

**JOINT REGIONAL PLANNING PANEL  
(East)**

<b>JRPP No</b>	2013SYE080
<b>DA Number</b>	MOD2013/0044
<b>Local Government Area</b>	Hurstville City Council
<b>Proposed Development</b>	Section 96(2) application to modify Development Consent No 12/DA-241 for a mixed retail/residential development to use the ground floor common courtyard as leasable floor area in conjunction with shop 2 and construct a new basement level 5 which provides 25 additional car spaces to the development (115 spaces in total)
<b>Street Address</b>	9 Dora Street, Hurstville
<b>Applicant/Owner</b>	Applicant: George El Khouri Architects  Owner: Xycom P/L
<b>Number of Submissions</b>	Fourteen (14 ) adjoining and adjacent owners/residents notified  Application advertised for fourteen (14) days  No submissions received
<b>Recommendation</b>	Approval subject to conditions of consent
<b>Report by</b>	Paula Bizimis – Senior Development Assessment Officer Hurstville City Council

## Assessment Report and Recommendation

<b>ZONING</b>	3b City Centre Business Zone
<b>APPLICABLE PLANNING INSTRUMENTS</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy No 55 - Remediation of Land</li> <li>• State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• Hurstville Local Environmental Plan 1994</li> <li>• Draft State Environmental Planning Policy (Competition) 2010</li> <li>• Draft Hurstville (City Centre) Local Environmental Plan 2011</li> <li>• Hurstville Development Control Plan No. 2: Section 2.2 - Neighbour Notification and Advertising of Development Applications, Section 4.2 - The Controls, Section 5.1 - Design Guidelines for Building, Public Domain and Open Space, Section 6.1 - Car Parking, Section 6.3 - Access and Mobility, Section 6.4 - Crime Prevention through Environmental Design, Section 6.5 - Energy Efficiency, Section 6.7 - Drainage and On-Site Detention Requirements, Section 6.9 - Waste Management, Section 6.10 - Development of a Heritage Item or on the Vicinity of a Heritage Item</li> </ul>
<b>HURSTVILLE LOCAL ENVIRONMENTAL PLAN 1994 INTERPRETATION OF USE</b>	“Demolish”, “Shop”, and “Residential Flat Building”
<b>EXISTING DEVELOPMENT</b>	Single storey commercial building
<b>COST OF DEVELOPMENT</b>	\$600,000 for proposed amendments
<b>REASON FOR REFERRAL TO JRPP</b>	Value over \$20M
<b>FILE NO</b>	MOD2013/0044 (12/DA-241:3)
<b>HAS A DISCLOSURE OF POLITICAL DONATIONS OR GIFTS BEEN MADE?</b>	No

## **EXECUTIVE SUMMARY**

1. On the 19 November 2012 consent was granted by the Joint Regional Planning Panel (JRPP) to Development Application No. 12/DA-241 for the demolition of existing structures and construction of a thirteen (13) storey, forty-five (45m) high building containing two (2) ground floor retail units, four (4) basement levels of car parking, and twelve (12) floors of residential units (66 units in total).
2. On 15 April 2013 the JRPP approved a Section 96(2) application to undertake alterations and additions to the approved development including the provision of an additional level to the development which contains 1 x 1 bedroom, 4 x 2 bedroom and 1 x 3 bedroom residential units. The total number of residential units in the development is now 72.
3. The current section 96(2) application seeks permission to use the ground floor common courtyard as leasable floor area in conjunction with shop 2 and construct a new basement level 5 which provides 25 additional car spaces to the development (115 spaces in total).
4. The proposed development has been assessed against the requirements of the relevant environmental planning instruments and development control plans and does not comply with the floor space ratio requirements of the Hurstville Development Control Plan No 2. This is discussed in the report.
5. The application was notified/advertised to fourteen (14) adjoining and adjacent owners/residents in accordance with Council's requirements and no submissions were received in reply.

## **RECOMMENDATION**

The application is recommended for approval subject to conditions of consent.

## **BACKGROUND**

- On the 19 November 2012 consent was granted to development Application No. 12/DA-241 for the demolition of existing structures and construction of a thirteen (13) storey, forty-five (45m) high building containing two (2) ground floor retail units, four (4) basement levels of car parking, and twelve (12) floors of residential units (66 units in total).
- On 15 April 2013 the JRPP approved a Section 96(2) application for the following:
  - Provide an additional level to the development which contains 1 x 1 bedroom, 4 x 2 bedroom and 1 x 3 bedroom residential units. The total number of residential units in the development will be 72 (additional floor area of 569sqm).
  - Remove the light void on the south west elevation, and relocate the ventilation and services shaft.
  - Enlarge the approved 1 bedroom dwelling and balcony into the void space of the reconfigured ventilation and services shaft.

The development consent, as amended, is subject to conditions of consent including the following which are relevant to this application:

1. **GEN1001 - 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:

<b>Reference No.</b>	<b>Date</b>	<b>Description</b>	<b>Revision</b>	<b>Prepared by</b>
<del>Job No 2012-02, Sheet No DA 1001, 1002, 1003, 1004</del>	<del>Jul 12</del>	<del>Basement 1 Plan, Basement 2 Plan, Basement 3 Plan, Basement 4 Plan</del>	<del>B</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No DA 1100, 1101, 1102, 1103, 1104, 1105</del>	<del>Jul 12</del>	<del>Ground Floor Plan, Level 01 Floor Plan, Level 02-11 Typical Floor Plan, Level 12 Floor Plan, Lower Roof Plan, Roof Plan</del>	<del>B</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No DA 2000, 2001, 2002, 2003</del>	<del>Jul 12</del>	<del>North East/Street Elevation, North West Elevation, South West/Rear Elevation, South East Elevation</del>	<del>B</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No DA 3000</del>	<del>Jul 12</del>	<del>Section A-A</del>	<del>B</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No DA 4000, 4001, 4002, 4003, 4004, 4005</del>	<del>Jul 12</del>	<del>Shadow Diagrams</del>	<del>B</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No DA 4500, 4501</del>	<del>Jul 12</del>	<del>Solar Diagram and cross Flow Diagrams</del>	<del>B</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No DA 5000</del>	<del>Jul 12</del>	<del>Finishes Schedule</del>	<del>B</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No DA 6000</del>	<del>Jul 12</del>	<del>Streetscape Diagram</del>	<del>B</del>	<del>George El Khouri Architects</del>
Job No 2012-02, Sheet No S96 1001, 1002, 1003, 1004	Jan 13	Basement 1 Plan, Basement 2 Plan, Basement 3 Plan, Basement 4 Plan	A	George El Khouri Architects
Job No 2012-	Jan 13	Ground Floor Plan,	Ground	George El

02, Sheet No S96 1100, 1101, 1102, 1103, 1104, 1105, 1106		Level 01 Floor Plan, Level 02-11 Typical Floor Plan, Level 12 Floor Plan, Level 13 Floor Plan, Lower Roof Plan, Roof Plan	Floor Plan B, all other plans A	Khoury Architects
Job No 2012-02, Sheet No S96 2000, 2001, 2002, 2003	Jan 13	North East/Street Elevation, North West Elevation, South West/Rear Elevation, South East Elevation	A	George El Khouri Architects
Job No 2012-02, Sheet No S96 3000	Jan 13	Section A-A	A	George El Khouri Architects
Job No 2012-02, Sheet No S96 3100	Jan 13	Section B-B Driveway Profile	A	George El Khouri Architects
Job No 2012-02, Sheet No S96 4000, 4001, 4002, 4003, 4004, 4005	Jan 13	Shadow Diagrams	A	George El Khouri Architects
Job No 2012-02, Sheet No S96 4500, 4501	Jan 13	Solar Diagram and Cross Flow Diagrams	A	George El Khouri Architects
Job No 2012-02, Sheet No S96 5000	Jan 13	Finishes Schedule	A	George El Khouri Architects
Job No 2012-02, Sheet No S96 6000	Jan 13	Streetscape Diagram	A	George El Khouri Architects

*(This condition is modified as part of 12/DA-241 REV01)*

*20A. The ground floor open space/courtyard located at the rear of the site is to be used as common open space and allocated as “common property” in any strata plan of the development. This area is not to be used by the ground floor shops as seating area, retail area, or the like. Development consent is required for this area to be used for any purpose other than common open space.*

*(This condition is added as part of 12/DA-241 REV01)*

*54. OCC2007 - Development Assessment – Allocation of car parking spaces - Car parking associated with the development is to be allocated as follows:*

- (a) Residential dwellings: 62 car spaces*
- (b) Residential visitors: 18 car spaces*
- (c) Retail: 9 car spaces*

(d) Car wash bay: 1 car wash bay (which can be a visitor space)

(This condition is modified as part of 12/DA-241 REV01)

## **DESCRIPTION OF THE PROPOSAL**

The current section 96(2) application seeks permission for the following:

- To use the ground floor common courtyard as leasable floor area in conjunction with shop 2. This area has a floor area of 214.5sqm. The total leasable floor area of shop 2 will be 402sqm.
- The construction of a new basement level 5 which provides 25 additional car spaces to the development (115 spaces in total).

Specifically the development will now contain the following:

### **New Basement 5**

- 25 car spaces
- 18 storage areas
- 2 lifts and 2 stairs

### **Basement 4**

- 25 car spaces including 2 disability accessible car spaces
- 18 storage areas
- 2 lifts and 2 stairs

### **Basement 3**

- 25 car spaces including 2 disability accessible car spaces
- 18 storage areas
- 2 lifts and 2 stairs

### **Basement 2**

- 25 car spaces including 2 disability accessible car spaces
- 18 storage areas
- 2 lifts and 2 stairs

### **Basement 1**

- 13 car spaces including 3 disability accessible car spaces
- 28 storage areas
- 2 lifts and 2 stairs
- Pump room and electrical room

### **Modified Ground floor**

- Two (2) retail units (Shop 1 and Shop 2) with a floor area of 48sqm and 187.5sqm respectively (retail floor area of shops 235.5sqm) and an enclosed courtyard area with direct access to Shop 2 of 214.5sqm. This is included as gross leasable floor area in accordance with Council's LEP (total gross leasable floor area is 450sqm).
- Entrance lobby for residential units
- Commercial plant room
- Substation
- Waste room
- Vehicle entry/exit to basement levels

- OSD tank
- 2 lifts and 4 stairs

#### Level 1

- 1 x 1 bedroom residential unit
- 3 x 2 bedroom residential units (including 1 x adaptable dwelling)
- Common area including BBQ area, community general room, child play room and community room, outdoor seating area
- 2 lifts and 2 stairs

#### Levels 2 – 11

Each of the levels 2 to 11 will contain the following:

- 1 x 1 bedroom residential unit
- 3 x 2 bedroom residential units (including 1 x adaptable dwelling)
- 1 x 2 bedroom + study unit
- 1 x 3 bedroom residential unit
- 2 lifts and 2 stairs

#### Level 12

- 1 x 1 bedroom residential unit
- 3 x 2 bedroom residential units (including 1 x adaptable dwelling per floor)
- 1 x 2 bedroom + study units
- 1 x 3 bedroom residential unit
- 2 lifts and 2 stairs

#### Level 13

- 2 x 3 bedroom residential units
- Plant room 1 boiler room
- Plant room 2 hydraulic
- Plant room 3 mechanical
- 2 lifts and 2 stairs

### **DESCRIPTION OF THE SITE AND LOCALITY**

The subject site known as 9 Dora Street Hurstville is located on the western side of Dora Street near the north western corner of MacMahon Street Hurstville. The site comprises four lots which are lots 1 and 2 DP 224116, lot 167 DP 335747, and lot 168 DP 1958. The site has a frontage of 40.2m, depth of 24.3m and a total site area of 976.9sqm. Existing on the site was a single storey commercial building which was recently demolished.

Adjoining the site on the southern boundary (at the corner of MacMahon Street) is a six (6) storey commercial building known as MacMahon House. This building has telecommunication antennas and equipment on the roof. Adjoining the site on the northern boundary is an "at grade" car park. Adjoining the site to the rear are single storey shops and a part one/part two storey shop which face Forest Road. The part one/part two storey shop located at 372 Forest Road is identified as a heritage item in the Hurstville Local Environmental Plan. On the opposite side of Dora Street is the three storey building housing the Hurstville City Council offices and Council Chambers.

The area surrounding the subject site is characterised by commercial and residential developments of various heights ranging from 6 to 8 storeys and one 15 storey building known as MacMahon Plaza located to the east of the subject site on MacMahon Street.



## COMPLIANCE AND ASSESSMENT

### Assessment of Section 96(2) Application

Under section 96(2) of the Environmental Planning and Assessment Act an application to modify the development consent under section 96(2) can be considered by the consent authority if:

- (a) *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*

The applicant has submitted the following information regarding the proposed development being substantially the same development as that for which consent was originally granted:

*The proposal does not require a new development application and is considered to be substantially the same as the originally approved development given that the approved use of the site, building envelope, and the relationship and appearance of the development to the neighbouring properties remains identical to the existing approval. The proposal results in an additional 25 car parking spaces, however, spread across a typical weekday period, the additional traffic generated by the proposal and impacts on functionality of the local road network would be imperceptible. The additional leasable*



*floor area for Shop No. 2 is located within an entirely enclosed portion of the approved building and is not externally visible.*

*Assessment of 'substantially the same' is to consider the totality of the changes made in comparison to the originally approved development. It is demonstrated above that the proposal easily satisfies this test. Furthermore it is demonstrated that the proposed development will have minimal environmental impact and therefore satisfies the criteria for classification as a Section 96(1A) application.*

#### Comment

It is considered that the proposed development is substantially the same development. Although the modified development will result in an additional basement level and an increase in the floor area of the development as a result of the additional car parking proposed (in excess of Council's requirements) and the use of the "common open space area" as floor area, the height and building envelope of the development will remain as approved. The external configuration of the rear "common open space area" will also remain as approved.

The proposed development will maintain the approved uses being ground floor shops, residential units, and basement car parking areas and as such the development will remain fundamentally as originally approved. In this regard it is considered that the development as modified is substantially the same development for which consent was originally granted.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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*

#### Comment

There was no requirement for the application to be referred to any other body.

- (c) *it has notified the application in accordance with:*

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

#### Comment

The application was notified in accordance with Council's requirements.

- (d) *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

No submissions were received in response to resident notification/advertising of the proposed development.

## Other Considerations Relevant to a Section 96(2) Application

In determining an application for modification of the development consent, the relevant matters referred to in Section 79C(1) must be taken into consideration. The following is a discussion of matters under Section 79C as being relevant to the current Section 96 application:

### 1. Environmental Planning Instruments

#### Hurstville Local Environmental Plan 1994

The site is zoned 3(b) – City Centre Business Zone under the provisions of the Hurstville Local Environmental Plan (LEP) 1994 and the proposed development, being a modification of the approved development, is permissible in the zone with consent. The modified development is consistent with the clauses of the LEP which are relevant to the development.

The objectives of the zone are as follows:

- “(a) to designate sufficient areas of land to meet the projected needs of the Hurstville Town Centre as a multi-functional regional centre,*
- (b) to facilitate development of land within the Hurstville Town Centre for commercial, retail, residential and community purposes,*
- (c) to provide a single business zone for the Hurstville Town Centre as a sub-regional centre,*
- (d) to facilitate the implementation of a development control plan for the Hurstville Town Centre:*
  - (i) by introducing appropriate floor space ratio controls,*
  - (ii) by encouraging an economically viable retail core which is centrally located and in close proximity to public transport,*
  - (iii) by enhancing employment opportunities and to service the needs of the local and regional community,*
  - (iv) by encouraging and facilitating the use of public transport,*
  - (v) by providing and enhancing pedestrian and public open space areas for shoppers and workers,*
  - (vi) by maintaining and improving the environmental and aesthetic quality of the Hurstville Town Centre and its surrounds,*
  - (vii) by ensuring adequate and accessible off-street car parking, and*
- (e) to improve traffic flow in and around the Hurstville Town Centre.”*

It is considered that the proposed development is consistent with the objectives of the zone. With regards to (d)((i) the floor space ratio of the development will be increased and this will result in the development not complying with the requirements of Hurstville Development Control Plan No 2 (DCP 2). The approved development has a floor space ratio of 6.56:1 and the proposed floor space ratio will be 7:1 as a result of the proposed additional 17 car spaces (248sqm) which are defined as floor area and the inclusion of the “common open space area” in the floor area calculations.

The applicant has submitted the following statement in support of the application:

*...The proposal seeks to dedicate the existing fully enclosed communal courtyard for use as leasable floor area of Shop No. 2. This aspect of the proposal will not create any change to the approved FSR as ground floor communal courtyard was already included*

*as calculable GFA as it is fully enclosed. The proposal will make more efficient use of the communal space given that embellished and directly accessible communal open space is located at Level 1 for use by the residents.*

*The increase in leasable floor area does however generate additional car parking, which is at the rate of 1 space per 27.5m<sup>2</sup>. This is provided in the proposed 5th basement level and surplus car parking will be dedicated to the approved units. The site specific car parking requirements of the DCP are stated as a 'minimum' and as such, surplus car parking can be provided to the units without creating a DCP noncompliance. However, strict application of the GFA / FSR requirements of the DCP results in the surplus car parking (17 spaces in total) being included as calculable GFA, which would create a further non-compliance with the existing approved FSR of 6.56:1. Given that the increase in GFA is entirely underground and does not create any external alteration to the building, additional FSR noncompliance is technical in nature and will not create any material alteration to the approved visual building bulk.*

#### Comment

The proposed increase to the floor space ratio relates to the additional car parking spaces that are provided in excess of Council's requirements within the basement levels. Under the definition of "gross floor area" in LEP 1994, car parking provided above Council's requirements is to be included as floor area.

It is noted that the rear "common open space area" was not included in the gross floor area of the development with the original application as the intention was to maintain this area as a common open space area and the condition 20a of the development consent confirmed this. The floor area of this area which is 214.5sqm has now been included in the floor space calculations as it is to be specifically used for commercial purposes in conjunction with shop 2.

The additional floor area proposed to the development as a result of the additional car parking spaces and the use of the "common open space area" for commercial purposes will result in no material change to the external building envelope as approved. The amendments proposed result in no additional adverse impacts in terms of privacy and solar access. For these reasons, the proposed increase to the floor area of the development is acceptable.

#### Other environmental planning instruments

The modified development has no implications on the approved development's compliance with the requirements of the applicable environmental planning instruments.

## **2. Draft Environmental Planning Instruments**

#### Draft State Environmental Planning Policy (Competition) 2010

The aims of this policy are to:

- a) Promote economic growth and competition, and
- b) Remove anti-competitive barriers in environmental planning and assessment.

The policy includes criteria to remove anti-competitive barriers to commercial development, being retail premises, business premises, and/or office premises. This

policy is not relevant to this application, as the intended specific use of each retail unit is unknown at this stage. Hence, the commercial viability, potential loss of trade, etc is irrelevant. The use of retail premises is permissible on this site and is encouraged in the current controls and the intended proposed controls. The existing facilities and services are adequate to support this proposal in general.

#### Draft Hurstville (City Centre) Local Environmental Plan 2011

Council at its meeting on 12 April, 2012 resolved to adopt the draft Hurstville Local Environmental Plan (Hurstville City Centre) 2012 with a number of amendments and forward the draft Plan to the Department of Planning and Infrastructure under the Environmental Planning and Assessment Act 1979.

For the purposes of this report the draft HCCLEP is not considered to be “certain” nor “imminent” and therefore the provisions of the Hurstville Local Environmental Plan 1994 apply.

### **3. Development Control Plans**

The requirements of Hurstville Development Control Plan No 2 (DCP 2) apply to the subject site. The relevant sections of DCP 2 that apply to this application are as follows:

#### Section 2.2 - Neighbour Notification and Advertising of Development Applications

The application was notified to fourteen (14) adjoining and adjacent owners/residents, and advertised for fourteen (14) days. No submissions were received in reply.

#### Section 4.2 - The Controls

The development as modified has been assessed against the “controls” that apply to the subject site as follows:

<b>Block 10, Site 10B</b>	<b>Proposed</b>	<b>Compliance</b>
<b>Use</b> Ground floor = retail/commercial Upper levels = commercial/residential	Ground floor = retail Upper levels = residential	Yes
<b>Height</b> 45m maximum	45m (14 storeys)	As approved
<b>FSR</b> 6:1 maximum	6.78:1 with the inclusion of the “common open space area” 7:1 with the 17 additional on site car parking spaces included in the floor space ratio calculation as per the definition of “gross floor area” of LEP1994	No, this has been discussed previously in the report and the additional floor area is acceptable
<b>Setbacks</b> <u>Street setbacks:</u> Build to street	The proposed development	As approved

alignment for ground floor, upper floors residential setback in accordance with the Residential Flat Design Code  <u>Ground floor:</u> full site coverage allowed  <u>Top floors:</u> setback from rear boundary to form courtyard to adjacent properties at rear	complies with the setback requirements	
<b>Awnings</b> Cantilevered awning to Dora Street	Cantilevered awning to Dora Street	As approved
<b>Balconies</b> Minimum 1/unit, 8sqm in size 2m minimum width	Minimum 1/unit, 8sqm in size Minimum 2m dimensions	As approved
<b>Vehicles Access</b> Dora Street	Dora Street	As approved
<b>Car parking in basement</b>  Residential: 1 car space/100sqm (6178sqm) = 62 spaces required  Visitors: 1 car spaces/4 residential units (72 units)= 18 spaces required  Retail: 1 car space/27.5sqm (231.8sqm) = 17 spaces required  Car wash bay = 1 required  Total = 98 car spaces	Total = 115 car spaces provided (17 in excess of the requirements (248sqm)). These additional car spaces will be allocated to the residential units as per the applicant's advice.	Yes

### Section 6.1 - Car Parking

As discussed previously in this report, the proposed amendments will result in the development having seventeen (17) on site car parking spaces in excess of Council's requirements. The applicant was requested to provide information on the intended use of the rear "common open space area" and in particular the need for seventeen (17) additional spaces on the site. The following response was provided:

*The occupant for shop 2 is not yet known, however, it is anticipated that this space would be suitable for use by a retail shop or restaurant. The required car parking rate under DCP 1 is 1 space per 27.5sqm of leasable floor area. Shops 1 and 2 have a combined area of 450sqm and as such 17 car parking spaces are required and proposed. This means that, for residential use, there will be a surplus of 17 car parking spaces. As outlined in our S.96 Statement of Environmental Effects, technically the surplus or additional car parking spaces would be included as calculable GFA and this would create a further non-compliance with the FSR maximum (the FSR would increase from 6.56:1 to 6.86:1 as outlined in your email).*

*However, as also stated in our SEE, the additional GFA would be provided entirely underground, would not alter the external appearance of the building and would not have any perceptible change to car parking or traffic generation. On this basis and given that the FSR non-compliance is purely technical in nature and that the proposal will not offend any LEP or DCP objectives, variation is considered to be reasonable in the circumstances of the case. It is further noted that the FSR control is within DCP 1 and is not a development standard which requires formal variation under SEPP No.1.*

#### Comment

The additional floor area is supported as discussed previously in the report.

#### Section 6.3 - Access and Mobility

The increase in the number of car parking spaces has implications on the number of accessible car parking spaces that are required to be provided in the development as follows:

##### *Accessible residential car spaces*

Where more than 50 car spaces are required for residential developments, 2% of these spaces are to be accessible. A total of 62 residential car spaces are required for the development which equates to 2 disability accessible spaces being required. The development provides 9 accessible car spaces which complies with the requirements.

##### *Accessible retail car spaces*

1 car space per 20 spaces or part thereof, where parking areas have more than 20 spaces but less than 50 spaces is required for retail uses. Given that 17 spaces are provided for the retail component, no accessible car spaces are required for the retail component.

#### Section 6.4 - Crime Prevention through Environmental Design,

The applicant was requested to provide information on the crime prevention measures proposed to be adopted for the development in light of the use of the rear “common open space area” in conjunction with shop 2 and the provision of an additional basement level. The following response was provided:

*Parking within the basement levels will be allocated and managed as follows:*

- *Basement levels 1 and 2 will be dedicated entirely for retail and residential visitor use;*
- *A boom gate will be located at the top of the ramp on level 2, positioned on a north-east to south-west axis adjacent to car parking space 10;*
- *Parking space 10 (disabled) will be dedicated as a turning bay and parking spaces 7 and 8 dedicated for residential use. This will leave 37 remaining car parking spaces between basement levels 1 and 2 which will be distributed as 17 retail, 18 visitor and 2 resident (spaces 7 and 8). All spaces will be signposted as “retail use only”, “residential visitor use only” or “private – residential use”. Should Council desire, parking spaces 7 and 8 in level 2 could be dedicated for retail use, however, we feel that signposting will be sufficient to ensure that they remain for private use of residents;*
- *A car parking counter will be installed at the entry point to the building on Dora Street which will indicate the number of car parking spaces available for retail*

*use. Access to the retail and visitor parking spaces will be controlled by an intercom system. In addition, access to the residential spaces will be controlled by remote control;*

- *Should Council's concerns remain with relation to security, CCTV cameras could be installed at the entrance to the building and within the basement levels; and*
- *Swipe card / electronic lift access will control access to the residential levels of the building.*

#### Comment

Condition 20(c) of the development consent requires that the residential and retail car spaces be separated in accordance with crime prevention principles. This condition is to be complied with and the applicant is to demonstrate how this will be achieved in the development. Accordingly, the crime prevention measures detailed above are considered appropriate, but the residential car spaces 7 and 8 will have to be isolated from the retail spaces in accordance with condition 20(c).

## **4. Impacts**

### **Natural Environment**

The modified development is unlikely to have additional impacts on the natural environment from that previously considered. Although the proposal includes a large amount of excavation for the basement levels, this is not uncommon in the Hurstville CBD area. It is considered the proposal is unlikely to adversely impact on existing drainage patterns and soil stability in the locality. The site currently has no significant vegetation and the street tree located at the front of the site can be removed.

### **Built Environment**

The proposed development is unlikely to have an adverse impact on the built environment. Although the proposed development proposes an increase to the floor area of the approved development, the external building envelope of the development will remain as approved with no additional impacts in terms of solar access and privacy.

### **Social and Economic Impacts**

The proposed development has no perceived adverse social or economic impacts.

### **Suitability of the Site**

The subject site has no impediments that preclude it from being developed for the proposed development.

## **5. REFERRALS, SUBMISSIONS AND THE PUBLIC INTEREST**

### **Resident Submissions**

The application was notified to fourteen (14) adjoining and adjacent owners/residents, and advertised for fourteen (14) days. No submissions were received in reply.

### **Internal - Council Referrals**

No internal referrals were required for this application.

### **External Referrals**

No external referrals were required for this application.

## **6. CONCLUSION**

The application seeks permission to modify development consent no. 12/DA-241 under the provisions of Section 96(2) of the Environmental Planning and Assessment Act. It is proposed to modify the approved development to allow the use of the ground floor common open space area as leasable floor area in conjunction with shop 2 and construct a new basement level 5 which provides 25 additional car spaces to the development (115 spaces in total).

The proposed amendments will result in an increase to the approved floor space ratio of the development above that required by Hurstville Development Control Plan No 2. This non compliance has been discussed in the report and a variation to the floor space ratio is supported on the basis that there will be negligible impacts on the approved building envelope and on adjoining developments. Accordingly the application is recommended for approval.

## **RECOMMENDATION**

Pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act, as amended, the application known as MOD2013/0044 to modify Development Consent No 12/DA-241 granted on 19 November 2012 (as amended 15 April 2013) for the demolition of existing structures and construction of a fourteen (14) storey, forty-five (45m) high building containing two (2) ground floor retail units, four (4) basement levels of car parking, and thirteen (13) floors of residential units (72 units in total) be approved and conditions 1 and 54 be modified and condition 20A be deleted from the consent as highlighted in the consent below:

**BEFORE COMMENCING BUILDING WORK, you must obtain a Construction Certificate from the Council or an Accredited Certifier.**

**DEVELOPMENT CONSENT** is granted to the Development Application described above, subject to the conditions in Schedules A, B and C.

**Consent Operation** - This consent operates from the date the original consent was endorsed, ie 19 November 2012, except as qualified by Section 93 of the Act.

This development consent will lapse unless acted upon within five (5) years from the date of the original endorsement, except as qualified by Section 99 of the Environmental Planning and Assessment Act 1979

**Right of Review** – If you are dissatisfied with this decision, you may apply for a Review of a Determination under Section 96AB of the Environmental Planning and Assessment Act 1979. A request for review and the decision by Council of that request must be made within twenty-eight (28) days from the date of this Notice of Determination and be accompanied by the relevant fee in accordance with Environmental Planning and Assessment Regulations 2000 Clause 123I. You must ensure that an application for review of determination gives Council a reasonable period in which to review its decision having regard to the relevant issues and complexity of the application.



**Right of Appeal** – Alternatively, Section 97AA of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the NSW Land and Environment Court within six (6) months of the endorsement date on this notice.

### **Schedule A – Site Specific Conditions**

#### **GENERAL CONDITIONS**

These conditions have been imposed to ensure that the development is carried out in accordance with the approved plans and to ensure that the appropriate fees and bonds are paid in relation to the development.

- GEN1001 - 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:**

<b>Reference No.</b>	<b>Date</b>	<b>Description</b>	<b>Revision</b>	<b>Prepared by</b>
Job No 2012-02, Sheet No DA 1001, 1002, 1003, 1004	Jul 12	Basement 1 Plan, Basement 2 Plan, Basement 3 Plan, Basement 4 Plan	B	George El Khouri Architects
Job No 2012-02, Sheet No DA 1100, 1101, 1102, 1103, 1104, 1105	Jul 12	Ground Floor Plan, Level 01 Floor Plan, Level 02-11 Typical Floor Plan, Level 12 Floor Plan, Lower Roof Plan, Roof Plan	B	George El Khouri Architects
Job No 2012-02, Sheet No DA 2000, 2001, 2002, 2003	Jul 12	North East/Street Elevation, North West Elevation, South West/Rear Elevation, South East Elevation	B	George El Khouri Architects
Job No 2012-02, Sheet No DA 3000	Jul 12	Section A-A	B	George El Khouri Architects
Job No 2012-02, Sheet No DA 4000, 4001, 4002, 4003, 4004, 4005	Jul 12	Shadow Diagrams	B	George El Khouri Architects
Job No 2012-02, Sheet No DA 4500, 4501	Jul 12	Solar Diagram and cross Flow Diagrams	B	George El Khouri Architects
Job No 2012-02, Sheet No	Jul 12	Finishes Schedule	B	George El Khouri

DA 5000				Architects
<del>Job No 2012-02, Sheet No DA 6000</del>	<del>Jul 12</del>	<del>Streetscape Diagram</del>	<del>B</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No S96 1001, 1002, 1003, 1004</del>	<del>Jan 13</del>	<del>Basement 1 Plan, Basement 2 Plan, Basement 3 Plan, Basement 4 Plan</del>	<del>A</del>	<del>George El Khouri Architects</del>
<b>Job No 2012-02, Sheet No S96-4 1001, 1002, 1003, 1004</b>	<b>Aug 13</b>	<b>Basement 1 Plan, Basement 2 Plan, Basement 3 Plan, Basement 4 Plan</b>	<b>A</b>	<b>George El Khouri Architects</b>
<b>Job No 2012-04, Sheet No S96-4 1005</b>	<b>Aug 13</b>	<b>Basement 5 Plan</b>	<b>A</b>	<b>George El Khouri Architects</b>
<b>Job No 2012-04, Sheet No S96-4 1101,</b>	<b>Aug 13</b>	<b>Ground Floor Plan</b>	<b>A</b>	<b>George El Khouri Architects</b>
<del>Job No 2012-02, Sheet No S96 1100, 1101, 1102, 1103, 1104, 1105, 1106</del>	<del>Jan 13</del>	<del>Ground Floor Plan, Level 01 Floor Plan, Level 02-11 Typical Floor Plan, Level 12 Floor Plan, Level 13 Floor Plan, Lower Roof Plan, Roof Plan</del>	<del>Ground Floor Plan B, all other plans A</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No S96 2000, 2001, 2002, 2003</del>	<del>Jan 13</del>	<del>North East/Street Elevation, North West Elevation, South West/Rear Elevation, South East Elevation</del>	<del>A</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No S96 3000</del>	<del>Jan 13</del>	<del>Section A-A</del>	<del>A</del>	<del>George El Khouri Architects</del>
<b>Job No 2012-04, Sheet No S96-4 3000</b>	<b>Aug 13</b>	<b>Section A-A</b>	<b>A</b>	<b>George El Khouri Architects</b>
<del>Job No 2012-02, Sheet No S96 3100</del>	<del>Jan 13</del>	<del>Section B-B Driveway Profile</del>	<del>A</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No S96 4000, 4001, 4002, 4003, 4004, 4005</del>	<del>Jan 13</del>	<del>Shadow Diagrams</del>	<del>A</del>	<del>George El Khouri Architects</del>
<del>Job No 2012-02, Sheet No S96 4500, 4501</del>	<del>Jan 13</del>	<del>Solar Diagram and Cross Flow Diagrams</del>	<del>A</del>	<del>George El Khouri Architects</del>

Job No 2012-02, Sheet No S96 5000	Jan 13	Finishes Schedule	A	George El Khouri Architects
Job No 2012-02, Sheet No S96 6000	Jan 13	Streetscape Diagram	A	George El Khouri Architects

(This condition is modified as part of MOD2013/0044 (12/DA-241))

2. GEN1002 - **Fees to be paid to Council** - The following must be submitted to either Council or an Accredited Certifier before a Construction Certificate is issued:

**(a) Fees to be paid to Council:**

**Schedule of fees, bonds and contributions**

Fee Type	Paid	Fee Type	Amount	Receipt Date	Receipt No
Development Application Fee	X	DA1	\$16,124.50	9 Sep 12	369315
Plan First Fee	X	AP35	\$14,137.60	9 Sep 12	369315
Notification Fee	X	AP12	\$220.00	9 Sep 12	369315
Company Search Fee	X		\$20.00	9 Sep 12	369315
Urban Design Review Panel	X		\$2,000.00	9 Sep 12	369315
DA Advertising Fee	X		\$1,105.00	9 Sep 12	369315
Long Service Levy		AP34	\$77,315.00		
Builders Damage Deposit		BON2	\$3,750.00		
Inspection Fee for Refund of Damage Deposit		DA6	\$130.00		
S94 - Open Space and Community Recreation		CONT9	\$469,188.00		
S94 - Community Services and Facilities		CONT3	\$249,113.00		
S94 - Management		CONT8	\$18,379.45		
S94 - Library Infrastructure		CONT7	\$127,070.00		
S94 - Library Bookstock		CONT4	\$715.56		
S94 - Residential Traffic and Parking in Hurstville		BO1	\$13,220.92		

CBD					
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**The following fees apply where you appoint Council as your Principal Certifying Authority (PCA). (If you appoint a private PCA, separate fees will apply)**

PCA Services Fee		DA6	\$14,650.02		
Construction Certificate Application Fee		CC1	\$8,820.89		
Construction Certificate Imaging Fee		AP165	\$500.00		

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.

**(This condition is modified part of 12/DA-241 REV01)**

3. GEN1007 - **Section 94 - Open Space and Community Recreation** - Pursuant to Section 94(1) of the Environmental Planning and Assessment Act, 1979, payment shall be made to Council of a monetary contribution for open space and community recreation facilities.

The contribution relates to Plan no. 2 and is based on the criteria that any development which results in a nett increase in the City's population will create extra demand on open space and community recreation facilities. Therefore the requirement for additional open space and embellishment of existing open space is a direct measurable consequence of the approved development.

**The total open space and community recreation facilities contribution required and payable before release of the Construction Certificate is \$469,188.00.**

(This condition is modified part of 12/DA-241 REV01)

4. GEN1008 - **Section 94 - Community Services and Facilities** - Pursuant to Section 94(1) of the Environmental Planning and Assessment Act, 1979, payment shall be made to Council of a monetary contribution for community services and facilities. The contribution relates to Plan no. 4 and is based on the criteria that any development which results in a nett gain of people living in the City or a change in the population structure will create extra demand on community services and facilities.

**The total community services and facilities contribution required and payable before release of the Construction Certificate is \$249,113.00.**

(This condition is modified part of 12/DA-241 REV01)

5. GEN1010 - **Section 94 - Management** - Pursuant to Section 94(1) of the Environmental Planning and Assessment Act, 1979, payment shall be made to Council of a monetary contribution for Section 94 planning and management.

The contribution is related to Plan no. 5 and is based on the criteria that the significant costs to Council associated with Section 94 planning and management are a direct measurable consequence of the approved development. Therefore it is appropriate to seek to partly offset these costs from the development.

**The total Section 94 Management contribution required and payable before release of the Construction Certificate is \$18,379.45.**

(This condition is modified part of 12/DA-241 REV01)

6. GEN1011 - **Section 94 – Library and Information Services** - Pursuant to Section 94(1) of the Environmental Planning and Assessment Act, 1979, payment shall be made to Council of a monetary contribution for library and information services.

The contribution is related to Plan no. 6 and is based on the premise that any development which results in a nett increase in the City's population will create extra demand on Council's library and information services provision. Furthermore, any such development will also generate an additional demand for the acquisition of library book stock.

Contributions are also sought from retail/commercial development within the Hurstville Town Centre, as defined by the map in the Plan.

- (a) The contribution rate for residential development is \$127,070.00.
- (b) The book stock acquisition contribution for residential development is \$715.56.

**The total Library and Information Services Section 94 contribution required and payable before release of the Construction Certificate is \$127,785.56.**

(This condition is modified part of 12/DA-241 REV01)

7. GEN1003 – **Section 94 -Traffic Management within the Hurstville City Centre District** - Pursuant to Section 94(1) of the Environmental Planning and Assessment Act, 1979, payment shall be made to Council of a monetary contribution for the provision of traffic management facilities within the Hurstville City Centre District.

The contribution relates to Plan no. 1 and is based on the following criteria as a direct consequence of the proposed development:

- (a) The increased traffic volume raises the potentiality of conditions accelerating the deterioration of road pavement and/or traffic system operational conditions.
- (b) The provision of the scheduled facilities is essential to facilitate the traffic system operation due to the proposed development.
- (c) The provision of a facility is a direct requirement as a result of the proposed development.

The contribution rate for Residential is \$2.14 per square metre respectively of nett increase in floor space.

The total traffic management contribution required and payable before release of the Construction Certificate is \$13,220.92.

(This condition is modified part of 12/DA-241 REV01)

8. GEN1013 - **Section 94 - Indexing of all Section 94 Contributions** - All contributions payable pursuant to Section 94 conditions must be paid before issue of the Construction Certificate, and will be indexed quarterly in accordance with the Consumer Price Index - Sydney All Groups, published by the Australian Bureau of Statistics. You must contact Council prior to payment to determine whether the contribution(s) amount is varied from that indicated in the consent due to adjustments to the Consumer Price Index – Sydney All Groups, as published by the Australian Bureau of Statistics. If you engage an Accredited Certifier, payment must be made before the issue of the Construction Certificate. Failure to do so can result in problems including incorrect cheque preparation, return of payment and delay in obtaining your Construction Certificate.
9. GEN1014 - **Long Service Levy** - Submit evidence of payment of the Building and Construction Industry Long Service Leave Levy to the Principal Certifying Authority. Note this amount is based on the cost quoted in the Development Application, and same may increase with any variation to estimated cost which arises with the Construction Certificate application. To find out the amount payable go to [www.lspc.nsw.gov.au](http://www.lspc.nsw.gov.au) or call 131441. **Evidence of the payment of this levy must be submitted with the Construction Certificate application.**
10. GEN1016 - **Damage Deposit – Major Works** - In order to insure against damage to Council property the following is required:
  - (a) Payment to Council of a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$3750.00.**
  - (b) Payment to Council of a non refundable inspection fee to enable assessment of any damage and repairs where required: **\$130.00.**
  - (c) At the completion of work Council will:
    - (i) review the dilapidation report prepared prior to the commencement works
    - (ii) review the dilapidation report prepared after the completion of works;
    - (iii) Review the Works –As-Executed Drawings (if applicable); and
    - (iv) inspect the public works.

The damage deposit will be refunded in full upon completion of work where no damage occurs and where Council is satisfied with the completion of works. Alternatively, the damage deposit will be forfeited or partly refunded based on the damage incurred.

  - (d) Payments pursuant to this condition are required to be made to Council before the issue of the Construction Certificate.

#### **SEPARATE APPROVALS UNDER OTHER LEGISLATION**

These conditions have been imposed to ensure that the applicant is aware of any separate approvals required under other legislation, for example: approvals required under the Local Government Act 1993 or the Roads Act 1993.

11. APR6001 - Engineering - Section 138 Roads Act 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.**

A separate approval is required to be lodged and approved 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):

- (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 (e.g. Opening the road for the purpose of connections to utility providers);
- (j) Stormwater and ancillary works in the road reserve; and
- (k) Stormwater and ancillary to public infrastructure on private land

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 Hurstville City Council's website [www.hurstville.nsw.gov.au/](http://www.hurstville.nsw.gov.au/) want to/Download a Council Form. For further information, please contact Council's Customer Service Centre on (02)9330 6222.

12. CC3018 - **Development Engineering - Extension of Council's Stormwater System** - A Section 138 Roads Act Drainage Application is to be submitted to and approved by Council for the extension of Council's drainage system. This extension shall be from the existing kerb inlet pit near the intersection of Queens Road to a point immediately upstream (South East) of the proposed vehicle crossing directly in front of the development site. The piped extension shall comprise 375mm (min) diameter class 3 reinforced concrete pipeline and a kerb inlet pit with 1.8 metre long (minimum) lintel opening in accordance with Council's Drainage Specification.

This Section 138 Application shall be approved by Council **prior to the issue of a Construction Certificate**.

13. APR60003 - **Engineering - Vehicular Crossing – Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:

- (a) Construct a 150mm thick concrete vehicular crossing reinforced with F72 fabric in accordance with Council's Specifications for vehicular crossings.
- (b) Construct a new full width (boundary to kerb) footpath in paving material approved and specified by Council's Engineer for the full frontage of the site in Dora Street in accordance with Council's Specifications for footpaths.
- (c) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the beneficiary of this consent and in accordance with Council's Specification for Vehicular Crossings and Associated Works. The work shall be carried out by a private contractor, subject to Council approval.

Constructing a vehicular crossing and/or footpath requires **separate approval** under **Section 138 of the Roads Act 1993**, prior to the issue of the **Construction Certificate**.

To apply for approval:

- (a) Complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Hurstville Council's Website at [www.hurstville.nsw.gov.au/I want to/Download a Council Form](http://www.hurstville.nsw.gov.au/I_want_to/Download_a_Council_Form)
- (b) In the Application Form, quote the Development Consent No. (eg. 2012/DA-241) and reference this condition number (e.g. Condition 23)
- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Section P1 and P2, in Council's adopted Fees and Charges for the administrative and inspection charges associated with Vehicular Crossing applications.

Please note, that an approval for a new or modified vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out by a private contractor in accordance with Council's *Specification for Vehicular Crossings and Associated Works* prior to the issue of the **Occupation Certificate**.

- 14. **APR6004 - Engineering - Road Opening Permit** - A Road Opening Permit must be obtained from Council, in the case of local or regional roads, or from the Roads and Traffic Authority, 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 OTHER GOVERNMENT AGENCIES**

These conditions have been imposed by other NSW Government agencies either through their role as referral bodies, concurrence authorities or by issuing General Terms of Approval under the Integrated provisions of the Environmental Planning and Assessment Act 1979.

- 15. **GOV1007 - Sydney Water – Quick Check** - The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Care Centre to determine whether the development application will affect Sydney Water's sewer and water mains, storm water drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to "Your Business" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building and Renovating under the heading Building and Developing, or telephone 13 20 92. The appointed PCA must ensure



that a Quick Check agent/Sydney Water has appropriately stamped the plans prior to the issue of the Construction Certificate.

16. GOV1009 - **Sydney Water – Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the Sydney Water Act must be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.
17. GOV1010 - **Ausgrid – Substation or Kiosk** - Ausgrid shall be consulted to determine if an electricity distribution substation is required. If so, it will be necessary for the final film survey plan to be endorsed with an area, having the required dimensions as agreed with Ausgrid, indicating the location of the proposed electricity distribution substation site. The substation must be located within the boundary of the development site, or within the building, subject to compliance with the Building Code of Australia. The substation site to be dedicated to Council as public roadway, or as otherwise agreed with Ausgrid. For details visit [www.ausgrid.com.au](http://www.ausgrid.com.au) or call 131525.
  - (a) written confirmation of Ausgrid's requirements is to be submitted **prior to the issue of the Construction Certificate**; and
  - (b) Ausgrid's requirements are to be met before the issue of the Occupation Certificate.
18. GOV1011 - **Ausgrid – Underground electrical conduits** - Ausgrid is to be consulted to determine if underground electricity conduits are to be installed in the footway. If so, the developer is to install the conduits within the footway across the frontage/s of the development site, to Ausgrid's specifications. Ausgrid will supply the conduits at no charge. The developer is responsible for compaction of the trench and restoration of the footway in accordance with Council direction. . For details visit [www.ausgrid.com.au](http://www.ausgrid.com.au) or call 131525.
  - (a) a copy of Ausgrid's requirements is to be submitted to Council **before issue of the Construction Certificate**;
  - (b) Where conduits are to be installed, evidence of compliance with Ausgrid's requirements is to be submitted **before the issue of the Occupation Certificate**.

Where works within the road reserve are to be carried out by the beneficiary of this consent, a Road Opening Permit Application must be submitted to, and approved by, Council **before the issue of the construction Certificate**.

19. GOV1012 - **Ausgrid – Clearances to electricity mains** - If any part of the proposed structure, within 5m of a street frontage, is higher than 3m above footway level, Ausgrid is to be consulted to determine if satisfactory clearances to any existing overhead High Voltage mains will be affected. If so, arrangements are to be made, at your cost, with Ausgrid for any necessary modification to the electrical network in question. For details visit [www.ausgrid.com.au](http://www.ausgrid.com.au) or call 131525.

#### **PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**

These conditions either require modification to the development proposal or further investigation/information prior to the issue of the Construction Certificate to ensure that there is no adverse impact.

20. **CC2004 - Development Assessment - Design Changes** - The following design changes are required and are to be incorporated into the plans to be lodged **with the Construction Certificate application**.

- (a) The proposed development is to be designed such that road traffic noise from Queens Road is mitigated by durable materials and complies with the requirements of Clause 102 (Impact of road noise or vibration on non-road development) of State Environmental Planning Policy (Infrastructure) 2007.
- (b) The swept path of the longest vehicle entering and exiting the site as well as manoeuvrability through the site shall be in accordance with Ausroads. In this regard, a plan showing the swept path of service vehicles entering and exiting the site shall be submitted to Council for approval, which shows that the development complies with this requirement.
- (c) The car parking spaces for the residential and retail component shall be separated such that entry to the residential car spaces is available only to residents and their visitors. This condition has been imposed so that the development complies with crime prevention principles.

~~20A. The ground floor open space/courtyard located at the rear of the site is to be used as common open space and allocated as "common property" in any strata plan of the development. This area is not to be used by the ground floor shops as seating area, retail area, or the like. Development consent is required for this area to be used for any purpose other than common open space.~~

**(This condition is deleted as part of MOD2013/0044 (12/DA-241))**

20B. The floor to ceiling height of each residential level is to be a minimum of 2.7m without any increase in the approved height of the roof or the lift tower of the development. This condition has been imposed to ensure that the development is consistent with State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development.

(This condition is added part of 12/DA-241 REV01)

21. The recommendations of the Preliminary Environmental Site Assessment Phase 1 prepared by Aargus Australia (dated December 2011) are to be implemented. This includes the preparation of a Phase 2 Environmental Site Assessment prior to the issue of the Construction Certificate. The finding/recommendations of the Phase 2 Environmental Site Assessment are to be implemented at the relevant construction stages.

22. **CC2001 - Development Assessment - Erosion and Sedimentation Control** - Erosion and sediment controls must be provided to ensure:

- (a) Compliance with the approved Erosion and 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 run-off is diverted around cleared or exposed areas
- (d) silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways

- (e) all erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
- (f) controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
- (g) all disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) Compliance with Managing Urban Stormwater – Soils and Construction (Blue Book) produced by Landcom 2004.

These measures are to be implemented before the commencement of work (including demolition and excavation) and must remain until the issue of the Occupation Certificate.

23. **CC2008 - Development Assessment – Landscape Plan** - A detailed landscape plan, drawn to scale, by a qualified landscape architect or landscape designer, must be submitted prior to the issue of the Construction Certificate. The plan must include:

- (i) Location of existing and proposed structures on the site including existing trees (if applicable);
- (ii) Details of earthworks including mounding and retaining walls and planter boxes (if applicable);
- (iii) Location, numbers and type of plant species;
- (iv) Details of planting procedure and maintenance;
- (v) Details of drainage and watering systems.

24. **CC2003 - Development Assessment - Construction Site Management Plan** - A Construction Site Management Plan must be submitted with the application for the Construction Certificate, and must include the following measures:

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

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

25. **CC2009 - Development Assessment – Pre-Construction Dilapidation Report – Private Land** - A qualified structural engineer shall prepare a Pre-Construction

Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:

- (a) All adjoining properties with a common boundary to the subject site.

The report shall be prepared at the expense of the beneficiary of the consent and submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

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

26. **CC2010 - Development Assessment – SEPP 65 Design Verification Statement -**

A certifying authority must not issue a construction certificate for residential flat development unless the certifying authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of [State Environmental Planning Policy No 65—Design Quality of Residential Flat Development](#).

27. **CC3004 - Development Engineering - Stormwater Drainage Plans -** The submitted stormwater plan has been assessed as a concept plan only and no detailed assessment of the design has been undertaken.

Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a qualified practising hydraulics engineer (with details of qualifications being provided) in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, **shall accompany the application for the Construction Certificate.**

28. **CC3001 - Stormwater System -** The submitted stormwater plan has been assessed as a concept plan only and no detailed assessment of the design has been undertaken. The underground basement car park must pump to and all other stormwater must drain by gravity to upper level of the new kerb inlet pit required to be constructed directly in front of the development site as part of the extension of Council's stormwater system. The design of this proposed drainage system must be prepared by a qualified practicing hydraulics engineer (with details of qualifications being provided) and be submitted for approval with the Construction Certificate application.

29. **CC3005 - Development Engineering -On Site Detention -** The submitted stormwater plan has been assessed as a concept plan only and no detailed assessment of the design has been undertaken.

An on-site detention (OSD) facility designed by a professional hydrological/hydraulic engineer, shall be installed. The design must include the computations of the inlet and outlet hydrographs and stage/storage relationships of the proposed OSD using the following design parameters:

- (a) Peak flow rates from the site are to be restricted to a permissible site discharge (PSD) equivalent to the discharge when assuming the site contained a single dwelling, garage, lawn and garden, at Annual Recurrence Intervals of 2 years and 100 years.

Refer to Flow Controls in Council's Draft/Adopted Stormwater Drainage Policy.

- (b) The OSD facility shall be designed to meet all legislated safety requirements and childproof safety fencing around the facility must be provided where the OSD facility is open or above ground when the design peak storage depth is greater than 300mm. A durable metal plate or similar sign is to be placed at the OSD facility and must bear the words:

"This is an on-site detention basin/tank and is subject to possible surface overflow during heavy storms."

Full details shall accompany the application for **the Construction Certificate**

30. CC2011 - Development Assessment – BASIX Commitments - All energy efficiency measures as detailed in the BASIX Certificate No. 407316M\_04 dated 11 January 2013, approved with the Development Consent 12/DA-241 must be implemented on the plans lodged with the application for the Construction Certificate.

(This condition is modified part of 12/DA-241 REV01)

31. CC3014 - **Development Engineering - Allocation of car parking and storage areas** - A plan showing the allocation of each car space and storage area to each individual unit in accordance with the conditions of the development consent shall be prepared. **This plan shall accompany the application for the construction Certificate.**
32. CC5004 - **Trees – Tree Removal & Replacement - Public Land** - Permission is granted for the removal of the following trees located on Council's public footpath:

- (a) The tree located at the front of the site on Dora Street on the public reserve.

This work is to be undertaken at the applicant's expense. Please refer to Section O1 in Council's adopted Schedule of Fees and Charges for the administration and replacement tree fees which apply to this work.

You have the option of Council removing the Council street tree/s or engaging a private contractor to undertake the work.

Should you choose Council to undertake the work, the following fees apply:

Fee Type	Fee Type	Amount
Administration Fee for Tree Removal	RC83	\$140.00

Replacement Tree Fee (per Tree)	RC83	\$116.00
Cost of tree removal	RC83	TBA
Cost of Stump Grinding	RC83	TBA

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.

The fees must be paid to Council prior to the issue of the Construction Certificate and evidence of payment must be provided to the Principal Certifying Authority.

Should you choose a Private Contractor to undertake the work; the private contractor must have a minimum of \$10 million dollars public liability insurance. Prior to the commencement of any work, the form entitled Application for the Removal of a tree by private contractor on public footpath accompanied by evidence of the Public Liability Insurance must be lodged with Hurstville City Council Tree Services Division.

33. CC6004 - **Engineering –Traffic Management – Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS2890.2 (for commercial vehicle facilities).
34. CC6005 - Engineering – Traffic Management – Construction Traffic Management Plan (Large Developments only) - A Construction Traffic Management Plan detailing:
  - (a) construction vehicle routes;
  - (b) anticipated number of trucks per day;
  - (c) hours of construction;
  - (d) Access arrangements; and
  - (e) Proposed traffic measures to minimise impacts of construction vehicles

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

35. CC7002 - **Building – Fire Safety Measures** - Prior to the issue of a Construction Certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a Certifying Authority. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or Certifying Authority will then issue a Fire Safety Schedule for the building.
36. CC7004 - **Building – Structural details** - Structural plans and specifications prepared and endorsed by a suitably qualified practising structural engineer who holds the applicable Certificate of Accreditation as required under the Building Professionals Act 2005 shall be submitted along with the Construction Certificate application to the Certifying Authority for any of the following, as required by the building design:

- (a) piers
- (b) footings
- (c) slabs
- (d) columns
- (e) structural steel
- (f) reinforced building elements
- (g) swimming pool design
- (h) retaining walls
- (i) stabilizing works
- (j) structural framework

37. **CC7011 - Building – Slip Resistance- Commercial, Retail and Residential Developments** - All pedestrian surfaces in areas such as foyers, public corridors/hallways, stairs and ramps as well as floor surfaces in the wet rooms in any commercial/retail/residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2004 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.

38. **CC4006 - Health - Acoustic Certification – Rooftop Mechanical Equipment (CBD only)** - The Construction Certificate plans must be accompanied by a certificate from a professional acoustic engineer certifying that noise from the operation of the roof top mechanical plant and equipment will not exceed the background noise level when measured at any boundary of the site. If sound attenuation is required, this must be detailed on the plans lodged with the Construction Certificate.

39. **CC4008 - Health - Car Wash Bays** - Plans and specifications of the car washing system which has been approved by Sydney Water must be submitted with the application for the Construction Certificate.

All car washing bays shall be contained within a roofed and bunded car wash bay with pre-treatment approved by Sydney Water. The water from the car wash bay must be graded to a drainage point and connected to sewer.

If alternative water management and disposal options are proposed (i.e. where water is recycled, minimised or reused on the site), detailed plans and specifications of the water recycling system must be submitted with the application for the Construction Certificate.

40. **CC8005 - Waste – Waste Storage Containers – Mixed Use Developments** - For the Residential portion of the building the following waste and recycling facilities will be required:

- (a) Domestic Waste - 18 x 240 litre Mobile Bins (MB's);
- (b) Domestic Recycling - 24 x 240 litre MB's.

Larger 1,100 litre MB's may be used as an alternative, but an equivalent amount of space will need to be provided.

For the Commercial portion of the building appropriate waste and recycling containers and facilities will need to be provided for all specific end use businesses in accordance with the following waste generation rates:-

- (a) Retail Trading – shops, to 100 square metres - 0.1-0.2 cubic metres per 100 square metres of floor area per day;
- (b) Restaurants and Food Shops – 0.3-0.6 square metres per 100 meals, plus up to 0.15 cubic metres of beverage containers per 100 meals; and,
- (c) Office – 0.01-0.03 cubic metres per 100 square metres of floor area per day.

All waste and recycling containers shall be stored in an approved waste storage area that is large enough to store the required number of bins, appropriate for the number of units and intended uses of the building, and is to be located in an area of the building that can be adequately serviced by waste collection vehicles.

If the Waste Storage Area is located in a part of the building that cannot be easily accessed by service providers, it will be the responsibility of the Owners Corporation to present the bins for collection to the kerb-side.

Details of the Waste Storage Area must be illustrated on the plans submitted with the application for the Construction Certificate.

(This condition is modified part of 12/DA-241 REV01)

41. CC8001 - **Waste – 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 Principal Certifying Authority and copy provided to the Manager - Environmental Services, Hurstville City Council prior to the issue of any Construction Certificate.

**PRIOR TO THE COMMENCEMENT OF WORK (INCLUDING DEMOLITION AND EXCAVATION)**

These conditions have been imposed to ensure that all pre-commencement matters are dealt with and finalised prior to the commencement of work.

42. PREC2001 - **Building regulation - Site sign – Soil and Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), the durable site sign issued by Hurstville City 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.
43. PREC2002 - **Development Assessment – Demolition and Asbestos** - The demolition work shall comply with the provisions of Australian Standard



AS2601:2011 – 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 Principal Certifying Authority 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.

The asbestos removal work shall also be undertaken in accordance with the *How to Safely Remove Asbestos: Code of Practice* published by Work Cover NSW.

Copies of the Act, Regulation and Code of Practice can be downloaded free of charge from the Work Cover NSW website: [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

44. **PREC6001 - Engineering – 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 Council’s Engineers for their records.
45. **PREC6002 - Engineering – Dilapidation Report on Public Land – Major Development Only** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared on Council infrastructure adjoining the development site on Dora Street.

The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the Principal Certifying Authority and a copy provided to the Council.

The report must include the following:

- (a) Photographs showing the existing condition of the road pavement fronting the site,
- (b) Photographs showing the existing condition of the kerb and gutter fronting the site,
- (c) Photographs showing the existing condition of the footpath pavement fronting the site,
- (d) Photographs showing the existing condition of any retaining walls within the footway or road, and
- (e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (f) The full name and signature of the structural engineer.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

Council will use this report to determine whether or not to refund the damage deposit after the completion of works.

46. **PREC7001 - Building – Registered Surveyors Report - During Development Work** - A report must be submitted to the Principal Certifying Authority at each of the following applicable stages of construction:

- (a) Set out before commencing excavation.
- (b) Floor slabs or foundation wall, before formwork or commencing brickwork.
- (c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
- (d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
- (e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
- (f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
- (g) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.
- (h) Other.

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

#### **DURING WORK**

These conditions have been imposed to ensure that there is minimal impact on the adjoining development and surrounding locality during the construction phase of the development.

47. **CON2001 - Development Assessment - Hours of construction for demolition and building work** - Work in connection with the demolition of any existing buildings and the removal of spoil and materials from the site that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity shall be permitted to be performed on any Sunday, Good Friday, Christmas Day or any Public Holiday. A penalty infringement notice may be issued for any offence.

In addition to the foregoing requirements, construction work on all buildings (except that on single dwelling houses and associated structures on the site of a single

dwelling house) shall be prohibited on Saturdays and Sundays on weekends adjacent to a public holiday.

48. **CON2002 - Development Assessment – 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 separately by Council.
49. **CON6002 - Engineering - 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 and/or under Section 68 of the Local Government Act 1993. Penalty infringement Notices may be issued for any offences and severe penalties apply.
50. **CON8001 - Waste – 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. Copies of all receipts for the disposal, or processing of all such materials shall be submitted to the Principal Certifying Authority and a copy provided to the Manager Environmental Services, Hurstville City Council.

#### **PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

These conditions have been imposed to ensure that all works have been completed in accordance with the Development Consent prior to the issue of the Occupation Certificate.

51. **OCC2004 - Development Assessment – BASIX Compliance Certificate** - A Compliance Certificate must be provided to the Principal Certifying Authority regarding the implementation of all energy efficiency measures as detailed in the BASIX Certificate No. 407316\_04 dated 11 January 2013, and in the plans approved with the Development Consent/ Construction Certificate, before issue of the Occupation Certificate.

(This condition is modified part of 12/DA-241 REV01)

52. **OCC2005 - Development Assessment – Completion of Landscape Works** - All landscape works must be completed before the issue of the Final occupation certificate.
53. **OCC2006 - Development Assessment – Post Construction Dilapidation report – Private Land** - At the completion of the construction works, a suitably qualified person is to be engaged to prepare a post-construction dilapidation report. This report is to ascertain whether the construction works associated with the subject development created any structural damage to the following adjoining premises:

- (a) All properties with a common boundary to the subject site.

The report is to be prepared at the expense of the beneficiary of the consent and submitted to the Principal Certifying Authority (PCA) prior to the issue of the Occupation Certificate. In ascertaining whether adverse structural damaged has occurred to the adjoining premises, the PCA, must compare the post-construction

dilapidation report with the pre-construction dilapidation report required by conditions in this consent.

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

54. **OCC2007 - Development Assessment – Allocation of car parking spaces - Car parking associated with the development is to be allocated as follows:**

- (a) **Residential dwellings: 79 car spaces (including the disability accessible car spaces required for the adaptable dwellings)**
- (b) **Residential visitors: 18 car spaces**
- (c) **Retail: 17 car spaces**
- (d) **Car wash bay: 1 car wash bay**

**(This condition is modified as part of MOD2013/0044 (12/DA-241))**

55. **OCC6002 - Engineering – Vehicular crossing and Frontage work – Major development** - The following road frontage works shall be constructed in accordance with Council's, Specification for Vehicular Crossings and Associated Works together with the Vehicular Crossing Approval issued by Council's Engineering Services Division:

- (a) Construct a 150mm thick concrete vehicular crossing reinforced with F72 fabric in accordance with Council's Specifications for vehicular crossings.
- (b) Construct a new full width (boundary to kerb) footpath in paving material approved and specified by Council's Engineer for the full frontage of the site in Dora Street in accordance with Council's Specifications for footpaths.
- (c) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the beneficiary of this consent and in accordance with Council's Specification for Vehicular Crossings and Associated Works. The work shall be carried out by a private contractor, subject to Council approval.

A private contractor shall carry out the above work, at the expense of the beneficiary of this consent and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

The driveway and road frontage works are to be completed **before the issue of the Occupation Certificate**.

56. **5CON6003 - Development Engineering** - The approval of the relative utility authority shall be obtained prior to any relocation or removal of the light pole located outside the site.
57. **OCC3008 - Development Engineering - Consolidation of Site** - The site shall be consolidated into one allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan shall be registered at the NSW Department of Lands prior to the issue of a final occupation certificate.

58. **OCC6008 - Engineering – Dilapidation Report on Public Land - Major Development Only** - Upon completion of works, a follow up dilapidation report must be prepared on Council infrastructure adjoining the development site on Dora Street.

The dilapidation report must be prepared by a qualified structural engineer. The report must be provided to the Principal Certifying Authority and a copy provided to the Council.

The report must include the following:

- (a) Photographs showing the condition of the road pavement fronting the site,
- (b) Photographs showing the condition of the kerb and gutter fronting the site,
- (c) Photographs showing the condition of the footway including footpath pavement fronting the site
- (d) Photographs showing the condition of retaining walls within the footway or road, and
- (e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (f) The full name and signature of the professional engineer.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

Council's Engineering Services Section must advise in writing that the works have been completed to their satisfaction prior to the issue of the Occupation Certificate. Further, Council will use this report to determine whether or not to refund the damage

59. **OCC7001 - Building – Fire Safety Certificate before Occupation or Use** - Prior to the issue of an occupation certificate the owner of the building must issue a final fire safety certificate and must cause a copy of that final fire safety certificate to be given to the principle certifying authority issuing the occupation certificate. The final fire safety certificate must be issued to the effect that each essential fire safety measure specified in the fire safety schedule for the building to which the certificate relates:

- (a) has been assessed by a properly qualified person, and
- (b) was found, when it was assessed, to be capable of performing to at least a standard required by the current fire safety schedule for the building for which the certificate is issued.

Note: The owner of the building:

- (a) must cause a copy of the final fire safety certificate (together with a copy of the current fire safety schedule) to be given to the Fire Commissioner, and
- (b) must cause a further copy of the final fire safety certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

60. **OCC7002 - Building – Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any commercial/retail/residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ

test must be carried out in accordance with AS/NZS 4663:2002. Details of compliance must be submitted with the application for the Occupation Certificate.

61. **OCC4004 - Health - Noise from mechanical plant and equipment – CBD Only -** Noise from the operation of mechanical, equipment, ancillary fittings, machinery, mechanical ventilation system and/or refrigeration systems must not exceed background noise when measured at the nearest lot boundary of the site. Where noise sensitive receivers are located within the site, noise from the operation of mechanical plant and equipment must not exceed background noise when measured at the nearest strata, stratum or community title boundary.

A professional engineer (acoustic) shall be engaged to certify that the design and construction of the all sound producing plants and equipment associated with the building complies with the above requirements. Certification shall be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

#### **ONGOING CONDITIONS**

These conditions have been imposed to ensure that the use or operation of the development does not adversely impact on the amenity of the neighbourhood or environment.

62. **ONG2003 - Development Assessment – Maintenance of Landscaping -** All trees and plants forming part of the landscaping must be maintained on an on-going basis. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilizing, pest and disease control and any other operations required to maintain healthy trees, plants and turfed areas.
63. **ONG7002 - Building – Annual Fire Safety Statement -** The owner of the building must issue an annual fire safety statement in respect of each essential fire safety measure in the building premises and cause a copy of that statement to be given to Council prior to or upon the due date for lodgement as required by Council.

The annual fire safety statement must be to the effect that:

- (a) in respect of each essential fire safety measure, such measure has been assessed by a properly qualified person and was found, when it was assessed, to be capable of performing:
  - (i) in the case of an essential fire safety measure applicable by virtue of a fire safety schedule, to a standard no less than that specified in the schedule, or
  - (ii) in the case of an essential fire safety measure applicable otherwise than by virtue of a fire safety schedule, to a standard no less than that to which the measure was originally designed and implemented, and
- (b) the building has been inspected by a properly qualified person and was found when it was inspected to be in a condition that did not disclose any grounds for a prosecution under Part 9, Division 7 of the Environmental Planning and Assessment Regulation, 2000.

The owner of the building must also cause a copy of the statement (together with a copy of the current fire safety schedule) to be given to the Fire Commissioner and as well cause a further copy of the statement (together with a copy of the current fire safety schedule) to be prominently displayed in the building.

64. **ONG4017 - Health - Lighting – General Nuisance** - Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill.
65. **ONG3004 - Development Engineering - Conditions relating to future Strata Subdivision of Buildings** - No approval is expressed or implied for the subdivision of the subject building(s). For any future Strata subdivision, a separate Development Application or Complying Development Certificate shall be approved by Council or an Accredited Certifier.

Prior to the issue of any Strata Certificate of the subject building(s) the following conditions shall be satisfied:

- (a) **Unit Numbering**  
Apartment type numbers shall be installed adjacent or to the front door of each unit.  
The unit number shall coincide with the strata plan lot numbering.
- (b) **Car Parking Space Marking and Numbering**  
Each basement car space shall be line marked with paint and numbered in accordance with the strata plan lot numbering.  
  
"Visitor Parking" signs shall be installed adjacent to any and all visitor car spaces prior to the issue of any Strata Certificate.
- (c) **Designation of Visitor Car Spaces on any Strata Plan**  
Any Visitor car spaces shall be designated on the final strata plan as "Visitor Parking - Common Property".
- (d) **Allocation of Car Parking Spaces, Storage Areas and Common Property on any Strata Plan.**
  - i. All car parking spaces shall be created as a part lot of the individual strata's unit lot in any Strata Plan of the subject building.
  - ii. All storage areas shall be created as a part lot of the individual strata's unit lot or a separate Utility Lot (if practical) in any Strata Plan of the subject building.
  - iii. The minimum number of parking spaces required to be allocated as a part lot to each individual strata's unit lot shall be in accordance with the car parking requirements of Council's Development Control Plan and as required by the relative development consent for the building construction.

- iv. No parking spaces shall be created as an individual strata allotment on any Strata Plan of the subject building unless these spaces are surplus to the minimum number of parking spaces required.

If preferred the surplus car spaces shall be permitted to be created as separate Utility Lots, (instead as a part lot of the individual strata's unit lot), in accordance with section 39 of the Strata schemes (freehold development Act 1973).

The above requirements regarding car parking spaces and storage areas may only be varied with the conditions of a separate Development Application Approval for Strata Subdivision of the Building(s).

- (e) On Site Detention Requirements

The location any on-site detention facility shall be shown on the strata plan and suitably denoted.

- (f) Creation of Positive Covenant

A Positive Covenant shall be created over any on-site detention facility by an Instrument pursuant to Section 88B of the Conveyancing Act 1919, with the covenant including the following wording:

"It is the responsibility of the Owner's Corporation to keep the on-site detention facilities, together with any ancillary pumps, pipes, pits etc, clean at all times and maintained in an efficient working condition. The on-site detention facilities shall not be modified in any way without the prior approval of Hurstville City Council."

Hurstville City Council is to be nominated as the Authority to release, vary or modify this Covenant.

- 66. **ONG3005 - Development Engineering – Additional requirements for the issue of a Strata Certificate** - In addition to the statutory requirements of the Strata Schemes (Freehold Development Act 1973) a Strata Certificate must not be issued which would have the effect of:

- a) The removal of any areas of common property shown upon the approved Development Application plans and allocated to any one or more strata lots;
- b) The removal of any visitor parking spaces from the strata scheme and allocated to any one or more strata lots; or
- c) Any unit's parking space or storage area is not strata subdivided as separate strata lot;
- d) Under no circumstances shall any future Strata By-Laws be created to grant exclusive use of nominated Visitors Parking spaces to occupants/owners of units or tenancies within the building.

**Note:** This condition has been imposed to ensure that: (a) common property is not alienated from the strata scheme and assigned to any one or more strata



lots, (b) visitor parking is not alienated from the strata scheme and assigned to any one or more strata lots such that visitors would be restricted from lawful access and use of required visitor parking, (c) parking spaces and storage areas are not strata subdivided as separate strata lots which may be sold with full strata title rights as a parking space or storage area lot, reducing available parking and storage to strata lots and visitors required to reduce demand for on-street public parking.

67. **ONG3006 - Development Engineering – On-going maintenance of the on-site detention system** - The Owner(s) must in accordance with this condition and any positive covenant:

- (a) Permit stormwater to be temporarily detained by the system;
- (b) Keep the system clean and free of silt rubbish and debris;
- (c) If the car park is used as a detention basin, a weather resistant sign must be maintained in a prominent position in the car park warning residents that periodic inundation of the car park may occur during heavy rain;
- (d) Maintain renew and repair as reasonably required from time to time the whole or part of the system so that it functions in a safe and efficient manner and in doing so complete the same within the time and in the manner reasonably specified in written notice issued by the Council;
- (e) Carry out the matters referred to in paragraphs (b) and (c) at the Owners expense;
- (f) Not make any alterations to the system or elements thereof without prior consent in writing of the Council and not interfere with the system or by its act or omission cause it to be interfered with so that it does not function or operate properly;
- (g) Permit the Council or its authorised agents from time to time upon giving reasonable notice (but at anytime and without notice in the case of an emergency) to enter and inspect the land with regard to compliance with the requirements of this covenant;
- (h) Comply with the terms of any written notice issued by Council in respect to the requirements of this clause within the time reasonably stated in the notice;
- (i) Where the Owner fails to comply with the Owner's obligations under this covenant, permit the Council or its agents at all times and on reasonable notice at the Owner's cost to enter the land with equipment, machinery or otherwise to carry out the works required by those obligations;
- (j) Indemnify the Council against all claims or actions and costs arising from those claims or actions which Council may suffer or incur in respect of the system and caused by an act or omission by the Owners in respect of the Owner's obligations under this condition.

This advice has been included to provide additional information and where available direct the applicant to additional sources of information based on the development type.

68. ADV3002 - **Development Engineering - Existing Sewer Main** - Council's records show an existing sewer main located along the rear boundary of the site. The requirements of Sydney Water regarding this sewer main will have to be met for the proposed construction works
69. Any proposed landscaping, fencing or signage is not to impede the desired sight lines of all road users including pedestrians and cyclists.
70. All works/regulatory signage associated with the proposed development shall be at no cost to NSW Roads and Maritime Service.
71. ADV2002 - **Development Assessment - Site Safety Fencing** - Site fencing must be erected in accordance with WorkCover 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.

For more information visit [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

## Schedule B – Prescribed Conditions

Prescribed conditions are those which are mandated under Division 8A of the *Environmental Planning and Assessment Regulation 2000* and given weight by Section 80A (11) of the *Environmental Planning and Assessment Act 1979*.

Detailed below is a **summary** of all the prescribed conditions which apply to development in New South Wales. Please refer to the full details of the prescribed conditions as in force, at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

It is the responsibility of the beneficiary of this consent to determine which prescribed conditions apply.

72. PRES1001 - **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
73. PRES1002 - **Clause 98 – Building Code of Australia and 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.
74. PRES1003 - **Clause 98A – Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the Principal Certifying Authority and the Principal Contractor.
75. PRES1004 - **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*.
76. PRES1007 - **Clause 98E – Protection and 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.

## Schedule C – Operational & Statutory Conditions

These conditions comprise the operational and statutory conditions which must be satisfied under the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning & Assessment Regulation 2000*. Please refer to the full details of the Act and Regulations as in force, at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

It is the responsibility of the beneficiary of this consent to determine which operational and statutory conditions apply.

77. **OPER1001 - Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited certifier.

An application form for a **Construction Certificate** is attached for your convenience.

78. **OPER1002 - Appointment of a Principal Certifying Authority** - The erection of a building must not commence until the beneficiary of the development consent has:
- (a) appointed a Principal Certifying Authority (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, then the beneficiary of the consent 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 Hurstville City Council as the Principal Certifying Authority for your development.

79. **OPER1003 - Notification of Critical Stage Inspections** - No later than two (2) 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 beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

80. **OPER1004 - Notice of Commencement** - The beneficiary of the development consent must give at least two (2) 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.

81. **OPER1005 - Subdivision Work – Construction Certificate and Appointment of Principal Certifying Authority** - Subdivision work in accordance with a development consent cannot commence until:
- (a) A Construction Certificate has been issued by the consent authority, the council (if not the consent authority) or an accredited certifier; and
  - (b) The beneficiary of the consent has appointed a Principal Certifying Authority for the subdivision work.

No later than two (2) days before the subdivision 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 beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the subdivision work.

An **Information Pack** is attached for your convenience should you wish to appoint Hurstville City Council as the Principal Certifying Authority for your development.

82. OPER1006 - **Subdivision work – Notice of Commencement** - The beneficiary of the development consent must give at least two (2) days notice to the Council and the PCA of their intention to commence the subdivision works.

A **Notice of Commencement Form** is attached for your convenience.

83. OPER1007 - **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifying Authority. 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*.
84. OPER1008 - **Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the principal certifying authority at least 48 hours before each required inspection needs to be carried out.

Where Hurstville City Council has been appointed PCA, Forty-eight (48) hours notice in writing, or alternatively twenty-four (24) hours notice by facsimile or telephone, must be given to when specified work requiring inspection has been completed.

85. OPER1009 - **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 Principal Certifying Authority appointed for the building work can issue the Occupation Certificate.

An **Occupation Certificate** Application Form is attached for your convenience.

If you need more information, please contact Paula Bizimis, Senior Development Assessment Officer below on 9330-6222 during normal office hours.



Ms P Bizimis  
Senior Development Assessment Officer  
**Planning and Development Directorate**