

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 07 FEBRUARY 2019**

<b>LPP Report No</b>	<b>LPP003-19</b>	<b>Development Application No</b>	<b>DA2018/0162</b>
<b>Site Address &amp; Ward Locality</b>	42 Herbert Street Oatley Blakehurst Ward		
<b>Proposed Development</b>	Demolition works, construction of a dwelling house and in-ground swimming pool		
<b>Owners</b>	Ms L Cordovado		
<b>Applicant</b>	Ms L Cordovado		
<b>Planner/Architect</b>	Planner: Planning Ingenuity (Author of Statement of Environmental Effects); Architect: Innovate Architects		
<b>Date Of Lodgement</b>	27/04/2018		
<b>Submissions</b>	A total of eleven (11) submissions have been received		
<b>Cost of Works</b>	\$2,548,000		
<b>Local Planning Panel Criteria</b>	Development is the subject of 10 or more unique submissions by way of objection		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	Kogarah Local Environmental Plan 2012; Kogarah Development Control Plan 2013, State Environmental Planning Policy 55 – Remediation of Land, State Environmental Planning Policy (BASIX) 2004, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Coastal Protection) 2018, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, Draft State Environmental Planning Policy (Environment)		
<b>List all documents submitted with this report for the Panel's consideration</b>	Architectural Plans Clause 4.6 Request for Variation – Foreshore Building Line		
<b>Report prepared by</b>	Team Leader Development Assessment		

<b>Recommendation</b>	THAT the application be approved in accordance with the conditions included in this report.
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<b>Summary of matters for consideration under Section 4.15</b> Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b> Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it	<b>Yes - the application has been accompanied by a</b>

<p>been attached to the assessment report?</p>	<p><b>request for variation of the Foreshore Building Line under Clause 6.4 of the Kogarah Local Environmental Plan.</b></p>
<p><b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p><b>Not Applicable</b></p>
<p><b>Conditions</b> Have draft conditions been provided to the applicant for comment?</p>	<p><b>Yes – Report publicly available and published on Council website prior to meeting.</b></p>

**Site Plan**



**Subject Site – 42 Herbert Street Oatley**

**EXECUTIVE SUMMARY**

**Proposal**

1. The Development Application (DA) proposes demolition works and construction of a new dwelling house and in-ground swimming pool at 42 Herbert Street, Oatley.
2. The dwelling house is part two/three storeys in height, and it will present as single storey to the street (south elevation), and three levels to the north elevation (Oatley Bay), due to the steep slope of the site.

**Site and Locality**

3. The site has a street address of 42 Herbert Street, Oatley, and is legally described as Lot 2 DP557722. The property is located on the northern side of Herbert Street, and has a rear waterfront boundary to the Georges River (known as Oatley Bay).
4. The site has an area of 786.2sqm (by survey), and has a steep fall of approximately 14m from the front boundary (RL15.2) to the rear (RL1.29), with an average gradient of 1:4 or 25%.
5. The site currently contains a part one/two storey dwelling and carport (to be demolished as part of the current DA); and a detached fibro boat house to the rear of the site (to be retained as part of the proposal). There is also an existing timber jetty that provides access for the site to the Georges River.
6. The locality generally consists of detached dwelling houses in a low density residential setting, with steep topography and water views being typical of this location. Land immediately to the south (opposite Herbert Street) forms part of Oatley Bay Reserve which is public open space with a substantial coverage of vegetation.

### **Zoning and Permissibility**

7. The subject site is zoned R2 Low Density Residential under Kogarah Local Environmental Plan 2012 (LEP 2012), with the proposed development being permissible with consent.

### **Submissions**

8. The DA was notified to neighbours in accordance with the Kogarah Development Control Plan 2013 (DCP2013), a total of 11 submissions were received (two of which also had a separate submission from a Planning Consultant as an attachment).
9. In addition to notification of the original DA, amended plans have been re-notified throughout the DA processing. The number of submissions received for this DA are summarised as follows:
  - Original DA submission: three submissions;
  - Amended Plans (received August 2018): four submissions;
  - Amended Plans (received September 2018): four submissions.
  - Total submissions 11.
10. The following is a summary of the key points of objection raised in the submissions, and these will be discussed in more detail within the body of the report:
  - View loss impacts on 40 Herbert Street (to the west);
  - Compliance with Council's planning controls (in particular, height, floor space ratio and foreshore building line);
  - Lack of clause 4.6 requests for variation re the above controls;
  - Visual impact/visual bulk impacts on 40 Herbert Street;
  - Compliance with foreshore building line;
  - Concerns regarding the garage at front of the site;
  - Extent of earthworks; and
  - Tree removal.

### **Reason for Referral to the Local Planning Panel**

11. The DA is referred to the Local Planning Panel for consideration, as the DA is subject to 10 or more unique submissions by way of objection as referenced in the s9.1 (EPA Act) Ministerial Direction of 23 February 2018.

## Issues of Concern

12. The proposal has been assessed against the planning controls contained in Kogarah Local Environmental Plan (LEP) 2012 and Kogarah Development Control Plan (DCP) 2013. There are a number of areas of non-compliance with the planning controls:
  - Minor encroachment to foreshore building line. This is supported by a clause 4.6 request for variation;
  - Requirement for second level not to extend beyond 60% of the depth of the allotment;
  - Maximum height (7.2m to underside of ceiling; 7.8m to parapet);
  - Primary building façade should not exceed 40%;
  - Minimum 1200mm side setback (to garage);
  - Garage dominance;
  - Driveway width;
  - Requirements for setbacks, width and area of proposed balconies/terraces;
  - Swimming pool requirements (including height out of ground).
13. Despite the areas of non-compliance, the proposal is considered to be acceptable as discussed within the body of the report. It is noted that under the provisions of the Environmental Planning and Assessment Act 1979 (Clause 4.15(3A)(b)) – the consent authority (Council) is required to be flexible in applying the provisions of a Development Control Plan, and allow reasonable alternative solutions that achieve the objects of those standards.
14. The areas of non-compliance are either justifiable having been resolved via amended plans throughout the DA process to date and/or can be addressed via conditions of consent for further amendments to be made.
15. The site has particular characteristics, namely a steep slope from the street to the rear boundary (Oatley Bay), and also this section of the Herbert Street frontage is unusual in so far as it is narrow in width servicing only properties 40-46 Herbert Street Oatley.
16. The numeric DCP non-compliances largely stem from the site characteristics, variations of the development controls contained in the Kogarah DCP 2013 are justifiable as the proposal generally meets the relevant objectives of the controls, and/or there is minimal impact on any neighbouring property or the public domain.

## Conclusion

17. The proposal has been assessed against the Matters for Consideration under Part 4.15 of the Environmental Planning and Assessment Act 1979, and is recommended for approval subject to conditions.

## REPORT IN FULL

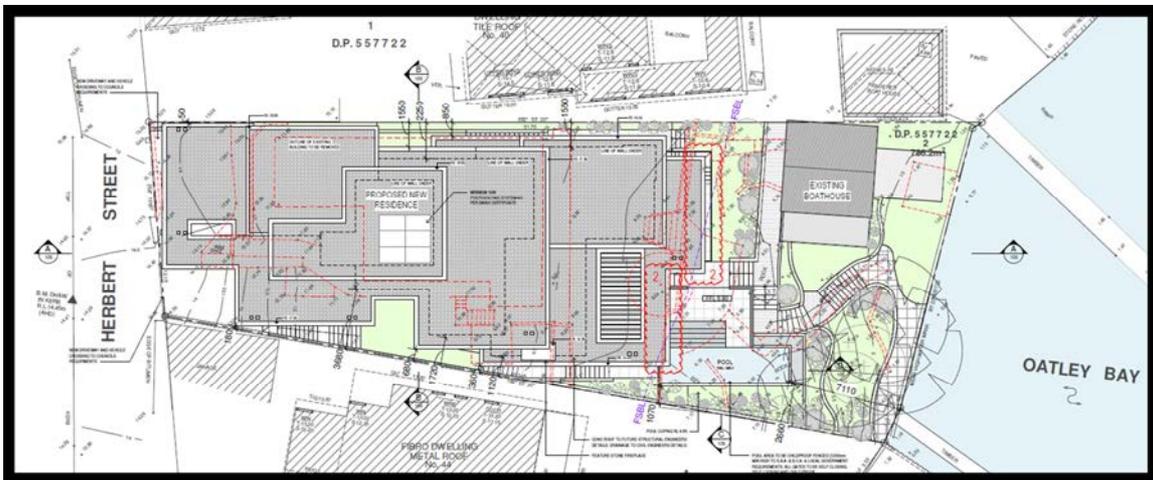
### Proposal

18. The DA proposes demolition works and construction of a new dwelling house and in-ground swimming pool.
19. The new development proposes a part two/part three storey development. In summary, the development proposes the following:
  - Demolition of the existing dwelling and carport;

- Upper level RL14.7: Double garage, carport (RL14.6), master bedroom with WIR and ensuite with north facing balcony (RL14.65);
- Ground floor RL 10.95: Kitchen/dining/living/pantry, WC, lounge room, laundry and store with a north facing terrace;
- Lower ground floor RL7.7: 3 bedrooms 2 with ensuites, bathroom, rumpus room and media room with a north facing terrace (RL7.65). The swimming pool is also access from this level (pool deck RL6.8);
- External stairs and pathways provided throughout the site and
- Lift access is provided to all levels of the development.

It is acknowledged the boatshed with terrace and jetty exist, no work proposed in this area of the site.

20. The site plan, front (south) elevation, and rear (north) elevation are provided below, to show the siting of the proposed building, it's appearance from the street, and from Oatley Bay.



Site Plan of proposed dwelling



South (street) elevation of proposed dwelling



**North (Oatley Bay) elevation of proposed dwelling**

**The Site and Locality**

21. The site has a street address of 42 Herbert Street, Oatley, and is legally described as Lot 2 in DP557722. The property is located on the northern side of Herbert Street, and has a rear waterfront boundary to the Georges River (Oatley Bay).
22. The site is slightly irregular in shape, with a southern boundary frontage to Herbert Street of 12.19m, an eastern side boundary length of 45.345m, a western side boundary length of 51.75m, and a northern boundary frontage of 20.955m to Oatley Bay. The site has an area of 786.2sqm (by survey).
23. The site has a steep fall of approximately 14m from the front boundary (RL15.2) to the rear (RL1.29), with an average gradient of 1:4 or 25%.
24. The site currently contains a part one/two storey dwelling house and carport (to be demolished as part of the proposal), and a detached fibro boat house to the rear of the site (to be retained as part of the proposal). There is also an existing timber jetty that provides access for the site to the Georges River which remains unaltered as part of this application.
25. Surrounding development on either side of the site consists of detached dwelling houses in a predominantly low density residential setting also cascading down steep sites. Land immediately to the south (opposite Herbert Street) forms part of Oatley Bay Reserve which is public open space with a substantial coverage of vegetation.
26. The subject site and the immediate adjoining properties are shown in the following photos.



**Subject Site – 42 Herbert Street Oatley**



**Adjoining property to the east – 44 Herbert Street Oatley**



**Adjoining property to the west – 40 Herbert Street Oatley**

### **Background**

27. The following is a brief summary of the history of this DA.
28. The DA was lodged on 27 April 2018. The DA was neighbour notified between 18 May and 1 June 2018. Three (3) submissions were received objecting to the proposal.
29. The submissions included view loss, height, and privacy impacts, together with concerns regarding the proposal's compliance with Council's planning controls (including height, floor space ratio, and the foreshore building line). A site inspection was undertaken of one of the objector's property to discuss the concerns on 25 June 2018.
30. Details of the concerns raised were discussed with the applicant. Amended plans (Revision D) were received on 21 August 2018, amending the following:
  - Clarification on FSR calculations (to confirm compliance with Kogarah LEP 2012);
  - Increase of the setback from the rear (Oatley Bay);
  - Adjustments/reduction in size of rear balconies/terraces to address potential privacy concerns, amendments of privacy screening to address view loss concerns;
  - Various adjustments to window form, sizes and positioning; and
  - Various internal layout changes.
31. The amended plans were re-notified from 23 August to 6 September 2018. A further four (4) submissions were received, raising similar issues to the original notification.
32. Details of the concerns were again provided to the applicant. In response, further amended plans (Revision F) were submitted by the applicant on 24 September 2018, which include the following amendments:
  - Reduction in levels by 300mm;
  - Adjustment of the roof overhang;
  - Windows in western elevation changed to obscure glazing, and re-configuration of windows to bedrooms; and
  - Re-configuration of internal stairs.

- 33. These amended plans were re-notified to neighbours from 11 October to 25 October 2018. A further four (4) submissions were received again raising similar issues to those previously raised.
- 34. As a total of eleven (11) submissions have been received to this DA, referral of this DA to the Local Planning Panel is required (as the number of submissions exceeds ten (10)). This information was clarified with the applicant via several emails in December 2018 and a formal meeting in Council’s offices on 21 December 2018.
- 35. This assessment report is based on the latest amended plans (Revision F) submitted by the applicant on 24 September 2018.

**PLANNING ASSESSMENT**

- 36. The site has been inspected and the proposed development has been assessed under the relevant Section 4.15(1) Matters for Consideration under the Environmental Planning & Assessment Act 1979.

**Zoning and Permissibility**

- 37. The site is zoned R2 – Low Density Residential under *Kogarah Local Environmental Plan 2012* (KLEP2012). The following is a map illustrating the zoning of the subject site and surrounding properties.



**Zoning Map**

**Relevant Planning Controls in Kogarah LEP 2012**

- 38. The extent to which the proposal complies with the relevant standards of Kogarah LEP 2012 is outlined in the table below.

Clause	Standard	Proposed	Complies
Part 2 - Permitted or Prohibited Development	Zoning: R2 Low Density Residential	The proposed development is permissible with consent in the zone.	Yes
	Objectives of the Zone: • To provide for the	The proposal is consistent with the objectives of the zone.	Yes

	<p>housing needs of the community within a low density residential environment;</p> <ul style="list-style-type: none"> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents</li> </ul>		
4.3 - Height of Buildings	9m as identified on Height of Buildings Map	<p>The height of the dwelling (as measured from highest point of the building to existing ground level below that point) varies due to the slope of the site, and ranges from:</p> <p>7.38m to 8.91m at the highest point.</p>	Yes
4.4A(2) Exceptions to floor space ratio for residential development in the zone R2.	<p>(2) Despite clause 4.4 (2), the floor space ratio for residential accommodation on land in Zone R2 Low Density Residential is not to exceed the maximum floor space ratio specified in the table to this subclause.</p> <p>For land with less than 800sqm but not less than 650sqm, the maximum FSR is obtained using the following formula:</p> $\frac{[(\text{lot area} - 650) \times 0.3 + 357.5]}{\text{lot area}}:1$ <p>The land has a site area of 786.2sqm. The maximum FSR and GFA (using the formula above) under this clause is:</p> <p>FSR: 0.51:1 Maximum GFA 400.96sqm</p>	<p>The development has a FSR calculated as follows:</p> <p>Lower Ground Floor: 150.38sqm</p> <p>Ground Floor: 157.53sqm</p> <p>First Floor: 64.03sqm</p> <p>Boathouse (detached from dwelling, to be retained): 28sqm</p> <p>Total: 399.94sqm Site Area: 786.2sqm</p> <p>FSR: 0.508:1</p>	Yes

5.10 – Heritage Conservation	Heritage impact statement required if site involves heritage item	Site does not contain or adjoin a heritage item.	N/A
6.1 – Acid Sulfate Soils	Acid Sulfate Soils Management Plan must be prepared	Site not affected by acid sulphate soils.	N/A
6.2 – Earthworks	To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of surrounding land	<p>The proposal involves excavation of up to 4m for the lower ground floor.</p> <p>This excavation is considered to be appropriate for a dwelling on a site with a significant slope, as it will have minimal impact on the natural features of the land, on the environmental functionality of the site (such as drainage etc.), and also ensures that the dwelling can be reduced in height so as to minimise impacts of bulk/scale upon neighbouring properties.</p> <p>The earthworks associated with this dwelling are considered to be acceptable.</p>	Yes
6.4 – Limited Development on foreshore area.	(1) The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.	The proposal will have minimal impact on the foreshore area given the dwelling is set above the existing boatshed which will remain on site.	Yes
	(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes: (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,	<p>The development proposes minimal impact in terms of the foreshore area.</p> <p>The dwelling is mostly located outside the foreshore area, except for a minor encroachment of the corners of the terraces (lower ground and ground floor) and the roofs over those terraces.</p> <p>The development also involves retention of an existing boathouse building</p>	No - Acceptable see comment below

		<p>which is located within the foreshore area.</p> <p>The development also proposes a swimming pool and terrace area within the foreshore area; however this is consistent with other dwelling houses in this location and is acceptable.</p>	
	b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,	<p>The Site has a significant slope from the street to the Bay. The dwelling has largely been designed so as not to significantly encroach into the foreshore area.</p> <p>The development form is considered to have appropriately addressed this clause.</p>	Yes
	(c) boat sheds, sea retaining walls, wharves, slipways, jetties, works to enable pedestrian access to the waterway, swimming pools, fences, cycleways or walking trails.	<p>Apart from the existing boathouse structure and jetty, this development does not propose any additional structures of this type within the foreshore area.</p>	Yes
	(3) Development consent must not be granted under this clause unless the consent authority is satisfied that: (a) the development will contribute to achieving the objectives for the zone in which the land is located, and;	<p>The development is consistent with the zone objectives and is representative of development form along the Bay.</p>	Yes
	(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and (iii) an adverse effect on drainage patterns, and	<p>The development will have a satisfactory appearance from the waterway and adjacent foreshore areas, and will be compatible with existing development.</p> <p>The drainage design is consistent with development on foreshore land.</p>	Yes

	<p>(c) the development will not cause environmental harm such as:</p> <p>(i) pollution or siltation of the waterway, or</p> <p>(ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or</p> <p>(iii) an adverse effect on drainage patterns,</p>	Potential environmental harm has been considered and will be suitably managed via conditions of consent.	Yes
	(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and	The development does not result in congestion or conflict between persons using the waterway, as the site is private property and there is no public access in this location.	Yes
	(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and	The subject site is private property and the development will not compromise access to the waterway.	Yes
	(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and	The subject land does not contain any historic, cultural, social, archaeologically significance forms.	Yes
	(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the	This application is for the removal of the existing dwelling and carport and the construction of a new dwelling, garage and associated works. The boatshed and jetty remain unaltered by this proposal.	Yes

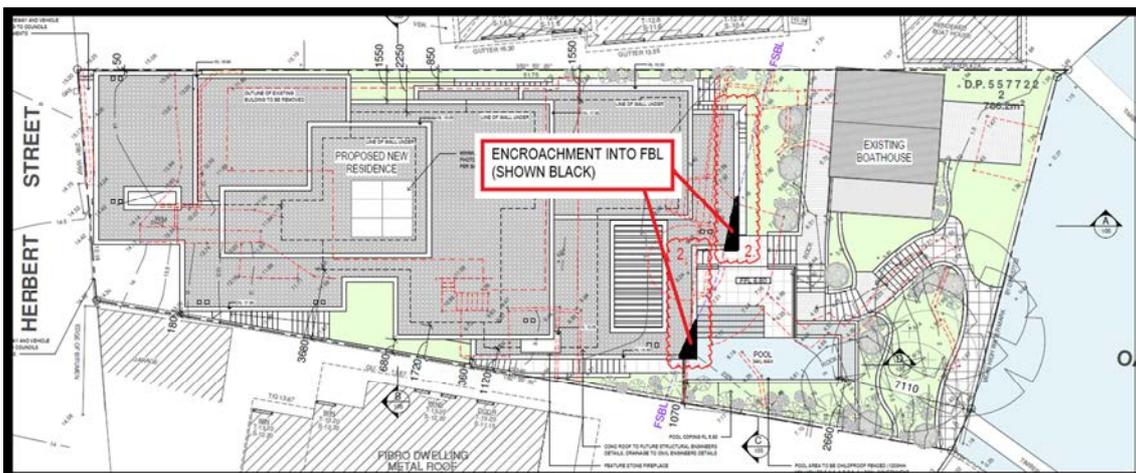
	foreshore, and		
	(h) sea level rise or change of flooding patterns as a result of climate change has been considered.	Lowest level of the dwelling is RL7.7 which is significantly higher than existing sea level. Any potential sea level rise as a result of climate change would be unlikely to impact on the proposed dwelling.	Yes

**Issues of Concern Regarding Compliance with Kogarah LEP 2012**

Clause 4.6 – Exceptions to Development Standards

Detailed Assessment of Clause 6.4 – Limited Development on Foreshore Area

- 39. Clause 6.4 in Kogarah LEP 2012 aims to ensure that development in the “foreshore area” will not impact on natural foreshore processes or affect the significance and amenity of the area.
- 40. The preceding table (Kogarah LEP 2012 provisions) indicates that the proposal is acceptable in terms of the controls in Clause 6.4.
- 41. In the Maps under Kogarah LEP 2012, in regard to the subject site, a Foreshore Building Line (FBL) has been set at 15m from the mean high water mark in Oatley Bay.
- 42. The foreshore building line has been indicated on the DA plans, which acknowledges there will be a small encroachment into the FBL for the lower ground floor and ground floor terraces, and the roof over those terraces. Due to the angle of the rear boundary and the shape of the dwelling, the encroachment occurs in two locations on the dwelling being the eastern side and towards the centre of the dwelling. The extent of the encroachment is a maximum of 900mm (measured from the FBL to the roof) at the eastern end of the dwelling, and 740mm (to the roof) in the centre of the dwelling, as illustrated in the following diagram.



**Marked-up site plan of proposed dwelling, showing extent of encroachment into the Foreshore Building Line**

Request for Variation under Clause 4.6 Kogarah LEP 2012

- 43. The development seeks a non-compliance of the foreshore building line, the proposal has been accompanied by a request for variation under Clause 4.6 of Kogarah LEP 2012, which is assessed below.

44. In a recent decision (*Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118*), the NSW Land and Environment Court has established a “five part test” for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation. These are set out below, together with commentary in respect of the proposed development.

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

46. Comment: Subclause (1) of Kogarah LEP 2012 states that: *The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.*”

47. The applicant has provided the following response regarding the proposal’s compliance with the objectives of the development standard.

*The proposed roof overhang will not impact upon the natural foreshore processes in any way, as it does physically not interact with the foreshore (i.e. it is raised and projects over the FBL).*

*The overhangs are set within the site away from side boundaries (in excess of any side setback requirements), and are north facing, therefore there will be no adverse effect on the amenity of adjoining neighbours in terms of loss of sunlight or outlook.*

*The roof encroachment into the FBL will be imperceptible when viewed from the water and in the context of wider development and neighbouring sites. The significance of the area will be undiminished as a result of the encroachment. Rather, a high quality contemporary building will replace a low quality building thereby enhancing the site’s significance. The minor encroachment beyond the FBL ensures that a coherent design is maintained.*

*The proposed development is therefore consistent with the objectives for development in the foreshore area, despite the non-compliance.*

48. Officer Comment: The proposed development will sit behind the line of neighbouring dwellings, particular the 40 Herbert Street to the west of the site, so therefore the dwelling will have minimal impact on the significance and amenity of the area. Further, the dwelling and its related components are set well back from the shoreline and so it will have minimal impact on natural foreshore processes. The development generally satisfies the objectives of the foreshore building line control and is therefore satisfactory despite the numerical non-compliance.

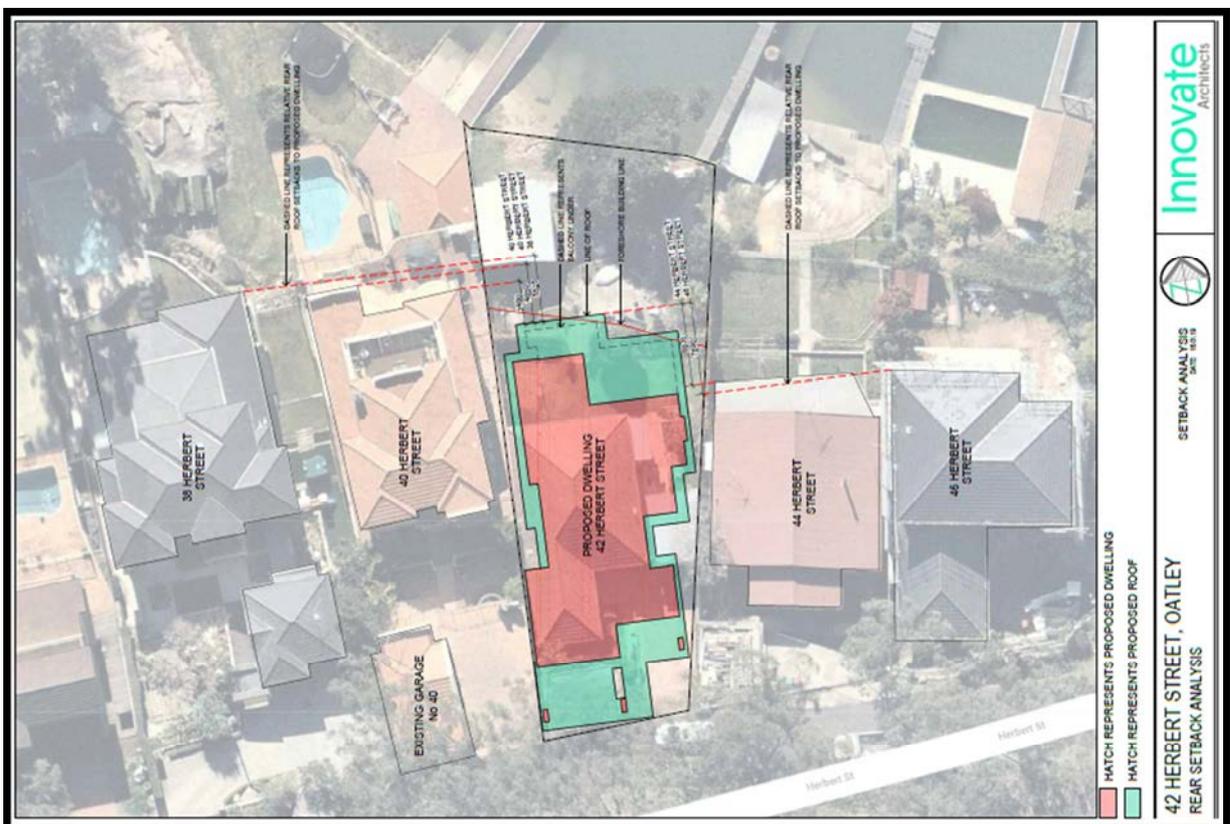
49. **2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary:**

50. Officer Comment: As noted in the applicant’s response above, the development will have no impact on natural foreshore processes, because the encroaching part of the building is raised and projects over the foreshore building line. It is agreed that the encroachment will also be imperceptible when viewed from the water, because the proposed dwelling will sit further within the site than the line of the rear of dwellings associated with recently approved dwellings in this location. Accordingly, it is

considered that the proposal addresses the underlying objectives of the standard, and numeric compliance is not considered necessary.

51. **3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;**
52. Officer Comment: The provisions of the Environmental Planning and Assessment Act 1979 require a degree of flexibility to be applied in assessment of development proposals. Whilst a dwelling fully compliant with the foreshore building line would not defeat or thwart the underlying objective/purpose of the control, it is considered that the objectives of the control can still be met by the proposal which involves a minor non-compliance to the control.
53. Compliance with the foreshore building line should be more strictly enforced in relation to the walls/floor space of a residential dwelling. However in this instance, the breach of the foreshore building line only occurs as a result of minor portions of the terraces and the roofs over those terraces.
54. **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;**
55. Officer Comment: There have been other dwellings approved with encroachments into the FBL in the immediate vicinity of the site. In particular, the dwelling at 46 Herbert Street (approximately 25m to the east) was approved in 2015 with an encroachment into the foreshore building line (up to 3.4m) significantly greater than that proposed of the dwelling (up to 900mm). Other dwellings in this location have been approved with flexibility regarding the foreshore building line, and accordingly, strict compliance is not necessary in this instance.
56. Council generally strictly enforces compliance with the foreshore building line, and so it cannot be said that this control has been abandoned or destroyed. However in keeping with the intent of the Environmental Planning and Assessment Act 1979, variation to the foreshore building line generally only supported to a minor extent in development proposals, where it can be demonstrated that there will be no adverse impact. This is considered to be the case in this instance, where a small variation is warranted.
57. **5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**
58. Officer Comment: The existing use of this land and immediately adjoining land is for low density residential purposes in a waterfront location. Some of the immediately adjoining properties contain dwellings with encroachments into the foreshore building line to an extent greater than the proposed development.
59. **Conclusion – Assessment of Clause 4.6 Request for Variation:**
60. Despite the non-compliance in terms of the FBL, the proposal is considered to be acceptable for the following reasons:

- (a) The encroachment into the FBL occurs only at two “points” of the lower ground and ground floor terrace areas (and the roof over those terraces) rather than an entire section of wall. This is due to the angle of the rear boundary and the shape of the dwelling. The above diagram also shows that much of the dwelling, including terraces and roofs, will be well beyond the FBL.
- (b) The extent of the encroachment being up to 900mm at the maximum point is visually negligible.
- (c) The encroachment into the FBL does not give rise to any significant issues regarding impacts on neighbouring properties, such as visual bulk or view loss (such issues have been discussed at length throughout this report).
- (d) There have been other dwellings approved with encroachment into the FBL in the immediate vicinity of the site. In particular, the dwelling at No 46 Herbert (approx. 25m to the east) was approved in 2015 with a significantly greater encroachment up to 3.4m than that proposed in this dwelling being up to 900mm).
- (e) Generally, the position of the rear of the proposed dwelling will be compatible with the “rhythm” established by the immediate neighbours along this section of Herbert Street (refer to aerial photo earlier in this report). In particular, the rear of the dwelling will sit slightly behind the dwelling to the west (40 Herbert Street), and therefore the encroachment would be indiscernible when viewed from either the water or from any adjoining property.
- (f) This is illustrated by the following drawing, being an air photo showing the position of the proposed dwelling relative to neighbouring dwellings:



**Aerial photo of subject property showing rear setbacks of the proposed dwelling relative to neighbouring properties**

### State Environmental Planning Policies

61. Compliance with the relevant state environmental planning policies is summarised in the table, and discussed in more detail below.

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
State Environmental Planning Policy (Coastal Management) 2018	Yes

### Deemed State Environmental Planning Policy – Georges River Catchment

62. All stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and will satisfy the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment.

### State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

63. A BASIX Certificate has been issued for the proposed development and the commitments required under the certificate have been satisfied.

### State Environmental Planning Policy No 55 - Remediation of Land

64. SEPP 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment.
65. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.
66. The site has a history of residential uses and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regard to site contamination.

### Draft Remediation of Land SEPP

67. The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.
68. The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.
69. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land.
70. The subject site has a history of residential use and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regards to site contamination.

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

71. The Vegetation SEPP regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
72. The Vegetation SEPP applies to clearing of:
- a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
  - b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).
73. The Vegetation SEPP repeals clause 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable DCP.
74. The proposed development does not involve the removal of any significant trees or vegetation. In this regard, the provisions of this SEPP are considered to be met.

**State Environmental Planning Policy (Coastal Management) 2018**

75. SEPP (Coastal Management) 2018 updates and consolidates three previous SEPPs (SEPP 14 Coastal Wetlands, SEPP 26 Littoral Rainforests, SEPP 71 Coastal Protection) into one new Policy and is a matter for consideration for the current DA.
76. Under SEPP (Coastal Management) 2018, the subject site is mapped as a Coastal Environment area and a Coastal Use area. These have the following management objectives under the SEPP:
77. **Coastal Environment Area:** The management objectives for the coastal environment area are as follows:
- (a) *to protect and enhance the coastal environmental values and natural processes of coastal waters, estuaries, coastal lakes and coastal lagoons, and enhance natural character, scenic value, biological diversity and ecosystem integrity,*
  - (b) *to reduce threats to and improve the resilience of coastal waters, estuaries, coastal lakes and coastal lagoons, including in response to climate change,*
  - (c) *to maintain and improve water quality and estuary health,*
  - (d) *to support the social and cultural values of coastal waters, estuaries, coastal lakes and coastal lagoons,*
  - (e) *to maintain the presence of beaches, dunes and the natural features of foreshores, taking into account the beach system operating at the relevant place,*
  - (f) *to maintain and, where practicable, improve public access, amenity and use of beaches, foreshores, headlands and rock platforms.*
78. **Coastal Use Area:** The management objectives for the coastal use area are as follows:
- (a) *to protect and enhance the scenic, social and cultural values of the coast by ensuring that:*
    - (i) *the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and*

- (ii) *adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and*
- (iii) *urban design, including water sensitive urban design, is supported and incorporated into development activities, and*
- (iv) *adequate public open space is provided, including for recreational activities and associated infrastructure, and*
- (v) *the use of the surf zone is considered,*

(b) *to accommodate both urbanised and natural stretches of coastline.*

79. Officer Comment: Generally, the proposed development is consistent with the above management objectives. Many of these relate to areas of coastline, beaches, surf zone etc which are not applicable to the proposed development which is located on the frontage to a bay of the Georges River (Oatley Bay). Consistency with other management objectives is assessed in detail throughout this report and is captured by assessment under applicable provisions of Kogarah LEP 2012 and Kogarah DCP 2013.
80. The following is an assessment of the matters for consideration listed under the SEPP as applicable to the Coastal Environment Area and Coastal Use Area.

<b>SEPP Control</b>	<b>Proposal</b>	<b>Complies</b>
<b>13. Development on land within the coastal environment area</b>		
(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:		
(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,	Surface water runoff is to be managed in accordance with the approved stormwater management plan and relevant conditions imposed. The proposal is generally satisfactory subject to conditions.	Yes
(b) coastal environmental values and natural coastal processes,	The proposal is used for residential purposes and will unacceptably impact the coastal environmental values and there is not impact on coastal processes.	Yes
(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,	Appropriate standard conditions to be imposed to ensure water quality is maintained. The site is not located on any of the sensitive coastal lakes identified in Schedule 1.	Yes
(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,	There will be no unreasonable impact upon these features. The site will be landscaped in accordance with the submitted landscape plan to replace and	Yes

	embellish existing vegetation along the foreshore.	
(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	Subject site and immediately adjoining sites are privately owned, with no public access to this part of the Oatley Bay foreshore.	Yes
(f) Aboriginal cultural heritage, practices and places,	The allotment is not known as a place of Aboriginal significance. There is no impact in terms of Aboriginal heritage.	Yes
(g) the use of the surf zone.	The development is not located near the surf zone.	NA
(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:		
(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or	The proposal is generally satisfactory in terms of impact as discussed throughout this report	Yes
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The proposal is generally satisfactory and has been designed to reduce impacts.	Yes
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact	The proposal is generally satisfactory and has been designed to minimise impacts.	Yes
<b>14 Development on land within the coastal use area</b>		
(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:		
(a) has considered whether the proposed development is likely to cause an adverse impact on the following:		
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,	There is no public access in this location.	Yes
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,	Property is on southern foreshore with no overshadowing impacts. There will be minimal impact in terms of wind tunnelling and loss of views from public places.	Yes
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,	The proposal is a cascading development form following the topography of the site. This development form is no inconsistent with the development forms immediately adjoining and along the bay.	Yes
(iv) Aboriginal cultural heritage, practices	The property is not a known site of	Yes

and places,	Aboriginal heritage.	
(v) cultural and built environment heritage, and	The site does not contain or adjoin any heritage items.	Yes
(b) is satisfied that:		
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or	Proposal is generally satisfactory in terms of impact as discussed throughout this report.	Yes
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or	The development does not result in any unreasonable impacts.	Yes
(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and	The development does not result in any unreasonable impacts.	Yes
(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.	Development is generally satisfactory in terms of the built form controls in Kogarah LEP 2012 and DCP 2013. The development form and scale is not inconsistent with the built form immediately adjoining and that of the visual catchment.	Yes

## Draft Environmental Planning Instruments

### Draft Environment SEPP

81. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018.
82. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.
- Changes proposed include consolidating the following seven existing SEPPs:
  - State Environmental Planning Policy No. 19 – Bushland in Urban Areas
  - State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
  - State Environmental Planning Policy No. 50 – Canal Estate Development
  - Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
  - Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
  - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
  - Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.
83. The proposal is consistent with the provisions of this Draft Instrument.

### Development Control Plans

#### Kogarah Development Control Plan 2013

84. The proposed development has been assessed against the requirements of Part C1 – Low Density Housing in Kogarah DCP 2013, as indicated in the following table.

Clause	Standard	Proposed	Complies
Part C1 – Low Density Housing			

<b>1.1 Streetscape Character</b>			
1.1 Streetscape Character	<p>1. A Streetscape Character Analysis (SCA) must be submitted as part of any Development Advisory Service (DAS) application for the following:</p> <ul style="list-style-type: none"> <li>- New dwellings</li> <li>- Alterations to the front elevation and or two level additions to an existing dwelling</li> <li>- Attached dual occupancy</li> <li>- Detached dual occupancy</li> </ul>	<p>The DA documentation has included a SCA, which includes a photographic analysis of the existing streetscape, as well as an assessment of how the development responds to the streetscape.</p> <p>When viewed from the street, the development proposes a single storey structure, with garage/carport area within the front of the site the with carport being forward of the dwelling.</p> <p>The existing site characteristics being steep topography and also a relatively narrow road carriageway has resulted in this form of development being the characteristic in this location. The development is considered to be satisfactory in terms of streetscape considerations – subject to conditions of consent including deletion of the covered area in front of the garage.</p>	Yes
1.2.1 Floor space Requirements	FSR to comply with the provisions of Kogarah LEP 2012, FSR for this site is a max 0.51:1.	FSR proposed is 0.508:1.	Yes
	<p>(3) Bulk and relative mass is required to be acceptable in terms of the following impacts:</p> <ul style="list-style-type: none"> <li>(i) streetscape considerations (bulk and scale);</li> <li>(ii) building setbacks;</li> <li>(iii) landscape requirements;</li> <li>(iv) the existence of significant trees/vegetation on site;</li> </ul>	<p>The proposal is considered to be acceptable in terms of its height and bulk when viewed from the street and from adjoining properties. The dwelling has been designed to be sympathetic to its location and the topography of the site. The site will be appropriately landscaped for a foreshore development.</p>	Yes

	(v) the size and shape of the allotment; and (vi) topography of the site.		
	(5) Blank walls and flat facades should be avoided. Walls longer than 10m should be articulated by a minimum 300mm projection or indentation in the façade.	<p>The development proposes good articulation to all facades. No blank walls or flat facades proposed. No walls longer than 10m are proposed.</p> <p>Concern has been raised by the neighbour at No 40 regarding bulk and scale impacts from the garage/sub-floor area wall on the western side. Whilst this is 8.2m long (ie less than 10m), it would potentially have visual bulk impacts when viewed from the neighbour's side. It is recommended that the garage be shortened by 1m on the northern side of the garage so as to minimise visual bulk impacts from the neighbour's side. This is addressed via a condition of consent.</p>	Yes
	(6) The overall building should present a building mass that is in proportion with the allotment size, provides opportunities for modulation and articulation of the building and does not detract from the satisfaction of any other applicable design principle.	The proposal presents a building mass that is in proportion with allotment size, and is compliant with the maximum FSR for the site and also building height. The building also fully complies with the DCP setback requirements, subject to conditions requiring deletion of the covered area in front of the garage and also increasing the side setback of the garage/sub-floor area on the western side.	Yes
	(7) Where proposed development includes a two (2) residential level element, then the second level should not extend beyond 60% of	The development proposes a part two/part three level development. The rear part of the dwelling contains a small encroachment beyond the line of 60% of	No

	the depth of the allotment measured from the street boundary. Where side boundaries are of varying length, the second level is limited to a line across the block between the points on both boundaries.	the length of the allotment. This is discussed in detail later in this report.	
1.2.2 Building Height	The maximum building height must comply with the requirements specified in the table below: Single dwelling – 7.2m to the underside of the upper ceiling	Ceiling height at clerestory ceiling: RL18.6  EGL below: RL10.4 (under existing dwelling)  Ceiling height = 8.2m at clerestory ceiling.  Ceiling height at top floor ceiling: RL17.5 EGL below: RL9.04  Ceiling height = 8.44m at top floor ceiling	No
	7.8m to the top of the parapet  9m to the top of the ridge (pitched roof)	The dwelling proposes a parapet roof.  Height above clerestory:  Parapet RL19.05 EGL below: RL 10.4 (under existing dwelling)  Height above clerestory = 8.65m  Height above topmost floor:  Parapet RL17.95 EGL below: RL 10.4 (under existing dwelling)  Height above topmost floor = 8.91m	No
	(2) The maximum number of residential levels is two (2), except where the site has a slope exceeding 1:8 (12.5%), where the	The site has an overall slope of approximately 1 in 4 or 25%. The sloping nature of the site exceeds 1 in 8 (12.5%) and therefore Council is able to	Yes

	maximum number of residential levels is three (3).	consider a three level dwelling on this site.  The proposed dwelling contains three residential levels, and will present as a three level dwelling when viewed from Oatley Bay. The dwelling presents as a single level dwelling from Herbert Street.	
	(3) Regardless of the number of levels, the maximum height of the building must be consistent with the maximum height requirements.	The development is consistent with the maximum height requirement of 9m (as prescribed in Kogarah LEP 2012)	Yes
	(4) Foundation areas, garages, basements, storage rooms or the like must not have an external wall height greater than 1m above ground level (existing) at any point on the building.	The sub-floor area below the garage has an external wall height of some 3.75m at the highest point.	No
	(5) Where the dominant built form in the streetscape is single level, new buildings and alterations and additions should present as a single level building to the street. Any second level element is to be setback a minimum of 10m from the street boundary.	The dominant built form in the street is single storey, and in keeping with this existing streetscape, the proposed dwelling will be single storey when viewed from the street.	Yes
	(10) Rooftop terraces are prohibited in dwelling houses, dual occupancy development and secondary dwellings.	No rooftop terraces are proposed.	Yes
1.2.3 Rhythm of the Built Elements in the Streetscape	(1) The primary building façade should not exceed 40% of the overall width of the total frontage	In this instance, the primary building façade (consisting of the garage) is 6.87m wide, or 55% of the width of the frontage.	No
	(2) The secondary building façade should	The secondary building façade (consisting of the	Yes

	be set back a minimum of 1.5 metres from the primary building façade	entry door and the master bedroom beyond) is setback approx. 4.7m behind the primary façade.	
	(3) Where the dominant built form in the streetscape provides for a pitched hip or gable ended presentation to the street, the new buildings and/or additions should reflect that roof form.	The roof form of the dwellings in the immediate vicinity contain both pitched roofs and also flat/parapet roofs. The proposal is considered to be not unreasonable given the streetscape forms.	Yes
1.2.4.2 Front Setbacks	1) Where the setback of an adjacent building is greater than 5m, an appropriate setback may be achieved by ensuring development is set back: (i) the same distance as one or the other of the adjoining buildings, provided the difference between the setbacks of the two adjoining buildings is less than or equal to 2.0m.	The setbacks of adjacent buildings are less than 5m – i.e. the garage on 40 Herbert St (to the west) and also the carport of 44 Herbert St (to the east) are built to the front boundary (i.e. zero setback) in this instance.  The development proposes a front setback of 6.06m to the front wall of the garage which is considered acceptable. It is noted that the development also proposes a covered area within this 6.06m front setback however this is proposed to be deleted as a condition of consent.	N/A
	(2) Where the setbacks of the adjacent buildings are 0m-5.0m, an appropriate setback may be achieved by ensuring development is set back the same distance as one or the other of the two adjoining dwellings.	The existing setbacks of adjoining buildings would require the front setback of the proposal to be at the front boundary.  The development proposes a front setback of 6.06m to the front wall of the garage, which strictly does not comply with the DCP requirement.  As noted, the development proposes a covered area in front of the garage, which is not acceptable, and is proposed to be deleted via condition. The	Yes

		development already proposes a double garage with adjoining carport, and so a covered area in front of the garage is considered excessive in terms of structures in front of the building line, and therefore the covered area is proposed to be deleted via condition of consent.	
1.2.4.3 Side and Rear Setbacks	<p>Single dwelling, dual occupancy, development and secondary dwellings (attached to primary dwellings)</p> <p><b>Rear Setbacks</b> Buildings are to have a minimum rear setback of 15% of the average site length, or 6m, whichever is greater.</p> <p>Where the existing pattern of development displays an established rear setback, development should recognise and respond to site features and cross views of neighbouring amenity.</p>	<p>The site has a length of 51.75m, and therefore the minimum rear setback is 7.76m.</p> <p>However, in this instance as a waterfront property, there is a foreshore building line requirement of 15m.</p> <p>The development proposes a rear setback of 17.73m (to the closest point of the new dwelling), which complies with both the FSBL and also the rear setback requirement of the DCP.</p> <p>(It is noted that the subject site contains an existing/approved boathouse with a rear setback of approximately 5m)</p>	Yes
	<p><b>Side Setbacks</b> For buildings having a wall height of 3.5m or less, the minimum side boundary setback is 900mm. For buildings having a wall height of greater than 3.5m the minimum side boundary setback is 1200mm.</p>	<p>The development proposes a part 2/part 3 storey dwelling with a total wall height greater than 3.5m.</p> <p>The proposed side setbacks are:</p> <p>Western side: ranging from 250mm (garage) to 2250mm.</p> <p>Eastern side: 1200mm (to the closest point)</p>	No (proposed garage setback of 250mm does not comply)
1.2.5	(1) New buildings and	The proposed building	Yes

Fenestration and External Materials	alterations and additions should present a primary building façade and roofing that is constructed of materials, and within a colour range, that is complementary to the dominant character of buildings in the streetscape.	materials are contemporary in nature, and will be of a colour and range of materials that is complementary with the existing/desired future character of the locality.	
	(2) Garage doors should not dominate the street front elevation	<p>The garage presents as the “primary frontage” of this dwelling, and exceeds the maximum 40% prescribed for primary frontages.</p> <p>The garage will therefore be a dominant feature of the proposed dwelling in the streetscape.</p> <p>However, the proposed garage arrangement is consistent with the streetscape established by immediately adjoining dwellings and is considered acceptable (subject to deletion of the covered area in front, as discussed throughout this report).</p>	No
	(3) The roof should be similar to the angle of pitch, materials and colour of roofs in the streetscape	The streetscape consists of predominantly pitched roofs; however flat/parapet roof forms also exist. The form of the proposed roof is compatible with the existing dwellings in the streetscape and considered to be acceptable.	Yes
	(4) The colours of garages, window frames, and balustrading on main facades and elevations are to be integrated with the external design of the building.	Contemporary in nature, well integrated into the design of the dwelling, and considered acceptable.	Yes

	(5) Glazing shall be limited to a maximum 35% of the total area of the overall street front façade. This includes both primary and secondary façade bays.	Minimal glazing (less than 10%) to street front façade due to design which positions the garage and solid front door at the front of the dwelling.	Yes
	(6) Where garaging is in the front façade it should be limited to a maximum of two garage bays, with separate garage door openings of a maximum width of 3m.	Garaging is in front façade, and has a double garage door 6.410m wide, rather than two single bays.  The carport adjacent to the garage does not have any front garage door.	No
1.2.6 Street Edge	(1) New developments should provide front fencing that complements fencing within the streetscape.	No new front fencing (ie along the frontage of the site) is proposed.	Yes
	(2) Fencing is to be consistent with the requirements of Section 4.2.	No new fencing (along the frontage of the site) is proposed.	Yes
	(3) Existing vegetation in the front building line setback or on the street verge that contributes to the character of the streetscape should be preserved.	Subject site contains no existing vegetation within front setback area.  A small amount of shrub planting is proposed as per the landscape plan	Yes
	(4) The driveway location should not result in the removal of any street trees or removal of substantial trees on the site.	Driveway does not involve tree removal	Yes
1.3 Open Space	(1) 15% of the site area must be deep soil landscaped area.	Deep soil landscaped area calculated at 136sqm or 17.3%.	Yes
	(2) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	Private open space areas are adjacent and visible from main living and dining rooms.	Yes
	(3) Development should take advantage of opportunities to provide north facing private open space to achieve comfortable year-round	Private open space is on the northern side of the dwelling.	Yes

	use.		
	(4) Where soil and drainage conditions are suitable, unpaved or unsealed landscaped areas should be maximised and designed to facilitate on site infiltration of stormwater.	The development proposes a mix of paved and soft surface areas, and infiltration of stormwater will be maximised.	Yes
	(5) Existing significant trees and vegetation must be incorporated into proposed landscape treatment.	Site contains very few existing trees. Development proposes removal of trees along the waterfront, which is supported by Council's Consultant Arborist due to their declining health subject to replacement planting of the same species as those existing.	Yes
1.4 Vehicular access, parking and circulation	(1) Car parking is to be provided in accordance with the requirements in Section B4. Two (2) car parking spaces required.	Three (3) car parking spaces provided in accordance with the requirements in Section B4 – in the form of the double garage and carport adjoining. The covered area in front of the garage is not supported and is proposed to be deleted as a condition of consent.	Yes
	(3) Garages should be accessed from a rear lane where this is available.	The site has no rear lane access.	Yes
	(4) Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.	At the frontage of the subject site, Herbert Street is a single width carriageway, with minimal opportunity for on-street parking on this side of Herbert Street. The proposal does not involve removal of street trees.	Yes
	(5) Garaging should be setback behind the primary façade.	Garage is the primary façade of the dwelling, and is therefore not setback behind it.	<b>No</b>
	(6) The maximum driveway width between the street boundary and the	Development proposes 6.41m and 5.5m, which does not comply with the DCP requirement.	No

	primary building façade is 4m		
	(7) Where the dominant provision of garaging within the streetscape is provided to the rear or side of developments, new developments and additions to existing Development should provide for a side driveway or garaging behind the main street front elevation of the building.	The dominant position of garaging on immediately adjoining properties in this particular location is at the front boundary. The proposed garage is set back 6.06m.	Yes
1.5.1 Visual Privacy	(1) Windows from active rooms are to be offset between adjacent dwellings so as to avoid direct overlooking onto neighbouring windows.	<p>Adjacent neighbours are to the east and west.</p> <p>All windows in the west elevation are either obscure glass and/or have high sill height windows.</p> <p>On the east elevation, the internal layout of the dwelling has been designed so that the majority of rooms with east-facing windows are either bedrooms or windows to void spaces. There is a lounge room with an east-facing window, however it's placement is such that it is offset from the windows in the neighbouring property.</p> <p>The windows are designed so as to reduce the privacy impacts on the immediate neighbours.</p>	Yes
	(2) Where terraces and balconies are proposed and are elevated more than 1.5m above ground level (finished) and are located behind the street front façade, they are restricted to a maximum width of 2.5m and must be setback a minimum 3m from any	<p>The development proposes a number of terrace areas elevated more than 1.5m above finished ground level:</p> <ul style="list-style-type: none"> <li>• <u>Upper level</u>: Contains a 10.8sqm balcony (6.1m x 1.8m) off the master bedroom – and setback 2.55m from the eastern</li> </ul>	No

	<p>adjoining property boundary.</p>	<p>boundary, which is compliant.</p> <ul style="list-style-type: none"> <li>• <u>Ground level:</u> Contains a terrace 43.025sqm (dimensions 7.3m x 4.25m and 2.5m x 4.8m) off the living/dining rooms. The terrace has setbacks of 2.15m from the eastern boundary and 2.83m from the western boundary and is non-compliant in this location.</li> <li>• <u>Lower ground level:</u> Contains a terrace 34.6sqm (dimensions 3m x 5.7m and 3.5m x 5m) off the rumpus room/bedrooms. The terrace has setbacks of 1.07m from the east boundary and 2.83m from the western boundary and is non-compliant in this location.</li> </ul>	
	<p>(3) The area of balconies or terraces greater than 1.5m above ground level is limited to a cumulative total of 40sqm per dwelling.</p>	<p>Lower GF terrace – 34.6sqm                  Ground Floor terrace – 43.025sqm                  First Floor Balcony – 10.8sqm                   Cumulative total: 88.425sqm</p>	<p>No</p>
	<p>(4) Council may consider a variation to the above requirements where it is considered that the terrace or balcony will not result in a loss of privacy to neighbouring properties.</p>	<p>Despite numerical non-compliance, it is considered that a variation is justified, the terraces have been designed so as to not result in privacy impacts on neighbours. This is discussed in detail later in this report.</p>	<p>Yes - see discussion below.</p>
	<p>(5) For active rooms or balconies on an upper level, the design should incorporate placement of room windows or</p>	<p>The active rooms, and the balconies adjoining them, have been design to include sensitively designed windows and</p>	<p>Yes</p>

	screening devices to only allow oblique views to adjoining properties.	screening devices to minimise potential overlooking into neighbours.	
	(6) Loss of privacy to neighbouring properties, as a result of a proposed development, will only be considered where a variation is sought to the objective or the design solution for floor space ratio, building height, building envelope, side boundary setbacks, and extent of second level development or size of balcony/terrace.	Whilst the proposal does involve a variation to the DCP in terms of ceiling height and top of parapet height, and area of terraces, it is not considered that these areas of non-compliance result in unreasonable loss of privacy to neighbours. The proposal is considered to be acceptable in terms of this clause, and in terms of privacy impacts on neighbours.	Yes
1.6 Solar Access	(1) At least 50% of the primary private open space of the proposed development should have access to a minimum of four hours of sunlight between 9am–3pm on 21 June.	The private open space is located on the northern side of the proposed dwelling, and the shadow diagrams indicate that the development will receive well over 4 hours of sunlight during the winter solstice.	Yes
	(2) Where private open space is proposed on the southern side of the building the distance from the southern boundary of the open space to the nearest wall to the north must be a minimum of 3m + h, where h is the height of the wall.	Not applicable – the private open space is on the northern side of the dwelling	Yes
	(3) Where the neighbouring properties are affected by overshadowing, at least 50% of the neighbouring existing primary private open space or windows to main living areas must receive a minimum of 3 hours sunlight between 9am–3pm on 21 June.	Shadow diagrams have been submitted showing impacts on both neighbours. Given the orientation of the site, the development will impact on the property at 40 Herbert St (to the west) between 9am and 12noon; and the property at 44 Herbert St (to the east) after 12noon.  The private open space of	Yes

		both adjoining properties is located to the north. The position of the proposed dwelling will ensure that the private open space areas of the neighbours both receive greater than 3 hours sunlight during the winter solstice, thus ensuring compliance with the DCP control.	
	(4) Shadow diagrams are to be submitted for the winter solstice (21 June) and the spring equinox (22 September).	Shadow diagrams have been submitted for the winter solstice and the spring equinox.	Yes
	(5) Shadow diagrams are required to show the impact of the proposal on solar access to the open space of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams.	Shadow diagrams show the required detail in terms of neighbouring properties.	Yes
1.7 Views and View Sharing	(1) Development shall provide for the reasonable sharing of views. Assessment of applications shall refer to the L&E Court Planning Principle <i>Tenacity Consulting v Warringah Council (2004) NSWLEC140</i> .	A comprehensive assessment in terms of views/view sharing is made in the 'Submissions' section of this report. In summary, the proposal is acceptable in terms of views/view sharing considerations.	Yes
<p><b>Part C3 Foreshore and Waterfront Development</b></p> <p>This part provides performance standards and controls for ancillary development that is below the Foreshore Building Line (FBL) and/or along the waterfront, above, on, or below Mean High Water Mark (MHWM).</p> <p>The objectives of these controls must be read in conjunction with the specific Foreshore Locality controls contained in Section C4. Some Locality controls may override what is generally permitted under this part.</p>			
6.1 General Objectives and Controls	(1) Council will not grant consent for residential waterfront structures to land which does not have frontage to the waterway. This includes allotments which only	<p>The proposed development has a frontage to the Georges River waterway (Oatley Bay).</p> <p>The subject site contains an existing boathouse on</p>	Yes

	have a right of way to the waterway.	the northern side of the site, which is to be retained, and no works are proposed to this building as part of this DA.	
	(2) Where an existing allotment has a water frontage of less than 9 metres, Council will not permit waterfront structures unless they are shared.	The site has a boundary to Oatley Bay of 20.12m. The development does not propose any new waterfront structures.	Yes
6.6 Swimming Pools/Spa Pools – apply to swimming pools between MHW and the foreshore building line. Swimming pools and spa pools will not be permitted below MHW.	(1) Any swimming pool or spa pool is to be sited as close to natural or existing ground level as possible. In this regard, the coping level of swimming pools and spa pools is not to be elevated more than 500mm above natural or existing ground level.	A swimming pool is proposed, which is partly excavated below natural ground level. The level of the pool will be RL 6.8, with an “infinity edge” to the northern side.  The site has a steep slope in this location, and existing ground level at the pool edge is RL4.5, for a coping level of up to 2.3m above existing ground level. This does not comply.	No
	(2) Any exposed edge is to have the natural or existing ground level reinstated and be suitably landscaped with mature trees and landscaping so as to reduce the visual impact from the waterway	The edge of the pool is an “infinity edge” with a small amount of pool tiles set against a background of feature sandstone panels. The landscape plan shows that the area between the pool and the boundary (to Oatley Bay) will be landscaped to minimise visual impact when viewed from the water, this is considered acceptable.	Yes
	(3) The construction of swimming pools and spa pools below the FBL and above MHW should avoid reshaping of the landform and removal of native vegetation and significant trees. In areas where the construction of a pool will necessitate	The pool is located mostly below the FBL; its design has had regard to minimising excavation, so that the natural features are retained where possible.	Yes

	excessive excavation or the removal of significant vegetation, the siting of the pool may be restricted to above the FBL. The Foreshore Locality Controls specify areas where this may be required.		
	(4) Pool/spa fencing that is visible from the foreshore/water must be open or transparent and must be of a colour that blends into the landscape character of the waterway.	Pool fencing will be toughened glass panels to provide an open appearance when viewed from Oatley Bay.	Yes
6.10 Landscaping	(1) Natural features along the foreshore are to be retained and the removal of natural rock, trees and vegetation to enable the construction of landscaping will not be supported.	Proposal generally retains natural features along the foreshore. The proposal does involve removal of three x <i>Cupaniopsis anacardiodes</i> (tuckeroo) trees along the water's edge, which have been identified as being dangerous/weight loaded. Replacement planting of the same species is proposed as per the landscape plan.	Yes
	(2) Natural ground levels are to be retained with minimal use of retaining walls.	The development proposes a retaining wall to a height of approximately 1m within the foreshore area; otherwise the natural ground levels are retained.	Yes
	(3) Endemic native species should be used in areas where native vegetation is present or has the potential to be regenerated.	The landscape plan has been assessed by Council's Consultant Arborist and is satisfactory subject to conditions.	Yes
	(4) Exotic species that have the potential to spread into surrounding bushland should be avoided.	As above, the submitted Landscape Plan has been assessed to be satisfactory by Council's Consultant Arborist. This assessment included the plant species to be incorporated in the landscaping embellishment.	Yes

	<p>(5) Existing mature trees should be retained where possible and incorporated into the design of new developments.</p>	<p>As mentioned, the development does not comply with this part of the DCP, as it proposes removal of three x <i>Cupaniopsis anarcardiodes</i> (tuckeroo) trees along the water’s edge, which have been identified as being dangerous/weight loaded. However, removal of these trees is supported as the landscape plan provides for adequate replacement planting.</p>	<p>Yes</p>
	<p>(6) Vegetation along ridgelines and on hillsides should be retained and supplemented with additional planting to provide a backdrop to the waterway.</p>	<p>The site is mostly devoid of existing vegetation, the landscape plan provides for suitable replacement planting and site embellishment.</p>	<p>Yes</p>
	<p>(7) A landscape plan is to be submitted for any development between FBL and MHWM. The level of detail required will depend on the level of works being undertaken. Where a landscape plan is submitted it should indicate the existing and proposed changes in contours, existing trees/vegetation to be retained and removed, measures to protect vegetation during construction and proposed planting including species and common names.</p>	<p>The Landscape plan provided provides the required level of information.</p>	<p>Yes</p>

**Part C4 Foreshore Locality Controls**  
**9.0 Oatley Bay**  
**Poulton Park to Oatley Point Reserve**



	boatshed in this locality.		
	<p><b>Fencing (open form)</b> Fencing should be no higher than 1200mm above natural or finished ground level Fences are to be constructed of open weave materials to enable vines, creepers or hedges to provide natural cover</p>	Boundary fencing is to be 1800mm high outside the FBL, and up to 1200mm below the FBL	Yes
	<p>Landscaping – Permitted This locality is within the habitat reinforcement corridor area of the Green Web. In this regard, the provisions of Part B2 Section 2.0 apply.</p> <p>Sites within area 9(e) are not subject to additional requirements.</p>	Landscape plan submitted with the DA, which has been assessed by Council's Consultant Arborist to be satisfactory.	Yes
<p>B2 – Tree Management &amp; Green Web Requirements.</p> <p>The following guidelines are to be considered for land situated within the Green Web Corridor:</p>	(a) design open space to reflect and integrate the natural heritage and underlying ecological processes of the landscape through site layout, grading, planting, landscape material, access and view lines.	The landscape plan submitted with the DA, which has been assessed to be satisfactory.	Yes
	(b) wherever possible, design open space to conserve indigenous vegetation and habitat on site and retain indigenous trees, understorey and groundcovers as a priority in the site layout. Select bushland area to preserve the most intact and sustainable areas of vegetation and prevent fragmentation of habitat.	Native vegetation conserved within the rear private open space.	Yes
	(c) design vegetation to enhance and link	This site and adjoining sites are highly urbanised	Yes

	existing vegetation and habitat within the site and adjacent sites.	with very little existing vegetation. The proposal will enhance the existing landscaped setting through site embellishment.	
	(d) design access to reduce pressures that have potential to cause degradation of vegetation, habitat, water quality and soil.	The landscaping provides for steps to access all parts of the site in a controlled manner.	Yes
	(e) use indigenous plant stock and, preferably, locally sourced plant material to preserve local genetic diversity.	The proposed landscape species have been assess and are acceptable.	Yes
	(f) maximise use of indigenous plant material and preferably use exclusively indigenous plants adjacent to remnants. Arrange plants to form plant associations based on the structure and distribution of indigenous plant communities using a diverse range or plants, including understorey and groundcovers, to form a viable habitat for flora and fauna.	The proposed landscape species have been assess and are acceptable.	Yes
	(g) In addition, the following criteria need to be applied to create a sustainable and diverse habitat: (i) maintain and enhance diversity in plant communities and sub communities, species, habitat niches and structure of the plant community. Most importantly, maintain and/or restore understorey species.	The proposed landscape species have been assess and are acceptable.	Yes
	(ii) include and retain water holes, ponds, dams, creeks and damp spots in habitat areas. In some cases there will	The Site contains minimal natural features of this type.	Yes

	<p>be numerous benefits in creating artificial dams or ponds which may include stormwater control facilities. Artificial water bodies should not involve in-stream works but should be additional to natural watercourses.</p>		
	<p>(iii) retain old or dead trees as these provide (or will in the future) nesting holes, hollows and perches. If there is a lack of tree holes, install nesting boxes for a range of native species. Hollow logs or old pipes can provide shelter for ground dwelling animals and can be mounted in trees to assist arboreal species and birds.</p>	<p>No such trees on site. The application is seeking removal of three x <i>Cupaniopsis anarcardiodes</i> (tuckeroo) trees along the water's edge, which have been identified as being dangerous/weight loaded.</p>	<p>Yes</p>
	<p>(iv) create dense plantings of shrubs, including prickly or spiky species in areas of little use (eg. corner back areas), to provide safe nesting sites for small birds and protect them from cats and larger predatory birds such as currawongs and ravens.</p>	<p>The proposed landscaping has been assessed as satisfactory by Council's Consultant Arborist.</p>	<p>Yes</p>
	<p>(v) arrange tree plantings so their canopies touch to allow smaller birds and mammals, such as possums and sugar gliders, to cross roads and areas of open grass without having to move across open ground where they are vulnerable to attacks by predators. Ropes and wires can be used as bridges for animals where tree canopies do</p>	<p>The urbanised nature of this location has little potential for linkages to landscaping on neighbouring sites.</p>	<p>Yes</p>

	not touch e.g. possums have frequently been observed using electricity supply wires for travelling in urban areas.		
	(vi) clear weed infested areas in stages rather than all at once to maintain shelter and nesting sites provided by existing invasive plants. Observe whether nesting activities are taking place or other resident fauna is present in the understorey and take care not to disturb these areas when nesting is occurring. As a general rule, never clear more than one third of the site for replanting to ensure that resident animals are not left without food and shelter. Some rubbish, such as car bodies, sheets of corrugated iron and timber can provide habitat and refuges from predators for reptiles, such as blue tongue lizards, and small mammals, such as bandicoots and bush rats.	The site is highly urbanised, and will be cleared of weeds when the development takes place.	Yes
	(vii) install artificial shelter structures, where stable populations of birds or reptiles reside, as part of your landscape design. They can be piles of timber logs or rocks, wire mesh structures imitating densely branched shrubs or of pipes imitating hollow logs. These shelters may also act as nesting	Proposal involves use of sandstone for external wall edging which is considered satisfactory in terms of potential artificial shelter structures.	Yes

	sites.		
	(viii) retain leaf litter and fallen branches. They provide an important habitat for reptiles and insects, foraging grounds and shelter against heat and predators.	This is a site maintenance matter.	Yes
	(ix) plant a range of indigenous flowering trees and shrubs to provide flowers and nectar throughout the seasons to maintain bird diversity and populations. During certain seasons, some birds rely on particular insect types that are dependent on particular plant species, thereby controlling insect populations, including those which are responsible for dieback in trees.	Landscaping has been assessed as satisfactory by Council's Consultant Arborist and addresses this criterion.	Yes
	(x) select plants with thick and furrowed bark, high foliage nutrient and different flowering and fruiting seasons to provide food throughout the whole year.	Landscaping has been assessed as satisfactory by Council's Consultant Arborist and addresses this criterion.	Yes
	(xi) minimise use of fertilisers and irrigation to prevent nitrification and invasive exotic plants destroying native bushland.	An on-going maintenance issue.	N/A

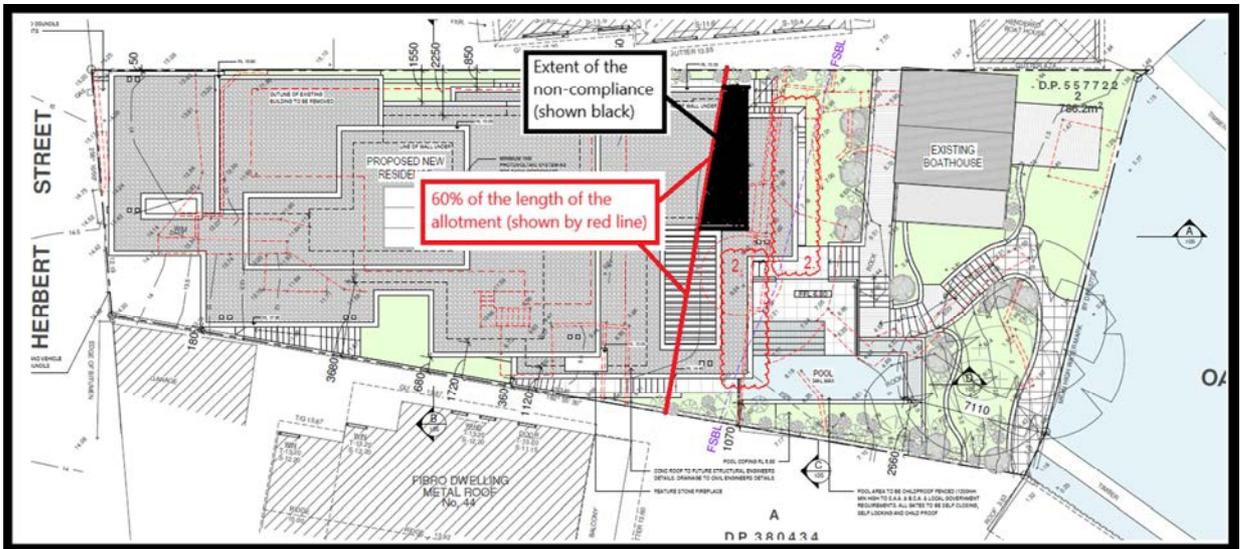
### **DEVELOPMENT CONTROL PLAN PART C1 – Low Density Housing**

85. As demonstrated in the table above, the proposal has been comprehensively assessed against the relevant requirements of Part C1 of Kogarah Development Control Plan 2013 – Low Density Housing. There are a number of areas of non-compliance with DCP 2013, which are discussed in further detail below.

#### Extent of Second Level

86. The Floor Space Requirements (Clause 1.2.1) of Part C1 Kogarah DCP 2013 states that the second level of a residential dwelling should not extend beyond 60% of the depth of the allotment when measured from the street boundary.

87. The proposed development is a two (2) storey dwelling, which cascades down the site with the site topography; the second level extends slightly beyond 60% of the length of the allotment. The extent of the non-compliance is approximately 1.7m (on the western side) and 2.5m (centre) as shown in the following drawing (applicant’s DA site plan, marked up).



**Site Plan, showing the extent of the non-compliance with the extent of the second level**

88. Despite the DCP non-compliances, the proposal is considered to be acceptable for the following reasons:

- (a) The objectives of this Clause of the DCP include a requirement that the overall building floor space should present a building mass that is in scale with the allotment size. In this regard, the dwelling generally complies with the DCP controls which govern building mass and its scale relative to the allotment size, in particular the Kogarah LEP 2012 standards of floor space ratio and overall height.
- (b) The positioning of the second storey of this dwelling will still be behind the line of the rear wall of the adjoining dwelling to the west (40 Herbert Street).
- (c) The non-compliance does not result in unreasonable impacts on any neighbouring property. In particular, the positioning of the second storey does not result in unacceptable visual bulk or view loss (as discussed at length throughout this report).

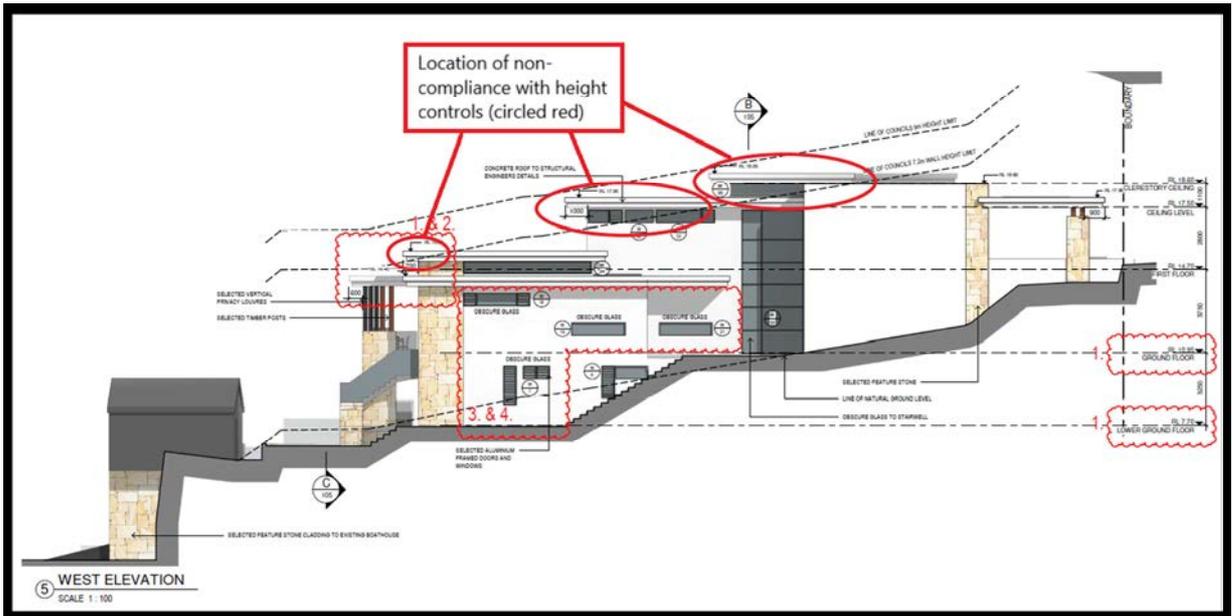
**Building Heights**

89. Clause 1.2.2 of Part C1 Kogarah DCP 2013 prescribes building height requirements of 7.2m (to the underside of the upper ceiling) and 7.8m (to the top of the parapet).

90. The proposed dwelling has heights measured as follows:
- To the underside of the ceiling, the height ranges from 8.2m to the clerestory ceiling, and 8.44m to the top floor ceiling;
  - To the top of the parapet, the height ranges from 8.65m to the clerestory roof, and 8.91m to the topmost floor;

which does not comply with the DCP controls.

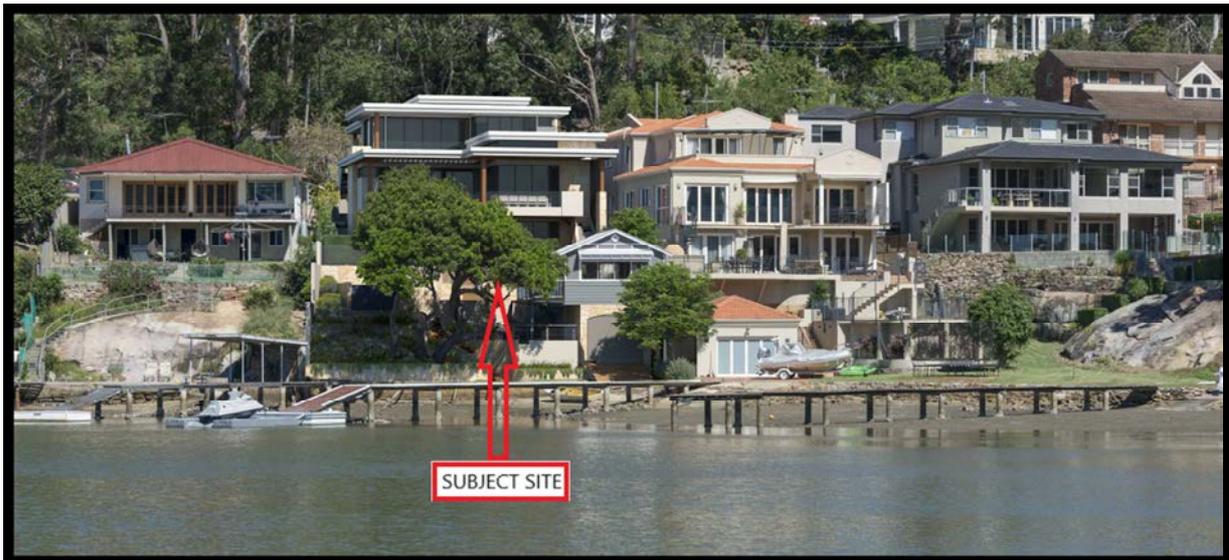
91. The location of the non-compliances in terms of these height controls is shown on the following drawing (west elevation):



**West Elevation of proposed dwelling, showing non-compliance with ceiling and top of parapet controls in Kogarah DCP**

92. Despite the numerical non-compliance with the DCP controls, the proposal is considered acceptable for the following reasons:

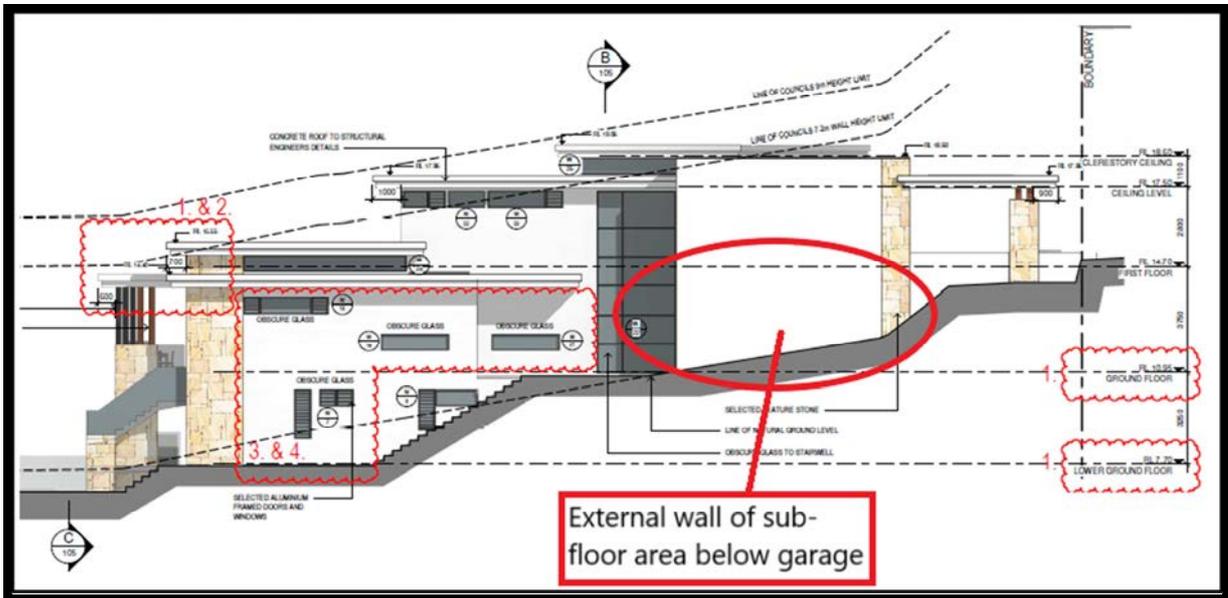
- (a) The DCP cannot prescribe a more restrictive control than an LEP control. In this regard, Kogarah LEP 2012 prescribes a 9m height limit for the subject site, and the development fully complies with the LEP control.
- (b) The non-compliance is related to the steep slope of the land, which results in non-compliance at various points on the ceiling/roof, rather than the entire length of wall.
- (c) When viewed from the waterway, the proposed dwelling will appear as consistent/compatible with the established character of dwellings in this location. In this regard, the applicant has provided a montage with the original DA plans to illustrate how the proposed dwelling will appear when viewed from the water. This shows that the proposed dwelling will be generally consistent with recent residential developments in terms of height, number of residential levels, and overall massing:



**Photomontage of proposed development, showing how the dwelling will appear from the waterway in relation to neighbouring properties**

Foundation Height

- 93. The building height controls (Clause 1.2.2 of Part C1 Kogarah DCP 2013) contains a requirement that foundation areas, garages, basements, storage rooms or the like must not have an external wall height greater than 1m above ground level (existing).
- 94. The western wall of the sub-floor area has an external wall height of up to 3.7m at the highest point, and therefore non-compliant. This is illustrated in the drawing below.



- 95. Despite the numerical non-compliance, the proposed development is considered to be acceptable for the following reasons:
  - (a) The non-compliance is directly attributed to the slope of the site, where the site falls significantly over a relatively short distance within the front of the site. The location of the garage at the front of the site, due to the topography and transitions to the roadway result in its floor level being elevated above the existing ground level.
  - (b) The slope of the land makes it unavoidable that there will be a non-compliant wall height of the sub-floor level below the garage.

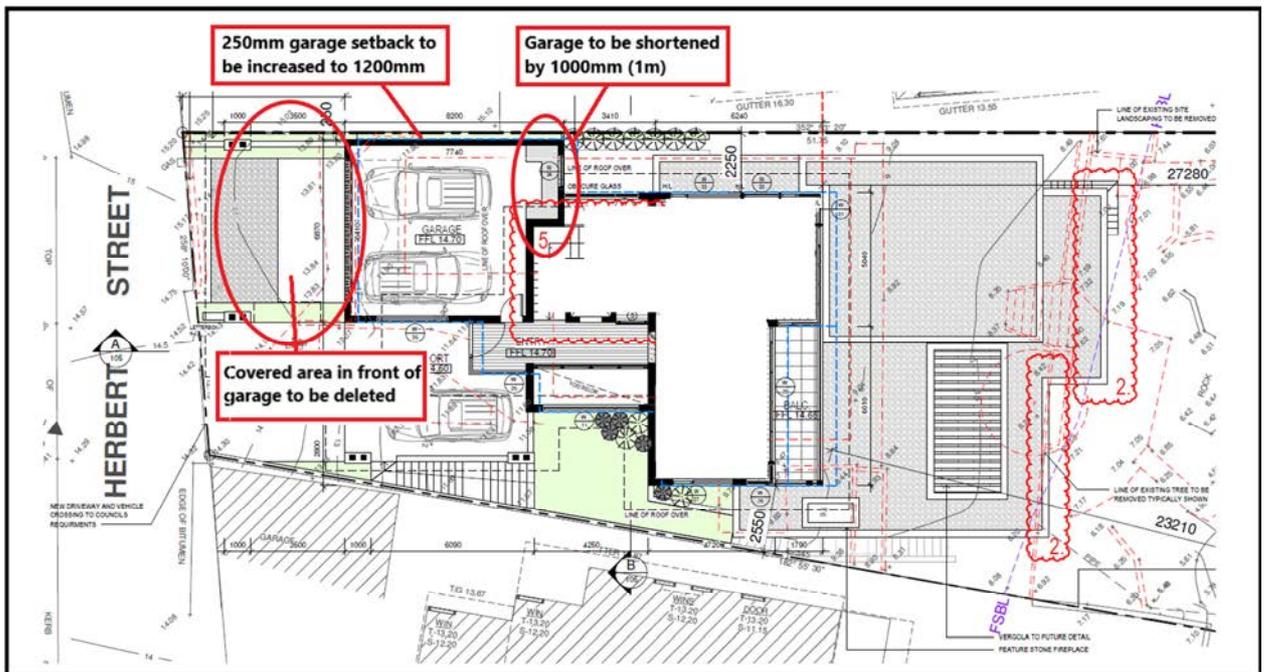
- (c) There will be no privacy or amenity impacts upon the immediate neighbour to the west, as there are no windows in this wall. Subject to design amendments to reduce the length of the garage and to increase the side setback and relocate the northern wall of the garage 1.4m to the south to align with the southern wall of the stair (as discussed throughout this report). It is also considered there will not be an unreasonable impact in terms of bulk and scale when viewed from the neighbouring property.

#### Primary Building Facade

96. The controls regarding Rhythm of the Built Elements in the Streetscape (Clause 1.2.3 of Part C1 Kogarah DCP 2013) contains a requirement that the primary building façade of a dwelling should not exceed 40% of the overall width of the total frontage of the site.
97. The subject development has been designed so that the garage constitutes the dwelling's primary frontage, given the steep topography of the site. The dwelling will appear as single storey when viewed from the street, with the garage/carport and front entry of the dwelling being the design features of the dwelling presenting to the street. The width of the garage exceeds 40% which therefore does not comply with the DCP controls.
98. Despite the non-compliance with the DCP, the proposal is considered to be acceptable for the following reasons:
- (a) This section of Herbert Street is unusual given the road is a single width access which ends at the adjoining property to the west (40 Herbert Street), and only services the properties from 40-46 Herbert Street. Vehicle access/manoeuvring to these properties is very limited, as a response to the street constrains these properties have garages/carports at or near the front boundary. This design in this unique location is not inconsistent with the streetscape.
- (b) The proposed development seeks to be generally consistent with the established streetscape character in this location of Herbert Street, by positioning its garage at the top of the site.
- (c) The objectives of this control in the DCP state that
- “new buildings and alterations and additions should reflect the dominant building rhythm of the streetscape with regard to the location, spacing and proportion of built elements in the street elevation”.*
- In this regard, it is considered that the design of the dwelling with its garage positioned at the top of the site and presenting to the street, is considered to be consistent with the established character in this unique part of Herbert Street. In this regard, particular reference is made to the immediate property to the west (40 Herbert Street), which has a three (3) car garage and vehicle turning area within the front setback area.
99. Notwithstanding the above, concern is raised regarding the provision of an additional covered area in front of the proposed garage, which is proposed in addition to the garage and carport. It is considered that this would result in excessive structures within the front setback area. Accordingly, it is recommended that the covered area in front of the garage be deleted. This is addressed as a condition of consent.

Side Setbacks

- 100. Part C1 of Kogarah DCP 2013 (clause 1.2.4.3) prescribes a side setback control of 1200mm for buildings with a wall height of greater than 3.5m.
- 101. The garage which has a side setback of 250mm to the western boundary which is non-compliant. Apart from the garage, the proposal fully complies with the DCP requirement for side setbacks.
- 102. The 250mm western side setback of the garage wall is considered unacceptable. The garage wall has a height of 3.5m (measured from the paved vehicle turning area at the front of the site) or 7m when measured from the lower level paved courtyard at the front of the neighbouring property. The garage wall is considered to have an excessive height which would result in adverse impacts of bulk and scale; as a result the side setback is to be increased through a condition to be 1200mm from the western boundary. This increased side setback will assist with reducing the bulk presented to the western neighbour.
- 103. **NOTE:** The proposed design amendments of increased garage setback, shortening the length of the garage and deletion of the covered area in front of the garage are illustrated in the drawing below:



**First floor plan, showing proposed design changes to increase the garage side setback to 1200mm, shorten the garage by 1000mm; and deletion of covered area in front of garage.**

Garage Controls

- 104. In addition to the above controls regarding Primary Building Frontage (as discussed above), Kogarah DCP 2013 also contains various controls (clause 1.2.5) relating to garages. In particular, the DCP states that:
  - Subclause (2): states that garage doors should not dominate the front street elevation; and
  - Subclause (6): states that where garaging is in the front façade, it should be limited to a maximum of two garage bays, with separate garage door openings of a maximum width of 3m.

105. The dwelling proposes a double-width garage door (rather than 2 x single width) facing the street. Further, the garage doors are the most dominant feature of the dwelling when viewed from the street and therefore non-compliant.
106. Despite the DCP non-compliance, the slope of the land and the narrow road carriageway, results in the established character of the streetscape consisting of garage/carport structures at or near the front boundary, the proposed development will not be inconsistent in terms of the unique streetscape character of this part of Herbert Street. The proposal is considered able to be modified to reduce the impact on the streetscape design through the deletion of the covered area in front of the garage which has been recommended as a condition of consent as discussed previously and illustrated in the above drawing.

#### Driveway Width

107. Part C1 of Kogarah DCP 2013 (clause 1.4) prescribes a maximum driveway width between the street boundary and the primary building façade of 4m. The development proposes two separate driveways with widths of 6.41m (to service the double garage) and 5.5m (to service the carport), which is non-compliant.
108. Despite the DCP non-compliance, the proposal is considered to be acceptable. The pertinent objective of the DCP is that “*Car access areas and garages/carports do not visually dominate either the development or the streetscape.* In this regard, the existing character of the streetscape of this unique part of Herbert Street is dominated by garages/carports and paved vehicle access to those structures.
109. This is well illustrated by the aerial photo (see earlier in this report), which shows that for each of the properties in this location (from 38 to 46 Herbert Street), the front setback area is dominated by garages/carports, and each of these properties contain driveways that take up most of the frontage of each lot, and which all exceed 4m in width.
110. In this regard, as noted throughout this report, it is considered that the double garage and carport adjoining are acceptable structures from a streetscape perspective, however the covered area in front of the garage is excessive and should be deleted.
111. In relation to the width of the driveway, it is considered that this is necessary to ensure safe and adequate vehicle manoeuvring area into/out of the site. In this regard, as mentioned, the width of the Herbert Street road carriageway is very narrow (single width) due to topography and vegetation.

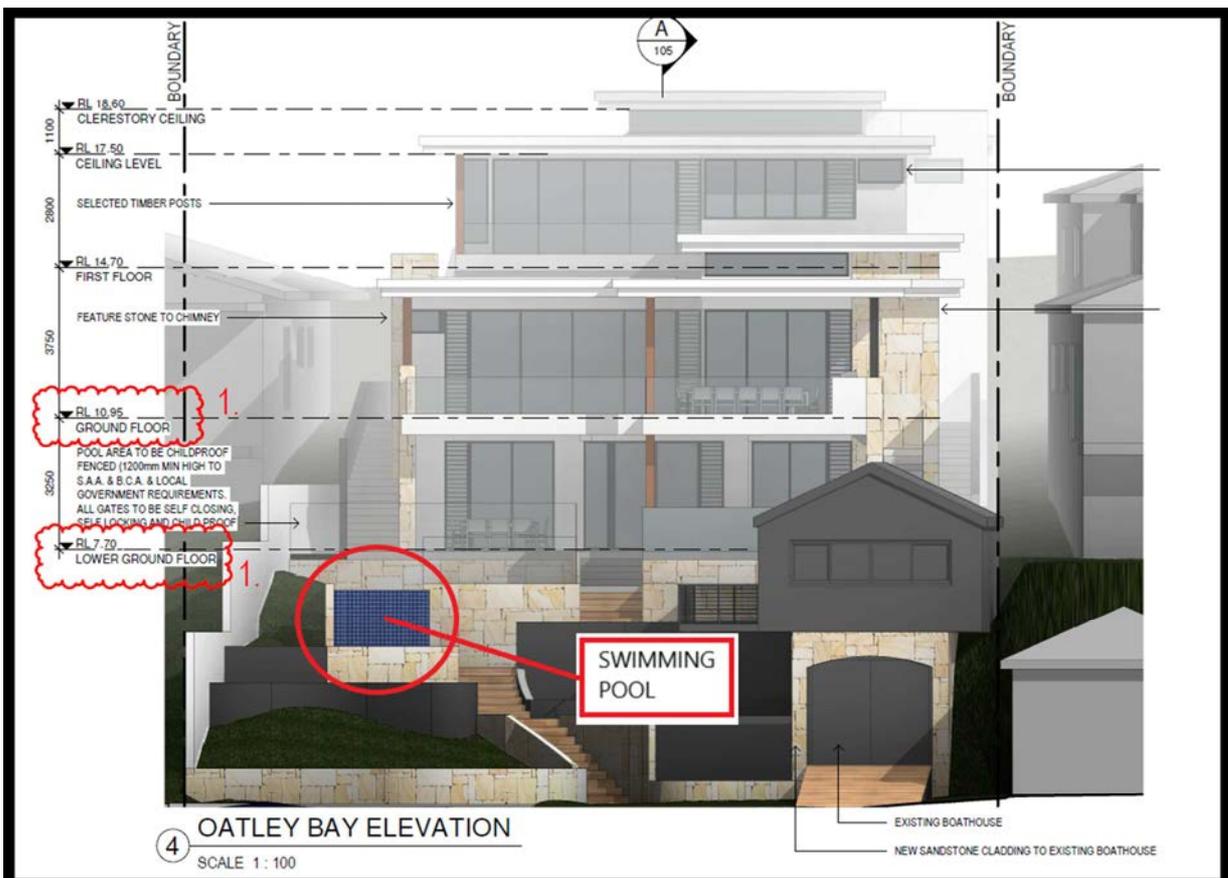
#### Terrace/Balcony Requirements

112. The Visual Privacy controls (Clause 1.5.1) of Part C1 Kogarah DCP 2013 contains the following requirements for terraces/balconies that are more than 1.5m above finished ground level:
- Subclause (2) prescribes a maximum width of terraces/balconies of 2.5m, and a minimum setback of 3m from any property boundary. The development proposes a ground floor terrace with a width up to 4.25m and a minimum setback of 2.15m (to the eastern boundary); and
  - Subclause (3) prescribes a maximum cumulative total of 40sqm per dwelling for terraces/balconies. The development proposes a cumulative total of 88.425sqm.

113. The development does not comply with these numeric requirements, however, the proposal is considered acceptable for the following reasons:
- (a) Subclause (4) of this Part of the DCP states that Council may consider a variation to these requirements where the terrace or balcony will not result in a loss of privacy to neighbouring properties.
  - (b) The subject development has been designed to enjoy views of Oatley Bay which are obtained directly out towards the north and north east. Potential loss of privacy to/from neighbours to the east and west has been appropriately mitigated through positioning the terraces behind the side external walls of the dwelling.
  - (c) The larger area spaces of the proposed terraces which are to be used for entertaining are centrally located within the terraces, not to the sides. The fact that the larger spaces of the terraces are centrally located will also help to ensure privacy impacts to the neighbours are minimised.
  - (d) The balconies/terrace areas proposed in this dwelling are generally consistent with scale and form of those on adjoining properties.
  - (e) Accordingly, given that the balconies/terraces will not significantly impact on the privacy of neighbouring properties and are consistent with neighbouring properties in terms of area, it is considered that the proposal is acceptable.

#### Swimming Pool Controls

114. The Swimming Pool/Spa Pools controls (Clause 6.6) of Part C3 (Foreshore and Waterfront Controls) Kogarah DCP 2013 prescribes that the coping level of swimming pools is not to be elevated more than 500mm above natural/existing ground level.
115. The proposed swimming pool has a coping/deck level of RL6.8 which is 2.3m higher than existing ground level being RL4.5 which is non-compliant as referenced in the diagram below.



**North elevation drawing of proposed development, showing location of the proposed swimming pool**

116. Despite the non-compliance, the proposal is considered acceptable for the following reasons:
- The objective of this control is to “minimise the visual impact of pools when viewed from the waterway”. In this regard, the north elevation of the pool which faces Oatley Bay shows that the external materials of the pool will be a “infinity edge” with feature stone as the external materials, which is consistent with the elevation of the dwelling in this location. Such treatment of the external wall of the pool will ensure it has an acceptable visual presentation to the waterway
  - In this regard the pool will have a satisfactory appearance when viewed from the water, as it is integrated into the design of the dwelling.
  - The width of the pool facing Oatley Bay is narrow being 2.2m; this narrow width will assist in minimising the pool’s visual impact when viewed from the waterway.
  - The land has a steep slope, particularly in the location of the pool, with a fall of some 3m over a short distance where the pool is to be located. With such a steep slope, it is difficult to achieve full compliance.
  - Other properties in this location also have swimming pools that are elevated above natural ground level, often with large/wide expanses of the underside of the pool presenting to the waterway and screened only with landscaping. The proposed pool will have a superior presentation to the waterway given the combination of materials and landscape screening.

## Section 7.12 Contributions

117. The proposed development would require payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979. An appropriate condition is included in the recommended conditions.

## IMPACTS

### ***Natural and Built Environment, Social and Economic Impacts***

118. It is considered the proposal will not have an unreasonable impact on the character of the locality, and also the amenity of neighbouring residential properties.

### ***Suitability of the site***

119. The site is zoned R2 – Low Density Residential. The proposal is a permissible form of development in this zone. The proposal will not have an unreasonable impact on the adjoining properties and views from the waterway. The site is not subject to any natural constraints such as land slip or flooding that would render it as unsuitable for the proposed development.

## SUBMISSIONS AND THE PUBLIC INTEREST

120. The DA was neighbour notified in accordance with Kogarah DCP 2013 for a period from 18 May to 1 June 2018. Three (3) submissions were received from and/or on behalf of adjoining owners.
121. Amended plans received August 2018 were re-notified to neighbours for a period from 23 August to 6 September 2018. A further four (4) submissions were received; raising similar issues to the original notification as an indication their issues of concern had not been resolved.
122. Subsequent amended plans dated September 2018 were re-notified to neighbours for a period from 11 to 25 October 2018. A further four (4) submissions were received to this re-notification process, again raising similar issues to those previously raised, and advising that the amended plans had not resolved previous concerns.
123. A total of eleven (11) submissions have been received to this DA. The issues of concern have been summarised and discussed as follows:
124. **View Loss**  
Concern is raised from the neighbour at 40 Herbert Street that the proposal will cause unacceptable view loss.
125. Assessment Officer's Comment: This was raised as an issue regarding the original DA plans, and amended plans in the opinion of the neighbour, have not resolved the neighbour's concern regarding this issue.
126. It should be noted that the following view assessment is made in terms of impacts on the property at 40 Herbert Street, to the west, as this is the only property likely to be affected due to lot orientation.
127. The Land and Environment Court has considered view sharing/view impacts in development proposals and established a *Planning Principle* to assist in the consideration and assessment of these issues. This is known as the *Tenacity* principle following the Court's consideration of *Tenacity v Warringah Council (2004)*.

- 128. The *Tenacity* Principle is also referenced in Kogarah DCP 2013 as the criteria for assessment of Views/View Sharing. *Tenacity* contains four “steps” for assessment of view impacts, which are provided below, together with an assessment of the proposal against each principle.
- 129. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*
- 130. Comment: The views in question are water views of Oatley Bay, generally looking to the north/north east. Further views from the neighbour’s property are also available towards the north west, which will be unaffected by the proposed development. The views are not “iconic” (i.e. there are no specific landmarks or features such as referenced in *Tenacity*), however it is a “whole” view because the neighbouring property (40 Herbert Street) has frontage to the waterway. Accordingly, such views would be valued very highly. Currently the view referenced by the submitter is largely across the subject property, with the only obstruction to this view being the vegetation located near the water’s edge (note – this is to be removed as part of the proposal, thus enhancing the views currently blocked by this vegetation).
- 131. The neighbour’s submission contains an aerial photo (provided below), as well as a number of photos from within the neighbouring property (one is also provided below). The assessment officer has conducted an inspection from the neighbour’s property to verify the views currently available.



**Aerial Photo showing Oatley Bay water views available from properties in this location**



**Assessment Officer's site inspection photo, showing the view towards the north/east currently available from the northern most window (dining room) on ground floor of neighbour's dwelling**

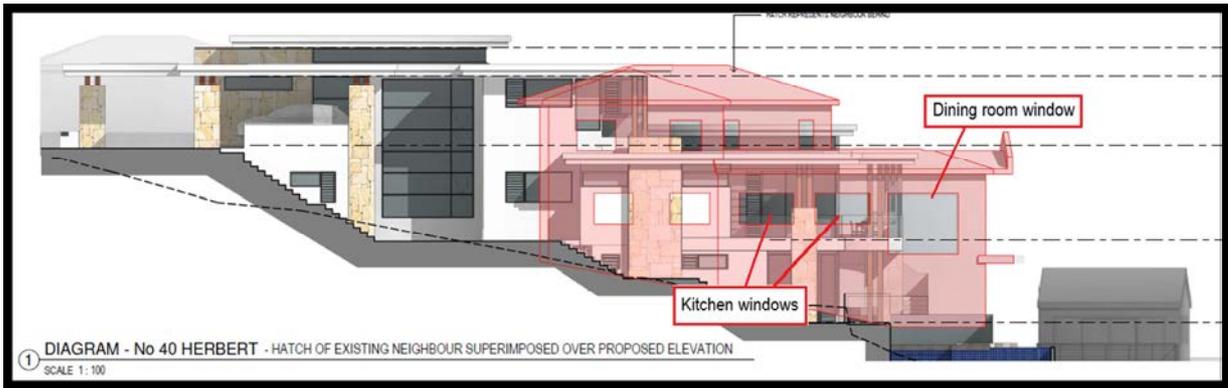


**Assessment Officer's site inspection photo, showing the view directly to the east currently available from the northern most window (dining room) on ground floor of neighbour's dwelling**



**Photo from neighbour's submission, taken across the subject site towards the eastern side of the neighbour's property**

132. *The **second step** is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*
133. Comment: The northern/eastern side of the ground floor level of the neighbour's house contains the main living areas (lounge, dining room and kitchen). The northern side of these rooms contains large sliding doors and balconies, whilst the eastern side contains the windows shown in the above photo. Currently, the views to the north/east from these rooms are generally available from both sitting and standing positions.
134. *Tenacity* considers the relationship between a development site and neighbouring properties. In this regard, the subject site is to the eastern side of the neighbour most likely affected by view loss. Views from the neighbour's property to the east are across the subject site due to orientation.
135. Views from the rear of the dwelling to the north would therefore be unaffected by the proposed dwelling. However, views from the side of the dwelling towards the east would be partly affected. Referring again to the above photo, views from the two smaller windows (kitchen) on the eastern side would be affected by the proposal, whilst the larger window (dining) would be mostly unaffected. In this regard, the applicant has provided a drawing of the side elevation of the proposed development with the neighbour's dwelling superimposed thereon, to illustrate potential impacts of the proposal.



**Side elevation of proposed development, with neighbour's elevation drawn in background**

136. The vegetation on the water's edge, Tuckeroo Trees are proposed to be removed as part of this application. Whilst the proposed dwelling would result in some view loss, this is more than compensated by the improved view resulting from the removal of this vegetation.

In this regard, the replacement Tuckeroo trees are proposed to be in 45 litre pot sizes, which means that these trees will have a height of some 1m – 1.5m at the time of planting.

137. *The **third step** is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*
138. Comment: The extent of the impact varies depending on the rooms/windows of the neighbour's property. In this regard, views from the north facing windows of the neighbour's property are unaffected by proposed development.
139. Views from east facing windows are side views across the subject site, and *Tenacity* states that "*the expectation to retain side views ... is often unrealistic*". Even though the proposed dwelling would result in removal of some of the views currently available (looking directly east), angled views (looking towards the north/east) from the side windows would still be partly retained.
140. It should be noted that the rear setback of the proposed dwelling will not extend as far to the rear of the site as the existing dwelling at 40 Herbert Street, which will assist in preservation of views. This is illustrated in the following photo prepared by the applicant showing the rear setbacks of the proposed dwelling relative to the neighbouring properties.



**Air photo of subject property showing rear setbacks of the proposed dwelling relative to neighbouring properties**

141. Furthermore, it is noted that views towards the north/east will be vastly improved by removal of the trees along the water’s edge (refer to Landscape Architect assessment later in this report).
142. Having regard to the qualitative terms referenced in *Tenacity*, it is considered that the proposal would have a *negligible to minor* impact on views currently available to the neighbour’s property. Such impact would be restricted to side views from windows taking in views across the subject site. Any such impact to these side windows would be more than offset by removal of the vegetation on the water’s edge.
143. *The **fourth step** is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*
144. Comment: The proposal is considered to be reasonable in terms of its view impact. Although the proposal has some areas of non-compliance with Kogarah DCP 2013, these are considered to be justifiable as discussed in the DCP compliance assessment earlier in this report. Even if the proposal did fully comply with the DCP controls, this would not improve the views available to the neighbour because of the positioning of the dwelling relative to the neighbour’s house.

145. As noted in the third step of the *Tenacity* assessment above, the proposal would have a *negligible to minor* impact on the views available to the neighbour.
146. It should be noted that the applicant has submitted amended plans to reduce impacts and improve views from the eastern side living room windows of the neighbour's property. In particular, the privacy screen on the western side of the ground floor terrace has been shortened and moved further away from the boundary, so as to open up views from the neighbour's east-facing living room windows.
147. Conclusion – View Impacts: Overall, having regard to the preceding assessment, it is considered that the proposal will not have an unreasonable impact in terms of views from the neighbour at No 40 Herbert Street or any other property. The views from this property to be affected are side views which are recognised in *Tenacity* as being more difficult to protect. As mentioned, although the positioning of the dwelling would cause some view impact, this would be more than offset by the removal of vegetation on the water's edge which will open up more of the view currently blocked by such vegetation.
148. **Height**  
Concern is raised that the proposal does not comply with the Kogarah LEP 2012 controls (9m overall height) or the Kogarah DCP 2013 controls (7.2m to underside of ceiling and 7.8m to the top of the parapet). In particular, concern is raised that the height of the development should be taken from existing ground level, much of which is beneath the existing dwelling and could be lower than that provided by the applicant.
149. Assessment Officer's Comment: These issues of concern relate to the original DA plans. The amended plans received during the processing of this DA have included a reduction in overall height by some 300mm. The amended proposal does not comply with the Kogarah DCP 2013 controls regarding ceiling and top of parapet height, however it does fully comply with the Kogarah LEP 2012 control (9m overall height). The proposal is considered to be satisfactory despite the non-compliance.
150. Issues regarding the height of the development have been discussed earlier in this report (see compliance assessment for Kogarah LEP 2012 and Kogarah DCP 2013).
151. In response to the neighbour's concerns regarding where "existing" ground level has been taken from, the Council officer's assessment has used survey levels provided with the applicant's DA submission. This has been provided in the form of both a survey plan, with such survey information included on the site plan and floor plans of the development. Based on this information, the assessment has concluded that the development is satisfactory in terms of the height controls in the Kogarah LEP 2012 and DCP 2013.
152. **Height of garage wall**  
Specific concern is raised regarding the height of the garage wall to be built on the site boundary (western side); in particular it's apparent height when viewed from the neighbour's property (adjoining 40 Herbert Street) as well as resulting impacts of bulk and scale.
153. Assessment Officer's Comment: The development proposes construction of a garage wall 8.2m in length and setback 250mm from the western boundary adjoining 40 Herbert Street.

154. The garage has a height of 3.9m when viewed from the street. At the front of the neighbouring property (40 Herbert Street), adjacent to the subject site there is a large, elevated vehicle turning area accommodating their garage. The height of this turning area is approximately 3.5m, with a paved/landscaped area between it and the front setback of the dwelling on 40 Herbert Street (see photo below).



**Photo of paved area within 40 Herbert Street, facing location of garage on 42 Herbert Street**

155. When viewed from 40 Herbert Street, the apparent height of the proposed garage when viewed from 40 Herbert Street will be 3.5m where it adjoins the paved vehicle turning area, and approximately 7m where it adjoins the lower paved area.
156. It is considered that the western garage wall would have an excessive impact in terms of visual bulk and dominance when viewed from the lower paved area within 40 Herbert Street. As a solution, it is considered that the side setback of the garage (presently 250mm) be increased to 1200mm and comply with the DCP so as to minimise visual impact. This is a recommended condition of consent.
157. **Height**  
Specific concern is raised that the height of the development is limited to two storeys under Part C4 Foreshore Locality Controls, with three storeys only being allowed so that a reduced building footprint can be achieved.

158. Assessment Officer's Comment: Kogarah DCP 2013 allow three (3) storey developments on allotments with a slope greater than 12.5% (or 1:8), such as the subject site. It is acknowledged that the DCP also contains specific Foreshore Locality Controls in Part C4 which generally limits developments to two (2) storeys so as to achieve a reduced building footprint.
159. It is considered the proposal is consistent with the existing neighbouring developments in this location, both in terms of its three (3) storey presentation to the north (Oatley Bay) and also the extent of the building footprint.
160. **Floor space ratio**  
Concern is raised that the proposal does not comply with the Kogarah LEP 2012 control for floor space ratio (FSR), In particular, the sub-floor area should be included in FSR calculations due to its large size, its floor to ceiling height and doors both to the inside and outside the dwelling.
161. Assessment Officer's Comment: These issues of concern also related to the original DA plans. The applicant's amended DA plans have included FSR calculations which confirm compliance with the LEP control, and in particular the definition of "gross floor area" as defined in Kogarah LEP 2012.
162. The original DA plans did include a large sub-floor area with both internal and external entry doors. The applicant's amended plans have deleted the external entry door (that were previously located on the western side), however it is agreed that the large size of the sub-floor area could lend itself to potential use for a range of internal spaces that would add to the "gross floor area" of the dwelling.
163. To resolve this issue, it is recommended that a condition of consent be imposed to reduce both the floor to ceiling height to a maximum 1.8m.
164. **Over-Development of the Site**  
Concerns is raised from the neighbours that the proposal is an over-development of the site, as it does not comply with a number of provisions including 60% of the length of the allotment, height, and setbacks.
165. Assessment Officer's Comment: These issues generally relate to the development's compliance with Kogarah DCP 2013. As indicated in the DCP compliance assessment earlier in this report, whilst the proposal has some areas of non-compliance with the DCP, these are justifiable in the circumstances, and/or they can be addressed as a condition of consent.
166. **Breach of the Foreshore Building Line**  
Neighbours have concerns that the development proposes an unacceptable breach of the foreshore building line (under Kogarah LEP 2012).
167. Assessment Officer's Comment: This issue has been fully considered and addressed earlier in this report (see Kogarah LEP 2012 compliance assessment) and found to be satisfactory. The breach of the foreshore building line is minor and is less than what has been approved for other nearby dwellings. The breach will also have minimal impact when viewed from the waterway.
168. **Privacy impacts on 44 Herbert Street**

169. Concern is raised that windows W11, W27, W28, W13, and W17 cause overlooking into the rear yard of the neighbour at 44 Herbert Street (to the east).
170. Assessment Officer's Comment: These were issues of concern raised from the original DA plans.
171. W11 is a large window designed to provide natural light into the entry corridor/void at the front of the dwelling. Although the window is very large (over two storeys of the elevation), it's position at the front means that any line of sight into the neighbour's rear yard will be obscured by other walls of the proposed dwelling.
172. W27 and W28 are windows to the master bedroom, and accordingly there would be minimal privacy impacts because this is not a primary living area of the house and will be used mostly at night for sleeping. It is noted that W27 has been reduced in size in response to the neighbour's concerns.
173. W13 is to a formal lounge room, positioned towards the centre of the house, and set behind the wall of the adjoining living room which will obscure any line of sight from this room to the neighbour's rear yard. Window W13 has also been reduced in size in response to neighbour's concerns.
174. W17 is to the dining room, and this window is some 10.19m from the boundary to the neighbour's property. This distance, together with the recommended privacy screen on the side of the ground floor terrace, will ensure that privacy impacts from this window are resolved.

On the basis of the above assessment, it is considered that the privacy impacts upon the neighbour at No 44 Herbert are not unreasonable.

175. **SEPP (Coastal Management) 2018**  
The proposal is inconsistent with the provisions of this SEPP, which aims to protect and enhance the scenic, social, and cultural values of the coast by ensuring that the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast.
176. Assessment Officer's Comment: Assessment of the proposal against the provisions of the Coastal Management SEPP is provided earlier in this report. In summary, it is considered that the proposal is satisfactory when assessed against the provisions of the Coastal Management SEPP.
177. **Garage door width.**  
Concern is raised that the width of the garage door is contrary to DCP controls and is inconsistent with the principles of Crime Prevention Through Environmental Design (CPTED) because it does not provide for casual surveillance of the public domain (street).
178. Assessment Officer's Comment: It is noted that the provisions of the Environmental Planning and Assessment Act requires Council to consider the principles of CPTED in the assessment of DAs. Generally, one of those principles is that developments should enable/facilitate casual surveillance of the public domain. In residential developments, this is commonly achieved through siting of some living areas towards the front of the house to enable views to/from the street.

179. The subject site has a steep slope from the street to the rear (Oatley Bay), and the siting of the garage at the front of the site for vehicle access provides little opportunity for living areas at the front for such casual surveillance. This is a common situation on allotments with such a steep slope away from the street and a narrow frontage of 12.19m.
180. **Tree Removal**  
Concern is raised that the proposal involves removal of three trees within the foreshore area, as such removal would be contrary to the DCP controls which require retention of natural foreshore features such as trees and exposed rock.
- Further, concern is also raised that the DA documentation is ambiguous, as the architectural plans show the retention of three *Cupaniopsis anarcardioides* (*Tuckeroo*) trees, whilst the landscape plans show these to be removed.
181. Assessment Officer's Comment: This has been clarified with the applicant who has requested that these be removed as part of the assessment of this DA. Council's Consultant Arborist has undertaken an assessment, and advised that the trees are in poor condition, dangerous and weight loaded. In this regard, the term "weight loaded" refers to partial fracture/failure of the tree branch/limb due to the weight of the limb itself, or by a particular event such as wind/storm damage. Appropriate conditions for replacement planting have been provided as part of the Consultant Arborist's assessment. This is considered to be a satisfactory outcome in this instance. In particular, the removal of these trees will provide additional water views until the replacement planting achieves full maturity.
182. **Earthworks**  
Concern is raised that the proposal involves works including swimming pools and retaining walls and other landscaped features which cover large rock outcrops and other natural foreshore features such as trees and exposed rock in the foreshore area.
183. Assessment Officer's Comment: The residential properties in this location are generally considered to be highly urbanised. Many of the residential properties have been developed in a way which has left very little of the natural foreshore features that previously existed. An example of this is No 40 Herbert to the west, which has a seawall and levelled turfed area at the water's edge, with a swimming pool, steps and terraces between the dwelling and the water (this is illustrated in the montage of the subject site and surrounding properties, see earlier in this report).
184. Other properties have also altered the previous foreshore landscape with a series of landscaped retaining walls that follow the topography of the site, and the subject proposal seeks to replicate this arrangement in the area to the rear of the dwelling.
185. **Lack of requests for variation under Clause 4.6 Kogarah LEP 2012**  
Concern is raised that the proposal breaches a number of planning controls which have not been supported by a clause 4.6 request for variation.
186. Assessment Officer's Comment: The provisions which the neighbour claims that the proposal breaches are listed below, together with a brief comment from the assessment officer:
- Construction within the FBL – this has been supported by a Clause 4.6 request, see discussion earlier in this report;

- FSR non-compliance – the proposal complies with the FSR control, no clause 4.6 request required;
- Exceed height limits – proposal does not breach the 9m LEP control, so no clause 4.6 required. The development proposes a variation to the ceiling height and parapet height controls as discussed elsewhere in this report, however these are DCP controls not requiring a clause 4.6 variation request;
- Construct a 7.8m high wall 250mm from boundary – DCP control, no clause 4.6 required;
- Contravene the 60% limit for the second storey – DCP control, no clause 4.6 required;
- Installation of a pool within the FBL that sits 1.9m above ground – DCP control, no clause 4.6 required;
- Remove 3 significant trees on the foreshore to allow construction of a pool and terraces – DCP control, no clause 4.6 required;
- Non-compliance with front setbacks – DCP control, no clause 4.6 required; and
- Facade to street in excess of 40% – DCP control, no clause 4.6 required.

187. In summary, the proposal has been supported by a request for variation as required by Kogarah LEP 2012 for the non-compliance to the foreshore building line. The proposal does not breach any other controls under Kogarah LEP 2012, whilst the other of the above stated breaches are to Kogarah DCP 2013 controls which do not require a clause 4.6 request.

## REFERRALS

### Council Referrals

188. Drainage Engineer  
Council's Drainage Engineer has reviewed the proposal and raised no objection subject to appropriate conditions of consent.
189. Tree Management/Consultant Arborist: Council's Consultant Arborist has undertaken an assessment and advised that the proposal is satisfactory subject to appropriate conditions of consent. Note: Particular commentary has been provided in relation to the removal of the three *Cupaniopsis anacardioides* (Tuckeroo) trees near the foreshore, where it is advised that these trees are dangerous / weight loaded. In this regard, the term "weight loaded" refers to partial fracture/failure of the tree branch/limb due to the weight of the limb itself, or by a particular event such as wind/storm damage. Council's Consultant Arborist has undertaken an assessment and noted that the Tuckeroo trees on the shoreline exhibit such weight load damage and has supported the proposal to remove the trees.

## CONCLUSION

190. The proposal has been assessed using the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is considered to be satisfactory and recommended for approval subject to conditions, as discussed throughout this report.
191. The DA has been notified to neighbours on three occasions throughout the processing. Submissions have been received from a number of adjoining owners, but in particular, several submissions have been received from the owners of 40 Herbert Street, immediately to the west. The main issues of concern related to view loss and their

concerns regarding extent of non-compliance with Kogarah LEP 2012 and Kogarah DCP 2013.

192. In this regard, it is considered that the issues of concern that have been raised do not warrant refusal of the DA. Appropriate conditions of consent are recommended to address particular matters.
193. The proposal has been assessed against the provisions of Kogarah LEP 2012 and Kogarah DCP 2013, and a number of areas of non-compliance have been identified. The areas of non-compliance mainly relate to the slope of the land. There are also other areas of non-compliance specific to the garage, which in this instance is close to the front of the property which is common in this location of Herbert Street as reflected by other garages on adjoining properties.
194. The proposal is considered to be appropriate when assessed against the applicable planning controls, with some matters proposed to be addressed via conditions of consent.

## DETERMINATION AND STATEMENT OF REASONS

### Statement of Reasons

1. The proposed development is considered to be an appropriate scale and form for the site and the character of the locality.
2. The proposed development will not have an unreasonable or adverse impact upon the natural or built environments.
3. The issues of concern raised by the neighbours do not warrant refusal and/or can be ameliorated via conditions of consent.
4. In consideration of the aforementioned reasons, the proposed development is a suitable built form outcome for the site and its approval is not contrary to the public interest.

### Determination

- A. THAT Georges River Council supports the request for variation under Clause 4.6 of Kogarah LEP 2012, in relation to the foreshore building line controls contained in Clause 6.4 of Kogarah LEP 2012.
- B. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Council approves Development Application DA2018/0162 for demolition works and construction of a new dwelling house and in-ground swimming pool at Lot 2 DP 557722 and known as 42 Herbert Street Oatley, subject to the following conditions:

## GENERAL CONDITIONS

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

Description	Reference No.	Date	Revision	Prepared by
Site Plan	2544 Sheet 100	Sept 2018	F	Innovate Architects
Lower Ground Floor	2544 Sheet 101	Sept 2018	F	Innovate Architects

Plan				
Ground Floor Plan	2544 Sheet 102	Sept 2018	F	Innovate Architects
First Floor Plan	2544 Sheet 103	Sept 2018	F	Innovate Architects
Elevations	2544 Sheet 104	Sept 2018	F	Innovate Architects
Sections	2544 Sheet 105	Sept 2018	F	Innovate Architects
Landscape Plan	1811 Sheet L01B	18/4/18	A	Site Design + Studios

## SEPARATE APPROVALS REQUIRED UNDER OTHER LEGISLATION

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

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

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

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

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

The relevant Application Forms for these activities can be downloaded from Council’s website [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au). For further information, please contact Council’s

Customer Service Centre on (02) 9330 6400.

- 3. Vehicular Crossing - Minor Development** - Constructing a vehicular crossing and/or footpath requires a separate approval under Section 138 of the Roads Act 1993 prior to the commencement of those works.

To apply for approval, complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Georges River Council's Website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au). Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Section P1 and P2, in Council's adopted Fees and Charges for the administrative and inspection charges associated with Vehicular Crossing applications.

An approval for a new or modified vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out in accordance with Council's specifications applicable at the time, prior to the issue of an Occupation Certificate.

- 4. Road Opening Permit** - A Road Opening Permit must be obtained from Council, in the case of local or regional roads, or from the RMS, in the case of State roads, for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.

## **REQUIREMENTS OF CONCURRENCE, INTEGRATED & OTHER GOVERNMENT AUTHORITIES**

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

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

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

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

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

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

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

Fee Type	Fee
<b>GENERAL FEES</b>	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See <a href="https://portal.longservice.nsw.gov.au/bci/levy/">https://portal.longservice.nsw.gov.au/bci/levy/</a>	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$155.00
<b>DEVELOPMENT CONTRIBUTIONS</b>	
Georges River Council Section 94A Development Contributions Plan 2017	\$ 25,480

### General Fees

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

### Development Contributions

The Section 7.11 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

A Section 7.12 contribution has been levied on the subject development pursuant to the Georges River Council Section 94A Contributions Plan.

#### Indexation

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

#### Timing of Payment

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

#### Further Information

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

### 7. **Damage Deposit - Minor Works** - In order to insure against damage to Council property the following is required:

(a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **\$1,900.00**

(b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **\$155.00**

(c) Submit to Council, before the commencement of work, a photographic record of the

condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

At the completion of work Council will inspect the public works, and the damage deposit will be refunded in full upon completion of work where no damage occurs. Otherwise the amount will be either forfeited or partly refunded according to the amount of damage.

8. **Site Management Plan** - A Site Management Plan detailing all weather access control points, sedimentation controls, fencing, builder's site sheds office, amenities, materials storage and unloading arrangements must be submitted with the application for the Construction Certificate.

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.

9. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 918140S\_02 must be implemented on the plans lodged with the application for the Construction Certificate.

10. **Required design changes** - Changes are required to be made and shown on the Construction Certificate plans to the satisfaction of the Certifying Authority as follows:

<b>Amendments made in red on approved plans</b>	<b>All changes made in red on the approved plans shall be updated and shown on the Construction Certificate plans</b>
<b>Garage /sub-floor Setback</b>	Amended plans and details are required to show a reduction in floor area through providing an increased setback only to the external wall of the garage, and the sub-floor area below. This setback shall be a minimum 1200mm to the western boundary (adjoining 40 Herbert Street). Variation to the location and other setbacks to boundaries of the garage are not permitted.
<b>Garage/sub-floor length</b>	Amended plans and details are required to show a reduction in floor area through providing an increased setback only to the northern external wall of the garage, and the sub-floor area (the area shown on the plans as workbench / storage) below by 1m to align with the southern wall of the internal stairs. Variation to the location and other setbacks to boundaries of the garage are not permitted.
<b>Deletion of covered area</b>	The covered area forward of the garage (between the southern elevation of the garage and the southern front boundary) shall be deleted. A 600mm architectural eave line only is permitted to be retained.
<b>Privacy Screen</b>	A privacy screen shall be provided to the entire eastern side of the ground floor terrace/balcony (shown on Plan No 2544 Sheet 102). The privacy screen is to be a minimum of 1.8m high measured from the finished floor level of the balcony and comprise of a material that cannot be seen through, such as translucent glazing. If louvres are to be used, they are to be fixed in a position that does not allow downward viewing of the adjoining property.
<b>Privacy Screen</b>	A privacy screen shall be provided to the entire eastern side of the

	first floor terrace/balcony (shown on Plan No 2544 Sheet 103). The privacy screen is to be a minimum of 1.8m high measured from the finished floor level of the balcony and comprise of a material that cannot be seen through, such as translucent glazing. If louvres are to be used, they are to be fixed in a position that does not allow downward viewing of the adjoining property.
<b>Sub-floor area – use</b>	The sub-floor area shall not be used or converted for use as habitable floor space. In this regard, the height sub floor area shall be reduced to a maximum 1.8m in height when measured from finished ground level to the underside of the slab of the garage above, to ensure that the sub-floor area cannot be used or converted for use as habitable floor space.

**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 top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
- (c) All clean water runoff is diverted around cleared or exposed areas
- (d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
- (e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
- (f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
- (g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
- (h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

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

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

- (a) All stormwater shall drain by gravity to the bay via a seawall as shown on the drainage plan located within the property boundary, with the provision of a pollution control pit.
- (b) The PCA shall ensure that any structure or connection is to be located within the boundary of the site.

- (c) The drainage engineer shall ensure that any surface runoff from the street shall not enter the garages or building and it is to be collected and diverted around the building to drain by gravity this matter is to be shown on plan.

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

- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004

**14. Compliance with Swimming Pool Act 1992** - The alterations and additions to the dwelling house and/or the construction of the new dwelling house subject of this consent must not generate any non-compliances with the Swimming Pools Act 1992, Swimming Pool Regulation 2008, Building Code of Australia and/or AS 1926.1-2007 - Swimming Pool Safety. Details of compliance to be illustrated on the plans lodged with the application for the Construction Certificate.

**15. Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works. A copy shall be forwarded to Council where Council is not the PCA.

**16. Swimming Pools - Use and Maintenance** - The following apply to the construction, use and maintenance of swimming pools and spas:

- (a) no ground level may be raised or filled except where shown specifically on the approved plans;
- (b) all pool/spa waste water is to be discharged to the sewer according to the requirements of Sydney Water;
- (c) the swimming pool must not be used for commercial or professional purposes;
- (d) drain paved areas to the landscaped areas or a suitable lawful drainage system; and
- (e) arrange any external pool/spa lighting to minimise glare nuisance to adjoining owners.

**17. Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).

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

**19. Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Site Design and Studios, reference

numbers - L01B. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following –

- a) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
- b) Tree/ s proposed upon the approved landscape plan shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003), and be planted and maintained in accordance with Councils standard specification.

**20. Tree Protection and Retention** - The following trees shall be retained and protected:

<b>Tree Species</b>	<b>Location of Tree / Tree No.</b>	<b>Tree Protection Zone (metres) Fencing distance from trunk</b>
<i>Magnolia stellata</i>	44 Herbert St, side fence	3.0 metres

Details of the trees to be retained must be included on the Construction Certificate plans.

#### **General Tree Protection Measures**

- (a) All trees to be retained shall be protected before and maintained during demolition, excavation and construction of the site.
- (b) The tree protection measures must be undertaken in accordance *AS4970 -2009 Protection of trees on development sites*.
- (c) Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a suitably qualified Arborist (AQF Level 5 or above in Arboriculture).
- (d) The Project Arborist must be present on-site during the stages of excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
- (e) Unless otherwise specified in *AS 4970-2009 Protection of trees on development sites*, a protective fence consisting of 1.8 metres high, fully supported chainmesh fence shall be erected around the base of the tree. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.
- (f) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly, regularly to minimise the effects of construction works.
- (g) No services shall be installed within the TPZ of the tree unless approved by Council. This fence shall be kept in place during demolition, construction and also have a sign displaying 'Tree Protection Zone – DO NOT ENTER' attached to the fence and must also include the name and contact details of the Project Arborist.

#### **Excavation works near tree to be retained – *Magnolia stellata***

- (h) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not adversely be affected.
- (i) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

- (j) Tree Protection Zone around the trees to be retained are not to have soil level changes or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

Details satisfying this condition shall be shown on the Construction Certificate plans.

Details of this construction method shall be shown on the Construction Certificate plans.

## 21. Tree Removal & Replacement

### Tree removal

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
<i>Cupaniopsis anarcardiodes</i>	X3	42 Herbert St Oatley, waters edge, dangerous hazard beam/ weight loaded

### General Tree Removal Requirements

- (a) All tree removal shall be carried out by a minimum certificate Level 3, Licenced and insured Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - *Pruning of Amenity Trees* and Tree Works Industry Code of Practice (Work Cover NSW 1.8.98).
- (b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

A copy of the Hurstville City Council's Tree Removal and Pruning Guidelines and Kogarah City Council, Street Tree Management Strategy and Masterplan, can be downloaded from Council's website [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au).

## 22. Archaeological Investigation. Prior to the issue of a Construction Certificate:

- (a) The applicant must apply to the Heritage Division of the Department of Environment and Heritage for an excavation permit under Section 140 of the [Heritage Act 1977](#).
- (b) Should any potential archaeological deposit likely to contain Aboriginal objects be identified by any person during the planning or historical assessment stage, application must be made by a suitably qualified archaeologist to the NSW Government Office of Environment and Heritage for an excavation permit for Aboriginal objects.
- (c) The applicant must comply with the conditions and requirements of any excavation permit required, and are to ensure that allowance is made for compliance with these conditions and requirements into the development program.
- (d) General bulk excavation of the site is not to commence prior to compliance with the conditions and requirements of any excavation permit required.
- (e) Should any relics be unexpectedly discovered in any areas of the site not subject to an excavation permit, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with section 146 of the [Heritage Act 1977](#).
- (f) Should any Aboriginal objects be unexpectedly discovered then all excavation or disturbance of the area is to stop immediately and NSW Government Office of Environment and Heritage is to be informed in accordance with Section 89A of the [National Parks and Wildlife Act 1974](#);

- (g) Should any archaeological remains or Aboriginal objects be discovered, a copy of recording of the finds and the final archaeological summary report is to be submitted to Council's Heritage Advisor prior to issue of an Occupation Certificate.

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

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

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

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

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

**24. Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the Work Health and Safety Regulation 2011.

**25. Dial before your dig** - The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" shall be forwarded to Council's Engineers for their records.

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

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

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

(c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected

in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.

**27. Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:

- (a) Set out before commencing excavation.
- (b) Floor slabs or foundation wall, before formwork or commencing brickwork.
- (c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
- (d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
- (e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
- (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 PCA is satisfied that the height and location of the building is proceeding in accordance with the approved plans.

**28. 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**

**29. Site sign - Soil & Erosion Control Measures** - Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.

**30. 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.

31. **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.
32. **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.
33. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act 1993 and/or under Section 68 of the Local Government Act 1993. Penalty infringement Notices may be issued for any offences and severe penalties apply.
34. **Swimming Pools - Filling with water** - The pool/spa shall not filled until the safety fences have been completed in accordance with the approved plans and specifications and inspected by the PCA.
35. **Waste Management Facility** - All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

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

36. **Tree Removal on Private Land** - The trees identified as 'to be removed/pruned' on the approved plans or by conditions of this consent shall be removed in accordance with AS4373 -2007 and the Amenity Tree Industry Code of Practice (SafeWork NSW, August 1998).
37. **Excavation works near tree to be retained** - Excavation around the tree/s to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not be adversely affected.

Where the Tree Protection Zone of trees on site or adjoining sites become compromised by any excavation works, the Project Arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

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

38. **BASIX Compliance Certificate** - A Compliance Certificate must be provided to the PCA regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.
39. **Completion of Landscape Works** - All landscape works must be completed before the issue of the Final Occupation Certificate in accordance with approved landscape plans and specifications, drawn by Site Design and Studios, reference numbers - L01B. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following –
- (a) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
  - (b) Tree/ s proposed upon the approved landscape plan shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003), and be planted and maintained in accordance with Councils standard specification.
40. **Engineering Requirements prior to the issue of the Occupation Certificate** - The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:
- (a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
  - (b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
  - (c) Construct any new vehicle crossings as required in this consent.
  - (d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf
41. **Vehicular crossing - Minor development** - The vehicular crossing and/or footpath works shall be constructed by a private contractor at the expense of the applicant, in accordance with the Vehicular Crossing Approval issued by Council's Engineering Services Division and in accordance with Council's Specification for Vehicular Crossings and Associated Works and the issued.

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 and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

NOTE: No stencilled or coloured concrete may be used outside the boundary of the property.

The work must be completed before the issue of an Occupation Certificate.

#### **OPERATIONAL CONDITIONS (ONGOING)**

42. **Maintenance of Landscaping** - All trees and plants forming part of the landscaping must be maintained. Maintenance includes watering, weeding, removal of rubbish from tree bases,

fertilizing, pest and disease control, replacement of dead or dying plants and any other operations required to maintain healthy trees, plants and turfed areas.

43. **Swimming Pools - Resuscitation Notice** - An expired air resuscitation warning notice complying with the Swimming Pools Act 1992 must be affixed in a prominent position adjacent to the pool.
44. **Outdoor Lighting** - To avoid annoyance to the occupants of adjoining premises or glare to motorist on nearby roads, outdoor lighting must comply with AS 4282-1997: Control of the obtrusive effects of outdoor lighting.
45. **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.
46. **Private Swimming Pools & Spas - Pump Noise** - The swimming pool/spa pump and associated equipment must be located so that the noise emitted does not exceed 5dB(A) above the background level. If this cannot be achieved, a ventilated and sound-proofed enclosure must enclose the pump to achieve the required noise levels.

Swimming pool is to be installed with a timer that limits the recirculation and filtration systems operation such that it does not emit noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):

- (a) before 8 am or after 8 pm on any Sunday or public holiday, or
- (b) before 7 am or after 8 pm on any other day.

47. **Use of the Sub-Floor Area** - The sub-floor area shall not be used or converted for use as habitable floor space at any time.

## **OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

48. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
49. **Appointment of a PCA** - The erection of a building must not commence until the applicant has:

- (a) appointed a PCA for the building work; and
- (b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

If the work is not going to be undertaken by an Owner - Builder, the applicant must:

- (c) appoint a Principal Contractor to undertake the building work. If residential building work (within the meaning of the Home Building Act 1989) is to be undertaken, the Principal Contractor must be a holder of a contractor licence; and
- (d) notify the PCA of the details of any such appointment; and

(e) notify the Principal Contractor of any critical stage inspections or other inspections that are required to be carried out in respect of the building work.

An Information Pack is attached for your convenience should you wish to appoint Georges River Council as the PCA for your development.

**50. Notification Requirements of PCA** - No later than two days before the building work commences, the PCA must notify:

(a) the consent authority and the Council (if not the consent authority) of his or her appointment; and

(b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

**51. Notice of Commencement** - The applicant must give at least two days notice to the Council and the PCA of their intention to commence the erection of a building.

A Notice of Commencement Form is attached for your convenience.

**52. Critical Stage Inspections** - The last critical stage inspection must be undertaken by the PCA. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the Environmental Planning and Assessment Regulation 2000.

**53. Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the PCA at least 48 hours before each required inspection needs to be carried out.

Where Georges River Council has been appointed as the PCA, 48 hours notice in writing, or alternatively 24 hours notice by facsimile or telephone, must be given when specified work requiring inspection has been completed.

**54. Occupation Certificate** - A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part.

Only the PCA appointed for the building work can issue the Occupation Certificate.

An Occupation Certificate Application Form is attached for your convenience.

## **PRESCRIBED CONDITIONS**

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

**56. Clause 98 - Building Code of Australia & Home Building Act 1989** - Requires all building work to be carried out in accordance with the Building Code of Australia. In the case of residential building work to which the Home Building Act 1989 relates, there is a requirement for a contract of insurance to be in force before any work commences.

57. **Clause 98A - Erection of Signs** - Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the PCA and the Principal Contractor.
58. **Clause 98B - Home Building Act 1989** - If the development involves residential building work under the Home Building Act 1989, no work is permitted to commence unless certain details are provided in writing to Council. The name and licence/permit number of the Principal Contractor or Owner Builder and the name of the Insurer by which work is insured under Part 6 of the Home Building Act 1989.
59. **Clause 98E - Protection & support of adjoining premises** - If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.
60. **Clause 98E - Site Excavation** - Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided and adequate provision shall be made for drainage.

## NOTES/ADVICES

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61. **Review of Determination** - Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: Review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney South Planning Panel or the Land & Environment Court.

62. **Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.
63. **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.

**64. Long Service Levy** - A Long Service Levy shall be paid in respect to this development. Details are provided below;

- a) 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>.
- b) 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.

**65. Disability Discrimination Act** - This application has been assessed in accordance with the Environmental Planning and Assessment Act 1979. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992. The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.

**66. Security deposit administration & compliance fee** - Under Section 97 (5) of the Local Government Act 1993, a security deposit (or part) if repaid to the person who provided it is to be repaid with any interest accrued on the deposit (or part) as a consequence of its investment.

- a) Council must cover administration and other costs incurred in the investment of these monies. The current charge is \$50.00 plus 2% of the bond amount per annum.
- b) The interest rate applied to bonds is set at Council's business banking facility rate as at 1 July each year. Council will accept a bank guarantee in lieu of a deposit.
- c) All interest earned on security deposits will be used to offset the Security Deposit Administration and Compliance fee. Where interest earned on a deposit is not sufficient to meet the fee, it will be accepted in full satisfaction of the fee.

**67. Stormwater & Ancillary Works - Applications under Section 138 Roads Act and/or Section 68 Local Government Act 1993** - To apply for approval under Section 138 of the Roads Act 1993:

- (i) Complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Georges River Council's Website at [www.georgesriver.nsw.gov.au](http://www.georgesriver.nsw.gov.au)
- (ii) In the Application Form, quote the Development Consent No. (eg. 2017/DA/\*\*\*\*)
- (iii) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with Vehicular Crossing applications.

An approval for a new vehicular crossing will contain the approved access and/or alignment levels which will be required to construct the crossing and/or footpath. Once approved, all work shall be carried out by a private contractor in accordance with Council's

specifications prior to the issue of an Occupation Certificate.

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

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

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

**68. 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)).

**69. Noise - Noise related conditions** - Council will generally enforce noise related conditions in accordance with the Noise Guide for Local Government (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the Industrial Noise Guidelines (<http://www.environment.nsw.gov.au/noise/industrial.htm>) publish by the Department of Environment and Conservation. Other state government authorities also regulate the [Protection of the Environment Operations Act 1997](#).

Useful links relating to Noise:

- (a) Community Justice Centres - free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](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)).

## ATTACHMENTS

Attachment 1 Amended Plans - Revision F - Site Plan - 42 Herbert Street Oatley

Attachment 2 Amended Plans - Revision F - Elevations - 42 Herbert Street Oatley

