

<b>Panel Reference</b>	<b>2017SSH039</b>
<b>DA Number</b>	DA2017/0483
<b>LGA</b>	Georges River Council
<b>Proposed Development</b>	Demolition of all existing structures onsite, lot consolidation and construction of a 10 storey residential flat building over four (4) levels of basement parking containing eighty-seven (87) residential units and 100 car-spaces, including landscaping and infrastructure works at 2 -10 Stanley Street Kogarah.
<b>Street Address</b>	2 - 10 Stanley Street, Kogarah NSW 2217.
<b>Applicant/Owner</b>	Carlton Investments No.2 Pty Ltd (Applicant and Owner)
<b>Date of DA lodgement</b>	13 October 2017.
<b>Number of Submissions</b>	Three (3) submissions received.
<b>Recommendation</b>	Approval subject to the conditions.
<b>Regional Development Criteria (Schedule 7)</b>	<p>Regional development is defined in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.</p> <p>Development with a capital investment value (CIV) over \$30 million.</p> <p>The CIV of this application as outlined in the application is \$31,134,021.</p>
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979.</li> <li>• Environmental Planning and Assessment Regulation 2000.</li> <li>• State Environmental Planning Policy No 55 – Remediation of Land.</li> <li>• State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.</li> <li>• State Environmental Planning Policy (Building and Sustainability Index: 2004).</li> <li>• State Environmental Planning Policy (Infrastructure) 2007.</li> <li>• State Regional Environmental Plan No 2 – Georges River Catchment.</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.</li> <li>• Draft Environment State Environmental Planning Policy</li> </ul>

	<ul style="list-style-type: none"> <li>• Kogarah Local Environmental Plan 2012.</li> <li>• Kogarah Development Control Plan.</li> <li>• Kogarah Section 94 Contribution Plan.</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Statement of Environmental Effects.</li> <li>• Registered survey.</li> <li>• Architectural plans.</li> <li>• Landscape Plan.</li> <li>• Traffic Impact Assessment report.</li> <li>• Stormwater Details and Plans</li> <li>• Clause 4.6 Exception to Development Standard – Height.</li> <li>• SEPP 65 Design Verification Statement.</li> <li>• SEPP 65 Assessment Criteria.</li> </ul>
<b>Report prepared by</b>	Mr Ramez Guirguis Senior Development Assessment Officer
<b>Report date</b>	23 November 2018.

<b>Summary of matters for consideration under Section 4.15</b>  Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b>  Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b>  If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>Yes</b>
<b>Special Infrastructure Contributions</b>  Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	<b>Not Applicable</b>

<p><b>Conditions</b></p> <p>Have draft conditions been provided to the applicant for comment?</p>	<p><b>No, standard conditions have been attached. Applicant advised.</b></p>
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## Executive Summary

### Proposal

Council received a development application (DA2017/0483) seeking planning permission for the demolition of all existing structures onsite and construction of a 10 storey residential flat building over four (4) levels of basement parking containing eighty-seven (87) residential units and 100 car-spaces, including landscaping and infrastructure works at 2-10 Stanley Street Kogarah (the Site).

### Site and locality

The subject site has a regular rectangular shape with a combined area of 1,634 m<sup>2</sup> comprising the amalgamation of eight (8) allotments commonly known as 2-10 Stanley Street Kogarah occupying 3 street frontages. The site is located within the Kogarah North Precinct; on the corner of an area which has recently been up zoned to High Density Residential land use.

### Zoning and KLEP (2012) Compliance – LEP

The sites are identified as R4 High Density Residential pursuant to the provisions of the Kogarah Local Environmental Plan 2012. Residential flat buildings are a permissible use within the zone. The proposal meets the definition of a “residential flat building”. The application seeks to increase the height of the building in the area of the roof top communal open space and plant, this variation has been accompanied by a Clause 4.6 - Exceptions to development standards request.

### State Environmental Planning Policy

The proposal has been considered to be satisfactory in regards to:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2000.
- State Environmental Planning Policy No 55 – Remediation of Land.
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
- State Environmental Planning Policy (Building and Sustainability Index: 2004).
- State Environmental Planning Policy (Infrastructure) 2007.
- State Regional Environmental Plan No 2 – Georges River Catchment.
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

- Draft Environment State Environmental Planning Policy.

### **Draft Environment SEPP**

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.

This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating the following seven existing SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

The proposal is not inconsistent with the provisions of this Draft Instrument.

### **Kogarah Development Control Plan 2012 (KDCP 2012 – Amendment No 1)**

The proposal reasonably satisfies the applicable provisions contained within the Kogarah Development Control Plan.

### **Section E4 - Kogarah North Precinct**

The proposal is considered to reasonably satisfy the objectives of the Kogarah North Precinct, which results in an appropriate built form in relation to the applicable planning controls. It is noted that the application was lodged prior to the commencement of Section E4 – Kogarah North Precinct Development Control Plan.

### **Submissions**

The application was notified and renotified to two hundred (200) owners and occupiers in accordance with the provisions of the Kogarah Development Control Plan. In response, three (3) submissions were received. The relevant concerns have been addressed in detail later in this report.

### **Level of Determination**

The proposal seeks a cost of work of \$31,134,021. The development application is to be determined by the South Sydney Planning Panel due to the capital investment value exceeding \$30 million for a residential development pursuant to the definition of regional development contained within Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011

The CIV of this application as outlined in Registered Quantity Surveyors Detailed Cost Report is \$31,134,021.

## **Conclusion**

Having regards to the matters for consideration Section 4.15 and Section 4.16(1)(a) of the Environmental Planning and Assessment Act and following a detailed assessment of the proposed application DA2017/0483 is recommended for approval subject to conditions.

## **Full Report**

### **Site and Locality**

The subject site comprises eight (8) lots which are legally identified as Lots 47-54, Section B in Deposited Plan 1397 and is commonly known as No's 2-10 Stanley Street, Kogarah. The site is located on the southern side of Stanley Street and bounds Regent Lane to the east, Stanley Lane to the south, and a residential property at No 12 Stanley Street to the west.

The site is regular and rectangular in shape with combined 48.768 metre (m) frontage to Stanley Street along the north and Stanley Lane to the south, 33.53m to Regent Lane and 12 Stanley Street and a site area of 1,634 square metres (m<sup>2</sup>). The site is generally flat and falls from the south-western corner at Stanley Lane towards the north-eastern corner at Stanley Street by approximately 2.39m. The sites currently accommodate six (6) residences, including two (2) single storey cottage styled houses, a two storey dual occupancy, a two storey rendered dwelling house, and a two-storey brick house all with detached garages and carports in the rear yard accessible from Stanley Lane.



***Site and Aerial view of the sites which are outlined in Red***

Existing buildings on site are not listed as heritage items in the Kogarah Local Environmental Plan 2012 and the site is not located within a heritage conservation area.

The site is in close proximity to a locally significant heritage item being St George Girls High School (two-storey main building), to the west of the site on Victoria Street.

The site and surrounding area forms part of the Kogarah North Precinct, which is approximately 14 kilometres (km) to the southwest of Sydney central business district, and is characterised by a mix of uses including residential, commercial, and public use buildings ranging from single to 10 storeys in height.

Princes Highway is a three-lane one-way State classified road which forms the eastern boundary of Kogarah North Precinct. Stanley Street is located perpendicular to Princes Highway to the north of the site and provides access to Kogarah Town Centre to the south-west of the site. Stanley Lane runs along the southern boundary of the site providing access to Regent Street to the south and Regent Lane to the east.

Pursuant to the endorsed Kogarah North Precinct Urban Design Strategy, Kogarah North Precinct is envisaged to undergo significant urban renewal and therefore will have a mixed character transitioning from the traditional low density residential developments dominated by single to two storeys in height, to buildings up to 33m in height with a 4:1 FSR ratio as set out in Kogarah Local Environmental Plan 2012 for the area.

Existing and Proposed Developments immediately surrounding the site include:

To the east

- 13-19 Princes Highway contain a seven-storey shop top housing development with retail shops on the ground floor and vehicular access on Regent Lane.
- 21-35 Princes Highway contain a ten (10) storey residential flat building of 84 apartments and basement car parking with access on Regent Lane.

#### To the west

- 12-24 Stanley Street contain four (4) single storey dwellings, and three (3) two-storey detached dwellings all fronting Stanley Street with rear access available in Stanley lane. The land also accommodates various forms of ancillary structures and outbuildings associated with the dwellings.

The site is also subject to a Development Application seeking development consent for an eleven (11) storey residential flat building comprising 114 residential units with basement car park which is currently under Council's assessment (DA2018/0178).

#### Further to the west

- 18-24a Victoria Street contains three (3) single storey dwelling houses and one (1) two storey dwelling house and is subject to a current Development Application seeking Development Consent for a twelve (12) storey residential flat building above three levels of basement parking containing seventy six (76) residential units. The application is currently under Council's assessment (DA2017/0597).

#### To the north

- Properties to the north of Stanley Street contain two (2) two-storey dwelling house, two (2) two-storey dual occupancies, and one (1) single storey dwelling house.
- Further to the North West directly opposite the subject site, it is noted that 11 Stanley Street and 28-36 Victoria St (the site) is part of a Development Application seeking development consent for construction of an eleven (11) storey residential flat building above three (3) levels of basement parking containing 96 units. The Development Application is subject to a NSW Land and Environment Court appeal. (DA110/2017)

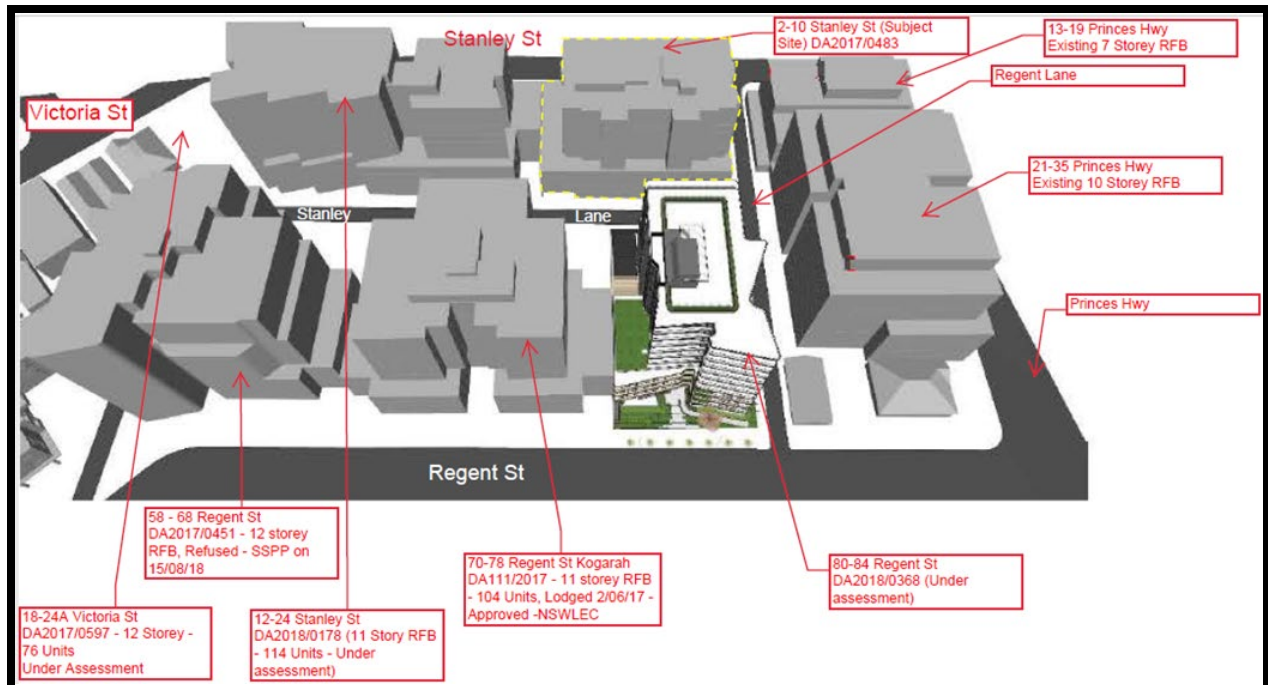
#### To the south

- 80-84 Regent Street is also occupied by single storey dwellings and a Development Application is in place which seeks Development Consent for a eleven (11) storey residential flat building above three and a half (3.5) levels of basement parking containing sixty one (61) residential units which is currently under Council's assessment (DA2018/0368).
- 70-78 Regent Street was occupied by single to double story dwellings and later Development Application (DA111/2017) which sought Consent for an eleven (11) storey residential flat building containing one hundred and four (104) residential units with basement parking for 123 car spaces; was determined by means of approval subject to conditions by NSW Land and Environment Court (LEC)



## To the south west

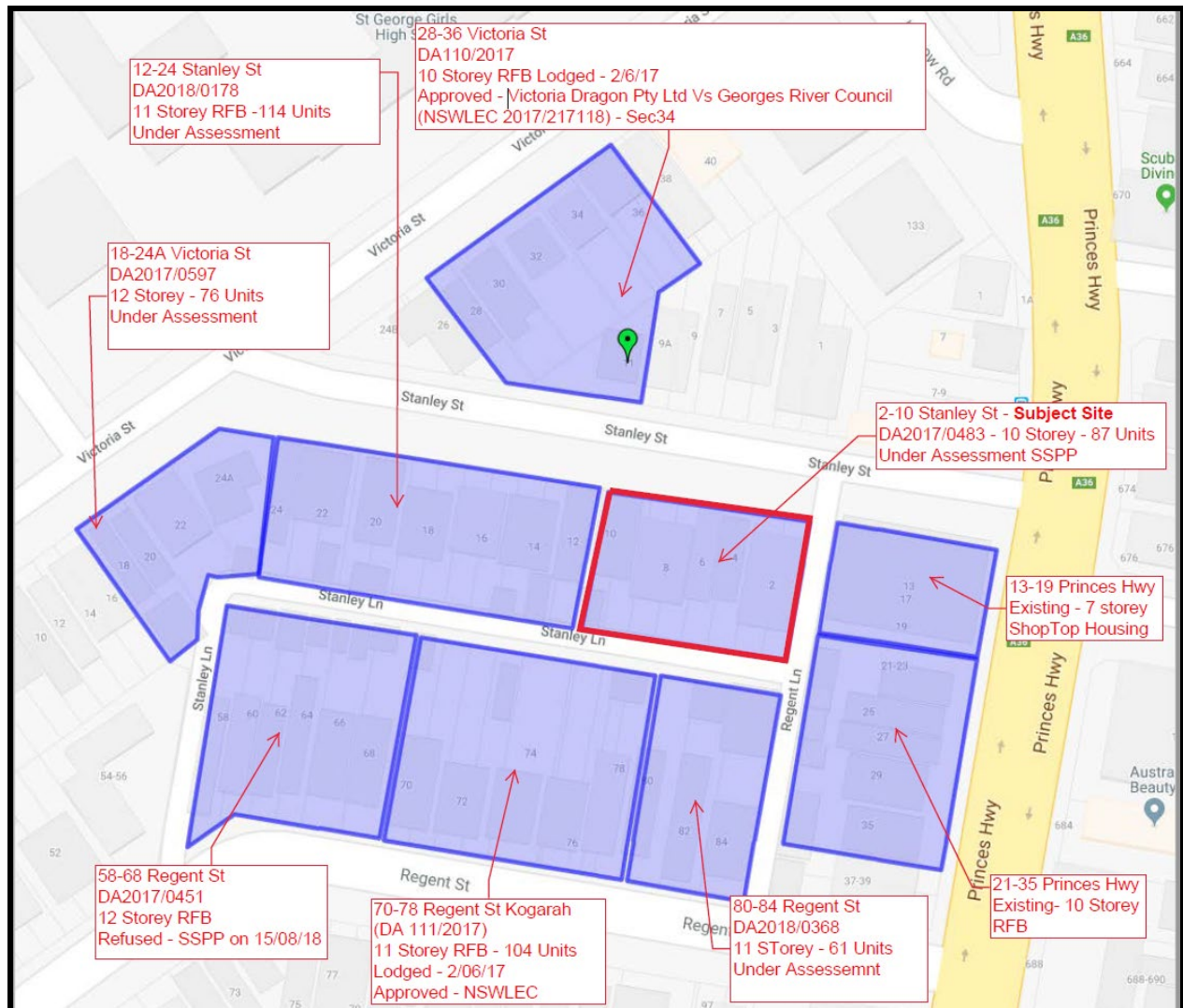
- 58-68 Regent Street is occupied by single storey dwellings and a Development Application which sought Development Consent for a twelve (12) storey residential flat building above two (2) levels of basement parking was later refused by Sydney South Planning Panel (DA2017/0451).



*Massing and 3D Perspectives of entire block bound by Stanley St from the north, Regent St from the South and Regent Lane from the East*

*(Source: Extract prepared by Mr. Paul Buljevic, Architect responsible for DA2018/0368 at No. 80-84 Regent St south of the subject site – Written consent granted prior to use of image)*





Site context map denoting the subject site (Source: Nearmap, 2018 and Council records)

## Proposal

The proposed development seeks approval for the demolition of existing structures and construction of a ten (10) storey residential flat building development comprising an eighty-seven (87) units with four (4) levels of basement car parking accommodating 100 vehicles at the property known as 2-10 Stanley Street, Kogarah NSW 2217.

The subject site is located on the southern side of Stanley Street and occupies three (3) Street frontages being Stanley Street from the North (front), Regent Lane from the East (side) and Stanley Lane from the South (rear).

The proposed development is split into 2 cores identified as building A and building B, with their individual entrances and lobbies, accessible from the Stanley Street frontage; notwithstanding, the building reads as one building fronting Stanley Street.

Access to the basement parking levels is located in the Regent Lane and a small vehicle loading space is located at the rear of the ground floor level and accessible from the Stanley Lane.

All parking is provided onsite with a 4 basement levels containing 100 car-spaces including 13 visitors' spaces, 9 accessible spaces and provisions for 40 bicycle racks.

All Ground floor apartments have direct access to private courtyards from the Stanley Street frontage.

The proposed 87 residential apartments comprise the following mix:

- 2 x studios (2%);
- 26 x 1 bedrooms (30%);
- 58 x 2 bedrooms (67%) and;
- 1 x 3 bedrooms (1%)

The communal open space is provided predominantly on the roof top area at level 10 and occupies 465 m<sup>2</sup> which contains seating areas, BBQ areas and an accessible WC.

An additional 65 m<sup>2</sup> of communal open space is provided on level 4 western side over roof space.

Accessibility measures contained within the proposed development includes:

- Nine (9) x 1 bedroom adaptable & Liveable apartments, 3 x 1 bedroom liveable apartments and 3 x 2 bedroom liveable apartments
- Nine (9) x accessible parking spaces including 1 accessible visitor parking space
- An accessible 1:14 ramp access to Building "B" from Stanley Street,
- Two lift shafts through all levels

Deep soil landscaping is predominantly provided within the front setback area as well as two irregular shaped areas located along the southern rear setback area on either corners of the site. The development provides for a total of 114.3 m<sup>2</sup> (7%) of deep soil component.

Specifically, the proposed development will contain the following on each level:

#### Lowest Basement (4):

- Total of twenty-nine (29) resident parking spaces (including 1 accessible space and two (2) of which are tandem parking spaces)
- Forty three (43) individual residents' storage spaces
- Two (2) lift cores and two (2) fire stairs
- Sprinkler tank rooms
- Stormwater pump out system

#### Basement (3):

- Total of twenty-eight (28) resident parking spaces (including 1 accessible space and three (3) of which are tandem parking spaces)
- Seventeen (17) individual residents' storage spaces
- Two (2) lift cores and two (2) fire stairs

#### Basement (2):

- Total of twenty-four (24) resident parking spaces (including 7 accessible spaces and three (3) of which are tandem parking spaces)
- Twenty-one (21) individual residents' storage spaces
- Two (2) lift cores and two (2) fire stairs

#### Basement (1):

- Total of 18 Parking spaces (including five (5) resident parking spaces, thirteen (13) visitors parking one of which is an accessible car space.
- One (1) loading space
- Forty (40) bicycle parking
- Two (2) lift cores and two (2) fire stairs
- Garbage room and plant rooms

#### Ground Floor Plan:

- Five (5) residential units (including 2 x 1 bedroom, 2 x 2 bedroom and 1 x 3 bedroom)
- Two (2) residential lobbies opening onto Stanley Street
- Small vehicle loading area accessible from Stanley Lane
- Three (3) fire exits (2 leading to Stanley Lane, 1 leading to basements)
- Plant rooms
- Substation
- Access ramp from Regent Lane to basement car park

#### Levels 1, 2 and 3:

- Each level contains a total of eleven (11) apartments comprising 4 x 1 bedroom and 7 x 2 bedroom apartments
- Including 3 x adaptable and liveable 1 bedroom apartments, 1 x liveable x 1 bedroom apartment and 1 liveable x 2 bedroom apartment.
- Lift lobby/circulation corridor & fire stairs

#### Levels 4:

- Contains a total of nine (9) apartments comprising 2 x Studios, 2 x 1 bedroom and 5 x 2 bedroom
- Lift lobby/circulation corridor and fire stairs
- Communal open space on level 4 (65 m<sup>2</sup>)

#### Levels 5 to 9:

- Contains a total of eight (8) apartments comprising 2 x 1 bedroom and 6 x 2 bedroom apartments

Level 10 Roof terrace area:

- Communal open space on level 10 (465 m<sup>2</sup>)
- Lift lobby/circulation corridor and fire stairs



*Proposed north –eastern perspectives Source: (Amended Plans prepared by Level 33 Architects)*



*Proposed northern perspectives Source: (Amended Plans prepared by Level 33 Architects)*

## **Background**

The subject development application was lodged with Council on 13 October 2017. Given the CIV of the proposal, the application was subsequently registered with Sydney South Planning Panel (SSPP) on 26 October 2017.

A SSPP Briefing Meeting was held on 22 November 2017, during which following key issues had been discussed:

- Setbacks and future interface with the existing high density residential developments to the east
- LEP height, FSR and draft DCP setbacks
- Communal open space
- Public domain improvements
- Apartment layouts
- massing above the fourth storey on the front
- lift over run
- Unit mix – number of 3 bedroom units (ADG requirements)



- Consistent with Kogarah North Precinct Development Controls
- SEPP 55 contamination of land

Council has also engaged with an independent urban design and architecture consultancy, GM Urban Design & Architecture, to carry out an urban design review (hereafter GMU Review). The GMU Review concludes that the proposal gives rise to the following key issues:

- Context – the proposal fails to provide a satisfactory design response to its context, in particular, its excessive length and depth and the proposed podium presentation to Stanley Street. The proposal also provides an inadequate secondary setback above podiums which do not create a clear street wall height and increase the bulk and scale.
- Height – the proposal breaches the maximum building height development standard in KLEP 2012.
- Built form and scale – the proposal provides approximate 25m depth and 47m length within the podium element. The proposal has a nil setback to the western boundary which is inconsistent with the desired future character.
- Streetscape character – the proposed development lacks a strongly defined podium height and a sufficient landscaping area to the southern and eastern boundaries.
- Deep soil area – the proposed deep soil area on the northern and southern boundaries with width of less than 6m as per the ADG.
- Street address – the proposed residential lobbies are not sufficiently visible from Stanley Street.
- Overshadowing – the proposal results significant overshadowing impacts to the existing neighbouring sites to the south.
- Internal amenity – 28% of the units do not receive any solar access in mid-winter.
- Incorrect information – the east and west elevations do not correlate to the plans. Bedroom windows are shown in the elevations, however, the proposed bedroom openings are to the north or south. The proposed roof plan does not match the landscape plans prepared by Canvas.

The aforementioned matters contained in GMU Review are discussed in details in Section 8 of this report.

On 12 April 2018, the Applicant-nominated private certifier, Certified Building Specialists, notified Council that a Complying Development Certificate No D8K041B1 for demolition of existing structures was issued and Notice of Commencement was also issued and provided to Council.



*View of site from Stanley Street (source: Google Images)*



*View of site from Regent Lane (source: Google Images)*





View of site from Stanley Lane (source: Google Images)

## Statutory framework

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

The proposal has been assessed and considered against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the objects of the EP&A Act, and the principles of ecologically sustainable development as follows:

#### Objects of the EP&A Act

Consent authority is required to consider the objects in Section 1.3 of the EP&A Act when making decisions under the Act. Council has considered the object of the EP&A Act in the Table below and is satisfied that the proposal complies with all objects.

Objects of the EP&A Act	Proposal	Compliance
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources</i>	The proposal results in the urban infill development of a residential flat building within Kogarah North Precinct providing additional housing to the locality.	Yes
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and</i>	<i>This report considers the proposals against the principles of ESD.</i>	Yes

<i>assessment</i>		
<i>(c) to promote the orderly and economic use and development of land</i>	A detailed merit assessment is provided in later in this report.	Yes
<i>(d) to promote the delivery and maintenance of affordable housing</i>	The proposal provides eighty-seven (87) apartments to the housing market. The proposal has been amended to reflect a diverse apartment mix including studios, 1, 2 and 3 bedroom apartments.	Yes
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</i>	The site is located within a highly urbanised area. The proposal is not considered to result in adverse impacts to threatened and other species of native animals and plants, ecological communities and their habitats.	Yes
<i>(f) to promote the sustainable management of built and cultural heritage</i>	The proposal is considered as having no detrimental impacts upon heritage items within the site vicinity.	Yes
<i>(g) to promote good design and amenity of the built environment</i>	This report assesses the proposal's design and amenity against SEPP 65, the ADG Guidelines and KDCP 2013.	Yes
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>	The proposal will achieve this object by complying with Council's recommended consent conditions relating to construction phase of the development.	Yes
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</i>	The proposal is a regionally significant development and therefore the Sydney South Planning Panel is the consent authority.	Yes
<i>(j) to provide increased opportunity for community participation in</i>	The submissions section of this report outlines Council's public exhibition of the proposal, including public submissions.	Yes

<i>environmental planning and assessment</i>	The submission section also sets out details of Council's consideration of the key issues raised in public submissions.	
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## **Ecologically Sustainable Development (ESD)**

The Act adopts the definition of ESD found in the Protection of the Environment Administration Act 1991. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

(a) The precautionary principle

Officer Comment: The site has been appropriately planned for development and will not result in any serious or irreversible environmental damage.

(b) Inter-generational equity

Officer Comment: The proposal will not have adverse impacts on the environment for future generations.

(c) Conservation of biological diversity and ecological integrity

Officer Comment: The site is within a highly urbanised area and contains no significant flora or fauna.

(d) Improved valuation, pricing and incentive mechanisms

Officer Comment: The proposal includes a number of energy, water, and waste reducing measures to reduce the ongoing cost, resource, and energy requirements of the development.

## **Section 4.15 Assessment**

***(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:***

***(a) the provisions of:***

***(i) any environmental planning instrument***

The proposal has been considered under the relevant statutory provisions as per below:

- Environmental Planning and Assessment Act 1979.
- Environmental Planning and Assessment Regulation 2000.
- State Environmental Planning Policy No 55 – Remediation of Land.

- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
- State Environmental Planning Policy (Building and Sustainability Index: 2004).
- State Environmental Planning Policy (Infrastructure) 2007.
- State Regional Environmental Plan No 2 – Georges River Catchment.
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
- Draft Environment State Environmental Planning Policy.
- Kogarah Local Environmental Plan 2012.

**(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent**

**(iii) any development control plan, and**

The applicable Development Control Plans to the proposed development are:

- Kogarah Development Control Plan 2013.
- Kogarah North Development Control Plan 2013.
- Kogarah Section 94 Contribution Plan.

**(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and,**

Comment: there is no planning agreements proposed

**(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,**

Comment: There are no further prescribed matters under the Regulations apart from compliance with the National Building Code of Australia (BCA).

**(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,**

Comment: The proposal is not considered to have any adverse impacts upon the natural and built environment. It has been considered in context with the future surrounding development essentially defining this specific locality as part of Kogarah North Urban Strategy adopted by Georges River Council.

Additionally, the proposal is considered to contribute positively to the social and economic dimensions sought to be achieved within the precinct.

**(c) the suitability of the site for the development,**

Comment: The site has no impediments that would preclude it from being suitable for the proposed development.

**(d) any submissions made in accordance with this Act or the regulations,**

Comment: The proposal has been notified and all submissions received are discussed in detail under the submissions and referral section of this report.

**(e) the public interest.**

Comment: The proposal satisfies the applicable EPI's and object of the Act and accordingly is considered to be within the Public interest.

**Environmental Planning and Assessment Regulations 2000 (EP&A) Regs 2000**

The proposed development satisfies the relevant matters for consideration for development under the Regulations.

**Compliance and Assessment**

**Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment**

The site is within the area affected by the Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment. The proposal, including the disposal of stormwater, is considered to be consistent with the Council's requirements for the disposal of stormwater in the catchment.

All stormwater from the proposed development will be managed by the proposed stormwater system and will be treated in accordance with Council's water management Policy and would therefore satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

**State Environmental Planning Policy no. 55 – Contamination of Land (SEPP 55)**

SEPP 55 applies to the land and Clause 7 stipulates that a consent authority must not consent to the carrying out of any development on land unless it has considered matters for consideration contained in Clause 7.

According to Council's records, the site has been used for residential purposes only, as such, there is no reason to suspect the site may have been subjected to contamination.

Accordingly, it is considered that the site is suitable for the proposed development without the need for any site remediation.

Notwithstanding, the application is accompanied by a Preliminary Site Investigation which determines if the subject site is suitable for the proposed residential use. A Preliminary Site Investigation was undertaken by (EI Australia (report number E23383.GA\_Rev1, dated 9 October 2017) which concludes that the site is suitable for the proposed development. The report also recommends that further detailed

geotechnical subsurface investigation prior to final design is required to determine the site specific subsurface profile and geotechnical parameters for the design of footings.

As such, a condition of consent is included to impose further geotechnical investigations prior to issue of construction Certificate.

**State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 (SEPP BASIX) 2004**

A BASIX Certificate No 857331M\_04 prepared by Damian O’Toole Town Planning P/L has been issued for the proposed development as revised.

The BASIX Certificate indicates that the development will achieve the following:

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
Water	40	41
Thermal Comfort	Pass	Pass
Energy	25	25

**State Environmental Planning Policy – Infrastructure 2007 (SEPP) Infrastructure 2007**

The proposed development is subject to Clause 101 and Clause 102 of the SEPP (Infrastructure) as the subject site is located near Princes Highway which is listed as a classified road.

Clause 101 requires that the development does not compromise vehicle movements on the classified road. Whilst Stanley Street is not a classified road, the proposed development has vehicle access from Regent Lane which is near to the Princess Hwy.

Vehicular movements to and from Regent Lane does not compromise vehicle movements on the Princes Highway.

The application was referred to Roads and Maritime Services (RMS) who has advised that no objection is raised to the development subject to conditions of consent being attached to any consent granted.

Clause 102 requires that residential developments located adjoining a road corridor or road that experiences high volumes of traffic to be considered in terms of potential noise and vibration from the road. The application is accompanied by an acoustic assessment of the potential impacts of road noise and vibration on the proposed development. An Acoustic Report titled Acoustic – Traffic and Environmental Noise Assessment prepared by Acoustic Noise & Vibration Solutions P/L (reference no 2017- 467, dated 11 September 2017).

The report concludes that the proposed development can meet the requirements of Clause 102 subject to the recommendations of the report being adopted in the design of the development.

Further detailed mechanical design plans are conditioned to be submitted for full acoustic assessment and treatment if required upon approval.

### **State Environmental Planning Policy – State and Regional Development 2011 (SRD SEPP)**

The proposal is a regionally significant development pursuant to Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) as it is development that has a capital investment value of more than \$30 million and was lodged prior to 1 March 2018. As such, the Sydney South Planning Panel is the consent authority for the subject development application.

### **State Environmental Planning Policy – Vegetation in Non-Rural Areas 2017 (Vegetation SEPP)**

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 replaces the repealed Clause 5.9 of KLEP 2012 (Preservation of Trees and Vegetation).

The intent of this SEPP is consistent with the objectives of the repealed Standard where the primary aims/objectives are related to the protection of the biodiversity values of trees and other vegetation on site.

In this instance, the development is consistent with the provisions of the SEPP and the site is free of any vegetation of any botanical significance.

A landscape strategy is designed and submitted prepared by Canvas Landscape Architects (membership No. 001253) DA-L101 to DA-L103 Rev D dated 21 November 2018

### **State Environmental Planning Policy no. 65 – Design Quality of Residential Flat Buildings (SEPP 65)**

The extent to which the proposed development complies with the controls and principles in the State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG) is detailed and discussed in section 6 of this report.

### **Part 1 - Application of SEPP 65**

<b>Clause</b>	<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
<b>3 - Definitions</b>	Complies with definition of	Complies with	Yes



	"Residential Apartment Development" (RAD)	definition.	
<b>4 - Application of Policy</b>	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB	Erection of a new residential flat building (10 storey over 4 basement levels).	Yes
<b>5 – Development Applications</b>	Design verification statement provided by qualified designer  Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect Mr George O'Donovan (Registration No 6763).	Yes

## Part 2 - Design Quality Principles under SEPP 65

Clause	Standard	Proposal	Complies
<b>1 – Context and neighbourhood character</b>	Good design responds and contributes to its context (e.g. natural and built features of an area)	Proposed development has been designed to respond to its context and the surrounding future residential development.	Yes
<b>2 – Built form and scale</b>	Good design provides an appropriate scale in terms of the existing and desired future character and built form that suits the scale of the street and surrounding buildings	<p>The proposed development provides an appropriate scale in relation to the relevant requirements relating to floor space ratio.</p> <p>In reference to the proposed height, this is discussed in detail under the C14.6 request section of this report and the height breach is limited to the provisions of the lift overrun, plant and roof top communal open space.</p> <p>In reference to the setbacks, a nil western boundary setback is considered satisfactory in this case as it responds to the adjoining land use proposals and</p>	Yes

		<p>design.</p> <p>Further, building separation to adjoining existing buildings has been observed in the design.</p>	
<b>3 - Density</b>	Good design has a density appropriate for a site and its context, in terms of projected population and can be sustained by existing and proposed infrastructure	Proposed development complies with the floor space ratio requirements.	Yes
<b>4 – Sustainability</b>	Good design combines positive environmental, social and economic outcomes. Includes use of natural cross ventilation and sunlight, recycling and reuse of materials and waste, use of sustainable materials and deep soil zones	The proposed development provides appropriate outcomes for sustainability, through energy efficiency measures, landscape open space areas, cross ventilation and sunlight.	Yes
<b>5 - Landscape</b>	Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity, enhances the development's environmental performance, optimises useability, privacy and opportunities for social interaction, equitable access, and practical management	<p>Landscaping to the site will be in the form of a communal open space areas and a 2-3m wide deep soil zone to the majority of the north (side) setback which fronts Stanley Street. Further landscaping is proposed on level 4 being the roof top of the levels below and level 10 roof top terraces.</p> <p>Privacy is preserved to occupants on level 4 from the proposed communal open space.</p> <p>Level 10 communal open space has equitable lift access by all occupants and provisions for an accessible</p>	Yes

		WC and various seating areas.	
<b>6 - Amenity</b>	Good design influences internal and external amenity for residents and neighbours	The proposed development mitigates privacy impacts with the location of balconies away from the adjoining residential zone. The windows and balconies located adjoining these areas have been provided with translucent glazing and louvered privacy screens to reduce overlooking to adjoining developments.	Yes
<b>7 – Safety</b>	Good design optimises safety and security, both internal to the development and for the public domain	The proposed development is consistent with crime prevention principles.	Yes
<b>8 –Housing diversity and social interaction</b>	Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. Includes different types of communal spaces for social interaction	The proposed development provides apartments with a variety of bedroom numbers and design layouts. Two communal open space areas have been provided which will be accessible to all residents on level 4 and level 10 respectively.	Yes
<b>9 - Aesthetics</b>	Good design achieves a built form that has a balanced composition of elements, a variety of materials, colours and textures and responds to the future local context	The design of development and proposed external materials and finishes are appropriate. The proposed development results in a satisfactory architectural outcome.	Yes

### **GMU Design Review Assessment**

Council has also engaged with an independent urban design and architecture consultancy, GM Urban Design & Architecture, to carry out an urban design review (hereafter GMU Review). The GMU Review concludes that the proposal gives rise to the following key issues:

GMU Design Review	Applicant Response	Officer Response
<p><b>Context</b> – the proposal fails to provide a satisfactory design response to its context, in particular, its excessive length and depth and the proposed podium presentation to Stanley Street. The proposal also provides an inadequate secondary setback above podiums which do not create a clear street wall height and increase the bulk and scale.</p>	<p>Section 10 of Part E4 of the Kogarah Development Control Plan 2013 (DCP) addresses Street Frontage Height, and Front, Rear and Side Setbacks. In the context of secondary setbacks above the podium, the relevant objectives of Section 10 are:</p> <p><i>A. Establish the desired spatial proportions of the street and define the street edge.</i></p> <p><i>E. Encourage design with good facade articulation.</i></p> <p><i>I. Avoid an unreasonable sense of enclosure and to facilitate an appropriate separation between buildings.</i></p> <p>The relevant controls are:</p> <p><i>(iv) Development is to establish a four-storey street wall height to provide human scale and set back taller elements about the four-storey street wall height.</i></p> <p><i>(xii) Table 3. Level 1. Minimum 5m setback from the property boundary. Level 2, 3, 4, Minimum 7m setback from the property boundary. Balconies/winter gardens may encroach up to 2m into the 7m setback.</i></p> <p><i>The proposal provides a four-</i></p>	<p>The proposal is consistent with the Kogarah North Precinct</p> <p>The creation of the proposed podium is consistent with adjoining proposals further west along Stanley Street.</p> <p>The Kogarah North DCP envisaged a 4 storey street wall along Stanley Street with an increased setback for higher levels beyond the fourth storey.</p> <p>The proposal has been amended since the design review to reflect an improved articulation to the street wall façade of the first 4 levels addressing the corner of Stanley Street and Regent Lane.</p> <p>Further amendments were made to the 4<sup>th</sup> floor podium with the creation of an additional communal open space within the western setback area and with additional landscaping treatments made visible from the Street elevation.</p> <p>The upper floors have also been further setback from the Street frontage to achieve an 8m separation</p>

	<p><i>storey street wall as envisaged by the DCP by establishing a consistent 5m setback from the property boundary. In the 5m to 7m 'articulation zone' above the ground floor, a combination of balconies and rooms which are similar in appearance to winter gardens create a well-articulated and consistent four storey street wall that establishes the desired spatial proportions of the street and defines the street edge.</i></p> <p><i>Notwithstanding the limited intrusion of rooms within the articulation zone the proposal achieves the relevant objectives of the DCP. The resulting facade creates a stronger street wall which helps differentiate the podium from the tower above, which is setback 8m from the property boundary strictly in accordance with the DCP.</i></p>	<p>consistent with KNDCP.</p> <p>The application is considered to be acceptable in this regard.</p>
<b>Height</b> – the proposal breaches the maximum building height development standard in KLEP 2012.	Refer to CI4.6 assessment	Refer to CI4.6 assessment below.
<b>Built form and scale</b> – the proposal provides approximate 25m depth and 47m length within the podium element. The proposal has a nil setback to the western boundary which is inconsistent with the	<p><i>The relevant control from Section 10 Part E4 of the DCP 'Controls for Side and Rear Setbacks' is as follows:</i></p> <p><i>(xiv) Side and rear setbacks must result in a development that:</i></p> <p><i>(a) Provides resident amenity,</i></p>	<p>The proposed nil western boundary setback has been assessed on merits in light of its future local context, taking into consideration the current adjoining proposal to the west, namely (12-24 Stanley) which also</p>

<p>desired future character.</p>	<p><i>including landscaping and deep soil planting, protection of large established trees, privacy, solar access and ventilation;</i></p> <p><i>(b) Responds to the local context and provides streetscape amenity, including providing adequate separation from existing and future development; and</i></p> <p><i>(c) Does not prevent a neighbouring site from achieving its full development potential.</i></p> <p><i>The note to this section then states:</i></p> <p><i>Council may consider a request for zero side boundary setbacks up to four (4) storeys to sites fronting the Princes Highway to maximise yield. Council may consider the reduction of the side boundary setbacks on other sites within the Precinct, where the proposed development complies with the principles of solar access and cross ventilation in SEPP 65 and where it can be demonstrated that there would be no additional impacts on adjoining properties and trees are retained. Council will require the submission of a schematic design for the redevelopment of neighbouring sites so that</i></p>	<p>proposes a nil boundary setback adjoining the subject site.</p> <p>The adjoining development consists of the amalgamation of 7 sites with the intention of constructing an RFB in 2 sections facing Stanley Street and adjoining the subject development with a nil common boundary setback.</p> <p>Due to the fact that neighbouring proposal contains a pedestrian link separating each of its sections; collectively, this creates a consistent street wall along the Stanley Street frontage.</p> <p>With the necessary break located midway through the 12-24 Stanley Street's Development.</p> <p>In light of the above design, having an additional break through buildings within a collective distance of less than 100 metres is considered excessive and unnecessary.</p> <p>It is also, considered undesirable from a crime prevention through environmental design perspective.</p>
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	<p><i>Council can undertake an assessment of the impact of adjoining developments and compliance with the Apartment Design Guide.</i></p> <p><i>The proposal includes a nil setback on the western boundary adjacent to number 12 Stanley Street for the podium levels only. The four-storey street wall that results is consistent with the general control (iv) and objective A. The levels above the podium are setback from the side boundary in accordance with the distance prescribed by the ADG to 'facilitate an appropriate separation between buildings' in accordance with Objective I. The resulting building achieves the ADG requirement for two hours of sunlight access to at least 70% of apartments in mid-winter and achieves the cross-ventilation requirements also. The quantum of deep soil on the site achieves the standard prescribed by the ADG, without including the land to be dedicated for road widening. There is currently a development application before Council for the neighbouring site which also proposes a nil setback on the boundary and a continuation of the street wall effect. In this regard, the proposal does not</i></p>	
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	<p><i>prevent the neighbouring site from achieving its full development potential and could be said to be facilitating the achievement of that potential.</i></p> <p><i>In a high density urban environment such as that contemplated in Kogarah North by the recently amended LEP, a continuous street wall at the podium level is not an unusual nor undesirable urban form. The DCP does not expressly prevent a continuous street wall and provides a framework to consider the nil setback shown in the proposal. As described above, the proposal satisfies the considerations in this framework.</i></p>	
<p><b>Streetscape character</b> – the proposed development lacks a strongly defined podium height and a sufficient landscaping are to the southern and eastern boundaries.</p>	<p><i>The walls along the eastern facade are not excessively long (maximum 12m) and are articulated with a break and step at the podium level and then butterfly walls on the floor above. The faced creates visual interest and satisfies the relevant design objective of the ADG in our opinion.</i></p>	<p>The proposed design has been further amended since lodgement and now the fourth floor podium is accessible from the western side and offers a communal open space with additional planting added at the fourth floor level and mature sized (potted) tree visible from Stanley Street.</p>
<p><b>Deep soil area</b> – the proposed deep soil area on the northern and southern boundaries with width of less than 6m as per the ADG.</p>	<p><i>No Comments provided</i></p>	<p>The proposal was amended since the review and provided additional deep soil component within the setback along Stanley Street and</p>

		<p>additional deep soil was also included to the rear in the form of 2 x irregular shaped areas fronting Stanley Lane.</p> <p>The minimum dimension of the deep soil areas is primarily dictated by the shape of the basement below.</p> <p>The provision of 6m minimum dimension for deep soil component on this site would affect the minimum space required for vehicular manoeuvrability within the basement levels below.</p> <p>The site is considered to be further constrained by the dedication of 1.2m wide zone for lane widening; extending the full length of Stanley lane and wrapped around along the full depth of Regent lane.</p> <p>The laneway widening provision has essentially impacted on the available space and shape of the basement which in return translates in a non-complying width of deep soil areas.</p> <p>In this circumstance the variation is considered reasonable and justified particularly as the total numerical amount deep</p>
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		soil area complies.
<b>Street address</b> – the proposed residential lobbies are not sufficiently visible from Stanley Street.	<p><i>Direct street access is now provided to ground floor apartments as shown in the amended architectural plans.</i></p> <p><i>The building entries from Stanley Street are clearly legible by their proportions and the use of coloured frames</i></p>	<p>Amended plans later submitted addressed this issue.</p> <p>The redesign is considered satisfactory.</p>
<b>Internal amenity</b> – 28% of the units do not receive any solar access in mid-winter	<p><i>Seventy two percent (72%) of the apartments achieve more than two hours of solar access in Mid-Winter.</i></p>	<p>The proposal provides 63 Units (72%) receiving the required sunlight of 3 hours or more.</p> <p>Four (4) of the 24 units facing to the rear of the site, receive 2 hours of sunlight being 5% with eastern orientation towards Regent lane but limited due to existing shadow cast by adjoining residential Flat buildings across Regent Lane</p> <p>Twenty (20) units (23%) receive no direct sunlight as they have direct orientation to the south with no side aspect relief from either east or west.</p> <p>Whilst, the proposed development exceeds the required 70% of its apartments receiving 3 hours of solar access as specified by the ADG as a minimum; numerically, it was considered unattainable to limit the maximum specified 15% of</p>

		<p>apartments receiving no sunlight as per Objective 4A-1 (2) ADG.</p> <p>This breach is quantified in the form of 7 additional units (8%) not receiving direct sunlight as opposed to a maximum of 13 units.</p> <p>The subject units in breach are all commonly 1 bedroom units including 1 studio with a maximum area generally below 54 sqm each and even lower for the studio.</p> <p>Collectively, the variation and the maximum amount of units permitted with no direct sunlight is quantified as 16.4% of the proposed FSR being 6,466.72 sqm, noting that in this instance the proposed FSR is below the maximum permitted FSR by 70 sqm.</p> <p>In light of the above, this shows that the proposed development only exceeds the maximum 15% performance of the ADG guideline by only 1.4%.</p> <p>This breach is considered minor in nature particularly in a high density residential setting such as this.</p> <p>Further, consideration should also be given in this circumstance to the site's orientation and the</p>
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		<p>existing subdivision pattern essentially providing parallel frontages with a southern rear frontage to Stanley Lane.</p> <p>As such this breach is considered minor and inevitable in nature and is therefore supported in this circumstance.</p>
<p><b>Overshadowing</b> – the proposal results significant overshadowing impacts to the existing neighbouring sites to the south.</p>	<p><i>The amended plans have reduced the number of apartments which receive no sunlight access by one.</i></p> <p><i>While this is an improvement, the proposal still exceeds the relevant design criteria in the ADG despite the design seeking to minimise the number of south facing single access apartments.</i></p> <p><i>In our opinion this is an inevitable consequence of the established subdivision pattern in Kogarah North which results in north-south oriented development sites.</i></p> <p><i>It is important to note that the ADG recognises that the solar access design criteria may not be possible on some sites. It is also important to note that "the ADG is not intended to be and should not be applied as a set of strict development standards" according to Planning</i></p>	<p>The Author Concurs with the applicant's representation as per Column 2 of this table.</p>

	<p><i>Circular PS 17- 001 issued by the Department of Planning &amp; Environment on 29 June 2017.</i></p> <p><i>Due to the site orientation and the planned density of development in the precinct, the impact on solar access on neighbouring properties is also unavoidable. The building is substantially compliant with the height limit and, as indicated on the shadow diagrams, because the exceedance of the height limit occurs towards the centre of the building at the lift rooms, the additional overshadowing that results is extremely marginal and is compensated for by less overshadowing than would otherwise be expected to occur given the <u>building height control</u>.</i></p>	
<p><b>Incorrect information</b> – the east and west elevations do not correlate to the plans. Bedroom windows are shown in the elevations, however, the proposed bedroom openings are to the north or south. The proposed roof plan does not match the landscape plans prepared by Canvas.</p>	<p><i>The amended architectural plans are now coordinated with the landscape plan.</i></p>	<p>Inconsistencies have been addressed in the Amended Plans, resolving this matter.</p>

## Consideration of Apartment Design Guide (ADG) under Clause 30 of SEPP 65

SEPP 65 refers to some parts of the Apartment Design Guide that must be applied when assessing development applications. Objectives, design criteria and design guidance in Parts 3 and 4 of the Apartment Design Guide that are referred to in SEPP 65 will prevail over any inconsistent DCP control. Parts 3 and 4 set out objectives, design criteria and design guidance for the siting, design and amenity of residential apartment development.

**Note:** Certain design criteria referred to in SEPP 65 cannot be used as a reason to refuse a development application, if complied with.

Clause	Standard	Proposal	Complies
Objective 3D-1	<p>1. Communal open space has a minimum area equal to 25% of the site.</p> <p>-Where it cannot be provided on ground level it should be provided on a podium or roof</p> <p>-Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> <li>• provide communal spaces elsewhere such as a landscaped roof top terrace or a common room</li> <li>• provide larger balconies or increased private open space for apartments</li> <li>• demonstrate good proximity to public open space and facilities and/or provide contributions to public open space</li> </ul> <p>2. Developments achieve a minimum of 50% direct</p>	<p>530m<sup>2</sup> (32%) communal open space, 65m<sup>2</sup> of which is provided to level 4 podium created by western side building setback and the remaining 465m<sup>2</sup> is provided wholly within level 10 roof top.</p> <p>The communal open space area has good amenity in that it receives at least 3 hours sunlight during winter and is a functional area with landscaping, BBQ facilities, sanitary facilities and seating provided.</p> <p>More than 50% of the communal Open space receives the required sunlight as specified</p>	Yes



	<p>sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>		
Objective 3E-1	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>-Where the site is less than 650sqm = no minimum dimension</p> <p>-Where site area is between 650sqm and 1500sqm = 3m minimum dimension</p> <p>-Where the site is more than 1500sqm = 6m minimum dimension</p> <p>Deep soil = 7%</p> <p>Achieving the design criteria may not be possible on some sites including where:</p> <ul style="list-style-type: none"> <li>the location and building typology have limited or no space for deep soil at ground level (eg central business district, constrained sites, high density areas, or in centres)</li> <li>there is 100% site coverage or non-residential uses at ground floor level</li> </ul> <p>Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting</p>	<p>The site area is 1634m<sup>2</sup> and the minimum deep soil area required is 114.38 m<sup>2</sup>.</p> <p>The proposed development provides 114.8m<sup>2</sup> (7%) of the site, predominantly adjoining the northern boundary.</p> <p>An additional 2 x small deep soil triangular areas of approximately 18.5 m<sup>2</sup> each are provided adjoining the Stanley Lane (rear) elevation.</p> <p>However, the required min dimension of 6m was unachievable in this circumstance. The minimum dimension is generally 3m and is considered acceptable given the depth constraints of the site.</p>	<p>Yes</p> <p>No (*1)</p>

	provided such as on structure.		
Objective 3F-1	<p>1. Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>-Up to 12m (4 storeys)</p> <p>Habitable rooms and balconies = 6m</p> <p>Non-habitable rooms = 3m</p> <p>-Up to 25m (5-8 storeys)</p> <p>Habitable rooms and balconies = 9m</p> <p>Non-habitable rooms = 4.5m</p> <p>-Over 25m (9+ storeys)</p> <p>Habitable rooms and balconies = 12m</p> <p>Non-habitable rooms = 6m</p>	<p>The proposal seeks a variation to enable a nil western side boundary separation for the first 4 storeys (ground floor included).</p> <p><b>(Refer to Note (2) below)</b></p> <p>The eastern side adjoining Regent Lane has been setback by 6m measured from the Centre of the laneway.</p> <p><b>(Refer to Note (2) below)</b></p> <p>Levels 4 – 9 have maintained the proposal at 6m separation and have utilised the reduced setback option of 4.5 m to blank walls however included highlight frosted windows along the eastern facade for better solar amenities and cross ventilation.</p> <p><b>(Refer to Note (2) below)</b></p>	<p>No (*2)</p> <p>No (*2)</p> <p>No (*2)</p>

Objective 3J-1	<p>1. For development in the following locations:</p> <ul style="list-style-type: none"> <li>- On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area;</li> <li>- The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant Council, whichever is less</li> </ul> <p>The car parking needs for a development must be provided off street</p>	<p>The development complies with the requirements of the Guide to Traffic Generating Developments in relation to car parking and other facilities and provides 100 car spaces and 40 Bicycle spaces.</p> <p>The proposal provides the following rates</p> <p>Seventy (70) residential spaces.</p> <p>Nine (9) residential accessible spaces.</p> <p>Eight (8) tandem residential spaces.</p> <p>Twelve (12) visitor's spaces.</p> <p>One (1) accessible visitor space.</p>	Yes
Objective 4A-1	<p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area</p> <p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	<p>The living rooms and private open spaces of 72% of units receive at least 3 hours of solar access.</p> <p>A further 5% of the units receive the minimum 2 hours of solar access.</p> <p>&gt;15% of units receive no direct sunlight</p>	<p>Yes</p> <p>No (*3)</p>
Objective 4B-3	<p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p>	<p>84% of units are appropriately cross ventilated.</p>	Yes

	<p>Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p> <p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	Maximum depth is approximately 12.5m.	
Objective 4C-1	<p>1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Habitable rooms = 2.7m</p> <p>Non-habitable rooms = 2.4m</p>	Overall proposed height is 3.1m including 2.7m for all rooms plus 400mm for services.	Yes
Objective 4D-1	<p>1. Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm</p> <p>2 bedroom = 70sqm</p> <p>3 bedroom = 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight</p>	<p>1 bedroom = 50-57sqm</p> <p>2 bedroom = 70-80sqm</p> <p>3 bedroom = 106sqm</p> <p>At least one (1) window is provided for each habitable room with the appropriate glass area provided.</p>	<p>Yes</p> <p>Yes</p>

	and air may not be borrowed from other rooms		
Objective 4D-2	<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Within range.</p> <p>Open plan layouts less than 8m from window.</p>	<p>Yes</p> <p>Yes</p>
	<p>1. Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p> <p>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <p>-3.6m for studio and 1 bedroom</p> <p>- 4m for 2 and 3 bedroom apartments</p> <p>4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	The entire development complies with these requirements.	Yes
Objective 4E-1	<p>1. All apartments are required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth</p>	All balcony areas are at or greater than the minimum specified and the minimum	Yes

	<p>-2 bedroom = 10sqm/2m depth</p> <p>-3+ bedroom = 12sqm/2.4m depth</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m</p>	<p>dimensions are observed for primary balconies as required.</p> <p>Contributing secondary balconies are at or greater than 1m in depth</p> <p>The ground floor units have courtyards of 15m<sup>2</sup> to each with a minimum depth of 3m.</p>	<p>Yes</p> <p>Yes</p>
Objective 4F-1	1. The maximum number of apartments off a circulation core on a single level is eight	Maximum 6 units off each circulation core. There are 2 circulation cores proposed.	Yes
Objective 4G-1	<p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>-1 bedroom = 6m<sup>3</sup></p> <p>-2 bedroom – 8m<sup>3</sup></p> <p>3 bedroom – 10m<sup>3</sup></p>	All units have storage areas that comply with the requirements with dedicated storage areas within the basement levels and provisions for additional storage cupboard within the apartment	Yes, subject to condition of consent
Objective 4M	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The façade of the development are now appropriate.	Yes
Objective 4N	Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open	The roof design is appropriate and integrated into the design of the development. Communal open space is provided on level 4 being the roof area of the floors below and the	Yes

	space are maximised. Incorporates sustainability features.	roof terrace on level 10.	
Objective 4O	Landscape design is viable and sustainable, contributes to the streetscape and amenity	Landscape design is appropriate and provides an attractive outlook to Stanley Street demonstrated in the amended design.	Yes
Objective 4P	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	Landscaping to the site, which includes planting on structures has been design by a qualified landscape architect with details provided on species, soil depth, growth heights and spacing etc.	Yes
Objective 4Q	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	The various sizes and designed of apartments allows for use by differing lifestyles.	Yes
Objective 4S	Mixed use developments are provided in appropriate locations, provide active street frontages, residential levels of the building are integrated within the development and safety and amenity is maximised for residents	Residential flat building development only.	Yes
Objective 4T	Awnings and signage – awnings are well located and compliment and integrate with the building design, signage responds to the context and desired streetscape character	An awning has been incorporated into the façade of the development which is consistent with the streetscape and defines main entrances to the building.	Yes
Objective 4U	Development incorporates passive environmental design, passive solar design	Development incorporates BASIX commitments in the design to provide	Yes

	to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	appropriate energy efficiency features.	
Objective 4V	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into site design	Development incorporates appropriate stormwater measures.	Yes
Objective 4W	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	Waste facilities are provided which are accessible to all residents.	Yes
Objective 4X	Building maintenance – building design provides protection from weathering, enables ease of maintenance, material selection reduces ongoing maintenance cost	Design incorporates a mix of external finishes that require minimal maintenance.	Yes

### **1. Minimum dimension of 6m to Deep Soil areas for sites above 1500 sqm**

The proposal has been amended since the review providing additional deep soil within the front setback area along Stanley Street and additional deep soil has also been included to the rear in the form of 2 x irregular shaped areas fronting Stanley Lane.

The minimum dimension of the deep soil areas is primarily dictated by the shape of the basement below.

The provision of 6m minimum dimension for deep soil component on this site would affect the minimum space required for vehicular manoeuvrability within the basement levels below.

The site is considered to be further constrained by virtue of its location occupying three (3) street frontages and the requirement for the dedication of a 1.2m wide zone for lane



widening; extending the full length of Stanley Lane and wrapped around along the full depth of Regent Lane.

The lane widening provision has essentially impacted on the available space and shape of the basement which in return translates in a non-complying width of deep soil areas.

In addition, the proposed development provides additional landscaping and communal open space on both the level 4 podium and the roof top. Within the design of the proposed communal spaces substantial sized trees are proposed accordingly.

In this circumstance the variation is considered reasonable and justified particularly as the total deep soil area complies.

## **2. Minimum Building Separation (West and East sides)**

### **Western Side**

The subject site is constrained by virtue of its corner position occupying 3 street frontages and defining the entire block. It is the subject of a 1.2m wide lane widening provision along the Regent Lane and Stanley Lane frontages, which in return progressively leaves no alternatives to the design but to be shifted towards the west.

The proposal provides a nil western boundary setback in context with the adjoining development (currently under assessment DA2018/0178).

The adjoining development to the west has a much wider frontage to Stanley Street; incorporating the amalgamation of nos. 12-24 Stanley Street with the intention of constructing a residential flat building consisting of 2 main buildings separated by an approximately 6m wide pedestrian pathway in between.

The buildings in question are split into 2 intervals by the pedestrian link. The first interval measures approximately 20m in frontage to Stanley Street and adjoins the subject development with a nil setback along the common boundary.

When viewed from the Street both developments read coherently and provide systematic breaks defining each interval beginning from Regent Lane, followed by the proposed pedestrian link on the adjoining development to the west and another 6m break along the western boundary of the adjoining development.

Further, and in context with the adjoining development, this has given the opportunity for both developments to work collectively to represent the envisaged Street wall to Stanley Street in accordance with the Kogarah North Precinct Urban Design Strategy and KDCP 2013 Part E4 respectively.

In this regard the nil western boundary setback is considered acceptable on merit from a streetscape perspective and its conformity with other development along Stanley Street.

### **Eastern Side**

The applicable minimum building separation from the east is to be measured from the centre line of Regent Lane which is 6m wide.

The proposal has also dedicated a minimum of 1.2m to widen the lane and opted to utilise the reduced side building separation of 4.5 m to non-habitable rooms for the first 4 levels along its eastern façade.

Similarly from level 4 to 9 above, the proposal as amended has maintained the 4.5m reduced separation; however, this was measured from the centre of the laneway to a “butterfly architectural element projection along the eastern façade). The projection of this “butterfly” feature offers the opportunity for north facing angled windows to service the kitchen areas located on the corner of the development without compromising the visual privacy to the east due to the reduced separation.

This only applies to the projecting feature element along the eastern façade whereby the predominant bulk of the façade maintains the 6m separation as a reduced separation for the upper levels.

The reduced separation is applicable to non-habitable areas and/or blank walls only.

The proposed breach came about via the placement of highlight windows along the eastern façade to improve the solar access and cross ventilation amenities.

In this circumstance, this breach is considered justifiable as it satisfies the intent of the design guideline and preserves the visual privacy to the adjoining buildings across the laneways.

In applying strict compliance with the building separation guideline on this particular site given its constrained location occupying 3 street frontages, and the adopted 4:1 FSR would typically result in an undesirable built form resembling the shape of what is commonly known as “the wedding cake” look and without utilising the site to its maximum potential which would render any development unfeasible on the subject site.

Notwithstanding, a **condition of consent** is included hereunder should this application be determined by means of approval, to govern all windows located within the reduced setback to be of a minimum of 1.6m bottom sill level and provide translucent glazing to preserve privacy.

### **3. Maximum of 15% of apartments in a building receive no direct sunlight**

As discussed earlier in SEPP 65 assessment of this report, the proposal provides 63 Units (72%) receiving the required sunlight of 3 hours or more.

Four additional (4) units with eastern orientation receive 2 hours of sunlight constituting 5%. Their solar access is limited due to existing shadow cast by the adjacent residential flat buildings across Regent Lane.

Twenty (20) units (23%) of the development receive no direct sunlight with direct orientation to the south.

Whilst, the proposed development exceeds the required 70% of its apartments receiving 3 hours of solar access; numerically, it was considered unavoidable to limit the maximum number of units not receiving direct sunlight to 15% as per Objective 4A-1 (2) ADG.

This breach is quantified in the form of 7 additional units (8%) not receiving direct sunlight as opposed to a maximum of 13 units.

The subject units in breach are all commonly 1 bedroom units including 1 studio with a maximum area generally below 54 sqm each and even lower for the studio.

The above breach constitutes 16.4% of the proposed FSR being 6,466.72 sqm, noting that in this instance the proposed FSR is below the maximum permitted FSR by 70 sqm.

When quantifying this breach in square metres, this shows that the proposed development only exceeds the maximum 15% performance ADG guideline by 1.4%.

This breach is considered minor in nature particularly in a high density residential setting such as this.


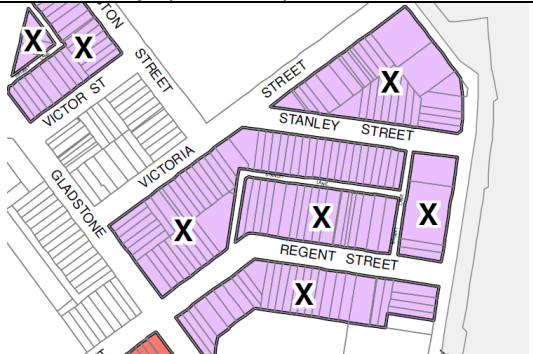

Further consideration should also be given in this circumstance to the site's orientation and the existing subdivision pattern essentially providing parallel sites with a southern rear frontage to Stanley Lane.

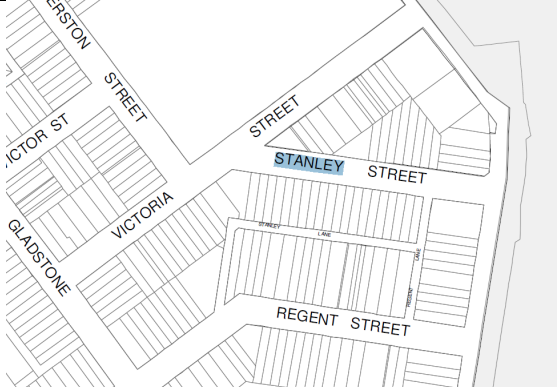
As such this breach is considered minor and inevitable in nature and is therefore supported in this circumstance.

### **Kogarah Local Environmental Plan 2012 (KLEP 2012)**

The provisions of the Kogarah Local Environmental Plan (KLEP) apply to the proposed development which complies with the relevant provisions as follows.

<b>Clause</b>	<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
<b>2.3 – Zone objectives and land use table</b>	R4 – High Density Residential	Consistent with the zone objectives and land use table.	Yes
<b>4.3 – Height of Buildings</b>	33m as identified on Height of Buildings Map	Approximately 36m maximum	No (1)

		at RL 50.8	
<b>4.4 – Floor Space Ratio</b>	4.0:1 as identified on Floor Space Ratio Map (6536m <sup>2</sup> )	FSR = 4.0:1 (6534.83m <sup>2</sup> )	Yes
<b>4.5 – Calculations of Floor space and Site area</b>		The proposal has been correctly calculated in accordance with the provisions of this clause.	Yes
<b>4.6 – Exceptions to Development Standards</b>		A CI 4.6 request has been submitted accordingly to vary the height limit for the provisions of the lift over run and associated rooftop communal open space structures.	Yes (refer to CI 4.6 - assessment of this report)
<b>5.10 – Heritage Conservation</b>		The site does not contain any heritage listed items or located within the vicinity of a heritage item.	NA

<b>6.1 – Acid Sulphate Soils</b>		<p>The subject site does not contain any acid sulphate soils</p>	<p>Yes</p>
<b>6.2 – Earthworks</b>	<p>Before granting development consent for earthworks the consent authority must consider:</p> <ul style="list-style-type: none"> <li>-Impact on drainage patterns and soil stability</li> <li>-The effect on likely future use or redevelopment of the land</li> <li>-The quality of the fill or the excavated soil</li> <li>-The effect on existing and likely amenity of adjoining properties</li> <li>-The source of fill material and the destination of excavated material</li> <li>- The likelihood of disturbing relics</li> <li>-The potential impacts on any watercourse, drinking water catchment or environmentally sensitive area</li> </ul>	<p>The proposed earthworks are considered acceptable having regard to the provisions of this clause as the works are not likely to have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</p> <p>The proposal is accompanied by a supporting preliminary Geotechnical Investigation of the site Prepared by EI Australia and dated 9 October 2017.</p>	<p>Yes</p>
<b>6.3 – Flood Planning</b>		<p>The site is not identified as a Flood affected</p>	<p>Yes</p>

		land.	
<b>6.5 – Airspace Operations</b>		The proposal has been referred to Sydney Airport for review and no objections were raised in this regard.	Yes

## **Clause 4.6 – Assessment**

### **Cl4.6 Exceptions to development standards**

#### **(1) The objectives of this clause are as follows:**

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,**
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.**

#### **Applicant's Response**

*The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.*

*As the following request demonstrates, compliance with the standard would be unreasonable and unnecessary, and a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.*

*The development standard that this request seeks approval to vary is the Height of Buildings control in Clause 4.3 of the Kogarah Local Environmental Plan 2012.*

*The numeric value of the Height of Buildings development standard is 33m.*

*The development standard is not specifically excluded from the operation of Clause 4.6 of KLEP.*

*This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal<sup>1</sup>.*

*In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address, where relevant*

*and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.*

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.**

#### Applicant Response

*The subject site has a maximum building height standard of 33m. The proposal has a maximum building height, as measured from ground level 'existing', of 36m {at RL 50.8AHD) as confirmed by Level 33 Architects. Therefore, the proposal breaches the standard by 3m. Specifically, the portion of the building above the 33m height limit includes parts of the lift overrun and rooftop level.*

*It is important to note that the extent of the variation is related to the lift over-run of the building that provides equitable access to the roof-top communal open space on the building.*

*It is also relevant to observe that the land within the Kogarah North Precinct was recently rezoned to create a high density residential precinct. As part of the Planning Proposal (PP) that created the new development standards (height and floor space ratio), we understand that there was no detailed 'urban design' analysis to determine the likely built form outcomes, particularly as they relate to SEPP 65 and the associated Apartment Design Guide (ADG). Council subsequently commissioned and adopted an urban design study, which found that "many sites will struggle to achieve the permitted 33m height standard and FSR of 4:1" when the relevant design considerations had been taken into account. If these development standards were to be realised without providing any built form setbacks, the development would "not result in good design outcome and result in a bulky building with little or no articulation". On the 7th of August 2017, Council adopted criteria by which to consider requests to vary the height standard for buildings in the Kogarah Precinct. The criteria were subsequently included in a Draft DCP amendment which was publicly exhibited in late 2017. These provisions were deleted by the elected Council, however, when the DCP amendment were finally adopted in January 2018. No reasons were published.*

*The proposed development seeks a variation to the height standard to ensure that the proposal delivers an appropriate built form that is consistent with the desired future character as outlined in the KNPUDS and controls under the ADG.*

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a**

written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Applicant Response

*Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]*

*Compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in Table 1 (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard 2.*

<b>Objective</b>	<b>Discussion</b>
(a) to establish the maximum height for buildings	<i>The proposed height of the proposal is approximately 3m greater than the height standard. As discussed under Section 2 of this Clause 4.6, the height controls established for the Kogarah North Precinct do not work appropriately with the density of development desired by Council of 4:1. The proposed height of the building is a result of delivering a built form that incorporates the desired built form outcomes for the precinct. Whilst the maximum height of the building is 36m, it is noteworthy that the remainder of the building is lower than this, with the built form being consistent with Council's policy for Clause 4.6 variations in the Kogarah North Precinct (up to 20%).</i>
	<i>As detailed later in this variation request, and the SEE, the proposed height is compatible within its context, and will not result in any adverse impacts to surrounding properties. The breach of the standard does not affect consistency with this objective. In fact, the breach of the standard allows for a building that achieves an improved built form providing better amenity and presentation to the street and public domain.</i>



<p><i>(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas</i></p>	<p><i>Level 33 have prepared detailed shadow diagrams for the proposal, which are provided at <b>Appendix 4</b>. The shadow diagrams illustrate the additional overshadowing impact caused by the variation of the height standard. Because the greatest breach occurs as a result of the lift overruns, which are located centrally within the building footprint, the additional overshadowing impact is relatively minor and would have no material impact on the existing neighbouring dwellings because they mostly fall in either the front yards or the street in front of those dwellings. The variation of the height standard does not result in any additional overlooking of neighbouring properties and in fact facilitates the achievement of the building separation requirements of the ADG.</i></p>
<p><i>(c) to provide appropriate scale and intensity of development through height controls</i></p>	<p><i>Because of the location of the precinct relative to the Kogarah Rail Station and Kogarah Strategic Centre, Council has deliberately sought to create a high density residential precinct. As noted earlier in this report, Council have acknowledged that achieving the current development standards for height and FSR are difficult to achieve and result in a poor urban built form outcome for the precinct. The breach of the height standard results in a built form outcome for the development that is consistent with the desired building envelope principles as established under the KNPUDS and the ADG. Accordingly the breach of the standard directly achieves this objective.</i></p>

**(b) that there are sufficient environmental planning grounds to justify contravening the development standard.**

Applicant's response

*There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]*

*The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. There is robust justification throughout the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.*

*In particular, and as demonstrated by the shadow diagrams at Appendix 4, the variation of the height standard results in no environmental harm caused by additional overshadowing.*

*The environmental planning benefits that are facilitated by the variation of the height standard greatly outweigh the negligible environmental harm. These benefits relate to the achievement of the desired future character of the precinct as established in the urban design principles under the KNPUDS by enabling the provision of a generous street setback and the creation of a distinct four storey podium to create human scale on the street and facilitate boulevard style planting. The variation also facilitates the provision of generous building articulation.*

*The proposal results in a better environmental planning outcome than if strict compliance of the development standard was observed in favour of the draft DCP controls.*

**(4) Development consent must not be granted for development that contravenes a development standard unless:**

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

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

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

**(b) the concurrence of the Director-General has been obtained.**

**Applicant's response**

***The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl. 4.6(4)(a)(ii)]***

*The proposal is also consistent with the objectives of the zone as explained in Table 2 (below).*

<b>Objective</b>	<b>Discussion</b>
<i>To provide for the housing needs of the community within a high density residential environment.</i>	<i>The proposal provides additional housing for the local area in the form of a high density residential flat building. The breach of the standard does not result in an inconsistency with this objective. In fact, the breach of the standard more appropriately achieves this objective by</i>

	<i>providing a high-density development in an appropriate location that will result in an appropriate built form as viewed from the public domain, as well as providing high levels of amenity to the residential units.</i>
<i>To provide a variety of housing types within a high density residential environment</i>	<i>The proposed development comprises one and two-bedroom units, addressing the local market demand. The breach of the standard does not result in an inconsistency with this objective.</i>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i>	<i>The breach of the standard does not result in an inconsistency with this objective.</i>

(5) In deciding whether to grant concurrence, the Director-General must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

Applicant's Response

Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]

*There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would arise because of varying the development standard as proposed by this application.*

- (b) the public benefit of maintaining the development standard, and

Applicant's Response

*There is no public benefit of maintaining the standard [cl. 4.6(5)(b)]*

*As discussed earlier, the proposed breach of the standard facilitates public benefits through a built form outcome that achieves the desired urban design principles established under the KNPUDS. The proposed provides generous setbacks and articulation, resulting in a building that will provide an improved relationship to the public domain.*

*The breach of the standard is minor and represents a lift over-run, which provides equitable access to rooftop landscaped areas and communal open space. The breach of the standard does not result in any adverse environmental impacts to the public domain or surrounding properties.*

*Accordingly, there is no public benefit' in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the Height of Buildings standard and hence there are minor public disadvantages.*

*We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.*

**(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.**

**(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:**

**(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or**

**(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.**

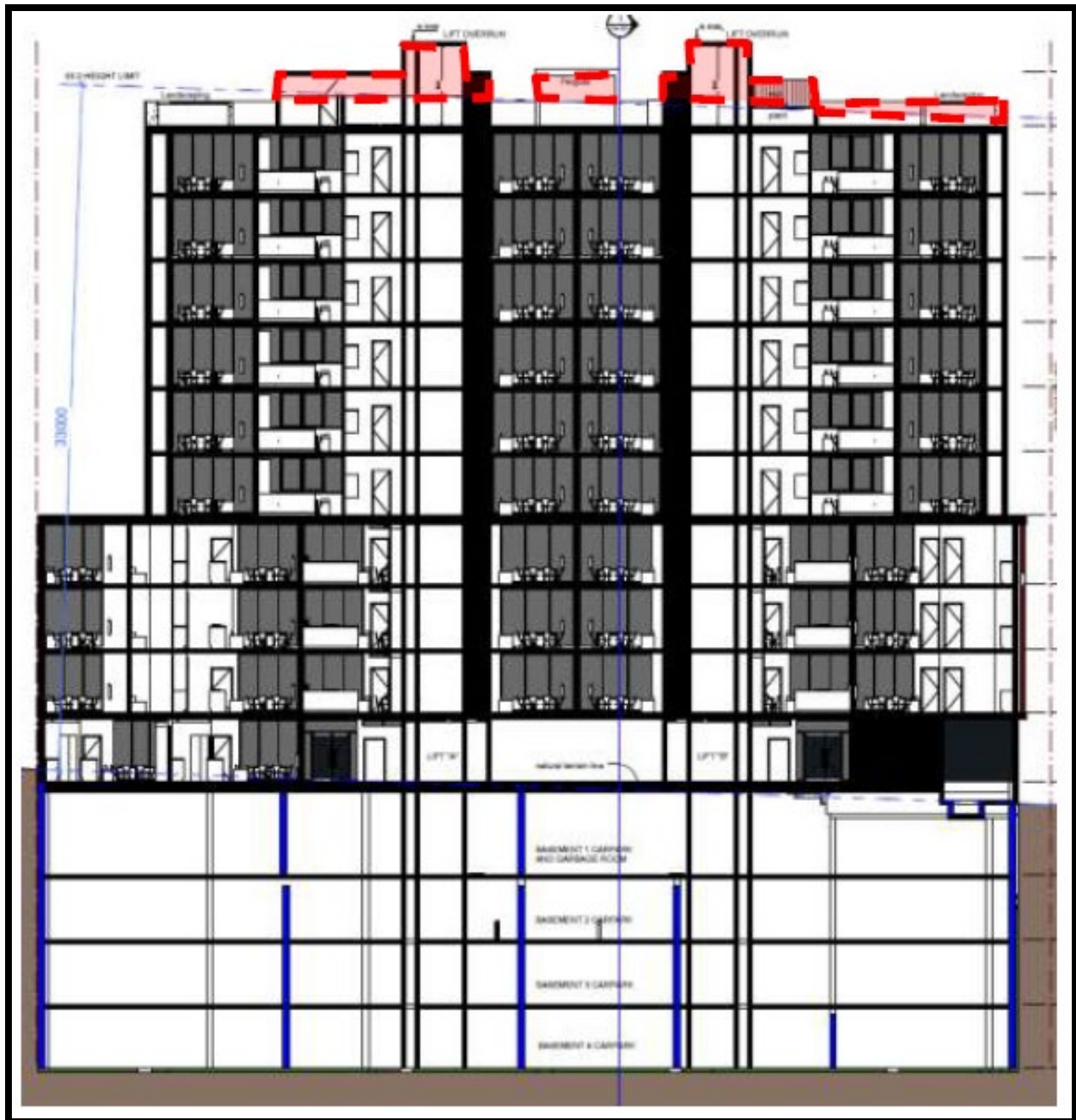
**(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).**

**(8) This clause does not allow development consent to be granted for development that would contravene any of the following:**

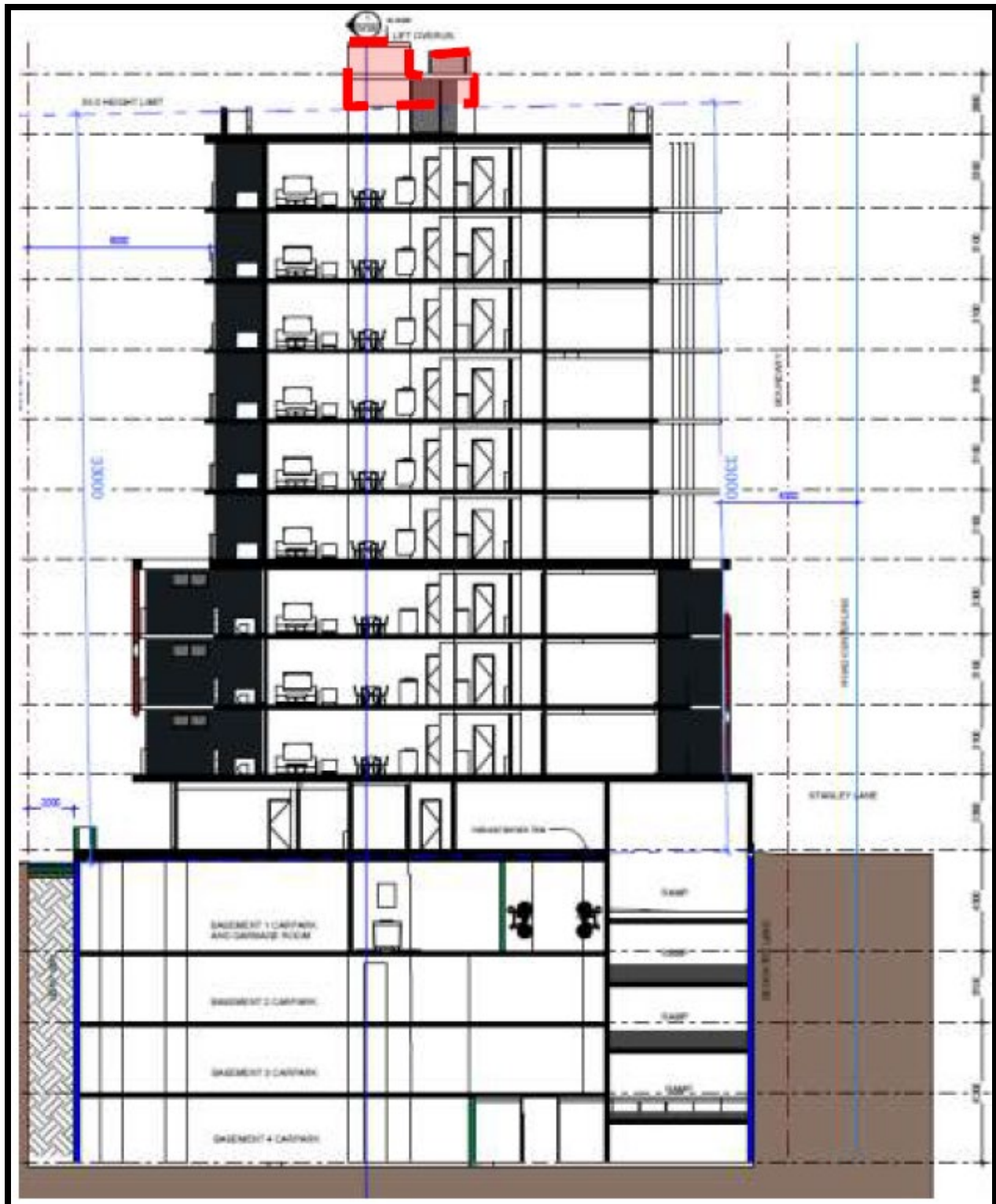
**(a) a development standard for complying development,**

**(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,**

**(c) Clause 5.4.**



Extent of height breach (Source: Level 33 Architects)



Extent of height breach (Source: Level 33 Architects)

Assessment of Clause 4.6 using the “Five Part Test” established by the NSW Land and Environment Court (LEC)

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded:

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

Officer comment:

The objectives of the height standard are:

- (a) to establish the maximum height for buildings
- (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas
- (c) to provide appropriate scale and intensity of development through height controls

In this circumstance the breach of height as previously mentioned is limited to the lift over run and some minor associated outdoor structures for the provisions of the rooftop communal open space and plant.

The visual privacy to the adjoining existing development as well as currently proposed residential flat buildings to the east, west and south is considered to have been preserved as the building involves the use of high parapet surrounding the parameters of the rooftop.

The rooftop communal open space is further setback from the parameters of the development from all directions which would not enable any overlooking from a standing position at that height, considering the setbacks and the angle of the line of sight.

Similarly, in reference to the overshadowing impact, any shadow cast from the projection of the rooftop structures would be cast onto the development itself as the structures are located centre of the rooftop footprint. The extent of the shadow also remains negligible and the communal open space will still be in full compliance with the minimum required solar access as a result.

As such the height breach is considered to be of an appropriate scale and intensity to the satisfaction of the above objectives.

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

Officer comment:

The purpose of the standard though remains relevant and compliance is necessary.

The intent or underlying objective is to limit overshadowing and visual privacy impacts to an acceptable level within a High density setting.

This is considered to be of direct relevance had the breach in height been presented in the form of an additional residential level, however in this circumstance it is limited to the common roof top open space structures, plant and the lift over run.

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

Officer comment:

The rooftop open space structures, plant and lift over run provisions are common services required in any high density development and strict compliance with the height standard would result in a loss of an entire residential floor to the development. This scenario is considered unreasonable and would not be consistent with the envisaged FSR for the subject site.

**Test 4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable:**

Officer comment:

Council has consistently issued previous consents that enabled lifts over run provisions and associated rooftop common space area structures and plant in the past and to date. Whilst this action may not render the standard to have been fully abandoned or destroyed as yet, it has certainly proven that strict compliance in this regards is unreasonable and unnecessary given rooftop structures for communal open space continue to be encouraged as a good design outcome.

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

Officer comment:

In this regard, whilst strict compliance with the development standard is considered unreasonable, it is not considered however, to be inappropriate as the consistent breaches of the standard is limited only to the associated services for the development as opposed to an entire residential levels beyond the height limit where compliance is warranted and remains appropriate for the existing and envisaged land use.

As such, strict compliance with the height standard in this circumstance is considered unreasonable and unnecessary. The development standard has been certainly varied numerous and consistently whether by Council, independent Panels and/or LEC for



the purposes of communal open space structures, plant and lift over run provisions on the rooftops associated with high density land use developments.

Whilst the standard remains appropriate for the intended land use, a merit based assessment should be exercised consistently in this regard. This does not necessarily mean that the standard has been fully abandoned as it still limits breaches in height that involves provisions of GFA beyond the height limit whereby overshadowing and visual privacy would be compromised otherwise.

### **Kogarah Development Control Plan 2013 (KDCP 2013)**

The proposed development is subject to the provisions of the Kogarah Development Control Plan 2013 (DCP). Specifically, the relevant section of the DCP is Part B- General Controls and Part E4 – Kogarah North Precinct.

The following comments are made with respect to the proposal satisfying the relevant KDCP 2013 objectives and controls.

#### **Part B- General Controls – KDCP**

##### B2 – Tree Management and Green Web

There is no significant vegetation on the site. Two (2) street trees located at the front of the site will be retained and protected. The application is accompanied by a landscape plan prepared by a qualified landscape architect that proposes appropriate landscaping to the site and common open space areas within the rooftop communal open space areas and the ground floor areas

##### B4 – Parking and Traffic

The extent to which the proposed development complies with the car parking provisions is outlined in the table below.

<b>B4</b>	<b>Relevant Requirements</b>	<b>Proposed</b>	<b>Complies</b>
Parking requirements	<u>Residential</u> 1 bedroom unit - 1 space/unit  2 bedroom unit - 1.5 paces/unit  3 bedroom unit - 2 spaces/unit  1 Visitor parking /5 units or part thereof, and  1 designated carwash bay which may be a visitor space	Based on the proposed apartment mix of: 2 x studios 26 x 1 bedroom 58 x 2 bedroom and 1 x 3 bedroom, The proposal requires a total of 115 spaces for residential units and 18 spaces for visitors. The proposal however, is subject to the RMS guide for Traffic generating development in accordance with	Yes, refer to ADG Assessment

		SEPP 65, which requires 65 spaces only, inclusive of visitor's spaces. The proposal exceeds this requirement as it provides 100 spaces.	
Bicycle parking	<p><u>Residential</u> 1/3 dwellings and 1/10 dwellings (visitor)</p> <p>Must be in accordance with AS2890.3 – 1993 (Parking facilities – Part 3 Bicycle Parking Facilities)</p>	Total provided = 40 bicycle spaces at the rate of 87 apartments it requires 29 residential and 9 visitors.	Yes
Design and layout of car parking areas	<ul style="list-style-type: none"> <li>▪ Internal car park shall be designed in accordance with the requirements set out in AS 2890.1 (2004) and AS 2890.2 (2002) for off street parking and commercial vehicles.</li> <li>▪ Non-residential and residential development parking areas should be physically separated</li> <li>▪ Basement car parking is to be located within the building footprint.</li> <li>▪ Car parking areas may be designed as ground level parking provided that the design results in building frontages level with the street</li> <li>▪ Design parking to ensure pedestrian safety.</li> <li>▪ Include natural ventilation to basement and semi basement car parking.</li> <li>▪ Integrate ventilation design into the façade of the building, or parking structure,</li> <li>▪ treating it with appropriate features such as louvres,</li> </ul>	<p>The development complies with these requirements.</p> <p>And provisions for natural and mechanical ventilation mechanism is included as condition of consent.</p>	Yes

	well- designed grilles, planting or other landscaping elements. <ul style="list-style-type: none"> <li>▪ Ensure that all vehicles, including vehicles using loading bays, can enter and leave the</li> <li>▪ site in a forward direction.</li> <li>▪ Avoid locating access ways to driveways adjacent to the doors or windows of habitable rooms.</li> </ul>		
Loading requirements	Retail area between 15sqm and 500sqm – 1 bay  Design of loading bay facilities to be 3.5m wide x 9.5m long	1 courier space provided which is 3.5m wide x 5.4m long. This is considered to be appropriate given that there are no non-residential components within the development which are likely to require large delivery vehicles. The basement areas also include “bulky goods” areas that can temporarily accommodate items for delivery/storage.	Yes

## **B5 – Waste Management and Minimisation**

A Waste Management Plan has been submitted with the application which is acceptable. Council’s Coordinator – Environmental Sustainability has examined the application and requested additional information that the applicant has addressed. Any consent granted will be subject to conditions of consent requiring the provision of appropriate waste facilities for the ongoing use of the development.

## **B6 – Water Management**


The development can drain to the street via gravity. Appropriate conditions of consent can be attached to any consent granted.

## **B7 – Environmental Management**

This section primarily relates to the building materials used in the development and their sustainability qualities. The proposed material and finishes to the development are

considered appropriate and do not indicate any particular adverse environmental issues.

## 10.2 Part E4 – Kogarah North Precinct

<b><u>Controls</u></b>	<b>Relevant Requirements</b>	<b>Proposed</b>	<b>Complies</b>
E4.1 Existing character			Yes
E4.2 – Land to which this part applies	<p><i>Each application will be considered on the individual circumstances and merits of the case in terms of the achievement of the relevant objectives.</i></p> <p><i>The SEPP and the ADG prevail over Council's DCP.</i></p> 	The subject site is located within the Kogarah North precinct which this part applies to.	Yes
E4.3 – Development contributions	<p><i>Council seeks the following development contributions:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Section 94 Contributions;</i></li> <li>▪ <i>Section 94A levies; and</i></li> <li>▪ <i>Voluntary Planning Agreements.</i></li> </ul>	Applicable Section 94 Contributions have been imposed as part of conditions of consent	Yes
E4.4 – The Kogarah North Urban Design Strategy	<p>The Kogarah North Precinct Urban Design Strategy (KNPUDS) was endorsed by Council on 27 November 2017.</p> <p>Design Option 3 was endorsed</p>	The proposal is consistent with the KNPUDS as adopted with emphasis on the 4 storey Street wall character.	Noted

	by Council at its meeting held 1 May 2017. Design Option 3 places an emphasis on creating a built form that complies with the ADG and defines a four storey street wall character.		
E4.5 – Vision for the Kogarah North Precinct	<ul style="list-style-type: none"> <li>▪ <i>Provide a diverse mix of residential accommodation</i></li> <li>▪ <i>Retain and preserve the existing heritage item.</i></li> </ul>	<p>The proposal offers an acceptable level of apartment mix that targets the housing needs within the area.</p> <p>There are no heritage listed items onsite or in the immediate vicinity.</p>	Yes
Street Frontage	<ul style="list-style-type: none"> <li>▪ <i>Address the street with four storey podium to ensure a comfortable human scale</i></li> <li>▪ <i>Address the Princes Highway, Railway Parade North and the Primary and Secondary Corners with active street frontages, awnings and street trees to increase pedestrian amenity</i></li> <li>▪ <i>On other streets, set buildings back to allow for improved public domain and deep soil planting.</i></li> </ul>	<p>The proposal provides a street front, 4 storey podium and whilst this may have resulted in a nil western side setback to the adjoining development, the design has taken into account the adjoining proposed development also maintaining a nil boundary status to achieve the desired podium character from the Street.</p> <p>The corner of Regent Lane and</p>	Yes

		Stanley Lane is considered a secondary corner as listed in Kogarah North Precinct Urban Design Strategy and the subject site has been subject to a Lane widening additional setback from the eastern boundary to Regent Lane and southern boundary to Stanley Lane.	
Built Form	<ul style="list-style-type: none"> <li>▪ <i>Ensure a comfortable human scale, avoiding the appearance of deep and unbroken canyons and tempering the scale of the street-edge buildings</i></li> <li>▪ <i>Provision of good residential amenity in terms of privacy and built form by complying with the SEPP 65 Residential Flat Design Code built form recommendations regarding separation between buildings and setbacks from side and rear boundaries.</i></li> <li>▪ <i>Design high quality corner buildings at the major and secondary corners which encourage architectural diversity</i></li> <li>▪ <i>Except on Major and Secondary Corners, reinforce the four storey street wall height by setting back upper levels of buildings</i></li> <li>▪ <i>Introduce breaks in the</i></li> </ul>	<p>The proposal has been amended since lodgement with further front setback from Stanley Street providing landscaped at grade podiums followed by ground floor courtyards maintaining an appropriate Human scale.</p> <p>The proposal as amended is considered satisfactory from a SEPP65 perspective.</p>	Yes

		<p><i>building massing at upper levels to reduce the building's apparent scale</i></p> <ul style="list-style-type: none"> <li>▪ <i>Buildings should incorporate interesting roof forms and the visual intrusiveness of service elements such as service plants, electrical substations, lift over-runs and the like shall be minimised by integrating them into the building</i></li> <li>▪ <i>Vehicular access to new development should be, where possible from existing and/or new service lanes, rather than streets</i></li> <li>▪ <i>Façades must be articulated and employ materials and finishes to enhance and complement the character of the streetscape</i></li> </ul>		
E4.6 – Submissions requirements for Development Applications	–	<ul style="list-style-type: none"> <li>▪ <i>A 3D dimensional Google Sketch-up model, including the existing built form of the immediately adjoining and neighbouring context of proposal; and</i></li> <li>▪ <i>Identifying Isolated sites</i></li> <li>▪ <i>Containing a number of detailed section of the façade at a scale of 1:20</i></li> </ul>	<p>3 D Perspectives have been provided and a massing diagram have been extracted from adjoining developments that best illustrated the collective massing of all proposals within the immediate vicinity of the subject site.</p> <p>The proposal does not result in any site's isolation.</p>	Yes
E4.7 – Siting and		<ul style="list-style-type: none"> <li>▪ The siting of a building is to respond to the requirements</li> </ul>	The siting of the building responds	Yes

Consolidation of Development sites	<p>of the Apartment Design Guide.</p> <ul style="list-style-type: none"> <li>▪ The maximum floor space ratio (FSR) is set by clause 4.4 of Kogarah LEP 2012 and the FSR Map.</li> <li>▪ Sites must be have a minimum site frontage of 60m</li> <li>▪ Development is not to result in the creation of an isolated site that could not be developed in compliance with the relevant planning controls, including the Kogarah LEP 2012, SEPP 65 and the ADG.</li> </ul>	<p>to the ADG requirements</p> <p>The proposal is below the maximum FSR</p> <p>The subject site measures 48m to Stanley Street</p> <p>The proposal does not isolates any sites</p>	<p>Yes</p> <p>No (*1)</p> <p>Yes</p>
	<p>Development of land identified below is subject to an amalgamation requirement:</p> <ol style="list-style-type: none"> <li>1. Nos 24B – 36 Victoria Street and No 11 Stanley Street, Kogarah</li> <li>2. Nos 5 – 11 Palmerston Street, Kogarah</li> <li>3. Nos 13 – 21 Palmerston Street, Kogarah</li> <li>4. Nos 16 – 22A Gladstone Street and No 2 Victoria Street, Kogarah</li> <li>5. Nos 70 – 84 Regent Street, Kogarah</li> </ol>	NA	NA
E4.8 – Heritage	<ul style="list-style-type: none"> <li>▪ The building height and setbacks must have regard to and respect the value of that heritage item and its setting</li> <li>▪ the new development is to provide an appropriate transition in height and adequate curtilage and side setbacks from the heritage item.</li> <li>▪ Existing heritage items are to</li> </ul>	<p>The subject development is not within the vicinity of a heritage listed item, or contain any heritage listed items.</p>	NA



	<p>be incorporated into development sites</p> <ul style="list-style-type: none"> <li>▪ Development to the south of St Paul's Anglican Church and hall (I96) is to be setback a minimum of 15m from the boundary of the site.</li> <li>▪ A Heritage Assessment is required to be lodged with a development application in accordance with Clause 5.10(5) of the Kogarah Local Environmental Plan 2012</li> </ul>		
E4.9 – Building Heights	<ul style="list-style-type: none"> <li>▪ Clause 4.3 of the Kogarah LEP 2012 indicates the maximum building height of 33 metres for the Precinct</li> <li>▪ The Kogarah North Precinct is affected by the Obstacle Limitation Surface. The maximum height of the inner horizontal surface is 51m AHD</li> <li>▪ Approval to operate construction equipment (i.e. cranes) shall be obtained prior to any commencement of construction, where the prescribed airspace is affected.</li> </ul>	<p>The proposal breaches the maximum height limit as specified by Cl4.3 KLEP 2012.</p> <p>The extent of departure is limited to the lift overrun provisions and minor associated communal open space structures.</p> <p>A Clause 4.6 request has been submitted and assessed.</p> <p>The proposal has been referred to Sydney Airport corporation and no objections were raised</p> <p>Subject to standard conditions of consent being</p>	<p>No (Refer to Cl4.6 assessment)</p> <p>Yes</p>

		imposed.	
E4.10 – Street Frontage Height, and front and rear and side setbacks		Refer to ADG and Cl 4.6 assessments of this report as it prevails.	No
E4.11 – Trees and Landscape	<ul style="list-style-type: none"> <li>▪ <i>Setbacks are to maximise the retention of existing trees</i></li> <li>▪ <i>Setbacks are to include the planting of canopy trees, both small and large</i></li> <li>▪ <i>All property boundary front setbacks must be deep soil and landscaped and must not have any underground intrusions</i></li> <li>▪ <i>Development is to establish a four storey street wall height to provide human scale and set back taller elements above the four storey street wall height.</i></li> <li>▪ <i>One step in the built form as the height increases due to building separations is required. Additional steps should be careful not to cause a 'ziggurat' appearance.</i></li> <li>▪ <i>No ground floor apartments are to be below the adjacent footpath level.</i></li> <li>▪ <i>Ground floor residential with a street frontage must incorporate landscaping</i></li> <li>▪ <i>The primary area of outdoor private open space must not be located on the street frontage.</i></li> <li>▪ <i>Blank walls are to be avoided fronting principal streets and the public domain.</i></li> <li>▪ <i>Side or rear boundary fencing is not permitted fronting the</i></li> </ul>	<p>The proposal complies with the provisions of this section.</p> <p>Further discussions are detailed in the assessment of SEPP65 and the ADG sections of this repor.</p>	Yes

	<i>public domain except where appropriate landscaping is located in front of the fence.</i>		
Developments with frontage to streets other than the Princes Highway, Railway Parade North and with frontage to a major or secondary corner	<p><b>Level 1 (Ground Floor)</b></p> <ul style="list-style-type: none"> <li>▪ <i>Minimum 2m setback from the property boundary. This 2m setback is to form an extension to the public domain to provide for an increased footpath and deep soil landscaping.</i></li> <li>▪ <i>Any basement parking must be located fully under the building footprint, no encroachment of the basement will be permitted within the setback</i></li> <li>▪ <i>Residential development is discouraged at the ground floor</i></li> <li>▪ <i>The fencing height is to be no greater than 1m and the style is to be open format</i></li> <li>▪ <i>Neighbourhood shops or home offices are encouraged</i></li> </ul> <p><b>Level 2,3,4</b></p> <ul style="list-style-type: none"> <li>▪ <i>Minimum 4m setback from the property boundary</i></li> <li>▪ <i>Balconies may encroach up to 2m into the 4m setback</i></li> <li>▪ <i>Balconies or the lower levels should be in the form of wintergardens to improve acoustic amenities</i></li> </ul> <p><b>Level 5 and above</b></p> <ul style="list-style-type: none"> <li>▪ <i>Minimum 5m setback from the property boundary</i></li> <li>▪ <i>Balconies must be set behind the 5m setback</i></li> </ul>		
E4.12 – Dedication of Land to Council for Road/Lane Widening and		The site is subject to a road widening provision of 1.2m along the eastern	Yes

Splays		<p>boundary to Regent Lane and along the southern boundary to Stanley Lane.</p> <p>The proposal has incorporated this requirement.</p>	
W4.13 – Creation of through sites pedestrian links and additional open space		<p>The site is not subject to pre-planned pedestrian links as per Kogarah North Urban Design Strategy by virtue of its location occupying two (2) corners being Stanley Street and Regent lane and Regent Lane and Stanley Lane.</p>	Yes
E4.14 – Housing choice	<p>(ii) An apartment mix is to be provided, taking into consideration:</p> <p>a. the distance to public transport, employment and education centres</p> <p>b. the current market demands and projected future demographic trends</p> <p>c. the demand for social and affordable housing</p> <p>d. different cultural and socioeconomic groups</p>	<p>The proposal provides an acceptable level of apartment mix considering its accessible location.</p> <p>The proposed apartment mix is:</p> <p>2 x studios (2%);</p> <p>26 x 1 bed (30%);</p> <p>58 x 2 bed (67%) and;</p>	Yes

	(iii) Apartment configurations are to support diverse household types and stages of life including single person households, families, multi-generational families and group households.	1 x 3 bed (1%)	
E4.15 – Addressing the Street and Public Domain	building services must be co-ordinated and integrated with the overall design  Buildings must be sited to address the street or both Streets if it has two or more frontages.		Yes
E4.16 – Impact of development on the Road/Pedestrian network		The proposal is not considered to impose any detrimental impact upon the road and or pedestrian network as it provides more than the minimum required parking onsite and is located along all 3 frontages defining the corner of Stanley St, Regent Lane and Stanley Lane in a grid like subdivision pattern setting.	Yes
E4.17 – Development with frontage to the Princes Hwy and	NA	NA	NA

Adjacent to the Railway line			
E4.18 – Vehicular access and Car parking		<p>The proposal complies with the provisions of the RMS Traffic Generating Development Guide which in this case is the applicable controls relevant to the provision of car parking spaces onsite</p> <p>In this regard, the proposal complies in full.</p> <p>In addition, vehicular access has been limited to Regent Lane from the east and is compliant with AS2890, with minimal disturbance to traffic conditions on Stanley Street and subsequently onto the Princess Highway.</p>	Yes
E4.19 – Architectural Articulation	<ul style="list-style-type: none"> <li>▪ Large areas of flat facade are to be avoided. Facades should be articulated into separate sections, using steps in the facade, expressed entries, panels, bay windows, balconies, pergolas and other architectural elements.</li> <li>▪ Articulation elements must be</li> </ul>	<p>The listed performance criteria has been considered as part of the SEPP 65 assessment and the ADG being the applicable</p>	Yes

	<p>integral with the building design and should consider the whole building- with the building having distinct façade elements being the podium, centre and upper storey/roof.</p> <ul style="list-style-type: none"> <li>▪ Changes of texture and colour should complement facade articulation.</li> <li>▪ Provide solar protection elements as integral with the building design and massing.</li> <li>▪ Façades must be articulated and employ materials and finishes to enhance and complement the character of the streetscape.</li> <li>▪ Reinforce a desired pattern characterised by simple, rectilinear building forms, a consistent street wall height, and a balance of horizontal elements (parapet, central area, below-awning area) and vertical elements (subdivision patterns, building bays).</li> <li>▪ Retain the pedestrian scale and give continuity to the 'base' of the built form.</li> <li>▪ Optimise environmental sustainability and minimise energy consumption through the placement and design of openings and shade systems.</li> <li>▪ Design building facades to optimise environmental amenity through sun shading devices, privacy screens and noise barriers combined with useable outdoor areas.</li> <li>▪ Avoid large expanses of blank walls or glass curtain walls.</li> <li>▪ Conceal meter boxes, fire hydrant boosters, sprinkler valves and the like so that they are not visible from the</li> </ul>	<p>controls in this regard.</p> <p>The proposal satisfied these controls.</p>	
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	<p>street.</p> <p><b>Roofs</b></p> <ul style="list-style-type: none"> <li>▪ Articulate roofs to provide a varied and interesting roofscape.</li> <li>▪ Design large projections, shade structures and pavilions to enhance the appearance of flat roofed buildings.</li> <li>▪ Roof fixtures are not permitted where they are visible from the street. Fixtures include aerals, vents, chimneys, solar collectors and mobile phone transmitters.</li> <li>▪ Conceal lift over-runs and plant equipment, including satellite dishes, within well designed roof forms.</li> <li>▪ No development will be permitted within the roof void.</li> <li>▪ The use of green roofs and green walls is encouraged particularly where this forms part of a communal open space arrangement in a residential/mixed use development.</li> <li>▪ Buildings greater than 9 storeys are to incorporate green facades or landscaped features (i.e. landscaped communal areas located on podiums and roofs</li> </ul>		
E4.20 - Awnings	<ul style="list-style-type: none"> <li>▪ Awnings are to be sized to adequately accommodate street trees. In addition, ground floor street frontages must be recessed into the building to provide an ample undercover passage without impacting street tree planting.</li> <li>▪ Provide under awning lighting to enhance safety.</li> </ul>	Achieved	Yes



E4.22 – Solar access	<ul style="list-style-type: none"> <li>▪ (Maintain solar access to existing apartment buildings and public open space</li> <li>▪ New buildings and additions shall be sited and designed to maximise direct sunlight to north-facing living areas, communal and private open space areas.</li> <li>▪ Living rooms and private open spaces for at least 70% of residential units in a development should receive a minimum of 2 hours direct sunlight between 9am and 3pm in midwinter</li> <li>▪ Skylights and light wells must not be used as the primary source of daylight in habitable rooms</li> <li>▪ Direct sunlight to north facing windows of habitable rooms and 10m<sup>2</sup> of useable private open space areas of adjacent dwellings should not be reduced to less than 2 hours between 9.00am and 3.00pm on 21 June</li> </ul>	The proposal provides adequate solar access in excess of the specified 2 hours to 72% of the proposal.	Yes
E4.23 – Safety and Security	<ul style="list-style-type: none"> <li>▪ The design of development is to incorporate Crime Prevention Through Environmental Design (CPTD) principles.</li> <li>▪ Development is to be designed to incorporate and/or enhance opportunities for effective natural surveillance</li> </ul>	<p>The proposal offers dual facing units on the ground floor and a common series of 1 bedroom units fronting Stanley Lane from the rear.</p> <p>The front entrances are well defined and front courtyards provide natural surveillance to</p>	Yes

		the Street.	
E4.24 – Waste minimisation	<ul style="list-style-type: none"> <li>▪ For buildings more than 3 storeys, provide a waste and recycling chute on each floor such that the total travel distance from any dwelling to a waste chute does not exceed 40m</li> <li>▪ Where a waste and recycling chute system is used, chute openings are to open only into a waste service compartment which must include containers for recyclables</li> <li>▪ An additional room or caged area with a minimum volume of 8m³ is to be allocated and designated with signs for the storage of discarded bulky items</li> <li>▪ locating chutes away from habitable rooms, and provide acoustic insulation to the waste service facilities</li> <li>▪ It is preferable for waste trucks to enter the site in a forward direction</li> </ul>	2 x waste chutes have been provided that leads to a 72sqm garbage room located in the level 1 basement which has provisions for an 8m³ bulky good areas and a loading bay.	Yes
E4.25 – Site Facilities	<ul style="list-style-type: none"> <li>▪ Any electrical kiosk, fire booster assembly or similar utilities will be in a location that is visible from the main entrance of the development</li> <li>▪ Fire booster assemblies are to be a minimum of 10m distance to an electrical kiosk, and housed within the external face of the building</li> </ul>	Appropriate site facilities have been essentially integrated in the design and placed along the Regent Lane façade.	Yes
E4.26 Maintenance	<ul style="list-style-type: none"> <li>▪ Buildings must incorporate and integrate building maintenance systems into the design of the building form, roof and façade</li> </ul>	Maintenance systems have been integrated in the common circulation areas, basements levels and where	Yes

		applicable integrated into the design when fronting the street.	
E4.27 Acoustic Privacy	<ul style="list-style-type: none"> <li>▪ The location of driveways, open space and recreation areas and ancillary facilities external to the dwelling must be carefully planned to ensure minimal noise impact</li> <li>▪ Where party walls are provided they must be carried to the underside of the roof</li> <li>▪ An Acoustic Report is to be submitted at Development Application stage &amp; post construction</li> </ul>	Spatial considerations have been observed and an acoustic report submitted.	Yes

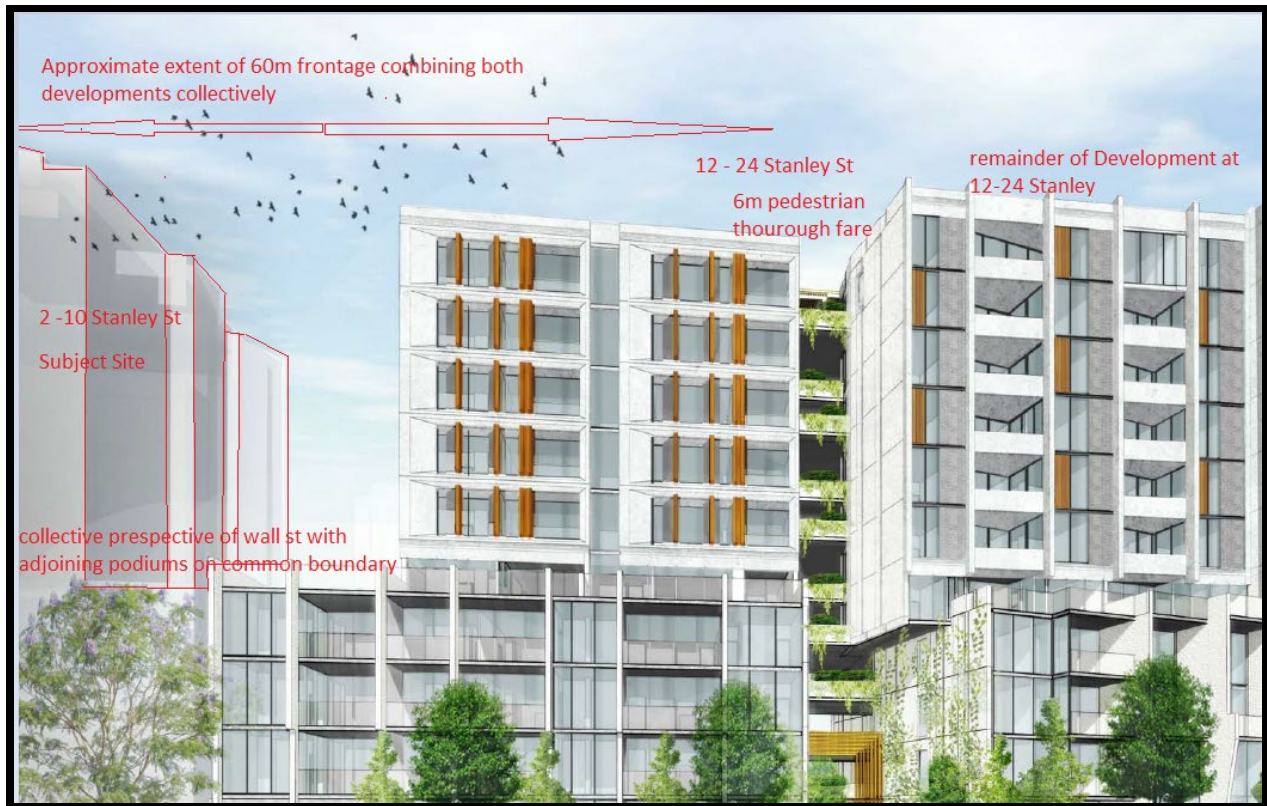
(1) Minimum site frontage of 60m

The subject site has a 48.7 m frontage to Stanley Street and involves the consolidation of 8 Lots to achieve the proposed residential flat building development.

The adjoining proposed development to the west involves the consolidation of 12 lots extending from no. 12 Stanley to no. 24 Stanley Street and occupying the remainder of Stanley Street.

Collectively, apart from the built-up and already established development occupying the corner of Princess Highway and Stanley Street, the subject development combined with the adjoining development to the west (also currently under assessment) constitute the predominant Streetscape of Stanley Street in its entirety.

As such, the departure from this control is assessed in context of adjoining (proposed) development west of the subject site (12-24 Stanley Street) whereby both developments are proposing a nil common boundary setback.



*Perspective of Streetscape in context with adjoining development west of the subject site at 12-24 Stanley St (Source: Scott Carver Architects – DA2018/0178)*

The intent of the 60m control is to provide the necessary breaks through the built form and avoid excessive and lengthy street walls with no relief /breaks and pedestrian linkages to the “grid like” existing subdivision pattern.

In this circumstance the first pedestrian link is considered to be Regent Lane where the subject site occupies its corner position within Stanley Street and the second would be the pedestrian thoroughfare proposed by the adjoining development essentially dividing the façade into approximately one third to two thirds.

This had created a proportionate integration between the subject proposal and the adjoining proposal which provides overall equal and systematic intervals along the Stanley Street Façade.

Having regard also to the lane widening provision imposed on the subject site, the remainder of the proposed development had integrated well with that of the adjoining development to its west (which is also under assessment).

Both developments in this circumstance are proposing a nil boundary setback along their common boundary which creates the essential built form outcome had the subject application provided a complying 60m frontage and incorporated the additional sites acquired by the adjoining development.

In conclusion, whilst this may present itself as a variation numerically, in this circumstance, it is considered acceptable as it provides a better built form streetscape outcome when viewed in context of the adjoining development.

## **Section 94 Contributions Plan**

The proposed development requires payment of \$1,348,202.32 of Section 94 contributions based on the provisions of additional dwellings on the subject site. The contribution amount is based on the following:

<b>Contribution Type</b>	<b>Contribution Amount</b>
Roads and traffic management	NA
Open Space	NA
Streetscape, Open Space & Public Domain	\$1,265,757.99
Traffic Facilities	\$23,853.73
Community Facilities	\$22,564.91
Kogarah libraries – buildings component	\$21,030.85
Kogarah libraries – books component	\$14,994.84
<b>Total Contributions:</b>	<b>\$1,348,202.32</b>

## **IMPACTS**

### **Natural Environment**

The proposed development is unlikely to result in adverse impacts to the natural environment. The site contains no significant vegetation. There are two street tree located on the nature strip at the front of the site and these will be retained and protected. A landscape plan prepared by a qualified landscape architect has been prepared for the development which shows appropriate deep soil planting to the northern boundary and to the communal open space areas on the rooftop. The landscaping will improve the current site conditions.

The proposed excavation to the site is for the purposes of providing four basement levels for car parking and associated facilities. The excavation is consistent with that required for most new developments.

### **Built Environment**

The proposed development is unlikely to result in adverse impacts to the built environment. The proposed development complies with the relevant requirements

except in the height of the lift overrun, plant and associated areas of the rooftop communal open space areas. This variation is discussed in the report and is supported as it is unlikely to result in adverse impacts to adjoining developments and the streetscape.

In addition, the proposed design as amended has been integrated with adjoining development to the west where a common boundary is shared and has preserved visual privacy to the east and south by providing appropriate screening and highlight translucent windows to those areas utilising the reduced building separation as per the ADG.

### **Social Impact**

The proposed development has no apparent adverse social impact.

### **Economic Impact**

The proposed development has no apparent adverse economic impact.

### **Suitability of the site**

It is considered that the proposed development is of a scale and design that is suitable for the site. Having regard to its size, shape, topography, vegetation and relationship to adjoining developments, the subject site does not contain any impediments that would preclude it or compromise its suitability for the intended land use as proposed.

## **SUBMISSIONS AND THE PUBLIC INTEREST**

The application was notified/advertised twice to 184 owners and occupiers in accordance with Council's requirements and three (3) submissions were received in reply. The following issues were raised by the submitters.

- Concerns in reference to being isolated due to the number of developments occurring surrounding them because despite their active lobbying to de-list their heritage listed sites in an effort to sell their properties collectively, a decision has not yet been made to date which affects the value of their sites.

Officer Comment – This concern is not directly related to the subject development and property value is outside the scope of this assessment. Property value is not part of the heads of consideration under Section 4.15 EP&A Act 1979; hence no comments can be given in this regard.

- Potential privacy impacts from balconies and windows towards the north across Stanley Street

It is noteworthy, that the submission received also stated as an introduction that the primary reason for this objection is because the developers would not buy their

property and now that Residential flat buildings are being proposed across the road concerns of loss of privacy, traffic congestion, overshadowing and decrease in property value is now expressed as a result.

Officer Comment: In reply to the privacy issue raised by the resident the applicant has provided an 8 m front setback to levels 4 and beyond from the front boundary and 5m for the first four levels respectively. The subject front facing northern windows and balconies are not considered to impose any detrimental privacy impact as it provides adequate setback in full compliance with the KDCP in addition to the full width of Stanley Street itself.

- Overshadowing concern

Officer Comment – The nature of this submission is in relation to development in Stanley Street opposite the site, there will be no impact on these properties given their orientation.

- Potential traffic congestion.

Officer Comment: The proposed development is self-sufficient as far as the minimum required number of parking spaces in accordance with the RMS Traffic generating Development Guide. In addition the proposal exceeds that of the minimum requirement within the confinement of the proposed 4 basement levels.

The RMS requires 65 spaces inclusive of visitor's spaces for the proposed 87 units and the proposal exceeds this requirement as it provides 100 spaces.

- Property devalue.

Officer Comment: as was previously mentioned property value is not a matter for consideration under the Environmental Planning and Assessment Act 1979.

## **REFERRALS**

### **Council Internal Referrals**

#### Senior Building Officer (Major Projects)

Council's Senior Building Officer has raised no objection subject to conditions of consent being attached to any consent granted.

#### Senior Strategic Planner – Urban Design Review

#### **Proposed Development Application**

1. The proposed Development Application provides for 86 residential units (26 one-bed, 59 two-bed and one three-bedroom apartments), 638sqm communal open space on the roof (level 10), closure of five existing driveways and construction of two new driveways off Regent Lane and Stanley Lane, 100 car parking spaces, 40 bike parking spaces and 2 loading/service bays and removal of 2 trees on the site.

## Subject Site

2. The subject site is located in the Kogarah North Precinct and is a corner site. It has an overall area of 1,634m<sup>2</sup> and is bounded by Stanley Street, Regent Lane, Stanley lane on three sides. It has a B2 Local Centre to its East and is generally surrounded by single and two-storeyed residential development on the other sides.

## Strategic Considerations

3. The subject site is governed by the following strategic planning documents: Greater Sydney Region Plan – A Metropolis of three cities, the South District Plan, Kogarah LEP 2012, Kogarah North Precinct Urban Design Strategy, E-4 Kogarah North Precinct DCP. The following draft documents also apply to the subject site - draft Kogarah North Precinct Public Domain Plan and the draft Georges River Car Parking Strategy.

4. Kogarah is identified as a Health and Education Precinct by the Greater Sydney Commission in the Greater Sydney Region Plan and the South District Plan. The Greater Sydney Region Plan sets out objectives to deliver diverse housing supply to improve affordability. The District Plan identifies that the Kogarah Centre should be strengthened through approaches including:

- support the growth of the health and education precinct;
- encourage new lifestyle and entertainment uses to activate streets and grow the night-time economy.

5. As part of the finalisation of the New City Plan (Kogarah LEP 2012), the Kogarah North Precinct (that includes the subject site) was zoned R4 High Density Residential, with a maximum height of 33m and a maximum FSR of 4:1 in May 2017. The purpose of the New City Plan was to provide additional housing and employment opportunities to meet the needs of the current and future residents. Key objectives of the R4 High Density Residential zone are to provide for the housing needs of the community and a variety of housing types within a high density residential environment.

Senior Strategic Planner Comment: The unit mix provides only one 3-bedroom unit and no studio apartments, thus does not truly provide for a variety of housing types. It is recommended that more three-bedroom units and some studios are provided to meet the R4 zone objective of providing a diverse typology.

Senior Development Assessment Planner's Comment: the design has been amended to provide 2 studio apartments and 1 x 3 bedroom apartment.

The provisions of more 3 bedroom apartments were rendered by the applicant to be unfeasible.

The proposed apartment mix is considered satisfactory as amended.



6. The Kogarah North Precinct Urban Design Strategy and Kogarah North Precinct DCP establish the Desired Future Character for the site and its context. The vision stated in the DCP is 'to create a vibrant and diverse precinct, where a spacious, high-quality public domain is the setting for thriving social activities and cohesive built form'. The vision includes that Kogarah North will consist of residential and community uses in the form of apartment buildings that will deliver a diversity of heights but will maintain a human scale built form at street level creating a balance between increased housing opportunities, public and private amenity and an active and safe pedestrian environment.

Senior Strategic Planner Comment: It is acknowledged that two units have a direct and another two have an indirect access to Stanley Street on the ground level. The provision of retail floor space on the ground level would help to further activate and create a safe pedestrian environment.

Senior Development Assessment Planner's Comment: The proposal had since been amended and provided direct access to all ground floor units with north facing courtyards.

7. The draft Georges River Car Parking Strategy ascertains that part of Stanley Street (fronting the site) has an occupancy rate of less than 50% and over 85% on a weekday (Wednesday) and between 50 and 80% on a weekend (Saturday).

Senior Strategic Planner Comment: It is acknowledged that the proposed DA aims to cater to the parking requirements of the development.

8. The draft Kogarah North Precinct Public Domain Plan specifies Stanley Street as a 'Living Street'. Living Streets will provide additional neighbourhood outdoor space, maximise tree planting and WSUD zones, have street gardens and street furniture, provide areas of porous paving to contribute to stormwater management and water quality and public art opportunities. The draft Plan specifies the laneways including Stanley and Regent Lanes as contributing to the open space network with a finer grain detail on a neighbourhood scale. There needs to be clear demarcation of vehicle egress zone as a shared way, a variety of urban furniture provided in a consistent alignment for clarity of movement and function.

Senior Strategic Planner Comment: These details need to be considered in the proposed future iterations of the development and integrated into the design concept.

## Urban Design Considerations

### Character

9. The Kogarah North precinct has been nominated for high density residential development. This will change the existing single and two-storeyed residential character to a 10-11 storey high-rise character. The R4 zone permits shop-top housing.

Senior Strategic Planner Comment: It is recommended that the applicant investigates the provision of retail floorspace on the ground in the current development. This will ensure street activation and safety.

#### Built form and articulation

10. The proposed development provides an excessive length (approx. 25m depth and more than 45m length) and creating a dominant bulk and scale without considering the relationships with the existing high-density commercial development to the east and the future desired character of the western neighbour. Moreover, as the form is not well articulated, it provides a sense of over-development.

11. The podium will create a 4-storey wall along Stanley Street if the lots to the west of the site are redeveloped abutting this site.

12. The bulk and scale of the development creates an excessive sense of enclosure to the laneways and a poor streetscape contrary to the character of streets and laneways recommended in the Kogarah North Urban Design Strategy and Kogarah North DCP draft Kogarah North Precinct Public Domain Plan.

Senior Strategic Planner Comment: The built-form needs to be well-articulated and maintain human scale.

#### Senior Development Assessment Planner's Comment

The proposal has been amended with further articulation to the front and side facades and particularly to the provision of front courtyards, increased front setback and feature eastern façade.

Level 4 podium has now become a communal open space with green spaces provides which can be visible from the street.

The applicant had re-designed in conjunction with the adjoining (proposed development at 12 – 24 Stanley St) to provide a coherent streetscape.

The proposal as amended is considered satisfactory and consistent with KNPUDS.

#### Building Height

13. The objectives of the height control are to 'minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas' and to 'provide appropriate scale and intensity of development through height controls'. The proposal exceeds the maximum building height of 33m by up to 3m (it includes parts of the roof top and the lift overrun). This 36m height contributes to

potential overshadowing impacts and is inconsistent with the desired future character of Kogarah North Precinct.

14. The proposed 3.3m floor-to-floor height at ground floor should be increased to accommodate a future retail/commercial premise. An increased floor-to-floor height (e.g. 4.5m) will encourage adaptability for a variety of future uses as functional requirements are likely to change over the life of the building.

Senior Strategic Planner Comment: The roof form is not well articulated and integrated into the overall built form and the height exceedance is not justifiable.

Senior Development Assessment Planner's Comment: this matter has been discussed in the assessment of CI 4.6 section of this report.

#### Setbacks

15. The proposed nil setback to the western boundary provides a very dominant built form along Stanley Street in the event of the redevelopment of the neighbouring site and compromises the green landscape character of the neighbourhood. This is not consistent with the desired future character of the residential neighbourhood as envisioned by the DCP and the draft Kogarah North Public Domain Plan.

16. The proposal has also reduced street setbacks to the eastern and southern boundaries. The inadequate secondary setbacks above podium increase the bulk and scale perceived from the surrounding areas. This creates an overbearing mass too close to the street, which detracts from the intent of a human-scaled street wall.

Senior Strategic Planner Comment: The setbacks to the eastern and southern boundaries need to be reinvestigated and amended.

Senior Development Assessment Planner's Comment: This matter has been discussed in the ADG assessment section of this report

#### Residential Amenity

17. The proposal provides approx. 114m<sup>2</sup> (7%) deep soil area on the northern and southern boundaries with a proposed width less than a minimum of 6m as per the ADG. The proposed deep soil areas appear like scattered leftover areas which do not provide a positive contribution to the landscape character of the neighbourhood and the expected 'leafy street' as per the DCP vision.

Senior Strategic Planner Comment: The deep soil areas need to be consolidated and have a minimum width of 6m to encourage the growth of mature trees.

Senior Development Assessment Planner's Comment: This matter has been discussed in the ADG assessment section of this report where the site was considered to be

constrained due to its limited depth, lane dedication provision, and increased front setback re-design all of which have contributed to the shape of the basement catering minimum manoeuvrability space within which in return have resulted in a reduced minimum width of deep soil component onsite.

#### Development Engineer

Council's Development Engineer has raised no objection subject to conditions of consent being attached to any consent granted.

#### Traffic Engineer

Council's Traffic Engineer has examined the application and has raised no objection to the development subject to conditions of consent requiring the car spaces to comply with the Australian Standards.

#### Environmental Health Officer

Council's Environmental Health Officer has raised no objection subject to conditions of consent being attached to any consent granted.

#### Coordinator of Environment Sustainability and Waste

Council's Coordinator of Environment Sustainability and Waste has raised no objection subject to conditions of consent being attached to any consent granted.

#### Council's Landscape Management Officer

Council's Consultant Arborist has raised no objection subject to conditions of consent being attached to any consent granted.

### **External Referrals**

#### Roads and Maritime Services (RMS)

The RMS has raised no objection to the application subject to conditions of consent being attached to any consent granted.

#### Civil Aviation Safety Authority (CASA) – Sydney Airport

The Civil Aviation Safety Authority has raised no objection to the application subject to conditions of consent being attached to any consent granted.

### **CONCLUSION**

The application has been assessed having regard to the Heads of Consideration under Clause 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans.

The application seeks approval for the demolition of existing structures, amalgamation of 8 lots and construction of a 10 storey residential flat building development comprising 87 residential units, over 4 basement levels for 100 car parking spaces.

The proposed development application was lodged on the 13th October 2017 with a capital investment value of \$31,134,021 million which classifies it as a Regional Development. Therefore, the Sydney South Regional Planning Panel is the consent authority.

The subject site occupies 3 Street frontages with an area of 1634 m<sup>2</sup> on the corner of Stanley Street and Regent Lane with a rear access to Stanley lane.

The site is subject to the Kogarah North Precinct Urban design Strategy which was recently adopted, essentially resulting in the site being Zoned R4 – for High density residential land use with an applicable FSR of 4:1.

Accordingly, the area is experiencing an urban renewal transition from low to high density whereby Council is in receipt of numerous applications for higher densities some of which relate to adjoining sites simultaneously such as the subject application.

As such, the proposal has also been assessed in context of its surrounding and adjoining current proposals.

The proposal has been the subject of an independent design review commissioned by Council and conducted by GMU Urban Design & Architecture. The proposed design has been amended throughout the course of the assessment with several changes made to date to respond to the issues presented.

The proposal seeks to depart from Clause 4.3 relevant to the height standard by a 9.7% breach (3.21m) under the provisions of Clause 4.6 on the basis of minimal environmental impacts and the limitation of the height breach to the lift over run and associated rooftop communal open space structure provision. The departure has been assessed utilising the five part test guided by previous judgments of the Land and Environment Court proceedings and is considered acceptable in this circumstance.

The proposal also presents minor variations to the provisions of the apartment design guide (ADG) and Kogarah North Development Control Plan relating to the minimum building separation, minimum dimension of deep soil area, maximum number of units permitted with no direct solar access and the minimum site frontage for the development.

The above variations have been addressed and appropriately justified on the basis of site's constraint directly related to the dedication of land for lane widening, natural site's orientation and subdivision pattern. In reference to the minimum 60m frontage variation to KDCP control, the proposal was considered satisfactory to the intent of the control when considered in context of the adjoining development currently under assessment and subject of its respective development application.

Notwithstanding, The development has been assessed against the requirements of the relevant planning instruments and development control plans and is consistent with those requirements except in the height of the development relating to the lift overrun and associated structures to the communal open space areas on the roof. The submission received to the application has been addressed in the report and through amended plans. Following detailed assessment it is considered that Development Application No DA2017/0483 should be approved subject to conditions.

## **DETERMINATION AND STATEMENT OF REASONS**

The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and development control plan except in the height of the development which is considered acceptable having regard to the justification provided in the report above.
- The applicant has amended the proposal from that originally submitted to address issues raised by the Design Review Panel and Council officers to provide a better outcome for adjoining developments and the design of the development.
- The proposal also presents minor variations to the provisions of the apartment design guide (ADG) and Kogarah North Development Control Plan relating to the minimum building separation, minimum dimension of deep soil area, maximum number of units permitted with no direct solar access and the minimum site frontage for the development.
- The above variations have been addressed and appropriately justified on the basis of site's constraint directly related to the dedication of land for lane widening, natural site's orientation and subdivision pattern. In reference to the minimum 60m frontage variation to KDCP control, the proposal was considered satisfactory to the intent of the control when considered in context of the adjoining development currently under assessment and subject of its respective development application.

THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the South Sydney Planning Panel, grants development consent to Development Application DA2017/0483 for the demolition of existing structures and construction of a 10 storey Residential Flat Building development comprising 87 residential units, basement car parking and landscaping on Lot 47,48,49,50,51,52,53,and 54, Sec B, DP 1397, and known as 2 – 10 Stanley Street, Kogarah, subject to the following conditions of consent:

## **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.

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

Description	Reference No.	Date	Revision	Prepared by
Calculations Plan	DA001 c	21/11/2018	C	Level 33 Architects
Demolition plan	DA003 c	21/11/2018	C	Level 33 Architects
Construction waste management plan	DA004 c	21/11/2018	C	Level 33 Architects
Site plan	DA013 c	21/11/2018	C	Level 33 Architects
Gross Floor Area plan	DA014 c	21/11/2018	C	Level 33 Architects
Solar & Cross Ventilation plan	DA015 c	21/11/2018	C	Level 33 Architects
Storage calculation plan sheet 1	DA016 c	21/11/2018	C	Level 33 Architects
Storage calculation plan sheet 2	DA017 c	21/11/2018	C	Level 33 Architects
Storage calculation plan sheet 3	DA018 c	21/11/2018	C	Level 33 Architects
Deep soil calculation plan sheet 1	DA019 c	21/11/2018	C	Level 33 Architects
Lane center line set-out	DA020 c	21/11/2018	C	Level 33 Architects
Basement B1 plan	DA080 c	21/11/2018	C	Level 33 Architects
Basement B2 plan	DA081 c	21/11/2018	C	Level 33 Architects
Basement B3 plan	DA082 c	21/11/2018	C	Level 33 Architects
Basement B4 plan	DA083 c	21/11/2018	C	Level 33 Architects
Ground floor plan	DA100 c	21/11/2018	C	Level 33 Architects
Level 1 plan	DA101 c	21/11/2018	C	Level 33 Architects

Level 2 plan	DA102 c	21/11/2018	C	Level 33 Architects
Level 3 plan	DA103 c	21/11/2018	C	Level 33 Architects
Level 4 plan	DA104 D	21/11/2018	D	Level 33 Architects
Level 5 plan	DA105 D	21/11/2018	D	Level 33 Architects
Level 6 plan	DA106 D	21/11/2018	D	Level 33 Architects
Level 7 plan	DA107 D	21/11/2018	D	Level 33 Architects
Level 8 plan	DA108 D	21/11/2018	D	Level 33 Architects
Level 9 plan	DA109 D	21/11/2018	D	Level 33 Architects
Level10 plan	DA110 C	21/11/2018	C	Level 33 Architects
Roof plan	DA111 C	21/11/2018	C	Level 33 Architects
Section 1 plan	DA200 C	21/11/2018	C	Level 33 Architects
Section 2 plan	DA201 C	21/11/2018	C	Level 33 Architects
North elevation plan	DA300 C	21/11/2018	C	Level 33 Architects
East elevation plan	DA301 C	21/11/2018	C	Level 33 Architects
South elevation plan	DA302 D	21/11/2018	D	Level 33 Architects
West elevation plan	DA303 C	21/11/2018	C	Level 33 Architects
Material finishes plan	DA800 C	21/11/2018	C	Level 33 Architects
Adaptable & Livable Units	DA850 C	21/11/2018	C	Level 33 Architects
Landscape Plan – Ground Floor & Image Palette	DA-L101	21/11/2018	D	Canvas Landscape architects
Landscape Plan – Level 4	DA-L102	21/11/2018	D	Canvas Landscape architects
Landscape Plan – Level 10 Communal Open Space & typical details	DA-L103	21/11/2018	D	Canvas Landscape architects
BASIX Certificate	857331M_04	22/11/2018	04	Damian O'Toole Planning P/L
Access compliance report	FP-7214	26/09/2017	Issue B	Vista Access Architects Pty Ltd
Acoustic report Traffic & Environmental Noise assessment	Ref: 2017-467	11/09/2017	-	Acoustic Noise & Vibration Solutions P/L



BCA Design Assessment report	P217_264-1(BCA) LS	7/09/2017	-	Design Confidence
Geotechnical desktop study report	Report E23383 GA_REV1	9/10/2017	REV1	EI Australia
Assessment of traffic and parking implications	17169	October 2017	REV- B	Transport & Traffic Planning Associates
Waste Management Plan	-	06/09/2017	REV C	Elephant Foot recycling solutions

## SEPARATE APPROVALS UNDER OTHER LEGISLATION

2. **Section 138 Roads Act 1993 and Section 68 Local Government Act** Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure. If separate activity approvals are required under other legislation, these approvals will be obtained and evidence of the approval(s) provided to the Certifier prior to the issue of the Construction Certificate.

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

- (a) Placing or storing materials or equipment;
- (b) Placing or storing waste containers or skip bins;
- (c) Erecting a structure or carrying out work
- (d) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- (e) Pumping concrete from a public road;
- (f) Pumping water from the site into the public road;
- (g) Constructing a vehicular crossing or footpath;
- (h) Establishing a “works zone”;
- (i) Digging up or disturbing the surface of a public road (eg Opening the road for the purpose of connections to utility providers);

- (j) Stormwater and ancillary works in the road reserve;
- (k) Stormwater and ancillary to public infrastructure on private land; and
- (l) If any excavation is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways.

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

The relevant Application Forms for these activities can be downloaded from Council's website [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au)

For further information, please contact Council's Customer Service Centre on (02) 9330 6400.

3. **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 footpath for the full length of the frontage(s) of the site in accordance with Council's Specifications applying at the time construction approval is sought.
- (b) All associated road pavement restorations.
- (c) Installation of turf as required across all street frontages.
- (d) The thickness and design of the driveway will be in accordance with Council's Specifications applying at the time construction approval is sought.
- (e) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
- (f) Any existing vehicular crossing and/or laybacks which are redundant will be removed. The kerb and gutter, any other footpath and turf areas will be restored at the expense of the applicant. The work will be carried out in accordance with Council's specification, applying at the time construction approval is sought.

Constructing a vehicular crossing and/or footpath requires separate approval under the *Roads Act 1993*, prior to the commencement of those works.

4. **Structural Engineer's Details - Supporting excavations and adjoining land** - Prior to the commencement of work in connection with the excavation of the site

associated with the basement car park, structural engineer's details relating to the method of supporting the excavation will be submitted.

5. **Building - Hoarding Application** - Prior to demolition of the buildings on the site or the commencement of work above ground level a separate application for the erection of an A class (fence type) or a B class hoarding or C type scaffold, in accordance with the requirements of Work Cover Authority of NSW, will be erected along that portion of the footway/road reserve, where the building is within 3 metres of the street boundary.

An application for this work (Hoarding Application) under Section 68 of the *Local Government Act 1993* and the *Roads Act 1993* will be submitted for approval to Council.

6. **Road Opening Permit** - A Road Opening Permit will be obtained from Council, in the case of local or regional roads, or from the RMS, in the case of State roads, for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.
7. **Below ground anchors** - In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application will be lodged with Council under Section 68 of the *Local Government Act 1993* and the *Roads Act 1993* for approval, prior to commencement of those works.

(a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.

(b) The applicant has indemnified Council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of council.

(c) Documentary evidence of such insurance cover to the value of \$20 million.

(d) The applicant must register a non-terminating bank guarantee in favour of Council for the amount of.

The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.

(e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will

be borne by the applicant.

## **REQUIREMENTS OF OTHER GOVERNMENT AGENCIES**

### **8. Sydney Water – Tap in TM**

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

### **9. Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements for a Section 73 Compliance Certificate under the *Sydney Water Act 1994* that relates specifically to this development consent must be obtained from Sydney Water Corporation. Application will be made through an authorised Water Servicing Co-ordinator. The Notice of Requirements will be submitted prior to the commencement of work.

### **10. Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the *Sydney Water Act 1994* that relates specifically to this development consent must be submitted to the Principal Certifier prior to the issue of the Occupation/Subdivision Certificate.

### **11. Electricity Supply** - An application will be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application to Ausgrid will be provided to the Certifier prior to the issue of a Construction Certificate.

### **12. Structural Certificate** - The proposed building will be constructed in accordance with details designed and certified by a practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building will be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried out in accordance with the structural design, will be submitted to the Principal Certifier at each stage of construction and prior to the issue of the Occupation Certificate.

### **13. Requirements of Civil Aviation Safety Authority** – Approval must be obtained from the Civil Aviation Safety Authority prior to the issue of the Construction Certificate.

#### 14. Roads and Maritime Services (RMS) Conditions

- The layout of the proposed car parking and loading areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2002 for heavy vehicle usage.
- All vehicles are to enter and exit the basement in a forward direction.
- All vehicles are to be wholly contained on site before being required to stop.
- Bicycle parking associated with the subject development should be in accordance with AS 2890.3 (Bicycle Parking Facilities).
- A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.

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

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

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

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

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

Fee Type	Fee
<b>GENERAL FEES</b>	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://portal.longservice.nsw.gov.au/bci/levy/">https://portal.longservice.nsw.gov.au/bci/levy/</a>	

Builders Damage Deposit	\$161,792.40
Inspection Fee for Refund of Damage Deposit	\$155.00
Security Deposit for Council's Stormwater Extension Works	\$3000.00
Driveway and Restoration Works Design Inspection Fee (Multi-unit Development)	\$371.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Kogarah Section 94 Development Contributions Plan No.8 – Streetscape, Open Space and Public Domain	\$1,265,757.99
Kogarah Section 94 Development Contributions Plan No.8 – Traffic Facilities	\$23,853.73
Kogarah Section 94 Development Contributions Plan No.8 – Community Facilities	\$22,564.91
Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries - Buildings	\$21,030.85
Kogarah Section 94 Development Contributions Plan No.9 - Kogarah Libraries - Books	\$14,994.84
TOTAL for Section 7.11 contributions	\$1,348,202.32

### **General Fees**

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

### **Development Contributions**

#### **Indexation**

The above contributions will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant Section 94 Development Contributions Plan.

#### **Timing of Payment**

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

#### **Further Information**

A copy of all current Development Contributions Plans may be inspected at Council's offices or viewed on Council's website  
[www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).

16. **Service Utilities - Land Subdivision Only** - Arrangements will be made to the satisfaction of all Service Utility Authorities in respect to the services supplied by those authorities to the development. All services to any future dwellings erected on the site will be underground.

17. **Erosion & Sedimentation Control** - Erosion and sediment controls must be in place prior to commencement of any work on the site. These measures include:

(a) Compliance with the approved Erosion & Sediment Control Plan

(b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)

(c) All clean water runoff is diverted around cleared or exposed areas

(d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways

(e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works

(f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway

(g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar

(h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

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

18. **Pre-Construction Dilapidation Report - Private Land** - A professional engineer specialising in structural or geotechnical engineering will prepare a Pre-Construction Dilapidation Report detailing the current structural condition of all neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.

The report will be prepared at the expense of the applicant and submitted to the satisfaction of the Certifier prior to the issue of the Construction Certificate.

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

pre-construction dilapidation report was delivered to the adjoining properties must be provided to the Certifier prior to the commencement of any work on the site.

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

19. **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 the Certifier. Such a list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Certifier will then issue a Fire Safety Schedule for the building.
20. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifier for approval prior to construction of the specified works.

A copy will be forwarded to Council where Council is not the Principal Certifier.

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

(a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development and to ensure the construction of the civil works to be complete at the applicant's expense: **\$161,792.4**

(b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$1,113.00**

(c) Submit to Council, before the commencement of work, a dilapidation report of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

At the completion of work Council will review the dilapidation report and the Works-As-Executed Drawings (if applicable) and 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.

**22. Access for Persons with Disabilities** - Access for persons with disabilities will be provided throughout the site, including to all common rooms, lobby areas and sanitary facilities in accordance with the requirements of the Premises Standards, the Building Code of Australia and AS 1428.1. Details must be submitted with the Construction Certificate Application. Pedestrian access throughout basement levels will be highlighted/line marked and sign posted to safeguard egress.

**23. Required design changes** - The following changes and details are required to be made and shown on the Construction Certificate plan

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

The stormwater concept plans shall be revised satisfying the following and shown on the Construction Certificate plans:	<ul style="list-style-type: none"><li>• According to the stormwater concept plan Job Number 15034, Drawing D2, Issue A, dated 21 September 2017 and prepared by EZE Hydraulic Engineers, top of the water level in the OSD tank is 14.90 m AHD. However, the Pit P1 RL is 14.90 m AHD. During rare flood events, Pit P1 is likely to surcharge and flood the property including the basement driveway area. All surface inlet pits levels at the site shall be set above the top of the OSD tank grate level.</li><li>• During rare flood events, Regent Lane will subject to street flooding. The crest level of the driveway to the basement car park shall be set at least 150 mm above the top of the kerb levels.</li><li>• The building down pipes to the OSD and Rainwater tanks and the basement car park sub soil drainage details shall be shown on the drawings.</li></ul>
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**25. Stormwater System (CC9.34)**

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

(a) All stormwater shall drain by gravity to Council's drainage line directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).

(b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (2005 or 2016) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.

(c) The underground basement car park must pump to and all other stormwater must drain by gravity to the OSD system.

- (d) The construction of the building and driveway shall be designed to protect the underground basement from possible inundation by surface waters. The crest of the driveway shall be set least 150 mm above the top of the kerb levels.
- (e) The sub soil drainage for the below ground structures including basement car parks shall be designed in accordance with the findings and recommendations in the geotechnical report. The geotechnical report should assess any possible impact of the proposed development upon existing ground water table and surrounding land and buildings. Should the results of the report indicate that the site is likely to experience issues associated with groundwater management, a fully-tanked dry basement with no sub soil drainage collection or disposal and an allowance made for any hydrostatic pressures.

#### **26. - On Site Detention**

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

An on-site detention (OSD) facility designed by a professional engineer who specialises in Hydraulic Engineering must be designed, approved and installed.

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:

"BEWARE: This is an on-site detention basin/tank for rainwater which could overflow during heavy storms."

Full details shall accompany the application for the Construction Certificate.

#### **27. - Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for storm water disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

- (a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20 year storm;
- (b) The pump system shall be regularly maintained and serviced, every six (6) months; and
- (c) The drainage disposal shall be discharged to the OSD system.

Details and certification of compliance from a professional engineer specialising in civil engineering shall be provided for approval with the Construction Certificate application

#### **28. - Stormwater Drainage Plan Details**

Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineering specialising in hydraulic engineering shall be submitted with the Construction Certificate application.

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (2005 or 2016) and Council's Water Management Policy (Kogarah Council), August 2006.

### 1. Traffic

- In the event that two-way traffic does occur, further internal traffic management system details are to be provided.
- Driveway access width to be widened to 6.0m.

### 3 Waste requirements

- Garbage trucks must demonstrate adequate vehicular manoeuvrability in accordance with the Australian Standards entering and exiting the site.
- The bin room is to be increased to accommodate bins. The unit will require 24 garbage bins to be collected 2 x per week and 24 X recycling bins per week. The plans are to clearly show complaint ingress and egress into the building.

29. **Commonwealth Disability (Access to Premises) Standard** - The *Commonwealth Disability (Access to Premises - Buildings) Standards 2010* (the Premises Standards) applies to all applications (including a Construction Certificate). This requires any new building, part of a building and the affected part of the existing building to comply with the Premises Standards, the Building Code of Australia and AS 1428.

30. **Geotechnical Report** - The applicant must submit a Geotechnical Report, prepared by a professional engineer specialising in geotechnical engineering who holds the relevant Certificate of accreditation as required under the *Building Professionals Act 2005* in relation to dilapidation reports, all site works and construction. This is to be submitted before the issue of the Construction Certificate and is to include:

- (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilisation works and any excavations.
- (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This will be submitted to the Certifying Authority and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5)

working days prior to any works on the site.

- (c) On-site guidance by a vibration specialist during the early part of excavation.
- (d) Rock breaking techniques. Rock excavation is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures.
- (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

31. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical Engineer's report.

Alternatively where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) a report from a qualified geotechnical engineer detailing the maximum size of hammer to be used is to be obtained and the recommendations in that report implemented during work on the site. The report must be submitted with the Construction Certificate application.

32. **Slip Resistance** - 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 will 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, will comply with AS/NZS4586:2004 - Slip Resistance Classifications of New Pedestrian Materials and will be detailed on the plans lodged with the application for the Construction Certificate.

33. **Advice from FR NSW** - Prior to the issue of a Construction Certificate the applicant may be required, under the *Environmental Planning & Assessment Regulation, 2000* to seek written comment from FR NSW about the location of water storage tanks, construction of hydrant/booster pump and valve rooms, and any Fire Engineered Solution developed to meet the performance requirements under the Category 2 Fire Safety Provisions.

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

34. **Site Management Plan - Major Development**

A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:

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

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

35. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces will be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1-2004 (for car / motorbike parking facilities), AS 2890.2-2002 (for commercial vehicle facilities), AS 2890.6-2009 (Off-street parking for people with disabilities) and AS 2890.3-2015 (bicycles). A *“Detailed Design”* certificate, prepared by a tertiary qualified and experienced traffic engineer that fully addresses this condition, will be submitted to the Principal Certifier with the Construction Certificate Application. An *“As Constructed”* certificate, prepared by a tertiary qualified and experienced traffic engineer that fully addresses this condition, must be submitted to the Principal Certifier with the Occupation Certificate Application.

36. **Construction Traffic Management Plan** - 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 for the approval of Council's Engineers. Council's Engineers will specify in writing that they are satisfied with the Traffic Management Plan prior to the issue of the Construction Certificate.

37. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by a qualified designer, must be submitted to the Certifier verifying 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 under Schedule 1 of State Environmental Planning Policy No 65 -Design Quality of Residential Flat Development.

38. **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 must be submitted to the Certifier prior to the issue of any Construction Certificate.

39. **Car Wash Bays** – Plans and specifications of the car washing system approved by Sydney Water must be submitted with the application for the Construction Certificate.

All car washing bays will 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 (ie 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 for approval.

40. **Design Quality Excellence (Major Development)** - In order to ensure the design quality excellence of the development is retained:

- (a) The design architect is to have direct involvement in the design documentation, contract documentation and construct stages of the project;
- (b) Evidence of the design architect's commission is to be provided to the Council prior to the issue of the Construction Certificate.

41. **Landscape Plans** - All landscape works will be carried out in accordance with the approved landscape plans. The landscaping will be maintained in accordance with the approved plans in perpetuity. This includes

42. **Driveway Construction Plan Details** - Detailed engineering plans for the



driveway will be submitted with the Construction Certificate application.

43. **Stormwater Plan** - The submitted stormwater plans Drawing Nos. D1 to D9 Issue A prepared by EZE Hydraulic Engineers Pty Ltd dated 29th September 2017 have been assessed and approved as concept plans only. No detailed assessment of the design has been undertaken. A Detailed Stormwater Plan and supporting information of the proposed on-site stormwater management system is to be submitted. The required details in this Plan and the relevant checklist are presented in the document 'Water Management Policy. Kogarah Council. August 2006'

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

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

- a) An oil/silt separator sized to the catchment area must be specified on the Detailed Stormwater Plan and located downstream of the proposed basement car parks and prior to discharge to Councils stormwater system.
- b) A suitably qualified engineer is to certify that appropriate design measures have been taken to ensure that the basement levels are protected from flooding in the case of the On-site Detention system malfunctioning or reaching capacity.
- c) A safe overflow is to be provided from the On-site Detention tank to the street gutter in case of the orifice becoming blocked or the storage reaching capacity.

The Detailed Stormwater Plan is to be certified by a professional engineer specialising in hydraulic engineering. A Statement, that the stormwater system has been designed in accordance with the document 'Water Management Policy. Kogarah Council. August 2006' and satisfies the provisions and objectives of that policy along with the requirements stated above must be included with the Stormwater Detailed Plan.

- a) The design is to be amended for the stormwater extension to be realigned to be on the northern side of Stanley Lane and the eastern side of Regent Lane with connection to the existing street drainage system at the south eastern corner of the intersection of Stanley Street and Regent Lane.
- b) The design is to be amended to allow for a minimum of 450mm cover over the pipe for its full extent within the Council road ways. If it is shown that this is not feasible in some locations Council may consider

a minimum cover of 300mm with the pipe to be fully concrete encased.

- c) The longitudinal section is to be amended to allow for the amended pipe alignments as specified above and to clearly detail the location of all services mains and connections in the vicinity of the works and indicate all adjustments required to be made to existing underground services.
- d) All pits and pipe trench details within the road reserve would need to be submitted to Council's specifications.
- e) The detail and extent of all required restorations associated with the works.

- A security deposit of \$161,792.40 shall be lodged with Council for the extension of the Council stormwater system in Regent Lane and Stanley Lane and all associated restorations.

44. **Council Property Shoring** - Prior to the issue of the Construction Certificate, plans and specifications prepared by a professional engineer specialising in practising structural engineering will detail how Council's property will be supported at all times.

Where any shoring is to be supporting, or located on Council's property, certified structural engineering drawings detailing; the extent of the encroachment, the type of shoring and the method of removal, will be included on the plans. Where the shoring cannot be removed, the plans will detail that the shoring will be cut to 150mm below footpath level and the gap between the shoring and any building will be filled with a 5MPa lean concrete mix.

45. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 857331M\_04 dated 22 November 2018 must be implemented on the plans lodged with the application for the Construction Certificate.

46. **Tree Removal & Replacement - Tree removal** - Permission is granted for the removal of all trees on site.

47. **Public Domain Plan.** A public domain plan is to be submitted to Council in accordance with the requirements of the Kogarah North Public Domain Strategy/Plan prepared by Atlas Urban on behalf of Council. The plan is to address the design criteria, including but not limited to:

- Street trees located in islands behind the kerb,
- Reconfiguration of street verges with geometries that provide better for trees,
- Expanded soil volumes in verges and linear parks for maximum root space,
- The utilization of permeable hard materials for water access to tree roots,
- Variation in seating opportunities
- Bike racks by school interface, and
- Stormwater provision.



The plan must be approved by Council prior to the issue of a Construction Certificate.

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

48. **Demolition & Asbestos** - The demolition work will comply with the provisions of Australian Standard AS2601:2001 - Demolition of Structures, NSW Work Health & Safety Act 2011 and the NSW Work Health & Safety Regulation 2011. The work plans required by AS2601:2001 will 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 will be submitted to the Certifier prior to the commencement of works.

For demolition work which involves the removal of asbestos, the asbestos removal work will 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* and the *Demolition Code of Practice (NSW Work Cover July 2015)*.

49. **Dial before your dig** - The applicant will 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" will be forwarded to Council's Engineers for their records.

50. **Dilapidation Report on Public Land - Major Development Only** - Prior to the commencement of works (including demolition and excavation), a dilapidation report will be prepared for the Council infrastructure adjoining the development site, including:

- (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) The full name and signature of the structural engineer

The Dilapidation Report will be prepared by a qualified structural engineer. The

report will be provided to the Certifier and a copy provided to the Council.

The Dilapidation Report will be prepared by a professional engineer. The report will be provided to the Certifier and a copy provided to the Council.

The report is to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

**51. Registered Surveyor's Report - During Development Work** - A report will be submitted to the Certifier at each of the following applicable stages of construction:

(a) Set out before commencing excavation.

(b) Floor slabs or foundation wall, before formwork or commencing brickwork.

(c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.

(d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey will be provided at each subsequent storey.

(e) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.

(f) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey will indicate the reduced level of the main ridge.

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

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

**53. Structural Engineer's Details - Supporting Council road/footway** - Prior to the commencement of work in connection with the excavation of the site associated with the basement carpark, structural engineer's details relating to the method of supporting Council's roadways/footways will be submitted to the satisfaction of

Council.

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

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

(b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.

(c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.

## **DURING WORK**

**55. Site Sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, will 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 will remain in a prominent location on site up until the completion of all site and building works.

**56. Cost of work to be borne by the applicant** - The applicant will bear the cost of all works associated with the construction of the development that occurs on Council property. Care will be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway will be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction must be maintained in a state of good repair and condition throughout the course of construction.

**57. Physical connection of Stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection

of the approved stormwater drainage system from the land the subject of this consent to Council's public drainage system.

58. **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 the *Roads Act 1993* and/or the *Local Government Act 1993*.
59. **Hours of Construction for Demolition and Building Work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery must not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.
60. **Hazardous or Intractable Waste – Removal and Disposal.** Hazardous or intractable waste arising from the demolition or construction process must be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and all applicable legislation.
61. **Structural Certificate During Construction** - The proposed building will be constructed in accordance with details designed and certified by the practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building will be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, will be submitted to the Principal Certifier at each stage of Construction or prior issue of the Occupation Certificate.
62. **Structural Certificates** - The proposed structure will be constructed in accordance with details designed and certified by the practising qualified structural engineer. In addition, Compliance or Structural Certificates, to the effect that the building works have been carried in accordance with the structural design, will be submitted to the Principal Certifier prior issue of the Occupation Certificate.
63. **Stormwater to Kerb** - Any stormwater connections to the kerb and gutter are to be in accordance with Council's *'Specification for Construction by Private Contractors'*.

All roof water and surface water from paved or concreted areas are to be disposed of in accordance with the Stormwater Plan by means of a sealed pipeline constructed in accordance with AS/NZS 3500.3:2015. The line will pass through a silt arrestor pit.

64. **Redundant Driveway** - All existing vehicular crossings adjacent to the subject premises that have become redundant will be removed and the footway and kerb and gutter reinstated at the developer/applicant's expense.
65. **Damage within Road Reserve & Council Assets** - The owner will bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.
66. **Public Utility & Telecommunication Assets** - The owner will bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
67. **Works Zone** - The installation of a "Works Zone" for the site will require the approval from the Traffic Advisory Committee. As a result, the applicant will provide a formal request to Council's Traffic Section with the duration and exact location of the required "Works Zone" at least 6 weeks prior to its required installation date. All costs associated with the installation of a "Works Zone" will be at the applicants expense.
68. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation will be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like will be ignited or burnt.

Copies of all receipts for the disposal, or processing of all such materials will be submitted to the Principal Certifier and Council, where Council is not the Principal Certifier.

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

69. **SEPP 65 Design Verification Statement** - The Principal Certifier will not issue an Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the he/she has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No 65 Design Quality of Residential Flat Development.
70. **Restriction to User and Positive Covenant for On-Site Detention Facility**

A Restriction on Use of the Land and Positive Covenant will be created and

registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owners of the land. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

### **Restrictions on Use of Land**

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

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

### **Positive Covenants**

*1. The registered proprietor of the lot(s) hereby burdened will in respect of the system:*

- a) keep the system clean and free from silt, rubbish and debris*
- b) maintain and repair at the sole expense of the registered proprietors the whole of the system so that it functions in a safe and efficient manner*
- c) permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant*
- d) comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.*

*2. Pursuant to Section 88F(3) of the Conveyancing Act 1919 the Council will have the following additional powers:*

- a) in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above*
- b) the Council may recover from the registered proprietor in a Court of competent jurisdiction:
  - i. any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense will include reasonable wages for the Council's employees engaged in effecting the work referred to in (i)**



*above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.*

*ii. legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.*

**71. Maintenance Schedule – On-site Stormwater Management.** A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule will outline the required maintenance works, how and when these will be done and who will be carrying out these maintenance works.

**72. Works as Executed and Certification of Stormwater works.** Prior to the issue of an Occupation Certificate, the Principal Certifier will ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification will be forwarded to the Principal Certifier and Council, from a professional engineer specialising in hydraulic engineering.

This Plan and Certification will confirm that the design and construction of the stormwater drainage system satisfies the conditions of development consent and the Construction Certificate stormwater design details approved by the Certifier.

The works-as-executed drainage plan will be prepared by a professional engineer specialising in hydraulic engineering in conjunction with a Registered Surveyor and will include the following details (as applicable):

- (a) The location of any detention basin/s with finished surface levels;
- (b) Finished site contours at 0.2 metre intervals (if applicable);
- (c) Volume of storage available in any detention areas;
- (d) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
- (e) The orifice size/s (if applicable);
- (f) Details of any infiltration/absorption systems; and (if applicable);
- (g) Details of any pumping systems installed (including wet well volumes) (if applicable).

**73. Consolidation of Site** - The site will be consolidated into one allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan will be registered at the NSW Land and Property Information prior to the issue of a final occupation certificate.

**74. Requirements prior to the issue of the Occupation Certificate** - The following will be completed and or submitted to the Principal Certifier prior to the issue of the Occupation Certificate:

- (a) All the stormwater/drainage works will be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) will be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (c) Construct any new vehicle crossings required.
- (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
- (e) A Section 73 (Sydney Water) Compliance Certificate for the Subdivision will be issued and submitted to the Principal Certifier prior to the issue of the Occupation Certificate.
- (f) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete will be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

**75. Completion of Major Works** - Prior to the issue of the Occupation Certificate, the following works will be completed at the applicant's expense to the satisfaction of Council's Engineering Services section:

- (a) Stormwater pipes, pits and connections to public stormwater systems within the road related area;
- (b) Driveways and vehicular crossings within the road related area;
- (c) Removal of redundant driveways and vehicular crossings;
- (d) New footpaths within the road related area;



- (e) Relocation of existing power/light pole where required;
- (f) Relocation/provision of street signs where required;
- (g) New or replacement street trees where required;
- (h) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development will be turfed. The grass verge will be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- (i) New or reinstated kerb and guttering within the road related area; and
- (j) New or reinstated road surface pavement within the road.

Council's Engineering Services Section will advise in writing that the works have been completed to their satisfaction prior to the issue of the Occupation Certificate. [Note: The damage deposit paid to Council will not be released until the works have been completed to Council's satisfaction].

76. Prior to the issue of an Occupation Certificate, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be forwarded to the PCA and Council, from a professional engineer specialising in hydraulic engineering.

This Plan and Certification shall confirm that the design and construction of the stormwater drainage system satisfies the conditions of development consent and the Construction Certificate stormwater design details approved by the PCA.

The works-as-executed drainage plan must be prepared by a professional engineer specialising in hydraulic engineering in conjunction with a Registered Surveyor and must include the following details:

- (a) The location of any detention basin/s with finished surface levels;
- (b) Volume of storage available in any detention areas;
- (c) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
- (d) The orifice size/s.

77. **Dilapidation Report on Public Land for Major Development Only** - Upon completion of works, a follow up dilapidation report will be prepared for the items of Council infrastructure adjoining the development site including:

The dilapidation report will be prepared by a professional engineer specialising in structural engineering, and include:

- (a) Photographs showing the condition of the road pavement fronting the site
- (b) Photographs showing the condition of the kerb and gutter fronting the site
- (c) Photographs showing the condition of the footway including footpath pavement fronting the site, and
- (d) The full name and signature of the professional engineer.

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

Council will use this report to determine whether or not to refund the damage deposit.

Council's Engineering Services Division will advise in writing that the works have been completed to their satisfaction prior to the issue of an Occupation Certificate.

**78. Stormwater Drainage Works - Works As Executed** - Prior to the issue of the Occupation Certificate, storm water drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to Council detailing:

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) The structural adequacy of the On-Site Detention system (OSD);
- (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (d) Pipe invert levels and surface levels to Australian Height Datum;
- (e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Council's Engineering Services section will advise in writing that they are satisfied with the Works-As-Executed prior to the issue of an Occupation Certificate.

A Works As Executed plan of Council's Stormwater system extension as constructed including all levels will be submitted and approved by Council.

## 79. Dilapidation Report –

A Dilapidation Report will be required prior to the release of the Security Deposit to ensure the new asset has not failed during the works on site. The dilapidation report is to include CCTV footage of the full extent of the newly constructed Council stormwater assets within the Council road reserves in Regent Lane, Stanley Lane and Stanley Street. The footage is to include the inspection and notation of all visible defects and joints along the asset. The report is to be carried out upon completion of all construction works.

The Security Bond may be released upon all of the following being met.

- the issue of the occupation certificate,
- the completion of the final inspection for the stormwater pipe replacement.
- written approval from Council's Drainage section of the dilapidation report.

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

(a) That the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so.

(b) That as at the date of the assessment the measure was found to be capable of functioning at a standard not less than that required by the attached Schedule.

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

**81. Acoustic Certification** - Prior to the issue of any Occupation Certificate, a suitably qualified acoustic consultant will certify that the operation of the premises and plant equipment will not give rise to a sound pressure level at any affected premises that exceeds the relevant acoustic criteria. The development will at all times comply with these noise levels post occupation.

**82. Waste room** The waste room will contain the following to minimise odours, deter vermin, protect surrounding areas, and make it a user-friendly and safe area:

- waste room floor to be sealed;

- waste room walls and floor surface is flat and even;
- all walls painted with light colour and washable paint;
- equipment electric outlets to be installed 1700mm above floor levels;
- The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
- light switch installed at height of 1.6m;
- waste rooms must be well lit (sensor lighting recommended);
- optional automatic odour and pest control system installed to eliminate all pest types and assist with odour reduction - this process generally takes place at building handover - building management make the decision to install;
- all personnel doors are hinged and self-closing;
- waste collection area must hold all bins - bin movements should be with ease of access;
- conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.
- Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.

Cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners:

83. Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report titled “ Acoustic Report - Traffic & Environmental Noise Assessment - For proposed development at No. 2-10 Stanley Street, Kogarah. Reference No. 2017-467”, prepared by ACOUSTIC NOISE & VIBRATION SOLUTIONS P/L and dated 11 September 2017.
84. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent, will be implemented before issue of any Occupation Certificate.
85. **BASIX Compliance Certificate** - A Compliance Certificate will be provided to the Principal Certifier regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.
86. **Notice to Council - Allocation of street addresses** - Prior to the issue of any Occupation Certificate, ‘as-built’ drawings detailing the installed and allocated street/unit address and numbering will be submitted to the satisfaction of Council.
87. **Allocation of Car Parking Spaces** – A total of 100 car parking spaces, and a minimum of 40 bicycle parking spaces associated with the development is to be allocated as follows:

- (a) 87 resident car spaces
- (b) 13 visitor car spaces
- (c) 40 bicycle spaces

**78. Vehicular Access** A vehicular access (entry and exit) must be provided from Stanley Lane. To that end, the applicant must submit a formal application to Council for its approval for the following interim Traffic Management Measures (TMMs).

**88. Electricity Supply** - Evidence will be provided demonstrating that the development has been connected to the Ausgrid, if required.

**89. Public Domain Plan – Compliance.** The works in the approved Public Domain Plan lodged in accordance with the requirements of the Kogarah North Public Domain Strategy/Plan prepared by Atlas Urban on behalf of Council are to be completed prior to issue of the occupation certificate.

**90. Dedication of Land.** The submission of documentary evidence of the formal dedication of land to a width of 1.2m for the purpose of road widening of Stanley Lane. The road widening is to ensure appropriate access and egress from the laneway to the subject site. Appropriate documentary evidence is to be submitted to the Principal Certifier and Council (if Council is not the Principal Certifier).

## ONGOING CONDITIONS

**91. Noise Control** - The use of the premises will not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the *Protection of the Environment Operations Act 1997*.

**92. ONG14.14 - Final Acoustic Report – Verification of Noise report** - Within three months from the issue of an Occupation Certificate, an acoustic assessment is to be carried out by an appropriately qualified acoustic consultant, in accordance with the EPA's Industrial Noise Policy and submitted to Council for consideration. This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report (submitted by ACOUSTIC NOISE & VIBRATION SOLUTIONS P/L, titled “ Acoustic Report - Traffic & Environmental Noise Assessment - For proposed development at No. 2-10 Stanley Street, Kogarah. Reference No. 2017-467”, prepared by ACOUSTIC NOISE & VIBRATION SOLUTIONS P/L and dated 11 September 2017 are effective in attenuating noise to an acceptable noise level and that the use is not calculated to give rise to ‘offensive noise’ as defined under the provision of the Protection of the Environment Operation Act 1997 (as amended).

**93. Lighting - General Nuisance** - Any lighting on the site will be designed so as not

to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare. Flashing, moving or intermittent lights or signs are prohibited.

94. **Amenity of the Neighbourhood** - The implementation of this development will not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
95. **Activities and Storage of Goods Outside Buildings** - There will be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
96. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping will be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas.
97. **Annual Fire Safety Statement** - The owner of the building premises will ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement will be given:
- (a) Within 12 months after the date on which the fire safety certificate was received.
  - (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
  - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the *Environmental Planning and Assessment Regulation 2000*.
  - (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.
98. **Responsibility of Owners Corporation** - The Owners Corporation will be responsible for presenting all approved waste and recycling receptacles for collection, and returning all receptacles to the Main Waste Collection Room, as soon as practicable after they have been serviced.

The Owners Corporation will also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory

requirements, relevant health and environmental standards, and to the satisfaction of Council.

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

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

100. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the *Building and Construction Industry Long Service Payments Act 1986*.

Payment of the required Long Service Levy payment must be made and proof of payment provided to the Principal Certifier prior to the issue of an Occupation Certificate.

101. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. The applicant is advised to contact Ausgrid for further details and information on lodging your application to connect to the network.

102. **Disability Discrimination Act** – The applicant is responsible to ensure compliance with this and other anti-discrimination legislation.

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

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

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

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



104. **Stormwater & Ancillary Works** - Applications under Section 138 Roads Act and/or Section 68 Local Government Act 1993 – The applicant must obtain all necessary approvals. 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 will be carried out by a private contractor in accordance with Council's specifications prior to the issue of an Occupation Certificate.

The developer must meet all costs of the extension, relocation or reconstruction of any part of Council's drainage system (including design drawings and easements) required to carry out the approved development.

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

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

### **Schedule C – 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.

**Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.

**Clause 98 – Building Code of Australia** - Requires all building work to be carried out in accordance with the Building Code of Australia.

**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 Certifier and the Principal Contractor.



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

### **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.

**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.

**Appointment of a Principal Certifier** - The erection of a building must not commence until the beneficiary of the development consent has appointed a Certifier for the building work.

**Notification of Critical Stage Inspections** - No later than two (2) days before the building work commences, the Principal Certifier 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.

**Notice of Commencement** - The beneficiary of the development consent must give at least two (2) days notice to the Council and the Principal Certifier of their intention to commence the erection of a building.

**Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifier. 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.

**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. Only the Principal Certifier appointed for the building work can issue the Occupation Certificate.

Advisory Note: There is a development proposal for 70 - 78 Regent Street that also requires the extension of the existing Council drainage system along Stanley Lane and Regent Lane. If both developments are to proceed the applicant will be required to liaise with the applicant for this proposal with regards to lodgement of the required Stormwater Drainage Application(s), the detailed design(s) and the construction works. Council will not become involved in any negotiations with regards to responsibilities and costs associated with these works. Note that the extension to the drainage system will become Council's assets upon completion and that Council may approve the connection of other properties / developments stormwater discharge to the system.

## RECOMMENDED CONDITIONS