42. The site is also located in the Kensington Street Precinct. Kensington Street is the only north-east to south-west street linking Gray Street to the Princes Highway and is located on the highest point in the town centre. It has a major role in the Kogarah Centre.
43. The subject site is bounded by Moorefield Lane to the north-east, Kensington Street to the north-west, Montgomery Street to the west and Hogben Street to the south. The site is approximately 400m to the south-west of Kogarah Railway Station.
44. Adjoining the site to the east is a mixed development at 13-19 Hogben Street, being six storeys high with ground level commercial uses and residential units above.
45. The locality is being transformed from a lower scale residential flat building to a high density mixed use development. This is as a result of the recent uplift in density and height.
46. The subject site is located within the Kogarah Town Centre which is characterised by mixed use developments comprising commercial and residential uses. The lower scale developments are being replaced by developments of a higher scale reflective of the height and densities permitted within the B4 zone.
47. Within close proximity to the subject site is St George Public Hospital and St George Private Hospital and other various health facilities. Located along Montgomery Street is TAFE NSW, St George campus and the offices of St George Bank.



Figure 1: Subject site to the right, view looking north up Montgomery Street.

48. To the north of the site opposite the subject site in Kensington Street is a low scale commercial building with parking accessed via Moorefield Lane.



Figure 2: Commercial building located on corner of Kensington Street and Moorefield Lane opposite the driveway entry of the subject site.

49. To the east and adjoining the subject site is 13-19 Hogben Street which contains a seven (7) storey mixed use development comprising residential apartments above commercial premises.



Figure 3: The subject site shown with the adjoining development to the east – 13-19 Hogben Street.

50. To the north-east on the opposite side of Moorefield Lane and opposite the proposed basement entry is an eight (8) storey mixed use building.



Figure 4: Existing building opposite basement entry in Moorefield Lane.

51. To the west on the opposite side of Montgomery Street is a mix of developments including a single storey dwelling house, a four (4) storey commercial building and a seven (7) storey mixed use development.



Figure 5: Buildings located to the west of the site in Montgomery Street.

52. To the south of the site is a two (2) storey development which comprises a shop and residence and is listed as a local heritage item in Schedule 5 of KLEP 2012.



Figure 6: Two storey heritage building opposite the subject site.



Figure 7: Existing heritage building located on the corner of Hogben and Montgomery Streets.

53. The subject site is located within an area that is zoned B4 Mixed Use. To the north-east from Bank Lane the zone changes to R4 High Density Residential in the area known as the Kogarah North Precinct. To the south of the subject site from South Street, this area is zoned SP2 Health Services Infrastructure and contains the St George Public and St George Private Hospitals.

Background

54. A pre-lodgement application (PRE2018/0063) was lodged to Council on 5 December 2018.

55. The pre-lodgement meeting was held on 16 January 2019 and a follow up meeting held on 13 March 2019. The key issues identified were as follows:
- Bulk and scale;
 - Proposal exceeded the maximum building height and FSR development standards;
 - Streetscape response and contextual fit;
 - Amenity impacts to private and public domain;
 - Residential amenity;
 - Deep soil;
 - Building Alignment; and
 - Waste Management.

As part of the Pre-DA process the application was referred to GMU Urban Design and Architecture for urban design comments. Comments were received on 14 February 2019. These comments concluded that substantial amendments were required to the proposal.

56. DA2020/0190 was lodged on 14 May 2020 and refused by the Panel on 16 September 2021 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 spatial separation, balcony sizes and general functionality of apartments 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 as a whole does not ensure that a high level of amenity is achieved and maintained. 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. This is exacerbated by the awning location and roof top services being located in a highly visible location on the external façade of the development.*
 3. *The amendments proposed by the applicant to the floor to floor heights to in part address building height non-compliances are not supported by the Panel in terms of meeting the requirements of SEPP 65 and Apartment Design Guide requirements.*
 4. *The proposal is unsatisfactory having regard to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal has not provided a revised BASIX Certificate consistent with the plans submitted for assessment and therefore does not satisfy State Environmental Planning Policy BASIX:2004.*
 5. *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.*
 6. *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.*
 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 built form of the development will be out of character with*

existing and recently approved developments and does not reflect the desired future character for development in the precinct.

8. *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.*

57. REV2022/0001 was lodged on 12 January 2021, and notified for a period of 14 days, two submissions were received.
58. Council wrote to the applicant on 28 March 2022 regarding the following:
- Urban Design (including comments regarding street address, bulk, scale, massing, façade treatment)
 - Accuracy of documents – Height of Buildings incorrectly calculated.
 - Layout/ and amenity.
 - Ground floor arrangement including loading dock, commercial floor space and commercial communal space.
 - Waste.
 - Storage.
 - Parking detail including bicycle parking and proposed parking for neighbouring property at 13-19 Hogben Street.
59. A meeting was held on 29 April 2022, between the applicant, their consultants and Council, to discuss the correspondence. The applicant submitted revised plans and supporting information on 1 June 2022. These plans and supplementary information are subject of this assessment report.
60. The table below details the required design changes provided to the applicant in March 2022 that have not been addressed by the amended plans submitted in June 2022:

Design Issue	Amended design
Urban Design – refer to detailed discussion later in this report	Not supported.
Waste – refer to detailed discussion later in this report	Not supported.
Traffic and Parking - refer to detailed discussion later in this report	Not supported.
<u>Parking for 13-19 Hogben St</u> It is noted that five (5) parking spaces are to be provided within the proposed development for 13-19 Hogben Street. Detail on access rights, proposed covenants, landowners' consent, legal access and other detail regarding the use/function of these car spaces have not been provided, and are required for assessment. Further a section plan through the stair access from 21 Hogben Street, to 13-19 Hogben Street is required.	Details on access rights, proposed covenants, landowners' consent, legal access and other detail regarding the use/function of these car spaces have not been provided. A section plan is provided on Sheet 505 of the amended plans.

Design Issue	Amended design
<ul style="list-style-type: none"> - The location of windows for bathrooms, kitchens, bedrooms etc, along common walkways are not supported, as they impact upon the amenity of future residents. The dwellings are to be reconfigured and windows removed along common walkways at each residential level, for each affected dwelling. 	<p>Bathroom windows remain adjacent to the common accessway for the 2-bedroom units facing Kensington Street at each level (and the 3-bedroom unit on Level 11).</p> <p>They have 2m high sill heights and are frosted however will still result in poor amenity for residents.</p>
<ul style="list-style-type: none"> - Level 11, Unit 112: The large terrace created from the deletion of Unit 111, from the original DA, has resulted in a large area with no indication of landscaping treatment. <p>At this level, and noting the matters associated with habitable spaces and non-compliance with building height from the original DA, an amended layout or use of Level 11 is to be considered, for example:</p> <ul style="list-style-type: none"> o improved dwelling and private open space layout across dwellings 112 and 113; or o improved landscaping treatment for the terrace of dwelling 112, or o consideration of allocating this terrace communal open space for units 112 and 113, and so on. <p>The above demonstrates there are numerous design options to consider, however this area requires improved landscaping treatment (as a minimum) and use consideration, whilst complying with the height of building control (i.e. underside of ceiling of habitable spaces).</p>	<p>“Typical” planter boxes are shown on the amended Landscape Plan close to the triangular tip of the terrace, a poor landscaping outcome.</p> <p>The terrace remains the outdoor private open space of Unit 112, with the balcony of Unit 113 being reduced in size and relocated from the northern façade to the western façade.</p> <p>Note: The Landscape Plan does not match the architectural plan for the balcony design of Unit 113.</p> <p>No meaningful alternative design options have been proposed.</p>
<ul style="list-style-type: none"> - Ground floor holding bay/ vehicular turning bay: This turning bay raises concerns with safety and accessibility. There is no security fencing, gating, or even the provision of a wall to provide separation from the main ground floor uses, nor is there any consideration of impact of odours to the ground floor. <p>There are concerns relating to pedestrian safety as well, with regards to internal pedestrian movements in the vicinity of this area. This vehicular access area should be</p>	<p>The turntable has been deleted and replaces with a truck turning area.</p> <p>Council’s Traffic Engineer and Urban Designer do not support the amended design for reasons provided later in this report.</p>

Design Issue	Amended design
<p>separated from any ground floor internal use, and further detail on how items will be taken to the holding bay area are to be provided. This detail is to be provided for assessment, including amended plans.</p>	
<p>Storage</p> <ul style="list-style-type: none"> - Basement: A number of storage areas in the basement are located in corners and some areas are not easily accessed to their allocated unit. Consideration of improved access to storage areas are to be provided. Doors or other areas of access and changes should be shown on the basement floor plans. All storage areas are to have unit number allocations annotated on plan. <p>Large storage areas in the basement should be divided and allocated to more than one unit.</p> <ul style="list-style-type: none"> - Storage within Units: There are a number of units where the storage volumes are not clearly annotated. For example Unit 23 indicates “sto 7.18m³”, however this storage appears to be kitchen storage, and the storage areas of this unit- adjacent to the living/dining, has no volume noted. <p>Plans are to be clearly labelled, to ensure storage volumes are clearly identified. Kitchen, bedroom, bathroom and laundry storage is not to be included in the overall storage volumes required, as per the Apartment Design Guide.</p>	<p>The amended plans so not address this issue.</p>
<p>Bicycle Parking</p> <p>The bicycle parking is not well located, and should not be located within the corner of basement level 3. Bicycle parking racks should be allocated across a number of parking levels including the upper most basement level. These bicycle spaces should be visible, and easily access, and consideration of CPTED should be given when amending their location.</p> <p>Bicycle parking for visitors should be provided in a well located, easily accessed and visible space for visitors. Consideration of locating a number of bicycle parking spaces at ground level should be examined, in particular when amending the ground floor layout in</p>	<p>Bicycle parking remains in the corner of B3.</p> <p>Visitor bicycle parking (6 spaces) has been provided on B1 which is not well located or easily accessible. The bicycle spaces on the ground level are nominated for use by</p>

Design Issue	Amended design
consideration of the Urban Design comments above. The Apartment Design Guide provides detail and design criteria for bicycle parking and this should be applied to this development.	commercial tenants.
- Consistent with Apartment Design Guide (Objective 3J-2 of the Apartment Design Guide), the basement should identify parking bay or charging facility for Electric Vehicles. A minimum of one common bay should be provided at each basement level. The loading bay at street level facing Hogben Street, shall have a charging facility installed.	One EV charging station is provided on Basement 1, no other basement levels contain a charging station as required. A charging station has been shown within the truck turning area on the ground floor, however a parking space is not proposed adjacent to it.

61. A comparison of the reasons for refusal of DA2020/0190 and the amended design is provided in the table below.

Reason for refusal	Comment on amended design
<i>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 spatial separation, balcony sizes and general functionality of apartments having regard to the Apartment Design Guide (ADG) and State Environmental Planning Policy No. 65 Design Quality of Residential Flat Buildings.</i>	The amended design remains unacceptable with regard to spatial separation.
<i>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 as a whole does not ensure that a high level of amenity is</i>	The awning above the communal open space on the rooftop has been reduced in size however remains a dominant feature when viewed from Hogben Street. The service areas, stair and lift overruns remain in the same location. The variation request to the building height is not supported.

Reason for refusal	Comment on amended design
<p><i>achieved and maintained. 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. This is exacerbated by the awning location and roof top services being located in a highly visible location on the external façade of the development.</i></p>	
<p>3. <i>The amendments proposed by the applicant to the floor-to-floor heights to in part address building height non-compliances are not supported by the Panel in terms of meeting the requirements of SEPP 65 and Apartment Design Guide requirements.</i></p>	<p>The floor-to-floor heights are 3.1m in accordance with the ADG.</p> <p>Unit 111 has been deleted from the design however there still exists a height non-compliance with Unit 112 breaching the 39m height limit</p>
<p>4. <i>The proposal is unsatisfactory having regard to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposal has not provided a revised BASIX Certificate consistent with the plans submitted for assessment and therefore does not satisfy State Environmental Planning Policy BASIX:2004.</i></p>	<p>A valid BASIX certificate has been submitted with the amended design.</p>
<p>5. <i>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</i></p>	<p>This reason for refusal remains relevant to the amended design.</p>

Reason for refusal	Comment on amended design
<i>upon the streetscape, amenity for future occupants and to adjoining properties.</i>	
6. <i>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.</i>	This reason for refusal remains relevant to the amended design.
7. <i>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 will be out of character with existing and recently approved developments and does not reflect the desired future character for development in the precinct.</i>	This reason for refusal remains relevant to the amended design.
8. <i>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.</i>	This reason for refusal remains relevant to the amended design.

Division 8.2 Reviews

9. Division 8.2 of the Environmental Planning and Assessment Act requires the following provisions (Section 8.3) to be considered in the assessment of an application to review a determination:

An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.

- (2) *A determination or decision cannot be reviewed under this Division: after the period within which any appeal may be made to the Court has expired if no appeal was made, or after the Court has disposed of an appeal against the determination or decision.*
- (3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*

10. The statutory considerations pursuant to Division 8.2 Reviews have been met. The application has been lodged within an appropriate timeframe, being twelve months before the appeal rights expire, and is considered to be substantially the same as the original application (DA2020/0190).

Compliance and Assessment**STATE ENVIRONMENTAL PLANNING INSTRUMENTS**

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

State Environmental Planning Policy (Biodiversity and Conservation) 2021

12. 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

13. 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.
14. This chapter applies to clearing of:
- (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
 - (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).*
15. Fourteen (14) trees are proposed for removal as part of the application.
16. Council's Landscape Officer supports their removal and the proposed landscaping as part of the proposal, subject to conditions if the application were to be approved.

Chapter 11 – Georges River Catchment

17. 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,*

18. The stormwater design was reviewed by Council's Engineering Section. No objection was raised with respect to the management and disposal of stormwater.

19. The proposal is consistent with the objectives and purpose of Chapter 11 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

20. Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 is relevant to the proposal.

21. 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.

22. 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.

23. 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

24. 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

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

26. A valid BASIX Certificate has been submitted with the amended plans.

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

27. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (State Environmental Planning Policy 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three (3) or more storeys in height and containing at least four (4) dwellings. Amendment 3 to State Environmental Planning Policy 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, State Environmental Planning Policy 65 applies.
28. Clause 28(2) of State Environmental Planning Policy 65 requires that the consent authority take into consideration the following as part of the determination of DAs to which State Environmental Planning Policy 65 applies:
- a) *the advice (if any) obtained from the design review panel, and*
 - b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
 - c) *the Apartment Design Guide.*
29. The application has been reviewed having regard to the criterion and design principles as set out in the ADG.
30. The tables below provide a comprehensive assessment against the principles, objectives and controls of State Environmental Planning Policy No 65 and the ADG.

Table: Application of State Environmental Planning Policy 65

Clause	Standard	Proposal	Complies
3. Definitions	Complies with definition of “Residential Apartment Development” (RAD) Section 4 (1) (Application of Policy) of the State Environmental Planning Policy 65 states that the policy “ <i>applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:</i> (a) <i>the development consists of any of the following:</i> (i) <i>the erection of a new building,</i> (ii) <i>the substantial redevelopment or</i>	Complies with definition. The proposal is for the construction of a 12 storey mixed use shop top housing building with 5 levels of basement.	Yes

	<p><i>the substantial refurbishment of an existing building,</i></p> <p><i>(iii) the conversion of an existing building, and</i></p> <p><i>(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and</i></p> <p><i>(c) the building concerned contains at least 4 or more dwellings.”</i></p>		
4. Application of Policy	<p>Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB.</p> <p>The definition of an RFB in the State Environmental Planning Policy includes mixed use developments.</p>	The development proposes the construction of a new shop top housing development, which satisfies the definition of the policy.	Yes
Clause 50 - Development Applications (EP&A Regulation 2000)	<p>Design verification statement provided by qualified designer.</p> <p>Registered Architect Name and Registration No.</p>	Design Verification Statement provided by Registered Architect Estefano Bonfante Norman (Nominated Architect No. 11618).	Yes

31. Council's Urban Designer has carried out an assessment of the proposal against the provisions of SEPP 65 and the ADG. An assessment of the proposal as lodged was undertaken taking into consideration the design quality of the development. Those comments are provided below.

1. *It is recommended the proposal be amended to address existing site topography. Level changes should be accommodated within the building, with entries and ground floor levels located generally at footpath level. Basement car parking should be located below natural ground level. Gentle gradients should be provided in the public domain and building to achieve a significant reduction in the number of steps across the site.*
2. *It is recommended that the design should be amended for the building alignment to comply with KDCP 2013, which requires the building to be at footpath level and aligned to Kensington Street and the corner of Montgomery and Hogben Streets. Building services along Hogben Street should have a minimum 3m setback to minimise the visual dominance on the streetscape.*

If a setback is desired for outdoor dining along Kensington Street, the setback should be at the same level as the footpath with gradual slope or minimum stepping (Refer Recommendation 1).

3. *The design should be amended to incorporate a visually prominent building entry off Kensington Street to the Commercial Common Area and Retail 1 and visually interesting entry to Retail 2.*
4. *The design should be amended to incorporate a visually prominent and safe residential building entry. If residential access is desired from Hogben Street, the building services should be setback and the width of the entrance increased with the lifts clearly visible from the streets.*
5. *The design should be amended for the vehicular access ramp to be integrated with the building's façade design. Security doors / gates should be provided at the entry but setback from the laneway to minimise the impact of the void on the façade. The security gate should be open grille shutters and complement the architecture, features and materials of the building to minimise dominance on the streetscape.*
6. *It is recommended that the design should be amended for the proposal to have a maximum podium / street wall height of 4 storeys. The levels above should have a minimum setback of 3m (balconies and building articulation should not encroach onto the upper level setback).*
7. *It is recommended that the design should be amended for the proposal to comply with the building separation required to the northeast with the aim that the proposal does not compromise the development potential of 8-12 Kensington Street.*

Building separation resulting from the setbacks proposed to the southeast boundary are considered inadequate. The proposal is considered an over development of the site given that it is not consistent with the vision and character of the area. For the proposal to be taken into consideration, setbacks to the southeast boundary should be increased to comply with the ADG.

8. *The design should be amended to present a more appropriate built form to the streetscape and context by incorporating the required setbacks, building separation and streetwall height.*

Refer to Section 5 for details on the façade treatment.

9. *The design should be amended such that the Commercial Common Area (CCA) is an integral part of the development with easy and direct pedestrian access as well as adequate solar access. If the current location is desired for the CCA, the main building entry should be relocated such that it terminates at the CCA.*

There is a discrepancy between the landscape plan and the architectural plan. Hence, clarification is required on the interface treatment between the CCA and the building services.

10. *To ascertain extend of sunlight within proposed apartments and the impact of the proposal on the existing development a detailed Solar Access Report prepared by an independent expert should be submitted to Council for assessment.*

The Solar Access Report should include a 3D view of the apartments including internal arrangement of furniture and hourly shadows between 9am and 3pm on the winter solstice (21 June).

11. *The design should be amended to provide privacy to all bedrooms.*
12. *The ceiling heights should comply with the ADG. Rather than increasing ceiling heights of the ground floor (Ground Floor ceiling height between 4.2m and 4.8m), the proposal should address the topography and have the FFLs at slip levels rather than a single slab.*
13. *It is recommended that the architectural expression of the elevations and overall built form be amended to enhance the visual appeal of the building, minimise the building bulk and scale provide appropriate height transition and enhance human comfort.*

The desired typology for the centres within the LGA generally is the tower and podium form with distinctive base, middle and top. To achieve a village feel, the exiting development should have had a maximum four story podium / street wall height with a tower above with generous setbacks. This would result in a development that has appropriate scale, proportions and an appropriate fit for the context.

32. The amended scheme still fails to achieve an appropriate urban design outcome for the subject development site given the development controls permitted. The comments on the amended design by Council's Urban Designer are as follows:

The proposal in its current form is not supported. As discussed below, majority of the urban design recommendations in the letter dated 18 March 2022 have not been incorporated in the amended design.

1.0 Topography

The finished floor level (FFL) of Retail and terrace in the northeast corner has been lowered to RL24.6m (Rev J) from the original design, which had the RL at 25.0m.

The northeast corner (intersection of Moorfield Land and Kensington Street) still is more than a meter above the footpath level and the corner still is visually and

physically disconnected from the public domain. In addition, the change in FFLs have not been transferred on the levels above ground.

Levels in the northeast corner need to be resolved and the variation in FFLs transferred to levels above ground, where appropriate.

2.0 Building Envelopes and Site Configuration

2.1 Street Activation

Retail 1 setback to Kensington Street has been amended from the 1.2m to 0m. A single entry off Montgomery Street is proposed. As stated above, the terrace in the northeast corner is more than a meter above the natural ground and provides no activation. The space within the Kensington Street setback should be unobstructed and easy to use for wheelchair users.

The 0m setback to the service stairs and exhaust shaft is not supported as it a visual barrier to the residential entry.

The original design had the vehicular entry width at 8.5m with planter providing a buffer to the holding area. The proposed design has the vehicular entry and gate width of 11.74m. Given the total street frontage, the 11.74m vehicular access in addition to the services has significant visual impact on the streetscape as it is the very dominant feature on the façade.

Hence, the proposal is not supported. Please refer to the original urban design comments provided in the letter dated 18 March 2022 for objectives and street activation recommendations.

2.2 Pedestrian Access / Circulation

Commercial

The loading/unloading (vehicle) turntable and commercial common area has been replaced with loading/unloading area. This has resulted in significant changes to the pedestrian circulation pattern at ground level. The common entry off Kensington Street and the internal circulation corridor have been deleted. Retail 2 with sliding doors / access on the southeast facade has interface with the loading/unloading area.

The revised design has the pedestrian movement primarily along the streets. Provision of folding doors to access the loading/unloading is of concern given the impact of noise and odour as well as pedestrian safety. The landscape plan has internal paved area (pedestrian circulation) along the loading/unloading area, which is not consistent with the architectural plans. As stated before, circulation or outdoor seating along the loading/unloading area will be undesirable and unusable.

There should be a separation between the vehicular and pedestrian areas.

Residential Access /Circulation

The 1.8m wide residential entry has been revised to 4.34m wide at the building facade, which narrows down to 3m. However, the location next to the loading/unloading area has been retained. Some architectural treatment has been incorporated to distinguish the residential entry. However, the residential lobby still

does not provide space for social interaction and is devoid of natural light and ventilation, which is desirable.

In addition, the temporary bin holding area has been deleted and it is inferred that residential lift will be used to transfer garbage from the basement to the street. This is considered unhygienic, unsafe and undesirable.

As discussed under Section 4.3 below, the internal residential corridor/common circulation space will high sill toilet windows along its perimeter and views/noise from the loading/unloading area. It does not provide any opportunity for casual social interaction or seating and does not provide an aesthetically pleasing or desirable space.

3.0 Built Form and Scale

3.1 Street Wall Height

In terms of built form, the balcony on the Kensington Street façade (apartments above Retail 1 - corner of Kensington Street and Montgomery Street) has been relocated to Montgomery Street. On Level 2 the balcony extends the whole length of the street, while on the levels above the length of the balcony has been reduced by around 50%. The balconies still add to the bulk and scale of the building and the height is still perceived as 11 storeys. No other upper level setbacks have been included and the proposal does not read as a podium tower typology or provide a human scale.

This is not consistent with the KDCP objectives and hence not supported. Please refer to the comments and recommendations in the urban design letter dated 18 March 2022.

3.2 Building Separation

None of the issues raised and recommendations have been addressed in the amended design. Please refer to the comments and recommendations in the urban design letter dated 18 March 2022.

3.3 Building Bulk and Scale

Except for lower the FFL in the northeast corner (Retail and terrace) no other issues such as podium height, upper level setbacks, street setbacks have been addressed.

Please refer to the comments and recommendations in the urban design letter dated 18 March 2022.

4.0 Amenity

4.1 Communal Open Space and Deep Soil Planting

Ground floor commercial common area has been deleted and replaces with loading/unloading area. The loading / unloading area – core of the building, is a significantly large considering the building footprint. Part of the commercial common area (between the car park entry/driveway and loading/unloading area), which has interface with the courtyards of the development to the southeast have been retained

and proposed to be landscaped. The quality of this space, less than 50% of which will receive less than an hour of sun is of concern. Given the blind corners, access from retail space and lack of passive surveillance of the area, safety is of concern.

There is no provision of commercial common area in the revised design. The ground floor has unusable floor space (terrace in the northeast corner, space between the driveway and loading/unloading area) and space, which is not well integrated with the built form. Consideration to create communal space at ground level, which is integrated with the built form should be considered.

Please refer to the comments and recommendations in the urban design letter dated 18 March 2022 for the desired quality of commercial common area.

4.2 Solar Access

Concerns raised in the urban design letter dated 18 March 2022 have not been addressed.

4.3 Privacy

Bedroom of Units 15, 25, 35, 45, and 55 along the corridor have been moved away from the corridor following concerns raised on privacy.

Revised option has high sill toilet windows along the corridor.

4.4 Ceiling Heights

Ceiling heights have not been amended.

Please refer to the comments and recommendations in the urban design letter dated 18 March 2022

5.0 Architectural Expression

Except for the balconies along Montgomery Street, relocated from Kensington Street, no significant changes are proposed to the composition of massing elevation treatment, materials or textures.

33. Clause 28 of SEPP 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.

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

Clause	Standard	Proposal	Complies
3D - Communal open space	1. Communal open space has a minimum area equal to 25% of the site. - Where it cannot be provided on	511 m ² (52%) provided on the rooftop.	Yes

Clause	Standard	Proposal	Complies
	<p>ground level it should be provided on a podium or roof</p> <ul style="list-style-type: none"> • Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should: <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space 		
	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)	Complies	The roof top communal open space will achieve a minimum of 2 hours of solar access throughout the day in mid-winter.
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>Where the site has an area of between 650 m² – 1,500 m²</p>	Nil proposed	No, however acceptable. The provision of the deep soil zone is limited by the footprint of the basement that is required to cater for

Clause	Standard	Proposal	Complies
	= 3m min dimension Min deep soil area of 7% (68.61 m ²)		the parking for the development. Landscaping is provided at street level and within the rooftop communal open space area.
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: Up to 12m (4 storeys) Habitable - 6m Non-habitable – 3m Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m Over 25m (9+ storeys) Habitable - 12m Non habitable – 6m	Refer to assessment below.	No
<p><u>Comment on Separation Distances (3F Visual Privacy)</u> The subject site has four boundaries which adjoin roads or laneways, being Hogben Street, Montgomery Street, Kensington Street and Moorefield Lane. The only property boundary with another building is the eastern boundary. Adjoining this boundary is a mixed use development known as 13-19 Hogben Street Kogarah.</p> <p><u>Eastern boundary setbacks</u> <u>Apartments facing Hogben Street in the south eastern corner of the site</u> Level 1 apartment 16 – blank wall to boundary Level 2 apartment 26 - blank wall to boundary Level 3 apartment 36 - blank wall to boundary Level 4 apartment 46 - blank wall to boundary Level 5 apartment 55 - blank wall setback of 5.864m to boundary</p>			

Clause	Standard	Proposal	Complies
<p>No separation is required between blank walls and compliance has been achieved for the above apartments.</p> <p><u>Apartments facing Moorefield Lane</u> Level 1 apartment 11 - 5.8m setback Level 2 apartment 21 – 5.8m setback Level 3 apartment 31 – 5.8m setback Level 4 apartment 41 – 5.8m setback Level 5 apartment 51 – 5.8m setback Level 6 apartment 61 – 5.8m setback Level 7 apartment 71 – 5.8m setback Level 8 apartment 81 – 5.8m setback Level 9 apartment 91 – 5.8m setback Level 10 apartment 101 – 5.8m setback Level 11 apartment 112 – 6m setback to terrace</p> <p>The eastern external wall only contains one window being a non-habitable bathroom within all apartments. Under the ADG, a non-habitable window is required to be setback between 3m and 6m from the boundary depending upon the building height. As the setback provided is 5.8m throughout with the blank wall (noting no separation required for blank walls) in conjunction with the non-habitable window the setback is acceptable. The balconies have a privacy screen on the eastern edge.</p> <p>The use of blank walls ensures privacy is maintained along the eastern boundary for the south-eastern units. The apartments to the north, facing Moorefield Lane have a bathroom window with the rest of the wall being a blank wall to maintain amenity between properties.</p> <p>The area occupied by the terrace of Unit 112 was previously Unit 111 in the design refused under DA2020/0190. The required setback at Level 11 is 12m, with which the design does not comply. No privacy treatment is proposed on the eastern edge of the terrace. It noted there is an application under assessment for an additional two levels of apartments at the adjacent site at 13-19 Hogben Street. The determination of that application is dependent on the outcome of this application as parking for the additional units at 13-19 Hogben Street is proposed within the basement of this building. In any case, there is no residential development at what would be Level 11 on the adjacent site. Nonetheless, the 6m setback proposed to the Unit 112 terrace is not supported and compliance with the required 12m should be achieved.</p>			
3G – Pedestrian Access and entries	Building entries and pedestrian access connects to and addresses the public domain	Residential apartments are accessed directly off Hogben Street. Vehicular access to the basement carpark is via Moorefield Lane.	Yes
	Multiple entries (including communal building entries and individual	The streetscape is activated by the retail premises which have frontage to predominantly Kensington Street but also	Yes

Clause	Standard	Proposal	Complies
	ground floor entries) should be provided to activate the street edge	Montgomery Street and Hogben Street.	
3H-Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Vehicular and pedestrian access is separate.	Yes
3J-Bicycle and car parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Roads and Maritime Services Guide to Traffic Generating Developments (RMS), or the car parking requirement prescribed by the</p>	<p>The site is located within 400m of Kogarah Railway station as such the RMS provisions are applicable to this assessment.</p> <p>Proposal relies on the following car parking provisions;</p> <ul style="list-style-type: none"> • 10 x 1 bedroom units = 0.4 x 10 = 4 spaces • 29 x 2 bedroom units = 0.7 x 29 = 20.3 spaces • 11 x 3 bedroom units = 1.2 x 11 = 13.2 spaces <p>Total = 37.5</p> <p>Residential spaces required = 38</p> <p>Visitor total = 50/7 = 7.1</p> <p>Visitors spaces required = 7 spaces</p> <p>The proposal requires a total of 45 off-street car parking spaces for residents and visitors.</p> <p>The proposal provides a total of:</p> <ul style="list-style-type: none"> - 47 residential spaces for 21 Hogben Street. 	<p>The number of spaces provided meets the numerical requirement however a number of spaces do not meet relevant Australian Standards for width or accessibility – refer to comments by Council's Traffic Engineer later in this report.</p>

Clause	Standard	Proposal	Complies
	<p>relevant council, <i>whichever is less.</i></p> <p>In accordance with Section 5.4.3 (High Density Residential Flat Buildings) of the RMS Traffic Generating Guidelines. The site is located within the “Metropolitan Regional (CBD) Centres” and the following provisions apply;</p> <p>0.4 spaces per 1 bedroom unit 0.7 spaces per 2 bedroom unit 1.2 spaces per 3 bedroom unit 1 space per 7 units (visitor parking)</p> <p>The provision of at least one loading dock for residential use is desirable, although a dock intended for commercial uses may be sufficient. 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> <p>The car parking needs for a development must be provided off street</p>	<p>- 8 visitor spaces</p> <p>TOTAL PROPOSED = 55</p> <p>The following parking has also been provided:</p> <p>17 spaces have been provided for retail/commercial</p> <p>(Council’s DCP requires a minimum of 7 car parking spaces be provided for retail/commercial).</p> <p>In total the development requires a total of 52 car parking spaces.</p> <p>A total of 72 car parking spaces have been provided (EXCLUDING THE 5 SPACES FOR 13-19 Hogben Street)</p> <p>The off street car parking provision exceeds the requirements of RMS/ADG provisions.</p> <p>A truck turning area has been provided and accessed via Hogben Street.</p>	<p>The truck turning area caters for a SRV. Council’s Traffic Engineer recommends it cater for a MRV. Refer to comments later in the report with regard to parking and waste.</p>

Clause	Standard	Proposal	Complies
4A- Solar and daylight access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area	82% of apartments receive a minimum of 2 hours of solar access during mid-winter.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter	All units receive direct sunlight.	Yes
4B- Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	All apartments have been designed to comply with minimum cross ventilation requirements.	Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	No apartment exceeds 18m in depth.	Yes
	The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths	Most apartments are dual aspect.	Yes
4C-Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable	A minimum 3.1m floor to floor height has been provided to enable a minimum 2.7m ceiling height to be achieved to the residential component.	Yes

Clause	Standard	Proposal	Complies
	rooms = 2.4m 3.3m for ground floor and first floor in mixed use areas to promote flexibility of use.	The ground floor provides a floor to floor height of 4.2m which enables a minimum 3.9m to be achieved on the ground floor. Note: The first floor contains residential units with a floor to floor height of 3.1m.	No, however the ground floor height will be compliant and the ceiling height proposed for the first floor is considered acceptable even though not numerically compliant.
<u>Variation to 3.3m ceiling height for first floor of mixed use development</u> The ground floor to floor height will enable a minimum ceiling height of 3.3m. The first floor contains residential apartments and has a floor-to-floor height of 3.1m, which does not meet the desired 3.3m ceiling height for a mixed use building. The ceiling height as proposed will not affect its usability or adaptability of various uses.			
4D- Apartment size and layout	Apartments are required to have the following minimum internal areas: Studio = 35m ² 1 bedroom = 50 m ² 2 bedroom = 70 m ² 3 bedroom = 90 m ² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each	Min. 35sqm Nil. Min. 75sqm Min. 95sqm Achieved.	Complies
	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	Every habitable room has window openings larger than 10% of the floor area of the room area.	Complies

Clause	Standard	Proposal	Complies
	borrowed from other rooms		
4D-2 Apartment size and layout	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Satisfactory. With the minimum floor to ceiling heights complying with the 2.7m minimum, all habitable room depths satisfy the minimum requirements.	Complies
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	The apartments have open plan living/dining room layouts.	Complies
4D-3 Apartment size and layout	Master bedrooms have a minimum area of 10 m ² and other bedrooms 9 m ² (excluding wardrobe space).	All master bedrooms have a minimum internal size of 10 m ² .	Complies
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	All bedrooms have minimum dimensions of 3m	Complies
	Living rooms or combined living/dining rooms have a minimum width of: -3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments	All living rooms have minimum widths of 4m.	Complies
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies.	Yes

Clause	Standard	Proposal	Complies
4E- Private Open space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <p>Studio apartments = 4 m²</p> <p>-1 bedroom = 8s m²/2m depth</p> <p>-2 bedroom = 10 m²/2m depth</p> <p>-3+ bedroom = 12 m²/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	<p>>4sqm</p> <p>NA</p> <p>Min. 10sqm</p> <p>Min. 10sqm</p> <p>Noted</p>	<p>Yes</p> <p>NA</p> <p>Yes</p> <p>Yes</p> <p>-</p>
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m	No ground floor apartments proposed.	NA
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	Two lifts service each floor – maximum 6 units per floor.	Yes
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	The proposed development contains more than 10 storeys, has 50 apartments and has two lifts for the residents.	Yes

Clause	Standard	Proposal	Complies
4G- Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>Studio = 4m³</p> <p>1 bedroom = 6m³</p> <p>2 bedroom – 8m³</p> <p>3 bedroom – 10m³</p>	<p>None allocated in the basement</p> <p>NA</p> <p>Complies</p> <p>Complies</p>	<p>No</p> <p>NA</p> <p>Yes</p> <p>Yes</p>
	At least 50% of storage is to be located within the apartment.	Complies	Yes
<p><u>Discussion on storage:</u></p> <p>6 of the 10 Studio apartments have a parking space in the basement however have not been allocated storage in the basement, either in a cage behind the parking space or separately despite there being storage spaces shown in the basement as being “Spare”.</p> <p>This issue was raised with the applicant in the letter of March 2022 and has not been addressed in the amended plans.</p>			
4H- Acoustic Privacy	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.</p> <p>Window and door openings are generally orientated away from noise sources</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas</p>	<p>Building separation, orientation and arrangements are designed to mitigate noise pollution with openings shielded through setbacks and other arrangements from noise sources.</p> <p>Recommendations have been provided to ensure separation between buildings complies. In addition the building must comply with the specific requirements of the NCC – BCA.</p> <p>Internal layouts further work to mitigate noise transfer.</p>	Complies

Clause	Standard	Proposal	Complies
	Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources		
4J – Noise and Pollution	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 	<p>Site layout and floor plan design seeks to minimise acoustic disruption for the enjoyment of the future residents/users of the development. The communal open space on the ground level is centrally located within the development and is shielded from Hogben Street, Montgomery Street and Kensington Street by the proposed building.</p> <p>Vehicle entries are located and designed to minimise further noise impacts and the placement of non-residential uses aids in separating residents from noise sources.</p>	Yes
4K – Apartment Mix	<p>A range of apartment types and sizes is provided to cater for different household types now and into the future</p> <p>The apartment mix is distributed to</p>	<p>The development offers a mix of studio, 2 and 3 bedroom apartments.</p> <ul style="list-style-type: none"> • 10 x studio apartments (20%) • 29 x 2 bedroom apartments (58%) • 11 x 3 bedroom apartments (22%) 	Complies

Clause	Standard	Proposal	Complies
	suitable locations within the building	The mix is considered to be acceptable and appropriate.	
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>	No ground floor apartments proposed	N/A
4M - Facades	<p>Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.</p>	<p>The proposal fails to provide adequate building modulation and articulation to all street frontages. The continuous unarticulated street wall results in a bulky and dominant streetscape that does not respond to human scale.</p> <p>The building has not been successfully resolved in this regard.</p> <p>The overall aesthetic is not considered to be appropriately resolved and is not consistent with the desired streetscape character.</p>	No
4N – Roof design	<p>Roof treatments are integrated into the building design and positively respond to the street.</p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p> <p>Incorporates</p>	<p>The roof is a modern element that is generally consistent with new developments of this scale and form. It includes a communal area on the roof which is a benefit for future occupants. The awning above the rooftop communal open space is large and dominant and should be reduced in scale and size.</p>	<p>No, rooftop communal open space area is supported however roof element needs to be reduced in size and scale.</p>

Clause	Standard	Proposal	Complies
	sustainability features.	Notwithstanding it exceeds the permitted building height development standard of the Kogarah Local Environmental Plan 2012.	
4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	Council's consultant arborist has reviewed the landscape plan and found it to be satisfactory.	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	Planting zones have been integrated into the design to ensure appropriate growing conditions.	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory – the design offers a wide variety of apartment styles and forms many of which can be integrated and amalgamated in the future where necessary.	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.	This is a new development.	N/A
4S Mixed Use	Mixed use developments are provided in appropriate	Located within the B4 Mixed-Use zone of the Montgomery Street Precinct area of the	Yes

Clause	Standard	Proposal	Complies
	locations and provide active street frontages that encourage pedestrian movement	<p>Kogarah Town Centre as designated within the KLEP and KDCP, the proposal provides a range of uses that support the town centre.</p> <p>A range of public transport options, including bus and rail, are located within 400m, of the site as well as green open spaces.</p> <p>Within the development the ground level commercial use will create active frontages, encourage movement and curiosity, and contribute to the public domain.</p>	
4T – Awnings and signage	Awnings should be located and complement and integrate with the building design.	Awnings have been provided along the street frontages to promote the use of these areas and activate the street interface.	Yes
	<p>A number of the following design solutions are used:</p> <ul style="list-style-type: none"> • Continuous awnings are maintained and provided in areas with an existing pattern. • Height, depth, material and form complements the existing street character. • Protection from the sun and rain is provided. • Awnings are wrapped around the secondary 	The development utilises these design solutions.	Yes

Clause	Standard	Proposal	Complies
	frontages of corner sites. <ul style="list-style-type: none"> Awnings are retractable in areas without an established pattern. 		
4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A valid BASIX Certificate has been submitted.	Yes
4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The development incorporates appropriate stormwater measures and Council's Development Engineers are satisfied with the design subject to conditions.	Yes
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	Designated waste storage areas are provided in the basement for building users, with recycling facilities included. A bulk waste area for residents is also provided within the basement.	Yes
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection	The design incorporates a mix of external finishes that require minimal maintenance.	Yes

Clause	Standard	Proposal	Complies
	reduces ongoing maintenance cost		

Kogarah Local Environmental Plan 2012 (KLEP 2012)

34. The subject development site is zoned B4 Mixed Use under the KLEP 2012 as shown in the figure below.

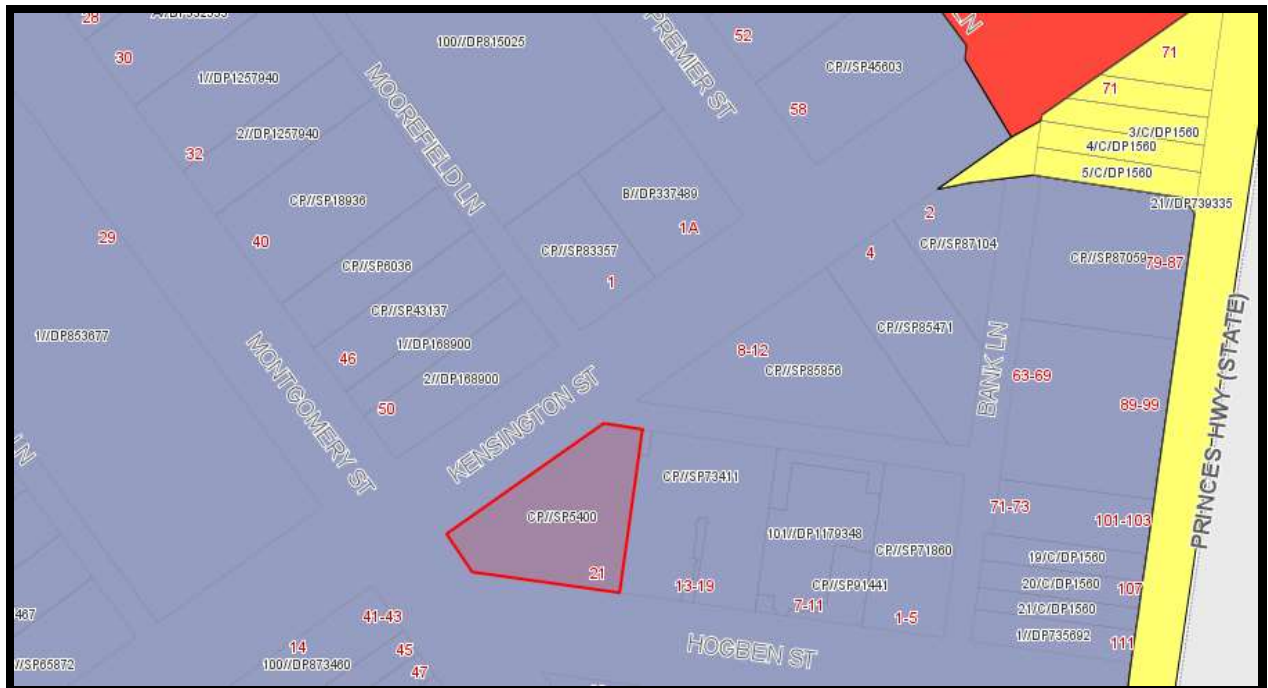


Figure 8: Zoning map (KLEP 2012) - Subject site outlined in red.

35. The objectives of the zone are as follows:

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

36. The B4 zoning focused on providing a mixture of compatible land uses, promoting and integrating suitable business, office, residential, retail and other developments within accessible locations to maximise public transport and encourage walking and cycling. It seeks to encourage development that will contribute to an active, vibrant and sustainable town centre.

37. The subject site is located within the Kogarah Town Centre. Due to the site's close accessibility to Kogarah railway station and the local shopping precinct there is a clear expectation through the zoning to provide for retail and commercial uses to activate the street frontages and support the centre.

38. An assessment of the proposal against the relevant LEP clauses and standards is as follows.

Clause	Standard	Proposal	Complies
Part 2: Permitted or Prohibited Development			
2.2 Zoning of Land to which Plan applies	B4 Mixed Use	The proposal is defined as a shop top housing development being a mixed use development comprising a residential flat building development and commercial/retail premises which are permitted land uses in the B4 mixed use zone under KLEP 2012.	Yes
2.3 Zone objectives and Land use table	Objectives of zone to be satisfied	The proposal satisfies the objectives of the zone by providing a mixture of residential apartments and commercial premises.	Yes
2.7 Demolition	Demolition requires development consent.	Consent for demolition of existing structures is sought.	Yes
Part 4: Principal Development Standards			
4.3 Height of Buildings	39m as identified on Height of Buildings Map.	The building exceeds the 39m height limit and achieves an overall height at the highest point of 42.9m. The lift overrun, fire stairs, roof of communal open space area and associated services are the elements which exceed the height control.	No – see discussion below regarding Clause 4.6 Statement which has been submitted.
4.4 Floor Space Ratio	4.5:1 as identified on Floor Space Ratio Map	The proposed FSR is 4.5:1. The proposal complies with a GFA of 4,322m ² being and FSR of 4.108:1.	Yes
4.5 Calculations of Floor space and Site area	Floor space to be calculated in accordance with Clause.	Floor space has been calculated in accordance with this clause.	Yes
4.6 Exceptions to Development Standards	A clause 4.6 variation request has been submitted in relation to the proposed building height. An assessment of the submission is provided following this table.		
Part 5: Miscellaneous Provisions			
5.6 Architectural roof features	Development that includes an architectural roof feature that exceeds, or causes a building	No architectural roof feature proposed.	N/A

Clause	Standard	Proposal	Complies
	to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.		
5.10 Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	<p>The site is not a heritage item and is not within a heritage conservation area.</p> <p>Schedule 5 of the KLEP identifies that the following items of heritage significance are located within the vicinity of the subject site:</p> <ul style="list-style-type: none"> • Item I80 – shop and residence at 22 Hogben Street, and • Item I81 – Former Sixth Church of Christ Scientist – Grace Chinese Church at 1A Kensington Street. • Item I97 – shop and residence at 111 Princes Highway, Kogarah. <p>The proposal was referred to Council's Heritage Advisor who advised that the proposed development is supported on heritage grounds subject to conditions.</p> <p>Council's DCP has specific requirements for development adjoining heritage items. The proposed development is not considered to have an adverse impact upon the heritage items.</p>	Yes
Part 6: Additional Local Provisions			
6.1 Acid Sulfate Soils (ASS)	The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental	The site is not affected by any Acid Sulfate Soils.	Yes

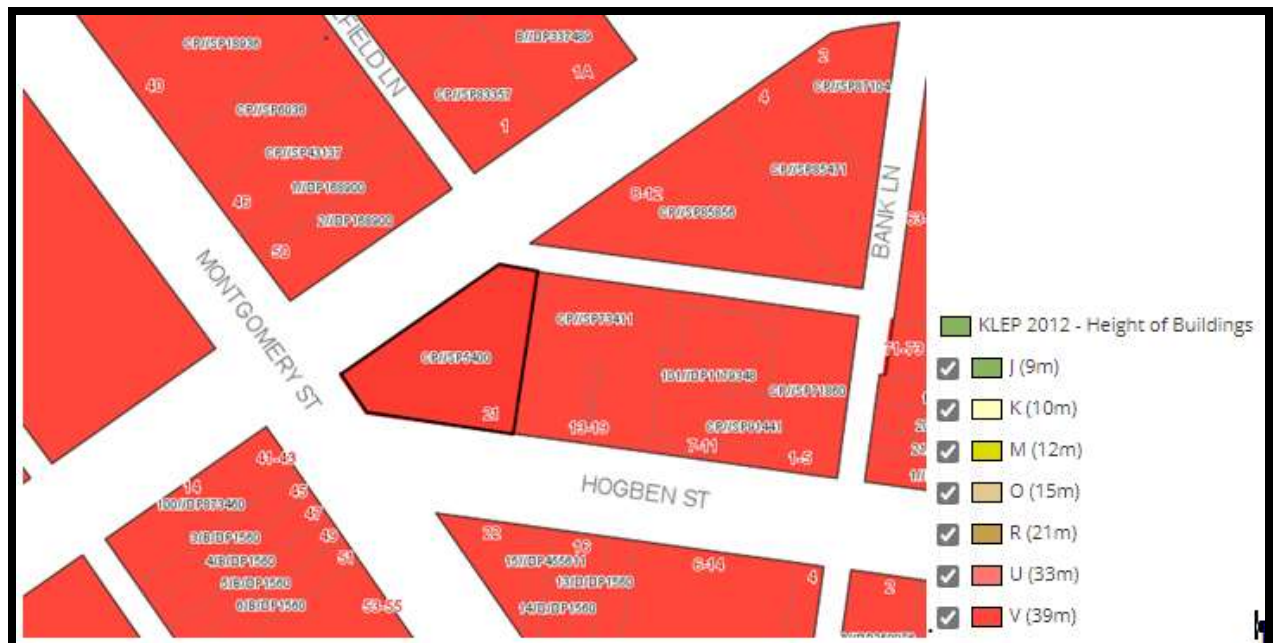
Clause	Standard	Proposal	Complies
	damage		
6.2 Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	<p>The proposal includes the provision of five (5) levels of basement car parking.</p> <p>The proposed earthworks are not considered to be unreasonable for the use.</p>	Yes
6.3 Flood Planning	<p>The objectives of this clause are as follows—</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid significant adverse impacts on flood behaviour and the environment.</p>	The site is not affected by any flood planning restrictions.	Yes
6.5 Airspace Operations	<p>The objective of this clause is to protect airspace around airports.</p> <p>The consent</p>	<p>Approval has been provided to a maximum height of RL 69.8m AHD.</p> <p>The maximum height of the building is a maximum of RL</p>	Yes

Clause	Standard	Proposal	Complies
	authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the <i>Airports Act 1996</i> of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division	67.9m. The height permitted is not breached by the development.	

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Clause 4.6 Exceptions to development standards - Height of Buildings

39. The objectives of Clause 4.6 are as follows
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
40. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Kogarah Local Environmental Plan 2012 (KLEP) identifies a maximum height of 39m for the site (refer to figure below) and the proposed development will exceed the height by up to 3.9m which comprises the rooftop communal open space area and awnings, lift and stair overruns and a portion of Unit 112. This amounts to a 10% variation to the control. The remainder of the building is below the 39m height limit.
41. 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.



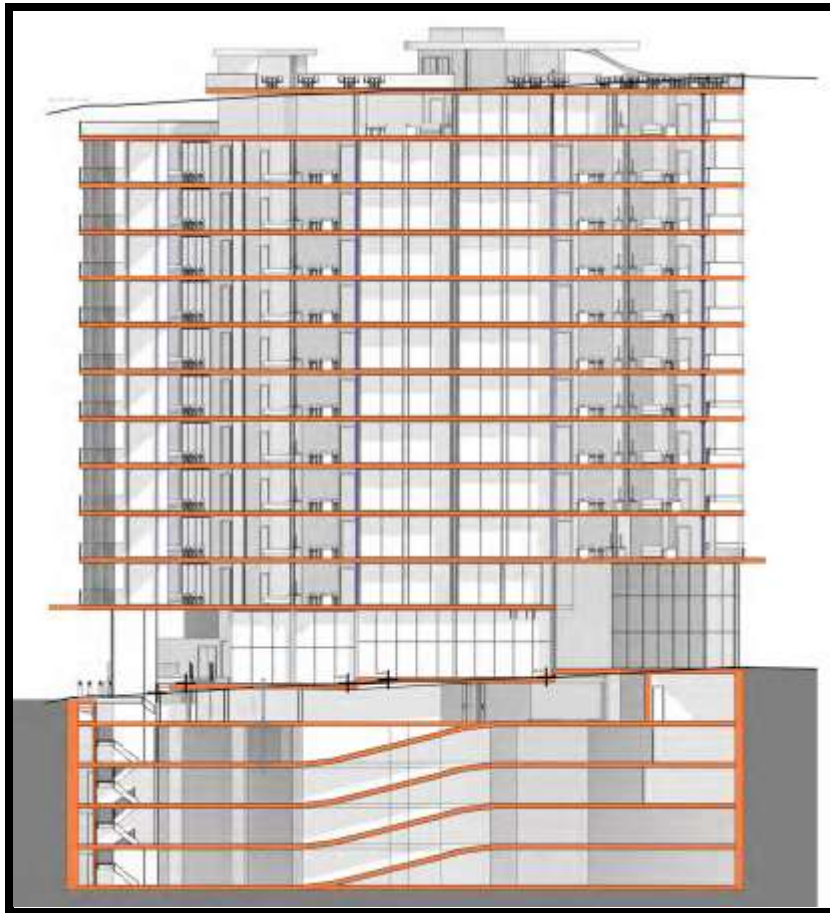


Figure 11: Section showing 39m height limit

42. Clause 4.6(3) states that:
“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - *that there are sufficient environmental planning grounds to justify contravening the development standard”*
43. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of KLEP. The full request has been provided to the Panel separately and the summary included in the request is provided below:

CONCLUSION – SUPPORT FOR VARIATION TO HEIGHT OF BUILDING

For the reasons identified above, it is considered that supporting the Clause 4.6 – Exception to Development Standard in relation to Clause 4.3 Height of Building is reasonable and appropriately justified in accordance with the provisions within this subsection and planning considerations given that the merits of extent of the variation. No habitable residential floor area is located above 39m.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation of which have been reasonably satisfied under the provisions of Clause 4.6. Given this due consideration of Initial Action Pty Ltd vs Woollahra Council have been adequately

satisfied whereby the proposal does not necessary result in a better outcome that strict numerical compliance however results in a reasonable outcome with minimal impacts.

- As previously discussed, this extent of the variation relating to height is considered to be inconsequential and does not result in any unreasonable material planning impact as indicated within the shadow and vertical diagrams.
- The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3 Height of Building and B4 Mixed Use Zone objectives and therefore the merits of the proposed variation are considered to be worthy of approval.
- Strict numerical compliance is unlikely to result in a better material planning outcome given that negligible material impacts arise in relation to the extent of the variation which is not considered to be significantly perceivable when viewed from the public domain given the site, context and maximum height control.
- The proposed variation to the prescribed height does not result in any unreasonable or unduly impact in terms of privacy or bulk and scale or view loss to the amenity on site or to adjoining properties.
- **Natural Environment Impacts** - The proposed extent of the variation is not considered result in any material natural or environmental impacts given the sitting the variation on the portion of the building.
- **Built Environment Impacts** - The proposed extent of the variation is also considered to satisfy and meet the objectives and intent and requirements of the planning controls. In this regard, the proposal is not considered to result in any unacceptable unreasonable adverse built environment impacts by virtue of the design. The proposal adopts a reasonable built form for shop top housing which is responsive to the prominent location, irregular allotment shape and context of the surrounding area which is considered to be undergoing transitional urban change from older established built forms to shop top housing within the Kogarah Town Centre.
- **Economic Impacts** - The proposed extent of the variation is not considered to result in any unacceptable economic impacts given the proposed residential purpose sought. It is also considered that there will be economic generation due to the proposed collective works.
- **Social Impacts** - The proposed extent of the variation is not considered to result in any unacceptable social impacts by virtue of the design of the proposal and is compatible with the immediate surrounding context and aligns is compatible with the character of the area.

Given the above, due considerations of Initial Action Pty Ltd vs Woollahra Council have been adequately satisfied as the proposal has addressed several of the key points under the Wehbe v Pittwater Council test. As previously stated, the proposed variation to height of building is considered to be reasonable, impact is neutral and is not excessive and is not inconsistent with the objectives of Clause 4.3 Height of Building, notwithstanding the numerical departure and therefore is considered worthy of support.

44. The Clause 4.6 request for variation is assessed as follows.

Is the planning control in question a development standard?

45. Height of Buildings control under Clause 4.3 of the KLEP 2012 is a development standard. The maximum permissible height is 39m.

What are the underlying objectives of the development standard?

46. 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))

47. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.
48. Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation:
1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
 2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
 4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
 5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*
49. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.

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

50. 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 whilst the rooftop awning has been reduced in size from the refused application it is still located along the edge of the Hogben Street elevation and primarily provides cover above the lift and stairs and service areas rather than being centrally located and setback from the building edges. This results in a dominant rooftop feature that appears as another storey, rather than a recessed ancillary element of the design.

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

51. 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,"*

52. 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.*
62. 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 Montgomery Street and Kensington Street Precincts and the B4 Mixed Use zone within the town centre.
 - The bulk and scale of the development is incompatible with the existing buildings that have been completed and approved within the immediate vicinity.
 - 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 Hogben Street.
53. The objectives of the B4 Mixed Use zone are:
- *To provide a mixture of compatible land uses.*
 - *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
 - *To encourage development that contributes to economic growth and employment opportunities.*
 - *To encourage development that contributes to an active, vibrant and sustainable town centre.*
 - *To provide opportunities for residential development, where appropriate.*
63. The exceedance of the building height control generally satisfies the objectives of the zone for the following reasons:
- The development will provide for a compatible mix of residential and commercial uses, the proposed variations will not impede the attainment of this objective.
 - The development is providing for the housing needs of the community with a mix of apartment choices within a mixed use zone whilst also integrating commercial and retail development.
 - The development is located within an accessible location with only a short walk to Kogarah Station and a number of bus stops within close proximity.
 - The development will provide residential development for the Kogarah Town Centre whilst also activating the street through the provision of non-residential uses at street level.
64. 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.

65. The public benefit of the variation is that it will appropriately facilitate the provision of a high density mixed use development on B4 zoned land and will 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 needs to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.
66. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard.
67. The awning and lift over run are located along the southern boundary and is highly visible from the street, generating a visual impact.
68. 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.

54. Concurrence from the Secretary has been obtained and can be assumed in this case.
69. The proposed variation is considered to be unacceptable and does not satisfy the provisions of Clause 4.6. The encroachment and variation adds visual bulk and an unreasonable and unnecessary amount of additional height to the building.
70. The proposed development does not satisfy the objectives of the height control as it will be a visually dominating and a bulky structure in this prominent corner location. The proposed design response is not considered to be in the public interest and does not minimise impacts as stipulated by the objectives of the height control. The additional height is considered to establish an undesirable urban design and planning precedent in the immediate locality and the scale of the development will not be sympathetic with the existing scale and form of existing adjoining developments.
71. For these reasons the Clause 4.6 Statement is not considered to be well-founded and cannot be supported in this case.

Georges River Local Environmental Plan 2021

55. The Georges River Local Environmental Plan 2021 was gazetted on 8 October 2021.
56. In relation to this development site the zoning, height and floor space ratio remain unchanged.
57. Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.

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

Development Control Plans

Kogarah Development Control Plan 2013

59. Apart from satisfying some of the provisions of the ADG and SEPP 65 the controls within the KDCP are applicable. Part B, General Controls and Part E1 Kogarah Town are required to be considered in the design of the proposal.

Table: KDCP 2013 Compliance Table

PART B – GENERAL CONTROLS

Required	Proposed	Complies
B1 Heritage Items and Heritage Conservation Areas		
<p>Ensure development protects and enhances the environmental and cultural heritage of Kogarah;</p> <p>The relevant requirements of Clause 5.10 of KLEP 2012 are to be addressed for any development relating to a heritage item</p>	<p>In respect to the heritage provisions of Part B1 of the KDCP, the site is located within the vicinity of a heritage item.</p> <p>The site is not a heritage item and is not within a heritage conservation area.</p> <p>Schedule 5 of the KLEP identifies that the following items of heritage significance are located within the vicinity of the subject site:</p> <ul style="list-style-type: none"> Item I80 – shop and residence at 22 Hogben Street, and Item I81 – Former Sixth Church of Christ Scientist – Grace Chinese Church at 1A Kensington Street. Item I97 – shop and residence at 111 Princes Highway, Kogarah. <p>The proposal was referred to Councils Heritage Advisor who advised that the proposed development is supported on heritage grounds subject to conditions.</p> <p>Council’s DCP has specific requirements for development</p>	Yes

Required	Proposed	Complies
	adjoining heritage items. The proposed development is not considered to have an adverse impact upon any heritage item.	
B2 Tree Management and Greenweb		
<p>The objectives of this part include the following:</p> <ul style="list-style-type: none"> • Ensure the protection of existing trees which contribute to the visual amenity and environment of the City of Kogarah; • Protect trees within and adjacent to development sites; • Maximise healthy tree canopy coverage across the City of Kogarah <p>Development consent or a Council permit is required to ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree, whether on private or public land, which has:</p> <p>(i) A height greater than 3.5m, or (ii) A branch spread exceeding 3 metres in diameter</p>	<p>The proposal includes the removal of ten (10) on site trees with little significance and four street trees. Council's Consultant Arborist has reviewed the proposed landscape plan and is satisfied with its content subject to suitable conditions of consent.</p> <p>The site is not within a 'habitat corridor' or 'habitat reinforcement corridor' under Council's Greenweb strategy.</p>	Yes
B3 – Development near busy roads and rail corridors		
Acoustic assessment for noise sensitive development may be required if located in the vicinity of a rail corridor or busy roads	A Noise Impact Assessment report was provided with the application. Should the proposal be approved, appropriate conditions will be imposed to ensure the constructed building complies with the recommendations of the Acoustic Report.	Yes
B4 Parking and Traffic		
Refer to Part E1 for parking requirements in the Kogarah Town Centre. It should be noted that there may also be specific	The site is located within 400m of Kogarah Railway station as such the RMS provisions are applicable to this assessment.	The number of spaces provided meets the numerical requirement however a number of spaces do not meet

Required	Proposed	Complies
parking requirements relating to specific precincts in the Kogarah Town Centre.	<p>Proposal relies on the following car parking provisions;</p> <ul style="list-style-type: none"> • 10 x 1 bedroom units = 0.4 x 10 = 4 spaces • 29 x 2 bedroom units = 0.7 x 29 = 20.3 spaces • 11 x 3 bedroom units = 1.2 x 11 = 13.2 spaces <p>Total = 37.5</p> <p>Residential spaces required = 38 Visitor total = 50/7 = 7.1</p> <p>Visitors spaces required = 7 spaces</p> <p>The proposal requires a total of 45 off-street car parking spaces for residents and visitors.</p> <p>The proposal provides a total of:</p> <ul style="list-style-type: none"> - 47 residential spaces for 21 Hogben Street. - 8 visitor spaces <p>TOTAL PROPOSED = 55</p> <p>The following parking has also been provided:</p> <p>17 spaces have been provided for retail/commercial</p> <p>(Council's DCP requires a minimum of 7 car parking spaces be provided for retail/commercial).</p> <p>In total the development requires a total of 52 car parking spaces.</p> <p>A total of 72 car parking spaces have been provided</p>	relevant Australian Standards for width or accessibility – refer to comments by Council's Traffic Engineer later in this report.

Required	Proposed	Complies
	(excluding the 5 spaces for 13-19 Hogben Street)	
Loading dock	A truck turning area is proposed off Hogben Street.	Yes
<u>Car wash bay:</u> 1 bay, which can also function as a visitor space	A shared car wash bay/visitors space has been provided.	Yes
<u>Bicycle Parking:</u> 1 space per 3 dwellings $50/3 = 17$ spaces required	17 residential bicycle parking spaces are provided in a storage room in Basement 3.	Yes
<u>Bicycle parking - Visitors</u> 1 space per 10 dwellings for visitors = 5 spaces required	12 visitors bicycle parking spaces are provided in a storage room in the basement.	Yes
<u>Bicycle parking – Commercial</u> 1 space per 5 car parking spaces = $17/5 = 4$ spaces	4 spaces provided at ground level adjacent to Retail 2.	Yes
Car park access and layout to comply with relevant Australian Standards	The internal layout and size of car parking spaces in the basement levels has been reviewed by Councils Traffic Engineer and is considered unsatisfactory.	No
B5 – Waste Management and Minimisation		
Submit Waste Management Plan (WMP) Provide a dedicated caged area within the bin room for the storage of discarded bulky items.	A Waste Management Plan (WMP) is considered to be unacceptable in relation to waste management.	No, see comments made by Councils Waste Coordinator in the referrals section of this report.
B6 – Water Management		
All developments require consideration of Council's Water Management Policy	The subject site is not located within flood prone land. The proposed stormwater system has been reviewed by Councils Drainage Engineer and found to be satisfactory subject to conditions of the application was to be supported.	Yes
B7 – Environmental Management		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	The application was accompanied by a BASIX certificate at lodgement and has been updated to reflect the amended plans.	Yes

Development Control Plans

Part E1 – Kogarah Town Centre

60. The proposal is subject to the provisions of Part E1 - Kogarah Town Centre. Assessment against the relevant controls has been undertaken below.

Part E1 - Kogarah Town Centre

2.3 Montgomery Street Precinct

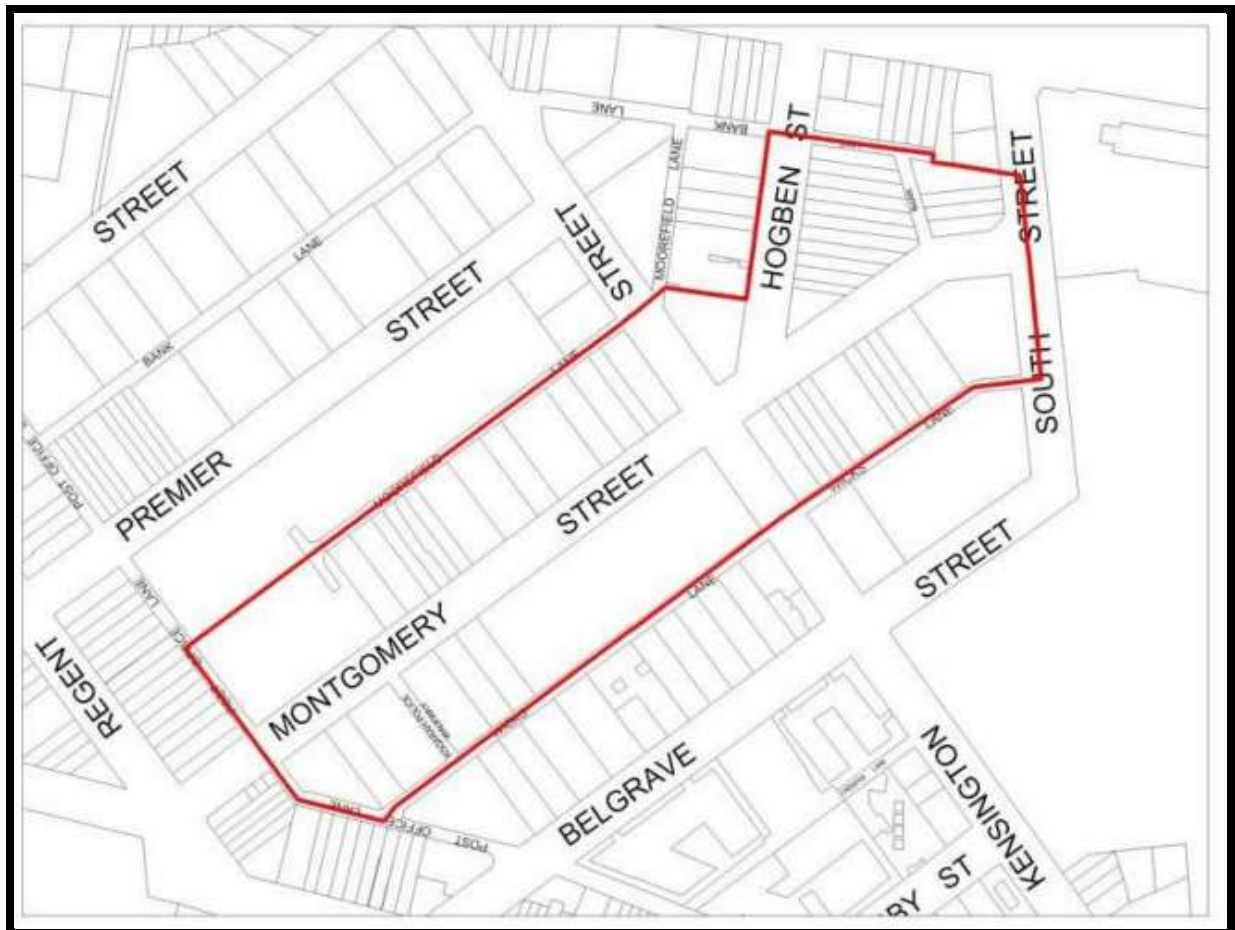


Figure 19: Montgomery Street Precinct map

2.3.2 Desired Future Character Principles

Land Uses

(a) Reinforce Montgomery Street as a major mixed use, active street, encompassing retail, commercial and medical/civic uses with retail shop fronts along much of its length.	The proposed development seeks consent for a mixed use development comprising ground floor commercial/retail premises along the Montgomery, Kensington and Hogben Street frontages with residential apartments above. This is consistent with the B4 mixed use zoning.	Yes
(b) Provide an active retail street frontage in any re-development of the existing TAFE building.	N/A	N/A

c) Provide predominantly commercial and medical uses associated with the two hospitals at the hospital end of Montgomery Street between Kensington Street and South Street.	The site is on the corner of Kensington Street with commercial uses at street level.	Yes
Street Frontage		
(d) Address the street, at the station end of Montgomery Street up to the TAFE building, with small scale retail and commercial development at ground level.	N/A. The subject site is not between the Railway Station and the TAFE on Montgomery Street.	N/A
(e) Address and enclose the South Street park with buildings built to the alignment of the streets and the lane fronting the park.	N/A	N/A
Built Form		
(f) Emphasise the intersection of Kensington Street and Montgomery Street with taller corners, reinforcing Kensington Street as the major north-east, south-west boulevard in the town centre.	<p>The proposed building has an emphasis to the intersection of Kensington and Montgomery Street. This is reinforced in part by the high ceilings provided for the ground floor commercial space. The building has also provided a highly visible and dominant awning which adds additional height to the building, this should be recessive in nature given this awning is part of the roof top communal space and exceeds the maximum building height control.</p> <p>There is however a lack of suitable elements across the façade of the building to provide articulation along Hogben Street and Kensington Street frontages.</p>	No
(g) Redevelop the southern side of Montgomery Street between Kensington and South Street, with buildings having the lower three or four-storeys built to the proposed building alignment.	N/A	N/A

(h) Set back the upper storeys 3m from the alignment or mark storeys 3 or 4 with a strong cornice line.	The building is located on the boundary for most of the street frontage with a small section setback 2.4m.	No
Heritage		
(i) Respect the scale of the heritage building on the corner of Hogben Street and Montgomery Street with complementary adjacent development.	<p>The site is not a heritage item and is not within a heritage conservation area.</p> <p>Schedule 5 of the KLEP identifies that the following items of heritage significance are located within the vicinity of the subject site:</p> <ul style="list-style-type: none"> • Item I80 – shop and residence at 22 Hogben Street, and • Item I81 – Former Sixth Church of Christ Scientist – Grace Chinese Church at 1A Kensington Street. • Item I97 – shop and residence at 111 Princes Highway, Kogarah. <p>The proposal was referred to Councils Heritage Advisor who advised that the proposed development is supported on heritage grounds subject to conditions.</p> <ul style="list-style-type: none"> • Council's DCP has specific requirements for development adjoining heritage items. The proposed development is not considered to have an adverse impact upon this heritage item. 	Yes
(j) Retain the heritage buildings opposite the Courthouse and set back any taller development 15m from the street frontage for properties Nos. 22-28 Montgomery Street. Structures forward of 15m may be considered by Council only if they are shown to protect the heritage and enhance the urban design quality of the street. In any case, no higher structure should be	N/A	N/A

allowed forward of 9.3m. In relation to such structures, applicants shall be required to show how both external and internal heritage features are protected by the design.		
Pedestrian Movement		
(k) Create a pedestrian link adjacent to the courthouse, from Belgrave Street to Moorefield Lane.	N/A The subject site is not located in this area.	N/A
(l) Provide pedestrian amenity in the form of continuous awnings along retail and commercial frontages. A diverse range of canopies, awnings, balconies, bay windows and signs will assist in creating a colourful and visually rich townscape character.	Continuous awnings have been provided.	Yes
2.6 Kensington Street Precinct		

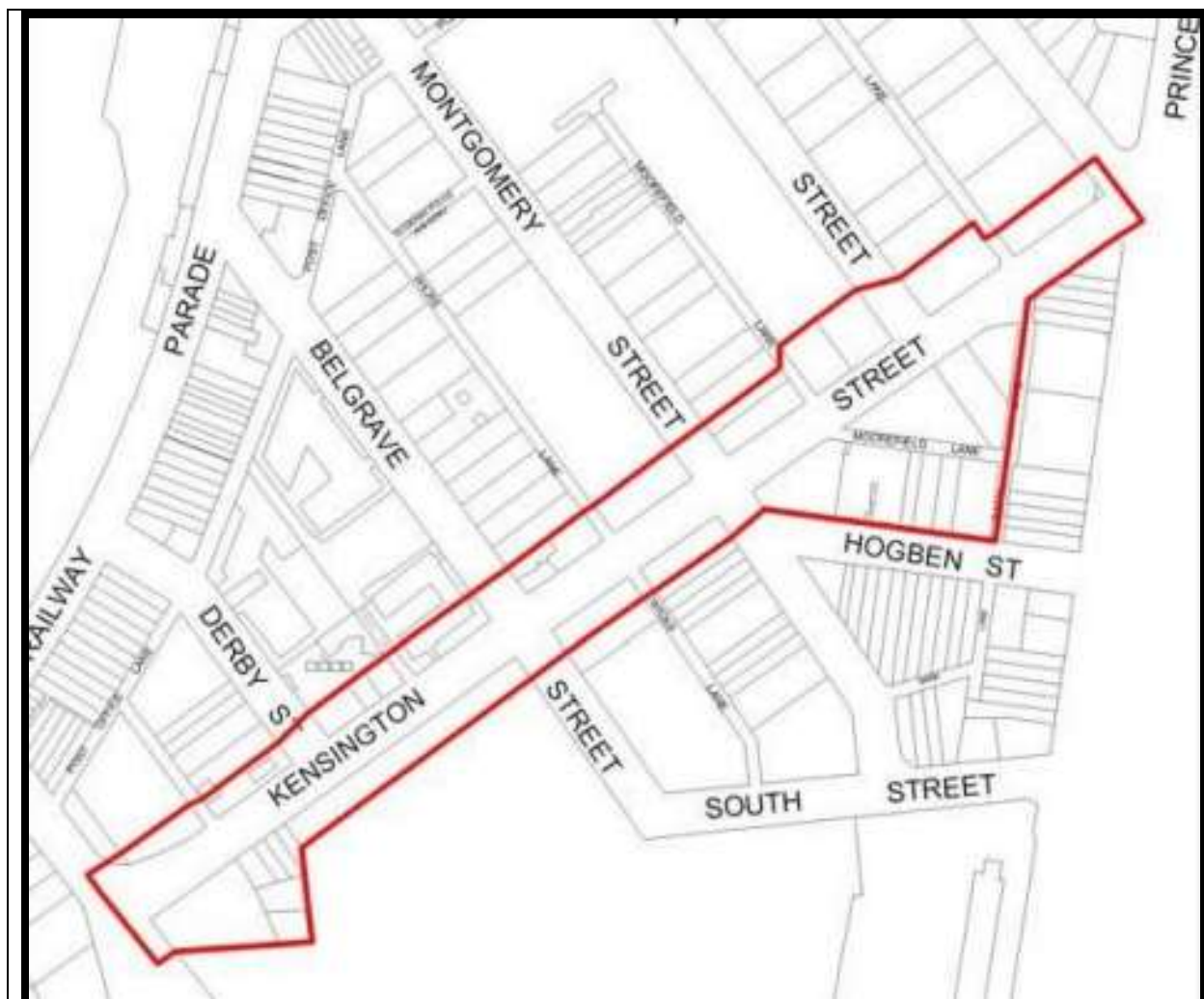


Figure 20: Kensington Street Precinct map

2.6.2 Desired Future Character Principles

Land Uses

(a) Encourage a range of overlapping uses along Kensington Street, including commercial offices, residential, medical and public buildings.

The proposal is for a mixed use development with retail located on the ground floor to activate the street frontage in Kensington Street.

Yes

Street Frontage

(b) Provide active street frontages with retail, commercial offices, home offices and public uses.

Retail premises have been proposed at ground level.

Yes

(c) Address the street with major facades, building entrances and substantial tree planting.

The proposal is too dominant and bulky.

No

Built Form		
(d) Emphasise the intersections of cross streets with corner buildings having taller elements on the corner, building entrances and geometric corner elements	The building is taller at the main intersection of the site however the elements on the upper level need to be more recessive to accentuate the intersection.	No
(e) Create Kensington Street as the main boulevard through the town centre, lined with appropriate new medium rise development.	The development is for a high rise development which aligns with the new controls with increased height and density.	No, however acceptable.
Heritage		
(f) Relate to heritage buildings with low rise podiums, horizontal cornices and other scale breaking devices, in adjacent development	<p>The site is not a heritage item and is not within a heritage conservation area.</p> <p>Schedule 5 of the KLEP identifies that the following items of heritage significance are located within the vicinity of the subject site:</p> <ul style="list-style-type: none"> Item I80 – shop and residence at 22 Hogben Street, and Item I81 – Former Sixth Church of Christ Scientist – Grace Chinese Church at 1A Kensington Street. Item I97 – shop and residence at 111 Princes Highway, Kogarah. <p>The proposal was referred to Councils Heritage Advisor who advised that the proposed development is supported on heritage grounds subject to conditions.</p> <p>Council's DCP has specific requirements for development adjoining heritage items. The proposed development is not considered to have an adverse impact upon this heritage item.</p>	Yes
Pedestrian		
(g) Provide pedestrian amenity and linkages from one side of Kensington Street to the other, with street awnings, street trees and pedestrian kerb crossings.	The awning at street level is proposed along the street frontages.	Yes

Part 3 Built Form		
3.2 Heritage Items		
Schedule 5 of Kogarah LEP 2012 lists heritage items which are protected. Council should be consulted early in the development process for sites that involve heritage items or are in the vicinity of a heritage item	<p>The subject site does not contain a heritage item. The subject site is in the vicinity of heritage items.</p> <p>The proposal will not adversely affect the heritage significance of the heritage items nearby including the following:</p> <ul style="list-style-type: none"> Item I80 – shop and residence at 22 Hogben Street, and Item I81 – Former Sixth Church of Christ Scientist – Grace Chinese Church at 1A Kensington Street. 	Yes
3.3 Consolidation of Sites		
(1) In considering an application for redevelopment of a site, Council will consider the impact of the proposed development on adjoining allotments of land that will be left as isolated sites and the impact on their future development capacity	The proposal does not result in any isolated sites.	Yes
(2) A minimum street frontage of 18m is required for buildings taller than 3 storeys to provide a minimum workable building footprint, allowing for adequate car parking and the required setbacks.	The street frontage exceeds 18m.	Yes
3.4 Building Heights		
(1) Maximum building heights are shown in Figure 1 – Building Heights Plan	The proposed building has a height of 42.9m which exceeds the maximum building height of 39m contained within KLEP 2012. A Clause 4.6 has been submitted by the Applicant in support of this variation.	No, however discussed within the Clause 4.6 Assessment.
3.4.3 Building Heights in relation to corners		
(1) Corner elements should be accentuated.	The corner of the site is accentuated however it is not acceptable. There are elements on the upper levels that need to be reduced, removed and recessed, including balconies and external walls in the north-east corner of the building.	No

(2) Corner elements may exceed the height control by up to 4 metres above the average street wall height. The area they contain is to be included in the calculation of gross floor area.	N/A. The proposal is subject to the maximum building height control in KLEP 2012.	N/A
3.4.5 Building Height and Articulation		
Where buildings are greater than four storeys, strong articulation should be provided in the form of a setback at the 5th and 6th storey, a strongly marked balcony cornice line (projection) and modulation in roof form	The building is predominantly on the boundary line and provides the articulation through façade articulation.	Yes
3.5 Building Density		
(1) The maximum floor space ratios for the Kogarah Centre are specified in the Floor Space Ratio Plan	The proposed development provides a FSR of 4.4:1 which is compliant with KLEP 2012.	Yes
(2) The maximum floor space ratios have been calculated using building heights and setbacks specified in this DCP to achieve a realistic building envelope.	N/A	N/A
(3) Rooftop development, where permissible, is not included as part of the total gross floor area for the building, and is not counted as an additional storey for the purposes of calculating the allowable gross floor area for the building	Noted	Yes
3.6 Building Alignment		
(1) Buildings must be built to the alignments specified in Figure 3.4 below, for the majority of the facade length. This control requires the building to be built predominantly to the specified building alignment; however buildings are not to have straight, flat facades.	The building is built to the boundary on all street frontages, which is required for the Montgomery and Kensington Street frontages. The Hogben Street frontage requires that the building be setback a minimum of 3m with height greater than 4m.	No

- Street Aligned
- Commercial must be street aligned/residential must be setback
- /// Setback whole of building minimum 3m for building with height greater than 4m
- • • Setback for Railway Parade side of Post Office lane – minimum 1m between Gladstone St and Montgomery St. Refer to 5.5 for setbacks between Montgomery St and Gray St.



Figure 21: Building Alignment Plan

(2) Buildings require highly articulated facades with many projections such as stepped facades, entry porches, bay windows and balconies to provide vertical subdivisions and visual interest in the streetscape.

Some of these elements have been incorporated into the design.

Yes

3.6.1 Lanes

(2) For buildings above 4m high, the whole of the building must be built to the alignments specified in Figure 8.

The external walls of the building are setback beyond 3m; however the balconies are constructed to the boundary. It is noted that a majority of this frontage is occupied by the driveway.

No

Figure 8 – Building alignment for buildings up to 4m

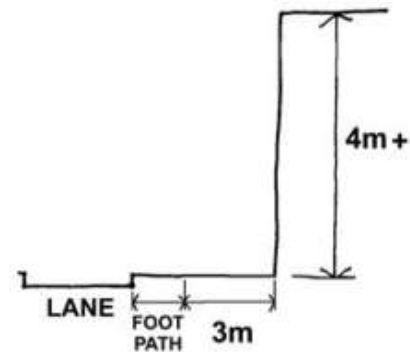


Figure 22: Building alignment for buildings 4m+.

3.7 Building Depth

(1) New buildings are to provide operable windows to all living and working environments	Each unit includes operable openings to the living areas.	Yes
(2) Articulate buildings using courtyards, atria and the like to achieve substantial daylighting, cross ventilation and/or stack ventilation	All apartments can achieve cross ventilation.	Yes
(5) The range of maximum building depth for residential buildings in order to allow natural light and cross ventilation should be 10m – 15m. This includes sheltered balconies (which is a balcony with a roof over it), sunrooms and the like.	Generally compliant.	Yes

3.8 Floor to Ceiling Heights

(1) Floor to ceiling heights should be a minimum of 3m at ground floor level, to allow for a range of uses including retail, commercial offices and home offices	Ground floor ceiling height exceeds 3m.	Yes
(2) Floor to ceiling heights should be a minimum of 2.7m at upper storeys of buildings, to all habitable rooms to allow for a range of uses, and to improve the environmental performance and amenity of the building	2.7m proposed.	Yes

3.9 Parking Provision in the Kogarah Town Centre		
3.9.1 Car Parking		
(4) For commercial/retail development and other land uses parking is to be provided at the following rate: (i) 1 space per 40m2 for any floor space at ground floor level. (ii) 1 space per 50m2 for all other floor space above ground floor level.	The required number of parking spaces is provided – refer to earlier assessment.	Yes
(5) 1% of all car parking spaces are to be designated “accessible” spaces for people with mobility impairments, with a minimum of 1 space for facilities such as medical suites		
(6) For car parks between 10 to 99 spaces at least one “accessible” space must be provided.		
3.9.2 Bicycle parking		
Bicycle parking and facilities should be designed in accordance with the relevant Australian Standards	Bicycle parking for residents, commercial and visitors has been provided.	Yes
3.9.3 Loading Bay Facilities		
Loading bay facilities are to be provided at the following rates: Retail <ul style="list-style-type: none">• floor area 15m² to 500 m² - 1 bay required.• floor area 500 m² to 1500 m² - 2 bays required Commercial <ul style="list-style-type: none">• floor area 1000 m² to 5000 m² - 1 bay required• floor area 5000 m² to 10000 m² - 2 bays required	One (loading bay facility has been provided accessed from Hogben Street and incorporated a turntable. 	

<p>Loading bay facilities are to be designed as follows</p> <ul style="list-style-type: none"> • minimum bay width - 3.5m • minimum bay length for Bay 1 - 9.5m • minimum bay length for Bay 2 - 6.5m 	<p>Width exceeds 3.5m</p> <p>Length exceeds 9.5m</p> <p>N/A</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p>
4. Urban Design		
4.1 Address and Active Street Frontages		
(1) Buildings on the street frontage are to provide pedestrian amenity in the form of active street frontages, building entrances and awnings	An active street frontage has been proposed through the ground floor commercial premises which wraps around the three street frontages. An awning is proposed along these frontages.	Yes
(2) Buildings setback from the street frontage, are to address the street with major facades, entrances, stairs, low fences, substantial planting and other streetscapes	The proposal incorporates these elements.	Yes
4.2 Corners		
(1) Buildings are to be sited on the street frontages at corners, addressing the corner	The building is sited at the corner of Hogben, Montgomery and Kensington streets. The awning structure on the roof top communal open space should be reduced in size and scale and the new structure made more recessive so it is not visually dominant.	Yes
(2) The street intersection is to be addressed with splays, curves, building entries and other special architectural elements	Some of these architectural elements have been incorporated into the design.	Yes
4.3 Architectural Articulation		
(1) Large areas of flat facade are to be avoided. Facades should be articulated into separate sections, using steps in the facade, expressed entries, panels, bay windows, balconies, pergolas and other architectural elements	<p>The buildings facades are somewhat articulated through the design of the building, however further treatment should be employed given its prominence on the corner within the town centre that do not overhang the boundaries.</p> <p>The proposal provides a continuous built form to the majority of the northern and southern boundaries without any street wall definition or secondary setbacks</p>	No

(2) Articulation elements must be integral with the building design and should consider the whole building - not just the street facade	Further articulation should be provided, in particular to the frontages as they wrap around the corner and are not permitted to overhang the boundary.	No
(3) Changes of texture and colour should complement facade articulation	Materials and finishes complement the proposed façade.	Yes
4.4 Façade Composition		
(1) Provide a balance of horizontal and vertical facade elements to relate to adjacent facades in the streetscape. Avoid simple facade designs containing only horizontal or vertical elements.	Horizontal and vertical elements have been provided to the building through the choice of materials and the location of balconies in addition to the size of vertical and horizontal elements.	Yes
(2) Subdivide long facades with columns, windows and other vertical elements to provide a vertical emphasis	Columns, windows and balconies have been incorporated into the design to provide some level of articulation. Further setbacks could be provided to emphasise the articulation.	Yes
(3) Provide substantial cornices, balconies and other horizontal elements to subdivide the facade into a base, middle and top.	Balconies of differing shapes and sizes have been provided to provide articulation.	Yes
4.5 Private Open Space and Balconies		
(1) Every apartment is to have at least one balcony directly accessible from the main living area, of minimum size 10 m ²	Complies.	Yes
(2) The minimum dimension in any direction is to be 2.5m	Complies.	Yes
(3) There is no minimum size for a bedroom balcony (eg: Juliet balconies)	Complies.	Yes
(4) Design balconies which are recessed into the wall or enclosed with walls, columns or roofs to provide sufficient enclosure and visual firmness	The building incorporates recessed balconies into the design of the building.	Yes
(5) Design balustrades which allow for views into, and along the street but, avoid all-glass and all-brick balustrades	The proposed balustrade is considered appropriate and is consistent with the design of the building.	Yes

4.6 Awnings

(1) Step awnings and other weather protection devices in relation to street level changes and building entrances.	The main street frontages have a continuous awning. The site is located in the Kogarah Town Centre and the proposed awnings overhang the public footpath on Kensington, Montgomery and Hogben Street to provide weather protection for pedestrians.	Yes
(2) Avoid steeply pitched awnings which break the general alignment of awnings in the street.	The proposed awnings are not steeply pitched.	Yes
(3) Provide architectural detail in the form of: (i) Posts (ii) exposed structures and joints (iii) fascia motifs, patterns.	Not provided	No
(4) Provide under-awning lighting to enhance safety.	Can be provided.	Yes
(5) Awnings are to be built to the street frontage where indicated in Figure 4.9	The site is required to provide awnings to the street frontages in Montgomery and Kensington Street.	Yes

**Figure 23: Awnings Plan****4.7 Roof Designs**

(1) Articulate roofs to provide a varied and interesting roofscape	The proposed development includes a roof top communal open space area.	Yes
(2) Design large projections, shade structures and pavilions to	The rooftop area contains a lift over run, fire stars and an awning which are all flat roofed structures. The	No

enhance the appearance of flat roofed buildings.	awning needs to be reduced in scale and size and be recessed within the building. It is currently highly visible and dominates the building.	
(3) Conceal lift over-runs and plant equipment (incl. satellite dishes) within well designed roof forms	The lift over run and fire stairs are centrally located within the roof top level.	Yes
(4) Design steep pitched roofs with strong roof forms. Roofs should be integral part of the design of the building	N/A	N/A
(5) Penthouses are encouraged in residential developments, to create interesting skylines using setback upper storeys, special fenestration and roof decks	The upper level apartments contain larger outdoor areas with substantial views.	Yes
4.8 Visual and Acoustic Privacy		
(1) Buildings are to be sited so that walls containing windows to habitable rooms are a minimum of 6m from a side or rear boundary. This will ensure a minimum distance of 12m is achieved between windows of habitable rooms	The eastern boundary is the only boundary that adjoins a neighbouring property. This side boundary has no openings in the walls for the walls in the southern corner facing Hogben Street. The apartments to the north facing Moorefield Lane and Kensington Street are located 6m from the side boundary. Balconies to these apartments are located on the Kensington and Moorefield Lane boundary, however adjoin the street frontage.	No, however considered acceptable.
(2) Separation for balconies and terraces is to be a minimum 8m balcony to another balcony, or 7m balcony to a window of a non-habitable room. (This assumes that only habitable rooms will have balconies)	Complies	Yes
(3) Overlooking should be minimised by: (i) building on the perimeter of the block and building to the side boundaries of sites, with blank walls, to avoid overlooking; (ii) locating habitable rooms	Complies	Yes

within buildings away from privacy sensitive areas		
(4) Screen views from windows and balconies by: (i) using screens in front of windows and balconies to cut out direct views; (ii) offsetting windows opposite each other in neighbouring walls; (iii) using horizontal and vertical projecting screens above, below and to the side of windows, to reduce overlooking	Measures employed to address these matters.	Yes
(5) Development is to meet or exceed the sound insulation requirements for separating walls and floors of adjoining dwellings of the Building Code of Australia	This is a requirement that will need to be shown on design documentation for the Construction Certificate and achieved prior to the issue of an Occupation Certificate.	Yes
(6) With particular regard to timber flooring in residential developments, appropriate insulation between floors is to achieve minimum sound attenuation of (50Rw).	Should the application be approved, a condition of consent can be imposed to address this matter.	Yes
(7) Submit an acoustic report demonstrating the method and acoustic rating achieved for the development with the Development Application. Issues to address include, but are not limited to, party walls, storeys, different uses and traffic noise	An acoustic report has been provided and assessed by Council's Environmental Health Officer. Suitable conditions have been proposed should the application be approved including the development complying with the recommendations of the report.	Yes
(8) Site buildings and design internal layouts of rooms, courtyards, terraces, to minimise acoustic problems. The use of openings, screens and blade walls can reduce acoustic problems	Complies	Yes
(9) Design restaurants and cafes to diminish the impact of noise associated with late night operation on nearby residents	N/A	N/A

(10) Blank walls are not desirable however blank walls may be built on the property boundary in certain circumstances. They should be articulated, patterned or contain appropriate public art	A blank wall is proposed along the eastern boundary to align with the blank wall of the adjoining property.	Yes
(11) For development adjacent to the railway line or with frontage to a classified road, the requirements of the ISEPP apply. Developments are to be designed to take into account the requirements of the ISEPP and any other applicable policies or guidelines	N/A	Yes
4.9 Landscaping and Deep Soil Planting		
(1) Deep soil landscaping areas are to be provided where possible within the side boundary setback area and to the front and rear setback areas, where more than one building is located on the site, landscaping and deep soil planting should be provided to assist in privacy screening	The excavation is to the perimeter of the site to accommodate the basement parking so no deep soil is proposed, which is acceptable in a town centre location.	No, however the landscaping proposed is considered acceptable.
(2) Landscaping should be of native species and should include species that are drought resistant and require minimal watering once established, or plants that match the rainfall and drainage conditions	A landscape plan has been provided and found to be satisfactory by Council's Consultant Arborist.	Yes
(3) Limit turf to usable outdoor spaces.	N/A	N/A
4.10 Location of car parking		
(1) Car parking should be provided below ground.	Car parking is provided below ground.	Yes
4.11 Safety and Security		
(1) Orient buildings towards the street, such that building frontages and entries overlook and are clearly visible from the street and provide a sense of address and visual	The design of the building ensures that all street frontages are clearly visible from the public domain.	Yes

interest		
(2) Avoid blank walls addressing streets and any other public spaces	Complies	Yes
(3) Clearly design buildings and spaces, and the entries to buildings, delineate public, semi public and private space through the use of symbolic or actual barriers, such as low fences or landscaping, post boxes, lighting and signage	Complies	Yes
(4) Avoid building recess, alcoves or dense landscaping in places where concealment is possible	Complies	Yes
(6) Where developments have a car park or access laneway to a car park, provide windows, lighting or secondary access doors that address the car park	Complies	Yes
4.12 Outdoor Advertising		
None proposed or considered in the assessment of this proposal.		
4.13 Housing Choice and Ancillary Requirements		
(1) To achieve a mix of living styles, sizes and layouts, all residential development (or residential component within a mixed development must provide a mix of one bedroom, two bedroom and three bedroom apartments	The proposed development provides a mix of apartments as follows: <ul style="list-style-type: none"> • 10 x studio apartment • 29 x 2 bedroom apartments. • 11 x 3 bedroom apartments. 	Yes
(2) Residential units must have the minimum net floor area as follows: 1 Bedroom unit = 75 m ² 2 Bedroom unit = 100 m ² 3 Bedroom unit = 115 m ²	ADG controls are relevant.	Complies with ADG.
(3) External clothes drying facilities are encouraged. These should be provided in the form of a screened balcony or terrace area.	Not provided. All apartments have space for an internal dryer.	No, however acceptable.
(4) All developments must provide a designated secure storage space (in addition to any areas set	Storage space has been provided in the basement however has not been assigned to Studio apartments.	No

aside for off-street parking) to a minimum floor area of 4m² for each dwelling or unit. The storage space could be incorporated as part of the garage.

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Georges River Development Control Plan 2020 (Interim Policy)

61. Council at its Environment and Planning Committee Meeting dated 24 June 2019 resolved to adopt the Georges River Interim Policy Development Control Plan which became effective on 22 July 2019.
62. The Interim Policy is a supplementary document, meaning that the current Development Control Plan controls continue to apply if a particular control is not specified in the Interim Policy, or if it is still considered best practice. All operative Development Control Plans still legally apply. Whilst the Interim Policy has no statutory recognition in the assessment of a Development Applications pursuant to the Environmental Planning and Assessment Act 1979, the Policy was used as a guide as it is an endorsed position of the Council.
63. An assessment of the proposal has been carried out against the provisions of the Interim Policy as set out in the following table.

Table: Interim Policy Compliance Table

Interim Policy – Georges River Development Control Plan 2020		
Standard	Proposed	Complies
<i>Site Frontage</i>		
20m	Site frontage 33.12m - Hogben Street Secondary frontages 43m - Kensington Street 10.21m - Montgomery Street 8.51m – Moorefield Lane	Yes
<i>Building Height</i>		
The relevant LEP controls relating to building height will prevail over DCP controls that relate to height in storeys	The proposal exceeds the height control; The variation is supported by the provision of a Clause 4.6 Statement. This statement is not supported.	No, Clause 4.6 statement lodged in support of proposal.
<i>Private Open Space</i>		
The ADG requirements prevail over the DCP controls for private open space	The proposal complies with the ADG controls.	Yes
<i>Communal Open Space (COS)</i>		
The ADG requirements prevail over the DCP controls for COS under the Interim Policy	The proposal is considered to comply with the requirements of the ADG with respect to COS. Refer to “3D – Communal Open Space” within the ADG Compliance Table above.	Yes

Parking		
<p>In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment):</p> <ul style="list-style-type: none"> • If located in a strategic centre (<i>i.e.</i> Kogarah CBD and Hurstville CBD) and within 800m of a Railway, the “Metropolitan Regional Centre (CBD)” rates apply. • If located within 800m of a railway and outside the strategic centres the “Metropolitan Subregional Centre” rates apply. • If located outside of 800m of a Railway, the relevant Development Control Plan applies. 	<p>The site is located within 800m of Kogarah Railway Station and is located in the Strategic Centre. The proposal exceeds the minimum requirements of the Strategic Centres parking rates (refer to earlier assessment).</p>	<p>Yes</p>
Solar Access		
<p>The ADG requirements prevail over the Development Control Plan controls for solar access under the DCP</p>	<p>The proposal is acceptable with the solar access provisions of the ADG. Refer to “4A – Solar and Daylight Access” within the ADG Compliance Table above.</p>	<p>Yes</p>

DEVELOPER CONTRIBUTIONS

64. The proposed development if approved would require the payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979 as the proposal is increasing the density of the locality. If the development was to be approved a condition outlining the required contributions will be imposed.

Impacts

Natural Environment

65. The proposed development is unlikely to result in adverse impacts to the natural environment. The site contains several trees which are required to be removed as part of the development. The proposed tree removal has been assessed by Council’s Consulting Arborist as being acceptable subject to appropriate conditions of consent requiring replacement tree planting.
66. A Landscape Plan prepared by a qualified landscape architect has been prepared for the development which shows appropriate planting and suitable landscaping to the communal open space on the rooftop.

Built Environment

67. 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.
68. 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.
69. Accordingly, the proposal is inconsistent with the existing and future desired character of the precinct and is recommended for refusal.

Social Environment

70. No adverse social impacts have been identified as part of the assessment. The provision of additional dwellings would in principle provide for additional housing in close proximity to a local centre for a cross-section of the community. However, the built form is not an appropriate outcome for the site.

Economic Environment

71. The proposed development will have no adverse economic impact in fact it would benefit in the longer term the sustainability of the Kogarah Town Centre and will in the immediate term contribute to maintaining jobs in the construction industry.
72. The proposed development will provide temporary employment through the construction of the development. In addition, the proposal will restore and increase employment associated with the use of the site.

Suitability of the Site

73. The site is zoned B4 Mixed Use. The proposal is a permissible land use within the zone, subject to development consent.
74. The mixed use development does not respond to the constraints of the site, in particular the lands irregular shape, area and context, as evidenced by its various non-compliances with relevant building envelope controls as detailed previously within the report.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

75. The application was advertised for a period of 14 days between 27/1/22 to 10/2/22 in accordance with Council's notification policy. Two submissions have been received.
76. The concerns raised are summarised below.

Concern	Comment
<i>1) The proposed building on a small corner site, is out of character, scale and proportion to the surrounding buildings, many of which were built quite recently. In particular it is definitely too tall for the surrounding buildings.</i>	The proposal meets the height and floor space ratio controls for the site however is not a suitable design outcome for the site. This forms one of the reasons for refusal.

<p>2) <i>The proposed development will be an eyesore for residents of the the adjacent and surrounding properties which up to now have had acceptable views of the surrounding streets and buildings.</i></p>	
<p>3) <i>The addition of 51 residential apartments will worsen the existing traffic congestion during rush hour in Montgomery Street, Hogben Street and South Street. These streets are virtually impassable during the evening rush hour due to the large numbers of hospital and bank workers leaving work. The congestion has led to safety issues for traffic as well as pedestrians.</i></p>	<p>The proposal provides the required number of parking spaces for the number of units proposed. It is not considered the development will adversely affect traffic congestion in the locality.</p>
<p>4) <i>The lack of street parking is already a major problem in this corner of Kogarah. It will worsen significantly with the proposed development and may lead to safety issues. Delivery, service, and emergency vehicles will find access even more difficult. There are already large numbers of patients daily attending the St George Private or Public Hospitals who seek access, drop-off or parking on these streets.</i></p>	
<p>1. <i>The proposed construction at 21 Hogben street, Kogarah is out of character to the current Kensington street, Hogben street, and Montgomery street developments. The development is five storey's above any other building currently in the surrounding area. Creating a dwarfing affect to the other building in the area. This will impinge on our current view towards the west from our property and create residents from the new development (higher apartments) visual access to our personal privacy at 8-12 Kensington street.</i></p>	<p>The proposal meets the height and floor space ratio controls for the site however is not a suitable design outcome for the site. This forms one of the reasons for refusal.</p>
<p>2. <i>The proposed development has plans to create five levels of underground parking. this kind of construction will create cracking, vibration and instability to adjoining property which we have great concern with (caused by deep excavation). I have huge concerns about these issues looking at previous construction</i></p>	<p>Any consent for a development of this nature would include conditions requiring excavation in accordance with relevant standards.</p>

failures in Mascot and Homebush. Is there going to be long term insurance coverage for residents of adjoining apartment blocks if cracking and instability of building occurs out of this new development.

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REFERRALS

77. The application was referred to a number of external agencies and internal officers for comment as follows.

Council Referrals

Development Engineer

78. Council's Development Engineer reviewed the proposal. Conditions of development consent have been imposed if the application was to be supported.

Traffic Engineer

79. The Application was referred to Council's Traffic Engineer. Council's Traffic Engineer has reviewed the proposal on a number of occasions with traffic and parking issues identified. The amended plans submitted have been reviewed and they are considered unsatisfactory for the following reasons:

1. Basement 3 - Dwg No.103

The visitor spaces either side of the "storage" area in the south-western corner of the car park having a wall on one side will need to have a width of 2.7m to comply with the requirements of AS/NZS 2890.1: 2004 Parking Facilities, Part 1- off-street car parking

2. Basement 2 – Dwg No.104

- *"Retail 13" car space adjacent to the "Storage" area in the south-western corner of the car park having a wall on one side will need to have a width of 2.7m*
- *The car space marked "accessible" on the southern side of "Retail 5" has insufficient width to comply with the requirements of an accessible space under AS/NZS 2890.6:2009 Parking Facilities Part 6 – off street parking for people with disabilities*
The space would need to be increased in width or provided with a shared zone to comply
- *"Retail" parking spaces 15-17 are marked "Accessible" however, none of the spaces comply with the width required in the Australian Standard 2890.6.*

3. Basement 1 - Dwg No. 105

It is considered the "Double Outlet Charging Station" in visitor spaces 2 and 3 should be provided in dedicated/standalone spaces and not provided in spaces that may be occupied by non-electric vehicles much of the time.

4. Visitor Parking

Visitor parking is provided on basement 3 (3 spaces) and basement 1 (5 spaces). It is considered visitor parking should be provided on the one level and preferably on the basement 1 where visitors first enter the site from Moorfield Lane.

Having visitor parking on multiple levels will result in visitors travelling needlessly to other levels and possibly as far as basement 5 in search of parking.

5. Driveway Plan and Section- Dwg No. 201 - Issue "I"- dated 12/5/2022

The profile will need to include cross sectional details of Moorefield Lane including road centreline; gutter lip; gutter invert; back of layback and boundary level.

RL 23.55 shown on drawing 201 is not representative of levels shown on Survey Plan Dwg No. S-21648-1 dated 8/3/2011 prepared by Kevin Brown and Associates.

6. Ground Floor-Dwg 106 – Loading bay/service vehicle facility

It is considered the loading bay area should be designed to cater for access by a medium rigid vehicle (MRV) not a small rigid vehicle (SRV) as proposed.

A loading area catering for a MRV will:

- *Allow for collection of waste by a Council contractor*
- *Allow for access by removalist trucks to avoid those trucks frequently parking illegally for long periods of time in busy Hogben Street which has a high demand for on street parking all day and well into the night.*
- *Require a minimum head clearance of 4.5m as per AS 2890.2:2018 Parking Facilities Part2 off street commercial vehicle parking and*
- *Be designed to cater for a MRV to enter and exit the site in a forward direction.*

7. Visitor Bicycle Parking

It is considered additional bicycle parking facilities should be provided at ground floor level for the parking of resident visitor and commercial visitor bicycles.

ADDITIONAL COMMENTS

Basement 1-Refuse Room

It is considered the "refuse room" facility on basement 1 should be relocated to the ground floor loading dock area to avoid waste bins having to be transferred between levels in the residential lifts.

Assets and Infrastructure

80. Council's Assets and Infrastructure Section reviewed the proposed development in relation to public domain works and raised no objection to the proposal subject to suitable conditions of development consent. The condition would require a public domain plan to be lodged and approved by Council's Assets and Infrastructure Division prior to the issue of the Construction Certificate if the application was to be supported. As part of these conditions the applicant is to discuss the layout for public domain works with Council's Assets and Infrastructure staff prior to preparing designs.

Consultant Arborist

81. Council's Consultant Arborist has reviewed the landscape plan submitted with the application. No objection is raised to the proposal subject to conditions of development consent if the application was to be supported.

Urban Designer

82. Detailed comments and advice were provided to the applicant in March 2022 (provided in this report in the ADG discussion) and discussed in the meeting held with the applicant in April 2022. The concerns raised have not been satisfactorily addressed through the amended plans as detailed earlier in this report.

Coordinator of Environment Sustainability and Waste

83. Council's Waste Co-Ordinator has reviewed the proposed development and has raised no objection to the proposal subject to suitable conditions if the application was to be supported.

Environmental Health Officer

84. Council's Environmental Health Officer has reviewed the Noise Impact Assessment Report and raised no objection to the proposal subject to conditions of consent if the application was to be supported.

Heritage Advisor

85. Council's Consultant Heritage Advisor has reviewed the proposed development and has raised no objection to the proposal subject to suitable conditions of development provided. The Officers comments are reproduced below.

"Consideration of the proposed development:

6. *The subject site contains a part 3 part 4 storey 'walk-up-flats' building. The building is of masonry construction with a flat roof and features suspended slab balconies with contrasting masonry balustrades. Overall, the building displays characteristics which attribute it to the walk-up-flats of the late 20th century, with a construction date of c1970s.*
7. *The existing building is not considered to hold any heritage significance and no objections are raised to the demolition of the building. A Photographic Archival Recording would not be required nor warranted in this instance.*
8. *The subject site is within the vicinity of three individually listed heritage items, each of local heritage significance. The most directly related is the shop and residence at 22 Hogben Street, which is directly opposite the site. The other heritage items are within the vicinity, but have an obscured visual relationship owing to the intervening built forms.*
9. *A review of the architectural plans submitted shows that the development proposal remains substantially the same in the overall quantum of the development as originally proposed in the parent Development Application. While a Heritage Impact Statement (HIS) has not been submitted with this application, given that the previous development was supported on heritage grounds and the development remains substantially the same, a revised HIS is not considered necessary to allow an informed assessment of the proposal.*
10. *As per the previous advice, it is acknowledged that the proposed development will result in a significant increase in the overall height of the built form within the established streetscape, and that the proposed development will be significantly visible within the viewing context of the heritage item directly opposite.*
11. *The primary viewing angle to the heritage item directly opposite is generally taken to be from Hogben Street and Montgomery Street facing towards the heritage item. In such instances, when viewing the heritage item from its primary viewing aspects, the viewer would have their back to the proposed development, insofar as it would not significantly obscure the primary site lines and viewing aspects.*

12. *While the proposed building will be visible in the periphery when viewing the heritage item opposite, the visual separation afforded by Hogben Street will aid in providing clear separation between the built forms.*
13. *It is also accepted that the existing setting and curtilage of the heritage items (inclusive of the other two items within the vicinity of the site) have been substantially altered in the second half of the 20th century, with multi-storey residential flat buildings having been erected which have diminished the original low-density character of the streetscape. In this regard, the setting of the heritage items have already been largely diminished whereby larger scale developments feature in the visual backdrop and setting.*
14. *The proposed development will not result in any material affectation to the heritage items.*
15. *On balance, the height, scale and form of the building as proposed can be supported. The design changes to the external elevations also offer enhanced aesthetics to the building, which will positively read in the backdrop to the heritage items in the vicinity.*
16. *The proposed materiality is acceptable as it clearly distinguishes the development as new work and will complement the textures, hues and tones of the heritage items within the vicinity.”*

Building Surveyor

86. Council's Building Surveyor has reviewed the proposed development and has raised no objection to the proposal subject to suitable conditions if the application was to be supported.

External Referrals

Ausgrid

87. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Standard conditions were provided.

Sydney Airport and CASA (Civil Aviation Safety Authority)

88. The application is supported subject to specific conditions relating to the height limitation for the building and any construction equipment (such as cranes). The building must not exceed a maximum height of 69.8 metres AHD, inclusive of all lift overruns, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc.” The application does not exceed this criterion.

Water NSW

89. The application was referred to Water NSW. No objection was received.

CONCLUSION

90. The proposal seeks consent for demolition works, site preparation, and construction of a twelve storey (12) mixed use development in elevation comprising ground floor retail/commercial floor space, 50 residential apartments above five (5) levels of basement containing 73 car spaces, roof top communal open space, landscaping, site works and stratum subdivision at SP5400 known as 21 Hogben Street, Kogarah.
91. 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 development in the street, the immediate locality and the residential amenity of the area.

92. The proposal is inconsistent with various design quality principles of State Environmental Planning Policy 65 including context and neighbourhood character, built form and scale, amenity and aesthetics.
93. The application fails to address concerns with street address, bulk, scale, massing, façade treatment, apartment layout and amenity, servicing arrangements, waste management, commercial layout, storage requirements and parking matters.
94. The applicant has not provided documentation to address whether the existing units are affordable rental housing in accordance with Part 3 of SEPP (Housing) 2021.
95. The proposal fails to comply with the building height development standard of 39m that applies to the site under Kogarah Local Environmental Plan 2012. This variation includes, roof above Unit 112, lift overrun, fire stairs and awning over the rooftop communal open space area. The height to the top of the lift overrun is 42.9m equating to a 10% variation of the height control.
96. 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.
97. The awning located over part of the roof top communal open space has been reduced in size from the refused application, however, remains dominant when viewed from Hogben Street and presents as an additional level rather than a recessive structure as desired. This element is not considered an architectural roof feature.
98. The proposal fails to provide adequate building modulation and articulation to all street frontages. The continuous unarticulated street wall results in a bulky and dominant streetscape that does not respond to the human scale.
99. The proposed development fails to provide the minimum required storage area requirements of Part 4G of the ADG for the Studio apartments.
100. The proposed design, mass and form of the building is considered inconsistent with the established and future form of mixed use developments in the precinct. The proposed development will not be sympathetic with the development in the street and immediate locality. The proposal is considered to establish an undesirable design precedent in the area and is not considered to be in the public interest.
101. The proposal has been assessed against the provisions of the Kogarah Local Environmental Plan 2012 and Kogarah Development Control Plan 2013. The proposal satisfies the key planning controls in the Kogarah Local Environmental Plan apart from Clause 4.3 Height of Buildings development standard. A Clause 4.6 Statement has been submitted with the application, however has been found to not be well-founded as is not supported.
102. The proposal also fails to comply with various built form controls of Kogarah Development Control Plan 2013 as discussed within the report.

103. For the above reasons, the proposal is recommended for refusal.

DETERMINATION AND STATEMENT OF REASONS

104. Statement of Reasons

- This part of Kogarah is undergoing transition to high density shop top house developments and residential flat buildings with new controls allowing for a greater density and scale. However, the proposal fails to respond to both the existing context of the streetscape and the desired future character for development.
- 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 streetscape and will be inconsistent with development that has been approved within this precinct.
- 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.
- The proposal fails to provide adequate building modulation and articulation to all street frontages. The continuous unarticulated street wall results in a bulky and dominant streetscape that does not respond to human scale.
- The proposed development fails to provide the minimum required storage area requirements of Part 4G of the ADG for the Studio apartments.
- The proposal is considered to establish an undesirable precedent in the area and will not be in the public interest.

Determination

105. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Environmental Planning Panel refuse consent to REV2022/0001 for demolition works, site preparation, and construction of a twelve storey (12) mixed use development comprising ground floor retail/commercial floor space, 50 residential apartments above five (5) levels of basement containing 73 car spaces, roof top communal open space, landscaping, site works and stratum subdivision at SP5400 and known as 21 Hogben Street, Kogarah, 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 spatial separation 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 as a whole does not ensure that a high level of amenity is achieved and maintained. 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. This is exacerbated by the awning location and roof top services being located in a highly visible location on the external façade of the development.
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 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 will be out of character with existing and recently approved developments and does not reflect the desired future character for development in the precinct.
 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 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.
106. **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](#)  Elevations



REV	DATE	DESCRIPTION	BY
1	18/11/2021	GROUND FLOOR LARGEST AREA AMENDMENTS	
2	17/04/2022	RETAIL CORRECTIONS CORRECTIONS TO REVISIONS	
3	27/04/2022	RETAIL CORRECTIONS TO REVISIONS	
4	04/05/2022	GROUND FLOOR REVISIONS & REVISIONS CORRECTIONS	
5	21/05/2022	REVISIONS CORRECTIONS, GROUND FLOOR CORRECTIONS, RETAIL CORRECTIONS	

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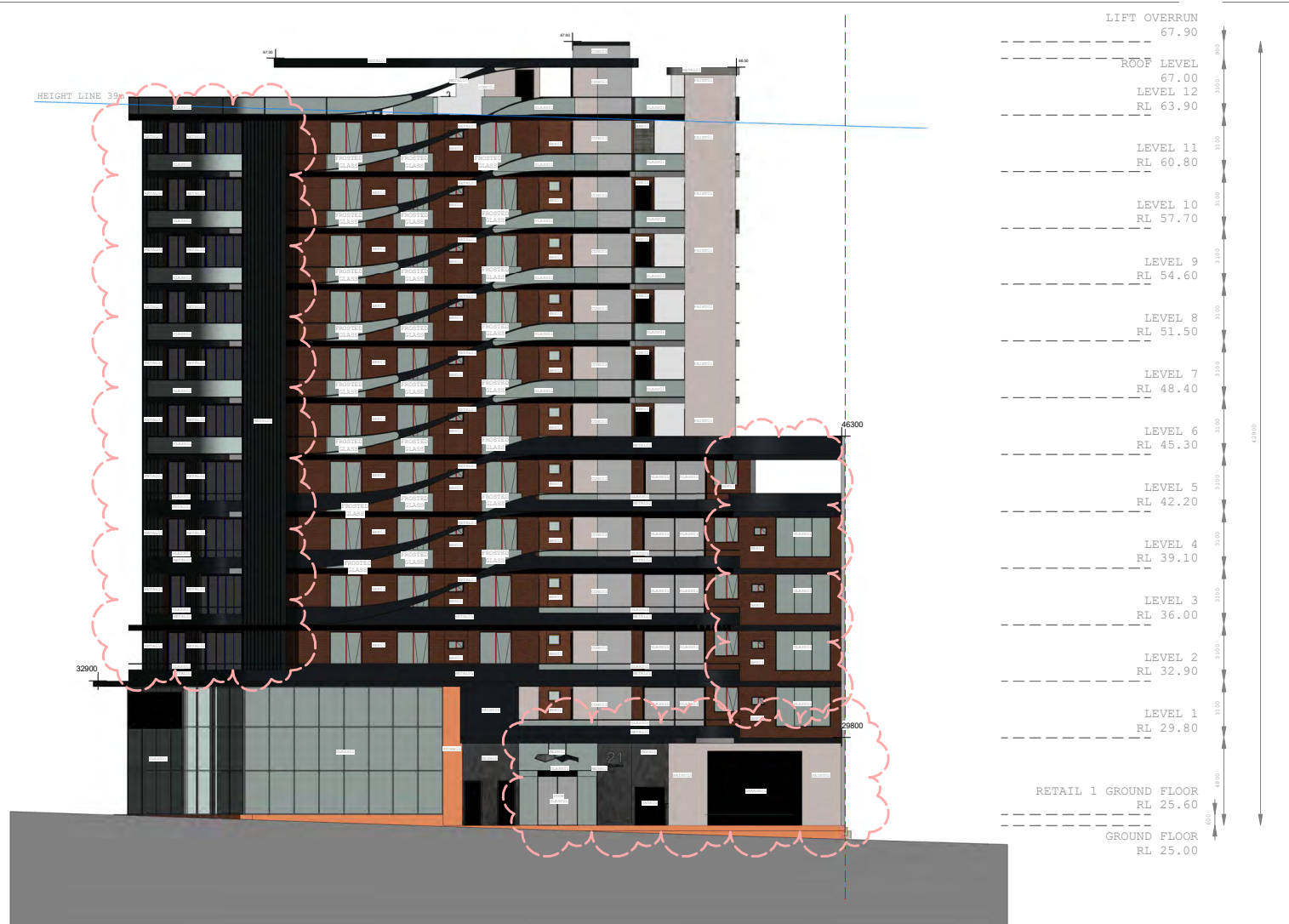
Date	24/05/2022
Project Number	EQD32
Project Status	DEVELOPMENT APPLICATION
Project Name	OBLIQUE
Project Address	21 HOGBEN STREET KOGARAH
Client Name	MOAT PTY LTD
Sheet Name	MOORFIELD LANE ELEVATION

NOMINATED REGISTERED ARCHITECT
ESTEFANO BONFANTE KOGARAH BOARD NO. 11618

DWG NO.

401

SCALE 1 : 200



REV	DATE	DESCRIPTION	BY
1	18/11/2021	ISSUE FOR LANDSCAPE ARCHITECTS	
2	17/02/2022	ISSUE FOR LANDSCAPE ARCHITECTS	
3	27/03/2022	ISSUE FOR LANDSCAPE ARCHITECTS	
4	04/05/2022	ISSUE FOR LANDSCAPE ARCHITECTS	
5	21/05/2022	ISSUE FOR LANDSCAPE ARCHITECTS	

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Date	24/05/2022
Project Number	EQX22
Project Status	DEVELOPMENT APPLICATION
Project Name	OBlique
Project Address	21 HOGBEN STREET KOGARAH
Client Name	WMA PTY LTD
Sheet Name	HOGBEN STREET ELEVATION

NOMINATED REGISTERED ARCHITECT
 ESTEFANO BONFANTE KOGARAH NSW NO. 11618

DWG NO.	402
SCALE	1 : 200

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REV	DATE	DESCRIPTION	BY
0	18/11/2021	ISSUE FOR LANDSCAPE ARCHITECTS	
1	17/04/2022	ISSUE FOR LANDSCAPE ARCHITECTS	
2	27/04/2022	ISSUE FOR LANDSCAPE ARCHITECTS	
3	04/05/2022	ISSUE FOR LANDSCAPE ARCHITECTS	
4	21/05/2022	ISSUE FOR LANDSCAPE ARCHITECTS	

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BARANGAROO SUITE, SYDNEY

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Date	24/05/2022
Project Number	EQD32
Project Status	DEVELOPMENT APPLICATION
Project Name	OBlique
Project Address	21 HOGBEN STREET KOGARAH
Client Name	MDAT PTY LTD
Sheet Name	ELEVATION FROM 13-19 HOGBEN STREET

NOMINATED REGISTERED ARCHITECT
 ESTEFANO BONFANTE KOGARAH ROAD NO. 11618

DWG NO.

403

SCALE 1 : 200

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REV	DATE	DESCRIPTION	BY
0	18/11/2021	ISSUE FOR LANDSCAPE AMENDMENTS	
1	17/04/2022	ISSUE FOR LANDSCAPE AMENDMENTS	
2	27/04/2022	ISSUE FOR LANDSCAPE AMENDMENTS	
3	04/05/2022	ISSUE FOR LANDSCAPE AMENDMENTS	
4	11/05/2022	ISSUE FOR LANDSCAPE AMENDMENTS	

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PO BOX 832, KENNINGTON, NSW, 1465

Date	24/05/2022
Project Number	EQD32
Project Status	DEVELOPMENT APPLICATION
Project Name	OBlique
Project Address	21 HOGBEN STREET KOGARAH
Client Name	DMAT PTY LTD
Sheet Name	KENNINGTON STREET ELEVATION

NOMINATED REGISTERED ARCHITECT
ESTEFANO BONFANTE KOGARAH NSW NO. 11618

DWG NO.

404

SCALE 1 : 200

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LIFT OVERRUN
67.90

ROOF LEVEL
67.00

LEVEL 12
RL 63.90

LEVEL 11
RL 60.80

LEVEL 10
RL 57.70

LEVEL 9
RL 54.60

LEVEL 8
RL 51.50

LEVEL 7
RL 48.40

LEVEL 6
RL 45.30

LEVEL 5
RL 42.20

LEVEL 4
RL 39.10

LEVEL 3
RL 36.00

LEVEL 2
RL 32.90

LEVEL 1
RL 29.80

RETAIL 1 GROUND FLOOR
RL 25.60



REV	DATE	DESCRIPTION	BY

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NARANGAROO SUITE, SYDNEY

PO BOX 832, HENSLINGTON, NSW, 1465

Date 24/05/2022
 Project Number EQX32
 Project Status DEVELOPMENT APPLICATION
 Project Name OBLIQUE
 Project Address 21 HOGBEN STREET KOGARAH
 Client Name HMAI PTY LTD
 Sheet Name MONTGOMERY STREET ELEVATION

DWG NO.
405

SCALE 1 : 200

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**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 01 SEPTEMBER 2022**

LPP044-22

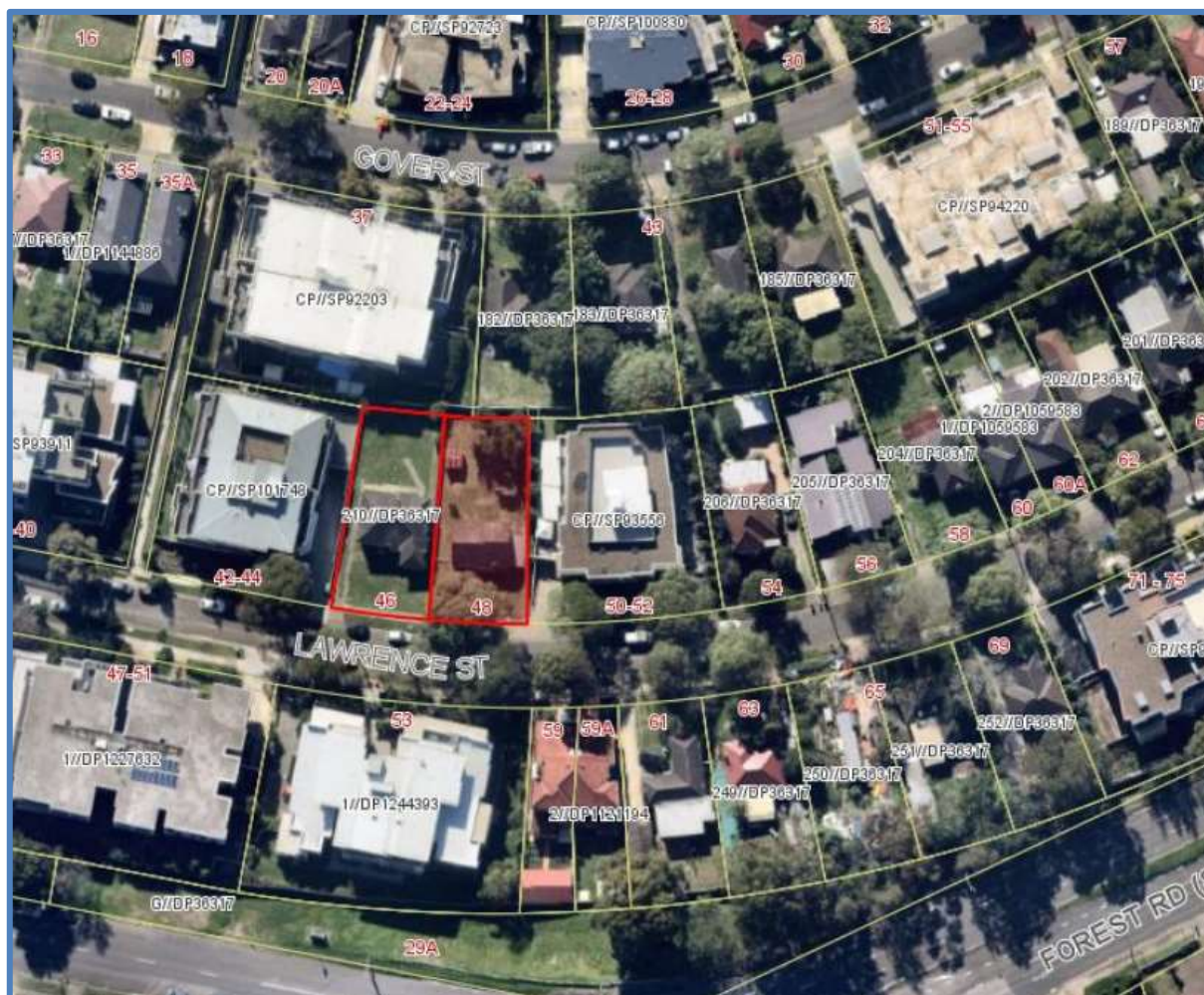
LPP Report No	LPP044-22	Development Application No	DA2021/0472
Site Address & Ward Locality	46 - 48 Lawrence Street, Peakhurst Peakhurst Ward		
Proposed Development	Demolition works and construction of residential flat building		
Owners	NSW Land and Housing Corporation		
Applicant	NSW Land and Housing Corporation		
Planner/Architect	Gyde/McIntosh and Phelps		
Date Of Lodgement	7/12/2022		
Submissions	One submission		
Cost of Works	\$3,842,799.00		
Local Planning Panel Criteria	The application seeks consent for development to which the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies.		
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 (Affordable Rental Housing) 2009, State Environmental Planning Policy (Transport and Infrastructure) 2021, Georges River Local Environmental Plan 2021, Georges River Development Control Plan 2021.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Stormwater Plans, Landscape Plan, Survey, Waste Management Plan, Geotechnical Report, Arborist Report, Traffic Report, Statement of Environmental Effects, Submission		
Report prepared by	Principal Planner		

Recommendation	That the application be approved subject to conditions of consent.
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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	Yes

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?	Yes – the applicant has reviewed the conditions

Site Plan



Executive Summary

Proposal

1. Development consent is sought for demolition works and construction of a three storey residential flat building, containing twelve (12) dwellings.



Figure 1: Photomontage of proposal

2. The applicant is the NSW Land and Housing Corporation and the proposal has been submitted pursuant to SEPP (Affordable Rental Housing) 2009.
3. The proposed development contains one lower ground parking level, with four (4) internal parking spaces, and two external parking spaces. Three residential levels are proposed, each with four dwellings at each level; communal and private open space.
4. Pedestrian and vehicular access to the site is obtained from Lawrence Street.
5. The site contains five trees which are to be removed as part of the development, and one street tree which is to be retained as part of the development. A sewer runs adjacent to the rear boundary.
6. The proposed method of stormwater drainage for the development is to Gover Street via an existing easement over adjoining properties, which are also owned by the NSW Land and Housing Corporation.

Site and Locality

7. The site is identified as Lots 209 and 210, in DP36317, also known as 46 and 48 Lawrence Street, Peakhurst.
8. The site is irregular in shape with a site frontage to Lawrence Street 35.356m, and a rear boundary of 29.616m. The eastern side boundary measures 36.805m, and the western side boundary measures 36.462m, resulting in an overall site area of 1195.1m².
9. The site slopes from the eastern side boundary to the western side boundary with a fall of approximately 2.5m. There are no easements burdening the site.
10. The site is currently occupied by two single dwellings, ancillary outbuildings and five trees and is located in an area characterised by a mix of older style single dwellings and new residential flat buildings, of which a number of these include affordable rental housing.

Zoning and Permissibility

11. The site is zoned R4 High Density Residential under the provisions of the Georges River Local Environmental Plan 2021 (GRLEP 2021), residential flat buildings are permissible with consent in the zone.

Background

12. A Pre-DA meeting was held on 9 June 2021, (PRE2021/0032), the applicant was advised of the following:
- Bulk and scale as a result of the car parking arrangement;
 - Compliance with Height of Building control;
 - Local Character;
 - Façade treatment;
 - Provision of further landscape planting;
 - Traffic and public domain comments; and
 - The stormwater scheme submitted at the time was adequate.
13. A request for additional information and amended plans was sent to the applicant on 9 June 2022 requesting the following:
- Evidence of in principle agreement of the property owner over which the existing easement traverses to which the development is to connect to;
 - Amended materials and finishes;
 - Compliant bin numbers and waste management details; and
 - Additional plan details.
14. On 8 July 2022, the applicant submitted the following:
- Amended architectural plans;
 - Amended Waste Management Plan;
 - Geotechnical Report;
 - Title search and easement details.

Planning and Design Issues

15. The proposal has been assessed against the provisions of the SEPP (Housing) 2021, Georges River Local Environmental Plan 2021 and Georges River Development Control Plan.
16. The proposal is compliant with the maximum height and FSR development standards that apply to the site and is consistent with the desired future built form controls for the site.

Submissions

17. One submission was received during the 14 day notification period. The submission raised concern with traffic in the locality in general and the provision of parking on the site.

Conclusion

18. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The bulk and scale of the building is suitable given the articulation, appropriate building setbacks and the mix of materials and finishes textures.

19. As a result, the application is recommended for approval subject to conditions of consent.

Report in Full

Description of the Proposal

20. The application proposes demolition works and construction of a residential flat building, wholly dedicated to affordable rental housing. The proposal is described in detail as follows:

- Demolition of existing structures;
- Removal of five trees;
- Construction of residential flat building including:
 - Lower Ground Floor:
 - Six parking spaces (including 2 accessible spaces);
 - Storage cages for each unit;
 - Lift and stair access; and
 - Service rooms.
 - Ground Floor:
 - Four units comprising 2 x 1b units and 2 x 2b units; and
 - Bulky waste store room and bin store area along the eastern site boundary.
 - Level 1:
 - Four units comprising 4 x 2b units.
 - Level 2:
 - Four units comprising 4 x 2b units.
- Landscaping and site works, including removal of five trees, replanting of 15 trees and retention of the existing street tree. The proposed method of stormwater drainage for the development is to Gover Street via an existing easement over adjoining properties. The applicant also owns 43-47 Gover Street, for which recent approval for a residential flat building has been granted under DA2021/0307 by the Sydney South Planning Panel. The property is burdened by 1m wide easement for drainage along the southern rear and western side boundaries, to which the subject development will connect to.

Description of the Site and Locality

21. The site is identified as Lots 209 and 210, in DP36317, also known as 46 and 48 Lawrence Street, Peakhurst.
22. The site is currently occupied by two single dwellings, a number of outbuildings and five trees. There are no easements burdening the site, and the sewer runs along the northern rear boundary of the site. Vehicular and pedestrian access are both gained from Lawrence Street.



Figure 2: The subject site

23. The site is irregular in shape with a site frontage to Lawrence Street 35.356m, and a rear boundary of 29.616m. The eastern side boundary measures 36.805m, and the western side boundary measures 36.462m, resulting in an overall site area of 1195.1m².
24. The site has a crossfall from the front south eastern corner, to the rear north western corner of approximately 2.5m.
25. The site contains vegetation, and the applicant seeks consent to remove five (5) trees and retention of a street tree.
26. The property to the east is occupied by a residential flat building at Nos. 50-52 Lawrence Street.



Figure 3: Nos. 50-52 Lawrence St (eastern neighbour)

27. The property to the west is occupied by a residential flat building at Nos. 42-44 Lawrence Street.



Figure 4: Nos. 42-44 Lawrence Street (western neighbour)

28. Land at the rear of the site is occupied by a residential flat building at Nos. 37-39 Gover Street and the land at 43-49 Gover Street, while currently occupied by dwelling houses has approval for a residential flat building. Development on the opposite side of Lawrence Street is characterised by dual occupancies and residential flat buildings.

State Environmental Planning Policies (SEPPs)

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

State Environmental Planning Policy Title	Complies
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Yes
State Environmental Planning Policy (Resilience and Hazards) 2021	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Yes
State Environmental Planning Policy (BASIX) 2004	Yes
State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)	Yes

State Environmental Planning Policy (Biodiversity and Conservation) 2021

30. 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

31. 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.
32. This chapter applies to clearing of:

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

33. Five (5) trees are proposed for removal as part of the application. Council's Landscape Officer has reviewed the plans and raises no objection to their removal subject to replacement planting and retention of the street tree as proposed in the Landscape Plan submitted with the application.

Chapter 11 – Georges River Catchment

34. The primary relevant aims and objectives of this chapter of the 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,*
35. The stormwater design was reviewed by Council's Engineering Section. The site is required to be drained by an easement over the adjoining property at 43 Gover Street, which is also owned by NSW Land and Housing.
36. The applicant provided confirmation that the agreement of the Body Corporate of 50-52 Lawrence Street has been received to connect into an existing easement that benefits that land.
37. No objection was raised with respect to the management and disposal of stormwater, subject to recommended conditions of consent.
38. The proposal is consistent with the objectives and purpose of Chapter 11 of the SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

39. Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 is relevant to the proposal.
40. 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.

41. 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.
42. A review of historic aerial photography indicates that the site has historically been used for residential purposes. Therefore the site is considered appropriate for the proposed use.

State Environmental Planning Policy (Transport and Infrastructure) 2021

43. 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

44. 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.
45. A valid BASIX Certificate has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy (Housing) 2021

46. This application was lodged under the State Environmental Planning Policy (Housing) 2021.
47. The proposal seeks consent for twelve (12) affordable housing dwellings, pursuant to the provisions of the SEPP, specifically Chapter 2 – Affordable Housing. An assessment of the proposal against the relevant provisions of the SEPP is provided in the following table.

Clause	Standards	Proposal	Complies
16 – Development to which Division applies	(1) This Division applies to residential development if— (a) the development is permitted with consent under another environmental planning instrument, and	Yes – permissible in the R4 zone.	Yes
	(b) at least 20% of the gross floor area of the building resulting from the development will be used for the purposes of affordable housing, and	100% is to be used as affordable housing.	Yes
	(c) for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area, and	Complies – refer below.	Yes

Clause	Standards	Proposal	Complies
	(d) for development on other land—all or part of the development is within 400m walking distance of land within 1 or more of the following zones or an equivalent land use zone— (i) Zone B1 Neighbourhood Centre, (ii) Zone B2 Local Centre, (iii) Zone B4 Mixed Use.	N/A	N/A
<p>The proposal satisfies subsection (c) as the site is located 400m walking distance from a bus stop on Forest Road before Pearce Street (ID221018). The bus stop provides bus services which satisfy the frequency requirements specified above. The site is therefore considered to be “accessible” in accordance with the SEPP provisions.</p>			
17 – Floor Space Ratio	<p>(1) The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an additional floor space ratio of—</p> <p>(a) if the maximum permissible floor space ratio is 2.5:1 or less—</p> <p>(i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1, or</p>	<p><u>Permissible FSR under the GRLEP 2021=</u> 1:1 or 1195.1m²</p> <p>Permissible FSR under SEPP (Housing)= 1.5:1 or 1792.65m²</p> <p>(100% of the floor space is to be used as affordable housing)</p> <p>Proposed FSR: 0.84:1 or 1003.87m²</p>	Yes - The development does not seek to rely on the bonus floor space afforded by the Housing SEPP.
18 Non-discretionary development standards—the Act, s 4.15			
The following are non-discretionary development standards in relation to the carrying out of development to which this Division	(a) a minimum site area of 450m ² ,	Site area is 1195.1m ²	Yes

Clause	Standards	Proposal	Complies
applies—			
	(b) for a development application made by a social housing provider—at least 35m ² of landscaped area per dwelling,	Required: 35x 12 dwellings = 420m ² Proposed = 448m ²	Yes
	(c) if paragraph (b) does not apply—at least 30% of the site area is landscaped area	N/A	N/A
	(d) a deep soil zone on at least 15% of the site area, where—	Required: 179.25m ² Proposed = 246.6m ² or 20.6%	Yes
	(i) each deep soil zone has minimum dimensions of 3m, and	Yes	Yes
	(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site	Required: 116.5m ² Proposed = 159m ²	Yes
	(e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter	92% of units receive at least 3 hours.	Yes
	(f) for a development application made by a social housing provider for development on land in an accessible area—	Required 1B = 2x 0.4 = 0.8 spaces	
	(i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, or	2B = 10x 0.5 = 5 spaces	
	(ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, or	Total required = 6 spaces	
	(iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,	Proposed = six (6) spaces.	Yes

Clause	Standards	Proposal	Complies
	(g) if paragraph (f) does not apply— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	N/A	N/A
	(h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment,	Complies	Yes
	(i) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,	N/A	N/A
	(j) if paragraphs (h) and (i) do not apply, the following minimum floor areas— (i) for each dwelling containing 1 bedroom—65m ² , or (ii) for each dwelling containing 2 bedrooms—90m ² , or (iii) for each dwelling containing at least 3 bedrooms—115m ² plus 12m ² for each bedroom in addition to 3 bedrooms	N/A	N/A
19 Design requirements	(1) Development consent must not be granted to development to which this Division applies unless the consent authority has considered the following, to the extent to which they are not inconsistent with this Policy— (a) the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March	N/A	N/A

Clause	Standards	Proposal	Complies
	<p>2004, (b) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the Low Rise Diversity Design Guide.</p> <p>(2) Subsection (1) does not apply to development to which State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development applies.</p> <p>(3) Development consent must not be granted to development to which this Division applies unless the consent authority has considered whether the design of the residential development is compatible with—</p> <p>(a) the desirable elements of the character of the local area, or</p> <p>(b) for precincts undergoing transition—the desired future character of the precinct.</p>	<p>Applicable – see separate assessment below.</p> <p>Yes – refer to assessment following this table.</p> <p>Yes</p>	<p>See below.</p> <p>Yes</p> <p>Yes</p>
20 - Continued application of SEPP 65	Nothing in this Policy affects the application of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development to residential development to which this Division applies	Noted	Noted

Character assessment

48. Clause 19 of the Housing SEPP requires consideration against the provisions of SEPP 65 which apply to this development. A detailed assessment of the development against the provisions of SEPP 65 is provided below.
49. Under clause 19 of the *State Environmental Planning Policy (Housing) 2021*, a consent authority must consider if the design is compatible with the *character of the local area*. No guidelines were developed to inform how to apply the compatibility test. A number of court cases have provided some guidance as to how to assess the “character” of a local area and what to consider ensuring an affordable housing development is suitable.

50. In considering compatibility with neighbouring character, in *Sterling Projects v The Hills Shire Council* [2011] the Commissioner said that *“character is not limited to a consideration of streetscape but includes the wider context of the site, in particular the characteristics of the properties which adjoin the site”*.
51. In the recent decision of *Louden Pty Ltd v Canterbury-Bankstown Council* [2018] clause 16A played a prominent role in Commissioner Gray’s judgement. Commissioner Gray stated that all buildings of all typologies must be incorporated into the assessment of the local area character. This assessment concurs with Commissioner Roseth SC who in *Project Venture Developments v Pittwater Council* [2005] stated that *“compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.”* Therefore in order to establish a local character in a mixed, diverse area the plans should reasonably match other structures in the vicinity and should consider such aspects as building forms, setbacks and scale.
52. The subject site is located within a precinct that is zoned for high density residential and is transitioning from a lower scale environment to a higher density landscape. This transition is facilitated by the increase in height and density afforded to the locality bound by Lawrence Street, Trafalgar Street and Pearce Avenue.
53. The locality can be described as residential in character, ranging from residential flat buildings, boarding houses, dual occupancies and dwelling houses.
54. The proposed development is considered to be consistent with the future character envisaged by the planning controls. The scale and form of the development is consistent with the height and density controls applicable to the site. The development also satisfies the objectives of the R4 zone which include:
 - *To provide for the housing needs of the community within a high density residential environment.*
 - *To provide a variety of housing types within a high density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To enable other land uses that contribute to the vibrancy of the neighbourhood while ensuring that business centres remain the focus for business and retail activity.*
 - *To encourage development that maximises public transport patronage and promotes walking and cycling.*
55. The proposed built form is considered to be a desirable response for this site in terms of its scale and design intent and will be in keeping with the anticipated development outcome for the area.
56. The height and scale of the building is consistent with the applicable planning controls and the proposal will provide affordable residential development on the site. As such the proposal satisfies the objectives and intent of Clause 19.

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

57. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (State Environmental Planning Policy 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three or more

storeys in height and containing at least four dwellings. Amendment 3 to 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.

58. Clause 28(2) of State Environmental Planning Policy 65 requires that the consent authority take into consideration the following as part of the determination of DAs to which State Environmental Planning Policy 65 applies:

- a) *the advice (if any) obtained from the design review panel, and*
- b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
- c) *the Apartment Design Guide.*

59. An assessment of the development against the Design Quality Principles of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development is included in the table below.

DESIGN QUALITY PRINCIPLES	ASSESSMENT
Principle 1: Context & Neighbourhood Character	The modern architectural form is consistent with the desired future character of the locality.
Principle 2: Built Form & Scale	The development is of an appropriate bulk and scale for this location, and consistent with the existing and desired future character of the locality. The proposed residential apartment building is appropriately articulated, through architectural form and varying setbacks.
Principle 3: Density	The unit areas and proportions of the apartments are in keeping with the Apartment Design Guide. The proposed densities are sustained, in this location, given the proximity of the site to public transport, community facilities, jobs and the environment.
Principle 4: Sustainability	The development incorporates BASIX requirements and sustainability measures into its overall design so as to enhance water and energy efficiency and to provide suitable amenity.
Principle 5: Landscape	The proposal has incorporated landscaping within the front setback, incorporating planting in the communal areas.
Principle 6: Amenity	This principle refers to good amenity as combining <i>“appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.”</i> The proposal is generally consistent with the above amenity provisions regarding the controls contained within the Apartment Design Guide. The development proposes areas of communal open space.

DESIGN QUALITY PRINCIPLES	ASSESSMENT
Principle 7: Safety	The proposed development incorporates suitable Crime Prevention Through Environmental Design (CPTED) Principles in the design.
Principle 8: Housing Diversity & Social Interaction	The proposal provides a mix of apartment types. The development includes one (1) and two (2) bedroom apartment. The development proposes a both active and passive communal open space.
Principle 9: Aesthetics	An appropriate composition of textures, materials and colours within the development has been achieved.

60. The table below provides an assessment against the ADG.

Apartment Design Guide (ADG) –Building Key Design Criteria

Objective	Design Criteria	Proposal	Complies
3D-1 Communal Open Space (COS) Site area: 1195.1m ²	Required: COS has a minimum area equal to 25% of the site. (298.8m ²) A minimum of 50% direct sunlight to the principle usable part of COS for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).	515m ² or 43% Yes	Yes Yes
3E-1 Deep Soil Zones	Deep soil zones are to meet the following minimum requirements. Where the site area is 650m ² -1500m ² = min. 3m dimension; and, min. 7% of the site area. (83.6m ²)	246.6m ² or 20.6%	Yes
3F-1 Visual Privacy Minimum required separation distances from buildings to the side and rear boundaries:	Up to 12m (4 storeys) 6m habitable rooms/balconies 3m non-habitable rooms Provision for NIL setback in the ADG for Blank walls	6m to side and rear boundaries at each level.	Yes
4A-1 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. A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid-winter.	Min 70%	Yes

Objective	Design Criteria	Proposal	Complies
4B-3 Natural ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys. Overall depth of cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Yes	Yes
4C – 1 Ceiling Heights	Measured from finished floor to finished ceiling level, minimum heights are; <ul style="list-style-type: none"> Habitable rooms = 2.7m Non habitable rooms 2.4m. 	Yes	Yes
4D-1 Apartment Size & Layout	Minimum internal areas of; 1 bedroom = 50m ² 2 bedroom = 70m ² (+5m ² with 2 bathrooms) Habitable rooms to have window with area not less than 10% of floor area	Yes	Yes
4D-2 Room Depth	Habitable room depths are limited to maximum 2.5 x the ceiling height. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Yes	Yes
4D-3 Room Dimensions	Master bedrooms - min area of 10m ² , and other bedrooms 9m ² (excluding wardrobe space) Bedrooms to have min dimension of 3m. Living rooms or combined living/dining rooms have a min width of: <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom 4m for 2 and 3 bedroom 	Yes	Yes
4E-1 Private Open Spaces / Balconies	All apartments are required to have a primary balcony as follows; 1 bedroom = 8m ² (depth of 2m) 2 bedroom = 10m ² (depth of 2m) Ground Level / Podium apartments = 15m ² (depth of 3m)	Min, 15sqm Min. 10sqm The 1B units on the ground level provide 15sqm. The 2B units on the ground floor provide terraces	Yes Yes Yes Acceptable

Objective	Design Criteria	Proposal	Complies
		greater than 15sqm, each with an area having a minimum dimension of 3m for the useable part of the terrace adjacent to the living room doors.	
4F-1 Common Circulation	Maximum apartments of single circulation core = 8	Yes	Yes
4G-1 Storage	In addition to storage in kitchens, bathrooms and bedrooms the following storage is provided <ul style="list-style-type: none"> • 1 bedroom 6m³ • 2 bedroom = 8m³ At least 50% of the required storage is to be located within the apartment.	Yes	Yes

Environmental Planning Instruments

Georges River Local Environmental Plan 2021 (GRLEP 2021)

Zoning

61. The subject site is zoned Zone R4 High Density Residential under the provisions of the Georges River Local Environmental Plan 2021 (GRLEP2021). Residential Flat Buildings are permissible in the zone.
62. The objectives of the zone are as follows:
- *To provide for the housing needs of the community within a high density residential environment.*
 - *To provide a variety of housing types within a high density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To enable other land uses that contribute to the vibrancy of the neighbourhood while ensuring that business centres remain the focus for business and retail activity.*
 - *To encourage development that maximises public transport patronage and promotes walking and cycling*
63. The proposal fails to satisfies the objectives of the R4 High Density Residential zone.
64. The extent to which the proposal complies with the relevant standards of the GRLEP 2021, is outlined in the table below.

Clause	Standard	Proposed	Complies
Part 1 – Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is consistent with the aims of the	Yes

Clause	Standard	Proposed	Complies
		plan.	
1.4 - Definitions	Residential flat building means: <i>means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.</i>	The proposed development is consistent with this definition.	Yes
Part 2 - Permitted or prohibited development			
2.3 - Zone objectives and Land Use Table	Meets objectives of R4-Low Density Residential Zone.	The proposal meets all objectives.	Yes
	Development must be permissible with consent	The proposal is permissible with development consent.	Yes
Part 4 - Principal Development Standards			
4.3 – Height of Buildings	12m as identified on Height of Buildings Map	11.7m	Yes
4.4 – Floor Space Ratio	1:1 as identified on Floor Space Ratio Map Housing SEPP FSR applies to the site, with a maximum FSR of 1.5:1	<u>Permissible FSR under the GRLEP 2021</u> = 1:1 or 1195.1m ² Permissible FSR under SEPP (Housing) = 1.5:1 or 1792.65m ² (100% of the floor space is to be used as affordable housing) Proposed FSR: 0.84:1 or 1003.87m ²	Yes
4.6 – Exceptions to development standards	In accordance with Clause 4.6 (1) through to and including (8)	N/A	N/A
Part 5 - Miscellaneous Provisions			
5.7 – Development below mean high water mark	(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water	The proposal does not involve works below the Mean High Water Mark.	Yes

Clause	Standard	Proposed	Complies
	subject to tidal influence (including the bed of any such water).		
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. The site is not in a heritage conservation area.	Yes
5.11 – Bush Fire Hazard Reduction	Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.	The subject land is not within a bush fire prone area.	Yes
Part 6 - Additional Local Provisions			
6.1 – Acid sulfate soils	(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.	N/A	Yes
6.2 – Earthworks	(2) Development consent is required for earthworks unless— (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or (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 – Stormwater Management	(2) In deciding whether to grant development consent for development, the consent authority must be satisfied that the development—	Yes – Council's Development Engineer has reviewed the application and has provided conditions of consent.	Yes

Clause	Standard	Proposed	Complies
	<p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater detention or retention to minimise stormwater runoff volumes and reduce the development's reliance on mains water, groundwater or river water, and</p> <p>(c) avoids significant adverse impacts of stormwater runoff on adjoining properties, native bushland, receiving waters and the downstream stormwater system or, if the impact cannot be reasonably avoided, minimises and mitigates the impact, and</p> <p>(d) is designed to minimise the impact on public drainage systems.</p>	<p>Drainage of the site will be to an easement over the adjacent property at the rear to Gover Street.</p>	
6.9 Essential services	<p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have</p>	<p>Essential services are available to the site currently and suitable arrangements provided for the development of the site.</p>	<p>Yes</p>

Clause	Standard	Proposed	Complies
	<p>been made to make them available when required—</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the supply of telecommunications facilities,</p> <p>(d) the disposal and management of sewage,</p> <p>(e) stormwater drainage or on-site conservation,</p> <p>(f) suitable vehicular access.</p>		
6.10 Design excellence	(1) The objective of this clause is to deliver the highest standard of sustainable architecture and urban design.	Noted	Applicable clause.
	(2) This clause applies to development on land referred to in subclause (3) involving—		
	(a) the erection of a new building, or	Yes	Yes
	(b) additions or external alterations to an existing building that, in the opinion of the consent authority, are significant.	N/A	N/A
	(3) This clause applies to development on the following land—	Applicable	Applicable
	(a) land identified on the Foreshore Scenic Protection Area Map if the development is for one or more of the following purposes—	N/A	N/A
	(i) bed and breakfast accommodation,	N/A	N/A
	(ii) health services facilities,	N/A	N/A
	(iii) marinas,	N/A	N/A
	(iv) residential accommodation, except for secondary	Yes	Yes

Clause	Standard	Proposed	Complies
	<p>dwelling</p> <p>(b) land in the following zones if the building concerned is 3 or more storeys or has a height of 12 metres or greater above ground level (existing), or both, not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking—</p> <p>(i) Zone R4 High Density Residential, (ii) Zone B1 Neighbourhood Centre, (iii) Zone B2 Local Centre, (iv) Zone B3 Commercial Core, (v) Zone B4 Mixed Use, (vi) Zone B6 Enterprise Corridor, (vii) Zone IN2 Light Industrial.</p> <p>(4) Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.</p> <p>(5) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters— (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and</p>	<p>Yes</p> <p>Considered – R4 Zone</p> <p>Considered below against CI 6.10(5)</p> <p>Yes appropriate design and materials and finishes used to achieve this high standard.</p>	<p>Applicable</p> <p>Considered</p> <p>Noted</p> <p>Yes</p>

Clause	Standard	Proposed	Complies
	location will be achieved,		
	(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,	Yes, the proposed development provides suitable and extensive landscaping in the front setback. Along the side boundaries, and in the rear open space area of the site.	Yes
	(c) whether the development detrimentally impacts on view corridors,	N/A	N/A
	(d) how the development addresses the following matters—		
	(i) the suitability of the land for development,	The proposed development is set in an existing high density residential area.	Yes
	(ii) existing and proposed uses and use mix,	The proposed development sits well within the context and contributes to the high density locally, and provides a mix of 1 and 2 bedroom, and is therefore considered an appropriate and permissible from of lands uses for the site and the locality.	Yes
	(iii) heritage issues and streetscape constraints,	N/A – no heritage in the vicinity of the site	N/A
	(iv) the relationship of the development with other development (existing or proposed) on the same site or on	Consistent with adjacent and surrounding development in the locality, compliant	Yes

Clause	Standard	Proposed	Complies
	neighbouring sites in terms of separation, setbacks, amenity and urban form,	with setbacks, and height and FSR controls and objectives.	
	(v) bulk, massing and modulation of buildings,	Appropriate modulation and massing of the whole of proposed dwellings through the use of articulation and various materials and finishes.	Yes
	(vi) street frontage heights,	Consistent with the streetscape.	Yes
	(vii) environmental impacts such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,	Complies with the solar access controls.	Yes
	(viii) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of pedestrian networks,	The proposal does not impact upon these networks.	Yes
	(ix) the impact on, and proposed improvements to, the public domain,	The application is acceptable with regards to the public domain. The proposed landscaping enhances the setting and the public domain.	Yes
	(x) achieving appropriate interfaces at ground level between the building and the public domain,	There is an appropriate interface at ground level with the development addressing the street with a visible entry and appropriate articulation.	Yes

Clause	Standard	Proposed	Complies
	(xi) excellence and integration of landscape design,	Yes, the proposed development provides suitable and extensive landscaping in the front setback. Along the side boundaries, and in the rear open space area of the site.	Yes
	(xii) the provision of communal spaces and meeting places,	Yes, appropriate front entry sequences and entrance lobby provided.	Yes
	(xiii) the provision of public art in the public domain,	N/A	N/A
	(xiv) the provision of on-site integrated waste and recycling infrastructure,	Storage waste is accommodated within the site.	Yes
	(xv) the promotion of safety through the application of the principles of crime prevention through environmental design.	Yes – surveillance over the street is accounted for in this design	Yes
6.12 - Landscaped areas in certain residential and environment protection zones	<p>(2) This clause applies to land in the following zones—</p> <p>(a) Zone R2 Low Density Residential,</p> <p>(b) Zone R3 Medium Density Residential,</p> <p>(c) Zone R4 High Density Residential,</p> <p>(d) Zone E2 Environmental Conservation.</p> <p>(3) Despite subclause (2), this clause does not apply to development referred to in <i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</i>, clause 4.</p>	Applicable – the site is zoned R4.	Applicable

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

Clause	Standard	Proposed	Complies
	on land to which this clause applies unless a percentage of the site area consists of landscaped areas that is at least— (f) for development in Zone R4 High Density Residential—10% of the site area.	246.6m ² or 20.6%	Yes

Development Control Plans

Georges River Development Control plan

65. The proposed development is subject to the provisions of the Georges River Development Control Plan 2021 (Part 6 Residential Controls). The following comments are made with respect to the proposal considering the objectives and controls contained within the DCP.

Part 6.3 Residential Flat Buildings and residential components of shop top housing (High Density)

Control	Proposal	Compliance
6.3.1 <i>Minimum Site Requirements</i> Minimum lot size requirement of 1,000m ²	1195.1m ²	Yes
Minimum lot width is 24m.	35.356m	Yes
6.3.3 Building Setbacks and Street Interface <i>Front setbacks:</i> i. Street setback: up to a building height of four storeys, a minimum setback of 5m is to be provided. ii. Corner sites: up to a building height of four storeys, a minimum setback of 5m to both street frontages is to be provided. iii. Above four storeys, the front setback of the upper building levels is to be increased to a minimum of 8m to the street. The minimum 8m setback also applies to balconies, terraces and balustrades and must be accommodated behind the setback. iv. On a corner site, both frontages are to provide the increased setback above four storeys.	Minimum setback of 5.2m N/A N/A	Yes N/A N/A

Control	Proposal	Compliance
v. Above level four (ground plus 3 storeys); an increased setback of the upper levels/s may be required depending on the width of the street. The required additional upper level setback for sites fronting a road with a reservation width less than 20m will be determined based on their visual impact in the specific context of the development. If the assessment determines that an additional setback is required, the minimum additional setback will be 2m and up to 3m based on the assessment.	6m setback	Yes
vi. The street setback area needs to be predominantly landscaped and is to accommodate a minimum of two (2) canopy trees to a mature height of at least 6m.	Yes	Yes
<p><i>2. Side boundary setbacks:</i></p> <p>i. Minimum setback of 6m from side boundary between ground floor level and up to four storeys.</p> <p>ii. Upper level setbacks are 9m above four storeys.</p> <p><i>3. Rear boundary setbacks:</i></p> <p>i. Minimum 6m setback from a rear boundary between ground floor level and up to four storeys.</p> <p>ii. Upper level setbacks are 9m above four storeys.</p>	<p>6m</p> <p>N/A</p> <p>6m</p> <p>N/A</p>	<p>6m</p> <p>N/A</p> <p>6m</p> <p>N/A</p>
<p>5. Encroachments into boundary setbacks:</p> <p>i. Ground floor private open space may encroach up to 2m into the 5m front setback leaving a minimum 3m of deep soil area to the street.</p> <p>ii. Ground floor private open space may encroach up to 3m into the side and rear setbacks leaving a minimum 3m of landscaped buffer.</p> <p>6. The setback areas, other than any permitted ground floor private open space, are to be landscaped and be retained as part of the common property of the development.</p>	<p>5.2m setback</p> <p>5.2m</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

Control	Proposal	Compliance
7. For improved streetscape, reduction in visual clutter and to provide above ground space for street tree canopy, powerlines in the street verge in front of new development to which this part applies will be undergrounded. This includes the connection of power supply from the road reservation into the development site.	Condition.	Yes
8. Sub-stations, fire booster assemblies and waste bin storage structures need to be integrated into the development and identified at the DA stage.	These areas are provided on the plans and suitably located.	Yes
9. Setbacks may need to be increased to maintain the required levels of solar access to adjoining development as per the DCP requirement for that particular type of development or where the site is in a Heritage Conservation Area or in the vicinity of a Heritage Item to provide an appropriate buffer or curtilage to the Heritage Conservation Area or Heritage Item.	Noted. Site is not in a Heritage Conservation Area or in the vicinity of a Heritage Item.	NA
6.3.5 Façade Treatment and Street Corners		
1. New buildings and additions are to consider the Desired Future Character statement in Part 5 of this DCP.	See assessment below.	Yes
2. Building facades must be clearly articulated and employ high quality materials and finishes that enhance and complement the streetscape character.	Yes appropriate design and materials and finishes are proposed.	Yes
3. Street corners must be given prominence by a change in building articulation, materials, colours, form and scale.	N/A	N/A
4. Human scale at street level must be reinforced in the design of the building and overall development. The scale, rhythm, materiality and landscaping treatment need to define the appearance of the building to create physical and visual connections	Yes	Yes

Control	Proposal	Compliance
between the private and public domain for pedestrians.		
5. Services such as substations and fire booster assemblies must be integrated into the design of the façade.	Details provided on the plans.	Yes
6. Development must not rely solely on the use of two-dimensional colour and materials to create visual interest. Modulation and articulation in the building form must be considered in the design of the building, in plan view and elevation.	Yes appropriate design and materials and finishes are proposed.	Yes
7. Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding, and green walls should be considered as alternatives to blank walls.	Appropriately articulated.	Yes
8. Clear glazing to balustrades must be avoided where they are visible from nearby vantage points. Screening of balconies by way of adjustable or fixed panels should be included where there are issues of privacy, and/or excessive exposure to solar impacts.	Not proposed	Yes
9. Noise mitigation treatments and design considerations for developments adjoining busy roads or rail corridors, that satisfy the requirements for habitable rooms in accordance with Department of Planning, Industry and Environment's 'Development Near Rail Corridors and Busy Roads – Interim Guideline' and the requirements of Clause 102 (3) of State Environmental Planning Policy (Infrastructure) 2007 need to be considered.	N/A	N/A
6.3.6 Landscaped Treatment and Private Open Space		
1. Deep soil is to be provided within the setbacks areas as required in Figures 3, 4, 5 and 6 and consistent with Part	Yes	Yes

Control	Proposal	Compliance
3E of the NSW State Government's Apartment Design Guide. To be included as deep soil as required by Part 3E of the Apartment Design Guide, the deep soil area must have a minimum dimension of 3m on any axis. Planting in the deep soil areas is to include trees that achieve a minimum mature height of 6m.		
2. The visual appearance of developments is to be softened through the incorporation of planter boxes and similar design treatments that will support landscaping in a minimum soil depth of 800mm.	Planter boxes incorporated into the design.	Yes
3. Where landscaping is included on balconies and terraces, the functional area of the private open space is not to be reduced to below the minimum requirements of Part 4E of the Apartment Design Guide.	N/A	N/A
4. Where services including fire booster valves, substations and other infrastructure required as part of the any new development present to a public road or public space, they must be concealed by a screen or fence that corresponds with the materiality of the building façade.	Noted on the plans.	Yes
5. Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	Complies	Yes
6. Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year-round use.	Complies	Yes
7. Unpaved or unsealed areas within a development site should be maximised and designed to facilitate on site infiltration of stormwater.	Complies	Yes
8. Existing significant trees and vegetation must be incorporated into the proposed landscape treatment.	There are no significant trees on the site.	Yes

Control	Proposal	Compliance
9. Private open space and balconies must comply with Part 4E of the NSW State Government's Apartment Design Guide.	See assessment above	Yes
10. Planting of replacement trees is to be in accordance with Council's Tree Management Policy. Note: Street trees proposed within the kerbside should be set back from the kerb to prevent restrictions to sight lines in accordance with AS 2890.1 (latest edition).	15 replacement trees proposed and conditioned as part of the Landscape Plan. One existing street tree is to be retained.	Yes
6.3.7 Communal Open Space		
1. Communal open space to a minimum area of 25% of the site area and with a minimum dimension of 5m is to be provided.	40% of the site area and >5m dimensions.	Yes
2. Communal open space may be provided above ground level where: i. the proposed elevated communal open space will provide a high level of amenity as a communal open space at ground level of the site; and ii. there will be no significant impact on surrounding properties in respect to the loss of privacy.	The ground level communal open space faces north and will not adversely impact neighbouring properties.	Yes
3. At least 50% of the required communal open space area is to receive 2 hours of direct sunlight between 9am and 3pm on 21 June.	At least 50% will receive 2 hours as it faces north.	Yes
4. Where communal open space is provided at ground level, a minimum of 50% is to comprise unpaved landscaped area.	Complies.	Yes
5. The useable and trafficable area of any rooftop communal open space is to be set back a minimum of 2.5m from the edge of the roof of the floor immediately below with landscape planters provided to prevent close and direct views into adjoining properties.	NA	NA

Control	Proposal	Compliance
6. Roof top communal open space areas, amenities and common (non-private) rooms should include equitable access for all residents, and must be designed to ensure that noise and overlooking will be avoided, by way of screening and setbacks from boundaries as detailed in Figure 7.	NA	NA
7. Where roof top communal open space is proposed on a site adjoining lower density zone, any communal open space is to be setback a minimum of 4m from the edge of the roof of the floor immediately below adjacent to a lower density residential zone (refer to Figure 7).	NA	NA
8. Ancillary structures on the roof such as lift overruns and staircases should be located where their impact is minimised to reduce their visual dominance. Balustrades should be visually recessive. Note: Ground level and roof top common open space to be provided in accordance with Part 3D of the Apartment Design Guide.	The lift overrun is located centrally and setback from the site boundaries. It is also below the 12m height limit.	Yes
6.3.8 Solar Access		
1. Shadow diagrams are to be submitted for the winter solstice (21 June) to demonstrate impacts at a minimum of 9am, midday and 3pm.	Provided.	Yes
2. Shadow diagrams must include elevational diagrams identifying the habitable rooms and private open space areas of the adjoining dwellings, and view from the sun diagrams, identifying solar access compliance to the proposed development.	View from the sun diagrams submitted.	Yes
3. Shadow diagrams are required to show the impact of the proposal on the sunlight to the open space of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams.	Complies.	Yes

Control	Proposal	Compliance
<p>4. Where the neighbouring lower density residential zoned dwellings are affected by overshadowing from a development, at least 50% of the neighbouring existing primary private open space and windows to primary living areas must receive a minimum of 3 hours sunlight between 9am–3pm on the winter solstice (21 June).</p> <p>Note: Achieving compliance with this control may be difficult on steeply sloping sites, east west facing allotments, irregular allotments or sites with open space to the south of the built form. In this instance, compliance with the control will be considered on its merits.</p>	<p>NA</p> <p>Noted.</p>	<p>NA</p> <p>-</p> <p>NA</p>
<p>5. Where development adjoins public open space, the solar access amenity of the space will be considered on its merits.</p>	<p>NA</p>	<p>Yes</p>
<p>6. New development shall maintain solar access to the living rooms and private open space of apartments within existing residential flat buildings.</p>	<p>Complies.</p>	
<p>6.3.9 Vehicular Access, Parking and Circulation</p> <p>1. Car parking is to be provided in accordance with the requirements in Part 3 General Considerations of this DCP unless Objective 3J-1 of the Apartment Design Guide applies. Car access areas and garages doors do not visually dominate either the development or the streetscape.</p> <p>2. Vehicular access points should be clearly visible from the street with adequate sign posting or design cues to alert drivers to their availability.</p> <p>3. The design of the vehicular access should prevent vehicles queueing across footpaths and onto the public road. Vehicles should be accommodated wholly within the site before being required to stop.</p>	<p>N/A Parking to be provided in accordance with Housing SEPP.</p> <p>Yes</p> <p>Yes</p>	<p>N/A</p> <p>Yes</p> <p>Yes</p>

Control	Proposal	Compliance
4. On corner sites with two street frontages, vehicular access should be provided to the street with the lesser traffic volumes.	N/A	N/A
5. Garages and basements are to be accessed from a rear lane where this is available.	N/A	N/A
6. 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.	Yes	Yes
7. Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1 (latest edition).	Yes	Yes
8. Clearance above the general parking surface must be a minimum of 2.5m.	Yes	Yes
9. Tandem parking (one space immediately behind another) may be used where two spaces are provided and allocated to a single, specific dwelling.	N/A	N/A
10. All residential flat buildings or residential components of shop top housing must provide a car wash bay which:	Car wash bay not provided, acceptable in this instance given the nature of the proposal.	On merit
i. Is roofed and bunded to exclude rainwater.	Yes	Yes
ii. Has clearly visible signs which indicate that no degreasing or mechanical work is to be undertaken in the car wash bay.	N/A	N/A
iii. Has a fixed basket trap for floor waste.	N/A	N/A
iv. Includes a 1000 litre general purpose pit.	N/A	N/A

Control	Proposal	Compliance
11. Three options exist for the disposal of trade wastewater from residential car wash bays. They are:	N/A	N/A
i. Removal off-site by an authorised liquid waste disposal contractor;	N/A	N/A
ii. Reuse of treated wastewater for car washing or irrigation on landscaped areas. An appropriate method should be used to treat grease, oil and silt before reuse or irrigation; or	N/A	N/A
iii. Discharge to the sewer via appropriate pre-treatment.	N/A	N/A
12. If the carwash bay is not discharged into the sewer, applicants must provide Council with details and evidence of how wastewater will be removed (e.g. removal by an authorised liquid waste disposal contractor)	N/A	N/A
13. Developments on Classified Roads are to:	N/A	N/A
i. Minimise the number of access points or seek alternative access wherever possible.		
ii. Provide safe vehicle access, adequate sight distances and make provision for vehicles to leave the site in a forward direction in accordance with AS2890.1 (latest edition).		
iii. Sufficient space within the property boundary is to be provided to accommodate vehicles entering the property and waiting for security gates or booms to open. The queuing area is to be sufficient to ensure waiting vehicles are wholly within the property boundary.		
iv. Comply with any conditions imposed by Council to satisfy the requirements of TfNSW.		
14. Basement car parking should be naturally ventilated where possible.	Basement is mechanically ventilated.	Yes

Control	Proposal	Compliance
15. Separate pedestrian access to buildings should be provided which does not rely upon access from a basement as the sole pedestrian access location.	Pedestrian entry is provided directly from Lawrence Street.	Yes
16. The use of mechanical parking devices such as car lifts, turn tables and car stackers for the provision of car parking should be avoided wherever possible.	Not proposed.	Yes
6.3.10 Dwelling Mix		
1. Developments that propose more than 20 dwellings are to provide a mix of dwellings consistent with the following percentage mix: i. Studio apartments and 1 bed apartments – Maximum of 25% ii. 2 bed apartments – Minimum of 35% iii. 3+ bed apartments – Minimum of 15%	N/A	N/A
2. Any variations to the apartment mix are to take into consideration: i. The distance to public transport, employment and education centres. ii. The current market demands and projected future demographic trends. iii. The demand for social and affordable housing. iv. Different cultural and socioeconomic groups.	N/A	N/A
3. Apartment configurations are to support diverse household types and stages of life including single person households, families, multi-generational families and group households.	The units include 1 and 2 bedroom layouts including adaptable and liveable floor plans.	Yes
6.3.11 Adaptable Housing		
1. The minimum number of adaptable units designed in accordance with AS4299 - 1995 Adaptable Housing must be incorporated into the developments included in this section:		

Control	Proposal	Compliance
<p>i. 5-10 units – 1 adaptable unit ii. 11-20 units – 2 adaptable units iii. 21-30 units – 3 adaptable units iv. 31-40 units – 4 adaptable units v. 41-50 units – 5 adaptable units vi. 51+ units – 6 adaptable units + 10% of additional dwellings beyond 60 (rounded up to the nearest whole number).</p> <p>2. The adaptable units must comply with the relevant Australian Standards and be certified as “adaptable housing units” and every adaptable unit needs to have an accessible car space.</p> <p>3. Developments must be designed and constructed to comply with:</p> <p>i. AS 1428.1 – 1993 Design for Access and Mobility Part 1 ii. AS 1428.4 – 1993 Design for Access and Mobility Part 2 Enhanced and Additional Requirements – Buildings and Facilities iii. Relevant provisions of the Building Code of Australia</p> <p>4. Notwithstanding compliance with the above, the development shall be designed to meet the needs of people with disabilities, including:</p> <p>i. The provision for a continuous accessible path of travel from all public roads and public spaces as well as unimpeded internal access;</p> <p>ii. The provision in design for ease of use and comfort through appropriate gradients, rest areas, circulation space and user friendly entrances;</p> <p>iii. Safety design measures, including contrasting colour for points of danger and slip resistant surfaces; and</p>	<p>2 Adaptable Units required, 2 provided.</p> <p>Yes, and two adaptable spaces provided.</p> <p>Condition to be imposed.</p> <p>Yes</p> <p>Yes</p> <p>Yes – Condition recommended regarding slip resistance.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

Control	Proposal	Compliance
iv. Legible design features such as signs and indicators to assist the location of handrails and guardrails. Adaptable Housing is defined by Australian Standard AS 4299, which is specifically designed to allow for the future adaptation of a dwelling to accommodate the occupant's needs.	Yes – Condition recommended regarding slip resistance.	Yes
6.3.12 Universal Design 1. Developments achieve a benchmark of 20% of the total apartments incorporating the Liveable Housing Guideline's silver level universal design features.	Yes	Yes
<i>Locality Statement - Peakhurst</i> <ul style="list-style-type: none"> • Encourage tree planting and landscaping within the front setback space to create a treelined streetscape character. • Encourage consistent setbacks of buildings from the street and the provision of landscaping within the front setback. • Encourage the retention of treetop bushland views towards the west of the locality, overlooking Georges River 		The proposal is consistent with the locality statement.

IMPACTS

Natural Environment

66. The proposal has been assessed and endorsed by Council's Landscape Officer. The landscaping proposed is considered sufficient in this instance. The applicant proposes extensive planting along the boundaries of the site and in the front setback, contributing to the locality and streetscape setting.

Built Environment

67. The proposal represents an appropriate planning outcome for the site with respect to its bulk, scale and density, façade articulation and expression and is an appropriate response to the context of the site and it's the zoning of the land.

Social Impact

68. The proposal will provide affordable housing in the locality.
69. No adverse social impacts have been identified as part of the assessment. The proposed development, in principle, will continue to provide housing in the area. The construction of a residential flat building in this location is consistent with the zoning of the land.

Economic Impact

70. There is no apparent adverse economic impact that is likely to result within the locality due to the construction of the dwellings. It is likely there will be a small positive economic impact as a result of the construction of the development.

Suitability of the Site

71. The site is zoned R4 High Density Residential. The proposal is a permissible form of development in this zone and has been designed to reflect the current and future context of the locality.

Submissions and the Public Interest

72. The application was neighbour notified in accordance with Community Engagement Strategy for a period of fourteen (14) days. One (1) submission was received. In summary the following issues and concerns were raised:

Submission	Comment
Increase in traffic in the area and more parking should be provided in the building	The proposed development provides the required number of parking spaces for affordable housing and is not considered to have a significant impact on traffic in the area.

Council Referrals

Consultant Arborist and Landscape Officer

73. No objections subject to conditions if the application subject to conditions of consent.

Building Surveyor

74. Council's Building Surveyor has reviewed the application and provided conditions of consent.

Infrastructure/Assets Engineer

75. Council's Infrastructure/Assets Engineer has reviewed the application and provided conditions of consent.

Development Engineer

76. Council's Development Engineer has reviewed the application and provided conditions of consent.

GIS/Addressing

77. The application was referred to GIS / Addressing and street addresses for the new dwellings were provided.

Traffic Engineer

78. Council's Traffic Engineer has reviewed the application and has provided conditions of consent.

Waste Officer

79. Council's Waste Officer has reviewed the application and has provided conditions of consent.

External Referrals

Ausgrid

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

Developer Contributions

81. Land and Housing Corporation is exempt from payment of contributions pursuant to Chapter 2.2.2 of the Georges River Council Local Infrastructure Contributions Plan 2021.

Conclusion

82. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and

Development Control Plans. The bulk and scale of the building is suitable given the articulation, appropriate building setbacks and the mix of materials and finishes textures.

83. As a result, the application is recommended for approval subject to conditions of consent.

DETERMINATION AND STATEMENT OF REASONS

84. Statement of Reasons

- The proposed development complies with the requirements of the relevant environmental planning instruments.
- The proposed development complies with the objectives of the relevant environmental planning instruments.
- The proposal aims to provide a high-quality development that will establish a positive urban design outcome.

Determination

85. Pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, approves Development Application DA2021/0472 for demolition works and construction of a residential flat building, on Lots 209 and 210 in DP11417, known as 46 and 48 Lawrence Street, Peakhurst, subject to the following conditions:

Section A

1. **Drainage Easement** - Prior to the issue of any Crown certificate the following must occur:
 - (a) The applicant must acquire an Easement to Drain Water of 1 metre (minimum) width through 43 Gover Street property. The easement must allow for a piped, gravity fed system of drainage of stormwater from the subject site with direct, underground connection to Council's kerb and gutter in Gover Street.
 - (b) Evidence of registration of the easement to drain water benefitting the subject site and burdening the title of the affected properties is to be provided to Council.
 - (c) The written consent of each of the owners of the property/ies burdened by the Easement will be required to carry out the drainage works on the burdened lot/s.
 - (d) Documentary evidence must be submitted to Council prior to the issue of a Crown Certificate in accordance with (a) and (b) above.
2. **Approved Plans** - The development must be implemented in accordance with the approved plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where marked up on the plans and/or amended by conditions of this consent:

Description	Reference No.	Date	Revision	Prepared by
Cover Sheet	DA001	8.7.22	3	McIntosh & Phelps
Demolition Plan	DA005	8.7.22	2	McIntosh & Phelps
Site Plan	DA006	8.7.22	2	McIntosh & Phelps
Lower Ground	DA101	5.11.21	1	McIntosh & Phelps
Ground Floor	DA102	5.11.21	1	McIntosh & Phelps
Level 1	DA103	5.11.21	1	McIntosh & Phelps

Level 2	DA104	5.11.21	1	McIntosh & Phelps
Roof Plan	DA105	8.7.22	2	McIntosh & Phelps
Sections	DA201	8.7.22	2	McIntosh & Phelps
Elevations	DA202	8.7.22	2	McIntosh & Phelps
Elevations	DA203	8.7.22	2	McIntosh & Phelps
Photomontage	DA301	8.7.22	2	McIntosh & Phelps
External Finishes	DA401	8.7.22	3	McIntosh & Phelps
Landscape Plan	DA601	8.7.22	3	McIntosh & Phelps
Planting Schedule	DA602	8.7.22	3	McIntosh & Phelps

The following documents and plans have been reviewed in assessing the proposal:

- **Siteworks and Stormwater Plan – Sheet 01, Job No. 202330, Drawing No. DA_C24.01, Revision 02, Dated 03/11/2021, Prepared by Northrop.**
- **Siteworks and Stormwater Plan – Sheet 02, Job No. 202330, Drawing No. DA_C24.02, Revision 01, Dated 15/10/2021, Prepared by Northrop.**
- **Sediment and Soil Erosion Control Details, Job No. 202330, Drawing No. DA_C22.11, Revision 01, Dated 15/10/2021, Prepared by Northrop.**
- **Survey Plan, Prepared by DS&P Surveyors, Two Sheets, Rev 3, Dated 07/12/2020.**

Note: Crown Building Work – Pursuant to Section 6.28 of the Environmental Planning and Assessment Act 1979, Crown building, demolition and incidental work cannot be commenced to be carried out unless the Crown building and other development work is certified by or on behalf of the Crown to comply with the technical provisions of the State's building laws including the Building Code of Australia. It is the responsibility of the Crown Authority to ensure this statutory provision of the Act is complied with.

Separate Approvals Required Under Other Legislation

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

4. **Works on public road and footway** – All proposed works within the public road and footway shall be designed and constructed to Council's standards and specifications and a copy of the detailed plans submitted to Council prior to work commencing. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress or after completion of the works.

Requirements of Concurrence, Integrated & Other Government Authorities

5. **Electricity Supply** - An application is required to be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application being lodged with Ausgrid is required to be provided to the Crown Certifier. For further details, you are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services).
6. **Electricity Supply to Development** - The electricity supply to the Development must be underground.
7. **Sydney Water - Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed/stamped. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Crown Certifier must ensure that a Tap in™ agent has appropriately stamped the plans prior to the commencement of works.
8. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the [Sydney Water Act 1994 <http://legislation.nsw.gov.au/>](http://legislation.nsw.gov.au/) must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

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

9. **Required Drainage System Design Changes** - The following changes are required to be made and shall be submitted to the Crown Certifier prior to the commencement of construction works:
 - (a) The minimum clearance depth of the OSD tank must be not less than 470mm.
 - (b) There must be additional four 900 square heavy duty grates to be installed (two at both middle sides and other two at the other end where there is no grates).

- (c) Longitudinal and cross of OSD tanks and rainwater tank with OSD DCP shall be clearly documented.

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

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

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

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

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

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

The profile will be used to assess suitability of proposed internal driveway levels and does not represent final footpath or road levels. The levels on Council's road related area including boundary level will be verified with Council prior to the commencement of works.

12. **Stormwater System – General** - The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted to the Crown Certifier prior to the commencement of construction works.

- (a) All stormwater shall be drained in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).

- (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall be submitted to the Crown Certifier prior to the commencement of construction works.

13. **On-site Stormwater Detention** - The submitted Concept Stormwater and OSD Plans prepared by Northrop, with following details have been assessed as a concept plans only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted to the Crown Certifier prior to the commencement of construction works.

- i. **Siteworks and Stormwater Plan – Sheet 01, Job No. 202330, Drawing No. DA_C24.01, Revision 02, Dated 03/11/2021, Prepared by Northrop.**
- ii. **Siteworks and Stormwater Plan – Sheet 02, Job No. 202330, Drawing No. DA_C24.02, Revision 01, Dated 15/10/2021, Prepared by Northrop.**

An OSD facility designed by a professional engineer who specialises in Hydraulic engineering must be designed, approved and installed as follows.

- (a) The required OSD storage requirements and permissible discharge are to be calculated in accordance with Table 3 of Council's Stormwater Management Policy.
- (b) A minimum 35.70 cubic metre OSD volume is to be provided in accordance with the Stormwater Concept Plan and Council's Stormwater Management Policy.
- (c) The minimum clearance depth of the OSD tank must be not less than 470mm.
- (d) There must be additional four 900 square heavy duty grates to be installed (two at both middle sides and other two at the other end where there is no grates).
- (e) The OSD facility shall be designed to meet all legislated safety requirements. A durable metal plate or similar sign is to be placed at the OSD facility and must bear the words:
- (f) "BEWARE: This is an on-site detention basin/tank for rainwater which could overflow during heavy storms."
- (g) Full details shall accompany the applicable Crown Certificate.

14. **Stormwater Drainage Plan Details** - Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineering specialising in hydraulic engineering shall be submitted to the Crown Certifier prior to the commencement of construction works.

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Management Policy.

15. **Driveway Construction Plan Details** - Detailed engineering plans for the driveway shall be submitted to the Crown Certifier prior to the commencement of construction works that show:

- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
- (b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).

- (c) Longitudinal driveway sections are to be prepared by a qualified civil/traffic engineer and be submitted to the Crown Certifier. These profiles are to be at 1:100 scale along both edges of the proposed driveway, starting from the centreline of the frontage street carriageway to the proposed garage/parking level. The civil/traffic engineer shall provide specific written certification on the plans that:
 - i. Vehicular access can be obtained using grades of 25% (1 in 4) maximum; and
 - ii. All changes in grade (transitions) comply with Australian Standard 2890.1 (2004) – “Off-street car parking” to prevent the scraping of the underside of the vehicles.

16. **Fire Safety Measures** - A list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must be submitted to the Crown Certifier. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Crown Certifier will then issue a Fire Safety Schedule for the building.

Note: Fire and Rescue NSW - Building - Prior to the commencement of work the applicant may be required, under Clause 144 of the Environmental Planning and Assessment Regulation, 2000, to seek written comment from FR NSW about the location of water storage tanks, construction of hydrant/booster pump and valve rooms, and any Fire Engineered Solution developed to meet the performance requirements under the Category 2 Fire Safety Provisions.

The applicant is also advised to seek written advice from FR NSW on the location and construction of the proposed Fire Control Centre Facility and location and installation of the sites Fire Indicator/mimic Panels (if required).

17. **Site Management Plan - Major Development** - A Site Management Plan must be submitted to the Crown Certifier prior to the commencement of work, and include the following:

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

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

18. **Construction Vehicle and Pedestrian Plan of Management** – A Vehicle and Pedestrian Plan of Management (CVPPM) shall be submitted to the Crown Certifier prior to the commencement of work. The CVPPM shall be prepared for the various stages of the development and include, but not be limited to, the following:
- (a) Details of the scope of works to be undertaken during the demolition, excavation, construction stages etc., and the duration of each.
 - (b) Indicate the consent approved hours of work.
 - (c) Identify the routes to be travelled within the Council area for trucks travelling to and from the site.
 - (d) Identify other developments occurring concurrently in the area including those within the street and up to 500m from the site.
 - (e) The developer/builder shall liaise fortnightly with other identified developers/builders to minimize any cumulative traffic impacts.
 - (f) Include a plan showing the location of any schools, pre schools and long day care centres within 200m of the site.
 - (g) Detail the number of and where construction worker vehicles will be parked during the various stages of the development.
 - (h) Identify any proposed temporary road closures, temporary changes to traffic flow and loss of pedestrian or cyclist access likely to occur as a result of works being undertaken during the various work stages.
 - (i) Detail the size (including dimensions), number and frequency of trucks movements to and from the site during the various stages of work.
 - (j) Include copies of all required Traffic Control Plans (TCPs). All TCP's shall be prepared by RMS accredited persons.
 - (k) Provide, if required, swept wheel path drawings for the different types of vehicles accessing the site. The swept wheel path drawings:
 - May be required if it is considered truck movements into and out of the site associated with the various stages of development have the potential to damage public or private infrastructure/property.
 - May be required if it is considered truck movements into and out of the site cannot be carried out without a loss of on street vehicle parking spaces either in close proximity to or removed from the site.
 - Shall be prepared by a suitably qualified and experienced traffic engineering consultant.
 - (l) Show the location and length of any proposed Works Zones including any adjustments required to Council's infrastructure, parking control signs etc. to implement the zones. **NOTE:** Works Zones require the approval of the Georges River Council Traffic Committee prior to installation.
 - (m) Show the locations of where it is proposed to stand trucks remote from the site should they be unable on arrival to immediately enter the site or an approved Works Zone. Double parking, parking in NO STOPPING/NO STANDING zones or across neighboring property driveways is not permitted.

NOTE: A copy of the approved CVPPM must be kept at the site and made available on request:

19. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1184679M_04 dated 11 November 2021 must be implemented on the plans lodged with the Crown Certifier.

20. **Waste Management Plan** - A final Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Crown Certifier prior to the commencement of work.

The final Waste Management Plan must state:

- (a) That it is the responsibility of a designated person to present the bins to the kerb no earlier than 12 hours prior to collection and remove the bins from the kerbside no later than 12 hours post collection.
- (b) Any garden waste must be removed from the property by a licensed landscape contractor.

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

Primary Address

- 46 Lawrence Street, Peakhurst NSW 2210

Unit Addresses

Unit description on DA plans	Proposed street address to comply with AS/NZS 4819:2011 and NSW Addressing Manual
Unit 2	G01/46 Lawrence Street, Peakhurst NSW 2210
Unit 1	G02/46 Lawrence Street, Peakhurst NSW 2210
Unit 3	G03/46 Lawrence Street, Peakhurst NSW 2210
Unit 4	G04/46 Lawrence Street, Peakhurst NSW 2210
Unit 6	101/46 Lawrence Street, Peakhurst NSW 2210
Unit 5	102/46 Lawrence Street, Peakhurst NSW 2210
Unit 7	103/46 Lawrence Street, Peakhurst NSW 2210
Unit 8	104/46 Lawrence Street, Peakhurst NSW 2210
Unit 10	201/46 Lawrence Street, Peakhurst NSW 2210
Unit 9	202/46 Lawrence Street, Peakhurst NSW 2210
Unit 11	203/46 Lawrence Street, Peakhurst NSW 2210
Unit 12	204/46 Lawrence Street, Peakhurst NSW 2210

Details indicating compliance with this condition must be shown on the construction plans.

22. **Demolition Notification Requirements** - The following notification requirements apply to this consent:

- (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear

of the demolition site.

- (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
- (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words “DANGER ASBESTOS REMOVAL IN PROGRESS” measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.

23. **Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the commencement of work. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Crown Certifier and Council for their records.

24. **Dilapidation Report on Public Land** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site.
The report must include the following:

- (a) Photographs showing the existing condition of the road pavement fronting the site.
- (b) Photographs showing the existing condition of the kerb and gutter fronting the site.
- (c) Photographs showing the existing condition of the footpath pavement fronting the site.
- (d) Photographs showing the existing condition of any retaining walls within the footway or road.
- (e) The full name and signature of the structural engineer.
- (f) The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the Crown Certifier and a copy provided to the Council.
- (g) The report is to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

Note: Council will use this report to determine if any rectification works are required.

25. **Dilapidation Report – Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:

- (a) All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.
- (b) All adjoining properties

The report shall be prepared at the expense of the applicant and submitted to the satisfaction of the Crown Certifier prior to the construction.

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

dilapidation report was delivered to the adjoining properties must be provided to the Crown Certifier.

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

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

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

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

During Construction

28. **Landscape Plans** – All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by McIntosh & Phelps Landscape Architects, Issue 1, Sheets DA601 to 604 and dated 08/07/22. The landscaping must be maintained in accordance with the approved plans in perpetuity, subject to the following –
- (a) The proposed fifteen (15) trees/palms and all plant species, pot/ bag size and quantities of plants must be in accordance with the proposed plant schedule upon the landscape plan.
 - (b) To ensure all tree, palm and plant species are available and planted, the applicant must engage a registered and licenced nursery grower early within the building phase to contract grow all tree/palm and plant material as per landscape plan planting schedule.

- (c) The trees and palms proposed upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)* and be planted and maintained in accordance with Councils standard specification.
- (d) If the planted trees/palms and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.

29. Compliance with submitted Arborist Report

- (a) The recommendations outlined in the Arborist's Report titled Arboricultural Impact Assessment prepared by Advanced Treescape Consulting, Russell Kingdom(AQF 5), dated 28/10/21 must be implemented throughout the relevant stages of construction. Details of tree protection measures to be implemented must be detailed and lodged with the Construction Certificate application for approval and shall be in accordance with Section 4 - *Australian Standard AS 4970-2009: Protection of trees on development sites*.
- (b) The tree/s to be retained and protected are listed in the table below:

Tree Species	Location of Tree / Tree No.	Tree protection measures Fencing distance from trunk
T1 – <i>Lophostemon confertus</i> (8.4m TPZ)	Councils street verge	4.0m without blocking the footpath and roadway

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

Tree Protection Measures

- (a) The tree protection measures must be undertaken in accordance AS4970-2009 *Protection of trees on development sites*.
- (b) All trees on Council property, subject site and adjacent sites, to be retained must be protected before site set up and maintained during demolition, excavation and construction of the site.
- (c) Although trees may be on adjacent sites, the tree protection fencing must be placed on the nominated distances as per table above, out from the trees trunk, within the subject site to minimise impacts to neighbours trees and kept for the entirety of the project.
- (d) Details of the tree protection measures to be implemented must be provided with

the application for the applicable Crown Certificate by a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Australian Arboricultural Association or Affiliation.

- (e) The engaged AQF 5 Consulting Project Arborist must be present on-site during the stages of site set up, excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
- (f) In accordance with AS 4970-2009 *Protection of trees on development sites*, a protective fence consisting of 2.4 x 1.8 metres high, fully supported chainmesh fence shall be used. The distance of the fence out from the base of each tree is to be in accordance with the TPZ listed in the table above.
- (g) The tree protection fencing must be kept in place during demolition, excavation and construction and also have a sign displaying 'Tree Protection Zone – DO NOT ENTER' attached to the fence and must also include the name and contact details of the Project Arborist.
- (h) No building products, preparation of building products, storage of materials, stockpiling, site sheds or services shall be installed or placed within the TPZ of 8.4M of Council's Street tree, to be retained.

Excavation works near tree to be retained

- a) Excavations around the trees to be retained on Council's street verge or the adjoining properties must be supervised by the AQF 5 Project Arborist to ensure that the root system and canopy will not adversely be affected.
- b) No strip footings are permitted within 8.4m of Tree 1, Council's street tree. Front fencing must only be post and rail type construction.
- c) All excavations within 6 metres of any tree for the purposes of stormwater piping within the proposed easement to Gover St on adjoining lands, must only be conducted using air spade or hydro vac type of excavations with no bucket type of machinery permitted and must be under the guidance of the AQF 5 Project Arborist.
- d) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the AQF 5 Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.
- e) Tree Protection Zones around the trees to be retained are not to have soil level changes, building product / materials stored or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

30. Tree Removal & Replacement

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
<i>Chamaecyparis obtusa</i> "Crippsii"	X1	Within site, front boundary
<i>Syagrus romanizoffiana</i>	X1	Within site
<i>Ceratopetalum gummiiferum</i>	X2	Within site
<i>Jacaranda mimosifolia</i>	X1	Within site

General Tree Removal Requirements

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

- 31. Contamination of land** - Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the Crown Certifier and all works on site must cease immediately.

If the site is identified as being potentially affected by soil contamination, a detailed site contamination investigation shall be carried out by a certified contaminated land consultant in accordance with the requirements of the relevant NSW EPA Guidelines approved under the Contaminated Land Management Act 1997 including the EPA.

Guidelines for Consultants Reporting on contaminated sites shall be followed and the report shall certify the suitability of the site for the proposed development. A copy of the detailed site contamination report must be provided to the Crown Certifier and submitted to Council for their records.

Should the detailed site contamination report find that contamination makes the land unsuitable for the proposed development and remediation is required, a Remedial Action Plan must be submitted to Council as per required under State Environmental Planning Policy No 55 – Remediation of Land.

Works associated with the development must not commence until such time a validation report prepared by the certified contaminated land consultant verifying that the land is suitable to be used for this development consent is submitted to Council.

Should the recommendation in the detailed site contamination report recommend monitoring of the site, then a monitoring program is to be submitted to Council for assessment and review prior to any recommencement of works.

- 32. Hours of construction for demolition and building work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the

hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.

Note: A penalty infringement notice may be issued for any offence.

33. **Worksite traffic and pedestrian control** - Traffic and pedestrian control shall be in accordance with TfNSW 'Traffic Control at Works Sites- Technical Manual' version 6.1.
34. **Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.
35. **Physical connection of Stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's Kerb in Gover Street through the creation of drainage easement with 43 Gover Street property.
36. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.
37. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted without prior consultation with Council.
38. **Damage within Road Reserve and Council Assets** - The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.
39. **Public Utility and Telecommunication Assets** – The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
40. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

Copies of all receipts for the disposal, or processing of all such materials shall be submitted to the Crown Certifier.

Prior to Occupation

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

42. **Restriction to User and Positive Covenant for On-Site Detention Facility** – Within 3 months of occupation, a Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owners of the land. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

Restrictions on Use of Land

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

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

Positive Covenants

1. *The registered proprietor of the lot(s) hereby burdened will in respect of the system:*
 - a) *keep the system clean and free from silt, rubbish and debris*
 - b) *maintain and repair at the sole expense of the registered proprietors the whole of the system so that it functions in a safe and efficient manner*
 - c) *permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant*
 - d) *comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.*
2. *Pursuant to Section 88F(3) of the Conveyancing Act 1919 the Council shall have the following additional powers:*
 - a) *in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above*
 - b) *the Council may recover from the registered proprietor in a Court of competent jurisdiction:*
 - i. *any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (i) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.*
 - ii. *legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or*

obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.

43. **Maintenance Schedule – On-site Stormwater Management** - A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule shall outline the required maintenance works, how and when these will be done and who will be carrying out these maintenance works.
44. **Vehicular crossing & Frontage work – Major development** - The following road frontage works shall be constructed in accordance with the specifications for Driveway Crossing and Associated Works on Council Road Reserve.
 - (a) New 1.5m wide footpath to be constructed for full frontages of the site in accordance with Council's Specifications for footpath, applying at the time construction approval is sought.
 - (b) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
 - (c) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
 - (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

45. **Completion of Major Works** - Prior to Occupation, the following works must be completed at the applicant's expense to the satisfaction of the Crown Certifier:
 - (a) Stormwater pipes, pits and connections to public stormwater systems within the road related area;
 - (b) Driveways and vehicular crossings within the road related area;
 - (c) Removal of redundant driveways and vehicular crossings;
 - (d) New footpaths within the road related area;
 - (e) Relocation of existing power/light pole
 - (f) Relocation/provision of street signs
 - (g) New or replacement street trees;
 - (h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
 - (i) New or reinstated kerb and guttering within the road related area; and
 - (j) New or reinstated road surface pavement within the road.

46. **Dilapidation Report on Public Land for Major Development Only** - Upon completion of works, a follow up dilapidation report must be prepared for the items of Council infrastructure adjoining the development site. The dilapidation report must be prepared by a professional engineer specialising in structural engineering, and include:
- (a) Photographs showing the condition of the road pavement fronting the site
 - (b) Photographs showing the condition of the kerb and gutter fronting the site
 - (c) Photographs showing the condition of the footway including footpath pavement fronting the site
 - (d) Photographs showing the condition of retaining walls within the footway or road
 - (e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
 - (f) The full name and signature of the professional engineer.

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

47. **Stormwater drainage works – Works As Executed - Underground Tank** – Prior to Occupation, storm water drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to the Crown Certifier:

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) The structural adequacy of the On-Site Detention system (OSD);
- (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (d) Pipe invert levels and surface levels to Australian Height Datum;
- (e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.
- (f) The Work-As-Executed plans are prepared on the copies of the approved drainage plans issued with the applicable Crown Certificate and variations are marked in red ink;
- (g) The Work-As-Executed plans have been prepared by a registered surveyor certifying the accuracy of dimensions, invert levels, surface levels, storage volume etc;

48. **Requirements prior to Occupation - Stormwater and Onsite Detention Works** - The following shall be completed and or submitted to the Crown Certifier prior to Occupation:

- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction plans prior to Occupation.
- (b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction plans prior to Occupation.
- (c) Construct any new vehicle crossings required.
- (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
- (e) A Section 73 (Sydney Water) Compliance Certificate for the development shall be issued and submitted to the Crown Certifier prior to Occupation.

- (f) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the Crown Certifier prior to Occupation.

49. **Requirements prior to Occupation - Driveways Works** - The following shall be completed and or submitted to the Crown Certifier prior to Occupation:

- (a) Construction of new vehicle crossings as required by this consent.
- (b) Replacement of all redundant vehicle crossing laybacks with kerb and guttering, and replacement of redundant concrete with turf.

50. **Amalgamation of Two Lots into a Single Lot prior to Occupation** - Both lots shall be amalgamated into a single lot and a Deposited Plan (with Administration Sheet) is to be prepared by a Registered Surveyor and submitted to the Crown Certifier for review and approval prior to its registration.

This Plan shall create the following:

- (a) A Positive Covenant shall be created over the on-site detention facility and the pump out system using Section 88B of the Conveyancing Act 1919, with the covenant including the following wording:

It is the responsibility of the Lot Burdened to keep the on-site detention facilities, together with any ancillary pumps, pipes, pits etc., clean at all times and maintained in an efficient working condition. The on-site detention facilities shall not be modified in any way without the prior approval of Georges River Council.

Council is to be nominated as the Authority to release, vary or modify this Covenant. The 88B instrument shall be submitted to Council for endorsement by Council's Authorised Officer (with a copy of the consolidation plan for Council records).

51. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the [Environmental Planning and Assessment Regulation 2000](#), on completion of building works and prior to Occupation, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 174 of the Environmental Planning and Assessment Regulation, 2000. In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:

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

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

52. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any

residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted to the Crown Certifier prior to occupation.

53. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to the Ausgrid, if required.
54. **BASIX Compliance Certificate** - A Compliance Certificate must be provided to the Crown Certifier regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before Occupation.
55. **Completion of Tree Works** - All tree protection and Project Arborist works set out in the approved tree protection plan must be completed prior to occupation. A certificate of compliance must be prepared by an AQF Level 5 Arborist and submitted to the Crown Certifier prior to occupation.
56. **Completion of Landscape Works** - All landscape works, the planting of all tree and plant material in accordance with approved landscape plans and specifications must be completed prior to occupation. A certificate of compliance for the planting of all trees and shrubs proposed for the site must be prepared by an AQF 5 Horticulturist and forwarded to the Crown Certifier prior to occupation.

Operational Conditions (Ongoing)

57. **Noise Control** - The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the [Protection of the Environment Operations Act 1997](#) (as amended).
58. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with *AS 4282-2019: Control of the obtrusive effects of outdoor lighting*.
59. **Lighting - General Nuisance** - Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare.

Flashing, moving or intermittent lights or signs are prohibited.
60. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
61. **Vehicular entry and exit** - Vehicular entry/exit movements shall be carried out in a forward direction at all times.
62. **Parking Space Delineation** - Prior to the issue of the applicable Crown Certificate, all car parking spaces shall be suitably numbered and linemarked in accordance with the relevant Australian Standard. Details shall be submitted to the Crown Certifier for approval prior to delineation taking place.

63. **Wheel Stops** - Prior to the issue of the applicable Crown Certificate, wheel stops shall be installed on all parking spaces. Details of the size; location and type to shall be submitted to the Crown Certifier for approval prior to installation.
64. **Bicycle facilities** - Facilities for the parking of bicycles either at grade or in a basement car park area shall comply with the requirements of AS2890.3: 2015 Parking Facilities, Part 3: Bicycle parking.
65. **Annual Fire Safety Statement** - The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
- (a) Within 12 months after the date on which the fire safety certificate was received.
 - (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
 - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
 - (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.
66. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.

Prescribed Conditions

Not Applicable – Pursuant to Division 4.6 of the Environmental Planning and Assessment Act, 1979, the consent authority cannot impose conditions on a consent for which the Crown is the applicant, without the approval of the Minister.

END CONDITIONS

NOTES/ADVICES

1. **Lapsing of Consent** - This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.
2. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au
3. **Noise - Noise related conditions** - Council will generally enforce noise related conditions in accordance with the Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nlg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) published by the Department of Environment and Conservation. Other state government authorities also regulate the Protection of the Environment Operations Act 1997.
Useful links relating to Noise:
 - (a) Community Justice Centres - free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
 - (b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
 - (c) New South Wales Government Legislation home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 (www.legislation.nsw.gov.au).
 - (d) Australian Acoustical Society - professional society of noise-related professionals (www.acoustics.asn.au/index.php).
 - (e) Association of Australian Acoustical Consultants - professional society of noise related professionals (www.aaac.org.au).
 - (f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).
4. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.
5. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.
6. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

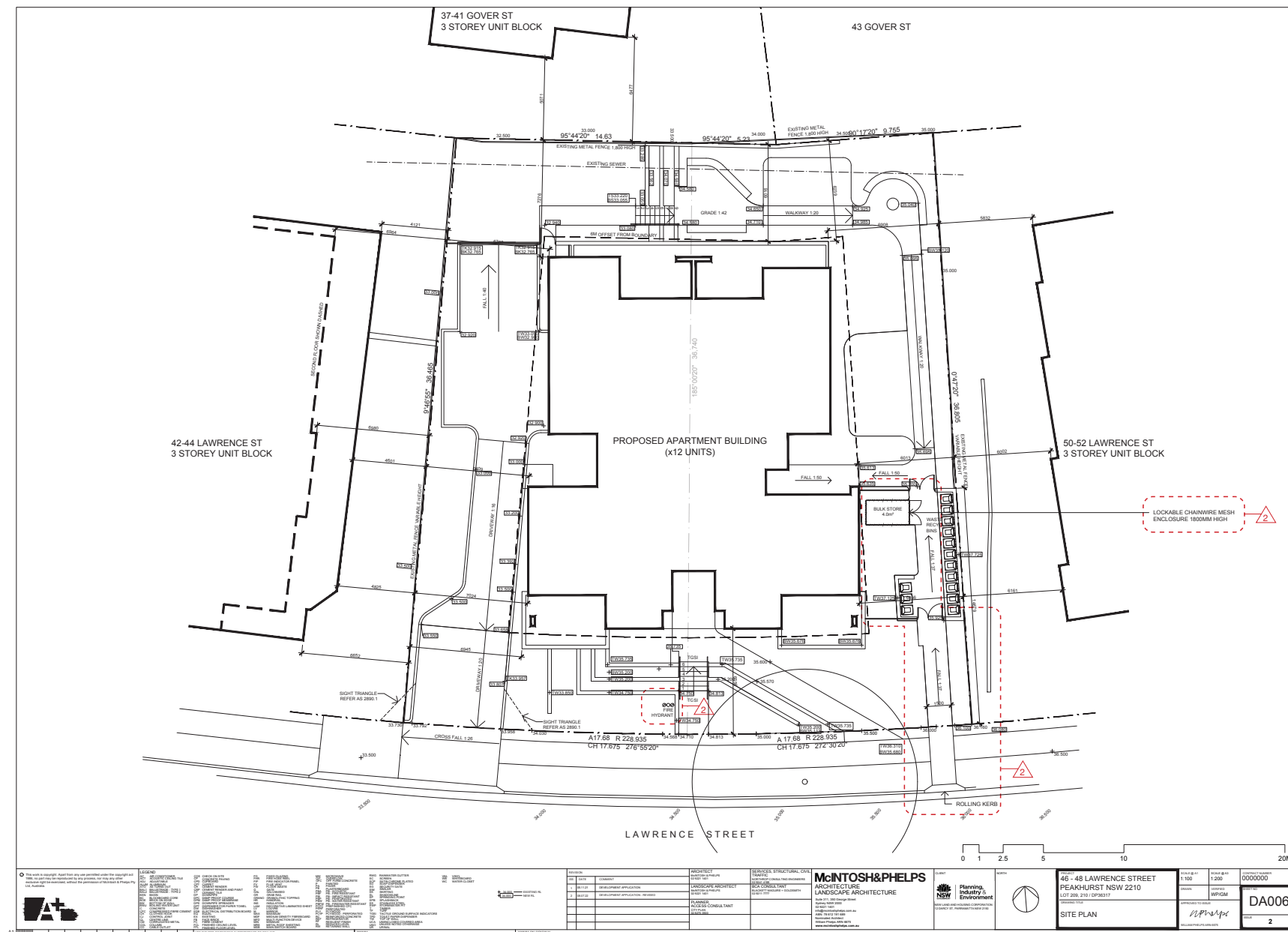
The required Long Service Levy payment can be direct to the Long Service Corporation via their web site <https://online.longservice.nsw.gov.au/bci/levy>. Payments can only be processed on-line for the full levy owing and where the value of work is between \$25,000 and \$6,000,000. Payments will be accepted for amounts up to \$21,000, using either MasterCard or Visa.

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

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

ATTACHMENTS

Attachment  1  Site Plan and Elevations







**REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 01 SEPTEMBER 2022**

LPP045-22

LPP Report No	LPP045-22	Development Application No	MOD2022/0087
Site Address & Ward Locality	27-33 Nielsen Avenue, Carlton Hurstville Ward		
Proposed Development	Modification of development consent DA212/2016 for a residential flat building.		
Owners	SBN Holdings Pty Ltd & Finlar Holdings Pty Ltd & Nielsen Avenue Carlton Pty Limited & AJK Holdings Aust Pty Ltd		
Applicant	Mr J Apostolou		
Planner/Architect	BMA Urban / Loucas Architects		
Date Of Lodgement	8/06/2022		
Submissions	No submissions		
Cost of Works	\$10,705,320 (original DA)		
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, Georges River Local Environmental Plan 2021, Georges River Development Control Plan 2021.		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Design Verification Statement, Landscape Plan, Statement of Environmental Effects		
Report prepared by	Principal Planner		

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

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?	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, standard conditions have been attached with no design changes

Site Plan



Executive Summary

Proposal

1. The Section 4.55(2) modification application seeks consent for amendments to a consent granted under DA212-2016 (as amended by MOD2020/0084) for demolition and construction of a residential flat building.
2. The modifications to the approved residential flat building sought include:
 - Lower Basement: column and fire stair amendments and storage redesign.
 - Upper Basement: column and fire stair amendments, addition of walls to service and waste rooms.
 - Ground Floor:
 - Provision of revised retaining wall detail (south-west);
 - Addition of an ensuite to apartment G.7;
 - Revised building entries and glazing configuration;
 - Redesign of the eastern staircase;
 - Substation nomination;
 - Removal of seating furniture;
 - Redesign of apartment G.7, G.8 and G.9 rear yard stair;
 - Provision of a 2m high wall behind the hydrant/water meter.
 - First, Second and Third Floors: addition of ensuite bathrooms to Units 1.03, 1.07, 2.03, 2.07, 3.03 and 3.07.
 - Fourth Floor:
 - Removal of skylights from apartments 4.01 and 4.02;
 - Removal of children's play area from communal open space.

Site and Locality

3. The development site is located on the north-western side of Nielsen Avenue and consists of four existing allotments known as 27-33 Nielsen Avenue, Carlton. These sites are legally identified as Lots 23, 24, 25 and 26 in DP5452.
4. The consolidated site is regular in shape. It has a total frontage to Nielsen Avenue of 73.1m and a total site area of 2,054.4sqm.
5. Presently situated on the site are four residential dwellings, ancillary structures and scattered vegetation.
6. The site is located in a residential locality characterised by dwelling houses, however, is zoned R4 High Density Residential and has a height limit of 15m and a FSR of 1.5:1.

7. The site has approval for a five storey residential flat building over two levels of basement parking. Construction is yet to begin on the approved development.

Zoning and Permissibility

8. The site is zoned R4 High Density Residential under Georges River Local Environmental Plan 2021 (GRLEP) and the proposed modification being works to the approved residential flat building is permissible with Council's consent.

Submissions

9. The application was neighbour notified between 23/6/2022 and 7/7/2022. No submissions were received.

Reason for referral to the Local Planning Panel

10. The proposal is referred to the Local Planning Panel for determination as the development is subject to SEPP 65 and the application has been lodged under Section 4.55(2) of the Act. The Georges River Local Planning Panel is the consent authority via the Ministerial Direction of 23 February 2018.

Conclusion

11. The application has been assessed having regard to Section 4.55(2) of the Environmental Planning and Assessment (EP&A) Act 1979 and the Matters for Consideration under Section 4.15(1) of the EP&A Act 1979. Following the assessment of the proposal, it is considered that Modification No. MOD2022/0087 is worthy of support and is recommended for approval subject to modified conditions.

Report in Full

Site and Locality

12. The development site is located on the north-western side of Nielsen Avenue and consists of four existing allotments known as 27-33 Nielsen Avenue, Carlton. These sites are legally identified as Lots 23, 24, 25 and 26 in DP5452.
13. The consolidated site is regular in shape. It has a total frontage to Nielsen Avenue of 73.1m and a total site area of 2,054.4sqm.
14. Presently situated on the site are four residential dwellings, ancillary structures and scattered vegetation.
15. The site is located in a residential locality characterised by dwelling houses, however is zoned R4 High Density Residential and has a height limit of 15m and a FSR of 1.5:1.
16. The site has approval for a five storey residential flat building over two levels of basement parking. Construction is yet to begin on the approved development.

Background

17. The approved development is for the demolition, tree removal and construction of a residential flat building with basement parking. (DA212/2016). The original building was approved at four storeys, and a modification was approved in 2020 for an additional unit on the fourth floor under MOD2020/0084.

Proposal

18. The applicant seeks to modify Development Consent No DA212/2016 (as modified) in the following manner:

- Lower Basement: column and fire stair amendments and storage redesign. Refer to Figures 1 and 2 for approved and proposed layouts.
- Upper Basement: column and fire stair amendments, addition of walls to service and waste rooms. Refer to Figures 3 and 4 for approved and proposed layouts.
- Ground Floor:
 - Provision of revised retaining wall detail (south-west);
 - Addition of an ensuite to apartment G.7;
 - Revised building entries and glazing configuration;
 - Redesign of the eastern staircase;
 - Substation nomination;
 - Removal of seating furniture;
 - Redesign of apartment G.7, G.8 and G.9 rear yard stair;
 - Provision of a 2m high wall behind the hydrant/water meter.
- First, Second and Third Floors: addition of ensuite bathrooms to Units 1.03, 1.07, 2.03, 2.07, 3.03 and 3.07.
- Fourth Floor:
 - Removal of skylights from apartments 4.01 and 4.02;
 - Removal of children's play area from communal open space.

19. Please refer to the architectural plans provided under separate cover for the proposed changes to the apartment layouts. The proposed basement changes are provided below.

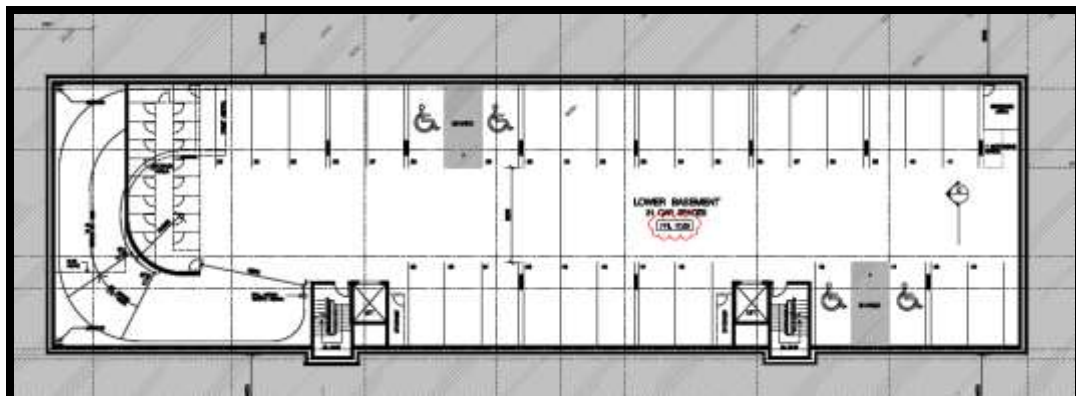


Figure 1: Approved Lower Basement

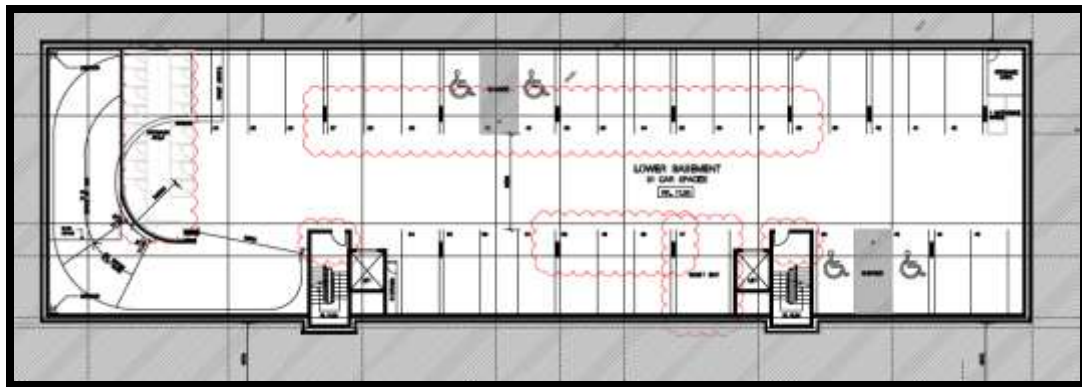


Figure 2: Proposed Lower Basement

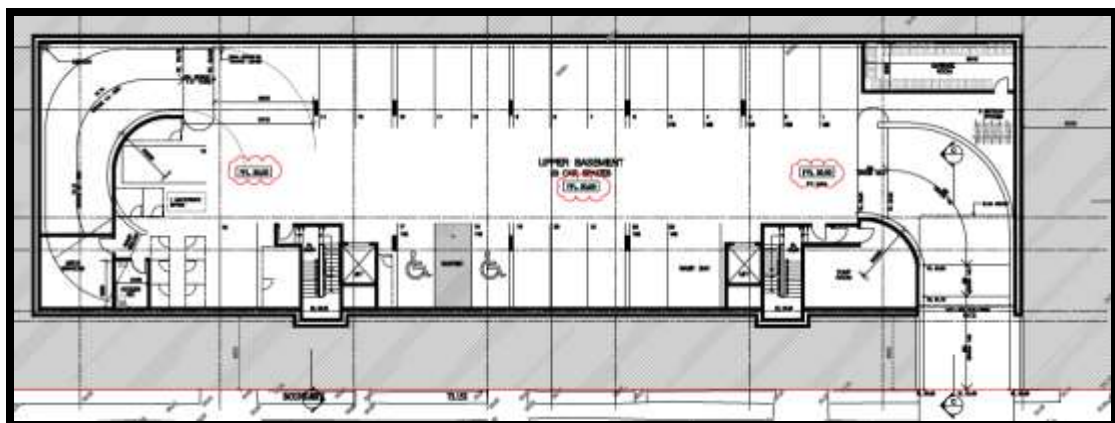


Figure 3: Approved Upper Basement

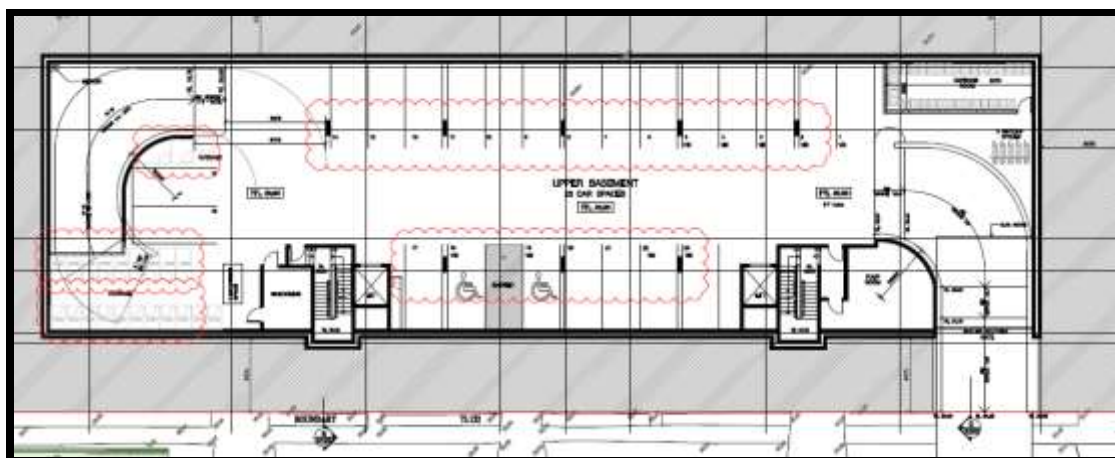


Figure 4: Proposed Upper Basement

20. The conditions in the consent requiring modification are limited to condition numbers 1(i), (i)(a), (ii) and (ii)(a).

ASSESSMENT

Section 4.55(2) Considerations

21. The application has been made pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 to modify Development Consent DA212/2016 (as modified). A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if it:

22. Is satisfied the proposed development as modified is substantially the same development for which consent was originally granted?

The proposed development as modified would represent substantially the same development for which consent was originally granted being a residential flat building.

23. Has advertised and or notified the application in accordance with the regulations or a development control plan?

The application was neighbour notified in accordance with the provisions of Georges River Development Control Plan 2021 and no submissions were received.

24. Has considered any submissions made concerning the proposed modification?

No submissions were received.

Section 4.15 Evaluation

25. In determining a Section 4.55(2) modifications the provisions of Section 4.15 of the EP&A Act 1979 (where relevant) need to be considered as part of the assessment. The following considers the proposal in respect to these requirements.

State Environmental Planning Policies (SEPPs)

26. 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

27. 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

28. 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.
29. This chapter applies to clearing of:
- (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
 - (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).*

30. No trees are proposed to be removed as part of this application.

Chapter 11 – Georges River Catchment

31. 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,*
32. The stormwater design was reviewed by Council's Development Engineer. No changes are proposed to the approved stormwater management system and no changes to conditions are required.

State Environmental Planning Policy (Resilience and Hazards) 2021

33. Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 is relevant to the proposal.
34. 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.
35. 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.
36. The site was deemed to be suitable for residential development at the DA approval stage.

State Environmental Planning Policy (Transport and Infrastructure) 2021

37. Ausgrid was consulted as required by Chapter 2. No objection was raised and no conditions required.

State Environmental Planning Policy (BASIX) 2004

38. 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.
39. 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

40. 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.
41. The proposal involves alterations to an approved residential flat building and is therefore affected by the State Environmental Planning Policy.
42. 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:
- the advice (if any) obtained from the design review panel, and*
 - the design quality of the development when evaluated in accordance with the design quality principles, and*
 - the Apartment Design Guide.*

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: Jim Apostolou (Registration No.7490)	Yes

43. 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	<p>1. Communal open space has a minimum area equal to 25% of the site. Minimum 513.5sqm</p> <p>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)</p>	<p>No change to approved area of the communal open space.</p> <p>The modification seeks consent to delete the children's play equipment from the rooftop area which is supported.</p>	Yes
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements: Min deep soil area of 7% (149sqm)</p> <p>Minimum dimension of 6m</p>	No change to approved development.	Yes
3F- Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows: <u>Up to 12m (4 storeys)</u> Habitable - 6m Non-habitable – 3m</p> <p><u>Up to 25m (5-8 storeys)</u> Habitable – 9m Non-habitable – 4.5m</p>	No change to approved development.	Yes
3G – Pedestrian Access and entries	Building entries and pedestrian access connects to and addresses the public domain.	No change to approved development.	Yes

Clause	Standard	Proposal	Complies
	Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge		
3H-Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	No change to approved development.	Yes
3J-Bicycle and car parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> - On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <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>	No change to approved development.	Yes
4A- Solar and daylight access	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight	No change to approved development.	Yes

Clause	Standard	Proposal	Complies
	<p>between 9am and 3pm at mid-winter in the 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>		
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>	No change to approved development.	Yes
4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms = 2.7m Non-habitable rooms = 2.4m</p>	No change to approved development.	Yes
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 minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p>	<p>Min. 50sqm Min. 70sqm Min. 90sqm</p> <p>Complies.</p>	<p>Yes Yes Yes</p> <p>Yes</p>

Clause	Standard	Proposal	Complies
	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	Complies	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>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	Complies.	Yes
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>Living rooms or combined living/dining rooms have a minimum width of: -3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	No change to approved development.	Yes

Clause	Standard	Proposal	Complies
4E- Private Open space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> - 1 bedroom = 8sqm/2m depth - 2 bedroom = 10sqm/2m depth - 3+ bedroom = 12sqm/2.4m <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m</p>	No change to approved development.	Yes
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	No change to approved development.	Yes
4G- Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> 1 bedroom = 6m³ 2 bedroom – 8m³ 3 bedroom – 10m³ <p>At least 50% of storage is to be located within the apartment.</p>	No change to approved development.	Yes
4H- Acoustic Privacy	Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. Window and door openings are generally orientated away from noise sources	No change to approved development.	Yes

Clause	Standard	Proposal	Complies
	<p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas</p> <p>Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources</p>		
4J – Noise and Pollution	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 	No change to approved development.	Yes
4K – Apartment Mix	<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building</p>	No change to approved development.	Yes

Clause	Standard	Proposal	Complies
4L – Ground Floor Apartments	Street frontage activity is maximised where ground floor apartments are located. Design of ground floor apartments delivers amenity and safety for residents.	No change to approved development.	Yes
4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	Appropriate façade treatments are proposed.	Yes
4N – Roof design	Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.	No change to approved development.	Yes
4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	No change to approved development.	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	No change to approved development.	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	No change to approved development.	Yes
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings - new	Not applicable.	N/A

Clause	Standard	Proposal	Complies
	additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.		
4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A compliant BASIX Certificate accompanies the application.	Yes
4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	No change to approved development.	Yes
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	No change to approved development.	Yes
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	No change to approved development.	Yes

Georges River Local Environmental Plan 2021

44. The building height of the development was approved at 17.1m (MOD2020/0084) under Kogarah LEP 2012. The maximum height under GRLEP 2021 is 15m. A 50mm increase in parapet height is proposed close to Lift 1 however it does not change the overall approved height of the building.



Figure 5: Parapet height detail

45. The FSR of the development was approved at 1.5:1 (3,081.6sqm) (MOD2020/0084) under KLEP 2012. The maximum FSR under GRLEP 2021 is 1.5:1. The conversion of parts of the approved service areas with ensuite bathrooms for seven units results in an additional 40.4sqm of gross floor area, bringing the total FSR to 1.52:1 (3,122sqm) and resulting in a variation to the maximum Floor Space Ratio (FSR) control of 40.4sqm. This variation has been assessed below.

Assessment of Floor Space Ratio (FSR) variation

46. The approved FSR of the development is 3,081qm or 1.5:1. The increase FSR arises from the conversion of service areas to bathrooms for seven units and totals 40.4sqm, resulting in a 40.4sqm exceedance above the maximum 1.5:1 FSR control for the site, which represent a variation of 1.3%.
47. The applicant has addressed the variation in their Statement of Environmental Effects and has been reproduced below.

Assessment of FSR Variation

The extent of gross floor area within the development has been increased by approximately 40.4m². The resultant FSR is 1.52:1 (3122m²) which exceeds the maximum allowable FSR of 3081.6m². The extent of the non-compliance is approximately 40.4m². The additional gross floor area can be attributed to the proposed ensuite forming part of a number of “unused” service zones, centrally sited within the already established apartment floor plates.

In the NSW Land and Environment Court case of *Gann & Anor v Sutherland Shire Council* [2008], the Court held that there is power to modify a development application (via a Section 4.55/4.56 application) where the modification would result in the breach of development standards. The court took the view that development standards within an LEP did not operate to prohibit the granting of consent if they were not complied with (and no objection pursuant to SEPP No.1 (now relevant to a Clause 4.6 variation) had been lodged). Notwithstanding, the Court held that despite a SEPP No. 1 Objection (or Clause 4.6 variation now) not being required, a Section 96 application (this being a section 4.55) application under the EP&A Act) still requires the consent authority to take into consideration those matters referred to in Section 4.55. These matters, where relevant to the application are assessed below.

The objectives of Clause 4.4 – Floor Space Ratio within GRLEP 2021 are as follows:

- (a) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
- (b) to ensure that development provides appropriate built form transition between new buildings and—*
 - (i) adjoining land uses, or*
 - (ii) heritage items, heritage conservation areas or Aboriginal places of heritage significance,*

The proposed modified development satisfies the objectives of the FSR development standard in that:

- The size and scale of the development is not being materially altered. Overall, the proposed modified development is of a size and scale remains consistent with the planning controls despite the minor and purely numerical FSR dispensation. The ensuing built form relationship between the subject and neighbouring building's both existing and desired future, will not be materially altered;
- The site is not within a conservation area or near a heritage item; and
- The additional calculable GFA will not be perceived as a stepping outside of the building envelope noting that the breaching elements will not be visually realised from the public domain or neighbouring properties. In this regard, the breach will have no bearing on contextual character nor will it result in any perceivable visual scale increase to the development.

The site is located in a R4 – Medium Density Residential Zone. The objective of the zone is as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To enable other land uses that contribute to the vibrancy of the neighbourhood while ensuring that business centres remain the focus for business and retail activity.*
- *To encourage development that maximises public transport patronage and promotes walking and cycling.*

The proposal continues to respond to the objective of the zone in an orderly manner.

The numerical FSR departure is deemed acceptable on merit as the proposal continues to meet the objectives of both the zone and the development standard. On 'planning grounds', the modified proposal does not alter the degree of which compliance with the zone objectives was achieved under the originally approved development. This alongside a lack of additional amenity impact/s, further affirms the reasonableness of the departure.

Although an objection pursuant to Clause 4.6 is not required, the reasoning applied in *Wehbe v Pittwater Council* [2007] NSW LEC 827, is appropriate to rely upon for the purpose of determining that the proposal is well founded despite the departure from Clause 4.4 of Georges River LEP 2021. In the judgement, the Honourable Brian Preston, Chief Justice of the Land and Environment Court, set out five (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.

In response, the proposal is deemed to remain consistent with the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827 whereby the objectives of the FSR standard are achieved notwithstanding the non-compliance with the standard.

This method alone is sufficient to satisfy the 'unreasonable and unnecessary' requirement.

Given that compliance with the zone and development standard objectives is achieved, insistence on strict compliance with the FSR development standard is considered to be unnecessary in the circumstance. The proposal remains consistent with the relevant objectives and will create negligible environmental impacts. The proposal is therefore justified on environmental planning grounds.

It is also worth noting that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provided further clarification relevant to the matters in which a Clause 4.6 was required to satisfy. Of note, it was identified that there was no need to demonstrate a "better" planning outcome.

87 *The second way is an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

88 *The second matter was in cl 4.6(3)(b). I find that 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.

Overall, the proposal is considered to achieve a superior planning purpose by way of enhancing residential amenity in the absence of any additional or adverse impacts.

48. In the NSW Land and Environment Court case of *Gann & Anor v Sutherland Shire Council* [2008], the Court held that there is power to modify a development application (via a Section 4.55 application) where the modification would result in the breach of development standards. The Court took the view that development standards within an LEP did not operate to prohibit the granting of consent if they were not complied with (and no objection pursuant to SEPP No. 1 (now relevant to a Clause 4.6 variation) had

been lodged). Notwithstanding, the Court held that despite a SEPP No. 1 Objection (or Clause 4.6 variation now) not being required, a Section 96 application (this being a Section 4.56 of the EP&A Act) still requires the consent authority to take into consideration those matters referred to in Section 4.15. These matters, where relevant to the application are assessed below.

Objectives of Clause 4.4 – Floor space ratio

49. The objectives of Clause 4.4 are as follows:
 - (a) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*
 - (b) *to ensure that development provides appropriate built form transition between new buildings and—*
 - (i) *adjoining land uses, or*
 - (ii) *heritage items, heritage conservation areas or Aboriginal places of heritage significance,*
 - (c) *to control development density and intensity of land use, taking into account—*
 - (i) *the environmental constraints and values of the site, including retaining the scenic, visual, and landscape qualities of the area, and*
 - (ii) *the amenity of adjoining land and the public domain, and*
 - (iii) *the availability of infrastructure to service the site, and*
 - (iv) *the capacity of the road network to accommodate the vehicular and pedestrian traffic that a development will generate.*
50. The proposal satisfies the objectives of the floor space control as the additional floor space located within the footprint of the approved building (being the conversion of surplus service areas to bathrooms for seven units) and will not add to the perceived approved bulk of the building.
51. The site is located in the R4 High Density Residential zone, the objectives of which are:
 - *To provide for the housing needs of the community within a high density residential environment.*
 - *To provide a variety of housing types within a high density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To enable other land uses that contribute to the vibrancy of the neighbourhood while ensuring that business centres remain the focus for business and retail activity.*
 - *To encourage development that maximises public transport patronage and promotes walking and cycling.*
52. The modified proposal satisfies the relevant objectives of the zone in that it does not alter the approved intensity of residential land use and continues to provide a variety of dwelling types.
53. The minor numerical variation to the floor space development standard is acceptable on merit as the proposal meets the objectives of both the zone and the development standard.

54. On “planning grounds” the modified proposal does not alter the degree of which compliance with the zone objectives was achieved under the originally approved development. The modifications will not result in any amenity impacts on adjoining sites given the additional floor area is confined to the approved building footprint.
55. Although an objection pursuant Clause 4.6 is not required, the reasoning applied in *Wehbe v Pittwater Council* [2007] NSW LEC 827, is appropriate to rely upon to determine that the proposal is well founded despite the departure from Clause 4.4 of Georges River LEP 2021. In the judgement the Honourable Brian Preston, Chief Justice of the Land and Environment Court, set out 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.
56. The proposal is considered to be consistent with the first of these in that the objectives of the FSR standard and the R4 zone objectives are achieved notwithstanding the numerical variation proposed.
57. Given that compliance with the zone and development standard objectives is achieved, insistence on strict compliance with the FSR standard is considered to be unreasonable and unnecessary in the circumstances. The proposal is compliant with the relevant objectives and will create no environmental impacts. The proposal is therefore justified on environmental planning grounds.
58. 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:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that 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.

59. The proposal is considered to achieve a planning purpose of enhancing residential amenity and housing diversity in the absence of any additional or new adverse impacts.

Georges River Development Control Plan 2021

60. The proposed development does not affect the relevant provisions of GRDCP 2021 with regards to Residential Flat Buildings.

Developer Contributions

61. The proposed development is subject to developer contributions which were levied at the time of the development determination. The modification does not alter the amount payable.

Planning Agreements

62. There is no planning agreement applicable to the development.

EP&A Regulation 2000

63. No matters within the Regulation are affected by the modification. An updated BASIX certificate has been lodged. The BASIX certificate reference in the conditions of consent has been updated.

IMPACTS**Likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

64. The proposed changes are minor and result in minimal environmental impacts, as discussed above.

Suitability of the site for the development

65. The site is zoned R4 – High Density Residential. The proposal is a permissible form of development in this zone. The proposed changes do not affect the suitability of the site for the development, and do not impact the development potential of the adjoining allotments.

SUBMISSIONS AND THE PUBLIC INTEREST

66. The application was notified in accordance with the provisions of Section 4.55 of the Environmental Planning and Assessment Act 1979. No submissions were received.

The public interest

67. The proposal is not inconsistent with the public interest.

REFERRALS**Council Referrals**

68. The application was referred to the following Council staff for comment:
- Development Engineer
 - Traffic Engineer
 - Land Information
69. No objections were raised and amended conditions of consent were provided where required (Traffic Engineer only).

CONCLUSION

70. The application has been assessed having regard to the Section 4.55 and the Matters for Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979. Following the assessment of the modifications, it is considered that Modification No. MOD2022/0087 is considered worthy of support subject to updated conditions.

71. The conditions in the consent requiring modification are limited to condition numbers 1(i), (i)(a), (ii) and (ii)(a).

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

72. The reasons for this recommendation are:

- The proposal remains consistent with the original reasons for approval;
- The proposed modifications to the approved plans do not result in undermining the objectives of the Georges River Local Environmental Plan 2021 or the Georges River Development Control Plan 2021: and
- The proposed modifications to the approved plans do not result in any adverse impact on the natural and built environment.

Determination

73. THAT pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979 that the Georges River Local Planning Panel grant consent to Modification Application MOD2022/0087 for modifications to DA212/2016 (as amended) at Lots 23 to 26 in DP5452 known as 27-33 Nielsen Avenue, Carlton, subject to the amendments in the below conditions of consent (condition 1 only):

SECTION A - General Conditions

The conditions that follow in this Section A of the Notice of Determination are general conditions which are imposed to ensure that the development is carried out in accordance with the development consent.

1. **Approved Plans of Consent** - The development must be implemented in accordance with the approved plans, specifications and details listed below and any supporting information submitted with the Development Application except as amended by any conditions attached to the Development Consent:

- (i) ~~Architectural plans Prepared by Architecture and Building Works Project No PN-16005 Drawing numbers DA-0800 (J), DA-0900 (J), DA-1000 (M), DA-1100 (G), DA-1200 (G), DA-1300 (F), DA-1400 (H), DA-1500 (H), DA-2000 (F), DA-2100 (F), DA-2200 (F), DA-3000 (F), DA-3100 (D), DA-3200 (E) and DA-3300 (D) received by Council on 31 November 2017.~~

~~And as amended by architectural plans prepared by Loucas Architects, No. A-1400, A-1500, A-2000, A-2100, A-2200, A-3000, Rev B dated 30.09.20.~~

Plan	Date	Revision	Prepared By
Site Plan	23.2.2022	A	Loucas Architects
Lower Basement Floor Plan	23.2.2022	A	Loucas Architects
Upper Basement Floor Plan	23.2.2022	A	Loucas Architects
Ground Floor Plan	23.2.2022	A	Loucas Architects
First Floor Plan	23.2.2022	A	Loucas Architects
Second Floor Plan	23.2.2022	A	Loucas Architects
Third Floor Plan	23.2.2022	A	Loucas Architects
Fourth Floor Plan	9.8.2022	B	Loucas Architects
Roof Plan	9.8.2022	B	Loucas Architects
Elevation 01	23.2.2022	A	Loucas Architects
Elevations	23.2.2022	A	Loucas Architects

Elevation 03	23.2.2022	A	Loucas Architects
Section A-A	23.2.2022	A	Loucas Architects
Section B-B and A2	23.2.2022	A	Loucas Architects
Landscape Sections	23.2.2022	A	Loucas Architects
GFA Calculation	23.2.2022	A	Loucas Architects

(This condition is modified as part of MOD2020/0084 (DA2016/0212))

(This condition is modified as part of MOD2022/0087 (DA2016/0212))

- (i)(a) BASIX Certificate ~~744512_12~~ 744521M_16 dated ~~4 October 2020~~ 7 April 2022 prepared by Max Brightwell.

(This condition is added as part of MOD2020/0084 (DA2016/0212))

(This condition is modified as part of MOD2022/0087 (DA2016/0212))

- (ii) Landscape plans- Prepared by Isthmus- Drawing numbers ISO213DA1 and DA2 ~~Issue D dated 10 October 2017~~ Issue H dated 23 February 2022.

(This condition is modified as part of MOD2022/0087 (DA2016/0212))

- (ii)(a) ~~The rooftop landscape plan is to be amended to be consistent with approved architectural plan A-1400 prepared by Loucus Architects, Rev B dated 30.09.20.~~

(This condition is added as part of MOD2020/0084 (DA2016/0212))

(This condition is deleted as part of MOD2022/0087 (DA2016/0212))

- (iii) Stormwater plans- Australian Consulting Engineers- Job No 1606380 Drawing numbers D00 (A), D01 (C), D02 (C), D03 (E), D05 (C), D06 (A), D07 (A),

SECTION B – Prior to the Issue of a Construction Certificate or Demolition Conditions

The conditions that follow in this Section B of the Notice of Determination relate to the payment of fees, amendments being made to the proposal, further investigation being undertaken or the preparation of documentation that must be complied with prior to the issue of a Construction Certificate or Demolition.

Note: A copy of the Construction Certificate shall be forwarded to Council prior to commencement of construction where Council is not the certifier who issued the Construction Certificate.

2. Asset & Building Fees

Payment of the following amounts as detailed below:

- *Builders Long Service Levy of \$107,786.69
- Driveway Design and Inspection Fee (Dwelling) of \$ 1,000.00
- Driveway and Restoration Works Design Inspection Fee of \$ 36,400.00
- Asset Inspection Fee of \$ 110.00

*Note: The Builders Long Service Levy quoted is based on the market value of the proposed building works and the Levy Rate applicable at the time of assessing the Development Application and may be subject to change prior to payment.

3. Restoration Deposit

A deposit of \$36,400.00 shall be lodged with Council to ensure the completion of the following works to be completed at the applicant's expense

- Construction of 1.2 metre wide concrete footpath along Nielsen Avenue.
- All associated road pavement restorations.
- Installation of turf as required across full street frontage along Nielsen Avenue.

These works are to be in accordance with plans and specifications to be issued by Council.

4. Section 94 Index

Section 94 Contributions are to be paid as detailed below in the following condition, and until paid all contributions will be indexed four (4) times a year (on the following dates) to allow for the cost increases: 31 January, 30 April, 31 July and 31 October.

5. Section 94 Contributions

As at the date of Development Consent the following contributions have been levied on the subject development under Section 94 of the Environmental Planning and Assessment Act, 1979 and the nominated Section 94 Contributions Plans:

No.1 – Roads and Traffic Management – Residential	\$ 5,389.68
No.5 – Open Space 2007	\$382,396.40
No.9 – Kogarah Libraries – Buildings	\$ 6,143.80
No.9 – Kogarah Libraries – Books	\$ 8,617.38
TOTAL	\$402,547.26

Any of the above Section 94 Contributions Plans may be inspected at the Georges River Council Customer Service Centres.

(This condition is modified as part of MOD2020/0084 (DA2016/0212))

6. Dilapidation Report

Prior to issue of any construction certificate or commencement of any demolition or earth works on site, the applicant shall submit, for acceptance by the Principal Certifying Authority (PCA), with a copy forwarded to Council where Council is not the PCA, a full dilapidation report on the visible and structural condition of the following properties;

- All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.

The report must be completed by a suitably qualified consulting structural/ geotechnical engineer as determined necessary by that professional based on the excavations for the proposal, the subsoil conditions and any recommendations of a geotechnical report for the site. The report shall have regard to protecting the applicant from spurious claims for structural damage and shall be verified by all stakeholders as far as practicable.”

Reports relating to properties that refuse access to carry out inspections to complete the dilapidation report, after being given reasonable written notice to request access (at least 14 days) at a reasonable time (8.00am-6.00pm), are not to hold up the release of the Construction Certificate.

7. Soil and Water Management

A Soil and Water Management Control Plan, incorporating contour levels and prepared in accordance with Environmental Site Management Policy shall be submitted to Council detailing all measures to control soil erosion and sedimentation runoff from the site during excavation and construction activities.

8. SEPP No 65 Certification

A design verification statement from a qualified designer shall be submitted that verifying that the plans and specifications achieve the design quality of the development for which consent was granted having regard to the design quality principles of State Environmental Planning Policy No. 65.

9. Adaptable Housing Compliance

The proposed development including the nominated adaptable units shall comply with the adaptable housing provisions of AS4299 – Adaptable Housing and AS1498 – Access and Mobility (Parts 1 and 2). The Adaptable Housing checklist and circulation diagram demonstrating compliance shall be submitted.

9A. Unit 4.02 storage

2m³ of storage is to be located within the basement level to service unit 4.02 and referenced on all plans and documents.

(This condition is added as part of MOD2020/0084 (DA2016/0212))

10. Ausgrid Sub Station

The applicant is to confer with Ausgrid to determine if an electricity distribution substation is required. If so, shall be incorporated within the Construction Certificate and it will be necessary for the final film survey plan to be endorsed with an area having dimensions 5m x 4m over the location of the proposed electricity distribution substation to be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. Ausgrid's requirements are to be met prior to release of the occupation certificate.

11. Clearances to Overhead Mains

If any part of the proposed structure, within 5m of a street frontage, is higher than 3m above footway level, the applicant is to confer with Ausgrid to determine if satisfactory clearances to any existing overhead mains will be affected. If so, the applicant is to make arrangements with Ausgrid for any necessary modification to the electrical network in question.

These works to be at the applicant's expense and Ausgrid's requirements are to be met prior to actual construction commencing on site or as agreed with Ausgrid.

Supply of electricity

It is recommended that for the nominated electrical consultant/contractor to provide a preliminary enquiry to Ausgrid to obtain advice for the connection of the proposed development to the adjacent electricity network infrastructure. An assessment will be carried out based on the enquiry which may include weather or not:

- The existing network can support the expected electrical load of the development
- A substation may be required on-site, either a pad mount kiosk or chamber style and;
- Site conditions or other issues that may impact on the method of supply.
- Please direct the developer to Ausgrid's website, www.ausgrid.com.au about how to connect to Ausgrid's network

Service mains

It appears that existing overhead electricity service mains, that supply the subject property, may not have sufficient clearance to the proposed construction as per the requirements of the "Installation and Service Rules of NSW". It is recommended that the developer engage a Level 2 Accredited Service Provider (ASP) Electrician to ensure that the installation will comply with the Service Rules.

(This condition is modified as part of MOD2020/0084 (DA2016/0212))

12. Sydney Water (DA Only)

The approved plans must be processed through Sydney Water to determine whether the development will affect any Sydney Water asset's (sewer and water mains, stormwater drains and/or easements) and if any further requirements need to be met. An approval receipt will be issued by Sydney Water which is to be submitted to Council or the Principal Certifying Authority.

Please refer to the web site www.sydneywater.com.au for;

- Sydney Water Tap in – see Plumbing, building and developing and then Sydney Water Tap in; and
- Building over/adjacent to a Sydney Water Asset - see Plumbing, building and developing, building then Building Approvals or telephone 13 20 92.

13. Certification of Detailed Plan

The detailed stormwater plan is to be certified by a Chartered Professional Engineer. A statement, that the stormwater system has been designed in accordance with Council's Water Management Policy and satisfies the provisions and objectives of that policy, must be included in the Stormwater Detailed Plan.

14. Stormwater Plan

The submitted stormwater plan has been assessed and approved as a concept plan only. No detailed assessment of the design has been undertaken. A Detailed Stormwater

Plan and supporting information of the proposed on-site stormwater management system is to be submitted. The required details in this Plan and the relevant checklist are presented in the document 'Water Management Policy. Kogarah Council. August 2006'

The design parameters and the general concept of the proposed on-site stormwater management system are to be the same as documented in the approved Concept Stormwater Plan for the proposed development. Any conceptual variations to the stormwater design will require written approval from Council and will require to be justified and supported by appropriate details, calculations and information to allow for proper assessment.

The Detailed Stormwater Plan is to address the following issue(s):

- a) A suitably qualified engineer is to certify that appropriate design measures have been taken to ensure that the upper and lower basements have been protected from flooding in the case of the On-site Detention system malfunctioning or reaching capacity.

15. **Ingress Points**

All possible ingress points such as vehicle entrances and exits, ventilation ducts, windows, light wells, lift shaft openings, risers and stairwells to the basement car parking levels are to be built at or protected up to the 1 in 100 year flood levels. The applicant will need to liaise with the flood consultant with respect to the required levels at each possible ingress location.

SECTION C – Prior to Commencement of Construction Conditions

The conditions that follow in this Section C of the Notice of Determination are specific to the proposed development and must be complied with prior to the commencement of construction on the site.

16. **Geotechnical Report**

Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site. In this regard, all excavated waste materials shall be disposed of at an approved Waste Depot.

No rock breaking or other machinery for the excavation, drilling, cutting or removal of rock shall be used on the site prior to the acceptance by the principal certifying authority of the following documentation:

- (i) A report by a geotechnical engineer detailing the measures recommended in undertaking the works so as to prevent damage to any adjoining or nearby buildings.
- (ii) The type and size of machinery proposed.
- (iii) The routes of all trucks to convey material to and from the site.

17. **On-Site Detention**

A 49.6m³ On-Site Detention system with a Maximum Site Discharge of 25 Litres per Second is to be provided in accordance with the Stormwater Concept Plan and

associated Design Assessment Report. The overflow is to be directed to the site drainage system.

18. **Certification by Mechanical Engineer**

To ensure that adequate provision is made for ventilation of the building, mechanical and /or natural ventilation shall be provided. These systems shall be designed in accordance with the provisions of:-

- a) The Building Code of Australia;
- b) Australian Standard AS 1668 Part 1 - 1998;
- c) Australian Standard AS 1668 Part 2 - 2002;
- d) The Public Health Act 2010;
- e) The Public Health Regulation 2012;
- f) Australian Standard 3666.1 - 2002;
- g) Australian Standard 3666.2 - 2002;
- h) Australian Standard 3666.3 - 2000.

Details of all mechanical and /or natural ventilation systems, along with specific certification, provided by an appropriately qualified person, verifying compliance with the abovementioned requirements.

19. **Structural Engineer's Details**

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

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

20. **Tree Protection**

Prior to the commencement of any works on the site the tree protection measures required for the established Tree Protection Zone (TPZ) of the trees to be retained shall be installed in accordance with Section 4 - *Australian Standard AS 4970-2009 - Protection of trees on development sites*.

Unless otherwise specified in AS 4970-2009 a protective fence consisting of 1.8m high fully supported chainmesh shall be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed below. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.

There shall be no services installed within the drip line TPZ of the tree. This fence shall be kept in place during demolition, construction and also have a sign displaying "Tree Protection Zone" attached to the fence, this must also include the name and contact details of the Project Arborist.

21. **Tree Retention – Arborist Report**

The trees identified for retention in the Arboricultural Development Assessment Report dated September 2016 by Paul Vegzoff of Moore Trees listed below shall be protected in

accordance with the above report and the requirements of Section 4 - *Australian Standard AS 4970-2009 - Protection of trees on development sites*.

Tree Numbers	Location on site	TPZ
1,2,3, 9 -11 26 – 29, 30, 31	27 – 33 Nielsen Avenue, Carlton	Refer to Arborist report

LPP045-22

22. Protection of Site – Hoarding

A hoarding or fence must be erected between the work site and the public place if:

- the work involved in the erection or demolition of a building is likely to cause obstruction or inconvenience to pedestrian or vehicular traffic in a public place; or
- if it involves the enclosure of a public place.

If necessary an awning is to be erected which is sufficient to prevent any substance from or in connection with the work from falling into a public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

If the work site is likely to be hazardous to persons in a public place, it must be kept lit between sunset and sunrise.

23. Ground Anchors

Should the proposed development require the installation of ground anchors to a road reserve the following must be complied with:

- The appropriate Roads Act 1993 approvals shall be obtained.
- The anchoring is to be de-stressed once no longer required.
- The work is to be clear of all services contained within the public roadway and the required dial before you dig investigations are to be undertaken in relation to any services that may be in the proposed anchor locations.
- Public liability insurances being held by the builder/ developer with a copy being submitted to Council.
- A works-as-executed plan showing the exact location of all anchoring points being submitted to Council upon their installation.

It is to be noted that if anchoring into adjacent private properties is required any such approval would need to be obtained from the owners of this property.

24. Driveway

In respect to vehicular access to the proposed development the gutter crossing and driveway are to be reconstructed between the kerb and street alignment to Council's specifications.

In this regard a separate driveway application is to be lodged with Council for works outside the property boundary. Furthermore the design boundary level is to be received from Council prior to construction of the internal driveway.

25. Council Infrastructure Inspection

Prior to the commencement of any works an authorised representative of the applicant is to organise and attend a meeting on site with Council's Infrastructure Compliance Co-ordinator to discuss protection of Council's infrastructure. To organise this meeting contact Council's Customer Service Centre on 9330 6400.

26. Public Liability Insurance

All nominated contractors / applicants carrying out driveway and/or restoration works on Council property must carry public liability insurance with a minimum cover of twenty million dollars (\$20,000,000.00). In this regard, prior to commencement of works, the principal contractor is to lodge an "Application for the Construction of Work by Private Contractor" to Council, which includes submitting evidence of their current insurance. The principal contractor must ensure that sub-contractors are also adequately insured.

27. Soil Erosion Controls

Prior to commencement of any site works, erosion and sediment controls are to be installed in accordance with Environmental Site Management Policy and any approved Soil and Water Management Plan and shall incorporate:

- Measures to prevent sediment and other debris escaping from the cleared or disturbed areas into drainage systems or waterways;
- Controls to prevent tracking of sand, soil, aggregates, etc, by vehicles onto adjoining roadways.

SECTION D – Construction and Operational Conditions

The conditions that follow in this Section D of the Notice of Determination are imposed to ensure the development is constructed and operates having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment during the construction phase or the operation of the use.

28. Inspections - Multi Unit

The following lists of inspections are the **MANDATORY CRITICAL STAGE INSPECTIONS** that **MUST** be carried out by the Principal Certifying Authority (PCA).

- (a) at the commencement of building works
- (b) prior to covering waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building, and
- (c) prior to covering any stormwater drainage connections, and
- (d) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.

Certificates from your engineer or subcontractor are **NOT** acceptable in the first instance for the above inspections. Failure to have your PCA carry out these inspections could result in a delay or refusal to issue an Occupation Certificate.

In addition to the above, it is recommended that the following inspections be carried out for the subject development;

- Erosion Control
- Earthworks/Excavation
- Building setout
- Concrete reinforcement
- Timber and/or steel framework
- Mechanical/Hydraulic work
- Driveways
- Landscaping
- External Finishes

29. Storage of materials on Public Road

All building materials or waste containers must be stored within the confines of the site. The storage of such building materials, waste containers or equipment associated with the project upon the public roadway, including the pedestrian footway or unpaved verge, is prohibited.

30. Use of Crane on Public Road

Prior approval must be obtained from Council a minimum of 24 hours before the use on any site of a crane, hoist or similar machinery that will be used to transfer materials across Council's footpath. This includes cranes that are situated on roadways, footpaths and road reserves.

Any application for approval must be accompanied by the following information:-

- Site sketch indicating the proposed location of the crane, pedestrian controls and traffic controls;
- A copy of current public liability insurance with minimum cover of twenty million dollars (\$20,000,000) indemnifying Council in the event of an incident;
- A copy of an RMS accredited traffic control plan;
- Proof that the local area command of the NSW Police have been advised of the proposal.

The use of a crane, hoist or similar machinery on any site without prior approval is prohibited.

31. Building Height - Surveyors Certificate

The proposed building is not to be erected at a height greater than that indicated on the approved plan. A certificate from a Registered Surveyor verifying the correct Reduced Level of the ground floor slab and boundary clearances shall be submitted prior to inspection of the steel reinforcement.

32. Excavation of Site

Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

In this regard, all excavated waste materials shall be disposed of at an approved Waste Depot (details are available from Council).

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

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

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

33. Stormwater to Kerb

Any stormwater connections to the kerb and gutter are to be in accordance with Council's '*Specification for Construction by Private Contractors*'.

34. Redundant Driveway

All existing vehicular crossings adjacent to the subject premises that have become redundant shall be removed and the footway and kerb and gutter reinstated at the developer/applicants expense.

35. Work within Road Reserve

A Development Consent or any related Construction Certificate does not allow for the erection of a structure or to carry out work in, on or over a public road. Should a structure or work be required a separate approval under S138 of the Road Act 1993 must be granted by Council prior to the commencement of any works within the road reserve. Applications may be made at Council's Customer Service Centre.

36. Damage within Road Reserve & Council Assets

The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.

37. Public Utility & Telecommunication Assets

The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.

38. Stormwater Drainage

All roof water and surface water from paved or concreted areas being disposed of to the street gutter by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3.2. The line must pass through a silt arrestor pit, a standard design is available within Council's Water Management Policy.

39. Garbage Room

The proposed garbage room being provided with the following:-

- a) A smooth concrete floor graded and drained to a floor waste connected to the sewer of the Water Board.
- b) The walls being cement rendered with the intersection of the walls and floor being coved to a radius of not less than 25mm.
- c) The door being close fitting to prevent the access of rats and mice.
- d) A cold water hose cock being provided for the cleaning of containers and the room itself.
- e) Ventilation being provided by means of direct connection to the outside air to the satisfaction of Council.
- f) A sign, minimum size 600mm x 600mm, directing residents not to place recyclables in garbage carts and encouraging residents to recycle. Details of an acceptable wording for the sign are available from Council.

40. Hours of Construction

Construction may only be carried out between 7.00 am and 5.00 pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday.

41. Restriction on Hours of Excavation (other than single residential dwelling)

Despite the general hours of construction above,

- a) The hours where rock breaking, cutting, hammering and drilling occur shall be limited to 9:00am – 4:00pm on weekdays only.
- b) A noise management plan for the above works, prepared by a suitably qualified acoustical practitioner in accordance with the Interim Noise Construction Guidelines prepared by the Department of Environment & Climate Change NSW, must be submitted to Council prior to commencement of any excavation works.

41A. Use of the rooftop common area

The rooftop common area shall be vacated and not used between the hours of 10.00pm and 8.00am the following day.

(This condition is added as part of MOD2020/0084 (DA2016/0212))

42. Provision of Amenities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site or as specified by Workcover requirements .

- each toilet provided must be a standard flushing toilet and must be connected:
- to a public sewer; or
- if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council; or
- if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities must be completed before any other work is commenced.

43. Letter Boxes

Suitable letter box facilities (including Owner's Corporation in the case of strata units) shall be provided in accordance with Australia Post specifications.

44. Oil/Silt Separator

An oil/silt separator sized to the catchment area must be specified on the Stormwater Detailed Plans and located downstream of the proposed basement car park and prior to discharge to councils stormwater system.

45. Car Wash

To ensure that waste water is treated in an acceptable manner the car wash bay shall be designed and constructed to ensure that waste water is discharged to the sewer in accordance with the requirements of Sydney Water. Evidence of a permit issued by Sydney Water shall be submitted.

46. Basix Certificate Details – DA Only

Construction of building works given Development Consent must be carried out in accordance with a valid and current BASIX certificate and all required commitments must be satisfied.

47. Air Conditioning / Offensive Noise

Air conditioning plant and equipment shall be installed and operated so as to not create an offensive noise as defined under the Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Noise Control) Regulation 2008.

48. Building Finishes

The building finishes are to be constructed in accordance with the colour board and perspective submitted with the Development Application.

49. Allocation of Car Parking Spaces

A minimum of 54 off street car parking spaces shall be constructed, drained, marked and maintained at all times in accordance with the approved plans. These spaces shall be allocated as follows:

- a) 45 are to be allocated to the residential units.

- b) 9 are to be allocated as visitor parking spaces.

50. Residential Car Parking Spaces

A minimum of one (1) unrestricted car parking space shall be allocated to each residential unit.

51. OSD Markers

All on-site stormwater storages that experience permanent or temporary ponding shall be indicated on the site by fixing a marker plate.

52. Visitor Parking

A directional sign shall be provided at the front of the site indicating the availability of visitor and/or customer parking on site. Those visitor and/or customer spaces shall be marked or signposted.

53. Planting or Walls

Planting or walls adjacent the driveway near the boundary shall comply with the requirements of "AS/NZS 2890.1:2004 - Off Street Car Parking, Section 3.2.4(b)".

54. Works Zone

The installation of a "Works Zone" for the site will require the approval from the Traffic Advisory Committee. As a result, the applicant shall provide a formal request to Council's Traffic Section with the duration and exact location of the required "Works Zone" at least 6 weeks prior to its required installation date. All costs associated with the installation of a "Works Zone" will be at the applicant's expense.

55. Road Closure Application

A Road Closure Application form and associated documents shall be submitted to Council for approval at least 5 business days prior to any proposed lane usage for concrete pours, cranes or other activities involved in the demolition, excavation and construction on the site.

56. Tree Protection - Excavation

Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not adversely be affected.

Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project Arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

Tree Protection Zone (TPZ) around the trees to be retained are not to have soil level changes or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

SECTION E – Prior to Occupation or Subdivision Certificate Conditions

The conditions that follow in this Section E of the Notice of Determination relate to conditions that ensure that the development is completed in accordance with the requirements of the Development Consent prior to the issue of either an Occupation Certificate or a Subdivision Certificate.

57. Adaptable Housing Certification

Certification shall be provided by a person suitably accredited by the Association of Consultants in Access Australia, verifying that the development has been constructed in accordance with the requirements of AS4299 - Adaptable Housing and AS1428 - Design for Access and Mobility and in accordance with the report and checklist submitted with the Construction Certificate.

(This condition is modified as part of MOD2020/0084 (DA2016/0212))

58. SEPP No 65 Certification

A design verification statement from a qualified designer shall be submitted verifying that the development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principals of State Environmental Planning Policy No. 65.

59. Completion of Landscaping

Certification shall be provided from a suitably qualified and experienced Landscape Designer or Landscape Architect. This Certification shall verify that the landscape works have been completed in accordance with the approved detailed landscape plan and relevant conditions of this consent.

Note: A Landscape Designer is a person eligible for membership of the Australian Institute of Landscape Designers and Managers and a Landscape Architect is a person eligible for membership of the Australian Institute of Landscape Architects as a Registered Landscape Architect.

60. Consolidation of Lots

The lots covered by this development consent shall be consolidated into one lot and proof of registration of the consolidation shall be submitted to Council.

61. Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the Sydney Water Act, 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au then refer to “Water Servicing Coordinator” under “Developing Your Land” or telephone 13 20 92 for assistance.

Following application a “Notice of Requirements” will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the

Coordinator, since building of water / sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority.

62. Stormwater Compliance Certificate

A Stormwater Compliance Certificate is to be obtained for the constructed on-site stormwater management systems in conjunction with the works-as-executed drawings and the final inspection. This Certificate is to be signed by an accredited hydraulic engineer (preferably be the original design consultant) and submitted to the Principal Certifying Authority. Copy of the standard Stormwater Compliance Certificate is shown in Council's Water Management Policy.

If the proposed works involve Council owned stormwater infrastructure (or infrastructure to be owned by Council), then the applicant should organise inspection with Council and pay Council the appropriate inspection fee. Inspection is to be carried out at the following specified stages:

- Prior to backfilling of pipelines trenches.
- Prior to backfilling of drainage connection to pipeline or channels.
- Prior to casting pits and other concrete structures including kerb and gutter, aprons, pathways, vehicular crossings, dish crossings and pathway steps.

63. Positive Covenant

A Restriction on Use of the land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owner of the land. The terms of the instrument are to be generally in accordance with the Council's standard terms and conditions for Restriction on Use of the land and Positive Covenant shown in Council's Water Management Policy.

64. Maintenance Schedule

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

65. Verification of Levels

For flood affected properties, a registered surveyor shall verify the levels of the design overland runoff path and finished floor levels to AHD and according the approved plans.

66. Fire Safety Schedule

Certain items of equipment or forms of construction shall be nominated as "fire safety measures" within the building.

Upon completion of works, and before occupation of the building, each of the fire safety measures is required to be certified by an appropriately competent person (chosen by

the owner of the building). The certificate is to state that the measure was inspected and found to be designed, installed and capable of operating to a standard not less than that required by the relevant regulations.

Further, it is the responsibility of the owner of the building that each fire safety measure is again inspected and certified as to its condition every twelve (12) months following the submission to Council of the original certification.

67. BASIX Completion Receipt

In accordance with clause 154C of the Environmental Planning and Assessment Regulation 2000, prior to issuing a final occupation certificate the certifying authority must apply to the Director-General for a BASIX completion receipt.

SECTION F – Prescribed Conditions

The following are prescribed conditions of development consent pursuant to s.80A(11) of the Environmental Planning and Assessment Act 1979 and cl.98 of the Environmental Planning and Assessment Regulation 2000.

68. Compliance with the Building Code of Australia

The development must be carried out in accordance with the provisions of the Building Code of Australia.

69. Insurance Requirements under Home Building Act 1989

The builder or person who does the residential building work must comply with the applicable requirements of Part 6 of the Home Building Act, 1989. This means that a contract of insurance must be in force in accordance with Part 6 of that Act before any building work authorised to be carried out by the consent commences.

It is the responsibility of the builder or person who is to do the work to satisfy Council that they have complied with the applicable requirements of Part 6 of the Home Building Act, 1989.

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

70. Erection of Signs

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

71. Notification of Home Building Act 1989 Requirements

Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:

- (a) in the case of work for which a principal contractor is required to be appointed:
 - (i) the name and licence number of the principal contractor, and
 - (ii) the name of the insurer by which the work is insured under Part 6 of that Act,
- (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified above becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

72. Shoring and Adequacy of Adjoining Property

If the development involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (a) protect and support the adjoining premises from possible damage from the excavation, and
- (b) where necessary, underpin the adjoining premises to prevent any such damage.

The above condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

73. Council Notification of Construction

The erection of a building which is the subject of a Development Consent must not be commenced until:

- a) Detailed plans and specifications of the building have been endorsed with a construction certificate by Council or an accredited certifier.
- b) the person having the benefit of the development consent has:
 - appointed a Principal Certifying Authority (PCA), and
 - notified Council (if Council is not the PCA) *in writing* of the appointment, and
 - given at least 2 days notice to Council of their intention to commence the erection of the building. The notice may be in writing or by phone.

SECTION G – Demolition Conditions

The following conditions are imposed to ensure the demolition associated with the proposed development is carried out having regard to relevant legislation and does not unreasonably impact on the amenity of the locality or environment.

74. Demolition Conditions-Asbestos

- (a) Demolition of buildings where asbestos is determined to be present should only occur 7am – 5pm Monday to Saturdays, and must not occur on Sundays or Public Holidays, to ensure that the persons carrying out the work have access to WorkCover professionals if required.
- (b) All asbestos removal shall be undertaken in accordance with the requirements of WorkCover's 'How to Safely Remove Asbestos' Code of Practice and Council's Asbestos Policy.
- (c) Written notice must be provided to Georges River Council five (5) working days (excluding public holidays) prior to commencement of any works.

Written notice is to include the following details:

- Date the demolition will commence
- Name, address, contact details (including after hours) and licence number of the demolisher and asbestos removalist (if different)

Work must not commence prior to the nominated demolition date.

Note: it is the responsibility of the persons undertaking demolition work to obtain the relevant WorkCover licences and permits.

- (d) The owner is to notify all owners and occupiers of premises on either side, opposite and at the rear of the development site five (5) working days prior to demolition. Such notification is to be clearly written on A4 size paper stating the date the demolition will commence and is to be placed in the letterbox of every premises (including every residential flat or unit, if any). The demolition must not commence prior to the date and time stated in the notification.
- (e) A demolition or asbestos removal contractor licensed under the *Work Health and Safety Regulations 2011* must undertake removal of more than 10m² of bonded asbestos (or otherwise specified by WorkCover or relevant legislation).

Removal of friable asbestos material must only be undertaken by a contractor that holds a current AS1 Friable Asbestos Removal Licence.

- (f) Demolition sites that involve the removal of asbestos must display a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.

- (g) All asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations (Waste) Regulation 2005. All receipts detailing method and location of disposal must be submitted to Council as evidence of correct disposal.
- (h) A Clearance Certificate or Statement, prepared by a suitably qualified occupational hygienist must be provided to Council upon completion of demolition and asbestos related works, which confirms that the relevant legislative requirements in relation to safe removal and disposal have been satisfied.
- (i) A Work Cover Licensed Demolisher is to be engaged to carry out any demolition works using mechanical equipment where the structure is over 4 metres in height or to carry out any manual demolition works on a structure over 10 metres in height.
- (j) The provision of temporary fences and footpath crossing pads prior to commencement of demolition operations. Further, no waste materials or bins are to be placed on Council's roadways or footpaths.
- (k) No waste materials are to be burnt on site.
- (l) No trees as defined by Council's Tree Preservation Order being removed or damaged on the site without the prior written approval of Council.
- (m) Compliance with the provisions of Australian Standard AS 2601-1991: "The Demolition of Structures", which requires notification of demolition to be submitted at least seven (7) days prior to demolition to the NSW Workcover Authority.
- (n) Effective erosion and sediment control measures are to be undertaken during the course of demolition and building works in accordance with Council's 'Environmental Site Management Policy'. Failure to implement appropriate measures may result in a \$750 Penalty Infringement Notice (individual) and/or \$1,500 (corporation) being issued and/or the incurring of a maximum penalty of \$250,000 (corporation) or \$120,000 (individual) through the Land and Environment Court.
- (o) Appropriate measures are to be implemented on site to control dust and other air borne matter and demolition material is to be stored and stacked in a manner so as to minimise the risk of damage or nuisance to neighbouring properties.
- (p) Council being notified upon completion of the demolition works so that an inspection can be made of the roadway and footpath.
- (q) All non-recyclable demolition material being disposed of at an approved waste disposal depot. Details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept as evidence of approved method of disposal.
- (r) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and

- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed

END CONDITIONS

NOTES/ADVICES

1. Review of Determination

Section 82A of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney South Planning Panel or the Land & Environment Court.

2. Appeal Rights

Division 8 (Appeals and Related matters) Part 4 of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.

3. Lapsing of Consent

This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 95 of the Environmental Planning and Assessment Act 1979 as amended.

4. Worksite Safety

It is usually the owner/applicant's responsibility to ensure that the development site is a safe working environment. This may be by the engagement of an appropriately competent principal contractor. There are various legislative and WorkCover requirements with respect to maintaining a safe work-site. Details of these requirements and legislation, as well as, guidance and advisory material, can be found on the WorkCover Website www.workcover.nsw.gov.au.

5. Worksite Safety Scaffolding

Council is committed to worksite safety and requiring that all scaffolding is installed by competent and qualified professionals with the relative appropriate standards. The applicable Australian Standards for the scaffolding is AS/NZS1576 in respect of the design of the scaffolding and AS/NZS4576 with respect to the erection of the scaffolding. Also, you should

ensure that those erecting scaffolding are appropriately qualified and have the appropriate qualifications to erect scaffolding. For further information regarding this please see www.workcover.nsw.gov.au.

6. Kid Safe NSW

Kidsafe NSW has produced Safer Homes for Children Design and Construction Guidelines for builders, renovators and home owners. The guidelines identify common hazards for children and recommended practical design applications to improve child safety for all areas of the home. Free copies of the Guidelines are available from Council's Customer Service Centre, or contact Kidsafe on (02) 9845 0890 or their website <http://www.kidsafensw.org/homesafety/index.htm> for more information.

7. Dial Before You Dig

Underground pipes and cables may exist in the area. In your own interest and for safety, telephone 1100 before excavation or erection of structures. Information on the location of underground pipes and cables can also be obtained by fax on 1300 652 077 or through the following website www.dialbeforeyoudig.com.au.

8. Disability Discrimination Act

This authorisation does not imply that the proposal complies with *Disability Discrimination Act 1992*. The Proponent is responsible to ensure compliance with this and other anti-discrimination legislation. The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS 1428.1 – Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under *The Disability Discrimination Act 1992*.

9. Demolition Waste

Sorting your construction and demolition waste will save you money. For pricing and disposal options for sorted loads of tiles, bricks, timber concrete or asphalt call Waste Service NSW on 1300 651 116.

10. Property Address

Property addresses shall be allocated by Council in accordance with the Addressing Standard AS/NZS 4819:2011.

11. Stormwater

The Flood Planning Level (FPL) of Lot 23 of DP5452 is identified at RL 23.11m (AHD). The Flood Planning Level (FPL) of Lot 24 of DP5452 is identified at RL 23.84m (AHD). Lots 25 and 26 of DP5452 are affected by the Probable Maximum Flood (PMF) but not the 1 in 100 year flood. The development has been approved with a Finished Floor Level upon submission and review of the document *27-33 Nielsen Avenue – Flood Level Summary* by Cardno dated 9 June 2017.

ATTACHMENTS

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

