

**REPORT TO GEORGES RIVER COUNCIL  
IHAP MEETING OF 8 SEPTEMBER 2016**

<b>IHAP Report No</b>	4	<b>Development Application No</b>	REV2016/0014
<b>Site Address &amp; Ward Locality</b>	8 Lily St Hurstville - Section 82A Review of Determination of Development Application No DA2014/1131 for demolition of existing structures and construction of a 2/3 storey dwelling, secondary dwelling, detached garage, swimming pool, and front fence  Hurstville Ward		
<b>Proposal</b>	Section 82A Review of Determination of Development Application No DA2014/1131 for demolition of existing structures and construction of a 2/3 storey dwelling, secondary dwelling, detached garage, swimming pool, and front fence		
<b>Report Author/s</b>	Senior Development Assessment Officer, Paula Bizimis		
<b>Owners</b>	Mrs X Liu		
<b>Applicant</b>	Robert Jurukovski		
<b>Zoning</b>	Zone R2 - Low Density Residential		
<b>Date of Lodgement</b>	21 June 2016		
<b>Submissions</b>	Two (2) submissions received		
<b>Cost of Works</b>	\$600,000.00		
<b>Reason for Referral to IHAP</b>	Section 82A Review of Determination of refusal by Council		
<b>Recommendation</b>	THAT Council uphold its original decision and refuse the application for the reasons included in the report.		

**Site Plan**



## Executive Summary

1. On 20 April 2016 Council refused Development Application No DA2014/1131 for the demolition of existing structures and construction of a two (2)/three (3) storey dwelling with attached secondary dwelling, detached garage, swimming pool and front fence.
2. The current application seeks review of the refusal. Some design changes have been undertaken to the development as part of this application.
3. The application has been assessed against the relevant Environmental Planning Instruments, Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) and the relevant Development Control Plan. A number of variations are sought, and for the reasons provided in this report, are not supported.
4. The application was notified to fifteen (15) residents/owners in accordance with Council's requirements and two (2) submissions were received in reply. The issues raised in the submissions are detailed in the report.
5. It is recommended that the application be refused for the reasons detailed in the report.

## Report Detail

### BACKGROUND

1. On 20 April 2016 Council refused Development Application No DA2014/1131 for the demolition of existing structures and construction of a two (2)/three (3) storey dwelling with attached secondary dwelling, detached garage, swimming pool and front fence. Council refused the application for the following reasons:
  - 1) *Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the objectives of the R2 Low Density Residential Zone of the Hurstville Local Environmental Plan 2012.*
  - 2) *Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, a BASIX certificate has not been provided in accordance with State Environmental Planning Policy (Building and Sustainability Index: BASIX) 2004.*
  - 3) *Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following clauses of Hurstville Development Control Plan No 1 – LGA Wide:*
    - *Section 3.1 – Car Parking*
    - *Section 3.5 – Energy Efficiency*
    - *Section 4.1 – Single Dwelling Houses*
    - *Section 4.1.3.5 – Basements and Attics*
    - *Section 4.1.3.8 – Car Parking*
    - *Section 4.1.3.9 – Visual Privacy*
    - *Section 4.5 – Secondary Dwellings*
    - *Section 4.6 - Outbuildings*
  - 4) *Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development will result in unreasonable privacy impacts negatively impacting on the amenity of adjoining properties.*
  - 5) *Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposal would be an overdevelopment and would*

*have adverse impacts on the natural and built environment.*

- 6) *Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest as it is inconsistent with provisions of the relevant controls and is likely to set an undesirable precedent with respect to overdevelopment on similar sites in the locality, when considering the non compliances.*
- 7) *Insufficient information was provided to assess all aspects of the application.*

## **DESCRIPTION OF THE PROPOSAL**

2. The application is a Section 82A Review of Determination of the refusal of Development Application No DA2014/1131 for the demolition of existing structures and construction of a two (2)/three (3) storey dwelling with attached secondary dwelling, detached garage, swimming pool and front fence. Some design changes have been undertaken to the development from that previously considered. In detail the proposed development includes:

### Lower ground level

- Secondary dwelling comprising master bedroom with ensuite, second bedroom, study, kitchen, living room, and bathroom (56sqm).
- Undercroft area including pool pump, stairs, lift, shower, semi basement swimming pool, patio area
- External entry and stair access to patio area, swimming pool, and both levels of the principal dwelling
- Single garage with access from Lily Lane (rear boundary)

### Upper ground level

- Porch/entry area to principal dwelling
- Bedroom 1 with ensuite, bedroom 2 and 3 with shared ensuite, study, kitchen, bathroom, living/TV room
- Single garage with access from Lily Street (front boundary)
- Lift, stairs
- Terrace area/balcony located on rear elevation with access off master bedroom and living/TV room

### First floor level

- Bedroom and study with access to walk in robe and ensuite
- Family room
- Bar area
- Lift, stairs, void area
- A balcony on the front elevation off the bar area, balcony (BBQ area) on the rear elevation with access off the family room, study and bedroom.

### Front fence

A front fence is proposed to the front boundary of the site. The fence will have a maximum height of 1.8m with solid component up to 1.2m with open metal railings above.

## **HISTORY**

3. 11 Nov 14 Development Application No DA2014/1131 lodged  
26 Nov 14 Application notified

- 1 Jul 15 Application referred to Council with a recommendation for refusal. The Council resolved to defer the application for a redesign
- 30 Oct 15 Amended plans received
- 29 Feb 16 Amended plans renotified
- 20 Apr 16 Application (amended plans) referred to Council with recommendation for refusal.
- 21 Jun 16 Current 82A Review of Determination Application lodged.

#### **DESCRIPTION OF THE SITE AND LOCALITY**

4. The subject site has a 12.19m frontage to Lily Street and a secondary frontage of 12.19m to Lily Lane at the rear. The site has a total area of 490.3sqm and has a fall of 3.56m to the rear. Currently occupying the site is a single storey dwelling house with vehicular access to the rear. There is no significant vegetation present on the site.

The site is directly opposite Station Lane which provides access to Allawah train station. The site is adjoined by part one(1)/part two (2) storey dwelling houses on either side, and opposite Lily Lane to the rear are also single dwelling houses. The area is characterised by low density residential development.

#### **COMPLIANCE AND ASSESSMENT**

##### **SECTION 82A OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

5. Section 82A(4) states that Council may review a determination if:

*“(a) it has notified the request for review in accordance with the regulations, if the regulations so require, or a development control plan if the council has made a development control plan that requires the notification or advertising of requests for the review of its determinations.”*

Comment: The request for review was notified in accordance with Development Control Plan No 1.

*“(b) it has considered any submissions made concerning the request for review.”*

Comment: The application was notified in accordance with Council's requirements and two (2) submissions were received in response. The issues raised in the submissions are detailed in the report below under the heading *“Referrals, Submissions and the Public Interest”*.

*“(c) in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development as amended is substantially the same development as the development described in the original application.”*

Comment: Although the proposal has been amended from the original application it is considered to be substantially the same development as that described in the original application. The proposed development remains a dwelling house with secondary dwelling, swimming, detached garage, and front fence.

The development has been inspected and assessed under the relevant Section 79C(1) "Matters for Consideration" of the Environmental Planning and Assessment Act 1979.

#### **Environmental Planning Instruments**

**HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012**

6. The extent to which the proposal complies with the relevant standards of Hurstville Local Environmental Plan 2012 is outlined in the table below.

<b>HLEP 2012 Clause</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
Part 2 Permitted or Prohibited Development	R2 Low Density Zone	The proposal is defined as a dwelling house and secondary dwelling. Dwelling houses and secondary dwellings are permissible in the zone.	Yes
	Objectives of the Zone	The proposal is inconsistent with the objectives of the zone	No (1)
2.7 Demolition	Requires consent or can be under SEPP (Exempt and Complying Codes)	The proposed demolition can be supported with standard demolition conditions of consent	Yes
4.3 Height of Buildings	9m as identified on Height of Buildings Map	9m	Yes
4.4 Floor Space Ratio	0.6:1 as identified on Floor Space Ratio Map (294.18sqm)	0.54:1 (264sqm)	Yes
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	In accordance with Cl. 4.5	Yes
4.6 – Exception to Development Standards	Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard (Cl 4.6 variation)	N/A	N/A
5.4(9) Secondary dwellings floor space	Floor area not exceed the greater of 60sqm or 10% of total floor area of principal dwelling whichever is greater	56sqm	Yes
6.5 Gross Floor Area of a Dwelling House	For site area < 630sqm Max. GFA = Site area x 0.55 = 269.67sqm	0.54:1 (264sqm)	Yes
6.7 Essential Services	The following services that are essential for the development shall be available or that adequate arrangements must be made available when required:  Supply of water, electricity and	Adequate facilities for the supply	Yes

	disposal and management of sewerage	of water and for the removal of sewage and drainage are already available to this land	
	Stormwater drainage or on-site conservation	Stormwater is to discharge by gravity to the street gutter in Lily Lane	Yes
	Suitable vehicular access	Suitable vehicular access is available to the garage at the rear of the site from Lily Lane. However, information has not been submitted to undertake an assessment of the proposed vehicular crossing to Lily Street.	No

7. (1) Objectives of the zone

The objectives of the R2 Low Density Residential Zone are:

- *‘To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for a range of housing types, where such development does not compromise the amenity of the surrounding area, or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To encourage greater visual amenity through maintaining and enhancing landscaping as a major element in the residential environment.*
- *To provide for a range of home business activities where such activities are not likely to adversely affect the surrounding residential amenity.’*

It is considered that the proposed development is not consistent with the objectives of the R2 Low Density Residential Zone for the following reasons:

- The proposed development will compromise the amenity of adjoining properties in that the proposed balconies to the rear elevation allow for direct viewing of the private open space areas of adjoining developments. There are also several doors which give external access from the principal dwelling to the side boundary area which result in overlooking and viewing of adjoining developments due to their finished floor level being above the existing ground level (up to 1.1m above existing ground level).
- The proposal does not provide adequate parking for the development compromising the amenity of the area.
- The development provides a poor level of amenity for future occupants as the design of the development does not allow direct and reasonable access to the private open space area. Rather, the design provides convoluted internal access through the lower ground floor and through the swimming pool coping area to access the rear yard. This design encourages the use of balconies and terraces

as the primary open space areas which exacerbates the privacy impacts to adjoining developments.

In addition to this, the living area provided to the dwellings is isolated within a room (which is smaller or the same size as the bedrooms) with no flow through from the kitchen and other “living” areas. The family room on the first floor and design of the first floor in general, lends itself to being used as a separate dwelling with independent access easily achievable from the lower ground floor. The provision of a second door which gives external access from the bathroom and kitchen of the principal dwelling is questionable and provides unnecessary opportunities to access these areas from the side boundary of the site.

The amenity of the secondary dwelling is further compromised in that the windows on the south east elevation (kitchen, ensuite, and bedroom) are located in an undercroft area with no sunlight penetration. The design of the development compromises the integrity of the development and amenity for future occupants.

**STATE ENVIRONMENTAL PLANNING INSTRUMENTS**

8. Compliance with the relevant state environmental planning policies is detailed and discussed in the table below.

State Environmental Planning Policy	Complies
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy 55 – Remediation of Land	Yes
State Environmental Planning Policy (Building Sustainability Index BASIX) 2004	Yes

**Draft Environmental Planning Instruments**

9. No draft environmental planning instruments affect the proposed development.

**Any other matters prescribed by the Regulations**

10. The Regulations prescribe the following matters for consideration for development in the Hurstville Council area:

Demolition

Safety standards for demolition and compliance with AS 2601 - 2001 apply to the demolition of any buildings affected by the proposal.

**Development Control Plans**

11. The provisions of the Hurstville Development Control Plan No 1 (DCP 1) apply to the proposed development as follows.

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.1 CAR PARKING**

Section 3.1	Standard	Proposed	Complies
3.1.4.2(a) – Layout	AS2890.1 – Min. dimensions (double garage) = 3m x 5.4m  Two spaces	Lily Street garage is 3m x 6.88m and Lily Lane garage is 2.7m x 6m however as the garage to Lily Street cannot be considered, the development provides one car space only.	No (1)
3.1.4.4 – Ramps,	AS2890.1 – Max.	The plans submitted with the	No (1)

Transitions and Driveways	driveway gradient = 1 in 5 (20%)  Minimum headroom at a grade change (driveway and underside of the front balcony) = 2.2m	application do not show adequate detail to assess the proposed vehicular crossing from Lily Street.  Rear garage accessed from Lily Lane complies.	
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12. (1) Car Parking

The proposed Lily Lane garage does not have a width that meets the minimum dimensions of the Australian Standards. This can be corrected through a condition of consent.

The application does not include information regarding the levels of Lily Street and footpath in relation to the proposed vehicular crossing from Lily Street. This information is critical as the ground level of Lily Street (road and footpath) is higher than the subject site and has to be considered to determine if appropriate access can be achieved. The information submitted with the application has been reviewed by Council’s Engineering Services and they have advised that appropriate information, which has been previously requested, has not been submitted to undertake an assessment of the proposed crossing.

Notwithstanding this, the subject site has rear lane access off Lily Lane where a single garage is proposed. Generally, where sites have a secondary frontage, particularly to a lane, the lane is the preferred vehicle access point so to reduce crossings from the primary road and to reduce multiple crossings on one site. In the case of Lily Lane, it serves as the vehicle access to the majority of sites with a frontage to Lily Street and for sites on the opposite side of the lane with a frontage to Cronulla Street. The subject site has its existing vehicular crossing from Lily Lane. It is practical for two (2) car spaces to be provided to the rear of the site with access off Lily Lane, particularly as appropriate access levels can be easily achieved.

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 3.4 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

13. The extent to which the proposal complies with the requirements Section 3.4 is detailed in the table below.

Section 3.4	Requirement	Proposed	Complies
3.4.1.1 – Fencing	Front fence: preferred height of 1m	Front fence is 1.8m high with solid material up to 1.2m. This allows viewing to/from the street and is acceptable.	Acceptable
3.4.1.4 – Entrances	Clearly visible and not confusing	The front door to the principal dwelling is located on the side elevation of the façade adjoining a porch area. There is no justification for this location when the door can be located on the façade which will allow for direct interface with the street.	No
3.4.1.5 – Site and building layout	-Provide surveillance opportunities	-The windows and balconies allow for surveillance primarily to the rear of the site and across the side boundaries.	No



	-Dwelling addresses street -Habitable rooms are directed towards the front of the building	-The front façade of the principal dwelling is poor and does not appropriately address the street as the entrance to the dwelling does not face the front of the site. -Habitable rooms are directed towards the front of the building for a small portion of the first floor only. Surveillance/view of the street can only be reasonably achieved from the first floor balcony, as windows cannot be accessed as they are windows to a void and stairwell.	
3.4.1.6 – Landscaping	Avoid medium height vegetation with concentrated top to bottom foliage	Details of proposed landscaping to the site have not been provided	No
3.4.1.8 – Building identification	Dwellings to be clearly numbered	Numbering can be provided to the dwelling as a condition of consent	Yes

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 3.5 ENERGY EFFICIENCY**

14. A BASIX Certificate has been submitted with the application which shows that the proposed dwellings can achieve the target scores.

In terms of overshadowing, the shadow diagrams submitted with the application show that the majority of the principal private open space area to the adjoining developments will receive at least 3 hours solar access between 9am and 3pm on 21 June.

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 3.7 DRAINAGE AND ON-SITE DETENTION (OSD) REQUIREMENTS**

15. The proposed development can drain to Lily Lane subject to conditions of consent being attached to any consent granted.

**DEVELOPMENT CONTROL PLAN NO 1 - LGA WIDE – SECTION 3.8 FENCES ADJACENT TO PUBLIC ROADS**

16. The proposed front fence is up to 1.8m high but is a primarily an open structure. The fence includes up to 1.2m of solid material and metal railings above that to 1.8m. The fence allows for viewing to the street and the front setback area.

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE - SECTION 3.9 WASTE MANAGEMENT**

17. Waste management information has been submitted with the application which is in accordance with the objectives of Development Control Plan No 1.

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 4.1 SINGLE DWELLING HOUSES**

18. The proposed development complies with the provisions of Section 4.1 as follows.

Section 4.1	Standard	Proposed	Complies
4.1.2.2 Streetscape	Must not diminish the quality of the streetscape	When viewed from the street the development presents as a 2	No (1)

		storey structure which is acceptable, however the development is 3 storeys when viewed from the side (north west) elevation. This bulk and scale is not consistent with the 2 storey height anticipated by the planning requirements.  The provision of the entry door on the side elevation of the development diminishes the dwelling's interface with the street and public area.		
4.1.3.1 Maximum Floor Area	For site area < 630sqm Max. GFA = Site area x 0.55 = 269.67sqm	0.54:1 (264sqm)	Yes	
4.1.3.2 Landscaped Areas and Private Open Spaces	20% to be landscaped area (min. width of 2m)	18.8%	No (2)	
	15sqm of landscaped area to be provided in the front yard	Approximately 12sqm	No (2)	
	Principal Private Open Space Min. dimension of 4m x 5m	> 4m x 5m	Yes	
4.1.3.3 Building Height	Max. ridge height = 9m	< 9m	Yes	
	Max. ceiling height = 7.2m	7.2m	Yes	
4.1.3.4 Setback Controls	Front Setback (Building Line):  4.5m to front wall of the dwelling 5.5m to garage	5.5m  5.5m	Yes	
	Side Boundary Setbacks:  900mm to ground floor level  1.2m to first floor level	900mm – 1.8m for lower ground floor and upper ground floor 1.2m minimum	Yes	
	Rear Setback:  Ground floor level – 3m First floor level – 6m	9.7m to elevated terrace area 18.3m to balcony area	Yes	
	Rear balconies – 6m	9.7m to elevated terrace area	Yes	
	4.1.3.5 Basements and Attics	Must not protrude more than 1m above existing ground level	Up to approximately 1.45m	No (3)
		Floor to ceiling height Min. 2.1m – Max. 2.7m	2.55m – 2.6m	Yes
	Where excavation exceeds	Up to approximately 2m	No (3)	

	1.5m, a geotechnical report must be submitted.	excavation. Geotechnical report provided	
4.1.3.6 Balconies & Terraces	Direct access from a habitable room	All proposed balconies are accessed from habitable rooms	Yes
	Overlooking impacts can be minimized with the use of privacy screens between 1.5m-1.8m high	Privacy screens are provided to the side elevation of the rear balconies however they are not effective in addressing overlooking from the widest part of the balconies which allows direct viewing of adjoining developments	No (4)
4.1.3.7 Façade Articulation	Garage must be setback 5.5m	5.5m from Lily Street	Yes
	Garage doors facing the street must occupy less than 40% for sites greater than 12m wide	19.8%	Yes
	Dwellings must have a front door or window to a habitable room fronting the street	The entrance to the dwelling does not face the front of the site. Habitable rooms are directed towards the front of the building for a small portion (bar area) of the first floor only. Surveillance/view of the street can only be achieved from the first floor balcony, as windows cannot be accessed, for example, void and stairwell windows.	No (1)
	Dwellings must incorporate multiple building elements	Front porch and balcony provides articulation	Yes
4.1.3.8 Car Parking	3 bedrooms or more, 2 spaces to be provided	Only 1 space provided. See discussion below.	No (5)
	Garages must not extend further towards the front boundary than the front wall	Garage matches the setback of the front wall	Yes
	Max. driveway crossing width: 2.7m and 4.5m	3m	Yes
	AS2890.1 – Max. driveway gradient = 1 in 5 (20%)	The proposed driveway off Lily Street cannot be assessed due to lack of information	No (5)
4.1.3.9 Visual Privacy	Windows to be offset by 1m. Neighbouring principal private open space is not overlooked by proposed living areas.	The principal private open space area of adjoining developments can be overlooked by the proposed balconies which are located off the living areas. Access from the principal dwelling to the ground level private open space is	No (4)

		convoluted and not direct which encourages use of balconies as the private open space area.	
4.1.3.10 Solar Design	Principal private open space of both the subject lot and adjoining lot must receive a minimum of 3hrs direct solar access between 9am and 3pm in mid-winter (June).	3hrs direct solar access between 9am and 3pm in mid-winter (June) achievable	Yes
4.1.3.11 Stormwater	Stormwater is to drain by gravity to Council’s drainage system	See stormwater assessment table below	Yes

<b>Stormwater Assessment</b>	
Existing Stormwater System	Gravity to street
Proposed Stormwater System	Gravity to street
Stormwater objectives for development type met?	Consistent
Slope to rear (measured centreline of site)	Yes (to Lily Lane)
Gravity to street (from property boundary to street kerb)?	Yes
Discharge into same catchment?	Yes
Easement required?	No

19. (1) Streetscape and Façade Articulation

The development presents as a two (2) storey building at the street frontage but has a three (3) storey mass immediately behind the façade on the northwest elevation. This is particularly imposing and is exacerbated by the excavation proposed to accommodate the lower ground floor. This is not considered to be consistent with the height anticipated by Development Control Plan No 1 which identifies under Section 3.12 – Building Heights and Indicative Storeys that, where the maximum building height is identified as 9m in the LEP, the maximum number of storeys is two (2).

As previously discussed in the report, the front entrance to the principal dwelling is located on the side elevation of the porch area and does not directly face the street. This results in the interface with the public domain being poor.

There are no habitable rooms directed towards the front of the building except for a bar area on the first floor. There are windows on the façade but they are from an entry area, stairwell and a void. These windows do not allow for surveillance or view of the street as they are not related to habitable areas or circulation areas.

The most accessible window is the bar area window on the first floor but this is a small component of the overall façade. A reasonable view of the street can only be achieved if standing on the first floor balcony. The proposed development is therefore considered to not be consistent with the requirements of Development Control Plan No 1 in relation to façade articulation.

20. (2) Landscaped areas and Private Open Space

The proposed development does not achieve the required landscaped open space area as required by Development Control Plan No 1. The application does not contain landscape calculations and this had to be scaled off the plans. A redesign of part of the ground floor front and rear setback area has to be undertaken to achieve compliance.

21. (3) Basement and Attics

The proposed basement is up to 1.45m above natural ground level along the north western boundary. Even though the wall height complies, the basement projection presents as a third storey along this elevation which is excessively bulky and overbearing when viewed from the adjoining property.

The ground level has also been excavated by up to 2m to provide the lower ground floor which contains the secondary dwelling, patio and swimming pool. Large areas of excavation are also proposed adjoining the stair and lift area which are not designated as a particular use. This additional excavation is not required and is unnecessary as the upper ground floor area above this excavation has a finished floor level consistent and generally level with the existing ground level. In addition to this the north west boundary of the site has been excavated outside the building footprint to allow external pedestrian access to the secondary dwelling which is not supported.

The proposed development results in the existing ground level of the site being extensively excavated to provide an additional storey to the development so to house the secondary dwelling, patio and swimming pool. This is not considered to be the intention of Development Control Plan No 1 in relation to basement areas and excavation which promotes minimal excavation and maximum deep soil landscaping, prohibits habitable rooms in basements to protect the internal amenity of occupants, and promotes development which is sympathetic to the natural land form with minimal cut and fill.

The proposed development is not considered to achieve these objectives. The proposed excavation is for the purposes of providing a third storey which could not be otherwise achieved whilst still complying with the height standard and wall height requirement. Deep soil landscaping to the site has been compromised and the side setback areas of the development cannot contain any deep soil due to the excavation and hard surfaces proposed. In addition to this, the amenity of the secondary dwelling is compromised in that the windows on the southeast elevation (kitchen, ensuite, and bedroom) are located in an undercroft area with no sunlight penetration.

22. (4) Balconies and Terraces and Visual Privacy

Privacy screens are provided to the side elevations of the rear balconies however they are not effective in addressing overlooking from the widest part of the balconies which allows direct viewing of adjoining developments. Both the upper ground floor and first floor balconies are significantly elevated above natural ground level which increases the overlooking from these areas.

Access from the principal dwelling to the principal ground level private open space is convoluted and not direct which encourages use of balconies as the private open space area of each floor. The balcony on the first floor is identified as a “BBQ” area which identifies the possible intended use of this balcony and also lends to the concern that each floor will be used as a separate dwelling.

The windows located on the side elevations and the numerous doors proposed on the ground floor south east elevation (which have a floor level up to 1.1m above the existing ground level) also have the potential to overlook the adjoining properties.

23. (5) Car parking

The garage to Lily Lane does not comply with the Australian Standards for width. The garage can be amended to achieve compliance. The issues related to the proposed garage off Lily Street have been discussed in the report above.

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 4.5 SECONDARY DWELLINGS**

24. The proposed secondary dwelling complies with the provisions of Section 4.5 as follows.

<b>Section 4.5</b>	<b>Requirements</b>	<b>Proposed</b>	<b>Complies</b>
4.5.2 General Design	Compliments existing principal dwelling and natural surrounds	The secondary dwelling is contained within the lower ground level which has been excavated. As discussed in the report, the basement level projects significantly above the existing ground level and appears as a 3 storey building along the north west elevation which result in additional bulk. The amenity of the dwelling is compromised with the windows on the south east elevation being in an undercroft area with no sunlight penetration.	No
Subdivision	Not permitted	A condition of consent is required to any consent granted that the subdivision of the lot is not permitted or granted.	Yes (subject to condition)
Location	To maintain existing trees where possible	No tree removal required.	Yes
4.5.2.1 Height	1 storey	1 storey within lower ground level of the development.	Yes
	Floor to ceiling height 2.7m – 3.6m	2.9m floor to floor height shown on plans which is likely to result in 2.7m floor to ceiling height.	Yes
4.5.2.2 Floor Space	60sqm or 10% of the total floor area of the principal dwelling	56sqm	Yes
	Combined floor space cannot exceed the maximum permitted floor space for the site under the LEP	FSR = 0.54:1	Yes
4.5.2.3 Setbacks	1.2m	Side setback = 1m Rear setback = >1.2m	No. Justification for variation to the side setback has

			not been provided. The side setback does comply with the setback requirement for single dwellings and could be considered in isolation, however the issues relating to the development are numerous and this non-compliance contributes to the overall deficient design of the development.
4.5.2.4 Landscaping	Shared with principal dwelling  20% of the site	The landscaped area can be shared although access from the principal dwelling is convoluted and the design does not encourage easy and practical access to open space areas such as the swimming pool, patio and rear yard.  18.8% of the site	No
4.5.2.5 Car Parking	No additional parking spaces are required  Secondary dwelling must not result in any failure of the principal dwelling to meet the minimum required car parking spaces	No additional parking proposed.  Principal dwelling does not meet parking requirements as discussed earlier in this report. However, the secondary dwelling does not contribute to the parking issue.	Yes

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 4.6 OUTBUILDINGS**

<b>Section 4.6 - Garage</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
4.6.2.3 External Finishes	Low reflectivity	Details not provided but can be a condition of consent	Yes, subject to condition
4.6.2.4 Maximum Height	3m from ceiling or top plate height to natural ground level	< 3m	Yes
4.6.2.5 Driveway Gradients and Parking	Driveway gradients must be constructed in accordance with AS2890.1	Can comply but subject to condition of consent	Yes, subject to condition

4.6.2.6 Stormwater	To comply with relevant Council policy, BCA and Australian Standard	Subject to drainage condition the garage can drain directly to Lily Lane at the rear	Yes
4.6.3.1 Garages, Gyms, Cabanas and Sheds	Outbuildings of masonry (brick) construction may extend to side and rear boundaries	900mm setback to side boundary	Yes
	Outbuildings on rear laneways are to be setback 1m to allow area for bins to be placed	1m setback provided	Yes

**DEVELOPMENT CONTROL PLAN NO 1 – LGA WIDE – SECTION 5.7 SWIMMING POOLS AND SPAS**

Section 5.7	Standards	Proposed	Complies
5.7.1.1 Aims	Satisfy Swimming Pools Act 1992 and Swimming Pools Regulation 1998	Swimming pool is partially fenced along the eastern and northern side. It is unclear how the pool is to be secured from within the building (to the west) and also along the southern edge.  The dwelling will form the northern fence line which contains the kitchen, ensuite and bedroom windows. To gain access to the swimming pool and rear yard, residents have to walk along the pool coping which is a safety hazard, impractical and unreasonable.	No, design of swimming pool is impractical and not well-considered.
	Do not adversely affect neighbour amenity	The coping level of the swimming pool is up to 2m below natural ground level. As such it is unlikely to affect neighbour amenity.	Yes
	Maintain trees	No trees to be removed	Yes
5.7.2 Pool Siting and Noise Control	Top of pool is as close as possible to natural ground level	Coping is located below ground level due to excavation for lower ground level for the secondary dwelling. The excavation proposed is not supported as detailed	No



	<p>No fill between pool and property boundary and landscaping to be incorporated along boundary lines</p> <p>Drainage of spill/overflow water shall not adversely impact on neighbours or the environment</p> <p>Swimming pool edge must be a minimum setback of 1.5m from any side or rear boundary</p>	<p>in the report above.</p> <p>Excavation only along the side boundaries. As the swimming pool is located below the dwelling, there is no opportunity for landscaping.</p> <p>Standards applied</p> <p>1.51m to side boundary &gt;11m to the rear boundary</p>	<p>No</p> <p>Yes (subject to condition of consent)</p> <p>Yes</p>
5.7.2.2 Noise Control and Nuisances	<p>The position of the swimming pool and associated equipment is to be determined paying consideration to any noise amenity impact on adjacent neighbours</p> <p>Mechanical equipment may be required to be acoustically treated to minimise noise impacts on adjacent neighbours</p> <p>Construction, location and use of the swimming pool are to be such so as not to cause a nuisance to surrounding neighbours by means of noise, drainage, illumination or any other reason</p>	<p>The pool level is below the ground level of the adjoining property and is unlikely to result in any noise amenity impacts.</p> <p>The pool pump will be located within the lower ground floor adjoining a solid wall. Standard conditions of consent are required to ensure noise from the pool pump complies with the relevant standard.</p> <p>Standards applied</p>	<p>Yes</p> <p>Yes, (subject to condition of consent)</p> <p>Yes (subject to condition of consent)</p>
5.7.2.3 Heated Swimming Pools	<p>Heating may only be sourced from renewable energy sources such as solar heating, heat pumps and gas heating. Swimming pool covers should be provided when the pool is not in use</p>	<p>No information provided</p>	<p>Yes (subject to condition of consent)</p>

**Impacts**

**Natural Environment**

25. The application proposes significant excavation of the natural ground level. A geotechnical investigation report (prepared by Crozier Geotechnical Consultants, dated July 2016) has been submitted to support the proposed development. The report identifies that the proposed excavation will require support to the side boundaries of the site prior to excavation and support walls at the perimeter of the excavation to minimise the risk of lateral displacement beyond the side boundaries.

Notwithstanding this, it is considered that the proposed excavation is unreasonable and proposed to accommodate a third storey to the building. The proposed excavation to the development and subsequent height of the lower ground floor above ground level, do not comply with the requirements of Development Control Plan No 1. This indicates that the proposed development does not reflect the requirements or intentions of Development Control Plan No 1 in relation to basements and excavation.

As a result of the proposed excavation the provision of deep soil areas to the site have been compromised and are not possible for the majority of the side setback areas. The landscaped open space area to the site does not comply with the requirements of Development Control Plan No 1. As such the proposed development is likely to result in an adverse impact on the natural environment.

### ***Built Environment***

26. The proposed development is likely to result in an adverse impact to the built environment. The proposed development results in a three (3) storey building immediately behind the street frontage on the northwest elevation which is bulky and overbearing when viewed from adjoining developments. The existing ground level has been excavated to accommodate the third storey which is not consistent with the objectives of Development Control Plan No 1. The general design deficiencies of the development compromise the amenity of the future occupants of the development in terms of access to the principal ground level private open space area, and provision of deep soil planting. The development also results in unacceptable privacy impacts to adjoining developments in terms of overlooking from balconies, windows, and external doors, with no opportunity for perimeter or screen planting.

### ***Social Impact***

27. The proposed development is for a residential purpose in an already established residential zone and has no perceived social impacts.

### ***Economic Impact***

28. No significant economic impacts are likely to arise as a result of the proposed development.

### ***Suitability of the Site***

29. The subject site is suitable for a dwelling house and secondary dwelling however the design of the development has to be reflective of the planning requirements and provide good amenity outcomes for future occupants and adjoining developments. The existing site is proposed to be extensively modified through excavation to achieve the proposed development and in this regard is not suitable for the proposed development.

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

### **Resident**

30. The application was notified to fifteen (15) residents/owners in accordance with Council's requirements and two (2) submissions were received in reply. The issues raised in the submissions are as follows.

### ***Overdevelopment***

31. Overdevelopment of the site will create danger for school students and add to traffic congestion. The western wall is high and devoid of architectural features, style or character.

Comment: As detailed in the report, insufficient information has been provided to assess the proposed garage from Lily Street. As such only one (1) appropriate car space has been provided to the site which does not comply with the requirements of Development Control Plan No 1. The north western wall is three (3) storeys which is bulky and overbearing when viewed from the adjoining site. This has been discussed in the report and the design of the development is not supported.

### ***Privacy***

32. The proposed windows and terraces (entertainment areas) will overlook adjoining properties (rear yard and living areas) and cause an acoustic issue from the use of the large terrace areas. Concern that first floor terrace can be in-filled to create additional rooms.

Comment: As discussed in the report, the proposed balconies, terraces, windows and doors located on the side elevation result in unacceptable privacy impacts on adjoining developments. The design of the development allows for each of the three (3) levels to be used as three separate dwellings and the convoluted and impractical access to the lower ground floor swimming pool, patio and rear yard encourages the use of the balconies and terrace areas as private open space areas. On this basis the proposed development cannot be supported.

### ***Swimming Pool Pump***

33. The swimming pool pump is located on the side boundary which would cause a noise impact.

Comment: The pool pump is located in the lower ground floor area behind a solid wall. It is unlikely that this will result in noise impacts. Any development consent granted for a swimming pool is subject to standard conditions of consent regarding noise from associated plant.

### ***Excavation***

34. Excessive excavation with no allowance for adequate support of adjoining properties. Excavation for the swimming pool is a concern especially during the excavation stage.

Comment: Any development consent granted which includes significant excavation is subject to conditions of consent requiring dilapidation reports to be prepared on adjoining sites. The geotechnical investigation report submitted with the application identifies that support to the side boundaries of the site will be required prior to excavation and support walls required to the perimeter of the excavation to minimise the risk of lateral displacement beyond the side boundaries. Irrespective of this, the proposed excavation to the site is considered to be excessive and is not supported as detailed in the report above.

### ***Use***

35. Number of bedrooms indicates that they will be rented out which is currently happening. A lot of noise from the current residents of this property and parking issues as they block driveways due to lack of parking. The development has many bedrooms, small laundry, two (2) kitchens and bar area. The development is intended to be used as a boarding house but has been submitted to by-pass the requirements for boarding houses.

Comment: The design of the development allows for each level to be easily used as a separate dwelling with independent external access provided and associated private open space area available to each level. Notwithstanding this, the proposed development has fundamental design issues that can only be overcome with a total redesign which includes minimising excavation, reconfiguring access to the ground floor principal private open space including any swimming pool, reducing and/or removing balconies, terraces, external doors, and windows, redesigning the principal and secondary dwelling to achieve appropriate amenity, and providing appropriate onsite car parking.

### ***Driveway***

36. How is the front driveway going to be constructed? A driveway at the front of the site cannot be built as the land is too steep. The driveway is still shown on the plans even though the previous assessment did not support the driveway.

Comment: The information submitted with the application has been reviewed by Council's Engineering Services and they have advised that appropriate information, which has been previously requested, has not been submitted to undertake an assessment of the proposed vehicle crossing off Lily Street.

Generally, where sites have a secondary frontage, particularly to a lane, the lane is the preferred vehicle access point so to reduce crossings from the primary road and multiple crossings to one site. In the case of Lily Lane, it serves as the vehicle access to the majority of sites with a frontage to Lily Street and for sites on the opposite side of the lane with a frontage to Cronulla Street. The subject site has its existing vehicular crossing from Lily Lane and it is reasonable for two (2) car spaces to be provided to the rear of the site with access off Lily Lane.

## **Council Referrals**

### ***Engineering Services***

27. The application has been reviewed by Council's Engineering Services and they have advised that appropriate information, which has been previously requested, has not been submitted to undertake an assessment of the proposed crossing to Lily Street. It is also questionable whether appropriate access levels can be achieved given the difference in levels of the road, footpath, and subject site. Council generally does not encourage multiple crossings to a site and where a site has a secondary frontage such as a lane, vehicle access should be provided through the lane. In the case of Lily Lane, its primary function is as a service lane for vehicle access to the majority of sites with a frontage to Lily Street and Cronulla Street. The proposed development should have its vehicle access from the lane, as existing.

### **External Referrals**

28. No external referrals were required for this application.

## **6. CONCLUSION**

29. The application seeks review of the refusal of Development Application No DA2014/1131 for the demolition of existing structures and construction of a two (2)/three (3) storey

dwelling with attached secondary dwelling, detached garage, swimming pool and front fence.

The application has been assessed against the relevant requirements and does not meet the objectives of the R2 Low Density Residential zone and does not comply with numerous provisions and objectives of the Hurstville Development Control Plan No 1. The development has fundamental design issues that compromise the amenity of the principal dwelling, the secondary dwelling, and results in unacceptable privacy impacts to adjoining developments. The development also proposes extensive excavation to the site for the purposes of providing an additional storey to the development which would otherwise not comply with the height standard. This excavation compromises the provision of landscaped open space (deep soil) to the site and perimeter screen planting.

Two (2) submissions were received in response to notification of the application. The issues raised in the submissions are discussed in the report and found to be valid.

Having regard to the matters of consideration under Section 79C of the Environmental Planning and Assessment Act 1979, the proposal is considered unsatisfactory for the reasons stated in this report and is recommended for refusal.

## **DETERMINATION**

30. Pursuant to the provisions of Section 82A of the Environmental Planning and Assessment Act, as amended, the determination of Development Application No DA2014/1131 refused on 20 April 2016 for the demolition of existing structures and construction of a 2/3 storey dwelling with attached secondary dwelling, detached garage, swimming pool and front fence on Lot 22 Section 3 DP 5970 and known as 8 Lily Street Hurstville be upheld and the application known as REV2016/0014 for the demolition of existing structures and construction of a 2/3 storey dwelling with attached secondary dwelling, detached garage, swimming pool and front fence be refused for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the objectives of the R2 Low Density Residential Zone of the Hurstville Local Environmental Plan 2012.
2. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following clauses of Hurstville Development Control Plan No 1 – LGA Wide:
  - Section 3.1 – Car Parking
  - Section 3.4 – Crime Prevention through Environmental Design
  - Section 3.12 – Building heights and Indicative Storeys
  - Section 4.1 – Single Dwelling Houses
    - Section 4.1.2.2 – Streetscape
    - Section 4.1.3.2 – Landscaped Areas and Private Open Space Areas
    - Section 4.1.3.5 – Basements and Attics
    - Section 4.1.3.6 – Balconies and Terraces
    - Section 4.1.3.7 – Facade Articulation
    - Section 4.1.3.8 – Car Parking and Vehicular Access
    - Section 4.1.3.9 – Visual and Acoustic Privacy
  - Section 4.5 – Secondary Dwellings
  - Section 5.7 – Swimming Pools and Spas

3. Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development will result in unreasonable privacy impacts negatively impacting on the amenity of adjoining properties.
4. Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposal would have adverse impacts on the natural and built environment.
5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest as it is inconsistent with provisions of the relevant controls and is likely to set an undesirable precedent with respect to similar sites in the locality, when considering the non compliances.
6. Pursuant to the provisions of the Environmental Planning and Assessment Regulation 200, Schedule 1, the development application provides insufficient information for a full and thorough assessment of all aspects of the application.