

<b>DATE OF DETERMINATION</b>	27 May 2021
<b>PANEL MEMBERS</b>	Helen Lochhead (Chair), Stuart McDonald, Susan Budd
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	<p>Con Hindi – I have a conflict of interest as we have voted on the planning proposal on many occasions.</p> <p>Nick Katris – I have a conflict of interest as we have voted on the planning proposal on many occasions.</p> <p>Heather Warton – I am currently working on Class 1 Land and Environment Court appeals for Georges River Council. I work with the Legal Section, not the planning section and am an independent expert witness.</p>

#### **MATTER DETERMINED**

PPSSSH-28 – Georges River – DA2020/0352 at 61 Forest Road HURSTVILLE 2220 – 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 (as described in Schedule 1).

#### **PANEL CONSIDERATION AND DECISION**

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

#### **Application to vary a development standard**

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Hurstville Local Environmental Plan 2012 (LEP), that has demonstrated that:

- compliance with cl. 4.3 (Height of buildings) and cl 4.4 (Floor space ratio) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standards

the panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl.4.3 (height of buildings) and cl 4.4 (Floor space ratio) of the LEP and the objectives for development in the B4 zone; and
- The Clause 4.6 Statement is well founded and there will not be any direct or adverse environmental impacts generated by the variations sought.
- the concurrence of the Secretary has been assumed.

#### **Development application**

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### **REASONS FOR THE DECISION**

The panel determined to uphold the Clause 4.6 variation to building height and Clause 4.4 Floor space ratio; and approve the application for the reasons outlined in the council assessment report, notably,

- 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
- The buildings define the eastern entry to the City Centre and have been carefully designed having regard to the design objectives for the site.
- The proposed development is well considered and designed so that it will not result in any unreasonable impact on the natural and built environment.
- The proposed development is located within an area undergoing significant change and has been designed to be compatible 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 acceptable having regard to the justification provided in the Council report.
- 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 not considered incompatible with the character of the locality and is capable of existing harmoniously with its surroundings.
- The proposal is generally consistent with the applicable provisions contained in Hurstville DCP No 2 and the site- specific controls and objectives for the Landmark Square development site within the DCP.
- The proposal is generally consistent with the provisions of the Draft Georges River Local Environmental Plan 2020

## CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments.

- Condition to be added as condition 4A:

The notation 'line of bridge' as shown on the upper ground floor plan drawing number DA-110-009 is to be deleted from the plans.

- Communal Open space condition to be added as condition 20A

**Communal Open Space – Upper Ground Floor** - A Plan of Management (POM) is to be prepared for the communal open space located on the upper ground floor, to regularise the use of this area between private residents and the public. The POM must be submitted to 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 following:

- Hours of use of the upper ground floor communal open space are to be restricted to between 7am and 10pm.
- Location and type of signage to be installed in the upper ground floor communal open space area to notify residents and visitors in respect to the use of this area.
- Measures to ensure that the amenity and safety of persons within the development and in nearby existing and future development is maintained.
- No consumption of alcohol and no smoking within the upper ground floor communal open space area.

The development must be carried out in accordance with the POM at all times.

- Communal Open space (operational) condition to be added as condition 133A

**Communal Open Space – Upper Ground Floor** – The use of the communal open space area located on the upper ground floor is to be in accordance with the Plan of Management (POM) at all times.

- Site Remediation and validation conditions to be added as conditions 36A, 36B and 36C and all remaining conditions to be re-numbered

**36A. Contamination** – Prior to the issue of any Construction Certificate for above ground building works, the site must be remediated in accordance with the recommendations of the approved Remediation Action Plan (RAP) prepared by ERM Services Australia Pty Ltd dated 20 August 2020 and the Detailed Site Investigation Report (DSI) prepared by DLA Environmental Services dated March 2017

- The applicant must engage an appropriately qualified and experienced supervising environmental consultant to supervise all aspects of site remediation and validation. The environmental consultant must supervise all aspects of the remediation and validation works in accordance with the approved Remediation Action Plan.
- Any reports relating to contamination must be prepared or reviewed and approved by an appropriately qualified and certified environmental consultant. The front cover of the report must include the details of the consultant's certification.
- Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination must be immediately notified to Council and the Principal Certifying Authority in writing.
- Any variations to the approved Remediation Action Plan must be prepared or reviewed and approved by an appropriately qualified and certified environmental consultant and submitted to Council prior to the commencement of such work.

**36B. Site Validation Report** - Prior to the issue of any Construction Certificate for above ground building works, 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 provided to Council and the PCA.

The Validation Report 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 ERM Services Australia Pty Ltd dated 20 August 2020 and that the site is suitable for the proposed use.

The Validation Report must be prepared or reviewed and approved by an appropriately qualified and certified environmental consultant. The front cover of the report must include the details of the consultant's certification.

**36C. Notice of Completion and monitoring Report** - After completion of all Remediation works and prior to the issue of any Construction Certificate for above ground building 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.

### CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition. The panel notes that issues of concern included:

- bulk, scale, density and traffic issues arising from the increased density under the planning proposal that established controls for the area and proposed future uses on adjoining sites

The panel considers that concerns raised by the community relate primarily to the bulk and scale of development permitted under the LEP and DCP and are not pertinent to the application under consideration in the assessment report and that no new issues requiring assessment were raised.

PANEL MEMBERS	
 Helen Lochhead (Chair)	 Stuart McDonald
 Susan Budd	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSSH-28 – GEORGES RIVER – DA2020/0352
2	PROPOSED DEVELOPMENT	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
3	STREET ADDRESS	61-75 Forest Road and 126 Durham Street, Hurstville
4	APPLICANT/OWNER	Applicant – Aaron Sutherland Owner – Prime Hurstville Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Capital Investment Value > \$30M
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <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> <li>Sydney Regional Environmental Plan XXX (Deemed SEPP)</li> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> </ul> </li> <li>Draft environmental planning instruments: <ul style="list-style-type: none"> <li>Draft Environment State Environmental Planning Policy</li> <li>Draft Remediation of Land SEPP</li> <li>Draft Georges River Local Environmental Plan 2020</li> <li>Draft Design and Place State Environmental Planning Policy</li> </ul> </li> <li>Development control plans: <ul style="list-style-type: none"> <li>Hurstville Development Control No.2</li> <li>Interim Georges River Development Control Plan</li> <li>Draft Georges River Development Control Plan 2020</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 27 April 2021</li> <li>Clause 4.3 Building Height</li> <li>Clause 4.4 Floor Space Ratio.</li> <li>Written submissions during public exhibition: 3</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Briefing: Thursday, 11 March 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Helen Lochhead (Chair), Stuart McDonald, Susan Budd</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Council assessment staff</u>: Nichole Askew, Ryan Cole, Liam Frayne, Cassandra McFarlane</li> <li>• Final briefing to discuss council's recommendation: Thursday, 13 May 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Helen Lochhead (Chair), Stuart McDonald, Susan Budd</li> <li>○ <u>Council assessment staff</u>: Nichole Askew, Ryan Cole, Liam Frayne, Cassandra McFarlane</li> </ul> </li> </ul>
<b>9</b>	<b>COUNCIL RECOMMENDATION</b>	Approved subject to conditions
<b>10</b>	<b>DRAFT CONDITIONS</b>	Attached to the council assessment report