

Panel Reference	PPSSSH-27
DA Number	DA2020/0342
LGA	Georges River Council
Proposed Development	Demolition works, tree removal, and construction of a seniors housing development and consolidation of the site into a single lot.
Street Address	2-8 Macpherson Street, Hurstville
Applicant/Owner	Land and Housing Corporation
Date of DA lodgement	4 September 2020
Number of Submissions	Two unique submissions plus a petition with 22 signatures
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7)	Regionally significant development is defined in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011. The proposed development is classified as “Regional” development as it is Crown development over \$5 million. The CIV of the project is \$5,795,000 excl. GST
List of all relevant s79C(1)(a) matters	• Environmental Planning and Assessment Act 1979. • Environmental Planning and Assessment Regulation 2000. • State Environmental Planning Policy (State and Regional Development) 2011. • State Environmental Planning Policy No 55 – Remediation of Land. • State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. • State Environmental Planning Policy (Building and Sustainability Index: 2004). • State Regional Environmental Plan No 2 – Georges River Catchment. • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. • State Environmental Planning Policy (Infrastructure) 2007. • Draft State Environmental Planning Policy – Environment.

	• Draft State Environmental Planning Policy –Remediation of Land. • Draft Design and Place State Environmental Planning Policy. • Hurstville Local Environmental Plan 2012. • Draft Georges River Local Environmental Plan 2020. • Hurstville Development Control Plan No. 1. • Draft Georges River DCP 2020.
List all documents submitted with this report for the Panel's consideration	• Statement of Environmental Effects • Clause 4.6 Variation Request • Registered survey • Architectural plans • Landscape Plan • Stormwater Details and Plans
Report prepared by	Linley Love Senior Development Assessment Planner
Report date	13 May 2021

Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Clause 4.4 Floor space ratio

Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	Draft conditions were provided to the Applicant for review on 6 April 2021 and changes have been incorporated in the conditions at the end of this report

Executive Summary

Proposal

This application has been submitted by the NSW Land and Housing Corporation pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and seeks consent for demolition works, tree removal, and construction of a seniors housing development and consolidation of the site into a single lot.

The proposal is detail further as follows:

Demolition works: all existing structures are to be demolished.

Tree Removal: 21 trees are proposed for removal from the site.

Proposal: Construction of two buildings with pedestrian and vehicular access from Macpherson Street and at-grade car parking for a total of six (6) vehicles including four accessible spaces separating the buildings.

The ground and first floors of the north-eastern building each contain six (6) units (3 x 1B unit and 3 x 2B units). The ground and first floors of the north-western building each contain four (4) units (1 x 1B unit and 3 x 2B units).

Vehicular and pedestrian access to the site is provided via a driveway from Macpherson Street and five (5) ground floor units also have independent pedestrian access from Macpherson Street.

A briefing for the Sydney South Planning Panel was held on on 11 November 2020, during which the following key issues were discussed and required further resolution:

- No accessible path from Seniors Development to bus stop to comply with cl 26 of Housing for Seniors or People with a Disability SEPP. Applicant needs to demonstrate how this is to be achieved. Issues to be addressed include paving, lighting, gradient, ramps etc
- Cl 4.6 for floor space ratio needs to address the variations to the development standard and how these are to be mitigated
- Minor non-compliances, floor space, landscaped area/dwelling

The above are discussed in further detail in this report.

The proposed development will contribute to Land and Housing Corporation's (LAHC) implementation of the State Government's *Future Directions for Social Housing* which requires growth of the social housing portfolio that is fit for purpose, well located, and offers a better tenant experience.

The proposed development is consistent with the Greater Sydney Commission's (GSC) *Greater Sydney Region Plan and South District Plan* by accelerating the supply of housing in suitable locations and contributing to the housing supply target of 23,250 homes by 2021.

Site and locality

The site is known as 2-8 Macpherson Street, Hurstville and consists of four allotments (Lots 55 to 58 in DP35124).

It is irregular in shape and yields a total site area of 2,381sqm.

The site has frontage to Macpherson Street and currently situated on the site are four single storey detached dwellings.

State Environmental Planning Policy

The proposal has been considered to be satisfactory in regards to the following policies which have been considered in respect to the application:

- State Environmental Planning Policy (State and Regional Development) 2011.
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
- State Environmental Planning Policy No 55 – Remediation of Land.
- 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 State Environmental Planning Policy – Remediation of Land.
- Draft Environment State Environmental Planning Policy.

- Draft Design and Place State Environmental Planning Policy.

The proposal satisfactorily complies with the provisions of these policies and a detailed assessment of the proposal against the provisions of these policies is provided in the body of this report.

Zoning and Hurstville LEP 2012 (HLEP) Compliance

The site is zoned R2 Low Density Residential pursuant to the provisions of the Hurstville Local Environmental Plan 2012. The proposal satisfies the R2 zone objectives.

Development for the purposes of seniors housing is made permissible under Clause 4 of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP).

The site has a height limit of 9m in accordance with the provisions of Clause 4.3 of the HLEP. The proposal complies with the 9m height limit.

The floor space ratio (FSR) for the site is 0.6:1 in accordance with Clause 4.4 of the HLEP. The applicant has submitted a Clause 4.6 variation request and seeks a FSR of 0.6:1.

Hurstville Development Control Plan No.1 (Amendment No 6)

The provisions of Hurstville DCP No. 1 are applicable to the proposed development. A detailed assessment of the proposal against these standards is provided later in this report.

Submissions

The application was notified to owners and occupiers in the immediate locality in accordance with the provisions of the Georges River Community Consultation Plan. In response, one two individual submissions and one petition with 22 signatures were received.

Level of Determination

The proposal has a CIV of \$5,795,000 exc. GST. The development application is to be determined by the South Sydney Planning Panel as the proposed development is classified as "Regional" development as it is Crown development over \$5 million.

Regionally significant development is defined in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.

The CIV has been confirmed and is outlined in the Registered Quantity Surveyors Detailed Cost Report which accompanies the Development Application.

Conclusion

Having regards to the matters for consideration Section 4.15 and Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment of the proposed application, DA2020/0342 is recommended for approval subject to the conditions referenced at the end of this report.

Full Report

Site and Locality

The site is known as 2-8 Macpherson Street, Hurstville and consists of four allotments (Lots 55 to 58 in DP35124). It is irregular in shape and yields a total site area of 2,381.1sqm. The site has frontage to Macpherson Street and currently situated on the site are four single storey detached dwellings shown in the figures below.

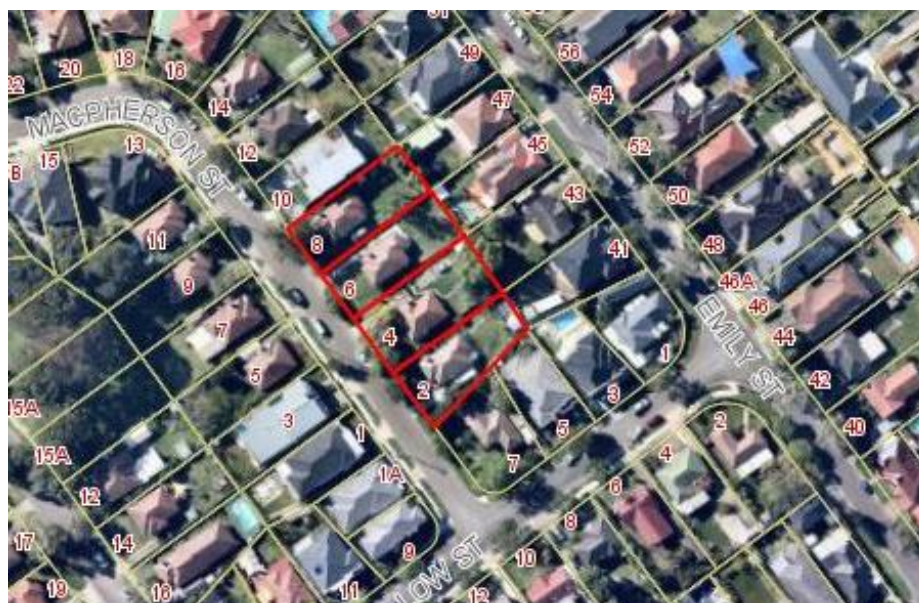


Figure 1 Aerial site photo



Figure 2 No. 2 Macpherson Street



Figure 3 No. 4 Macpherson Street



Figure 4 Nos. 6 and 8 Macpherson Street

SURROUNDING DEVELOPMENT

The site is located in a low density residential area characterised by one and two storey dwelling houses. The adjacent properties contain a single storey dwelling house at No. 7 Low Street, which is similar in size to the existing dwellings on the site (Figure 5), and No. 10 Macpherson Street which contains a two storey dwelling house (Figure 6). The properties to the rear on Emily Street contain a mix of single and two storey dwelling houses.



Figure 5 No. 7 Low Street (south-east of the site)



Figure 6 No. 10 Macpherson Street (north-west of the site)



Figure 7 Dwellings opposite the site on Macpherson Street



Figure 8 Dwellings opposite the site on Macpherson Street

Proposal

This application has been submitted by the NSW Land and Housing Corporation pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and seeks consent for demolition works, tree removal, and construction of a seniors housing development and consolidation of the site into a single lot.

The built form comprises two buildings with pedestrian and vehicular access from Macpherson Street and at-grade car parking for a total of six (6) vehicles including four accessible spaces separating the buildings.

The ground and first floors of the north-eastern building each contain six (6) units (3 x 1B unit and 3 x 2B units).

The ground and first floors of the north-western building each contain four (4) units (1 x 1B unit and 3 x 2B units).

Vehicular and pedestrian access to the site is provided via a driveway from Macpherson Street and five (5) ground floor units also have independent pedestrian access from Macpherson Street.

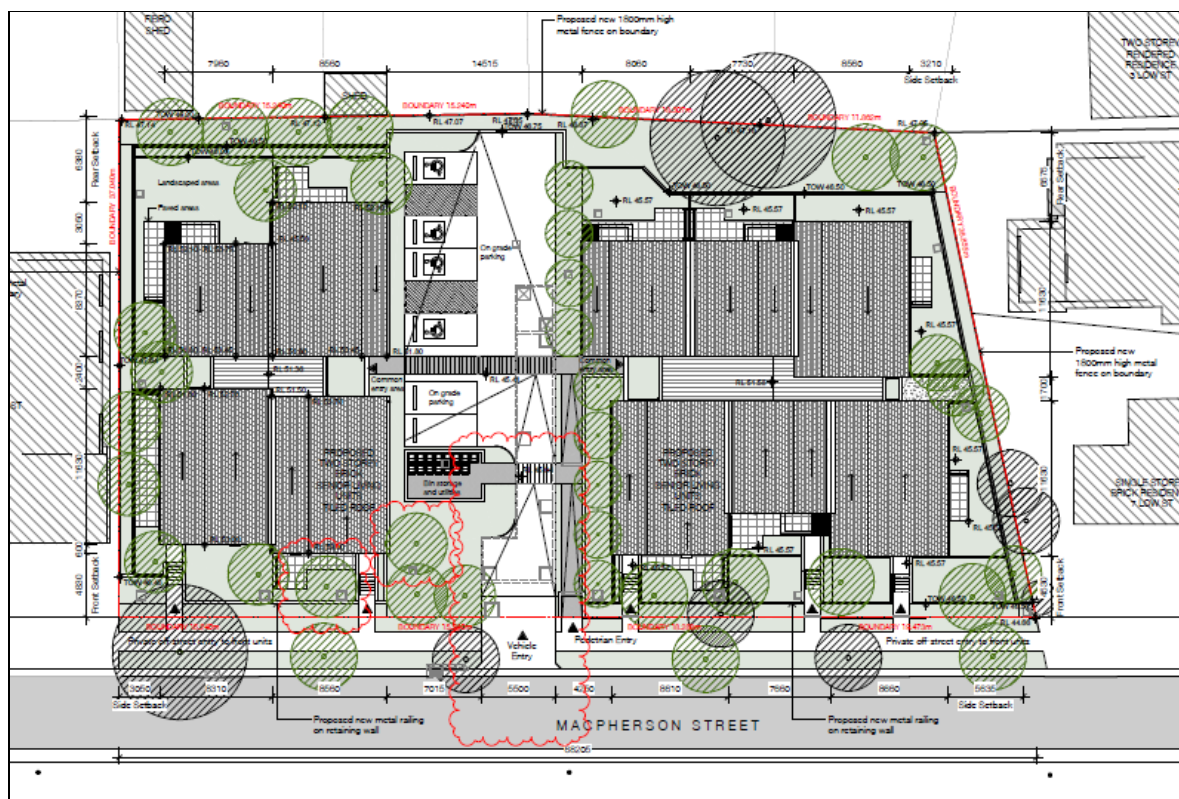


Figure 9 Proposed Site Plan

Background

Sydney South Planning Panel

The Sydney South Planning Panel was briefed of this matter at their meeting held on 11 November 2020, during which the following key issues were discussed and required further resolution:

- No accessible path from Seniors Development to bus stop to comply with cl 26 of Housing for Seniors or People with a Disability SEPP. Applicant needs to demonstrate how this is to be achieved. Issues to be addressed include paving, lighting, gradient, ramps etc
- Cl 4.6 for floor space ratio needs to address the variations to the development standard and how these are to be mitigated
- Minor non-compliances, floor space, landscaped area/dwelling

Council's Assets and Infrastructure Team and Consulting Arborist were consulted with regard to the required footpath construction between the site and the bus stop on Barnards Avenue. Conditions of consent have been recommended for the construction of the footpath and protections of street trees.

An assessment of the proposed variations are provided later in this report.

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 Officers have considered the objects 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 is urban infill development of to storey seniors housing in a low density residential locality. The provision of additional social housing in the locality is desirable.	Yes

<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental, and social considerations in decision-making about environmental planning and assessment</i>	The design considers the principles of ESD. The building has been designed to comply with all BASIX commitments.	Yes
<i>(c) to promote the orderly and economic use and development of land</i>	The development has been designed to satisfy the key planning controls for this site and the built form as proposed is considered to reflect the desired future character for development within the locality and for this precinct.	Yes
<i>(d) to promote the delivery and maintenance of affordable housing</i>	The proposal provides affordable housing for seniors.	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 proposal is not considered to result in adverse impacts on any threatened and other species of native animals and plants, ecological communities and their habitats. There are no significant species mapped within the Site or its immediate vicinity.	Yes
<i>(f) to promote the sustainable management of built and cultural heritage</i>	The Site is not a designated Heritage Item nor is it located within a Heritage Conservation Area.	Yes
<i>(g) to promote good design and amenity of the built environment</i>	This report assesses the proposal's design and amenity against State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 and Hurstville Development Control Plan No. 1. The design is considered to	Yes

	satisfactorily address the key development and design controls.	
<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 objective by complying with the recommended consent conditions relating to the construction phase of the development, subject to the agreement of the Land and Housing Corporation as they are a Crown authority.	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 given the cost of works exceeds \$5 million dollars and is proposed by the Crown and therefore the Sydney South Planning Panel is the consent authority.	Yes
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment</i>	The application was notified to neighbours. Submissions have been addressed in this report.	Yes

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 (State and Regional Development) 2011.

- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
- Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment
- State Environmental Planning Policy No 55 – Remediation of Land.
- 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 State Environmental Planning Policy – Remediation of Land.
- Draft Environment State Environmental Planning Policy.
- Draft Design and Place State Environmental Planning Policy.
- Hurstville Local Environmental Plan 2012.
- Draft Georges River Local Environmental Plan 2020.

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 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. Stormwater is to be gravity fed to Macpherson Street via on site detention. Council's Development Engineers have not raised any issues with the proposed method of stormwater disposal subject to the imposition of standard conditions.

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

SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.

A review of the site history indicates that the site has been used for residential purposes for extended periods of time, and such uses and/or development are not typically associated with activities that would result in the contamination of the site. The proposed works do not include any change to the use of the land that would result in any concerns with respect to contamination. There is no indication of previous uses that

would cause contamination. In this regard there is no indication that the land is contaminated.

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

The objectives of this Policy ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

A BASIX (Building Sustainability Index) certificate No. 1082949M was prepared on 18 June 2020 and assessed the proposal against the provisions of BASIX and found the proposal to be compliant. The BASIX commitments are shown on the development plans

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

The proposal is a regionally significant development pursuant to Clause 4 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) as it has a Capital Investment Value (CIV) of more than \$5 million and is a Crown development in accordance with the SRD SEPP. 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 Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.

The Vegetation SEPP applies to clearing of:

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

The Vegetation SEPP repeals clause 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable DCP.

The proposal requires the removal of 17 trees across the site and two street trees. An Arboricultural Impact Assessment prepared by Landscape Matrix Pty Ltd and dated 24

June 2020 accompanied the application. This report assessed the significance of each existing tree within its landscape and considers its sustainability (retention value) and longevity.

Council's Consultant Arborist has reviewed all the relevant documentation and plans and has concurred with the proposed landscaping outcome. Conditions are recommended to ensure protection of the adjoining site and the street trees and ensure that the landscaping is implemented during construction in accordance with the proposed plans.

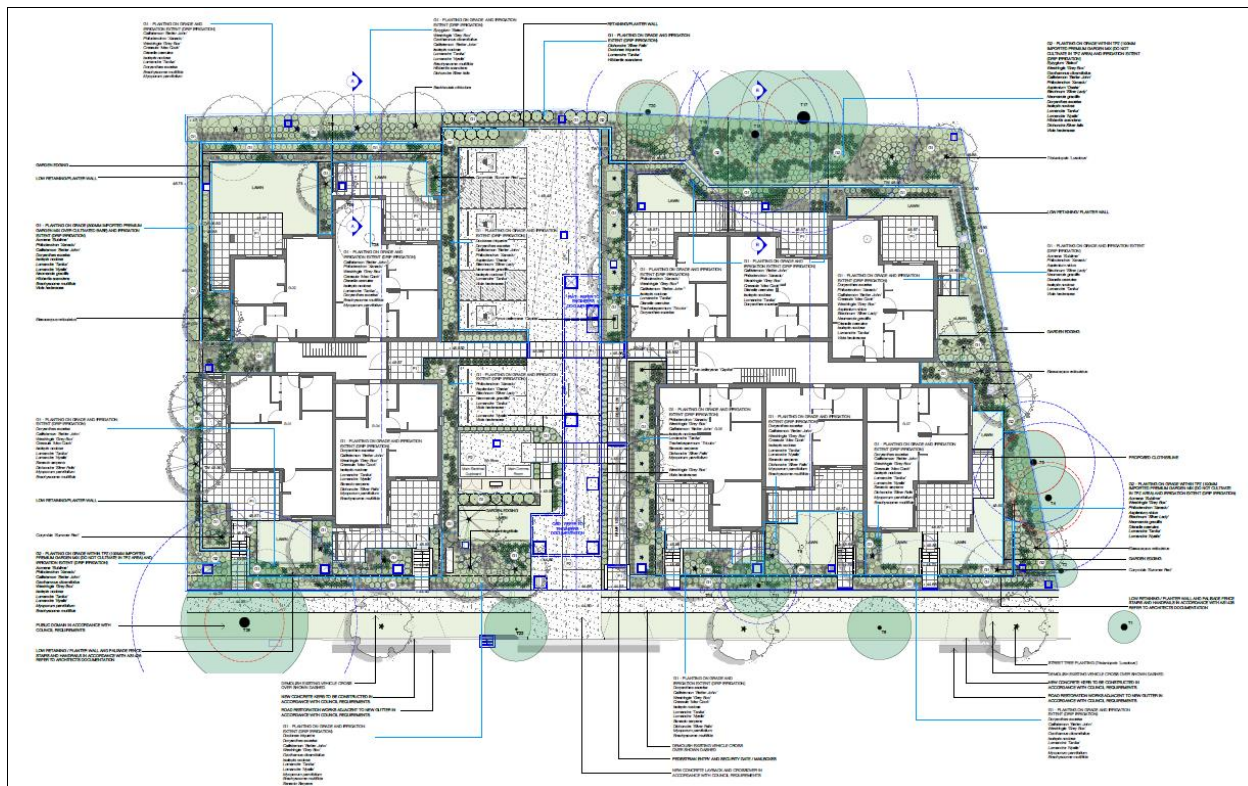


Figure 10 Proposed Landscape Plan

State Environmental Planning Policy (Infrastructure) 2007

The proposal was referred to Ausgrid (Clause 45 – Determination of development applications – other development). In response, no comments were received upon finalisation of this assessment report.

Given the above, appropriate considerations within this SEPP have been satisfied.

STATE ENVIRONMENTAL PLANNING POLICY (Housing for Seniors or People with a Disability) 2004

SEPP 2004 applies as the proposal relates to a Seniors Housing development (Chapter 3 of the SEPP).

An assessment of the proposal against the requirements of the SEPP is provided in the table below:

Standard	Required	Proposed	Complies
Cl. 14 – Objectives of Chapter	The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.	The proposal meets the objectives of the Chapter by providing 20 new dwellings in an accessible location for seniors.	Yes
Cl. 15 – What Chapter does	This Chapter allows the following development despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy— (a) development on land zoned primarily for urban purposes for the purpose of any form of seniors housing, and (b) development on land that adjoins land zoned primarily for urban purposes for the	The land is zoned for urban purposes.	Yes

	purpose of any form of seniors housing consisting of a hostel, a residential care facility or serviced self-care housing.		
Cl.16 – Development consent required	Development allowed by this Chapter may be carried out only with the consent of the relevant consent authority unless another environmental planning instrument allows that development without consent.	The proposal requires development consent.	Yes
Cl. 17 - Development on land adjoining land zoned primarily for urban purposes	Subject to subclause (2), a consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land that adjoins land zoned primarily for urban purposes unless the proposed development is for the purpose of any of the following— - a hostel, - a residential care facility, - serviced self-care housing. A consent authority must not consent to a development application made pursuant to this	Not applicable – the land is zoned for urban purposes.	N/A

	Chapter to carry out development for the purposes of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that the housing will be provided— for people with a disability, or in combination with a residential care facility, or as a retirement village (within the meaning of the <i>Retirement Villages Act 1999</i>).		
Cl. 18 - Restrictions on occupation of seniors housing allowed under this Chapter	(1) Development allowed by this Chapter may be carried out for the accommodation of the following only— seniors or people who have a disability, (b) people who live within the same household with seniors or people who have a disability, (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy. (2) A consent authority must not consent to a development	A condition of consent is included in the conditions at the end of this report.	Yes

	application made pursuant to this Chapter unless— (a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates, and (b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1). (3) Subclause (2) does not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.		
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Cl. 19 Use of seniors housing in commercial zones		Not applicable.	N/A
Cl. 20 (Repealed)		-	-
Cl. 21 Subdivision	Land on which development has been carried out under this Chapter may be subdivided with the consent of the consent authority.	Subdivision is not proposed.	-
Cl. 22 Fire sprinkler systems in residential care facilities for seniors	Development for the purpose of the installation of a fire sprinkler system in a residential care facility for seniors may be carried out with development consent.	Not proposed.	-
Cl. 23 Development on land used for the purposes of an existing registered club		Not applicable.	N/A
Cl. 24 Site compatibility certificates required for certain development applications		Not applicable.	N/A
Cl. 25 Application for site compatibility certificate		Not applicable.	N/A
Cl.26 – Location and access to facilities	Residents to have access the identified services (banks,	Subject to construction of a footpath on Macpherson Street and	Yes – conditions included for

	shops, service providers, etc) within 400 metres of the site or be within 400 metres from a public transport service.	Emily Street, the proposal will be located within 400m of an appropriate public transport service.	footpath construction
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Footpath construction:

The following aerial photo indicates the required location of the pathway between the site and the bus stop. Parts of the journey already have a footpath so a condition of consent has been recommended for the construction of the missing footpath along Emily Street and Macpherson Street:



Cl. 27- Not to be on Bushfire Prone Land	Seniors Living Development is not permitted on bushfire prone land.	The site is not identified as bushfire prone land.	Yes
Cl.28 – Water and Sewer	Consent not to be granted unless the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.	Site is located within the Sydney Water service area and will be required to be connected to the required services.	Yes

Cl.30 – Site Analysis	Consent not to be granted unless site analysis prepared by the applicant has been submitted and has formed part of the assessment.	A site analysis has been submitted with the application.	Yes
Cl.31 – Design of in-fill self-care housing	To be assessed in accordance with the Seniors Living Policy: Urban Design Guidelines for Infill Developments	The application has been assessed in accordance with the guidelines	See relevant section of this report.
Cl.32 – Design of Residential Development	To be assessed in accordance with Division 2 of the SEPP	See Below	See elsewhere in table.
Cl.33 – Neighbourhood amenity and streetscape	Development is required to:		
	Recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area	The proposed development incorporates a roof form and scale that is compatible with the existing street. The proposal is consistent with the two-storey desired future character of the area.	Yes
	Retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a Local Environmental Plan	The site is not near any heritage item or heritage conservation area.	N/A

	Maintain reasonable neighbourhood amenity and appropriate residential character by: (i) providing building setbacks to reduce bulk and overshadowing, (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours	6.8m and 7.55m (rear) Min. 3m (sides) Min. 4.5m front The building form is suitable for the siting given the existing land form. The development adopts building heights consistent in scale with existing development in the street, and consistent with the future desired character of the area. The development does not incorporate any element on the boundary.	Yes
	Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line	The development is designed with a front building line in sympathy with that existing in the street (min. 4.5m).	Yes
	Embody planting that is in sympathy with, but not necessarily the same as, other	The proposed planting scheme is consistent with Council's desired landscape type for	Yes

	planting in the streetscape	future development in the locality.	
	Retain, wherever reasonable, major existing trees	There are no significant trees on the site that require retention.	Yes
	Be designed so that no building is constructed in a riparian zone.	The site does not occupy a riparian zone.	Yes
Cl. 34 – Visual and Acoustic Privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The placement of all windows and balconies are such that privacy impacts for adjoining properties will be minimised. Where possible, bedrooms have been located away from car parking and driveway areas.	Yes
Cl.35- Solar Access and Design for Climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and	The main living areas and private open space areas of adjoining development will achieve reasonable solar access.	Yes

	(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The plan of the site ensures the maximum number of units have adequate natural ventilation and solar heating and natural lighting by being provided with a northern orientation where possible.	
Cl.36 - Stormwater	The proposed development should: (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.	The proposal has been reviewed by Council's Development Engineer who is satisfied that the proposal will appropriately address stormwater runoff by capturing it and moving it to the street. An on-site detention system has been provided.	Yes
Cl.37 – Crime Prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of	The site planning of the proposal allows for a	Yes

	the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	good level of visibility from inside dwellings of their entry areas. All entrances contain four or six dwellings off them, with, where possible, separate entry points provided. It will be required that all dwellings be fitted with doors incorporating peep holes into their design.	
Cl.38 – Accessibility	The proposed development should: have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.	The site will have, once the footpath on Macpherson Street and Emily Street is constructed, clear, obvious pedestrian access to local facilities. The development provides for attractive and safe environments for pedestrians and motorists, with convenient access and parking for residents/visitors to the level required under	Yes

		SEPP2004.	
Cl.39 – Waste Management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The proposal incorporates appropriate waste management facilities.	Yes
Cl.40 – Development Standards	Minimum Site area 1000sqm	Does not apply to Social Housing Provider.	N/A
	Site frontage to be minimum 20m	Does not apply to Social Housing Provider.	NA
	Height to be 8m or less	8m maximum.	Yes
	A building adjacent to a boundary of the site not to be more than 2 storeys in height	The building does not incorporate any elements adjacent to a boundary.	Yes
	A building in the rear 25% of the site cannot exceed 1 storey in height.	Does not apply to a social housing provider.	N/A
Cl.50 – Standards for which consent cannot be refused.	(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys)	All buildings are 8m or less.	Yes
	(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,	Maximum permitted FSR: 0.6:1 (HLEP2012) 2381sqm x 0.6 = 1482.6sqm Proposed FSR: 1452.4sqm or 0.61:1	Not applicable – permitted FSR is 0.6:1.

	(c) landscaped area: a minimum of 35m ² per dwelling where the application relates to a social housing provider	35 x 20 = 700m ² required 941m ² provided.	Yes
	(d) Deep soil zones: if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the deep soil zone). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres,	2,381m ² x 15% =357.15m ² required. 413m ² (17%) provided. 56% located in the rear of the site.	Yes
	(e) solar access: if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm	70% of dwellings receive the required direct sunlight to their living areas. All units receive sufficient solar access to their private open space.	Yes

	in mid-winter,		
	(f) private open space for in-fill self-care housing: if: (i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and	All ground floor units have between 34sqm and 81sqm private open space, of the required dimensions and accessible from the living areas of the dwelling.	Yes
	(ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area.	All first floor dwellings have at least: 6m² if 1 bedroom 10m² if 2 bedroom.	Yes
	(h) parking: if at least the following is provided: 1 car spaces for each 5 dwellings where the development application is made by a social housing provider.	20 dwellings/5 = 4 spaces required. 6 spaces provided.	Yes

Under Schedule 3 of the SEPP, the following additional detailed **development standards** apply to development proposals for self-contained dwellings:

Standard	Required	Proposed	Complies
Wheelchair Access 15–20	If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road. (2) If the whole of the site does not have a gradient of less than 1:10: (a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and (b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents. Note. For example, if 70% of the site has a gradient of less than 1:10, then 70% of the dwellings must have wheelchair access as required by this subclause. If more than 50% of the site has a gradient greater than 1:10, development for the	Does not apply to Developments by a social housing provider.	N/A

	purposes of seniors housing is likely to be unable to meet these requirements.		
Common Areas	Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development	All common areas have reasonable access with regards to AS 1428.1.	Yes
Security	Pathway lighting: (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) must provide at least 20 lux at ground level.	Pathway lighting will meet the requirement outlined.	Yes
Letter Boxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry or, in the case of self-contained dwellings, must be located together in one or more central locations adjacent to the street entry.	All letter boxes are situated on a hard stand area and accessed via a continuous path of travel. These will (according to the statement) be lockable. The letter boxes are generally provided in a central location at the street frontage.	Yes

Private Car Accommodation	If car parking (not being car parking for employees) is provided: (a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and (b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.	4 of 6 provided car parking spaces have been designed to be able to be used by persons with a disability as required (4 required by SEPP). The accessible spaces are capable of being widened. No garages are proposed.	Yes
Accessible Entry	Every entry (whether a front entry or not) to a dwelling, not being an entry for employees, must comply with clauses 4.3.1 and 4.3.2 of AS 4299.	All entries comply with the requirement.	Yes
Interior - General	(1) Internal doorways must have a minimum clear opening that complies with AS 1428.1. (2) Internal corridors must have a minimum unobstructed width of 1,000 millimetres. (3) Circulation space at approaches to internal doorways must comply with	Does not apply to an application by a social housing provider.	N/A

	AS 1428.1.		
Bedrooms	At least one bedroom within each dwelling must have: (a) an area sufficient to accommodate a wardrobe and a bed sized as follows: (i) in the case of a self-contained dwelling—a queen-size bed, and (b) a clear area for the bed of at least: (i) 1,200 millimetres wide at the foot of the bed, and (ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction, and (c) 2 double general power outlets on the wall where the head of the bed is likely to be, and (d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be, and (e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and (f) wiring to allow a potential illumination level of at least 300 lux.	Does not apply to an application by a social housing provider.	N/A
Bathrooms	(1) At least one bathroom within a dwelling must be on the ground (or main) floor and	Does not apply to an application by a social housing	N/A

	have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1: (a) a slip-resistant floor surface, (b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1, (c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future: (i) a grab rail, (ii) portable shower head, (iii) folding seat, (d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it, (e) a double general power outlet beside the mirror. (2) Subclause (1) (c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.	provider.	
Toilet	A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.	Does not apply to an application by a social housing provider.	N/A

Surface Finishes	Balconies and external paved areas must have slip-resistant surfaces. Note. Advise regarding finishes may be obtained from AS 1428.1.	Does not apply to an application by a social housing provider.	N/A
Door Hardware	Door handles and hardware for all doors (including entry doors and other external doors) must be provided in accordance with AS 4299.	Does not apply to an application by a social housing provider.	N/A
Ancillary Items	Switches and power points must be provided in accordance with AS 4299.	Does not apply to an application by a social housing provider.	N/A
Living Room and Dining Room	(1) A living room in a self-contained dwelling must have: (a) a circulation space in accordance with clause 4.7.1 of AS 4299, and (b) a telephone adjacent to a general power outlet. (2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.	Does not apply to Developments by a social housing provider.	N/A
Kitchen	A kitchen in a self-contained dwelling must have: (a) a circulation space in accordance with clause 4.5.2 of AS 4299, and (b) a circulation space at door approaches that complies with AS 1428.1,	Does not apply to Developments by a social housing provider.	N/A

	and (c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299: (i) benches that include at least one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a), (ii) a tap set (see clause 4.5.6), (iii) cooktops (see clause 4.5.7), except that an isolating switch must be included, (iv) an oven (see clause 4.5.8), and (d) “D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and (e) general power outlets: (i) at least one of which is a double general power outlet within 300 millimetres of the front of a work surface, and (ii) one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.		
Access to Kitchen, main	In a multi-storey self-contained dwelling, the	Does not apply to Developments by a	N/A

bedroom, bathroom and toilet	kitchen, main bedroom, bathroom and toilet must be located on the entry level.	social housing provider.	
Lifts in multi-storey buildings	In a multi-storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the <i>Building Code of Australia</i> .	Does not apply to Developments by a social housing provider.	N/A
Laundry	A self-contained dwelling must have a laundry that has: (a) a circulation space at door approaches that complies with AS 1428.1, and (b) provision for the installation of an automatic washing machine and a clothes dryer, and (c) a clear space in front of appliances of at least 1,300 millimetres, and (d) a slip-resistant floor surface, and (e) an accessible path of travel to any clothes line provided in relation to the dwelling.	Does not apply to Developments by a social housing provider.	N/A
Storage for linen	A self-contained dwelling must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.	Does not apply to Developments by a social housing provider.	N/A

Garbage Storage	A garbage storage area must be provided in an accessible location.	The garbage storage area is situated in an accessible location.	Yes
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The proposal therefore complies with the requirements outlined as development standards outlined in Schedule 3 of the SEPP where they apply to a development application lodged by a social housing provider (in this instance, the NSW Land and Housing Corporation).

Clause 15 – Design Requirements

Pursuant to Clause 31 of the SEPP, in determining a development application to carry out development for the purpose of in-fill multi-unit housing, a consent authority must take into consideration the provisions of the '*Seniors Living Policy: Urban Design Guidelines for Infill Development*' published by the Department of Planning in March 2004.

The provisions of the '*Seniors Living Policy: Urban Design Guidelines for infill Development*' have been taken into consideration in the assessment of the proposal as indicated in the following table:

Assessment Criteria & Comment		Compliance
1. RESPONDING TO CONTEXT		
Analysis of neighbourhood character	Street layout & hierarchy: The legibility of a neighbourhood is related to the layout and hierarchy of the streets and the clarity with which these can be 'read'. New development should therefore be of an appropriate scale and character to reinforce these existing patterns. <u>Comment:</u> The proposed development is of a scale and character that reinforces the existing pattern of the street.	Yes

	Block & lots: Land subdivision has resulted in blocks and lots configured for particular uses and building types. When new building types are introduced with a different relationship to the block and lot they may have negative impacts. <u>Comment:</u> The proposed buildings will have a similar relationship to the block when compared with existing development on the site.	Yes
	Built Environment: Residential neighbourhoods are often consistent in terms of built form. This includes not only the size and shape of buildings but the spaces between them. It is important that new built form, as far as possible, follows these patterns. <u>Comment:</u> The built form of the proposed buildings will generally be setback from the sides and front of the site in a similar way to existing development in the area.	Yes
	Trees: Trees and vegetation are critical in establishing the particular character of a neighbourhood or street. Distinctive patterns of planting can often compensate for fragmented or undistinguished built form. <u>Comment:</u> The development will not provide for fragmented or undistinguished building form, but the planting scheme will be consistent with that in the street and Council's future desired landscape form.	Yes

	Policy Environment: Council's own LEPs or DCPs may describe the character of an area or identify the key elements that contribute to its unique character. <u>Comment:</u> The proposal is complimentary with the proposed future character of the area as the proposal is limited to two storeys in height and will appear from the street as low density residential in character its multi dwelling format notwithstanding.	Yes
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2. SITE PLANNING AND DESIGN

Design principles and better practice	General: 1. Site design should be driven by the need to optimise internal amenity and minimise impacts on neighbours. These requirements should dictate the maximum development yield. <u>Comment</u> The site provides a reasonable level of amenity for occupants and for neighbours of adjoining properties. 2. Cater for the broad range of needs from potential residents by providing a mix of dwelling sizes and dwellings both with and without assigned car parking. This can also provide variety in massing and scale of built form within the development. <u>Comment:</u> The proposed development provides a mix of single and two bedroom, ground and first floor apartments providing a mix of dwelling sizes.	Yes
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	Built Form: - Locate the bulk of development towards the front of the site to maximise the number of dwellings with frontage to a public street. - Parts of the development towards the rear of the site should be more modest in scale to limit the impacts on adjoining properties. - Design and orient dwellings to respond to environmental conditions. <u>Comment:</u> The bulk of the development is situated towards the street. Suitable setbacks are provided to side boundaries and to the rear.	Yes
	Trees, landscaping & deep soil zones: 1. Maintain existing patterns and character of gardens and trees. 2. Improve amenity by increasing the proportion of the site that is landscaped area. 3. Provide deep soil zones for absorption of run-off and to sustain vegetation, including large trees. 4. Minimise the impact of higher site cover on stormwater runoff. <u>Comment:</u> A number of trees are to be retained and new trees planted as part of the proposal, and deep soil zones have been provided as per the SEPP requirements.	Yes

	Parking, garaging & vehicle circulation: 1. Consider centralised parking in car courts to reduce the amount of space occupied by driveways, garages and approaches to garages. 2. Where possible maintain existing crossing and driveway locations on the street. <u>Comment:</u> Car parking has been provided generally in a central courtyard. One driveway crossing will replace the four existing crossings.	Yes
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3. IMPACT ON STREETSCAPE		
Design principles and better practice	General: 1. Respond to the desired streetscape character. <u>Comment:</u> The proposed development is responsive to the character of the streetscape.	Yes
	Built form: 1. Reduce the visual bulk of a development. <u>Comment:</u> The proposal is a two storey development with articulated facades, suitable setbacks from the frontage and separation between the two buildings.	Yes
	Trees, landscaping & deep soil zones: 1. Retain existing trees and planting in front and rear setbacks and the road reserve. <u>Comment:</u> Deep soil areas have generally been provided at the front and rear of the site.	Yes

	Residential amenity: 1. Clearly design open space in front setbacks as either private or communal open space. 2. Define the threshold between public and private space, for example by level change, change in materials, fencing, planting and/or signage 3. Design dwellings at the front of the site to address the street, 4. Provide a high quality transition between public and private domains. <u>Comment:</u> Private and communal open spaces are clearly defined, as are thresholds between public and private space. The front dwellings address the street and a high quality transition has been provided between public and private domains..	Yes
	Parking, garaging & vehicular circulation: 1. Avoid unrelieved, long, straight driveways that are visually dominant. 2. Minimise the impact of driveways on streetscape. 3. Where basement parking is used minimise the impact of the entry. 4. Locate or screen all parking to minimise visibility from the street. <u>Comment:</u> The site does contain a long straight driveway, necessary by the layout of the site. Adequate landscaping is provided around this driveway and associated parking to soften its	Yes

	impact on the streetscape. The parking area is partially screened by the bin store enclosure and services cupboards (8.66m from the front boundary).	
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4. IMPACTS ON NEIGHBOURS

Design principles and better practice	Built Form: 1. Design the relationship between buildings and open space to be consistent with the existing patterns in the block. 2. Protect neighbours' amenity by carefully designing the bulk and scale of the new development to relate to the existing residential character, for example by setting upper storeys back behind the side or rear building line. 3. Reduce the visual bulk of roof forms by breaking down the roof into smaller elements, rather than having a single uninterrupted roof structure. 4. Design second storeys to reduce overlooking of neighbouring properties. 5. Reduce the impact of unrelieved walls on narrow side and rear setbacks by limiting the length of the walls built to these setbacks. <u>Comment:</u> 1. The relationship between buildings and open space has been designed to be compatible with the existing and desired residential character of the locality, including suitable side and rear setbacks and landscaped yards. 2. The bulk and scale has been, as much as possible, designed to relate to the existing character of the area. 3. The visual bulk of the structure is broken up by articulation of the development and two buildings. 4. Suitable side setbacks are provided on the first floor, and	Yes
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	boundary planting provided. Privacy screens are provided to first floor balconies. 5. The development is broken up by stepping the facades.	
	Trees, Landscaping & deep soil zones: 1. Use vegetation and mature planting to provide a buffer between new and existing dwellings. 2. Locate deep soil zones where they will provide privacy between new and existing dwellings. 3. Planting inside and rear setbacks can provide privacy and shade for adjacent dwellings. 4. For new planting, if possible, use species that are characteristic of the local area. <u>Comment:</u> The proposed landscaping scheme and provision of deep soil along all site boundaries allows for substantial planting to be provided, including screen planting and canopy trees.	Yes
	Residential amenity: 1. Protect sun access and ventilation to living areas and private open space of neighbouring dwellings by ensuring adequate building separation. 2. Design dwellings so that they do not overlook neighbours' private open space or look into existing dwellings. 3. When providing new private open space minimise negative impacts on neighbours. 4. Where side setbacks are not large enough to provide useable private open space, use them to achieve privacy and soften the visual impact of new development by planting screen vegetation.	Yes

	<u>Comment:</u> Sun access and ventilation to living areas of adjoining properties are reasonably ensured by the proposal. The dwellings do not provide close and direct views into adjoining properties. The open space areas will not have a significant impact on neighbours. The side setbacks are sufficient to provide private open space and are suitably landscaped.	
	Parking, garaging & vehicular circulation: 1. Provide planting and trees between driveways and side fences to screen noise and reduce visual impacts. 2. Position driveways so as to be a buffer between new and existing adjacent dwellings. <u>Comment:</u> Planting is proposed between the driveway and dwellings where possible. The driveway is located centrally on the site and separates the built form on the site.	Yes

5. INTERNAL SITE AMENITY		
Design principles and better practice	Built form: 1. Design dwellings to maximise solar access to living areas and private open spaces. 2. In villa or townhouse style developments, provide dwellings with a sense of individual identity through building articulation, roof form and other architectural elements, and through the use of planting and building separation. 3. Design dwelling entries so that they are clear and identifiable from the street or driveway. <u>Comment:</u> The dual aspect design of the majority of dwellings and their internal layouts maximises solar access to living areas and private open space areas. The dwellings have clearly identifiable entrances from street or common areas from the pedestrian pathways from the street and car park.	Yes
	Parking, garaging & vehicular circulation: 1. Locate habitable rooms, particularly bedrooms, away from driveways, parking areas and pedestrian paths (where this is not possible use physical separation, planting. Screening devices or louvres to achieve adequate privacy). 2. Avoid large uninterrupted areas of hard surface (driveways, garages, walls). Small areas of planting can break these up and soften their 'hard edge' appearance. 3. Screen parking from views and outlooks from dwellings. 4. Reduce the dominance of areas for vehicular circulation and parking. <u>Comment:</u> Bedrooms have been located away from vehicular and pedestrian access points to the site where possible. No large	Yes.

	uninterrupted areas of hard surface are proposed except the driveways. Parking has been screened where possible from dwellings. The parking area is not dominant.	
	Residential amenity: 1. Provide distinct and separate pedestrian and vehicular circulation on the site. 2. Ensure that adequate consideration is given to safety and security. 3. Provide private open space that is generous in proportion and adjacent to the main living areas of the dwelling (living room, dining room or kitchen). 4. Provide communal open space that is clearly and easily accessible to all residents and easy to maintain. 5. Site and/or street common service facilities such as garbage collection areas and switchboard to reduce their visual prominence to the street or to any private or communal open space <u>Comment:</u> The development provides distinct and separate pedestrian and vehicular circulation on the site. Adequate consideration has been given to safety and security in the design. Private open space areas are compliant and are located adjacent to the main living areas. Communal open space is not provided. Each dwelling has private open space to meet the needs of the residents.	Yes

The proposal therefore achieves reasonable design with regards to the *Seniors Living Policy: Urban Design Guidelines for Infill Development*.

Draft State Environmental Planning Policies

Draft State Environmental Planning Policy – Remediation of Land

The Department of Planning and Environment ('DPE') has announced a Draft Remediation of Land SEPP ('**Draft SEPP**') which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land ('**SEPP 55**').

The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.

Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land.

A review of the site history indicates that the site has been used for residential purposes for extended periods of time, and such uses and/or development are not typically associated with activities that would result in the contamination of the site. The proposed works do not include any change to the use of the land that would result in any concerns with respect to contamination. There is no indication of previous uses that would cause contamination. In this regard there is no indication that the land is contaminated.

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 Draft SEPP.

Draft Design and Place SEPP

The Draft Design and Plan SEPP will repeal and replace SEPP No 65 – Design Quality of Residential Apartment Development and SEPP (Building Sustainability Index: BASIX)

2004. The explanation of intended effect of the draft SEPP was publicly exhibited in February/March 2021. Following submissions of the EIE the draft SEPP will be on public exhibition in late 2021.

Local Environmental Plan

Hurstville Local Environmental Plan 2012

Zoning

The subject site is zoned R2 Low Density Residential under the provisions of the Hurstville Local Environmental Plan (HLEP) 2012.

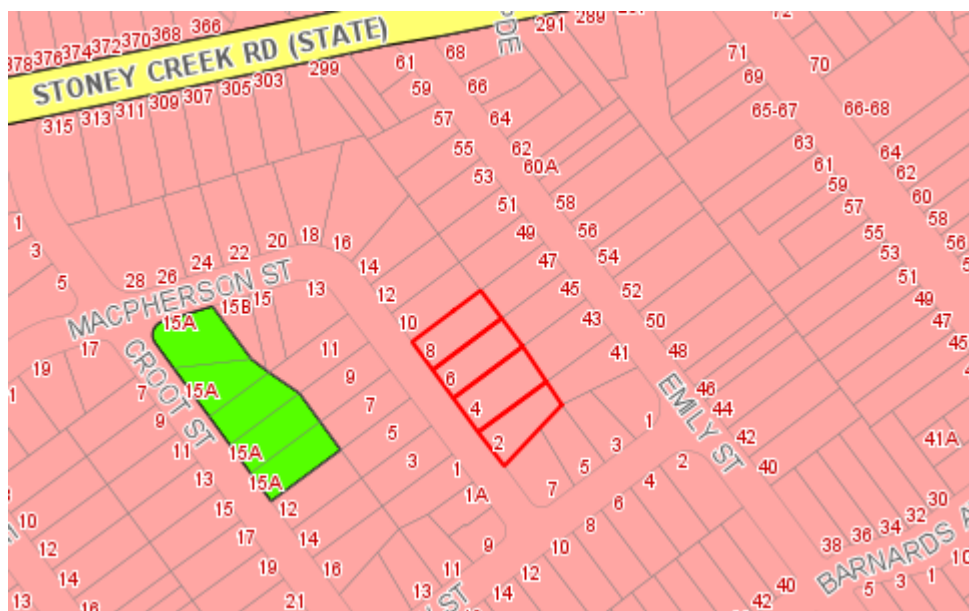


Figure 11 Zoning Map (HLEP 2012) (site edged red)

The zone objectives are listed below:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.
- To ensure that a high level of residential amenity is achieved and maintained.

- *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
- *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*

The proposed development meets the objectives of the zone by providing housing for seniors in a suitable residential area. The proposal has been designed to minimise impacts on neighbouring properties and provide a high level of amenity for future residents, within a well landscaped setting.

The extent to which the proposal complies with the relevant standards of the HLEP 2012 is outlined in the table below.

HLEP 2012 Compliance Table

Clause	Standard	Proposal	Complies
2.2 Zoning of Land to which Plan applies	R2 Low Density Residential	Seniors housing pursuant to Clause 4 of SEPP (Housing for Seniors and People with a Disability) 2004.	Yes
2.3 Zone objectives and Land use table	Objectives of zone to be satisfied: • <i>To provide for the housing needs of the community within a low density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> • <i>To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage</i>	The proposal meets the objectives of the zone by providing additional housing for seniors. The design ensures a high level of amenity for future residents and does not adversely impact the amenity of surrounding properties.	Yes

	<i>of the area.</i> <i>• To ensure that a high level of residential amenity is achieved and maintained.</i> <i>• To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.</i> <i>• To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.</i>		
2.7 Demolition	Demolition requires development consent.	Consent for demolition of existing structures is sought.	Yes
4.3 Height of Buildings	Maximum permitted height of 9m	8m	Yes
4.4 Floor Space Ratio	Maximum permitted FSR of 0.6:1 (1,428.1sqm)	0.61:1 1,452sqm (24sqm exceedance)	No – refer to Clause 4.6 assessment
4.5 Calculations of Floor space and Site area	Floor space to be calculated in accordance with Clause.	Floor space calculated in accordance with clause.	Yes
4.6 Exceptions to Development Standards	In accordance with Clause 4.6 (1) through to and including (8)	The proposal is accompanied by a Clause 4.6 variation relating to the breach of the Floor Space Ratio	Refer to the Clause 4.6 assessment below.

		standard under Clause 4.4.	
5.10 Heritage Conservation	Not identified as a heritage item and not located within a Heritage Conservation Area.	Satisfactory - no local heritage items or conservation areas are within the vicinity of the Site.	Yes
6.1 Acid Sulfate Soils (ASS)	The site is not affected by acid sulfate soils.	N/A	N/A
6.2 Earthworks	Development consent sought for excavation requires development consent. Considerations to apply include impact on drainage patterns, fill, effect on land and fill, impact to waterways.	Minimal excavation is proposed as part of the application. No excessive excavation is proposed.	Yes

Exception to Development Standards

Detailed assessment of variation to Clause 4.4 floor Space Ratio

The objectives of Clause 4.6 are as follows:

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

The proposed development seeks a variation to the development standard relating to FSR (Clause 4.4). The Hurstville Local Environmental Plan 2012 (HLEP) identifies a maximum FSR of 0.6:1 for the site (or 1,428.6sqm) (refer to Figure 12 below). The proposed development has a gross floor area of 1,452.41sqm or 0.61:1. This amounts to a 23sqm, or 1.67% variation to the control.



Figure 12 FSR Map (HLEP 2012)

Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the HLEP.

Clause 4.6(3) states that:

“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard”*

To support the non-compliance, the applicant has provided a request for a variation to Clause 4.4 in accordance with Clause 4.6 of HLEP. The Clause 4.6 request for variation is assessed as follows.

Is the planning control in question a development standard?

Flor space ratio control under Clause 4.4 of the HLEP 2012 is a development standard. The maximum permissible FSR is 0.6:1.

What are the underlying objectives of the development standard?

The objectives of Floor space ratio standard under Clause 4.4 of HLEP 2012 are:

- (a) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*

- (b) *to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic to achieve the desired future character of the locality,*
- (c) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) *to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing and are not likely to undergo a substantial transformation,*
- (e) *to minimise the adverse impact of the development on heritage items,*
- (f) *to establish maximum floor space ratios that ensure the bulk and scale of development is compatible with the major centre status of the Hurstville City Centre.*

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

There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

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

Applicants comment:

3 JUSTIFICATION FOR FLOOR SPACE RATIO VARIATION

The proposed floor space ratio of 0.61:1 represents a very minor variation to the development standard prescribed in the HELP 2012 (0.6:1), constituting a 1.67% increase, equating to an additional 23.4m² floor area. The negligible increase in the floor space ratio allows LAHC to deliver greater housing choices to those in need, each requiring greater accessibility areas for users with mobility issues such as those in wheelchairs, or walking assisted devices, typical with seniors housing development.

The development complies with Council's prescribed height limit of 9m, for the location. The setbacks of the dwellings comply with, and in many instances exceed, the Hurstville Development Control Plan No.1 minimum setback requirements. Owing to the minor nature of the variation, the design, scale and materiality of the proposed development is consistent with the character of the locality, and for these reasons justifies the very minor departure from Council's floor space ratio.

With respect to the subject site, compliance with the 0.6:1 floor space ratio development standard is considered unnecessary in this case because the proposed development complies with the objectives of the subject development standard (*Clause 4.4 Floor space ratio*). The objectives of the development standards are addressed at **Section 2.2** above. Refer also to the five tests under *Wehbe v Pittwater Council* at **Section 4.2** below.

The development is considered to have sufficient environmental planning grounds given the development allows LAHC to deliver greater housing choices to those in need, through the provision of units with greater accessibility areas/ circulation spaces needed by seniors with mobility issues.

The development will be in the public interest because it raises no inconsistencies with the objectives of the R2 zone and complies with the objectives of the development standard. The proposed development has been designed to minimise any conflict with the adjoining properties such as overshadowing, privacy, sunlight impacts and view impacts. Refer to **Section 2.2** above.

The case also identifies that the outcome of the breach to a development standard does not necessarily need to be a *neutral or better* outcome, if the relevant environmental planning grounds to assess it against do not require such. With regard to overshadowing, visual impact and privacy the objective of the development standard is to *minimise* disruption to adjoining properties and the public domain (CI 4.4(1)(c)). The proposed development has been designed to ensure that such impact to neighbours are minimised, and therefore complies with the objective.

4.2 *Wehbe v Pittwater Council* (2007) NSW LEC 827

In his decision in *Wehbe v Pittwater Council* (2007) NSW LEC 827, Chief Justice Preston expressed the view that there are five different ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary. The five tests are considered in the table below.

i. <i>The objectives of the standards are achieved notwithstanding non-compliance with the standard</i>	The proposed development complies with the objectives of <i>Clause 4.4 Floor space ratio</i> . The objectives of the standard are addressed at Section 2.2 above.
ii. <i>The underlying objectives or purposes of the standard are not relevant to the development and therefore compliance is unnecessary</i>	The underlying objectives of the standard are relevant to the development. However, as provided in this request, compliance with the standard is considered unnecessary in this case.
iii. <i>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</i>	The underlying object or purpose of the standards would not be defeated or thwarted if compliance was required.
iv. <i>The development standards have been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standards and hence compliance with the standard is unnecessary and unreasonable; and</i>	This exception to development standards request does not rely on this reason.
v. <i>The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.</i>	This exception to development standards request does not rely on this reason.

4.3 Winten Developments Pty Ltd v North Sydney Council (2001) NSWLEC 46

The exception to development standard request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North Sydney Council (2001) NSWLEC 46*.

a) Are the planning controls in question a development standard?	Yes, Clause 4.4 of the HLEP 2012 is a development standard.
b) What is the underlying object or purpose of the standards?	The objectives of the standard are addressed at Section 2.2 above.
c) Is compliance with the development standards unnecessary or unreasonable in the circumstances of the case?	Sections 2 and 3 demonstrate that compliance is unnecessary and unreasonable.

d) Is compliance with the development standards consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standards tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?	As demonstrated in Section 2 , compliance with the standards would be inconsistent with the objectives of Clause 4.6 and would hinder the attainment of the objects of the Act as discussed in Sections 2, 3 and 4 of this request.
e) Is the objection well founded?	The objection is well founded on the grounds that the non-compliance: – Enables the delivery of greater housing choices to those in need, by providing units with better circulation space for seniors with mobility issues. – Allows for the delivery of an additional unit, therefore providing critical infrastructure, needed to address the long waiting list for social housing. – Has been demonstrated not to raise any issues of State or regional planning significance; – Achieves the objects of the EP&A Act and will provide positive social impacts to the Georges River Local Government Area; – Enables a development that reflects the changing character of the locality without significant environmental impacts on the use and enjoyment of adjoining land uses, such as overshadowing, privacy, sunlight impacts and view impacts.

5 CONCLUSION

The development proposes to vary the maximum HLEP 2012 floor space ratio standard of 0.6:1 by 0.01:1 (1.67%) resulting in a maximum floor space ratio of 0.6.1:1.

In considering this request, it should be noted that the Land and Environment Court of NSW in a recent decision in *Eastern Suburbs Leagues Club Ltd v Waverley Council [2019] NSWLEC 130* found that a Clause 4.6 variation is not required to exceed height and floor space ratio standards in a Local Environmental Plan for seniors housing under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Although not technically required, the Clause 4.6 request has been provided, should Council consider it warranted/necessary.

The proposed development, with the floor space ratio non-compliance, will not result in a built form that will be out of character with surrounding residential development and will be consistent with the emerging character of the area. Additionally, any potential impacts of the proposed development on surrounding dwellings will not be noticeably different when compared to the impacts of a scheme achieving the 0.6:1 floor space ratio control.

The proposed floor space ratio is supported on environmental planning grounds and is in the public interest, as outlined in this report.

It is therefore considered that the minor variation to the floor space ratio development standard at 2-8 Macpherson Street, Hurstville, does not undermine the objectives of both the development standard and the zone. The noncompliance results in a development that improves the amenity of future tenants without any discernible internal and external impacts. Council is therefore requested to exercise its flexibility under Clause 4.6 by granting development consent to the proposed development.

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

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

Applicants Comment:

Clause 4.6(3)(b) – Environmental planning grounds

It is considered that there are sufficient environmental planning grounds to justify contravening the floor space ratio development standard under the HLEP 2012. The development is considered to be consistent with:

- The objectives of *Clause 4.4 Floor space ratio*;
- Relevant plans and strategies.

These matters are addressed below.

Objectives of *Clause 4.4 Floor space ratio*

Table 1 Compliance with Clause 4.4 of the HLEP 2012

Objectives of Clause 4.4	Compliance	Comment
(a) <i>to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality</i>	Yes	The degree of variation is negligible, being only 1.67% above the prescribed floor space ratio of 0.6:1. This equates to an additional 23.4m², and is considered necessary in order to provide greater circulation spaces for seniors with mobility issues, without resulting in an adverse impact on the environment and/or adjoining neighbours. The additional floor area does not cause the building to be incompatible with the desired and future character of the locality. The development complies with the Council's prescribed height limit of 9m, for the location. The setbacks of the dwellings comply with, and a number of locations exceed, the Hurstville Development Control Plan No.1 minimum setback requirements. The buildings have been designed to minimize bulk and scale. This includes provided landscaping, changes in roof profiles and staggering and modulation of elevation alignments which have minimized the impact of the bulk and scale of the buildings on the streetscape and adjoining properties. The proposed development is compatible with the bulk and scale of the existing and desired future character of the locality.
(b) <i>to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic to achieve the desired future character of the locality,</i>	Yes	The proposed 1.67% variation to the prescribed floor space ratio (23.4m²) would not create unreasonable demands on the existing services or require the augmentation existing infrastructure, and will not result in the excessive generation of vehicular or pedestrian traffic, that would change the character of the locality.
(c) <i>to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,</i>	Yes	The expected impacts of the proposed development will not be noticeably different when compared to a development scheme complying with the prescribed FSR Due to the orientation of the site and the proposed layout, the proposed development will not result in any unreasonable adverse overshadowing, or overlooking impacts onto the adjoining properties. The proposed development has been designed to ensure that loss of privacy, loss of solar access and visual impacts are minimised.

(d) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing and are not likely to undergo a substantial transformation,	Yes	The locality is undergoing transformation. The bulk and scale of the proposed development reflects the emerging character of the area.
(e) to minimise the adverse impact of the development on heritage items,	Yes	The development will not impact any heritage items, with the closet item (I59) located approximately 100m to the north-east. The site does not contain any Commonwealth, State or Local Listed Heritage Items nor is it located within a heritage conservation area.
(f) to establish maximum floor space ratios that ensure the bulk and scale of development is compatible with the major centre status of the Hurstville City Centre.	Yes	The site is not located within the commercial centre of Hurstville City, located approximately 1.7km to the north.

Relevant plans and strategies

The development provides for social housing and is therefore consistent with the NSW Government's *Plan Future Directions for Social Housing in NSW*, the *Greater Sydney Region Plan 2018*, and the *Central City District Plan 2018*.

As at June 2019, there were over 46,000 households on the waiting list for social housing in NSW. The waiting list for the St George allocation zone (CS09) is approximately 1,750, with a wait time for one and two bedroom units/houses greater than 10 years.

Clause 4.6(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Clause 4.6(4) states that:

“Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

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

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

Applicants Comment:

Clause 4.6(4)(a)(ii) – the public interest

The proposed development will provide housing to meet the needs of the community, assisting LAHC in meeting its significant, long-standing and continually growing demand for social housing in the Georges River local government and surrounding areas. The development will also assist in allowing LAHC to grow its social housing portfolio in line with the NSW Government's Future Directions for Social Housing in NSW.

The development will assist LAHC to improve the amenity of accommodation for its tenants, by providing new, more appropriate housing aligning with demand for seniors housing. The development will also improve the environmental sustainability of housing on the site, particularly through improved thermal performance, solar access, natural ventilation, energy and water efficiency.

Objectives of Clause 4.4 Floor space ratio

The objectives of the development standard, are addressed in Table 1 above. As noted in the table, the extent of variation is negligible, being only a 1.67% increase above the allowable floor space ratio of 0.6:1 (proposing 0.61:1). Given the minor variation, it is considered that the building will still be compatible with the bulk and scale of the existing and desired future character of the locality, including accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic. The development provides for an appropriate transition between the existing character, evident by the developments compliance with the 9m height control, and setback controls found in the DCP. Furthermore, any adverse environmental impacts on the use or enjoyment of adjoining properties and

the public domain are minimised.

Objectives of the R2 Low Density Residential zone

The site is identified within the *R2 Low Density Residential* zoning under the HLEP 2012. The objectives of the R2 zone are addressed below:

1) Objectives of zone

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
- *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*

The proposed development's floor space ratio non-compliance raises no inconsistencies with the objectives of the R2 zone. The development will provide for the housing needs of the community within a low density residential environment; will assist in addressing the communities immediate need for social housing; encourages a range of housing types through the provision of one (1) and two (2) bedroom apartments designed for seniors housing that does not compromise the amenity of the surrounding area, or natural or cultural heritage of the area. The development also ensures a high level of residential amenity to proposed units and existing adjoining residences.

- (a) to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality,*

Officer Comment: The design of the development incorporates suitable setbacks to the site boundaries, articulated facades and a maximum height of 8m to ensure it is compatible with the existing and desired residential character of the locality. The two buildings are separated by a distance of between 7m and 8m to reduce the bulk of the development when viewed from the street and adjoining properties to the rear, and the development is set within landscaped gardens of which all is deep soil to accommodate substantial landscaping including screen planting and canopy trees.

The minor numerical non-compliance of 23sqm floor space does not preclude the development from achieving compliance with controls that seek to limit the bulk and scale of the development.

- (b) to establish the maximum development density and intensity of land use, accounting for the availability of infrastructure and generation of vehicular and pedestrian traffic to achieve the desired future character of the locality,*

Officer Comment: The maximum FSR of the site and surrounding land is 0.6:1. The nature and scale of the proposed development, being seniors housing, is unlikely to generate significant vehicular and pedestrian activity. The site is serviced and has been designed to be in keeping with the residential character of the area through appropriate design including a two storey (8m) height, suitable landscaping and setbacks to all site boundaries.

- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. In terms of visual impact the non-compliance will not be noticeable from the adjoining properties or the street. The proposal will not result in adverse overshadowing impacts with the bulk of the shadow cast over the site itself and Macpherson Street. Visual privacy is maintained through suitable setbacks, privacy screens to first floor balconies and orientation of living areas to the street or to the rear, rather than the side boundaries.

- (d) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing and are not likely to undergo a substantial transformation,*

Officer Comment: The area is unlikely to undergo substantial transformation as the current planning controls have been adopted into the draft Georges River LEP 2020.

(e) *to minimise the adverse impact of the development on heritage items,*

Officer Comment: The proposal does not impact any heritage items.

(f) *to establish maximum floor space ratios that ensure the bulk and scale of development is compatible with the major centre status of the Hurstville City Centre.*

Officer Comment: The site is not located within the Hurstville City Centre.

Officers comment: The exceedance of the control generally satisfies the objectives of the zone for the following reasons:

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

The development is providing for the housing needs of seniors with a mix of dwelling choices and layouts.

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

The development is residential in nature and does not include any additional land uses. This objective is offering some greater flexibility in the provision of land uses within this zone and is not a mandatory requirement.

- *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*

The proposal provides new housing for seniors and has been designed to minimise impacts on neighbouring properties in terms of privacy, solar access and built form, and achieves good presentation to the street. The site is not located close to any natural or cultural heritage items.

- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposal will provide new accommodation for seniors that achieves a high level of residential amenity in terms of solar access, privacy and internal amenity, both for future residents of the development and neighbours.

- *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*

Landscaping is provided to all site boundaries and serves to soften the development when viewed from the street and private property, create visual privacy for residents and neighbours and increase the quality and quantity of landscaping on the site.

- *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.*

The proposal does not preclude the operation of home businesses.

The extent of non-compliance is considered to be reasonable and will not establish an undesirable precedent. It will not have any adverse effect on the surrounding locality, which is characterised as low density residential development in the form of predominantly two storey dwellings and dual occupancies. The proposal promotes the economic use and development of the land consistent with its zone and purpose. The Panel is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The public benefit of the variation is that it will appropriately facilitate the provision of housing on a R2 zoned site and provide for new high quality dwellings specifically for seniors. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.

The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

The proposal could be reduced in floor space to achieve compliance with the standard however the minor non-compliance of 23sqm is not considered to result in any adverse impacts on the locality. In this case the proposal seeks to establish an appropriate design and built form outcome for this site with the building complying in large with the FSR standard. There will be no adverse amenity or visual impacts generated by the variation and the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the FSR control is considered to be a reasonable and well-founded request.

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

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

It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard.

Draft Georges River Local Environmental Plan 2020

The Local Planning Panel considered the report on the outcomes of the Public Exhibition and Finalisation of Georges River Local Environmental Plan 2020 (DLEP2020) on 25 and 26 June 2020. In relation to this development site the zoning, height and floor space ratio are unchanged.

Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.

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

Development Control Plan

Hurstville Development Control Plan No. 1

The HDCP No. 1 does not contain controls for seniors housing. The relevant controls in relation to vehicular access, stormwater and waste have been considered by council and deemed acceptable, subject to conditions of consent recommended in this report.

Georges River Development Control Plan 2020

The Georges River Development control Plan was made by the Georges River Local Planning Panel on 24 March 2021.

This does not come into effect until the Georges River Local Environmental Plan is gazetted.

Georges River Interim Policy Development Control Plan 2020

Council has implemented the Georges River Interim Policy DCP. The aim of the Interim Policy is to address current inconsistencies in development controls. The Interim Policy will give certainty to the community that Development Applications are being assessed on a more consistent basis. The Interim Policy came into effect on 22 July 2019 and shall be considered in the assessment of all applications from this date. The Interim policy does not contain controls for seniors housing.

(iii) 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 are no planning agreements that pertain to this site.

(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) and meeting the Australian Standards for parts of the design.

(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,

Natural Environment

The proposed development is unlikely to result in adverse impacts to the natural environment. The proposed landscape solution for the development aims to create a coherent and formal landscaping design that will improve the visual quality of the immediate environment, the streetscape and the site itself.

Built Environment

The proposed development is unlikely to result in adverse impacts to the built environment. The architectural design, use of high quality materials and finishes will create a positive contribution to the streetscape.

Social Impact

The proposed development will have no adverse social impact, in fact it will fulfil a much needed housing requirement in the area by providing more seniors accommodation.

Economic Impact

The proposed development will have no adverse economic impacts. Through the construction process the development will ensure employment in this industry in the short term if this development is approved.

(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. The site is zoned to permit low density residential development.

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

Submissions are addressed on the following page of this report.

(e) the public interest.

The proposal satisfies the applicable Environmental Planning Instrument's and objects of the Act and accordingly is considered to be within the Public interest. The development will not adversely affect the amenity of immediately adjoining properties and will not negatively affect the character and nature of the neighbourhood.

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.

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

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

Development Contributions

Pursuant to Clause 2.7.1 of the Hurstville Section 94 Contributions Plan 2012, this application is exempt from a requirements to make contributions under that Plan as the development is for the purposes of seniors housing and is provided by a social housing provider.

SUBMISSIONS AND THE PUBLIC INTEREST

The application was notified to immediately adjoining properties and they were given a 14 day period in which to comment (between the period of 16 September to 30 September 2020). Notification procedures were conducted in accordance with Council's requirements. Two unique submissions and one petition were received.

The issues raised in the submissions are addressed below:

Size & scale: Current infrastructure servicing the neighbourhood does not cater for such an increase in occupants & visitors

Comment: The infrastructure provided to the site is considered capable of accommodating the additional residents and visitors.

Inconsistent with local planning guidelines: R2 Low Density, max. FSR 0.6:1, min. lot size 450m²

Comment: The proposal is permitted with consent pursuant to SEPP (Housing for Seniors and People with a Disability). There is no minimum lot size for this type of development. The minor variation to the FSR is considered acceptable in this case as discussed in this report.

Lack of public transport options: 400m to bus stop serviced by an infrequent bus route, not suitable for seniors

Comment: The site is located within the 400m of a bus stop on Barnards Ave. The applicant will be required to construct a footpath between the site and the bus stop to comply. Conditions of consent have been recommended to this effect.

Lack of parking spaces: Hurstville controls would require 20 spaces + 5 visitors, whereas proposed is 6 spaces

Comment: The number of parking space provided complies with the applicable SEPP (Housing for Seniors and People with a Disability).

Significant increase in vehicular traffic: Proposed 6 spaces only will push a number of vehicles onto the street, leading to congestion & safety issues

Comment: It is not considered that the scale and nature of the development, being seniors housing, will have adverse impacts on Macpherson Street or the surrounding road network.

Privacy: Breach of privacy for those opposite the site on Macpherson Street

Comment: The buildings are setback 4.5m from the street boundary to comply with the Hurstville DCP. The additional separation provided for by the street results in minimal impacts privacy impacts for residents on Macpherson Street.

Rear setback: Only 6.5m to property on Emily Street and will overshadow Emily Street; privacy screens should be on all upper level rear windows

Comment: The rear setback complies with the 6m control in Hurstville DCP. Landscaping is also provided along the rear boundary for additional screening. No shadow is cast to Emily Street properties as they are located north of the subject site.

REFERRALS

Council Internal Referrals

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 in principle subject to conditions of consent being attached to any consent granted.

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 reviewed the proposal and has raised no objection subject to conditions of consent being attached to any consent.

Council's Consultant Arborist

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

External Referrals

Ausgrid

The application was referred to Ausgrid in accordance with the provisions of Clause 45 of the Infrastructure SEPP. In response, no comments were received upon finalisation of this assessment report.

CONSULTATION ON DRAFT CONDITIONS

Council provided a set of draft conditions to the Land and Housing Corporation (as the Crown) for comment. Council and the LAHC agreed on a number of condition amendments and deletions, however disagreed on the following matters:

Issue Number	Condition Matter	LAHC Comment	Council Comment
1	Conditions that refer to S138 of the Roads Act 1993 and or S68 of the Local Government Act. Condition 2, 10, 11, 35, 36	- The LAHC requested that all references to S138 of the Roads Act be removed from the conditions as <i>“Clause 5 of Schedule 2 of the savings, transitional & other provisions of the Roads Act 1993 provides that a Public Authority, such as the LAHC, does not require consent from a Road Authority to exercise its functions in respect of an unclassified road that is not a Crown road.”</i> - The LAHC requested that all references to S68 of the Local Government Act be deleted as <i>“Pursuant to S.69 of the Local Government Act 1993, S.68 does not require the Crown to obtain the approval of a Council to do anything that is incidental to the erection or demolition of a building, including construction &/or activities in the road reserve”</i>	Council has noted the comments from the LAHC. Council has retained the conditions regarding S138 of the Roads Act, and S68 of the Local Government Act in order to ensure any appropriate site specific needs are met, as a number of the conditions contain a number of requirements. Council has used the recommended wording provided by the LAHC in the.

		The LAHC did advise that should Council seek to keep these conditions referring to S138 of the roads Act and S68 of the Local Government Act, that the following wording be inserted: <i>“Separate approval will be required under Section 138 of the Roads Act 1993 for any of the following activities carried out in, on or over a public road (including the footpath) listed below if not exempt under Section 69 of the Local Government Act 1993.”</i>	
2	Fire Safety Measures Conditions 12, 49,58	The LAHC has advised that as these measures are covered by the Building Code of Australia they are not required. The LAHC has advised that should Council seek to retain these conditions that this is satisfactory	Council has noted the comments, and has retained these conditions.
3	Fees to be Paid Condition 13	The LAHC advises <i>“The payment of a security/maintenance bond/bank guarantee is not considered to be appropriate for a Crown authority. There is no legislative basis for bonds to be levied on the Crown. LAHC’s Building Contractor will be required to pay for any damage caused to Council’s property”</i>	Council requires a bond to be paid in order to ensure any damages that may occur can be recovered through this bond. Council is not party to any agreement or contract between the LAHC and its contractors, therefore this condition will remain.

4	Tree removal Condition 23	The LAHC seeks to delete the following wording from this condition <i>“No additional trees are to be removed on the site or neighbouring properties without the prior written approval of Council, except for exempt species within the site.”</i> The LAHC advised that this wording is redundant as the table this wording identifies the species for removal. The LAHC has advised that should Council seek to retain this wording that this is also satisfactory.	Council seeks to retain this wording in order to ensure that no other trees are removed during construction, despite specific trees being identified for removal.
5	Demolition and asbestos Condition 24, 27	The LAHC seeks to delete these conditions advising <i>“The contractor engaged to demolish the structures will prepare and submit the demolition waste management plan required under AS 2601-2001 to Workcover for approval, being the enforcing agency, under the Work, Health and Safety Act 2011 and the Work, Health and Safety Regulation 2011 which forms part of the contract. This also applies to any issue relating to asbestos removal.”</i>	Council acknowledges these comments, however will retain this condition to ensure that safe removal and demolition occurs.
6	Restriction to User and Positive Covenant for On-Site Detention Facility	The LAHC advised that the specific details/ wording of the covenant are not required as the opening paragraph of this conditions concludes with <i>“The terms of the instrument are to be in accordance with Council’s standard terms and</i>	Council does not agree with the removal of part of the condition as it seeks to ensure the correct wording and any standard terms are used in relation to the restriction and positive

	Condition 44	<i>restrictions which are as follows:</i>	covenant
7	Amalgamation and Overland Flow Condition 47	The LAHC advised that Council does not need to see or approve of any documents regarding amalgamation and registration with the LRS. They advise that “as a Crown authority does not require further approvals from Council. Section 69 of LGA removes the need to obtain the further approval of Council and thereby recognises the Land & Housing Corporation’s position as a Crown authority, in accordance with Department of Planning (formerly Planning NSW) Circular D6 – Crown Development Applications and Conditions of Consent”	Council has retained its original condition, however has added the wording “, <i>except where the submission of the plan to Council is exempt under Section 69 of the Local Government Act 1993.</i>” Consistent with advice provided by the LAHC in issue (1) above.

Should the Land and Housing Corporation not agree with the recommended conditions, this matter will need to be referred to the Minister.

CONCLUSION

The application has been assessed having regard to the Matters for 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 consolidation of four allotments, demolition works, tree removal and construction of a two storey seniors housing development comprising of 20 units and at grade parking for six vehicles, associated landscaping and site works.

The proposed development application was lodged on the 4 September 2020 with a capital investment value of \$5,795,000 which classifies the development as Regionally

significant as it is Crown development over \$5million. Therefore, the Sydney South Regional Planning Panel is the consent authority.

The development has been assessed against the requirements of the relevant planning instruments and development control plans and is consistent with those requirements. Following detailed assessment it is considered that Development Application No DA2020/0342 be approved subject to the conditions referenced at the end of this report.

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.
- The proposal has been designed to generally satisfy the key provisions of the SEPP (Housing for Seniors and People with a Disability).
- The proposed design has been sensitively considered to be consistent with the anticipated, desired future character for development in this area.
- The proposal aims to provide a high-quality building that will establish a positive urban design, architectural and planning precedent in the area.

THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the South Sydney Planning Panel, grant development consent to Development Application DA2020/0342 for demolition works, tree removal, and construction of a seniors housing development and consolidation of the site into a single lot on Lots 55 to 58 in DP35124, and known as 2-8 Macpherson Street, Hurstville subject to the following conditions of consent:

SPECIFIC DEVELOPMENT CONDITIONS

Development Details

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

Description	Reference No.	Date	Revision	Prepared by
Site Plan	DA-0102	18/3/21	8	SJB
Floor Plan - Ground	DA-0201	18/3/21	8	SJB
Floor Plan – Level 1	DA-0202	31/7/20	7	SJB
Floor Plan - Roof	DA-0203	31/7/20	7	SJB
Elevations	DA-0501	31/7/20	7	SJB
Sections	DA-0601	31/7/20	7	SJB
Window Schedule	DA-1601	1/5/20	1	SJB
Materials and External Finishes	DA-1611	31/7/20	7	SJB
Existing and Demolition Plan	DA-2501	31/7/20	7	SJB
Landscape Plan	LA LP 01/06	18/3/21	06	Black Beetle
Landscape Plan	LA LP 02/03	18/3/21	03	Black Beetle
Stormwater Plans	D00	20/8/20	B	Smart Structures Australia
Stormwater Plans	D01	11/3/21	D	Smart Structures Australia
Stormwater Plans	D05	11/3/21	D	Smart

				Structures Australia
Stormwater Plans	D10	11/3/21	D	Smart Structures Australia
Stormwater Plans	D11	20/8/20	B	Smart Structures Australia
Stormwater Plans	D15	20/8/20	B	Smart Structures Australia
Stormwater Plans	D16	20/8/20	B	Smart Structures Australia

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

Separate Approvals Required Under Other Legislation

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

Separate approval will be required under Section 138 of the Roads Act 1993 for any of the following activities carried out in, on or over a public road (including the footpath) listed below if not exempt under Section 69 of the Local Government Act 1993.

- (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.

Evidence of any approval shall be provided to the Certifying Authority prior to commencement of construction.

The relevant Application Forms for these activities can be downloaded from Council’s website www.georgesriver.nsw.gov.au. For further information, please contact Council’s Customer Service Centre on (02) 9330 6400.

Requirements of Concurrence, Integrated & Other Government Authorities

3. **Electricity Supply** - An application is required to be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application being lodged with Ausgrid is required to be provided to the Certifying Authority. For further details, you are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services).
4. **Connection to the network** - The following are to be obtained prior to work commencing:

(a) written clearance from the electricity supply authority stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development;

(b) A certificate from an approved telecommunications carrier to certify that satisfactory arrangements have been made to ensure the provision of underground telephone services to each dwelling in the development; and

(c) Where the site is to be connected to reticulated gas, a certificate from an approved gas carrier to certify that satisfactory arrangements have been made to ensure the provision of underground gas services to each dwelling in the development.

5. **Electricity Supply to Development** - The electricity supply to the Development must be underground.
6. **Sydney Water - Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed/stamped. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in™ agent has appropriately stamped the plans prior to the commencement of works.
7. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the [Sydney Water Act 1994](http://legislation.nsw.gov.au/) must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site www.sydneywater.com.au then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

Prior to the Commencement of Works (including Demolition and Excavation)

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

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

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

9. **On Site Detention** - The submitted Concept Stormwater and OSD Plan prepared by Smart Structures Australia Consultants with reference number "Stormwater Drainage Plan", Drawing No. 180320, Issue "D", 17 Sheets, dated 11/3/2021 has been assessed as a concept plan only. The final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted to LAHC and Council prior to commencement of construction works.

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

The required OSD storage requirements and permissible discharge are to be calculated in accordance with Table 3 of Council's Stormwater Management Policy.

A minimum 42.92 cubic metre OSD volume is to be provided in accordance with the Stormwater Concept Plan and Council's Stormwater Management Policy.

The OSD facility shall be designed to meet all legislated safety requirements. A durable metal plate or similar sign is to be placed at the OSD facility and must bear the words:

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

Full details shall be provided in the construction drawings.

10. **Stormwater Drainage Application** - This Development Consent does not give approval to undertake new street drainage pit and pipe works on public infrastructure as per Stormwater Drainage Plan", Drawing No. 180320, Issue "D", 17 Sheets, dated 11/3/2021, prepared by Smart Structures Australia. A separate approval of a Stormwater Drainage Application is required under Section 138 of the Roads Act 1993 and/or Section 68 of the Local Government Act 1993 if not exempt under Section 69 of the Local Government Act 1993, for the following:

- a) Stormwater & ancillary works in the road reserve. This includes connections to council.
- b) Stormwater & ancillary to public infrastructure on private land

Evidence of any approval shall be provided to the Certifying Authority prior to commencement of construction.

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

12. **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) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.

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

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

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

The profile will be used to assess suitability of proposed internal driveway levels and does not represent final footpath or road levels. The levels on Councils road related area including boundary level will be verified following the submission of an "Application for Driveway Crossing and Associated Works on Council Road Reserve" issued under Section 138 Roads Act if not exempt under Section 69 of the Local Government Act 1993. "

- a) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification.

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

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

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

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

Payments must be made prior to occupation.

Council will only accept Bank Cheque or Electronic Funds Transfer (EFT) for transaction values of \$500,000 or over. Council must 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
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit Calculation is based on \$1,236 per metre of street frontage as follows: Macpherson Street: 68.2m	\$84,301.38
Inspection Fee for Refund of Damage Deposit (Minimum of two (2) inspections at \$371 per inspection)	\$742.00

General Fees

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

15. **Site Management Plan - Major Development** - A Site Management Plan must be submitted to the Certifying Authority prior to the commencement of work, and include the following:
- a) location of protective site fencing;
 - b) location of site storage areas/sheds/equipment;

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

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

16. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1082949M_02 dated 18/6/20 must be implemented on the plans lodged with the Certifying Authority.
17. **Erosion & Sedimentation Control** - Erosion and sediment controls must be provided to ensure:
 - (a) Compliance with the approved Erosion & Sediment Control Plan
 - (b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
 - (c) All clean water runoff is diverted around cleared or exposed areas
 - (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
 - (e) All erosion and sediment controls are fully maintained for the duration of

demolition, excavation and/or development works

- (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

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

- 18. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).
- 19. **Waste Management Plan** - A final Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Certifying Authority prior to the commencement of work.

The final Waste Management Plan must state:

- (a) That it is the responsibility of a designated person to present the bins to the kerb no earlier than 12 hours prior to collection and remove the bins from the kerbside no later than 12 hours post collection.
 - (b) Any garden waste must be removed from the property by a licensed landscape contractor.
- 20. **Footpath Construction** - The following footpath works will be required to facilitate pedestrian access between the proposed development site and Barnards Avenue:
 - a) Construct a New 1.5m wide footpath for the full frontage of the site in accordance with Council's Specifications for footpath and the relevant Australian Standards, applying at the time construction approval is sought.

- b) Construct a New 1.5m wide footpath on the North Western side of Low Street for the full length between Macpherson Street and Emily Street.
- c) Construct a New 1.5m wide footpath on the South Western side of Emily Street for the full length between Low Street and Barnards Avenue.

The Applicant is required to submit Public Domain Plans which are to consist of full civil engineering drawings to Australian Standards, inclusive of proposed footpath locations, kerb ramps, cross sections, existing and proposed footpath levels, tree locations and service utility asset locations in accordance with Councils specifications for footpath and the relevant Australian Standards.

Tree Protection Measures – street trees for footpath construction

- a) The tree protection measures must be undertaken in accordance AS4970 - 2009 *Protection of trees on development sites*.
- b) All trees on Council property must be protected before site set up and maintained during excavations, formwork and concrete pours.

Excavation works near trees for footpath construction

- c) To preserve all Council's street trees from excavators and concrete pours, no work shall commence until the trunk/ branches are protected, in accordance with AS4970 - 2009, *Protection of trees on development sites*, by the wrapping of geo woven fabric around the trunk 4 / 5 times and the placement of two metre long, lengths of 50mm x 100mm timber battens vertically arranged around the trunk, with 100mm spacing's. The timber battens shall be secured by wire/ hoop straps but not secured into the tree itself. The trunk/ branch protection shall be maintained intact until the completion of all works.
- d) Excavations for the purposes of footpath construction around trees located upon Council's street verge must be supervised by an AQF 5 Project Arborist to ensure that the root system will not adversely be affected.

21. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Black beetle Landscape Architecture, Ref No BB 1262, Stage C, LA LP 01/05 and dated 20/08/20. The landscaping shall be maintained in accordance with the approved plans, subject to the following:

- a) The proposed tree and plant species, pot/ bag size and quantities of trees and plants shall be in accordance with the proposed plant schedule and plan view (01) upon the landscape plan.

- b) All trees proposed upon the approved landscape plan shall be of 200 litre pot/ bag size, contract grown prior to landscape works and comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification;
- c) If the planted trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.

22. **Tree Protection and Retention** - The tree/s to be retained and protected are listed in the table below.

Tree Species	Location of Tree / Tree No.	Tree Protection Zone Fencing distance from trunk
T1 – <i>Callistemon viminalis</i>	Councils street tree	3.0 metres radially out from its trunk
T4 – <i>Arbutus unedo</i>	Neighbours tree, No 7 Low St	3.0 metres radially out from its trunk, into site
T5 – <i>Stenocarpus sinuatus</i>	Neighbours tree, No 7 Low St	4.8 metres radially out from its trunk into site
T6 – <i>Callistemon viminalis</i>	Councils street tree	5.6m – trunk wrap as per AS4970 - 2009
T17 – <i>Cinnamomum camphora</i>	Neighbours tree at rear	6.0 metres radially out from its trunk
T18 – <i>Ficus rubiginosa</i>	Neighbours tree at rear	6.2 metres radially out from its trunk
T22 – <i>Callistemon viminalis</i>	Councils street tree	3.4 – trunk wrap as per AS4970 - 2009
Tree 26 – <i>Eucalyptus scoparia</i>	Councils street tree	6 metres radially out from trunk without blocking

		footpath
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- a) The client shall engage a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation.
- b) A certificate of compliance letter from the AQF 5 Arborist must be forwarded to the PCA – Principal Certifying Authority, at three (3) stages being, before works, during works and once all building works have been completed, that tree protection measures have been installed and being maintained during the building process.

Tree Protection Measures

- c) All trees on Council property, subject site and adjacent sites, to be retained must be protected before site set up and maintained during demolition, excavation and construction of the site.
- d) Although trees may be on adjacent sites, the tree protection fencing must be placed on the nominated distances as per table above, out from the trees trunk, within the subject site to minimise impacts to neighbours trees and kept for the entirety of the project.
- e) The tree protection measures must be undertaken in accordance AS4970 - 2009 Protection of trees on development sites.
- f) Details of the tree protection measures to be implemented must be provided with the construction drawings by a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation.
- g) The engaged AQF 5 Consulting Project Arborist must be present on-site during the stages of site set up, excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
- h) In accordance with AS 4970-2009 *Protection of trees on development sites*, a protective fence consisting of 2.4 x 1.8 metres high, fully supported chainmesh fence shall be used. The distance of the fence out from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.
- i) The tree protection fencing must be kept in place during demolition, excavation and construction and also have a sign displaying 'Tree Protection Zone – DO NOT ENTER' attached to the fence and must also include the name and contact details of the Project Arborist.

- j) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
- k) No building products, preparation of building products, storage of materials, stockpiling, site sheds or services shall be installed within the TPZ of the trees to be retained.

Excavation works near tree to be retained

- l) All stormwater piping and excavations within the tree protection zones of any trees to be retained on the site, Councils street trees or adjacent sites, must be completed by hand and or Air Spade type of non-destructive excavations, with no machinery/ bucket type of excavations permitted.
- m) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the AQF 5 Project Arborist to ensure that the root system will not adversely be affected.
- n) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the AQF 5 Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.
- o) Tree Protection Zones around the trees to be retained are not to have soil level changes, building product / materials stored or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

Pier and Beam / Cantilever / Post and rail –

- p) To preserve Councils street trees and neighbouring trees, the footings of any front fencing or retaining walls, must be isolated pier and beam construction within the TPZ of trees to be retained. The piers shall be hand dug and located such that no roots of a diameter greater than 50mm are severed or injured in the process of any site works during the construction period. The beam shall be located on or above the existing soil levels.
- q) Removal or pruning of any other tree (that would require consent of Council) on the site is not approved. All pruning must be undertaken by a qualified Arborist in accordance with AS4373 -2007 Pruning of Amenity Trees and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).

23. **Tree Removal & Replacement - Tree removal** - Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
T3 – <i>Ligustrum lucidum</i>	X1	Front south corner of site
T7 – <i>Jacaranda mimosifolia</i>	X1	Front of site
T8 – <i>Pittosporum undulatum</i>	X1	Front of site
T8A – <i>Banksia integrifolia</i>	X1	Front of site
T9 – <i>Cinnamomum camphora</i>	X1	Councils street tree
T10/11/14 – <i>Olea europaea</i>	X3	Front boundary of site
T12 – <i>Livistonia australis</i>	X1	Front boundary of site
T13 – <i>Cinnamomum camphora</i>	X1	Front boundary of site
T15 – <i>Camellia japonica</i>	X1	Front of site
T16 – <i>Chamaecyparis obtusa Crippsii</i>	X1	Middle of site
T19 / 21 – <i>Cinnamomum camphora</i>	X2	Rear middle of site
T23 – <i>Ligustrum lucidum</i>	X1	Front north of site
T24 – <i>Araucaria columnaris</i>	X1	Front north of site
T25 – <i>Acacia parramattensis</i>	X1	Front north of site
T27 – <i>Ligustrum lucidum</i>	X1	Middle of site, north
T28 – <i>Banksia integrifolia</i>	X1	Rear of site, north

T29 – <i>Phoenix canariensis</i>	X1	Rear of site, north
T30 – <i>Prunus Spp</i>	X1	Rear of site, north
T31/ 32 – <i>Cinnamomum camphora</i>	X1	Rear of site, north

General Tree Removal Requirements

All tree removal shall be carried out by a minimum certificate Level 3, Licenced and insured Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - Pruning of Amenity Trees and Tree Works Industry Code of Practice (Work Cover NSW 1.8.98).

No additional trees are to be removed on the site or neighbouring properties without the prior written approval of Council, except for exempt species within the site.

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

Primary Address

2 Macpherson Street, Hurstville NSW 2220

Unit Addresses

Unit description on DA plan	Proposed street address to comply with AS/NZS 4819:2011 and NSW Addressing Manual
G04	G01/2 Macpherson Street, Hurstville NSW 2220
G01	G02/2 Macpherson Street, Hurstville NSW 2220
G02	G03/2 Macpherson Street, Hurstville NSW 2220
G04	G04/2 Macpherson Street, Hurstville NSW 2220
G10	G05/2 Macpherson Street, Hurstville NSW 2220
G09	G06/2 Macpherson Street, Hurstville NSW 2220
G08	G07/2 Macpherson Street, Hurstville NSW 2220
G07	G08/2 Macpherson Street, Hurstville NSW 2220

G09	G09/2 Macpherson Street, Hurstville NSW 2220
G10	G10/2 Macpherson Street, Hurstville NSW 2220
1.04	101/2 Macpherson Street, Hurstville NSW 2220
1.01	102/2 Macpherson Street, Hurstville NSW 2220
1.02	103/2 Macpherson Street, Hurstville NSW 2220
1.03	104/2 Macpherson Street, Hurstville NSW 2220
1.10	105/2 Macpherson Street, Hurstville NSW 2220
1.09	106/2 Macpherson Street, Hurstville NSW 2220
1.08	107/2 Macpherson Street, Hurstville NSW 2220
1.07	108/2 Macpherson Street, Hurstville NSW 2220
1.06	109/2 Macpherson Street, Hurstville NSW 2220
1.05	110/2 Macpherson Street, Hurstville NSW 2220

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

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

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

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

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

26. **Demolition Notification Requirements** - The following notification requirements apply to this consent:
 - (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
 - (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
 - (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
27. **Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the Work Health and Safety Regulation 2011.
28. **Dial before your dig** - The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the commencement of work. The sequence number obtained from "Dial Before You Dig" shall be forwarded to the Certifying Authority and Council for their records.

29. **Registered Surveyors Report - During Development Work** - A report by the Building Contractor must be submitted to the Certifying Authority at each of the following applicable stages of construction:

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

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

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

During Construction

31. **Contamination of land** - Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions

about site contamination and remediation must be notified to Council and the certifying authority and all works on site must cease immediately.

If new information as outlined above comes to light, a detailed site contamination investigation shall be carried out by a certified contaminated land consultant in accordance with the requirements of the relevant NSW EPA Guidelines approved under the Contaminated Land Management Act 1997 including the EPA.

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

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

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

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

32. **Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.
33. **Hours of construction for demolition and building work** - Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.

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

34. **Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.
35. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.
36. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act 1993 and/or under Section 68 of the Local Government Act 1993, if not exempt under Section 69 of the Local Government Act 1993.

Penalty infringement Notices may be issued for any offences and severe penalties apply.

37. **Road Opening Permit** - Separate approval will be required under Section 138 of the Roads Act 1993 for any of the following activities carried out in, on or over a public road (including the footpath) listed below if not exempt under Section 69 of the Local Government Act 1993:
 - a) A Road Opening Permit must be obtained from Council for every opening of a public road reserve to access services including sewer, water mains, gas mains, connecting of stormwater to the kerb and telecommunication. This is for any work that involves excavation through or within a public road, kerb and gutter, and or the public footway between the road and the property boundary. The permit is to be lodged prior to the commencement of works. Additional approval is required from Roads and Maritime Services for works on a State Road.
38. **Damage within Road Reserve and Council Assets** - The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works arising as a result of the development at, near or associated with the site.

39. **Public Utility and Telecommunication Assets** - The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and reinstate any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
40. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

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

Prior to Occupation

41. **Restriction on use of land – SEPP (Housing for Seniors) 2004** - A Restriction on the Use of Land shall be created pursuant to Section 88E of the Conveyancing Act 1919, with the Restriction including the following wording:
- ‘The lots burdened shall not be occupied by any person other than:*
- i. Seniors or people who have a disability,*
 - ii. People who live in the same household with seniors or people who have a disability,*
 - iii. Staff employed to assist in the administration of and provision of services to housing provided under the SEPP (Housing for Seniors or People with a Disability) 2004.*

The terms referenced above are as defined in [State Environmental Planning Policy \(Housing for Seniors or People with a Disability\) 2004](#).

This Restriction on Use of Land shall be registered on the title relating to the subject site, prior to Occupation.

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

43. **Requirements prior to Occupation of the development - Stormwater and Onsite Detention Works** - The following shall be completed and or submitted to the PCA prior to Occupation:

- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction plans prior to Occupation.
- (b) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the Certifying Authority prior to Occupation.

The following shall be completed and or submitted to the Certifying Authority prior to Occupation:

- (a) Construction of new vehicle crossings as required by this consent.
 - (b) Replacement of all redundant vehicle crossing laybacks with kerb and guttering, and replacement of redundant concrete with turf.
44. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.
45. **Restriction to User and Positive Covenant for On-Site Detention Facility** - A Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owners of the land. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

Restrictions on Use of Land

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

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

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

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

- a) in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above*
- b) the Council may recover from the registered proprietor in a Court of competent jurisdiction:*
 - i. any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (i) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.*
 - ii. legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.*

46. **Maintenance Schedule On-site Stormwater Management** - A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule shall outline the required maintenance works, how and when these will be done and who will be carrying out these maintenance works.
47. **Stormwater drainage works – Works As Executed - Underground Tank** - Prior to Occupation, storm water drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to 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.
 - (f) The Work-As-Executed plans are prepared on the copies of the approved drainage plans and variations are marked in red ink;
 - (g) The Work-As-Executed plans have been prepared by a registered surveyor certifying the accuracy of dimensions, invert levels, surface levels, storage volume etc;
- Council must advise in writing that they are satisfied with the Works-As-Executed prior to Occupation.
48. **Amalgamation of Four Lots into a Single Lot and Creation of Overland Flow Drainage Easement prior to Occupation**
- (a) All four lots shall be amalgamated into a single lot and a Deposited Plan (with Administration Sheet) is to be prepared by a Registered Surveyor. The plan is to be submitted to Council for review and approval prior to its registration,

except where the submission of the plan to Council is exempt under Section 69 of the Local Government Act 1993.

- (b) A 1.0m wide drainage easement shall be created for the benefit of the affected upstream properties that adjoin the consolidated lot as per plan prepared by Smart Structures Australia Consultants with reference number "Stormwater Drainage Plan", Drawing No. 180320, Issue "D", Sheet D01, dated 11/3/2021. All details shall be incorporated with the Deposited Plan and submitted to Council for review and approval prior to its registration, except where the submission of the plan to Council is exempt under Section 69 of the Local Government Act 1993.
- (c) Georges River Council should be designated as beneficiary of the easement and is to be named as the Authority whose consent is required to release, vary or modify the restriction. The restriction must be incorporated in the deposited plan and the registration with the NSW Land and Registry Services must be eventuated together with the registration of the deposited plan.

The following terms shall be included as the terms of restriction.

- i. This covenant shall bind all persons who are or claim under the registered proprietor(s) as stipulated in Section 88E(5) of the Act.

The authority having the right to release vary or modify this Restriction as to User is **Georges River Council**.

Note: The document/instrument shall be submitted to Council for approval, together with other relevant documents prior to lodgement with the NSW Land and Registry Services, except where the submission of the plan and other relevant documents, to Council, is exempt under Section 69 of the Local Government Act 1993

Evidence of registration of the easement to drain water benefitting adjoining upstream properties and burdening the title of the consolidated lot showing covenants and restrictions shall be provided to Council prior to Occupation.

- 49. **Restriction on use of land for overland flow from upstream properties to the newly created lot** - A Restriction of Use of the Land is to be created over the consolidated lot by Section 88B of the Conveyancing Act 1919 to ensure that the overland flow path of storm waters runoff arriving from upstream rear properties

and passing through grassed swale along north- eastern and south eastern boundaries of the site is maintained in accordance with the assessment of the development. This Restriction shall be worded as follows:

- (a) No obstruction or modification along the grassed swale shall be permitted without the prior consent of Georges River City Council. (This is required to allow the free flow of upstream properties surface waters runoff through the site to Macpherson Street at the front of the property).*
- (b) No materials whatsoever shall be placed or stored in the void area underneath the ground floor slab. (This is required to keep the void clear of obstructions to allow the free flow of surface waters to and from this area).*
- (c) No obstructions along the boundary fences of the lots burdened, (including internal dividing fences), such as raised garden beds shall be permitted. (This is required to allow the free flow of upstream rear properties surface waters through the site to Macpherson Street drainage system).*

Georges River Council is to be nominated as the Authority to release, vary or modify this Restriction.

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

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

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

51. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any commercial/retail/residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted to the Certifying Authority prior to occupation.
52. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to the Ausgrid, if required.
53. **BASIX Compliance Certificate** - A Compliance Certificate must be provided to the Certifying Authority regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before Occupation.
54. **Completion of Landscape Works** - Prior to occupation, all landscape works must be completed in accordance with approved landscape plans and specifications, drawn by Black beetle Landscape Architecture and Design, Dwg LA LP 01 /05, dated 20/08/20.

An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the Certifying Authority.

Operational Conditions (Ongoing)

55. **Housing for Seniors & People with a Disability** - The development approved under this consent constitutes "Housing for Seniors or People with a Disability" as defined under [State Environmental Planning Policy \(Housing for Seniors or People with a Disability\) 2004](#). Accordingly only those people who meet the following criteria may occupy this accommodation:
 - (a) seniors or people who have a disability,
 - (b) people who live within the same household with seniors or people who have a disability,
 - (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

"Seniors" are any of the following:

- (a) people aged 55 or more years,
- (b) people who are resident at a facility at which residential care (within the meaning of the [Aged Care Act 1997](#) of the Commonwealth) is provided,
- (c) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

“People with a disability” are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.

56. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with AS 4282-2019: *Control of the obtrusive effects of outdoor lighting*.
57. **Lighting - General Nuisance** - Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare.

Flashing, moving or intermittent lights or signs are prohibited.

58. **Entering & Exiting of vehicles** - All vehicles shall enter and exit the premises in a forward direction.
59. **Annual Fire Safety Statement** - The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
 - (a) Within 12 months after the date on which the fire safety certificate was received.
 - (b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.
 - (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
 - (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.
60. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying plants and other operations required to maintain healthy trees, plants and turfed areas.

Tree Protection Measures

A final certificate of compliance letter, once all building and landscape works have been completed, from the engaged AQF 5 Consulting Arborist, that tree protection measures have been installed and maintained for the entirety of the project and report on the condition of the trees that as part of this Consent, were to be protected and retained.

A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy, Masterplan, and Tree Management Policy 2019, can be downloaded from Council's website www.georgesriver.nsw.gov.au.

Prescribed Conditions

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

END CONDITIONS

NOTES/ADVICES

61. **Lapsing of Consent** - This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.
62. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)**
NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au
63. **Noise - Noise related conditions** - Council will generally enforce noise related conditions in accordance with the Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the Protection of the Environment Operations Act 1997.

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
 - (b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
 - (c) New South Wales Government Legislation home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 (www.legislation.nsw.gov.au).
 - (d) Australian Acoustical Society - professional society of noise-related professionals (www.acoustics.asn.au/index.php).
 - (e) Association of Australian Acoustical Consultants - professional society of noise related professionals (www.aaac.org.au).
 - (f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).
64. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.
65. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.
66. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

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

amounts up to \$21,000, using either MasterCard or Visa.

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

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