

<b>Panel Reference</b>	<b>PPSSSH-90</b>
<b>DA Number</b>	DA2021/0306
<b>LGA</b>	Georges River Council
<b>Proposed Development</b>	Demolition works, lot consolidation and construction of a three storey residential flat building comprising of 30 units, basement carpark and landscaping works.
<b>Street Address</b>	43-49 Gover Street, Peakhurst
<b>Applicant/Owner</b>	Applicant: NSW Land and Housing Corporation Owner: NSW Land and Housing Corporation
<b>Date of DA lodgement</b>	23 August 2021
<b>Number of Submissions</b>	Two submissions
<b>Recommendation</b>	Approval subject to conditions of consent.
<b>Regional Development Criteria (Schedule 6)</b>	<p>Regionally significant development is defined in Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021.</p> <p>The proposed development is classified as “Regional” development as it has a Capital Investment Value (CIV) of over \$5 million and is lodged by or on behalf of the Crown (State of NSW).</p> <p>The CIV of the project is \$9,984,927.00.</p>
<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>• State Environmental Planning Policy (Affordable Rental Housing) 2009</li> <li>• State Environmental Planning Policy (Planning Systems) 2021</li> <li>• State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>• State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</li> <li>• State Environmental Planning Policy (Building and Sustainability Index: 2004)</li> <li>• State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>• State Environmental Planning Policy (Transport and Infrastructure) 2021</li> </ul>

	<ul style="list-style-type: none"> <li>• Hurstville Local Environmental Plan 2012</li> <li>• Hurstville Development Control Plan No.1 (Amendment 6)</li> <li>• Georges River Local Environmental Plan 2021</li> <li>• Georges River Development Control Plan 2021</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Statement of Environmental Effects</li> <li>• Clause 4.6 Variation Request – building height</li> <li>• Registered survey</li> <li>• Architectural plans</li> <li>• Landscape Plan</li> <li>• Traffic Impact Assessment report</li> <li>• Stormwater Details and Plans</li> <li>• SEPP 65 Design Verification Statement</li> <li>• Geotechnical Report</li> </ul>
<b>Report prepared by</b>	<p>Linley Love</p> <p>Senior Development Assessment Planner</p>
<b>Report date</b>	24 May 2022

<p><b>Summary of matters for consideration under Section 4.15</b></p> <p>Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?</p>	<b>Yes</b>
<p><b>Legislative clauses requiring consent authority satisfaction</b></p> <p>Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?</p>	<b>Yes</b>
<p><b>Clause 4.6 Exceptions to development standards</b></p> <p>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?</p>	<b>Yes – Clause 4.3 Height of buildings</b>
<p><b>Special Infrastructure Contributions</b></p> <p>Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<b>Not Applicable</b>

<b>Conditions</b>  Have draft conditions been provided to the applicant for comment?	<b>Yes – Crown Development</b>  <b>Crown amendments incorporated into recommendation.</b>
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## Executive Summary

### Proposal

Council received a development application (DA2021/0306) seeking consent for demolition works, the removal of all but 1 of the existing site trees, lot consolidation and construction of a three storey residential flat building comprising thirty (30) units, basement carpark, landscaping works.

The proposal includes basement car parking for a total of fifteen (15) vehicles including three accessible spaces, bicycle parking, lift cores, stairwells, service areas and a bin storage room. A variation to the maximum 12m building height of 0.844m (a 7% variation).

The development is split into two buildings, east and west, which are connected at the ground level but separated at the levels above. The ground floor contains ten units (7 x 1B unit and 3 x 2B units) and communal open space at the rear. Each building has its own lift and stair access from the basement level with shared common pedestrian access from Gover Street. The first and second floors have an identical layout and each contain 10 units (5 x 1B unit and 5 x 2B units). Communal open space is located on the rooftop of the eastern building and vehicular and pedestrian access to the site is provided via a driveway from Gover Street.

The application was considered by Council's Senior Specialist Planner (Urban Design) who was generally in support of the proposal subject to the resolution of some design issues. The planning and design issues were discussed at the briefing with the Sydney South Planning Panel was held on 18 October 2021, during which the following key issues were discussed and required further resolution:

*The proposal is for a residential flat building (30 DUs) under the Affordable Housing SEPP on a consolidated sloping site that requires some cut and fill. Several issues were raised in the briefing including the following:*

- *Significant trees onsite. Every effort should be made to retain as many trees as possible. A thorough evaluation of all trees is necessary and replacement trees planted if necessary.*
- *It is recommended that the proposal be amended to provide a more appropriate response to the existing site topography. Level changes should*

*be more aligned with the existing topography and significant difference between the natural ground and FFL should be avoided.*

- *The proposal could be moderated to minimise the projection of basement above natural ground across the site.*
- *The main building entry foyer should have direct access from the street to provide a direct physical and visual connection. It should also ensure that the entry is clearly identifiable. Where feasible the ground floor apartments should provide direct street access although not at the expense of significant landscaping.*
- *A minor LEP height non-compliance may be considered reasonable in consideration of the topographical constraints.*
- *The building should minimise building depth and maximise daylight, internal amenity and minimise building bulk.*
- *The location of the communal open space on the southern side of the building minimises sun access. A minimum 50% direct sunlight to at least one communal open space for a minimum of 2 hours between 9am -3pm pm June 21 should be achieved.*
- *Carparking in accordance with SEPP is noted.*

The applicant submitted amended plans on 4 April 2022 in response to the Panel's comments and satisfy the planning and design issues identified during the assessment of the application.



Figure 1 Photomontage of the proposed development when viewed from Gover Street

### **Site and locality**

The subject site comprises of four individual allotments at 43-49 Gover Street, Peakhurst, each containing a detached dwelling house. The site has a frontage to Gover Street of 60.96m and a site area of 2,480.5sqm.



Figure 2 Aerial photo showing the site location and site boundaries in red (courtesy of Nearmap 2022)

The site is located within an area that is transitioning from a low scale residential environment to an area accommodating medium density development in private and public ownership.

The site falls towards Gover Street from its southeast to its northwestern corner by approximately 7m.

Vegetation on the site includes 26 trees, the majority of which are identified as exempt species under the Georges River Tree Management Policy (either being undesirable species or fruit trees) but including 4 trees identified as being of high value. Vegetation in the road reserve adjoining the property consists of 4 mature street trees.

The site is encumbered by a drainage easement along its western, and a portion of its southern boundary benefitting the residential flat building at 50-52 Lawrence Street to the rear. A sewer line traverses the front setback of the site.

The adjoining sites contain residential flat buildings and the character of the immediate neighbourhood is one in transition, consisting of a mix of single dwellings, dual occupancies and 3 and 4 storey residential flat buildings and boarding houses. The site is well located within proximity to Peakhurst Park and is 2km from Riverwood Town Centre.

### **State Environmental Planning Policies**

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

- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Building and Sustainability Index: 2004)
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

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

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

Although the Georges River Local Environmental Plan 2021 presently applies to the site, the subject application is saved by the operation of Clause 1.8A of that plan which requires, for applications lodged prior to the commencement of that plan but not finally determined, it must be determined as if that plan had not commenced.

The site is zoned R3 Medium Density Residential pursuant to the provisions of the Hurstville Local Environmental Plan 2012.

The proposal meets the definition of a “residential flat building” (RFB) which is “*a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing*”. An RFB is permissible with consent in the zone. The proposal also satisfies the R3 zone objectives.

The site has a height limit of 12m in accordance with the provisions of Clause 4.3 of the HLEP. The proposal seeks a variation to the 12m height limit, with the maximum height of the building reaching 12.844m to the top of the lift overrun of the eastern building. The variation is well founded and supported in this case as discussed in detail in this report.

The floor space ratio (FSR) for the site is 1:1 in accordance with Clause 4.4 of the HLEP and the proposal complies having an FSR of 0.9:1.

It is noted that although the zoning of the site changed to R4 High Density Residential under the Georges River Local Environmental Plan a residential flat building continues to be permissible, and the maximum height and floor space ratio provisions remain unchanged.

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

The provisions of Part 4 (Specific Controls for Residential Development) specifically Part 4.1 Residential Flat Buildings (RFB's) is applicable to the proposed development. A detailed assessment of the proposal against these standards is provided later in this report.

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 Hurstville Development Control Plan.

### **Crown Development Application**

In accordance with Division 4.6 of the Environmental Planning and Assessment Act, 1979 (as amended), the application is a Crown Development Application and in accordance with subclause 4.33 a consent authority (other than the Minister) *“must not refuse its consent to a Crown development application, except with the approval of the Minister, or impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.”*

In accordance with the provisions of the Act, Draft conditions of consent were issued to the Land and Housing Corporation on 4 May 2022. The response has been received and has been incorporated into the recommendation.

### **Submissions**

The application was notified to owners and occupiers in the immediate locality in accordance with the provisions of the Hurstville Development Control Plan. In response, two submissions were received both raising concern with regards to additional traffic impacts and pressure on parking in the locality as a result of the proposal and cumulative development in the locality.

### **Level of Determination**

The proposal has a CIV of \$9,9984,927.00. The development application is to be determined by the South Sydney Planning Panel due to the Capital Investment Value (CIV) exceeding \$5 million for Crown development pursuant to the definition of regionally significant development contained within Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021.

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

### **Conclusion**

Having regards to the matters for consideration Section 4.15 and Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment of the proposed application, DA2020/0306 is recommended for approval subject to the conditions referenced at the end of this report.

## **Full Report**

### **Site and Locality**

The subject site comprises of four lots which are legally identified as Lots 182, 183, 184 and 185 in DP 36317 and known as 43-49 Gover Street, Peakhurst. Refer to the survey plan at the figure below which shows the siting and location of the existing structures on the development site, being dwelling houses and ancillary structures. The properties are under the ownership of the Land and Housing Corporation and are currently vacant. The site has a frontage to Gover Street of 60m and a site area of 2,480.5sqm.

The site falls towards Gover Street from its south east to its north western corner by approximately 7m.

Vegetation on the site includes 26 trees, the majority of which are identified as exempt species under the Georges River Tree Management Policy (either being undesirable species or fruit trees) but including 4 trees identified as being of high value. Vegetation in the road reserve adjoining the property consists of 4 mature street trees.

The site is encumbered by a drainage easement along its western, and a portion of its southern boundary benefitting the residential flat building at 50-52 Lawrence Street to the rear. A sewer line traverses the front setback of the site.

The adjoining sites contain residential flat buildings and the character of the immediate neighbourhood is one in transition, consisting of a mix of single dwellings, dual occupancies and 3 and 4 storey residential flat buildings and boarding houses. The site is well located within proximity to Peakhurst Park and is 2km from Riverwood Town Centre.

The site is adjoined by a residential flat building to the east, known as Nos. 51-55 Gover Street, Peakhurst, and a residential flat building to the west known as Nos. 37-41 Gover Street, Peakhurst. Photos of the site and neighbouring properties are provided in figures 4 to 8.



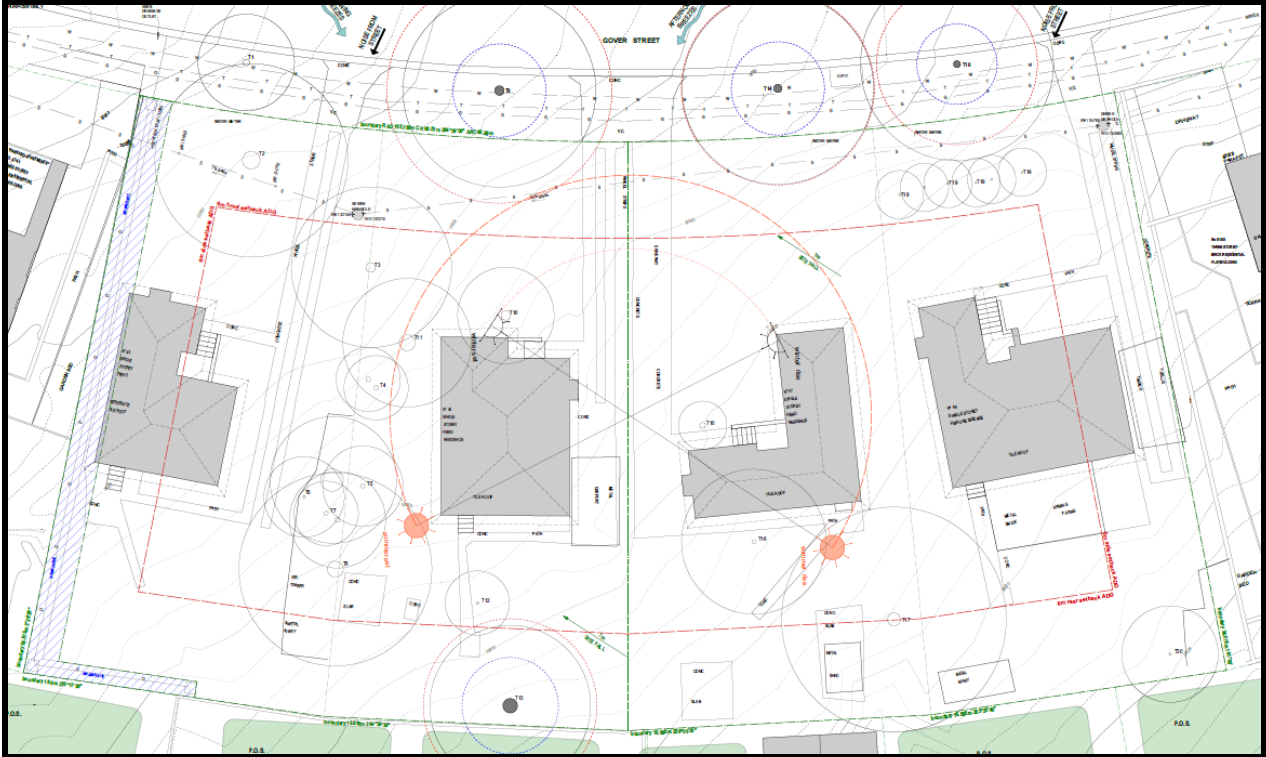


Figure 3 Extract from the Survey Plan of the subject site showing the configuration of properties, structures and existing vegetation



Figure 4 The site viewed from Gover Street





Figure 5 The western neighbour at 37-41 Gover Street



Figure 6 The eastern neighbour at 51-55 Gover Street





Figure 7 Development on the opposite side of Gover Street



Figure 8 Development on the opposite side of Gover Street

## **Proposal**

The proposal seeks demolition of all existing structures, removal of all but 1 of the existing site trees and one street tree, lot consolidation and the construction of a 3-storey residential flat building (RFB) containing 30 residential apartments and basement car parking for 15 vehicles and landscaping works.

The proposed RFB is enabled in planning terms by the provisions of Division 5 “RFBs – social housing providers, public authorities and joint ventures” of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPPARH) as the site is within an “accessible area”.

A detailed description of the proposal is provided below:

### Basement level:

- Vehicular access from Gover Street;
- 15 car parking spaces including 3 accessible spaces;
- Garbage bin storage room;
- Plant rooms, switch room and pump room
- Two lift cores and fire stairs; and
- Bicycle parking.

### Ground Floor:

- Communal Open Space;
- 7 x 1B units;
- 3 x 2B units; and
- Shared pedestrian entry and lobby areas for each building.

### Levels 1 & 2 contain the following

- 5 x 1B units; and
- 5 x 2B units.

### Rooftop

- Communal open space is provided on the rooftop of the eastern building.

The proposal involves the removal of 17 trees, the retention of 13 site trees and 3 street trees.

The proposed 30 residential apartments comprise the following unit mix:

- 17 x 1 bedrooms (57%); and
- 13 x 2 bedrooms (43%).

## Background

### Sydney South Planning Panel

The Sydney South Planning Panel was briefed of this matter at their meeting held on 18 October 2021, during which the following key issues were identified and required further resolution. The table below includes the Panel comments and a response to each as to how the amended plans have addressed each issue.

Panel Comment	Response
<ul style="list-style-type: none"> <li><i>Significant trees onsite. Every effort should be made to retain as many trees as possible. A thorough evaluation of all trees is necessary and replacement trees planted if necessary.</i></li> </ul>	<p>The applicant submitted a Thyer evaluation of the trees proposed for removal and Council's Landscape Arborist has reviewed the proposal and Landscape Plan.</p> <p>The Aboricultural Impact Assessment (AIA) identifies 25 x trees for removal. Of these 11 are exempt species under the Georges River Tree Management Policy, 5 area known environmental weed and a further 4 are of low retention value and the remainder are located within the footprint of the proposed works.</p> <p>One street tree, a declining Brushbox, is proposed for removal. This is located in the driveway of the proposed development.</p> <p>To offset the removal of these trees, the proposed landscaping offers substantially more than the required 2:1 replacement tree planting and in larger pot sizes than required. In addition, (remove gap and include below).A Thyer tree valuation for trees 2 and 8 was provided to Council. These trees are located centrally within the allotments, they do not appear to be remnant species and the replacement planting offered includes a wide variety of advanced locally endemic tree species which will serve to improve biodiversity. As such, offset payment is not required.</p> <p>In relation to the proposed landscaping a condition is recommended for the landscape plan to be amended prior to construction for it to accurately reflect the proposed tree numbers for removal and retention.</p>

<ul style="list-style-type: none"> <li><i>It is recommended that the proposal be amended to provide a more appropriate response to the existing site topography. Level changes should be more aligned with the existing topography and significant difference between the natural ground and FFL should be avoided.</i></li> </ul>	<p>The proposed building has been split into two distinct forms and has been stepped in response to site topography. The FFLs of the west portion are approximately 1.6m below the FFL on each respective level of the east portion.</p>
<ul style="list-style-type: none"> <li><i>The proposal could be moderated to minimise the projection of basement above natural ground across the site.</i></li> </ul>	<p>Further to the stepped building form, the amended scheme has also been lowered slightly which allows the development to sit comfortably within the site and remains compatible with the character of existing development in the surrounding area.</p>
<ul style="list-style-type: none"> <li><i>The main building entry foyer should have direct access from the street to provide a direct physical and visual connection. It should also ensure that the entry is clearly identifiable. Where feasible the ground floor apartments should provide direct street access although not at the expense of significant landscaping.</i></li> </ul>	<p>The main entry to the building now has direct access from the street and has been amended to be more prominent.</p>
<ul style="list-style-type: none"> <li><i>A minor LEP height non-compliance may be considered reasonable in consideration of the topographical constraints.</i></li> </ul>	<p>The extent of the breach has been reduced from 1.869m to 0.84m. The variation request is well founded and assessed later in this report.</p>
<ul style="list-style-type: none"> <li><i>The building should minimise building depth and maximise daylight, internal amenity and minimise building bulk.</i></li> </ul>	<p>The proposal meets the natural ventilation and solar access requirements as demonstrated on Sheets 602 to 606 of the amended plan set.</p>
<ul style="list-style-type: none"> <li><i>The location of the communal open space on the southern side of the building minimises sun access. A minimum 50% direct sunlight to at least one communal open space for a minimum of 2 hours between 9am - 3pm pm June 21 should be achieved.</i></li> </ul>	<p>A ground level and rooftop area of communal open space are provided, with the roof top area receiving more than 2 hours sunlight year round to more than 50% of the area.</p>
<ul style="list-style-type: none"> <li><i>Carparking in accordance with SEPP is noted.</i></li> </ul>	<p>Noted.</p>



The applicant submitted amended plans to address the design issues above and a Thyer evaluation report in support of the proposed tree removal.

The design changes made to the original proposal include centralising the shared pedestrian entry to the building at the ground floor, separating the east and west buildings at Levels 1 and 2 and lowering the height of the buildings to better relate to the cross fall of the site from east to west.

### **Statutory framework**

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

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

#### **Objects of the EP&A Act**

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

<b>Objects of the EP&amp;A Act</b>	<b>Proposal</b>	<b>Compliance</b>
(a) <i>to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources</i>	The proposal is urban infill development of a residential flat building within a residential precinct that is currently in transition from low to medium density housing. The provision of additional social housing in the locality is desirable.	Yes
(b) <i>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
(c) <i>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
(d) <i>to promote the delivery and maintenance of affordable housing</i>	The proposal provides affordable housing for low income people unable to rent privately.	Yes

<b>Objects of the EP&amp;A Act</b>	<b>Proposal</b>	<b>Compliance</b>
(e) <i>to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</i>	<p>The site is located within a residential area that is transitioning to medium density development.</p> <p>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.</p>	Yes
(f) <i>to promote the sustainable management of built and cultural heritage</i>	The Site is not a designated Heritage Item nor is it located within a Heritage Conservation Area.	Yes
(g) <i>to promote good design and amenity of the built environment</i>	<p>This report assesses the proposal's design and amenity against State Environmental Planning Policy 65, the Apartment Design Guide Guidelines and Hurstville Development Control Plan.</p> <p>The amended design is considered to satisfactorily address the key development and design controls.</p>	Yes
(h) <i>to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>	The proposal will achieve this objective by complying with the recommended consent conditions relating to the construction phase of the development, subject to the agreement of the Land and Housing Corporation as they are a Crown authority.	Yes
(i) <i>to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</i>	The proposal is a regionally significant development given the cost of works exceeds 5 million dollars and is proposed by the Crown and therefore the Sydney South Planning Panel is the consent authority.	Yes
(j) <i>to provide increased opportunity for community participation in environmental planning and assessment</i>	The application was notified to neighbours. Two submissions were received which are addressed later in this report.	Yes

## Section 4.15 Assessment

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

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

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

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

- State Environmental Planning Policy (Affordable Rental Housing) 2009 (this SEPP was in effect when the application was lodged);
- State Environmental Planning Policy (Housing) 2021 (savings provision applies);
- State Environmental Planning Policy (Planning Systems) 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- 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 (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
- Draft Design and Places SEPP;
- Hurstville Local Environmental Plan 2012; and
- Georges River Local Environmental Plan 2021.

### **State Environmental Planning Policies (SEPPs)**

Compliance with the relevant State Environmental Planning Policies is summarised in the following table and discussed in further detail below.

<b>State Environmental Planning Policy Title</b>	<b>Complies</b>
State Environmental Planning Policy (Planning Systems) 2021	Yes
State Environmental Planning Policy (Biodiversity and Conservation) 2021	Yes
State Environmental Planning Policy (Resilience and Hazards) 2021	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	Yes
State Environmental Planning Policy (Industry and Employment) 2021	Yes
State Environmental Planning Policy (BASIX) 2004	Yes
State Environmental Planning Policy (Affordable Rental Housing) 2009	Yes
State Environmental Planning Policy (Housing) 2021	Saving provisions apply

## **State Environmental Planning Policy (Planning Systems) 2021**

The proposal is a regionally significant development pursuant to Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 as it is a Crown development that has a Capital Investment Value (CIV) of more than \$5 million in accordance with the SEPP. As such, the Sydney South Planning Panel is the consent authority for the subject development application.

## **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The relevant parts of the above Policy that apply to this application are Chapter 2 – Vegetation in non-rural areas, and Chapter 11 – Georges River Catchment.

### Chapter 2 - Vegetation in Non-Rural Areas

Chapter 2 aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

This chapter 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 (Development Control Plan).*

Tree removal is proposed as part of the application. The applicant has submitted a Thyer evaluation for the trees of high significance that are proposed for removal and a condition of consent has been included requiring the payment of an offset fee. Council's Arborist has reviewed the proposal and supports the development subject to conditions of consent.

### Chapter 11 – Georges River Catchment

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 reviewed by Council's Engineering Section at lodgement. No objection was raised with respect to the management and disposal of stormwater.

The proposal is consistent with the objectives and purpose of Chapter 11 of the SEPP.

### **State Environmental Planning Policy (Resilience and Hazards) 2021**

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 is relevant to the proposal.

Chapter 4 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.

Clause 4.6 requires contamination and remediation to be considered in determining a DA. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.

A review of historic aerial photography indicates that the site has historically been used for residential purposes. Residential usage is not typically associated with activities that would result in the contamination of land. On this basis, the site is likely to be suitable for residential development in its current state for the development proposed with respect to contamination.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

Compliance with SEPP (Transport and Infrastructure) 2021 has been considered. Ausgrid was consulted as required by Chapter 2. No objection was raised and no conditions required.

### **State Environmental Planning Policy (BASIX) 2004**

The trigger for BASIX Certification is when the estimated cost of works for residential development (new dwelling(s)/alterations and additions) is equal to or above \$50,000. BASIX Certification is also triggered when proposing a swimming pool with a volume of 40,000 litres.

A valid BASIX Certificate has been submitted with the Development Application satisfying the minimum requirements of SEPP (Building Sustainability Index: BASIX) 2004.

### **State Environmental Planning Policy (Housing) 2021**

Since the Housing SEPP came into effect in November 2021, the savings and transitional provisions in the Housing SEPP have subsequently been amended. Section 2(2) under Schedule 7A of the Housing SEPP now clarifies that “... *the provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).*” Due to this, the provisions under Part 2 Division 1 of the Housing SEPP do not apply to the subject development application.

### **State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)**

This application was lodged under SEPP (Affordable Rental Housing) 2009, prior to the introduction of SEPP (Housing) 2021 in November 2021.

All thirty (30) units are proposed to be affordable rental housing. Therefore this Policy applies to the development. The aims of this Policy are:

- *to provide a consistent planning regime for the provision of affordable rental housing,*
- *to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- *to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- *to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing*

### Accessibility

Clause 4 of the SEPP requires the site to be “accessible”, meaning the proposal needs to satisfy the following provisions being:

- (a) *800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or*
- (b) *400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
- (c) *400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.*



The proposal satisfies subsection (c) as the site is located 350m walking distance from a bus stop on Forest Road before Pearce Street (ID221018). The bus stop provides bus services which satisfy the frequency requirements specified above. The site is therefore considered to be “accessible” in accordance with the SEPP provisions.

The provisions of Part 2 Division 1 (In-fill affordable housing) are relevant to the development. The provisions of Clause 13 (floor space ratio) and Clause 14 (standards that cannot be used to refuse consent) are considered in the table below.

#### **SEPP (Affordable Rental Housing) 2009 – Part 2 Division 1**

<b>Control</b>	<b>Numerical Requirement</b>	<b>Proposed Development</b>	<b>Complies</b>
Floor Space	HLEP 2012, Clause 4.4 stipulates an FSR of 1:1. 100% of the residential units are provided as affordable housing and in accordance with Clause 13(2) of the ARH SEPP this permits a bonus FSR of 0.5:1. On this basis the maximum FSR that is permissible is 1.5:1.	Total GFA = 2,236sqm FSR = 0.9:1	Yes
Site Area	450sqm	2,480sqm	Yes
Landscaped Area	35sqm/dwelling 1050sqm	1,199sqm	Yes
Deep Soil Zones	15% of the site area (372sqm)	34.8% of the site area (3m dimension)	Yes
Solar Access	70% of dwellings receive 3 hours of solar access between 9am and 3pm	73% (22 of 30 units) receive 2 hours or more of sunlight in midwinter between 9am and 3pm (in accordance with ADG)	Yes
Parking	(i) in the case of a development application made by a social housing provider for development on land in an accessible area— at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2	15 spaces proposed, including 3 accessible spaces	Yes

Control	Numerical Requirement	Proposed Development	Complies
	bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms, 17 x 1B units = 7 spaces 13 x 2B units = 7 spaces <b>Total required = 14 spaces</b>		
Dwelling Size	1 bedroom apartments = 50sqm  2 bedroom apartments = 70sqm  3 bedroom apartments = 95sqm	50sqm - 59sqm  70sqm – 79sqm  NA	Yes  Yes  NA

In accordance with Clause 14 of the ARHSEPP, a consent authority cannot refuse the development if the development satisfies the minimum requirements relating to site area, landscaped area, deep soil zones, solar access, parking and dwelling size in accordance with Clause 14 of the ARHSEPP. In this case the development satisfies these provisions and as such cannot be refused on the identified grounds.

#### Character assessment

Clause 16 of the ARHSEPP requires consideration against the provisions of SEPP 65 which apply to this development. A detailed assessment of the development against the provisions of SEPP 65 is provided below.

Under clause 16A of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, a consent authority must not consent to a development if the design is incompatible with the *character of the local area*. No guidelines were developed to inform how to apply the compatibility test. A number of court cases have provided some guidance as to how to assess the “character” of a local area and what to consider ensuring an affordable housing development is suitable.

In considering compatibility with neighbouring character, in *Sterling Projects v The Hills Shire Council* [2011] the Commissioner said that “*character is not limited to a consideration of streetscape but includes the wider context of the site, in particular the characteristics of the properties which adjoin the site*”.

In the recent decision of *Louden Pty Ltd v Canterbury-Bankstown Council* [2018] clause 16A played a prominent role in Commissioner Gray’s judgement. Commissioner Gray stated that all buildings of all typologies must be incorporated into the assessment of the local area character. This assessment concurs with Commissioner Roseth SC who in

*Project Venture Developments v Pittwater Council* [2005] stated that “compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.” Therefore in order to establish a local character in a mixed, diverse area the plans should reasonably match other structures in the vicinity and should consider such aspects as building forms, setbacks and scale.

The subject site is located within a precinct that is zoned for medium density residential and is transitioning from a lower scale environment to a medium density landscape. This transition is facilitated by the increase in height and density afforded to the locality bound by Lawrence Street, Trafalgar Street And Pearce Avenue.

The locality can be described as residential in character, ranging from residential flat buildings, boarding houses, dual occupancies and dwelling houses.

The proposed development is considered to be consistent with the future character envisaged by the planning controls. The scale and form of the development is consistent with the height and density controls applicable to the site. The development also satisfies the objectives of the R3 zone which include:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To provide for a range of home business activities, where such activities are not likely to adversely affect the surrounding residential amenity.*

The proposed built form is considered to be a desirable response for this site in terms of its scale and design intent and will be in keeping with the anticipated development outcome for the area.

The height and scale of the building is generally consistent with the applicable planning controls and the proposal will provide affordable residential development on the site. As such the proposal satisfies the objectives and intent of Clause 16A.

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

SEPP 65 is applicable to the proposed development and the extent to which the proposal complies with the controls and principles of the SEPP and the Apartment Design Guide are outlined in the Tables below.

**Compliance with Part 1 - Application of SEPP 65**



<b>Clause</b>	<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
<b>3. Definitions</b>	Complies with definition of "Residential Apartment Development" (RAD)	The proposed development complies with the definition.	Yes
<b>4. Application of Policy</b>	Development involves the erection of a new RFB (at least 3 storeys and contains more than 4 dwellings),	The proposal is the erection of a new residential flat building which satisfies the definition of the policy as it is 3 storeys in height with a total of 30 apartments.	Yes
<b>5. Development Applications</b>	Design verification statement provided by qualified designer  Registered Architect Name and Registration No.	A Design Verification Statement has been provided by Registered Architect Anthony Nolan (Nominated Architect No.6773).	Yes

Council's Senior Specialist Planner (Urban Design) reviewed the Development Application plans in September 2021 before the Panel was briefed on the application in October 2021. Following the briefing, the applicant was provided with both the Urban Design and Panels comments and amended plans were requested to address the following design issues:

- *It is recommended that the proposal be amended to provide a more appropriate response to the existing site topography. Level changes should be more aligned with the existing topography and significant difference between the natural ground and FFL should be avoided.*
- *The proposal could be moderated to minimise the projection of basement above natural ground across the site.*
- *The main building entry foyer should have direct access from the street to provide a direct physical and visual connection. It should also ensure that the entry is clearly identifiable. Where feasible the ground floor apartments should provide direct street access although not at the expense of significant landscaping.*
- *A minor LEP height non-compliance may be considered reasonable in consideration of the topographical constraints.*
- *The building should minimise building depth and maximise daylight, internal amenity and minimise building bulk.*
- *The location of the communal open space on the southern side of the building minimises sun access. A minimum 50% direct sunlight to at least one communal open space for a minimum of 2 hours between 9am -3pm pm June 21 should be achieved.*

The applicant submitted preliminary plans for review by Council's Urban Designer prior to submitting a full set of amended plans for assessment. The comments of Council's Urban Planner are provided below in italics, with planning commentary on the full set of amended plans that were submitted to Council in April 2022, upon which this assessment report is based.

<b>Urban Design Comment</b>	<b>Planning Comment on amended plans</b>
<i>1. It is recommended that the proposal be amended such that the different FFLs incorporated on the ground level (Level 00) should be maintained on levels above. This will create a more interesting built form, further reduce the building mass and break down the repetitious external detailing making the façade monotonous. It should also be ensured that the development as a whole addresses existing topography.</i>	<p>To achieve this request, the development has been split into an eastern and western building sharing a ground level entry floor at RL34.675. Building East has a floor level of RL36.275 and Building West has a floor level the same as the common entry lobby.</p> <p>On the upper levels, Building East maintains a higher floor level 1.6m above the floor level of Building West.</p>
<i>2. Sections through the highest point of the development should be provided to confirm the extend of non-compliance.</i>	<p>Provided at Section CC (Sheet 0402 Revision B). The extent of the non-compliance is 0.844m to the top of the lift overrun of the eastern building.</p>
<i>3. The non-compliance with the 18m wide building depth could be taken into consideration subject to compliance of the proposal with the natural light and ventilation requirements.</i>	<p>The amended plans demonstrate that 83% of units achieve 2 hours solar access and 63% of units are cross ventilated, which comply with the ADG requirements.</p>
<i>4. The amended building entry is a significant improvement to the original DA and can be taken into consideration. However, details are required on the landscaping, materials and architectural treatment at the public/private interface.</i>	<p>Amended landscape plans have been submitted that include more direct entry from the street and additional planting between the public entry to the building and the adjacent private terraces at the ground level. The figures below show the original and amended entry designs and landscaping.</p>

Urban Design Comment	Planning Comment on amended plans
 <p style="text-align: center;">Original Entry</p>	 <p style="text-align: center;">Amended entry</p>
<p>5. The design should be amended for the development to achieve a minimum 50% direct sunlight to the principal COS for a minimum of 2 hours between 9.0am to 3.0pm on 21 June (mid winter).</p>	<p>The proposal includes two areas of communal open space. The rooftop communal open space area will receive sunlight year-round to satisfy this requirement.</p>
<p>6. It is recommended that if the DA is recommended to be approved, a condition on architectural expression should be included as per the recommendation on the original DA.</p>	<p>The amended design is considered a suitable design response for the site and locality.</p>

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

#### Compliance with Design Provisions in Part 3 and Part 4 of the ADG

Standard	Proposal	Complies
<b>3D – Communal Open Space (COS)</b>		
Provide COS at least 25% of the site area (620sqm)	29% (725sqm).	Yes
Located on a podium or roof if it can't be located on ground level	COS is located on ground level and the rooftop.	Yes
At least 50% direct sunlight to the principal usable part of the COS for at least 2 hours between 9 am and 3 pm on 21 June (mid-winter)	The rooftop area of COS will receive a minimum 2 hours to at least 50% of the area.	Yes
<b>3E – Deep Soil Zones</b>		
Site area is > 1,500sqm = 6m min dimensions		



Standard	Proposal	Complies
Min deep soil area of 7% (174sqm)	9.6% or 238sqm – the area used in the calculations are greater than 6m wide.	Yes
<b>3F – Visual Privacy</b>		
<p>Minimum separation to side and rear boundaries:</p> <p>Up to 12m (4 storeys):  3m non-habitable rooms  6m habitable rooms &amp; balconies</p>	<p>All habitable rooms or balconies (with the exception of the communal area) are setback greater than 6m from the southern boundary.</p> <p>There is a 0.6m point encroachment at the NE corner of the building however it does not contain any windows or balconies in the area of the breach.</p>	Yes
<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>One common entry is provided from Gover Street.</p> <p>Separate entries are not provided to individual apartments at ground level to maximise area available for landscaping and to avoid unnecessary built form by way of stairs in the front setback.</p>	<p>Yes</p> <p>Acceptable</p>
<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 access driveway to the basement is located in the north-western corner of the site off Gover Street and is separate from the pedestrian access point to the ground floor. Both sides of the driveway are to be landscaped to soften the starkness of the hard surfaces.	Yes

Standard	Proposal	Complies
<b>3J – Bicycle and Car Parking</b>		
Car parking provided in accordance with RMS Guide To Traffic Generating Development (Applies to sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area)	NA – refer to SEPP (ARH) rates	NA
<b>4A – Solar and Daylight Access</b>		
Living rooms and private open space receive 2 hours direct sunlight between 9am and 3pm in midwinter for 70% of apartments	24 of 30 units (80%) receive greater than 2 hours.	Yes
Max. 15% of apartments receive no direct sunlight between 9am and 3pm in midwinter	3 units (10%) receive no direct sunlight.	Yes
<b>4B – Natural Ventilation</b>		
At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	19 of 30 units (63%) are naturally cross ventilated.	Yes
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	All apartments comply.	Yes
The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths	6 or 7 of 10 units on each level are dual aspect units.	Yes
<b>4C – Ceiling Heights</b>		
Minimum ceiling heights measured from FFL to finished ceiling level: Habitable rooms = 2.7m Non-habitable rooms = 2.4m	All rooms have 2.7m internal ceiling height.	Yes
<b>4D – Apartment Size and Layout</b>		
Minimum internal areas: 1br: 50sqm 2br: 70sqm 3br: 90sqm	All apartments meet minimum internal sizes for all the one and two bedroom units.	Yes
(Add 5sqm if second bathroom proposed)	N/A	N/A

Standard	Proposal	Complies
Each habitable room must have a window in an external wall with a total minimum glass area of at least 10% of the floor area of the room.	Each habitable room has a suitably sized window.	Yes
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	All rooms are compliant.	Yes
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	All units are compliant.	Yes
Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)	All bedrooms meet the minimum internal sizes (excluding wardrobe space).	Yes
Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	All bedrooms meet the minimum dimensions excluding wardrobe space as specified.	Yes
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	All living rooms comply.	Yes
Internal width of cross-over or cross-through apartments are at least 4m	All such apartments meet the minimum width requirement.	Yes
<b>4E – Private Open Space and Balconies</b>		
Minimum primary balcony sizes: 1br: 8sqm area, 2m depth  2br: 10sqm area, 2m depth  3+br: 12sqm area, 2.4m depth  The minimum balcony depth to be counted as contributing to the balcony area is 1m	All 1 bedroom units are compliant. All 2 bedroom units are compliant. NA	Yes Yes NA
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	All ground floor units comply with the minimum depth and width requirements.	Yes

Standard	Proposal	Complies
minimum area of 15sqm and a minimum depth of 3m		
<b>4F – Common Circulation Areas</b>		
Maximum 8 apartments off a circulation core on a single level	10 apartments are located on each level serviced by 2 lifts.	Yes
<b>4G – Storage</b>		
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:  1br: 6m <sup>3</sup> 2br: 8m <sup>3</sup> 3+br: 10m <sup>3</sup>	All units comply. All units comply. NA	Yes Yes N/A
At least 50% of storage is located within the apartment	All units comply.	Yes
<b>4H – Acoustic Privacy</b>		
Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses.	The proposal complies with Section 3F – Visual Privacy.	Yes
Window and door openings are generally orientated away from noise sources	The site is not located close to any noise sources other than roads and other residential development.	Yes
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	Achieved	Yes
Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	Generally achieved where practicable.	Yes
<b>4J – Noise and Pollution</b>		
To minimise impacts the following design solutions may be used: • physical separation between buildings and the noise or pollution source • residential uses are located	The site is not located in close proximity to any noise or pollution sources.	Yes

Standard	Proposal	Complies
<p>perpendicular to the noise source and where possible buffered by other uses</p> <ul style="list-style-type: none"> <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>		
<b>4K – Apartment Mix</b>		
A range of apartment types and sizes is provided to cater for different household types now and into the future.	17 x 1B units 13 x 2B units	Yes
The apartment mix is distributed to suitable locations within the building.	Each floor contains a mix of 1B and 2B units in different configurations.	Yes
<b>4L – Ground Floor Apartments</b>		
Street frontage activity is maximised where ground floor apartments are located	All ground floor units have frontage to the street which allows for increased casual surveillance and activity.	Yes
Design of ground floor apartments delivers amenity and safety for residents	Each ground floor unit has a street-facing terrace and living room doors to allow for casual surveillance.	Yes
<b>4M – Facades</b>		
Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale	All facades are articulated and relate well to the street frontages and neighbouring southern property.	Yes
<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.	Clean, simple roof form with the lift overrun centralised within the building.	Yes
Incorporates sustainability features	The building is BASIX compliant.	Yes

Standard	Proposal	Complies
<b>4O – Landscape Design</b>		
Landscape design is viable and sustainable, contributes to the streetscape and amenity	The landscape design is of a high quality and will soften the built form, retains a number of existing trees and provides screening to the adjacent residential properties.	Yes
<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	Planter boxes are an appropriate depth.	Yes
<b>4Q – Universal Design</b>		
Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs. Benchmark of 20% liveable dwellings.	27 of 30 (90%) liveable units are proposed.	Yes
<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.	N/A –as the building is new.	N/A
<b>4U – Energy Efficiency</b>		
Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	Appropriate building orientation, natural ventilation, passive solar design, results in the development exceeding the BASIX target for energy efficiency.	Yes
<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	Stormwater is to be managed by on site detention system, with the water discharging to Gover Street. Council's Development Engineers have reviewed the plans and raised no objection, subject to	Yes



Standard	Proposal	Complies
	conditions of consent.	
<b>4W – Waste Management</b>		
Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	An adequately sized bin store room is proposed in the basement.	Yes
<b>4X – Building Maintenance</b>		
Building design provides protection from weathering  Enables ease of maintenance, material selection reduces ongoing maintenance cost	Suitable materials and finishes are proposed including face brick, rendered and painted masonry and metal screens in neutral colours.	Yes

The proposal therefore is considered an appropriate response with regards to the matters identified in SEPP 65 and the Apartment Design Guide.

### **Georges River Local Environmental Plan 2021**

The Georges River Local Environmental Plan 2021 was gazetted on 8 October 2021.

In relation to this development site the zoning has been changed to R4 High Density Residential, and the height and floor space ratio remain unchanged.

Consideration is given to the provisions of Georges River Local Environmental Plan 2021 in the assessment this application.

In this regard, the provisions have no determining weight because of the 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 Local Environmental Plan 2012**

#### **Zoning**

The subject site is zoned R3 Medium Density Residential under the provisions of the Hurstville Local Environmental Plan (HLEP) 2012. Refer to the figure below.

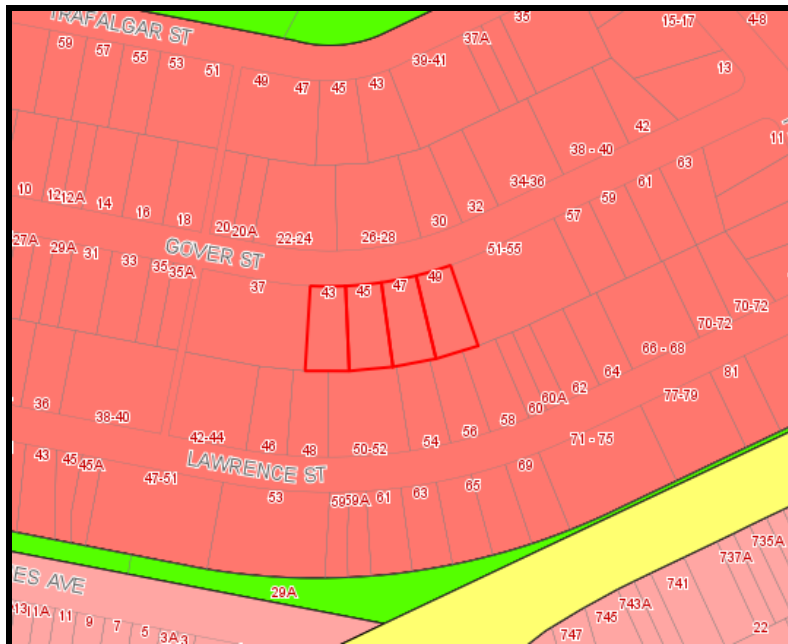


Figure 9 Zoning map extract from HLEP 2012 (site edged red)

The proposal satisfies the objectives of the zone which include:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To provide for a range of home business activities, where such activities are not likely to adversely affect the surrounding residential amenity.*

The proposed development is consistent with the objectives of the R3 zone as follows:

- The proposed design enables the development to provide for the housing needs of the locality in a manner that is consistent with that typically found within the R3 zone.
- A variety and mix of housing types are proposed, in that one and two bedroom apartments are proposed with a variety of internal configurations. Three have been nominated as adaptable.
- The proposal would not prevent surrounding sites from providing facilities or services that could meet the needs of local residents.
- A high level of residential amenity will be achieved and maintained, both for residents on the subject site and those within surrounding sites.
- While facilities have not been provided to accommodate home businesses, the configurations of the apartments could allow for some home business activities to

occur (i.e. a home office) without disturbing surrounding residential amenity. The proposal does not prevent surrounding properties from accommodating home businesses.

- The development is providing for much needed social housing in the area.

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

**HLEP 2012 Compliance Table**

<b>Clause</b>	<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
<b>2.3 Zone objectives and land use table</b>	R3 Medium Density Residential  Residential Flat Buildings (RFB) are permissible.	A Residential Flat Building (RFB) is proposed and is permissible.	Yes
<b>4.1 Minimum subdivision lot size</b>	450sqm	No subdivision is proposed.  Site consolidation is proposed.	Yes
<b>4.3 Height of Buildings</b>	Maximum 12m height limit	Maximum 12.84m	No – refer to Clause 4.6 variation discussion
<b>4.4 Floor Space Ratio</b>	Maximum FSR of 1:1	0.9:1	Yes
<b>4.5 Calculations of Floor space and Site area</b>	Maximum of 2,480sqm of Gross Floor Area is permitted	2,232sqm in GFA is proposed.	Yes
<b>4.6 Exceptions to Development Standards</b>	(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	A variation to the 12m height limit is proposed of 0.844m (or 7%).	Refer to variation discussion following this table.
<b>5.10</b>	Not an item and not located	No local heritage	Yes

Clause	Standard	Proposal	Complies
<b>Heritage Conservation</b>	within a Conservation Area.	items or conservation areas are within the vicinity of the Site.	

### **Exception to Development Standards**

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

The objectives of Clause 4.6 are as follows

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

The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Hurstville Local Environmental Plan 2012 (HLEP) identifies a maximum height of 12m for the Site and the proposed development will exceed the height by up to 0.844m which comprises the lift overrun and the upper section of the stairway overrun. The remainder of the building is below the 12m height limit. This height breach amounts to a 7% variation of the control.

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.

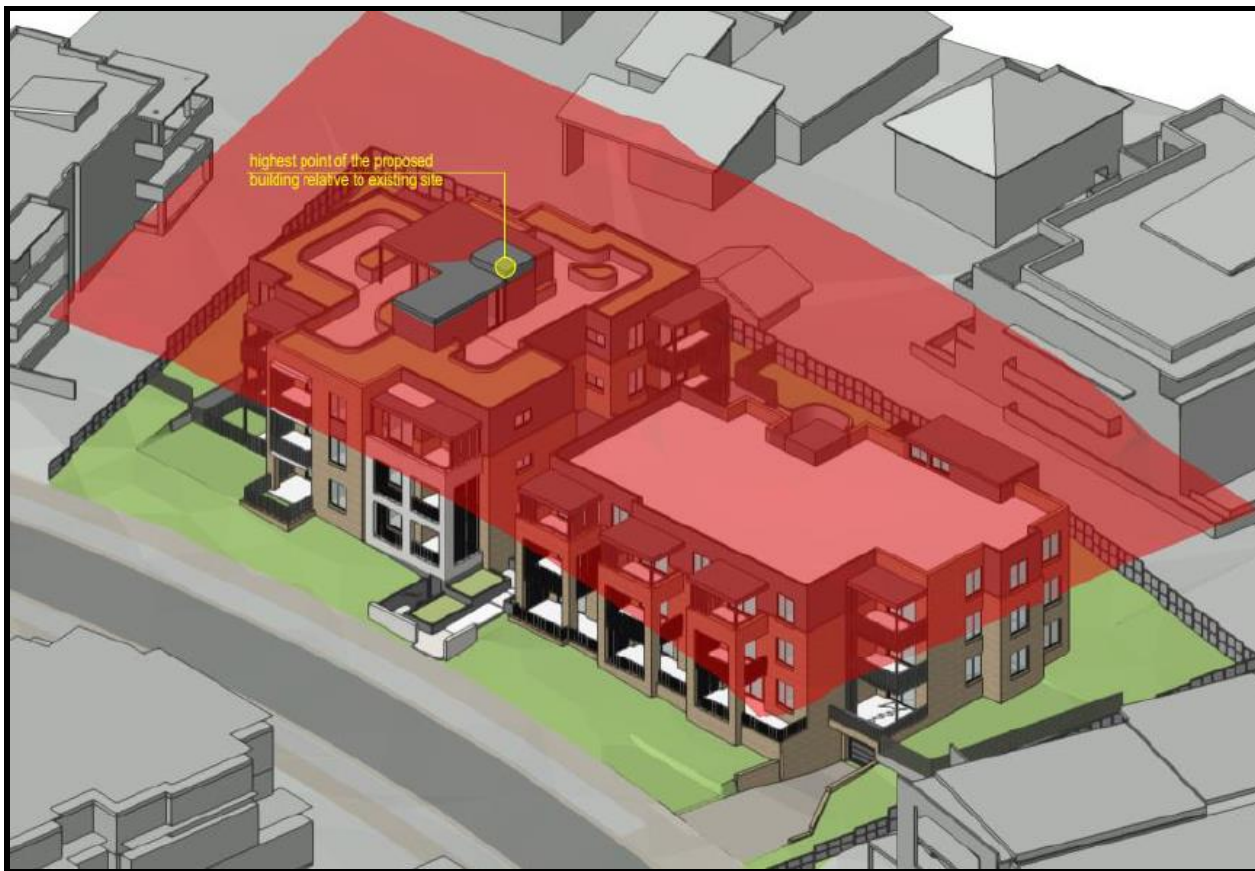


Figure 10 Height blanket diagram showing height non-compliance

Clause 4.6(3) states that:

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

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

To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of HLEP. The Clause 4.6 request for variation is assessed as follows:

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

Height of Buildings control under Clause 4.3 of the HLEP 2012 is a development standard. The maximum permissible height is 12m.

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

The objectives of Height of Buildings 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))***

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

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

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

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

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

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

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

Clause 4.6(4) states that:

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

- (a) the consent authority is satisfied that:*
  - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,”*

The applicant’s variation request is reproduced on the following pages.

It is generally understood that Clause 4.6(3) can be satisfied if it is established that a development satisfies one or more of the above points. In this instance point 1 is investigated and considered well founded for the proposed development.

The objectives of the building height development standard under clause 4.3 of the HLEP 2012 are provided below, and followed by a response on how that objective is achieved notwithstanding noncompliant with the standard:

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

CPS response: The 12-metre building height standard seeks to limit building heights to an appropriate level within the zone. Sites within Gover Street and the surrounding area more broadly are currently transitioning from a low-density to a high-density residential environment; such high-density development (i.e. residential flat buildings) within this surrounding area is of a consistent scale to that being proposed, and examples of such development includes (but not necessarily limited to):

- 13-15 Gover Street (3-storey plus rooftop level)
- 22-24 Gover Street (3-storey plus rooftop level)
- 47 Lawrence Street (4-storeys)
- 50-52 Lawrence Street (3-storey plus rooftop level)
- 75 Lawrence Street (3-storey plus rooftop level)
- 77-79 Lawrence Street (3-storey plus rooftop level)
- 83 Lawrence Street (3-storey plus rooftop level)
- 75 Trafalgar Street (3-storey plus rooftop level)
- 13 Pearce Street (4 storeys)

As a result of designs/layouts which situate at least part of the service structures and/or the communal open space on the rooftop, the examples above also include maximum building heights that are similar to or greater than that being proposed by the subject application<sup>4</sup>.

The form of the proposed development (i.e. a three-storey residential flat building with a rooftop communal open space area) is consistent with recently-completed high-density residential development within this local area; the proposed breaches of the building height standard are both modest and centralised within the building, and as such will have negligible impacts on the character of the streetscape and locality.

Impacts on amenity are discussed within the response to objective (b) below, however in terms of compatibility with the surrounding residential environment, reference is made to the planning principles within *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191; these principles determined that compatibility is not about 'sameness' but rather about a proposal's ability to exist in harmony with its surroundings. Compatibility also relates to the acceptability of a proposal's physical impacts on surrounding development. With determining the proposal's compatibility with the surrounding area, the two tests used in Senior Commissioner Roseth's findings are as follows:



***Test 1 - Is the proposal's appearance in harmony with the buildings around it and the character of the street?***

The subject site is within an area of Peakhurst that is generally bordered by Boundary Road to the northeast, Peakhurst and Pearce Avenue Parks to the north and Forest Road and Jacques Avenue to the southeast and southwest respectively. Due to the R3<sup>2</sup> zoning of this area, development over a period of time has been transitioning from low density residential development (i.e. dwelling houses and dual-occupancies) to high-density residential development; such development has taken the form larger three-to-four storey residential flat buildings with basement/semi-basement parking.

The overall form of the proposed development and its associated height (i.e. a part three-and-four storey residential flat building with high levels of visual articulation) will be consistent with that of development on surrounding sites, examples of which are listed above. As with other similar approvals within the surrounding area, the proposed element that will breach the building height standard is a relatively small area that is both centrally located within the building footprint and set back behind the road frontage; the larger footprint of the top residential level (i.e. level 2) will therefore largely obscure the noncompliant elements from the public domain (i.e. the Gover Street road reserve). Views of the stairway/lift overrun will also be screened from the public domain within Lawrence Street by existing and future development on sites to the south and southeast of the subject site (e.g. 50-58 Lawrence Street). Further, against the 12-metre building height standard, a 264mm-844mm breach will not be highly discernible from surrounding sites, noting that the noncompliant building element will not adversely affect the amenity of those sites (refer to the second test below).

With regard to the above, it is submitted that the physical appearance and height of the proposed building and will be compatible and in harmony with surrounding development and the streetscape character.

***Test 2 - Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.***

CPS response: A response to each of the major issues is as follows:

Overshadowing

The shadow analysis previously prepared by Kennedy Associates Architects illustrates that the development complies with applicable development controls regarding solar access to surrounding sites, in that a minimum 3 hours of solar access is maintained to main living areas and areas of principal private open space of adjoining sites. As demonstrated by shadow and solar access plans submitted with the amended plans and information, the development (as amended) will further reduce impacts on surrounding sites as a result of both lowering the maximum height of the development and reducing its bulk and scale, particularly within the centre of the building.

### Visual privacy

As previously submitted and noting that Council's Urban Design comments have not raised any concerns, the development will not result in adverse and unreasonable visual privacy outcomes. The elements of the building that will breach the building height standard affect the upper levels of the stairway/lift overrun, and as such will have no impact on the visual privacy of surrounding sites.

### Obstruction of views

With regard to the planning principles established by *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, there are no significant views that are obtainable from the subject site nor surrounding sites.

### General visual impacts

The proposed development will not have any adverse visual impacts.

The proposed breaches of the height standard will have a negligible impact on the streetscape. Amendments to the plans have removed the breach on the northwest corner of the development; the reduction of the height breach associated with the stairway/lift overrun will also reduce the already negligible streetscape impact.

As a result of situating the highest point of the stairs/lift overrun within the centre of the eastern part of the building, any visual impact from the streetscape would be mitigated by the forward-most parts of the building (i.e. given the low viewpoints from the street, the front building line and forward parts of the building would largely obscure the points which form the maximum height of the building).

Any visual impact will also be further lessened as a result of the sloped topography of the area and the high levels of proposed building articulation, which have been further increased as a result of design

In summary, the form and height of the proposed development accounts for the topography of the site, and is consistent with the landscape, prevailing building height and desired future streetscape character of the local area.

*(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,*

CPS response: A detailed response is provided above when considering impacts on, and consistency with, existing and desired character. To summarise however, the proposed changes to the design will further reduce already negligible visual effects on the public domain. Further, the proposed breach of the height standard will have no impacts on surrounding sites in terms of visual impacts and amenity, visual privacy and solar access (noting that significant views are not obtainable from surrounding sites).



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

CPS response: Not applicable, as there are no mapped heritage items on, or in close proximity to, the subject site.

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

CPS response: As demonstrated by *figure 4* below, the subject site is located close to the centre of an area within Peakhurst that is subject to a transition from low to high density residential development. As detailed above, a large number of residential flat buildings have already been approved in this area with heights that are similar to (if not greater than) the heights proposed by the subject DA. As the site is not on the periphery of the R3 zone, the development will not result in an undesirable transition between areas of differing development densities, zonings and building heights. Further, as the proposed height variations are minor (and noting that there are numerous other developments with designs and heights which are similar or greater to that being proposed), the development will not represent a further height transition when compared to future development on surrounding sites.



**Figure 4:** An extract of our client's 3D model, showing the proposed development as viewed from the southeast, with the 12-metre height plane overlaid in red.

Source: Nearmap, 21 December 2021 (Modified by CPS, March 2022)

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

CPS response: Not applicable, as the site is not within, nor is it in close proximity to, the Hurstville City Centre.

*(f) 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,*

CPS response: The subject site and surrounding area were zoned as an R3 zone under HLEP 2012 when it was gazetted (noting that the area has been up-zoned to R4-zoning as part of the recently gazetted

GRLEP 2021). It is therefore envisioned that development within this area will progressively transition from lower-density to higher density residential development, and current development within the area (examples of which are provided above) are reflective of this progressive change in character. The height and scale of the proposed development is in line with this transition. The proposal will not isolate surrounding sites, and will therefore not result in an undesirable transition between it and surrounding development.

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

CPS response: As demonstrated both above and within the Statement of Environmental Effects for this proposal, the height of the proposed development will not adversely affect the amenity of adjoining sites. While there will be some overshadowing of sites to the south in mid-winter, the portions of adjoining sites that would be overshadowed are not significant, and the shadow would quickly move across the rear of those adjoining sites and therefore fully complies with relevant requirements. Importantly, there is no significant increase in shadow impacts associated with the minor elements proposed to be above 12 metres, as these are set well back from the southern-most portions of the building that are responsible for such overshadowing. Such impacts will also be considerably reduced from those originally proposed, given substantial changes to the design that have reduced the development's bulk and scale, particularly within the centre of the building. The height variation will also not have any impacts effects on the visual privacy.

As it is located on the southern side Gover Street and nearby public parks, the proposed development will also not have any impacts on the amenity and use of the public domain, including the nearby Peakhurst Park and associated facilities.

CPS response: There are numerous and substantive environmental planning grounds to justify contravention of the development standard. These are detailed as follows:

1. Consistency with objectives of the standard and zone:

CPS response: As demonstrated throughout this variation request, the proposal satisfies the objectives of both the building height standard and the R3 Medium Density Residential zone within HLEP 2012.

2. No significant and unreasonable impacts on the surrounding area

CPS response: The proposed height variation will have no adverse or unreasonable impacts on the amenity of the surrounding sites and the public domain, with regard to the following:

- As they affect the upper section of the stairway/lift overrun, the height variations will not result in adverse visual privacy outcomes,
- As there are no significant views obtainable within the surrounding area, there will be no adverse impacts on views, and



- Solar access within the site and overshadowing of surrounding sites will not be affected by proposed height variations, noting that full compliance is attained with controls relating to such requirements.

### 3. Consistency with existing and future character

CPS response: With regard to the:

- Significant (i.e. 2,480m<sup>2</sup>) size of the subject site,
- Zoning of the site and surrounding area,
- Current transition to higher-density forms of residential development within the surrounding locality, and
- Approved heights and scale of recently approved residential flat buildings within the surrounding area (as detailed above),

the proposed building height and scale is appropriate for both the site and the locality more broadly. The consistency of the proposed development's height and scale with other high-density residential development within the surrounding area is such that approval of the subject DA will not set an undesirable development precedent.

### 4. Limited visual impacts as a result of the variation

CPS response: The proposed breaches of the height standard will have a negligible impact on the streetscape. As a result of situating the highest point of the stairs/lift overrun within the centre of the eastern part of the building, any visual impact from the streetscape will be mitigated by the forward-most parts of the building's upper levels (i.e. given the lower viewpoints from the adjoining road reserve, the front of upper levels of the building will largely obscure the highest points of the building). The stairway/lift overrun will also be screened from public areas within Lawrence Street to the south of the site by existing and future development on sites to the south (i.e. 50-58 Lawrence Street).

With regard to the above and noting the modest size of the proposed height variations in proportion to the overall height of the development, the proposed height breaches will not be discernible when viewed from surrounding sites.

As such, these elements of the building which do not comply with the building height standard will have a negligible visual impact when viewed from both the public domain and surrounding residential sites.

### 5. Excavation limitations

CPS response: Given the slope of the site, it is not possible to excavate further into the site in order to attain compliance with the height standard.

Given the diagonal direction of the slope and the depth of the site, to further excavate the eastern part of the building to attain compliance with the height standard will result in apartments at the rear of the ground floor experiencing extremely poor amenity (i.e. through reduced solar access and cross-ventilation opportunities, in addition to private open space areas being enclosed by the residential flat

building on one side and large retaining walls on the other). To remove dwellings at the rear of the ground floor to both enable compliance with the height standard *and* to reduce excavation will also diminish the number of dwellings available for affordable housing, resulting in detrimental social impacts.

## 6. Amenity benefits

CPS response: Many of the sites within the surrounding R3-zoned area are inherently constrained, in that they are oriented in a north-south direction; the alignments of lots along Gover and Lawrence Streets are such that site amalgamations for higher-density developments also create allotments that are both shallow and wide. As a result, it is difficult to design higher-density developments on the southern side of those streets that can both capitalise on the 12-metre height, while also providing sufficient solar access to communal open space areas (noting that such spaces are not to be situated within the front (i.e. northern) setback areas of such sites).

As such, the design of this development has sought to situate one part of the communal open space within the rear south-western part of the site, with the other part to be located on the eastern side of the roof level. Such an arrangement promotes year-round and all-weather use of the outdoor communal facilities, in accordance with the objectives, design criteria and design guidance of the Apartment Design Guide (ADG). In order to both provide access to the rooftop communal area for all residents however (including those with disabilities) and provide some shelter for year-round use of such facilities, the design needs to include stairway and lift access to, and partial roofing of, this area. Noting the rooftop location of this part of the communal open space, the most significant breaches of the building height standard are associated with the rooftop communal area, including the lift/lift overrun, rooftop stairs and a small roof which covers part of the rooftop communal open space area, and not habitable parts of the building.

Despite breaching the height standard, such an arrangement will permit both sufficient solar access to communal open space areas and a variety of microclimates within the site; year-round use of outdoor communal facilities will therefore be promoted as envisioned by the ADG and the design quality principles of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65).

Given the unique circumstances of the subject site (in terms of orientation, width and depth and topography), the height of the proposed development correlates directly to maximising dwelling yield and the amenity of communal facilities for those proposed apartments. To permit a relatively small breach of the building height standard will therefore enable the site to provide three levels of affordable housing in addition to high-quality facilities for residents of those dwellings.

As it is not possible to further lower the height of the development as proposed, strict enforcement of the height standard would require removing the rooftop communal area and relocating it to the rear setback area. If this were to occur, then it is unlikely that the proposed communal areas would:

- Obtain sufficient solar access despite improvements to the building design (due to orientation and depth of the site, and subsequent overshadowing by the proposed residential flat building), and

- Obtain good amenity that promotes active use of such areas.

Further, to provide adequate solar access to communal areas located solely within at-grade areas within the rear setback will require significant changes to the building that will reduce dwelling yield; noting that the development is to provide for affordable housing, any reduction to the number of dwellings would therefore have significant and detrimental social outcomes.

Furthermore, the provision of a roof top communal open space that is set well back from the parapet is considered to have lower amenity impacts than if the entirety of communal open space was to be provided at grade adjacent to side and rear boundaries.

It is therefore submitted that allowing relatively minor breaches of the height standard will result in better planning outcomes, as dwelling yield is maximised (thereby providing better social outcomes through the provision of more affordable housing) while also providing high-quality onsite communal areas for residents. Given the critical need for affordable high-quality housing within the Georges River Local Government Area (LGA), it is submitted that compliance with the development standard in this instance is unreasonable and unnecessary.

## 7. Social benefits

CPS response: As the proposed development is to be used for the purposes of affordable housing, dwelling yield is critical to maximising the social benefit that is to be gained by this project. The majority of the height variation is attributable to the provision of a rooftop communal open space, which gives residents a choice between the shadier ground level space at the rear of the building and a sunnier area with weather protection on the rooftop.

For the reasons outlined above, it is evident that there are substantive environmental planning grounds which demonstrate why strict application of the development standard in this instance is unreasonable and unnecessary, and subsequently not appropriate for this proposal.

In the recent judgement within *Initial Action*, Preston CJ indicated that a consent authority only needs to be satisfied that an applicant has adequately addressed the matters within clause 4.6(3), and that, pursuant to 4.6(4)(a)(ii), the development is consistent with the objectives of the standard and consistent with the objectives of the zone. Although not strictly required, this variation has addressed the reasons that the development satisfies 4.6(4)(a)(ii).

The objectives of the R3 Medium Density Residential zone under HLEP 2012 are as follows:

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



**CPS Response:** The proposed development will provide much needed affordable housing for members of the community that are on low incomes and/or have a disability. Such residents will be accommodated within a variety of differently-sized apartments. The form of development being proposed (i.e. a residential flat building) is consistent with similar forms of development that are located throughout the area of Peakhurst that is denoted by *figure 4*.

- *To provide a variety of housing types within a medium density residential environment.*

**CPS Response:** A mixture of one- and two-bedroom dwellings is proposed, within a form of development (i.e. a residential flat building) that is consistent with that in the surrounding medium-high density residential environment and existing forms of development on surrounding sites.

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

**CPS Response:** The proposed development would not affect the ability of surrounding sites to provide facilities and/or services that would meet the day-to-day needs of local residents.

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

**CPS Response:** All proposed apartments will exceed minimum size requirements, while the proposed development will also notably exceed minimum requirements for solar access (to dwellings, associated private open space and communal open space areas) and natural ventilation, noting that revisions to the amended plans will also further improve solar access within the site. Further, the proposal will satisfy all requirements relating to visual privacy and solar access to surrounding sites. As such, the development will be capable of providing and maintaining very high levels of residential amenity. The proposed rooftop communal open space and associated structures contribute to the high level of residential amenity for future occupants of the proposed development while also maintaining the amenity of adjoining residential development.

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

**CPS Response:** The subject application proposes a residential flat building that would be primarily used as such. Facilities designed for the accommodation of home businesses are not proposed, though the units are of a sufficient size that they could be utilised for low-intensity purposes (e.g. a home office) if necessary.

### Conclusion

While the amended plans still contain elements that vary the building height standard, such breaches are negligible and through the application of tests derived through relevant caselaw, this assessment confirms that the proposal is both in harmony and compatible with the existing and desired character of an area that is currently subject to significant development transition. The proposal is an appropriate design response with regard to the characteristics and constraints of the site. The proposed residential flat building will provide for very high levels of residential amenity within the subject site, without



causing significant and unreasonable impacts on surrounding sites and the public domain in terms of visual privacy, solar access and/or visual amenity. The proposal is therefore considered to be acceptable.

As a result, compliance with the building height development standard is found to be unreasonable and unnecessary in the specific circumstances of this proposal, and there are sufficient environmental planning grounds to justify contravention of the building height development standard. Given the above, the applicant's statutory requirements pursuant to clause 4.6 of HLEP 2012 are satisfied, and the variation to the building height development standard can be approved by Council.

The proposal meets the objectives of the standard as follows:

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

Officer Comment: The site and surrounding land is zoned R3 with a height limit of 12m. The proposal is consistent with the existing and desired future of the locality in terms of scale and height.

- (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,*

Officer Comment: This objective relates to considering the amenity impacts associated with the non-compliance. In terms of visual impact the structure is centrally located which reduces its visual appearance from the immediately adjoining streetscape.

The objective seeks to "minimise" the visual impact, it is not requiring it to be eliminated or totally negated, and as such seeing the structure is not a reason for refusal, it's the impact of the visual interference of this structure that is to be controlled. The breach relates to a small-scale ancillary structure which will not be a highly visible or an intrusive element given the scale and proportions of the building. It will not be visible from immediately adjoining properties or the streetscape given that it is centrally located. There will be no adverse impacts in terms of overshadowing or overlooking to adjoining properties from the part of the building where the height is exceeded.

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

Officer Comment: The proposal will not impact on any items of heritage significance.

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

Officer Comment: The site and surrounding land is zoned R3 with a height limit of 12m. The proposal is consistent with the existing and desired future of the locality in terms of scale and height.

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

Officer Comment: This objective is not relevant to the subject 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,*

Officer Comment: The site and surrounding land is zoned R3 with a height limit of 12m. The proposal is consistent with the existing and desired future character of the locality in terms of scale and height.

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

Officer Comment: There will be no adverse impacts in terms of overshadowing or overlooking to adjoining properties or the public domain from the encroaching element as the roof area does not contain any useable areas.

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

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

The development is providing for the housing needs within a medium density residential environment with 30 affordable units proposed.

- *To provide a variety of housing types within a medium density residential environment.*

The development incorporates a mix of one and two bedroom units with varying layouts, including three adaptable rooms and 26 liveable apartments.

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

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

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

The units achieve a high level of residential amenity through natural ventilation and solar access. The height non-compliance will not result in unreasonable impacts on neighbouring properties in relation to privacy, overshadowing, visual or acoustic impacts.

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

The proposal does not preclude the use of the rooms in the apartments for small home businesses.

The area of non-compliance is considered to be reasonable in the circumstances of the case and will not establish an undesirable precedent. The variation proposed will not have any adverse impacts on the surrounding locality, which is emerging which is characterised by residential development of comparable character. The proposal promotes the economic use and development of the land consistent with its zone and purpose. The Panel is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome resulting from the non-compliance.

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

The shadow diagrams submitted with the architectural plans demonstrate the non-compliance does not result in any additional shadow beyond a compliant built form due to the central location of the lift overrun and the shadow being cast from the topmost wall on the southern elevation of the building.

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 and 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(b) the concurrence of the Secretary has been obtained.***

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

It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).

The proposal is therefore considered to be acceptable with regards to the provision of the HLEP 2012.

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

**Georges River Local Environmental Plan 2021**

The Georges River Local Environmental Plan 2021 was gazetted on 8 October 2021 but is required to be considered as a proposed instrument by virtue of the operation of Clause 1.8A of the plan which states:

*“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.”*

In comparison to the provisions of the HELP 2012, under the Georges River Local Environmental Plan the zoning of the site has been changed to R4 High Density Residential (which continues to permit residential flat buildings, while the maximum height and floor space ratio controls remain unchanged).

The proposal therefore is consistent with the provisions of the GRLEP 2021.

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

Clause 1.7 ‘Savings Provision’ of the Georges River Development Control Plan 2021 states:

*“If an application has been made before the commencement of the DCP in relation to land to which the DCP applies, and the application has not been finally determined before that commencement, the application must be determined as if the DCP had not commenced. All applications received after the commencement date of an amendment to the DCP are subject to the DCP as amended.”*

Accordingly, the applicable Policy to this application is the Hurstville Development Control Plan No.1. The proposal is assessed against this below:

### **Hurstville Development Control Plan No.1**

A detailed assessment of the development against the relevant sections of HDCP No. 1 is contained in the DCP compliance table below.

**Compliance Table – Hurstville Development Control Plan No. 1**

<b>Development</b>	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
3.1 Vehicle Access and Parking	<p>DS1.5 Refer to AS 2890.1 2004 and AS2890.2 Part 2 for the design and layout of parking facilities. DS1.6</p> <p>A designated car washing area (which may also be a designated visitor car space) is required for service stations and residential developments of four or more dwellings.</p>	<p>Turning and manoeuvring into and out of car spaces, the driveway grades and transitions together with the isle widths are in accordance with the Australian Standard.</p> <p>A car wash bay has not been nominated, however could be accommodated.</p> <p>However LAHC (the crown authority) has not to this, on the basis that provision of such facilities have been an operation and maintenance issue in their facilities in the past.</p>	<p>Yes</p> <p>No – proposed conditioned requirement not accepted by LAHC, not pressed by Council.</p>
Numerical parking controls	<p><u>Residential Accommodation</u></p> <p>Dwelling (1-2 bedrooms): 1 space per dwelling Dwelling (3 bedrooms and over): 2 spaces per dwelling Visitor spaces: 1 space per 4 dwellings (or part thereof)</p>	<p>NA – parking rates of the SEPP (ARH) 2009 have been applied.</p>	<p>NA</p>

Development	Requirements	Proposed	Complies
3.3 Access and Mobility	In developments containing five or more dwellings, a minimum of one adaptable dwelling, designed in accordance with relevant Australian Standards must be provided for every ten dwellings or part thereof.	30 units are proposed; therefore three adaptable units are required.  Units 1, 11 and 21 are nominated as adaptable apartments.	Yes
	Access for all persons through the principal entrance and access to any common laundry, kitchen, sanitary or other common facilities in accordance with relevant Australian Standards.	Access through the building for people with a disability has been catered for and lift access has been provided to all levels.	Yes
3.4 Crime Prevention through Environmental Design	Ensures that the way in which the site, and the buildings within the site, are laid out enhance security and feelings of safety.	The design of the building generally complies with the objectives and controls, appropriate consideration as been given through the design and the built form layout	Yes
	Ensures that private and public spaces are clearly delineated	Perimeter landscaping around private courtyards delineates private and public areas at the ground level.	Yes
	Ensures that the design of the development allows for natural surveillance to and from the street and between individual dwellings or commercial units within the site	All ground floor units are oriented to the street frontages to allow for casual surveillance.	Yes
3.5 Landscaping	Site layout and design, including buildings, structures and	20% of the site is landscaped area and 9.6% is deep soil area.	Yes

Development	Requirements	Proposed	Complies
	<p>hardstand, ensures the long term retention and health of existing significant trees and vegetation.</p> <p>Where significant trees or vegetation are required to be removed to allow for site development, they are to be replaced with the same or similar species achieving the same coverage at maturity.</p>	<p>Three existing street trees are being retained as part of the development. The proposed landscaping scheme for the site offers substantially more than the required 2:1 replacement planting in larger pot sizes than required. The scheme is supported by Council's Landscape Officer.</p>	Yes
3.6 Public Domain	Development contributes to the creation of attractive, comfortable and safe streets that comprise consistent and high quality paving, street furniture and street tree plantings.	The building design and landscape scheme creates a high quality interface at the street frontage.	Yes
3.7 Stormwater	A development application is supported by a concept stormwater management plan showing how surface and roof waters are to be discharged by gravity to the street or easement and the size of all pipes.	Council's Engineers have reviewed the proposed drainage and stormwater arrangement and have raised no objection subject to the imposition of conditions.	Yes
<b>4.1 Residential Flat Buildings</b>			
Site Frontage	Min street frontage 24m	The site has a street frontage of approximately 60m to Gover Street.	Yes
Height	In accordance with HLEP 2012 and 3 storeys.	<p>The maximum height is 12.844m.</p> <p>The building is 3 storeys.</p>	<p>No</p> <p>Yes</p>



<b>Development</b>	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
Excavation	The maximum excavation for any building's finished ground floor level facing a public street is 0.5m below natural ground level.	The ground floor level is located above natural ground level facing Gover Street. Excavation is proposed for the basement which is acceptable subject to recommended conditions	Yes
Front Setback	The minimum setback to a primary or secondary street is 6m.	The bulk of the building is setback 6m from the street with a point encroachment of the terrace of Unit 6 being setback 5.4m.	Acceptable
Landscaped Area	Minimum amount of landscaped area of open space is 20% of the Site area Min dimension of landscaped open space is 2m	48% of the site is landscaped area. All areas used in the calculation exceed 2m in width.	Yes
Solar Access	Development allows for at least 3 hours of sunlight on the windows of main living areas and adjoining principal private open space of adjacent dwellings between 9.00 am and 3.00 pm on 22 June.	The adjoining properties will continue to receive more than three hours direct sunlight on 21 June.	Yes
Noise	Windows of adjacent dwellings are separated by a distance of at least 3m	Minimum 6m separation provided to the adjacent developments.	Yes
Streetscape	Development creates a high quality interface between the public and private domain	The building design and landscape scheme creates a high quality interface at the street frontage.	Yes
Fencing	Provides appropriate levels of privacy, security and noise attenuation	Front fencing is not proposed.	N/A
Site Facilities	Development provides space for the storage of recyclable goods, either	Compliant with ADG controls.	Yes

Development	Requirements	Proposed	Complies
	in the curtilage of each dwelling or in a central storage area in larger developments.		

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

Comment: there are no planning agreements that pertain to this site.

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

Comment: There are no further prescribed matters under the Regulations apart from compliance with the National Building Code of Australia (BCA) and meeting the Australian Standards for parts of the design.

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

### **Natural Environment**

The Aboricultural Impact Assessment (AIA) identifies 25 x trees for removal. Of these 11 are exempt species under the Georges River Tree Management Policy, 5 area known environmental weed and a further 4 are of low retention value and the remainder are located within the footprint of the proposed works.

One street tree, a declining Brushbox, is proposed for removal. This is located in the driveway of the proposed development.

To offset the removal of these trees, the proposed landscaping offers substantially more than the required 2:1 replacement tree planting and in larger pot sizes than required. In addition, (remove gap and include below).A Thyer tree valuation for trees 2 and 8 was provided to Council. These trees are located centrally within the allotments, they do not appear to be remnant species and the replacement planting offered includes a wide variety of advanced locally endemic tree species which will serve to improve biodiversity. As such, offset payment is not required.

In relation to the proposed landscaping a condition is recommended for the landscape plan to be amended prior to construction for it to accurately reflect the proposed tree numbers for removal and retention.

Soil depths for the proposed podium planting have not been provided, however the proposed species shown on the landscape plan require soil depths of 1200mm as per the Apartment Design Guide, with the recommended minimum depths being:

- Large Trees 12-18m tall – 150m<sup>3</sup>, 1200mm depth
- Medium Trees 8-12m tall – 35m<sup>3</sup>, 1000mm depth
- Small Trees 6-8m tall – 9m<sup>3</sup>, 800mm depth

A condition has been recommended for the planter boxes to be amended to meet the above requirements prior to work commencing.

### **Built Environment**

The proposed development is unlikely to result in adverse impacts to the built environment. The architectural design, use of high quality materials and finishes will result in a suitable built form for the site and locality. The development will create a positive contribution to the streetscape and will enhance the public domain.

### **Social Impact**

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

### **Economic Impact**

The proposed development will have no adverse economic impacts.

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

Comment: The site has no impediments that would preclude it from being suitable for the proposed development. The site is zoned to permit medium density residential development.

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

Comment: Two submissions were received during the neighbour notification period.

### **(e) the public interest.**

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

Having regard to its size, shape, topography, vegetation and relationship to adjoining developments, the subject site does not contain any impediments that would preclude it or compromise its suitability for the intended land use as proposed.

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

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

### **Development Contributions**

Under Section 2.2.2 of the Georges River Council Local Infrastructure Contributions Plan 2021, the applicant, being a social housing provider, is exempt from paying contributions for this development.

### **Submissions and the Public Interest**

The application was notified to immediately adjoining properties and they were given a 14 day period in which to comment (between the period of 2 September 2021 to 16 September 2021). Notification procedures were conducted in accordance with Council's requirements. Two submissions were received.

<b>Issue</b>	<b>Comment</b>
Increased traffic congestion on local streets.	Council's Traffic Engineers have raised no concern with the impact of the development on the local road network.
Insufficient parking spaces provided in the development.	The proposal provides the required number of parking spaces for the number of units in the development pursuant to SEPP (Affordable Rental Housing) 2009.

### **Referrals**

#### **Council Internal Referrals**

##### Development Engineer

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

##### Traffic Engineer

Council's Traffic Engineer has raised no objection subject to conditions of consent imposed on any consent granted.

##### Urban Designer

The comments of Council's Senior Specialist Planner (Urban Design) have been included and discussed earlier in this report.

##### Council's Consultant Arborist

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

### **External Referrals**

#### Ausgrid

The application was referred to Ausgrid in accordance with the provisions of Clause 45 of the Infrastructure SEPP (in force at the time of submission). No objections received.

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

The proposed development application was lodged on the 23 August 2021 with a capital investment value of \$9,984,927.00 which classifies the development as Regionally significant. Therefore, the Sydney South Regional Planning Panel is the consent authority.

The application seeks approval for the consolidation of four allotments, demolition works, tree removal, construction of a three storey residential flat building comprising 30 units and a basement car park for 15 vehicles, associated landscaping and site works.

The proposal has been assessed against the provisions of the Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan No. 1.

The proposal satisfies the key planning controls in the Hurstville Local Environmental Plan 2012 apart from the maximum height of building standard. A Clause 4.6 Statement has been submitted with the application justifying the variation, in this case is considered to be unreasonable and unnecessary in the circumstances of this case and sufficient environmental planning grounds have been demonstrated to contravene the control in this instance.

The proposed development design satisfies the objectives of both the height control and the zone objectives for the site, and the Clause 4.6 Statement and is considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought. The proposal satisfies the requirements of Clause 4.3 of the Hurstville Local Environmental Plan 2012.

Following detailed assessment it is considered that Development Application No DA2021/0306 be approved subject to the conditions referenced at the end of this report.

### **Determination and Statement of Reasons**

The reasons for this recommendation are:

- The proposed development generally complies with the requirements of the relevant environmental planning instruments and development control plan.
- The proposal has been designed to generally satisfy the key provisions of the Apartment Design Guide (ADG).
- The proposed design has been sensitively considered to be consistent with the anticipated, desired future character for development in this area.

That Sydney South Planning Panel support the request for variation under Clause 4.6 of Hurstville Local Environmental Plan 2012, in relation to Clause 4.3 – Height of building as the variation sought satisfies the matters identified in Clause 4.6 and the proposal is in the public interest as it is satisfactory with regards the objectives of Clause 4.6 and of the zone.

Pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the South Sydney Planning Panel, grant development consent to Development Application DA2021/0306 for demolition works and construction of residential flat building on Lots 182-185 in DP 36317, and known as 43-49 Gover Street, Peakhurst subject to the following conditions of consent:

### **SPECIFIC DEVELOPMENT CONDITIONS**

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#### **Development Details**

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

<b>Description</b>	<b>Reference No.</b>	<b>Date</b>	<b>Revision</b>	<b>Prepared by</b>
Cover Page	0000	14/2/22	B	Kennedy Associates Architects
Introduction	0001	14/2/22	B	Kennedy Associates Architects
Block Analysis	0100	14/2/22	B	Kennedy Associates Architects
Site Analysis	0101	14/2/22	B	Kennedy Associates Architects
Demolition Plan	0102	14/2/22	B	Kennedy Associates Architects
Site Plan	0103	14/2/22	B	Kennedy Associates Architects
External Works	0104	14/2/22	B	Kennedy Associates Architects
Basement Level	0201	14/2/22	B	Kennedy Associates Architects
Level 00	0202	14/2/22	B	Kennedy Associates Architects
Level 01	0203	14/2/22	B	Kennedy Associates Architects
Level 02	0204	14/2/22	B	Kennedy Associates Architects

Level 03	0205	14/2/22	B	Kennedy Associates Architects
Roof Level	0206	14/2/22	B	Kennedy Associates Architects
Elevation 01	0301	14/2/22	B	Kennedy Associates Architects
Elevation 02	0302	14/2/22	B	Kennedy Associates Architects
Elevation 03	0303	14/2/22	B	Kennedy Associates Architects
Sections 01	0401	14/2/22	B	Kennedy Associates Architects
Sections 02	0402	14/2/22	B	Kennedy Associates Architects
Driveway Long Section 01	0411	15/2/22	B	Kennedy Associates Architects
Driveway Long Section 02	0412	15/2/22	B	Kennedy Associates Architects
Driveway Long Section 03	0413	15/2/22	B	Kennedy Associates Architects
Ground Floor Landscape Plan	01	16/3/22	B	Taylor Brammer
Level 03 Landscape Plan	02	16/3/22	B	Taylor Brammer
Ground Floor Planting Plan	03	16/3/22	B	Taylor Brammer
Level 03 Planting Plan	04	16/3/22	B	Taylor Brammer
Existing Tree Retained and Removed	05	16/3/22	B	Taylor Brammer
Landscape Details	06	16/3/22	B	Taylor Brammer

The following documents and plans have been reviewed in assessing the proposal:

- ***“Stormwater Drainage Plan”, Project No. 16172, Sheet C-4141 (Rev “A” dated 12/3/2021, Sheet C-2001 and Sheet C-2002 (Revision “D” dated 26/03/21, and Sheet C-2101 (Rev “C” dated 18/03/21) prepared by Land and Housing Corporation.***
- ***“Survey Plan”, Job No. BGWT6, dated 31/2/2021, prepared by Land and Housing Corporation.***



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

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

2. **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) New 1.5m wide footpath to be constructed for full frontages of the site in accordance with Council's Specifications for footpath, applying at the time construction approval is sought.
  - (b) 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.
  - (c) The thickness and design of the driveway shall be in accordance with Council's Specifications 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.
3. **Works on public road and footway** – All proposed works within the public road and footway shall be designed and constructed to Council's standards and specifications and a copy of the detailed plans submitted to Council prior to work commencing. The applicant/developer shall arrange for necessary inspections by Council whilst the work is in progress or after completion of the works.

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

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

5. **Electricity Supply to Development** - The electricity supply to the Development must be underground.
6. **Sydney Water - Tap in™** - The approved plans must be submitted to a Sydney Water Tap in™ to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed/stamped. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Crown Certifier must ensure that a Tap in™ agent has appropriately stamped the plans prior to the commencement of works.
7. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the [Sydney Water Act 1994](http://www.sydneywater.com.au) <<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 to the Crown Certifier prior to the commencement of work. A Section 73 Compliance Certificate will be required at the completion of development in accordance with further conditions.

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

8. **Landscape Plan – Amendment** – Prior to construction the plans must illustrate that the approved landscape plan has been amended to incorporate the following changes:
  - Sheet 05 shall be amended so that tree numbers and species match those listed in the approved Arboricultural Impact Assessment Report.
  - Sheet 05 shall be amended so that trees to be retained and removed match those listed in the approved Arboricultural Impact Assessment Report.
  - Planting details for raised planter boxes shall be amended to meet soil depths for proposed podium planting as per the Planning NSW Apartment Design Guide, Part 4 recommended minimum depths:

- Large Trees 12-18m tall – 150m<sup>3</sup>, 1200mm depth
- Medium Trees 8-12m tall – 35m<sup>3</sup>, 1000mm depth
- Small Trees 6-8m tall – 9m<sup>3</sup>, 800mm depth

- 9. Tree Protection Plan** - The following trees are to be retained and protected in accordance with the approved Arboricultural Impact Assessment Report as part of the proposed works:

Tree ID Number and Species	Location
<i>T9 – Lophostemon confertus</i>	Street Tree
<i>T14 – Lophostemon confertus</i>	Street Tree
<i>T18 – Lophostemon confertus</i>	Street Tree

A site-specific tree protection plan and specification in accordance with AS 4970-2009: *Protection of trees on development sites* prepared by an AQF Level 5 Arborist must be prepared prior to construction. The plan must include the following as a minimum:

- Name of AQF Level 5 Arborist, contact information, plan number and date
  - Scale
  - North point
  - Location of street trees 9, 14 and 18.
  - TPZ, SRZ and canopy dimensions
  - Locations, dimensions and specifications for tree protection measures including fencing, trunk and ground protection
- 10. Required Drainage System Design Changes** - The following changes are required to be made and shall be submitted to the Crown Certifier prior to the commencement of construction works.:
- a) All surface inlet pits within the development shall be at least 600X600 gated pits and the minimum depth of 600mm must be maintained.
  - b) RHS outlet (100mm high) shall be used for site discharge to the public drainage system.
  - c) All grates for both OSD tanks shall be at least 900X900 in size.
  - d) A weir or alternative overflow route must be provided for major storm events or in case of tank blockages.
  - e) Outlet from OSD tank A shall be connected to an existing pit along the street kerb. The existing lintel shall be required to be replaced with the new 2400mm lintel.
  - f) Basement pump sump must be connected directly to the OSD Tank A not to the PIT (P8).

- g) 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:
- i. 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 minimum of either 4 litres per second or the rate of inflow generated from 1% AEP 5-minute duration storm event of the area of the contributing ramp that draining into the system.
  - ii. The pump holding tank shall be capable of holding the total volume of runoff generated by the 1% AEP 3-hour storm event of the area of the contributing ramp assuming pumps are not working. The minimum basement pump sump volume shall be 10 cubic meter.
  - iii. The pump system shall be regularly maintained and serviced, every six (6) months; and
  - iv. Drainage disposal from the pump system shall be discharged directly to the OSD tank.
  - v. The proposed boundary pit shall be a Silt Arrestor Pit and must be located inside the property just upstream of the point of discharge from the site. This pit must have minimum dimensions of 450mm x 450mm and shall have a 150mm deep sump and galvanised mesh screen permanently fixed over the outlet pipe or pipes. A minimum of 4 x 30mm diameter seepage holes shall be provided in the pit base. For drainage into the surrounding soil, the pit base shall be constructed on a layer of 200mm thick aggregate base wrapped in geotextile fabric. All non-plastic drainage pits must be benched and streamlined.
  - vi. The final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted to the Crown Certifier prior to the issue of the appropriate Crown Certificate.

**11. 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 topsoil 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.

- 12. Vehicular Access Grades** – While reconfiguring, realigning and proposing any vehicular access, the applicant must submit to the Crown Certifier a profile (longitudinal section) demonstrating access clearance by the B85 Design Vehicle (85% percentile vehicle in accordance with AS2890.1 2004) for the entry.

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

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

The profile will be used to assess suitability of proposed internal driveway levels and does not represent final footpath or road levels. The levels on Council's road related area including boundary level will be verified with Council prior to the commencement of works.

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

- (a) All stormwater shall be drained in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's Stormwater Drainage Guidelines, shall be submitted to the Crown Certifier prior to the commencement of construction works.

#### 14. On-site Stormwater Detention

The submitted Concept Stormwater and OSD Plan prepared by Land and Housing Corporation reference Stormwater Drainage Plans as “**Stormwater Drainage Plan**”, **Project No. 16172**, Sheet C-4101 (Rev “A” dated 12/3/2021), Sheet C-2001 and Sheet C-2002 (Rev “D” dated 26/03/21), and Sheet C-2101 (Rev “C” dated 18/03/21 has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted to the Crown Certifier prior to the commencement of construction works.

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

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

A minimum 17 cubic meter volume for OSD tank A and 23 cubic meter volume for OSD tank B shall be provided in accordance with the above Stormwater Concept Plan and Council’s Stormwater Management Policy.

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

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

Full details shall accompany the application for the applicable Crown Certificate.

#### 15. Driveway Construction Plan Details - Detailed engineering plans for the driveway shall be submitted to the Crown Certifier prior to the commencement of construction works 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. Longitudinal driveway sections are to be prepared by a qualified civil/traffic engineer and be submitted to the Crown Certifier. These profiles are to be at 1:100 scale along both edges of the proposed driveway, starting from the centreline of the frontage street carriageway to the proposed garage/parking level. The civil/traffic engineer shall provide specific written certification on the plans that:

- i. Vehicular access can be obtained using grades of 25% (1 in 4) maximum and
- ii. All changes in grade (transitions) comply with Australian Standard 2890.1 (2004) – “Off-street car parking” to prevent the scraping of the underside of the vehicles.

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

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

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

- 17. Site Management Plan - Major Development** - A Site Management Plan must be submitted to the Crown Certifier prior to the commencement of work, and include the following:

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

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

**18. Construction Vehicle and Pedestrian Plan of Management** – A Vehicle and Pedestrian Plan of Management (CVPPM) shall be submitted to the Crown Certifier prior to the commencement of work. The CVPPM shall be prepared for the various stages of the development and include, but not be limited to, the following:

- (a) Details of the scope of works to be undertaken during the demolition, excavation, construction stages etc., and the duration of each.
- (b) Indicate the consent approved hours of work.
- (c) Identify the routes to be travelled within the Council area for trucks travelling to and from the site.
- (d) Identify other developments occurring concurrently in the area including those within the street and up to 500m from the site.
- (e) The developer/builder shall liaise fortnightly with other identified developers/builders to minimize any cumulative traffic impacts.
- (f) Include a plan showing the location of any schools, pre schools and long day care centres within 200m of the site.
- (g) Detail the number of and where construction worker vehicles will be parked during the various stages of the development.
- (h) Identify any proposed temporary road closures, temporary changes to traffic flow and loss of pedestrian or cyclist access likely to occur as a result of works being undertaken during the various work stages.
- (i) Detail the size (including dimensions), number and frequency of trucks movements to and from the site during the various stages of work.
- (j) Include copies of all required Traffic Control Plans (TCPs). All TCP's shall be prepared by RMS accredited persons.
- (k) Provide, if required, swept wheel path drawings for the different types of vehicles accessing the site. The swept wheel path drawings:
  - May be required if it is considered truck movements into and out of the site associated with the various stages of development have the potential to damage public or private infrastructure/property.
  - May be required if it is considered truck movements into and out of the site cannot be carried out without a loss of on street vehicle parking spaces either in close proximity to or removed from the site.
  - Shall be prepared by a suitably qualified and experienced traffic engineering consultant.



- (l) Show the location and length of any proposed Works Zones including any adjustments required to Council's infrastructure, parking control signs etc. to implement the zones. **NOTE:** Works Zones require the approval of the Georges River Council Traffic Committee prior to installation.
- (m) Show the locations of where it is proposed to stand trucks remote from the site should they be unable on arrival to immediately enter the site or an approved Works Zone. Double parking, parking in NO STOPPING/NO STANDING zones or across neighboring property driveways is not permitted.

**NOTE:** A copy of the approved CVPPM must be kept at the site and made available on request:

- 19. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 1181907M dated 25 May 2021 must be implemented on the plans lodged with the Crown Certifier.
- 20. **Waste Management Plan** - A final Waste Management Plan incorporating all requirements in respect of the provision of waste storage facilities, removal of all materials from the site that are the result of site clearing, extraction, and, or demolition works and the designated Waste Management Facility shall be submitted to the Crown Certifier prior to the commencement of work.

The final Waste Management Plan must state:

- (a) That it is the responsibility of a designated person to present the bins to the kerb no earlier than 12 hours prior to collection and remove the bins from the kerbside no later than 12 hours post collection.
  - (b) Any garden waste must be removed from the property by a licensed landscape contractor.
- 21. **Allocation of street addresses** - In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing, the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street address for the subject development is allocated as follows:

**Primary Address**

- 43 Gover Street, Peakhurst NSW 2210

## Unit Addresses

Unit numbers on DA Plans		Unit numbers and addresses allocated by Council				
Level	Unit No.	Unit No	Street No	Street Name	Suburb	COMPLETE ADDRESS
Basement Level	-	Basement Carpark 1 (B1)				
Level 00	U1	G01	43	Gover Street	Peakhurst NSW 2210	G01/43 Gover Street, Peakhurst NSW 2210
Level 00	U2	G02	43	Gover Street	Peakhurst NSW 2210	G02/43 Gover Street, Peakhurst NSW 2210
Level 00	U3	G03	43	Gover Street	Peakhurst NSW 2210	G03/43 Gover Street, Peakhurst NSW 2210
Level 00	U4	G04	43	Gover Street	Peakhurst NSW 2210	G04/43 Gover Street, Peakhurst NSW 2210
Level 00	U5	G05	43	Gover Street	Peakhurst NSW 2210	G05/43 Gover Street, Peakhurst NSW 2210
Level 00	U6	G06	43	Gover Street	Peakhurst NSW 2210	G06/43 Gover Street, Peakhurst NSW 2210
Level 00	U7	G07	43	Gover Street	Peakhurst NSW 2210	G07/43 Gover Street, Peakhurst NSW 2210
Level 00	U8	G08	43	Gover Street	Peakhurst NSW 2210	G08/43 Gover Street, Peakhurst NSW 2210
Level 00	U9	G09	43	Gover Street	Peakhurst NSW 2210	G09/43 Gover Street, Peakhurst NSW 2210
Level 00	U10	G10	43	Gover Street	Peakhurst NSW 2210	G10/43 Gover Street, Peakhurst NSW 2210
Level 01	U11	101	43	Gover Street	Peakhurst NSW 2210	101/43 Gover Street, Peakhurst NSW 2210
Level 01	U12	102	43	Gover Street	Peakhurst NSW 2210	102/43 Gover Street, Peakhurst NSW 2210
Level 01	U13	103	43	Gover Street	Peakhurst NSW 2210	103/43 Gover Street, Peakhurst NSW 2210
Level 01	U14	104	43	Gover Street	Peakhurst NSW 2210	104/43 Gover Street, Peakhurst NSW 2210
Level 01	U15	105	43	Gover Street	Peakhurst NSW 2210	105/43 Gover Street, Peakhurst NSW 2210
Level 01	U16	106	43	Gover Street	Peakhurst NSW 2210	106/43 Gover Street, Peakhurst NSW 2210
Level 01	U17	107	43	Gover Street	Peakhurst NSW 2210	107/43 Gover Street, Peakhurst NSW 2210
Level 01	U18	108	43	Gover Street	Peakhurst NSW 2210	108/43 Gover Street, Peakhurst NSW 2210
Level 01	U19	109	43	Gover Street	Peakhurst NSW 2210	109/43 Gover Street, Peakhurst NSW 2210
Level 01	U20	110	43	Gover Street	Peakhurst NSW 2210	110/43 Gover Street, Peakhurst NSW 2210
Level 02	U21	201	43	Gover Street	Peakhurst NSW 2210	201/43 Gover Street, Peakhurst NSW 2210
Level 02	U22	202	43	Gover Street	Peakhurst NSW 2210	202/43 Gover Street, Peakhurst NSW 2210
Level 02	U23	203	43	Gover Street	Peakhurst NSW 2210	203/43 Gover Street, Peakhurst NSW 2210
Level 02	U24	204	43	Gover Street	Peakhurst NSW 2210	204/43 Gover Street, Peakhurst NSW 2210
Level 02	U25	205	43	Gover Street	Peakhurst NSW 2210	205/43 Gover Street, Peakhurst NSW 2210
Level 02	U26	206	43	Gover Street	Peakhurst NSW 2210	206/43 Gover Street, Peakhurst NSW 2210
Level 02	U27	207	43	Gover Street	Peakhurst NSW 2210	207/43 Gover Street, Peakhurst NSW 2210
Level 02	U28	208	43	Gover Street	Peakhurst NSW 2210	208/43 Gover Street, Peakhurst NSW 2210
Level 02	U29	209	43	Gover Street	Peakhurst NSW 2210	209/43 Gover Street, Peakhurst NSW 2210
Level 02	U30	210	43	Gover Street	Peakhurst NSW 2210	210/43 Gover Street, Peakhurst NSW 2210

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

## 22. Demolition Notification Requirements - The following notification requirements apply to this consent:

- (a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
- (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
- (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.

- 23. Dial before your dig** - The applicant shall contact “Dial Before You Dig on 1100” to obtain a Service Diagram prior to the commencement of work. The sequence number obtained from “Dial Before You Dig” shall be forwarded to the Crown Certifier and Council for their records.
- 24. Dilapidation Report on Public Land** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site. 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.
  - e) The full name and signature of the structural engineer.
  - f) The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the Crown Certifier and a copy provided to the Council.
  - g) 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 any rectification works are required.

- 25. Registered Surveyors Report - During Development Work** - A report by the Building Contractor must be submitted to the Crown Certifier at each of the following applicable stages of construction:
- a) Set out before commencing excavation.
  - b) Floor slabs or foundation wall, before formwork or commencing brickwork.
  - c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
  - d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
  - f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.

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

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

- 26. 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

**27. Tree Removal & Replacement Planting**

Permission is granted for the removal of all trees located within the proposed development site:

- a) All tree removal shall be carried out by a minimum AQF Level 3 Arborist with appropriate insurance. Tree removal is to be undertaken safely and in compliance with *AS 4373-2007 - Pruning of Amenity Trees* and *Tree Works Industry Code of Practice (Work Cover NSW 1.8.98)*.
- b) All tree replacement planting must be undertaken in accordance with the tree planting plan, schedule and specifications provided with the approved Landscape Plans.

- 28. Tree Protection & Compliance with Tree Protection Plan** – The tree protection measures and recommendations outlined in the approved Tree Protection Plan must be implemented throughout the relevant stages of construction in accordance with Section 4 - *Australian Standard AS 4970-2009: Protection of trees on development sites*.

- a) The following trees are to be retained and protected as part of the proposed works:

Tree ID Number and Species	Location
T9 – <i>Lophostemon confertus</i>	Street Tree
T14 – <i>Lophostemon confertus</i>	Street Tree
T18 – <i>Lophostemon confertus</i>	Street Tree

**29. Landscape Works** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -

- a) The applicant must engage a licensed and reputable nursery grower early within the build phase and purchase all trees and plant material early to ensure that all tree and plant material, pot/bag sizes and quantities are guaranteed at the time of the landscape and planting phase.
- b) 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)*. All tree and plant material purchased for the proposed works must be inspected and certified for compliance by an AQF 5 Horticulturist and confirmed with a letter to the Crown Certifier.

**30. Street Tree Removal / Replacement by Council**

- a) Council must be appointed to remove and plant all tree/s on public land. All costs associated with the removal of the tree and the planting of a replacement tree 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.
- b) 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.

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 <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 fee to be paid prior to CC.	1	\$489.00
<b>Fee Type – Tree removal on street verge</b>	<b>Number of trees</b>	<b>Amount per tree</b>
<i>T1 – Lophostemon confertus</i>	1	To be determined
Cost of tree removal & Stump Grinding	1	To be determined

Prior to obtaining the applicable Crown Certificate, the applicant must contact Council, to be provided with a fee proposal for the removal of one (1) tree located upon Council's street verge, fronting the site. This fee/quote provided to the applicant by Council must be paid to Council prior to obtaining the applicable Crown Certificate, with the receipt viewed by the Crown Certifier. All trees on Council's street verge must be removed by Council.

- 31. Contamination of land** - Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the Crown Certifier and all works on site must cease immediately.

If the site is identified as being potentially affected by soil contamination, a detailed site contamination investigation shall be carried out by a certified contaminated land consultant in accordance with the requirements of the relevant NSW EPA Guidelines approved under the Contaminated Land Management Act 1997 including the EPA.

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

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

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

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

- 32. 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.

33. **Worksite traffic and pedestrian control** - Traffic and pedestrian control shall be in accordance with TfNSW 'Traffic Control at Works Sites- Technical Manual' version 6.1.
34. **Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.
35. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.
36. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted without prior consultation with Council.
37. **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.
38. **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.
39. **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 Crown Certifier.

## Prior to the Issue of an Occupation Certificate

40. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the [Sydney Water Act 1994 <http://legislation.nsw.gov.au/>](http://legislation.nsw.gov.au/) must be submitted to the Crown Certifier prior to Occupation.
41. **Restriction to User and Positive Covenant for On-Site Detention Facility –**  
Within 3 months of occupation, 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.*

**42. 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.

**43. Vehicular crossing & Frontage work – Major development** - The following road frontage works shall be constructed in accordance with the specifications for Driveway Crossing and Associated Works on Council Road Reserve.

- (a) New 1.5m wide footpath to be constructed for full frontages of the site in accordance with Council's Specifications for footpath, applying at the time construction approval is sought.
- (b) 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.
- (c) The thickness and design of the driveway shall be in accordance with Council's Specifications 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 Occupation.

**44. Completion of Major Works** - Prior to Occupation, the following works must be completed at the applicant's expense to the satisfaction of the Crown Certifier:

- (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.

**45. Dilapidation Report on Public Land for Major Development Only** - Upon completion of works, a follow up dilapidation report must be prepared for the items of Council infrastructure adjoining the development site. 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 Crown Certifier and a copy provided to the Council. The reports are to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

**46. Stormwater drainage works – Works As Executed - Underground Tank –**

Prior to Occupation, storm water drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to the Crown Certifier:

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) The structural adequacy of the On-Site Detention system (OSD);
- (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (d) Pipe invert levels and surface levels to Australian Height Datum;
- (e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.
- (f) The Work-As-Executed plans are prepared on the copies of the approved drainage plans issued with the Construction Certificate and variations are marked in red ink;
- (g) The Work-As-Executed plans have been prepared by a registered surveyor certifying the accuracy of dimensions, invert levels, surface levels, storage volume etc;

**47. Requirements prior to Occupation - Stormwater and Onsite Detention Works**

The following shall be completed and or submitted to the Crown Certifier prior to Occupation:

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

**48. Requirements prior to Occupation - Driveways Works -** The following shall be completed and or submitted to the Crown Certifier prior to Occupation:

- (a) Construction of new vehicle crossings as required by this consent.
- (b) Replacement of all redundant vehicle crossing laybacks with kerb and guttering, and replacement of redundant concrete with turf.

- 49. Amalgamation of Four Lots into a Single Lot prior to Occupation** - All four lots shall be amalgamated into a single lot and a Deposited Plan (with Administration Sheet) is to be prepared by a Registered Surveyor and submitted to the Crown Certifier for review and approval prior to its registration.
- 50. Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the [Environmental Planning and Assessment Regulation 2000](#), on completion of building works and prior to Occupation, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 174 of the Environmental Planning and Assessment Regulation, 2000. In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:
- (a) That the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so.
  - (b) That as at the date of the assessment the measure was found to be capable of functioning at a standard not less than that required by the attached Schedule.
- A copy of the certificate is to be given by the applicant to the Commissioner of Fire & Rescue NSW and a further copy is to be displayed in a frame and fixed to a wall inside the building's main entrance.
- 51. Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted to the Crown Certifier prior to occupation.
- 52. Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to the Ausgrid, if required.
- 53. BASIX Compliance Certificate** - A Compliance Certificate must be provided to the Crown Certifier regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before Occupation.
- 54. Completion of Tree Works** - All tree protection and Project Arborist works set out in the approved tree protection plan must be completed prior to occupation. A certificate of compliance must be prepared by an AQF Level 5 Arborist and submitted to the Crown Certifier prior to occupation.

- 55. Completion of Landscape Works** - All landscape works, the planting of all tree and plant material in accordance with approved landscape plans and specifications must be completed prior to occupation. A certificate of compliance for the planting of all trees and shrubs proposed for the site must be prepared by an AQF 5 Horticulturist and forwarded to the Crown Certifier prior to occupation.

#### **Operational Conditions (Ongoing)**

- 56. 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).
- 57. Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorists on nearby roads, outdoor lighting must comply with *AS 4282-2019: Control of the obtrusive effects of outdoor lighting*.
- 58. 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.

- 59. 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.
- 60. Vehicular entry and exit** - Vehicular entry/exit movements shall be carried out in a forward direction at all times.
- 61. Carpark design and layout** - The layout and design of off street car parking areas shall comply with the requirements of AS/NZS 2890.1:2004 Parking Facilities, Part 1- Off street Car parking and other Australian Standards as applicable.
- 62. Marking of parking spaces** - Prior to the issue of the Crown Certificate, all parking spaces shall be clearly designated and linemarked to comply with *AS1742, Manual of uniform Traffic Control Devices*.
- 63. Bicycle facilities** - Facilities for the parking of bicycles either at grade or in a basement car park area shall comply with the requirements of AS2890.3: 2015 Parking Facilities, Part 3: Bicycle parking.

**64. 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.

**65. Ongoing Tree Maintenance Works**

- a) All newly planted trees must be maintained until they reach a height where they are protected by Councils Tree Management Controls. Maintenance includes watering, weeding, removal of rubbish from tree bases, fertilising, pest and disease control, replacement of dead or dying trees and other operations required to maintain healthy trees.
- b) If any trees are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species and pot/bag size. 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. 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.

### **Prescribed Conditions**

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

**END CONDITIONS**

## NOTES/ADVICES

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1. **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.
  
2. **Access to NSW Legislations (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)
  
3. **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/nlg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) published 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)).
  
4. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.
  
5. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or [www.ausgrid.com.au](http://www.ausgrid.com.au) (Business and Commercial Services) for further details and information on lodging your application to connect to the network.



6. **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.

7. **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)).