

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSSH-28
<b>DA Number</b>	DA2020/0352
<b>LGA</b>	Georges River Council
<b>Proposed Development</b>	Demolition works, remediation and construction of a mixed use development comprising four (4) buildings being from three (3) to twenty (20) storey's in elevation containing commercial floor space, a 145 room hotel and 254 apartments above four (4) levels of basement containing 524 car spaces, landscaping, site works and stratum subdivision.
<b>Street Address</b>	61-75 Forest Road and 126 Durham Street, Hurstville Lot 1 DP 225302 Lot 100 and Lot 101 DP 776275 Lot 10 DP 621395 Lots 1, 2,3 and 4 DP 12517
<b>Applicant/Owner</b>	Applicant- Aaron Sutherland Owner – Prime Hurstville Pty Ltd
<b>Date of DA lodgement</b>	10 September 2020
<b>Total number of Submissions Number of Unique Objections</b>	Three (3) submissions received.
<b>Recommendation</b>	Approval subject to conditions
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	Regional Development is defined in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.  Development with a capital investment value (CIV) over \$30 million is classified as "Regional".  The CIV of this development as outlined in the application is \$128,390,000 including GST.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning and Assessment Act 1979.</li> <li>• Environmental Planning and Assessment Regulation 2000.</li> <li>• Water Management Act 2000</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No.55 – Remediation of Land</li> <li>• State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development</li> </ul>

	<ul style="list-style-type: none"><li>• State Environmental Planning Policy (State and Regional Development) 2011</li><li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li><li>• Draft Environment State Environmental Planning Policy</li><li>• Draft Remediation of Land SEPP</li><li>• Greater Metropolitan Regional Environmental Plan No 2 - Georges River Catchment</li><li>• Hurstville Local Environmental Plan 2012</li><li>• Draft Georges River Local Environmental Plan 2020</li><li>• Hurstville Development Control No.2</li><li>• Interim Georges River Development Control Plan.</li><li>• Draft Georges River Development Control Plan 2020</li><li>• Draft Design and Place State Environmental Planning Policy</li></ul>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"><li>• Statement of Environmental Effects.</li><li>• Architectural plans</li><li>• Clause 4.6 variation requests for Building Height and Floor Space Ratio associated with the land zoned B4 and the area identified as W1 with a permissible Floor Space Ratio of 3.5:1 (see figure 13 within the body of this report).</li></ul>
Clause requests4.6	Clause 4.3 Building Height Clause 4.4 Floor Space Ratio.
Report prepared by	Michael Hornery Principal Planner
Report date	27 April 2021
<b>Summary of s4.15 matters</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	
Yes	
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	
Yes	
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	
Yes – Building exceeds Clause 4.3 Height of	

	<b>Building Standard and Clause 4.4 Maximum Floor space ratio associated with the land zoned B4 and the area identified as W1 with a permissible Floor Space Ratio of 3.5:1 (see figure 13 within the body of this report).</b>
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	<b>Not applicable</b>
<b>Conditions</b> Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	<b>Yes</b>

## **Executive Summary**

### **Proposal**

1. Council received a development application (DA2020/0352) seeking consent for demolition works, remediation and construction of a mixed use development comprising four (4) buildings being from three (3) to twenty (20) storey's in elevation containing commercial floor space, a 145 room hotel and 254 apartments above four (4) levels of basement containing 524 car spaces, landscaping, site works and stratum subdivision.
2. In response to the issues raised by Council and Council's Urban Designer along with the issues identified by the Sydney South Planning Panel (SSPP) during the briefing, have resulted in the proposal being amended to include demolition works, remediation and construction of a mixed use development

comprising four (4) buildings being from three (3) to twenty (20) storey's in elevation containing commercial floor space, a 76 room hotel and 260 apartments above four (4) levels of basement containing 476 car spaces, landscaping, site works and stratum subdivision. The application is integrated development under the Water Management Act 2000.

This assessment is based on these amended plans.

### **Site and Locality**

3. The subject development site is known as 61-75 Forest Road and 126 Durham Street, Hurstville.

The allotments and their legal description are noted below:

- 61 -65 Forest Road – Lot 1 DP 225302.
  - 67-69 Forest Road – Lot 101 DP 776275.
  - 71A Forest Road – Lot 100 DP 776275.
  - 73 Forest Road – Lot 10 DP 621395.
  - 75 Forest Road – Lot 3 & Lot 4 DP 12517.
  - 126 Durham Street – Lot 1 & Lot 2 DP 12517.
4. It is an irregular shaped allotment with a 61.68m frontage to Roberts Lane, a 35.13 metre frontage to Durham Street and a 71.61 metre frontage to Forest Road. The site has a total area of 8,545 sqm and has a cross fall of approximately 3.5m from north to south.
  5. Situated on the development site are a number of industrial and commercial buildings currently being used for retail purposes, self-storage, car sales and repairs and a car wash.
  6. The site is located within the Hurstville City Centre in the Eastern Bookend precinct. This precinct is dominated by the East Quarter buildings located to the south of the site, transforming it a mixed-use gateway to the City Centre.

### **State Environmental Planning Policies**

7. The proposal has been considered to be satisfactory in respect 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 No.55 – Remediation of Land.
  - State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
  - State Environmental Planning Policy (Building and Sustainability Index:2004).
  - State Environmental Planning Policy (Infrastructure) 2007.
  - State Regional Environmental Plan No 2 – Georges River Catchment.
  - State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

- Draft Environment State Environmental Planning Policy.
- Draft Remediation of Land SEPP.
- Draft Design and Place State Environmental Planning Policy.

### **Zoning and HLEP (2012) Compliance - LEP**

8. The site is zoned B4 Mixed use pursuant to the provisions of the Hurstville Local Environmental Plan 2012. The proposal satisfies the B4 zone objectives. The proposed mixed use development includes a number of uses including Residential flat buildings, Shop top housing, Hotel accommodation and commercial premises which are all permitted uses within the zone. The application seeks an increase to the statutory height limit whereby the lift over run, architectural roof feature and associated services exceed the maximum permitted height for Building D. The proposal also seeks a variation to the floor space ratio associated with the land zoned B4 and the area identified as W1 with a permissible Floor Space Ratio of 3.5:1 (see figure 13 within the body of this report).
9. The application has been accompanied by Clause 4.6 -exceptions to development standards requests for variations to Clause 4.3 – Height of buildings and Clause 4.4- Floor space ratio development standards.

### **Hurstville Development Control Plan No 2**

10. The provisions of Hurstville Development Control Plan No 2 (HDCP) are applicable to the propose development. The proposal is considered to be an acceptable urban design and planning outcome for the site and generally satisfies the applicable provisions contained within the HDCP.

### **Section 8.2 – Landmark Square – Site Specific controls.**

In addition to the HDCP No 2, site specific controls have been developed for the Landmark Square development site. The proposal is considered to reasonably satisfy the objectives of the Landmark Square controls which results in an appropriate built form in relation to the applicable planning controls.

A detailed assessment of the proposal against these controls is provided later in this report.

11. In addition to the above policies and controls, the applicant has considered the issues identified by Council's assessing officers and the issues that arose during the Sydney South Planning Panel Briefing meeting held on 11 March 2021.

### **Submissions**

12. The application was advertised for a period of twenty-eight (28) days between 23 September 2020 and 21 October 2020 in accordance with the Hurstville Development Control Plan and the Georges River Council Community Engagement Strategy notification criterion. Three (3) submissions were received.

### **Level of Determination**

13. The proposal has a CIV of \$128,390,000 including GST. The development application is to be determined by the Sydney South Planning Panel due to the capital investment value (CIV) exceeding \$30 million for a mixed use development pursuant to the definition of regional development contained within 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.

#### **Voluntary Planning Agreement**

14. The Voluntary Planning Agreement (VPA) has been executed for the site as part of the Planning Proposal. This VPA requires \$1,000,000 (plus indexing) is to be paid immediately prior to the date on which the first development consent for the development on the land operates.

A deferred commencement consent is recommended to enable the payment of the financial amount required by the VPA prior to the consent becoming operational.

#### **Conclusion**

15. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed Development Application (DA2020/0352) is recommended for approval subject to the conditions referenced at the end of this report.

#### **Report in Full**

##### **Site and Locality**

16. The subject development site is known as 61-75 Forest Road and 126 Durham Street, Hurstville. The allotments and their legal descriptions are noted below:
  - 61 -65 Forest Road – Lot 1 DP 225302.
  - 67-69 Forest Road – Lot 101 DP 776275.
  - 71A Forest Road – Lot 100 DP 776275.
  - 73 Forest Road – Lot 10 DP 621395.
  - 75 Forest Road – Lot 3 & Lot 4 DP 12517.
  - 126 Durham Street – Lot 1 & Lot 2 DP 12517.

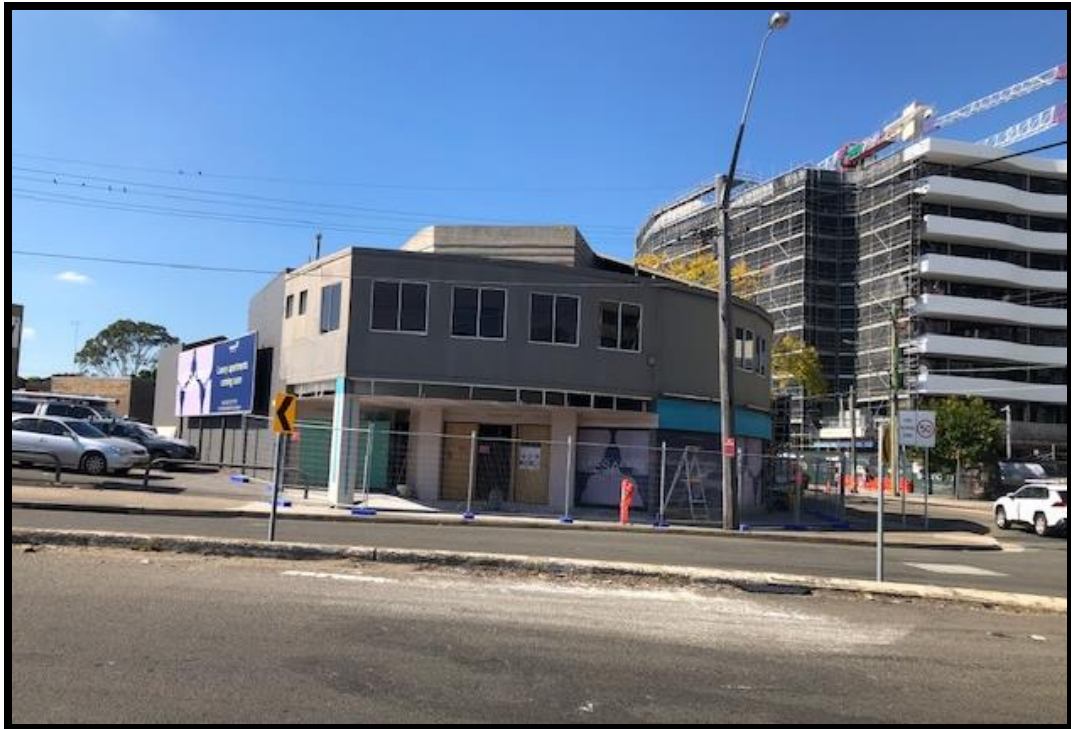


**Figure 1:** Aerial view of subject site outlined in red (Source: Intramaps 2021)

17. It is an irregular shaped allotment with a 61.68m frontage to Roberts Lane, a 35.13 metre frontage to Durham Street and a 71.61 metre frontage to Forest Road. The site has a total area of 8,545 sqm and has a cross fall of approximately 3.5m from north to south.
18. The subject site is bounded by Forest Road to the east, Roberts Lane to the northeast and Durham Street to the south. The site is approximately 450m north of Allawah train station and 750 metres east of the Hurstville train station and CBD.
19. Situated on the development site are a number of industrial and commercial buildings currently being used for retail purposes, self-storage, car sales and repairs and a car wash.
20. The site is located within the Hurstville City Centre in the Eastern Bookend precinct. The precinct is dominated by the East Quarter buildings located to the south of the site, transforming it into a mixed-use gateway to the City Centre.

The site contains eight (8) trees of varying heights which are of minor ecological significance. The request for removal has been supported by an Arboricultural report. This report has been reviewed by Council's Consultant Arborist who raises no issues with the removal of these trees subject to replacement planting as conditioned and the completion of the landscape works referenced in the landscape plan.





**Figure 2: View of the site along Forest Road, (93 Forest Road is under construction in the background).**

### **Surrounding Development**

21. The subject development site is being transformed from lower scale retail and industrial developments to a high-density mixed-use development. This is as a result of the rezoning of the land from IN2 Light Industrial and part R2 Low Density Residential to B4 Mixed Use.
22. Immediately adjoining the site to the north is No 53 Forest Road Hurstville which contains a two (2) storey brick rendered building operating as a boarding house. Further to the north across Roberts Lane is a mixture of built forms ranging from a three (3) storey mixed use developments with frontage to Forest Road and dwelling houses which have their primary frontage to Lily Street.





**Figure 3: No 53 Forest Road, Hurstville (located to the north of the development site corner of Forest Road & Roberts Lane)**

23. To the west of the site across Forest Road is also a mixture of buildings including a Toyota car dealership and Hurstville Public School.



**Figure 4: Hurstville Public School**

24. To the south of the site across Durham Street and Forest Road is the East Quarter Mixed Use development, whilst further to the east across Durham Street is Kempt Field which includes a new children's playground located directly to the south of the subject site.



**Figure 5: High Rise developments known as the East Quarter along Forest Road.**

25. Immediately to the west, within the Landmark Square Precinct, are the remaining 10 allotments which form the south western corner of the street block. Within these allotments is the heritage listed Hurstville Scout Hall. These sites have varying uses including a mattress factory, funeral home, car repairs and dry cleaners and other industrial and retails uses.

### **Description of Proposal**

26. Development consent is sought for demolition works, remediation and construction of a mixed use development comprising four (4) buildings being from three (3) to twenty (20) storey's in elevation containing commercial floor space, a 76 room hotel and 260 apartments above four (4) levels of basement containing 476 car spaces, landscaping, site works and stratum subdivision. The application is integrated development under the Water Management Act 2000.
27. The development is identified as integrated development and requires approval under clause 91 of the Water Management Act 2000 due to the excavation encountering groundwater and requiring approval from WaterNSW. General terms of approval have been issued by WaterNSW.





**Figure 6: Photomontage of the development as viewed along Forest Road (Source: Turner)**



**Figure 7: Photomontage of the development as viewed looking south along Forest Road (Source: Turner)**





**Figure 8: Photomontage of the development as viewed along Roberts Lane (Source: Turner)**



**Figure 9: Photomontage of the development as viewed within the central communal open space area (Source: Turner)**

28. A detailed breakdown of the proposed development is as follows:

**Basement Level 04**

- 136 Residential car spaces including 1 accessible space.
- 29 bicycle spaces
- Building A and B lobbies.
- Fire Stairs and lift access.

- Shared residential/retail goods lift.
- Stormwater pumping station rooms.
- Exhaust air fan room.
- Cleaner's rooms.
- Bin storage and bulky waste rooms for each building.
- Storage.
- General services.

#### Basement Level 03

- One hundred and seventy seven (177) Residential car spaces including fourteen (14) accessible spaces.
- One (1) car wash bay
- Fifty-eight (58) bicycle spaces.
- Fire hydrant/sprinkler pump room.
- Fire Hydrant/sprinkler tank room
- Sewer/stormwater pumping station
- Cleaners room
- Building C & D lobbies.
- Supermarket room.
- Fire Stairs and lift access.
- Shared residential/retail goods lift.
- Exhaust air fan room.
- Supply air fan room
- Storage.
- General services.

#### Basement Level 02

- One hundred and forty one (141) Retail spaces including five (5) accessible spaces and two (2) taxi spaces.
- Nine (9) motor bike parking spaces
- Twenty-two (22) hotel parking spaces including 1 accessible space.
- Three (3) hotel motor bike parking spaces.
- One (1) hotel bicycle space.
- Hotel and Retail Lobbies
- Fire Stairs and lift access.
- Shared residential/retail goods lift.
- Exhaust air fan room.
- Supply air fan room.
- Retail store rooms.
- Storage.
- Service rooms.
- Rainwater reuse pump/filter room.
- Trolley storage areas.
- General services.

#### Basement Level 01

- Hotel store, clean linen holding, furniture store and dirty linen holding room.
- Public toilets and amenities room comprising male, female, accessible and parents room.

- Building management room.
- Retail and hotel mail.
- Two (2) x Hotel bicycle store.
- Two (2) x large commercial tenancies and back of house areas.
- Three (3) x small retail tenancies and three (3) retail storage rooms located in the back of house corridor.
- Travelators to basement 02.
- Escalators from ground floor.
- Vehicular access from Durham Street.
- Accessible pedestrian ramp from Durham Street.
- Loading dock.
- Fire Stairs and lift access.
- Shared residential/retail goods lift.
- Retail store rooms.
- Hotel bin holding room
- Retail garbage holding rooms.
- Residential garbage holding rooms.
- Bulky waste storage room
- Communication and switch rooms.
- Building A comms room
- Building D comms and switch rooms.
- General services.

#### Lower Ground level

- Building entry.
- Two (2) x Retail premises.
- Hotel concierge.
- Hotel office and luggage rooms.
- Communications and electrical room.
- Building C and D lobbies including mailboxes and Fire Indicator Panel's (FIP).
- Hydrant boosters located on Durham Street frontage.
- Fire Stairs and lift access.
- Escalators to retail premises.
- Vehicular access from Durham Street.
- Accessible pedestrian ramp from Durham Street.
- Fire control centre.
- Pedestrian access into internal common courtyard.
- OSD tank.

#### Upper Ground floor

- Entry forecourt.
- Hotel Reception, staff room and Manager's office.
- Hotel lobby reception and business lounge.
- Hotel kitchen and toilet amenities.
- Hotel conference room
- Hotel Rooms
- Staff room.
- Communal Open space area.
- Café.



- Substation.
- Gas regulators
- Fire Stairs and lift access.
- Food kiosks.
- Vehicular access from Forest Road to basement parking.
- Vehicular access from Roberts Lane
- Retail and commercial premises.
- Public toilet facilities in Building B.
- Building B lobby including mailboxes and FIP.
- Building A Residential apartments comprising the following:
  - o Lobby including mailboxes
  - o Community Room
  - o 1 x 1 bedroom apartment.
  - o 2 x 2 bedroom apartments.
  - o 7 x 2 storey 2 bedroom apartments.
- Building D comprising the following:
  - o 5 hotel rooms including one (1) accessible room.

#### Level 01

- Building D - Hotel rooms.
- Building D - Hotel gym.
- Building D – Service and maid's room.
- Building A Residential apartments comprising the following:
  - o 2 x 1 bedroom apartments.
  - o 2 x 2 bedroom apartments.
  - o 1 x 3 bedroom apartments.
  - o First floor of 7 x 2 bedroom apartments below
- Building B Residential apartments comprising the following:
  - o 2 x 1 bedroom apartments.
  - o 6 x 2 bedroom apartment.
  - o 1 x 3 bedroom apartment.
- Building C Residential apartments comprising the following:
  - o 2 x 1 bedroom apartments.
  - o 4 x 2 bedroom apartments.
  - o 1 x 2 storey 3 bedroom apartment.
- Building D comprising the following:
  - o 16 hotel rooms.
- Fire Stairs and lift access.

#### Level 02

- Building D - Hotel rooms.
- Building D – Service and maid's room.
- Building D – Communal room
- Building A Residential apartments comprising the following:
  - o 1 x 1 bedroom apartment.
  - o 6 x 2 bedroom apartments.
  - o 1 x 3 bedroom apartments.
- Building B Residential apartments comprising the following:
  - o 2 x 1 bedroom apartments.
  - o 6 x 2 bedroom apartments.

- 1 x 3 bedroom apartments.
- Building C Residential apartments comprising the following:
  - 2 x 1 bedroom apartments.
  - 4 x 2 bedroom apartments.
  - First floor of 3 bedroom unit below
- Building D comprising the following:
  - 16 hotel rooms.
- Fire Stairs and lift access.

#### Level 03

- Building D - Hotel rooms.
- Building D – Service and maids room.
- Building B Residential apartments comprising the following:
  - 6 x 2 bedroom apartments.
  - 1 x 3 bedroom apartments.
- Building C Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.
  - 2 x 2 bedroom apartments.
  - AC Plant Room
- Building comprising the following:
  - 13 hotel rooms including one (1) accessible room.
- Fire Stairs and lift access.
- Building A rooftop.
  - Solar panels to the roof of building

**Note: There is no Level 4 due to cultural sensitivity.**

#### Level 05

- Building D - Hotel rooms.
- Building D – Service and maids room.
- Building B Residential apartments comprising the following:
  - 6 x 2 bedroom apartments.
  - 1 x 3 bedroom apartments.
- Building C Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.
  - 1 x 2 bedroom apartments.
  - 1 x 3 bedroom apartments.
- Building D comprising the following:
  - 13 hotel rooms including one (1) accessible room.
- Fire Stairs and lift access.

#### Level 06

- Building D - Hotel rooms.
- Building D – Service and maids room.
- Building B Residential apartments comprising the following:
  - 6 x 2 bedroom apartments.
  - 1 x 3 bedroom apartments.
- Building C Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.
  - 1 x 2 bedroom apartment.

- 1 x 3 bedroom apartment
- Building D comprising the following:
  - 13 hotel rooms including one (1) accessible room.
- Fire Stairs and lift access.

#### Level 07

- Building B Residential apartments comprising the following:
  - 6 x 2 bedroom apartments.
  - 1 x 3 bedroom apartments.
- Building C Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.
  - 1 x 2 bedroom apartments
  - 1 x 3 bedroom apartments.
- Building D comprising the following:
  - 5 x 2 bedroom apartments
  - Plant room for hotel
- Fire Stairs and lift access.

#### Level 08

- Building B Residential apartments comprising the following:
  - 1 x 1 bedroom apartment.
  - 2 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
  - 1 Rooftop communal open space
- Building C Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.
  - 1 x 2 bedroom apartments.
  - 1 x 3 bedroom apartments
- Building D Residential apartments comprising the following:
  - 3 x 1 bedroom apartments
  - 2 x 2 bedroom apartments
  - 1 x 3 bedroom apartments
  - Plant room for hotel
- Fire Stairs and lift access.

#### Level 09

- Building B Residential apartments comprising the following:
  - 1 x 1 bedroom apartment.
  - 2 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Building C Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.
  - 1 x 2 bedroom apartment.
  - 1 x 3 bedroom apartment.
- Building D Residential apartments comprising the following:
  - 3 x 1 bedroom apartments.
  - 3 x 2 bedroom apartment.
  - 1 x 3 bedroom apartment.
- Fire Stairs and lift access.

#### Level 10

- Building B Residential apartments comprising the following:
  - 1 x 1 bedroom apartment.
  - 2 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Building C Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.
  - 1 x 2 bedroom apartment.
  - 1 x 3 bedroom apartment.
- Building D Residential apartments comprising the following:
  - 3 x 1 bedroom apartment
  - 3 x 2 bedroom apartment.
  - 1 x 3 bedroom apartment.
- Fire Stairs and lift access.

#### Level 11

- Building B Residential apartments comprising the following:
  - 1 x 1 bedroom apartment.
  - 2 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Building C Residential apartments comprising the following:
  - 4 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Building D Residential apartments comprising the following:
  - 3 x 1 bedroom apartments.
  - 3 x 2 bedroom apartment.
  - 1 x 3 bedroom apartment.
- Fire Stairs and lift access.

#### Level 12

- Building B Roof top comprising the following:
  - Fire stairs.
  - Lift over runs.
  - Plant.
  - Cooling towers.
- Building C Residential apartments comprising the following:
  - 4 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Building D Residential apartments comprising the following:
  - 3 x 1 bedroom apartments.
  - 3 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Fire Stairs and lift access.

#### Level 13

- Building C Residential apartments comprising the following:
  - 4 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Building D Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.

- 1 x 2 bedroom apartments.
- 2 x 3 bedroom apartment.
- Fire Stairs and lift access.

**Note: There is no Level 14 due to cultural sensitivity**

#### Level 15

- Building C Residential apartments comprising the following:
  - 4 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Building D Residential apartments comprising the following:
  - 4 x 1 bedroom apartments.
  - 1 x 2 bedroom apartments.
  - 2 x 3 bedroom apartment.
- Fire Stairs and lift access.

#### Level 16, Level 17 and Level 18 (various RL's across the buildings)

- Building C Residential apartments comprising the following:
  - 4 x 2 bedroom apartments.
  - 1 x 3 bedroom apartment.
- Building D Residential apartments comprising the following:
  - 1 x 1 bedroom apartments.
  - 3 x 2 bedroom apartment.
  - 2 x 3 bedroom apartments.
- Fire Stairs and lift access.

**Note: The RL shown on the plan is RL 112.4 which is the RL for Level 17, Level 16 is 109.3 and Level 18 RL is 115.5.**

#### Level 19

- Building C Residential apartments comprising the following:
  - 1 x 2 storey 3 bedroom apartment.
  - 3 x 3 bedroom apartments.
- Building D Residential apartments comprising the following:
  - 3 x 3 bedroom apartments.
  - 1 x 2 bedroom apartment
- Fire Stairs and lift access.

#### Level 20

- Building C Residential apartments comprising the following:
  - 3 x 3 bedroom apartments.
  - First floor of the 2 storey unit below.
- Building D Residential apartments comprising the following:
  - 3 x 3 bedroom apartments.
  - Plant room
- Fire Stairs and lift access.

### **Development Summary**

29. A numerical summary of the proposed development is provided as follows:

Element	Proposal
Height	<ul style="list-style-type: none"> <li>• Building A: 12 metres.</li> <li>• Building B: 28 – 40 metres.</li> <li>• Building C: 65 metres.</li> <li>• Building D: 67.4 metres.</li> </ul>
Levels	<ul style="list-style-type: none"> <li>• Building A: 3 storeys.</li> <li>• Building B: 7 – 11 storeys.</li> <li>• Building C: 19 storeys.</li> <li>• Building D: 20 storeys.</li> </ul>
Apartments	260 residential apartments comprised as follows: <ul style="list-style-type: none"> <li>• 70 x 1 bedroom apartments (27%).</li> <li>• 136 x 2 bedroom apartments (52%).</li> <li>• 54 x 3 bedroom apartments (21%).</li> </ul>
Hotel	76 individual rooms
Car parking spaces	476 car parking spaces comprising the following: <ul style="list-style-type: none"> <li>• 313 Residential spaces.</li> <li>• 141 retail carparking spaces for:               <ul style="list-style-type: none"> <li>- Residential visitors' spaces.</li> <li>- Retail, supermarket, medical, food and beverage.</li> </ul> </li> <li>• 22 hotel spaces.</li> </ul>
Bicycle parking spaces	104 residential spaces
Common open space	2090 sqm (25%)
Deep soil Area	596.83 sqm (6.7%)
Solar access for apartments	76% - 2 hours between 9am -3pm
Cross ventilation for apartments	67.7%

## Background

30. Landmark Square Planning Proposal was gazetted on 7 August 2020, which included the following:

- Rezoning from IN2 Light Industrial and part R2 Low Density Residential to B4 Mixed Use.
- Increasing the Floor Space Ratio from 0.6 (R2) and 1:1 (IN2) to 2:1 along Roberts Lane and up to 3.5:1 for the remainder of the site (including a minimum non-residential FSR of 0.5:1).
- Increasing the maximum building height from 9m (R2) and 10m (IN2) to a range of heights being 12m, 15m, 21m, 28m, 30m, 40m and 65m.
- Amend the Active Street Frontages Map to apply active street frontages along the Forest Road and Durham Street frontages of the Precinct; and
- Apply a bonus FSR incentive of 0.5:1 based on the total Precinct site area for the purpose of hotel accommodation at the corner of Forest Road and Durham Street.



31. A pre-lodgement meeting was held on 6 July 2020.
32. DA2020/0352 (subject application) was lodged to Council on 10 September 2020 seeking development consent for the demolition of existing structures, remediation, and construction of a 3 to 20 storey mixed use development across 4 buildings containing commercial floor space, a hotel with 145 rooms, and 254 apartments, above 4 basement levels, and stratum subdivision.
33. A Request for further information was sent to the applicant on 1 February 2021 to address a number of issues as follows:
  - Urban Design.
  - Building Height.
  - Floor Space.
  - Traffic and Access.
  - Additional details and clarification of information.
  - Site amalgamation/isolation.
34. A SSPP Briefing Meeting was held on 11 March 2021, during which the following key issues had been discussed:
  - There is an expectation that the proposal will meet the new site-specific planning controls.
  - Pre-eminence of corner tower element is expected with stepping down from the corner. This and the streetscape needs further resolution.
  - Improved address and entry through increased width of site access between Building A and B.
  - SEPP 65/ ADG considerations including sunlight, natural ventilation and noise mitigation. Mechanical ventilation needs further consideration.
  - Overall FSR compliance for overall site FSR, however for individual buildings exceed specific building FSR. CI 4.6 required for deviation from the standard.
  - Height non-compliance for 3 of 4 building and reliance on CI 4.6 to justify.
  - Only entitled to a portion of FSR bonus.
  - More detail required on:
    - Traffic and parking management
    - Waste management
    - Storage
35. Based on the outcomes of the briefing and the request from Council for additional information, a number of issues were raised and have been considered by the applicant which resulted in the lodgement of amended plans and documentation. Amended plans now seek development consent demolition works, remediation and construction of a mixed use development comprising four (4) buildings being from three (3) to twenty (20) storey's in elevation containing commercial floor space, a 76 room hotel and 260 apartments above four (4) levels of basement containing 476 car spaces,

landscaping, site works and stratum subdivision. The application is integrated development under the Water Management Act 2000.

36. The plans have been amended incorporating the following changes in response to the concerns raised:

- The bridge between Buildings C and D has been removed.
- Upper ground floor updated to replace reference to food trucks with reference to food kiosks.
- Additional awning introduced along Forest Road and Durham Street frontages.
- The hydrant and booster assemblies have been relocated from Forest Road to the Durham Street frontage and related basement services have been relocated to the south.
- The basement and ground levels have been adjusted to increase the depth and volume of soil above slab and also to provide soil on slab at the front of Building A which is contiguous with the deep soil within the Roberts Lane dedication area.
- Building A has been amended as follows:
  - The building has been reduced from 6 to 3 storeys in height.
  - The southern end has been redesigned to address interface issues to the southern boundary.
  - The lobby at the north-western corner has been redesigned to provide for a wider through site link.
  - Level 1 and 2 has been updated to remove balconies to bedrooms and increase screening to address privacy between Building A and Building B.
- Building B has been amended as follows:
  - Additional screening provided to apartments to address privacy between Building A and Building B.
  - The roof top louvre element and associated Level 12 plant room has been reduced and pulled away from Forest Road and the louvres now only screen the plant area, which has resulted in Building B becoming completely height compliant.
  - The façade colours have been amended including a change of colour above Level 6.
  - Provision of an accessible toilet to the rooftop communal open space.
  - Various minor amendments to apartment layouts and windows.
- Building C has been amended as follows:
  - The building height has been reduced by reducing the floor to floor levels and is now height compliant.
  - The façade expression has been updated to provide a more horizontal expression.
  - Various minor amendments to apartment layouts and windows.
- Building D has been amended as follows:
  - The hotel accommodation has been reduced by 2,285 square metres to 4,741 square metres, including removal of pool deck and reduction in number of lifts, and a commensurate increase in residential accommodation provided in Building D.

- The hotel offering has also been revised based on market feedback, with a reorientation to hotel suites resulting in a reduction from 145 rooms to 76 individual rooms (42 suites).
- The façade expression has been amended to introduce a vertically oriented language and an architectural roof feature has been provided at the roof level to accentuate the prominence of this building.
- The podium expression has been increased in height with a screen device which achieves a 5-storey scale to distinguish Building D from the other buildings.
- Basement changes include:
  - Updated parking provision.
  - Additional boom gates have been added to prevent conflict of traffic at the circular ramp
  - Updated graphics to clarify where one way traffic flows occur including at ramps between the split levels.
  - Updated layouts to improve access and wayfinding to storage and plant room areas.
  - Updated layouts to include motorbike parking and bicycle graphics updated for clarification.
  - Waste rooms and lift waiting areas have been replanned for improved access and wayfinding.
  - The bulky waste room has been split to provide one on each of the split floor levels of the basement, to avoid need for residents to move goods via ramps/stairs.
  - Level B3 plan has been updated to show the future connection to the adjoining lot at No 53 Forest Road, Hurstville. Level B4 has been reduced in size.

## **Statutory Framework**

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

37. 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**

38. 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.

<b>Objects of the EP&amp;A Act</b>	<b>Proposal</b>	<b>Compliance</b>
<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</i>	The proposal results in the urban infill development of a mixed-use development within the Hurstville City Centre providing additional housing and commercial and retail premises in the locality.	Yes

<i>State's natural and other resources</i>		
<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 does not provide for any affordable rental housing but does provide a mix of housing types and styles (1, 2 and 3 bedroom apartments and some 2 storey units) and includes adaptable units.	Satisfactory
<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. The heritage item is on land known as 116 Durham Street Hurstville.	Yes
<i>(g) to promote good design and amenity of the built environment</i>	This report assesses the proposal's design and amenity against SEPP 65, the ADG Guidelines and HDCP No 2.	Yes

	The amended design is considered to 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.	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 \$30 million dollars 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>	<p>The submissions section of this report outlines Council's public exhibition of the proposal, including public submissions.</p> <p>The submission section also sets out details of Council's consideration of the key issues raised in public submissions.</p>	Yes

### **Ecologically Sustainable Development (ESD)**

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

(a) The precautionary principle

Officer Comment: The site has been rezoned for this form of development, The proposed mixed use development includes a number of uses including Residential flat buildings, Shop top housing, Hotel accommodation and commercial premises which are all permitted uses within the zone. The design of the buildings have been sensitively considered and it is unlikely that there will be any serious or irreversible environmental damage created.

(b) Inter-generational equity

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

(c) Conservation of biological diversity and ecological integrity

Officer Comment: The site is within an urbanised and established residential/commercial area which does not contain any significant flora or fauna. There are no threatened species or significant vegetation within the development site or within the immediate vicinity of the Site.

(d) Improved valuation, pricing and incentive mechanisms

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

### **Integrated Development**

40. The development is identified as integrated development and requires approval under the Water Management Act 2000 due to the excavation encountering groundwater and requiring approval from WaterNSW. The application was referred to WaterNSW and general terms of approval have been issued and have been included as part of the recommended conditions of consent listed at the end of this report.

### **Compliance and Assessment**

#### **STATE ENVIRONMENTAL PLANNING INSTRUMENTS**

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

<b>State Environmental Planning Policy</b>	<b>Compliance</b>
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Infrastructure) 2007	Yes
State Environmental Planning Policy No.55 – Remediation of Land	Yes
State Environmental Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65)	Yes
State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy (State and Regional Development) 2011	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes

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

42. The primary relevant aims and objectives of this plan are:

- *to maintain and improve the water quality and river flows of the Georges River and its tributaries and ensure that development is managed in a manner that is in keeping with the national, State, regional and local significance of the Catchment,*
- *to protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*



- *to ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
- *to establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment,*

The stormwater design was referred to Council's Development Engineer for review. The disposal of stormwater is considered to be consistent with the Council requirements for the disposal of stormwater in the catchment.

In summary, the proposal is consistent with the aims, objectives or purpose of the Regional Plan if effected in accordance with the recommended conditions of consent.

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

43. Clause 101 relates to Development with frontage to a classified road and Clause 102 relates to the impact of road noise or vibration on non-road development and Clause 104 relates to traffic generating development. The subject site is located on a classified road and the development is traffic generating so the provisions of Clause 101 and Clause 104 are applicable and referral to Transport for NSW is required.

##### Clause 101- Development with frontage to classified road

44. Clause 101 states the following:

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
    - (i) *the design of the vehicular access to the land, or*
    - (ii) *the emission of smoke or dust from the development, or*
    - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
  - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

##### Clause 102- Impact of road noise or vibration on non-road development

45. Clause 102 requires the consent authority to consider the likely impact of noise and vibration on residential accommodation. This applies to land located adjacent to a road with an annual average daily traffic volume of

more than 20,000 vehicles. An acoustic report has been provided by Acoustic Logic which confirms that the Forest Road and Durham Street frontages are subject to higher noise levels, such that the open windows noise criteria cannot be met. The proposal therefore relies on mechanical ventilation.

46. Where the building is affected and reliant upon mechanical ventilation, these rooms will need to comply with the relevant provisions of the NCC.

Clause 104- Traffic-generating development

47. Clause 104 of Infrastructure SEPP requires that before granting consent to a development with a car park of more than 50 which connects to a classified road within 90 metres, Councils must refer the application to the Roads and Maritime Services (Transport for NSW) for comment and must consider the accessibility of the site, including:

- *The efficiency of movement of people to and from the site and the extent of multi-purpose trips, and*
- *The potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
- *Any potential traffic safety, road congestion or parking implications of the development.*

48. The application is accompanied by a Traffic and Transport Impact Assessment prepared by Mott MacDonald which addresses the relevant traffic issues associated with the proposal. The proposal has been referred to Transport for NSW who support the development subject to conditions.
49. The application was also internally referred to Council Traffic Section who are satisfied with the proposal subject to conditions.

**State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)**

50. State Environmental Planning Policy No. 55 - Remediation of Land applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.
51. Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated prior to granting consent to carrying out of any development on that land and if the land is contaminated, it is satisfied that the land is suitable in its current state or will be suitable after remediation for the purpose for which the development is proposed to be carried out.
52. A Preliminary site investigation was undertaken with the key findings of the PSI as follows:
- The historical use of the Site was predominately commercial and industrial from the 1930s. Potentially contaminating activities occurring onsite were identified to be associated with use of the Site as a bus depot, glass manufacturing, a mechanical workshop, and a service station.

- WorkCover NSW records indicate that two underground storage tanks (USTs) are present within 71 Forest Road, and one UST is present within at 61 – 65 Forest Road (all three tanks are within the current Site boundary what the RAP relates).
  - A former landfill known as Kempt Field was identified to the south of the Site on the other side of Durham Street.
  - A qualitative risk assessment undertaken for the Site identified a medium to high risk of the presence of subsurface contamination.
53. Following this a Detailed Site Investigation (DSI) was undertaken. On the basis of the conclusions in the report, it was recommended that a Remediation Action Plan (RAP) be developed in accordance with the relevant regulatory requirements to address the identified contention issues and render the site suitable for the proposed land use.
54. The DSI concluded that the site can be made suitable for the intended land use consistent with Residential A – Residential with Gardens / Accessible soil (NEPC, 2013) following implementation of the recommendations of the Remedial Action Report (RAP).
55. The application is accompanied by a Remediation Action Plan prepared by Environmental Resources Management Australia Pty Ltd. The report concluded that the site can be made suitable for the intended land use subject to appropriate remediation in accordance with the RAP and SEPP 55. The application was assessed by Council's Environmental Health team and was supported subject to specific conditions. The application was notified for 28 days.

**State Environmental Planning Policy (State and Regional Development) 2011**

56. The proposal is a regionally significant development pursuant to Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) as it has a CIV of more than \$30 million in accordance with the SEPP.
57. In this case the Sydney South Planning Panel is the consent authority for the subject development application.

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

58. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
59. 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).
- 60. The objectives of the SEPP are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 5(1) of the SEPP as the site is within both Georges River Council and the SP2 Infrastructure zone.
- 61. Pursuant to Clause 8(1) of the SEPP, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 60O of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
- 62. Eight (8) trees are nominated to be removed as part of the works. An Arboricultural Impact Assessment Report prepared by Urban Arbor and dated 24 July 2020 accompanied the application. The application was referred to Council's Consultant Arborist who concurred with the findings of the applicants Arborist Report and supported the tree removal subject to replacement planting of trees and site landscaping in accordance with the landscape plan provided.
- 63. Council's Consultant arborist has reviewed all the relevant documentation and plans and has concurred with the proposed landscaping outcome.

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

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

66. The application has been reviewed having regard to the criterion and design principles as set out in the ADG.
67. The tables below provide a comprehensive assessment against the principles, objectives and controls of State Environmental Planning Policy No 65 and the ADG.

**Table - application of State Environmental Planning Policy 65**

<b>Clause</b>	<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
<b>3. Definitions</b>	<p>Complies with definition of "Residential Apartment Development" (RAD) Section 4 (1) (Application of Policy) of the State Environmental Planning Policy 65 states that the policy <i>"applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:</i></p> <p><i>(a) the development consists of any of the following:</i></p> <p><i>(i) the erection of a new building,</i></p> <p><i>(ii) the substantial redevelopment or the substantial refurbishment of an existing building,</i></p> <p><i>(iii) the conversion of an existing building, and</i></p> <p><i>(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car</i></p>	<p>Complies with definition.</p> <p>The proposal is for four (4) mixed use buildings ranging from three (3) to 20 storeys with four (4) levels of basement parking.</p>	Yes

	<i>parking), and (c) the building concerned contains at least 4 or more dwellings.”</i>		
<b>4. Application of Policy</b>	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB  The definition of an RFB in the State Environmental Planning Policy includes mixed use developments.	The development proposes the construction of a new mixed-use development, which satisfies the definition of the policy.	Yes
<b>Clause 50 - Development Applications (E P &amp; A Regulation 2000)</b>	Design verification statement provided by qualified designer.  Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect Nicholas Turner (Nominated Architect No.6695).	Yes

68. A design verification statement has been provided by Nicholas Turner (Registration No 6695) of Turner in accordance with Clause 50 of the *Environmental Planning and Assessment Regulation 2000*.
69. The application was referred to Council's Urban Designer for comment. An assessment of the proposal has been undertaken taking into consideration the design quality of the development. Those comments are provided below:

#### **Urban Design Considerations**

A site specific DCP (within the HDCP No.2) was prepared to reflect detailed urban design considerations for the future development of the Landmark Square Precinct to accompany the Planning Proposal. A number of Urban Design Principles (DCP 8.2.2.2) were developed to ensure any future development in the Precinct is carried out in accordance with the approved concept scheme, including the inter-relationship between the proposed height and floor space ratio, and considering provision of ground level communal open space, street setbacks, road widening, etc

For the purpose of this referral, urban design considerations have been provided against each of the principles below:



1. *Development of a sustainable, diverse, attractive and inviting precinct for people to live, work and recreate through leadership and integration of design excellence.*

View shed analysis prepared based on topography and geospatial modelling identifies that the subject site, especially any development located on the corner of Forest Road / Durham Street is visible from the Georges River as well as the Sutherland LGA foreshores.

In light of its visibility, the proposed corner tower (Building D) must demonstrate a vigorously articulated façade to minimise the bulk of the building envelope, particularly along the Durham Street façade. The proposed built form and façade treatment for Building D is supported.

2. *Development is distinctive, visually interesting and appealing.*

The design intent of utilising a different façade treatment for each building in the proposal is supported as this approach enables the creation of visual interest through materiality and form. However, the proposal needs to rely on a consistent rhythm to ensure there is still an underlying sense of coherency in the visual presentation of this Precinct.

A distinctive rhythm is established by the proposal along Forest Road through the modulated built forms of Building B and Building D. The tower forms of these buildings are fairly consistent in width (approx. 21 to 24m on the Forest Road façade) – which contributes to a uniform streetscape character and minimises the appearance of the building bulk from the public domain.

There is concern that the tower element (from Level 09 and beyond) of Building C is inconsistent with the rhythm established by the two adjoining towers and there is concern that the width of this building (measuring approx. 35m) detracts from the streetscape character through its excessive building bulk.

It is acknowledged that different architectural styles have been adopted by Buildings C and D to differentiate between the private residential land use in Building C and the hotel land use in Building D. However, the similarity in height and the excessive bulk of Building C has generated two competing 'landmark' towers side-by-side on the same site. In light of the visual prominence of Building D from the Georges River foreshore and its primary land use as a hotel, the proposal should be amended with the intent of bolstering the corner element (i.e. Building D) by further articulating Building C to reduce its bulky envelope and by extension its conflicting streetscape dominance. This may be achieved through one or both of the following methods:

Extend the building indentation proposed on Level 19 to every floor from Level 09; and/or

Reduce the building envelope at the northern corner by approx. 10m to achieve a consistent building width with Building B and Building D along the Forest Road façade.

3. *Development is designed to address the context of the area through responsive built forms and appropriate transitions to adjoining residential development.*

The layout of the proposal is generally consistent with the maximum building height map which was developed by the Planning Proposal to enforce appropriate transitions to the adjoining lower density residential areas.

4. *Provision of good residential amenity by complying with the State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development and the Apartment Design Guide.*

It appears like Buildings B and C contains winter gardens (enclosed balconies) along the Forest Road façade on Levels 01 and 02. In these instances, the living rooms and bedrooms of these units rely on borrowed light through the enclosed winter gardens. Accordingly, the proposal must demonstrate compliance with NCC F4.3 to ensure occupant amenity is not compromised.

There are also a number of bedrooms with windows at the end of a narrow indentation on Levels 01 and 02 (e.g. B.208, C.202, C.203, C.205) in Buildings B and C.

The proposal should also consider the provision of toilets/water closets on the ground floor of its terrace units in Building A (e.g. A2.001, 002, 003, 006, 007, 009 and 010) to ensure a basic level of occupant amenity and convenience is provided. The principle habitable space of the living room should ideally be supported by its own essential facilities.

- Snorkle bedroom window – borrowed light through deep slits in the building – slit is only 2 storeys in height (Level 01 and 02) and is covered by the balcony on Level 03 and above – subpar amenity – borrow light through a winter garden is not acceptable – need to demonstrate NCC compliance (F4.3)

5. *The street edge is activated and clearly defined by building podiums featuring fine grain retail and active uses.*

Active Street frontages map was amended to reflect ASF along Forest Rd, and Durham Street. The proposed development provides retail tenancies on the ground floor and an articulated 3 storey podium along the majority of the street frontage.

However, the proposal should be amended to provide a continuous awning along the active street frontages where possible.

6. The building facades are distinctively articulated to enhance the streetscape character.

Refer comments in Principle No.2 above.

7. A human scale is maintained at the street level with particular emphasis on the human experience in the built environment.

The provision of the 3 storey brick podium along Forest Road is supported as a response to this principle. The landscaped verge and the new street trees along Roberts Lane are also supported.

However, additional information is requested regarding the relationship between the basement vehicle entry on Durham Street to the pedestrian crossing that is frequently used by pedestrians (especially small children) on-route to Kempt Field with its recently completed Adventure Playground. There is concern for the likely conflict between pedestrians and vehicles.

8. A highly permeable precinct with distinguished pedestrian connections between streets and communal spaces.

### **Green Lane**

The 4 storey underpass and activated laneway is supported. However, it appears that the level difference between Forest Road and the public plaza is only address through two sets of stairs. There needs to be appropriate egress to enable disabled access to the public plaza.

### **Laneway between Buildings B and C**

The proposed ground floor plan illustrates locations for food trucks in this space. The question is raised regarding whether these are permanent stalls or removable vehicles. Consideration will need to be given to discreet access (e.g. the provision of a crossover) from Forest Road and to ensure the pedestrian experience is prioritised over vehicles.

### **Park Lane**

Significant concern is raised regarding the narrow width of this pedestrian through-site link. The proposed location of the main retail car parking entry on Forest Road would result in Park Lane being treated as the primary pedestrian link between Forest Road and Durham Street. This is an existing key connection for school children from nearby schools to the north of the Precinct (Hurstville Public School, Georges River College, Bethany's College and Sydney Technical High School) accessing Kempt Field and Allawah Railway Station beyond. Accordingly, visibility and amenity must be improved.

The proposal currently creates a 'bottleneck' at the north-western corner of Building A. The 9m wide connection is abruptly reduced to 3m at this point (see below):

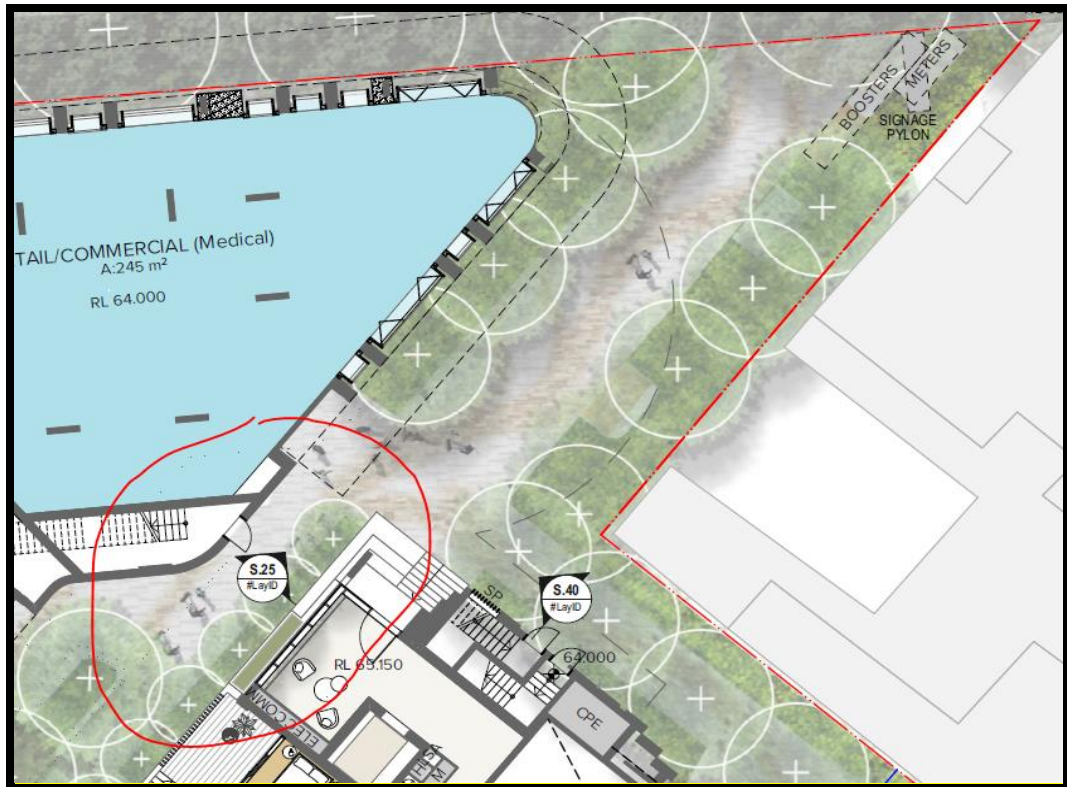


Figure 10: Plan showing bottle neck at north western corner.

The proposal must be amended to ensure a minimum 6m width for this critical through-site link. This may be achieved by reducing the footprint of Building A at this corner (refer red outline in red below):

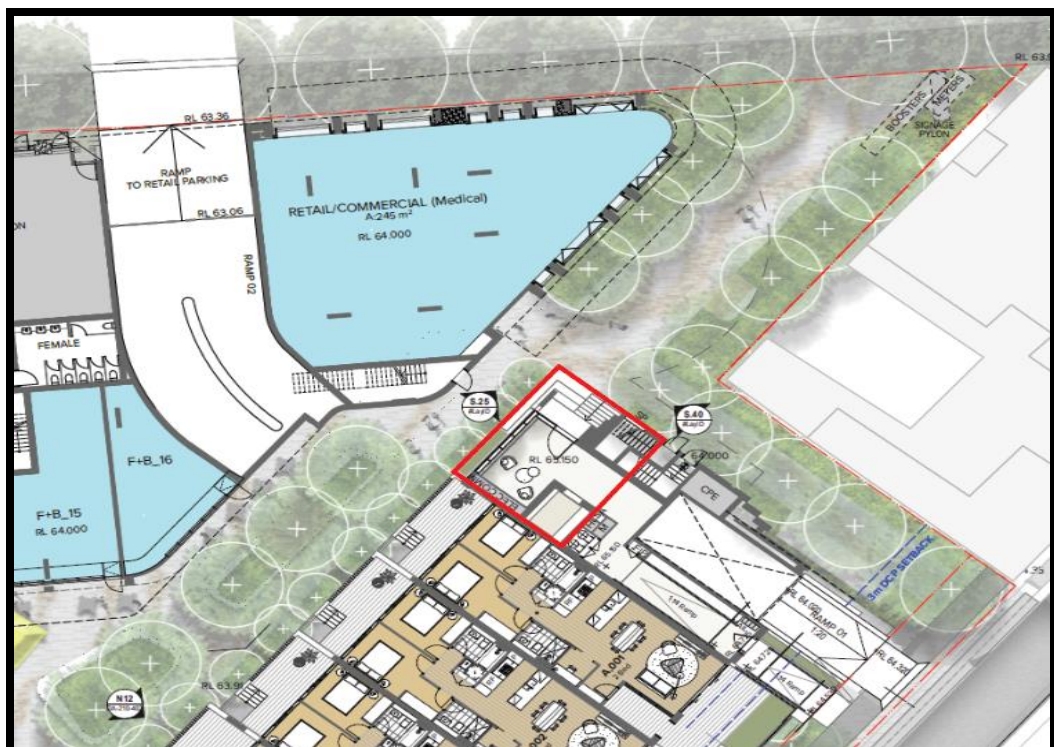


Figure 11: Plan showing area of building that could be reduced (outlined in red)

9. A sense of place is created, particularly between buildings and in public spaces.

Refer comments in Principle No.8 above.

10. Provision of adequate basement car parking and a safe and efficient access network for pedestrians and vehicles.

Refer Principle No.7 above regarding potential pedestrian safety concern on Durham Street.

The Statement of Environmental Effects states that there is provision for “break through access” in the basement to support the future redevelopment of the isolated site at 53 Forest Road. However, the plans provided for Basement 03 and 04 illustrate the breakthrough access location being occupied by a cleaner’s room and storage cages allocated to private residences. The proposal needs to be amended to demonstrate that these spaces are kept clear to enable future basement access to 53 Forest Road.

The plans have been amended removing the cleaner’s room and storage cages, providing clear and unobstructed access extending to the allotment boundary, with provision made for the future connection of the subject site to the adjoining lot at No 53 Forest Road, Hurstville. A condition of development consent has been imposed requiring that a restriction on the title be imposed granting consent and permitting the break through access be made between the subject site and No 53 Forest Road at a later stage.

70. Clause 28 of SEPP 65 requires the consent authority to take into consideration the provisions of the Apartment Design Code. The table below assesses the proposal against these provisions.

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

Clause	Standard	Proposal	Complies
<b>3D - Communal open space</b>	<p>1. Communal open space has a minimum area equal to 25% of the site.</p> <p>- Where it cannot be provided on ground level it should be provided on a podium or roof</p> <p>- Where developments are unable to achieve the design criteria, such as on small</p>	<p>2167.96sqm (25.4%) (Includes 373.38sqm of communal rooftop open space on level 08)</p>	<p>Yes Numerically compliant.</p> <p>Yes, all areas of communal open space on the ground floor and on the rooftop will achieve a minimum of 2 hours (or more) of solar access throughout</p>

	lots, sites within business zones, or in a dense urban area, they should: <ul style="list-style-type: none"> <li>• provide communal spaces elsewhere such as a landscaped roof top terrace or a common room</li> <li>• provide larger balconies or increased private open space for apartments</li> <li>• demonstrate good proximity to public open space and facilities and/or provide contributions to public open space</li> </ul>		the day in midwinter.
	2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Complies	Yes, all areas of communal open space on the ground floor and on the rooftop will achieve a minimum of 2 hours (or more) of solar access throughout the day in midwinter.
<b>3E – Deep Soil zones</b>	1. Deep soil zones are to meet the following minimum requirements:  Where the site has an area of between 650sqm – 1,500sqm = 3m min dimension  >1500sqm – 6m min dimension	596.83sqm (6.7%)	No, however is only marginally below the minimum of 7%. It also does not meet the minimum 6m width, although this is considered acceptable.

	Min deep soil area of 7% (598.15sqm)		<p>The provision of the deep soil zone is limited by the footprint of the basement that is required to cater for the parking for the development.</p> <p>Landscaping is provided at street level and within the central park area which includes planting of trees and the communal open spaces also include generous planting. Overall, the landscaping proposed provides good amenity for future uses of this space.</p>
<b>3F- Visual Privacy</b>	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4</p>	<p>Apartment privacy has been coordinated throughout the proposals to balance use, solar access and cross ventilation as well as communal open space.</p> <p>The rear setbacks of Buildings B and C are significant</p>	<p>Yes, the amended plans submitted provide adequate separation distances between neighbouring sites to ensure reasonable privacy is achieved.</p>

	<p>storeys)  Habitable - 6m  Non-habitable – 3m</p> <p>Up to 25m (5-8 storeys)  Habitable – 9m  Non-habitable – 4.5m</p>	<p>given the communal courtyard provided ensuring these setbacks would comply with any future development to the sites to the rear.</p> <p>The side setbacks for Building A through the use of blank walls ensures privacy is maintained.</p> <p>Setbacks and separation distances to the front of the site are dictated by the Hurstville DCP, however, are discussed below:</p> <p>Along Durham Street, Building D provides a 4m setback to the boundary, taking into consideration the centreline of the road this setback is considered acceptable.</p> <p>Along Forest Road the building also adopts a varying setback between 3.8 and 5.2m, taking into consideration the centreline of the road this setback is considered acceptable.</p> <p>Along Roberts Lane, the buildings</p>	
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		will be setback 3m from the boundary following the land dedication.	
<p><b>Comment on Visual Privacy and amenity between buildings on site:</b>  The ADG requires that separation between buildings on the same site should combine required building separations depending upon the type of room as follows:</p> <p>Non-habitable to blank walls – 3m  Habitable room to blank walls – 6m  Habitable to Non-habitable – 9m  Habitable to Habitable – 12m</p> <p>The separation distances proposed between buildings on site is considered to be adequate and acceptable taking into consideration the use of blank walls and non-habitable windows in some areas to maintain amenity that is consistent with the objectives of the ADG.</p> <p><u>Between Building C and Building D</u>  There is an 8 – 9m separation, (in some areas this is increased) between buildings C and D from Level 07 where the residential units commence in Building D (the lower levels contain the hotel rooms). Both Building C and D employ a stepped external wall built form to assist in providing adequate building separation between windows and balconies, whilst avoiding direct sight lines and minimising any impacts associated with privacy. The use of angled walls, blank walls and habitable rooms located opposite plant rooms ensure that in some aspects the buildings are compliant. Where there are minor non-compliances these are considered acceptable and satisfy the objectives of the ADG.</p> <p><u>Between Buildings B and C</u>  From Level 1 to Level 11, there is a 6m separation maintained between buildings B and C for the width of Hawker Lane. Residential units here are orientated east and west to maintain solar access. Within this area the buildings are separated with blank walls, habitable rooms and non-habitable rooms. Where habitable rooms are located opposite other habitable rooms these are generally bedrooms or living rooms and their windows are not located directly opposite each other. Building B terminates at level 11, so from Level 12 and above there are no privacy or visual impacts.</p> <p><u>Between Buildings A and B.</u>  Building A is a three (3) storey building and given that the ground floor of Building B contains commercial space, it is only Level 01 and Level 02 that need to be considered in terms of visual privacy. A majority of Building A is setback 9.3m from the balconies for Building B with the exception of the western units on Level 01 and 02, which are located 4m from Building B with the adjoining balcony partially encroaching. The apartments of Building A are located opposite access stairs on Level 01 and a void on</p>			

Level 02 in Building B ensuring there are minimal impacts in relation to privacy. The balconies are orientated towards the north west and have privacy screens located along their western side opposite Building B ensuring privacy is maintained.			
<b>3G – Pedestrian Access and entries</b>	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>Residential towers B, C and D have their own secure lobby off Forest Road. Building A has its own separate access via Roberts Lane.</p> <p>The hotel entrance lobby is accessed from a through site link from Forest Road.</p>	Yes
<b>3H-Vehicle Access</b>	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	The vehicular access points are located off Durham Street, Forest Road and Roberts Lane.	Yes
<b>3J-Bicycle and carparking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>- On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>- On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated</li> </ul>	<p>The site is located within 800m of Allawah Railway station as such the RMS provisions are applicable to this assessment.</p> <p><b>Proposal relies on the following car parking provisions;</b></p> <ul style="list-style-type: none"> <li>• 70 x 1 bedroom units = 0.4 x 70 = 28 spaces</li> <li>• 137 x 2 bedroom units = 0.7 x 137 = 96 spaces</li> <li>• 53 x 3 bedroom units = 1.2 x 53</li> </ul>	<p>The car parking arrangement and number of car spaces provided complies with the ADG/RMS requirements.</p> <p>The proposal complies with the numerical requirements of the ADG given the accessible location of the site</p>

	<p>regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Roads and Maritime Services Guide to Traffic Generating Developments (RMS), or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>In accordance with Section 5.4.3 (High Density Residential Flat Buildings) of the RMS Traffic Generating Guidelines. The site is located within the "Metropolitan Regional (CBD) Centres" and the following provisions apply;</p> <p>0.4 spaces per 1 bedroom unit 0.7 spaces per 2 bedroom unit 1.2 spaces per 3 bedroom unit 1 space per 7 units (visitor parking)</p> <p>The provision of at least one loading dock for residential use is desirable, although a dock intended for commercial uses may be sufficient.</p>	<p>= 64 spaces</p> <p>Residential spaces required = 188 spaces</p> <p>Visitor = <math>260/7 = 38</math> spaces</p> <p>Total = 38 spaces required</p> <p><b>The proposal requires a total of 226 off-street car parking spaces for residents and visitors</b></p> <p>Total of 476 car parking spaces are provided comprising thirty eight (38) visitor spaces and 313 resident spaces which include fifteen (15) accessible spaces.</p> <p>The following parking has also been provided:</p> <ul style="list-style-type: none"> <li>• 141 spaces for retail/commercial, and visitors spaces (including five (5) accessible spaces and two (2) taxi spaces.</li> <li>• 22 hotel spaces including one (accessible space).</li> </ul> <p>The off street car parking provision exceeds the requirements of RMS/ADG</p>	
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		provisions.  Loading dock has been provided and accessed via Durham Street.	
<b>4A- Solar and daylight access</b>	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter</p>	A minimum of 76% of apartments receive a minimum of 2 hours of solar access during mid-winter.	Complies
<b>4B- Natural Ventilation</b>	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p> <p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths</p>	<p>A minimum of 63% of apartments have been designed to comply with minimum cross ventilation requirements.</p> <p>No apartment exceeds 18m in depth.</p> <p>Every apartment has a dual aspect.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<b>4C-Ceiling Heights</b>	Measured from finished floor level to finished ceiling level, minimum	A minimum 3.1m floor to floor height has been provided to enable a	Yes

	<p>ceiling heights are:  Habitable rooms = 2.7m  Non-habitable rooms = 2.4m</p> <p>3.3m for ground floor and first floor in mixed use areas to promote flexibility of use.</p>	<p>minimum 2.7m ceiling height to be achieved to the residential component.</p>	
<b>4D- Apartment size and layout</b>	<p>Apartments are required to have the following minimum internal areas:  1 bedroom = 50sqm  2 bedroom = 70sqm  3 bedroom = 90sqm  The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	<p>One bedroom units have minimum areas of 52sqm-64sqm.</p> <p>Two bedroom units have minimum area of 73-108sqm.</p> <p>Three bedroom units have minimum internal areas of 95sqm-134sqm.</p> <p>Every habitable room has window openings larger than 10% of the room area.</p>	Complies
<b>4D-2 Apartment size and layout</b>	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height  In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable</p>	<p>Satisfactory</p> <p>With the minimum floor to ceiling heights complying with the 2.7m minimum, all habitable room depths satisfy the</p>	Complies

	room depth is 8m from a window	minimum requirements.  The apartments have open plan living/dining room layouts.	
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of: -3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>All master bedrooms have a minimum internal size of 10sqm.</p> <p>All bedrooms have minimum dimensions of 3m.</p> <p>All living rooms have minimum widths of 4m.</p> <p>There are no cross-over or cross-through apartments proposed.</p>	Complies
<b>4E- Private Open space and balconies</b>	<p>All apartments are required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth</p> <p>-2 bedroom = 10sqm/2m depth</p> <p>-3+ bedroom = 12sqm/2.4m</p>	<p>The proposed balconies and terraces for all apartments exceed the minimum sizes.</p> <p>Achieved.</p> <p>Achieved.</p> <p>Achieved.</p>	<p>Complies</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m</p>	<p>Noted and applied in the calculation.</p> <p>Ground floor apartments have private open spaces that exceed 15sqm and have a depth of 3m.</p>	<p>Yes</p> <p>Yes</p>
<b>4F- Common circulation areas</b>	The maximum number of apartments off a circulation core on a single level is eight	<p>No more than nine (9) units are provided to any one core on a single level in line with the guidance of 12 units of ADG.</p> <p>Objective 4F-1. Where nine units are provided, two fire stairs are provided to meet BCA requirements with daylight access to both ends of the common corridor.</p>	Complies
<b>4G- Storage</b>	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m<sup>3</sup>  2 bedroom – 8m<sup>3</sup>  3 bedroom – 10m<sup>3</sup></p> <p>At least 50% of storage is to be</p>	<p>Each unit is provided with sufficient storage space with at least 50% located in individual units. The remaining is located in a dedicated secure location within the residential areas of the basement.</p>	Yes

	located within the apartment.	Storage spaces within apartments is located as part of a holistic design approach and integrated into the overall layout.	
<b>4H- Acoustic Privacy</b>	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.</p> <p>Window and door openings are generally orientated away from noise sources</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas</p> <p>Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources</p>	<p>Building separation, orientation and arrangements are designed to mitigate noise pollution with openings shielded through setbacks and other arrangements from noise sources.</p> <p>Recommendations have been provided to ensure separation between buildings comply. In addition the building must comply with the specific requirements of the NCC – BCA.</p> <p>Internal layouts further work to mitigate noise</p> <p>The application is accompanied by an acoustic report addressing potential noises issues from the site to the roadways, from traffic generation and vehicle movements, noise from commercial usage and from mechanical plant.</p>	Complies
<b>4J – Noise and Pollution</b>	To minimise impacts the following design solutions may be used:	Site layout and floor plan design seeks to minimise acoustic disruption on the enjoyment of the	Yes



	<ul style="list-style-type: none"> <li>• physical separation between buildings and the noise or pollution source</li> <li>• residential uses are located perpendicular to the noise source and where possible buffered by other uses</li> <li>• buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer</li> <li>• landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry</li> </ul>	<p>future residents/users of the development. The Central Park located centrally within the development is shielded from Forest Road and Durham Street by existing and proposed built forms to create a green, calm space with café and food kiosk activation.</p> <p>Vehicle entries are located and designed to minimise further noise impacts, and the placement of non-residential uses aids in separating residents from noise sources.</p> <p>The designs will incorporate seals to prevent noise transfer through gaps, acoustic glazing, and other measures where necessary to attenuate noise impacts on apartments.</p>	
<b>4K – Apartment Mix</b>	<p>A range of apartment types and sizes is provided to cater for different household types now and into the future</p> <p>The apartment mix</p>	<p>The development offers a mix of 1, 2 and 3 bedroom apartments some being 2 storey in form.</p> <ul style="list-style-type: none"> <li>• 70 x 1 bedroom</li> </ul>	Complies

	is distributed to suitable locations within the building	apartments (27%) <ul style="list-style-type: none"> <li>• 136 x 2 bedroom apartments (52%)</li> <li>• 54 x 3 bedroom apartments (21%)</li> </ul> The mix is considered to be acceptable and appropriate.	
<b>4L – Ground Floor Apartments</b>	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	<p>The ground floor apartments located along Roberts Lane which have front and rear private amenity space have direct access to Roberts Lane or Central Park. The private spaces at ground level are provided with secure gates, fencing and perimeter planting to create a safe and secure environment that integrates with the landscaping and streetscape approach. This allows privacy and passive surveillance of Central Park and the laneway.</p>	Complies
<b>4M - Facades</b>	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The façade treatments as amended and the overall aesthetic is now well resolved and is consistent with the desired streetscape character. The increase in height of the podium to Building D now	Yes

		results in this building being the focal point and an appropriate gateway to the development.	
<b>4N – roof design</b>	Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.	<p>The roof is a modern element that is generally consistent with new developments of this scale and form. It offers the ability to include a communal area on the roof which is a benefit for future occupants.</p> <p>The architectural roof feature on Building D completes the building and is a positive inclusion.</p>	Complies
<b>4O – Landscape Design</b>	Landscape design is viable and sustainable, contributes to the streetscape and amenity	<p>A detailed landscape design has been prepared which compliments the natural and cultural features of the area and streetscape. Planting is provided throughout the design to create a welcoming, green and bio-diverse environment including a minimum of 70% of native drought tolerant species. This includes street edge planting along Roberts Lane, tree planting along Forest Road and a range of landscaping across</p>	Yes

		Central Park. The range and type of species and planting is consistent with the requirements of the ADG and DCP requirements.	
<b>4P- Planting on Structures</b>	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	<p>Deep soil and planting zones have been integrated into the design to ensure appropriate growing conditions, drainage and placement are facilitated as well as an attractive, welcoming environment. Plant species selection is designed to suit site conditions, ensure appropriate maintenance and grow as a holistic landscape design with 70% being drought hardy native species.</p> <p>Planted spaces are designed as part of the overall architectural approach, using planters and landscaped spaces in combination to achieve an integrated design.</p>	Yes
<b>4Q – Universal Design</b>	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory	Complies

<b>4R – Adaptive reuse</b>	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	This is a new development.	N/A
<b>4S Mixed Use</b>	Mixed use development are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	<p>Located within the extended B4 Mixed-Use zones of the 'eastern bookend' precinct as designated within the HLEP and DCP, the proposal provides a range of uses that support a strategic urban city centre.</p> <p>A range of public transport options, including bus and train, are located within 450m, as well as green open spaces.</p> <p>Within the development ground level uses such as retail, café, commercial and restaurants create active frontages, encourage movement and curiosity, and contribute to the public domain.</p>	Yes
<b>4U – Energy Efficiency.</b>	Development incorporates passive environmental design, passive solar design to optimise heat	A compliant BASIX Certificate accompanies the application.	Yes

	storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation		
<b>4V – Water management and conservation</b>	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The development incorporates appropriate stormwater measures and Council's Development Engineers are satisfied with the design subject to conditions.	Yes
<b>4W – Waste Management</b>	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	Designated waste storage areas are provided in the basement for building users, with recycling facilities included. A bulk waste area for residents is also provided within the basement. Appropriate loading areas are provided to facilitate collection.	Yes
<b>4X – Building Maintenance</b>	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates a mix of external finishes that require minimal maintenance.	Yes

## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

### **Draft Environmental State Environmental Planning Policy**

71. 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.

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

#### **Draft Remediation of Land State Environmental Planning Policy**

73. The Draft Remediation of Land SEPP was exhibited from 31 January 2018 to 13 April 2018. The proposed remediation of land SEPP will:

- Provide a state-wide planning framework for the remediation of land;
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well;
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land;
- Clearly list the remediation works that require development consent;
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

74. The proposal is not inconsistent with the provisions of this Draft Instrument as there is no evidence this site is contaminated based on previous uses.

#### **Draft Design and Place SEPP**

75. The Draft Design and Place 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.

#### **Hurstville Local Environmental Plan 2012 (HLEP 2012)**

76. The subject development site is zoned B4 Mixed Use under the HLEP 2012 as shown in **figure12** below:





**Figure 12:** Zoning map (HLEP 2012) - Subject site outlined in red

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

Clause	Standard	Proposal	Complies
<b>Part 2: Permitted or Prohibited Development</b>			
<b>2.2 Zoning of Land to which Plan applies</b>	B4 Mixed Use	The proposed application is for a mixed use development comprising a residential flat development, hotel and commercial premises which are all permitted land uses in the B4 mixed use zone under HLEP 2012.	Yes
<b>2.3 Zone objectives and Land use table</b>	Objectives of zone to be satisfied	The proposal satisfies the objectives of the zone by providing a mixture of residential apartments, a hotel and commercial premises which are consistent with the zone objectives and are suitable for the site and will not adversely	Yes

		impact neighbouring properties.	
<b>2.7 Demolition</b>	Demolition requires development consent.	Consent for demolition of existing structures is sought.	Yes
<b>Part 4: Principal Development Standards</b>			
<b>4.3 Height of Buildings</b>	Maximum permitted height as per height of building map:  Building A: 21m Building B: 28/40m Building C: 65m Building D: 65m	Building A: 21m Building B: 28/40m  Building C: 65m Building D: 67.4m	Yes Yes  Yes No
<b>Note:</b> Clause 4.6 objection has been submitted requesting variation to the development standards for the maximum building height for Buildings D. The areas of non- compliance include the architectural roof feature, lift over run, stairs, plant and façade screen.			
<b>4.4 Floor Space Ratio</b>	Maximum permitted Land W1 – 3.5:1  Land T1 – 2:1	3.635:1 (1019.83sqm or 3.87%)  0.99:1	No  Yes
<b>Note:</b> Clause 4.6 objection has been submitted requesting variation to the development standards for the maximum floor space has been submitted.			
<b>4.4A Non-residential floor space ratios</b>	The objective of this clause is to encourage an appropriate mix of residential and non-residential uses in order to ensure a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of the business zones.	Despite clause 4.4, development consent must not be granted for development on the following land unless the non-residential floor space ratio is at least 0.5:1.  (g) 108, 110, 112, 114, 116, 118, 118A, 120, 122A and <b>126 Durham Street</b> , Hurstville, being Lots A–D, DP 391801, Lot 5, DP 171179, Lots 1 and 2, DP 213685, Lot 1, DP 337499, Lot 15, DP 601341 and <b>Lots 1 and 2, DP 12517</b> ,  (h) 53, <b>61–63, 67, 71A, 73 and 75 Forest Road</b> ,	Yes

		<p>Hurstville, being Lot A, DP 372835, Lot 1, DP 225302, Lots 101 and 100, DP 776275, Lot 10, DP 621395 and Lots 3 and 4, DP 12517</p> <p>9015sqm proposed which equates to 1.05:1.</p>	
<b>4.4 (2A)(a) Floor Space Ratio</b>	<p>Despite subclause (2), development consent may be granted for a building if the consent authority is satisfied that—</p> <p>(a) the gross floor area of the building will exceed the maximum gross floor area that would otherwise be permitted under this clause by an amount of no more than 7,023 square metres (the <b><i>bonus floor allowance</i></b>), and</p> <p>(b) part of the building, with a floor area of not less than the bonus floor allowance, will be—</p> <p>(i) used for the purpose of hotel or motel accommodation, and</p> <p>(ii) situated on land identified as “Area 1” on the</p>	<p>Proposed hotel is 4741sqm and is located in Area 1.</p>	Yes

	Floor Space Ratio Map.		
<b>4.5 Calculations of Floor space and Site area</b>	Floor space to be calculated in accordance with Clause.	Floor space has been calculated in accordance with this clause.	Yes
<b>4.6 Exceptions to Development Standards</b>	Clause 4.6 variation requests have been submitted in relation to the proposed building height and FSR.		
<b>Part 5: Miscellaneous Provisions</b>			
<b>5.6 Architectural roof features</b>	Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.  (3A) This clause does not apply to land in Zone B3 Commercial Core or Zone B4 Mixed Use.	The proposal provides an architectural roof feature however under subclause (3A) of this clause, the height breach is not granted in a zoned B4 without the benefit of consideration of the height breach under clause 4.6. The architectural roof feature forms part of the clause 4.6 variation to the development standard in respect to the variation of the height development standard.	N/A
<b>5.10 Heritage Conservation</b>	The development site is not identified as a heritage item and is not located within a Heritage Conservation Area.	The site is not a heritage item and is not within a heritage conservation area.  Schedule 5 of the HLEP identifies that item I26 is Hurstville Scout Hall located at	Yes

		116 Durham Street which is located to the east of the development site. The heritage item is not immediately adjacent to the development site and is not adversely affected by the proposal. Council's DCP has specific requirements for development adjoining the heritage item. The proposed development is not considered to have an adverse impact upon this heritage item.	
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#### Part 6: Additional Local Provisions

<b>6.1 Acid Sulfate Soils (ASS)</b>	The site is not identified as being affected by acid sulfate soils.	N/A	N/A
<b>6.6 Active street frontages</b>	The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B2 Local Centre, Zone B3 Commercial Core and <b>Zone B4 Mixed Use</b> .	The subject development site is identified on the Active Street Frontages Map – sheet ASF_008B.	Yes
<b>6.7 Essential Services</b>	Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available		Yes

	<p>when required—</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the disposal and management of sewage,</p> <p>(d) stormwater drainage or on-site conservation,</p> <p>(e) suitable road and vehicular access.</p>	<p>Water supply is available to the site and can be extended to service this development.</p> <p>A Substation is to be provided and incorporated into the development; its location is annotated on the plan.</p> <p>Sewage connections are available to the site and can be extended to service the development.</p> <p>Stormwater component has been assessed by Council's Drainage Engineer and was found to be satisfactory subject to conditions of consent.</p> <p>The Site provides vehicular access via Forest Road, Durham Street and Roberts Lane to various parts of the development.</p>	
6.9 Airspace Operations	<p>The objective of this clause is to protect airspace around airports.</p> <p>The consent authority</p>	<p>Approval has been provided to a maximum height of RL 128m AHD. This height is not</p>	Yes

	must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the <i>Airports Act 1996</i> of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division	breached by the development.	
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#### **Clause 4.6 Exceptions to development standards**

##### **Detailed assessment of variation to Clause 4.3 Height of Buildings**

78. Clause 4.3 of the Hurstville Local Environmental Plan 2012 (HLEP) relates to the maximum permitted building height for a site and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 65m. Building Height is defined as:

*“Building height (or height of building) means:*

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

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

There are six height zones across this development site being 12m, 15m, 21m, 28m, 40m and 65m as shown in figure 13 below:



Figure 13: Extract from the HLEP height of buildings map

The location and extent of the non-compliance is provided in the image below (figure 14):



Figure 14: Height plan drawing which illustrates the components which are above the height control for Building D (Source: Turner).

79. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The HLEP identifies various height controls ranging from 12m to 65m across this development site. The variation proposed is associated with Building D which is located within an area of the site having a 65m height control. The proposed development will exceed the height by 2.4m. The height breach relates to the architectural



roof feature, lift over run and stairs having a maximum RL of 128m, resulting in a 3.7% variation of the control. The architectural roof feature clause in the HLEP does not result to this site given the B4 zoning.

80. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the HLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.
81. Clause 4.6(1) outlines the objectives of the standard which are to *"provide an appropriate degree of flexibility in applying certain development standards to particular development"* and *"to achieve better outcomes for and from development by allowing flexibility in particular circumstances"*.
82. 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"*
83. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of HLEP2012. The Clause 4.6 request for variation is assessed as follows:

***Is the planning control in question a development standard?***

84. The Height of Buildings control under Clause 4.3 of the Hurstville Local Environment Plan 2012 is a development standard.

***What are the underlying objectives of the development standard?***

85. The objectives of the Height of Buildings development standard under Clause 4.3 of HLEP 2012 are:
- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
  - (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,*
  - (c) to minimise the adverse impact of development on heritage items,*
  - (d) to nominate heights that will provide a transition in built form and land use intensity,*
  - (e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,*
  - (f) 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,*

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

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

86. 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.

87. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

*“An objection under State Environmental Planning Policy 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”*

88. The judgment goes on to state that:

*“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

89. 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.”*

90. The Clause 4.6 statement was prepared having regard to the recent court cases and their judgements.
91. Applicants comment: *“Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in Wehbe v Pittwater Council [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.*

*In addition, in the matter of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34] the Chief Justice held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.*

*This request addresses the five part test described in Wehbe v Pittwater Council. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:*

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

*The specific objectives of Clause 4.3 of the HLEP are identified below. A comment on the proposals consistency with each objective is also provided.*

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

*Careful consideration has been given to the location, size and design of the proposed development to ensure that a high quality outcome will be achieved which will sit comfortably within the forthcoming streetscape.*

*The proposed departure from the height control on the site occurs only as a result of a desire to accentuate the height of Building D to give it the prominence that the planning controls intended for this building.*

*Council has expressed a strong preference for Building D to be the clearly dominant building when compared to Building C. However, there is only a 1 storey difference between the two buildings required by the DCP, and due the fall along each site frontage, Building D is at the lowest point of the site which further diminishes the apparent difference in scale between Buildings C and D such that they appear similar in height.*

*In order to create a prominence for Building D, the architectural expression has deliberately emphasised the verticality of the building, which is terminated by a parapet which has been designed as an architectural roof feature. Whilst there is a lift over run and plant area which also breach the height control for Building D, these are located behind the parapet and are not visible.*

*There is no habitable floor space above the height control. The proposal presents with the number of storeys as anticipated by the new planning controls for the site and has a scale as anticipated by the DCP and therefore achieves an appropriate contextual fit which is compatible with the future adjoining development and the future streetscape, notwithstanding the height non-compliance.*

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes.*

### **Visual Impact and Disruption of Views**

*The visual impact of the proposed height variation is considered to be acceptable as discussed above in relation to Objective (a) as the area of increased height is minor and the result of a desire to accentuate Building D. The proposal fits appropriately within the future desired character of the area.*

### **Privacy**

*The proposed development provides ADG compliant separation from the adjacent properties (or sufficient privacy measures), such that the proposed variation in height does not result in any adverse privacy impacts to adjacent properties.*

### **Overshadowing**

*The areas of additional height are minor within the context of the overall building height such that the variation does not result in any meaningful difference in shadow to the adjacent properties to the south beyond a compliant scheme.*

*(c) To minimise the adverse impact of development on heritage items*

*The minor nature of the height variations and the location of these areas at a significant height above, and distance from, the nearby Hurstville Scout Hall is such that the areas of encroachment will not result in any adverse impact to the heritage item.*

*(d) To nominate heights that will provide a transition in built form and land use intensity*

*The proposal is predominantly consistent with the varied heights across the site with the exception of some minor encroachments for Building D, such that the proposed development reflects the intended transition in heights*

*across the site as intended by the LEP Building Heights which apply to the site.*

- (e) To establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre*

*The Building Height controls for the site have been established to achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre. The proposed variations are minor and do not compromise this objective in that the proposed heights of the buildings still achieve an appropriate urban form as anticipated by the planning controls which apply to the site.*

- (f) 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*

*The proposed height encroachments are minor such that they do not compromise the overall transition in scale across the site. In particular, it is noted that Building A which is located on the eastern part of the site and required to be much lower in order to achieve a sensitive transition in scale to the lower density residential context to the east is only half the anticipated height.*

- (g) To minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

*The minor extent of the areas of height encroachment and the central location of the lift overruns and plant are such that the proposed variations to the height control do not result in any meaningful or adverse environmental impacts on the use or enjoyment of adjoining properties and the public domain.*

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

*The underlying objectives and purpose of the height control are relevant to the proposed development. However, the proposed development is consistent with those objectives on the basis that the proposed height is compatible with the existing and future scale of the surrounding buildings and will sit comfortably with the context of the site with no significant adverse impacts to adjacent properties.*

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

*The underlying objectives and purpose of the standard relates to compatibility and impact and are relevant to the proposed development. The underlying objective and purpose would be satisfied by a compliant proposal,*

*but is also demonstrated to be satisfied in this instance notwithstanding the proposed height variation.*

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

*The development standard has not been virtually abandoned.*

***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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone***

*Strict compliance with the maximum height of buildings development standard is considered to be unnecessary and unreasonable in the circumstance of this site as discussed below:*

- The proposed variations arise as a result of a desire to ensure that Building D is clearly the dominant building when compared to Building C. However, there is only a 1 storey difference between the two buildings required by the DCP, and due the fall along each site frontage, Building D is at the lowest point of the site which further diminishes the apparent difference in scale between Buildings C and D such that they appear similar in height. In order to create a prominence for Building D, the architectural expression has deliberately emphasised the verticality of the building, which is terminated by the proposed parapet which has been designed as an architectural roof feature. Whilst there is a lift over run and plant area which also breach the height control for Building D, these are located behind the architectural roof feature and are not visible.*
- The proposed departure from the height control for the lift overrun and plant on the top of Building D is located behind the parapet and such that they are recessive which eliminates their visual impact to the surrounding streets.*
- The locality is undergoing a transition in its character and other similar developments are occurring within the vicinity of the site. The proposed variation to the height control is minor and will not result in a building which is inconsistent with the emerging character of development in the zone and locality generally.*
- The proposed areas of height non-compliance do not result in any significant or meaningful additional overshadowing to the surrounding properties due to the minor nature of the height exceedances and the*

*central location of rooftop elements such as the lift overrun, plant and screening.*

- *There are no adverse impacts in terms of privacy impacts to adjacent sites resulting from the proposed variation to the height development standard which would warrant strict compliance.*
- *The proposed variation allows for the most efficient and economic use of the land.*
- *Having regard to the planning principle established in the matter of Project Venture Developments v Pittwater Council [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.*
- *Requiring strict compliance would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public and instead would impact on the achievement of an optimal built form outcome for the site as anticipated by the new planning controls.”*

92. Officer's comment: In respect to Prestons CJ judgement the NSW Land and Environment Court has established the five part test (outlined above). In this case the development satisfies the five part test and is considered the variation to the height control requested is considered to be worthy of support in this individual instance.

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

93. Applicants Comment: *The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:*

- *in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
- *there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*

94. *The greatest extent of the height variation for Building D is associated with the parapet which has been introduced as an architectural roof feature for this building to address Council's desire for Building D to be the clearly*

*dominant building when compared to Building C. There is only a 1 storey difference between the two buildings required by the DCP, and due the fall along each site frontage, Building D is at the lowest point of the site which further diminishes the apparent difference in scale between Buildings C and D such that they appear similar in height. In order to create a prominence for Building D, the architectural expression has deliberately emphasised the verticality of the building, which is terminated by the proposed parapet as an architectural roof parapet. Whilst there is a lift over run and plant area which also breach the height control for Building D, these are located behind the architectural roof feature and are not visible.*

95. *The environmental planning grounds that justify this component of the development are:*

- The proposed development provides for a scale for each building as anticipated by the DCP and therefore the proposal provides for a compatible outcome with the forthcoming context of the site notwithstanding the height non-compliance.*
- The height non-compliance is specifically the result of a desire to fulfill the intended urban design outcome as anticipated by the planning controls, which is to ensure that Building D is the dominant building within the street block.*
- The proposed areas of height non-compliance do not result in any meaningful difference in shadow impact both to adjacent properties and also within the development itself when compared to a compliant height.*
- The proposal also provides a more sensitive interface to Roberts Lane as Building A is only 3 storeys which is half the possible 6 storey height provided by the LEP and DCP.*

96. *The objects specified in section 5(a)(i) and (ii) of the E P & A Act are:*

*'to encourage:*

*i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*

*ii) the promotion and co-ordination of the orderly and economic use and development of land...'*

97. *The proposed development is consistent with the aims of the Policy and the objects of the E P & A Act in that:*

- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional*



*benefits to the owners or occupants of the surrounding properties or the general public.*

- *Strict compliance would prevent the achievement of an optimal urban design outcome and would diminish the visual prominence of Building D, contrary to the planning vision for the site.*

*On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height non-compliance in this instance.”*

98. 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 not need to satisfy. Importantly, there does not need to be a “better” planning outcome:

***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***

99. 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,”*

100. Applicants comment: *“Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).*

*These matters are comprehensively addressed above in this written request with reference to the five part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.*

101. *Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.*

**Objective of the Development Standard**

102. The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

**Objectives of the Zone**

103. Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the B4 Mixed Use zone.

*The objectives of the B4 Mixed Use zone are:*

- To provide a mixture of compatible uses.*
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- To allow for residential development in the Hurstville City Centre while maintaining active retail, business or other non-residential uses at street level.*

104. *The proposal provides a mixture of compatible uses comprising speciality retail, supermarket, food and drink premises, a hotel, and residential apartments and will contribute to the vibrancy of the area. The site is also particularly well located in relation to public transport being only 450 metres from Allawah train station and 750 metres from Hurstville train station and town centre and therefore provides a transitoriented development that intensifies and diversifies activity around public transport infrastructure allowing for multiple activities and services, local employment and diverse housing options. The proposal is also in very close proximity to a range of recreational opportunities and services and facilities including Kemp Field which is directly opposite the site to the south.*

105. *The architecture of the development with buildings addressing the street frontages and the internal common landscaped open space, combined with a high quality public domain outcome will result in activated and vibrant places that are used both during the day and evening, increasing safety.*

106. *For the reasons given the proposal is considered to be consistent with the objectives of the B4 Mixed Use zone.*

107. *The proposal has been demonstrated to be consistent with both the objectives of the building height development standard as well as the objectives of the zone and therefore the consent authority can be satisfied that the proposal is in the public interest. Furthermore, the public interest is appropriately served by maximising the provision of housing, employment and hotel uses provided by the development, within the identified environmental capacity of the site.*

108. Officer's comment: Buildings A, B and C are all compliant with their respective height limits. The non-compliance is to Building D, which has been designed to ensure all habitable areas are located within the permitted height and the only exceedance relates to the architectural roof feature, lift over run and fire stairs which are generally recessive in nature. The proposal generally satisfies the objectives of the development standard in the following ways:
109. The amenity impacts associated with the non-compliance have been considered. In terms of visual impact, the structures are generally centrally located which reduces their visual appearance from the immediately adjoining streetscapes. The lift over run and stairs are centrally located with the architectural roof feature providing screening and also visual relief from the roof structures. It is considered that in this case the small scale ancillary structures which will not be highly visible or an intrusive element given the scale and proportions of the building are considered acceptable. In respect to the more dominant elements like the lift overrun accessing the roof terrace at the rear, this will be a visible element when viewed from a distance. It will not be readily visible from immediately adjoining properties and streetscapes given that it is centrally located. There will be no significant adverse impacts in terms of overshadowing or overlooking to adjoining properties.
110. New developments of a similar nature have been approved along Forest Road and Treacy Street and have established a precedent for development in the street and immediate precinct. The proposed development is consistent with the pattern of development that is emerging in this precinct.
111. The proposed development is considered to satisfy the objectives of the building height development standard for the following reasons:
- The development is consistent with the built form envisaged for the eastern bookend of the Hurstville City Centre as described by Council's DCP.
  - Despite the variation, the bulk and scale of the development is compatible with the existing buildings that have been completed and under construction in the East Quarter which is located to the south of the development site.
  - When considered in the context of the development, the variation is minor and would not be readily discernible from street level.
  - The bulk of the variation is a result of the parapet and architectural roof feature which provide an important architectural detail which contributes positively to the overall appearance of the development.
  - The height variation will not result in any unreasonable adverse amenity impacts such as overshadowing on neighbouring properties or the public domain.
  - The variation to the height would not result in an unreasonable visual impact on neighbouring properties or the streetscape.
112. The B4 Mixed Use zone objectives require the development to:

- *To provide a mixture of compatible uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To allow for residential development in the Hurstville City Centre while maintaining active retail, business or other non-residential uses at street level.*

113. The exceedance in the building height control generally satisfies the objectives of the zone for the following reasons:

- The development will provide for a compatible mix of residential and commercial uses, and the proposed variations will not impede the attainment of this objective.
- The development is providing for the housing needs with a mix of apartment choices and layouts within a Mixed use zone whilst also integrating commercial and retail development and a hotel.
- The development is located within an accessible location with only a short walk to Allawah Station and a number of bus stops within close proximity.
- The development incorporates a diversity of apartment types (offering studio, 1, 2, and 3 bedroom apartments, some being 2 storeys, including adaptable and liveable apartments).
- The development will provide residential development for the Hurstville City Centre whilst also activating the street through the provision of non-residential uses at street level.

114. The area of non-compliance is considered not to be unreasonable and will not establish an undesirable precedent or undermine the objectives of the zone or height control. It will not have any adverse effect on the surrounding locality, which is consistent within the B4 location. The proposal promotes the economic use and development of the land consistent with zone and its purpose.

115. The public benefit of the variation is that it will appropriately facilitate the provision of a high density mixed use development on B4 zoned land and will provide for a range of housing stock. It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 needs to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.

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

development that contravenes the development standard has a better environmental planning outcome than a development that complies with the development standard.

117. The structures which breach the building height are ancillary containing lift over run, fire stairs, plant equipment and the façade screen. The lift over run, plant equipment and fire stairs are all centrally located and have minimal visual impact, with the facade screen providing suitable screening. The architectural roof feature adds visual interest to the building and is considered a key feature to the aesthetic and appearance of Building D.
118. In this case the proposal seeks to establish the preferred and appropriate design and built form outcome for this site with the building complying in large with the height standard. There will be no adverse amenity or visual impacts generated by the variation, the proposal satisfies the objectives of the zone and the development standard. In this case the justification to vary the height control is considered to be a reasonable and well-founded request.

**Clause 4.6(4)(b) the concurrence of the Director-General has been obtained.**

119. In accordance with clause 64 of the Environmental Planning and Assessment Regulation 2000, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

**Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))**

120. Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

**Conclusion – Assessment of Clause 4.6 Request for Variation**

121. Despite the non-compliance in terms of the height, the proposed variation is considered to be acceptable and satisfies the provisions of Clause 4.6.
122. The proposed variation satisfies the objectives of the height control as the non-compliant structures, being the architectural roof feature, lift overrun, stairs and plant will not be visually dominating. The additional height is considered to be consistent with other developments in the immediate locality and the scale of the development is sympathetic with the existing scale and form of existing adjoining developments.
123. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).

124. For these reasons the Clause 4.6 Statement is considered to be well-founded and could be supported if the development as a whole was consistent with the assessment criterion and was of a form that could be supported.

**Detailed assessment of variation to Clause 4.4 Floor Space**

125. The proposed development seeks a variation to the development standard relating to floor space (Clause 4.4 of the HLEP). The LEP identifies two FSR zones which apply to the site being a 2:1 FSR along the Roberts Lane frontage of the site and a 3.5:1 FSR for the remainder of the site. The gross floor area (GFA) is calculated in accordance with the definition in the HLEP which states

**Gross floor area** means “the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes—
  - (d) any area for common vertical circulation, such as lifts and stairs, and
  - (e) any basement—
    - (i) storage, and
    - (ii) vehicular access, loading areas, garbage and services, and
  - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
  - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
  - (h) any space used for the loading or unloading of goods (including access to it), and
  - (i) terraces and balconies with outer walls less than 1.4 metres high, and
  - (j) voids above a floor at the level of a storey or storey above.

126. Having regard to the above definition, the application has been modified to ensure all areas within the building that are classified as GFA have been included.

127. The plans have been amended to remove a number of hotel rooms within Building D and also a reduction in the height of Building A from 6 storeys to 3 storeys. The reduction in the height of Building A has reduced the FSR within this area to 1:1, where a 2:1 FSR is permitted and the hotel rooms have been reduced due to the removal of the connecting bridge between Buildings C and D. These changes have resulted in the bulk and scale of the development being generated towards the corner of Forest Road and Durham Street with this being the focal point of the site.

128. On this basis, the proposed development will exceed the GFA by 1019.83sqm. This is a 3.87% variation to the control. Any variation to the

FSR/GFA can only be considered under Clause 4.6 – Exceptions to Development Standards of the HLEP.

129. Clause 4.6(1) outlines the objectives of the standard which are to “provide an appropriate degree of flexibility in applying certain development standards to particular development” and “to achieve better outcomes for and from development by allowing flexibility in particular circumstances”.

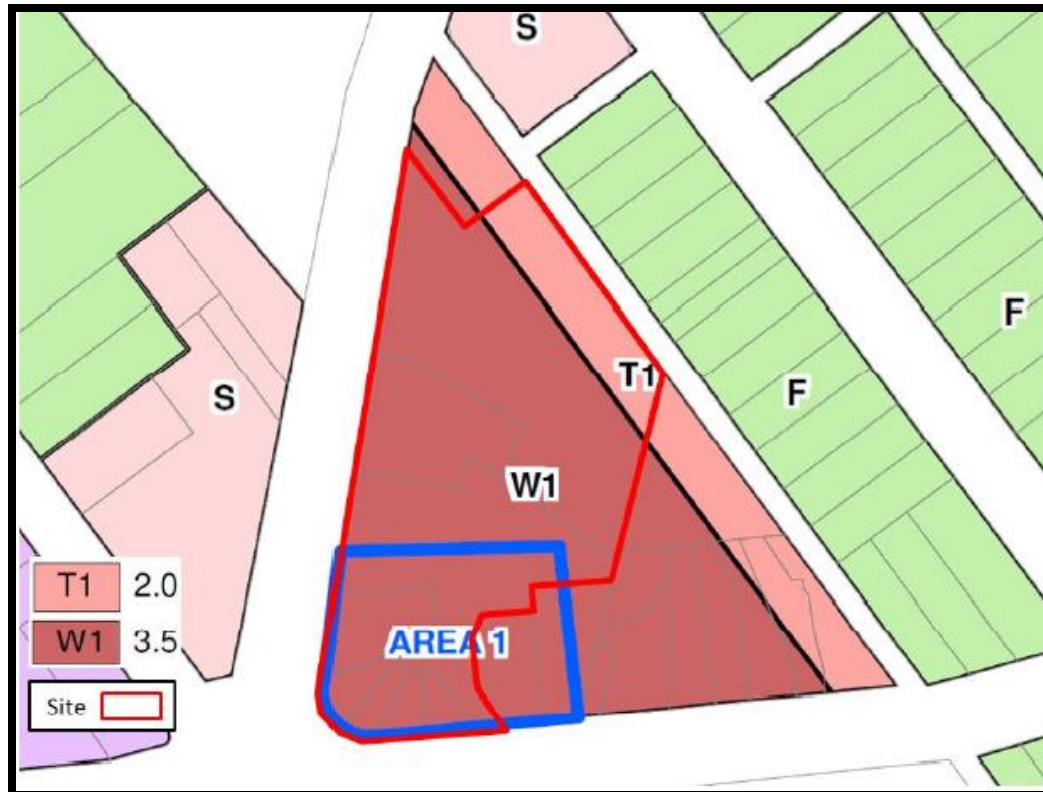


Figure 15: Floor space ratio of the subject site

130. In addition to the FSR Controls, Clause 4.4 (2A) of the HLEP provides the following:

*Despite subclause (2), development consent may be granted for a building if the consent authority is satisfied that—*

- (a) *the gross floor area of the building will exceed the maximum gross floor area that would otherwise be permitted under this clause by an amount of no more than 7,023 square metres (the bonus floor allowance), and*
- (b) *part of the building, with a floor area of not less than the bonus floor allowance, will be—*
  - (i) *used for the purpose of hotel or motel accommodation, and*
  - (ii) *situated on land identified as “Area 1” on the Floor Space Ratio Map.*

The proposal seeks to take up a portion of the bonus floor space allowance provided by the above clause and includes a hotel of 4,741sqm in gross floor area to be located within Building D, which is situated on land identified as Area 1 on the floor space ratio map. The proposal is compliant in this regard.

131. 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”*

132. To support the non-compliance, the applicant has provided an updated request for a variation to Clause 4.4 prepared by Sutherland & Associates Planning and dated March 2021.

133. The Clause 4.6 request for variation is assessed in detail below.

**Is the planning control in question a development standard?**

134. The Floor Space Ratio control pursuant to Clause 4.4 of the HLEP 2012 is a development standard.

**What are the underlying objectives of the development standard?**

135. 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.*

**What is the context of the variation?**

136. Applicant's Comments: *“In relation to the calculation of FSR for the two FSR zones, in Mulpha Norwest Pty Ltd v The Hills Shire Council (No 2) [2020] NSWLEC 74, the Land and Environment Court has decided that the FSR must be evaluated separately in the two different FSR areas. The table below provides a breakdown of the site area of each FSR zone, the*



compliant Gross Floor Area (GFA) within each FSR zone, the total available Gross Floor Area on a combined basis, and the variation to the FSR control in the 3.5:1 zone. (These figures are exclusive of the 'bonus floor allowance').

FSR zone	Site Area	Compliant GFA	Proposed GFA/FSR	FSR	FSR Variation
2:1	1,018.38 sqm	2,036.76sqm	1,014sqm	0.99:1	N/A
3.5:1	7,526.62 sqm	26,343.17sqm	27,363sqm	3.635:1	1,019.83sqm or 3.87%
TOTAL	8,545.63sqm	28,379.93sqm	28,377sqm	N/A	N/A

137. *Whilst the total proposed Gross Floor Area (excluding the 'bonus floor allowance') does not exceed the total density that can be achieved across the entire site, the proposal exceeds the maximum gross floor area in the 3.5:1 area by 1,019.83 square metres or 3.87%.*
138. Council's comments: "The application proposes a total gross floor area of 28,377sqm across the development site, which is compliant with the total maximum gross floor area permitted within the two FSR zones, which equates to 28,379.93sqm. The area of the site which is permitted to have an FSR of 2:1 (2036.76sqm), proposes a FSR of 1:1 (1014sqm), which is significantly below the maximum permitted.
139. The area of the site which is permitted to have an FSR of 3.5:1 (26,343.17sqm), proposes a FSR of 3.635:1 (27363sqm), which is a variation to the development standard of 1019.83sqm, equating to 3.87%. Numerically, the variation is considered minor given the large, integrated nature of the development across this coordinated site. In this case, a concession of this nature is considered satisfactory given the design excellence of the building.
140. Currently, the building is designed to accommodate large unbuilt upon areas and generous areas of separation. This is an appropriate and clever urban design and planning outcome, which is able to capture some additional floor space without the building looking excessively dense and bulky. The breaks in the built form reduce the mass and visual bulk of the building and break up its length. The proposal creates a harmonious and coherent looking building.

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

141. Applicant's comments: "*Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in Wehbe v Pittwater Council [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.*

142. *In addition, in the matter of Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34] the Chief Justice held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.*
143. *This request addresses the five part test described in Wehbe v Pittwater Council. [2007] NSWLEC 827, followed by a concluding position which demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:*

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

144. *The specific objectives of Clause 4.4 of the HLEP are identified below. A comment on the proposals consistency with each objective is also provided.*
- (a) *to ensure that buildings are compatible with the bulk and scale of the existing and desired future character of the locality, the overall density across the site does not exceed the maximum density which is achievable with the application of the two FSR controls and the variation arises as a result of a minor increase to the density on the western part of the site which is compensated by a significant reduction in density on the eastern part of the site. In particular, Building A is half the 6 storey height anticipated by the planning controls. The proposed bulk and scale of the remaining buildings is exactly as anticipated by the planning controls which reflects 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,*

The overall density across the site does not exceed the maximum density which is achievable with the application of the two FSR controls and the variation arises as a result of a minor increase to the density on the western part of the site which is compensated by a significant reduction in density on the eastern part of the site. Accordingly, the intensity of land use is exactly as anticipated by the FSR controls which apply to the site notwithstanding the variation to FSR in the 3.5:1 zone which means that the density is acceptable having regard to the availability of infrastructure and also likely traffic generation arising from the development of the site.

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

The overall density across the site does not exceed the maximum density which is achievable with the application of the two FSR controls and the variation arises as a result of a minor increase to the density on the western

part of the site which is compensated by a reduction in density on the eastern part of the site. The variation to the 3.5:1 FSR zone does not manifest itself in any difference in scale of development compared to that which is envisaged for the site under the recently adopted planning controls for the site, and therefore there is no adverse environmental impacts on the use or enjoyment of adjoining properties and the public domain as a result of the proposed variation.

*(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,*

The variation to the 3.5:1 FSR zone does not manifest itself in any difference in scale of development compared to that which is envisaged for the site under the recently adopted planning controls for the site, and therefore the development provides appropriately for a transition in scale from west to east across the site. In fact, the proposal provides for a reduced density on the eastern part of the site where there is a more sensitive interface to the lower scale residential development across Roberts Lane to the east.

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

The variation to the 3.5:1 FSR zone does not manifest itself in any difference in scale of development compared to that which is envisaged for the site under the recently adopted planning controls for the site, and therefore there is no adverse impact to the nearby heritage listed Hurstville Scout Hall as a consequence of the proposed FSR variation.

*(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.*

The overall density across the site does not exceed the maximum density which is achievable with the application of the two FSR controls and the variation arises as a result of a minor increase to the density on the western part of the site which is compensated by a reduction in density on the eastern part of the site. The variation to the 3.5:1 FSR zone does not manifest itself in any difference in scale of development compared to that which is envisaged for the site under the recently adopted planning controls for the site, and therefore the bulk and scale of the proposed development remains compatible with the major centre status of the Hurstville City Centre.

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

145. *The underlying objectives and purpose of the FSR control are relevant to the proposed development. However, the proposed development is consistent with those objectives on the basis that the overall density on the site is as anticipated by the application of the two FSR zones.*

**3. The underlying object of purpose would be defeated or thwarted if**

**compliance was required and therefore compliance is unreasonable.**

146. The underlying objectives and purpose of the standard relates to density and intensity of use as well and to control bulk and scale. The underlying objective and purpose would be diminished by a compliant proposal in the 3.5:1 FSR zone as the development would fail to realise the identified environmental capacity of the site.

**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.**

147. The development standard has not been virtually abandoned.

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

148. The current use and character of the land is generally for commercial purposes with the current strategic direction for the precinct, the current zoning of the land and applicable development controls anticipating an intensification of the use of the site for commercial activity and employment generating uses. This site is suitable for such intensification, the zoning and primary development controls are relevant and redevelopment can be readily facilitated and on that basis this way is not applicable ground for justification of the variation.

Key facts that support the above reasons why strict compliance with the floor space ratio development standard is unreasonable and unnecessary in the circumstances of the case are as follows:

- Whilst there is a minor exceedance in the 3.5:1 zone, this is balanced by the equivalent minor reduction in the 2:1 zone, such that the overall density of the proposed development is exactly as anticipated for the site when the two FSR zones are combined. Accordingly, the variation arises from the distribution of Gross Floor Area across the site and not as a result of any proposed increase in overall density for the site beyond that which is intended by the FSR controls.
- Notwithstanding that the distribution of Gross Floor Area across the site is not precisely as intended by the boundary between the two FSR zones, the proposed development nonetheless provides a distribution of mass and scale across the site generally as anticipated by the DCP as well as the previous master planning process.
- Despite the proposed FSR variation, the Applicant's proposed approach towards the distribution of density on the site is entirely aligned with the objective of the split FSR zones with a lower density and scale along the Roberts Road frontage of the site and higher density and scale for the remaining majority of the site. In particular, Building A is actually half of

*the 6 storey height anticipated by the DCP which provides for an even more sensitive interface to Roberts Lane.*

- *The proposed variation to the 3.5:1 FSR control is minor and does not result in any unreasonable impacts, noting that this does not compromise the achievement of all of the necessary metrics in relation to setbacks, number of storeys, common open space and the provision of through site links.*
- *If the variation is not permitted, the overall site will not achieve its planned level of density.”*

149. Council's comments: In order to consider the reasonableness of the proposal, the Applicant has considered whether the development satisfies the objectives of the development standard and objectives of the zone. The objectives of the standard seek to reduce the intensity of development to ensure it is compatible with the desired future character and zone objectives and to limit the bulk and scale of development. This being a key landmark site and design excellence is of critical importance as this site marks one of the gateway locations to Hurstville. The current design has considered the sites importance, size and prominence. It has created a very attractive built form that includes curved elements which wrap around the corner and continues along Durham Street. The built form is broken up by a formal central courtyard space which provides direct pedestrian links to Forest Road. The elevations of all the buildings are broken up by the differing colour palettes and materials and finishes. The mass and form is well balanced and coherent and will create an attractive response to this key site. The objectives of the FSR standard despite a small non-compliance have been sensitively achieved through the design.

150. The building is located in the B4 zone and will comprise of commercial/retail tenancies on the ground floor, residential apartments within all buildings and a hotel within Building D which are all permissible uses which will not compete but will compliment each other and other development within the Hurstville City Centre. The development will provide additional services and facilities that will benefit and grow this precinct. Whilst the site is located on the periphery of the City Centre it will create connectivity and enhance the vibrance of the area.

151. In respect to Prestons CJ judgement the NSW Land and Environment Court and in accordance with a recent decision (Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118), the NSW Land and Environment Court has established a “five part test” for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation. The Applicant has justified above that the development satisfies the purpose and intention of the five part test. It is considered that the proposal satisfies the five part test for the following reasons:

- the proposed scale and massing of the building is consistent with the desired future character of the locality.

- the non-compliance relates to a relatively small amount of additional floor space in the order of 1019.83sqm (3.87%) which dispersed across this large site is considered a minor numeric non-compliance.
- the area of non-compliance will not result in any adverse impacts on the adjoining land uses with respect to overshadowing, loss of privacy, inappropriate scale and view loss.
- The proposed development will have a positive contribution to the streetscape and immediate surrounds.

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

152. Applicant's comments: *"The Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:*

- *in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
- *there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*

*The variation to the development standard in this instance is for FSR and unlike a variation to a height control for example, where there is a specific area of encroachment, there is not necessarily one specific area responsible for the FSR control. Notwithstanding, the proposed variation to the FSR control in the 3.5:1 FSR zone of 1,019.83 square metres could correlate with the GFA on the top floors of both Buildings C and D.*

*The environmental planning grounds that justify the component of the development which results in the FSR variation are:*

- *anomalous outcome which would be inconsistent with the intention of the DCP to reduce scale at the eastern edge of the site. The proposed buildings in the 3.5:1 FSR zone have a scale and proportions as anticipated by the planning controls such that the proposed variation does not result in any detrimental impact. The above identification of areas within the building which are equivalent to the additional 1,019.83 square metres is particularly useful in considering the environmental planning grounds associated with the proposed variation. The proposed development is predominantly compliant in relation to height, setbacks and arrangement of buildings as anticipated by the DCP. The removal of floor space by taking the top floor of both building C and D to simply achieve numerical compliance would result in a built form which is less*

*than that which was anticipated for the site by the concept master plan and would be inconsistent with the built form outcome which is intended by the planning controls. Furthermore, strict compliance in the 3.5:1 FSR zone would force this area to be redeployed into Building A in the 2:1 zone, which could result in an or a built form outcome which differs from that which is expected on the site. Therefore, the appropriate contextual fit of the proposed development provides an environmental planning ground to support the proposed variation.*

- It is noted that Preston J provides that the development is not required to demonstrate a beneficial effect relative to a compliant development, however, in this instance it is considered that strict compliance would not achieve any improved outcome for the development and would in fact result in a diminished outcome as a result of needing to redeploy the floor space into the 2:1 FSR zone, or simply result in less housing and employment floor space than that which is capable of being provided within the demonstrated environmental capacity of the site.*
- The overall density of the proposal does not exceed the total density which could be achieved across the site. Furthermore, the proposed distribution of density across the site, where more floor space is located in the western part of the site rather than the more sensitive eastern part, is entirely consistent with the core objective of the split FSR zones which instead aims to shift the majority of built form to the western part of the site and away from the sensitive interface across Roberts Lane. In particular, Building A is actually half of the 6 storey height anticipated by the DCP which provides for an even more sensitive interface to Roberts Lane. The Applicant's proposed approach towards the distribution of density on the site is entirely aligned with the objective of the split FSR zones by moving density towards the western part of the site.*
- The proposed variation to the 3.5:1 FSR control does not result in any unreasonable impacts.*
- If the variation is not permitted, the proposal would need to relocate density to Building A which is counter intuitive as it more merely diminish the achievement of a more sensitive interface to Roberts Lane.*
- The proposed FSR variation will provide for additional housing and employment floor space which is an environmental benefit particularly in this location where Council is trying to encourage additional housing and employment closer to centres due to the better access to public transport and the various facilities and amenities offered by the centres.*

*On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed FSR non-compliance in this instance.*

153. Council's comments: Based on the discussion above, it is considered that there are sufficient environmental planning grounds to justify contravening

the development standard. Key environmental planning grounds to support the variation include:

- Despite the development exceeding the floor space ratio development standard, Buildings A, B and C all comply with their maximum height limits and with the exception of the architectural roof feature, lift over run and fire stairs Building D is compliant with the maximum 65m height limit which is still consistent and in scale with adjoining developments and development within the immediate vicinity. As such, the overall bulk and scale of the building is considered to be acceptable in terms of its scale and built form and the relationship of the building to the street and adjoining development.
- The subject development site is seen as the gateway to the city centre and the corner of Forest Road and Durham Street should be the focal point for the development. The variation is of a minor nature and part of the building that encroaches the 65m height limit is the architectural roof feature which provides a high quality element that defines the presence of Building D as the main entry and focal point to the development, whilst also screening the lift over run and plant areas.
- The development has been subject to a planning proposal and the built form is what was anticipated through this process. It will improve the site with the introduction of landscaping and softening the appearance of the development when viewed from all immediate streetscapes. The proposal is environmentally sustainable and will produce a visually attractive development.
- There are no adverse amenity impacts created by the development i.e. no view loss, unreasonable overshadowing or overlooking to any immediate residential property.

154. These are all positive environmental and planning outcomes.

**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.**

155. Applicant's comments: *"Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).*

156. *These matters are comprehensively addressed above in this written request with reference to the five part test described in Wehbe v Pittwater Council [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.*

157. *Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent*



*authority is satisfied that 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.*

**Objective of the Development Standard**

158. *The proposals consistency with the objectives of the development standard have been addressed in detail in this Clause 4.6 request.*

**Objective of the Zone**

159. *The objectives of the B4 Mixed Use zone are:*

- To provide a mixture of compatible land uses.*
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- To allow for residential development in the Hurstville City Centre while maintaining active retail, business or other non-residential uses at street level.*

160. *The proposal provides a mixture of compatible uses comprising speciality retail, supermarket, food and drink premises, a hotel, and residential apartments and will contribute to the vibrancy of the area. The site is also particularly well located in relation to public transport being only 450 metres from Allawah train station and 750 metres from Hurstville train station and town centre and therefore provides a transitoriented development that intensifies and diversifies activity around public transport infrastructure allowing for multiple activities and services, local employment and diverse housing options. The proposal is also in very close proximity to a range of recreational opportunities and services and facilities including Kemp Field which is directly opposite the site to the south.*

161. *The architecture of the development with buildings addressing the street frontages and the internal common landscaped open space, combined with a high quality public domain outcome will result in activated and vibrant places that are used both during the day and evening, increasing safety.*

162. *For the reasons given the proposal is considered to be consistent with the objectives of the B4 Mixed Use zone.*

163. *The above discussion demonstrates that the proposal development will be in the public interest notwithstanding the proposed variation to the FSR development standard, 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. Furthermore, there is no material public benefit in maintaining the standard generally or in relation to the site specifically as a variation as proposed has been demonstrated to be based on sufficient environmental planning grounds in this instance. Accordingly, there is no material impact or public benefit associated with strict adherence to the development standard and there is no compelling*

*reason or public benefit derived from maintenance of the standard for this particular component.*

164. Council's comment: The proposed development will be in the public interest because it is consistent with the objectives of the floor space standard and the objectives for development within the zone. The development will not compromise the importance of the Hurstville City Centre but will cater for commercial/retail floor space for the locality, additional apartments and also a hotel which is not a common or prevalent use in the area (but a desirable one) and they will assist with providing support to the city centre.

**Clause 4.6 (4)(b) the concurrence of the Planning Secretary Director-General has been obtained**

165. In accordance with clause 64 of the Environmental Planning and Assessment Regulation 2000, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

**Non-compliance does not hinder the attainment of the Objects of the Environmental Planning and Assessment Act 1979**

166. The Wehbe decision identifies that in assessing a variation to a development standard, consideration must be given to Objects (a)(i) and (a)(ii) in Section 5 of the Environmental Planning and Assessment Act 1979. These are:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land.

167. It is not considered that the proposed variation to the floor space ratio standard will contravene either of these Objects. The proper management of the existing urban environment in order to achieve better social, environmental and community outcomes, as well as the orderly and economic use and development of land, will be realised through the provision of a high quality development in a location with good access to public transport options and in proximity to shops, services and recreational facilities and educational establishments.

**Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))**

168. Contravention of the maximum floor space ratio development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

**Any other matters required to be taken into consideration by the Director-General before granting concurrence**

169. Despite exceeding the statutory maximum floor space ratio, the proposed redevelopment of the site will facilitate the orderly and economic redevelopment of the site for the purposes of a mixed use development that will positively contribute to the achievement of the objectives of Kogarah Local Environmental Plan 2012.

**Conclusion – Assessment of Clause 4.6 Request for Variation**

170. Despite the non-compliance in terms of the floor space (and gross floor area), the proposal is considered to be acceptable and satisfies the provisions of Clause 4.6. The additional 3.87% of floor space (some 1019.83sqm of GFA) is considered minor and will not create any adverse environmental or amenity impacts.
171. It is also noted that the total gross floor area across the development site does not exceed the total density that can be achieved across the entire site. The proposed FSR for the area that has a FSR of 2:1, is significantly under the maximum permitted proposing a FSR of 1:1. This FSR zone is located adjacent to land zone R2 Low Density Residential and the lower scale of development and reduced FSR for this building is considered an appropriate transition between zones. Building D is the gateway building to the development and its visual prominence and dominance is important to define the development. The additional floor area does not detract from the streetscape character and is consistent with the buildings already constructed and currently under construction.
172. The proposed development satisfies the objectives of the floor space control and the zone objectives and is therefore considered to be in the public interest.
173. 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 in this particular case.

**Draft Georges River Local Environmental Plan 2020**

174. In accordance with section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 any proposed instrument that is or has been the subject of public consultation is a relevant matter for consideration in the assessment of a development application.
175. The Georges River Local Planning Panel endorsed at its meeting dated 26 June 2020 the Planning Proposal (as amended) to be forwarded to the Department of Planning, Industry and Environment for gazettal in accordance with Section 3.36 of the Environmental Planning and Assessment Act 1979.

176. The Draft Georges River Local Environmental Plan 2020 provisions have no detrimental 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”.

### Hurstville Development Control Plan No.2 (HDCP)

177. The Hurstville Development Control Plan No. 2 applies to all land identified as Hurstville City Centre. The following table outlines the relevant controls and compliance with HDCP:

### Section 4.7 - Eastern Bookend – Hurstville City Centre

Section 4 of HDCP No 2 provides objectives and controls for the Hurstville City Centre Precincts.

The Hurstville City Centre is divided into six precincts defined geographically and by land use function. The subject site is located within the Eastern Bookend precinct. Eastern Bookend is identified as the precinct shaded lilac, on the eastern extremity of the City Centre. This precinct straddles Forest Road and Durham Street and is bounded by Hill Street on the western side, the Illawarra Railway Line on the southern side, residential areas on the northern and the Kempt Field Park on the eastern side.

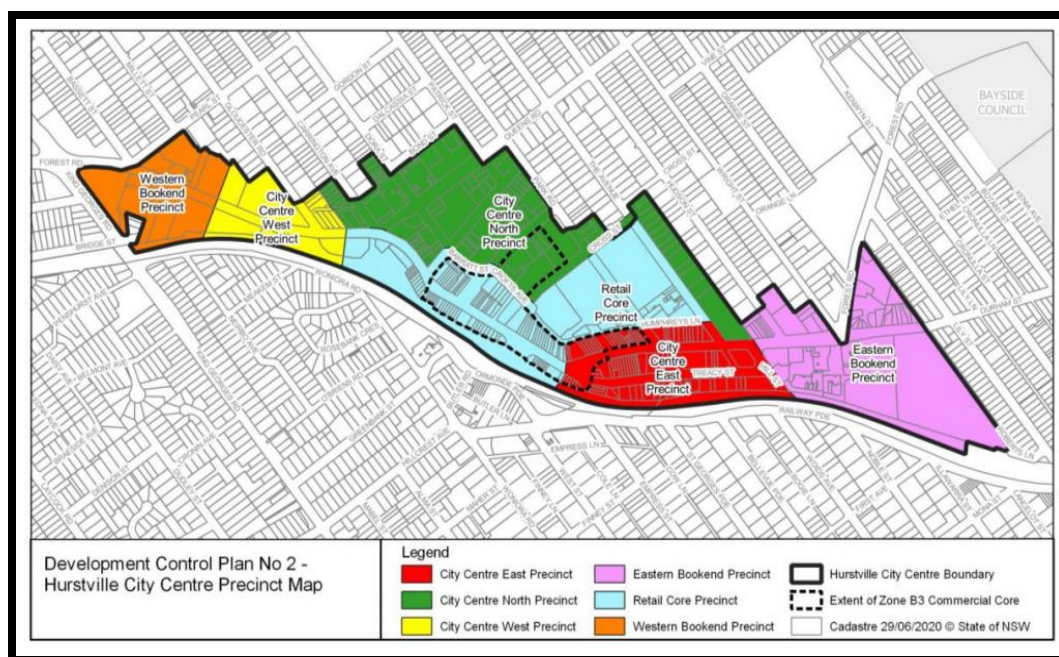


Figure 16: Hurstville City Centre Precincts

This area forms the gateway to the city and is dominated by the East Quarter buildings, transforming it into a mixed use gateway to the City Centre with its prominent position on the axis of Forest Road.

The Eastern Bookend Precinct will be characterised by a higher intensity of built form, allowing for taller buildings on designated sites to define the

eastern entry to the City Centre. Mixed-use development will be promoted. This Precinct provides a transition between the City Centre and surrounding residential areas.

The proposed development is consistent with the objectives and principles for development in the Eastern Bookend Precinct and defines the entrance to the city centre.

Section 5 of HDCP No 2 provides controls for residential, commercial and mixed use development in the Hurstville City Centre. The most relevant criterion is reproduced below:

<b>5.3.1 Site amalgamation</b>
The DCP requires a building floor plate of between 900-1000sqm and a minimum street frontage of 30m. The floor plate exceeds 1000sqm and the street frontage exceeds 30m. The proposed development does result in an isolated site at No 53 Forest Road and this site is less than 800sqm in area. This is addressed in Section 8.2 of the DCP.
The DCP requires that where lot consolidation is proposed that adjoining sites must not be isolated and retain access. In accordance with the requirements of section 5 and also section 8.2 of HDCP No 2, the owners have attempted to acquire the adjoining site at No 53 Forest Road, their efforts have been unsuccessful.
The applicant is required to demonstrate that any negotiations between the owners of the properties commenced before DA lodgement. An acquisition of the property at No 53 Forest Road was made on 16 June 2020, the owners representative for 53 Forest Road confirmed in writing on 17 June 2020 that the owners are not prepared to sell the property (irrespective of price).
<b>5.3.2 Floor Space Ratio</b>
Refer to Floor space ratio requirements in HLEP 2012.
<b>5.3.3 Building Height</b>
<u>Building Height</u> Refer to HLEP 2012 for maximum building heights. Buildings A, B and C are all compliant with height permitted by HLEP 2012. Building D is seeking a variation to the height control in relation to lift over runs, architectural roof features and plant. A Clause 4.6 has been submitted with the application – see assessment above.
<u>Street Wall Podiums</u> Refer to the site specific requirements under Section 8.2.4.4 of the DCP.
<u>Floor to Ceiling Heights</u> The DCP requires the following: Ground floor retail – 4.5m floor to floor height. First Floor commercial use – 3.6m floor to floor height. Residential use – 3.1m floor to floor height. The ADG requires a floor to ceiling height of 3.3m for ground and first floor in mixed use developments. The proposed development

provides a 4.25m floor to floor height for the ground floor and 3.1 metres floor to floor for residential uses. The residential ceiling heights are achieved.
<b>5.3.4 Street setbacks</b>
Refer to the site specific requirements for Landmark Square under Section 8.2.4.4 of the DCP.
<b>5.3.5 Building Separation</b>
The DCP requires that any residential or the residential component of mixed use development must provide adequate separation between habitable rooms, balconies and non-habitable room, consistent with State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65) and the recommendations of any accompanying design code. The separation distances within the site are generally consistent or exceed the requirements of the Apartment Design Guide.
<b>5.3.6 Solar Access</b>
The DCP requires that 70% of dwellings are to receive minimum of 3 hours solar access to a living area and private open space between 9am and 3pm on 21 June. This is overridden by the provisions of the ADG which require a minimum of 2 hours solar access rather than the 3 hours required by the DCP. In this regard greater than 70% of apartments receive at least 2 hours of solar access between 9am and 3pm on 21 June.
<b>5.3.7 Natural Ventilation</b>
The development complies with section.
<b>5.3.8 Visual Privacy, Acoustic and Vibration Amenity</b>
<u>Visual Amenity</u> Adequate separation has been provided and designed generally consistent with the provisions of SEPP 65 and the ADG. The design has ensured privacy is achieved. <u>Acoustic and Vibration Amenity</u> The internal layouts of apartments and the location of courtyards have been designed to minimise noise transmission. An acoustic report has been submitted with the application addressing potential noise generation and how to address. All habitable rooms facing Forest Road and Durham Street will require their windows to be closed to meet acoustic requirements, mechanical ventilation is therefore required. This will need to be provided in accordance with the requirements of the NCC Building Code of Australia and will need to be addressed at CC stage.
<b>5.3.9 Building Entrances and Lobbies</b>
All entrances are clearly defined, visible and identifiable from the street and public areas. Letter boxes, lifts and signage are located and accessed from the lobby areas. Appropriate CPTED measures have been employed and include suitable lighting.
<b>5.3.10 Building Facades and Articulation</b>
The proposed building contributes positively the streetscape and public domain and is consistent with the development in the immediate vicinity. The various architectural language with the use of

horizontal and vertical façade elements create a good balance and appropriately relates to the proportion and scale of other building within this precinct. Suitable and appropriate articulation has been provided and the buildings are broken up by the site through links along Forest Road.			
<b>5.3.11 Awnings and Balconies</b>			
<u>Balconies</u> This is subject to the provisions of SEPP 65 and the ADG.			
<u>Awnings</u> The proposed development provides awnings along the Forest Road and Durham Street frontages generally consistent with the objectives of the DCP.			
<b>5.3.12 Active Street Frontages</b>			
The proposal provides Active street frontages to Forest Road and Durham Street comprised of residential lobbies and retail tenancies at the ground floor of each building.			
<b>5.3.13 Permeability and Accessibility</b>			
The development provides site links through the site generally in accordance with the provisions of the site specific DCP. The links are all clearly defined and provide suitable and adequate width to cater for all users. The links will provide public access 24 hours a day, 7 days a week. The site through links are required to be registered on the title as public pedestrian accessways in accordance with the requirements of the VPA. Conditions of development consent have been imposed accordingly regarding the easement for access.			
<b>5.3.14 Crime Prevention Through Environmental Design</b>			
The proposed development provides surveillance of the adjacent streets both during the day and night. The entry areas and development as whole will be appropriately lit at night to enhance safety, visibility and legibility.			
Should the proposal be supported, a condition of consent has been imposed requiring CCTV systems and appropriate lighting be installed around the perimeter of the site as per the recommendation of the NSW Police Force. A condition shall also be imposed requiring operational compliance with the submitted Crime Risk Assessment report prepared by Lote Consulting.			
<b>5.3.15 Landscaping</b>			
The proposal has been accompanied by a landscaping plan which is considered satisfactory.			
<b>5.3.16 Planting on Structures</b>			
The proposed landscape design for the development includes landscaping within all communal areas and is considered to be satisfactory.			
<b>5.3.17 Site Servicing</b>			
The development provides for site services consistent with the objectives of DCP No 2.			
<b>5.4.1 Housing Choice, Affordability and mix</b>			
(a) Variety of	Developments comprising		Yes

units	<p>residential uses must provide a variety of residential units mix, sizes, and layouts within each development. The following criteria must be satisfied:</p> <ul style="list-style-type: none"> <li>• Bed-sitter apartments and one bedroom apartments must not be greater than 25% and not less than 10% of the total mix of apartments within each development.</li> <li>• Two bedroom apartments are not to be more than 75% of the total mix of apartments within each development.</li> <li>• Three bedroom apartments are not to be less than 10% of the total mix of apartments within each development</li> </ul>	<p>62 x 1 bedroom apartments (24.4%).</p> <p>140 x 2 bedroom apartments (55.1%).</p> <p>52 x 3 bedroom apartments (20.5%).</p>	
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Section 6 provides controls in relation to site planning considerations. Some of these controls are reproduced below:

Clause	Standard	Proposal	Complies
<b>6.1 Public Domain</b>			
6.1.1 Landscaping (street trees)	Street tree planting	This will be subject to the public domain plans required to be approved by Council's Assets and Infrastructure Section.	To be conditioned
6.1. 2 Infrastructure	Street furniture, lighting	This will be subject to the public domain plans required to be approved by Council's Assets and Infrastructure	To be conditioned



		Section.	
6.1.4 Paving, culture	Paving for footpaths as per DCP.	This will be subject to the public domain plans required to be approved by Council's Assets and Infrastructure Section.	To be conditioned
<b>6.2 Environmental Management</b>			
6.2.1 Energy Efficiency	Energy efficiency measures to be provided.	A BASIX certificate has been submitted with the application.	Yes
6.2.3 Stormwater Management	Suitable stormwater management plan is to be provided	The stormwater plan has been reviewed by Council's engineer and has been found to be satisfactory subject to conditions.	Yes
6.2.4 Waste Minimisation	Waste Management requirements	A suitable Waste Management plan has been submitted which caters for demolition, construction and operational waste for the development.	Yes
6.2.5 Wind mitigation	A wind effects report has been submitted	Generally acceptable.	Yes
6.2.6 Reflectivity	Minimise the impacts reflected light and solar reflectivity from buildings on pedestrians and	The building is capable of compliance and the proposed materials will	Yes

	motorists.	ensure reflectivity is minimised.	
6.2.7 Soil Management	Ensure changes to land use will not increase risk to public health. Suitable assessment should be undertaken to ascertain whether site is contaminated.	A Remedial Action Plan (RAP) has been prepared for the subject site to ensure that the proposed development will be suitable for the proposed use.	Yes
<b>6.3 Development of a heritage items or in the vicinity of a heritage item.</b>			
<b>6.3.1 General Information</b>			
Heritage items/in vicinity of heritage item.	If your property is a Heritage Item or is next to and in the vicinity of a Heritage Item you will need to consider the impact your development will have on the heritage significance of the heritage item and its setting	The subject site is not immediately adjacent to the heritage item.	Yes
<b>6.4 Preservation of Trees and Vegetation</b>			
6.4.3 Tree and Vegetation Management Process	Tree Management of subject site. SEPP (Vegetation in non rural areas) 2017 must be considered in tree management	The proposal requires the removal of 8 trees which are of a low retention value and are supported by Council's arborist. A detailed landscape plan has been provided which provides	Yes

		suitable landscaping for the proposed development. The provisions of the SEPP have been considered and are acceptable.	
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## Section 8.2 Landmark Square

Section 8.2 provides specific planning controls for the Landmark Square Precinct. The following table summarises the proposal against the relevant controls:

Clause	Standard	Proposal	Complies
<b>8.2.1.6 Planning Agreements</b>			
Planning Agreement	Development of the precinct must occur in accordance with the Planning Agreement registered on the title of the land.	The Planning Proposal (gazetted 7 August 2020) established new planning controls for the site was also supported by a Voluntary Planning Agreement which was executed in August 2019 providing a range of public benefits including monetary contributions towards upgrades to Kempt Field and public domain works in the	Yes

		Hurstville City Centre, road widening in Roberts Lane as part of the development works, and easements for public access over the through site links to the central public domain area with the site.	
<b>8.2.2 Desired Future Character</b>			
<b>8.2.2.2 Urban Design Principles</b>			
1) Sustainable precinct.	Development of a sustainable, diverse, attractive and inviting precinct for people to live, work and recreate through leadership and integration of design excellence	Proposal generally achieves these principles.	Yes
2) Visual impact of building.	Development is distinctive, visually interesting and appealing.	The proposal satisfies this control.	Yes
3) Context of the area	Development is designed to address the context of the area through responsive built forms and appropriate transitions to adjoining residential development.	The proposed development provides a hierarchy of height across the site which reflects the transition in scale anticipated by the planning with the highest point located in the south western corner and the lowest point in the	Yes

		area adjacent to Roberts Lane.	
4) SEPP 65 and ADG	Provision of good residential amenity by complying with the State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development and the Apartment Design Guide	The proposal provides residential amenity and meets the relevant amenity principles and standards of SEPP 65 and the ADG.	Yes
5) Street edge	The street edge is activated and clearly defined by building podiums featuring fine grain retail and active uses.	The proposal achieves an active street edge along Forest Road and Durham Street with the retail tenancies and podiums along a majority of the street frontage.	Yes
6) Façade articulation	The building facades are distinctively articulated to enhance the streetscape character.	The building Facades are articulated and maintain enhancing the streetscape character.	Yes
7) Human scale at street level	A human scale is maintained at the street level with particular emphasis on the human experience in the built environment.	The proposal achieves an active street edge along Forest Road and Durham Street, with a human scale provided by virtue of the retail tenancies and the podium along	Yes

		the majority of the street frontage.	
8) Pedestrian connections	A highly permeable precinct with distinguished pedestrian connections between streets and communal spaces.	Appropriate pedestrian connections have been provided.	Yes
9) Sense of place	A sense of place is created, particularly between buildings and in public spaces.	The high quality design and programming of the internal open space along with the activation of this space with retail frontages will achieve a strong sense of place within the development.	Yes
10) Car Parking	Provision of adequate basement car parking and a safe and efficient access network for pedestrians and vehicles.	Adequate parking has been provided.	Yes
<b>8.2.4 Development Requirements</b>			
<b>8.2.4.1 Surveyors Certificate</b>			
a) Surveyors certificate	A Development Application for the site must be accompanied by a surveyor's certificate that indicates the break-up of the residential and non-residential floor area for the purpose of calculating the gross floor area.	Surveyors certificate provided confirming break up of Floor area.	Yes
<b>8.2.4.2 Amalgamation and Site Isolation</b>			
<b>8.2.4.3 Roberts Lane Widening</b>			
a) Roberts	Roberts Lane is	The proposal	Yes

Lane road widening	subject to a road widening affectation. Refer to Figure 3 below.	incorporates a 3m wide road widening and dedication along the Roberts Lane frontage.	
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**Figure 17: Roberts Lane local road widening**

b) Road widening	The 3m road widening would enable Roberts Lane to be increased to a 9m wide public road which could accommodate an approximately 2m wide pedestrian footpath with street planting on the western side of the Lane and a minimum 6m wide two-way carriageway.	Road widening can only occur in the area highlighted blue under this development proposal.	Yes
c) Structures	No permanent structure may be built above or below the land nominated for road widening in	Noted, can be conditioned.	Yes

	Figure 3.		
d) Proponents expense for road widening	Road dedication and road widening is to be at the proponent's expense.	Noted can be conditioned.	Yes
<b>8.2.4.4 Built Form and Setbacks</b>			
a) Setbacks	Setbacks are to be provided as per Figure 4.	Setbacks are generally consistent with the DCP.	Yes
b) Podium height	Development on Forest Road and Durham Street shall display a built form comprising a maximum 3 storeys podium built form to the street frontage.	3 storey podium proposed to the Forest Road frontage for Buildings B and C. A 5 storey podium at the corner of Forest Road and Durham Street has been provided to ensure this building is the focal point for the site.	No, however considered acceptable.
c) Podium setbacks	The levels above the podium on Forest Road and Durham Street shall display a setback of 4m along the street frontages with a 10m setback on the corner of Forest Road and Durham Street as shown in Figures 5, 6 and 7.	4m setback provided to Durham Street. 4m setback provided to the Forest Road frontage with some minor point of encroachments. The building has varying setbacks to the Durham/Forest Road corner of the	Generally acceptable.  The reduced setback to the corner is considered appropriate.



		building.	
d) Transition to low density	Development shall provide an appropriate transition in height and density to the adjoining R2 Low Density Residential area along Roberts Lane to provide a comfortable pedestrian environment as detailed below: (i) Development on Roberts Lane shall display a maximum 3 storey built form to the street frontage; and (ii) Minimum 3m setback shall be provided from Roberts Lane (excluding land dedication as identified in 8.2.4.3).	3 storeys to the street frontage.  3m provided.	Yes  Yes
e) Access to ground floor apartments	Direct access from the street is to be provided to ground floor apartments located on Roberts Lane.	Direct access provided.	Yes
f) Acoustic ratings of apartments	All residential apartments are to be insulated and to have impact isolation between floors to achieve an Acoustic Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants. An Acoustic Report is to be submitted with any Development Application for the site to ensure that the	Acoustic report provided and reviewed by Councils Health Officer who has raised no objection subject to conditions.	Yes

	standards have been achieved.		
g) SEPP 65 and ADG	All developments are to comply with State Environmental Planning Policy No.65 Design Quality of Residential Apartment Development and the Apartment Design Guide.	See comments under Urban design and SEPP 65 assessment.	Yes
h) Height Map	A scaled height map overlay on top of Architectural plans is required at the Development Assessment stage to ensure heights are consistent with heights in the Local Environmental Plan	Clause 4.6 objection has been lodged for the height variations to building D.	No, however considered acceptable. See Clause 4.6 discussion above.
i) Wind Impact Report	<p>A Pedestrian Wind Impact Report prepared by a suitably qualified engineer is to be submitted with Development Applications for buildings 30m or higher, and for other buildings at the discretion of Council. At a minimum, the report is to:</p> <p>(i) report the likely impacts of wind on the pedestrian environment at the footpath level within the site and the public domain; and</p> <p>(ii) show how the proposal minimises the impact of wind</p>	A Pedestrian Wind Impact Report prepared by a suitably qualified engineer has been provided which addresses wind impacts associated with the proposal.	Yes

	on the public and private domain.		
<b>8.2.4.5 Façade Treatment and Street Corners</b>			
a) Building facades	Building facades must be clearly articulated and employ high quality materials and finishes that enhance and complement the streetscape character.	The design of the proposal is carefully considered with a unifying podium language and a unique and visually dynamic façade expression for each building which ensures diversity will be achieved.	Yes
b) Street corners	Street corners must be given prominence by a change in building articulation, materials, colours, form or height.	The amended design now ensures the buildings prominence is evident from the Forest Road and Durham Street corner. Materials, colours and form will provide an aesthetically pleasing building.	Yes
c) Human scale at street level	Human scale at street level must be created through the use of scale, rhythm, materiality and/or landscaping.	The podium levels provide the buildings with a human scale when viewed from street level.	Yes
d) Essential services	Essential services such as substations and fire hydrants	The substation has been	Yes

	must be integrated into the design of the façade	integrated into the Forest Road frontage and the hydrant booster has been relocated to Durham Street adjacent to the vehicular access.	
e) Modulation and articulation	Development must not rely solely on the use of two-dimensional colour and materials to create visual interest. Modulation and articulation in the building form must be explored.	The proposed buildings are appropriately modulated and articulated to provide visual interest from the public domain, including along the street and through site links.	Yes
f) Facade treatments	Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding and green walls should be considered as alternatives to blank walls.	There are no large areas of blank walls and the design of each building is such that they are all viewed all round.	Yes
g) Glazing balustrades	Clear glazing balustrades must be avoided where they are visible from the public domain	The amount of glazing used is considered acceptable.	Yes
h) Balconies	Balconies must be located at interfaces to the Scout Hall to reduce building bulk and enhance visual permeability. However, no	The subject development does not adjoin the Scout hall.	N/A

	structures are to encroach into the 6m wide setback as identified in Figure 8.		
<b>8.2.4.6 Pedestrian Access and the Public Domain</b>			
a) Width of site links	Provide a coherent structure of public through-site links that is highly permeable for pedestrians based on the following hierarchy of usage and minimum widths (refer Figure 10): (i) Primary connection – minimum 6m wide (ii) Supplementary connection – minimum 3m wide	A minimum 6m wide pedestrian connection has now been provided between building A and Building B.	Yes
b) Connections	Connections must be open to the sky.	The bridge proposed to connect Building C and D has now been removed.	Yes
c) Illumination of site links	All through-site links are to have appropriate levels of illumination	Can be conditioned to address this criterion.	Yes
d) Accessible routes	Provide high quality accessible routes to public and semi-public areas of the building and the site, including the central plaza, major entries, lobbies, communal open space, site facilities, parking areas and pedestrian pathways.	Generally acceptable, can be further clarified by specific detailing and/or conditions.	Yes
e) Through links	The design of through-site links is to ensure that a clear and safe path that is unobstructed by	Generally acceptable subject to further detailing.	Yes

	parking and services is available for pedestrians at all times.		
f) Accessways	Separate and clearly distinguish between public and private pedestrian accessways and vehicle accessways and utilise consistent paving treatments throughout the site.	Generally acceptable subject to further detailing.	Yes
g) Central plaza	<p>A central plaza of a minimum size of 1,500sqm is to be provided in the Precinct (refer Figure 10). The plaza is to satisfy the following:</p> <ul style="list-style-type: none"> <li>(i) To be provided as a consolidated, landscaped communal open space on the ground level which permits unrestricted public access;</li> <li>(ii) To be well-designed and easily identifiable by the general public;</li> <li>(iii) To be designed to support community events over different times of the day, week and year through the provision of an adaptable space, variations in</li> </ul>	Generally acceptable subject to further detailing.	Yes

	<p>levels where appropriate to enable formal and informal seating and the inclusion of services (e.g. water and power supply);</p> <p>(iv) To be surrounded by active land uses (e.g. retail tenancies); and</p> <p>(v) Excludes the site area occupied by public through-site links in the calculation of total area.</p>		
h) Public Domain Plan	A public domain plan is to be submitted with any Development Application. The plan must detail public domain improvements within the Precinct and adjacent to the Precinct, including footpaths, lighting, street tree planting and street furniture.	Generally acceptable. Council's Assets and Infrastructure Division have provided draft conditions of consent.	Yes
i) Electricity and telecommunications	The existing above ground electricity and telecommunication cables within the road reserve and within the site will be replaced, at the applicant's expense, by underground cable and appropriate street light standards, in accordance with the Energy and	Can be conditioned to satisfy this criterion.	Yes

	Communication Provider's guidelines. The applicant will bear the cost of the new installation and the first 12 months of additional street light charges.		
<b>8.2.4.7 Open Space and Landscaping</b>			
a) Deep Soil ground level setback	Deep soil landscaping should be provided in the setback at ground level. Deep soil should not be above basement parking.	The proposal provides sufficient deep soil for the subject site given its location.	Yes
b) Deep soil	Deep soil landscaping must be provided at ground level in the setback fronting Roberts Lane. The landscape design should enhance the visual amenity and pedestrian environment of Roberts Lane.	The DCP only requires unimpeded deep soil at ground level in the setback facing Roberts Lane.	Yes, the amended design provides a level of deep soil that will accommodate planting facing Roberts Lane.
c) Landscape open space	A landscaped open space is to be provided generally in the location shown in Figure 10 and is to include landscaping and the provision of street furniture.	The landscaping proposed represents an integral element in ensuring the development has an appropriate contextual fit and will positively contribute to the envisaged character of the Landmark Square Precinct.	Yes
d) Landscape	Landscape design is	The	Yes



design	to be in scale with the development and should relate to building form; facilitate storm water infiltration through the use of permeable surfaces; and be easily maintained.	landscape design is appropriate, and its scale is appropriate for this development.	
e) Landscaping	Landscaping is to ensure amenity of private and publicly accessible open spaces and solar efficiency of apartments by providing shade from the sun and shelter from the wind, including the use of deciduous trees for shading of windows and open space areas in summer and allowing solar access in winter.	The Landscape Package prepared by Urbis that accompanies the application demonstrates that the proposal will result in a mixed use development within a suitably landscaped setting having regard to the urban context of the site.	Yes
f) Communal open space	Additional communal open spaces are to be provided above the podium level of each building to ensure equitable access by all residents.	A roof top communal open space has been provided to Building B	Yes
g) Planting, seating and play equipment	Planting, seating and play equipment are to be provided in communal open spaces.	Planting, seating and play equipment has been provided in the ground floor communal open space and the	Yes

		rooftop communal open space as shown on the landscape plans.	
h) Landscaping Plan	All Development Applications are to include a landscaping plan for all landscaped areas prepared by a qualified landscape designer. The landscaping plan should demonstrate that there is no conflict with the location of services on the site and any deep soil planting area.	Landscape plans have been reviewed and considered acceptable.	Yes
<b>8.2.4.8 Active Street Frontages</b>			
a) Active street frontages	Active street frontages are to be provided along Forest Road and Durham Street in accordance with the Active Street Frontages Map of the HLEP 2012.	The proposal provides active street frontage to Forest Road and Durham Street comprising residential lobbies and retail tenancies at the ground floor of each building.	Yes
<b>8.2.4.9 Heritage Item – Scout Hall</b>			
a) Setbacks to Scout Hall	Developments adjacent to the Scout Hall are to comply with the minimum setback specified in 8.2.4.4	N/A. The development is not immediately adjacent to the Scout Hall.	N/A
b) Through site links	Through-site links are to be provided around the scout hall	N/A	N/A

	providing access between Durham Street and the internal future public domain area of the development in accordance with 8.2.4.6.		
<b>8.2.4.10 On-site Parking</b>			
a) Underground parking	Car parking must be located underground in a basement and be designed in accordance with Section 5.4 Transport, Traffic, parking and Access of this DCP.	Car parking is located underground in basement levels B2 to B4.	Yes
b) Car parking rates	Car parking rates must comply with RMS car parking rates in accordance with the Apartment Design Code.	The car parking provided exceeds the minimum RMS car parking rates.	Yes
c) Loading and unloading	All loading and unloading of goods is to be accommodated within the property and off the public roads, including garbage pickup.	All loading and unloading is proposed to be within the property. Basement level 1.	Yes
d) Vehicles entering and exiting	All vehicles are to enter and exit in a forward direction.	All vehicles can enter and exit in a forward direction.	Yes
e) AS/NZS 2890.1 and AS 2890.6 compliance	All the designs for all levels of the basement car park are to adhere to the latest edition of relevant AS/NZS 2890.1 and 2890.6.	Councils Traffic Engineer has reviewed the amended information and is satisfied compliance can be achieved.	Yes
f) Safe and	Safe and secure	Complies	Yes

secure access	access is to be provided for building users, direct access to residential apartments and convenient access to customers/staff of the commercial uses.		
<b>8.2.4.11 Vehicle Access</b>			
a) Traffic generation rates	The development is to adhere to traffic generation rates from Roads and Maritime Services Guide to Generating Development for the specific uses of the site.	TfNSW have provided their GTA's for the proposed development.	Yes
b) Service Vehicles	Service vehicles to the development must be restricted to Medium Rigid Vehicles (MRVs). Heavy Rigid Vehicles (HRV) cannot access Roberts Lane without kerb adjustment and significant loss of parking on local roads.	Can be conditioned to meet this criterion. The MRV is accessed via Durham Street.	A condition of consent has been imposed.
c) Service vehicle access to the development	Service vehicle access to the development is to be outside of school peak times, being 8.00am-9.30am and 2.30pm-4.00pm on Monday – Friday	Can be conditioned to meet this criterion.	Yes, the application has been conditioned with this restriction.
d) Three rest	Three restricted left in/left out vehicular access points (labelled A, B and C) is the preferred and recommended access to the development. The access points will need to be utilised to separate retail use access from	The proposed development provides access in accordance with the DCP with three restricted left in/left out vehicular access points which provide	Yes

	residential use access from service vehicle access.	for separate retail access from the residential use.	
e) Car parking and service vehicle entries	The appearance of car parking and service vehicle entries are to be improved by screening and locating garbage collection, loading/unloading and servicing areas within the basement of the development. Refer to Waste Minimisation and Management of this DCP.	The garbage collection, loading/unloading and servicing areas are all located within the basement of the development and are not visible from the street.	Yes

### **Georges River Development Control Plan 2020 (Interim Policy)**

178. The Interim Policy is a supplementary document, meaning that the current Development Control Plan controls continue to apply if a particular control is not specified in the Interim Policy, or if it is still considered best practice. All operative Development Control Plans still legally apply. Whilst the Interim Policy has no statutory recognition in the assessment of a Development Applications pursuant to the Environmental Planning and Assessment Act 1979, the policy was used as a guide as it is an endorsed position of the Council.

179. The proposal is generally consistent with relevant requirements in this policy.

180. Councils Executive Strategic Planner has provided the following comments in relation to the Planning Agreement for the site:

### **Planning Agreement**

181. Councils Executive Strategic Planner has provided the following comments in relation to the Planning Agreement for the site:

### **Planning Agreement for Part of Landmark Square Precinct**

The Voluntary Planning Agreement (VPA) between Council and Prime Hurstville Pty Limited (Developer) for Part of the Landmark Square Precinct was executed on the 26 August 2019.

The VPA applies to part of the Landmark Square Precinct, being 61-69, 71A, 73 & 75 Forest Road and 126 Durham Street, Hurstville and any lot created by the subdivision of these lots. Schedule 2 of the VPA includes a plan of the

subject land. The VPA applies to the Land, the taking effect of the Amending LEP and to the Development. The VPA is registered on the title of the land.

Under the VPA the Developer is obligated to provide a range of Development Contributions to Council in accordance with Schedule 1 of the VPA, including:

1. **A monetary contribution of \$7,375,878** for public facilities, public domain works & road infrastructure (including embellishments to Kempt Field & public domain works in the Hurstville City Centre. The contribution is to be paid in instalments:
  - \$1 million within 30 days of the Amending LEP taking effect (this contribution has been paid to Council);
  - **\$1 million immediately prior to the date on which the first Development Consent for the Development on the Land operates;** and
  - the remainder to be paid prior to the issue of any Construction Certificate for the Development on the Developer Land.
2. **Roberts Land - construction and dedication of a 3 metre wide strip of land for widening 'part' of Roberts Lane**
  - prior to the issue of the first subdivision certificate for the Development; or
  - the issuing of the first occupation certificate for building envelop C as referred to in the Planning Proposal or any building that the Council reasonably considers replaces that building.
  - Widening of Robert's Lane shall be constructed in accordance with the Council's standards and requirements.
3. **Easement for public access through and across the Land**
  - prior to the earlier of the issuing of any Occupation Certificate for the Development on the Land which, in conjunction with all earlier Occupation Certificates for the Development on the Land, authorises the occupation and use of 75% or more of the Development on the Land, or
  - the date notified by the Council to the Developer that it considers, acting reasonably, that the Development has completed
  - Schedule 4 of the VPA contains a draft of the Instrument setting out the terms of the easement and the plan below.

Schedule 1 of the VPA requires the second instalment of the monetary contribution of *"\$1,000,000 to be paid immediately prior to the date on which the first Development Consent for the Development on the Land operates"*.

Clause 10.2 of the VPA requires that the monetary contribution is indexed at the time of payment. The current indexed contribution amount, as at the March Quarter 2021, is \$1,022,433.13

In order for payment of the indexed monetary contribution to be paid immediately prior to the date on which the first Development Consent is

issued for the subject Development, a deferred commencement consent is required to be issued for the Development.

To ensure the requirements of the VPA are adhered to and all terms met, conditions of development consent have been imposed that relate to the terms of the VPA, namely conditions 2, 61, 112, 128, 129 and 130 in addition to the deferred commencement condition.

## **Impacts**

### ***Natural Environment***

182. The proposed development is unlikely to result in adverse impacts to the natural environment. The site contains no significant vegetation worthy of retention. Eight (8) trees are nominated to be removed as part of the works.
183. A Landscape Plan prepared by a qualified landscape architect has been prepared for the development which shows appropriate deep soil planting and suitable landscaping to the communal open space on the rooftop and also within the central courtyard communal open space.
184. The proposed excavation to the site is for the purposes of providing four (4) levels of basement for car parking and also the provision of retail and commercial premises to the upper basement level. The excavation is consistent with that required for most new developments.

### ***Built Environment***

185. The proposed redevelopment will provide for the urban renewal of a large consolidated site within the Hurstville City Centre that will contribute positively to the building stock within the area with a harmonious built form. The siting, scale, bulk, and massing of the development is generally consistent with that anticipated for the site and the Planning proposal for the site and represents an appropriately designed development which will contribute positively to the character of the area.
186. The building has introduced a highly modulated and articulated front façade treatment along Forest Road and Durham Street to create a landmark development benefiting the local and regional community.
187. It is considered the proposal provides a welcome transition between the adjoining low density buildings to the north with a 3 storey building fronting Roberts Lane and the high density developments to the south with high density located along Forest and Durham Street.
188. The proposed development incorporates appropriate design elements to ameliorate potential amenity impacts to adjoining properties.

### ***Social Environment***

189. The proposed development is of a scale and form that is consistent with modern developments which is unlikely to result in adverse social impacts.

### ***Economic Environment***

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

### **Suitability of the Site**

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

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

193. The application was advertised for a period of twenty eight (28) days between 23 September 2020 and 21 October 2020 in accordance with the Hurstville Development Control Plan. Three (3) submissions have been received.

Note: Two (2) submissions were received on 18 and 20 April 2021 from the same resident, Mr Jiang Chao who has recently purchased an apartment on Level 7 in the new development located across the road opposite Landmark Square. His concerns refer specifically to the heights of the building as approved under the Planning Proposal and what can be done to reduce these heights under the Planning Proposal. Both submissions also relate to the heights for the remaining 10 allotments within the Landmark Square precinct that are not part of this development.

Mr Jiang Chao was contacted, and his concerns were discussed. Mr Chao's main concern was that he believes the heights were inappropriate for the site and requested Council to reconsider the maximum heights. Of primary concern was for the remaining undeveloped sites in Durham Street.

Mr Chao was advised that the Planning Proposal had been approved and the heights were incorporated into the provisions of the LEP and now served as the maximum heights for the Landmark Precinct. In relation to the remaining sites in Durham Street, he was further advised that they were not part of this proposal, however the heights for these sites had been set and are in the Hurstville Local Environmental Plan.

The concerns raised are summarised below:

- *Traffic issues, increase congestion and conflicts generated.*

Comment: Increased traffic congestion around the development site and other connecting roads are raised as concerns by a resident within the Hurstville area. It is inevitable that the proposal will increase traffic volumes, in particular



Durham Street, particularly during the peak hour traffic periods. However, given that the proposal complies with the maximum total permitted floor space across the site, such traffic generation is considered reasonable and consistent with what was envisaged when the precinct was upzoned. Notwithstanding, the adjacent intersections are in the process of being upgraded to assist with the level of traffic generation likely to be generated by the proposal and is consistent with that anticipated for the site under the planning controls.

The development exceeds the carparking required for the development enabling all those, living, working and accessing the uses in the future can be accommodated within the confines of the development.

- *The bulk and scale is out of scale with the existing streetscape*

Comment: The bulk and scale of the proposed development has been raised as a concern. This area has been rezoned and a Planning Proposal approved for the development site altering the planning controls applicable to the site permitting buildings with varying heights ranging from 12m to 65m with varying floor space ratios of 2:1 and 3.5:1. The bulk and scale of the building is consistent with the control for the B4 Mixed Use zoning, and the envelope and form envisaged by the up-zoning.

- *Concern was raised with the maximum heights approved under the Planning Proposal would have an adverse impact on the development*

Comment: The Planning Proposal was gazetted on 7 August 2020 with the heights of the building approved. The resident would like to see the Planning proposal revisited and the heights reduced. The resident has been advised by Council's Manager Strategic Planning that these heights have been approved under the Planning Proposal and are the maximum heights permitted for the site are maintained.

### **Application Referrals**

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

### **Council Referrals**

#### Development Engineer

195. Council's Development Engineer reviewed the proposal. Conditions of development consent have been imposed.

#### Traffic Engineer

196. The DA was referred to Council's Traffic Engineer. Council's Traffic Engineer has raised no objection to the proposal subject to suitable conditions of development consent.

#### Assets and Infrastructure

197. Council's Assets and Infrastructure Section reviewed the proposed development in relation to public domain works and raised no objection to the proposal subject to suitable conditions of development consent. The condition would require a public domain plan to be lodged and approved by

Council's Assets and Infrastructure Division prior to the issue of the Construction Certificate. As part of these conditions the applicant is to discuss the layout for public domain works with Council's Assets and Infrastructure staff prior to preparing designs.

#### Consultant Arborist

198. Council's Consultant Arborist has reviewed the landscape plan and arborist report submitted with the application. No objection is raised to the proposal subject to conditions of development consent.

#### Urban Designer

199. Council's Urban Designer has reviewed the proposal and provided detailed comments on the revised proposal. The concern raised have been addressed through amended plans.

#### Coordinator of Environment Sustainability and Waste

200. The Review application was referred to Council's Coordinator of Environment Sustainability and Waste for assessment and review. The Waste Officer has advised that the proposed arrangements for ongoing waste management are acceptable and have provided conditions of development consent.

#### Environmental Health Officer

201. Council's Environmental Health Officer has reviewed the Contamination Assessment Report and the Noise Impact Assessment Report and raised no objection to the proposal subject to conditions of consent.

### **External Referrals**

#### Ausgrid

202. The application was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Comments were received from Ausgrid and they have raised no objection to the proposed development. No conditions were recommended.

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

203. The application is supported subject to specific conditions relating to the height limitation for the building and any construction equipment (such as cranes). The building must not exceed a maximum height of 128 metres AHD, inclusive of all lift over runs, vents, chimneys, aerials, antennas, lightning rods, any roof top garden plantings, exhaust flues etc." The application does not exceed this criterion.

#### Natural Resources Access Regulator

204. The proposal was referred to the Natural Resources Access Regulator. The Natural Resources Access Regulator (NRAR) has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), a controlled activity approval is not required and no further assessment by this agency is necessary.

#### NSW Police

205. The proposal was referred to NSW Police for comment. No objection is raised subject to conditions provided.

#### Water NSW

206. The application is supported with general terms of approval issued. It is noted that a separate approval is required to be issued by WaterNSW prior to the release of the construction certificate.

#### TfNSW

207. The application was referred to TfNSW in accordance with Clause 100, 101, 102 and 104 of State Environmental Planning Policy (Infrastructure) 2007. A formal response was provided, concurrence obtained subject to the imposition of conditions if the application was to be supported. These conditions are contained within the recommended conditions at the end of this report.

#### Sydney Water

208. The application is supported subject to the lodgement of a Section 73 certificate. A condition of consent has been recommended in this regard.

### **Developer Contributions**

209. The proposed development if approved would require the payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979 as the proposal is increasing the density of the locality. Conditions of development consent have been recommended should the application be supported.

### **Conclusion**

210. The proposal seeks consent for demolition works, remediation and construction of a three (3) to twenty (20) storey mixed use development across four (4) buildings containing residential apartments, commercial floor space and a hotel above four (4) basement levels, landscaping, site works and stratum subdivision. Lot 1 DP 225302, Lots 100 and 101 DP 776275, Lot 10 DP 621395, Lot 3 & Lot 4 DP 12517, Lot 1 & Lot 2 DP 12517 and known as 61-75 Forest Road and 126 Durham Street, Hurstville

211. The development is identified as Integrated development under the Water Management Act 2000 due to the excavation encountering groundwater and requiring approval from WaterNSW. General terms of approval have been obtained from WaterNSW.

212. The proposal has been assessed in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979. As discussed throughout this report, the proposal is considered a form of development which is compatible with its surrounding environment. The proposal is not considered to exacerbate physical environmental impact to the adjoining and immediate locality. In addition, it is considered that the proposed is within character and is capable of existing harmoniously with its surroundings.

213. Operationally, the proposal will not result in any unreasonable impacts on the amenity of adjoining properties subject to conditions of consent as recommended below.

214. The application is recommended for approval subject to conditions

## **DETERMINATION AND STATEMENT OF REASONS**

### **215. Statement of Reasons**

- The proposed development is not considered to be incompatible with surrounding development and surrounding land uses.
- The proposed development complies with the requirements of the relevant environmental planning instruments except in the height of the development for Building D and the maximum FSR within the FSR zone 3.5:1. Clause 4.6 exceptions have been submitted in support of the application which are considered to be acceptable having regard to the justification provided in the report above.
- The building will not unreasonably affect the amenity of any immediately adjoining properties in terms of unreasonable overlooking, overshadowing or view loss.
- The proposed development is well considered and sensitively designed so that it will not result in any unreasonable impact on the natural and built environment.
- The proposed development is not considered incompatible with the character of the locality and is capable of existing harmoniously with its surroundings.
- The proposed development is located within the Eastern Bookend Precinct of the Hurstville City Centre and is consistent with the desired future character of the precinct by providing a high density mixed use building to define the eastern entry to the City Centre.
- The proposal is not inconsistent with the provisions of the Draft Georges River Local Environmental Plan 2020.

## **DETERMINATION**

216. THAT pursuant to Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 (as amended) the Sydney South Planning Panel grants a deferred commencement consent to DA2020/0352 for demolition works, remediation and construction of a mixed use development comprising four (4) buildings being from three (3) to twenty (20) storey's in elevation containing commercial floor space, a 76 room hotel and 260 apartments above four (4) levels of basement containing 476 car spaces, landscaping, site works and stratum subdivision. The application is integrated development under the Water Management Act 2000 on Lot 1 DP 225302, Lots 100 and 101 DP 776275, Lot 10 DP 621395, Lot 3 & Lot 4 DP 12517, Lot 1 & Lot 2 DP 12517 and known as 61-75 Forest Road and 126 Durham Street, Hurstville, subject to the following conditions:

### **Deferred Commencement Conditions**

1. **Deferred Commencement - Drainage** - Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, this consent will not

operate until such time as the following requirements are satisfied:

- Evidence (and verification by Council) of payment of the \$1,000,000 (as appropriately indexed) monetary contribution to Georges River Council as required under the Voluntary Planning Agreement executed on 26 August 2019.

Documentary evidence as requested, or the above information must be submitted within thirty six (36) months of the granting of this deferred commencement consent. Commencement of the Consent cannot commence until written approval of the submitted information has been given by Council.

Subject to the above being satisfied, development consent be issued, subject to the following conditions:

### Conditions of consent

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
Cover Page	DA-001-001	18.3.2021	E	Turner Architects
Drawing List	DA-001-002		E	Turner Architects
Location Plan	DA-010-020	18.3.2021	E	Turner Architects
Site Analysis	DA-010-030	18.3.2021	E	Turner Architects
Context and Analysis Urban Analysis	DA-010-040	18.3.2021	E	Turner Architects
Demolition Plan	DA-010-050	18.3.2021	E	Turner Architects
Roof Level	DA-110-001	18.3.2021	G	Turner Architects
Basement 04	DA-110-004	12.4.2021	H	Turner Architects
Basement 03	DA-110-005	14.4.2021	J	Turner Architects
Basement 02	DA-110-006	12.4.2021	H	Turner Architects
Basement 01	DA-110-007	20.4.2021	I	Turner Architects
Lower Ground Level	DA-110-008	12.4.2021	H	Turner Architects
Upper Ground	DA-110-009	26.4.2021	I	Turner

Level				Architects
Level 01	DA-110-010	14.4.2021	I	Turner Architects
Level 02	DA-110-020	14.4.2021	I	Turner Architects
Level 03	DA-110-030	14.4.2021	I	Turner Architects
Level 05	DA-110-050	14.4.2021	I	Turner Architects
Level 06	DA-110-060	14.4.2021	I	Turner Architects
Level 07	DA-110-070	14.4.2021	I	Turner Architects
Level 08	DA-110-080	26.4.2021	J	Turner Architects
Level 09	DA-110-090	14.4.2021	I	Turner Architects
Level 10	DA-110-100	14.4.2021	I	Turner Architects
Level 11	DA-110-110	14.4.2021	I	Turner Architects
Level 12	DA-110-120	14.4.2021	I	Turner Architects
Level 13-15	DA-110-130	14.4.2021	I	Turner Architects
Level 16-18	DA-110-160	14.4.2021	I	Turner Architects
Level 19	DA-110-190	14.4.2021	I	Turner Architects
Level 20	DA-110-200	14.4.2021	I	Turner Architects
North Elevation Buildings A & B	DA-210-101	18.3.2021	F	Turner Architects
East Elevation Buildings B, C & D	DA-210-201	18.3.2021	F	Turner Architects
East Elevation Building A	DA-210-202	18.3.2021	F	Turner Architects
South Elevation Building D	DA-210-301	18.3.2021	F	Turner Architects
South Elevation Building C	DA-210-302	18.3.2021	F	Turner Architects
West Elevation Forest Road Buildings B, C	DA-210-401	18.3.2021	F	Turner Architects

& D				
West Elevation Building A	DA-210-402	18.3.2021	F	Turner Architects
Sections Buildings A & B	DA-310-010	18.3.2021	F	Turner Architects
Sections Building C and Central Park	DA-310-030	18.3.2021	F	Turner Architects
Sections Building D	DA-310-040	18.3.2021	F	Turner Architects
Ramp Sections 01	DA-350-010	18.3.2021	E	Turner Architects
Ramp Sections 02	DA-350-020	18.3.2021	A	Turner Architects
Proposed Built Envelope within LEP Height Plane Extents	DA-710-010	18.3.2021	E	Turner Architects
Proposed Height of Buildings Comparison	DA-710-020	18.3.2021	E	Turner Architects
Proposed Height of Buildings Detail	DA-710-025	18.3.2021	E	Turner Architects
Apartment Amenity Ground Floor to level 03	DA-720-000	18.3.2021	E	Turner Architects
Apartment Amenity Level 05 to Level 08	DA-720-050	18.3.2021	E	Turner Architects
Apartment Amenity Level 09 to Level 12	DA-720-090	18.3.2021	E	Turner Architects
Apartment Amenity Level 13 to roof	DA-720-130	18.3.2021	E	Turner Architects
Communal open space	DA-730-010	18.3.2021	E	Turner Architects
Waste Diagrams Basement 04	DA-750-004	12.4.2021	A	Turner Architects
Waste Diagrams Basement 03	DA-750-005	12.4.2021	A	Turner Architects

Waste Diagrams Basement 02	DA-750-006	12.4.2021	A	Turner Architects
Waste Diagrams Basement 01	DA-750-007	12.4.2021	A	Turner Architects
Waste Diagrams Lower Level	DA-750-008	12.4.2021	A	Turner Architects
Waste Diagrams Upper Ground Level	DA-750-009	12.4.2021	A	Turner Architects
GFA Diagrams Basement 02 to Upper Ground Floor	DA-770-002	26.4.2021	F	Turner Architects
GFA Diagrams Level 01 to Level 05	DA-770-002	18.3.2021	E	Turner Architects
GFA Diagrams Level 06 to Level 09	DA-770-050	26.4.2021	F	Turner Architects
GFA Diagrams Level 10 to Level 15	DA-770-090	18.3.2021	E	Turner Architects
GFA Diagrams Level 16 to Roof	DA-770-170	18.3.2021	E	Turner Architects
Adaptable and Living Plans – 1 bed	DA-810-002	18.3.2021	F	Turner Architects
Adaptable and Living Plans – 2 bed	DA-810-004	18.3.2021	F	Turner Architects
Adaptable and Living Plans – 3 bed	DA810-005	18.3.2021	F	Turner Architects
Materials and Finishes board	DA-890-001	18.3.2021	E	Turner Architects
Forest Road South 3D view	DA-900-001	18.3.2021	E	Turner Architects
Forest Road North 3D view	DA-900-002	18.3.2021	E	Turner Architects
Roberts Lane 3D view	DA-900-003	18.3.2021	E	Turner Architects
Central Park 3D view	DA-900-004	18.3.2021	E	Turner Architects
Landscape	001	18.3.2021	D	Urbis



Plan Ground floor site plan				
Landscape Plan Communal Roof top Plan	002	18.3.2021	D	Urbis
Landscape Plan Ground Floor Section A	003	18.3.2021	C	Urbis
Landscape Plan Ground Floor Section B	004	18.3.2021	C	Urbis
Landscape Plan Ground Floor Section C	005	18.3.2021	C	Urbis

Note: Any variation to the development as approved must only be undertaken in accordance with any applicable Exempt, Complying Development or an Approved Development Consent as outlined under the Environmental Planning and Assessment Act 1979.

2. **Voluntary Planning Agreement** – The terms of the Voluntary Planning Agreement between the Georges River Council and Prime Hurstville Pty Limited (Developer), which was executed on 26 August 2019 are to be complied with.
3. **Fit out of commercial premises** - No approval is granted for the use or fit-out of any of the commercial premises. Separate Development consent for the use and fit out of each commercial tenancy is required prior to the occupation of any commercial component of the development.
4. **Signage** - A separate application shall be submitted to Council prior to the erection of any signage unless the proposed signage is 'exempt development' under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* or any other applicable environmental planning instrument.

#### **Separate Approvals Required Under Other Legislation**

5. **Vehicular Crossing - Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:
  - (a) Construct a full width – (boundary to kerb) footpath in paving material for the full length of the frontage of the site along Forest Road and Durham Street and a 1.5 metre wide footpath along Roberts Lane in

accordance with Council's Specifications applying at the time construction approval is sought.

- (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
- (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
- (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought. Constructing a vehicular crossing and/or footpath requires separate approval under Section 138 of the Roads Act 1993, prior to the commencement of those works.
- (e) Driveway crest levels are to be in compliance with the recommendations provided by Flooding Advice (4.0 – Driveway Stormwater Levels Checks (table 2) – prepared by Martens Consulting Engineers, dated 14 August 2020.

6. **Building - Hoarding Application** Prior to demolition of the buildings on the site, or the commencement of work above ground level, a separate application for the erection of an 'A class' (fence type) or a 'B class' (overhead type) hoarding or 'C type' scaffold, in accordance with the requirements of SafeWork NSW, must be erected along that portion of the footways/roadway where the building is within 3 metres of the street boundary. An application for this work under Section 68 of the Local Government Act 1993 and the Roads Act 1993 must be submitted for approval to Council.

The following information is to be submitted with a Hoarding Application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993:

- (a) A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location.
- (b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
- (c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available on our website) before the commencement of work; and
- (d) A Public Risk Insurance Policy with a minimum cover of \$20 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party.

- (e) The application must be endorsement by the Roads & Maritime Services (RMS) as the hoarding is located within 100m of an intersection with traffic lights. For assistance you should contact the DA unit at RMS and speak to Hans on 8849 2076. Or email [hans.pilly.mootanah@rms.nsw.gov.au](mailto:hans.pilly.mootanah@rms.nsw.gov.au) to obtain concurrence for the hoarding structure.

**7. Below Ground anchors Information to be submitted with S68 Application under LGA 1993 and S138 Application under Roads Act 1993**

- In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application must be lodged with Council under Section 68 of the [Local Government Act 1993](#) and the [Roads Act 1993](#) for approval, prior to commencement of those works. The following details must be submitted.

- (a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.
- (b) The applicant has indemnified Council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of council.
- (c) Documentary evidence of such insurance cover to the value of \$20 million.
- (d) The applicant must register a non-terminating bank guarantee in favour of Council in accordance with Council's fees and charges. The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
- (e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.

**8. Section 138 Roads Act 1993 and Section 68 Local Government Act 1993**

- Unless otherwise specified by a condition of this consent, this Development Consent does not give any approval to undertake works on public infrastructure.

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

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

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

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

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

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

9. **Road Opening Permit** - A Road Opening Permit must be obtained from Council, in the case of local or regional roads, or from the RMS, in the case of State roads, for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.
10. **Road Occupancy Licence (Transport for NSW Condition)**- A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on the surrounding state road network during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

### **Requirements of Concurrence, Integrated & Other Government Authorities**

11. **Transport for NSW (TfNSW)** - The proposed development shall be carried out in accordance with the following requirements as detailed in their concurrence letter Ref No SYD20/01020/4 dated 23 April 2021:

The Traffic Control Signal (TCS) at the intersection of Forest Road / Wright Street / Durham Street shall be designed to meet TfNSW requirements. TCS plans shall be drawn by a suitably qualified person and endorsed by a suitably qualified practitioner.

The submitted design shall be in accordance with Austroads Guide to Road Design in association with relevant TfNSW supplements (available on [www.tfnsw.nsw.gov.au](http://www.tfnsw.nsw.gov.au)). The certified copies of the TCS design and civil design plans shall be submitted to TfNSW for consideration and approval prior to the release of a Construction Certificate and commencement of road works. Please send all documentation to

development.sydney@transport.nsw.gov.au. TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works. The developer will be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works.

12. **Approval from WaterNSW-** The development consent holder must apply to WaterNSW for a Water Supply Work approval after development consent has been issued by Council and before the commencement of any work or activity.

A completed application form must be submitted to WaterNSW together with any required plans, documents, application fee, security deposit or bank guarantee (if required) and proof of Council's development consent. Finalisation of an approval can take up to eight (8) weeks from the date the application and all required supporting documentation is received.

Application forms are available from the WaterNSW website at: [www.watarnsw.com.au](http://www.watarnsw.com.au) > Customer Services > Applications & Fees.

#### Notes

- i. An extraction limit will be determined by the Department of Planning, Industry and Environment following a further hydrogeological assessment and included on the conditions applied to the authorisation for the dewatering activity.
  - ii. Detailed information required to permit the hydrogeological assessment to be carried out is to be provided by the applicant otherwise the issue of the authorisation will be subject to delay.
  - iii. The authorisation will be issued for the purpose of temporary construction dewatering only and it does not constitute any form of approval for ongoing pumping of groundwater from basement levels after the building is issued an occupation certificate.
13. **WaterNSW General Terms of Approval-** The General Terms of Approval issued by WaterNSW do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to WaterNSW for the relevant approval after development consent has been issued by Council and before the commencement of any work or activity.

#### Dewatering

- (a) Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application.
- (b) An authorisation under the relevant water legislation, such as a Water Access Licence (WAL), shall be obtained for the take of groundwater as part of the activity. For avoidance of doubt, these terms do not

represent any authorisation for the take of groundwater, nor do they constitute the grant, or the indication of an intention to grant, any required WAL.

- (c) An authorisation under the relevant water legislation, such as an Approval, is also required for the works involved in extracting the groundwater. For avoidance of doubt, these terms do not represent any authorisation for the construction or installation of such works.
- (d) The relevant works must not be carried out, installed or operated until a specialist hydrogeological assessment has been completed by the Department of Planning Industry and Environment, which concludes that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the construction or use of the proposed water management work
- (e) The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation
- (f) Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:
  - a. any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and
  - b. any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and
  - c. where the habitable part of the structure (not being footings or foundations) is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable
- (g) Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.
- (h) The Applicant is bound by the above terms and any other terms and conditions of the subsequent authorisation(s) required for the extraction of groundwater and the associated works under the relevant water legislation.
- (i) Measurement and monitoring arrangements to the satisfaction of WaterNSW are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.
- (j) Following cessation of the dewatering operations and prior to the surrender of any associated authorisation, the applicant shall submit to

- WaterNSW the completion report which shall include: a. detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and b. The location and construction of groundwater extraction works that are decommissioned c. a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and d. a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure
- (k) The Department of Planning, Industry and Environment and Water has determined that an authorisation to account for the temporary and transient impacts on groundwater systems associated with the proposed development for up to twelve months is required (to be issued by WaterNSW).
  - (l) All required monitoring and reporting arrangements are to be designed to demonstrate the activity meets due diligence with respect to the Water Management Act 2000, the relevant water sharing plan(s) and the NSW Aquifer Interference Policy during construction and occupation phases of the building.
  - (m) At the time of application for a Construction Certificate, the developer must be able to demonstrate to the consent authority that an authorisation for the pumping of groundwater for temporary construction dewatering has been obtained for the relevant groundwater source from which water is being taken.
  - (n) At the time of application for an Occupation Certificate, the developer must be able to demonstrate to the consent authority that any unexpected groundwater pumping (resulting from poor construction methods, materials or inadequate waterproofing) has been authorised by a water access licence purchased for the relevant groundwater source from which water is being taken and must be able to demonstrate no impact on neighbouring sites or the integrity of the aquifer.
  - (o) All monitoring data collected for the development and all monitoring and management reports are to be provided in electronic format (tabulated and raw corrected data) to the Department of Planning, Industry and Environment and Water.
  - (p) A specialist Site Hydrogeology Report prepared and certified by a qualified, experienced and practising hydrogeologist must be provided to enable the Department of Planning Industry and Environment to carry out the assessment that includes, but is not limited to, the following:

Pre-development (existing) conditions in the form of a baseline monitoring record and comprehensive groundwater system description:

- i. site and neighbouring area stratigraphy, formation description, site groundwater levels, groundwater flow paths, site aquifer and aquitard (if relevant) hydraulic characterization.

- ii. groundwater quality and specific consideration of groundwater potentially affected by contamination from surrounding land uses or acid sulfate soils where they are found to exist.
- iii. neighbouring users, groundwater dependent ecosystems, water bodies and other relevant features within a one kilometre radius of the subject site.
- iv. the above site information must not date more than six months prior to the date of lodgement of the development application to account for climate trends and maintain the currency of groundwater data.

Excavation phase (during dewatering), in the form of a comprehensive impact prediction description as well as a monitoring and management strategy:

- i. predicted impacts (extent, magnitude and duration) that are developed through numerical groundwater modelling.
- ii. corresponding trigger levels (levels, quality, flow, volume and ground surface settlement) to manage any potential impacts.
- iii. construction techniques and approaches that will be used to prevent any ongoing groundwater pumping at the same time as not causing any obstruction to natural groundwater behaviour.
- iv. details of monitoring (groundwater levels, quality as required, rate of inflows, metered pumping).
- v. where a risk of ground settlement is identified due to the proposed dewatering, the proponent is to provide a program of monitoring, trigger and responses to Council (Note while it is the Proponents responsibility to identify the risk, the Department recommends that Council enforce this requirement for all applications in all high risk areas which includes sand formations or other unconsolidated ground).

Post-excavation phase (during aboveground construction) in the form of a comprehensive post-dewatering impact review:

- i. collation of monitoring records.
- ii. analysis of actual impacts compared to predicted impacts, noting that some impacts may be delayed.
- iii. magnitude and extent of potential long-term effects from the completed structure.
- iv. arrangements for reporting (measurements, technical analysis and future predictions) to the relevant authority.

Occupational phase (after building completion) in the form of an annual groundwater monitoring plan:



- i. monthly monitoring to demonstrate the magnitude of groundwater pumping after construction, either through satisfactory photographic and documented evidence of no visible seepage into the building or, if inflows cannot be prevented, measured flow rates into all pump-out sumps.
  - ii. recording arrangements to document ongoing compliance, event-based notification of unexpected groundwater take to the relevant authority and annual reporting arrangements.
- 14. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site
- 15. **Electricity Supply to development** - All existing overhead power lines within or at the immediate street frontage to the development site shall be relocated underground to Energy Australia standards and specifications. If not practicable to relocate the power line underground, arrangements shall be made with Energy Australia to place the conduit to carry those power lines underground so that they can be utilised at a later date by Energy Australia. In this regard all associated costs shall be borne by the applicant
- 16. **Trade Waste Agreements** - A Trade Waste Agreement with Sydney Water may be required. Details of any work required to comply with the agreement must be detailed on the plans lodged with the Construction Certificate. If no trade waste agreement or grease trap is required, a letter from Sydney Water to this effect must be submitted with the application for the Construction Certificate.
- 17. **Sydney Water - Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap in™ agent has appropriately stamped the plans prior to the issue of the Construction Certificate.
- 18. **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](http://www.sydneywater.com.au)

<http://www.sydneywater.com.au> then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

19. **Department of Infrastructure, Regional Development and Cities** - In accordance with The Airports (Protection of Airspace) Regulations 1996, regulation 14(1) (b), by the Department of Infrastructure, Regional Development and Cities imposes the following conditions on any approval:
- a) The building **must not exceed** a maximum height of 128 metres AHD, **this includes** all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any rooftop garden plantings, exhaust flues etc.
  - b) Building C must be obstacle lit by low density steady red lighting during the hours of darkness at the highest point of the building. Obstacle lights are to be arranged to ensure the building can be observed in a 360 degree radius as per Chapter 9, Division 4 of the Civil Aviation Safety Regulations 1998 – Part 139 (Aerodromes) manual of Standards 2019 (the MOS).
  - c) If at any time after the height of the building has reached 121 metres AHD, the crane(s) used to construct the building are removed and no other crane(s) are in place then the proponent **must arrange** for the highest point of the building to be obstacle lit with low intensity steady red lighting during the hours of darkness. The obstacle lights **must be arranged** to ensure the lighting can be observed in a 360 degree radius as per Chapter 9, Division 4 of the MOS.
  - d) The Proponent **must ensure** the obstacle lighting is monitored. For detailed requirements for the monitoring of obstacle lights within the aerodrome's OLS refer to Chapter 9, Division 4, section 9.36 of the MOS.
  - e) The proponent **must ensure** obstacle lighting is maintained in serviceable condition and any outage immediately notified to SACL.
  - f) Following completion of the building, the Proponent must advise SACL, in writing:

- That the future owner(s)/manager(s) of the building **have been informed** of their **obligation to maintain** the obstacle lighting in accordance with conditions of this approval; and
  - The contact details of the person/position **responsible for the maintenance** of the obstacle lighting. These details **must be reviewed regularly** and kept up to date.
- g) Separate approval **must be sought** under the Regulations for any equipment (i.e. cranes) required to construct the building. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore, it is advisable that approval to operate construction equipment (i.e. cranes) must be obtained prior to any commitment to construct.
- h) The Proponent must report all permanent obstacles 100 metres or more above ground level or that penetrate the OLS to the Aeronautical Information Service provider, Airservices Australia by emailing [VOD@airservicesaustralia.com](mailto:VOD@airservicesaustralia.com) or telephoning (02) 6268 5622
- i) On completion of construction of the building, the applicant must provide Georges River Council and the airfield design manager with a written report from a certified surveyor on the finished height of the building.

Breaches of approval conditions are subject to significant penalties under Sections 185 and 187 of the Act.

### **Prior to the Issue of a Construction Certificate**

20. **Communal Open Space** - A Plan of Management (POM) for use of rooftop open space must be submitted to and approved by the PCA prior to the issue of any Construction Certificate, with a copy stamped as received by the PCA provided to Council. The POM must outline the:

- (i) hours of use of the rooftop communal open space which shall be restricted to between 8am to 10pm;
- (ii) maximum number of 50 users at any one time;
- (iii) provisions that no amplified music to be played; and
- (iv) identify other measures to ensure that the amenity and safety of persons within the development and in nearby existing and future development is maintained.
- (v) Location and type of signage to be installed in the building to notify residents and visitors in respect to the use of this space.
- (vi) The approved POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision and a sign in the front entry of the building shall be included to ensure the use of this space is monitored and understood by all occupants.

The development must be carried out in accordance with this POM at all

times.

21. **Public Domain Plans** – The applicant is required to submit Public Domain Plans which are to consist of full civil engineering drawings to Australian Standards. These plans are to be inclusive of new kerbing long sections, cross sections, driveway, drainage, paved footpath, landscape and tree pits and in accordance with Council's "Public Domain Streetscape Works Specification."

The Public Domain Plans are to show all requirements of the "Part Landmark Square Precinct, Hurstville Planning agreement."

The Public Domain works shall be constructed in accordance with the approvals and specifications issued under the "Application for Driveway Crossing and Associated Works on Council Road Reserve" Roads Act 1993 Section 138 Approval issued by Council's Assets and Infrastructure Division. Applications to be made at the Georges River Council Customer Service Centre.

The Plan must be approved by Council's Assets and Infrastructure Division prior to issue of Construction Certificate. In this regard it is recommended the applicant liaise with Council's Assets and Infrastructure staff prior to preparing the public domain works design criterion.

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

22. **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](http://www.georgesriver.nsw.gov.au)).

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

Please contact Council prior to the payment of Section 7.11 Contributions to determine whether the amounts have been indexed from that indicated below in this consent and the form of payment that will be accepted by Council.

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
<b>GENERAL FEES</b>	

Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://portal.longservice.nsw.gov.au/bci/levy/">https://portal.longservice.nsw.gov.au/bci/levy/</a>	
Builders Damage Deposit	<b>\$208,167.12</b> (Calculation is based on \$1236 per metre of street frontage as follows: Durham Street – 35.13m Forest Road – 71.61m Roberts Lane – 61.68)
Inspection Fee for Refund of Damage Deposit	<b>\$742.00</b>
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Community Facilities)	<b>\$484,766.80</b>
Hurstville Section 94 Development Contributions Plan 2012 - Residential (Open Space, Recreation, Public Domain)	<b>\$3,427,647.58</b>
Hurstville Section 94 Development Contributions Plan 2012 - Non-Residential Hurstville City Centre (Public Domain)	<b>\$725,029.85</b>
<b>Total S94 Contributions</b>	<b>\$4,637,444.23</b>

### **General Fees**

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

### **Development Contributions**

The Section 94 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

#### Indexation

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

#### Timing of Payment

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

- If no construction certificate in respect of the erection of any building to which the consent relates has been issued on or before 25 September 2022, the monetary contribution must be paid before the issue of the first construction certificate after that date for any such building.

Note: Prior to the issue of any Occupation Certificate, written confirmation from Council's delegate that all outstanding s7.11 contributions have been paid, is to be obtained and provided to the satisfaction of the PCA.

#### Further Information

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

23. **Damage Deposit - Major Works** - In order to insure against damage to Council property the following is required:
- (a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$208,167.12** (Not inclusive of drainage works).
  - (b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee (for two inspections) to enable assessment of any damage and repairs where required: **\$742.00**
  - (c) Submit to Council, before the commencement of work, a dilapidation report of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

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

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

24. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
25. **Acoustic requirements for timber flooring** - If timber flooring is installed within the development, then appropriate insulation between floors shall be implemented to exceed the minimum sound attenuation
26. **Wind Mitigation Report** - The recommendations in the Pedestrian Wind Environment Report WF560-01F02 (REV0) -WS Report prepared by Wind Tech and dated 21 August 2020 shall be included as part of the Construction Certificate Plans.
27. **Driveway access/sight lines** - Driveway access to comply with figure 3.3- Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or

domestic driveway.

Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distance requirements stipulated in the *Australian Standards AS2890.1*

In the instance of multi storey car park and to prevent vehicles from running over the edge of a raised platform or deck of a multi-story car park, barriers in accordance to AS2890.1:2004 section 2.4.5.3 need to be installed.

28. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by a qualified designer, shall be submitted to the Certifying Authority verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of *State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development*
29. **Pre-Construction Dilapidation Report - Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:
- (a) All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.
  - (b) All properties along Roberts Lane
  - (c) Properties along Forest Road adjacent to the development site.

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

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

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

30. **Stormwater System-** The submitted stormwater plans as described in the table below have been assessed as a concept plan only.

Description	Reference No.	Date	Revision	Prepared by
General Sites	C01	12.4.2021	C	Intrax

and Locality Plan				Consultants
Drainage layout Plan – Basement 1	C02	12.4.2021	C	Intrax Consultants
Drainage Layout Plan – Lower Ground	C03	12.4.2021	C	Intrax Consultants
Drainage Layout – Upper ground drainage	C04	12.4.2021	C	Intrax Consultants
Drainage details 1	C05	12.4.2021	C	Intrax Consultants
Drainage details 2	C06	12.4.2021	B	Intrax Consultants
Drainage layout Plan Basement 4	C07	12.4.2021	A	Intrax Consultants

Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

- (a) All stormwater shall drain by gravity to the Council's kerb inlet pit located in Forest Road in accordance with the Australian 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 accompany the application for the Construction Certificate.
- (c) Details of all the drainage works within the public domain area must be submitted to Council's Assets and Infrastructure unit for approval.

Design details and certifications shall be submitted for approval with the Construction Certificate application.

### **Stormwater Systems with Basement**

- (d) The underground basement car park must pump to and all other stormwater must drain by gravity to:
  - i. the upper level of the new kerb inlet pit required to be constructed directly in front of the development site.

The design of the proposed drainage system must be prepared by a professional engineer who specialises in hydraulic engineering and be submitted for approval with the Construction Certificate application.



## **Protection of basement from inundation of stormwater waters**

- (e) The construction of the building shall be designed to conform to the recommendations and conclusions of Geotechnical Investigation Report (Report No GS7995-1A) dated 14 August 2020 by Aargus Geotechnical Engineering in regard to the protection of the underground basement from possible inundation by surface waters.
- (f) Evidence from a professional engineer who specialises in hydraulic engineering that this design requirement has been adhered to shall be submitted with the Construction Certificate application.

31. **On Site Detention-** The final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

An onsite detention (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.

Overflow from the OSD tank must directed to the street drainage system.

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

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

Full details shall accompany the application for the Construction Certificate. Council's stormwater policy can be obtained from the following link:

<https://www.georgesriver.nsw.gov.au/StGeorge/media/Documents/Council/Governance/Codes%20and%20Policies/Pol-073-01-Stormwater-Management-Policy-July-2020.pdf>

32. **Detailed Stormwater Drainage Design** - The submitted stormwater plans has been assessed as a concept plan only. A detailed drainage design supported by a catchment area plan and drainage calculations (including a Hydraulic Grade Line Analysis) must be submitted with the Construction Certificate application.
33. **Compliance with Flood Study** -The development shall be designed to conform to the recommendations and conclusions of the submitted flooding Advice prepared by Martens & Associates Pty Ltd, dated 14 August, 2020

This shall include, but not be limited to, any recommendations for the following:

- (a) Minimum floor levels, driveway crest levels
- (b) Site regrading
- (c) Protection of the basement from inundation of surface waters

34. **Pump-Out System Design for Stormwater Disposal** - The design of the pump-out system for storm water disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

- (a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20 year storm;
- (b) The pump system shall be regularly maintained and serviced, every six (6) months; and
- (c) Any drainage disposal to the street gutter from a pump system must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

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

35. **Stormwater Drainage Plan Details** - Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineering specialising in hydraulic engineering shall be submitted with the Construction Certificate application. These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Management Policy.

36. **Driveway Construction Plan Details** - Detailed engineering plans for the driveway shall be submitted with the Construction Certificate application for approval that show:

- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
- (b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).
- (c) The full length of the driveway designed with a minimum 150mm thick reinforced concrete and minimum of 3m wide pavement/kerb face to kerb face width, and a non-slip surface.

37. **Council Property Shoring** - Prior to the issue of the Construction Certificate, plans and specifications prepared by a professional engineer specialising in practising structural engineering must detail how Council's

property shall be supported at all times.

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

38. **Stormwater Drainage Application** - This Development Consent does not give approval to undertake works on public infrastructure. 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 to undertake:
- (a) Stormwater & ancillary works in the road reserve. This includes connections to council.
  - (b) Stormwater & ancillary to public infrastructure on private land

The Stormwater Drainage Application approval must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

The Application Form for this activity can be downloaded from Council's website [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au). For further information, please contact Council's Customer Service Centre on (02) 9330 6400.

39. **Car parking layout (Transport for NSW Condition)** - The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018. Parking Restrictions may be required to maintain the required sight distances at the driveway.
40. **Bicycle parking (Transport for NSW Condition)** - Bicycle Parking should be provided in accordance with AS2890.3.
41. **Fire Safety Measures** - Prior to the issue of a construction certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a PCA. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or PCA will then issue a Fire Safety Schedule for the building.
42. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be

carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical Engineer's report.

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

43. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors, common areas, stairs and ramps as well as floor surfaces in all wet rooms including in any residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2013 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate.
44. **Access for Persons with a Disability** - Access and or sanitary facilities for persons with disabilities must be provided to the premises/building in accordance with the requirements of the Premises Standards, the Building Code of Australia, and AS 1428.1. Details must be submitted with the Construction Certificate Application for approval.

In regard to the above, pedestrian access throughout basement levels shall be highlighted and sign posted to safeguard access and egress.

In the event that full compliance cannot be achieved the services of an accredited access consultant is to be obtained to determine alternative methods of compliance, such a report must be submitted to and endorsed by the Certifying Authority prior to the issue the construction certificate.

45. **Acoustic Requirements**  
**Compliance with submitted Acoustic Report**

The Construction Certificate plans shall demonstrate compliance with the Acoustic Report submitted and approved by Council, titled Landmark square, Hurstville – Development Application Acoustic Assessment prepared by Acoustic Logic and dated 18/08/2020.

**Acoustic Report - General Operation of Premises**

The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the [Protection of the Environment Operations Act 1997](#) (as amended) and [Regulations](#).

An Acoustic Report shall be prepared by a suitably qualified acoustic consultant demonstrating that the operation of the premises and plant equipment shall not give rise to a sound pressure level at any affected

premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise sources under consideration by more than 5dB. The source noise level shall be assessed as an LAeq, 15 min in accordance with the NSW Environment Protection Authority's [NSW Industrial Noise Policy](#).

46. **Regulated system – Details and Fit out** - Details of the regulated system (cooling towers and warm water system) must be submitted to the PCA for approval. Such details must demonstrate compliance with the following:

- i. [Public Health Act 2010](#) (as amended).
- ii. [Public Health Regulation 2012](#) (as amended).
- iii. AS/NZS 3666.1:2002 Air-handling and water systems of buildings - Microbial control-Design, installation and commissioning (as amended).

47. **Food Premises** - The following information shall be provided and shown on the Construction Certificate Plans:

(a) Plans and Specifications

Details of the construction and fit out of food premises must be submitted to Council's Environmental Health Officer. The plans and specifications must demonstrate compliance with the:

- i. [Food Act 2003](#) (as amended)
- ii. [Food Regulation 2015](#) (as amended)
- iii. Food Standards Code as published by Food Standards Australia
- iv. New Zealand and Australian Standard AS4674:2004 Design, Construction and fit out of food premises (as amended)
- v. Sydney Water – trade Waste Section.

Environmental Health Officers' must advise in writing that the plans and specification are considered satisfactory prior to the issue of any Construction Certificate.

48. **Crime Prevention**- In line with the recommendations of the NSW Police Force, the following are to accompany the Construction Certificate application:

- (a) The development is to provide Closed-Circuit Television (CCTV) cameras within and around the development. A Closed-Circuit Television plan is to be prepared in that regard.
- (b) Strict adherence to the provided 'Crime Risk Assessment Report'.
- (c) The system must record continuously at all times.
- (d) Recordings must be in a digital format and at a minimum of ten frames per second (10 fps).

- (e) Any recorded image must specify the time and date of the recorded image.
  - (f) The systems cameras must cover the following areas
    - (i) All entry and exit points on the premises
    - (ii) The footpath immediately adjacent to the premises
    - (iii) All publicly accessible areas (other than toilets) within the premises.
    - (iv) Throughout the underground car park to monitor activities around these areas
49. **Lighting in and around the Site-** Lighting must be installed in and around the property to increase visibility during the hours of darkness. Lighting must comply with the relevant Australian Standard.
50. **Commonwealth Disability (Access to Premises) Standard** - The Commonwealth Disability (Access to Premises - Buildings) Standards 2010 (the Premises Standards) applies to all applications (i.e. Construction Certificate). This requires any new building, part of a building and the affected part of the existing building to comply with the Premises Standards, the Building Code of Australia and AS 1428.
51. **Geotechnical report** - The applicant must submit a Geotechnical Report, prepared by a professional engineer specialising in geotechnical engineering who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted before the issue of the Construction Certificate and is to include:
- (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
  - (b) Dilapidation Reports on the adjoining properties including, but not limited to adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the PCA and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
  - (c) On-site guidance by a vibration specialist during the early part of excavation.
  - (d) Measures to minimise vibration damage and loss of support to other buildings. Where possible any excavation into rock is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures. Where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) the report shall detail the maximum size of hammer to be used and provide all reasonable recommendations to manage impacts.
  - (e) Sides of the excavation are to be pierced prior to any excavation

occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

**52. Construction Traffic Management Plan** - A Construction Traffic Management Plan detailing but not limited to the following:

- (a) Construction vehicle routes;
- (b) Anticipated number of trucks per day;
- (c) Anticipated number of staff per day
- (d) Hours of construction;
- (e) Duration of construction;
- (f) Traffic Control Plans to manage construction vehicles;
- (g) Access arrangements; and
- (h) Proposed traffic measures to minimise impacts of construction vehicles must be submitted for the approval of Council's Traffic Engineer. Council's Traffic Engineers must specify in writing that they are satisfied with the Traffic Management Plan prior to the issue of the Construction Certificate.

**53. Waste Room Design and Construction** - The construction certificate drawing shall show the waste room containing the following to minimise odours, deter vermin, protect surrounding areas, and make it a user-friendly and safe area:

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

**54. Waste Handling Systems** - All waste handling equipment and systems used

in conjunction with the provision of waste and recycling services shall be manufactured, installed and maintained in accordance with any applicable regulatory requirements, relevant Australian Standards, and relevant manufacturer's specifications.

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

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

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

56. **Traffic Design Certificate**- A detailed "design" certificate from an experienced and qualified traffic engineer with tertiary qualifications is to be submitted to and approved by the Principal Certifying Authority confirming the following:

- (a) The car parking layout and loading areas associated with the development (including, driveway grades, headroom clearance turn paths, aisle widths, aisle lengths and parking bay dimensions) should be in accordance with AS2890.1:2004, AS2890.6:2009 and AS2890.2:2018.
- (b) Bicycle parking associated with the development is provided in accordance with AS2890.3 design requirements.
- (c) Driveway access complies with Figure 3.3 of AS2890.1:2004 minimum sight lines for pedestrian safety.
- (d) All vehicles shall enter and exit the premises in a forward direction;

57. **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.

- 58. **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 must be allocated as advised by Georges River Council.
- 59. **Car Wash Bays** - Plans and specifications of the car washing system which has been approved by Sydney Water must be submitted with the application for the Construction Certificate.

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

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

- 60. **Materials and Finishes** - Any proposed cladding to the building shall be constructed of fire resistant materials which comply with the requirements of the National Construction Code (NCC) 2019 Volume (1) One Building Code of Australia (BCA). Details of the proposed materials and finishes are to be detailed on the construction certificate drawings and shall be to the satisfaction of the PCA.
- 61. **Dedication of Land** – The applicant at no cost to Council shall dedicate a 3m wide strip of land for widening part of Roberts Lane in accordance with the requirements as specified in the voluntary planning agreement (VPA).

The laneway dedication is to be clearly identified and annotated on the plans lodged with the application for any construction certificate.

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

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

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

64. **NBN Connection** - Prior to the issue of the Subdivision or Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
- (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note real estate development project has the meanings given in section 372Q of the Telecommunications Act).

65. **Landscape Plans** – All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Urbis for Aoyuan International, Drawing No 001 & 002 Rev D and 003, 004 & 005 Rev C and dated 18 March, 2021. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -

- (a) The proposed tree and plant species, pot/ bag size and quantities of plants shall be reflected as shown upon plan views and in accordance with the proposed plant schedule upon the landscape plan.
- (b) The applicant must engage a reputable nursery grower and supplier to have all trees and plants contract grown early within the building phase to ensure that the proposed trees, plant species, quantities and sizes are guaranteed at the time of landscape planting and implementation.

- (c) Fully integrated automatic irrigation system installed as per Australian Standards to irrigate all plants, garden beds and all trees.
- (d) All trees proposed upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification.
- (e) 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;

**66. Tree Removal & Replacement - Tree removal**

(a) Tree removal

Permission is granted for the removal of the following trees and in accordance with the Arborist Report provided by Urban Arbor, dated 24<sup>th</sup> July 2020:

<b>Tree Species</b>	<b>Number of trees</b>	<b>Location</b>
T1 – <i>Robinia pseudoacacia</i>	X1	Councils street tree fronting Durham St
T2 – <i>Corymbia maculata</i>	X1	Within site, rear lane way location
T3 – <i>Callistemon viminalis</i>	X1	Within site, rear lane way location
T4 – <i>Pittosporum undulatum</i>	X1	Within site, rear lane location
T5 - <i>Callistemon viminalis</i>	X1	Within site, rear lane way location
T6 – <i>Banksia integrifolia</i>	X1	Within site, rear lane way location
T7 - <i>Callistemon viminalis</i>	X1	Within site
T8 – <i>Callistemon citrinus</i>	X1	Within site

**General Tree Removal Requirements**

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

- (b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

#### **Street Tree Removal / Replacement by Council –**

- a) A maximum of seventeen (17) street trees of species to be determined (number is subject to public domain approval) must be provided in accordance with the Public Domain Plan Approval.
- b) Council shall be appointed to remove and plant all tree/s on public land. All costs associated with the removal of the tree/s and the planting of replacement trees shall be met by the applicant. Fees and charges outlined in the table below are subject to change and are set out in the current version of Council's 'Schedule of Fees and Charges', applicable at the time of payment.
- c) The fees must be paid in accordance with the conditions of this consent. The fee payable is to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.
- d) The fees payable will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant conditions set out in this consent.

<b>Fee Type – Tree planting on public land</b>	<b>Number of trees</b>	<b>Amount per tree</b>
Administration Fee, tree planting and maintenance	X17	\$452.00
Cost of tree removal – One tree	To be determined	
Cost of Stump Grinding – One tree	To be determined	

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

67. **Dilapidation Report on Public Land – Major Development Only -** Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site, including:
- (a) Foot paths , Kerb and gutter and roadways
  - (b) Stormwater drainage pits and pipes

The report must include the following:

- (a) Photographs showing the existing condition of the road pavement fronting the site,
- (b) Photographs showing the existing condition of the kerb and gutter fronting the site,
- (c) Photographs showing the existing condition of the footpath pavement fronting the site,

- (d) Photographs showing the existing condition of any retaining walls within the footway or road, and
- (e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
- (f) The full name and signature of the structural engineer
- (g) The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the PCA and a copy provided to the Council.

The Dilapidation Report must be prepared by a professional engineer. The report must be provided to the PCA and a copy provided to the Council. The report is to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

**Note:** Council will use this report to determine whether to refund the damage deposit after the completion of works.

- 68. **Structural Engineers Details – Supporting Council road/footway-** Prior to the commencement of work in connection with the excavation of the site associated with the basement carpark, structural engineer's details relating to the method of supporting Council's roadways/footways must be submitted to the satisfaction of Council.
- 69. **Demolition & Asbestos** - The demolition work shall comply with the provisions of Australian Standard AS2601:2001 - Demolition of Structures, NSW Work Health & Safety Act 2011 and the NSW Work Health & Safety Regulation 2011. The work plans required by AS2601:2001 shall be accompanied by a written statement by a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the safety statement shall be submitted to the PCA prior to the commencement of works.

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

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

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

- 70. **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 and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.

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

71. **Dial before your dig** - The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.

72. **Compliance with the Detailed Site Investigation-** Prior to the commencement of any work, other than demolition or excavation in association with the remediation of the site, a Site Audit Report and Site Audit Statement are to be submitted to Council. These documents must clearly state that the site is suitable for the proposed use.

Note: The Applicant must comply with clauses 17 'Guidelines and notices: all remediation work' and clause 18 'Notice of completion of remediation work' under [State Environmental Planning Policy No.55—Remediation of Land](#).

Note: Words and expressions used in these conditions have the same meaning as in the [Contaminated Land Management Act 1997](#).

73. **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](#).

74. **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**

75. **Site Validation Report** - A Validation report shall be prepared in accordance with the requirements of the EPA (2020) Guidelines for Consultants Reporting on Contaminated Sites and the EPA (2017) Guidelines for the NSW Site Auditor Scheme and will confirm that the site has been remediated to a suitable standard and in accordance with the process stipulated in the Remediation Action Plan prepared by EI Australia and dated 19 May 2020.

A fully qualified Auditor will be required to sign off on the remediation works and a copy of the Validation report shall be provided to Council at the completion of the remediation works program.

76. **Site Validation Report and monitoring Report** - After completion of all Remediation works, a Notice of completion of remediation work must be submitted to Council in accordance with clause 17(2) of the SEPP 55 and the Notice must address all requirements listed in Clause 18 of SEPP 55.

Where a full clean-up is not feasible, or on-site containment of contamination is proposed, the need for an ongoing monitoring program should be assessed. If a monitoring program is needed, it should detail the proposed monitoring strategy, parameters to be monitored, monitoring locations, frequency of monitoring, and reporting requirements.

This Report must be completed and submitted for approval by an EHO prior to the site being granted an OC.

77. **Site contamination (additional information)** - 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 accredited certifier immediately.

78. **Physical connection of Stormwater to site-** No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's stormwater system in the street as indicated on the approved drainage plans.

79. **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.

80. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the [Roads Act 1993](#) and/or under Section

68 of the [Local Government Act 1993](#). Penalty infringement Notices may be issued for any offences and severe penalties apply.

81. **Road Opening Permit** - 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.
82. **Structural Certificate During Construction** - The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate
83. **Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:
  - (a) Set out before commencing excavation.
  - (b) Floor slabs or foundation wall, before formwork or commencing brickwork.
  - (c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
  - (d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
  - (e) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
  - (f) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

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

84. **Hazardous or Intractable Waste – Removal and Disposal**- Hazardous or



intractable waste arising from the demolition or construction process shall be removed and disposed of in accordance with the requirements of SafeWork NSW and the NSW Environment Protection Authority and with the provision of:

- Work Health and Safety Act 2011 (NSW) (as amended);
- Work Health and Safety Regulation 2011 (as amended);
- Protection Of the Environment Operations Act 1997 (NSW) (as amended); and
- Protection of the Environment Operations (Waste) Regulation 2014 (as amended)

85. **Utility Arrangements (Transport for NSW Condition)** - The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.
86. **Demolition and Construction Vehicles (Transport for NSW Condition)** - All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
87. **Development Engineering - 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 and cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site.
88. **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.
89. **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.

90. **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.

91. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

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

92. **Damage within Road Reserve and Council Assets** - The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.
93. **Public Utility and Telecommunication Assets** -The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines & cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site

#### **Prior to the issue of the Occupation Certificate**

94. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent, must be implemented before issue of any Occupation Certificate.
95. **BASIX Compliance Certificate** - A Compliance Certificate must be provided to the PCA regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.
96. **Payment of S7.11 and S7.12 Contributions** - Prior to the issue of any Occupation Certificate, written confirmation from Councils delegate that all outstanding s7.11 and s7.12 contributions have been paid, is to be obtained and provided to the satisfaction of the PCA.
97. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the PCA prior to the issue of the Occupation/Subdivision Certificate.
98. **Median island construction** - On Forest Road, the developer will need to liaise with Council's Traffic Section and Design Section to construct a median island to restrict the development to left in left out along the Forest Road vehicular access to the proposed development as approved by the Local Traffic Advisory Committee
99. **Acoustic Certification** – Prior to the issue of any Occupation Certificate, a suitably qualified acoustic consultant shall certify that the operation of the

premises and plant equipment shall not give rise to a sound pressure level at any affected premises that exceeds the acoustic criteria established by the Acoustic Report required by a condition of this consent. The development shall at all times comply with these noise levels post occupation.

100. **Acoustic Compliance** – Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report titled Landmark square, Hurstville – Development Application Acoustic Assessment prepared by Acoustic Logic and dated 18/08/2020.

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

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

102. **Acoustic Compliance – General Operation of Premises-** The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 (as amended) and Regulations.

A suitably qualified person shall certify that the operation of the plant equipment shall not give rise to sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise sources under consideration by more than 5dB. The source noise level shall be assessed as an LAeq, 15 min in accordance with the NSW Environment Protection Authority's "NSW industrial Noise Policy.

Certification must be submitted to the PCA prior to the issue of any Occupation Certificate.

103. **Certification – Air handling systems (including water cooling system, hot water systems and warm water system)-** Certification by a suitably qualified person engineer '2012 must be submitted to the PCA prior to the issue of any occupation certificate verifying that the air handling system has been installed in accordance with:

- (a) [Public Health Act 2010](#) (as amended)
- (b) [Public Health Regulation 2012](#) (as amended)

- (c) AS/NZS 3666.1:2011 *Air-handling and water systems of buildings - Microbial control -Design, installation and commissioning*

104. **Food Premises – Inspections & Registration** - Prior to the issue of any Occupation Certificate or occupation or use of any food premises:
- (a) An inspection of the fit out of the Food Premises must be arranged with Council's Environmental Health Officer;
  - (b) A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and
  - (c) The Food Premises must notify and register its business details with Georges River Council as required under section 100 of the [Food Act 2003](#).
105. **Registration – Water cooling and warm water systems** - The applicant must register the regulated systems with Council and provide the PCA with evidence of registration pursuant to Clause 12 of the [Public Health Regulation 2012](#) (as amended prior to the issue of an Occupation Certificate.
106. **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".*

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

#### **Positive Covenants**

1. *The registered proprietor of the lot(s) hereby burdened will in respect of the system:*
  - a) *keep the system clean and free from silt, rubbish and debris*
  - b) *maintain and repair at the sole expense of the registered proprietors the whole of the system so that it functions in a safe and efficient manner*
  - c) *permit the Council or its authorised agents from time to time and*

*upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant*

- d) *comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.*

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

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

107. **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.

108. **Requirements prior to the issue of the Occupation Certificate-** The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:

- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
- (b) The internal driveway construction works, together with the provision for all services shall be completed in accordance with the approved

Construction Certificate plans prior to the issue of the Occupation Certificate.

- (c) Construct any new vehicle crossings required.
- (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
- (e) Section 73 (Sydney Water) Compliance Certificate for the Subdivision shall be issued and submitted to the PCA prior to the issue of the Occupation Certificate.
- (f) Work as Executed Plans prepared by a Registered Surveyor and certified by a practicing drainage engineer when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.
- (g) The construction of the proposed kerb inlet pit and 450mm diameter RCP pipe shall be completed in accordance with the conditions and specifications of the Section 68 Activity Approval.

109. **Line marking of parking spaces** - Parking spaces shall be clearly designated (sign posted and marked on ground) and line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with *Australian Standards, AS1742, Manual of Uniform Traffic Control Devices* and *NSW Road Transport (Safety and Traffic Management) Regulations 1999*.
110. **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.
111. **SEPP 65 Design Verification Statement** - The PCA must not issue any Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the PCA has received a design verification, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.
112. **Voluntary Planning Agreement** - The terms of the Voluntary Planning Agreement between the Georges River Council and Prime Hurstville Pty Ltd (Developer) which was executed on 26 August 2019 shall be completed and implemented. Confirmation by Council that the terms have been effected and are satisfactory shall be obtained from Georges River Council prior to the issue of any Occupation Certificate (OC) to the satisfaction of the Council.
113. **Vehicular crossing & Frontage work – Major development**- The following road frontage works shall be constructed in accordance with the specifications issued under the 'Application for Driveway Crossing and Associated Works on Council Road Reserve' approval issued by Council's

Assets and Infrastructure Division:

- (a) Construct a full width – boundary to kerb footpath in paving material for the full length of the frontage of the site in Forest Road and Durham Street and the construction of a 1.5m wide footpath along Roberts Lane in accordance with Council's Specifications for footpaths.
- (b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
- (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
- (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

**114. Traffic Certification-** An "as built" certificate from an experienced and qualified traffic engineer with tertiary qualifications is to be submitted to and approved by the Principal Certifying Authority confirming the following:

- (a) The car parking layout and loading areas associated with the development (including, driveway grades, headroom clearance turn paths, aisle widths, aisle lengths and parking bay dimensions) has been constructed in accordance with AS2890.1:2004, AS2890.6:2009 and AS2890.2:2018.
- (b) Bicycle parking associated with the development is provided in accordance with AS2890.3 design requirements.
- (c) Driveway access complies with Figure 3.3 of AS2890.1:2004 minimum sight lines for pedestrian safety.
- (d) All vehicles shall enter and exit the premises in a forward direction;
- (e) Parking spaces shall be clearly line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with *Australian Standards, AS1742, Manual of Uniform Traffic Control Devices* where required.

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

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

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

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

**117. Traffic Control Devices** - The internal road network, pedestrian facilities and parking facilities (including visitor parking and employee parking) shall be designated and line marked in accordance with Australian Standard - AS1742, Manual of Uniform Traffic Control Devices.

If an exit from car park utilises a pedestrian footpath, then a warning system such as flashing light and/or 'alarm sound' must be installed on the subject property to alert pedestrians of vehicles exiting the car park. The Alarm System must be designed and installed in accordance with AS2890.1 -2004.

**118. Dilapidation Report on Public Land**– Upon completion of works, a follow up dilapidation report must be prepared for the items of Council infrastructure adjoining the development site:

- (a) Footpaths, kerb and gutter
- (b) Drainage Infra-structure

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

- (a) Photographs showing the condition of the road pavement fronting the site



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

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

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

Council's Assets and Infrastructure Division must advise in writing that the works have been completed to their satisfaction prior to the issue of an Occupation Certificate.

**119. Allocation of car parking spaces** – Car parking associated with the development is to be allocated as follows:

- a) Residential dwellings: 313 car parking spaces
- b) Residential visitors and Commercial/Retail: 141 car parking spaces
- c) Hotel Spaces: 22 car parking spaces.

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

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

**121. Consolidation of Site with extra requirements** - The site shall be consolidated into one allotment and a Plan of Consolidation prepared by a Registered Surveyor and submitted to Council with an application for a Subdivision Certificate.

This Plan shall create the following:

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

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

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

The 88B instrument shall be submitted to Council for endorsement by Council's Authorised Officer (with a copy of the consolidation plan for Council records).

The Plan of Consolidation shall be registered at the NSW Land and Property Information prior to the issue of a final occupation certificate.

122. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000, on completion of building works and prior to the issue of an Occupation Certificate, the owner 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.

123. **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 with the application for the Occupation Certificate for approval.

124. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to Ausgrid (or relevant electricity provider).

125. **Allocation of street addresses** - All street addresses are to be allocated in accordance 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.

126. **Completion of Landscape Works –**

(a) All landscape works and fees payable for Councils street tree planting must be completed before the issue of the Final Occupation Certificate and to the satisfaction of Councils Tree Management Officers and in accordance with approved landscape plans and specifications, drawn by Urbis for Aoyuan International, Drawing No 001 & 002 Rev D and 003, 004 & 005 Rev C and dated 18 March, 2021.

(b) A certificate of compliance for the planting of all trees and shrubs proposed for the site. 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 PCA – Principal Certifying Authority, to form compliance.

127. **Restriction on user and positive covenant** - Prior to the issue of any Occupation Certificate, the submission of documentary evidence is required of the creation of a positive covenant on the title of the Site pursuant to section 88 *Conveyancing Act 1919* (NSW) addressing the following matters:

(a) Notation of Consent granted through Sydney South Planning Panel to undertake demolition and construction works associated with the breakout wall between any future basement of 53 Forest Road and the subject Site, subject to the issue of the relevant and required Construction and Occupation Certificates

(b) The creation of a right of carriageway to enable unimpeded vehicular access, fire egress, support, common space and garbage/waste services through the basement of the Site, the subject of this application and the breakthrough of any future connecting basement walls to access the adjoining site at 53 Forest Road, Hurstville to the benefit of the owners of the property at 53 Forest Road, Hurstville.

(c) No Occupation Certificate associated with the development work the Site under DA2020/0352 is to be issued until the works and requirements of (a) and (b) above have been constructed and effected.

**Note:** This Development Consent provides approval for the physical works required to create the openings for unimpeded vehicular access, fire egress, support, common space and garbage/waste services between the adjoining property 53 Forest Road, Hurstville and the Site, as shown on the approved plans at Condition 1.

128. **Public pedestrian pathway** - Prior to the issue of any occupation certificate, public pedestrian pathways shall be constructed as shown in plan DA - 110-009 Upper Ground Level Rev I dated 26/04/2021 prepared by Turner Studio and in accordance with the requirements as set out in the voluntary planning agreement (VPA)..
129. **Creation of Positive Covenant for the pedestrian site link** – A public easement and public positive covenant shall be created over the public through site links in terms to the satisfaction of Council to ensure their provision and maintenance.

Registration of an instrument under s88B of the Conveyancing Act 1919 to create easements in gross favour of the Council on terms generally in accordance with Hurstville Development Control Plan No 2 – City Centre as amended from time to time and the terms at Schedule 4 in the voluntary planning agreement (VPA) allowing for public access to and from and across and through the Land:

- To and from Forest Road (minimum 6 metres wide) to Roberts Lane,
- To and from Durham Street to Roberts Lane, and
- To and from Durham Street and Forest Road at the north western part of the land

In the location to the Council's satisfaction generally shown as 'A', 'B', 'C', 'D' and the 'Central Plaza' on the easement Plan.

The positive covenant shall include the following wording:

*"It is the responsibility of the Owner's Corporation to keep the pedestrian through site link connecting Forest Road and the central courtyard accessible to the public at all times, they are to be clean and well-lit and be of a surface that provides access for all which is to be maintained in an efficient working condition. The pedestrian links shall not be modified in any way without the prior approval of Georges River Council."*

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

130. **Dedication of Land** – The applicant at no cost to Council, shall dedicate a 3m wide strip of land from the gutter line of Roberts Lane to the boundary of the site for road widening purposes extending the part of Roberts Lane frontage as identified in Section 8.2.4.3 of HDCCP No 2 and the voluntary planning agreement (VPA). This strip shall be dedicated as road widening on a plan of subdivision prepared by a Registered Surveyor and must be submitted to Council with an application for a Subdivision Certificate and shown on the consolidated allotment plan. The submission of documentary evidence of the formal dedication of land being 3m from the gutter line to the allotment boundary for site frontage along Roberts Lane for the purpose of road widening of part of Roberts Lane is to be provided to Georges River

Council and must also be part of the Public Domain Plan for the development. The road widening is to ensure appropriate access and egress from the laneway to the subject site. Appropriate documentary evidence is to be submitted to the Principal Certifier and Council (if Council is not the Principal Certifier).

### **Stratum Subdivision Conditions**

131. **Stratum – Completion of Site Works prior to the issue of the Subdivision Certificate** - The structures of the building(s) shall be completed to the stage that all the boundaries and easement limitations of the proposed Stratum Lots can be physically defined on the Final Subdivision Plan. This stage of the building(s) shall be constructed in accordance with the approved plans and conditions of Development Consent No. DA2020/0352 and any subsequent approved revisions under Section 4.55 of the [Environmental Planning & Assessment Act 1979](#).

132. **Stratum – Final Subdivision Plan Requirements** - A final Subdivision Plan shall be prepared by a Registered Surveyor and shall create the following easements:

- (a) Easements for Support and shelter over each lot to benefit other lots.
- (b) Easements to Drain Water over each lot to benefit other lots.
- (c) Easements for Services over each lot to benefit other lots.
- (d) Various Rights of Access over each lot to benefit other lots.
- (e) Rights to Use Fire Stairs over each lot to benefit other lots. These Rights shall be created over all Fire Exits and Stairways if necessary.
- (f) Easements for Overhang.
- (g) Easements for Signage.
- (h) Rights to Use Loading Area.
- (i) Easements for Stormwater Detention Facilities.
- (j) Easement for Electricity Purposes
- (k) Any other required Easements

If any of the abovementioned easements cannot be created suitable provisions shall be provided in the Building Management Statement for the Scheme.

133. **Final subdivision Requirements – Car Space Numbering** - Each car space shall be renumbered correctly on site in accordance with the strata plan lot numbering.

134. **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.

### **Operational Conditions (On-Going)**

135. **Communal Open Space** – The use of the roof top communal open space area is to be in accordance with the approved Plan of Management (POM) at all times.
136. **Crime Prevention**- In line with the recommendation of the NSW Police Force, the premise is to always operate as per the following:
- (a) The CCTV system must continuously record and operate at all times.
  - (b) Recordings must be in a digital format and at a minimum of ten frames per second (10 fps).
  - (c) Any recorded image must specify the time and date of the recorded image.
  - (d) The systems cameras must cover the following areas
    - i. All entry and exit points on the premises
    - ii. The footpath immediately adjacent to the premises
    - iii. All publicly accessible areas (other than toilets) within the premises.
    - iv. Throughout the underground car park to monitor activities around these areas
  - (e) Lighting in and around the Site- Lighting devices must be in operation in and around the property to increase visibility during the hours of darkness. Lighting must comply with the relevant Australian Standard.

The premise is to always operate as per the approved Crime Risk Assessment and Security Management Plan.

137. **Noise Control** - The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997 (as amended).
138. **Maintenance of Sound attenuation** - Sound attenuation must be maintained in accordance with the Acoustic Report titled Landmark square, Hurstville – Development Application Acoustic Assessment prepared by Acoustic Logic and dated 18/08/2020.
139. **Food Premises – maintenance of food premises** - The food premises must be maintained in accordance with the [Food Act 2003](#) (as amended), [Food Regulation 2015](#) (as amended); the Food Standards Code as published by Food Standards Australia & New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises (as amended)*.
140. **Food premises – garbage odour** - A waste contractor shall be engaged to remove all waste from the garbage storage area on a regular basis so that no overflow of rubbish will occur. Practical measures are also to be taken to ensure that odour emission from the garbage storage area does not cause offensive odour as defined under the provision of the [Protection of the Environment Operations Act, 1997](#) (as amended).

141. **Food Premises – Storage of waste – used cooking oil** - Used oil shall be contained in a leak proof container and stored in a covered and bunded area prior to off-site disposal. Copies of receipts for the disposal of used cooking oil shall be kept on-site and made available to Council Officers upon request.
142. **Final Acoustic Report – Verification of Noise Report** - Within three months from the issue of an Occupation Certificate, an acoustic assessment is to be carried out by an appropriately qualified acoustic consultant, in accordance with the [EPA's Industrial Noise Policy](#) and submitted to Council for consideration. This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report titled Landmark square, Hurstville – Development Application Acoustic Assessment prepared by Acoustic Logic and dated 18/08/2020 are effective in attenuating noise to an acceptable noise level and that the use is not calculated to give rise to 'offensive noise' as defined under the provision of the [Protection of the Environment Operation Act 1997](#) (as amended).
143. **Smoke Area – Prohibition of live bands, amplified music or speakers** - There shall be no live bands, amplified music or speakers permitted to perform in the smoke area at any time.
144. **Operation of Air Handling Systems** - The occupier must operate air handling systems in compliance with Part 2 of the [Public Health Regulation 2012](#) (as amended).

Where there is any change in the air handling system the occupier must register the changes in the regulated systems with Council.

Water cooling systems must be certified annually by a competent person as being an effective process of disinfection under the range of operating conditions that could ordinarily be expected.

145. **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.
146. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
147. **Maximum vehicle size** - No vehicle larger than a Medium Rigid Vehicle (MRV) as defined in AS 2890.2: 2018 (Australian Standard for off street commercial vehicle facilities) is to be permitted to access the development for the purpose of loading or unloading of goods and/or services.
148. **Deliveries** - No deliveries to the premises shall be made direct from a public place or street inclusive of footpaths, nature strip, roadway and car parks.
149. **Deliveries** – No deliveries and/or waste removal to/from the site shall take

place between 10pm and 6am, 7 days a week.

150. **Service Deliveries** – Service vehicle access to the development is to be outside of school peak times, being 8.00am-9.30am and 2.30pm- 4.00pm on Monday to Friday.
151. **Loading and unloading areas** - All loading and unloading of vehicles in relation to the use of the premises shall take place wholly within the dedicated loading/unloading areas, which is wholly within the site.
152. **Visitors Parking** - All allocated car parking spaces shall be freely available for the visitors of the proposed development.
153. **Entering & Exiting of vehicles** - All vehicles shall enter and exit the site in a forward direction.
154. **Entering and Exiting on Durham Street** - All vehicles entering or exiting the development on Durham Street must be restricted to left in left out. The vehicular and loading access on Durham Street must have signs installed in a visible location within the development instructing drivers that they must turn left only out of the development.
155. **Forest Road signage** – On Forest Road the vehicular access must have signs installed in a visible location in the development instructing drivers that they must turn left only out of the development
156. **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.
157. **Maintenance of Landscaping** –
  - (a) 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.

- (b) 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](http://www.georgesriver.nsw.gov.au)

- 158. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
- 159. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.
- 160. **Responsibility of Strata/Building Manager** - Movement of bins around the site is the responsibility of the Strata/Building Manager or a delegated contractor (such as cleaners).

It is the responsibility of the Strata/Building Manager or a delegated contractor to clean and maintain waste chutes to maintain a sanitary environment. It is also the responsibility of the Strata/Building Manager or a delegated contractor to monitor fill levels of all bins in each designated bin storage area/chute discharge room and rotate these for servicing using bin lift equipment at the site. The Strata/Building Manager or a delegated contractor will also be responsible for monitoring the fill levels of bulky waste in the designated bulky waste storage areas.

The Strata/Building Manager shall also be responsible for maintaining all equipment, systems, facilities and storage areas used in conjunction with the provision of waste management services in accordance with all applicable regulatory requirements and relevant health and environmental standards

- 161. **Waste Management** - The provision of all residential, public and commercial waste services are to be provided as per the approved Waste Management Plan prepared by Waste Audit and Consultancy Services dated April 2021. The Body Corporate/Strata Manager will be responsible for overseeing the provision of waste services in accordance with the approved WMP and relevant legislation, including maintaining bins in a clean and sanitary manner utilising the equipment provided as per the WMP (bin wash, bin lift etc).

Chute discharge rooms will be provided for each building and contain track systems as per the WMP and architectural plans. Chute discharge rooms will only be accessible by authorised building or cleaning staff and must be secured by lock and key. Chute discharge rooms will be required to store bin

numbers for each building and access must be by double door (or appropriate roller door if space requires) to enable the movement of 1100L bins in/out of the room, while chutes and tracks operate and bins remain stored in the discharge room.

Chutes are to be installed and maintained as per manufacturers instruction and in order to maintain safe and hygienic infrastructure for resident's use.

Residential bulky and bin store areas must not be accessible by retail or commercial tenancies. Residential bulky waste and bin store areas must be secured under lock and key, and only accessible by authorised persons (caged areas are suitable for temporary bin storage areas, with keys made available to Council to enable servicing).

Any green waste (garden organics) generated onsite will be required to be removed from the site immediately by a landscaping or gardening contractor and disposed of at a licensed waste facility able to accept green waste.

Onsite access for Council provided waste collection services has been enabled for residential collections. Participation in and use of the on-property collection service is subject to site Risk Assessment and safe access by Councils waste collection contractor, determined both prior to the service commencing, and/or as required during on-going waste collection services provided to the property. Once a site is operational, Council reserves the right to cancel the on-property collection service at any time, with notice provided in writing to the Strata/Building Manager as relevant.

In the event of cancellation of the on-property service and/or in the event that Council is unable to provide collection services, the Strata/Building Manager will be responsible for arranging bin and bulky waste through a private waste collection contractor, at cost to the Strata and residents, to provide waste collection services onsite.

Kerbside presentation of bins and bulky waste is not permitted and all bins and waste from the development must be stored onsite at all times.

The site will not receive waste collection services more frequently than 3 days per week, in an effort to maintain amenity and reduce noise/odour issues in surrounding areas.

## **Operational Requirements Under the Environmental Planning & Assessment Act 1979**

162. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
163. **Appointment of a PCA** - The erection of a building must not commence until the applicant has:
  - (a) appointed a PCA for the building work; and

- (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

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

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

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

**164. Notification Requirements of PCA** - No later than two days before the building work commences, the PCA must notify:

- (a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
- (b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

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

A Notice of Commencement Form is attached for your convenience.

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

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

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

**168. Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has

been issued in relation to the building or part.

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

### **Prescribed Conditions**

169. **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
170. **Clause 98 - Building Code of Australia & Home Building Act 1989** - Requires all building work to be carried out in accordance with the Building Code of Australia. In the case of residential building work to which the Home Building Act 1989 relates, there is a requirement for a contract of insurance to be in force before any work commences.
171. **Clause 98A - Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the PCA and the Principal Contractor.
172. **Clause 98B – Home Building Act 1989** - If the development involves residential building work under the Home Building Act 1989, no work is permitted to commence unless certain details are provided in writing to Council. The name and licence/permit number of the Principal Contractor or Owner Builder and the name of the Insurer by which work is insured under Part 6 of the Home Building Act 1989.
173. **Clause 98E - Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.
174. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

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

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

If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement

of the soil shall be provided and adequate provision shall be made for drainage.

## **END CONDITIONS**

## **NOTES/ADVICES**

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

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

176. **Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
177. **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.
178. **Access to NSW Legislation (Acts, Regulations and Planning Instruments)** – NSW Legislation can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).
179. **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.

180. **Compliance with Access, Mobility and AS4299** - Adaptable Housing -

Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.

181. **Underground Cables-** Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

182. **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/nqlg.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](http://www.cjc.nsw.gov.au)).
- (b) Department of Environment and Conservation NSW, Noise Policy Section web page ([www.environment.nsw.gov.au/noise](http://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](http://www.legislation.nsw.gov.au)).
- (d) Australian Acoustical Society - professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).
- (e) Association of Australian Acoustical Consultants - professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).
- (f) Department of Gaming and Racing - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).

183. **Food Premises** - Information on Australian Standards can be obtained from [www.standards.com.au](http://www.standards.com.au)

Guidelines and Food Safety Standards may be obtained by contacting the Food Standards Australia New Zealand Authority at [foodstandards.gov.au](http://foodstandards.gov.au) or the NSW Food Authority on 1300 552 406, email: [contact@foodauthority.nsw.gov.au](mailto:contact@foodauthority.nsw.gov.au) or by visiting the website [www.foodauthority.nsw.gov.au](http://www.foodauthority.nsw.gov.au)

Notification of Food Business under Section 100 of the [Food Act 2003](#) requires the proprietor of a food business to give written notice, in the approved form, before conducting a food business. Penalties apply for failure to comply.

184. **Acoustical Engineer Contacts & Reference Material**- Further information including lists of Acoustic Engineers can be obtained from:

- (a) Australian Acoustical Society—professional society of noise-related professionals ([www.acoustics.asn.au](http://www.acoustics.asn.au))
- (b) Association of Australian Acoustical Consultants—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au))
- (c) NSW Industrial Noise Policy – Office of Environment & Heritage ([www.environment.nsw.gov.au](http://www.environment.nsw.gov.au))

185. **Disability Discrimination Act** - This application has been assessed in accordance with the [Environmental Planning and Assessment Act 1979](#). No guarantee is given that the proposal complies with the [Disability Discrimination Act 1992](#). The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The [Disability Discrimination Act 1992](#) covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.

186. **FR NSW comments** - Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation 2000 to seek written comment from FR NSW about any Fire Engineered Solution developed to meet the performance requirements for external combustible cladding.

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

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

Council must cover administration and other costs incurred in the investment

of these monies. The current charge is \$50.00 plus 2% of the bond amount per annum.

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

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

188. **Council appointed as the PCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement.

In this regard, detailed construction plans and specifications that demonstrate compliance with the above requirements of the BCA, in which case, including in relation to the provision of egress and the protection of openings etc must be submitted with the Construction Certificate Application.

189. **Energy Efficiency Provisions** - Should Council be appointed as the PCA, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the PCA.

Energy efficiency provisions relate only to new building work or the installation of new measure. Existing building fabric and measures may not be upgraded.

190. **Stratum Subdivision**

- (a) A Subdivision Certificate cannot be issued unless all relevant conditions of the development consent that are to be satisfied prior to the issue of the Subdivision Certificate have been complied with.
- (b) Council will check the consent conditions on the relevant subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision.
- (c) Plans of subdivision, Administration Sheets, Section 88B Instruments and copies must not be folded.



- (d) All Subdivision Plans, Deposited Plan Administration Sheets and Section 88B Instruments shall be submitted to Council enclosed in a protective cardboard tube (to prevent damage during transfer).
- (e) Certification from the Registered Surveyor that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services.

191. **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](http://www.SafeWork.nsw.gov.au)).

192. **Stormwater & Ancillary Works - Applications under Section 138 Roads Act and/or Section 68 Local Government Act 1993** - To apply for approval under Section 138 of the Roads Act 1993 and/or Section 68 Local Government Act 1993:

- (a) Complete the Stormwater Drainage Application Form which can be downloaded from Georges River Council's website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).
- (b) In the Application Form, quote the Development Consent No. (e.g. DA2018/0\*\*\*) and reference this condition number (e.g. Condition 23)
- (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.

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

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

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