

**ELECTRONIC REPORT TO GEORGES RIVER LOCAL PLANNING PANEL
FOLLOWING DEFERRAL OF THE MATTER ON 21 FEBRUARY 2019**

LPP Report No		Development Application No	DA2018/0091
Site Address & Ward Locality	58 Argyle Street Penshurst Mortdale Ward		
Proposed Development	Construction of a detached secondary dwelling		
Owner	Mr M Van and Ms Y Y W Van		
Applicant	S Nou		
Planner/ Architect	SN Design		
Date of Lodgement	14 March 2018		
Submissions	A total of nineteen (19) submissions have been received to the initial application, the revised plans were not re-notified as the floor area of the secondary dwelling was reduced.		
Cost of Works	\$90,000.00		
Local Planning Panel Criteria	Development is the subject of ten (10) or more unique submissions by way of objection		
List of all relevant 4.15(1)(a) matters	Hurstville Local Environmental Plan (HLEP) 2012, Hurstville Development Control Plan, 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, State Environmental Planning Policy (Affordable Rental Housing) 2009, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, Draft State Environmental Planning Policy (Environment)		
List all documents submitted with this report for the Panel's consideration	Architectural Plans, Statement of Environmental Effects		
Report prepared by	Development Assessment Planner		
Recommendation	THAT the application be approved in accordance with the conditions included in this report.		

Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be	Yes

satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment?	Yes when the report was published on the agenda

History

1. The Development Application (DA2018/0091) was lodged on 14 March 2018; the application was assessed and presented to the Georges River Local Planning Panel (Panel) on 21 February 2019 (Original report see Attachment A). The Panel deferred the matter on 21 February 2019 requesting the applicant address the following:

Determination Deferral

The Panel defers the determination of Development Application DA2018/0091 for the construction of a secondary dwelling at Lot A, DP 319134, and known as 58 Argyle Street, Penshurst, and requests that Council obtain a legal opinion on the following:

1. *Does State Environmental Planning Policy (Affordable Rental Housing) 2009 apply to an application for a secondary dwelling where secondary dwellings are a permitted use within the Hurstville Local Environmental Plan 2012;*
2. *Whether the patio area should be included in the total floor area of the secondary dwelling as referred to in Clause 5.4 Hurstville Local Environmental Plan 2012 and Clause 22 3(b) of State Environmental Planning Policy (Affordable Rental Housing) 2009.*

Following the receipt of the legal advice the matter be referred back to the Panel for electronic determination.

Report Detail

2. This report has been prepared having regard to the legal advice received.

Deferral Reason One

1. *Does State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHS) apply to an application for a secondary dwelling where secondary dwellings are a permitted use within the Hurstville Local Environmental Plan 2012;*

Officer Comment:

- ARHS applies to all development applications for secondary dwellings on land within an R2, R3 or R4 zone, and its provisions need to be taken into consideration when determining a development application for secondary dwellings.
- The ARHS applies to land to which HLEP and KLEP apply and is required to be considered when assessing all applications for secondary dwellings.
- Clause 8 of the ARHS details if there is an inconsistency between cl. 5.4 of HLEP and cl. 22 of ARHS, cl. 22 takes precedence. An assessment against the ARHS is undertaken later in this report.

Deferral Reason Two

2. *Whether the patio area should be included in the total floor area of the secondary dwelling as referred to in Clause 5.4 Hurstville Local Environmental Plan 2012 and Clause 22 3(b) of State Environmental Planning Policy (Affordable Rental Housing) 2009.*

Officer Comment:

- Clause 22(3) of SEPP ARH contains a control for total floor area, there is however no definition for total floor area. This clause details the following:

Clause 22(3) - A consent authority must not consent to development to which this Division applies unless:

(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and

(b) the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.

Subclause (a) makes the reference that development is not to exceed the 'maximum floor area allowed for a dwelling house on land under another environmental planning instrument (EPI)', in this regard the relevant EPI is the Hurstville Local Environmental Plan 2012 and specifically clause 6.5 *Gross floor areas of dwellings in residential zones*. In this regard floor area is referenced in the definition of 'gross floor area' being:

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

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*

	<p><u>Note</u> - The standard instrument defines secondary dwelling as follows:</p> <p>secondary dwelling means a self-contained dwelling that:</p> <p>(a) is established in conjunction with another dwelling (the principal dwelling), and</p> <p>(b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and</p> <p>(c) is located within, or is attached to, or is separate from, the principal dwelling.</p>	<p>The Secondary dwelling will be established in conjunction with the principle dwelling.</p> <p>The Secondary dwelling is located on the same lot.</p> <p>The Secondary dwelling will be separate from the principal dwelling.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p>
<p>Clause 20 – Land to which Division applies</p>	<p>This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but only if development for the purposes of a dwelling house is permissible on the land:</p>		

	a. Zone R2 Low Density Residential,	The zoning of the land is R2 – Low Density Residential	Complies
Clause 22 Development may be carried out with consent			
22(2)	A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The site will contain only a principle dwelling and a secondary dwelling	Complies
22(3)	<p>A consent authority must not consent to development to which this Division applies unless:</p> <p>(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and</p>	<p>Site Area: 522.6sqm (by calculation); and 518.5sqm (by title)</p> <p>For the purpose of this report, the site will be considered to have 518.5sqm (by title)</p> <p>Permissible Floor Area: 0.55:1 as per clause 6.5 of HLEP 2012</p> <p>Proposed Floor Area: 0.55:1</p>	Complies

	(b) the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	54.17sqm	Complies
Total floor area is not a defined term; in this regard the assessment has been undertaken using the definition of gross floor area under the HLEP in order to establish the development does not exceed the maximum residential floor space ratio applicable to the site.			
22(4)	A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres, (c) parking if no additional parking is to be provided on the site	The proposed Secondary dwelling is detached The site area is: 518.5sqm No additional parking has been proposed	Complies Complies Complies

22(5)	A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4)	The proposed Secondary dwelling is considered to be favourable development	
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Advice on Design Changes

3. Following deferral of the application by the Georges River Local Planning Panel on 21 February 2019, and in light of the legal advice received, the architectural plans have been amended to reduce floor space so the allotment does not exceed the maximum gross floor area for a dwelling house on this allotment.
4. In order to comply with Clause 22(3) (a) of SEPP ARH, the gross floor area of the site was reduced from 0.56:1 (as per previous LPP report) to 0.55:1. The reduction in FSR resulted in a northern side setback of 1.3m as opposed to the originally proposed 1.0m setback. The setbacks of the secondary dwelling exceed the Hurstville DCP requirements of 900mm.

Conclusion

5. The deferral issued by the Local Planning Panel (LPP) on 21 February 2019 has been reviewed and the application assessed in accordance with the advice received by Council.

The application before the Georges River Local Planning Panel is compliant with the relevant requirements of State Environmental Planning Policy (Affordable Rental Housing) 2009, Hurstville Local Environmental Plan 2012 and the Hurstville Development Control Plan 1.

The assessment outlined above is considered to have adequately assessed the deferral reasons as outlined above.

The proposal has been assessed using the evaluation 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.

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.

- The issues of concern raised by the neighbours do not warrant refusal and/or can be ameliorated via conditions of consent.

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

THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel approves Development Application DA2018/0091 for the construction of a detached secondary dwelling at Lot A, DP 319134, known as 58 Argyle Street, Penshurst, subject to the following conditions:

GENERAL CONDITIONS

- 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	Dwg No.	Date	Issue	Prepared by
Site Plan	ARGY-01	08.09.2019	C	SN Design
Floor Plan	ARGY-02	08.09.2019	C	SN Design
Roof Plan	ARGY-07	08.09.2019	C	SN Design
Elevations & Section	ARGY-03	08.09.2019	C	SN Design
Landscape Plan	ARGY-06	08.09.2019	C	SN Design
External Finishes	ARGY-01	08.09.2019	C	SN Design

SEPARATE APPROVALS REQUIRED UNDER OTHER LEGISLATION

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

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

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

- (a) Placing or storing materials or equipment;
- (b) Placing or storing waste containers or skip bins;
- (c) Erecting a structure or carrying out work
- (d) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- (e) Pumping concrete from a public road;
- (f) Pumping water from the site into the public road;
- (g) Constructing a vehicular crossing or footpath;
- (h) Establishing a “works zone”;
- (i) Digging up or disturbing the surface of a public road (e.g. Opening the road for the purpose of connections to utility providers);
- (j) Stormwater & ancillary works in the road reserve; and
- (k) Stormwater & ancillary to public infrastructure on private land
- (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.

3. **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 then see ‘Building’, or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap inTM agent has appropriately stamped the plans prior to the issue of the Construction Certificate.

PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

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

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

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

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

Fee Type	Fee
GENERAL FEES	
Long Service Levy (to Long Service Corporation)	

Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Builders Damage Deposit	\$1,900.00
Inspection Fee for Refund of Damage Deposit	\$155.00

General Fees

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

5. **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.

6. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 906101S must be implemented on the plans lodged with the application for the Construction Certificate.
7. **Low reflectivity roof** - Roofing materials must be low glare and reflectivity. Details of finished external materials including colours and texture must be provided to the Certifying Authority.
8. **External Colour Scheme** - The external colour scheme is to comprise predominantly tones in keeping with the existing residential dwelling. Schedule of external finishes and colours to be submitted to the PCA prior to the release of the Construction Certificate.
9. **Required design changes** - The following design changes are required to be made and shown on the Construction Certificate plans:
 - (a) The drainage plan does not show the On Site Detention System. On site Detention system shall be designed in accordance with Council's DCP1, Appendix 2 accompanied by a certificate from a suitably qualified engineer (registered on the NER of Engineers Australia or equivalent). Rainwater tank may be utilised for the OSD in addition to rainwater reuse.

- (b) The proposed garden shed with dimensions (2400mm x 900mm x 1800mm) located along the north-eastern corner of the allotment is to be deleted from the plans and does not form part of the approval.

10. **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 run-off 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.

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

12. **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.

13. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans. The landscaping shall be maintained in accordance with the approved plans in perpetuity.

14. **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 Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).

- (b) All overflows of roof waters from any rainwater tank shall drain by gravity to Council's kerb and gutter directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (c) All other impervious surface water runoff such as driveways and footpaths shall drain by gravity to Council's kerb and gutter directly in front of the development site.
- (d) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (2005) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.

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

Dwelling on Plans	Description	Lot Number	Secondary Address Allocated
Proposed Dwelling	Secondary	Lot A, DP 319134	58A Argyle Street, Penshurst

Details indicating compliance with this condition must be shown on the plans lodged with any Construction Certificate for approval.

16. **On Site detention** - 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.

An on-site detention (OSD) facility designed by a professional engineer who specialises in Hydraulic Engineering must be designed, approved and installed. The design must include the computations of the inlet and outlet hydrographs and stage/storage relationships of the proposed OSD using the following design parameters:

- (a) peak flow rates from the site are to be restricted to a permissible site discharge (PSD) equivalent to the discharge when assuming the site contained a single dwelling, garage, lawn and garden,
- (b) at Annual Recurrence Intervals of 2 years and 100 years.
The OSD facility shall be designed to meet all legislated safety requirements and childproof safety fencing around the facility must be provided where the OSD facility is open or above ground when the design peak storage depth is greater than 300mm. A durable metal plate or similar sign is to be placed at the OSD facility and must bear the words:

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

Full details shall accompany the application for the Construction Certificate.

17. **Stormwater Drainage Plan Details** – Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineering specialising in hydraulic engineering shall be submitted with the Construction Certificate application.

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (2005) and Council's drainage guidelines in Appendix 2 of the Hurstville Development Control Plan 1.

18. **Support for Easement Pipes** – The footings of the proposed secondary dwelling shall be clear of the zone of influence of the easement along the northern side boundary. Certification from a structural engineer is to be submitted with the construction certificate to the satisfaction of the PCA.

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

19. **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.
20. **Registered Surveyors Report - During Development Work** - A report must be submitted to the PCA at each of the following applicable stages of construction:
 - (a) Set out before commencing excavation.
 - (b) Floor slabs or foundation wall, before formwork or commencing brickwork.
 - (c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
 - (d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
 - (e) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
 - (f) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

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

21. **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 applicants expense.

DURING CONSTRUCTION

22. **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.
23. **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.

24. **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.

PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

25. **BASIX Certificate** - All energy efficiency measures as detailed in the approved BASIX Certificate in the plans approved with the Development Consent must be implemented before issue of any Occupation Certificate.
26. **Restriction to User and Positive Covenant for On-Site Detention Facility**- A Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owners of the land. The terms of the instrument are to be

in accordance with Council's standard terms and restrictions which are as follows:

Restrictions on Use of Land

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

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

Positive Covenants

1. *The registered proprietor of the lot(s) hereby burdened will in respect of the system:*
 - a) *keep the system clean and free from silt, rubbish and debris*
 - b) *maintain and repair at the sole expense of the registered proprietors the whole of the system so that it functions in a safe and efficient manner*
 - c) *permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant*
 - d) *comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.*
2. *Pursuant to Section 88F(3) of the Conveyancing Act 1919 the Council shall have the following additional powers:*
 - a) *in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above.*
 - b) *the Council may recover from the registered proprietor in a Court of competent jurisdiction:*
 - i. *any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (i) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.*
 - ii. *legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to*

section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.

27. **Maintenance Schedule – On-site Stormwater Management** - A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule shall outline the required maintenance works, how and when these will be done and who will be carrying out these maintenance works.

28. **Works as Executed and Certification of Stormwater Works** –Prior to the issue of an Occupation Certificate, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be forwarded to the PCA and Council, from a professional engineer specialising in hydraulic engineering. This Plan and Certification shall confirm that the design and construction of the stormwater drainage system satisfies the conditions of development consent and the Construction Certificate stormwater design details approved by the PCA.

The works-as-executed drainage plan must be prepared by a professional engineer specialising in hydraulic engineering in conjunction with a Registered Surveyor and must include the following details:

- (a) The location of any detention basin/s with finished surface levels;
- (b) Volume of storage available in any detention areas;
- (c) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
- (d) The orifice size/s.

29. **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) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.

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

- (a) Compliance with conditions of development consent relating to stormwater;
- (b) The structural adequacy of the On-Site Detention system (OSD);

- (c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
- (d) Pipe invert levels and surface levels to Australian Height Datum;
- (e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Council's Engineering Services section must advise in writing that they are satisfied with the Works-As-Executed prior to the issue of an Occupation Certificate.

OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

- 31. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued.
- 32. **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.

- 33. **Notification of Critical Stage Inspections** - 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.
- 34. **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.

35. **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](#).
36. **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.

37. **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

38. **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
39. **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.
40. **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.
41. **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](#).
42. **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.

43. **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

44. **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.

45. **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.
46. **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.
47. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au
48. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry

Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at <http://www.longservice.nsw.gov.au>.

The required Long Service Levy payment can be direct to the Long Service Corporation via their web site <https://online.longservice.nsw.gov.au/bci/levy>. Payments can only be processed on-line for the full levy owing and where the value of work is between \$25,000 and \$6,000,000. Payments will be accepted for amounts up to \$21,000, using either MasterCard or Visa.

49. **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.
50. **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](#):
- (a) 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.
 - (b) In the Application Form, quote the Development Consent No.
 - (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with 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 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.

51. **Council as PCA – Deemed to Satisfy Provisions of BCA** - Should the Council be appointed as the PCA in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative fire solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.
52. **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:

- Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
- Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
- 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).
- Australian Acoustical Society—professional society of noise-related professionals ([www.acoustics.asn.au /index.php](http://www.acoustics.asn.au/index.php)).
- Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au).
- Department of Gaming and Racing - (www.dgr.nsw.gov.au).