

AGENDA

Georges River Local Planning Panel

Thursday, 06 June 2024

4:00 PM

Blended Meeting

**Online and Council Chambers, Civic Centre,
Hurstville**

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GEORGES RIVER LOCAL PLANNING PANEL MEETING

ORDER OF BUSINESS

1. ON SITE INSPECTIONS

2. OPENING

3. ACKNOWLEDGEMENT OF COUNTRY

The Georges River Local Planning Panel acknowledges the Bidjigal people of the Eora Nation, who are the Traditional Custodians of all lands, waters and sky in the Georges River area. I pay my respect to Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples who live, work and meet on these lands.

4. APOLOGIES / LEAVE OF ABSENCE

5. NOTICE OF WEBCASTING

6. DISCLOSURES OF INTEREST

7. CONSIDERATION OF ITEM(S) AND VERBAL SUBMISSIONS

8. CLOSED SESSION – DELIBERATION OF REPORTS

LPP018-24	1174 Forest Road Lugarno – DA2022/0624 (Report by Development Assessment Planner)	3
LPP019-24	1176 Forest Road Lugarno – DA2022/0621 (Report by Development Assessment Planner)	67
LPP020-24	1178 Forest Road Lugarno - DA2022/0620 (Report by Development Assessment Planner)	135
LPP021-24	61 Vista Street SANS SOUCI NSW 2219 – MOD2023/0170 (Report by Development Assessment Planner - Fast Track)	203

9. CONFIRMATION OF MINUTES

Georges River Local Planning Panel Meeting - 06 June 2024

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REPORTS AND LPP DELIBERATIONS**REPORT TO GEORGES RIVER LOCAL PLANNING PANEL MEETING OF THURSDAY, 06 JUNE 2024****LPP018-24 1174 FOREST ROAD LUGARNO**

LPP018-24

LPP Report No	LPP018-24	Development Application No	DA2022/0624
Site Address & Ward Locality	1174 Forest Road Lugarno Peakhurst Ward		
Proposed Development	Demolition works and completion of a partially constructed two storey dwelling, swimming pool, retaining walls, landscaping and site works.		
Owners	Golden King Assets Pty Ltd		
Applicant	Ms Naomi Roberts-Thomson		
Planner/Architect	Planner/Architect - Rothshire		
Date Of Lodgement	26/05/2023		
Submissions	1 submission received		
Cost of Works	\$660,500.00		
Local Planning Panel Criteria	The instrument of delegations requires developments which in the opinion of the Manager of Development and Building is in the public interest to be reported to the Georges River Local Planning Panel for determination.		
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 (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Industry and Employment) 2021, Georges River Local Environmental Plan 2021 (GRLEP 2021) and Georges River Development Control Plan 2021 (GRDCP 2021).		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects, Survey Plan, Architectural Plans, Landscape Plan, Stormwater Plan, BCA Report, Swimming Pool Certificate, Detailed Site Investigation Report and Remedial Action Plan.		
Report prepared by	Development Assessment Planner		
RECOMMENDATION	That the application be refused in accordance with the reasons referenced at the end of this report.		

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

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SITE PLAN



Site Plan with subject site outlined in blue (Source: Intramaps, 2024)

EXECUTIVE SUMMARY

PROPOSAL

1. Council is in receipt of an application which seeks consent for demolition works and completion of a partially constructed two-storey dwelling, swimming pool, retaining walls, landscaping and site works.
2. The proposed works are specifically outlined below.
 - Associated internal fitout works required to finalise the construction of the existing part-constructed dwelling, including bathrooms, kitchen, fixtures and fittings.
 - Completion of the existing partly constructed swimming pool and swimming pool fencing.
 - The provision/completion of balustrades to balconies and to the internal open edges and stairs.

- Revised retaining wall arrangements.
- Provision of landscaping and planting.
- Stormwater management works.

SITE AND LOCALITY

3. The subject site is legally described as Lot A in DP328702 with a street address of 1174 Forest Road, Lugarno. This site is the second northern most allotment on the bend in Forest Road opposite Boronia Parade as the road descends from Hillcross Street.
4. The site is located within an established residential area with surrounding development comprising of low-density residential dwellings, medium density development, commercially zoned land and educational establishments. The subject site is located within the Foreshore Scenic Protection Area.
5. The subject site is a rectangular allotment with side boundaries of 45.72m, a rear boundary of 13.715m and front boundary to Forest Road of 13.715m and a total site area of 627sqm.
6. The site is currently occupied by a partially completed double storey dwelling with a swimming pool in the rear yard and associated retaining walls.
7. No lawful owners' consent has been provided in accordance with Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021.

ZONING AND PERMISSIBILITY

8. The subject site is zoned R2 under the provisions of the Georges River Local Environmental Plan (GRLEP) 2021, and the proposed development being alterations and additions to a dwelling house are permissible with consent in the zone.

SUBMISSIONS

9. The application was advertised, and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. 1 submission was received during the neighbour notification period. The application was re-neighbour notified; no submissions were received during the re-neighbour notification period. One submission was received in December 2023 outside of the notification period, this submission has been considered as part of the applications assessment.

CONCLUSION

10. Development consent is sought for demolition works and completion of a partially constructed two-storey dwelling, swimming pool, retaining walls, landscaping and site works at 1174 Forest Road, Lugarno.
11. The proposal has been assessed having regard to the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is an inappropriate response to the context of the site and will not result in a good planning and urban design outcome for the locality.
12. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policies (SEPP), the Georges River Local Environmental Plan 2021, and Georges River Development Control Plan 2021 and fails to comply Chapter 2 Vegetation in Non-Rural Areas under SEPP Biodiversity and Conservation) 2021, SEPP (Resilience and Hazards) 2021, GRLEP 2021, GRDCP 2021 development objectives and controls. Any variations have been addressed and are not worthy of support on merit.

REPORT IN FULL PROPOSAL

13. Council is in receipt of an application which seeks consent for demolition works and completion of a partially constructed dwelling of a two-storey single dwelling, swimming pool, retaining walls, landscaping, and site works.
14. The proposed works are specifically outlined below.
 - Associated internal fitout works required to finalise the construction of the existing part-constructed dwelling, including bathrooms, kitchen, fixtures and fittings.
 - Completion of the existing partly constructed swimming pool and swimming pool fencing.
 - The provision/completion of balustrades to balconies and to the internal open edges and stairs.
 - Revised retaining wall arrangements.
 - Provision of landscaping and planting.
 - Stormwater management works.

THE SITE AND LOCALITY

15. The subject site is legally described as Lot A in DP328702 with a street address of 1174 Forest Road, Lugarno. This site is the second northern most allotment on the bend in Forest Road opposite Boronia Parade as the road descends from Hillcross Street.
16. The site is located within an established residential area with surrounding development comprising of low-density residential dwellings, medium density development, commercially zoned land and educational establishments. The subject site is located within the Foreshore Scenic Protection Area.
17. The subject site is a rectangular allotment with side boundaries of 45.72m, a rear boundary of 13.715m and front boundary to Forest Road of 13.715m and a total site area of 627sqm.
18. Prior to the construction of the current development on this site, the subject site was occupied by a single dwelling house and associated outbuildings including greenhouses over this and the two adjoining allotments being 1176 and 1178 Forest Road Lugarno. The subject site and two adjoining allotments were using as a market garden by the occupants' and the selling orchards and produce from the property. The site is currently occupied by a partially completed two storey dwelling house with an in-ground swimming pool in the rear yard together with retaining walls.



Figure 1 – Aerial view – site (1174 Forest Road, Lugarno) outlined in blue (Source: Intramaps, 2024).



Figure 2 – Streetview from Forest Road (Source: Google Maps Streetview, 2024).



Figure 3 – Streetview from Forest Road (Source: Google Maps Streetview, 2024).

BACKGROUND

19. A history of the development site is as follows:

- A Complying Development Certificate (CDC) was issued on 2 February 2015 for the 'demolition of house and garages' at 1174-1178 Forest Road, Lugarno.
- A CDC (CDC2015/0034) was issued on 27 November 2015 for the construction of a 2-storey dwelling, double garage and an inground pool.
- The site and the existing partially constructed dwelling forms part of a group of three (3) dwellings located at 1174, 1178 and 1178 Forest Road, Lugarno. Each exist under similar circumstances, whereby the lots have been created and a partially constructed dwellings on each of the lots, these dwellings have all been constructed without planning approvals. The dwellings were not constructed in accordance with the CDC approvals issued.
- The existing partly constructed dwelling was initially part of approvals via the CDC process, which enabled the creation of each of the allotments (3 allotments from the initial 1 allotment) and construction of a dwelling house and swimming pool within the rear yards of each of the created lots. The relevant CDC for this site is CDC2015/0371.
- Despite the legitimate issue of the CDC and commencement of construction, the design of each dwelling was subsequently revised, the development as constructed departed from the relevant criterion contained in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. On this basis, the dwelling and associated ancillary structures are unauthorised.

- The non-compliant matters resulted in the issue of a stop works order issued by Council's Compliance Unit on 23 August 2017, whilst the dwelling was in the advanced stages of construction and unable to be completed (or regularised without further approval).
- A Building Information Certificate (BIC) (149D2017/0050) was submitted to Council on 12 October 2017. This was later withdrawn on 27 April 2020.
- Since the issue of the stop works order, the Owners of the site have been issued with clean up notices (dated 2 May 2019, 27 June 2019, and 13 September 2019), for vegetation maintenance, the swimming pool water being drained (given there is no swimming pool fencing) and maintenance of the site construction fencing so that it fully enclosed the site.
- A second stop works order was issued by Council's Compliance Unit on 18 March 2020, outlining that no further building or development is permitted on site.
- The BIC (149D2017/0050) submitted to Council on 12 October 2017 was withdrawn on 27 April 2020.
- An additional clean up notice was issued on 9 September 2021 for the site to ensure the site vegetation is maintained, the swimming pool being drained (given there is no swimming pool fencing) and maintenance of the site construction fencing so that it fully enclosed the site.
- An Emergency Order Number 21 was issued on 11 March 2022 for the site to address the ongoing issue of water accumulation in the swimming pool and the overgrown vegetation on the site, requiring these matters must be addressed as a matter of priority.
- CDC2015/0371 was voluntarily surrendered on 26 April 2022, following advice from Council's Officers.
- Given the complex history of the subject site, a pre-application discussion (PRE2022/0030) was held virtually on 16 June 2022. A letter was sent to the Applicant on 6 July 2022 outlining the process required to enable the finalisation and regularisation of the dwelling and associated ancillary development.
- To date the construction of the dwelling has not progressed since the stop works order has been issued. The dwelling and site remain in an incomplete and unfinished state, with construction fencing surrounding the site.
- A Building Information Certificate (BIC 149D2023/0005) was lodged via the NSW Planning Portal on 16 December 2022 for the building structural elements only, including foundations, retaining walls, concrete slabs, structural masonry walls, timber wall framing, timber roof framing and the swimming pool structure.
- The current development application (DA2022/0624) was lodged via the NSW Planning Portal on 26 May 2023.
- Council's Assessing Officer conducted a site inspection on 21 June 2023.
- The application was placed on exhibition, with the last date for public submissions being 27 July 2023. One (1) submission was received in December 2023.
- A request for additional information letter was sent via the NSW Planning Portal on 6 October 2023, requesting a site plan, details of setbacks, contaminated land status, solar access/overshadowing diagrams, vegetation details, rearward balcony information, swimming pool details, rear yard levels, front fencing, Building Code of Australia (BCA) compliances and non-compliances, retaining wall details, engineering details/compliance and landscaping detailing.
- A MS Teams meeting was held virtually to discuss the request for additional information letter on 23 October 2023.
- The Applicant provided revised plans for review on 7 November 2023; following Council Officers granting an extension of time.

- The application was placed on exhibition, with the last date for public submissions being 18 April 2024. No additional submissions were received.

Original Survey Plan

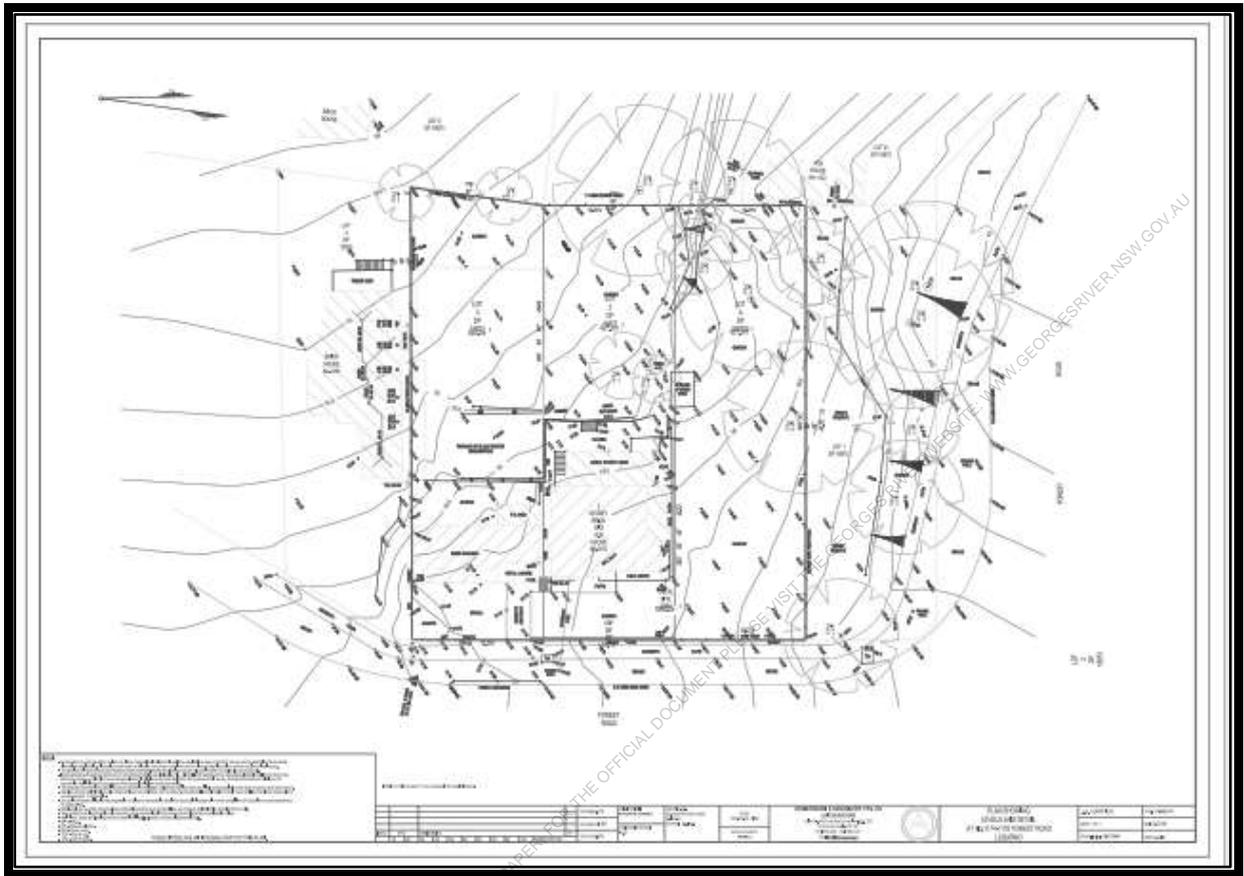


Figure 4: Original Survey Plan dated 19 May 2014

Complying Development Certificate Plans (CDC2015/0371)

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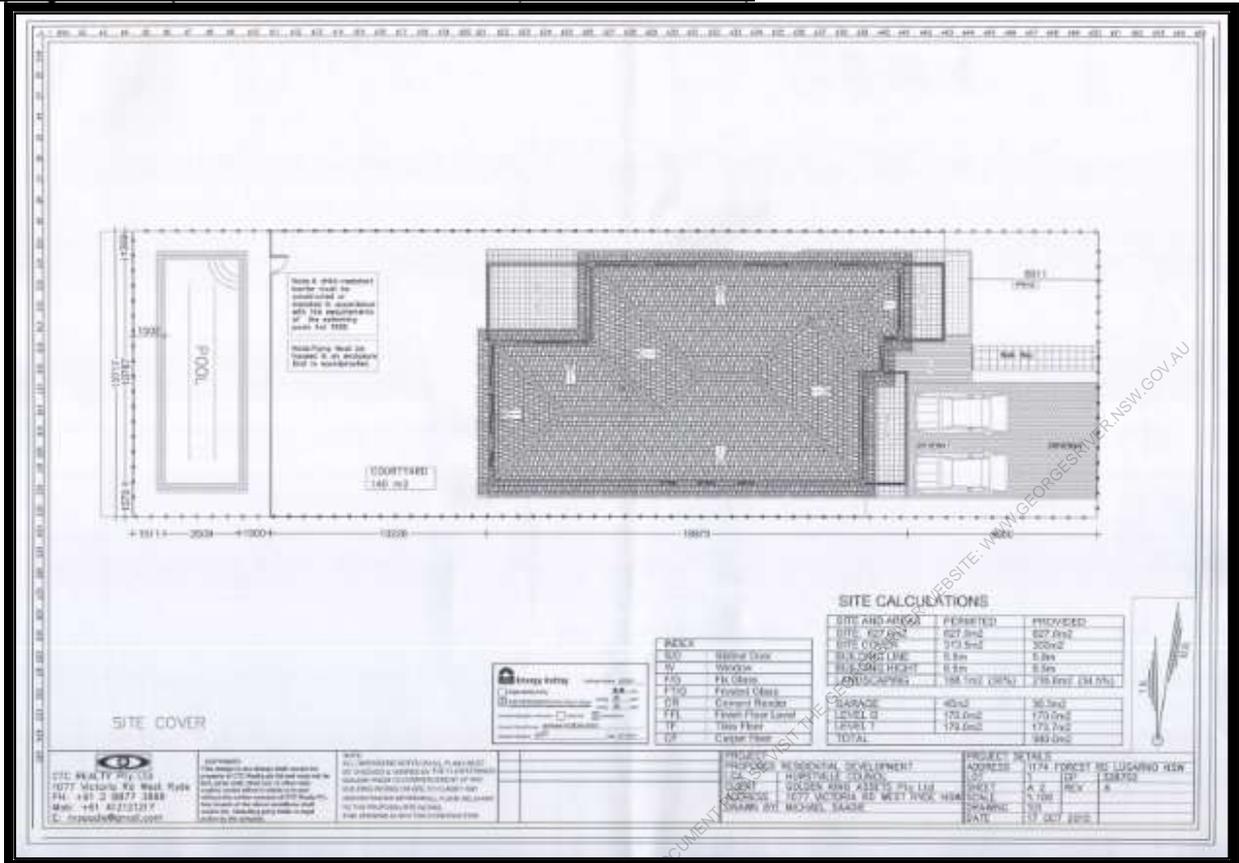


Figure 5: Site Plan (CDC2015/0371)

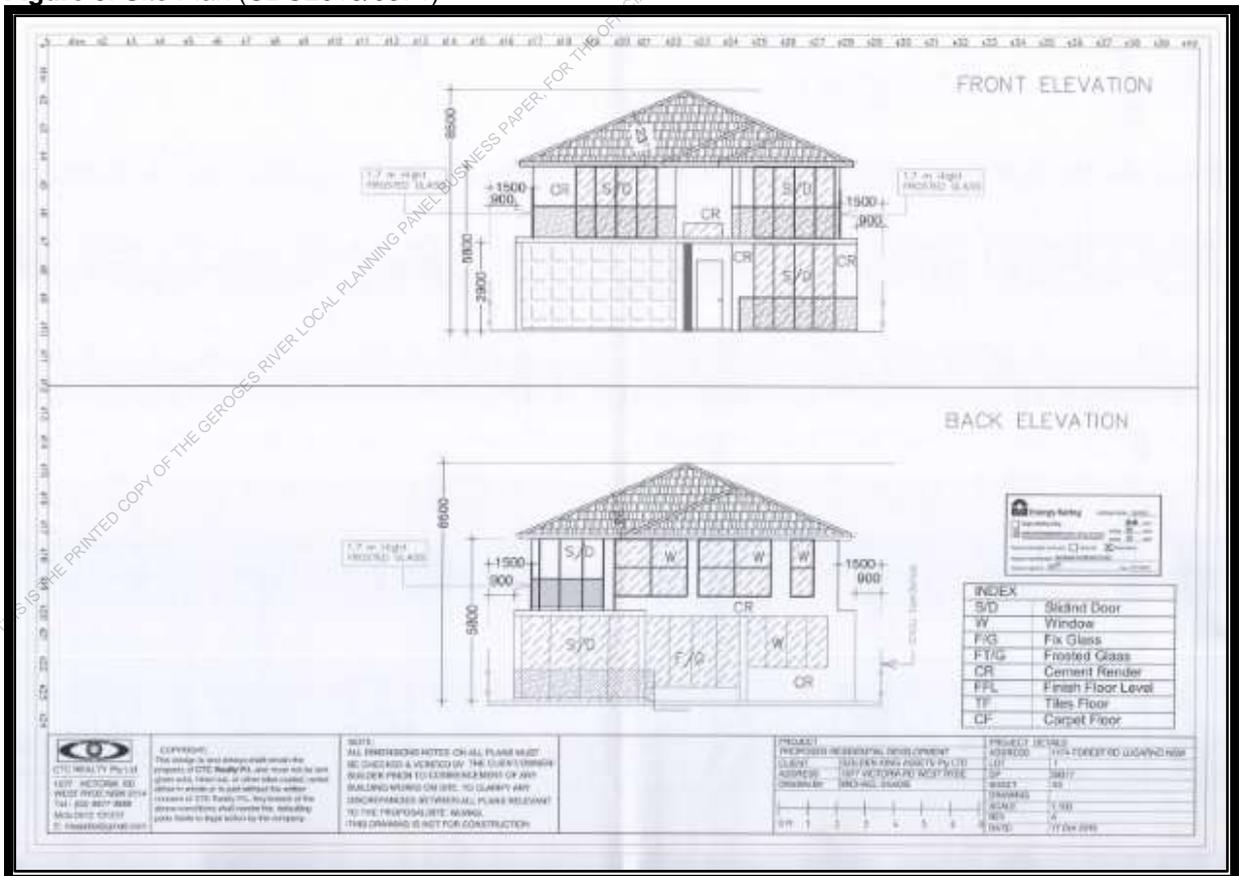


Figure 6: Elevation Plans (CDC2015/0371)

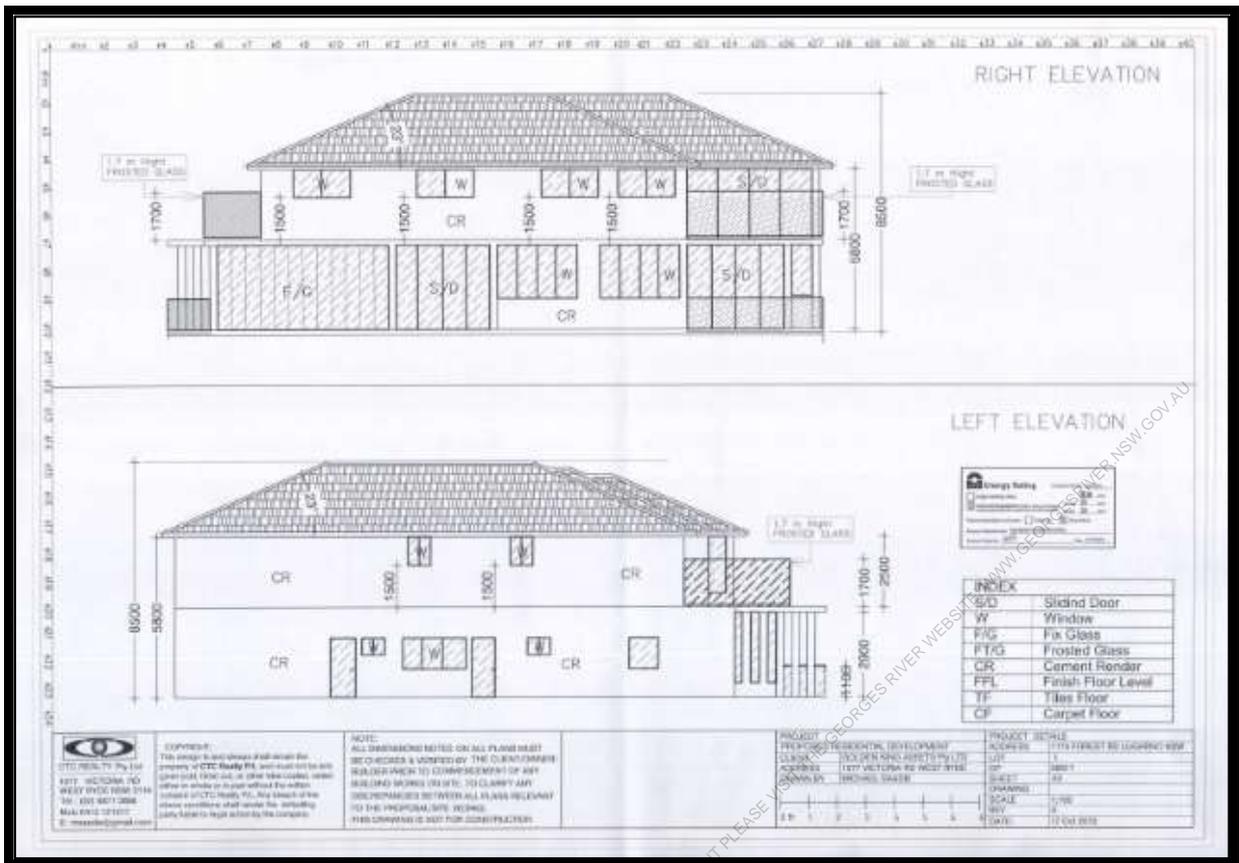


Figure 7: Elevation Plans (CDC2015/0371)

As Built Plans and Plans Subject of this Development Application (DA2022/0624)

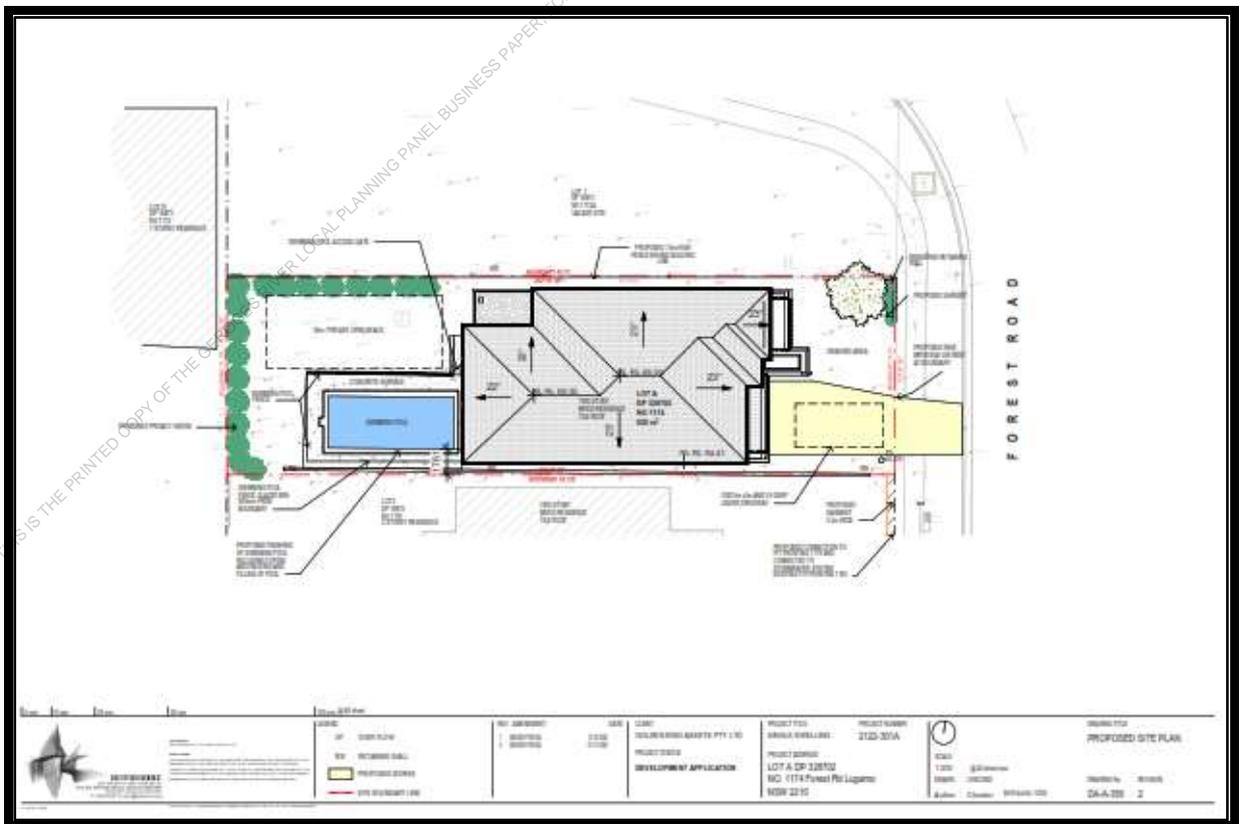


Figure 8: Site Plan (DA2022/0624)

NOTED DISCREPANCIES BETWEEN THE COMPLYING DEVELOPMENT CERTIFICATE APPROVED PLANS AND THE AS-BUILT DEVELOPMENT FORM AND THE PROPOSED DEVELOPMENT APPLICATION.

20. The roof ridge level has been raised by 430mm from RL 66.500 approved to the current RL 66.93.
21. The swimming pool has been re-oriented and relocated from being parallel with the rear boundary to being parallel with the southern side boundary including level changes.
22. The length of the built form changed from 20.74m (excluding the balcony) to 20.395m northern elevation and 18.801m to 20.05m southern elevation. The southern wall was also approved with no articulation. The southern wall has been built with articulation.
23. The 'formal' room along the northern elevation was approved with a curved outer wall however has been built with a straight wall.
24. Topography and level changes across the subject site since the demolition of the double storey dwelling over 1174-1178 Forest Road, Lugarno (refer to cut and fill survey plan).
25. Uncertainty as to where the fill has come from, was it imported fill and if so, is it VENM fill, or the excavated material from the swimming pool being moved across the site.
26. Ground floor plan approved at RL58.00, as-built level is RL58.840, which equates to a level change of 840mm. The first-floor plan approved a level of RL61.20, the as-built level is RL61.88, which equates to a level change of 680mm.
27. Level changes of the rearward patio area from RL58.740 to the rear yard level to RL58.42 with no steps to transition the 320mm change in level.
28. Retaining walls along the northern and southern side boundaries with insufficient details regarding the bottom of wall height and the top of wall height.

PLANNING ASSESSMENT

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

ENVIRONMENTAL PLANNING INSTRUMENTS

Section 4.15 Evaluation

30. The following is an assessment of the application with regard to Section 4.15(1) Evaluation of the Environmental Planning and Assessment Act 1979.

(1) Matters for consideration - general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

The provision of:

- (i) Any environmental planning instrument,*

State Environmental Planning Policies (SEPPs)

31. 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	No
State Environmental Planning Policy (Resilience and Hazards) 2021	No
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

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State Environmental Planning Policy (Biodiversity and Conservation) 2021

32. The relevant parts of the above Policy that apply to this application are Chapter 2 – Vegetation in non-rural areas, and Chapter 6 – Water Catchments.

Chapter 2 - Vegetation in Non-Rural Areas

33. 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.
34. This chapter applies to clearing of:
- Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
 - Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).*
35. The proposed development is not supported from a landscape and arboricultural perspective, for the following reasons:
- The information provided including the Arborist Reports are insufficient to facilitate a full and effective assessment to determination if there will be impacts on the street tree resulting from the part removal of the retaining wall.
 - The impacts on the street tree from the proposed development (being the part removal of a retaining wall along the northern side boundary) cannot be sufficiently assessed and/or substantiated based off the information submitted.

Chapter 6 – Water Catchments

36. The primary relevant aims and objectives of this Chapter are:
- whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
 - whether the development will have an adverse impact on water flow in a natural waterbody,*
 - whether the development will increase the amount of stormwater run-off from a site,*
 - whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
 - the impact of the development on the level and quality of the water table,*
 - the cumulative environmental impact of the development on the regulated catchment,*
 - whether the development makes adequate provision to protect the quality and quantity of ground water.*

37. The subject site is located within the Georges River Catchment and the stormwater design has been reviewed by Council's Development Engineering. The proposal remains unsatisfactory as the site does not provide adequate stormwater drainage in accordance with Georges River Stormwater Management Policy. The proposal is inconsistent with the objectives and purpose of Chapter 6 of the SEPP. The disposal of stormwater from the site due to levels will need to be via an inter-allotment drainage easement, this does not exist and no owners consent or legal agreement for this easement has been furnished to Council.

State Environmental Planning Policy (Resilience and Hazards) 2021

38. Chapter 2 and Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 are relevant to the proposal.
39. Chapter 2 aims to: "*Promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 including the management objectives for each coastal management area*".
40. The subject site is not mapped as a Coastal Environment area and a Coastal Use area.
41. 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.
42. 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.
43. Clause 4.8 under category 1 remediation work it outlines works requiring consent. For the purposes of this Chapter, a category 1 remediation work is remediation work (not being a work to which section 4.11(b) applies) that is—
- (a) designated development, or
 - (b) carried out or to be carried out on land declared to be a critical habitat, or
 - (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or
 - (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or
 - (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument—
 - (i) coastal protection,
 - (ii) conservation or heritage conservation,
 - (iii) habitat area, habitat protection area, habitat or wildlife corridor,
 - (iv) environment protection,
 - (v) escarpment, escarpment protection or escarpment preservation,
 - (vi) floodway,
 - (vii) littoral rainforest,
 - (viii) nature reserve,
 - (ix) scenic area or scenic protection,**
 - (x) wetland, or
 - (f) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Minister).

44. The subject development site is located within Georges River Foreshore Scenic Protection Area as per Georges River Local Environmental Plan 2021.
45. Clause 4.8 of Chapter 4 of the SEPP lists:
- 4.8(e)(ix) scenic area or scenic protection.*
46. Having considered the FSPA, land covered by Council's FSPA in the LEP is called up by this provision.
47. In coming to this conclusion, the following objectives of the FSPA in cl 6.6(1) are relevant:
- (a) *to protect, maintain and improve the scenic amenity of the Georges River foreshore,*
 - (b) *to protect, maintain and improve significant views of and from the Georges River,*
 - (d) *to reinforce and improve the dominance of landscape over built form, hard surfaces and cut and fill,*

In relation matters that the consent authority must be satisfied in cl 6.6(3), the following are relevant:

- (f) *the minimisation of the impact on the views and visual environment, including views to and from the Georges River, foreshore reserves, residential areas, and public places,*
 - (g) *the minimisation of the height and bulk of the development by stepping the development to accommodate the fall in the land.*
48. A desktop 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. However, the site has historically been used as a market garden and cultivation of orchids.
49. The Applicant has lodged a Detailed Site Investigation Report that found evidence of asbestos contaminated soil and asbestos fragments on the sites 1174 - 1178 Forest Road, Lugarno. The Detailed Site Investigation Report outlines that the sites can be made suitable for the intended use following remediation.
50. The Applicant also submitted a Remedial Action Plan Report which details the works required to remediate the site of the contaminates.
51. On this basis, the site is not suitable for residential development in its current state with respect to contamination. A separate development application for remediation must be lodged, determined and the site remediated prior to the approval of the proposed demolition works and completion of a partially constructed dwelling of a two-storey single dwelling, swimming pool, retaining walls, landscaping and site works under this development application.

State Environmental Planning Policy (Transport and Infrastructure) 2021

52. Compliance with SEPP (Transport and Infrastructure) 2021 has been considered during the assessment of this development application. The site is not mapped within a Transport and Infrastructure area and is not impacted by rail noise or vibration. Ausgrid was consulted as required by Chapter 2, no objection was raised.

State Environmental Planning Policy (Industry and Employment) 2021

53. SEPP (Industry and Employment) 2021 has been consideration through the assessment of this development application. It has been concluded that the above SEPP is not relevant to the proposed development.

State Environmental Planning Policy (Building Sustainability Index: 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 BASIX Certificate prepared by Rothshire Pty Ltd, dated 15 December 2022, certificate number 1363175S, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

56. The new *State Environmental Planning Policy (Sustainable Buildings) 2022* encourages the design and delivery of more sustainable buildings across NSW. It sets sustainability standards for residential and non-residential development and starts the process of measuring and reporting on the embodied emissions of construction materials.

57. As the subject development application was lodged prior to the gazettal of the SEPP Sustainable Buildings 2022 on 1 October 2023, the previous SEPP Building Sustainability Index: BASIX is applicable.

Georges River Local Environmental Plan 2021

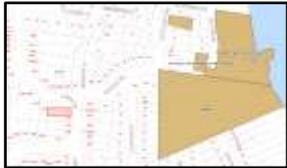
58. The extent to which the proposed development complies with the Georges River Local Environmental Plan 2021 (GRLEP 2021) is detailed and discussed in the table below.



Figure 11 – Zoning map, the site is outlined in blue (Source: Intramaps, 2024).

Clause	Standard	Proposed	Complies
Part 1 – Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is not considered to be consistent with the aims of the plan.	No
Part 2 - Permitted or prohibited development			
2.3 - Zone objectives and Land Use Table	Meets objectives of R2-Low Density Residential Zone.	The proposal fails to meet all the objectives.	No
	Development must be permissible with consent	The proposal is permissible with development consent.	Yes
Part 4 - Principal Development Standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The proposal has a maximum height of building of 8.52m.	Yes
4.4 – Floor Space Ratio	0.55:1 as identified on Floor Space Ratio Map	Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential, Clause 4.4A applies.	Refer to Clause 4.4A
4.4A - Exceptions to floor space ratio—certain residential accommodation	<p>(2) The maximum floor space ratio for a dwelling house on land identified as “Area 1” on the <u>Floor Space Ratio Map</u> must not exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>Site area</p> <ul style="list-style-type: none"> Maximum floor space ratio less than 650 square metres 0.55:1 <p>(3) The maximum floor space ratio for residential accommodation on land identified as “Area 2” on the <u>Floor Space Ratio Map</u> must not exceed 0.6:1.</p> <p>Site area: 626sqm</p>	The site results in a total gross floor area of 328.2sqm and an FSR of 0.52:1	Yes

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0.55:1 or 344.3sqm			
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 subject to tidal influence (including the bed of any such water).	The proposal does not involve works below the Mean High-Water Mark.	N/A
5.10 – Heritage conservation	In accordance with Clause 5.10 (2)	The site is not a heritage item however is in the vicinity of a heritage items as per the image below. The proposal does not seek to impact the Heritage item. The site is not in a heritage conservation area.	N/A
		 <p><i>Heritage Map as per GRLEP 2021</i></p>	
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.	N/A
5.21 – Flood Planning	(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development— (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in	The subject site is not impacted by flood.	N/A

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	<p>detrimental increases in the potential flood affectation of other development or properties, and will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood and will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p> <p>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</p> <p>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</p> <p>(b) the intended design and scale of buildings resulting from the development, whether the development incorporates</p>		
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	<p>measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</p> <p>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</p>		
<p>Part 6 - Additional Local Provisions</p>			
<p>6.1 – Acid sulfate soils</p>	<p>(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</p> <p>Class 5: Works within 100 metres of adjacent Class 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 2, 3 or 4 land.</p>	<p>The subject site is in a Class 5 Acid Sulfate Soils Area. The proposed works are beyond 100 metres of an adjacent Class and further investigation and/or additional information is not required in this regard.</p>  <p><i>Acid Sulfate Soils Map as per GRLEP 2021</i></p>	<p>Yes</p>
<p>6.2 – Earthworks</p>	<p>(2) Development consent is required for earthworks unless—</p> <p>(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or</p> <p>(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.</p>	<p>The completion of the partially constructed dwelling does not propose unnecessary earthworks. Earthworks will be required as part of remediation.</p>	<p>Yes</p>

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<p>6.3 – Stormwater Management</p>	<p>(2) In deciding whether to grant development consent for development, the consent authority must be satisfied that the development—</p> <p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater detention or retention to minimise stormwater runoff volumes and reduce the development’s reliance on mains water, groundwater or river water, and</p> <p>(c) avoids significant adverse impacts of stormwater runoff on adjoining properties, native bushland, receiving waters and the downstream stormwater system or, if the impact cannot be reasonably avoided, minimises and mitigates the impact, and</p> <p>(d) is designed to minimise the impact on public drainage systems.</p>	<p>Councils Engineers have reviewed the proposed development and is not supported as there is no inter-allotment drainage system in place. Given the levels of the site this is the only option available. No evidence has been provided that an easement has been obtained or a legal agreement entered into to obtain an easement. The proposal is not in accordance with Georges River Stormwater Management Policy. Refer to Development Engineers comments under the specialist referral comments in this assessment report.</p>	<p>No</p>
<p>6.4 - Foreshore area and coastal hazards and risk</p>	<p>(2) This clause applies to the following land—</p> <p>(a) land identified on the Coastal Hazard and Risk Map,</p> <p>(b) land identified on the Foreshore Building Line Map.</p> <p>(3) Development consent must not be granted for development on land to which this clause applies</p>	<p>The site is not located in a foreshore area and/or coastal hazards and risk area.</p>	<p>N/A</p>

	<p>except for the following purposes—</p> <ul style="list-style-type: none"> (a) the alteration, or demolition and rebuilding, of an existing building if the footprint of the building will not extend further forward than the footprint of the existing building into— <ul style="list-style-type: none"> (i) the foreshore building line, or (ii) the land identified on the Coastal Hazard and Risk Map, (b) the erection of a building if the levels, depth or other exceptional features of the site make it appropriate to do so, (c) boat sheds, cycling paths, fences, sea walls, swimming pools, water recreation structures or walking tracks. <p>(4) In deciding whether to grant development consent, the consent authority must consider the following matters—</p> <ul style="list-style-type: none"> (a) whether the development addresses the impacts of sea level rise and tidal inundation as a result of climate change, (b) whether the development could be located on parts of the site not exposed to coastal hazards, (c) whether the development will cause congestion or generate conflict between people using open space areas or the waterway, (d) whether the development will cause environmental harm by pollution or siltation of the waterway, (e) opportunities to provide reasonable, continuous public access 		
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	<p>along the foreshore, considering the needs of property owners, (f) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development. (5) In this clause— foreshore area means the land between the foreshore building line and the mean high-water mark of the nearest bay or river. foreshore building line means the line shown as the foreshore building line on the Foreshore Building Line Map.</p>		
<p>6.5 - Riparian land and waterways</p>	<p>(2) This clause applies to land identified as “Sensitive land” on the Riparian Lands and Waterways Map. (3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider the following— (a) whether the development is likely to have an adverse impact on the following— (i) the water quality and flows within the waterway, (ii) the stability of the bed, shore and banks of the waterway, (iii) the future rehabilitation of the waterway and riparian areas, (iv) the biophysical, hydrological or ecological integrity of adjacent coastal wetlands, including the aquatic and riparian species, habitats and ecosystems of the waterway, (v) indigenous trees and other vegetation,</p>	<p>The site is not located on land identified as sensitive land.</p>	<p>N/A</p>

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	<p>(vi) opportunities for additional planting of local native riparian vegetation,</p> <p>(b) whether the development is likely to increase water extraction from the waterway,</p> <p>(c) whether the development will cause environmental harm by pollution or siltation of the waterway,</p> <p>(d) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid significant adverse environmental impact, or</p> <p>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p>		
<p>6.6 - Foreshore scenic protection area</p>	<p>(2) This clause applies to land identified as “Foreshore scenic protection area” on the Foreshore Scenic Protection Area Map.</p> <p>(3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must be satisfied that the</p>	<p>The site is located within a foreshore scenic protection area.</p>	<p>No</p>

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	<p>development would facilitate the following—</p> <p>(a) the protection of the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation,</p> <p>(b) the avoidance or minimisation of the disturbance and adverse impacts on remnant vegetation communities, habitat and threatened species and populations,</p> <p>(c) the maintenance and enhancement of native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native flora and fauna movement through biodiversity corridors,</p> <p>(d) the achievement of no net loss of significant vegetation or habitat,</p> <p>(e) the avoidance of clearing steep slopes and facilitation of the stability of the land,</p> <p>(f) the minimisation of the impact on the views and visual environment, including views to and from the Georges River, foreshore reserves,</p>	 <p><i>Foreshore Scenic Protection Area Map as per GRLEP 2021</i></p> <p>The proposed development does not seek to impact upon any rock formations, canopy vegetation or significant vegetation of the site.</p> <p>The proposed development does not seek to disturb or have adverse impacts on remnant vegetation communities, habitat and threatened species and populations.</p> <p>The Landscape Officer has not endorsed the proposed landscape plan.</p> <p>The proposed development does not seek to clear steep slopes on the site.</p>	
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	<p>(a) land identified on the <u>Foreshore Scenic Protection Area Map</u> if the development is for one or more of the following purposes—</p> <ul style="list-style-type: none"> (i) bed and breakfast accommodation, (ii) health services facilities, (iii) marinas, (iv) residential accommodation, except for secondary dwellings, <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> <ul style="list-style-type: none"> (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>(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—</p>	<p>involves demolition works and completion of a partially constructed two-storey dwelling, swimming pool, retaining walls, landscaping, and site works.</p> <p>Visual intrusion and bulk of the proposal are considered unacceptable.</p> <p>Notwithstanding this, it should be noted that the dwelling as built does not achieve design excellence. However, the elements encompassed in this development application achieve the objectives of design excellence.</p> <p>The proposed development site will not impact upon any Heritage Items.</p>	
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	<p>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</p> <p>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</p> <p>(c) whether the development detrimentally impacts on view corridors,</p> <p>(d) how the development addresses the following matters—</p> <p>(i) the suitability of the land for development,</p> <p>(ii) existing and proposed uses and use mix,</p> <p>(iii) heritage issues and streetscape constraints,</p> <p>(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</p> <p>(v) bulk, massing and modulation of buildings,</p> <p>(vi) street frontage heights,</p> <p>(vii) environmental impacts such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,</p> <p>(viii) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of pedestrian networks,</p> <p>(ix) the impact on, and proposed improvements to, the public domain,</p> <p>(x) achieving appropriate interfaces at ground level</p>		
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	<p>between the building and the public domain, (xi) excellence and integration of landscape design, (xii) the provision of communal spaces and meeting places, (xiii) the provision of public art in the public domain, (xiv) the provision of on-site integrated waste and recycling infrastructure, (xv) the promotion of safety through the application of the principles of crime prevention through environmental design.</p>		
<p>6.12 -Landscaped areas in certain residential and environment protection zones</p>	<p>(2) This clause applies to land in the following zones— (a) Zone R2 Low Density Residential, (b) Zone R3 Medium Density Residential, (c) Zone R4 High Density Residential, (d) Zone E2 Environmental Conservation. (3) Despite subclause (2), this clause does not apply to development referred to in State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, clause 4. (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— (a) allows for the establishment of appropriate plantings— (i) that are of a scale and density commensurate with the height, bulk and scale of the buildings to</p>	<p>R2 Low Density Residential. Required = 25% of 626sqm (site area) Total LSA required = 156.5sqm Proposed LSA = 192.6sqm (31%)</p>	<p>Yes</p>

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	<p>which the development relates, and</p> <p>(ii) that will maintain and enhance the streetscape and the desired future character of the locality, and</p> <p>(b) maintains privacy between dwellings, and</p> <p>(c) does not adversely impact the health, condition and structure of existing trees, tree canopies and tree root systems on the land or adjacent land, and</p> <p>(d) enables the establishment of indigenous vegetation and habitat for native fauna, and</p> <p>(e) integrates with the existing vegetation to protect existing trees and natural landscape features such as rock outcrops, remnant bushland, habitats and natural watercourses.</p> <p>(5) Development consent must not be granted to development on land to which this clause applies unless a percentage of the site area consists of landscaped areas that is at least—</p> <p>(a) for a dwelling house located on land outside the Foreshore Scenic Protection Area—20% of the site area, or</p> <p>(b) for a dwelling house located on land within the Foreshore Scenic Protection Area—25% of the site area, or</p> <p>(c) for a dual occupancy located on land outside the Foreshore Scenic Protection Area—25% of the site area, or</p> <p>(d) for a dual occupancy located on land within the</p>		
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	<p>Foreshore Scenic Protection Area—30% of the site area, or (e) for development in Zone R3 Medium Density Residential—20% of the site area, or (f) for development in Zone R4 High Density Residential—10% of the site area, or (g) for development in Zone E2 Environmental Conservation—70% of the site area. (6) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle and any right of carriageway is not to be included in calculating the site area for the purposes of subclause (5). (7) In this clause— Foreshore Scenic Protection Area means land shown on the Foreshore Scenic Protection Area Map.</p>		
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Georges River Development Control Plan 2021

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

Part 5- Residential Locality Statements

<p>Lugarno Locality Statement</p> <p><u>Streetscape Character- Existing Character</u></p> <ul style="list-style-type: none"> • <i>Lugarno is a low-density residential area with a small local group of shops on Forest Road typical of post-war suburban development.</i> • <i>The housing stock in Lugarno predominately consists of freestanding dwelling houses built in the post-war period, as well as contemporary knock down rebuilds. This has resulted in an eclectic mix of housing styles.</i> • <i>Most of Lugarno is located within the Foreshore Scenic Protection Area (refer to GRLEP 2021 Foreshore Scenic Protection Area Map).</i> • <i>The combination of the low impact-built form and large street trees contributes to an overall character that is relaxed and informal within a bushland setting.</i> • <i>However, recent developments have seen the replacement of post-war dwellings with substantially larger, contemporary dwelling houses with significantly reduced setbacks and landscaping.</i>
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<ul style="list-style-type: none"> <i>The emerging eclectic character of the streetscape as result of knock down rebuilds is a threat to the urban bushland character of the area.</i>
<p>Streetscape Character- Future Desired Character</p> <ul style="list-style-type: none"> <i>Retain and enhance the prominence of the bushland landscaped character in new development through tree planting and landscaping.</i> <i>Encourage consistent setbacks of buildings from the street and the provision of landscaping within the front setback.</i> <i>Encourage the retention of trees and sharing of water views wherever possible, including screening via vegetation rather than solid walls.</i> <i>Public views to waterways should be retained from streets and public places.</i>
<ul style="list-style-type: none"> — The proposed development fails to maintain the existing and future desired character of Lugarno locality. — The adjoining property to the north of the development site has an existing well established canopy street tree. The proposed development seeks to remove part of an existing retaining wall within proximity to this street tree. The proposed development fails to retain and enhance the prominence of the bushland landscaped character of the site as insufficient information has been submitted to ensure the development proposed will enable the retention of the existing street tree.

Part 6 – Low Density Residential Controls

Control	Proposal	Compliance
1. New buildings and additions are to consider the Desired Future Character statement in Part 5 of this DCP.	The proposed works fail to appropriately responds to the desired future character of the locality.	No
2. New buildings and additions are to be designed with an articulated front façade.	The front façade has incorporated sufficient building articulation with the formal living room, front entry and porch together with the new garage entry. The height of the balustrade undermines the articulation of the front façade as it is visually dominating.	No
3. Developments on sites with two (2) or more frontages are to address all frontages.	The subject site only has 1 frontage – Forest Road.	Yes
4. Dwelling houses are to have windows presenting to the street from a habitable room to encourage passive surveillance.	Windows are present along the front façade of the dwelling from a formal room at ground level.	Yes
5. Development must be sensitively designed so as to minimise adverse impacts on the amenity	The proposed development impacts upon the amenity and view outlook of neighbouring public and private properties. Reasonable amenity for	No

Control	Proposal	Compliance
<p>and view corridors of neighbouring public and private property while maintaining reasonable amenity for the proposed development and is to balance this requirement with the amenity afforded to the new development.</p> <p>6. The maximum size of voids at the first-floor level should be a cumulative total of 15m² (excluding voids associated with internal stairs).</p>	<p>both the future occupants of the proposal and the adjoining property owners has not been achieved via the design.</p> <p>No voids are proposed in this development application.</p>	<p>N/A</p>
<p>1. New buildings are to consider and respond to the predominant and desired future scale of buildings within the neighbourhood and consider the topography and form of the site.</p> <p>2. On sites with a gradient or cross fall greater than 1:10, dwellings are to adopt a split-level approach to minimise excavation and fill. The overall design of the dwelling should respond to the topography of the site.</p> <p>3. A maximum of two (2) storeys plus basement is permissible at any point above ground level (existing). Basements are to protrude no more than 1m above existing ground level.</p> <p>4. Where topography conditions require a basement, the area of the basement should not exceed the area required</p>	<p>The proposal fails to appropriately respond to the future scale of buildings within the neighbourhood as the proposed development results in bulk and scale of the built form that would not have been granted consent if it has of been submitted as a construction of a new dwelling. In addition, the rectification works result in further bulk and enclosure of spaces which is unacceptable.</p> <p>The built form exists and is not split level in design, therefore this clause is not relevant in this instance.</p> <p>Compliant - 2 storeys.</p> <p>N/A- No basement proposed or exists.</p>	<p>No</p> <p>N/A</p> <p>Yes</p> <p>N/A</p>

Control	Proposal	Compliance
<p>to meet the car parking requirements for the development, access ramp to the parking and a maximum 10m² for storage and 20m² for plant rooms. Additional basement area to that required to satisfy these requirements may be included as floor space area when calculating floor space ratio.</p> <p>5. Where the entry to the basement carpark is visible from the street, the entry should be recessed a minimum of 1m (from the edge of the external wall or balcony) from the levels above and the external walls of the garage differentiated from the walls above through articulation and external materials.</p>	<p>N/A</p>	<p>N/A</p>
<p>Front Setbacks 1. The minimum setback from the primary street boundary is: i. 4.5m to the main building wall / facade; ii. 5.5m to the front facade of a garage or carport; or iii. Where the prevailing street setback is greater than the minimum, the average setback of dwellings on adjoining lots is to be applied.</p>	<p>Front Setback 6m to porch 7.3m to façade 8.9m to garage façade Remains unchanged via the proposed development.</p>	<p>N/A</p>
<p>Side and Rear Setbacks 1. Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is the greater (excluding detached secondary dwellings – see Point 12 in Section 6.1.2.12- Secondary Dwellings of this DCP).</p>	<p>Rear Setback 16.9m to rear facade Remains unchanged via the proposed development.</p> <p>Allowable Side Setback- 1.5m</p>	<p>N/A</p> <p>No</p>

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Control	Proposal	Compliance
<p>2. The minimum side setbacks for ground and first floor are:</p> <ul style="list-style-type: none"> i. 900mm for lots up to 12.5m in width measured at the front building line for the length of the development. ii. 1.2m for lots greater than 12.5m in width measured at the front building line for the length of the development. iii. 1.5m for all lots within the Foreshore Scenic Protection Area measured at the front building line for the length of the development. 	<p>Existing setbacks not impacted by the development -</p> <p><i>Northern Elevation</i> Ground Floor- 0.9m, 1.5m and 4.3m. First Floor- 1.5m and 4.1m.</p> <p><i>Southern Elevation</i> Ground Floor- 0.9m, 1.6m and 1.4m. First Floor - 1.5m.</p> <p>Proposed Side Setback of works as part of this development application-</p> <p><i>Northern Elevation</i> First Floor - 1.5m</p> <p><i>Southern Elevation</i> Ground Floor 0.9m First Floor - 1.5m</p>	
<p>3. Where alterations and additions (ground and first floor) to an existing dwelling are proposed, an existing side setback less than the setback required in Control 3 can be maintained, provided the reduced setback does not adversely affect compliance with the solar access and landscaped area controls or adversely impact upon the visual and acoustic amenity of neighbouring dwellings.</p>	<p>N/A</p>	<p>N/A</p>
<p>4. For battle-axe lots, minimum side and rear boundary setbacks apply, except the front setback of the battle-axe lot without a street frontage, where a minimum setback of 4.0m is to be provided as illustrated in Figure 1.</p>	<p>Not a battle axe allotment.</p>	<p>N/A</p>
<p>5. Any garages or parking structures fronting rear lanes may encroach upon the rear setback areas but</p>	<p>No laneway access</p>	<p>N/A</p>

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Control	Proposal	Compliance
<p>are still to provide a minimum setback of 1m from the lane.</p>		
<p>1. Private open space is to be located at the rear of the property and/or behind the building line and is to have a minimum area of 60m² with minimum dimensions of 6m and located on the same level (not terraced or over rock outcrops).</p> <p>2. Private open space is to be provided for all dwellings, (with the exception of secondary dwellings, which are able to share the private open space of the principal dwelling).</p> <p>3. Private open space is to be located so as to maximise solar access.</p> <p>4. Private open space is to be designed to minimise adverse impacts upon the privacy of the occupants of adjacent buildings.</p>	<p>There is a turfed area within the rear yard adjacent to the proposed swimming pool. The area is 60sqm with a minimum dimension of 6m.</p> <p>The private open space is proposed in the form of a patio area, swimming pool and grassed area. The private open space is located directly off the primary living areas.</p> <p>Private open space is oriented to the west and receives sufficient solar access.</p> <p>The private open space is located within the rear yard adjacent to the neighbouring properties private open space.</p>	<p>N/A- remains unchanged by the proposed development.</p> <p>N/A- remains unchanged by the proposed development.</p> <p>N/A - remains unchanged by the proposed development.</p> <p>N/A- remains unchanged by the proposed development.</p>
<p>1. Landscaping</p>		
<p>1. Landscaped area (has the same meaning as GRLEP 2021) is to be provided in accordance with the table contained within Clause 6.12 Landscaped areas in certain residential and environmental protection zones of GRLEP 2021.</p> <p>2. Provide a landscape setting within the primary and secondary street frontages, where hard paved areas are minimised. At a maximum,</p>	<p>The landscaped area is compliant with GRLEP 2021 minimum 25% deep soil landscape planting.</p> <p>35% hard stand area in the front setback.</p>	<p>Yes</p> <p>Yes</p>

Control	Proposal	Compliance
<p>impervious areas, including hard paving, gravel, concrete or other material that does not permit landscaping, are to occupy no more than 40% of the street setback area.</p> <p>3. The front setback area is to have an area where at least one (1) tree capable of achieving a minimum mature height of 10m with a spreading canopy can be accommodated. A schedule of appropriate species to consider is provided in Council's Tree Management Policy.</p>	<p>A 10m tree is proposed to be located within the front setback.</p>	<p>Yes</p>
<p>1. Any excavation must not extend beyond the building footprint, including for any basement car park.</p> <p>2. The depth of cut or fill must not exceed 1.0m from existing ground level, except where the excavation is for a basement car park.</p> <p>3. Developments should avoid unnecessary earthworks by designing and siting buildings that respond to the natural slope of the land. The building footprint must be designed to minimise cut and fill by allowing the building mass to step in accordance with the slope of the land.</p>	<p>No excavation is proposed for the works under this development application.</p> <p>No excavation is proposed for the works under this development application.</p> <p>No excavation is proposed for the works under this development application.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>
<p>1. Car parking is to be provided in accordance with the requirements in Part 3 of this DCP.</p> <p>2. A dwelling is to provide one (1) garage and one (1) tandem driveway parking space forward of the</p>	<p>A double garage with two car parking spaces exists.</p> <p>Complies - 2 car parking spaces contained within the building footprint.</p>	<p>Yes</p> <p>Yes</p>

Control	Proposal	Compliance
garage (unless otherwise accommodated within the building envelope).		
3. Driveways, garages and basements should be accessed from a secondary street or rear lane where this is available.	The double garage is accessed via the only frontage being Forest Road.	Yes
4. Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane.	N/A	N/A
5. Driveway crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	Complies – levels need to be resolved by a 138 Application under the Roads Act.	Yes
6. The maximum driveway width between the street boundary and the primary building setback alignment of the garage is 4.0m.	Compliant at the boundary and slays to meet the garage door at 5m.	No
7. Basements are permitted where the LEP height development standard is not exceeded, and it is demonstrated that there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure). (i) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition in the LEP) and the overall development presents as two (2) storeys to the street.	N/A- no basement proposed or exists.	N/A
8. Car parking layout and vehicular access	Satisfactory and able to comply.	Yes

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Control	Proposal	Compliance
<p>requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1 (latest edition).</p> <p>9. The maximum width of a garage opening is 6m.</p>	<p>Satisfactory – 5m</p>	<p>Yes</p>
<p>1. Windows from active rooms are to be offset with windows in adjacent dwellings, or appropriately treated so as to avoid direct overlooking onto neighbouring windows.</p> <p>2. For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties.</p> <p>3. Upper-level balconies should not project more than 1500mm beyond the main rear wall alignment so as to minimise adverse visual privacy impacts to adjoining properties.</p> <p>4. Windows for primary living rooms must be designed so that they reasonably maintain the privacy of adjoining main living rooms and private open space areas.</p> <p>5. Development applications are to be accompanied by a survey plan or site analysis plan (to AHD) of the proposed dwelling showing the location of adjoining property windows, floors levels, window sill levels and ridge and gutter line levels.</p>	<p>Satisfactory as the built form of the dwellings adjoining exists.</p> <p>Satisfactory as the built form of the dwelling adjoining exists.</p> <p>The existing rearward first-floor balcony is to be converted to a non-trafficable roof area and finished with pebbles. The doors to the balcony are to remain with a balustrade fixed to the sliding door frame preventing access.</p> <p>The proposed modification to the existing development maintains a reasonable level of privacy for the future occupants of the dwelling.</p> <p>A survey plan was submitted with the application.</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p> <p>Yes</p>

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Control	Proposal	Compliance
<p>1. Noise generators such as plant and machinery including air conditioning units and pool pumps are located away from windows or other openings in habitable rooms; they are to be screened to reduce noise or acoustically treated.</p>	<p>The location of the air conditioning condenser unit and swimming pool filter/pump has not been annotated on the architectural plans or the landscape plans.</p>	<p>No</p>
<p>1. New buildings and additions are sited and designed to facilitate a minimum of 3 hours direct sunlight between 9am and 3pm on 21 June onto living room windows and at least 50% of the minimum amount of private open space.</p> <p>2. To facilitate sunlight penetration to adjoining development, building bulk may be required to be articulated to achieve the required sunlight access.</p> <p>3. Direct sunlight to north-facing windows of habitable rooms and 50% of the principal private open space area of adjacent dwellings should not be reduced to less than 3 hours between 9.00am and 3.00pm on 21 June.</p> <p>4. Note: Variations will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation or steeply sloping sites with a southerly orientation away from the street.</p> <p>5. Shadow diagrams are required to show the impact of the proposal on</p>	<p>Satisfactory.</p> <p>The building incorporates sufficient articulation to facilitate sufficient sunlight penetration to adjoining development where possible given the lot orientation.</p> <p>Given the orientation of the lots some degree of overshadowing of the adjoining property is unavoidable.</p> <p>Variation supported given the east - west orientation of the site. See below commentary for merit-based justification.</p> <p>Sufficient solar access diagrams have been submitted with the architectural plans</p>	<p>Yes</p> <p>Yes</p> <p>No, refer to development control 4 below.</p> <p>Yes</p> <p>Yes</p>

Control	Proposal	Compliance
<p>solar access to the principal private open space and living rooms of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams. It may also be necessary to provide elevations or views from sun diagrams to demonstrate appropriate solar access provision to adjoining development.</p>		
<p>1. Large expansive surfaces of predominantly white, light or primary colours which would dominate the streetscape or other vistas should not be used.</p> <p>2. New development should incorporate colour schemes that have a hue and tonal relationship with the predominant colour schemes found in the street.</p> <p>3. Matching buildings in a row should be finished in the same colour or have a tonal relationship.</p> <p>4. All materials and finishes utilised should have low reflectivity.</p>	<p>The colour and material schedules are in accordance with the existing colours and materials currently on the existing building structure and are considered appropriate in the streetscape.</p> <p>The colours and materials have a tonal relationship with the predominant colour schemes found in the street and are considered acceptable.</p> <p>N/A - the subject site is not a matching building.</p> <p>Materials and finishes existing low in reflectivity. Any new work would be conditioned to be low in reflectivity if the application was to be supported.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>
<p>1. All dwellings are to be provided with adequate and practical internal and external storage (garage, garden sheds, etc.).</p> <p>2. Provision for water, sewerage and stormwater</p>	<p>The dwelling adequately provides practical internal and external storage for the future occupants of the dwelling. There is sufficient area in the rear yard for external storage in the form of garden shed to be installed.</p>	<p>Yes</p> <p>No</p>

Control	Proposal	Compliance
<p>drainage for the site shall be nominated on the plans to Council's satisfaction.</p> <p>3. Each dwelling must provide adequate space for the storage of garbage and recycling bins (a space of at least 3m x 1m per dwelling must be provided) and are not to be located within the front setback.</p> <p>4. Letterboxes are to be located on the frontage where the address has been allocated in accordance with Australia Post requirements.</p>	<p>Stormwater system not supported as an inter-allotment drainage easement is required and does not exist.</p> <p>The bins have not been located on the architectural or landscape plans.</p> <p>The letterbox has not been located on the architectural plans and/or the landscape plan.</p>	<p>No</p> <p>No</p>

6.4.1 Fences and Walls

Control	Proposal	Compliance
<p>10. Construction of retaining walls or associated drainage work along common boundaries must not compromise the structural integrity of any existing retaining wall or structures on the subject or adjoining allotments. All components, including footings and aggregate lines, must be wholly contained within the property.</p>	<p>N/A- The proposed development seeks to demolish part of an existing retaining wall within the front setback extending along the northern side boundary.</p> <p>No fencing is proposed.</p>	<p>N/A</p>
<p>11. A retaining wall that is visible from the street or public area must:</p> <ul style="list-style-type: none"> i. be constructed to a height no greater than 1.0m, and ii. be designed so a minimum setback of 1.0m between the retaining wall and the boundary is provided to permit landscaping, and iii. Be constructed of materials that are 	<p>N/A- The proposed development seeks to demolish part of an existing retaining wall within the front setback extending along the northern side boundary.</p>	<p>N/A</p>

<p>durable and do not detract from the streetscape.</p>		
<p>12. No part of any retaining wall or its footings is to encroach onto an easement unless approval from the beneficiary is obtained, and the purpose of the easement is not interfered with.</p>	<p>N/A- The proposed development seeks to demolish part of an existing retaining wall within the front setback extending along the northern side boundary.</p>	<p>N/A</p>
<p>13. Any retaining walls, required as part of the dwelling construction to contain potential land stability and/or the structural integrity of adjoining properties, must be completed and certified by an appropriately qualified and practicing engineer prior to occupation of the dwelling.</p>	<p>N/A- The proposed development seeks to demolish part of an existing retaining wall within the front setback extending along the northern side boundary.</p>	<p>N/A</p>
<p>14. Excavation or filling requiring retaining shall be shored or retained immediately to protect neighbouring properties from loss of support and to prevent soil erosion.</p>	<p>N/A- The proposed development seeks to demolish part of an existing retaining wall within the front setback extending along the northern side boundary.</p>	<p>N/A</p>
<p>Control</p>	<p>Proposal</p>	<p>Compliance</p>
<p>1. Swimming pools/spas are to be located to the rear of properties.</p>	<p>The swimming pool exists is in the rear yard.</p>	<p>Yes</p>
<p>2. For corner allotments or where the property has two street frontages, swimming pools/spas are not to be located in the primary frontage.</p>	<p>The site is not a corner allotment.</p>	<p>N/A</p>
<p>3. Swimming pools/spas must be positioned a minimum of 900mm from the property boundary with the water line being a minimum of 1500mm from the property boundary.</p>	<p>The positioning of the swimming pool on the site is existing. The coping and concrete area surrounding the swimming pool is yet to be constructed. The setback to the waterline and coping complies with this development control.</p>	<p>Yes</p>
<p>4. In-ground swimming pools shall be built so that the top of the swimming pool coping is as close to</p>	<p>N/A – The swimming pool and associated coping is existing. Tiles are proposed to be placed on top of the existing swimming pool coping.</p>	<p>N/A</p>

Control	Proposal	Compliance
<p>the existing ground level as possible. On sloping sites this will often require excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool consistent with the low side.</p>	<p>It is acknowledged the land levels have been altered as part of the unauthorised construction of the in-ground swimming pool.</p>	
<p>5. Swimming pools/spas are to be no more than 500mm above existing ground level.</p>	<p>N/A – The swimming pool and associated coping is existing. Tiles are to be placed on top of the existing swimming pool coping.</p> <p>It is acknowledged the land levels have been altered as part of the unauthorised construction of the in-ground swimming pool.</p>	<p>N/A</p>
<p>6. On steeply sloping sites, Council may consider allowing the top of the swimming pool at one point or along one side to extend up to 1m above existing ground level, provided that the exposed face of the swimming pool wall is treated to minimise impact. The materials and design of the retaining wall should be integrated with and complement the style of the swimming pool.</p>	<p>N/A – The swimming pool and associated coping is existing. Tiles to be places on top of existing swimming pool coping.</p> <p>It is acknowledged the land levels have been altered as part of the unauthorised construction of the in-ground swimming pool.</p>	<p>N/A</p>
<p>7. Decking around a swimming pool must not be more than 600mm above existing ground level.</p>	<p>N/A – The swimming pool and associated coping is existing. Tiles are to be placed on top of the existing swimming pool coping.</p>	<p>N/A</p>
<p>8. Filling is not permitted between the swimming pool and the property boundary. The position of the swimming pool, in relation to neighbours and other residents, must be considered to minimise noise associated with activities carried out in the swimming pool or from the swimming pool equipment, such as cleaning equipment.</p>	<p>No filling is proposed between the swimming pool and property boundary under this development application.</p>	<p>Yes</p>

Control	Proposal	Compliance
9. Council may require mechanical equipment to be suitably acoustically treated so that noise to adjoining properties is reduced.	The air conditioning condenser unit and swimming pool filter/pump location are not annotated on the architectural plans or the landscaping plans.	No
10. A pool fence complying with the legislation is to separate access from the residential dwelling on the site to the pool.	The swimming pool fencing proposed is not in accordance with the Swimming Pools Act.	No
11. Safety and security measures for swimming pools must comply with the relevant requirements of the Swimming Pools Act 1992 and any relevant Australian Standards.	The swimming pool fencing proposed is not in accordance with the Swimming Pools Act.	No
12. A spa is not required to be surrounded by a child resistant barrier provided that the spa is covered or secured by a child-safe structure (e.g., door, lid or mesh) that is fastened to the spa pool by a child-resistant device at all times when the spa pool is not in actual use and complies with Swimming Pools Act 1992 and any relevant Australian Standards.	N/A – no spa exists or is proposed.	N/A
Control	Proposal	Compliance
1. Development applications are supported by a site analysis and design response demonstrating how the relevant provisions of the LEP and the objectives of this part of the DCP have been addressed.	Sufficient information has been provided in this regard.	Yes
2. Removal of existing native vegetation minimised to that which is reasonably required to site and construct a building.	The proposed development involves minimal removal of vegetation on site. Site clearing was undertaken at the time the unauthorised dwelling, swimming pool and retaining walls were constructed.	Yes
3. The integrity of the existing edge of bushland closest to the Georges River is retained.	Achieved.	Yes

4. Vegetation along ridgelines and on hillsides is retained and supplemented to provide a backdrop to the waterway.	Achieved.	Yes
5. New, complementary planting and landscaping is encouraged.	Achieved.	Yes
6. Where on a steep site, vegetation is used to screen the impact of support structures such as piers.	The development proposed under this application is not proposed to be constructed on piers.	N/A
7. Landscaped areas below the FBL should maximise the use of indigenous plant material and preferably use exclusively indigenous plants. Turf should be limited in this area. Details of planting are to be indicated on any landscape plan submitted to Council.	N/A - No FBL impacts this development site.	N/A
8. Natural features that make a contribution to the environmental qualities and scenic landscape values of the foreshore, including mature native tree and sandstone rock outcrops, platforms and low cliffs, are retained.	Not applicable to this site.	N/A
9. The visual impact of buildings is minimised having regard to building size, height, bulk, siting, external materials, and colours and cut and fill.	The built form is not compatible with the bulk and scale of the desired future character of the locality. Furthermore, the built form fails to comply with the building separation as described under setbacks.	No
10. Buildings should be sited on the block to retain existing ridgeline vegetation, where possible. Siting buildings on existing building footprints or reducing building footprints to retain vegetation is highly recommended.	The proposed works are associated with the built form that exists on the site or are associated with altered land levels undertaken without consent.	Yes
11. Where on a steep site, buildings are sited to sit discretely within the	N/A- the built form and altered land levels undertaken without consent exist, the works the subject of this	N/A

<p>landscape using hillsides as a backdrop and below the tree canopy. The building footprint is to result in the following: (i) The preservation of topographic features of the site, including rock shelves and cliff faces; (ii) The retention of significant trees and vegetation, particularly in areas where the loss of this vegetation would result in the visual scarring of the landscape, when viewed from the water, and (iii) Minimised site disturbance through cutting and/or filling of the site.</p>	<p>application do not impact landscape features.</p>	
<p>12. Facades and rooflines of dwellings facing the water are to be broken up into smaller elements with a balance of solid walls to glazed areas. Rectangular or boxy shaped dwellings with large expanses of glazing and reflective materials are not acceptable. In this regard, the maximum amount of glazed area to solid area for façades facing the foreshore is to be 50%-50%.</p>	<p>The development site does not front the waterway.</p>	<p>N/A</p>
<p>13. Colours that harmonise with and recede into the background landscape are to be used. In this regard, dark and earthy tones are recommended and white and light coloured roofs and walls are not permitted. To ensure that colours are appropriate, a schedule of proposed colours is to be submitted with the Development Application and will be enforced as a condition of consent.</p>	<p>Satisfactory – the colours of the built form exist and are not proposed to be altered as part of this application. Any works proposed would be conditioned to be consistent with the existing development if the application was to be supported. colours proposed.</p>	<p>Yes</p>

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14. Buildings fronting the waterway must have a compatible presence when viewed from the waterway and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality	The development site does not front the waterway.	N/A
15. Blank walls facing the waterfront shall not be permitted. In this regard, walls are to be articulated and should incorporate design features, such as: (i) Awnings or other features over windows; (ii) Recessing or projecting architectural elements; or (iii) Open, deep verandas.	The development site does not front the waterway.	N/A
16. Adequate landscaping shall be provided to screen undercroft areas and reduce their impact when viewed from the water.	The development site does not front the waterway.	N/A
17. The extent of associated paved surfaces is minimised to that which provides essential site access and reasonable private open space.	Achieved.	Yes
18. Buildings have external finishes that are non-reflective and coloured to blend with the surrounding landscape.	Satisfactory – the colour scheme exists.	Yes
19. Swimming pools and surrounds should be sited in areas that minimise the removal of trees and limit impact on natural landform features (rock shelves and platforms).	N/A – The swimming pool and associated coping is existing.	N/A
20. Fences are low in profile and are at least 50% transparent.	N/A- no front fencing proposed.	N/A
21. Driveways and other forms of vehicular access	Satisfactory driveway design nominated on the plans. An application	Yes

are as close as practical to running parallel with contours	under 138 of the Roads Act will be required to be obtained prior to any crossing and driveway being poured.	
22. The natural landform is to be retained and the use of retaining walls and terracing is discouraged.	N/A – no retaining walls proposed under this development application. A retaining wall across part of the site frontage is proposed to be removed.	N/A
23. Retaining walls are not to be located: <ul style="list-style-type: none"> • Between the FBL and MHWM • Within 40m of MHWM 	N/A – no retaining walls proposed.	N/A
24. Where retaining walls are constructed in other areas, materials and colours that blend with the character and landscape of the area are used. Where retaining walls face the foreshore they are to be constructed of course, rock faced stone or a stone facing and are to be no higher than 600mm above natural or existing ground level. Under no circumstances will Council permit a masonry faced retaining wall facing the foreshore.	N/A – no retaining walls proposed.	N/A
25. Development provides opportunities to create view corridors from the public domain to the Georges River.	N/A- views of the Georges River are not afforded from this site.	N/A

Georges River Development Control Plan 2021 Amendment

60. The Amendment No. 3 to the Georges River Development Control Plan (DCP) 2021 was effective on 27 October 2023. This amendment sought to harmonise all DCP controls relating to the Hurstville City Centre into the Georges River DCP 2021 and rectify several housekeeping issues comprising of unintended omissions, numerical, typographical, interpretation and formatting errors throughout the Georges River DCP 2021. Existing savings provision apply, and all development applications lodged with Council prior to the gazelle of the amendment, will be determined as if the subject amendment had not commenced. This application has been assessed having regard to the relevant Development Control Plan.

ASSESSMENT

Streetscape Character and Built Form

61. Streetscape character is the overall character and appearance of a street formed by buildings and landscape features that frame the public street. Streetscape also refers to the way a street looks and helps to provide local amenity and identity. The presentation of structures in a street is the most critical element and determines the character of not only the street, but the locality. 'Good' streetscapes are those in which the houses and associated spaces form attractive streets and neighbourhoods, as intended by GRDCP 2021. New buildings need to be sensitive and in context with the landscape setting, and the environmental conditions of the locality to satisfy the objectives of GRDCP 2021. An assessment of the streetscape character and site analysis are the first steps in the design process and are used to ensure that the proposed development is the best possible solution for a site.
62. The proposed development fails to meet the objectives of streetscape character and built form. In particular, the proposal fails to comply with the following objectives.
- reflect the dominant and transitioning building patterns of the streetscape with regard to the location, spacing and proportion of built elements in the streetscape.*
 - Complement, conserve and enhance the visual character of the street and neighbourhood through appropriate building scale, form, setting, details, and finishes.*
 - Ensure that all elements of development visible from the street, waterways and public domain make a positive contribution to the foreshore, streetscape, and natural features.*
63. To make a positive contribution to the streetscape, new development needs to be compatible with the scale and character of existing buildings and landscape elements. The proposed development does not comply with development control 1 and 5 in section 1 under Part 6.1.2 of GRDCP 2021 as new buildings and additions are to consider the Desired Future Character Statement in Part 5 of GRDCP 2021. The proposed development fails to comply with development control 2 under section 1 in part 6.1.2 in that new buildings and additions are to be designed with an articulated front façade.
64. GRDCP 2021 development control 5 in section 1 under Part 6.1.2 notes that development must be sensitively designed to minimise adverse impacts on the amenity and view corridors of neighbouring public and private property while maintaining reasonable amenity for the proposed development and is to balance this requirement with the amenity afforded to the new development. The rearward elevated first floor balcony to be converted to a non-trafficable roof with a fixed balustrade across the sliding door. This area remains as a privacy and amenity concern towards the rearward adjoining property.
65. GRDCP 2021 development control 2 under section 1 in part 6.1.2 in that new buildings and additions are to be designed with an articulated front façade. The front façade has incorporated sufficient building articulation with the formal living room, front entry and porch together with the garage entry. The height of the balustrade undermines the articulation of the front façade as it is visually dominating.

Building Scale and Height

66. Good design provides a building layout that maximises the natural attributes of the site. Carefully considered building layout, design, scale and built form also creates a higher level of amenity for occupants through enhanced visual and acoustic privacy, passive heating and cooling, attractive outlooks from living spaces, and flexible and useable indoor and outdoor spaces that meet the needs of occupants.
67. The proposed development fails to comply with GRDCP 2021 development control 1 under section 2 in part 6.1.2 in that *buildings must consider and respond to the predominant and desired future scale of buildings within the neighbourhood and consider the topography and form of the site*. The proposal fails to appropriately responds to the future scale of buildings within the neighbourhood. The built form is not compatible with the bulk and scale of the desired future character of the locality.

Setbacks

68. The spatial relationship of buildings is an important determinant of urban form. Building separation affects the spatial continuity and the degree of openness in the street and between properties. Building separation is required to minimise adverse amenity impacts by providing opportunities for landscaping, access, privacy, solar access, and private and shared open spaces.
69. The proposed development fails to provide a 1.5m side setback for the length of the development site as the existing building has a side setback of 0.9m along the southern elevation. The proposal to remove a door and infill the area with a rendered brick wall is not side setback compliant. The non-compliant side setback impacts upon the view line of a minimum 1.5m setback along the side boundaries within the foreshore scenic protection area.

Vehicular Access, Parking and Circulation

70. The location and layout of parking can have a significant impact on the design of new development. It will influence the layout and design of buildings and landscaping and availability of on-street parking. The proposed development fails to comply with development control 6 under 7 in part 6.1.2 of GRDCP 2021 that outlines *the maximum driveway width between the street boundary and the primary building setback alignment of the garage is 4 metres*. The development proposes a driveway width crossover at the boundary of 4m which splays to meet the garage door and porch area of the dwelling being a width of 5.1m.
71. The objectives of Vehicular Access, Parking and Circulation:
- Ensure car parking is provided to meet the requirements of Council.*
 - Ensure vehicular access routes and parking areas are easily accessible and visible to motorists.*
 - Ensure car access areas and garages/carports do not visually dominate either the development or the streetscape.*
 - Ensure car parking spaces are designed to ensure ease of access, egress and on-site manoeuvring.*
 - Limit the width of driveways and hard surfaces depending on the site frontage.*
72. If the application were of a supportive nature, then a variation to GRDCP 2021 development control 6 under section 7 in part 6.1.2 could be supported as it is from a practicality perspective unreasonable to not allow a hard stand area forward of the garage doors to allow entry and exit for a vehicle.

Visual Privacy

73. Building design must take into consideration aspects of visual privacy and noise sources and minimise their future impact on occupants. Amenity is enhanced by privacy and a better acoustic environment. This can be achieved by carefully considering the location of the building on the site, the internal layout, the building materials used, and screening devices. The consideration of privacy requires an understanding of the context of the adjacent site, site configuration, topography, the scale of the development and its layout.
74. The proposed development fails to comply with development control 3 under section 8 in part 6.1.2 of GRDCP 2021 which outlines that upper-level balconies should not project more than 1500mm beyond the main rear wall alignment so as to minimise adverse visual privacy impacts to adjoining properties. The existing rearward balcony located on the north-western corner of existing dwelling is to be converted from a balcony to a non-trafficable roof area consisting of pebbles. The proposed development seeks to construct a fixed balustrade to the exterior face of the glass sliding doors preventing access. This is a poor built form outcome for this site and the doors should be change to windows to ensure this area is not used and to increase privacy to the rear allotment.

Noise

75. Building design must take into consideration the noise, vibration and minimise the acoustic privacy, amenity and health impacts on the future occupants and neighbouring properties.
76. The proposed development fails to comply with GRDCP 2021 development control 1 under section 9 in part 6.1.2 in relation to noise. GRDCP 2021 outlines that *noise generators such as plant and machinery including air conditioning units and pool pumps are located away from windows or other openings in habitable rooms; they are to be screened to reduce noise or acoustically treated*. The architectural and landscape plans fail to annotate on the plans the location of air conditioning condenser unit and the swimming pool pump/filter and thus an assessment of the potential impacts for the future occupants and neighbouring properties cannot be undertaken.
77. Furthermore, the proposed development fails to demonstrate compliance with GRDCP 2021 development control 9 under part 6.4.4 in relation to *mechanical equipment to be suitably acoustically treated so that noise to adjoining properties is reduced*. This development control is in relation to the air conditioning condenser unit and swimming pump/filter, the development has not given consideration to the potential impacts on the future occupants and neighbouring properties.

Site Facilities

78. The sustainable management of stormwater helps to protect and improve the quality of waterways and maintain the health of its ecosystems. This results in a better urban environment for residents of the Georges River Local Government Area. The proposed development fails to comply with GRDCP 2021 development control 2 under section 13 in part 6.1.2 relating to ensuring that the provision for water, sewerage and stormwater drainage for the site shall be nominated on the plans to Council's satisfaction.

79. Council's Development Engineer has reviewed the proposed development in relation to stormwater management and is not supportive of the design proposed as the application fails to provide a stormwater drainage design in accordance with Georges River Stormwater Management Policy. Due to the site levels and the relationship to Forest Road an inter-allotment drainage easement is required. One does not exist and there is no legal agreement in place that one can be obtained.
80. Furthermore, the proposed development fails to comply with GRDCP 2021 development control 3 under section 13 in part 6.1.2 in that *each dwelling must provide adequate space for the storage of garbage and recycling bins (a space of at least 3m x 1m per dwelling must be provided) and are not to be located within the front setback* and development control 4 under section 13 in part 6.1.2 being that *letterboxes are to be located on the frontage where the address has been allocated in accordance with Australia Post requirements*. Both the bin storage and the letter boxes have not been annotated on the architectural and/or landscape plans.

Retaining Walls

81. The proposed development seeks to remove an existing retaining wall located with the north-eastern corner of the site and runs along the northern side boundary. Council's request for additional information letter outlined that the existing retaining wall within the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) of the mature *Angophora costata* (Sydney Red Gum) which is a street tree required to be retained. The amended plans prepared by *Rothshire* dated 3 November 2023 'Rev 2' propose the partial demolition of the retaining wall within the TPZ. If the retaining wall is required to be retained, if the applicant is seeing to remove part of this retaining wall within the Tree Protection Zone, an Arboricultural Impact Assessment was requested to be prepared by an AQF Level 5 Arborist to demonstrate that the tree will remain viable in accordance with AS 4970-2009 '*Protection of trees on development sites*' to be submitted. The Applicant has not provided the requested additional information and maintains the removal of only part of the retaining wall.

Swimming Pool

82. The existing swimming pool fails to comply with GRDCP 2021 development controls 9 in relation to noise of the swimming pool pump and development controls 10 and 11 in relation to the swimming pool fencing. The architectural plans and landscape plan fail to demonstrate the location of the swimming pool pump/filter on the site. The location of this plant and equipment can greatly impact upon the amenity of the future occupants of the dwelling and neighbouring properties. Despite a Swimming Pool Certificate being issued as part of the additional information, it is unclear as to whether the swimming pool fencing is compliant with the Swimming Pools Act 1992 and any relevant Australian Standard.

Foreshore Scenic Protection Area

83. Part 6.5.1 Foreshore Scenic Protection Area of GRDCP 2021 applies to the site as the site is mapped under Clause 6.6 of GRLEP 2021. The proposed development fails to comply with GRDCP 2021 development control 9 in section 1 under part 6.5.1 relating to the Foreshore Scenic Protection Area and how the visual impact of buildings is minimised having regard to building size, height, bulk, siting, external materials, and colours and cut and fill. GRDCP 2021 outlines under objective (c) that the intent of the Foreshore Scenic Protection Area is to ensure that development is sited and designed to blend with the surrounding environment, particularly when viewed from highly visited public viewing points. The proposed development fails to ensure that the proposed development is sited and designed to blend with the surrounding environment being the Foreshore Scenic Protection Area.

IMPACTS

Natural Environment

84. This proposal is inconsistent with the controls for Low-Density Residential development given the design has not had adequate regard to bulk, scale, form, and the interface with the public domain and existing and future desired character.
85. The proposal is considered to have an unreasonable impact on the natural and built environment due to the elements presenting to neighbouring allotments, and the non-compliant setbacks given the site is within the FSPA. The design has resulted in unacceptable privacy and overlooking impacts on neighbouring properties. The design response (being the privacy screening and balustrade to a glass sliding door) to address the rearward first floor balcony impacts upon the visual bulk and scale of the development and acoustic privacy and amenity of the adjoining property and is considered to be a poor outcome.
86. The proposal in its current form is considered to result in adverse impacts on the character of the locality and compromise the amenity and privacy of neighbouring residential properties. Overall, the proposal presents an undesirable and unsupportable development.
87. Council's Landscape Officer has reviewed the proposed development and is not supportive of the proposed development from a landscape and arboricultural perspective. The proposed works will directly impact the natural environment being a street tree within the frontage of the subject site.

Built Environment

88. The proposed works under this development application coupled with the existing built form on the site, fails to represent an appropriate planning outcome for the site with respect to its bulk, scale and density, and expression. The development is an inappropriate response to the context of the site.
89. It is noted that the application before Council is seeking works to facilitate compliance with various elements of the development which has been constructed unlawfully without the benefit of a Part 4 approval and the undertaking of an mandatory inspections required by the construction phase of the development.
90. As a result, concern is raised that the support of these amendments without understanding the structural nature and habitability of the dwelling is of concern. As a result, this application cannot be supported.

Social Impact

91. The assessment demonstrates the proposal will have an adverse impact on the character of the locality and the amenity of neighbouring residential properties.

Economic Impact

92. There is no apparent adverse economic impact that is likely to result within the locality due to the demolition works and completion of a partially constructed two-storey dwelling, swimming pool, retaining walls, landscaping, and site works.

Suitability of the Site

93. The site is zoned R2 – Low Density Residential. Whilst the proposal being for demolition works and completion of a partially constructed two-storey dwelling, swimming pool, retaining walls, landscaping and site works, is a permissible form of development in this zone. It is considered that the proposal is not suitable for the site given the unsupportive elements of the proposal. The assessment demonstrates that the proposal in its current form will have an unreasonable impact on the character of the locality and the amenity of neighbouring residential properties. The environmental impacts on the social environment are unreasonable and the application is not supported.

SUBMISSIONS, REFERRALS AND PUBLIC INTEREST

Submissions

94. The application was advertised, and adjoining residents were notified by letter and given twenty-eight (28) days in which to view the plans and submit any comments on the proposal. One (1) submission was received on 4 December 2023, outside of the initial neighbour notification period. No submissions were received during the re-neighbour notification period.

Issue 1: Privacy

95. Officer Comment: Privacy concerns were raised regarding the rearward balcony. The design was modified through revised plans, whereby the balcony has been converted to non-trafficable roof space finished with pebbles and a balustrade placed in front of the glass sliding doors prevent access to this area. Privacy concerns were also raised regarding windows to the first floor. The first-floor windows service bedrooms that are considered to be low impact, low entertainment areas. The windows on the first floor within living areas have been oriented to the street or have raised sill heights to mitigate privacy issues.

The privacy concerns raised are considered to have been resolved through the revised design.

Issue 2: Height of Building

96. Officer Comment: Concern was raised regarding the height of building. The proposed works under this development application do not impact upon the height of building. The overall height of the dwelling does not exceed the 9m height control.

Issue 3: Private Open Space

97. Officer Comment: The submissions received raised concern with the private open space of the subject site. Specific concern was in relation to the levels within the rear yard given the unauthorised construction of the dwelling and the changes in the site topography. The levels on the site presently are not seeking to be altered as part of this application. It is noted the subject site's private open space has been raised above the previous natural topography of the site but is not considered to unreasonably impact adjoining allotments.

Issue 4: Cut and Fill

98. Officer Comment: Cut and fill has been raised as a concern by the objecting property. It is acknowledged the unauthorised construction of this dwelling and the swimming pool resulting in changes to the land levels originally on the site. This application is seeking some cut and fill for the rear landscaping as well as the construction of the driveway. The proposed cut and fill have been assessed and is considered acceptable.

Issue 5: Swimming Pool

99. Officer Comment: The swimming pool and coping surrounding the swimming pool is existing. The proposed development seeks to provide finishes to the swimming pool being the surrounding landscaping and swimming pool fencing. Concern was raised specifically regarding the out of ground height of the swimming pool. This is also a concern of council as the levels of the site have changed over the course of the demolition of the previous dwelling, and construction of the dwelling and swimming pool. Despite the swimming pool being an existing structure on the site, the swimming pool does result in an unacceptable outcome for the site in terms of its compliance with the Swimming Pool Fencing criterion and out of ground height due to the level changes within the rear yard.

Revised Plans

100. The Applicant lodged revised plans on 7 November 2023 and 25 January 2024. In accordance with the requirements of Georges River Community Engagement Strategy these plans were publicly exhibited as, in the opinion of Council, the submitted additional information and changes being sought did intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment. No additional submissions were received.

Council (Internal) Referrals**Development Engineer**

101. The Development Engineer advised that the application is not supported on a stormwater drainage perspective and provided the following comment.
- The submitted stormwater drainage design plan has not been comprehensively prepared and there are insufficient and inadequate information provided to address the design requirements.
 - The drainage design plan fails to present the following key information based on Council's previous review comments:
 - a) Reiterating that the site drainage design plan must address attached Council's due diligence comments. All stormwater runoffs shall be drained by gravity to a legal point of discharge in accordance with the Australian/New Zealand Standard AS/NZS 3500.3.
 - b) Surveyed spot levels from Summit Geomatic Survey Levels Plan, design ground levels, finished surface levels, total development footprint including OSD tank and Driveway access from layback to front boundary then to inside access driveway leading to basement which must be clearly drawn/shown and shall be consistently documented under Architectural, Landscape and Drainage plans. A certification for all plans' consistency is required from drainage design engineer and architect. All plans are to be submitted to support final drainage design plans for assessment. Contours are not required to present/display in the drainage plans. At this stage, 98% CC Plans are required given the nature of site topography and work history undertaken on the sites.
 - c) Contributing catchment areas from roof, hardstand & site setback areas draining to the OSD are acceptable.

- d) Detail design of OSD tank with marked up longitudinal/cross sections and internal drainage systems (pits/pipes/grated drains leading to OSD tank and inter allotment drainage (IAD) easement must be submitted as 98% CC design including any regrading site ground surfaces either existing or proposed levels etc) shall be clearly shown.
 - e) Each lot must have separate individual site drainage design detail plan draining to IAD pipe using Summit Geomatic prepared surveyed levels which is to be submitted as separate package. Hence there will be three site drainage plans with different drawing numbers based on each lot.
 - f) Site Drainage Plans must demonstrate that site discharge system from development sites can be satisfactorily discharged to an existing public drainage system via IAD pipe from street property numbers 1174 to 1178 later connected to public drainage system and to be prepared as 98% detailed design plan.
 - g) Upstream natural overland flow along rear portion of all three lots must be managed and conveyed through developed lots leading to a legal point of discharge which must be demonstrated and this is a critical information to address surrounding neighbours issues to overland drainage flooding impacts to their properties. The neighbours have had many issues with these current buildings in the last 8 years including insurance claims on damage to property and continued flooding every time it rains. Despite the information was requested earlier but was not submitted.
 - h) Basement pump sump detail design with minimum volume to be submitted.
 - i) Driveway access layout must be drawn on all plans from lay back to basement showing OSD tank footprint. The rear area features of each lot right up rear site boundary must be clearly documented.
 - j) Proposed and existing retaining wall details along all lot boundaries are to be submitted.
 - k) Submit a certificate from architect and drainage engineer stating that the existing ground levels and finished ground levels have been diligently reviewed and confirmed which can be satisfactorily be implemented during construction stage.
- Easement requirement for the development as follows:
 - a) The subject site falls to the rear and side to side slope and a demonstrated easement to drain water will be required to drain water either through No.1184 Forest Road, Lugarno or No. 1180 & 1182 Forest Road, Lugarno (If an easement does not already exist).
 - b) A detailed survey layout plan prepared by a Registered Surveyor showing the proposed easement to drain water through all properties must be submitted showing the feasibility of the easement.
 - c) Provide detail IAD easement drainage pits/pipeline plan with pipe longitudinal section and layout plan from the subject property up till where the drainage pipeline is connected to an existing public drainage system through other affected properties. The Applicant shall create easements in benefit in favour of subject properties from all affected properties. All inter- allotment drainage easements are to be noted on the stormwater drainage plan. Easement widths must comply with the requirements of Cl 3.5.2 of the SMP.
 - d) Contractual agreement between the affected parties shall be submitted.
 - e) Council has been made aware of recent clarification to the interpretation of Clause 6.9 Essential Services (including stormwater drainage), in the GRLEP 2021, and the nature of what adequate arrangements are required in circumstances where the specified essential services are not available from decisions in the Land and Environment Court.

In this regard, for an Applicant to demonstrate to Council that adequate arrangements with respect to site stormwater disposal have been made where an easement for drainage is required through adjoining downstream land, documentary correspondence must be provided to demonstrate:

- i. That the Applicant or proponent has made contact with the owner of the property proposed to be burdened by the stormwater easement with an in-principal proposal for the creation of an easement, specifying the location of this, the width, drainage system design, and works required.
- ii. That the adjoining burdened property owner has agreed, in principle to the proposal which shall be documented in the form of legal agreement prepared by solicitors, at full cost to the applicant.
- iii. In the absence of this documentation, Council cannot be satisfied that adequate arrangements with respect to site stormwater disposal have been made and would not therefore be able to approve the application.

To date the Applicant has failed to adequately address the site is satisfactory from a stormwater drainage perspective.

Traffic Engineer

102. The Traffic Engineer advised that the application is supported on a traffic and parking perspective. No objection was raised to the proposed development and no conditions were provided.

Landscape Officer

103. The Landscape Officer advised the proposed development is not supported for the following reasons:

- Previous Arboricultural comments were provided on 12 September 2023. It was recommended that that existing retaining wall within the Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) of the mature *Angophora costata* (Sydney Red Gum) street tree be retained.
- The amended plans prepared by Rothshire dated 3 November 2023 'Rev 2' still proposes partial demolition of the retaining wall within the TPZ. If the retaining wall cannot be retained within the Tree Protection Zone, an Arboricultural Impact Assessment prepared by an AQF Level 5 Arborist to demonstrate that the tree would remain viable in accordance with AS 4970-2009 'Protection of trees on development sites' will be required.

Recommendations:

- 1) That the architectural plans are amended to retain the existing retaining wall adjacent the street tree within the Tree Protection Zone (TPZ).
- 2) Alternatively, if the wall cannot be fully retained, an Arboricultural Impact Assessment prepared by an AQF Level 5 Arborist that demonstrates the tree would remain viable in accordance with AS 4970-2009 'Protection of trees on development sites' must be submitted.

Environmental Health Officer

104. As part of the assessment of this application, the application was referred to Council's Environmental Health Officer for comment.

The proposed development is supportable subject to remediation works being undertaken in accordance with the submitted Remedial Action Plan.

Land Information Officer

105. The application was referred to Council's Land Information Officer, no objection was raised to the proposed development and no conditions were provided.

Building Surveyor

106. As part of the assessment of this application, the application was referred to Council's Building Surveyor for comment.
107. The site is subject to a Building Information Certificate for the existing structures on site. Reference to a full assessment should be made via 149D2023/0005 attached to this report.
108. The recommendations of the BIC in summary:
- Refusal Reason – Building Code of Australia: Evidence has not been provided demonstrating compliance with the Performance Requirements of the NCC 2019 Building Code of Australia Volume Two for the building.
 - Refusal Reason - Building Code of Australia: The Balustrades require a performance solution for the Spigot design and installation which is not deemed to Satisfy.
 - Refusal Reason - Lack of Development Consent: The application for the completion of the building cannot proceed due to the absence of development consent as required by Part 4 of the Environmental Planning and Assessment (EP&A) Act.
 - Refusal Reason – Owners Consent: REF: 2122301-LET-006-V1 Dated 19.10.2022 has been deemed invalid as the "owners' representative" signed the authorisation without providing the full details of the owners, and all signatories for Golden King Assets Pty Ltd were not included.
 - Refusal Reason – Public interest: Refusing the application aligns with the broader public interest by safeguarding the integrity of the planning process and ensuring that development activities are conducted in accordance with established legal frameworks and community expectations.
 - Refusal Reason – Consent: Works have been carried out without the prior consent of Council in the instance where prior consent is necessary.
 - Refusal Reason – Assessment: Notional assessment carried out pursuant to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, revealed non compliances with the development standards.

Assets and Infrastructure Engineer

109. Council's Assets and Infrastructure Engineer advised that the driveway profile is supported, and suitable conditions of consent were provided should the application be supported.

External Referrals

Ausgrid

110. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. No concerns were raised subject to conditions being imposed if the application were to be supported.

Public Interest

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

DEVELOPMENT CONTRIBUTIONS

112. Contributions on this application would be determined in accordance with the Georges River Council Local Infrastructure Contributions Plan 2021 (Section 7.11 and Section 7.12). This application is recommended for refusal as a result contributions have not been levied at this time.

CONCLUSION

113. Development consent is sought for demolition works and completion of a partially constructed two-storey dwelling, swimming pool, retaining walls, landscaping and site works at 1174 Forest Road, Lugarno.
114. The proposal has been assessed regarding the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is an inappropriate response to the context of the site and will not result in a good planning, and urban design outcome in the locality.
115. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policy (SEPP), Georges River Local Environmental Plan 2021, and Georges River Development Control Plan 2021 and fails to comply Chapter 2 Vegetation in Non-Rural Areas under SEPP Biodiversity and Conservation) 2021, SEPP (Resilience and Hazards) 2021, GRLEP 2021, GRDCP 2021 development objectives and controls. Any variations have been addressed and are not worthy of support on merit.

STATEMENT OF REASONS AND RECOMMENDATION

116. Statement of Reasons

- No lawful owners' consent has been provided in accordance with Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021.
- The development is inconsistent with the aims of the GRLEP 2021 plan as it fails to promote a high standard of urban design and built form outcomes.
- The proposal fails to have adequate regard to the objectives of the R2 low density residential zone pursuant to Clause 2.3 of Georges River Local Environmental Plan 2021 *to promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity and to provide for housing within a landscaped setting that enhances the existing environmental character of the Georges River local government area.*
- The proposal fails to demonstrate compliance with Chapter 2 and Chapter 4, of the State Environmental Planning Policy (Resilience and Hazards) 2021 in relation to water catchments and remediation of land.
- The proposal fails to demonstrate compliance with the Georges River Local Environmental Plan (GRLEP) 2021 criterion related to Aims of the Plan, Zone Objectives, Stormwater Management, Foreshore Scenic Protection Area (FSPA), Essential Services and Design Excellence.
- The proposal fails to demonstrate compliance with several of the Georges River Development Control Plan 2021 criterion related to Residential Locality Statements, Streetscape Character and Built Form, Setbacks, Vehicular Access, Parking and Circulation, Visual Privacy, Noise, Site Facilities and Foreshore Scenic Protection Area.
- The proposed development will have unacceptable adverse impacts on the natural and built environment relating to the proposal not being compatible with the desired future character and zone objectives for the land.
- The proposed development will have unacceptable social impacts on the character of the locality and the amenity of neighbouring residential properties.

Recommendation

117. Pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, refuses Development Application DA2022/0624 for demolition works and completion of a partially constructed two storey dwelling, swimming pool, retaining walls, landscaping and site works at Lot A, DP328702 known as 1174 Forest Road, Lugarno, is recommended for refusal for the reasons outlined below.

1. **Refusal Reason – Environmental Planning Instrument** – Pursuant to Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021, the proposed development application fails to provide lawful owners consent by the owner of the property and/or another person, with written consent of the owner of the land.
2. **Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of State Environmental Planning Policy (Biodiversity and Conservation) 2021. In particular:
 - a) The information provided, relating to arboricultural matters, and the submitted Arborist Reports are insufficient and conflicting in content to make an effective assessment and determination relating to tree impacts.
 - b) The impacts from the stormwater proposal have not been sufficiently assessed or mitigated.
 - c) The submitted stormwater drainage design plan has not been comprehensively prepared and there are insufficient and inadequate information provided to address the design requirements. The submitted stormwater design is not in accordance with Georges River Stormwater Management Policy.
3. **Refusal Reason – Environmental Planning Instrument** – Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of State Environmental Planning Policy (Resilience and Hazards) 2021. In particular:
 - a) Detailed Site Investigation Report found evidence of asbestos contaminated soil and asbestos fragments on the sites 1174-1178 Forest Road, Lugarno.
 - b) The Detailed Site Investigation Report outlines that the sites can be made suitable for the intended use following remediation.
 - c) A separate development application for remediation must be lodged and determined prior to the approval of the proposal.
4. **Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Georges River Local Environmental Plan 2021:
 - a) Clause 1.2 – Aims of the Plan. The proposal is inconsistent with the aims of the plan with specific reference to 2(f) as it does not promote a high standard of urban design and built form.
 - b) Clause 2.3 - Zone Objectives. The proposal is inconsistent with the zone objectives as the proposal fails to promote a high standard of urban design and built form outcome that enhances the local character of the suburb and achieves a high level of residential amenity.

- c) Clause 6.3 – Stormwater Management. The proposal is not in accordance with Georges River Stormwater Management Policy.
- d) Clause 6.6 – Foreshore Scenic Protection Area. The proposal results in a dominant built form and reduced setbacks and fails to retain the existing environmental, cultural, and built form character values of the foreshore area.
- e) Clause 6.7 – Essential Services. The proposal is not in accordance with Georges River Stormwater Management Policy as the proposal has not demonstrated lawful discharge of stormwater from the site.
- f) Clause 6.10 – Design Excellence. The proposal in conjunction with the existing structures on the site fails ensure a high standard of architectural design, materials and detailing appropriate to the building type and location.

5. Refusal Reason - Environmental Planning Instrument - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Georges River Development Control Plan 2021:

- a) Part 5 - Resident Locality Statement. The proposal is not consistent with the existing and future desired character of the precinct. The proposal has failed to adequately provide a good urban design outcome for the partially constructed dwelling on site that is in accordance with the built form within the streetscape.
- b) Part 6.1.2.1 – Streetscape Character and Built Form – The proposal fails to satisfy the design criterion relating to bulk, scale, design, and architectural elements to provide visual relief of the built form scale.
- c) Part 6.1.2.2 – Building Scale and Height – The proposed development does not respond to the predominant and desired future scale of buildings within the neighbourhood and has not considered the topography and form of the site.
- d) Part 6.1.2.3 – Setbacks – The proposal fails to ensure adequate separation between buildings, consistent with the Foreshore Scenic Protection Area.
- e) Part 6.1.2.7 – Vehicular Access, Parking and Circulation – The proposed development fails to ensure that car access areas do not visually dominate the development and streetscape.
- f) Part 6.1.2.8 – Visual Privacy - The proposed development fails to minimise direct overlooking from windows and balconies.
- g) Part 6.1.2.9 – Noise – The proposed development fails to adequately locate noise generators such as air conditioning condenser units and swimming pool pumps/filters on the architectural plans or landscaping plans to assess the noise transmission from the development to the adjoining properties.
- h) Part 6.1.2.12 – Site Facilities – The proposal fails to demonstrate adequate provisions are made available for site facilities to support residential occupation i.e. bin storage, stormwater disposal and letterboxes.
- i) Part 6.4.4 – Swimming Pool – The proposal fails to demonstrate the swimming pool pump/filter location on site and swimming pool fencing in accordance with the Swimming Pools Act 1992 and any relevant Australian Standard.
- j) Part 6.5.1 – Foreshore Scenic Protection Area – The proposal fails to provide for the environmental qualities and scenic landscape values of the site via the proposed design.

6. Refusal Reason – Impact on the Environment – Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:

- a) **Built and Natural Environment.** The development is located within an established residential area and is considered to result in an unreasonable impact on the built and natural environment. Due to the insufficient information regarding the retention of a street tree and a complete assessment of the impact of the proposed development on the natural environment cannot be ascertained, resulting in non-support of the application.
 - b) **Social Impact.** The assessment demonstrates the proposal will have an adverse impact on the character of the locality and the amenity of neighbouring residential properties.
 - c) **Suitability of the Site.** The site is not considered suitable for the proposed development in its current form having regard to the scale, character, and amenity of the proposal on the surrounding development within the R2 Low Density Residential locality and Scenic Foreshore Protection Area.
- 7. Refusal Reason – The Public Interest –** Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent given the dwelling and associated structures are unauthorised.

ATTACHMENTS

- Attachment 1  Statement of Environmental Effects - 1174 Forest Road LUGARNO - DA2022/0624
- Attachment 2  Survey Plan - 1174-1178 Forest Road LUGARNO - DA2022/0624
- Attachment 3  Redated Architectural Plans - DA2022-0624 - 1174 Forest Road Lugarno
- Attachment 4  Landscape Plan - DA2022-0624 - 1174 Forest Road Lugarno
- Attachment 5  Stormwater Design Plans - DA2022-0624 - 1174 Forest Rd Lugarno
- Attachment 6  BCA Report - 1174 Forest Rd Lugarno - DA2022/0624
- Attachment 7  Swimming Pool Certificate - 1174 Forest Rd Lugarno - DA2022/0624
- Attachment 8  Detailed Site Investigation Report - 1174 Forest Rd Lugarno - DA2022/0624
- Attachment 9  Remedial Action Plan - 1174 Forest Rd Lugarno - DA2022/0624

REPORT TO GEORGES RIVER LOCAL PLANNING PANEL MEETING OF THURSDAY, 06 JUNE 2024

LPP019-24 1176 FOREST ROAD LUGARNO

LPP019-24

LPP Report No	LPP019-24	Development Application No	DA2022/0620
Site Address & Ward Locality	1176 Forest Road Lugarno Peakhurst Ward		
Proposed Development	Demolition works and alterations and additions and completion of a two-storey single dwelling with basement and swimming pool, retaining walls, landscaping and fencing.		
Owners	Golden King Assets Pty Ltd		
Applicant	Ms Naomi Roberts-Thomson		
Planner/Architect	Planner/Architect - Rothshire		
Date Of Lodgement	23/02/2023		
Submissions	1 submission received		
Cost of Works	\$688,000.00		
Local Planning Panel Criteria	The instrument of delegations requires developments which in the opinion of the Manager of Development and Building is in the public interest to be reported to the Georges River Local Planning Panel for determination.		
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 (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Industry and Employment) 2021, Georges River Local Environmental Plan 2021 (GRLEP 2021) and Georges River Development Control Plan 2021 (GRDCP 2021).		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects, Clause 4.6 Variation Statement, Survey Plan, Architectural Plans, Landscape Plan, Stormwater Plan, BCA Report, Swimming Pool Certificate, Detailed Site Investigation Report and Remedial Action Plan.		
Report prepared by	Development Assessment Planner		
RECOMMENDATION	That the application be refused in accordance with the reasons referenced at the end of this report.		

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

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SITE PLAN

Aerial Plan of subject site outlined in blue (Source: Intramaps, 2024)

LPP019-24

EXECUTIVE SUMMARY PROPOSAL

1. Council is in receipt of an application which seeks consent for demolition works and alterations and additions and completion of a two-storey single dwelling with basement and swimming pool, retaining walls, landscaping and fencing.
2. The proposed works are specifically outlined below.
 - Associated internal works required to finalise the construction of the existing partially constructed 2 storey dwelling, including bathrooms, kitchen, fixtures and finishings.
 - Relocation of vehicular parking from the “basement” level to the ground floor level.
 - The “basement” level is proposed to be a non-habitable undercroft to the dwelling. New blockwork infill wall with waterproofing and drainage within the “basement”. This is to ensure that the space is not being used as a habitable area and/or storage purposes. A new driveway and hard stand area is to be constructed. The existing “basement” access is proposed to be filled and replaced with deep soil landscaped area. The application fails to provide details in terms of structural adequacy for the in filling of the access area.
 - Completion of the existing partially constructed swimming pool and swimming pool fencing, as well as the provision/completion of balustrades to balconies and internal open edges of landings and stairs.
 - Revised retaining wall arrangements.
 - Provision of landscape planting.

- Stormwater management works.

SITE AND LOCALITY

3. The subject site is legally described as Lot 2 in DP18873 with a street address of No. 1176 Forest Road, Lugarno. This site is the third northern most allotment on the bend in Forest Road opposite Boronia Parade as the road descends from Hillcross Street.
4. The site is located within an established residential area with surrounding development comprising of low-density residential dwellings, medium density development, commercially zoned land and educational establishments. The subject site is located within the Foreshore Scenic Protection Area.
5. The subject site is a rectangular allotment with side boundaries of 45.72m, a rear boundary of 13.715m and front boundary to Forest Road of 13.715m and a total site area of 637sqm.
6. The site is currently occupied by a partially completed two storey dwelling and basement with a swimming pool and retaining walls in the rear yard.
7. No lawful owners' consent has been provided in accordance with Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021.

ZONING AND PERMISSIBILITY

8. The subject site is zoned R2 low density residential under the provisions of the Georges River Local Environmental Plan (GRLEP) 2021, the proposed development being alterations and additions to a dwelling house is permissible with consent in the zone.

SUBMISSIONS

9. The application was advertised, and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. One (1) submission was received during the neighbour notification period. The application was re-neighbour notified in 2024; no submissions were received during the re-neighbour notification period.

CONCLUSION

10. Development consent is sought for demolition works and alterations and additions and completion of a two-storey single dwelling with basement and swimming pool, retaining walls, landscaping and fencing at 1176 Forest Road, Lugarno.
11. The proposal has been assessed with regard to the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is an inappropriate response to the context of the site and will not result in a good planning and urban design outcome for the locality.
12. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policy (SEPP), Georges River Local Environmental Plan 2021, and Georges River Development Control Plan 2021 and fails to comply Chapter 2 Vegetation in Non-Rural Areas under SEPP Biodiversity and Conservation) 2021, SEPP (Resilience and Hazards) 2021, GRLEP 2021 and GRDCP 2021 development standards, objectives, and controls. Any variations have been assessed and are not worthy of support on merit.

REPORT IN FULL PROPOSAL

13. Council is in receipt of an which seeks consent for demolition works and alterations and additions and completion of a two-storey single dwelling with basement and swimming pool, retaining walls, landscaping and fencing.
14. The proposed works are specifically outlined below.
 - Associated internal works required to finalise the construction of the existing partially constructed 2 storey dwelling, including bathrooms, kitchen, fixtures and finishings.
 - Relocation of vehicular parking from the “basement” level to the ground floor level.
 - The “basement” level is proposed to be a non-habitable undercroft to the dwelling. New blockwork infill wall with waterproofing and drainage within the “basement”. This is to ensure that the space is not being used as a habitable area and/or storage purposes. A new driveway and hard stand area is to be constructed. The existing “basement” access is proposed to be filled and replaced with deep soil landscaped area. The application fails to provide details in terms of structural adequacy for the in filling of the access area.
 - Completion of the existing partially constructed swimming pool and swimming pool fencing, as well as the provision/completion of balustrades to balconies and internal open edges of landings and stairs.
 - Revised retaining wall arrangements.
 - Provision of landscape planting.
 - Stormwater management works.

THE SITE AND LOCALITY

15. The subject site is legally described as Lot 2 in DP18873 with a street address of No. 1176 Forest Road, Lugarno. This site is the third northern most allotment on the bend in Forest Road opposite Boronia Parade as the road descends from Hillcross Street.
16. The site is located within an established residential area with surrounding development comprising of low-density residential dwellings, medium density development, commercially zoned land and educational establishments. The subject site is located within the Foreshore Scenic Protection Area.
17. The subject site is a rectangular allotment with side boundaries of 45.72m, a rear boundary of 13.715m and front boundary to Forest Road of 13.715m and a total site area of 637sqm.
18. Prior to the construction of the current structures on site the subject site was occupied by a single dwelling house over the two adjoining allotments (1174 and 1178 Forest Road Lugarno). The subject site and two adjoining allotments were used as a market garden by the occupants' and the cultivating and selling of orchids and produce. The site is currently occupied by a partially completed two storey dwelling and basement with a swimming pool in the rear yard.
19. No lawful owners' consent has been provided in accordance with Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021.



Figure 1 – Aerial view – site (1176 Forest Road, Lugarno) outlined in blue (Source: Intramaps, 2024).



Figure 2 – Streetview from Forest Road (Source: Google Maps Streetview, 2024).



Figure 3 – Streetview from Forest Road (Source: Google Maps Streetview, 2024).

BACKGROUND

20. A history of the development proposal is as follows:
- A Complying Development Certificate (CDC) was issued on 2 February 2015 for the 'demolition of house and garages' at 1174-1178 Forest Road, Lugarno.
 - A CDC (CDC2015/0367) was issued on 27 November 2015 for the construction of a 2-storey dwelling, double garage, and an in-ground pool.
 - The site and the existing partially constructed dwelling forms part of a group of three (3) dwellings located at 1174, 1176 and 1178 Forest Road, Lugarno. Each exist under similar circumstances, whereby the lots have been created, dwellings, swimming pools and retaining walls have been partially constructed, without appropriate planning approvals.
 - The existing partially constructed dwelling was initially approved via a separate CDC, which was issued for the construction of dwelling houses and swimming pools within the rear yards. Relevant to this site is CDC2015/0367.
 - Despite the legitimate issue of the CDC and commencement of construction, the design of each dwelling was subsequently revised, the development as constructed departed from the relevant criterion contained in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. On this basis, the dwelling and associated ancillary structures are unauthorised.
 - The non-compliant matters resulted in the issue of a stop works order issued by Council's Compliance Unit on 23 August 2017, whilst the dwelling was in the advanced stages of construction and unable to be completed (or regularised without further approval).
 - A Building Information Certificate (BIC) (149D2017/0049) was submitted to Council on 12 October 2017, (later withdrawn on 27 April 2020).

- Since the issue of the stop works order, the Owners of the site have been issued with clean up notices (dated 2 May 2019, 27 June 2019, and 13 September 2019), for vegetation maintenance, the swimming pool water being drained (given there is no swimming pool fencing) and maintenance of the site construction fencing so that it fully enclosed the site.
- A second stop works order was issued by Council's Compliance Unit on 18 March 2020, outlining that no further building or development is permitted on site.
- The BIC (149D2017/0049) submitted to Council on 12 October 2017 was withdrawn on 27 April 2020.
- An additional clean up notice was issued on 9 September 2021 for the site to ensure the site vegetation is maintained, the swimming pool being drained (given there is no swimming pool fencing) and maintenance of the site construction fencing so that it fully enclosed the site.
- An Emergency Order Number 21 was issued on 11 March 2022 for the site to address the ongoing issue of water accumulation in the swimming pool and the overgrown vegetation on the site, requiring these matters must be addressed as a matter of priority.
- CDC2015/0367 was voluntarily surrendered on 26 April 2022, following advice from Council's Officers.
- Given the complex history of the subject site, a pre-application discussion (PRE2022/0030) was held virtually on 16 June 2022. A letter was sent to the Applicant on 6 July 2022 outlining the process required to enable the finalisation and regularisation of the dwelling and associated ancillary development.
- To date the construction of the dwelling has not progressed since the stop works order has been issued. The dwelling and site remain in an incomplete and unfinished state, with construction fencing surrounding the site.
- The current development application (DA2022/0620) was lodged via the NSW Planning Portal on 23 February 2023.
- The application was placed on exhibition, with the last date for public submissions being 6 April 2023. One (1) submission was received.
- Council's Assessing Officer conducted a site inspection on 21 June 2023.
- The subject site had a change in ownership as per Council's records on 27 July 2023.
- A request for additional information letter was sent via the NSW Planning Portal on 6 October 2023, requesting a site plan, details of setbacks, contaminated land status, solar access/overshadowing diagrams, vegetation details, swimming pool details, rear yard levels, front fencing, Building Code of Australia (BCA) compliances and non-compliances, retaining wall details, basement and storage details, engineering details/compliance and landscaping detailing.
- A MS Teams meeting was held virtually to discuss the request for additional information letter on 23 October 2023.
- The Applicant provided revised plans for review on 7 November 2023; following Council Officers granting an extension of time.
- A Building Information Certificate (BIC 149D2023/0103) was lodged via the NSW Planning Portal on 13 December 2023 for the building structural elements only, including foundations, retaining walls, concrete slabs, structural masonry walls, timber wall framing, timber roof framing and swimming pool structure.
- The application was placed on exhibition, with the last date for public submissions being 18 April 2023. No submissions were received.

Original Survey Plan

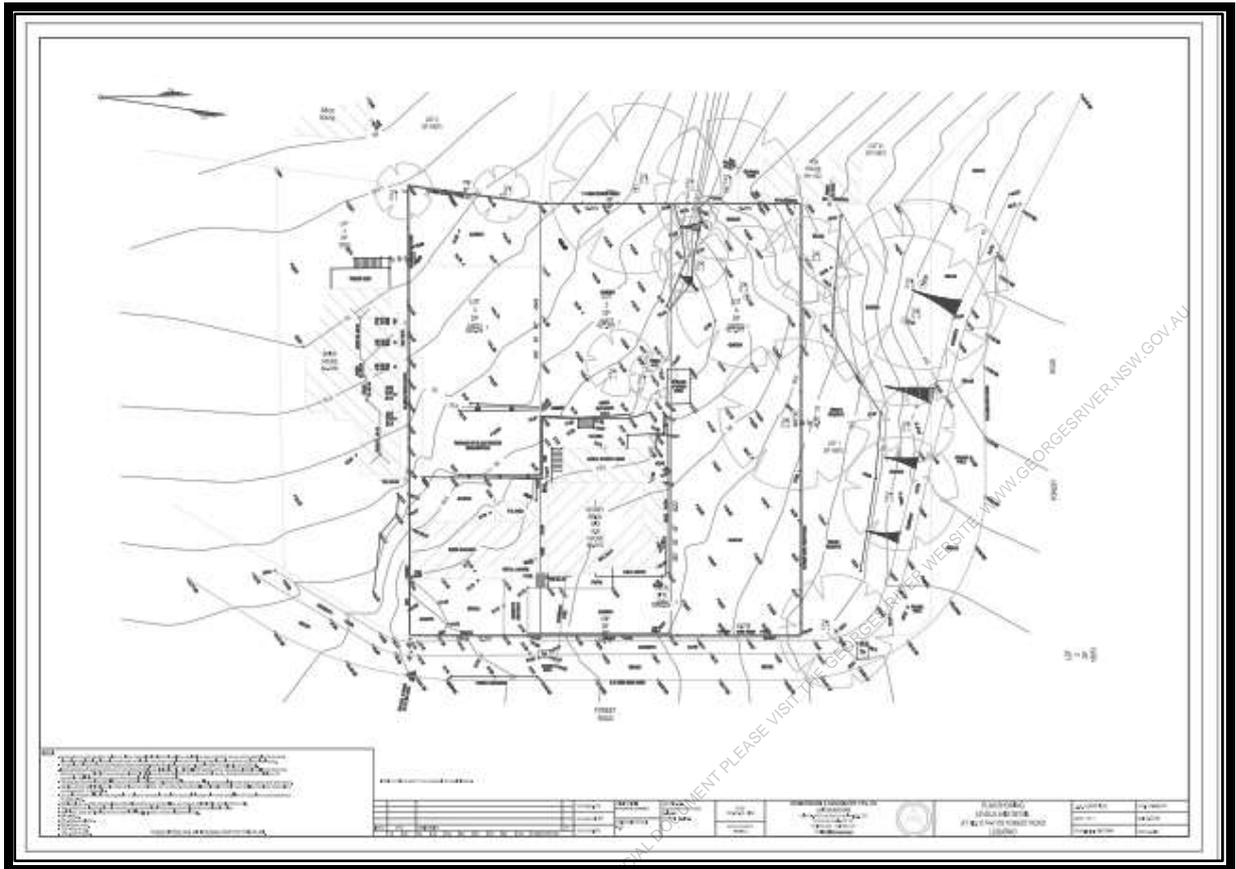


Figure 4: Original Survey Plan dated 19 May 2014

Complying Development Certificate Plans (CDC2015/0367)

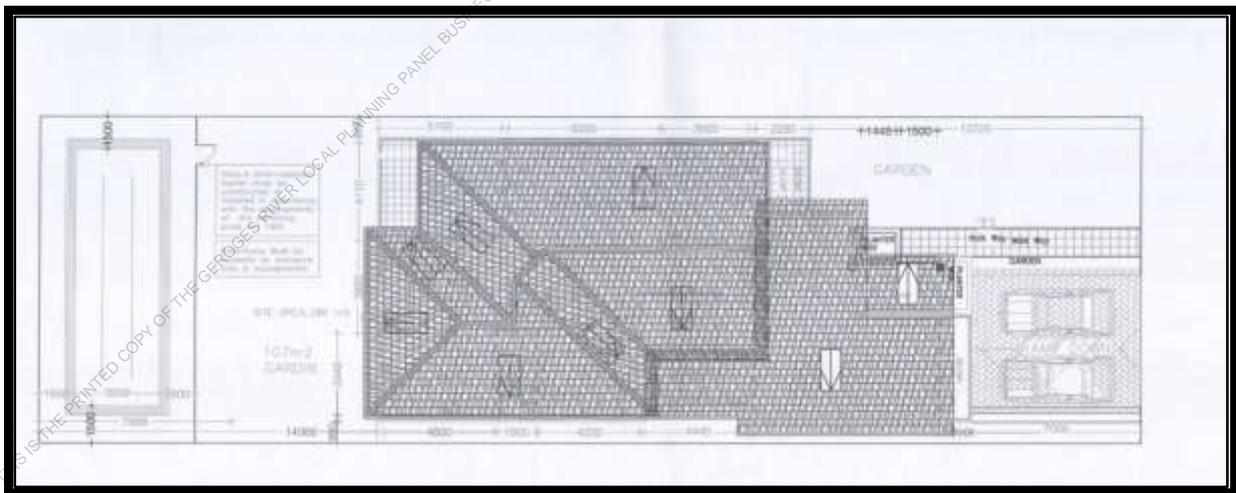


Figure 5: Site Plan (CDC2015/0367)

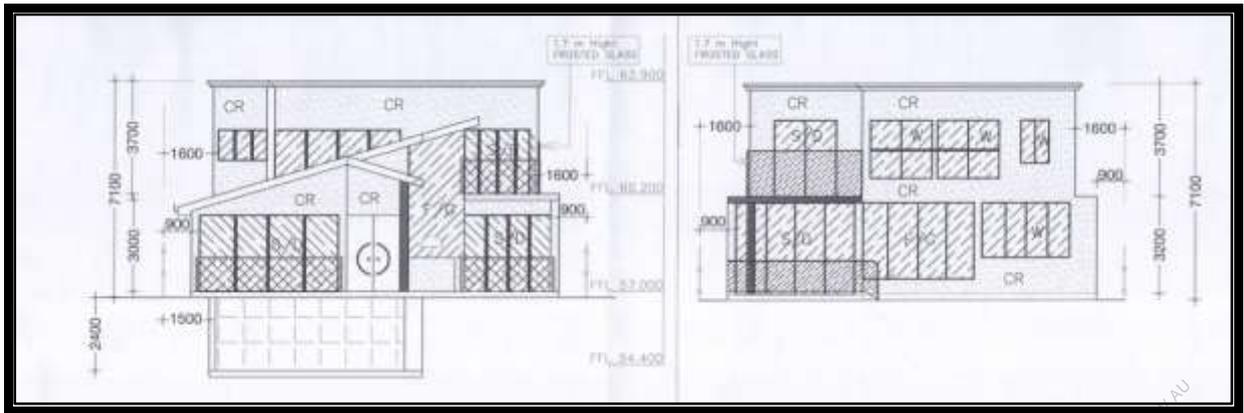


Figure 6: Elevation Plans (CDC2015/0367)

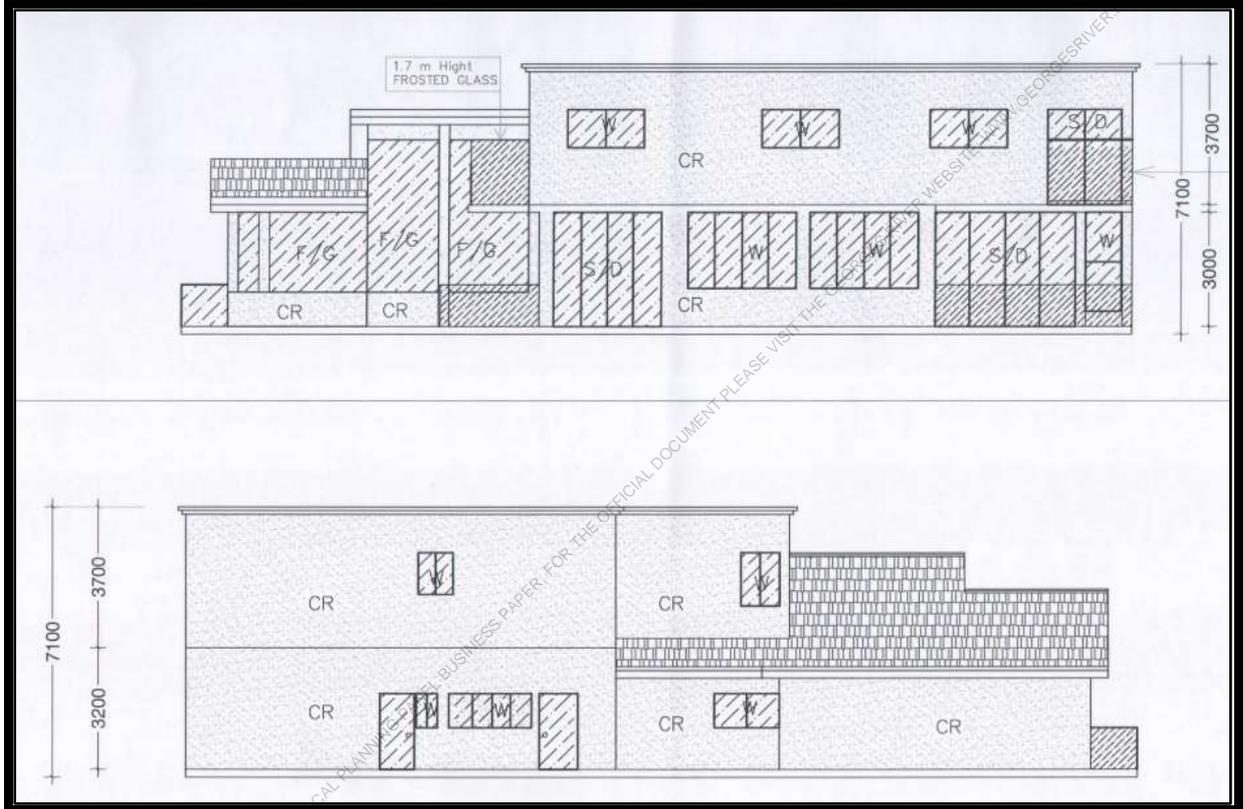


Figure 7: Elevation Plans (CDC2015/0367)

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As Built Plans and Plans Subject of this Development Application (DA2022/0620)

LPP019-24

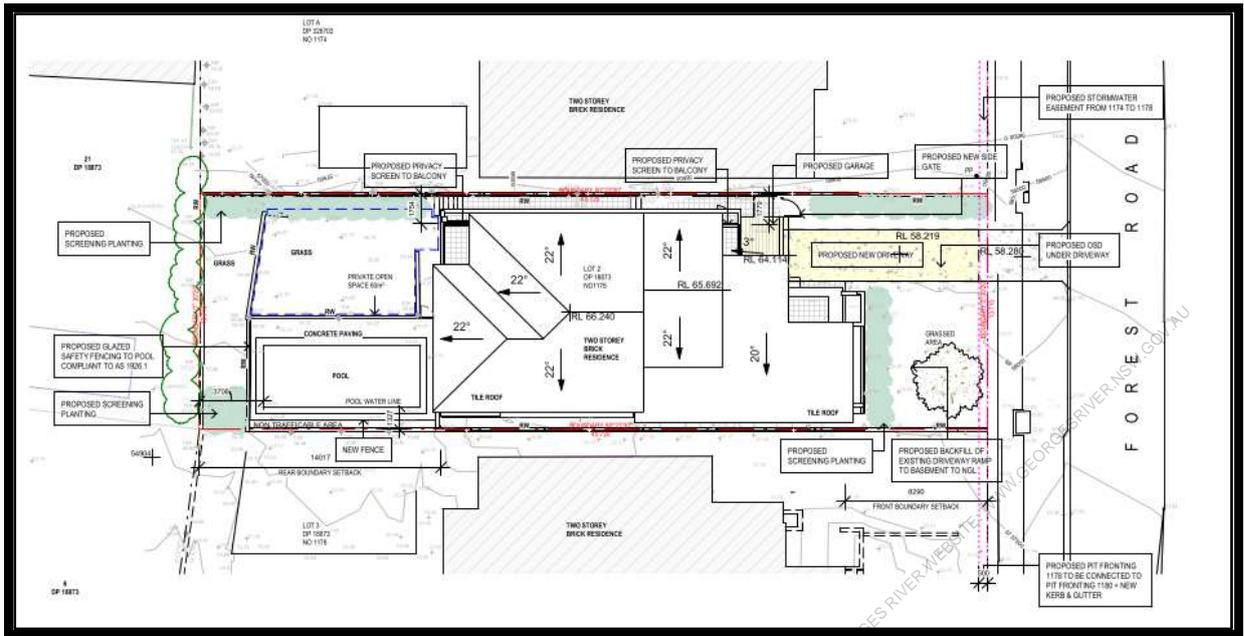


Figure 8: Site Plan (DA2022/0620)

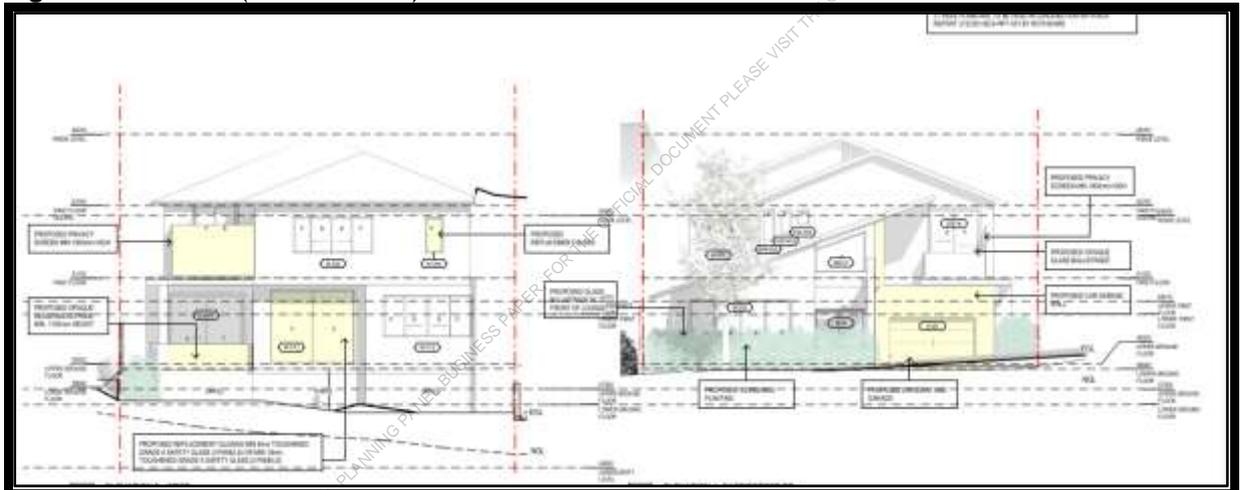


Figure 9: Elevation Plan (DA2022/0620)

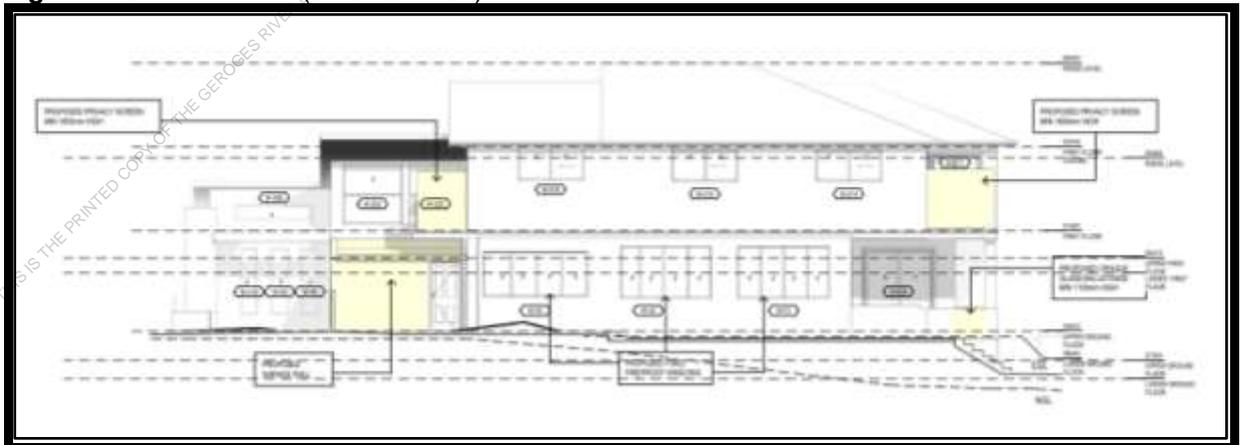


Figure 10: Elevation Plan (DA2022/0620)

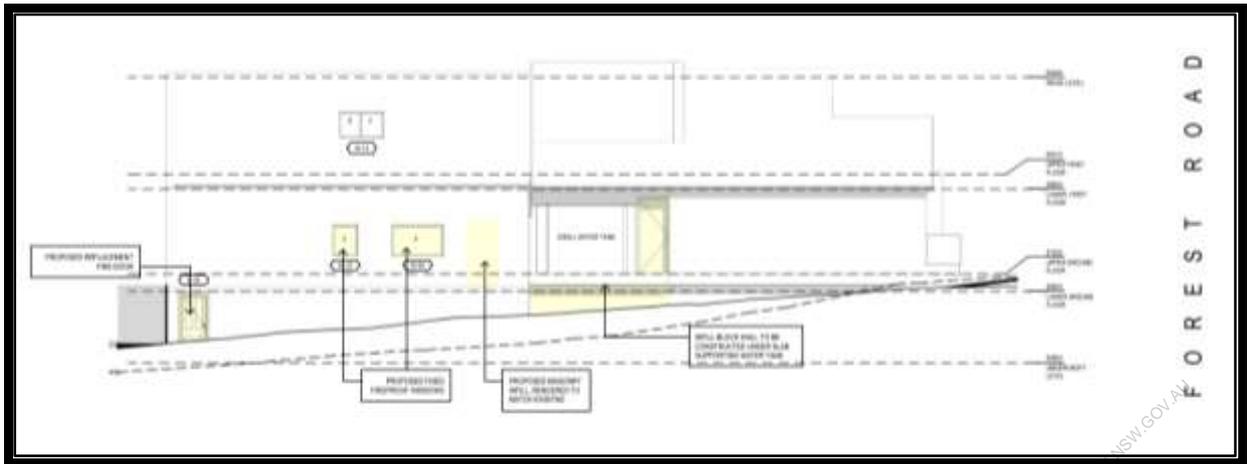


Figure 11: Elevation Plan (DA2022/0620)

NOTED DISCREPANCIES BETWEEN THE COMPLYING DEVELOPMENT CERTIFICATE APPROVED PLANS AND THE AS-BUILT DEVELOPMENT FORM AND THE PROPOSED DEVELOPMENT APPLICATION

21. The side setback has been reduced to 0.85m to the northern boundary, from what was originally approved at 0.9m. This setback does not meet with deemed to satisfy provisions of the BCA/NCC with respect to a fire rating from the allotment boundary and no alternate solution/performance-based solution has been provided to address the fire safety deficiencies of this elevation.
22. The swimming pool has been re-oriented and relocated from being parallel with the rear boundary to being parallel with the southern side boundary. The swimming pool side setback has been reduced to 1.33m, of what was originally approved at 1.586m.
23. The “basement” level internal floor level has been raised by 1.1m, the originally approved level was RL 54.4, and the constructed level is RL 55.5.
24. The ground entry/formal living room area internal floor level has been increased/raised by approximately 1.22m, the originally approved level was RL 57.00, and the constructed level is RL 58.220.
25. The ground living area internal floor level has been increased/raised by 1.04m, the originally approved level was RL 57.00, and the constructed level is RL 58.04.
26. The changes in levels have resulted in an overall height increase of 2.34m (from the approved RL 63.90 to the constructed RL 66.24).
27. The site topography has been altered and there are level changes across the subject site since the demolition of the double storey dwelling and associated ancillary structures over 1174 - 1178 Forest Road, Lugarno.
28. Uncertainty as to where the fill has come from, has this fill been VEMN fill or the solid from the construction of the swimming pool being displaced over the site.

PLANNING ASSESSMENT

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

ENVIRONMENTAL PLANNING INSTRUMENTS

Section 4.15 Evaluation

30. The following is an assessment of the application with regard to Section 4.15(1) Evaluation of the Environmental Planning and Assessment Act 1979.

(1) Matters for consideration - general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

The provision of:

(i) Any environmental planning instrument,

State Environmental Planning Policies (SEPPs)

31. 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	No
State Environmental Planning Policy (Resilience and Hazards) 2021	No
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 (Biodiversity and Conservation) 2021

32. The relevant parts of the above Policy that apply to this application are Chapter 2 – Vegetation in non-rural areas, and Chapter 6 – Water Catchments.

Chapter 2 - Vegetation in Non-Rural Areas

33. 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.

34. 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).*

35. The proposed development is supported from a landscape and arboricultural perspective. A landscape plan has not been submitted. Larger canopy trees need to be included in the front and rear yard to provide greater amenity to the local area.

Chapter 6 – Water Catchments

36. The primary relevant aims and objectives of this Chapter are:

- *whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- *whether the development will have an adverse impact on water flow in a natural waterbody,*
- *whether the development will increase the amount of stormwater run-off from a site,*

- *whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- *the impact of the development on the level and quality of the water table,*
- *the cumulative environmental impact of the development on the regulated catchment,*
- *whether the development makes adequate provision to protect the quality and quantity of ground water.*

37. The subject site is located within the Georges River Catchment and the stormwater design has been reviewed by Council's Development Engineering. The proposal remains unsatisfactory as the site does not provide adequate stormwater drainage in accordance with Georges River Stormwater Management Policy. The proposal is inconsistent with the objectives and purpose of Chapter 6 of the SEPP. The development will need to be drained by an inter-allotment drainage easement which does not currently exist, and no evidence has been provided that a legally binding agreement of downstream properties has been obtained.

State Environmental Planning Policy (Resilience and Hazards) 2021

38. Chapter 2 and Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 are relevant to the proposal.
39. Chapter 2 aims to: "*Promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 including the management objectives for each coastal management area*".
40. The subject site is not mapped as a Coastal Environment area and a Coastal Use area.
41. 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.
42. 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.
43. Clause 4.8 under category 1 remediation work it outlines works requiring consent. For the purposes of this Chapter, a category 1 remediation work is remediation work (not being a work to which section 4.11(b) applies) that is—
- (a) designated development, or
 - (b) carried out or to be carried out on land declared to be a critical habitat, or
 - (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or
 - (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or
 - (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument—
 - (i) coastal protection,
 - (ii) conservation or heritage conservation,
 - (iii) habitat area, habitat protection area, habitat or wildlife corridor,
 - (iv) environment protection,
 - (v) escarpment, escarpment protection or escarpment preservation,
 - (vi) floodway,
 - (vii) littoral rainforest,
 - (viii) nature reserve,

(ix) scenic area or scenic protection,

(x) wetland, or

- (f) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Minister).

44. The subject development site is located within Georges River Foreshore Scenic Protection Area (FSPA) as per Georges River Local Environmental Plan 2021.

45. Clause 4.8 of Chapter 4 of the SEPP lists:

4.8(e)(ix) scenic area or scenic protection.

46. Having considered the FSPA, land covered by Council's FSPA in the LEP is called up by this provision.

47. In coming to this conclusion, the following objectives of the FSPA in cl 6.6(1) are relevant:

- (a) *to protect, maintain and improve the scenic amenity of the Georges River foreshore,*
- (b) *to protect, maintain and improve significant views of and from the Georges River,*
- (d) *to reinforce and improve the dominance of landscape over built form, hard surfaces and cut and fill,*

In relation matters that the consent authority must be satisfied in cl 6.6(3), the following are relevant:

- (f) *the minimisation of the impact on the views and visual environment, including views to and from the Georges River, foreshore reserves, residential areas, and public places,*
- (g) *the minimisation of the height and bulk of the development by stepping the development to accommodate the fall in the land.*

48. A desktop 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. However, the site has historically been used as a market garden and for the cultivation of orchids.

49. The Applicant has lodged a Detailed Site Investigation Report that found evidence of asbestos contaminated soil and asbestos fragments on the sites known as 1174 - 1178 Forest Road, Lugarno. The Detailed Site Investigation Report outlines that the sites can be made suitable for the intended use following remediation.

50. The Applicant also submitted a Remedial Action Report which details the works required to remediate the site of the contamination.

51. On this basis, the site is not suitable for residential development in its current state with respect to contamination. A separate development application for remediation must be lodged, determined and remediation completed prior to the approval of an application which seeks demolition works and completion of a partially constructed two-storey dwelling with basement area, swimming pool, retaining walls, landscaping and site works under this development application.

State Environmental Planning Policy (Transport and Infrastructure) 2021

52. Compliance with SEPP (Transport and Infrastructure) 2021 has been considered during the assessment of this development application. The site is not mapped within a Transport and Infrastructure area thus it is unlikely to be impacted by rail noise or vibration. Ausgrid was consulted as required by Chapter 2, no objection was raised.

State Environmental Planning Policy (Industry and Employment) 2021

53. SEPP (Industry and Employment) 2021 has been consideration through the assessment of this development application. It has been concluded that the above SEPP is not relevant to the proposed development.

State Environmental Planning Policy (Building Sustainability Index: 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 BASIX Certificate prepared by Rothshire Pty Ltd, dated 2 December 2022, certificate number 1334736S_02, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.
56. The new *State Environmental Planning Policy (Sustainable Buildings) 2022* encourages the design and delivery of more sustainable buildings across NSW. It sets sustainability standards for residential and non-residential development and starts the process of measuring and reporting on the embodied emissions of construction materials.
57. As the subject development application was lodged prior to the gazettal of the SEPP Sustainable Buildings 2022 on 1 October 2023, the previous SEPP Building Sustainability Index: BASIX is applicable.

Georges River Local Environmental Plan 2021

58. The extent to which the proposed development complies with the Georges River Local Environmental Plan 2021 (GRLEP 2021) is detailed and discussed in the table below.

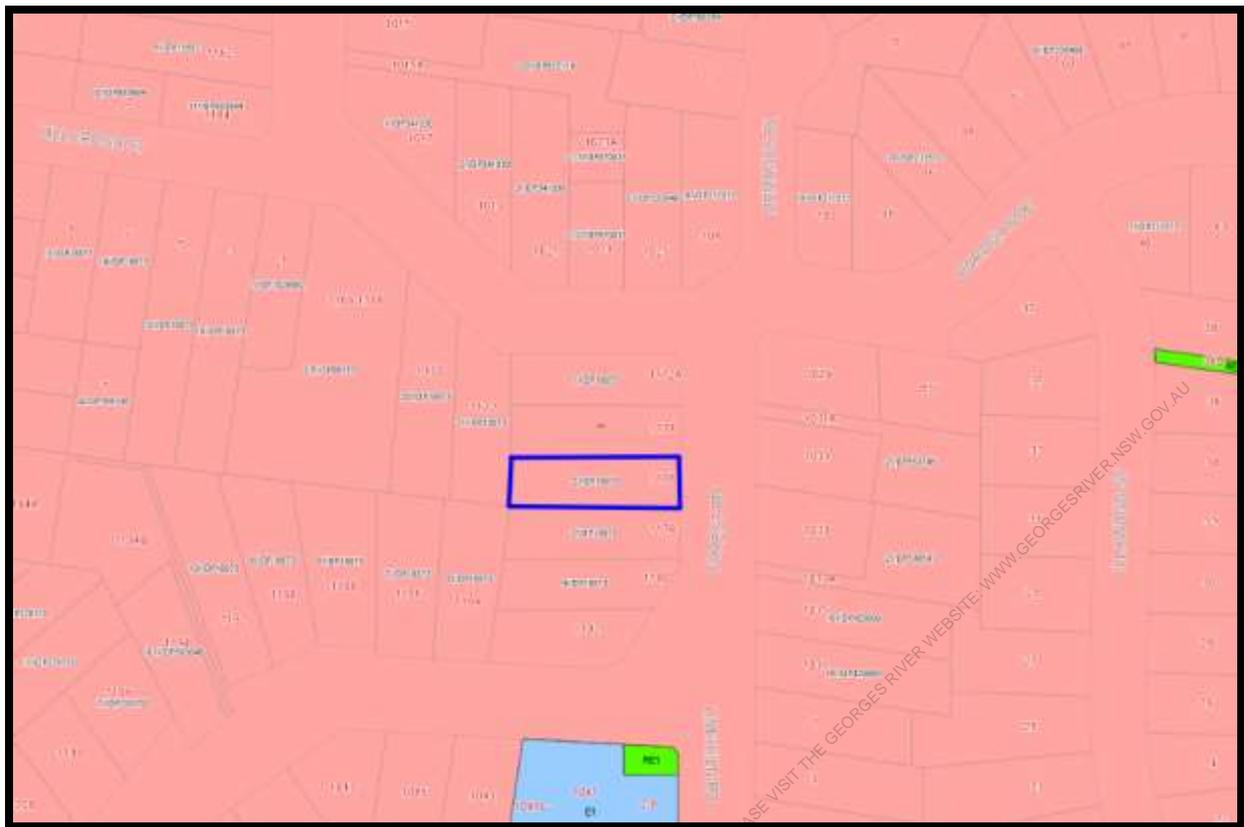
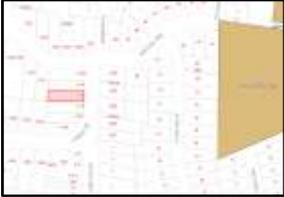


Figure 12 – Zoning map, the site is outlined in blue (Source: Intramaps, 2024).

Clause	Standard	Proposed	Complies
Part 1 – Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is not considered to be consistent with the aims of the plan.	No
Part 2 - Permitted or prohibited development			
2.3 - Zone objectives and Land Use Table	Meets objectives of R2-Low Density Residential Zone.	The proposal fails to meet all the objectives.	No
	Development must be permissible with consent	The proposal is a permissible form of development with consent.	Yes
Part 4 - Principal Development Standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The proposal has a maximum height of building of 9.716m.	No
4.4 – Floor Space Ratio	0.55:1 as identified on Floor Space Ratio Map	Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential, Clause 4.4A applies.	Refer to Clause 4.4A
4.4A - Exceptions to floor space ratio—	(2) The maximum floor space ratio for a dwelling	The site results in a total gross floor area	Yes

<p>certain residential accommodation</p>	<p>house on land identified as “Area 1” on the <u>Floor Space Ratio Map</u> must not exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>Site area</p> <ul style="list-style-type: none"> Maximum floor space ratio less than 650 square metres 0.55:1 <p>(3) The maximum floor space ratio for residential accommodation on land identified as “Area 2” on the <u>Floor Space Ratio Map</u> must not exceed 0.6:1.</p> <p>Site area: 627sqm</p> <p>0.55:1 or 344.85sqm</p>	<p>of 321.2sqm and a FSR of 0.51:1</p>	
<p>Part 5 - Miscellaneous Provisions</p>			
<p>5.7 – Development below mean high water mark</p>	<p>(2) Development consent is required to carry out development on any land below the mean high-water mark of any body of water subject to tidal influence (including the bed of any such water).</p>	<p>The proposal does not involve works below the Mean High-Water Mark.</p>	<p>N/A</p>
<p>5.10 – Heritage conservation</p>	<p>In accordance with Clause 5.10 (2)</p>	<p>The site is not a heritage item however is in the vicinity of a heritage items as per the image below. The proposal does not seek to impact the Heritage item. The site is not in a heritage conservation area.</p>	<p>N/A</p>
			
		<p>Heritage Map as per GRLEP 2021</p>	

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<p>5.11 – Bush Fire Hazard Reduction</p>	<p>Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.</p>	<p>The subject land is not within a bush fire prone area.</p>	<p>N/A</p>
<p>5.21 – Flood Planning</p>	<p>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <ul style="list-style-type: none"> (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and (d) incorporates appropriate measures to manage risk to life in the event of a flood and will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation 	<p>The subject site is not impacted by flood.</p>	<p>N/A</p>

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	<p>or a reduction in the stability of river banks or watercourses.</p> <p>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</p> <p>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</p> <p>(b) the intended design and scale of buildings resulting from the development, whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</p> <p>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</p>		
<p>Part 6 - Additional Local Provisions</p>			
<p>6.1 – Acid sulfate soils</p>	<p>(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</p> <p>Class 5: Works within 100 metres of adjacent</p>	<p>The subject site is in a Class 5 Acid Sulfate Soils Area. The proposed works are beyond 100 metres of an adjacent Class and further investigation and/or additional information is not required in this regard.</p>	<p>Yes</p>

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	<p>Class 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 2, 3 or 4 land.</p>	 <p><i>Acid Sulfate Soils Map as per GRLEP 2021</i></p>	
<p>6.2 – Earthworks</p>	<p>(2) Development consent is required for earthworks unless—</p> <p>(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or</p> <p>(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.</p>	<p>The completion of the partially constructed dwelling results in unnecessary earthworks being filling within the front setback for the enclosure of a driveway to the “basement”.</p>	<p>No</p>
<p>6.3 – Stormwater Management</p>	<p>(2) In deciding whether to grant development consent for development, the consent authority must be satisfied that the development—</p> <p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater detention or retention to minimise stormwater runoff volumes and reduce the development’s reliance on mains water, groundwater or river water, and</p>	<p>Councils Engineers have reviewed the proposed development and it is not supported. The proposal is not in accordance with Georges River Stormwater Management Policy. Refer to Development Engineers comments under the specialist referral comments in this assessment report.</p> <p>An inter-allotment drainage easement is required to drain the site. The easement does not exist and there is no legally binding agreement in place</p>	<p>No</p>

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	<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>to facilitate a future easement.</p>	
<p>6.4 - Foreshore area and coastal hazards and risk</p>	<p>(2) This clause applies to the following land—</p> <p>(a) land identified on the Coastal Hazard and Risk Map,</p> <p>(b) land identified on the Foreshore Building Line Map.</p> <p>(3) Development consent must not be granted for development on land to which this clause applies except for the following purposes—</p> <p>(a) the alteration, or demolition and rebuilding, of an existing building if the footprint of the building will not extend further forward than the footprint of the existing building into—</p> <p>(i) the foreshore building line, or</p> <p>(ii) the land identified on the Coastal Hazard and Risk Map,</p> <p>(b) the erection of a building if the levels, depth or other exceptional features of the site make it appropriate to do so,</p> <p>(c) boat sheds, cycling paths, fences, sea walls, swimming pools, water</p>	<p>The site is not located in a foreshore area and/or coastal hazards and risk area.</p>	<p>N/A</p>

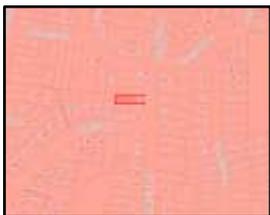
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	<p>recreation structures or walking tracks.</p> <p>(4) In deciding whether to grant development consent, the consent authority must consider the following matters—</p> <ul style="list-style-type: none"> (a) whether the development addresses the impacts of sea level rise and tidal inundation as a result of climate change, (b) whether the development could be located on parts of the site not exposed to coastal hazards, (c) whether the development will cause congestion or generate conflict between people using open space areas or the waterway, (d) whether the development will cause environmental harm by pollution or siltation of the waterway, (e) opportunities to provide reasonable, continuous public access along the foreshore, considering the needs of property owners, (f) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development. <p>(5) In this clause—</p> <p>foreshore area means the land between the foreshore building line and the mean high-water mark of the nearest bay or river.</p> <p>foreshore building line means the line shown as the foreshore building line on the Foreshore Building Line Map.</p>		
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<p>6.5 - Riparian land and waterways</p>	<p>(2) This clause applies to land identified as “Sensitive land” on the Riparian Lands and Waterways Map.</p> <p>(3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider the following—</p> <p>(a) whether the development is likely to have an adverse impact on the following—</p> <p>(i) the water quality and flows within the waterway,</p> <p>(ii) the stability of the bed, shore and banks of the waterway,</p> <p>(iii) the future rehabilitation of the waterway and riparian areas,</p> <p>(iv) the biophysical, hydrological or ecological integrity of adjacent coastal wetlands, including the aquatic and riparian species, habitats and ecosystems of the waterway,</p> <p>(v) indigenous trees and other vegetation,</p> <p>(vi) opportunities for additional planting of local native riparian vegetation,</p> <p>(b) whether the development is likely to increase water extraction from the waterway,</p> <p>(c) whether the development will cause environmental harm by pollution or siltation of the waterway,</p> <p>(d) appropriate measures proposed to avoid, minimise or</p>	<p>The site is not located on land identified as sensitive land.</p>	<p>N/A</p>
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	<p>mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid significant adverse environmental impact, or</p> <p>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p>		
<p>6.6 - Foreshore scenic protection area</p>	<p>(2) This clause applies to land identified as “Foreshore scenic protection area” on the Foreshore Scenic Protection Area Map.</p> <p>(3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must be satisfied that the development would facilitate the following—</p> <p>(a) the protection of the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation,</p> <p>(b) the avoidance or minimisation of the disturbance and adverse impacts on remnant vegetation communities,</p>	<p>The site is located within the foreshore scenic protection area.</p>  <p><i>Foreshore Scenic Protection Area Map as per GRLEP 2021</i></p> <p>The proposed development does not seek to impact upon any rock formations, canopy vegetation or significant vegetation of the site. This has previously been removed as part of</p>	<p>No</p>

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	<p>habitat and threatened species and populations, (c) the maintenance and enhancement of native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native flora and fauna movement through biodiversity corridors, (d) the achievement of no net loss of significant vegetation or habitat, (e) the avoidance of clearing steep slopes and facilitation of the stability of the land, (f) the minimisation of the impact on the views and visual environment, including views to and from the Georges River, foreshore reserves, residential areas and public places, (g) the minimisation of the height and bulk of the development by stepping the development to accommodate the fall in the land.</p>	<p>the unauthorised works.</p> <p>The proposed development does not seek to disturb or have adverse impacts on remnant vegetation communities, habitat and threatened species and populations.</p> <p>The proposed development does not seek to clear steep slopes on the site.</p> <p>View loss has not been raised as a concern by the neighbouring properties and is not envisaged.</p> <p>The site setbacks are not in accordance with the required minimum side setback of 1.5m within the FSPA.</p>	
<p>6.7 – Essential services</p>	<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 been made to make them available when required— (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage,</p>	<p>Council’s Development Engineer has reviewed the proposed development and notes that the proposal is not supported and is not in accordance with Georges River Stormwater Policy. Drainage due to levels of the site and the street drainage network requires the site to be drained via and inter-allotment drainage</p>	<p>No</p>

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	<p>(d) stormwater drainage or on-site conservation, (e) suitable road and vehicular access.</p>	<p>easement which does not exist and no legally binding agreement to facilitate an easement has been provided.</p>	
<p>6.10 - Design excellence</p>	<p>(2) This clause applies to development on land referred to in subclause (3) involving— (a) the erection of a new building, or (b) additions or external alterations to an existing building that, in the opinion of the consent authority, are significant. (3) This clause applies to development on the following land— (a) land identified on the <u>Foreshore Scenic Protection Area Map</u> if the development is for one or more of the following purposes— (i) bed and breakfast accommodation, (ii) health services facilities, (iii) marinas, (iv) residential accommodation, except for secondary dwellings, (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— (i) Zone R4 High Density Residential, (ii) Zone B1 Neighbourhood Centre,</p>	<p>The subject site is zoned R2 – Low Density Residential. The proposal is located within the Foreshore Scenic Protection Area and for the purpose of residential accommodation.</p> <p>The proposed development involves demolition works and completion of a partially constructed two-storey dwelling, enclosure of part of the “basement”, swimming pool completion, retaining walls, landscaping, and site works.</p> <p>Visual intrusion and bulk of the proposal are considered acceptable.</p> <p>Notwithstanding this, it should be noted that the dwelling as built does not achieve design excellence. However, the elements encompassed in this development application achieve the objectives of design excellence.</p>	<p>No</p>

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	<p>(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. (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. (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 location will be achieved, (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain, (c) whether the development detrimentally impacts on view corridors, (d) how the development addresses the following matters— (i) the suitability of the land for development, (ii) existing and proposed uses and use mix, (iii) heritage issues and streetscape constraints, (iv) the relationship of the development with other development (existing or proposed) on</p>	<p>The proposed development site will not impact upon any Heritage Items.</p>	
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	<p>the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</p> <p>(v) bulk, massing and modulation of buildings,</p> <p>(vi) street frontage heights,</p> <p>(vii) environmental impacts such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,</p> <p>(viii) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of pedestrian networks,</p> <p>(ix) the impact on, and proposed improvements to, the public domain,</p> <p>(x) achieving appropriate interfaces at ground level between the building and the public domain,</p> <p>(xi) excellence and integration of landscape design,</p> <p>(xii) the provision of communal spaces and meeting places,</p> <p>(xiii) the provision of public art in the public domain,</p> <p>(xiv) the provision of on-site integrated waste and recycling infrastructure,</p> <p>(xv) the promotion of safety through the application of the principles of crime prevention through environmental design.</p>		
<p>6.12 -Landscaped areas in certain residential and environment protection zones</p>	<p>(2) This clause applies to land in the following zones—</p> <p>(a) Zone R2 Low Density Residential,</p>	<p>R2 Low Density Residential.</p> <p>Required = 25% of 627sqm (site area)</p>	<p>Yes</p>

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	<p>(b) Zone R3 Medium Density Residential, (c) Zone R4 High Density Residential, (d) Zone E2 Environmental Conservation. (3) Despite subclause (2), this clause does not apply to development referred to in State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, clause 4. (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— (a) allows for the establishment of appropriate plantings— (i) that are of a scale and density commensurate with the height, bulk and scale of the buildings to which the development relates, and (ii) that will maintain and enhance the streetscape and the desired future character of the locality, and (b) maintains privacy between dwellings, and (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 (d) enables the establishment of indigenous vegetation and habitat for native fauna, and (e) integrates with the existing vegetation to</p>	<p>Total LSA required = 156.75sqm Proposed LSA = 205.1sqm (33%)</p>	
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	<p>protect existing trees and natural landscape features such as rock outcrops, remnant bushland, habitats and natural watercourses.</p> <p>(5) Development consent must not be granted to development on land to which this clause applies unless a percentage of the site area consists of landscaped areas that is at least—</p> <p>(a) for a dwelling house located on land outside the Foreshore Scenic Protection Area—20% of the site area, or</p> <p>(b) for a dwelling house located on land within the Foreshore Scenic Protection Area—25% of the site area, or</p> <p>(c) for a dual occupancy located on land outside the Foreshore Scenic Protection Area—25% of the site area, or</p> <p>(d) for a dual occupancy located on land within the Foreshore Scenic Protection Area—30% of the site area, or</p> <p>(e) for development in Zone R3 Medium Density Residential—20% of the site area, or</p> <p>(f) for development in Zone R4 High Density Residential—10% of the site area, or</p> <p>(g) for development in Zone E2 Environmental Conservation—70% of the site area.</p> <p>(6) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle and any right of carriageway is not to be included in calculating the site area</p>		
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	<p>for the purposes of subclause (5). (7) In this clause— Foreshore Scenic Protection Area means land shown on the Foreshore Scenic Protection Area Map.</p>		
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GRLEP 2021 CLAUSE 4.6- EXCEPTIONS TO DEVELOPMENT STANDARDS ASSESSMENT
GRLEP 2021 Clause 4.3 Height of Building

- 59. The proposed development seeks a variation to development standard relating to height – Clause 4.3 of GRLEP 2021. GRLEP 2021 identifies a maximum height of 9m for the site.
- 60. For context, Building Height is defined in the GRLEP 2021 as:

“Building height (or height of building) means:

- *In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or*
- *In relation to the RL of a building the vertical distance from the Australian Height Datum to the highest point of the building*

Including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

- 61. The Applicant has submitted a Clause 4.6 request to vary the height to 9.716m, this results in a 7.96% variation to the development standard. Councils’ review and assessment of the application is consistent with the calculations provided by the Applicant.
- 62. The extent of the variation is shown in the figures below.

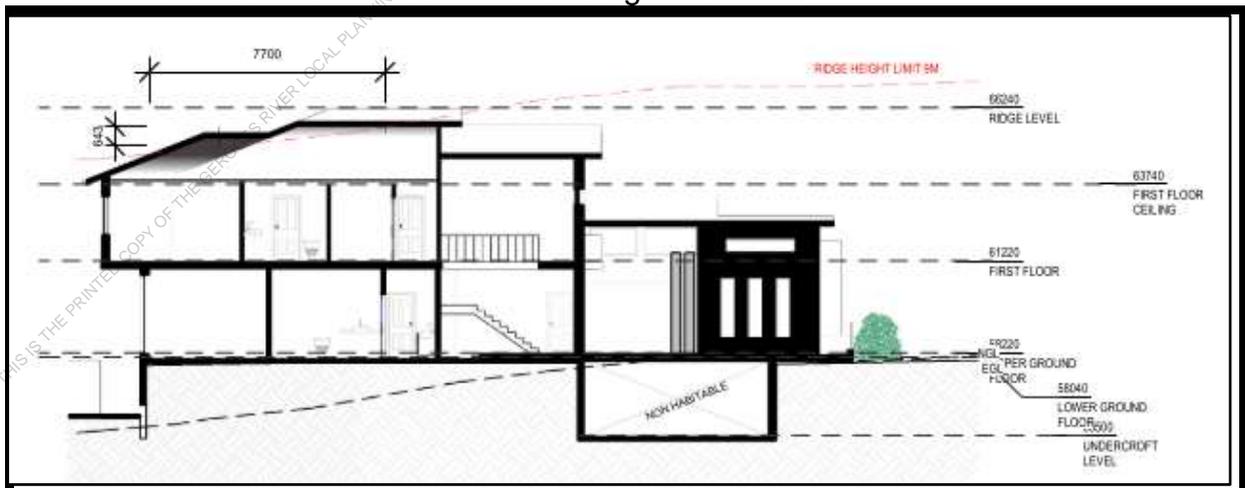


Figure 12: Section Plan highlighting extent of height of building development standard variation

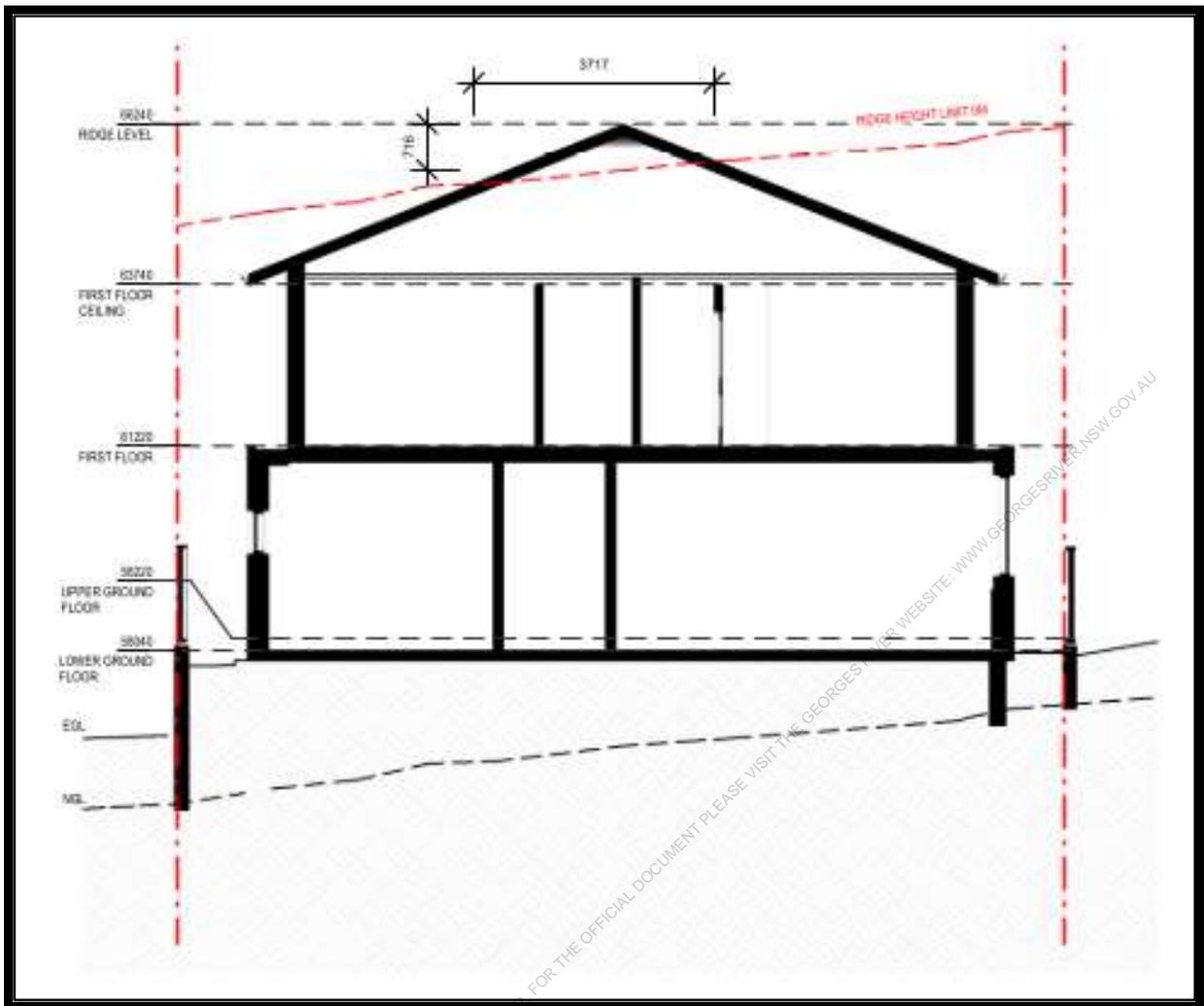


Figure 13: Section Plan highlighting extent of height of building development standard variation

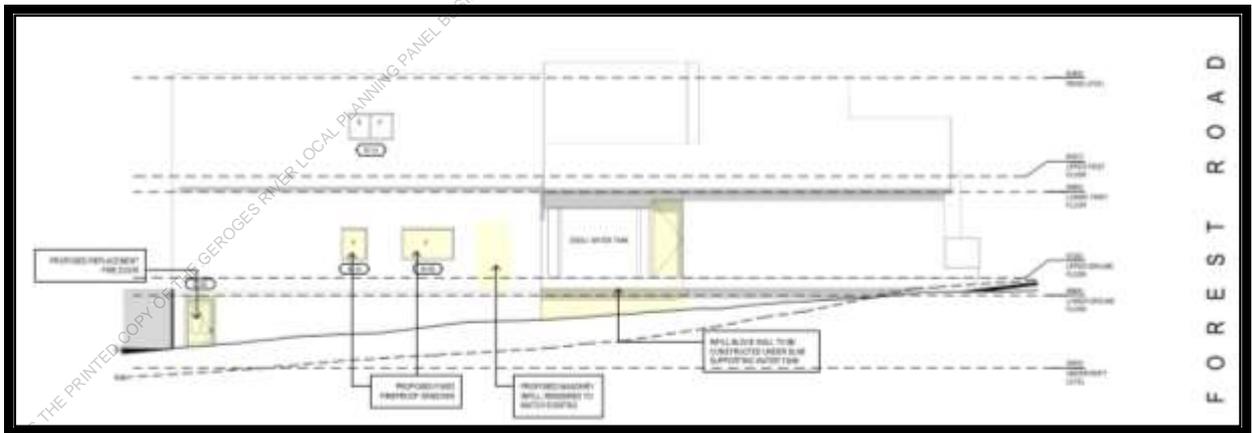


Figure 14: Elevation Plan highlighting three storey appearance.

63. The applicant has lodged a written request in accordance with the requirements of Clause 4.6 of GRLEP 2021. Any variation to a statutory control (development standard) can only be considered under Clause 4.6 – Exceptions to Development Standards of the GRLEP.
64. 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”.*

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

Is the planning control in question a development standard?

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

What are the underlying objectives of the development standard?

67. The objectives of the height of buildings development standard set out in Clause 4.3 (1) of GRLEP 2021 are as follows:
- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
 - (b) *to minimise the impact of overshadowing, visual impact, disruption of views and loss of privacy on adjoining properties and open space areas,*
 - (c) *to ensure an appropriate height transition between new buildings and—*
 - (i) *adjoining land uses, or*
 - (ii) *heritage items, heritage conservation areas or Aboriginal places of heritage significance.*

COMPLIANCE IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(A))

68. 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.
69. 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.*

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

Applicant Comment:

71. *The proposed development is considered to be compatible with the height, bulk and scale of the existing and desired future character of the Lugarno locality. The proposal complies with the applicable Floor Space Ratio (FSR) development standard and presents as a well-designed, articulated two (2) storey form, comparable to surrounding developments within the streetscape and with suitable landscaping to integrate with the bushland setting of the locality. The proposed variation is limited to the Western (rear) element of the roof form, which due to site levels, will be visible from nor alter the presentation of the dwelling from Forest Road. In this regard, the proposed variation is not considered to increase the overall bulk of the building, which is further mitigated by the pitched roof form (for instance when considered against a flat roof form).*
72. *As detailed in the supporting solar access diagrams, the proposal maintains compliant solar access to the subject and surrounding properties (including areas of private open space) in accordance with the Georges River Development Control Plan 2021 (DCP). Neither the site or surrounding properties benefit from any significant views or vistas. In this regard, the proposal will not affect any views in the locality. The proposal is considered to maintain residential amenity and visual privacy in accordance with the provisions of the DCP 2021. The proposal maintains a compliant rear setback of 14.017m, with windows having been offset from those on adjoining properties, as well as privacy screening (up to 1800mm) and an opaque balustrade installed on the rear balcony, to mitigate potential privacy impacts. The orientation of the subject site, being in an eastwest arrangement, further mitigates any potential impacts to adjoining properties to the west, which hold a north-south orientation. Further, the extent of the variation is limited to the roof form only, resulting in an increased void space only and does not result in any additional Gross Floor Area (GFA).*
73. *The proposal is considered to result in an appropriate transition to adjoining properties. The site sits within a group of three dwellings fronting Forest Road, each have been designed and constructed concurrently and in a similar manner. As noted above, given the orientation of the subject and significant rear setbacks, the proposed development is considered to maintain an appropriate transition to adjoining properties to the west of the site and will not result in any unreasonable visual imposition, loss of solar access or loss of visual privacy.*

CLAUSE 4.6(3)(B) ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD.

Applicant Comments:

74. *It is considered there are sufficient environmental planning grounds to justify the proposed contravention of the maximum height of building development standard as follows:*
- *The extent of the variation is limited to a small element of the roof form only, being the south western (rear) portion of the roof form and is located behind the main ridge form. The majority of the dwelling form is within the maximum permitted building height.*
 - *The extent of the variation is limited to a small element of the roof form only, being the western (rear) portion of the roof form and is located behind the main ridge form. The majority of the dwelling form is within the maximum permitted building height, and the extent of the proposed variation is further mitigated by the pitched roof form, particularly when considered against a flat roof redesign.*

- *The extent of the proposed variation is not visible from Forest Road and does not alter the presentation of the dwelling within the streetscape. The extent of the proposed variation is not visible from any other public place.*
- *Due to the topography of the site, the extent of the proposed variation does not increase the overall maximum RL of the roof form and is not considered to alter the visual bulk of the dwelling when viewed from surrounding properties.*
- *The extent of the proposed variation comprises the roof structure only and does not contribute to any additional GFA at the site, noting the proposal complies with the maximum FSR for the site.*
- *The extent of the proposed variation does not result in any additional storeys or accessible areas (that are not GFA, such as attic storage or a roof terrace). The proposal maintains a two (2) storey-built form, consistent with surrounding development patterns and the built form intended by the planning framework.*
- *Neither the site or surrounding properties benefit from any significant views or vistas. In this regard, the proposal will not affect any views in the locality.*
- *The proposal does not result in any unreasonable visual impact to surrounding properties. Suitable design measures have been incorporated within the design of the dwelling, including window positioning and the provision of privacy screening, to ensure a suitable relationship to neighbouring properties.*
- *The proposal maintains compliance solar access to the subject site and surrounding properties, in accordance with the provisions of the DCP 2021.*

Assessing Officer Comment:

75. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. It is considered that there are negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of bulk and scale of the development on the adjoining properties.
76. 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 the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,”*
77. The proposal meets the objectives of the height of building standard as follows:
- (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.*

Assessing Officer Comment:

78. The proposed development seeks to regularise an existing non-compliance regarding height of building given a pool pump housing area exists to the under-croft below the ground floor level. The dwelling presents as a two-storey dwelling with basement area when viewed from the front street elevation. The dwelling presents as a three-storey dwelling when viewed from the side and rear elevations. The proposed development fails to appropriately respond to the topography of the site, given the unauthorised cut and fill of the site which altered the site's topography. When the CDC was approved for the dwelling house on the site the height of building was compliant. The proposed development is not of similar bulk and scale of development within the immediate locality.
79. The proposal is inconsistent with the objectives of the R2 Low Density Residential zone as follows:
- *To provide for the housing needs of the community within a low-density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity.*
 - *To provide for housing within a landscaped setting that enhances the existing environmental character of the Georges River local government area.*
80. The siting of the development results in a development that has not been sensitively designed to minimise visual and environmental impacts upon the amenity of the surrounding area and the setting of the locality in terms of visual bulk and scale.
81. It is considered that the proposal does not have sufficient planning grounds to justify the variation request. The proposal is not of a scale that is compatible within the neighbourhood.

CLAUSE 4.6(B) THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED.

82. An assessment of the written request against Clause 4.6 (3)(a) and (b) Including comment about whether the request demonstrates the following:
- 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.
83. The application was supported by a Clause 4.6 Development Standard variation request (prepared by Rothshire). In this instance the variation request is considered inadequate.
84. 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.
85. The proposed development is not in the public interest as the proposal fails to comply with the objectives for both the Height of Buildings and the R2 Low Density Residential zone.
86. The proposed variation does not raise any matters of State or regional environmental planning significance.

- 87. The areas of non-compliance are unreasonable and will establish an undesirable precedent. It will have adverse impacts on the surrounding locality, which is predominantly characterised by low density residential development. The Panel is requested to not invoke its powers under Clause 4.6 to permit the variation proposed.
- 88. It is considered that the format of the Clause 4.6 Statement lodged with the application is consistent with that required by Clause 4.6. Notwithstanding this, the statement is not considered to be well founded as there are insufficient environmental planning grounds to justify contravening the standard given that in this case the proposal fails to satisfy the objectives of the zone and development standard (Clause 4.3, building height development standard).

Georges River Development Control Plan 2021

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

Part 5- Residential Locality Statements

<p>Lugarno Locality Statement</p> <p><u>Streetscape Character- Existing Character</u></p> <ul style="list-style-type: none"> • <i>Lugarno is a low-density residential area with a small local group of shops on Forest Road typical of post-war suburban development.</i> • <i>The housing stock in Lugarno predominately consists of freestanding dwelling houses built in the post-war period, as well as contemporary knock down rebuilds. This has resulted in an eclectic mix of housing styles.</i> • <i>Most of Lugarno is located within the Foreshore Scenic Protection Area (refer to GRLEP 2021 Foreshore Scenic Protection Area Map).</i> • <i>The combination of the low impact-built form and large street trees contributes to an overall character that is relaxed and informal within a bushland setting.</i> • <i>However, recent developments have seen the replacement of post-war dwellings with substantially larger, contemporary dwelling houses with significantly reduced setbacks and landscaping.</i> • <i>The emerging eclectic character of the streetscape as result of knock down rebuilds is a threat to the urban bushland character of the area.</i>
<p><u>Streetscape Character- Future Desired Character</u></p> <ul style="list-style-type: none"> • <i>Retain and enhance the prominence of the bushland landscaped character in new development through tree planting and landscaping.</i> • <i>Encourage consistent setbacks of buildings from the street and the provision of landscaping within the front setback.</i> • <i>Encourage the retention of trees and sharing of water views wherever possible, including screening via vegetation rather than solid walls.</i> • <i>Public views to waterways should be retained from streets and public places.</i>
<ul style="list-style-type: none"> — The proposed development fails to maintain the existing and future desired character of Lugarno locality. — The proposed development fails to retain and enhance a low-density residential character of Lugarno. — The proposed development fails to ensure setbacks in accordance with the Foreshore Scenic Protection Area. — The proposed development fails to ensure the bulk and scale of the development is compatible with the Lugarno locality.

Part 6 – Low Density Residential Controls

Control	Proposal	Compliance
<p>1. New buildings and additions are to consider the Desired Future Character statement in Part 5 of this DCP.</p>	<p>The proposed works fail to appropriately responds to the desired future character of the locality.</p>	<p>No</p>
<p>2. New buildings and additions are to be designed with an articulated front façade.</p>	<p>The front façade has incorporated sufficient building articulation with the formal living room, front entry and porch and the garage entry respectively.</p>	<p>Yes</p>
<p>3. Developments on sites with two (2) or more frontages are to address all frontages.</p>	<p>The subject site only has 1 frontage being Forest Road.</p>	<p>Yes</p>
<p>4. Dwelling houses are to have windows presenting to the street from a habitable room to encourage passive surveillance.</p>	<p>Windows exist within the front façade of the dwelling from a formal living room. There is 'opaque' glass balustrading to the front of the formal lounge room and screen planting proposed. The windows, balustrading and screen planting aid in passive surveillance being a design feature which deters threats while remaining largely invisible to the public domain.</p>	<p>No</p>
<p>5. Development must be sensitively designed so as to minimise adverse impacts on the amenity and view corridors of neighbouring public and private property while maintaining reasonable amenity for the proposed development and is to balance this requirement with the amenity afforded to the new development.</p>	<p>The proposed development impacts upon the amenity and view corridors of neighbouring public and private properties. Reasonable amenity for both the future occupants of the proposal and the adjoining property owners has not been achieved via the design.</p>	<p>No</p>
<p>6. The maximum size of voids at the first-floor level should be a cumulative total of 15m² (excluding voids associated with internal stairs).</p>	<p>Voids on first floor equate to 7.1sqm.</p>	<p>Yes</p>
<p>1. New buildings are to consider and respond to the predominant and desired future scale of</p>	<p>The proposal fails to appropriately responds to the future scale of buildings within the neighbourhood.</p>	<p>No</p>

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Control	Proposal	Compliance
<p>buildings within the neighbourhood and consider the topography and form of the site.</p>		No
<p>2. On sites with a gradient or cross fall greater than 1:10, dwellings are to adopt a split-level approach to minimise excavation and fill. The overall design of the dwelling should respond to the topography of the site.</p>	<p>The built form exists, this clause is not relevant in this instance. The design is already split level through the ground floor. The development fails to respond to the topography given its elevated form at the rear.</p>	Yes
<p>3. A maximum of two (2) storeys plus basement is permissible at any point above ground level (existing). Basements are to protrude no more than 1m above existing ground level.</p>	<p>2 storeys and “basement” to be enclosed to be an under-croft area. A new driveway and hard stand area is to be constructed. The existing “basement” access is proposed to be filled and replaced with deep soil landscape area. The application fails to provide details in terms of structural adequacy for the in filling of the basement access area.</p>	N/A
<p>4. Where topography conditions require a basement, the area of the basement should not exceed the area required to meet the car parking requirements for the development, access ramp to the parking and a maximum 10m² for storage and 20m² for plant rooms. Additional basement area to that required to satisfy these requirements may be included as floor space area when calculating floor space ratio.</p>	<p>N/A - No basement proposed. The existing basement area is being ‘removed’ as a vehicle cannot access this area.</p>	N/A
<p>5. Where the entry to the basement carpark is visible from the street, the entry should be recessed a minimum of 1m (from the edge of the external wall or balcony) from the levels above and the external walls of the garage</p>	<p>N/A</p>	

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Control	Proposal	Compliance
differentiated from the walls above through articulation and external materials.		
<p>Front Setbacks</p> <p>1. The minimum setback from the primary street boundary is:</p> <p>i. 4.5m to the main building wall / facade;</p> <p>ii. 5.5m to the front facade of a garage or carport; or</p> <p>iii. Where the prevailing street setback is greater than the minimum, the average setback of dwellings on adjoining lots is to be applied.</p>	<p>Front Setback</p> <p>7m to porch</p> <p>11.5m to garage façade</p> <p>8m to façade of dwelling</p> <p>Remains unchanged via the proposed development.</p>	N/A
<p>Side and Rear Setbacks</p> <p>1. Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is the greater (excluding detached secondary dwellings – see Point 12 in Section 6.1.2.12- Secondary Dwellings of this DCP).</p> <p>2. The minimum side setbacks for ground and first floor are:</p> <p>i. 900mm for lots up to 12.5m in width measured at the front building line for the length of the development.</p> <p>ii. 1.2m for lots greater than 12.5m in width measured at the front building line for the length of the development.</p> <p>iii. 1.5m for all lots within the Foreshore Scenic Protection Area measured at the front building line for the length of the development.</p> <p>3. Where alterations and additions (ground and first floor) to an existing</p>	<p>Rear Setback</p> <p>13.5m to rear façade</p> <p>Remains unchanged via the proposed development.</p> <p>Existing setbacks not impacted by the development -</p> <p><i>Northern Elevation</i></p> <p>Ground Floor- 0.9m and 1.5m</p> <p>First Floor- 1.5m</p> <p><i>Southern Elevation</i></p> <p>Ground Floor- 0.9m</p> <p>First Floor - 1.6m and 0.2m</p> <p>Allowable Side Setback- 1.5m</p> <p>Proposed Side Setback of works as part of this development application-</p> <p><i>Northern Elevation</i></p> <p>Ground Floor – 0.9m</p> <p>First Floor - 1.5m</p> <p><i>Southern Elevation</i></p> <p>Ground Floor 1m</p> <p>First Floor - 1.6m</p> <p>N/A – Whilst the dwelling on site is existing, there is no lawful approval for the built form.</p>	<p>N/A</p> <p>No</p> <p>N/A</p> <p>N/A</p>

Control	Proposal	Compliance
<p>dwelling are proposed, an existing side setback less than the setback required in Control 3 can be maintained, provided the reduced setback does not adversely affect compliance with the solar access and landscaped area controls or adversely impact upon the visual and acoustic amenity of neighbouring dwellings.</p> <p>4. For battle-axe lots, minimum side and rear boundary setbacks apply, except the front setback of the battle-axe lot without a street frontage, where a minimum setback of 4.0m is to be provided as illustrated in Figure 1.</p> <p>5. Any garages or parking structures fronting rear lanes may encroach upon the rear setback areas but are still to provide a minimum setback of 1m from the lane.</p>	<p>N/A – not a battle axe lot.</p> <p>N/A</p>	<p>N/A</p>
<p>1. Private open space is to be located at the rear of the property and/or behind the building line and is to have a minimum area of 60m² with minimum dimensions of 6m and located on the same level (not terraced or over rock outcrops).</p> <p>2. Private open space is to be provided for all dwellings, (with the exception of secondary dwellings, which are able to share the private open space of the principal dwelling).</p>	<p>There is a turfed area within the rear yard adjacent to the proposed swimming pool. The area is 60sqm with a minimum dimension of 6m.</p> <p>The private open space is proposed in the form of a patio area, swimming pool and grassed area. The private open space is located directly off the primary living areas via stairs. The private open space levels are not proposed to change under this development application.</p>	<p>N/A- remains unchanged via the proposed development.</p> <p>N/A- remains unchanged via the proposed development.</p> <p>N/A- remains unchanged</p>

Control	Proposal	Compliance
<p>3. Private open space is to be located so as to maximise solar access.</p> <p>4. Private open space is to be designed to minimise adverse impacts upon the privacy of the occupants of adjacent buildings.</p>	<p>Private open space is oriented to the west and receives sufficient solar access.</p> <p>The private open space is located within the rear yard adjacent to the neighbouring properties private open space. There have been significant level changes within the rear yard because of the unauthorised works which has an adverse impact upon the privacy of the future occupants of the dwelling and adjoining properties.</p>	<p>via the proposed development.</p> <p>N/A- remains unchanged via the proposed development.</p>
1. Landscaping		
<p>1. Landscaped area (has the same meaning as GRLEP 2021) is to be provided in accordance with the table contained within Clause 6.12 Landscaped areas in certain residential and environmental protection zones of GRLEP 2021.</p> <p>2. Provide a landscape setting within the primary and secondary street frontages, where hard paved areas are minimised. At a maximum, impervious areas, including hard paving, gravel, concrete or other material that does not permit landscaping, are to occupy no more than 40% of the street setback area.</p> <p>3. The front setback area is to have an area where at least one (1) tree capable of achieving a minimum mature height of 10m with a spreading canopy can be accommodated. A schedule of appropriate species to consider is provided in Council's Tree Management Policy.</p>	<p>The landscaped area is compliant with GRLEP 2021 minimum 25% deep soil landscape planting.</p> <p>25% hard stand area in front setback. The existing "basement" access is to be filled and replaced with deep soil landscape area. No structural details have been provided with the application.</p> <p>A 10m tree is proposed to be located within the front setback.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

Control	Proposal	Compliance
<p>1. Any excavation must not extend beyond the building footprint, including for any basement car park.</p> <p>2. The depth of cut or fill must not exceed 1.0m from existing ground level, except where the excavation is for a basement car park.</p> <p>3. Developments should avoid unnecessary earthworks by designing and siting buildings that respond to the natural slope of the land. The building footprint must be designed to minimise cut and fill by allowing the building mass to step in accordance with the slope of the land.</p>	<p>No excavation is proposed for the works under this development application.</p> <p>The extent of fill exceeds 1m from the ground level for the fill proposed within the front setback. The fill is associated with the filling of the “basement” access.</p> <p>No excavation is proposed for the works under this development application.</p>	<p>N/A</p> <p>No</p> <p>N/A</p>
<p>1. Car parking is to be provided in accordance with the requirements in Part 3 of this DCP.</p> <p>2. A dwelling is to provide one (1) garage and one (1) tandem driveway parking space forward of the garage (unless otherwise accommodated within the building envelope).</p> <p>3. Driveways, garages and basements should be accessed from a secondary street or rear lane where this is available.</p> <p>4. Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane.</p> <p>5. Driveway crossings are to be positioned so that on-</p>	<p>Tandem car parking space design. One (1) car in the proposed in the garage and 1 on the driveway in front of the garage. The existing “basement” access is proposed to be filled and replaced with deep soil landscape area. No structural details provided.</p> <p>Complies - 2 car parking spaces proposed. One (1) car within the proposed garage and one (1) on the driveway in front of the garage.</p> <p>Garage accessed via the only frontage being Forest Road.</p> <p>N/A</p> <p>Complies – The existing “basement” access is proposed to be filled and</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>

Control	Proposal	Compliance
<p>street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.</p> <p>6. The maximum driveway width between the street boundary and the primary building setback alignment of the garage is 4.0m.</p> <p>7. Basements are permitted where the LEP height development standard is not exceeded, and it is demonstrated that there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure). (i) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition in the LEP) and the overall development presents as two (2) storeys to the street.</p> <p>8. Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1 (latest edition).</p> <p>9. The maximum width of a garage opening is 6m.</p>	<p>replaced with deep soil landscape area (no structural details provided). A single driveway access is proposed under this development application. The driveway levels need to be resolved by a 138 Application under the Roads Act.</p> <p>Compliant at 3.1m in width.</p> <p>N/A- Whilst a “basement” exists on site, this development application seeks to convert the “basement” to be an under house undercroft area with the access to this area being replaced with deep soil landscape area. No structural detail provided as to how this will be achieved.</p> <p>Satisfactory. The new garage and hard stand area is compliant. The existing basement is not as a vehicle cannot access this level. Access to this area is being removed as part of this application.</p> <p>Satisfactory – 3m</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p>
<p>1. Windows from active rooms are to be offset with windows in adjacent dwellings, or appropriately treated so as to avoid direct overlooking onto neighbouring windows.</p>	<p>Satisfactory as the built form of the dwellings adjoining exists.</p> <p>Satisfactory as the built form of the dwelling adjoining exists.</p>	<p>Yes</p> <p>Yes</p>

Control	Proposal	Compliance
<p>2. For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties.</p> <p>3. Upper-level balconies should not project more than 1500mm beyond the main rear wall alignment so as to minimise adverse visual privacy impacts to adjoining properties.</p> <p>4. Windows for primary living rooms must be designed so that they reasonably maintain the privacy of adjoining main living rooms and private open space areas.</p> <p>5. Development applications are to be accompanied by a survey plan or site analysis plan (to AHD) of the proposed dwelling showing the location of adjoining property windows, floors levels, window sill levels and ridge and gutter line levels.</p>	<p>The rear first-floor balcony presents as a privacy and amenity issue toward the rear adjoining property. The Applicant has proposed to construct a balustrade on the exterior of the glass sliding door of bedroom 2 to restrict access to this space from this room. This balcony has also incorporated privacy screening to 1.8m so there is no oblique view. The screening will result in this balcony being dark and bulky which is not supported.</p> <p>The proposed modification to the existing development fails to maintain a reasonable level of privacy for the future occupants of the dwelling from the living areas.</p> <p>A survey plan was submitted with the application.</p>	<p>No</p> <p>Yes</p> <p>Yes</p>
<p>1. Noise generators such as plant and machinery including air conditioning units and pool pumps are located away from windows or other openings in habitable rooms; they are to be screened to reduce noise or acoustically treated.</p>	<p>The air conditioning condenser unit and swimming pool filter/pump are proposed to be placed in the under-croft area at the rear of the dwelling. It is unclear as to whether this space can be used as ventilation to this space has not been shown.</p>	<p>No</p>
<p>1. New buildings and additions are sited and designed to facilitate a minimum of 3 hours direct</p>	<p>Satisfactory solar access.</p>	<p>Yes</p>

Control	Proposal	Compliance
<p>sunlight between 9am and 3pm on 21 June onto living room windows and at least 50% of the minimum amount of private open space.</p> <p>2. To facilitate sunlight penetration to adjoining development, building bulk may be required to be articulated to achieve the required sunlight access.</p> <p>3. Direct sunlight to north-facing windows of habitable rooms and 50% of the principal private open space area of adjacent dwellings should not be reduced to less than 3 hours between 9.00am and 3.00pm on 21 June.</p> <p>4. Note: Variations will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation or steeply sloping sites with a southerly orientation away from the street.</p> <p>5. Shadow diagrams are required to show the impact of the proposal on solar access to the principal private open space and living rooms of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams. It may also be necessary to provide elevations or views from sun diagrams to demonstrate appropriate</p>	<p>The building incorporates sufficient articulation to facilitate sufficient sunlight penetration to adjoining development where possible given the lot orientation. The maximum 9m height of building breach under GRLEP 2021 extends the shadow cast on the adjoining property. Given the orientation of the lots some degree of overshadowing of the adjoining property is unavoidable.</p> <p>Variation supported given the east-west orientation of the site. See below commentary for merit-based justification.</p> <p>Sufficient solar access diagrams have been submitted with the architectural plans.</p>	<p>No</p> <p>No, refer to development control 4 below.</p> <p>Yes</p> <p>Yes</p>

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Control	Proposal	Compliance
solar access provision to adjoining development.		
<p>1. Large expansive surfaces of predominantly white, light or primary colours which would dominate the streetscape or other vistas should not be used.</p> <p>2. New development should incorporate colour schemes that have a hue and tonal relationship with the predominant colour schemes found in the street.</p> <p>3. Matching buildings in a row should be finished in the same colour or have a tonal relationship.</p> <p>4. All materials and finishes utilised should have low reflectivity.</p>	<p>The colours and materials schedules are in accordance with the existing colours and materials currently on the existing building structure.</p> <p>The colours and materials have a tonal relationship with the predominant colour schemes found in the street.</p> <p>N/A- the subject site is not a matching building.</p> <p>Materials and finishes are consistent with the development on the site and are low in reflectivity.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p>
<p>1. All dwellings are to be provided with adequate and practical internal and external storage (garage, garden sheds, etc.).</p> <p>2. Provision for water, sewerage and stormwater drainage for the site shall be nominated on the plans to Council's satisfaction.</p> <p>3. Each dwelling must provide adequate space for the storage of garbage and recycling bins (a space of at least 3m x 1m per dwelling must be provided) and are not to be located within the front setback.</p>	<p>The dwelling adequately provides practical internal and external storage for the future occupants of the dwelling. There is sufficient area in the rear yard for external storage in the form of garden shed to be installed.</p> <p>Stormwater system not supported. Drainage will need to be via an inter-allotment drainage easement which does not exist and no binding legal agreement for its creation has been provided.</p> <p>The bins have been located on the architectural within the northern side setback.</p>	<p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p>

Control	Proposal	Compliance
4. Letterboxes are to be located on the frontage where the address has been allocated in accordance with Australia Post requirements.	The letterbox has not been located on the architectural plans and/or landscape plan.	
Control	Proposal	Compliance
1. Swimming pools/spas are to be located to the rear of properties.	The swimming pool is in the rear yard.	Yes
2. For corner allotments or where the property has two street frontages, swimming pools/spas are not to be located in the primary frontage.	The site is not a corner allotment.	N/A
3. Swimming pools/spas must be positioned a minimum of 900mm from the property boundary with the water line being a minimum of 1500mm from the property boundary.	The positioning of the swimming pool on the site is existing. The setback to the waterline and coping fails to comply with this development control. 1.327m side setback to the waterline.	No
4. In-ground swimming pools shall be built so that the top of the swimming pool coping is as close to the existing ground level as possible. On sloping sites this will often require excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool consistent with the low side.	Swimming pool and associated coping is existing. The swimming pool and existing concrete coping is significantly elevated above the natural and existing ground levels due to the change in topography in the rear yard via the unauthorised works.	No
5. Swimming pools/spas are to be no more than 500mm above existing ground level.	Swimming pool and associated coping is existing. The structure is approximately 630mm above the existing ground. It should be noted that approximately 1m of fill has also been added to this area from the natural ground level.	No
6. On steeply sloping sites, Council may consider allowing the top of the swimming pool at one point or along one side to extend up to 1m above existing ground level, provided that the exposed face of the swimming pool	Swimming pool and associated coping is existing. The structure is approximately 630mm above the existing ground. It should be noted that approximately 1m of fill has also been added to this area from the natural ground level.	No

Control	Proposal	Compliance
wall is treated to minimise impact. The materials and design of the retaining wall should be integrated with and complement the style of the swimming pool.		
7. Decking around a swimming pool must not be more than 600mm above existing ground level.	Swimming pool and associated coping is existing. As per the submitted architectural and landscape plan there is no decking proposed.	No
8. Filling is not permitted between the swimming pool and the property boundary. The position of the swimming pool, in relation to neighbours and other residents, must be considered to minimise noise associated with activities carried out in the swimming pool or from the swimming pool equipment, such as cleaning equipment.	No filling is proposed between the swimming pool and property boundary under this development application.	Yes
9. Council may require mechanical equipment to be suitably acoustically treated so that noise to adjoining properties is reduced.	The air conditioning condenser unit and swimming pool filter/pump are proposed to be placed in the under-croft area at the rear of the dwelling. It is unclear as to whether this space can be used as ventilation to this space has not been shown.	No
10. A pool fence complying with the legislation is to separate access from the residential dwelling on the site to the pool.	Swimming pool fencing proposed in accordance with the Swimming Pools Act.	Yes.
11. Safety and security measures for swimming pools must comply with the relevant requirements of the Swimming Pools Act 1992 and any relevant Australian Standards.	Swimming pool fencing proposed in accordance with the Swimming Pools Act and Australian Standards.	Yes.
12. A spa is not required to be surrounded by a child resistant barrier provided that the spa is covered or secured by a child-safe structure (e.g., door, lid or mesh) that is fastened to the spa pool by a child-	N/A – no spa existing or proposed.	N/A

Control	Proposal	Compliance
resistant device at all times when the spa pool is not in actual use and complies with Swimming Pools Act 1992 and any relevant Australian Standards.		
Control	Proposal	Compliance
1. Development applications are supported by a site analysis and design response demonstrating how the relevant provisions of the LEP and the objectives of this part of the DCP have been addressed.	Sufficient information has been provided in this regard.	Yes
2. Removal of existing native vegetation minimised to that which is reasonably required to site and construct a building.	The proposed development involves minimal removal of vegetation on site. Vegetation removal was undertaken when the unauthorised construction and earthworks were undertaken.	Yes
3. The integrity of the existing edge of bushland closest to the Georges River is retained.	Not impacted by the development.	Yes
4. Vegetation along ridgelines and on hillsides is retained and supplemented to provide a backdrop to the waterway.	Not impacted by the development.	Yes
5. New, complementary planting and landscaping is encouraged.	Achieved- new landscape planting is proposed as part of this development application.	Yes
6. Where on a steep site, vegetation is used to screen the impact of support structures such as piers.	The development is not proposed to be constructed on piers. A new driveway and hard stand area is to be constructed. The existing "basement" access is proposed to be filled and replaced with deep soil landscape area. No structural details provided as to how this will be achieved.	N/A
7. Landscaped areas below the FBL should maximise the use of indigenous plant material and preferably use exclusively indigenous plants. Turf should be limited in this area. Details of planting are to be indicated on any	N/A - No FBL impacts this development site.	N/A

landscape plan submitted to Council.		
8. Natural features that make a contribution to the environmental qualities and scenic landscape values of the foreshore, including mature native tree and sandstone rock outcrops, platforms and low cliffs, are retained.	Satisfactory. Natural features of the site unchanged via the proposed works under this development application. The natural features of the site were eroded as part of the unauthorised dwelling construction and associated earthworks and swimming pool excavation.	Yes
9. The visual impact of buildings is minimised having regard to building size, height, bulk, siting, external materials, and colours and cut and fill.	The proposed development fails to ensure the proposed built form is sited and designed to blend with the surrounding environment being the adjoining properties to the north, west and south of the development site. Furthermore, the built form fails to comply with the building separation as described under setbacks.	No
10. Buildings should be sited on the block to retain existing ridgeline vegetation, where possible. Siting buildings on existing building footprints or reducing building footprints to retain vegetation is highly recommended.	Built form of the dwelling and the swimming pool location on the site is existing albeit constructed unlawfully. A new driveway and hard stand area is to be constructed. The existing "basement" access is proposed to be filled and replaced with deep soil landscape area. No structural details were provided as to how this will be achieved.	Yes
11. Where on a steep site, buildings are sited to sit discretely within the landscape using hillsides as a backdrop and below the tree canopy. The building footprint is to result in the following: (i) The preservation of topographic features of the site, including rock shelves and cliff faces; (ii) The retention of significant trees and vegetation, particularly in areas where the loss of this vegetation would result in the visual scarring of the landscape, when viewed from the water, and (iii) Minimised site disturbance through cutting and/or filling of the site.	Built form of the dwelling and the swimming pool location on the site is existing albeit constructed unlawfully. A new driveway and hard stand area is to be constructed. The existing "basement" access is proposed to be filled and replaced with deep soil landscape area. No structural details were provided as to how this will be achieved.	Yes

<p>12. Facades and rooflines of dwellings facing the water are to be broken up into smaller elements with a balance of solid walls to glazed areas. Rectangular or boxy shaped dwellings with large expanses of glazing and reflective materials are not acceptable. In this regard, the maximum amount of glazed area to solid area for façades facing the foreshore is to be 50%-50%.</p>	<p>The development site does not front the waterway.</p>	<p>N/A</p>
<p>13. Colours that harmonise with and recede into the background landscape are to be used. In this regard, dark and earthy tones are recommended and white and light coloured roofs and walls are not permitted. To ensure that colours are appropriate, a schedule of proposed colours is to be submitted with the Development Application and will be enforced as a condition of consent.</p>	<p>Satisfactory colours proposed.</p>	<p>Yes</p>
<p>14. Buildings fronting the waterway must have a compatible presence when viewed from the waterway and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality</p>	<p>The development site does not front the waterway.</p>	<p>N/A</p>
<p>15. Blank walls facing the waterfront shall not be permitted. In this regard, walls are to be articulated and should incorporate design features, such as:</p>	<p>The development site does not front the waterway.</p>	<p>N/A</p>

(i) Awnings or other features over windows; (ii) Recessing or projecting architectural elements; or (iii) Open, deep verandas.		
16. Adequate landscaping shall be provided to screen undercroft areas and reduce their impact when viewed from the water.	The development site does not front the waterway.	N/A
17. The extent of associated paved surfaces is minimised to that which provides essential site access and reasonable private open space.	Achieved.	Yes
18. Buildings have external finishes that are non-reflective and coloured to blend with the surrounding landscape.	Satisfactory.	Yes
19. Swimming pools and surrounds should be sited in areas that minimise the removal of trees and limit impact on natural landform features (rock shelves and platforms).	Swimming pool and associated coping is existing. Earthworks were unauthorised.	No
20. Fences are low in profile and are at least 50% transparent.	N/A- no front fencing proposed.	N/A
21. Driveways and other forms of vehicular access are as close as practical to running parallel with contours	A new driveway and hard stand area is to be constructed. The existing "basement" access is proposed to be filled and replaced with deep soil landscape area. No structural details provided as to how this will be achieved.	Yes
22. The natural landform is to be retained and the use of retaining walls and terracing is discouraged.	Retaining walls not proposed under this development application.	N/A
23. Retaining walls are not to be located: <ul style="list-style-type: none"> • Between the FBL and MHWM • Within 40m of MHWM 	Retaining walls not proposed under this development application.	N/A
24. Where retaining walls are constructed in other areas, materials and colours that blend with the character and landscape of the area are used. Where	Retaining walls not proposed under this development application.	N/A

<p>retaining walls face the foreshore they are to be constructed of course, rock faced stone or a stone facing and are to be no higher than 600mm above natural or existing ground level. Under no circumstances will Council permit a masonry faced retaining wall facing the foreshore.</p>		
<p>25. Development provides opportunities to create view corridors from the public domain to the Georges River.</p>	<p>Views of the Georges River are not visible from the site.</p>	<p>N/A</p>

Georges River Development Control Plan 2021 Amendment

90. The Amendment No. 3 to the Georges River Development Control Plan (DCP) 2021 was effective on 27 October 2023. This amendment sought to harmonise all DCP controls relating to the Hurstville City Centre into the Georges River DCP 2021 and rectify several housekeeping issues comprising of unintended omissions, numerical, typographical, interpretation and formatting errors throughout the Georges River DCP 2021. Existing savings provision apply, and all development applications lodged with Council prior to the gazelle of the amendment, will be determined as if the subject amendment had not commenced. This application has been assessed having regard to the relevant Development Control Plan.

ASSESSMENT

Streetscape Character and Built Form

91. Streetscape character is the overall character and appearance of a street formed by buildings and landscape features that frame the public street. Streetscape also refers to the way a street looks and helps to provide local amenity and identity. The presentation of structures in a street is the most critical element and determines the character of not only the street, but the locality. ‘Good’ streetscapes are those in which the houses and associated spaces form attractive streets and neighbourhoods, as intended by GRDCP 2021. New buildings need to be sensitive and in context with the landscape setting, and the environmental conditions of the locality to satisfy the objectives of GRDCP 2021. An assessment of the streetscape character and site analysis are the first steps in the design process and are used to ensure that the proposed development is the best possible solution for a site.
92. The proposed development fails to meet the objectives of streetscape character and built form. In particular, the proposal fails to comply with the following objectives.
- (a) *reflect the dominant and transitioning building patterns of the streetscape with regard to the location, spacing and proportion of built elements in the streetscape.*
 - (b) *Complement, conserve and enhance the visual character of the street and neighbourhood through appropriate building scale, form, setting, details, and finishes.*

(c) *Ensure that all elements of development visible from the street, waterways and public domain make a positive contribution to the foreshore, streetscape, and natural features.*

93. To make a positive contribution to the streetscape, new development needs to be compatible with the scale and character of existing buildings and landscape elements. The proposed development does not comply with development control 1 and 5 in section 1 under Part 6.1.2 of GRDCP 2021 which outlines that new buildings and additions are to consider the Desired Future Character Statement in Part 5 of GRDCP 2021.
94. GRDCP 2021 development control 5 in section 1 under Part 6.1.2 notes that development must be sensitively designed to minimise adverse impacts on the amenity and view corridors of neighbouring public and private property while maintaining reasonable amenity for the proposed development and is to balance this requirement with the amenity afforded to the new development. The rearward elevated first floor balcony remains as a privacy and amenity concern towards the rearward adjoining property. Despite the sliding doors to have a fixed balustrade to the external façade of the doors on bedroom 2 and privacy screening, the space still presents as an acoustic amenity concern to the adjoining properties.

Building Scale and Height

95. Good design provides a building layout that maximises the natural attributes of the site. Carefully considered building layout, design, scale and built form also creates a higher level of amenity for occupants through enhanced visual and acoustic privacy, passive heating and cooling, attractive outlooks from living spaces, and flexible and useable indoor and outdoor spaces that meet the needs of occupants.
96. The proposed development fails to comply with GRDCP 2021 development control 1 under section 2 in part 6.1.2 in that *buildings must consider and respond to the predominant and desired future scale of buildings within the neighbourhood and consider the topography and form of the site*. The proposal fails to appropriately responds to the future scale of buildings within the neighbourhood. The built form is not compatible with the height, bulk, and scale of the desired future character of the locality.

Setbacks

97. The spatial relationship of buildings is an important determinant of urban form. Building separation affects the spatial continuity and the degree of openness in the street and between properties. Building separation is required to minimise adverse amenity impacts by providing opportunities for landscaping, access, privacy, solar access, and private and shared open spaces.
98. The proposed development fails to provide a 1.5m side setback for the length of the development site as the existing building has a side setback of 995mm to 1010mm and 885mm to the northern setback. The proposal to remove a door and infill the area with a rendered brick wall is not side setback compliant. Furthermore, the non-compliant side setback impacts upon the view line of a minimum 1.5m setback along the side boundaries within the foreshore scenic protection area.

Excavation (Cut and Fill)

99. To contribute to the quality and identity of the area, development must respect landform and natural settings. Development must be designed so that it minimises impacts to natural land forms and allows the natural qualities of the site to be the dominant elements of its setting. Well considered design ensures dwellings integrate with the streetscape and views from the waterways and retain a consistent relationship to the natural topography. This relationship provides an important visual link between buildings in a streetscape, as well as reducing the impacts of new development on neighbouring lots. Deep excavation, cut and fill or benching may alter the pattern of subsoil water flow and soil stability, which may adversely affect neighbouring properties and the natural environment.
100. The proposed development seeks to fill the existing driveway ramp to the “basement” with soil and placement of landscaping on top. The proposed development fails to comply with GRDCP 2021 development control 2 under section 6 in part 6.1.2 which outlines that *the depth of cut or fill must not exceed 1.0m*. It should be noted that no engineering details to support the filling of the access area to the “basement”. Furthermore, no details have been provided as to how these specific works are to be undertaken.

Visual Privacy

101. Building design must take into consideration aspects of visual privacy and noise sources and minimise their future impact on occupants. Amenity is enhanced by privacy and a better acoustic environment. This can be achieved by carefully considering the location of the building on the site, the internal layout, the building materials used, and screening devices. The consideration of privacy requires an understanding of the context of the adjacent site, site configuration, topography, the scale of the development and its layout.
102. The proposed development fails to comply with development control 3 under section 8 in part 6.1.2 of GRDCP 2021 which outlines that upper-level balconies should not project more than 1500mm beyond the main rear wall alignment so as to minimise adverse visual privacy impacts to adjoining properties. The rearward elevated first floor balcony beyond the maximum 1.5m depth presents as a privacy and amenity concern towards the rearward adjoining property. Despite the sliding doors to have a fixed balustrade to the external façade of the doors on bedroom 2 and privacy screening, the space still presents as an acoustic amenity concern to the adjoining properties. This is a poor built form outcome for this site.

Solar Access

103. Ideally, solar access should be maximised in winter and controlled in summer. Daylight consists of both diffused light and direct light. Good levels of daylight in a dwelling improve amenity and reduce the need for artificial lighting. High levels of daylight can be achieved through the careful consideration of window size, location, and proportion.
104. The proposed development fails to comply with GRDCP 2021 development control 2 under section 10 in part 6.1.2 in that *to facilitate sunlight penetration to adjoining development, building bulk may be required to be articulated to achieve the required sunlight access*. The breach of the maximum 9m height of building development standard under GRLEP 2021 results in further overshadowing of the adjoining property. This is an unacceptable impact on the adjoining property as a result of the breach in height of building development standard.

Site Facilities

105. The sustainable management of stormwater helps to protect and improve the quality of waterways and maintain the health of its ecosystems. This results in a better urban environment for residents of the Georges River Local Government Area. The proposed development fails to comply with GRDCP 2021 development control 2 under section 13 in part 6.1.2 relating to ensuring that the provision for water, sewerage and stormwater drainage for the site shall be nominated on the plans to Council's satisfaction.
106. Council's Development Engineer has reviewed the proposed development in relation to stormwater management and is not supportive of the design proposed and the nominated information and provided stormwater plans, as the application fails to provide a stormwater drainage design in accordance with Georges River Stormwater Management Policy. An inter-allotment drainage easement is required to be able to drain the site. AN easement does not existing and no legally binding agreement has been provided detailing an easement can be created in the future.
107. The proposed development fails to comply with GRDCP 2021 development control 4 under section 13 in part 6.1.2 being that *letterboxes are to be located on the frontage where the address has been allocated in accordance with Australia Post requirements*. The letter box location has not been annotated on the architectural or landscape plans.

Swimming Pool

105. The existing swimming pool fails to comply with GRDCP 2021 development controls 10 and 11 in relation to the swimming pool fencing. Despite a Swimming Pool Certificate being issued as part of the additional information, it is unclear as to whether the swimming pool fencing is compliant with the Swimming Pools Act 1992 and any relevant Australian Standard.

Foreshore Scenic Protection Area

106. Part 6.5.1 Foreshore Scenic Protection Area of GRDCP 2021 applies to the site as the site is mapped under Clause 6.6 of GRLEP 2021. The proposed development fails to comply with GRDCP 2021 development control 9 in section 1 under part 6.5.1 relating to the Foreshore Scenic Protection Area and how the visual impact of buildings is minimised having regard to building size, height, bulk, siting, external materials, colours and cut and fill. GRDCP 2021 outlined under objective (c) that the intent of the Foreshore Scenic Protection Area is to ensure that development is sited and designed to blend with the surrounding environment, particularly when viewed from highly visited public viewing points. The proposed development fails to ensure that the proposed development is sited and designed to blend with the surrounding environment being the Foreshore Scenic Protection Area.

IMPACTS

Natural Environment

107. This proposal is inconsistent with the controls for the Low-Density Residential development given the design has not had adequate regard for the bulk, scale, form, and public domain interface.
108. The proposal is considered to have an unreasonable impact on the natural and built environment due to the elements presenting to neighbouring allotments, and the non-compliant setbacks given the site is within the FSPA. The design has resulted in unacceptable privacy and overlooking impacts on neighbouring properties.

109. The proposal in its current form is considered to result in adverse impacts on the character of the locality and the amenity of neighbouring residential properties. Overall, the proposal presents an undesirable and unsupportable development form.

Built Environment

110. The proposal coupled with the existing built form on the site fails to represent an appropriate planning outcome for the site with respect to its bulk, scale, density, and expression. The development is an inappropriate response to the context of the site.
111. It is noted that the application before Council is seeking works to facilitate compliance with various elements of the development which has been constructed unlawfully without the benefit of a Part 4 approval and the undertaking of a mandatory inspections required by the construction phase of the development.
112. As a result, concern is raised that the support of these amendments without understanding the structural nature and habitability of the dwelling is of concern. As a result, this application cannot be supported.

Social Impact

113. The assessment demonstrates the proposal will not have an adverse impact on the character of the locality and the amenity of neighbouring residential properties.

Economic Impact

114. There is no apparent adverse economic impact that is likely to result within the locality due to the demolition works and completion of a partially constructed two-storey dwelling with basement, swimming pool, retaining walls, landscaping and site works.

Suitability of the Site

115. The site is zoned R2 – Low Density Residential. Whilst the proposal being for demolition works and completion of a partially constructed two-storey dwelling with basement, swimming pool, retaining walls, landscaping, and site works, is a permissible form of development in this zone, it is considered that the proposal is not suitable for the site given the unsupportive elements of the proposal. The assessment demonstrates that the proposal in its current form will have an unreasonable impact on the character of the locality and the amenity of neighbouring residential properties. The environmental impacts on the social environment are unreasonable and the application is not supported.

SUBMISSIONS, REFERRALS AND PUBLIC INTEREST

Submissions

116. The application was advertised, and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. One (1) submission was received during the initial neighbour notification period. No submissions were received during the re-neighbour notification period.

Issue 1: Privacy

117. Officer Comment: Privacy concerns were raised regarding the rearward balcony. The proposal was revised through amended plans proposing bedroom 2 is to have a balustrade placed in front of the glass sliding doors and 1.8m screening. The balcony in question is of concern in terms of privacy and amenity and is discussed in detail earlier in this assessment report.

Issue 2: Height of Building

118. Officer Comment: Concern was raised regarding the height of building. The proposed development is non-compliant with GRLEP 2021 height of building development standard, the Clause 4.6 request to vary the Height of Building development standard is not supported as discussed earlier in this assessment report.

Issue 3: Stormwater Matters

119. Officer Comment: Concern was raised regarding the disposal of stormwater from the site. Stormwater disposal has been discussed in detail in this assessment report and is a reason for a refusal of this development application. No inter-allotment drainage easement exists and no binding legal agreement for the creation of an easement has been provided.

Revised Plans

120. The Applicant lodged revised plans on 7 November 2023 and 25 January 2024. In accordance with the requirements of Georges River Community Engagement Strategy these plans were publicly exhibited as, in the opinion of Council, the submitted additional information and changes being sought did intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment. No additional submissions were received.

Council (Internal) Referrals

Development Engineer

121. The Development Engineer advised that the application is not supported on a stormwater drainage perspective and provided the following comment.

- The submitted stormwater drainage design plan has not been comprehensively prepared and there are insufficient and inadequate information provided to address the design requirements.
- The drainage design plan fails to present the following key information based on Council's previous review comments:
 - a) Reiterating that the site drainage design plan must address attached Council's due diligence comments. All stormwater runoffs shall be drained by gravity to a legal point of discharge in accordance with the Australian/New Zealand Standard AS/NZS 3500.3.
 - b) Surveyed spot levels from Summit Geomatic Survey Levels Plan, design ground levels, finished surface levels, total development footprint including OSD tank and Driveway access from layback to front boundary then to inside access driveway leading to basement which must be clearly drawn/shown and shall be consistently documented under Architectural, Landscape and Drainage plans. A certification for all plans' consistency is required from drainage design engineer and architect. All plans are to be submitted to support final drainage design plans for assessment. Contours are not required to present/display in the drainage plans. At this stage, 98% CC Plans are required given the nature of site topography and work history undertaken on the sites.
 - c) Contributing catchment areas from roof, hardstand & site setback areas draining to the OSD are acceptable.

- d) Detail design of OSD tank with marked up longitudinal/cross sections and internal drainage systems (pits/pipes/grated drains leading to OSD tank and inter allotment drainage (IAD) easement must be submitted as 98% CC design including any regrading site ground surfaces either existing or proposed levels etc) shall be clearly shown.
- e) Each lot must have separate individual site drainage design detail plan draining to IAD pipe using Summit Geomatic prepared surveyed levels which is to be submitted as separate package. Hence there will be three site drainage plans with different drawing numbers based on each lot.
- f) Site Drainage Plans must demonstrate that site discharge system from development sites can be satisfactorily discharged to an existing public drainage system via IAD pipe from street property numbers 1174 to 1178 later connected to public drainage system and to be prepared as 98% detailed design plan.
- g) Upstream natural overland flow along rear portion of all three lots must be managed and conveyed through developed lots leading to a legal point of discharge which must be demonstrated and this is a critical information to address surrounding neighbours issues to overland drainage flooding impacts to their properties. The neighbours have had many issues with these current buildings in the last 8 years including insurance claims on damage to property and continued flooding every time it rains. Despite the information was requested earlier but was not submitted.
- h) Basement pump sump detail design with minimum volume to be submitted.
- i) Driveway access layout must be drawn on all plans from lay back to basement showing OSD tank footprint. The rear area features of each lot right up rear site boundary must be clearly documented.
- j) Proposed and existing retaining wall details along all lot boundaries are to be submitted.
- k) Submit a certificate from architect and drainage engineer stating that the existing ground levels and finished ground levels have been diligently reviewed and confirmed which can be satisfactorily be implemented during construction stage.
- Easement requirement for the development as follows:
 - a) The subject site falls to the rear and side to side slope and a demonstrated easement to drain water will be required to drain water either through No.1184 Forest Road, Lugarno OR No. 1180 & 1182 Forest Road, Lugarno (If an easement does not already exist).
 - b) A detailed survey layout plan prepared by a Registered Surveyor showing the proposed easement to drain water through all properties must be submitted showing the feasibility of the easement.

- c) Provide detail IAD easement drainage pits/pipeline plan with pipe longitudinal section and layout plan from the subject property up till where the drainage pipeline is connected to an existing public drainage system through other affected properties. The Applicant shall create easements in benefit in favour of subject properties from all affected properties. All inter- allotment drainage easements are to be noted on the stormwater drainage plan. Easement widths must comply with the requirements of CI 3.5.2 of the SMP.
- d) Contractual agreement between the affected parties shall be submitted.
- e) Council has been made aware of recent clarification to the interpretation of Clause 6.9 Essential Services (including stormwater drainage), in the GRLEP 2021, and the nature of what adequate arrangements are required in circumstances where the specified essential services are not available from decisions in the Land and Environment Court.

In this regard, for an Applicant to demonstrate to Council that adequate arrangements with respect to site stormwater disposal have been made where an easement for drainage is required through adjoining downstream land, documentary correspondence must be provided to demonstrate:

- i. That the Applicant or proponent has made contact with the owner of the property proposed to be burdened by the stormwater easement with an in-principal proposal for the creation of an easement, specifying the location of this, the width, drainage system design, and works required.
- ii. That the adjoining burdened property owner has agreed, in principle to the proposal which shall be documented in the form of legal agreement prepared by solicitors, at full cost to the applicant.
- iii. In the absence of this documentation, Council cannot be satisfied that adequate arrangements with respect to site stormwater disposal have been made and would not therefore be able to approve the application.

To date the Applicant has failed to adequately address the site is satisfactory from a stormwater drainage perspective.

Landscape Officer

122. The Landscape Officer advised the proposed development is supported subject to conditions if the application was to be supported.

Environmental Health Officer

123. As part of the assessment of this application, the application was referred to Council's Environmental Health Officer for comment.

The proposed development is supportable subject to remediation works being undertaken in accordance with the submitted Remedial Action Plan.

Land Information Officer

124. The application was referred to Council's Land Information Officer, no objection was raised to the proposed development and no conditions were provided.

Building Surveyor

125. As part of the assessment of this application, the application was referred to Council's Building Surveyor for comment.

126. The site is subject to a Building Information Certificate (BIC) for the existing structures on site. Reference for a full assessment should be made to 149D2023/0103.
127. The recommendations of the BIC in summary are reasons for refusal:
- Refusal Reason – Inconsistent Plans: The building information certificate plans do not align with the current proposed DA application. As a result, Council is unable to endorse certification for this application and must recommend its refusal.
 - Refusal Reason – Building Code of Australia: Evidence has not been provided demonstrating compliance with the Performance Requirements of the NCC 2019 Building Code of Australia Volume Two for the building.
 - Refusal Reason - Lack of Development Consent: The application for the completion of the building cannot proceed due to the absence of development consent as required by Part 4 of the Environmental Planning and Assessment (EP&A) Act.
 - Refusal Reason – Owners Consent: REF: 2122301-LET-0005-V1 Dated 19.10.2022. has been deemed invalid as the "owners' representative" signed the authorisation without providing the full details of the owners, and all signatories for Golden King Assets Pty Ltd were not included.
 - Refusal Reason – Public interest: Refusing the application aligns with the broader public interest by safeguarding the integrity of the planning process and ensuring that development activities are conducted in accordance with established legal frameworks and community expectations.
 - Refusal Reason – Consent: Works have been carried out without the prior consent of Council in the instance where prior consent is necessary.
 - Refusal Reason – Inspection: a physical inspection of the of the site has not been carried out by the assessing officer due to concerns of contamination of the site as detailed in the detailed site investigation by Geotechnical Consultants Australia dated 17 July 2019 REF: E1933-1. a physical inspection is required to conduct a detailed assessment.
 - Refusal Reason – Building Code of Australia: Evidence has not been provided demonstrating compliance with the Performance Requirements of the NCC 2019 Building Code of Australia Volume Two for the building. Is this not the same as the reason above?

External Referrals

Ausgrid

128. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. No concerns were raised subject to conditions being imposed if the application were to be supported.

Public Interest

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

DEVELOPMENT CONTRIBUTIONS

130. Contributions on this application would be determined in accordance with the Georges River Council Local Infrastructure Contributions Plan 2021 (Section 7.11 and Section 7.12). This application is recommended for refusal as a result contributions have not been levied at this time.

CONCLUSION

131. Development consent is sought for the demolition and alterations and additions to a two-storey dwelling with basement, swimming pool and associated landscaping, retaining walls and fencing at 1176 Forest Road, Lugarno.
132. The proposal has been assessed with regard to the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is an inappropriate response to the context of the site and will not result in a good planning, and urban design outcome in the locality.
133. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policy (SEPP), Georges River Local Environmental Plan 2021, and Georges River Development Control Plan 2021 and fails to comply Chapter 2 Vegetation in Non-Rural Areas under SEPP Biodiversity and Conservation) 2021, SEPP (Resilience and Hazards) 2021, GRLEP 2021 and GRDCP 2021 development standards, objectives and controls. Any variations have been addressed and are not worthy of support on merit.

STATEMENT OF REASONS AND RECOMMENDATION

75. Statement of Reasons

- No lawful owners' consent has been provided in accordance with Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021.
- The development is inconsistent with the aims of the plan as it fails to promote a high standard of urban design and built form outcomes.
- The proposal fails to have adequate regard to the objectives of the R2 low density residential zone pursuant to Clause 2.3 of Georges River Local Environmental Plan 2021 *to promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity and to provide for housing within a landscaped setting that enhances the existing environmental character of the Georges River local government area.*
- The proposal fails to demonstrate compliance with Chapter 2 and Chapter 4, of the State Environmental Planning Policy (Resilience and Hazards) 2021 in relation to water catchments and remediation of land.
- The proposal fails to demonstrate compliance with the Georges River Local Environmental Plan (GRLEP) 2021 criterion related to Aims of the Plan, Zone Objectives, Earthworks, Stormwater Management, Foreshore Scenic Protection Area (FSPA), Essential Services and Design Excellence.
- The proposal fails to demonstrate compliance with several of the Georges River Development Control Plan 2021 criterion related to Resident Locality Statements, Streetscape Character and Built Form, Building Scale and Height, Setbacks, Excavation (Cut and Fill), Visual Privacy, Site Facilities and Foreshore Scenic Protection Area.
- The proposed development will have unacceptable adverse impacts on the natural and built environment relating to the proposal not being compatible with the desired future character and zone objectives for the land.
- The proposed development will have unacceptable social impacts on the character of the locality and the amenity of neighbouring residential properties.

Recommendation

76. That Georges River Local Planning Panel refuse the request for variation under Clause 4.6 of Georges River Local Environmental Plan 2021, in relation to the Height of Buildings (Clause 4.3) development standard, as the variation sought does not satisfy the objectives of the standard and there are insufficient environmental planning grounds provided in the written request for variation justifying that compliance would be unnecessary and unreasonable in the circumstances of the case. The proposal is also not in the public interest, and it fails to satisfy the objectives of the zone resulting in an adverse environmental impact.
77. Pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, refuses Development Application DA2022/0620 for alterations and additions to a two-storey dwelling with basement, swimming pool, OSD and associated landscaping, retaining walls and fencing constructed on Lot 2, DP18873 known as 1176 Forest Road, Lugarno, is recommended for refusal for the reasons outlined below.
1. **Refusal Reason – Environmental Planning Instrument** – Pursuant to Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021, the proposed development application fails to provide lawful owners consent by the owner of the property and/or another person, with written consent of the owner of the land.
 2. **Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of State Environmental Planning Policy (Biodiversity and Conservation) 2021. In particular:
 - a) The impacts from the stormwater proposal have not been sufficiently assessed or mitigated.
 - b) The submitted stormwater drainage design plan has not been comprehensively prepared and there are insufficient and inadequate information provided to address the design requirements. The submitted stormwater design is not in accordance with Georges River Stormwater Management Policy.
 3. **Refusal Reason – Environmental Planning Instrument** – Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of State Environmental Planning Policy (Resilience and Hazards) 2021. In particular:
 - a) Detailed Site Investigation Report found evidence of asbestos contaminated soil and asbestos fragments on the sites 1174-1178 Forest Road, Lugarno.
 - b) The Detailed Site Investigation Report outlines that the sites can be made suitable for the intended use following remediation.
 - c) A separate development application for remediation must be lodged and determined prior to the approval of the proposal.
 4. **Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Georges River Local Environmental Plan 2021:

- a) Clause 1.2 – Aims of the Plan. The proposal is inconsistent with the aims of the plan with specific reference to 2(f) in relation to promoting a high standard of urban design and built form.
- b) Clause 2.3 - Zone Objectives. The proposal is inconsistent with the zone objectives as the proposal fails to promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity.
- c) Clause 4.3 – Height of Building. The proposed development seeks a 7.96% variation to the height of building development standard. The Clause 4.6 Exception to development standards request is not supported.
- d) Clause 6.2 – Earthworks. The proposal is not in accordance with the provisions under this development standard as the proposed earthworks being filling of the site, changing the topography and landform of the site within the front setback.
- e) Clause 6.3 – Stormwater Management. The proposal is not in accordance with Georges River Stormwater Management Policy.
- f) Clause 6.6 – Foreshore Scenic Protection Area. The proposal results in a dominant built form and reduced setbacks, failing to retain the existing environmental, cultural, and built form character values of the foreshore scenic protection area.
- g) Clause 6.7 – Essential Services. The proposal is not in accordance with Georges River Stormwater Management Policy as the proposal has not demonstrated lawful discharge of stormwater from the site.
- h) Clause 6.10 – Design Excellence. The proposal in conjunction with the existing structures on the site fails ensure a high standard of architectural design, materials and detailing appropriate to the building type and location.

5. Refusal Reason - Environmental Planning Instrument - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Georges River Development Control Plan 2021:

- a) Part 5 - Resident Locality Statement. The proposal is not consistent with the existing and future desired character of the precinct as the proposal has failed to adequately provide a good urban design outcome for the partially constructed dwelling on site within the streetscape.
- b) Part 6.1.2.1 – Streetscape Character and Built Form – The proposal fails to satisfy the design criterion relating to bulk, scale, design, and architectural elements to provide visual relief of the built form scale.
- c) Part 6.1.2.2 – Building Scale and Height – The proposed development does not respond to the predominant and desired future scale of buildings within the neighbourhood and the topography and form of the site.
- d) Part 6.1.2.3 – Setbacks – The proposal fails to ensure adequate separation between buildings, consistent with the Foreshore Scenic Protection Area.
- e) Part 6.1.2.6 – Excavation (Cut and Fill) – The proposed development seeks to fill more than 1m within the front setback.
- f) Part 6.1.2.8 – Visual Privacy - The proposed development fails to minimise direct overlooking from windows and balconies.
- g) Part 6.1.2.9 – Noise – The proposed development fails to adequately locate noise generators in a ventilated space such as air conditioning condenser units and swimming pool pumps/filters on the architectural plans or landscaping plans to assess the noise transmission from the development to the adjoining properties.

- h) Part 6.1.2.10 – Solar Access – The breach of the maximum 9m height of building development standard under Georges River Local Environmental Plan 2021 results in further overshadowing of the adjoining property.
- i) Part 6.1.2.12 – Site Facilities – The proposal fails to demonstrate adequate provisions are made available for site facilities to support residential occupation i.e., stormwater disposal and letterboxes.
- j) Part 6.4.4 – Swimming Pool – The proposal fails to demonstrate swimming pool fencing in accordance with the Swimming Pools Act 1992 and any relevant Australian Standard.
- k) Part 6.5.1 – Foreshore Scenic Protection Area – The proposal fails to provide for the environmental qualities and scenic landscape values of the site via the proposed design.

6. Refusal Reason – Impact on the Environment – Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:

- a) Built and Natural Environment. The development is located within an established residential area and is considered to result in an unreasonable impact on the built and natural environment.
- b) Social Impact. The assessment demonstrates the proposal will not have an adverse impact on the character of the locality and the amenity of neighbouring residential properties.
- c) Suitability of the Site. The site is not considered suitable for the proposed development in its current form having regard to the scale, character, and amenity of the proposal on the surrounding development within the R2 Low Density Residential locality and Scenic Foreshore Protection Area.

7. Refusal Reason – The Public Interest – Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

ATTACHMENTS

- Attachment 1  Statement of Environmental Effects - 1178 Forest Road LUGARNO - DA2022/0620
- Attachment 2  Clause 4.6 Request to Vary HOB - 1178 Forest Road LUGARNO - DA2022/0620
- Attachment 3  As Built Survey Plan - 1178 Forest Road LUGARNO - DA2022/0620
- Attachment 4  Original Survey Plan - 1178 Forest Road LUGARNO - DA2022/0620
- Attachment 5  Redacted Architectural Plans 1178 Forest Rd Lugarno - DA2022 0620
- Attachment 6  Landscape Plan 1178 Forest Rd Lugarno - DA2022 0620
- Attachment 7  Stormwater Plan - 1176 Forest Rd Lugarno - DA2022/0620
- Attachment 8  BCA Report - 1176 Forest Rd Lugarno - DA2022/0620
- Attachment 9  Swimming Pool Certificate - 1176 Forest Rd Lugarno - DA2022/0620
- Attachment 10  Detailed Site Investigation Report-DA2022-0620 -1178 Forest Road, LUGARNO
- Attachment 11  Remedial Action Plan - 1178 Forest Rd Lugarno DA2022/0620

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REPORT TO GEORGES RIVER LOCAL PLANNING PANEL MEETING OF THURSDAY, 06 JUNE 2024

LPP020-24 1178 FOREST ROAD LUGARNO - DA2022/0621

LPP020-24

LPP Report No	LPP020-24	Development Application No	DA2022/0621
Site Address & Ward Locality	1178 Forest Road Lugarno - DA2022/0621 Peakhurst Ward		
Proposed Development	Demolition works and completion of a partially constructed two storey dwelling with basement, swimming pool, carport and retaining walls.		
Owners	Golden King Assets Pty Ltd		
Applicant	Ms Naomi Roberts-Thomson		
Planner/Architect	Planner and Architect - Rothshire		
Date Of Lodgement	15/03/2023		
Submissions	1 submission received		
Cost of Works	\$688,000.00		
Local Planning Panel Criteria	The instrument of delegations requires developments which in the opinion of the Manager of Development and Building is in the public interest to be reported to the Georges River Local Planning Panel for determination.		
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 (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Transport and Infrastructure) 2021, State Environmental Planning Policy (Industry and Employment) 2021, Georges River Local Environmental Plan 2021 (GRLEP 2021) and Georges River Development Control Plan 2021 (GRDCP 2021).		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects, Clause 4.6 Variation Statement, Survey Plan, Architectural Plans, Landscape Plan, Stormwater Plan, BCA Report, Swimming Pool Certificate, Detailed Site Investigation Report and Remedial Action Plan.		
Report prepared by	Development Assessment Planner		
RECOMMENDATION	That the application be refused in accordance with the reasons referenced at the end of this report.		

<p>Summary of matters for consideration under Section 4.15</p> <p>Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?</p>	<p style="text-align: right;">Yes</p>
<p>Legislative clauses requiring consent authority satisfaction</p> <p>Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?</p>	<p style="text-align: right;">Yes</p>
<p>Clause 4.6 Exceptions to development standards</p> <p>If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?</p>	<p style="text-align: right;">Yes - Clause 4.3 Height of Building</p>
<p>Special Infrastructure Contributions</p> <p>Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p style="text-align: right;">Not Applicable</p>
<p>Conditions</p> <p>Have draft conditions been provided to the applicant for comment?</p>	<p style="text-align: right;">No, the application is recommended for refusal, the refusal reasons are publicly available when the report is published.</p>

SITE PLAN

Aerial Plan of subject site outlined in blue (Source: Intramaps, 2024)

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EXECUTIVE SUMMARY**PROPOSAL**

1. Council is in receipt of an application which seeks demolition and alterations and additions to a partially completed two storey dwelling house, carport, swimming pool, retaining walls and drainage works.
2. The proposed works are specifically outlined below.
 - Associated internal works required to finalise the construction of the existing partially constructed dwelling, including bathrooms, kitchen, fixtures and finishings.
 - Relocation of vehicular parking from the “basement” level to the ground floor level of the dwelling.
 - The “basement” level is proposed to be a non-habitable undercroft to the dwelling. New blockwork infill wall with waterproofing and drainage within the “basement”. This is to ensure that the space is not being used as a habitable area and/or storage purposes. A new driveway and hard stand area is to be constructed. The existing “basement” access is proposed to be filled and replaced with deep soil landscaped area. The application fails to provide details in terms of structural adequacy for the in filling of the access area.
 - Completion of existing part constructed swimming pool and swimming pool fencing, as well as the provision/completion of balustrades to balconies and internal open edges to landings and stairs.
 - Revised retaining wall arrangements.
 - Provision of landscape planting.

- Stormwater management works.
- A carport is annotated on the site plan to be constructed over the proposed driveway forward of the garage façade. The carport has not been annotated on the elevation plans.

SITE AND LOCALITY

3. The subject site is legally described as Lot 3 in DP18873 with a street address of No. 1178 Forest Road, Lugarno. This site is the fourth northernmost allotment on the bend in Forest Road opposite Boronia Parade as the road descends from Hillcross Street.
4. The site is located within an established residential area with surrounding development comprising of low-density residential dwellings, medium density development, commercially zoned land and educational establishments. The subject site is located within the Foreshore Scenic Protection Area.
5. The subject site is a rectangular allotment with side boundaries of 45.72m, a rear boundary of 14.02m and front boundary to Forest Road of 13.715m and a total site area of 638.6sqm.
6. The site is currently occupied by a partially completed two storey dwelling and basement with a swimming pool and retaining walls in the rear yard.
7. No lawful owners' consent has been provided in accordance with Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021.

ZONING AND PERMISSIBILITY

8. The subject site is zoned R2 Low Density Residential under the provisions of the Georges River Local Environmental Plan (GRLEP) 2021, and the proposed development being alterations and additions to a dwelling house and ancillary development is permissible with consent in the zone.

SUBMISSIONS

9. The application was advertised, and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. One (1) submission was received during the neighbour notification period. The application was re-neighbour notified; no additional submissions were received during the re-neighbour notification period.

CONCLUSION

10. Development consent seeks demolition and alterations and additions to a partially completed two storey dwelling house, carport, swimming pool, retaining walls and drainage works at 1178 Forest Road, Lugarno.
11. The proposal has been assessed having regard to the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is an inappropriate response to the context of the site and will not result in a good planning and urban design outcome for the locality.

12. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policies (SEPP), Georges River Local Environmental Plan 2021, and Georges River Development Control Plan 2021 and fails to comply Chapter 2 Vegetation in Non-Rural Areas under SEPP Biodiversity and Conservation) 2021, SEPP (Resilience and Hazards) 2021, GRLEP 2021, GRDCP 2021 development objectives and controls. Any variations have been assessed and are not worthy of support on merit.

REPORT IN FULL PROPOSAL

13. Council is in receipt of an application which seeks consent for demolition and alterations and additions to a partially completed two storey dwelling house, carport, swimming pool, retaining walls and drainage works.
14. The proposed works are specifically outlined below.
- Associated internal works required to finalise the construction of the existing part-constructed dwelling, including bathrooms, kitchen, fixtures and finishings.
 - Relocation of vehicular parking from the “basement” level to the ground floor.
 - The “basement” level is proposed to be a non-habitable undercroft to the dwelling. New blockwork infill wall with waterproofing and drainage within the “basement”. This is to ensure that the space is not being used as a habitable area and/or storage purposes. A new driveway and hard stand area is to be constructed. The existing “basement” access is proposed to be filled and replaced with deep soil landscaped area. The application fails to provide details in terms of structural adequacy for the infilling of the access area.
 - Completion of existing part constructed swimming pool and swimming pool fencing, as well as the provisions (completion) of balustrades to balconies and internal open edges and stairs.
 - Revised retaining wall arrangements.
 - Provision of landscape planting.
 - Stormwater management works.
 - A carport is annotated on the site plan to be constructed over the proposed driveway forward of the garage façade. The carport has not been annotated on the elevation plans.

THE SITE AND LOCALITY

15. The subject site is legally described as Lot 3 in DP18873 with a street address of No. 1178 Forest Road, Lugarno. This site is the fourth northernmost allotment on the bend in Forest Road opposite Boronia Parade as the road descends from Hillcross Street.
16. The site is located within an established residential area with surrounding development comprising of low-density residential dwellings, medium density development, commercially zoned land and educational establishments. The subject site is located within the Foreshore Scenic Protection Area.
17. The subject site is a rectangular allotment with side boundaries of 45.72m, a rear boundary of 14.02m and front boundary to Forest Road of 13.715m and a total site area of 638.6sqm.
18. The site is currently occupied by a partially completed two storey dwelling and basement with a swimming pool and retaining walls in the rear yard.
19. No lawful owners' consent has been provided in accordance with Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021.

20. Prior to the construction of the current structures on site the subject site was occupied by a single dwelling house over the two adjoining allotments (1174 and 1176 Forest Road Lugarno). The subject site and two adjoining allotments were using as a market garden by the occupants' selling produce and the cultivation and sale of orchids. The site is currently occupied by a partially finished two storey dwelling and basement with a swimming pool and retaining walls in the rear yard.

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Figure 1 – Aerial view – site (1178 Forest Road, Lugarno) outlined in blue (Source: Intramaps, 2024).

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Figure 2 – Streetview from Forest Road (Source: Google Maps Streetview, 2024).

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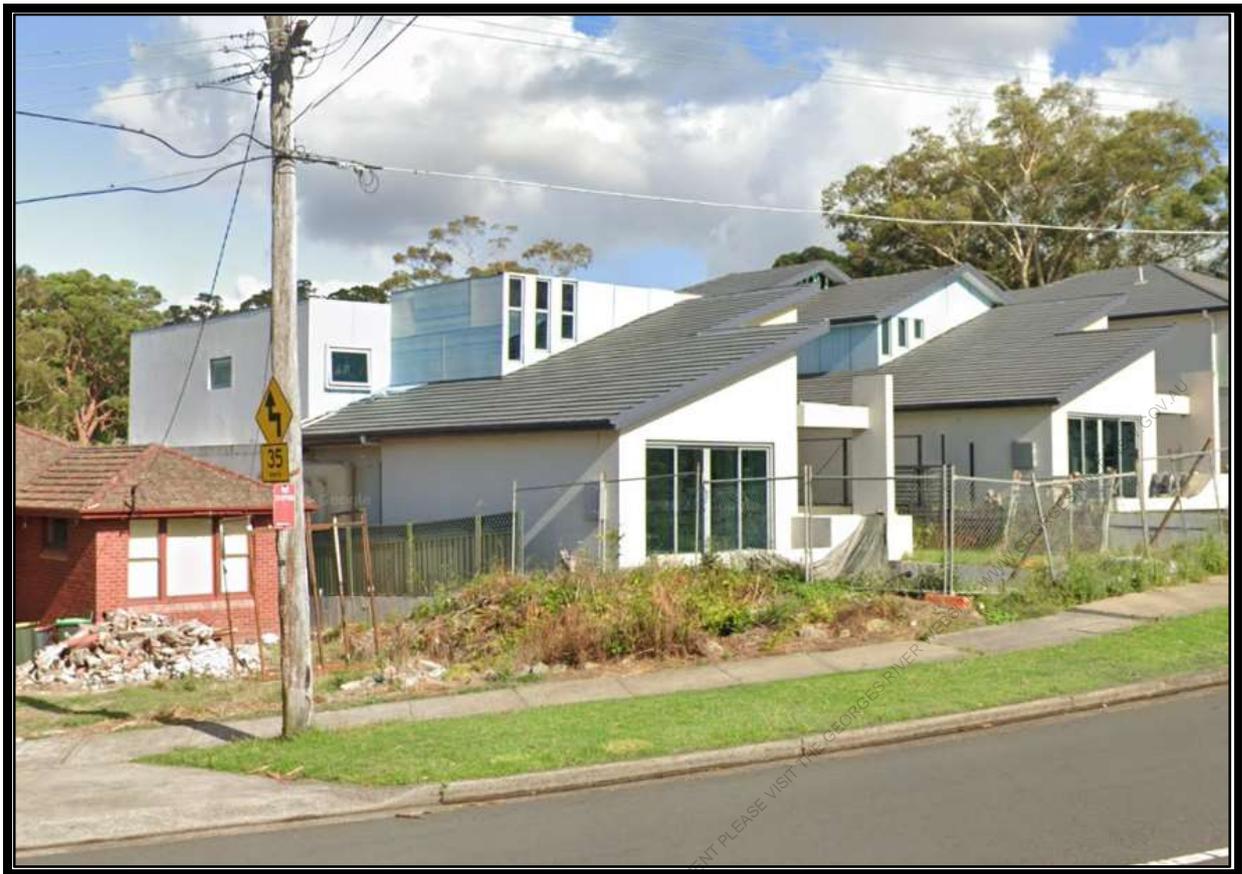


Figure 3 – Streetview from Forest Road (Source: Google Maps Streetview, 2024).

BACKGROUND

21. A history of the development proposal is as follows:
- A Complying Development Certificate (CDC) was issued on 2 February 2015 for the demolition of house and garages over 1174-1178 Forest Road, Lugarno.
 - A CDC (CDC2015/0372) was issued on 27 November 2015 for the construction of a 2-storey dwelling, double garage, and an in-ground pool.
 - The site contains an existing partially constructed two storey dwelling with basement, swimming pool and retaining walls forms part of a group of three (3) dwellings located at 1174, 1176 and 1178 Forest Road, Lugarno. Each exists under similar circumstances, whereby the lots have been created, a dwelling has been partially constructed together with a swimming pool and retaining walls, without appropriate planning approvals.
 - The existing partially constructed dwelling was initially approved via a separate CDC, which was issued for the construction of dwelling houses and swimming pools within the rear yards. Relevant to this site is CDC2015/0372.
 - Despite the legitimate issue of the CDC and commencement of construction, the design of each dwelling was subsequently revised, the development as constructed departed from the relevant criterion contained in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. On this basis, the dwelling and associated ancillary structures are unauthorised.
 - The non-compliant matters resulted in the issue of a stop works order issued by Council's Compliance Unit on 23 August 2017, whilst the dwelling was in the advanced stages of construction and unable to be completed (or regularised without further approval).
 - A Building Information Certificate (BIC) (149D2017/0049) was submitted to Council on 12 October 2017. (Which was withdrawn on 27 April 2020)

- Since the issue of the stop works order, the Owners of the site have been issued with clean up notices (dated 2 May 2019, 27 June 2019, and 13 September 2019), for vegetation maintenance, the swimming pool water being drained (given there is no swimming pool fencing) and maintenance of the site construction fencing so that it fully enclosed the site.
- A second stop works order was issued by Council's Compliance Unit on 18 March 2020, outlining that no further building or development is permitted on site.
- The BIC (149D2017/0049) submitted to Council on 12 October 2017 was withdrawn on 27 April 2020.
- An additional clean up notice was issued on 9 September 2021 for the site to ensure the site vegetation is maintained, the swimming pool being drained (given there is no swimming pool fencing) and maintenance of the site construction fencing so that it fully enclosed the site.
- An Emergency Order Number 21 was issued on 11 March 2022 for the site to address the ongoing issue of water accumulation in the swimming pool and the overgrown vegetation on the site, requiring these matters must be addressed as a matter of priority.
- CDC2015/0372 was voluntarily surrendered on 26 April 2022, following advice from Council's Officers.
- Given the complex history of the subject site, a pre-application discussion (PRE2022/0030) was held virtually on 16 June 2022. A letter was sent to the Applicant on 6 July 2022 outlining the process required to enable the finalisation and regularisation of the dwelling and associated ancillary development.
- To date the construction of the dwelling has not progressed since the stop works order has been issued. The dwelling and site remain in an incomplete and unfinished state, with construction fencing surrounding the site.
- The current development application (DA2022/0621) was lodged via the NSW Planning Portal on 15 March 2023.
- The application was placed on exhibition, with the last date for public submissions being 28 April 2023. One (1) submission was received.
- Council's Assessing Officer conducted a site inspection on 21 June 2023.
- The subject site had a change in ownership as per Council's records on 27 July 2023.
- A request for additional information letter was sent via the NSW Planning Portal on 6 October 2023, requesting a site plan, details of setbacks, contaminated land status, solar access/overshadowing diagrams, vegetation details, rearward balcony information, swimming pool details, rear yard levels, front fencing, Building Code of Australia (BCA) compliances and non-compliances, retaining wall details, car parking, basement and storage and engineering details/compliance and landscaping detailing.
- A MS Teams meeting was held virtually to discuss the request for additional information letter on 23 October 2023.
- The Applicant provided revised plans for review on 7 November 2023; following Council Officers granting an extension of time.
- A Building Information Certificate (BIC 149D2023/0102) was lodged via the NSW Planning Portal on 13 December 2023 for the building structural elements only, including foundations, retaining walls, concrete slabs, structural masonry walls, timber wall framing, timber roof framing and swimming pool structure.
- The application was placed on exhibition, with the last date for public submissions being 18 April 2023. No additional submissions were received.

Original Survey Plan

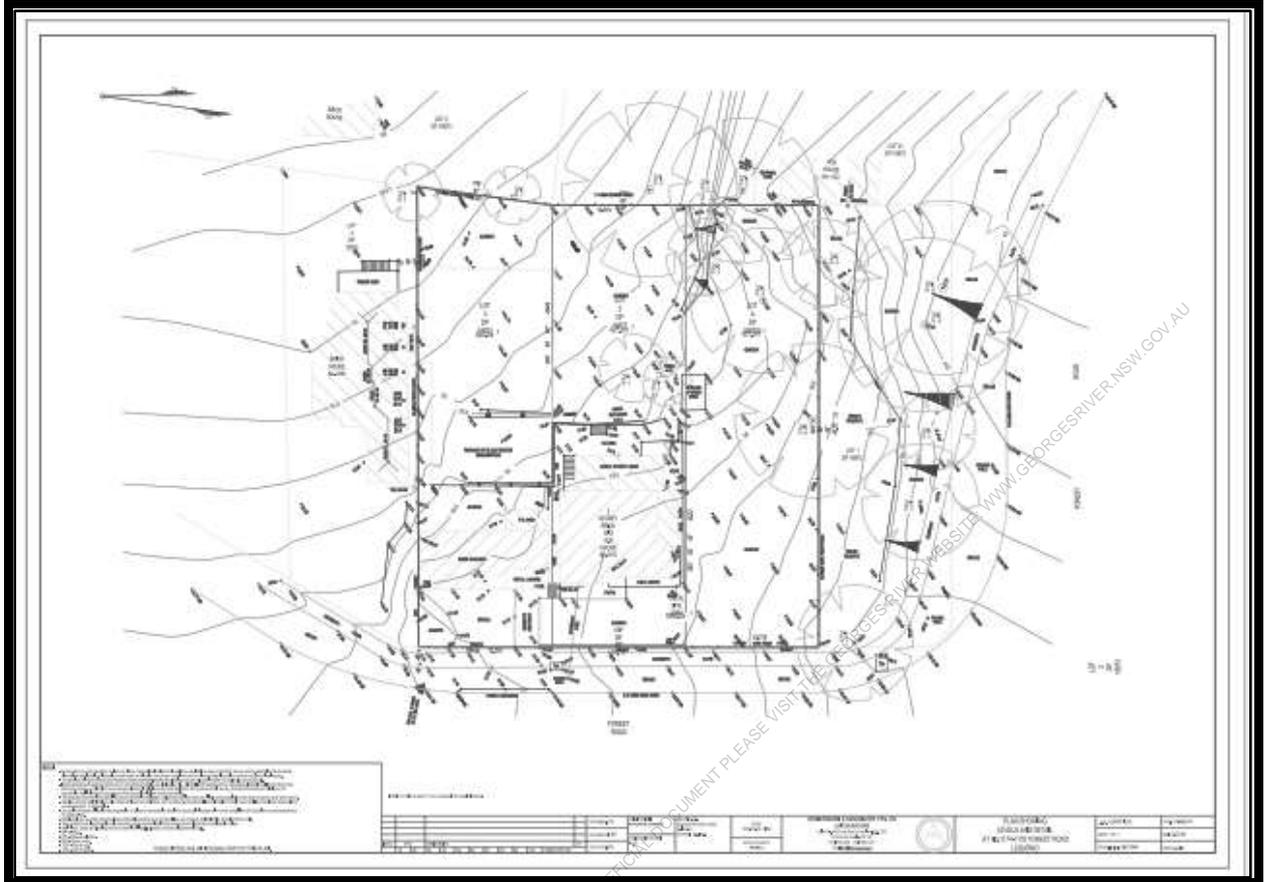


Figure 4: Original Survey Plan dated 19 May 2014

Complying Development Certificate Plans (CDC2015/0372)

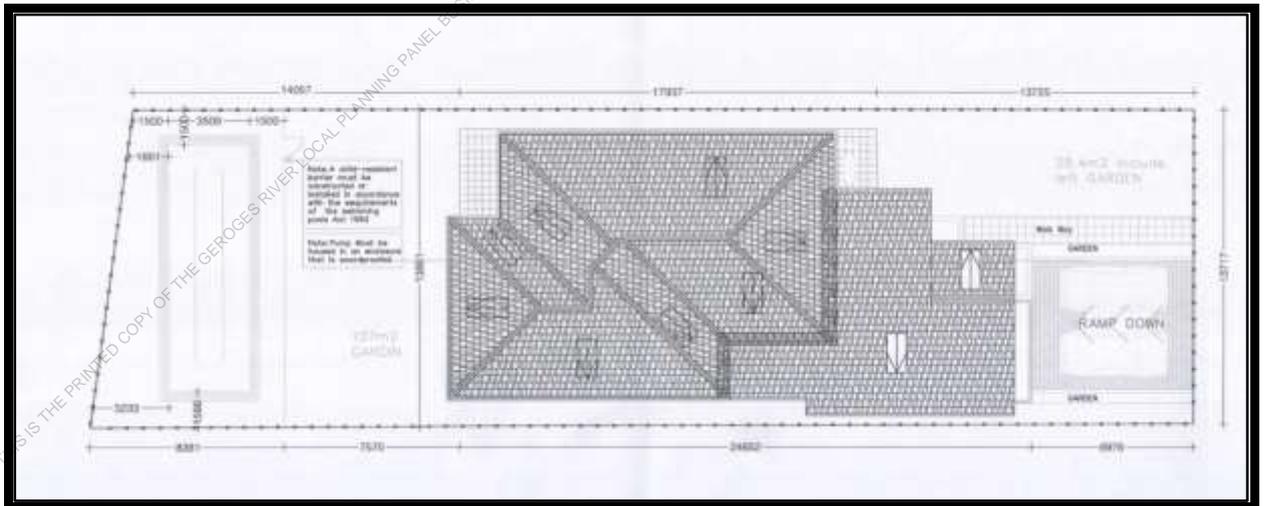


Figure 5: Site Plan (CDC2015/0372)

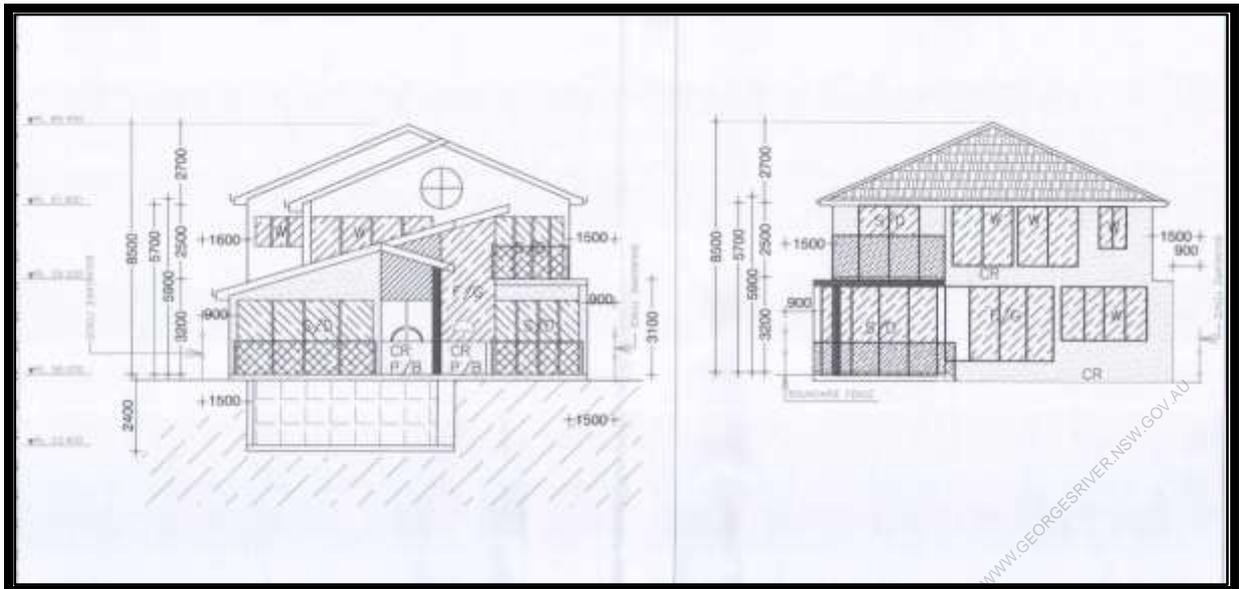


Figure 6: Elevation Plans (CDC2015/0372)



Figure 7: Elevation Plans (CDC2015/0372)

As Built Plans and Plans Subject of this Development Application (DA2022/0621)

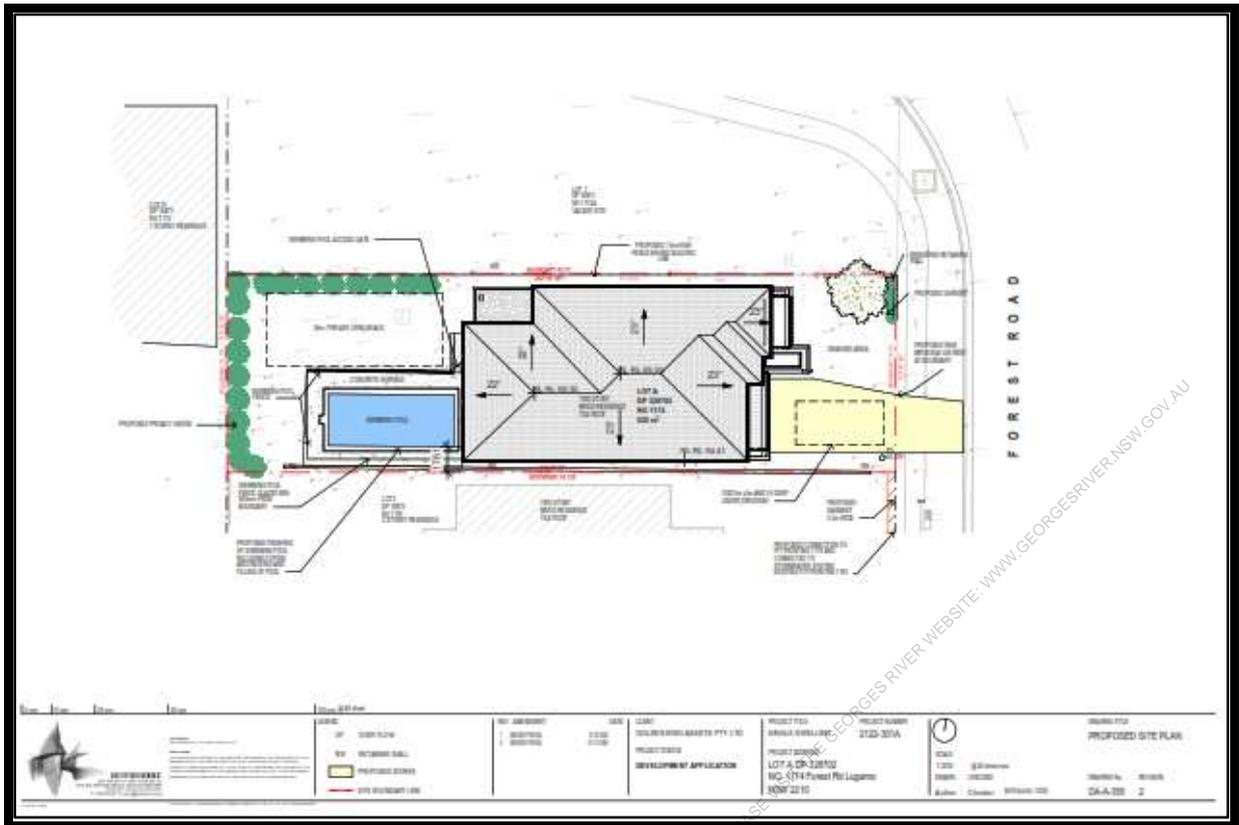


Figure 8: Site Plan (DA2022/0621)

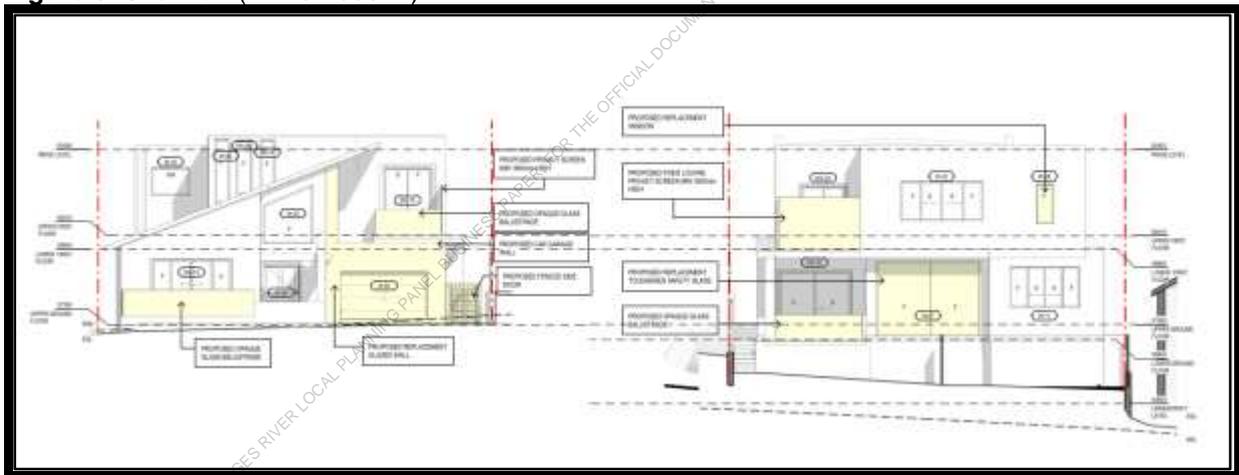


Figure 9: Elevation Plan (DA2022/0621)

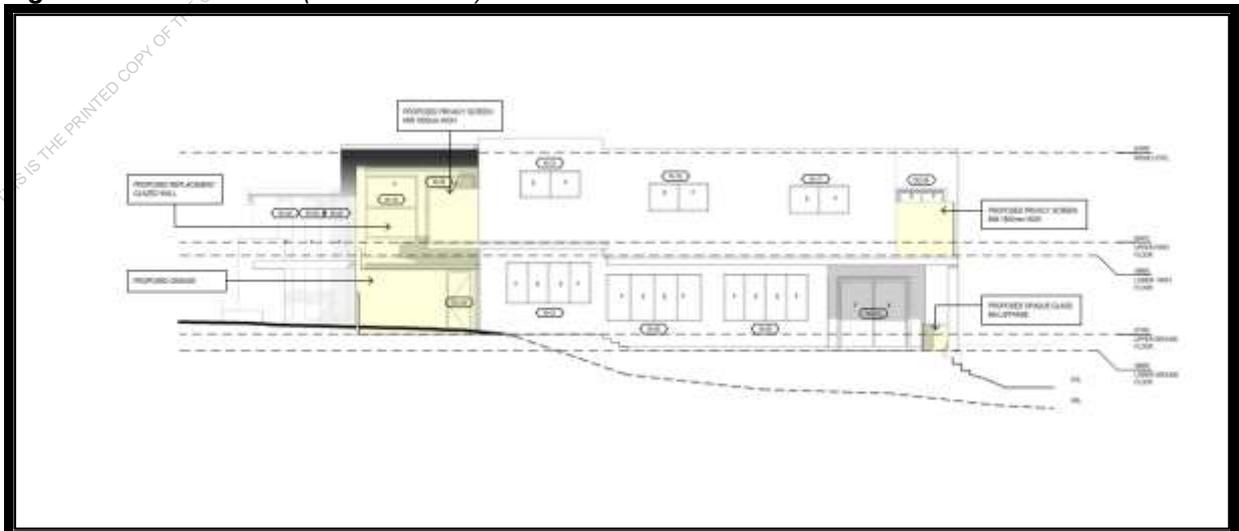


Figure 10: Elevation Plan (DA2022/0621)

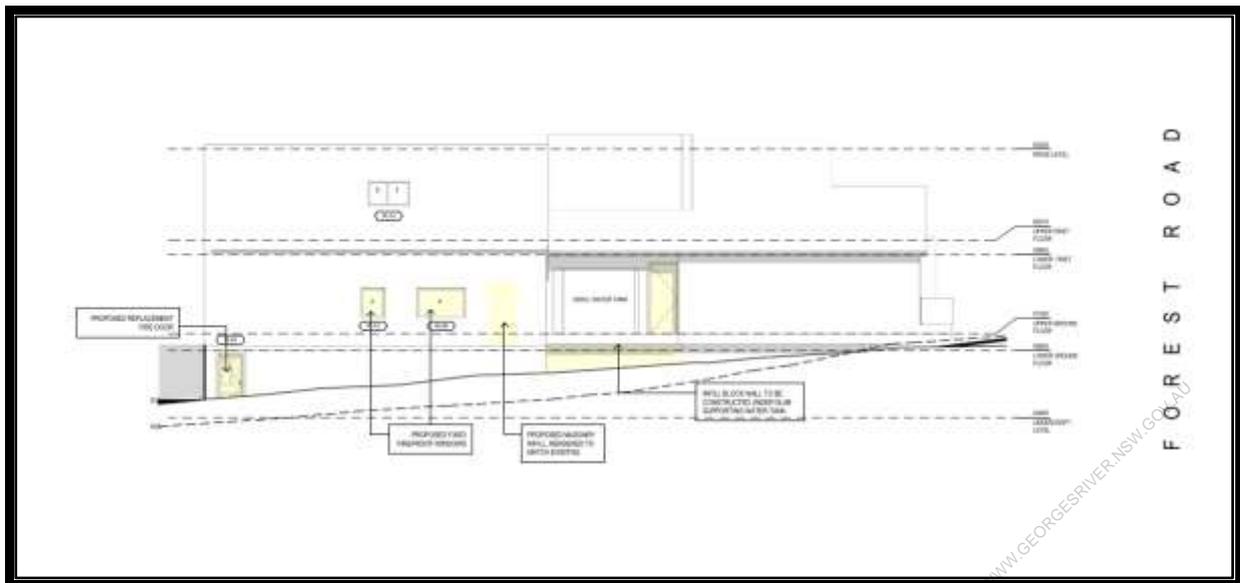


Figure 11: Elevation Plan (DA2022/0621)

NOTED DISCREPANCIES BETWEEN THE COMPLYING DEVELOPMENT CERTIFICATE APPROVED PLANS AND THE AS-BUILT DEVELOPMENT FORM AND THE PROPOSED DEVELOPMENT APPLICATION

22. Change in architectural roof form from a pitched roof to a flat roof design. The roof ridge level has been decreased by 2m, from RL65.40 to the current RL 63.40.
23. Additional "basement" level excavation involving an under-house storage area rearward of the "basement" car parking.
24. The patio and associated stairs to the rear of the site extend to the boundary, there is no longer any side setback.
25. The southern side setback has been reduced to 0.870m, of what was originally approved at 0.9m. This setback does not meet with deemed to satisfy provisions of the BCA/NCC with respect to a fire rating from the allotment boundary and no alternate solution/performance-based solution has been provided to address the fire safety deficiencies of this elevation.
26. The swimming pool has been re-oriented and relocated from being parallel with the rear boundary to being parallel with the southern side boundary.
27. The site topography has been altered and there are level changes across the subject site since the demolition of the double storey dwelling and associated ancillary structures over 1174-1178 Forest Road, Lugarno.
28. Uncertainty as to where the fill has come from, has this fill been VEMN fill or the solid from the construction of the swimming pool being displaced over the site.
29. Ground floor plan approved at RL56.00 whereas it has been built at RL57.35 (entry level) and RL56.95 (living level), which equates to a level change of 1.35m and 0.95m respectively. The first floor level was approved at RL59.20 whereas it has been built at RL60.41 (rumpus) and RL59.95 (bedrooms/bathroom), which equates to a level change of 1.21m and 0.75m respectively.
30. Retaining walls along the northern and southern side boundaries with a lack of detail regarding the bottom of wall height and top of wall height.

PLANNING ASSESSMENT

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

ENVIRONMENTAL PLANNING INSTRUMENTS

Section 4.15 Evaluation

32. The following is an assessment of the application with regard to Section 4.15(1) Evaluation of the Environmental Planning and Assessment Act 1979.

(1) Matters for consideration - general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

The provision of:

- (i) Any environmental planning instrument,

State Environmental Planning Policies (SEPPs)

33. 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	No
State Environmental Planning Policy (Resilience and Hazards) 2021	No
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 (Biodiversity and Conservation) 2021

34. The relevant parts of the above Policy that apply to this application are Chapter 2 – Vegetation in non-rural areas, and Chapter 6 – Water Catchments.

Chapter 2 - Vegetation in Non-Rural Areas

35. 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.
36. This chapter applies to clearing of:
- Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
 - Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (Development Control Plan).*
37. The proposed development is supported from a landscape and arboricultural perspective. A landscape plan has not been submitted. Larger canopy trees are required to be planted in the front and rear yard to provide greater amenity to the local area.

Chapter 6 – Water Catchments

38. The primary relevant aims and objectives of this Chapter are:

- *whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- *whether the development will have an adverse impact on water flow in a natural waterbody,*
- *whether the development will increase the amount of stormwater run-off from a site,*
- *whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- *the impact of the development on the level and quality of the water table,*
- *the cumulative environmental impact of the development on the regulated catchment,*
- *whether the development makes adequate provision to protect the quality and quantity of ground water.*

39. The subject site is located within the Georges River Catchment and the stormwater design has been reviewed by Council's Development Engineering. The proposal remains unsatisfactory as the site does not provide adequate stormwater drainage in accordance with Georges River Stormwater Management Policy. The proposal is inconsistent with the objectives and purpose of Chapter 6 of the SEPP. The development will need to be drained by an inter-allotment drainage easement which does not currently exist, and no evidence has been provided that a legally binding agreement of downstream properties has been obtained

State Environmental Planning Policy (Resilience and Hazards) 2021

40. Chapter 2 and Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 are relevant to the proposal.
41. Chapter 2 aims to: *"Promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 including the management objectives for each coastal management area"*.
42. The subject site is not mapped as a Coastal Environment area and a Coastal Use area.
43. 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.
44. 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.
45. Clause 4.8 under category 1 remediation work it outlines works requiring consent. For the purposes of this Chapter, a category 1 remediation work is remediation work (not being a work to which section 4.11(b) applies) that is—
- (a) designated development, or
 - (b) carried out or to be carried out on land declared to be a critical habitat, or
 - (c) likely to have a significant effect on a critical habitat or a threatened species, population or ecological community, or
 - (d) development for which another State environmental planning policy or a regional environmental plan requires development consent, or
 - (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument—
 - (i) coastal protection,
 - (ii) conservation or heritage conservation,
 - (iii) habitat area, habitat protection area, habitat or wildlife corridor,

- (iv) environment protection,
 - (v) escarpment, escarpment protection or escarpment preservation,
 - (vi) floodway,
 - (vii) littoral rainforest,
 - (viii) nature reserve,
 - (ix) scenic area or scenic protection,**
 - (x) wetland, or
- (f) carried out or to be carried out on any land in a manner that does not comply with a policy made under the contaminated land planning guidelines by the council for any local government area in which the land is situated (or if the land is within the unincorporated area, the Minister).

46. The subject development site is located within Georges River Foreshore Scenic Protection Area as per Georges River Local Environmental Plan 2021.

47. Clause 4.8 of Chapter 4 of the SEPP lists:

4.8(e)(ix) scenic area or scenic protection.

48. Having considered the FSPA, land covered by Council's FSPA in the LEP is called up by that provision.

49. In coming to this conclusion, the following objectives of the FSPA in cl 6.6(1) are relevant:

- (a) *to protect, maintain and improve the scenic amenity of the Georges River foreshore,*
- (b) *to protect, maintain and improve significant views of and from the Georges River,*
- (d) *to reinforce and improve the dominance of landscape over built form, hard surfaces and cut and fill,*

Further, in relation matters that the consent authority must be satisfied in cl 6.6(3), the following are relevant:

- (f) *the minimisation of the impact on the views and visual environment, including views to and from the Georges River, foreshore reserves, residential areas, and public places,*
- (g) *the minimisation of the height and bulk of the development by stepping the development to accommodate the fall in the land.*

50. A desktop 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. However, the site has historically been used as a market garden and for the cultivation of orchids.

51. The Applicant has lodged a Detailed Site Investigation Report that found evidence of asbestos contaminated soil and asbestos fragments on the sites 1174-1178 Forest Road, Lugarno. The Detailed Site Investigation Report outlines that the sites can be made suitable for the intended use following remediation.

52. The Applicant has lodged a Detailed Site Investigation Report that found evidence of asbestos contaminated soil and asbestos fragments on the sites known as 1174 - 1178 Forest Road, Lugarno. The Detailed Site Investigation Report outlines that the sites can be made suitable for the intended use following remediation.

53. The Applicant also submitted a Remedial Action Report which details the works required to remediate the site of the contamination
54. On this basis, the site is not suitable for residential development in its current state with respect to contamination. A separate development application for remediation must be lodged, determined and remediation completed prior to the approval of an application which seeks demolition works and completion of a partially constructed two-storey dwelling with basement area, swimming pool, retaining walls, landscaping and site works under this development application.

State Environmental Planning Policy (Transport and Infrastructure) 2021

55. Compliance with SEPP (Transport and Infrastructure) 2021 has been considered during the assessment of this development application. The site is not mapped within a Transport and Infrastructure area thus it is unlikely to be impacted by rail noise or vibration. Ausgrid was consulted as required by Chapter 2, no objection was raised.

State Environmental Planning Policy (Industry and Employment) 2021

56. SEPP (Industry and Employment) 2021 has been consideration through the assessment of this development application. It has been concluded that the above SEPP is not relevant to the proposed development.

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

57. 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.
58. A BASIX Certificate prepared by Rothshire Pty Ltd, dated 2 December 2022, certificate number 1334892S_02, has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.
59. The new *State Environmental Planning Policy (Sustainable Buildings) 2022* encourages the design and delivery of more sustainable buildings across NSW. It sets sustainability standards for residential and non-residential development and starts the process of measuring and reporting on the embodied emissions of construction materials.
60. As the subject development application was lodged prior to the gazettal of the SEPP Sustainable Buildings 2022 on 1 October 2023, the previous SEPP Building Sustainability Index: BASIX is applicable.

Georges River Local Environmental Plan 2021

61. The extent to which the proposed development complies with the Georges River Local Environmental Plan 2021 (GRLEP 2021) is detailed and discussed in the table below.

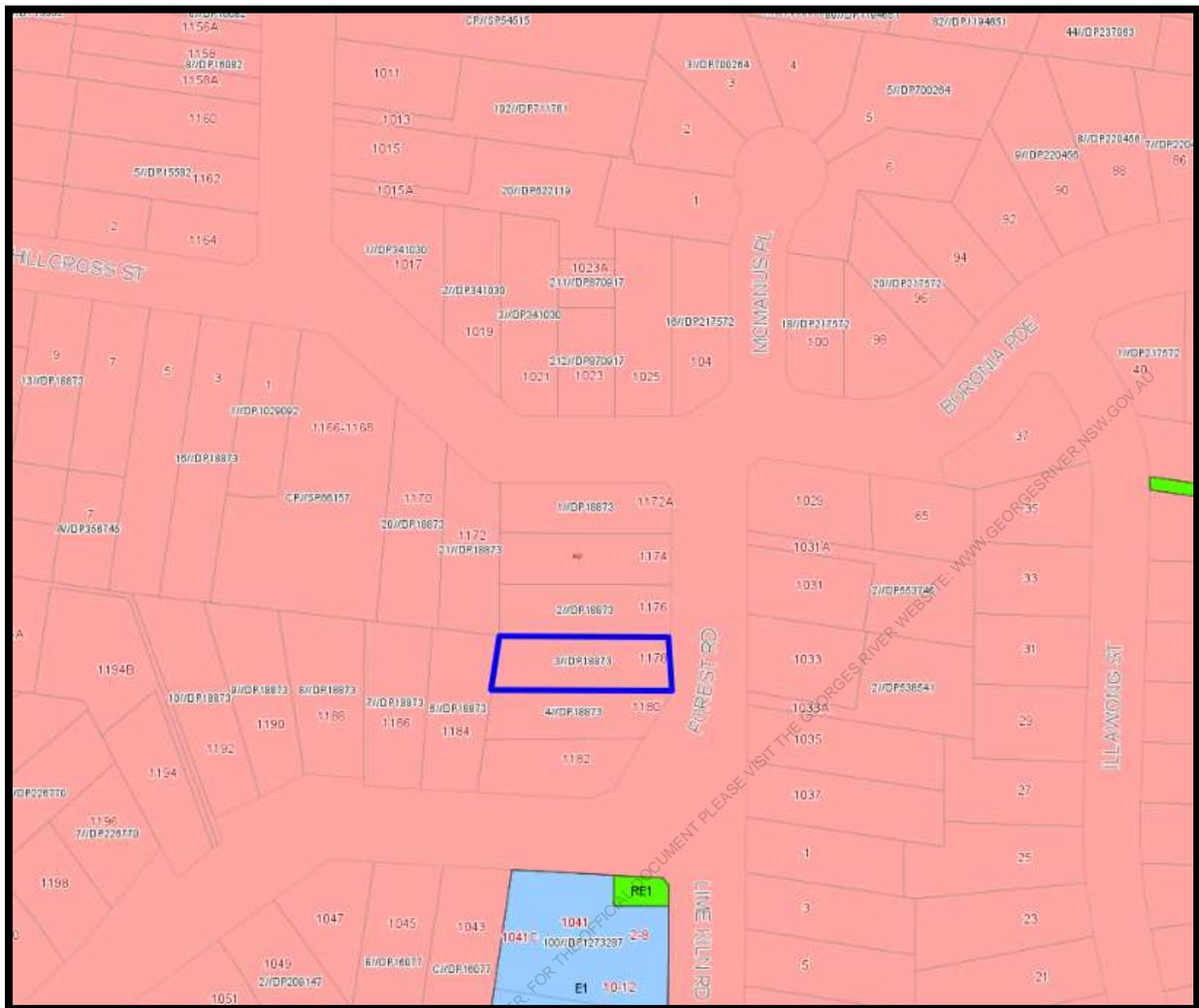
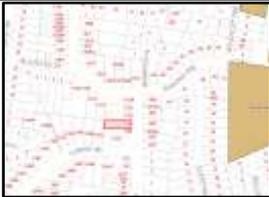


Figure 12 – Zoning map, the site is outlined in blue (Source: Intramaps, 2024).

Clause	Standard	Proposed	Complies
Part 1 – Preliminary			
1.2 – Aims of the Plan	In accordance with Clause 1.2 (2)	The development is not considered to be consistent with the aims of the plan.	No
Part 2 - Permitted or prohibited development			
2.3 - Zone objectives and Land Use Table	Meets objectives of R2-Low Density Residential Zone.	The proposal fails to meet all the objectives.	No
	Development must be permissible with consent	The proposal is permissible with development consent.	Yes
Part 4 - Principal Development Standards			
4.3 – Height of Buildings	9m as identified on Height of Buildings Map	The proposal has a maximum height of building of 9.076m.	No
4.4 – Floor Space Ratio	0.55:1 as identified on Floor Space Ratio Map	Despite clause 4.4 (2), the floor space ratio for residential accommodation on	Refer to Clause 4.4A

		land in Zone R2 Low Density Residential, Clause 4.4A applies.	
4.4A - Exceptions to floor space ratio—certain residential accommodation	<p>(2) The maximum floor space ratio for a dwelling house on land identified as “Area 1” on the <u>Floor Space Ratio Map</u> must not exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>Site area</p> <ul style="list-style-type: none"> Maximum floor space ratio less than 650 square metres 0.55:1 <p>(3) The maximum floor space ratio for residential accommodation on land identified as “Area 2” on the <u>Floor Space Ratio Map</u> must not exceed 0.6:1.</p> <p>Site area: 638.6sqm 0.55:1 or 351.23sqm</p>	The site results in a total gross floor area of 339.3sqm and an FSR of 0.53:1	Yes
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 subject to tidal influence (including the bed of any such water).	The proposal does not involve works below the Mean High-Water Mark.	N/A
5.10 – Heritage conservation	In accordance with Clause 5.10 (2)	The site is not a heritage item however is in the vicinity of a heritage items as per the image below. The proposal does not seek to impact the Heritage item. The site is not in a heritage conservation area.	N/A

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		 <p>Heritage Map as per GRLEP 2021</p>	
<p>5.11 – Bush Fire Hazard Reduction</p>	<p>Bush fire hazard reduction work authorised by the Rural Fires Act 1997 may be carried out on any land without development consent.</p>	<p>The subject land is not within a bush fire prone area.</p>	<p>N/A</p>
<p>5.21 – Flood Planning</p>	<p>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <ul style="list-style-type: none"> (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and (d) incorporates appropriate measures to manage risk to life in the event of a flood and will not adversely affect the 	<p>The subject site is not impacted by flood.</p>	<p>N/A</p>

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	<p>environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p> <p>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</p> <p>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</p> <p>(b) the intended design and scale of buildings resulting from the development, whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</p> <p>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</p>		
<p>Part 6 - Additional Local Provisions</p>			
<p>6.1 – Acid sulfate soils</p>	<p>(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.</p>	<p>The subject site is in a Class 5 Acid Sulfate Soils Area. The proposed works are beyond 100 metres of an adjacent Class and further investigation and/or additional</p>	<p>Yes</p>

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	<p>Class 5: Works within 100 metres of adjacent Class 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 2, 3 or 4 land.</p>	<p>information is not required in this regard.</p>  <p><i>Acid Sulfate Soils Map as per GRLEP 2021</i></p>	
<p>6.2 – Earthworks</p>	<p>(2) Development consent is required for earthworks unless—</p> <p>(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or</p> <p>(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.</p>	<p>The completion of the partially constructed dwelling, swimming pool and retaining walls does not necessitate unnecessary earthworks.</p>	<p>Yes</p>
<p>6.3 – Stormwater Management</p>	<p>(2) In deciding whether to grant development consent for development, the consent authority must be satisfied that the development—</p> <p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater detention or retention to minimise stormwater runoff volumes and reduce the development’s reliance on mains water, groundwater or river water, and</p> <p>(c) avoids significant adverse impacts of</p>	<p>Councils Engineers have reviewed the proposed development and is not supported. The proposal is not in accordance with Georges River Stormwater Management Policy. Refer to Development Engineers comments under the specialist referral comments in this assessment report.</p> <p>An inter-allotment drainage easement is required to drain the site. The easement does not exist and there is no legally binding agreement in place</p>	<p>No</p>

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	<p>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>to facilitate a future easement.</p>	
<p>6.4 - Foreshore area and coastal hazards and risk</p>	<p>(2) This clause applies to the following land—</p> <p>(a) land identified on the Coastal Hazard and Risk Map,</p> <p>(b) land identified on the Foreshore Building Line Map.</p> <p>(3) Development consent must not be granted for development on land to which this clause applies except for the following purposes—</p> <p>(a) the alteration, or demolition and rebuilding, of an existing building if the footprint of the building will not extend further forward than the footprint of the existing building into—</p> <p>(i) the foreshore building line, or</p> <p>(ii) the land identified on the Coastal Hazard and Risk Map,</p> <p>(b) the erection of a building if the levels, depth or other exceptional features of the site make it appropriate to do so,</p> <p>(c) boat sheds, cycling paths, fences, sea walls, swimming pools, water recreation structures or walking tracks.</p> <p>(4) In deciding whether to grant development consent, the consent</p>	<p>The site is not located in a foreshore area and/or coastal hazards and risk area.</p>	<p>N/A</p>

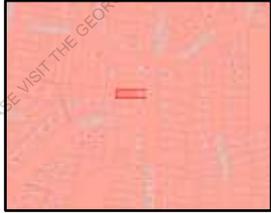
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	<p>authority must consider the following matters—</p> <ul style="list-style-type: none"> (a) whether the development addresses the impacts of sea level rise and tidal inundation as a result of climate change, (b) whether the development could be located on parts of the site not exposed to coastal hazards, (c) whether the development will cause congestion or generate conflict between people using open space areas or the waterway, (d) whether the development will cause environmental harm by pollution or siltation of the waterway, (e) opportunities to provide reasonable, continuous public access along the foreshore, considering the needs of property owners, (f) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development. <p>(5) In this clause—</p> <p>foreshore area means the land between the foreshore building line and the mean high-water mark of the nearest bay or river.</p> <p>foreshore building line means the line shown as the foreshore building line on the Foreshore Building Line Map.</p>		
<p>6.5 - Riparian land and waterways</p>	<p>(2) This clause applies to land identified as “Sensitive land” on the Riparian Lands and Waterways Map.</p> <p>(3) In deciding whether to grant development consent</p>	<p>The site is not located on land identified as sensitive land.</p>	<p>N/A</p>

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	<p>for development on land to which this clause applies, the consent authority must consider the following—</p> <ul style="list-style-type: none">(a) whether the development is likely to have an adverse impact on the following—<ul style="list-style-type: none">(i) the water quality and flows within the waterway,(ii) the stability of the bed, shore and banks of the waterway,(iii) the future rehabilitation of the waterway and riparian areas,(iv) the biophysical, hydrological or ecological integrity of adjacent coastal wetlands, including the aquatic and riparian species, habitats and ecosystems of the waterway,(v) indigenous trees and other vegetation,(vi) opportunities for additional planting of local native riparian vegetation,(b) whether the development is likely to increase water extraction from the waterway,(c) whether the development will cause environmental harm by pollution or siltation of the waterway,(d) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development. <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <ul style="list-style-type: none">(a) the development is designed, sited and will be managed to avoid		
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	<p>significant adverse environmental impact, or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p>		
<p>6.6 - Foreshore scenic protection area</p>	<p>(2) This clause applies to land identified as “Foreshore scenic protection area” on the Foreshore Scenic Protection Area Map. (3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must be satisfied that the development would facilitate the following— (a) the protection of the natural environment, including topography, rock formations, canopy vegetation or other significant vegetation, (b) the avoidance or minimisation of the disturbance and adverse impacts on remnant vegetation communities, habitat and threatened species and populations, (c) the maintenance and enhancement of native vegetation and habitat in parcels of a size, condition and configuration that will facilitate biodiversity protection and native flora and fauna movement through biodiversity corridors,</p>	<p>The site is located within a foreshore scenic protection area.</p>  <p><i>Foreshore Scenic Protection Area Map as per GRLEP 2021</i></p> <p>The proposed development does not seek to impact upon any rock formations, canopy vegetation or significant vegetation of the site. This has previously been removed as part of the unauthorised works.</p> <p>The proposed development does not seek to disturb or have adverse impacts on remnant vegetation communities, habitat and threatened species and populations.</p>	<p>No</p>

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	<p>(d) the achievement of no net loss of significant vegetation or habitat,</p> <p>(e) the avoidance of clearing steep slopes and facilitation of the stability of the land,</p> <p>(f) the minimisation of the impact on the views and visual environment, including views to and from the Georges River, foreshore reserves, residential areas and public places,</p> <p>(g) the minimisation of the height and bulk of the development by stepping the development to accommodate the fall in the land.</p>	<p>The proposed development does not seek to clear steep slopes on the site.</p> <p>View loss has not been raised as a concern by the neighbouring properties and is not envisaged.</p> <p>The site setbacks are not in accordance with the required minimum side setback of 1.5m within the FSPA.</p>	
<p>6.7 – Essential services</p>	<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 been made to make them available when required—</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the disposal and management of sewage,</p> <p>(d) stormwater drainage or on-site conservation, (e) suitable road and vehicular access.</p>	<p>Council’s Development Engineer has reviewed the proposed development and notes that the proposal is not supported and is not in accordance with Georges River Stormwater Policy. Drainage due to levels of the site and the street drainage network requires the site to be drained via and inter-allotment drainage easement which does not exist and no legally binding agreement to facilitate an easement has been provided.</p>	<p>No</p>
<p>6.10 - Design excellence</p>	<p>(2) This clause applies to development on land referred to in subclause (3) involving—</p> <p>(a) the erection of a new building, or</p>	<p>The subject site is zoned R2 – Low Density Residential. The proposal is located within the Foreshore Scenic Protection Area and</p>	<p>No</p>

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	<p>(b) additions or external alterations to an existing building that, in the opinion of the consent authority, are significant.</p> <p>(3) This clause applies to development on the following land—</p> <p>(a) land identified on the <u>Foreshore Scenic Protection Area Map</u> if the development is for one or more of the following purposes—</p> <p>(i) bed and breakfast accommodation,</p> <p>(ii) health services facilities,</p> <p>(iii) marinas,</p> <p>(iv) residential accommodation, except for secondary dwellings,</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,</p> <p>(ii) Zone B1 Neighbourhood Centre,</p> <p>(iii) Zone B2 Local Centre,</p> <p>(iv) Zone B3 Commercial Core,</p> <p>(v) Zone B4 Mixed Use,</p> <p>(vi) Zone B6 Enterprise Corridor,</p> <p>(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</p>	<p>for the purpose of residential accommodation.</p> <p>The proposed development involves demolition works and completion of a partially constructed two-storey dwelling, enclosure of part of the “basement”, swimming pool completion, retaining walls, landscaping, and site works.</p> <p>Visual intrusion and bulk of the proposal are considered acceptable.</p> <p>Notwithstanding this, it should be noted that the dwelling as built does not achieve design excellence. However, the elements encompassed in this development application achieve the objectives of design excellence.</p> <p>The proposed development site will not impact upon any Heritage Items.</p>	
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	<p>development exhibits design excellence.</p> <p>(5) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—</p> <p>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</p> <p>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</p> <p>(c) whether the development detrimentally impacts on view corridors,</p> <p>(d) how the development addresses the following matters—</p> <p>(i) the suitability of the land for development,</p> <p>(ii) existing and proposed uses and use mix,</p> <p>(iii) heritage issues and streetscape constraints,</p> <p>(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</p> <p>(v) bulk, massing and modulation of buildings,</p> <p>(vi) street frontage heights,</p> <p>(vii) environmental impacts such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,</p> <p>(viii) pedestrian, cycle, vehicular and service access and circulation</p>		
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	<p>requirements, including the permeability of pedestrian networks, (ix) the impact on, and proposed improvements to, the public domain, (x) achieving appropriate interfaces at ground level between the building and the public domain, (xi) excellence and integration of landscape design, (xii) the provision of communal spaces and meeting places, (xiii) the provision of public art in the public domain, (xiv) the provision of on-site integrated waste and recycling infrastructure, (xv) the promotion of safety through the application of the principles of crime prevention through environmental design.</p>		
<p>6.12 -Landscaped areas in certain residential and environment protection zones</p>	<p>(2) This clause applies to land in the following zones— (a) Zone R2 Low Density Residential, (b) Zone R3 Medium Density Residential, (c) Zone R4 High Density Residential, (d) Zone E2 Environmental Conservation. (3) Despite subclause (2), this clause does not apply to development referred to in State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, clause 4. (4) Development consent must not be granted to development on land to which the clause applies unless the consent</p>	<p>R2 Low Density Residential. Required = 25% of 638.6sqm (site area) Total LSA required = 159.65sqm Proposed LSA = 205.2sqm (32%)</p>	<p>Yes</p>

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	<p>authority is satisfied that the development—</p> <ul style="list-style-type: none"> (a) allows for the establishment of appropriate plantings— <ul style="list-style-type: none"> (i) that are of a scale and density commensurate with the height, bulk and scale of the buildings to which the development relates, and (ii) that will maintain and enhance the streetscape and the desired future character of the locality, and (b) maintains privacy between dwellings, and (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 (d) enables the establishment of indigenous vegetation and habitat for native fauna, and (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>(5) Development consent must not be granted to development on land to which this clause applies unless a percentage of the site area consists of landscaped areas that is at least—</p> <ul style="list-style-type: none"> (a) for a dwelling house located on land outside the Foreshore Scenic Protection Area—20% of the site area, or (b) for a dwelling house located on land within the Foreshore Scenic 		
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	<p>Protection Area—25% of the site area, or (c) for a dual occupancy located on land outside the Foreshore Scenic Protection Area—25% of the site area, or (d) for a dual occupancy located on land within the Foreshore Scenic Protection Area—30% of the site area, or (e) for development in Zone R3 Medium Density Residential—20% of the site area, or (f) for development in Zone R4 High Density Residential—10% of the site area, or (g) for development in Zone E2 Environmental Conservation—70% of the site area.</p> <p>(6) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle and any right of carriageway is not to be included in calculating the site area for the purposes of subclause (5).</p> <p>(7) In this clause— Foreshore Scenic Protection Area means land shown on the Foreshore Scenic Protection Area Map.</p>		
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GRLEP 2021 CLAUSE 4.6- EXCEPTIONS TO DEVELOPMENT STANDARDS ASSESSMENT

GRLEP 2021 Clause 4.3 Height of Building

62. The proposed development seeks a variation to development standard relating to height – Clause 4.3 of GRLEP 2021. GRLEP 2021 identifies a maximum height of 9m for the site.

63. For context, Building Height is defined in the GRLEP 2021 as:

“Building height (or height of building) means:

- *In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or*

- *In relation to the RL of a building the vertical distance from the Australian Height Datum to the highest point of the building*

Including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

64. The Applicant has submitted a Clause 4.6 request to vary the height to 9.076m, this results in a 0.84% variation to the development standard. Councils’ review and assessment of the application has calculated the maximum height of building as 9.3m, this results in a 3.33% variation to the height of building development standard.

65. The extent of the variation is shown in the figures below.

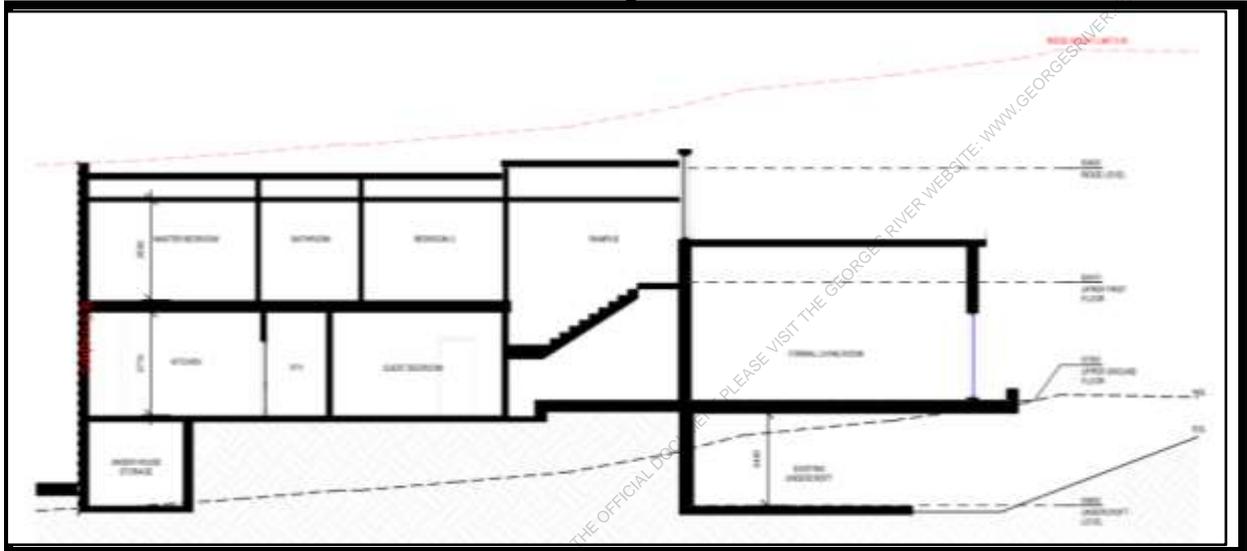


Figure 1: Section Plan highlighting extent of height of building development standard variation

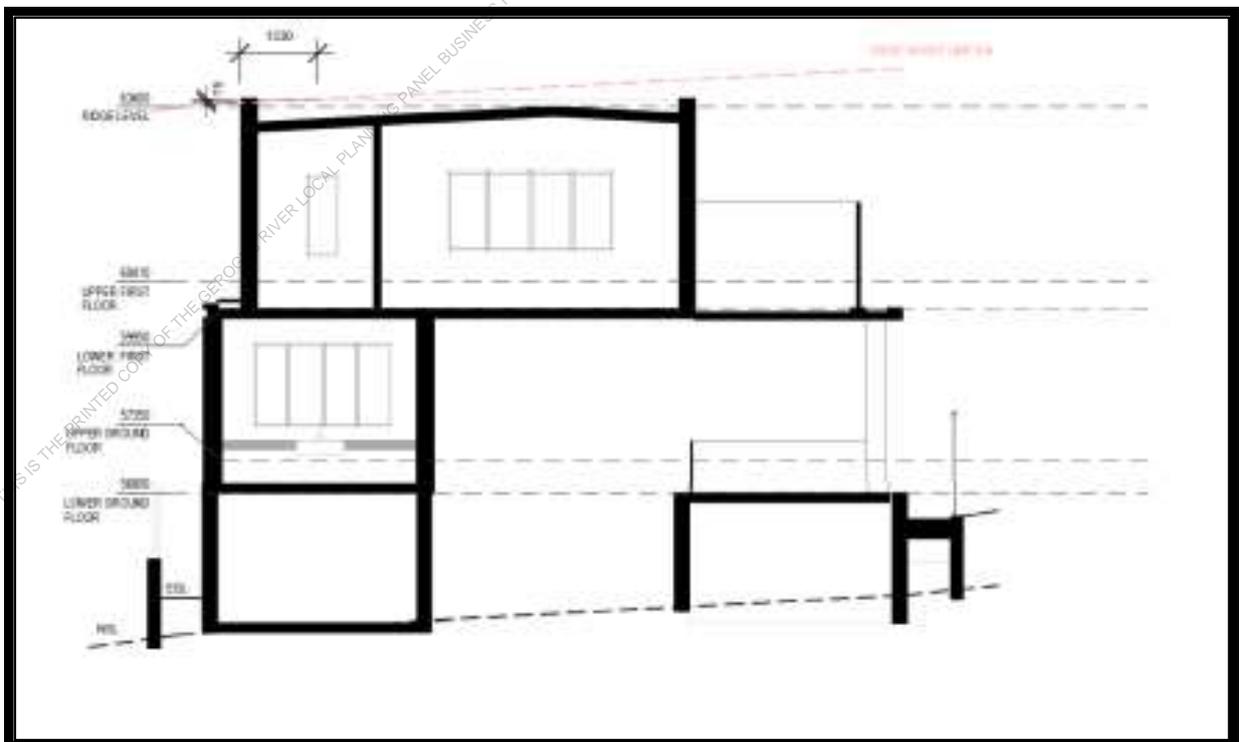


Figure 13: Section Plan highlighting extent of height of building development standard variation

COMPLIANCE IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(A))

72. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. 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.
73. 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.*
74. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements but fails to address the extent of the actual breach.

Applicant Comment:

75. *The proposed development is considered to be compatible with the height, bulk and scale of the existing and desired future character of the Lugarno locality. The proposal complies with the applicable Floor Space Ratio (FSR) development standard and presents as a well-designed, articulated two (2) storey form, comparable to surrounding developments within the streetscape and with suitable landscaping to integrate with the bushland setting of the locality. The proposed variation is limited to the south western (rear) element of the roof form, which due to site levels, will not be visible from nor alter the presentation of the dwelling from Forest Road. In this regard, the proposed variation is not considered to increase the overall bulk of the building.*
76. *As detailed in the supporting solar access diagrams, the proposal maintains compliant solar access to the subject and surrounding properties (including areas of private open space) in accordance with the Georges River Development Control Plan 2021 (DCP). Neither the site or surrounding properties benefit from any significant views or vistas. In this regard, the proposal will not affect any views in the locality. The proposal is considered to maintain residential amenity and visual privacy in accordance with the provisions of the DCP 2021. The proposal maintains a compliant rear setback of 14.658m, with windows having been offset from those on adjoining properties, as well as privacy screening (up to 1800mm) and an opaque balustrade installed on the rear balcony, to mitigate potential privacy impacts. The orientation of the subject site, being in an east-west arrangement, further mitigates any potential impacts to adjoining properties to the west, which hold a*

north south orientation. Further, the extent of the variation is limited to the roof form only and does not resulting in any increased void space or any additional Gross Floor Area (GFA).

77. The proposal is considered to result in an appropriate transition to adjoining properties. The site sits within a group of three dwellings fronting Forest Road, each have been designed and constructed concurrently and in a similar manner. As noted above, given the orientation of the subject and significant rear setbacks, the proposed development is considered to maintain an appropriate transition to adjoining properties to the west of the site and will not result in any unreasonable visual imposition, loss of solar access or loss of visual privacy.

CLAUSE 4.6(3)(B) ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD.

Applicant Comments:

78. It is considered there are sufficient environmental planning grounds to justify the proposed contravention of the maximum height of building development standard as follows: – The extent of the variation is limited to a small element of the roof form only, being the south western (rear) portion of the roof form and is located behind the main ridge form. The majority of the dwelling form is within the maximum permitted building height.
- The extent of the proposed variation is not visible from Forest Road and does not alter the presentation of the dwelling within the streetscape. The extent of the proposed variation is not visible from any other public place.
 - Due to the topography of the site, the extent of the proposed variation does not increase the overall maximum RL of the roof form and is not considered to alter the visual bulk of the dwelling when viewed from surrounding properties.
 - The extent of the proposed variation comprises the roof structure only and does not contribute to any additional GFA at the site, noting the proposal complies with the maximum FSR for the site.
 - The extent of the proposed variation does not result in any additional storeys or accessible areas (that are not GFA, such as attic storage or a roof terrace). The proposal maintains a two (2) storey-built form, consistent with surrounding development patterns and the built form intended by the planning framework.
 - Neither the site or surrounding properties benefit from any significant views or vistas. In this regard, the proposal will not affect any views in the locality.
 - The proposal does not result in any unreasonable visual impact to surrounding properties. Suitable design measures have been incorporated within the design of the dwelling, including window positioning and the provision of privacy screening, to ensure a suitable relationship to neighbouring properties.
 - The proposal maintains compliance solar access to the subject site and surrounding properties, in accordance with the provisions of the DCP 2021. For the reasons nominated above, it considered there are sufficient environmental planning grounds to support the proposed variation to the height of buildings development standard.

Assessing Officer Comment:

79. 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 are negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of bulk and scale of the development on the adjoining properties. It is also acknowledged that the Clause 4.6 has not assessed the actual non-compliance as the figures referenced in the variation are incorrect.

80. 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 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,”*
81. The proposal meets the objectives of the height of building standard as follows:
- (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.*

Assessing Officer Comment:

82. The proposed development seeks to regularise an existing non-compliance regarding height of building given a pool pump housing area exists to the under-croft below the ground floor level. The dwelling presents as a two-storey dwelling with basement area when viewed from the front street elevation. The dwelling presents as a three-storey dwelling when viewed from the side and rear elevations. The proposed development fails to appropriately respond to the topography of the site, given the unauthorised cut and fill of the site which altered the site’s topography. The proposed development is not of similar bulk and scale of development within the immediate locality.
83. The siting of the dwelling diminishes the outlook from the public domain, and adjoining properties.
84. The proposal is inconsistent with the objectives of the R2 Low Density Residential zone as follows:
- *To provide for the housing needs of the community within a low-density residential environment.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity.*
 - *To provide for housing within a landscaped setting that enhances the existing environmental character of the Georges River local government area.*
85. The siting of the development results in a development that has not been sensitively designed to minimise visual and environmental impacts upon the amenity of the surrounding area and the setting of the locality.
86. It is considered that the proposal does not have sufficient planning grounds to justify the variation request. The proposal is not of a scale that is compatible within the neighbourhood. The variation has not assessed the actual extent of the height breach in the referenced in the Clause 4.6 variation.

CLAUSE 4.6(B) THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED.

- 87. An assessment of the written request against Clause 4.6 (3)(a) and (b) Including comment about whether the request demonstrates the following:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- 88. The application was supported by a Clause 4.6 Development Standard variation request prepared by Rothshire, this document however has not assessed the actual extent of the breach. In this instance the variation request is considered inadequate.
- 89. 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.
- 90. The proposed development is not in the public interest as the proposal fails to comply with the objectives for both the Height of Buildings development standard and the R2 Low Density Residential zone.
- 91. The proposed variation does not raise any matters of State or regional environmental planning significance.
- 92. The areas of non-compliance are unreasonable and will establish an undesirable precedent. It will have adverse impacts on the surrounding locality, which is characterised by low density residential development. The Panel is requested to not invoke its powers under Clause 4.6 to permit the variation sought.
- 93. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6. Notwithstanding this, the statement is not considered to be well founded as the actual extent of the variation has not been included in the statement resulting in there being insufficient environmental planning grounds to justify contravening the standard given that in this case the proposal fails to satisfy the objectives of the zone and development standard (Clause 4.3, building height development standard).

Georges River Development Control Plan 2021

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

Part 5- Residential Locality Statements

<p>Lugarno Locality Statement</p> <p><u>Streetscape Character- Existing Character</u></p> <ul style="list-style-type: none"> • <i>Lugarno is a low-density residential area with a small local group of shops on Forest Road typical of post-war suburban development.</i> • <i>The housing stock in Lugarno predominately consists of freestanding dwelling houses built in the post-war period, as well as contemporary knock down rebuilds. This has resulted in an eclectic mix of housing styles.</i> • <i>Most of Lugarno is located within the Foreshore Scenic Protection Area (refer to GRLEP 2021 Foreshore Scenic Protection Area Map).</i> • <i>The combination of the low impact-built form and large street trees contributes to an overall character that is relaxed and informal within a bushland setting.</i>

<ul style="list-style-type: none"> • However, recent developments have seen the replacement of post-war dwellings with substantially larger, contemporary dwelling houses with significantly reduced setbacks and landscaping. • The emerging eclectic character of the streetscape as result of knock down rebuilds is a threat to the urban bushland character of the area.
<p><u>Streetscape Character- Future Desired Character</u></p> <ul style="list-style-type: none"> • Retain and enhance the prominence of the bushland landscaped character in new development through tree planting and landscaping. • Encourage consistent setbacks of buildings from the street and the provision of landscaping within the front setback. • Encourage the retention of trees and sharing of water views wherever possible, including screening via vegetation rather than solid walls. • Public views to waterways should be retained from streets and public places.
<ul style="list-style-type: none"> — The proposed development fails to maintain the existing and future desired character of Lugarno locality. — The proposed development fails to retain and enhance a low-density residential character of Lugarno. — The proposed development fails to ensure setbacks in accordance with the Foreshore Scenic Protection Area. — The proposed development fails to ensure the bulk and scale of the development is compatible with the Lugarno locality.

Part 6 – Low Density Residential Controls

Control	Proposal	Compliance
1. New buildings and additions are to consider the Desired Future Character statement in Part 5 of this DCP.	The proposed works fail to appropriately responds to the desired future character of the locality.	No
2. New buildings and additions are to be designed with an articulated front façade.	The front façade has incorporated sufficient building articulation with the formal living room, front entry and porch and the garage entry respectively. A carport is annotated on the site plan, but no details provided.	Yes
3. Developments on sites with two (2) or more frontages are to address all frontages.	The subject site only has 1 frontage being Forest Road.	Yes
4. Dwelling houses are to have windows presenting to the street from a habitable room to encourage passive surveillance.	Windows are present along the front façade of the dwelling from a formal living room. The windows, balustrading and screen planting aid in passive surveillance being a design feature which deters threats	No

Control	Proposal	Compliance
<p>5. Development must be sensitively designed so as to minimise adverse impacts on the amenity and view corridors of neighbouring public and private property while maintaining reasonable amenity for the proposed development and is to balance this requirement with the amenity afforded to the new development.</p> <p>6. The maximum size of voids at the first-floor level should be a cumulative total of 15m² (excluding voids associated with internal stairs).</p>	<p>while remaining largely invisible to the public domain.</p> <p>The proposed development impacts upon the amenity and view corridors of neighbouring public and private properties. Reasonable amenity for both the future occupants of the proposal and the adjoining property owners has not been achieved via the design.</p> <p>Voids on first floor of 7.1sqm.</p>	<p>Yes</p>
<p>1. New buildings are to consider and respond to the predominant and desired future scale of buildings within the neighbourhood and consider the topography and form of the site.</p> <p>2. On sites with a gradient or cross fall greater than 1:10, dwellings are to adopt a split-level approach to minimise excavation and fill. The overall design of the dwelling should respond to the topography of the site.</p> <p>3. A maximum of two (2) storeys plus basement is permissible at any point above ground level (existing). Basements are to protrude no more than 1m above existing ground level.</p> <p>4. Where topography conditions require a</p>	<p>The proposal fails to appropriately respond to the future scale of buildings within the neighbourhood.</p> <p>The built form exists, this clause is not relevant in this instance. The design is already split level through the ground floor. The development fails to respond to the topography given its elevated form at the rear.</p> <p>2 storeys and “basement” to be enclosed to be an under-croft area. A new driveway and hard stand area is to be constructed. The existing “basement” access is proposed to be filled and replaced with deep soil landscaped area. The application fails to provide details in terms of structural adequacy for the in filling of the access area.</p>	<p>No</p> <p>No</p> <p>Yes</p> <p>N/A</p>

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Control	Proposal	Compliance
<p>basement, the area of the basement should not exceed the area required to meet the car parking requirements for the development, access ramp to the parking and a maximum 10m² for storage and 20m² for plant rooms. Additional basement area to that required to satisfy these requirements may be included as floor space area when calculating floor space ratio.</p> <p>5. Where the entry to the basement carpark is visible from the street, the entry should be recessed a minimum of 1m (from the edge of the external wall or balcony) from the levels above and the external walls of the garage differentiated from the walls above through articulation and external materials.</p>	<p>No basement proposed. The existing basement area is being 'removed' as a vehicle cannot access this area.</p> <p>N/A</p>	<p>N/A</p>
<p>Front Setbacks 1. The minimum setback from the primary street boundary is: i. 4.5m to the main building wall / facade; ii. 5.5m to the front facade of a garage or carport; or iii. Where the prevailing street setback is greater than the minimum, the average setback of dwellings on adjoining lots is to be applied.</p>	<p>Front Setback 7m to porch 11.5m to garage façade 8m to façade of dwelling Remains unchanged via the proposed development.</p>	<p>N/A</p>
<p>Side and Rear Setbacks 1. Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is the greater (excluding detached secondary dwellings – see Point 12 in</p>	<p>Rear Setback 15m to rear façade. Remains unchanged via the proposed development.</p> <p>Existing setbacks not impacted by the development - <i>Northern Elevation</i></p>	<p>N/A</p> <p>No</p>

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Control	Proposal	Compliance
<p>Section 6.1.2.12- Secondary Dwellings of this DCP).</p> <p>2. The minimum side setbacks for ground and first floor are:</p> <p>i. 900mm for lots up to 12.5m in width measured at the front building line for the length of the development.</p> <p>ii. 1.2m for lots greater than 12.5m in width measured at the front building line for the length of the development.</p> <p>iii. 1.5m for all lots within the Foreshore Scenic Protection Area measured at the front building line for the length of the development.</p> <p>3. Where alterations and additions (ground and first floor) to an existing dwelling are proposed, an existing side setback less than the setback required in Control 3 can be maintained, provided the reduced setback does not adversely affect compliance with the solar access and landscaped area controls or adversely impact upon the visual and acoustic amenity of neighbouring dwellings.</p> <p>4. For battle-axe lots, minimum side and rear boundary setbacks apply, except the front setback of the battle-axe lot without a street frontage, where a minimum setback of 4.0m is to be provided as illustrated in Figure 1.</p>	<p>Ground Floor- 0.9m and 1.5m First Floor- 1.6m <i>Southern Elevation</i> Ground Floor- 0.9m First Floor - 1.5m and 0.4m</p> <p>Allowable Side Setback- 1.5m Proposed Side Setback of works as part of this development application- <i>Northern Elevation</i> Ground Floor – 0.9m First Floor - 1.6m <i>Southern Elevation</i> Ground Floor 0.9m First Floor - 1.5m</p> <p>The dwelling on site is existing, there is no lawful approval for the built form.</p> <p>Not a battle axe lot.</p> <p>No rear lane access.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>

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Control	Proposal	Compliance
<p>5. Any garages or parking structures fronting rear lanes may encroach upon the rear setback areas but are still to provide a minimum setback of 1m from the lane.</p>		
<p>1. Private open space is to be located at the rear of the property and/or behind the building line and is to have a minimum area of 60m² with minimum dimensions of 6m and located on the same level (not terraced or over rock outcrops).</p> <p>2. Private open space is to be provided for all dwellings, (with the exception of secondary dwellings, which are able to share the private open space of the principal dwelling).</p> <p>3. Private open space is to be located so as to maximise solar access.</p> <p>4. Private open space is to be designed to minimise adverse impacts upon the privacy of the occupants of adjacent buildings.</p>	<p>There is a turfed area within the rear yard adjacent to the proposed swimming pool. The area is 60sqm with a minimum dimension of 6m.</p> <p>The private open space is proposed in the form of a patio area, swimming pool and grassed area. The private open space is located directly off the primary living areas via stairs. The private open space levels are not proposed to change under this development application.</p> <p>Private open space is oriented to the west and receives sufficient solar access.</p> <p>The private open space is located within the rear yard adjacent to the neighbouring properties private open space. There have been significant level changes within the rear yard because of the unauthorised works which has an adverse impact upon the privacy of the future occupants of the dwelling and adjoining properties.</p>	<p>N/A- remains unchanged via the proposed development.</p>
<p>1. Landscaping</p>		
<p>1. Landscaped area (has the same meaning as GRLEP 2021) is to be provided in accordance with the table contained within Clause 6.12 Landscaped areas in certain residential and</p>	<p>The landscaped area is compliant with GRLEP 2021 minimum 25% deep soil landscape planting.</p>	<p>Yes</p>

Control	Proposal	Compliance
<p>environmental protection zones of GRLEP 2021.</p> <p>2. Provide a landscape setting within the primary and secondary street frontages, where hard paved areas are minimised. At a maximum, impervious areas, including hard paving, gravel, concrete or other material that does not permit landscaping, are to occupy no more than 40% of the street setback area.</p> <p>3. The front setback area is to have an area where at least one (1) tree capable of achieving a minimum mature height of 10m with a spreading canopy can be accommodated. A schedule of appropriate species to consider is provided in Council's Tree Management Policy.</p>	<p>25% hard stand area in front setback. The existing "basement" access is to be filled and replaced with deep soil landscape area. No structural details have been provided with the application.</p> <p>A 10m tree is proposed to be located within the front setback.</p>	<p>Yes</p> <p>Yes</p>
<p>1. Any excavation must not extend beyond the building footprint, including for any basement car park.</p> <p>2. The depth of cut or fill must not exceed 1.0m from existing ground level, except where the excavation is for a basement car park.</p> <p>3. Developments should avoid unnecessary earthworks by designing and siting buildings that respond to the natural slope of the land. The building footprint must be designed to minimise cut and fill by allowing the building mass to step in</p>	<p>No excavation is proposed for the works under this development application.</p> <p>The extent of fill exceeds 1m from the ground level for the fill proposed within the front setback. The fill is associated with the filling of the "basement" access. No structural or engineering information has been provided to support the application.</p> <p>No excavation is proposed for the works under this development application.</p>	<p>N/A</p> <p>No</p> <p>N/A</p>

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Control	Proposal	Compliance
accordance with the slope of the land.		
1. Car parking is to be provided in accordance with the requirements in Part 3 of this DCP.	Tandem car parking spaces. One (1) car in the proposed garage and one (1) on the proposed driveway in front of the garage. The site plan annotated a carport over the driveway no details of this carport have been provided. The existing "basement" access is proposed to be filled and replaced with deep soil landscaped area. No structural details provided as to the work proposed.	Yes
2. A dwelling is to provide one (1) garage and one (1) tandem driveway parking space forward of the garage (unless otherwise accommodated within the building envelope).	Complies - 2 car parking spaces proposed. One (1) car in the proposed garage and 1 on the proposed driveway in front of the garage. The site plan annotated a carport over the driveway, no details provided.	Yes
3. Driveways, garages and basements should be accessed from a secondary street or rear lane where this is available.	Garage accessed via the only frontage being Forest Road.	Yes
4. Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane.	No rear lane access exists.	N/A
5. Driveway crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	Complies - The existing "basement" access is proposed to be filled and replaced with deep soil landscaped area (no structural details provided). A single driveway access is proposed under this development application. The driveway levels need to be resolved by a 138 Application under the Roads Act.	Yes
6. The maximum driveway width between the street boundary and the primary building setback alignment of the garage is 4.0m.	Compliant at 3.1m in width.	N/A
7. Basements are permitted where the LEP height development standard is not exceeded, and it is demonstrated that	Whilst a "basement" exists on site, this development application seeks	

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Control	Proposal	Compliance
<p>there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure). (i) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition in the LEP) and the overall development presents as two (2) storeys to the street.</p> <p>8. Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1 (latest edition).</p> <p>9. The maximum width of a garage opening is 6m.</p>	<p>to convert the “basement” to be an under house under croft area with the access to this area being replaced with deep soil landscaped area. No structural details provided as to how this will be achieved.</p> <p>Satisfactory. The new garage and hard stand area is compliant. The existing basement is not as a vehicle cannot access this level. Access to this area is being removed as part of this application.</p> <p>Satisfactory – 3m</p>	<p>Yes</p> <p>Yes</p>
<p>1. Windows from active rooms are to be offset with windows in adjacent dwellings, or appropriately treated so as to avoid direct overlooking onto neighbouring windows.</p> <p>2. For active rooms or balconies on an upper level, the design should incorporate placement of room windows or screening devices to only allow oblique views to adjoining properties.</p> <p>3. Upper-level balconies should not project more than 1500mm beyond the main rear wall alignment so as to minimise adverse visual privacy impacts to adjoining properties.</p>	<p>Satisfactory as the built form of the dwelling adjoining exists.</p> <p>Satisfactory as the built form of the dwelling adjoining exists.</p> <p>The first-floor balcony presents as a privacy and amenity issue towards the rear adjoining property. The Applicant has proposed to construct a balustrade on the exterior of bedroom 2 glass sliding door to restrict access to this space from this room. This balcony has also incorporated privacy screening to 1.8m so there is no oblique view. The screening will result in this balcony being dark and bulky.</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p>

Control	Proposal	Compliance
<p>4. Windows for primary living rooms must be designed so that they reasonably maintain the privacy of adjoining main living rooms and private open space areas.</p> <p>5. Development applications are to be accompanied by a survey plan or site analysis plan (to AHD) of the proposed dwelling showing the location of adjoining property windows, floors levels, window sill levels and ridge and gutter line levels.</p>	<p>The proposed modification to the existing development fails to maintain a reasonable level of privacy for the future occupants of the dwelling from the living areas.</p> <p>A survey plan was submitted with the application.</p>	<p>Yes</p>
<p>1. Noise generators such as plant and machinery including air conditioning units and pool pumps are located away from windows or other openings in habitable rooms; they are to be screened to reduce noise or acoustically treated.</p>	<p>The air conditioning condenser unit and swimming pool filter/pump are proposed to be placed in the under-croft area at the rear of the dwelling. It is unclear as to whether this space can be used as ventilation to this space has not been shown.</p>	<p>No</p>
<p>1. New buildings and additions are sited and designed to facilitate a minimum of 3 hours direct sunlight between 9am and 3pm on 21 June onto living room windows and at least 50% of the minimum amount of private open space.</p> <p>2. To facilitate sunlight penetration to adjoining development, building bulk may be required to be articulated to achieve the required sunlight access.</p> <p>3. Direct sunlight to north-facing windows of habitable rooms and 50%</p>	<p>Satisfactory</p> <p>The building incorporates sufficient articulation to facilitate sufficient sunlight penetration to adjoining development where possible given the lot orientation. The maximum 9m height of building breach under GRLEP 2021 extends the shadow cast on the adjoining property.</p> <p>Given the orientation of the lots some degree of overshadowing of the adjoining property is unavoidable.</p>	<p>Yes</p> <p>No</p> <p>No, refer to development control 4 below.</p>

Control	Proposal	Compliance
<p>of the principal private open space area of adjacent dwellings should not be reduced to less than 3 hours between 9.00am and 3.00pm on 21 June.</p> <p>4. Note: Variations will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation or steeply sloping sites with a southerly orientation away from the street.</p> <p>5. Shadow diagrams are required to show the impact of the proposal on solar access to the principal private open space and living rooms of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams. It may also be necessary to provide elevations or views from sun diagrams to demonstrate appropriate solar access provision to adjoining development.</p>	<p>Variation supported given the east-west orientation of the site. See below commentary for merit-based justification.</p> <p>Sufficient solar access diagrams have been submitted with the architectural plans</p>	<p>Yes</p> <p>Yes</p>
<p>1. Large expansive surfaces of predominantly white, light or primary colours which would dominate the streetscape or other vistas should not be used.</p> <p>2. New development should incorporate colour schemes that have a hue and tonal relationship with the predominant colour</p>	<p>The colours and materials schedules are in accordance with the existing colours and materials currently on the existing building structure.</p> <p>The colour and material scheme are having a tonal relationship with the predominant colour schemes found in the street.</p>	<p>Yes</p> <p>Yes</p> <p>N/A</p>

Control	Proposal	Compliance
<p>schemes found in the street.</p> <p>3. Matching buildings in a row should be finished in the same colour or have a tonal relationship.</p> <p>4. All materials and finishes utilised should have low reflectivity.</p>	<p>N/A- the subject site is not a matching building.</p> <p>Materials and finishes have been chosen from a standard colour scheme that is low in reflectivity.</p>	<p>Yes</p>
<p>1. All dwellings are to be provided with adequate and practical internal and external storage (garage, garden sheds, etc.).</p> <p>2. Provision for water, sewerage and stormwater drainage for the site shall be nominated on the plans to Council's satisfaction.</p> <p>3. Each dwelling must provide adequate space for the storage of garbage and recycling bins (a space of at least 3m x 1m per dwelling must be provided) and are not to be located within the front setback.</p> <p>4. Letterboxes are to be located on the frontage where the address has been allocated in accordance with Australia Post requirements.</p>	<p>The dwelling adequately provides practical internal and external storage for the future occupants of the dwelling. There is sufficient area in the rear yard for external storage in the form of garden shed to be installed.</p> <p>Stormwater system not supported. Drainage will need to be via an inter-allotment drainage easement which does not exist and no binding legal agreement for its creation has been provided.</p> <p>The bins have been located on the architectural within the northern side setback.</p> <p>The letterbox has not been located on the architectural plans and/or landscape plan.</p>	<p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p>

Control	Proposal	Compliance
<p>1. Swimming pools/spas are to be located to the rear of properties.</p>	<p>The swimming pool is in the rear yard.</p>	<p>Yes</p>
<p>2. For corner allotments or where the property has two street frontages, swimming</p>	<p>The site is not a corner allotment.</p>	<p>N/A</p>

Control	Proposal	Compliance
pools/spas are not to be located in the primary frontage.		
3. Swimming pools/spas must be positioned a minimum of 900mm from the property boundary with the water line being a minimum of 1500mm from the property boundary.	The positioning of the swimming pools on the site is existing. The setback to the waterline and coping does not comply with this development control. Setback to waterline of only 0.8m.	No
4. In-ground swimming pools shall be built so that the top of the swimming pool coping is as close to the existing ground level as possible. On sloping sites this will often require excavation of the site on the high side to obtain the minimum out of ground exposure of the swimming pool consistent with the low side.	Swimming pool and associated coping is existing. The swimming pool and existing concrete coping is significantly elevated above the natural and existing ground levels due to the change in topography in the rear yard via the unauthorised works.	No
5. Swimming pools/spas are to be no more than 500mm above existing ground level.	Swimming pool and associated coping is existing. The structure is approximately 890mm above the existing ground. It should be noted that approximately 1m of fill has also been added to this area from the natural ground level.	No
6. On steeply sloping sites, Council may consider allowing the top of the swimming pool at one point or along one side to extend up to 1m above existing ground level, provided that the exposed face of the swimming pool wall is treated to minimise impact. The materials and design of the retaining wall should be integrated with and complement the style of the swimming pool.	Swimming pool and associated coping is existing. The structure is approximately 890mm above the existing ground. It should be noted that approximately 1m of fill has also been added to this area from the natural ground level.	No
7. Decking around a swimming pool must not be more than 600mm above existing ground level.	Swimming pool and associated coping is existing. As per the submitted architectural and landscape plan there is no decking proposed.	Yes
8. Filling is not permitted between the swimming	No filling is proposed between the swimming pool and property	Yes

Control	Proposal	Compliance
pool and the property boundary. The position of the swimming pool, in relation to neighbours and other residents, must be considered to minimise noise associated with activities carried out in the swimming pool or from the swimming pool equipment, such as cleaning equipment.	boundary under this development application.	
9. Council may require mechanical equipment to be suitably acoustically treated so that noise to adjoining properties is reduced.	The air conditioning condenser unit and swimming pool filter/pump are proposed to be placed in the under-croft area at the rear of the dwelling. It is unclear as to whether this space can be used as ventilation to this space has not been shown.	No
10. A pool fence complying with the legislation is to separate access from the residential dwelling on the site to the pool.	Swimming pool fencing proposed is not in accordance with the Swimming Pools Act.	Yes
11. Safety and security measures for swimming pools must comply with the relevant requirements of the Swimming Pools Act 1992 and any relevant Australian Standards.	Swimming pool fencing proposed is not in accordance with the Swimming Pools Act.	Yes
12. A spa is not required to be surrounded by a child resistant barrier provided that the spa is covered or secured by a child-safe structure (e.g., door, lid or mesh) that is fastened to the spa pool by a child-resistant device at all times when the spa pool is not in actual use and complies with Swimming Pools Act 1992 and any relevant Australian Standards.	No spa existing or proposed.	N/A
Control	Proposal	Compliance
1. Development applications are supported by a site analysis and design response demonstrating how the relevant provisions of the	Sufficient information has been provided in this regard.	Yes

LEP and the objectives of this part of the DCP have been addressed.		
2. Removal of existing native vegetation minimised to that which is reasonably required to site and construct a building.	The proposed development involves minimal removal of vegetation on site. Vegetation removal was undertaken when the unauthorised construction and earthworks were undertaken.	Yes
3. The integrity of the existing edge of bushland closest to the Georges River is retained.	Not impacted by the development.	Yes
4. Vegetation along ridgelines and on hillsides is retained and supplemented to provide a backdrop to the waterway.	Not impacted by the development.	Yes
5. New, complementary planting and landscaping is encouraged.	Achieved- new landscape planting is proposed under this development application.	Yes
6. Where on a steep site, vegetation is used to screen the impact of support structures such as piers.	The development is not proposed to be constructed on piers. A new driveway and hard stand area is to be constructed. The existing "basement" access is proposed to be filled and replaced with deep soil landscape area. No structural details provided as to how this will be achieved.	N/A
7. Landscaped areas below the FBL should maximise the use of indigenous plant material and preferably use exclusively indigenous plants. Turf should be limited in this area. Details of planting are to be indicated on any landscape plan submitted to Council.	N/A - No FBL impacts this development site.	N/A
8. Natural features that make a contribution to the environmental qualities and scenic landscape values of the foreshore, including mature native tree and sandstone rock outcrops, platforms and low cliffs, are retained.	Satisfactory. Natural features of the site unchanged via the proposed works under this development application. The natural features of the site were eroded as part of the unauthorised dwelling construction and associated earthworks and swimming pool excavation.	Yes
9. The visual impact of buildings is minimised	The proposed development fails to ensure the proposed built form is	No

<p>having regard to building size, height, bulk, siting, external materials, and colours and cut and fill.</p>	<p>sited and designed to blend with the surrounding environment being the adjoining properties to the north and south of the development site. Furthermore, the built form fails to comply with the building separation as described under setbacks.</p>	
<p>10. Buildings should be sited on the block to retain existing ridgeline vegetation, where possible. Siting buildings on existing building footprints or reducing building footprints to retain vegetation is highly recommended.</p>	<p>Built form of the dwelling and swimming pool location on the site is existing. A new driveway and hard stand area is to be constructed. The existing "basement" access is proposed to be filled and replaced with deep soil landscape area.</p>	<p>Yes</p>
<p>11. Where on a steep site, buildings are sited to sit discretely within the landscape using hillsides as a backdrop and below the tree canopy. The building footprint is to result in the following: (i) The preservation of topographic features of the site, including rock shelves and cliff faces; (ii) The retention of significant trees and vegetation, particularly in areas where the loss of this vegetation would result in the visual scarring of the landscape, when viewed from the water, and (iii) Minimised site disturbance through cutting and/or filling of the site.</p>	<p>Built form of the dwelling and swimming pool location on the site is existing. A new driveway and hard stand area is to be constructed. The existing "basement" access is proposed to be filled and replaced with deep soil landscape area.</p>	<p>N/A</p>
<p>12. Facades and rooflines of dwellings facing the water are to be broken up into smaller elements with a balance of solid walls to glazed areas. Rectangular or boxy shaped dwellings with large expanses of glazing and reflective materials are not acceptable. In this regard, the maximum amount of glazed area to solid area</p>	<p>The development site does not front the waterway.</p>	<p>N/A</p>

for façades facing the foreshore is to be 50%-50%.		
13. Colours that harmonise with and recede into the background landscape are to be used. In this regard, dark and earthy tones are recommended and white and light coloured roofs and walls are not permitted. To ensure that colours are appropriate, a schedule of proposed colours is to be submitted with the Development Application and will be enforced as a condition of consent.	Satisfactory colours proposed.	Yes
14. Buildings fronting the waterway must have a compatible presence when viewed from the waterway and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality	The development site does not front the waterway.	N/A
15. Blank walls facing the waterfront shall not be permitted. In this regard, walls are to be articulated and should incorporate design features, such as: (i) Awnings or other features over windows; (ii) Recessing or projecting architectural elements; or (iii) Open, deep verandas.	The development site does not front the waterway.	N/A
16. Adequate landscaping shall be provided to screen undercroft areas and reduce their impact when viewed from the water.	The development site does not front the waterway.	N/A
17. The extent of associated paved surfaces is minimised to that which provides essential site	Achieved.	Yes

access and reasonable private open space.		
18. Buildings have external finishes that are non-reflective and coloured to blend with the surrounding landscape.	Satisfactory.	Yes
19. Swimming pools and surrounds should be sited in areas that minimise the removal of trees and limit impact on natural landform features (rock shelves and platforms).	Swimming pool and associated coping is existing. Earthworks were unauthorised.	No
20. Fences are low in profile and are at least 50% transparent.	No front fencing proposed.	N/A
21. Driveways and other forms of vehicular access are as close as practical to running parallel with contours	A new driveway and hard stand area is to be constructed. The existing "basement" access is proposed to be filled and replaced with deep soil landscape area.	Yes
22. The natural landform is to be retained and the use of retaining walls and terracing is discouraged.	Retaining walls not proposed under this development application.	N/A
23. Retaining walls are not to be located: <ul style="list-style-type: none"> • Between the FBL and MHWM • Within 40m of MHWM 	Retaining walls not proposed under this development application.	N/A
24. Where retaining walls are constructed in other areas, materials and colours that blend with the character and landscape of the area are used. Where retaining walls face the foreshore they are to be constructed of course, rock faced stone or a stone facing and are to be no higher than 600mm above natural or existing ground level. Under no circumstances will Council permit a masonry faced retaining wall facing the foreshore.	Retaining wall not proposed under this development application.	N/A
25. Development provides opportunities to create view corridors from the	Views of the Georges River are not visible from the site.	N/A

public domain to the Georges River.		
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LPP020-24

Georges River Development Control Plan 2021 Amendment

95. The Amendment No. 3 to the Georges River Development Control Plan (DCP) 2021 was effective on 27 October 2023. This amendment sought to harmonise all DCP controls relating to the Hurstville City Centre into the Georges River DCP 2021 and rectify several housekeeping issues comprising of unintended omissions, numerical, typographical, interpretation and formatting errors throughout the Georges River DCP 2021. Existing savings provision apply, and all development applications lodged with Council prior to the gazelle of the amendment, will be determined as if the subject amendment had not commenced. This application has been assessed having regard to the relevant Development Control Plan.

ASSESSMENT

Streetscape Character and Built Form

96. Streetscape character is the overall character and appearance of a street formed by buildings and landscape features that frame the public street. Streetscape also refers to the way a street looks and helps to provide local amenity and identity. The presentation of structures in a street is the most critical element and determines the character of not only the street, but the locality. 'Good' streetscapes are those in which the houses and associated spaces form attractive streets and neighbourhoods, as intended by GRDCP 2021. New buildings need to be sensitive and in context with the landscape setting, and the environmental conditions of the locality to satisfy the objectives of GRDCP 2021. An assessment of the streetscape character and site analysis are the first steps in the design process and are used to ensure that the proposed development is the best possible solution for a site.
97. The proposed development fails to meet the objectives of streetscape character and built form. In particular, the proposal fails to comply with the following objectives.
- reflect the dominant and transitioning building patterns of the streetscape with regard to the location, spacing and proportion of built elements in the streetscape.*
 - Complement, conserve and enhance the visual character of the street and neighbourhood through appropriate building scale, form, setting, details, and finishes.*
 - Ensure that all elements of development visible from the street, waterways and public domain make a positive contribution to the foreshore, streetscape, and natural features.*
98. To make a positive contribution to the streetscape, new development needs to be compatible with the scale and character of existing buildings and landscape elements. The proposed development does not comply with development control 1 and 5 in section 1 under part 6.1.2 of GRDCP 2021. which outlines that new buildings and additions are to consider the Desired Future Character Statement in Part 5 of GRDCP 2021.
99. GRDCP 2021 development control 5 in section 1 under part 6.1.2 notes that development must be sensitively designed to minimise adverse impacts on the amenity and view corridors of neighbouring public and private property while maintaining reasonable amenity for the proposed development and is to balance this requirement with the amenity afforded to the new development. The rearward elevated first floor balcony remains as a privacy and amenity concern towards the rearward adjoining property. Despite the sliding doors to have a fixed balustrade to the external façade of

the doors on bedroom 2 and privacy screening, the space still presents as an acoustic amenity concern to the adjoining properties.

Building Scale and Height

100. Good design provides a building layout that maximises the natural attributes of the site. Carefully considered building layout, design, scale and built form also creates a higher level of amenity for occupants through enhanced visual and acoustic privacy, passive heating and cooling, attractive outlooks from living spaces, and flexible and useable indoor and outdoor spaces that meet the needs of occupants.
101. The proposed development fails to comply with GRDCP 2021 development control 1 under section 2 in part 6.1.2 in that *buildings must consider and respond to the predominant and desired future scale of buildings within the neighbourhood and consider the topography and form of the site*. The proposal fails to appropriately responds to the future scale of buildings within the neighbourhood. The built form is not compatible with the height, bulk and scale of the desired future character of the locality.

Setbacks

102. The spatial relationship of buildings is an important determinant of urban form. Building separation affects the spatial continuity and the degree of openness in the street and between properties. Building separation is required to minimise adverse amenity impacts by providing opportunities for landscaping, access, privacy, solar access, and private and shared open spaces.
103. The proposed development fails to provide a 1.5m side setback for the length of the development site as the existing building has a side setback of 0.87m along the southern elevation and 1030mm to the northern boundary. The proposal to remove a door and infill the area with a rendered brick wall is not side setback compliant. Furthermore, the non-compliant side setback impacts upon the view line of a minimum 1.5m setback along the side boundaries within the foreshore scenic protection area.

Excavation (Cut and Fill)

104. To contribute to the quality and identity of the area, development must respect landform and natural settings. Development must be designed so that it minimises impacts to natural land forms and allows the natural qualities of the site to be the dominant elements of its setting. Well considered design ensures dwellings integrate with the streetscape and views from the waterways and retain a consistent relationship to the natural topography. This relationship provides an important visual link between buildings in a streetscape, as well as reducing the impacts of new development on neighbouring lots. Deep excavation, cut and fill or benching may alter the pattern of subsoil water flow and soil stability, which may adversely affect neighbouring properties and the natural environment.
105. The proposed development seeks to fill the existing driveway ramp to the "basement" with soil and placement of landscaping on top. The proposed development fails to comply with GRDCP 2021 development control 2 under section 6 in part 6.1.2 which outlines that *the depth of cut or fill must not exceed 1.0m*. It should be noted that no engineering details to support the filling of the access area to the "basement". Furthermore, no details have been provided as to how these specific works are to be undertaken.

Visual Privacy

106. Building design must take into consideration aspects of visual privacy and noise sources and minimise their future impact on occupants. Amenity is enhanced by privacy and a better acoustic environment. This can be achieved by carefully considering the location of the building on the site, the internal layout, the building materials used, and screening devices. The consideration of privacy requires an understanding of the context of the adjacent site, site configuration, topography, the scale of the development and its layout.
107. The proposed development fails to comply with development control 3 under section 8 in part 6.1.2 of GRDCP 2021 which outlines that upper-level balconies should not project more than 1500mm beyond the main rear wall alignment so as to minimise adverse visual privacy impacts to adjoining properties. The rearward elevated first floor balcony beyond the maximum 1.5m depth presents as a privacy and amenity concern towards the rearward adjoining property. Despite the sliding doors to have a fixed balustrade to the external façade of the doors on bedroom 2 and privacy screening, the space still presents as an acoustic amenity concern to the adjoining properties. This is a poor built form outcome for this site.

Solar Access

108. Ideally, solar access should be maximised in winter and controlled in summer. Daylight consists of both diffused light and direct light. Good levels of daylight in a dwelling improve amenity and reduce the need for artificial lighting. High levels of daylight can be achieved through the careful consideration of window size, location, and proportion.
109. The proposed development fails to comply with GRDCP 2021 development control 2 under section 10 in part 6.1.2 in that *to facilitate sunlight penetration to adjoining development, building bulk may be required to be articulated to achieve the required sunlight access*. The breach of the maximum 9m height of building development standard under GRLEP 2021 results in further overshadowing of the adjoining property. This is an unacceptable impact on the adjoining property as a result of the breach in height of building development standard.

Site Facilities

110. The sustainable management of stormwater helps to protect and improve the quality of waterways and maintain the health of its ecosystems. This results in a better urban environment for residents of the Georges River Local Government Area. The proposed development fails to comply with GRDCP 2021 development control 2 under section 13 in part 6.1.2 relating to ensuring that the provision for water, sewerage and stormwater drainage for the site shall be nominated on the plans to Council's satisfaction.
111. Council's Development Engineer has reviewed the proposed development in relation to stormwater management and is not supportive of the design proposed and the nominated information and provided stormwater plans, as the application fails to provide a stormwater drainage design in accordance with Georges River Stormwater Management Policy. An inter-allotment drainage easement is required to be able to drain the site. AN easement does not existing and no legally binding agreement has been provided detailing an easement can be created in the future.
112. The proposed development fails to comply with GRDCP 2021 development control 4 under section 13 in part 6.1.2 being that *letterboxes are to be located on the frontage where the address has been allocated in accordance with Australia Post requirements*. The letter box location has not been annotated on the architectural or landscape plans.

Swimming Pool

113. The existing swimming pool fails to comply with GRDCP 2021 development controls 10 and 11 in relation to the swimming pool fencing. Despite a Swimming Pool Certificate being issued as part of the additional information, it is unclear as to whether the swimming pool fencing is compliant with the Swimming Pools Act 1992 and any relevant Australian Standard.

Foreshore Scenic Protection Area

114. Part 6.5.1 Foreshore Scenic Protection Area of GRDCP 2021 applies to the site as the site is mapped under Clause 6.6 of GRLEP 2021. The proposed development fails to comply with GRDCP 2021 development control 9 in section 1 under part 6.5.1 relating to the Foreshore Scenic Protection Area and how the visual impact of buildings is minimised having regard to building size, height, bulk, siting, external materials, colours and cut and fill. GRDCP 2021 outlined under objective (c) that the intent of the Foreshore Scenic Protection Area is to ensure that development is sited and designed to blend with the surrounding environment, particularly when viewed from highly visited public viewing points. The proposed development fails to ensure that the proposed development is sited and designed to blend with the surrounding environment being the Foreshore Scenic Protection Area.

IMPACTS

Natural Environment

115. This proposal is inconsistent with the controls for the Low-Density Residential development given the design has not had adequate regard for the bulk, scale, form and public domain interface.
116. The proposal is considered to have an unreasonable impact on the natural and built environment due to the elements presenting to neighbouring allotments, and the non-compliant setbacks given the site is within the FSPA. The design has resulted in unacceptable privacy and overlooking impacts on neighbouring properties.
117. The proposal in its current form is considered to result in adverse impacts on the character of the locality and the amenity of neighbouring residential properties. Overall, the proposal presents an undesirable and unsupportable development.

Built Environment

118. The proposal complied with the existing built form on the site fails to represent an appropriate planning outcome for the site with respect to its bulk, scale and density, and expression. The development is an inappropriate response to the context of the site.
119. It is noted that the application before Council is seeking works to facilitate compliance with various elements of the development which has been constructed unlawfully without the benefit of a Part 4 approval and the undertaking of a mandatory inspections required by the construction phase of the development.
120. As a result, concern is raised that the support of these amendments without understanding the structural nature and habitability of the dwelling is of concern. As a result, this application cannot be supported.

Social Impact

121. The assessment demonstrates the proposal will not have an adverse impact on the character of the locality and the amenity of neighbouring residential properties.

Economic Impact

122. There is no apparent adverse economic impact that is likely to result within the locality due to the demolition works and completion of a partially constructed two-storey dwelling with basement, swimming pool, retaining walls, landscaping and site works.

Suitability of the Site

123. The site is zoned R2 – Low Density Residential. Whilst the proposal being for demolition works and completion of a partially constructed two-storey dwelling with basement, swimming pool, retaining walls, landscaping, and site works, is a permissible form of development in this zone, it is considered that the proposal is not suitable for the site given the unsupportive elements of the proposal. The assessment demonstrates that the proposal in its current form will have an unreasonable impact on the character of the locality and the amenity of neighbouring residential properties. The environmental impacts on the social environment are unreasonable and the application is not supported.

SUBMISSIONS, REFERRALS AND PUBLIC INTEREST

Submissions

124. The application was advertised, and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. One (1) submission was received during the initial neighbour notification period. No submissions were received during the re-neighbour notification period.

Issue 1: Height of Building

125. Officer Comment: Concern was raised regarding the height of building. The proposed development is non-compliant with GRLEP 2021 height of building development standard, the Clause 4.6 request to vary the Height of Building development standard is not supported as discussed earlier in this assessment report.

Issue 2: Cut and Fill

126. Officer Comment: Cut and fill has been raised as a concern by the objecting property. The cut and fill proposed under this development application has been assessed and is not considered acceptable. It is noted that cut and fill has occurred during the construction of the dwelling beyond the architectural plans and has resulted in significant level changes on the subject site.

Issue 3: Swimming Pool

127. Officer Comment: The swimming pool and coping surrounding the swimming pool is existing. The proposed development seeks to provide finishes to the swimming pool being the surrounding landscaping, and swimming pool fencing. Concern was raised specifically regarding the out of ground height of the swimming pool. This is also a concern of council as the levels of the site have changed over the course of the demolition of the previous dwelling, and construction of the dwelling, retaining walls and swimming pool.

Issue 4: Setbacks

128. Officer Comment: The submission received raised concerns regarding the building setbacks and the cumulative non-compliances because of the non-compliant building separation. The building setbacks have been discussed in this assessment report and are considered unsatisfactory.

Issue 5: Stormwater Matters

129. Officer Comment: Concern was raised regarding the disposal of stormwater from the site. Stormwater disposal has been discussed in detail in this assessment report and is a reason for a refusal of this development application. No inter-allotment drainage easement exists and no binding legal agreement for the creation of an easement has been provided.

Issue 6: Boundary Fencing

130. Officer Comment: The submission received raised that the adjoining property would like a new boundary fence to be constructed. Boundary fencing is not a matter of consideration under EP&A Act 1979. Boundary fencing is under the Dividing Fences Act and is a civil matter between adjoining properties.

Revised Plans

131. The Applicant lodged revised plans on 7 November 2023 and 25 January 2024. In accordance with the requirements of Georges River Community Engagement Strategy these plans were publicly exhibited as, in the opinion of Council, the submitted additional information and changes being sought did intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment. No additional submissions were received.

Council (Internal) Referrals**Development Engineer**

132. The Development Engineer advised that the application is not supported on a stormwater drainage perspective and provided the following comment.
- The submitted stormwater drainage design plan has not been comprehensively prepared and there are insufficient and inadequate information provided to address the design requirements.
 - The drainage design plan fails to present the following key information based on Council's previous review comments:
 - a) Reiterating that the site drainage design plan must address attached Council's due diligence comments. All stormwater runoffs shall be drained by gravity to a legal point of discharge in accordance with the Australian/New Zealand Standard AS/NZS 3500.3.
 - b) Surveyed spot levels from Summit Geomatic Survey Levels Plan, design ground levels, finished surface levels, total development footprint including OSD tank and Driveway access from layback to front boundary then to inside access driveway leading to basement which must be clearly drawn/shown and shall be consistently documented under Architectural, Landscape and Drainage plans. A certification for all plans' consistency is required from drainage design engineer and architect. All plans are to be submitted to support final drainage design plans for assessment. Contours are not required to present/display in the drainage plans. At this stage, 98% CC Plans are required given the nature of site topography and work history undertaken on the sites.
 - c) Contributing catchment areas from roof, hardstand & site setback areas draining to the OSD are acceptable.

- d) Detail design of OSD tank with marked up longitudinal/cross sections and internal drainage systems (pits/pipes/grated drains leading to OSD tank and inter allotment drainage (IAD) easement must be submitted as 98% CC design including any regrading site ground surfaces either existing or proposed levels etc) shall be clearly shown.
- e) Each lot must have separate individual site drainage design detail plan draining to IAD pipe using Summit Geomatic prepared surveyed levels which is to be submitted as separate package. Hence there will be three site drainage plans with different drawing numbers based on each lot.
- f) Site Drainage Plans must demonstrate that site discharge system from development sites can be satisfactorily discharged to an existing public drainage system via IAD pipe from street property numbers 1174 to 1178 later connected to public drainage system and to be prepared as 98% detailed design plan.
- g) Upstream natural overland flow along rear portion of all three lots must be managed and conveyed through developed lots leading to a legal point of discharge which must be demonstrated and this is a critical information to address surrounding neighbours issues to overland drainage flooding impacts to their properties. The neighbours have had many issues with these current buildings in the last 8 years including insurance claims on damage to property and continued flooding every time it rains. Despite the information was requested earlier but was not submitted.
- h) Basement pump sump detail design with minimum volume to be submitted.
- i) Driveway access layout must be drawn on all plans from lay back to basement showing OSD tank footprint. The rear area features of each lot right up rear site boundary must be clearly documented.
- j) Proposed and existing retaining wall details along all lot boundaries are to be submitted.
- k) Submit a certificate from architect and drainage engineer stating that the existing ground levels and finished ground levels have been diligently reviewed and confirmed which can be satisfactorily be implemented during construction stage.
- Easement requirement for the development as follows:
 - a) The subject site falls to the rear and side to side slope and a demonstrated easement to drain water will be required to drain water either through No.1184 Forest Road, Lugarno OR No. 1180 & 1182 Forest Road, Lugarno (If an easement does not already exist).
 - b) A detailed survey layout plan prepared by a Registered Surveyor showing the proposed easement to drain water through all properties must be submitted showing the feasibility of the easement.

- c) Provide detail IAD easement drainage pits/pipeline plan with pipe longitudinal section and layout plan from the subject property up till where the drainage pipeline is connected to an existing public drainage system through other affected properties. The Applicant shall create easements in benefit in favour of subject properties from all affected properties. All inter- allotment drainage easements are to be noted on the stormwater drainage plan. Easement widths must comply with the requirements of Cl 3.5.2 of the SMP.
- d) Contractual agreement between the affected parties shall be submitted.
- e) Council has been made aware of recent clarification to the interpretation of Clause 6.9 Essential Services (including stormwater drainage), in the GRLEP 2021, and the nature of what adequate arrangements are required in circumstances where the specified essential services are not available from decisions in the Land and Environment Court.

In this regard, for an Applicant to demonstrate to Council that adequate arrangements with respect to site stormwater disposal have been made where an easement for drainage is required through adjoining downstream land, documentary correspondence must be provided to demonstrate:

- i. That the Applicant or proponent has made contact with the owner of the property proposed to be burdened by the stormwater easement with an in-principal proposal for the creation of an easement, specifying the location of this, the width, drainage system design, and works required.
- ii. That the adjoining burdened property owner has agreed, in principle to the proposal which shall be documented in the form of legal agreement prepared by solicitors, at full cost to the applicant.
- iii. In the absence of this documentation, Council cannot be satisfied that adequate arrangements with respect to site stormwater disposal have been made and would not therefore be able to approve the application.

To date the Applicant has failed to adequately address the site is satisfactory from a stormwater drainage perspective.

Landscape Officer

133. The Landscape Officer advised the proposed development is supported subject to conditions in relation to larger canopy trees in the front and rear yard to provide greater amenity to the local area of the application was to be supported.

Environmental Health Officer

134. As part of the assessment of this application, the application was referred to Council's Environmental Health Officer for comment.

The proposed development is supportable subject to remediation works being undertaken in accordance with the submitted Remedial Action Plan.

Land Information Officer

135. The application was referred to Council's Land Information Officer, no objection was raised to the proposed development and no conditions were provided.

Building Surveyor

136. As part of the assessment of this application, the application was referred to Council's Building Surveyor for comment.

137. The site is subject to a Building Information Certificate (BIC) for the existing structures on site. Reference for a full assessment should be made to 149D2023/0102.
138. The recommendations of the BIC in summary are reasons for refusal:
- Refusal Reason – Inconsistent Plans: The building information certificate plans do not align with the current proposed DA application. As a result, Council is unable to endorse certification for this application and must recommend its refusal.
 - Refusal Reason – Building Code of Australia: Evidence has not been provided demonstrating compliance with the Performance Requirements of the NCC 2019 Building Code of Australia Volume Two for the building.
 - Refusal Reason - Lack of Development Consent: The application for the completion of the building cannot proceed due to the absence of development consent as required by Part 4 of the Environmental Planning and Assessment (EP&A) Act.
 - Refusal Reason – Owners Consent: REF: 2122301-LET-0005-V1 Dated 19.10.2022. has been deemed invalid as the "owners' representative" signed the authorisation without providing the full details of the owners, and all signatories for Lugarno Developments Pty Ltd were not included.
 - Refusal Reason – Public interest: Refusing the application aligns with the broader public interest by safeguarding the integrity of the planning process and ensuring that development activities are conducted in accordance with established legal frameworks and community expectations.
 - Refusal Reason – Consent: Works have been carried out without the prior consent of Council in the instance where prior consent is necessary.
 - Refusal Reason – Inspection: a physical inspection of the of the site has not been carried out by the assessing officer due to concerns of contamination of the site as detailed in the detailed site investigation by Geotechnical Consultants Australia dated 17 July 2019 REF: E1933-1. a physical inspection is required to conduct a detailed assessment.
 - Refusal Reason – Building Code of Australia: Evidence has not been provided demonstrating compliance with the Performance Requirements of the NCC 2019 Building Code of Australia Volume Two for the building.

External Referrals

Ausgrid

139. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. No concerns were raised subject to conditions being imposed if the application were to be supported.

Public Interest

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

DEVELOPMENT CONTRIBUTIONS

141. Contributions on this application would be determined in accordance with the Georges River Council Local Infrastructure Contributions Plan 2021 (Section 7.11 and Section 7.12). This application is recommended for refusal as a result contributions have not been levied at this time.

CONCLUSION

142. Development consent is sought for the demolition and alterations and additions to a two-storey dwelling with basement, swimming pool and associated landscaping, retaining walls and fencing at 1178 Forest Road, Lugarno.
143. The proposal has been assessed with regard to the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is an inappropriate response to the context of the site and will not result in a good planning, and urban design outcome in the locality.
144. The proposal has been assessed against the provisions of the relevant State Environmental Planning Policy (SEPP), Georges River Local Environmental Plan 2021, and Georges River Development Control Plan 2021 and fails to comply Chapter 2 Vegetation in Non-Rural Areas under SEPP Biodiversity and Conservation) 2021, SEPP (Resilience and Hazards) 2021, GRLEP 2021, GRDCP 2021 development objectives and controls. Any variations have been addressed and are not worthy of support on merit.

STATEMENT OF REASONS AND RECOMMENDATION

75. Statement of Reasons

- No lawful owners' consent has been provided in accordance with Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021.
- The development is inconsistent with the aims of the plan as it fails to promote a high standard of urban design and built form outcomes.
- The proposal fails to have adequate regard to the objectives of the R2 low density residential zone pursuant to Clause 2.3 of Georges River Local Environmental Plan 2021 *to promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity and to provide for housing within a landscaped setting that enhances the existing environmental character of the Georges River local government area.*
- The proposal fails to demonstrate compliance with Chapter 2 and Chapter 4, of the State Environmental Planning Policy (Resilience and Hazards) 2021 in relation to water catchments and remediation of land.
- The proposal fails to demonstrate compliance with the Georges River Local Environmental Plan (GRLEP) 2021 criterion related to Aims of the Plan, Zone Objectives, Earthworks, Stormwater Management, Foreshore Scenic Protection Area (FSPA), Essential Services and Design Excellence.
- The proposal fails to demonstrate compliance with several of the Georges River Development Control Plan 2021 criterion related to Resident Locality Statements, Streetscape Character and Built Form, Building Scale and Height, Setbacks, Excavation (Cut and Fill), Visual Privacy, Site Facilities and Foreshore Scenic Protection Area.
- The proposed development will have unacceptable adverse impacts on the natural and built environment relating to the proposal not being compatible with the desired future character and zone objectives for the land.
- The proposed development will have unacceptable social impacts on the character of the locality and the amenity of neighbouring residential properties.

Recommendation

76. That Georges River Local Planning Panel refuse the request for variation under Clause 4.6 of Georges River Local Environmental Plan 2021, in relation to the Height of Buildings (Clause 4.3) development standard, as the variation sought does not satisfy the objectives of the standard and there are insufficient environmental planning grounds provided in the written request for variation justifying that compliance would be unnecessary and unreasonable in the circumstances of the case. The proposal is also not in the public interest, and it fails to satisfy the objectives of the zone resulting in an adverse environmental impacts.
77. Pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the Georges River Local Planning Panel, refuse Development Application DA2022/0621 for the demolition and alterations and additions to a two-storey dwelling with basement, swimming pool and associated landscaping, retaining walls and fencing Lot 3, DP18873 known as 1178 Forest Road, Lugarno, for the reasons outlined below.
1. **Refusal Reason – Environmental Planning Instrument** – Pursuant to Part 3, Division 1, Clause 23 of Environmental Planning and Assessment Regulation 2021, the proposed development application fails to provide lawful owners consent by the owner of the property and/or another person, with written consent of the owner of the land.
 2. **Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of State Environmental Planning Policy (Biodiversity and Conservation) 2021. In particular:
 - a) The impacts from the stormwater proposal have not been sufficiently assessed or mitigated.
 - b) The submitted stormwater drainage design plan has not been comprehensively prepared and there are insufficient and inadequate information provided to address the design requirements. The submitted stormwater design is not in accordance with Georges River Stormwater Policy.
 3. **Refusal Reason – Environmental Planning Instrument** – Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of State Environmental Planning Policy (Resilience and Hazards) 2021. In particular:
 - a) Detailed Site Investigation Report found evidence of asbestos contaminated soil and asbestos fragments on the sites 1174 - 1178 Forest Road, Lugarno.
 - b) The Detailed Site Investigation Report outlines that the sites can be made suitable for the intended use following remediation.
 - c) A separate development application for remediation must be lodged and determined prior to the approval of the proposal.
 4. **Refusal Reason - Environmental Planning Instrument** - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Georges River Local Environmental Plan 2021:
 - a) Clause 1.2 – Aims of the Plan. The proposal is inconsistent with the aims of the plan with specific reference to 2(f) in relation to promoting a high standard of urban design and built form.

- b) Clause 2.3 - Zone Objectives. The proposal is inconsistent with the zone objectives as the proposal fails to promote a high standard of urban design and built form that enhances the local character of the suburb and achieves a high level of residential amenity.
- c) Clause 4.3 – Height of Building. The proposed development seeks a 3.33% variation to the height of building development standard.
- d) Clause 6.2 – Earthworks. The proposal is not in accordance with the provisions under this development standard as the proposed earthworks being filling of the site, changing the topography and landform of the site within the front setback.
- e) Clause 6.3 – Stormwater Management. The proposal is not in accordance with Georges River Stormwater Management Policy.
- f) Clause 6.6 – Foreshore Scenic Protection Area. The proposal results in a dominant built form and reduced setbacks and fails to retain the existing environmental, cultural, and built form character values of the foreshore area.
- g) Clause 6.7 – Essential Services. The proposal is not in accordance with Georges River Stormwater Management Policy and as the proposal has not demonstrated lawful discharge of stormwater from the site.
- h) Clause 6.10 – Design Excellence. The proposal in conjunction with the existing structures on the site fails ensure a high standard of architectural design, materials and detailing appropriate to the building type and location.

5. Refusal Reason - Environmental Planning Instrument - Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Georges River Development Control Plan 2021:

- a) Part 5 - Resident Locality Statement. The proposal is not consistent with the existing and future desired character of the precinct as the proposal has failed to adequately provide a good urban design outcome for the partially constructed dwelling on site that is in accordance with the built form within the streetscape.
- b) Part 6.1.2.1 – Streetscape Character and Built Form – The proposal fails to satisfy the design criterion relating to bulk, scale, design, and architectural elements to provide visual relief of the built form scale.
- c) Part 6.1.2.2 – Building Scale and Height – The proposed development does not respond to the predominant and desired future scale of buildings within the neighbourhood and consider the topography and form of the site.
- d) Part 6.1.2.3 – Setbacks – The proposal fails to ensure adequate separation between buildings, consistent with the Foreshore Scenic Protection Area.
- e) Part 6.1.2.6 – Excavation (Cut and Fill) – The proposed development seeks to fill more than 1m within the front setback.
- f) Part 6.1.2.8 – Visual Privacy - The proposed development fails to minimise direct overlooking from windows and balconies.
- g) Part 6.1.2.9 – Noise – The proposed development fails to adequately locate noise generators in a ventilated space such as air conditioning condenser units and swimming pool pumps/filters on the architectural plans or landscaping plans to assess the noise transmission from the development to the adjoining properties.
- h) Part 6.1.2.10 – Solar Access – The breach of the maximum 9m height of building development standard under GRLEP 2021 results in further overshadowing of the adjoining property.
- i) Part 6.1.2.12 – Site Facilities – The proposal fails to demonstrate adequate provisions are made available for site facilities to support residential occupation i.e., stormwater disposal and letterboxes.

- j) Part 6.4.4 – Swimming Pool – The proposal fails to demonstrate swimming pool fencing in accordance with the Swimming Pools Act 1992 and any relevant Australian Standard.
- k) Part 6.5.1 – Foreshore Scenic Protection Area – The proposal fails to provide for the environmental qualities and scenic landscape values of the site via the proposed design.

6. Refusal Reason – Impact on the Environment – Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:

- a) Built and Natural Environment. The development is located within an established residential area and is considered to result in an unreasonable impact on the built and natural environment.
- b) Social Impact. The assessment demonstrates the proposal will not have an adverse impact on the character of the locality and the amenity of neighbouring residential properties.
- c) Suitability of the Site. The site is not considered suitable for the proposed development in its current form having regard to the scale, character, and amenity of the proposal on the surrounding development within the R2 Low Density Residential locality and Scenic Foreshore Protection Area.

7. Refusal Reason – The Public Interest – Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

ATTACHMENTS

- Attachment 1  Statement of Environmental Effects - 1178 Forest Road LUGARNO - DA2022/0621
- Attachment 2  4.6 Variation Request - 1178 Forest Road LUGARNO - DA2022 0621
- Attachment 3  Original Survey Plan - 1174-1178 Forest Road LUGARNO - DA2022 0621
- Attachment 4  As Built Survey Plan - 1178 Forest Road LUGARNO - DA2022 0621(2)
- Attachment 5  Redacted Architectural Plans 1178 Forest Rd Lugarno - DA2022 0621
- Attachment 6  Landscape Plan - 1178 Forest Rd Lugarno - DA2022/0621
- Attachment 7  Stormwater Design Plans - Lot 3, 1178 Forest Rd Lugarno_AI-1061473 - DA2022/0621
- Attachment 8  BCA Report (Whole Dwelling) - Lot 3, 1178 Forest Rd Lugarno_AI-1061473 - DA2022/0621
- Attachment 9  Swimming Pool Certificate - 1178 Forest Rd Lugarno - DA2022/0621
- Attachment 10  Detailed Site Investigation Report - Lot 3, 1178 Forest Rd Lugarno - DA2022/0621
- Attachment 11  Remedial Action Plan - Lot 3, 1178 Forest Rd Lugarno - DA2022/0621

REPORT TO GEORGES RIVER LOCAL PLANNING PANEL MEETING OF THURSDAY, 06 JUNE 2024

LPP021-24 61 VISTA STREET SANS SOUCI NSW 2219

LPP021-24

LPP Report No	LPP021-24	Development Application No	MOD2023/0170
Site Address & Ward Locality	61 Vista Street SANS SOUCI NSW 2219 Kogarah Bay Ward		
Proposed Development	Modification of DA2021/0081 for alterations and additions a dwelling house and pool – modifications involve retaining the existing pool and paving and stair reconfiguration		
Owners	Mr Eric Aristedes Coulpasis and Mrs Venetia Coulpasis		
Applicant	Mr Eric Aristedes Coulpasis		
Planner/Architect	Robert Parisi Architecture + Design		
Date Of Lodgement	23/01/2024		
Submissions	Nil		
Cost of Works	\$96,000.00		
Local Planning Panel Criteria	The Site has a landscaping variation below the Georges River Local Environmental Plan Development Standard (As Existing).		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	Water Management Act 2000 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 Georges River Council Local Environmental Plan 2021 Georges River Council Development Plan 2021		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects Architectural Plans		
Report prepared by	Development Assessment Planner - Fast Track		
RECOMMENDATION	Approval		

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

SITE PLAN



Aerial Photo of Locality – Subject site outlined in red (Source: Council Intramaps)

EXECUTIVE SUMMARY PROPOSAL

1. Council is in receipt of a Modification Application proposed under Section 4.55 (2) of the EPA Act. The application MOD2023/0170 is seeking a Modification of DA2021/0081 for alterations and additions a dwelling house and pool – the modifications involve retaining the existing pool and paving and stair reconfiguration.
2. The modification seeks to amend the parent consent resulting in changes within the rear yard, the proposal results in the following amendments:
 - The retention of the existing swimming pool on the site, which under the parent consent was proposed to be removed and a new swimming pool and landscaping works proposed.
 - The approved staircase connecting the upper outdoor space to the lower level is proposed to be amended. The design change has been proposed to satisfy the design change condition included in the parent consent addressing the Sydney Water requirements.
 - The modification also seeks to increase in soft landscaping on the site by 24.50sqm, this is achieved by the removal of a small hardstand area between the existing swimming pool and the foreshore.
3. The applicant has advised that the modification has been lodged to reduce costs associated with the development, in particular the provision of a new swimming pool and to comply with design change conditions imposed on the Parent Consent to satisfy the requirements of Sydney Water which has resulted in the reconfigured staircase.
4. The consent authority is the Georges River Local Planning Panel (GRLPP), as despite the proposal resulting in increased soft landscaping, the proposal remains non-compliance in the Georges River Local Environmental Plan 2021 development standard relating to Clause 6.12.

SITE AND LOCALITY

5. The subject site comprises of three lots A/DP333109, 404/DP752056, 471/DP752056 and contains a detached dwelling house that gains vehicular access from Vista Street to the east, residential dwellings to the north and south and Kogarah Bay to the west. Immediately to the north is a detached single storey dwelling house known as 59 Vista Street. To the south is 63 Vista Street which is a two storey detached dwelling house.

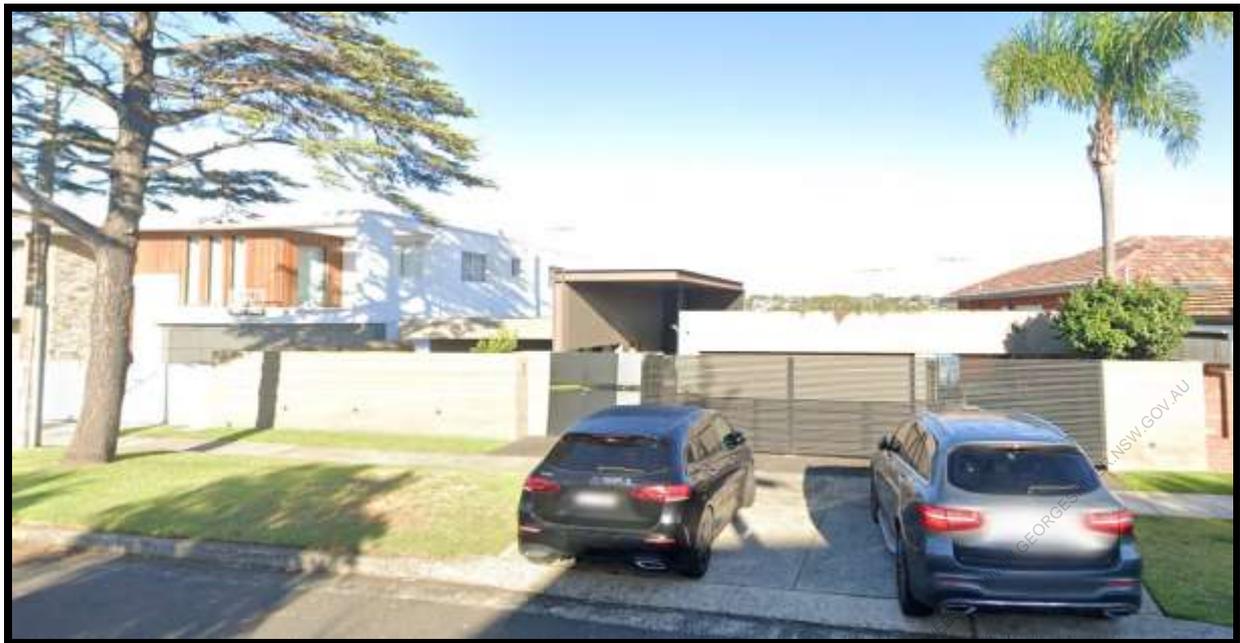


Photo 1: Front of the subject site from Vista Street (Source: Google Maps – Street View)

- 6. Existing on site is a two-storey, split-level detached dwelling house with an in-ground swimming pool and outbuilding within the rear yard. The property includes a private jetty and slip rails to Kogarah Bay.
- 7. The site includes a double driveway off Vista Street which provides direct private access to the double garage, which is under the roof form of the home, a large street tree is within the road reserve.



Photo 2: Rear of the subject site where the staircase is to be constructed.



Photo 3: Rear of the subject site showing the existing swimming pool to be retained.

8. The site is located within a predominantly residential streetscape which exhibits a broad range of architectural styles.

ZONING AND PERMISSIBILITY

9. The subject site is zoned R2 – Low-Density Residential in accordance with the provisions of the Georges River Local Environmental Plan 2021.
10. The works proposed in this application are defined as alterations and additions to a dwelling house which are permissible in the zone with consent and satisfy the objectives of this zone.

SUBMISSIONS

11. The application was advertised and notified with a sign placed onsite for a 14-day period in accordance with the provisions of Section 2.4 of the Georges River Development Control Plan 2021 and the Georges River Community Engagement Strategy 2023-2033. During the notification period, no submissions were received.

CONCLUSION

12. The proposed modification is considered to be substantially the same and of the same essence as the parent consent.

13. The proposed development complies with the provisions of applicable State Environmental Planning Policies, the Georges River Local Environmental Plan 2021 and the Georges River Development Control Plan 2021 and is therefore considered to be a reasonable and acceptable planning and design outcome without adverse impact on the historic significance and integrity of the property.
14. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans, the proposed modification application (MOD2023/0170) is recommended for approval subject to the conditions referenced at the end of this report.

REPORT IN FULL

PROPOSAL

15. The proposal involves the following works:
 - Deletion of the proposed in-ground swimming pool and retention of the existing in-ground swimming pool and associated paving surrounding the existing pool.
 - Amendments to the configuration of the external stairs descending from the dwelling house to the swimming pool area within the rear yard.
 - Deletion of the rainwater tanks, the amended BASIX Certificate details they are no longer required.
 - Addition of a new grassed being 24.50sqm in area on the western side of the existing pool.
16. To facilitate the proposed works, Conditions 1, 8 and 9 of the parent consent are to be modified, see the proposed conditions at the end of this report.

THE SITE AND LOCALITY

17. The subject site comprises of three individual lots A/DP333109, 404/DP752056, 471/DP752056 and contains a detached dwelling house that gains vehicular access from Vista Street to the east, residential dwellings north and south and Kogarah Bay to the west.
18. Existing on site is a two-storey, split-level detached dwelling house with an in-ground swimming pool and outbuilding within the rear yard. The property includes a private jetty and slip rails to Kogarah Bay.
19. The site includes a double driveway off Vista Street which provides direct private access to the double garage, which is under the roof form of the home, there is a large street tree within the road reserve.
20. The front setback of the allotment comprises a fenced landscaped area, hardstand for the purposes of vehicular parking and ancillary development including a pond and brick landscaping walls.
21. The site is located within a residential precinct and all immediately adjoining properties are detached dwelling houses of varying heights, architectural styles and forms.

BACKGROUND

22. The following contemporary consents are relevant to the subject site:

DA/MOD Number	Proposed Works	Determination	Date	Relevance
DA2021/0081	Alterations and additions a dwelling house and pool – modifications involve retaining the existing pool and paving and stair reconfiguration	Approved	24 September 2021	Parent Consent

LPP021-24

PLANNING ASSESSMENT

Section 4.55 Evaluation

Assessment – Section 4.55 Considerations

23. The modification application has been submitted in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act which relates to amendments of a more substantial nature. The following provisions of Section 4.55(2) of the Act need to be considered in the assessment of the application.

Section 4.55(2) Other modifications

24. 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 is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
 - it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
 - it has notified the application in accordance with—
 - the regulations, if the regulations so require, or
 - a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
 - it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: The proposed changes to the development consent are considered to be “substantially the same” for the following reasons:

Quantitative Considerations:

The proposal will not significantly alter the approved numerical aspects of the development, other than the landscaped area. The proposed modifications will result in a decrease of 19.1sqm of the landscaped area from the parent consent as the existing swimming pool is proposed to be retained by this modification and not demolished and replaced with a smaller swimming pool and landscaping as per the Parent Consent. Despite the reduction of landscaped area from the Parent Consent the modification seeks to increase landscaping from what is existing by the creation of a 24.5sqm landscaped area west of the swimming pool resulting in a total landscaped area of 128sqm. Despite the decrease in landscaped area, the modifications are contained within the approved footprint of the rear yard and will not significantly alter the use of the rear yard or the nature of ancillary developments.

Similarly, the modifications to the external stairway configuration to address the sewer easement encroachment and design change requirements of the parent consent result in minor numeric changes which were envisioned by the conditions of the Parent Consent and result in no additional impacts to adjoining properties.

Conclusion: The proposal is considered to be quantitatively substantially the same as the parent consent.

Qualitative Considerations:

The proposal will not significantly alter the envisioned use of the rear yard of the subject site, this remains unchanged by the proposal. The modification application does not seek to alter the approved built form of the cabana which is to remain as approved. The approved swimming pool is to be deleted and the existing swimming pool retained as such, there is no change to the use of the existing pool. The approved staircase is proposed to be amended slightly to address the conditions of the Parent Consent, the modification of the staircase will not result in environmental impacts. While the landscaped area is being reduced from what was approved under the Parent Consent, the modification application will still result in increased landscaped area from that which is existing.

Summary

Given the above, the proposal is substantially the same as the approved building both qualitatively and quantitatively. It is therefore considered that the proposed development is appropriately categorised as a S4.55(2) application. The proposal therefore satisfies the provisions of Section 4.55(2), (a).

The proposal was not required to be notified to external bodies and the proposal therefore satisfies the provisions of Section 4.55(2), (b).

The proposal was not required to be notified and therefore, the proposal satisfies the provisions of Section 4.55(2), (c) & (d).

Section 4.55 subclause (3) states.

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

Comment: A detailed Assessment against the provisions of S4.15(1) of the EP & A Act is provided below.

Section 4.55 subclause (4) states:

The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

Comment: The proposed development satisfies this provision as the modifications are not granting consent to a DA but rather modifying DA2021/0081

Section 4.15 Evaluation

25. The following is an assessment of the application with regard to Section 4.15(1) Evaluation of the Environmental Planning and Assessment Act 1979.

(1) Matters for consideration – general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) The provision of:

(i) Any environmental planning instrument,

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

ENVIRONMENTAL PLANNING INSTRUMENTS

Environmental Planning and Assessment Act, 1979 (EP&A Act)

27. The proposal is considered to be consistent with the aims and objectives of the Act.

Environmental Planning and Assessment Regulation 2000

28. The proposal is considered to have met the statutory requirements under Schedule 1 of the Regulations.

Water Management Act 2000

29. The proposed development is within 40m of a mapped water course (Being the Georges River (4th order stream as per the Strahler system)) and therefore consideration of the Water Management Act 2000 is required.

30. The proposed development is exempt from requiring a controlled activity approval as per Schedule 2 Exemptions, Part 2 Controlled Activities Exemptions of the Water Management (General) Regulation 2018 as the proposal is deemed consistent with Clause 29 Activities with respect to dwellings of the before mentioned schedule and therefore the proposal is not required to be referred to NRAR (NSW Department of Natural Resources Access Regulator).

STATE ENVIRONMENTAL PLANNING POLICIES

State Environmental Planning Policies (SEPPs)

31. 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 (BASIX) 2004	Yes

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 2

32. The subject site is mapped as a Coastal Environment area and a Coastal Use area. These have the following management objectives under the SEPP:
- to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,*
 - to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,*
 - to maintain and improve water quality and estuary health,*
 - to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,*
 - to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,*
 - to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.*
33. The proposed development is consistent with the management objectives of the SEPP. The development will not adversely affect any public areas, native flora and fauna, the connectivity to the Georges River foreshore, geological features and hydrology/water quality. The proposal is considered acceptable and is a reasonable planning response and outcome and will have to negatively impact upon the visual quality and amenity when viewed from the waterway.

State Environmental Planning Policy (Resilience and Hazards) 2021

34. Chapter 2 and Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 are relevant to the proposal.
35. Chapter 2 aims to: *“Promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016 including the management objectives for each coastal management area”.*
36. The subject site is mapped as a Coastal Environment area and a Coastal Use area. These have the following management objectives under the State Environmental Planning Policy:
- to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,*
 - to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,*
 - to maintain and improve water quality and estuary health,*
 - to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,*
 - to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,*
 - to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.*

- 37. The following is an assessment of the matters for consideration listed under the State Environmental Planning Policy as applicable to the Coastal Environment Area and Coastal Use Area.
- 38. The proposed development is consistent with the management objectives of the SEPP. The development will not adversely affect any public areas, native flora and fauna, the connectivity to the Georges River foreshore, geological features and hydrology/water quality. The proposed modification seeks to retain the existing swimming pool and as such, earthworks are minimised. The proposal seeks to increase the landscaped area of the site by 24.5sqm and in doing so results in a positive outcome for the natural environment.
- 39. The proposed modification seeks to retain existing structures which were proposed to be demolished and replaced under the parent consent, as such, there is no change to the bulk and scale of the existing site the proposed staircase is appropriate and in keeping with the conditions of the parent consent. It is considered that the modification results in a reasonable planning response and outcome and will not negatively impact the visual quality and amenity when viewed from the waterway as the bulk and scale remain as existing and the proposed stairs are proposed as approved.
- 40. The subject site has not been identified as being located in a coastal vulnerability area and a coastal environmental area as per NSW State Environmental Planning Policy (Coastal Management) 2018.
- 41. The following tables address the specific controls of Chapter 2:

Chapter 2 – Coastal Management		
Clause 11 Development on land within the coastal use area		
Control	Proposal	Compliance
(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:	Subclause (1) (a)	Yes
(a) has considered whether the proposed development is likely to cause an adverse impact on the following:		
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,		
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,		
	(i) There is no public access along the foreshore in this location.	
	(ii) The proposal seeks to retain structures as existing and therefore there is no increase in overshadowing, wind funneling and the loss of views.	

<p>(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,</p>	<p>(iii) The retention of the existing swimming pool, reconfiguration of the approved staircase and creation of a new landscaped area will not impact on visual and scenic amenity.</p>	
<p>(iv) Aboriginal cultural heritage, practices and places,</p>	<p>(iv) The site is not a known site identified as containing aboriginal cultural heritage value.</p>	
<p>(v) cultural and built environment heritage, and</p>	<p>(v) The site is not a heritage item, nor is the development site in the vicinity of a heritage item.</p>	
<p>(b) is satisfied that:</p>	<p>Subclause (1) (b)</p>	
<p>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</p>	<p>(i) The retention of the existing swimming pool, reconfiguration of the approved staircase and creation of a new landscaped area will not result in adverse impact.</p>	
<p>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p>	<p>(ii) Complies – adverse impact is reasonably avoided.</p>	
<p>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</p>	<p>(iii) Complies – no impacts to be managed as the approved works are not going ahead, the existing is being retained with the exception of the access stairs and additional landscaped area.</p>	
<p>(iv) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p>	<p>(iv) The reconfigured staircase is of an appropriate bulk and scale and consistent with the conditions of the parent consent.</p>	
<p>Chapter 2 – Coastal Management</p>		
<p>Clause 13 Development on land within the coastal environment area</p>		
<p>Control</p>	<p>Proposal</p>	<p>Compliance</p>
		<p>Yes</p>

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<p>(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:</p>	<p>Control 1</p> <p>(a) – No impact on the biophysical, hydrological (surface and groundwater) and ecological environment is envisioned, the retention of the swimming pool results in less soil disturbance than what would of resulted from the works approved under the parent consent.</p> <p>(b) The retention of the existing swimming pool, reconfiguration of the approved staircase and creation of new landscaped area will not impact coastal environmental values and natural coastal processes.</p> <p>(c) N/A</p> <p>(d) The retention of the existing swimming pool, reconfiguration of the approved staircase and creation of a new landscaped area will not impact are located within the existing developed area of the site and a suitable condition requiring a construction management plan has been applied in the condition set to ensure that waste generated during</p>	
<p>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</p>		
<p>(b) coastal environmental values and natural coastal processes,</p>		
<p>(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</p>		
<p>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</p>		

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	demolition and construction are suitably managed to avoid the likelihood of contaminants reaching marine life.	
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	(e) The retention of the existing swimming pool, reconfiguration of the approved staircase and creation of a new landscaped area will are not within immediate proximity to public areas nor restrict impact to public areas.	
(f) Aboriginal cultural heritage, practices and places,	(f) The site is not known to be a place of aboriginal cultural heritage.	
(g) the use of the surf zone.	(g) N/A – Works are not within a surf zone.	
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:	(2)	
(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	(a) – Complies, the development is sited appropriately to avoid impacts on the attributes described in subclause (1)	
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	(b) Complies, any impact is reasonably avoided.	
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact	(c) Complies, any impact is reasonably avoided.	

42. Chapter 4 Remediation of Land of SEPP (Resilience and Hazards) 2021 aims to promote and identify contaminated land/s and whether remediation is required in order to reduce the risk of harm to human health or any aspect to the environment. It aims to ensure land is suitable for its intended use.

43. Clause 4.6 of the policy requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated. A review of the above indicates that the site has historically been used for residential purposes and there is no evidence in Council records that any use under Table 1 of the contaminated land planning guidelines has occurred on site. Given this, there is no evidence that the site is contaminated, the site is considered suitable for the proposed development.

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

44. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.
45. A BASIX Certificate accompanies the proposal, which satisfies the provisions of this SEPP. A revised BASIX has been supplied to reflex the current development sought being the reduction on the works being undertaken and the retention of some of the works on site. As such, some criterion required in the initial BASIX certificate is no longer relevant given the reduction in works and the retention of some of the works on site.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

46. The relevant parts of the above Policy that apply to this application are Chapter 2 – Vegetation in non-rural areas, and Chapter 6 – Water Catchments.
47. Chapter 2 - Vegetation in Non-Rural Areas
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.
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).*

No trees have been nominated for removal or pruning as part of the modification, as such no assessment against this chapter is required.

48. Chapter 6 – Water Catchments

The primary relevant aims and objectives of this Chapter are:

- *whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,*
- *whether the development will have an adverse impact on water flow in a natural waterbody,*
- *whether the development will increase the amount of stormwater run-off from a site,*
- *whether the development will incorporate on-site stormwater retention, infiltration or reuse,*
- *the impact of the development on the level and quality of the water table,*
- *the cumulative environmental impact of the development on the regulated catchment,*
- *whether the development makes adequate provision to protect the quality and quantity of ground water.*

There are no changes to the stormwater management system and therefore the proposal is considered satisfactory and be of neutral effect on the quality of water entering the waterway.

Georges River Local Environmental Plan 2021 (GRLEP)

- 49. The subject site is zoned R2 – Low Density Residential in accordance with the provisions of the GRLEP 2021. The proposed alterations and additions to the site are ancillary to the use being a dwelling house and is permissible with development consent satisfying the objectives of the zone.

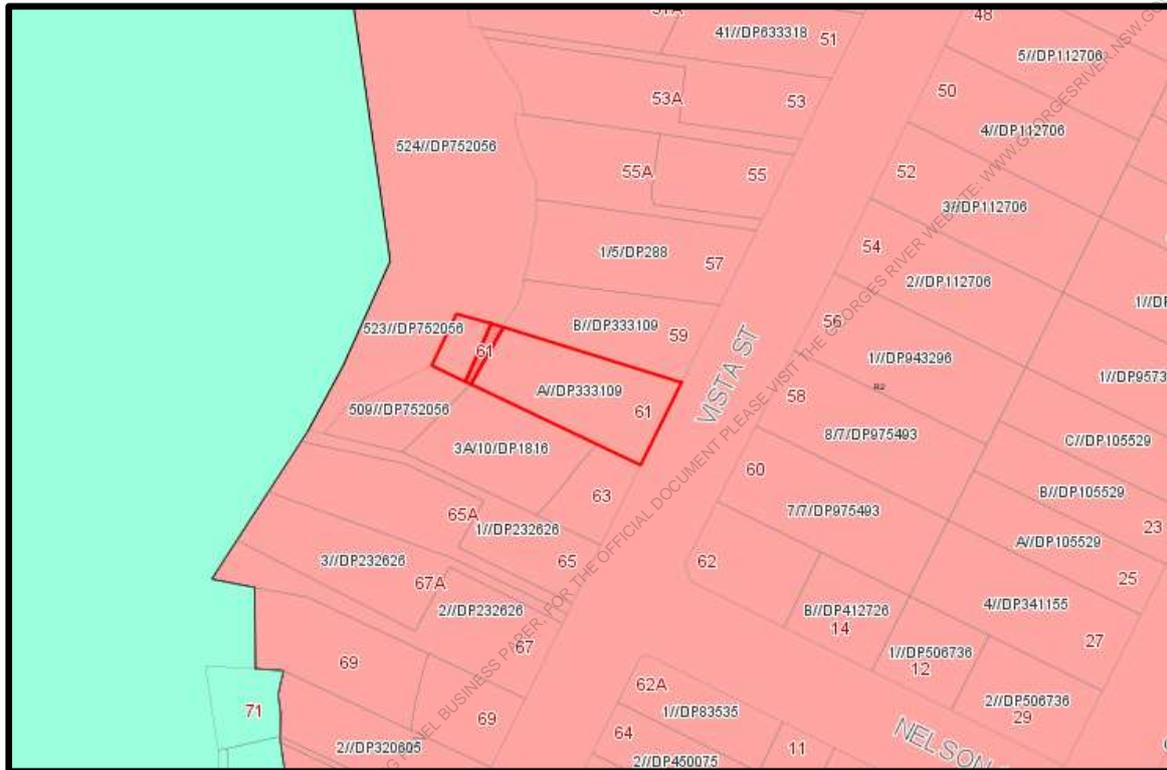


Figure 1: The subject site which is in the R2 – Low Density Residential Zone (Source: GRLEP 2021 zoning map)

- 50. Table 1 below summarises the proposals compliance against the relevant GRLEP 2021 provisions and controls.

Table 1: GRLEP 2021 Compliance Table

Clause	Standard	Proposed	Complies
2.2 - Zone	R2 Low Density Residential	The proposal comprises of modifications to the extent of work approved relating to alterations and additions to a dwelling house which is permissible within the zone.	Yes
2.3 - Objectives	Objectives of the Zone	Consistent with the zone objectives.	Yes
2.7 - Demolition	The demolition of a building or work may be carried out only with development consent.	Demolition of the existing hardstand is proposed to accommodate the additional landscaped area and requires consent.	Yes

<p>4.3 – Height of Buildings</p>	<p>9m as identified on Height of Buildings Map</p>	<p>The modification does not result in additional building structures and the existing building structures are retained, the approved works associated with the infill of the existing swimming pool and the installation of a new swimming pool is not proceeding. The existing pool will remain in place. As such there is no effect to the overall height any building.</p>	<p>Yes</p>
<p>4.4 – Floor Space Ratio</p>	<p>0.55:1 as identified on Floor Space Ratio Map</p>	<p>The modification seeks the deletion of the approved new in-ground pool and retention of the existing in-ground swimming pool, amendment of the staircase design as required as a condition of the parent consent. The deletion of the rainwater tank is as a direct result of the approved new pool not proceeding. The additional landscaping works is achieved by demolishing the existing hardstand west of the swimming pool and replacement with soft landscaping.</p> <p>This will not result in additional FSR.</p>	<p>Yes</p>
<p>4.4A - Exceptions to floor space ratio—certain residential accommodation</p>	<p>Clause 4.4A (Exceptions to floor space in the R2 Zone) includes a ratio depending on the size of the site and if the works relate to residential development in the R2 zone.</p>	<p>The modification seeks the deletion of the approved new in-ground pool and retention of the existing in-ground swimming pool, amendment of the staircase design as required as a condition of the parent consent. The deletion of the rainwater tank is as a direct result of the approved new pool not proceeding. The additional landscaping works is achieved by demolishing the existing hardstand west of the swimming pool and replacement with soft landscaping.</p> <p>This will not result in additional FSR.</p>	<p>Yes</p>

4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	FSR has been calculated in accordance with this clause.	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 works do not result in a breach of a development standard as a result no clause 4.6 is required.	N/A
5.10 – Heritage Conservation	The objectives of this clause are; (a) to conserve the environmental heritage of the Georges River local government area, (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, (c) to conserve archaeological sites, (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.	The subject site is not a listed local item of heritage pursuant to Schedule 5 of the GRLEP.	Yes
6.1 - Acid Sulphate Soils (ASS)	The objective of this clause is to ensure that “ <i>development does not disturb, expose or drain acid sulfate soils and cause environmental damage</i> ”	The site is mapped as containing Class 1 Acid Sulphate Soils. The modification seeks the deletion the proposed new in-ground pool and retaining the existing in-ground swimming pool as such there will be reduced disturbance of acid sulfate soils from the parent consent as fill and excavation is now not proceeding. The creation of the soft landscaped area will not	Yes

		<p>lower the water table and will only require surface level earthworks; therefore no disturbance of acid sulfate soils is envisaged.</p> <p>The proposal satisfies the provisions of Clause 6.1 and fulfill the objective of the clause.</p>	
6.4 - Foreshore area and coastal hazards and risk	<p>The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> (a) to protect people and property from unacceptable risk from coastal hazards associated with climate change, (b) to ensure that development in the foreshore area will not foreshore impact on natural processes or affect the amenity of the area, (c) to facilitate opportunities for public access to and along the foreshore. 	<p>The proposal is located on a site identified in the Coastal Hazard and Risk Map.</p> <p>The proposal is consistent with the objectives of this clause as the modification seeks the deletion of the approved in-ground pool and retention the existing in-ground swimming pool, amendment of the design of the staircase proposed under the parent consent to be consistent with the design change conditions imposed. The deletion of the rainwater tank is directly related to the new swimming pool not proceeding. The proposed new landscaping works are achieved by demolishing the existing hardstand area west of the swimming pool and replacement with soft landscaping. As such, the modification of the parent consent will not exacerbate risks, nor will it impact on natural processes or public access to the foreshore.</p>	Yes
6.6 Foreshore Scenic Protection Area	<p>The objectives of this clause are—</p> <ul style="list-style-type: none"> (a) to protect, maintain and improve the scenic amenity of the Georges River foreshore, (b) to protect, maintain and improve significant views of and from the Georges River, (c) to protect, maintain and improve the 	<p>The proposal is consistent with the objectives of this clause as the modification seeks the deletion of the approved in-ground pool and retention the existing in-ground swimming pool, amendment of the design of the staircase proposed under the parent consent to be consistent with the design change conditions imposed.</p>	Yes

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	<p>diversity and condition of native vegetation and habitats, (d) to reinforce and improve the dominance of landscape over built form, hard surfaces and cut and fill, (e) to encourage the recovery of threatened species and their communities, populations and habitats, (f) to enhance existing environmental, cultural and built character values of the foreshore.</p>	<p>The deletion of the rainwater tank is directly related to the new swimming pool not proceeding. The proposed new landscaping works are achieved by demolishing the existing hardstand area west of the swimming pool and replacement with soft landscaping. The modification will not result in a development outcome which will unreasonably impact the amenity of the Foreshore Scenic Protection Area.</p>	
<p>6.9 Essential Services</p>	<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 been made to make them available when required—</p> <p>(a) the supply of water, (b) the supply of electricity, (c) the supply of telecommunications facilities, (d) the disposal and management of sewage, (e) stormwater drainage or on-site conservation, (f) suitable vehicular access.</p>	<p>The subject site is serviced by water, sewer and telecommunication services as well as lawful discharge of water and vehicular access.</p>	
<p>6.10 Design excellence</p>	<p>The objective of this clause is to deliver the highest standard of sustainable architecture and urban design.</p>	<p>The retention of existing structures on site and the addition of a landscaped area are not works as described in 3 (a) or 3 (b) which trigger consideration of this clause.</p>	<p>Yes</p>

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	<p>This clause applies to development on land referred to in subclause (3) involving—</p> <p>(a) the erection of a new building, or</p> <p>(b) additions or external alterations to an existing building that, in the opinion of the consent authority, are significant.</p>		
<p>6.12 Landscaped areas in certain residential and conservation zones</p>	<p>(a) to ensure adequate opportunities exist for the retention or provision of vegetation that contributes to biodiversity and enhances the tree canopy of the Georges River local government area,</p> <p>(b) to minimise urban run-off by maximising permeable areas on the sites of development,</p> <p>(c) to ensure that the visual impact of development is minimised by sufficient and appropriately located landscaping that complements the scale of buildings,</p> <p>(d) to ensure that the use of surfaces that absorb and retain heat are minimised.</p> <p>Development consent must not be granted to development on land to which this clause applies unless a percentage of the site area consists of landscaped areas that is at least for a dwelling house located on land within the Foreshore Scenic Protection</p>	<p>The modification proposes new landscaping works by demolishing the existing hardstand area west of the swimming pool and its replacement with soft landscaping. This results in a landscaped area of 128sqm which is an increase on the existing landscaped area of the site by 24.50sqm by the demolition of the existing hardstand area west of the existing swimming pool and replacement with soft landscaping.</p> <p>The proposal however does not comply with the numerical control for landscaping.</p> <p>As the subject site is within the Foreshore Scenic Protection Area a landscaped area of 25% is required this is equivalent to 226.675sqm.</p> <p>A landscaped area of 14.1% or 128sqm is proposed, which can be supported as the proposal is an increase in landscaping from what is existing on the site.</p>	<p>No, Justified.</p>

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	Area—25% of the site area		
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Floor Area

51. Clause 4.4 of the GRLEP 2021 refers to the Floor Space Ratio controls for particular sites in the LGA. Although the FSR map shows the maximum FSR for the site being 0.55:1, Clause 4.4A relates to residential development in the R2 zone and requires this development to be governed by a ratio that is applied to the site depending on its area. There is no increase in Floor Space Ratio proposed by this modification application.

Acid Sulphate Soils

52. The subject site is located within a Class 1, Class 2 and Class 5 ASS mapped area (refer to Figure 2 below)

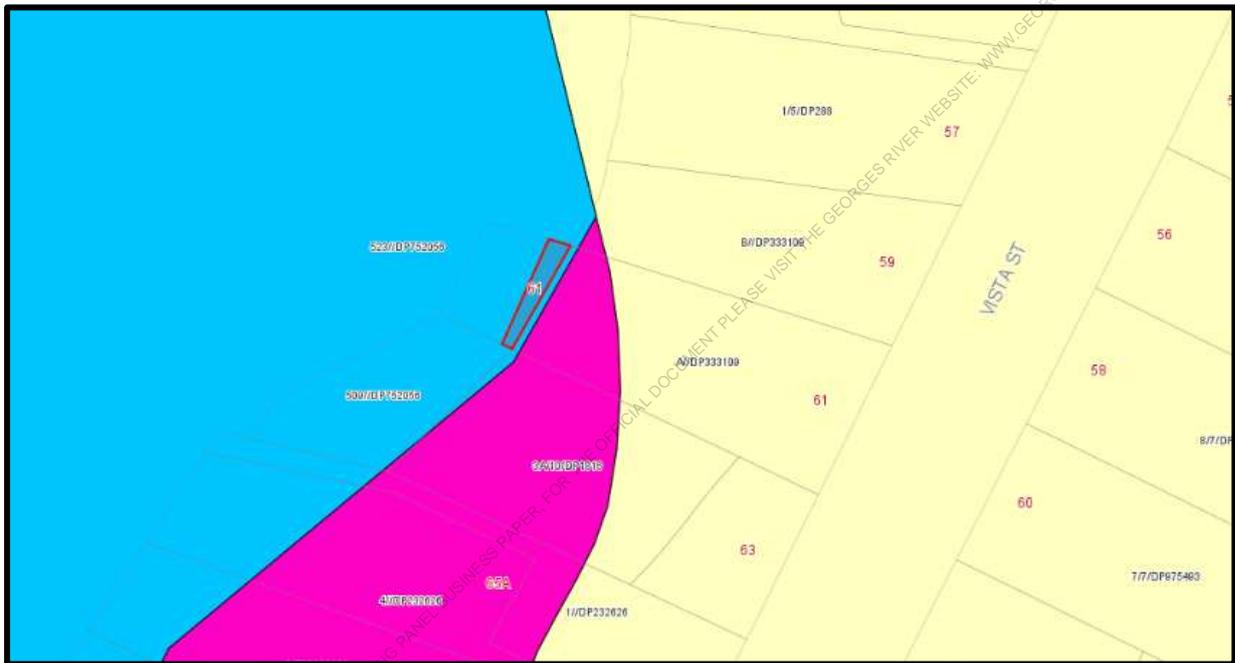


Figure 2: The subject site and its mapped area showing it is affected by ASS (Class 2)

53. Clause 6.1 of the GRLEP requires the following considerations to be taken into account in the assessment of the application:
- (3) *Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.*
 - (4) *Despite subclause (2), development consent is not required under this clause for the carrying out of works if—*
 - (a) *a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*
 - (b) *the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

54. The modification seeks the deletion the approved new in-ground pool and retention of the existing in-ground swimming pool. As such there will be reduced potential for the disturbance of acid sulfate soils from the parent consent. The creation of the soft landscaped area will not lower the water table and will only require surface level earthworks. Therefore, no disturbance of acid sulfate soils is envisaged. The proposal satisfies the provisions of Clause 6.1 and the objectives of the clause.

DEVELOPMENT CONTROL PLANS

55. The proposed development is subject to the provisions of the Georges River Development Control Plan 2021 (GRDCP). Table 2 below summarises the key planning controls which need to be satisfied and considered in the assessment of the application.

Table 2: Compliance with GRDCP 2021

Part 5 – Residential Locality Statements			
Applicable Controls	Standards	Proposal	Compliance
Sans Souci and Ramsgate	Retain and enhance the existing low density suburban residential character through articulated contemporary developments.	The proposal is consistent with the objectives of this clause as the modification seeks the deletion of the approved in-ground pool and retention the existing in-ground swimming pool, amendment of the design of the staircase proposed under the parent consent to be consistent with the design change conditions imposed. The deletion of the rainwater tank is directly related to the new swimming pool not proceeding. The proposed new landscaping works are achieved by demolishing the existing hardstand area west of the swimming pool and replacement with soft landscaping, this is consistent with the future desired character of the precinct for the following reasons: The described works do not change the low-density character of the existing dwelling house.	Yes

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	<p>Encourage well-designed high density residential development in designated areas along Rocky Point Road.</p> <p>Encourage consistent setbacks of buildings from the street and the provision of landscaping within the front setback, alongside low fencing to enhance visual permeability.</p> <p>Encourage the retention of trees and sharing of water views wherever possible, including screening via vegetation rather than solid walls.</p> <p>Protect public vistas over Georges River towards Kogarah Bay from Vista Street.</p>	<p>The described works do not change setbacks on the subject site, both existing and approved. It is noted that the staircase is being reoriented.</p> <p>The above-described changes to the parent consent result in no view loss from adjoining development or public spaces.</p> <p>The retention of the existing swimming pool, reconfiguration of the approved staircase and the creation of the new landscaped area will not impact on public vistas.</p>	
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Part 6.1 – Low Density Residential Controls			
Applicable Controls	Standards	Proposal	Compliance
<p>6.1.2.1 Streetscape Character and Built Form</p>	<p>1. New buildings and additions are to consider the Desired Future Character statement in Part 5 of this DCP.</p> <p>2. New buildings and additions are to be designed with an articulated front façade.</p> <p>3. Developments on sites with two (2) or more frontages are to address all frontages.</p> <p>4. Dwelling houses are to have windows presenting to the street from a habitable room to encourage passive surveillance.</p>	<p>There are no new buildings or additions proposed in this modification.</p> <p>There are no new buildings or additions proposed in this modification.</p> <p>Not applicable, the site only has one frontage.</p> <p>No change is proposed to the existing window openings which present to the street and are satisfactory regarding</p>	<p>Yes</p>

	<p>5. Development must be sensitively designed so as to minimise adverse impacts on the amenity and view corridors of neighbouring public and private property while maintaining reasonable amenity for the proposed development and is to balance this requirement with the amenity afforded to the new development.</p>	<p>opportunities for passive surveillance.</p> <p>There are no new building works proposed in this modification and therefore there is no impact on the streetscape and the mass and form of the existing dwelling.</p>	
<p>6.1.2.2 Building Scale and Height</p>	<p>1. New buildings are to consider and respond to the predominant and desired future scale of buildings within the neighbourhood and consider the topography and form of the site.</p> <p>2. On sites with a gradient or cross fall greater than 1:10, dwellings are to adopt a split-level approach to minimise excavation and fill. The overall design of the dwelling should respond to the topography of the site.</p> <p>3. A maximum of two (2) storeys plus basement is permissible at any point above ground level (existing). Basements are to protrude no more than 1m above existing ground level.</p> <p>4. Where topography conditions require a basement, the area of the basement should not exceed the area required to meet the car parking requirements for the development, access</p>	<p>There are no new buildings proposed under this modification.</p> <p>Not Applicable the site does not have a cross fall of 1:10 or greater.</p> <p>The existing dwelling is two storeys and currently below the 9m height limit. No changes to the built form of the dwelling house are proposed under this modification.</p> <p>Not applicable, no basement is proposed.</p>	<p>Yes</p>

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	<p>ramp to the parking and a maximum 10m² for storage and 20m² for plant rooms. Additional basement area to that required to satisfy these requirements may be included as floor space area when calculating floor space ratio.</p> <p>5. Where the entry to the basement carpark is visible from the street, the entry should be recessed a minimum of 1m (from the edge of the external wall or balcony) from the levels above and the external walls of the garage differentiated from the walls above through articulation and external materials.</p>	<p>Not applicable, no basement is proposed.</p>	
<p>6.1.2.3 Setbacks - Front Setbacks</p>	<p>1. The minimum setback from the primary street boundary is:</p> <ul style="list-style-type: none"> i) 4.5m to the main building wall / facade; ii) 5.5m to the front facade of a garage or carport; or iii) Where the prevailing street setback is greater than the minimum, the average setback of dwellings on adjoining lots is to be applied. 	<p>No change to the front setback is proposed.</p>	<p>Yes</p>
<p>6.1.2.3 Setbacks – Side and Rear</p>	<p>1. Buildings are to have a minimum rear setback of 15% of the average site length; or 6m, whichever is the greater (excluding detached secondary dwellings – see Point 12 in Section 6.1.2.12- Secondary Dwellings of this DCP).</p> <p>2. The minimum side setbacks for ground and first floor are:</p>	<p>No changes to the existing rear setback are proposed.</p>	<p>No, Justified</p>

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	<p>i) 900mm for lots up to 12.5m in width measured at the front building line for the length of the development.</p> <p>ii) 1.2m for lots greater than 12.5m in width measured at the front building line for the length of the development.</p> <p>iii) 1.5m for all lots within the Foreshore Scenic Protection Area measured at the front building line for the length of the development.</p>	<p>The stairs are to be setback 1.2m from the southern side boundary.</p> <p>The variation is consistent with the existing dwelling house and as approved by the parent consent, the variation to the control and therefore can be supported.</p>	
6.1.2.4 Private Open Space	<p>1. Private open space is to be located at the rear of the property and/or behind the building line and is to have a minimum area of 60m² with minimum dimensions of 6m and located on the same level (not terraced or over rock outcrops).</p> <p>2. Private open space is to be provided for all dwellings, (with the exception of secondary dwellings, which are able to share the private open space of the principal dwelling).</p> <p>3. Private open space is to be located so as to maximise solar access.</p> <p>4. Private open space is to be designed to minimise adverse impacts upon the privacy of the occupants of adjacent buildings.</p>	<p>The existing private open space within the rear yard remains unchanged by this application.</p> <p>The existing private open space within the rear yard remains unchanged by this application.</p> <p>The existing private open space within the rear yard remains unchanged by this application.</p> <p>The existing private open space within the rear yard remains unchanged by this application.</p>	Not Applicable.
6.1.2.5 - Landscaping	<p>1. Landscaped area (has the same meaning as GRLEP 2021) is to be provided in accordance with the table contained within Clause 6.12</p>	<p>See the assessment under the LEP table above - Clause 6.12.</p>	Yes

	<p>Landscaped areas in certain residential and environmental protection zones of GRLEP 2021.</p> <p>2. Provide a landscape setting within the primary and secondary street frontages, where hard paved areas are minimised. At a maximum, impervious areas, including hard paving, gravel, concrete or other material that does not permit landscaping, are to occupy no more than 40% (equivalent to Click or tap here to enter text.m² of the street setback area.</p> <p>3. The front setback area is to have an area where at least one (1) tree capable of achieving a minimum mature height of 10m with a spreading canopy can be accommodated. A schedule of appropriate species to consider is provided in Council's Tree Management Policy.</p>	<p>Landscaping within the primary frontage remains unchanged by this modification.</p> <p>Landscaping within the primary frontage remains unchanged by this modification.</p>	
<p>6.1.2.6 – Excavation Cut and Fill</p>	<p>1. Any excavation must not extend beyond the building footprint, including for any basement car park.</p> <p>2. The depth of cut or fill must not exceed 1.0m from existing ground level, except where the excavation is for a basement car park.</p>	<p>Excavation proposed by this MOD is to facilitate the additional soft landscaped area in the rear yard. The excavation is minor in nature and is without perceived impacts.</p> <p>Complies, no excavation greater than 1m is proposed by the modification.</p>	

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	<p>3. Developments should avoid unnecessary earthworks by designing and siting buildings that respond to the natural slope of the land. The building footprint must be designed to minimise cut and fill by allowing the building mass to step in accordance with the slope of the land.</p>	<p>Complies, retention of the existing swimming pool reduces earthworks from the parent consent.</p>	
<p>6.1.2.7 – Vehicular Access, Parking and Circulation</p>	<p>1. Car parking is to be provided in accordance with the requirements in Part 3 of this DCP.</p> <p>2. A dwelling is to provide one (1) garage and one (1) tandem driveway parking space forward of the garage (unless otherwise accommodated within the building envelope).</p> <p>3. Driveways, garages and basements should be accessed from a secondary street or rear lane where this is available.</p> <p>4. Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane.</p> <p>5. Driveway crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.</p> <p>6. The maximum driveway width between</p>	<p>Complies as existing, the subject site has 4 spaces which meets the requirements of this control, the car parking remains unchanged by this modification.</p> <p>N/A- Existing garaging and vehicular parking is not proposed to be altered by this development.</p> <p>N/A- Existing garaging and vehicular parking is not proposed to be altered by this development.</p> <p>N/A- Existing garaging and vehicular parking is not proposed to be altered by this development.</p> <p>N/A- Existing garaging and vehicular parking is not proposed to be altered by this development.</p> <p>N/A- Existing garaging and vehicular parking is</p>	<p>Yes.</p>

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	<p>the street boundary and the primary building setback alignment of the garage is 4.0m.</p> <p>7. Basements are permitted where the LEP height development standard is not exceeded, and it is demonstrated that there will be no adverse environmental impacts (e.g. affectation of watercourses and geological structure). (i) Basements on land where the average grade is less than 12.5% are permitted only where they are not considered a storey (see definition in the LEP) and the overall development presents as two (2) storeys to the street.</p> <p>8. Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1 (latest edition).</p> <p>9. The maximum width of a garage opening is 6m.</p>	<p>not proposed to be altered by this development.</p> <p>N/A- Existing garaging and vehicular parking is not proposed to be altered by this development.</p> <p>N/A- Existing garaging and vehicular parking is not proposed to be altered by this development.</p> <p>N/A- Existing garaging and vehicular parking is not proposed by this development.</p>	
<p>6.1.2.8 – Visual Privacy</p>	<p>1. Windows from active rooms are to be offset with windows in adjacent dwellings, or appropriately treated so as to avoid direct overlooking onto neighbouring windows.</p> <p>2. For active rooms or balconies on an upper level, the design should incorporate placement of</p>	<p>The proposed modifications to the parent consent will result in no perceived privacy impacts.</p> <p>No works on upper levels are proposed.</p>	<p>Complies.</p>

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	<p>room windows or screening devices to only allow oblique views to adjoining properties.</p> <p>3. Upper level balconies should not project more than 1500mm beyond the main rear wall alignment so as to minimise adverse visual privacy impacts to adjoining properties.</p> <p>4. Windows for primary living rooms must be designed so that they reasonably maintain the privacy of adjoining main living rooms and private open space areas.</p> <p>5. Development applications are to be accompanied by a survey plan or site analysis plan (to AHD) of the proposed dwelling showing the location of adjoining property windows, floors levels, window sill levels and ridge and gutter line levels.</p>	<p>No balcony works are proposed.</p> <p>No windows for primary living rooms are proposed to be modified.</p> <p>Deemed not required due to the minor scope of works.</p>	
<p>6.1.2.9 – Noise</p>	<p>1. Noise generators such as plant and machinery including air conditioning units and pool pumps are located away from windows or other openings in habitable rooms; they are to be screened to reduce noise or acoustically treated.</p>	<p>No unreasonable noise is likely to be generated from the modification works.</p>	<p>Not Applicable.</p>
<p>6.1.2.10 – Solar Access</p>	<p>1. New buildings and additions are sited and designed to facilitate a minimum of 3 hours direct sunlight between 9am and 3pm on 21 June onto living room windows and at least 50% of the minimum amount of private open space.</p>	<p>The solar access for the dwelling remains unchanged.</p>	

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	<p>2. To facilitate sunlight penetration to adjoining development, building bulk may be required to be articulated to achieve the required sunlight access.</p> <p>3. Direct sunlight to north-facing windows of habitable rooms and 50% of the principal private open space area of adjacent dwellings should not be reduced to less than 3 hours between 9.00am and 3.00pm on 21 June.</p> <p>4. Note: Variations will be considered for developments that comply with all other requirements but are located on sites with an east-west orientation or steeply sloping sites with a southerly orientation away from the street.</p> <p>5. Shadow diagrams are required to show the impact of the proposal on solar access to the principal private open space and living rooms of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams. It may also be necessary to provide elevations or views from sun diagrams to demonstrate appropriate solar access provision to adjoining development.</p>	<p>Not applicable, solar access achieved.</p> <p>The retention of the existing swimming pool, reconfiguration of the approved staircase and creation of new landscaped area will not result in the overshadowing of adjoining properties.</p> <p>Not required.</p> <p>No structures are proposed in this modification application which will result in overshadowing.</p>	
<p>6.1.2.11 - Materials, Colour</p>	<p>1. Large expansive surfaces of predominantly white, light or primary</p>	<p>Complies. The proposed works being landscaping works and changes to the</p>	<p>Yes</p>

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<p>Schemes and Details</p>	<p>colours which would dominate the streetscape or other vistas should not be used.</p> <p>2. New development should incorporate colour schemes that have a hue and tonal relationship with the predominant colour schemes found in the street.</p> <p>3. Matching buildings in a row should be finished in the same colour or have a tonal relationship.</p> <p>4. All materials and finishes utilised should have low reflectivity.</p>	<p>approved staircase will not result in an expanse of white materials.</p> <p>This modification does not seek to change the schedule of colours and materials of the parent consent.</p> <p>Not applicable.</p> <p>Complies.</p>	
<p>6.1.2.13 – Site Facilities</p>	<p>1. All dwellings are to be provided with adequate and practical internal and external storage (garage, garden sheds, etc.).</p> <p>2. Provision for water, sewerage and stormwater drainage for the site shall be nominated on the plans to Council’s satisfaction.</p> <p>3. Each dwelling must provide adequate space for the storage of garbage and recycling bins (a space of at least 3m x 1m per dwelling must be provided) and are not to be located within the front setback.</p> <p>4. Letterboxes are to be located on the frontage where the address has been allocated in accordance with Australia Post requirements.</p>	<p>Internal and external storage remains as existing.</p> <p>Complies, utilities connected and can be extended.</p> <p>Acceptable, as existing.</p> <p>Acceptable, as existing.</p>	
<p>Part 6.5 Foreshore Locality Controls</p>			

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Applicable Controls	Standards	Proposal	Compliance
<p>6.5.1 – Foreshore Scenic Protection Area</p>	<p>1. Development applications are supported by a site analysis and design response demonstrating how the relevant provisions of the LEP and the objectives of this part of the DCP have been addressed.</p> <p>2. Removal of existing native vegetation minimised to that which is reasonably required to site and construct a building.</p> <p>3. The integrity of the existing edge of bushland closest to the Georges River is retained.</p> <p>4. Vegetation along ridgelines and on hillsides is retained and supplemented to provide a backdrop to the waterway.</p> <p>5. New complementary planting and landscaping is encouraged.</p> <p>6. Where on a steep site, vegetation is used to screen the impact of support structures such as piers.</p> <p>7. Landscape areas below the FBL should maximise the use of indigenous plant material and preferably use exclusively indigenous plants. Turf should be limited in this area. Details of planting are to</p>	<p>Complies.</p> <p>Complies, no native vegetation is proposed to be removed.</p> <p>Not applicable, no bushland is within the vicinity of the development.</p> <p>Not applicable, no ridgeline vegetation is within the vicinity of the development.</p> <p>The modification seeks to increase soft landscaping on the subject site and therefore complies.</p> <p>Not applicable, no support structures are proposed that require screening.</p> <p>The existing landscaped area is to be retained to the rear of the site and soft landscaping is to be increased.</p>	<p>Yes</p>

LPP021-24

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	be indicated on any landscape plan submitted to Council.		
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LPP021-24

IMPACTS

Natural Environment

56. The modification will not result in a development outcome that is considered to have a detrimental impact on the natural environment. The modification proposes an additional soft landscaped area which results in a significant improvement to the existing landscaped area from 94.45sqm to 118.95sqm. The increase in green spaces between the pool and waterway will result in a positive impact on the natural environment.

Built Environment

57. The retention of the existing swimming pool, reconfiguration of the approved staircase and creation of new landscaped area will not in an unreasonable impact on the existing built form of the site, the works are considered sympathetic to the locality. Unreasonable impacts on adjoining properties are not envisaged by the proposal relating to the potential for overlooking, acoustic impacts during its use.

Social impacts

58. The proposal will not generate any adverse social impacts.

Economic impacts

59. The changes proposed under this modification application are not considered to have any unreasonable economic impacts and during the construction phase the proposal will generate employment.

Suitability of the site

60. The subject site is considered suitable to the proposed modification works being:
- Deletion the approved in-ground pool and retention of the existing in-ground swimming pool.
 - Amendment of the design of the staircase proposed under the parent consent to be consistent with the design change conditions imposed in the parent consent.
 - Deletion of the rainwater tanks given the new pool approved is not proceeding to be consistent with the revised BASIX requirements.
 - Proposed new landscaping works are achieved by demolishing the existing hardstand area west of the swimming pool and its replacement with soft landscaping.

As the subject site is within an established area, existing connection to services will not be impacted by the development and existing suitable vehicular access to the site exists to service the development.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

61. The application was notified under the provisions of Section 2.4 of the Georges River Development Control Plan 2021 and the Georges River Community Engagement Strategy 2023-2033. No submissions were received in the notification period.

Council Referrals

The application was not required to be referred internally or externally. All referrals which formed part of the assessment of the parent consent are considered by Council to remain valid and are adequate and all applicable conditions which resulted from these referrals are to remain unchanged by this modification.

Public Interest

62. The proposal is considered to be in the public interest for the following reasons:

The retention of the existing swimming pool on the site, which under the parent consent was proposed to be removed and a new swimming pool and landscaping works proposed. This is a suitable outcome for the site as soil disturbance is minimised and waste generation reduced.

The approved staircase connecting the upper outdoor space to the lower level is proposed to be amended. The design change has been proposed to satisfy the design change condition included in the parent consent which was to address the Sydney Water requirements and is a supportable outcome for the site.

The increase in soft landscaping on the site by 24.50sqm, is achieved by the removal of a small hardstand area between the existing swimming pool and the foreshore and is a supportable outcome for the site as water permeability and biodiversity is increased.

Section 7.12 Contributions

63. The development is not subject to Section 7.11/7.12 Contributions and no contribution fees were levied on the parent consent being DA2021/0081 in accordance with the Georges River Local Development Contributions Plan 2021.

CONCLUSION

64. The application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policies and the provisions of the Georges River Local Environmental Plan 2021 and the Georges River Development Control Plan 2021.

65. The proposal on its merits is an acceptable planning and design outcome (subject to the imposition of conditions) for the reasons outlined within this report. The modification of the parent consent is reasonable and compliant with the key planning controls and will not result in any unreasonable or adverse amenity outcomes. Considering this the modification is recommended for approval subjected to the conditions recommended below.

DETERMINATION AND STATEMENT OF REASONS

Statement of reasons

66. The reasons for the recommendation are:

- The development is permissible in the zone.
- The development complies with the Georges River Local Environmental Plan 2021 and the Georges River Development Control Plan 2021.
- The modification results in a development outcome which is substantially the same development of the parent consent.
- Soft landscaped area at the site is being increased from what is existing.
- The modification will not result in a development outcome which will adversely affect adjoining properties in terms of generating any additional overshadowing, overlooking or view loss.

Determination

67. That pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel, grant consent to modification application MOD2023/0170 which seeks to Modification of DA2021/0081 for alterations and additions a dwelling house and pool – modifications involve retaining the existing pool and paving and stair reconfiguration being on A/DP333109, 404/DP752056, 471/DP752056 known as 61 Vista Street, Sans Souci subject to the following amended conditions.

Development Details for 61 Vista St

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

Description	Reference No.	Date	Rev'n	Prepared by
Cover Page	Dwg No. DA-01	21.09.21	D	Robert Parsi Architecture + Design
Existing Plan	Dwg No. DA-02	21.09.21	D	Robert Parsi Architecture + Design
Demolition Plan	Dwg No. DA-03	21.09.21	D	Robert Parsi Architecture + Design
Site Plan/Site Analysis	Dwg No. DA-04	21.09.21	D	Robert Parsi Architecture + Design
Lower Ground Floor Plan	Dwg No. DA-05	21.09.21	D	Robert Parsi Architecture + Design
Pool Area Plan	Dwg No. DA-06	21.09.21	D	Robert Parsi Architecture + Design
Section 1	Dwg No. DA-07	21.09.21	D	Robert Parsi Architecture + Design
Existing North Elevation	Dwg No. DA-08	21.09.21	D	Robert Parsi Architecture + Design
North Elevation	Dwg No. DA-09	21.09.21	D	Robert Parsi Architecture + Design
Existing West Elevation	Dwg No. DA-10	21.09.21	D	Robert Parsi Architecture + Design
West Elevation	Dwg No. DA-11	21.09.21	D	Robert Parsi Architecture + Design
Deep Soil Plan	Dwg No. DA-12	21.09.21	D	Robert Parsi Architecture + Design
Cut & Fill Plan	Dwg No. DA-13	21.09.21	D	Robert Parsi Architecture + Design
Colour Schedule	Dwg No. DA-14	21.09.21	D	Robert Parsi Architecture + Design
Rear View - Existing	Dwg No. DA-18	21.09.21	D	Robert Parsi Architecture + Design
Rear View - Proposed	Dwg No. DA-19	21.09.21	D	Robert Parsi Architecture + Design
Side View - Existing	Dwg No. DA-20	21.09.21	D	Robert Parsi Architecture + Design
Side View -	Dwg No. DA-21	21.09.21	D	Robert Parsi

Proposed				Architecture + Design
Stormwater Concept Plan	Dwg No. DA-22	21.09.21	D	Robert Parsi Architecture + Design
Basix Requirements	Dwg No. DA-23	21.09.21	D	Robert Parsi Architecture + Design
Survey Plan	14/494	23/10/2014	-	Watson Buchan PTY LTD.
Cover Page	Dwg No. DA-01	27 March 2024	F	Robert Parsi Architecture + Design
Site Plan/Site Analysis	Dwg No. DA-04	27 March 2024	F	Robert Parsi Architecture + Design
Lower Ground Floor Plan	Dwg No. DA-05	27 March 2024	F	Robert Parsi Architecture + Design
Pool Area Plan	Dwg No. DA-06	27 March 2024	F	Robert Parsi Architecture + Design
Section 1	Dwg No. DA-07	27 March 2024	F	Robert Parsi Architecture + Design
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West Elevation	Dwg No. DA-11	27 March 2024	F	Robert Parsi Architecture + Design
Deep Soil Plan	Dwg No. DA-12	27 March 2024	F	Robert Parsi Architecture + Design
Cut & Fill Plan	Dwg No. DA-13	27 March 2024	F	Robert Parsi Architecture + Design
Stormwater Concept Plan	Dwg No. DA-22	27 March 2024	F	Robert Parsi Architecture + Design
Basix Requirements	Dwg No. DA-23	27 March 2024	F	Robert Parsi Architecture + Design

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Condition Amended MOD2023/0170 – DA2021/0081

Separate Approvals Required Under Other Legislation

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

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

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

- (a) Placing or storing materials or equipment;
- (b) Placing or storing waste containers or skip bins;
- (c) Erecting a structure or carrying out work

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

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

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

Requirements of Concurrence, Integrated & Other Government Authorities

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

Prior to the Issue of a Construction Certificate

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

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$160.00

General Fees

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

Timing of Payment

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

Further Information

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

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

- a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: \$1,900.00
- b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: \$160.00
- c) Submit to Council, before the commencement of work, a photographic record of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

7. **Site Management Plan - Minor Development**

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

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

8. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. A404406 A1729895 must be implemented on the plans lodged with the application for the Construction Certificate.

Condition Amended MOD2023/0170 – DA2021/0081

9. **Required design changes** - The following changes are required to be made and shown on the Construction Certificate plans:
- 1) ~~The proposed concrete slab across the eastern side of the swimming pool located below the existing rock shelf (and highlighted yellow on the approved pool area plan – Drawing No. DA-06 Rev D) shall be deleted from the plans and this area shall be retained as lawn and landscaping. This improves the aesthetics of the foreshore and brings the landscaped area for this site to approximately 15%.~~
 - 2) ~~The proposed rendered and painted wall of the planter box running along the bottom of the rock shelf and located on the eastern side of the swimming pool shall be deleted from the plans. (See approved Colour Schedule plan, Dwg No. DA-14, Rev D, with subject garden bed wall to be deleted marked with “DELETE THIS WALL” in blue.) Any proposed garden bed wall along the front of this existing rock shelf shall match the existing dwarf garden bed wall constructed in natural stone, in both height and external finish. This improves the aesthetics and natural look of the foreshore especially when viewed from the waterway.~~
 - 3) ~~The garden beds adjacent to the southern side boundary shall be provided with suitable landscaping that forms a visual barrier at least 1.2m in height (above the top of each garden bed wall) to help protect the privacy of the southern side neighbour from people using the proposed stairs.~~

Condition Deleted MOD2023/0170 – DA2021/0081

10. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
11. **Finish of Walls** - All walls adjacent to the southern side boundary (garden bed walls and cabana balcony wall) that can be seen from the southern side neighbour's property shall be finished in a good and workmanlike manner.
12. **Cut and Fill** – While building work is being carried out, the principal certifier must be ~~sto~~ all soil removed from or imported to the site is managed in accordance with the following requirements:
- (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification, and the volume of material removed must be reported to the principal certifier.

All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997* or a material identified as being subject to a resource recovery exemption by the NSW EPA.

- 13. External Colours/Finishes** – All external colours and finishes for the proposed works shall be in accordance with the submitted Colour Schedule (Dwg No. DA-14 Rev B) except where otherwise amended by other conditions of consent.
- 14. Erosion & Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
- (a) Compliance with the approved Erosion & Sediment Control Plan
 - (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
 - (c) All clean water runoff is diverted around cleared or exposed areas
 - (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
 - (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
 - (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
 - (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
 - (h) Compliance with [Managing Urban Stormwater - Soils and Construction \(Blue Book\) produced by Landcom 2004](#).
 - (i) Floating silt curtains, booms and similar erosion control measures are to be implemented to protect the existing waterway.

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

- 15. Stormwater System** - A stormwater plan prepared by a qualified engineer, shall be submitted for approval with the Construction Certificate.
- (a) All stormwater shall drain by gravity to the existing stormwater drainage disposal system in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
 - (b) Dirty water from the swimming pool to be connected to Sydney Water sewer in accordance with Sydney water requirements.

- 16. Compliance with Swimming Pool Act 1992** - The swimming pool shall be provided with a child resistant barrier (pool fence) that complies with the Swimming Pools Act 1992, Swimming Pool Regulation 2008, Building Code of Australia and/or AS 1926.1 - Swimming Pool Safety. Details of compliance to be illustrated on the plans lodged with the application for the Construction Certificate.

In this regard "boundary barriers" are not permitted as 1.8m high fencing below the FBL is not permitted.

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

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

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

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

- 19. Waste Management Plan** - A Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

- 20. Acid Sulfate Soils Management Plan** – An acid sulfate soils management plan shall be submitted for the proposed works, with the Construction Certificate application. The Construction Certificate shall not be issued until the acid sulfate soils management plan has been assessed in accordance with the Acid Sulfate Soils Manual and approved by the PCA.

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

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

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

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

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

22. **Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the [Work Health and Safety Regulation 2011](#).
23. **Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.
24. **Registered Surveyors Report - During Development Work** – All proposed works shall be located entirely within the bounds of the subject property. A report must be submitted to the PCA at each of the following applicable stages of construction:
 - a) Completion of Footings Formwork (for retained planter boxes adjacent to the southern side boundary) - Before pouring of concrete, detailing the location of the structure relative to adjacent boundaries.
 - b) Completion of all Work - Detailing the location of all structures (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

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

During Construction

25. **Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.
26. **Hours of construction for demolition and building work** - Unless authorised by Council:
 - a. Building construction and delivery of material hours are restricted to: 7.00 am to 5.00 pm (inclusive) Monday to Saturday and no work on Sundays and Public Holidays.
 - b. Demolition and excavation works are restricted to: 8.00 am to 5.00 pm (inclusive) Monday to Friday only. Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site.

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

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

Prior to the issue of the Occupation Certificate

32. **BASIX Compliance Certificate** - A Compliance Certificate must be provided to the PCA regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.

Operational Conditions (On-Going)

33. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas.
34. **Swimming Pools - Resuscitation Notice** - An expired air resuscitation warning notice complying with the [Swimming Pools Act 1992](#) must be affixed in a prominent position adjacent to the pool.
35. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.

- 36. 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.
- 37. Private Swimming Pools & Spas - Pump Noise** - The swimming pool/spa pump and associated equipment must be located so that the noise emitted does not exceed 5dB(A) above the background level. If this cannot be achieved, a ventilated and sound-proofed enclosure must enclose the pump to achieve the required noise levels.

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

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

Operational Requirements Under the Environmental Planning & Assessment Act 1979

- 38. Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
- 39. Appointment of a PCA** - The erection of a building must not commence until the applicant has:
- (a) appointed a PCA for the building work; and
 - (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

If the work is not going to be undertaken by an Owner - Builder, the applicant must:

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

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

- 40. Notification Requirements of PCA** - No later than two days before the building work commences, the PCA must notify:
- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and

- (b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

41. **Notice of Commencement** - The applicant must give at least two days notice to the Council and the PCA of their intention to commence the erection of a building.

A Notice of Commencement Form is attached for your convenience.

42. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the PCA. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the [Environmental Planning and Assessment Regulation 2000](#).

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

Where Georges River Council has been appointed as the PCA, 48 hours notice in writing, or alternatively 24 hours notice by facsimile or telephone, must be given when specified work requiring inspection has been completed.

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

Only the PCA appointed for the building work can issue the Occupation Certificate.

An Occupation Certificate Application Form is attached for your convenience.

Prescribed Conditions

45. **Clause 97A - BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
46. **Clause 98 - Building Code of Australia & Home Building Act 1989** - Requires all building work to be carried out in accordance with the Building Code of Australia. In the case of residential building work to which the Home Building Act 1989 relates, there is a requirement for a contract of insurance to be in force before any work commences.
47. **Clause 98A - Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the PCA and the Principal Contractor.
48. **Clause 98B - Home Building Act 1989** - If the development involves residential building work under the [Home Building Act 1989](#), no work is permitted to commence unless certain details are provided in writing to Council. The name and licence/permit number of the Principal Contractor or Owner Builder and the name of the Insurer by which work is insured under Part 6 of the [Home Building Act 1989](#).

49. **Clause 98E - Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.
50. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

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

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

Advice

Review of Determination - Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: Review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney South Planning Panel or the Land & Environment Court.

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.

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.

52. **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.

- 53. Security deposit administration & compliance fee** - Under Section 97 (5) of the [Local Government Act 1993](#), a security deposit (or part) if repaid to the person who provided it is to be repaid with any interest accrued on the deposit (or part) as a consequence of its investment.

Council must cover administration and other costs incurred in the investment of these monies. The current charge is \$50.00 plus 2% of the bond amount per annum.

The interest rate applied to bonds is set at Council's business banking facility rate as at 1 July each year. Council will accept a bank guarantee in lieu of a deposit.

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

- 54. Council as PCA - Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
- 55. 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).
- 56. Register your Swimming Pool** - All swimming pools in NSW are required to be registered. Fines apply for pools that are not registered. To register please visit: swimmingpoolregister.nsw.gov.au.

ATTACHMENTS

- Attachment 1  Amended Architectural Plans - 61 Vista Street, SANS SOUCI NSW 2219 - MOD2023/0170
- Attachment 2  Amended Statement of Environmental Effects - 61 Vista Street, SANS SOUCI NSW 2219 - MOD2023/0170