

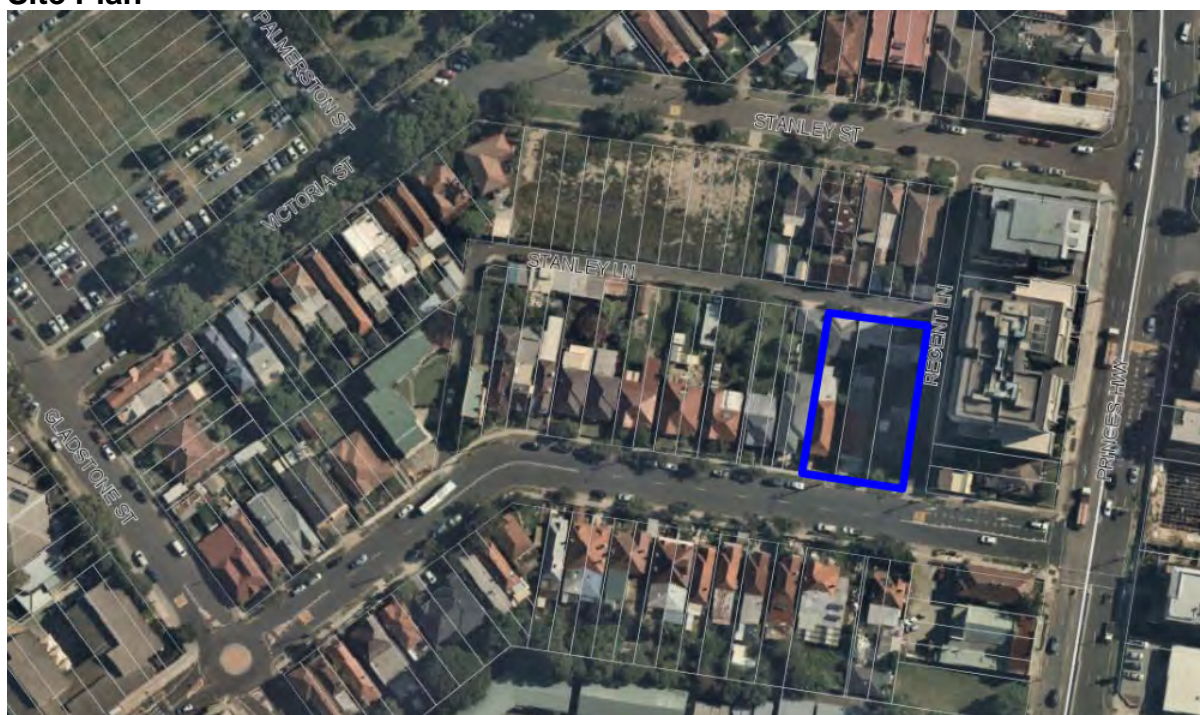
**ELECTRONIC REPORT TO GEORGES RIVER LOCAL PLANNING
PANEL FOLLOWING DEFERRAL AT 4 April 2019**

LPP Report No	LPP011-19	Development Application No	DA2018/0368
Site Address & Ward Locality	80-84 Regent Street, Kogarah Kogarah Bay Ward		
Proposed Development	Demolition of all existing structures on site and construction of a 11 storey residential flat building over three and a half (3.5) levels of basement parking containing sixty four (64) residential units and sixty nine (69) car spaces.		
Owner	Watsong Pty Ltd		
Applicant	Regent Street Property Pty Ltd		
Planner/ Architect	Planner: City Plan, Architect: PBD Architects		
Date of Lodgement	05/09/2018		
Submissions	Amended plans being notified from 26 September 2018 until 11 October 2018 - 1 submissions received. The height plane information submitted to satisfy the deferral reasons was not notified as the clarification of the height was 4.228m rather than 4.6m as nominated, therefore reducing the impact.		
Cost of Works	\$17,775,250.00		
Local Planning Panel Criteria	The application is a residential flat building subject to State Environmental Planning Policy No 65		
List of all relevant 4.15(1)(a) matters	State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy - (Infrastructure) 2007, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment, Kogarah Local Environmental Plan, Kogarah Development Control Plan		
List all documents submitted with this report for the Panel's consideration	Amended Architectural Plans via sendspace link Updated Clause 4.6 Request Letter to the Local Planning Panel Height Plane Diagrams Original Report Recommended conditions of consent		
Report prepared by	Senior Development Assessment Officer		
Recommendation	That the application be approved in accordance with the conditions included in the 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
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<p>Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?</p>	<p>Yes</p>
<p>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?</p>	<p>Yes</p>
<p>Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p>Not Applicable</p>
<p>Conditions Have draft conditions been provided to the applicant for comment?</p>	<p>No, however the applicant had the ability to review the conditions when the original report was published</p>

Site Plan



EXECUTIVE SUMMARY

This report has been prepared following the deferral of development application DA2018/0368 for the demolition of all existing structures onsite and construction of a 11 storey residential flat building containing sixty four (64) residential units over three and a half (3.5) levels of basement parking containing sixty nine (69) car spaces at 80-84 Regent Street Kogarah (the site) by the Georges River Local Planning Panel

(the Panel) on 4 April 2019. The residential flat building breaches the height standard of 33m by 4.228m.

The Panel resolved to defer consideration of the application to enable the applicant to submit amended height plane diagrams and a survey overlay plan in order to exactly determine the extent of the breach.

Amended plans were formally lodged on 12 April 2019. The amended material does not require re-notification as the height breach as originally notified was identified as 4.6m and following the clarification of the height plane diagram and overlaid survey date to be 4.228m.

This report has undertaken an assessment of the amended plans and documentation provided by the applicant which seeks to address the Panel's reasons for deferral. It is considered the proposal, together with the additional information in the form of a height plane diagram and survey overlay, has satisfied the Panels deferral reasons.

In accordance with Section 4.16 of the Environmental Planning and Assessment Act, 1979 (as amended) the proposal is recommended for approval subject to the conditions of consent included at the end of this report.

REPORT IN FULL

A. BACKGROUND

At its meeting on 4 April 2018, the Local Planning Panel (LPP) considered the subject development application and resolved the following:

Deferral

*Pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979, as amended, Development Application No. DA2018/0368 for for the demolition of all existing structures onsite and construction of a 11 storey residential flat building containing sixty four (64) residential units over three and a half (3.5) levels of basement parking containing sixty nine (69) car spaces at 80-84 Regent Street Kogarah, be **deferred** and invites the applicant to submit amended plans to address the following;*

- 1. Provision of a survey that confirms the ground level existing immediately below the upper most roof and confirmation that the extent of the height exceedance corresponds with the height plane diagram shown on drawing no. DA580 Issue A dated 3 September 2018 or alternatively provides an updated Clause 4.6 request and updated height plane diagram.*

Amended plans shall be submitted electronically to the Panel within sixty (60) days and the matter may be handled by electronic means subject to determination of the Panel unless the Chair determines that a further public meeting is required.

1. Planning Controls

The original planning assessment considered the proposal against the provisions of the Kogarah Local Environmental Plan 2012 (KLEP) and the Kogarah Development Control Plan 2012 (KDCP) and the design have not been altered despite the breach

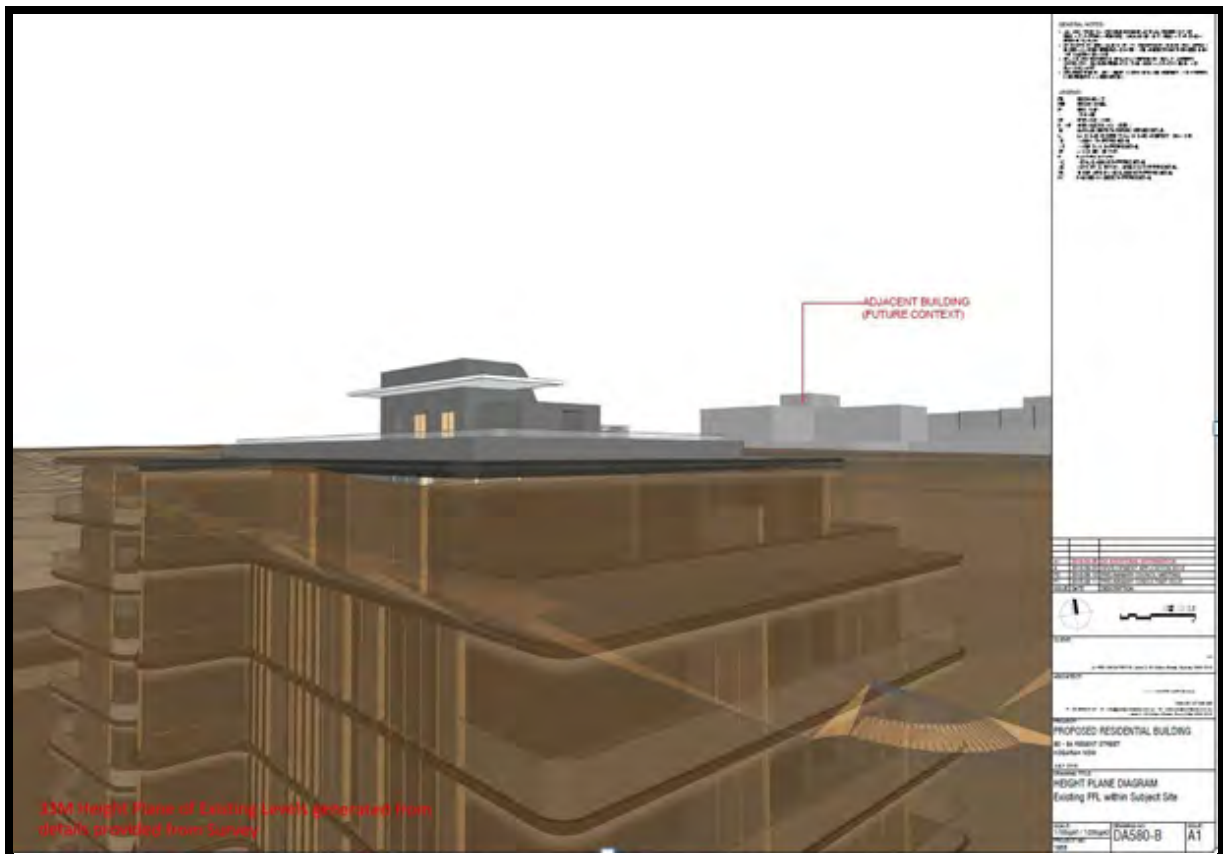


Figure 3 - Height Plan diagram

Revised 4.6 Assessment – Variation request to Clause 4.3 – Height of Buildings control of the Kogarah Local Environmental Plan

Clause 4.6 - Exceptions to development standards

(1) *The objectives of this clause are as follows:*

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

Applicant's Response - *The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.*

As the following request demonstrates, compliance with the standard would be unreasonable and unnecessary, and a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

The development standard that this request seeks approval to vary is the Height of Buildings control in Clause 4.3 of the Kogarah Local Environmental Plan 2012.

The numeric value of the Height of Buildings development standard is 33m.

The site is a small isolated site, with three (3) street frontages which demands a high quality public domain response. As a result, opportunity to provide high amenity to the communal open space is limited to the rooftop

The development standard is not specifically excluded from the operation of Clause 4.6 of KLEP.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal.

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

Officer Response: The variation request is consistent with the objectives of this Clause in the sense that it seeks to exercise a reasonable degree of flexibility to achieve a better outcome.

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Applicant Response - *The site is located at 80 - 84 Regent Street, Kogarah, and is legally described as Lot 1 DP 1084126, Lot 1 DP 974706 and Lot 139 DP 1388. The site is a regular shaped allotment with a primary frontage to Regent Street to the south, Regent Lane to the east and Stanley Lane to the north. The total site area is 1,358.6sqm.*

The site is situated in the Kogarah North Precinct, close to public transport by way of trains and buses. The area has been recently rezoned and is going through a transition from low- density dwellings to new multi-storey residential flat buildings. It is located within 75m of the Princes Highway which is a classified road and has a mixture of commercial/retail and residential uses. Properties to the south have a 39m height limit.

The subject site has a maximum building height standard of 33m. The proposal has a maximum building height, as measured from existing ground level of 37.228m (at RL 53.08 AHD) as confirmed by PBD Architects. Therefore, the proposal breaches the standard by maximum 4.228mm.

The extent of the variation is related primarily to the lift over-run of the building, the lightweight structures for the communal open space, stairs to the communal open space and amenities for the communal open space area. These structures provide equitable access to the proposed communal open/covered terrace on the rooftop and are limited primarily to the centre of the building.

In the north-eastern corner of the building the site has an existing "dip" which results in some of the parapet and a very minor section of the windows of the upper level encroaching in this corner. The lowest level in this corner is 260mm from top of

parapet. The figure above shows the roof plan superimposed on the survey below). However, it is predominantly the roof parapet, and above which encroach the height as can be seen.

As is demonstrated, the extent of window encroachment is negligible and hidden below the roof parapet. The proposal will deliver an appropriate built form that is consistent with the desired future character as outlined in the Kogarah Local Environmental Plan and the Apartment Design Guide.

Officer Response: The height standard in this circumstance applies and is not excluded.

The nature of the breach is considered to be minor in nature, limited to the provision of a lift overrun and is not considered to pose any detrimental impacts as a result

The height breach now sought is lower than what was originally calculated by a further 372mm following the amended documentation of the survey overlay.

(b) to minimise the impact of the overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,

Applicant Response - PBD Architects have prepared detailed shadow diagrams for the proposal which is provided at Appendix 4 of the SEE the overshadowing impact caused by the variation of the height standard is negligible due to the height breach being restricted to the centre of the site. Adjoining premises receive minimum 2hrs sunlight to their living areas.

The area of the building which encroaches the height is restricted to the lift overrun, stairs, and lightweight structures and amenities associated with the communal open space. The areas of non-compliance with the height will not have an adverse impact on solar access or overshadowing due to their location towards the centre of the site. (Refer to Appendix 4 of the SEE).

For the same reason, the structures that breach the height do not adversely impact on the visual quality of the building. They are centrally located so as to reduce any visibility from the street.

The variation of the height standard does not result in any additional overlooking of neighbouring properties. The communal area itself is setback a minimum 8.68m to the western common boundary, 12.91m - 13.13m to the northern rear lane boundary, 7.87m to the east lane boundary and 10.98m to the front Regent St boundary. The communal open space is generally set in 2.5m - 2.8m from the roof edge. The only exception being to the west for a length of 8.4m where it varies from 1.4m to 1.8m setback from the roof edge. This section provides a solid wall enclosing the stairs so has no visual/acoustic impact on neighbours. All doors are oriented "inwards" to the rooftop, with a solid wall facing towards the west to preserve visual and acoustic privacy.

The design complies with this objective of the Height Standard.

Officer Response - Due to the location of the height breach being center of the roof footprint any additional shadow is predominantly cast upon the roof area itself and further unto the Street by virtue of the site's orientation.

The proposed breach in height does not contain any residential elements where it enables the possibility of any overlooking.

Similarly the common open space has been maintained below the height limit and away from the parameters of the roof footprint to preserve visual privacy to adjoining properties.

(c) to provide appropriate scale and intensity of the development through height controls.

Applicant Response - *The portion of the building that exceeds the height does not alter the scale or intensity of the development. It is similar in size and height to what has recently been approved adjoining to the west.*

The design is considered to be consistent with this objective and in accordance with the higher density residential precinct expected in this area due to the location relative to the Kogarah Rail Station and Kogarah Strategic Centre and as endorsed by the Kogarah North Precinct Urban Design Strategy

The portion of the building that exceeds the height does not add to the bulk and scale of the development and is concentrated to the centre of the building.

Officer Response - The author concurs with the applicant's response.

(2) The height of building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Applicant Response - *The proposed height is compatible within its context and will not result in any adverse impacts to surrounding properties. The breach of the standard does not affect consistency with this objective.*

The breach of the standard allows for a building that achieves an improved built form providing better amenity to the residents of the development and the adjoining neighbours.

The provision of communal open space on the roof has a variety of useable spaces); which achieves abundant solar access, is consistent with this objective and objective 3D-1 relating to Communal Open Space within the SEPP 65 provisions. It also results in less impact on adjoining residents by maintaining the communal area to the centre of the site and not near an adjoining boundary.

Officer Response - The proposal despite the breach in height is considered satisfactory to the objectives of the standard and the zone collectively as it provides for essential services to a building of this scale and density.

The proposal as amended now present a lower breach in height by 372mm and remains limited to the provision of a lift overrun.

Additionally, the development as proposed is consistent with other established development of a similar scale to the east and also approved development of a similar scale and larger to the north and west respectively.

3.2 The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

Applicant Response - Compliance with Clause 4.3 Height of Buildings development standard is also unreasonable or unnecessary in the circumstances of this case because it would thwart the objective (c) of the standard (Test 3 under Wehbe).

The breach of the standard allows a built form that is consistent with the urban design principles established in the Kogarah North Precinct Urban Design Study. This includes providing an adequate setback to the street, side, and rear boundaries; as well as the provision of rooftop landscaping and communal open space. If the breach did not occur; the built-form outcome would be compromised as it would otherwise result in a poorer streetscape presentation of the building, (given that there are three (3) street frontages), and poor amenity for the residents because the communal open space would need to be located on the ground floor (or a lower) level, with limited solar access and resulting in significantly less building articulation. This would detrimentally affect the scale and intensity of the development. The positive interface with the public domain would be reduced as the communal open space was made private.

Officer Response - The rooftop open space structures and lift over run provisions are common services required in any high density development and strict compliance with the height standard would result in a loss of an entire residential floor to the development. This scenario is considered unreasonable and would not be consistent with the envisaged FSR for the subject site.

3.3 Development standard has been virtually abandoned or destroyed by the granting of consents departing from the standard in similar cases to this.

Applicant Response - Compliance with the Clause 4.3 Height of Buildings development standard is also unreasonable or unnecessary in the circumstances of this case because the development standard has been abandoned for similar reasons in the immediate area and Local Government Area (Test 4 under Wehbe).

The proposed building immediately to the west, 70 - 78 Regent Street, has been approved with a breach above the maximum 33m height standard for the communal rooftop and associated structures relating to that rooftop, being lift overrun, stairs, amenities and lightweight shade structures. Additional examples where this variation to the height standard and development consent has been granted is provided below.

Address	DA Number and Description	Height Control	Approved	Uplift	Area of non-compliance
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70-78 Regent St, Kogarah, Next door to subject site	DA111/2017 [2018] NSWLEC 1370 Demolition of existing buildings, amalgamation of lots and construction of a residential flat building consisting of eleven levels. Regent Land Pty	33m	37.9m to top of lift overrun (RL 54.65)	14.8%	Rooftop communal open space and lift overrun to service this space. Extract from the Court appeal: "The Council supports the height breaches required in order to provide additional quality
365 - 377 Rocky Point Rd,	DA227/2015 Alterations and additions to an approved mixed- use development. Primus DMS Pty Ltd v Georges River Council	15m	Approx 18.7m	24.67%	Rooftop communal open space and lift overrun to service this space.
27-29 Andover Street, Carlton	DA2017/119 Residential Flat Building	15m	16.7m	7.5%	Lift overrun

Officer Response - In this regard, whilst strict compliance with the development standard is considered unreasonable, it is not considered however, to be inappropriate as the consistent breaches of the standard is limited only to the associated services for the development as opposed to an entire residential levels beyond the height limit where compliance is warranted and remains appropriate for the existing and envisaged land use

As such, strict compliance with the height standard in this circumstance is considered unreasonable and unnecessary. The development standard has been certainly varied numerously and consistently whether by Council, independent Panels and/or LEC for the purposes of communal open space structures and lift over run provisions on the rooftops associated with high density land use developments.

Whilst the standard remains appropriate for the intended land use, a merit based assessment should be exercised consistently in this regard. This does not necessarily mean that the standard has been fully abandoned as it still limits breaches in height that involves provisions of GFA beyond the height limit whereby overshadowing and visual privacy would be compromised otherwise.

4. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]

Applicant Response - The SEE prepared for to support this DA provides a holistic environmental planning assessment of the proposed development and concludes that there are sufficient environmental planning grounds to support the development.

There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.

Additional specific environmental grounds to justify the breach of the standard are summarized as follows:

- a) The breach of the standard allows for a development that is consistent with the desired future character of the area which is going through a transition from low density to high density. It is consistent in the transition of perceived heights for this area, as the permissible heights step from 39m to the south, to the 33m for the site and to the north,
- b) The proposal complies with the maximum permissible floor space ratio for the site.
- c) The additional height is not to achieve additional floor space, but rather to provide a better designed building which results in improved amenity for the residents of the development and those adjoining. It is a better allocation of floor space across the building envelope, to avoid a short/squat built-form. It allows for the provision of the four (4) storey podium, thus maintaining the human scale at the street,
- d) Compliance with the standard would be unreasonable or unnecessary, due to the existing controls being virtually abandoned or destroyed from previous consents being granted. The property to the west has been recently approved for a development similar in height and with lift overrun and communal open space exceeding the height control,
- e) The subject allotment is unique in configuration as it has three (3) street frontages and is a narrower isolated site. This design allows for a visually interesting building on a constrained site, that achieves high quality communal area for the occupants of the development and little impact on adjoining residents,
- f) The proposed height is compatible with the existing development in the immediate context of the site and with the emerging pattern of development in the locality. Where possible, the areas that exceed the development standard have been located in the centre of the building to reduce their visual appearance when viewed from the intervening public domain
- g) There will be no loss to any 'significant' views as a result of the breach of the standard,
- h) The shadow diagrams that form part of this Development Application indicate that the area of non-compliance with the height will not have an adverse impact on solar access or overshadowing,
- i) It is considered that the proposed non-compliances with the maximum height limit for the site do not result in any unreasonable impact and is appropriate for the orderly and economic use of the land, and
- j) The proposed development results in an improved urban design outcome and enhanced Apartment Design Guide compliance.
- k) The environmental planning benefits that are facilitated by the variation of the height standard relate to the achievement of the desired future character of the precinct as established in the Kogarah North Precinct Urban Design Study. It enables the provision of a generous street setback and the creation of a distinct four-storey podium to create human scale on the street. The variation also facilitates the provision of generous building articulation, by having the majority of the communal open space on the roof.

Officer Response - As previously mentioned, the proposal despite the minor height breach, generally does not pose any detrimental environmental impacts.

From a shadow perspective, the breach in height following the amendment is lower by 372mm and concentrated within the center core of the roof footprint which causes any additional shadow to predominantly be cast upon the development itself.

Further, any additional shadow case will naturally be cast towards the south being the Street side by virtue of the site's orientation.

The height breach in question is limited to the lift overrun that essentially allows access to the roof top communal open space which is an important space to be maintained in a high density setting.

Particularly, given that the proposed development complies in full with the maximum GFA permitted and the communal open space provided in the roof is well setback from the adjoining properties ensuring visual privacy is preserved.

Furthermore, the site is located within the Kogarah North precinct which has recently been up zoned with the vision of providing high residential densities near well serviced transport networks and commercial hubs. In this regards, the development as proposed contributes to this vision and achieves the objectives of the zone.

Strict compliance in this circumstance will result in a loss of an entire residential level for the provisions of necessary services to a building of this scale and will compromise the development potential of the site which would be considered unreasonable and unjustified particularly in the absence of any detrimental environmental impacts.

5. The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl. 4.6(4)(a)(ii)]

Applicant Response - In section 3 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in the table below:

Objective	Discussion
<i>Zone R4 High Density Objectives To provide for the housing needs of the community within a high-density residential environment</i>	<i>The breach of the standard does not result in an inconsistency with this objective. The proposal as a whole provides for a variety of unit sizes and layouts to meet the demand of the local market within close proximity to the Kogarah Town Centre and Railway station.</i>
<i>To provide a variety of housing types within a high-density residential environment</i>	<i>The proposed development comprises one, two and three-bedroom units, with differing layouts addressing the local market demand. The breach of the standard does not result in an inconsistency with this objective.</i>

<p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i></p>	<p><i>The breach of the standard does not result in an inconsistency with this objective. The residential units are located within close proximity to the Kogarah Town Centre, Kogarah Railway Station and bus services.</i></p>
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As can be seen from Tables 1 and 3, the proposal is consistent with the objectives of the standard and the objectives of the zone; and is therefore considered to be in the public interest.

Officer Response - The proposal is considered satisfactory to the objectives of the zone and considered to be within the public interest despite the minor breach in question and for the reasons mentioned above.

6. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]

Applicant Response - *There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.*

Officer Response - Contravention of the development standard is not considered to raise any matter of significance for State or Regional environmental planning outcomes due to its minor nature.

7. There is no public benefit of maintaining the standard [cl.4.6(5)(b)]

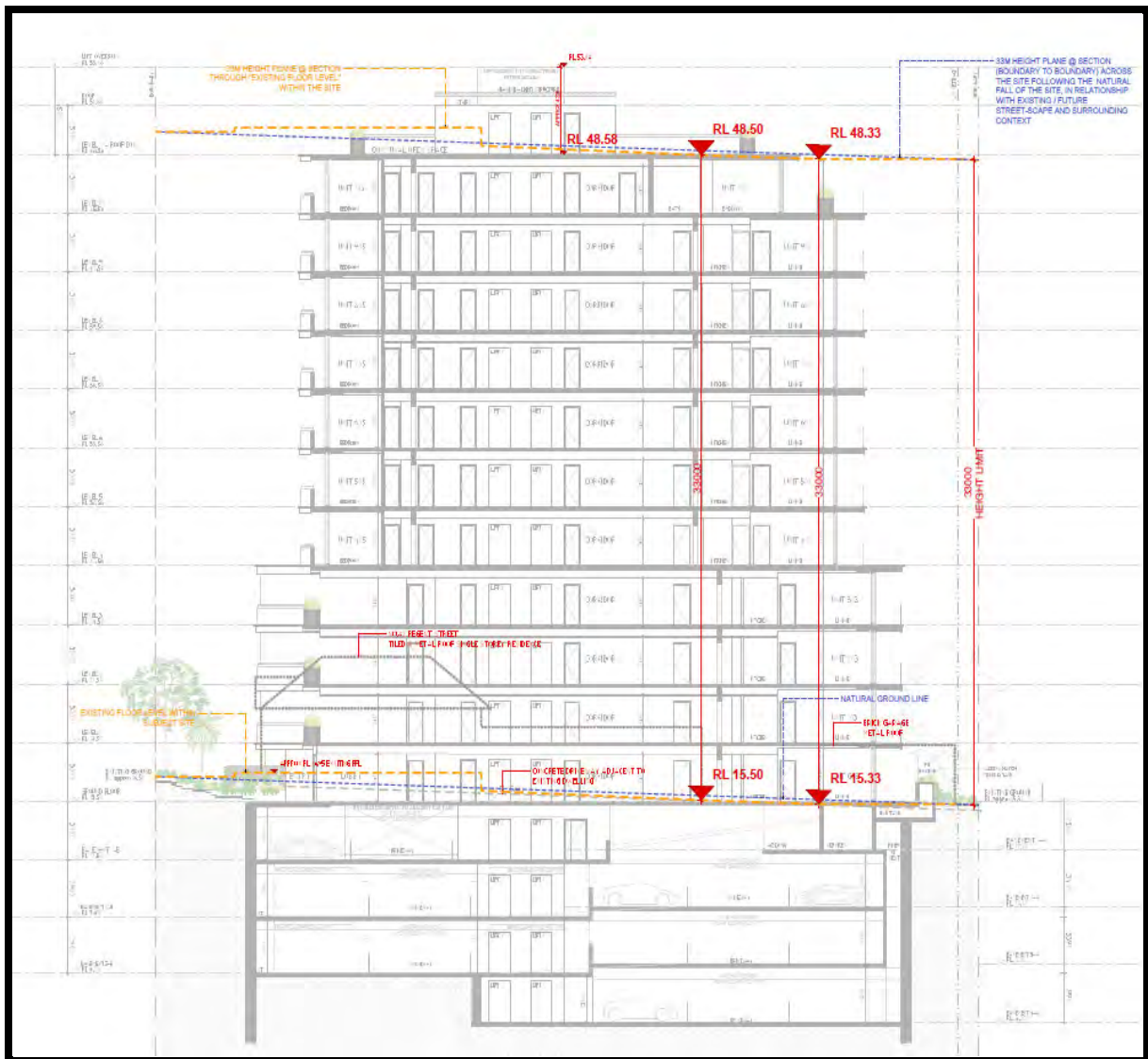
Applicant Response - *As discussed earlier, the proposed breach of the standard facilitates public benefits through a built form outcome that achieves the desired urban design principles established under the Kogarah North Precinct Urban Design Strategy. The proposal provides generous setbacks and articulation, resulting in a building that will provide an improved relationship*

to the public domain. It is also consistent with the objectives of rooftop communal open space to increase solar access to that space and to limit privacy and acoustic impacts if it were to be located at a lower level.

The breach of the standard is minor and represents a lift over-run which provides equitable access to rooftop landscaped areas and communal open space. The breach of the standard does not result in any adverse environmental impacts to the public domain or surrounding properties, due to the central design of that area.

Accordingly, there is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the Height of Buildings standard and hence there are very minor disadvantages.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.



Height Line Diagram Map issue A1 prepared by PBD Architects dated 04/05/2019

Officer Response - The breach in question is considered to be of a minor nature and is limited to the provisions of the lift over run. Whilst Council, has permitted rooftop structures for communal open space including lifts over runs in the past to protrude within reason beyond the development standard, it maintained strict compliance however, ensuring that no breach contains residential components therein.

As such, this is not considered as an abandonment of the development standard and the integrity of the height standard remains and is considered to be within the public benefit.

Assessment of Clause 4.6 using the “Five Part Test” established by the NSW Land and Environment Court (LEC)

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded:

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard:

Officer’s comment - The objectives of the height standard are:

- (a) to establish the maximum height for buildings
- (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas
- (c) to provide appropriate scale and intensity of development through height controls

In this circumstance the breach of height as previously mentioned is limited to the lift over run and some minor associated outdoor structures for the provisions of the rooftop communal open space.

The visual privacy to the adjoining existing and approved future residential flat buildings to the east, west and south is considered to have been preserved as the building involves the use of high parapet surrounding the parameters of the rooftop.

The rooftop communal open space is further setback from the parameters of the development from all directions which would not enable any overlooking from a standing position at that height, considering the setbacks and the angle of the line of sight.

Similarly, in reference to the overshadowing impact, any shadow cast from the projection of the rooftop structures would be cast unto Regent Street as the structures are located centre of the rooftop footprint. The extent of the shadow also remains negligible and the communal open space will still be in full compliance with the minimum required solar access as a result.

As such the height breach is considered to be of an appropriate scale and intensity to the satisfaction of the above objectives.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary:

Officer's comment - The purpose of the standard though remains relevant and compliance is necessary.

The intent or underlying objective is to limit overshadowing and visual privacy impacts to an acceptable level within a high density setting. This is considered to be of direct relevance should the breach in height been presented in the form of an additional residential level, however in this circumstance it is limited to the common roof top open space structures and the lift over run.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable:

Officer's comment - The rooftop open structures and lift over run provisions are common services required in any high density development and strict compliance with the height standard would result in a loss of an entire residential floor of the development. This scenario is considered unreasonable and would not be consistent with the envisaged FSR for the subject site and the future character of this precinct.

Test 4 - The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable:

Officer's comment - Council has consistently issued previous consents that enabled lifts over run provisions and associated rooftop common space area structures in the past and to date.

The assessing officer does not hold the applicant's views that the height standard has been virtually abandoned and destroyed.

Whilst the standard has been varied previously, this action does not render the standard to have been fully abandoned or destroyed as such.

Previous departures were only limited to the provision of lift overruns and Communal Open space structures as envisaged within the Kogarah North Precinct Strategy.

In this regard, it is worthy to note that Council have not permitted any height breaches with residential component within.

As such, strict compliance in this regards is considered unreasonable and unnecessary particularly as the Design Review Panel's recommendations for provisions of rooftop structures for communal open space continue to be received consistently.

Test 5 - The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Officer's comment - In this regard, whilst strict compliance with the development standard is considered unreasonable, it is not considered however to be inappropriate, as the consistent breaches of the standard is limited only to the associated services for the development as opposed to an entire residential levels beyond the height limit where compliance is warranted and remains appropriate for the existing and envisaged land use.

In applying the above 5 step test, strict compliance with the height standard in this circumstance is considered unreasonable and unnecessary. The development standard has been certainly varied numerously and consistently whether by Council, independent Panels and/or Land and Environment Court for the purposes of communal open space structures and lift over run provisions on the rooftops associated with high density land use developments.

Whilst the standard remains appropriate for the intended land use, a merit based assessment should be exercised consistently in this regard. This does not necessarily mean that the standard has been fully abandoned as it still limits breaches in height that involves provisions of GFA beyond the height limit whereby overshadowing and visual privacy would be compromised otherwise.

B. NEIGHBOUR NOTIFICATION

In accordance with the provisions of the KDCP 2012, the amended plans did not require re-notification as the clarification of the height has result in the development having a height of 4.228m being less than the 4.6m nominated on the plans reviewed by the Local Planning Panel therefore not resulting in an increased impact on any neighbouring property.

C. CONCLUSION

The amended plans submitted in response to the deferral reason by the Georges River Local Planning Panel of 4 April 2019, has been addressed above.

The proposal as amended is recommended for approval subject to conditions listed below.

The breach in height following investigation is determined to be 372mm below what was originally sought.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments and development control plan except in the height of the development which is considered acceptable having regard to the justification provided in the report above.
- The applicant has amended the proposal from that originally submitted to address issues raised by the Design Review Panel and Council Officers to provide a better outcome for adjoining developments and the design of the development.
- The proposal also presents minor variations to the provisions of the apartment design guide (ADG) and Kogarah North Development Control Plan relating to the minimum building separation, minimum dimension of deep soil area, maximum number of units permitted with no direct solar access and the minimum site frontage for the development.
- The above variations have been addressed and appropriately justified on the basis of site's constraint directly related to the dedication of land for lane widening, natural site's orientation and subdivision pattern. In reference to the minimum 60m frontage variation to KDCP control, the proposal was considered satisfactory to the intent of the control when considered in context of the adjoining development currently under assessment and subject of its respective development application.

Determination

THAT Georges River Council supports the request for variation under Clause 4.6 of the Kogarah LEP 2012, in relation to the building height control.

THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979, as amended, the Local Planning Panel grants development consent to Development Application DA2018/0368 for the demolition of all existing structures onsite and construction of a 11 storey residential flat building containing sixty one (61) residential units over three and a half (3.5) levels of basement parking containing sixty nine (69) car spaces on Lot 1 DP1084126, Lot 1 DP 97476 and Lot 139 DP1388 and known as 80–84 Regent Street, Kogarah, subject to the following conditions of consent:

SPECIFIC DEVELOPMENT CONDITIONS

Section A Development Details

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

Description	Reference No.	Date	Revision	Prepared by
Cover Page	DA000	03/09/2018	A	PBD Architects
Project Summary	DA001	03/09/2018	A	PBD Architects
Site analysis	DA002	03/09/2018	A	PBD Architects
Demolition Plan	DA003	03/09/2018	A	PBD Architects
Basement 3.5 Level Floor Plan	DA100	03/09/2018	A	PBD Architects
Basement 3 Level Floor Plan	DA101	03/09/2018	A	PBD Architects
Basement 2 Level Floor Plan	DA102	03/09/2018	A	PBD Architects
Basement 1 Level Floor Plan	DA103	03/09/2018	A	PBD Architects
Ground Floor Plan	DA104	03/09/2018	B	PBD Architects
Level 1-3 Floor Plan	DA105	03/09/2018	A	PBD Architects
Level 4 Floor Plan	DA106	03/09/2018	A	PBD Architects
Level 5-9 Floor Plan	DA107	03/09/2018	A	PBD Architects
Level 10 Floor Plan	DA108	03/09/2018	A	PBD Architects
Level 11 Communal Open Space Floor Plan	DA109	03/09/2018	A	PBD Architects
Roof Plan	DA110-A	05/04/2019	A1	PBD Architects
South Elevation Plan	DA201	03/09/2018	B	PBD Architects
East Elevation Plan	DA202	03/09/2018	B	PBD Architects
North Elevation Plan	DA203	03/09/2018	B	PBD Architects
West Elevation Plan	DA204	03/09/2018	B	PBD Architects
Section A Plan	DA300	03/09/2018	A	PBD Architects
Section B Plan	DA301	03/09/2018	A	PBD Architects
South Material Schedule	DA400	03/09/2018	A	PBD Architects
East Material Schedule	DA401	03/09/2018	A	PBD Architects
North Material Schedule	DA402	03/09/2018	A	PBD Architects
West Material Schedule	DA403	03/09/2018	A	PBD Architects
Photomontage	DA410	03/09/2018	A	PBD Architects
Apartment Mix Diagram	DA500	03/09/2018	A	PBD Architects
Height Plane Diagram – Existing FFL within subject site	DA580-A	05/04/2019	A1	PBD Architects
Height Plane Diagram – Existing FFL within subject site	DA580-B	05/04/2019	A1	PBD Architects
Height line diagram - A	R802	05/04/2019	A1	PBD Architects
Landscape Plan – Cover	SS18-	18/10/2018	D	Site Image

Sheet	3898_000			Landscape Architects
Landscape Plan – Ground Floor	SS18-3898_101	19/02/2019	E	Site Image Landscape Architects
Landscape Plan – Rooftop	SS18-3898_102	18/10/2018	D	Site Image Landscape Architects
Landscape Detail	SS18-3898_501	04/09/2018	C	Site Image Landscape Architects
Landscape specifications	SS18-3898_502	04/09/2018	C	Site Image Landscape Architects

Section B Separate Approvals Required Under Other Legislation

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

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

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

- (a) Placing or storing materials or equipment;
- (b) Placing or storing waste containers or skip bins;
- (c) Erecting a structure or carrying out work
- (d) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
- (e) Pumping concrete from a public road;
- (f) Pumping water from the site into the public road;
- (g) Constructing a vehicular crossing or footpath;
- (h) Establishing a “works zone”;
- (i) Digging up or disturbing the surface of a public road (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.

The relevant Application Forms for these activities can be downloaded from Council’s website www.georgesriver.nsw.gov.au. For further information, please contact Council’s Customer Service Centre on (02) 9330 6400.

3. **Vehicular Crossing - Major Development** - The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:

(a) Construct a metre wide footpath for the full length of the frontage of the site in accordance with Council's Specifications applying at the time construction approval is sought.

(b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.

(c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.

(d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

Constructing a vehicular crossing and/or footpath requires separate approval under Section 138 of the Roads Act 1993, prior to the commencement of those works.

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

5. **Engineering - Vehicular Crossing - Minor Development** - Constructing a vehicular crossing and/or footpath requires a separate approval under Section 138 of the Roads Act 1993 prior to the issue of the Construction Certificate.

To apply for approval, complete the Driveway Crossing on Council Road Reserve Application Form which can be downloaded from Georges River Council's Website: www.georgesriver.nsw.gov.au

Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Section P1 and P2, in Council's adopted Fees and Charges for the administrative and inspection charges associated with Vehicular Crossing applications.

Please note, that 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 Specification for Vehicular Crossings and Associated Works prior to the issue of the Occupation Certificate.

6. **Engineering - Road Opening Permit** - A Road Opening Permit must be

obtained from Council, in the case of local or regional roads, or from the Roads and Maritime Services, in the case of State roads, for every opening of a public road reserve to access services including sewer, stormwater drains, water mains, gas mains, and telecommunications before the commencement of work in the road.

7. **Building - Hoarding Application** - Prior to demolition of the buildings on the site or the commencement of work above ground level a separate application for the erection of an A class (fence type) or a B class hoarding or C type scaffold, in accordance with the requirements of Work Cover Authority of NSW, must be erected along that portion of the footway/road reserve, where the building is within 3.0 metres of the street boundary. An application for this work under Section 68 of the Local Government Act 1993 and the Roads Act 1993 must be submitted for approval to Council.

The following information is to be submitted with a Hoarding Application under s68 of the Local Government Act and s138 of the Roads Act 1993:

- (a) A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and
 - (b) Hoarding plan and details that are certified by an appropriately qualified engineer; and
 - (c) The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available on our website) before the commencement of work; and
 - (d) A Public Risk Insurance Policy with a minimum cover of \$10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party; and
 - (e) The application must be endorsement by the Roads & Maritime Services (RMS) as the hoarding is located within 100m of an intersection with traffic lights. For assistance you should contact the DA unit at RMS and speak to Hans on 88492076. Or email hans.pilly.mootanah@rms.nsw.gov.au to obtain concurrence for the hoarding structure.
8. **Below ground anchors - Information to be submitted with S68 Application under LGA 1993 and S138 Application under Roads Act 1993** - In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application must be lodged with Council under Section 68 of the Local Government Act 1993 and the Roads Act 1993 for approval, prior to commencement of those works. The following details must be submitted.
 - (a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.

- (b) The applicant has indemnified Council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of council.
- (c) Documentary evidence of such insurance cover to the value of \$20 million.
- (d) The applicant must register a non-terminating bank guarantee in favour of Council for the amount of. The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
- (e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.

Section C Requirements of Concurrence, Integrated & Other Government Authorities

9. Roads and Maritime Services (RMS) Conditions

- a. The layout of the proposed car parking and loading areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004.
- b. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for determination prior to the issue of a construction certificate.
- c. All vehicles are to enter and exit the site in a forward direction.
- d. All works/regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.

10. Department of Infrastructure, Regional Development and Cities - In accordance with The Airports (Protection of Airspace) Regulations 1996, regulation 14(1)(b), by the Department of Infrastructure, Regional Development and Cities imposes the following conditions on any approval:

- a) The building **must not exceed** a maximum height of **53.08 metres AHD**, inclusive of all lift over-runs, vents, chimneys, aerials, antennas, lightning rods, any rooftop garden plantings, exhaust flues etc.
- b) The Proponent **must advise** Airservices Australia at least three business days prior to the controlled activity commencing by emailing [<ifp@airservicesaustralia.com>](mailto:ifp@airservicesaustralia.com) and quoting YSSY-CA-136.
- c) Separate approval **must be sought** under the Regulations for any construction equipment (i.e. cranes) required to construct the building.

- d) Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Regulations. Therefore, approval to operate construction equipment (i.e. cranes) must be obtained prior to any commitment to construct.
 - e) On completion of construction of the building, the applicant must provide Georges River Council and the airfield design manager with a written report from a certified surveyor on the finished height of the building.
 - f) **Breaches of approval conditions are subject to significant penalties** under Sections 185 and 187 of the Act.
11. **Sydney Water – Tap in TM** - The approved plans must be submitted to a Sydney Water Tap inTM 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.
12. **Notice of Requirements for a Section 73 Certificate** - A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the ‘Plumbing, building and developing’ section of the web site www.sydneywater.com.au then refer to ‘Providers’ under ‘Developing’ or telephone 13 20 92 for assistance.

Following application, a ‘Notice of Requirements’ will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, as it can take some time to build water/sewer pipes and this may impact on other services and building, driveway or landscape design.

The Notice of requirements must be submitted prior to the commencement of work. A Section 73 Compliance Certificate will be required at the completion of development in accordance with further conditions.

13. **Section 73 Compliance Certificate** - A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the PCA prior to the issue of the Occupation Certificate.

Section D Prior to the Issue of a Construction Certificate

14. **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).

Please contact council prior to the payment of S94 Contributions to determine whether the amounts have been indexed from that indicated below in this consent and the form of payment that will be accepted by Council.

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

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

Fee Type	Fee
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	\$129,742.92
Inspection Fee for Refund of Damage Deposit	\$371.00

DEVELOPMENT CONTRIBUTIONS				
Plan No.	Description	Section 94 contributions assessed	No. of existing lots (credit)	Section 94 contributions payable
No. 8	Streetscape, Open Space & Public Domain	\$987,223.68	(\$56,454.84)	\$930,768.84
No. 8	Traffic Facilities	\$18,211.54	(\$931.98)	\$17,279.56
No. 8	Community Facilities	\$17,599.08	(\$1,006.38)	\$16,592.70
No. 9	Kogarah libraries - buildings component	\$16,402.93	(\$938.01)	\$15,464.92
No. 9	Kogarah libraries - books component	\$11,695.23	(\$668.79)	\$11,026.44
Total Section 94 Contributions Currently Payable				\$991,132.46

General Fees

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

Development Contributions

The Section 94 contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

A Section 94A contribution has been levied on the subject development

pursuant to the Georges River Council Section 94A Contributions Plan.

Indexation

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

Timing of Payment

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

Further Information

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

15. **Damage Deposit - Major 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 **\$129,742.92**
 - (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. **\$371.00**
 - (c) Submit to Council, before the commencement of work, a dilapidation report 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 review the dilapidation report and the Works-As-Executed Drawings (if applicable) and inspect the public works.

The damage deposit will be refunded in full upon completion of work where no damage occurs and where Council is satisfied with the completion of works. Alternatively, the damage deposit will be forfeited or partly refunded based on the damage incurred.

16. **Site Management Plan** - A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:
- (a) location of protective site fencing;
 - (b) location of site storage areas/sheds/equipment;
 - (c) location of building materials for construction, e.g. stockpiles
 - (d) provisions for public safety;
 - (e) dust control measures;
 - (f) method used to provide site access location and materials used;
 - (g) details of methods of disposal of demolition materials;
 - (h) method used to provide protective measures for tree preservation;

- (i) provisions for temporary sanitary facilities;
- (j) location and size of waste containers/skip bins;
- (k) details of proposed sediment and erosion control measures;
- (l) method used to provide construction noise and vibration management;
- (m) construction and demolition traffic management details.

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

17. **SEPP 65 Design Verification Statement** - A design verification statement, prepared by a qualified designer, shall be submitted to the Certifying Authority verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of State Environmental Planning Policy No 65 -Design Quality of Residential Flat Development.
18. **Design Quality Excellence (Major Development)** -
- (a) In order to ensure the design quality excellence of the development is retained:
 - i. The design architect is to have direct involvement in the design documentation, contract documentation and construct stages of the project;
 - ii. The design architect is to have full access to the site and is to be authorised by the applicant to respond directly to the consent authority where information or clarification is required in the resolution of the design issues throughout the life of the project;
 - iii. Evidence of the design architect's commission is to be provided to the Council prior to release of the Construction Certificate.
 - (b) The design architect of the project is not to be changed without prior notice and approval of the Council.
19. **BASIX Commitments** - All energy efficiency measures as detailed in the BASIX Certificate No. 953217M, dated 4 September 2018 must be implemented on the plans lodged with the application for the Construction Certificate.
20. **Required design changes** - The following changes are required to be made and shown on the Construction Certificate plans:

Referring to Concept Stormwater Design Plans dated 31 August 2018 and prepared by Geba Consulting, design changes are required and shown on the Construction Certificate plans and submitted to Council's for approval.

According to Hurstville DCP 1, Section 3.7.3, Part A for Development Requirements, development sites greater than 700m² in area must discharge stormwater into Council's stormwater system. A gully pit with 2400mm lintel is

to be constructed at this location. If no pipe line exists, a new pipe line must be constructed to discharge stormwater. Please note that a drainage application under Section 68 of the Local Government Act 1993 and Section 138 of the Roads Act 1993 is required to get approval to connect to Council's drainage system.

The stormwater plans shall be revised and submitted with Section 138 application to Council's Asset Engineer satisfying the following.

- a. A new 375mm diameter RCP drainage line shall be designed and constructed along Regent Lane from the site to the nearest kerb inlet pit. This is to ensure Council's requirements are met.
- b. The proposed drainage along Regent Lane shall be documented on a detailed features survey plan that describes all existing structures, utility services, vegetation and other relevant information.
- c. The inlet pits shall be cast-in-situ and conforming to Council's standard drainage pit details.
- d. The minimum distance from the lintel to the near end of the splay of the driveway at kerb line shall be at least 500mm.
- e. A drainage system longitudinal section drawn at a scale of 1:100 or 1:200 horizontally and 1:10 or 1:20 vertically and showing crossing utility services, pipe size, class and type, pipe support type in accordance with AS 3725 or AS 2032 as appropriate, pipeline chainages, pipeline grade, hydraulic grade line and any other information necessary for the design and construction of the drainage system.

During rare flood events, Stanley Lane will be subject to street flooding. The crest level of the driveway to the basement car park shall be set at least 150mm above the top of the kerb levels.

21. **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.

22. **Pre-Construction Dilapidation Report – Private Land** - A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises including but not limited to:

- (a) All neighbouring buildings likely to be affected by the excavation as determined by the consulting engineer.
- (b) A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises that shall be affected by the excavation as determined by the consulting engineer.

The report shall be prepared at the expense of the applicant and submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

A copy of the pre-construction dilapidation report is to be provided to the adjoining properties (subject of the dilapidation report), a minimum of 5 working days prior to the commencement of work. Evidence confirming that a copy of the pre-construction dilapidation report was delivered to the adjoining properties must be provided to the PCA.

Should the owners of properties (or their agents) refuse access to carry out inspections, after being given reasonable written notice, this shall be reported to Council to obtain Council's agreement to complete the report without access. Reasonable notice is a request for access in no sooner than 14 days between 8.00am-6.00pm.

23. **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 drainage line directly in front of the development site in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).
- (b) Stormwater drainage plans including pipe sizes, type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineer who specialises in Hydraulic Engineering in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (2005 or 2016) and Council's Stormwater Drainage Guidelines, shall accompany the application for the Construction Certificate.
- (c) The underground basement car park must pump to and all other stormwater must drain by gravity to the OSD system.
- (d) The construction of the building and driveway shall be designed to protect the underground basement from possible inundation by surface waters. The crest of the driveway shall be set least 150 mm above the top of the kerb levels.
- (e) The sub soil drainage for the below ground structures including basement car parks shall be designed in accordance with the findings and recommendations in the geotechnical report. The geotechnical report should assess any possible impact of the proposed development upon existing ground water table and surrounding land and buildings. Should the

results of the report indicate that the site is likely to experience issues associated with groundwater management, a fully-tanked dry basement with no sub soil drainage collection or disposal and an allowance made for any hydrostatic pressures.

24. **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 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.

25. **Pump-Out System Design for Stormwater Disposal** - The design of the pump-out system for storm water disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

- (a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20 year storm;
- (b) The pump system shall be regularly maintained and serviced, every six (6) months; and
- (c) The drainage disposal shall be discharged to the OSD system.

Details and certification of compliance from a professional engineer specialising in civil engineering shall be provided for approval with the Construction Certificate application

26. **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 or 2016) and Council's Water Management Policy (Kogarah Council), August 2006.

27. **Driveway Construction Plan Details** - Detailed engineering plans for the driveway shall be submitted with the Construction Certificate application for approval that show:
- (a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
 - (b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).
 - (c) The full length of the driveway designed with a minimum 150mm thick reinforced concrete and minimum of 2.7m wide pavement/kerb face to kerb face width, and a non-slip surface.

28. **Council Property Shoring** - Prior to the issue of the Construction Certificate, plans and specifications prepared by a professional engineer specialising in practising structural engineering must detail how Council's property shall be supported at all times.

Where any shoring is to be supporting, or located on Council's property, certified structural engineering drawings detailing; the extent of the encroachment, the type of shoring and the method of removal, shall be included on the plans. Where the shoring cannot be removed, the plans must detail that the shoring will be cut to 150mm below footpath level and the gap between the shoring and any building shall be filled with a 5MPa lean concrete mix.

29. **Fire Safety Measures** - Prior to the issue of a construction certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a PCA. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or PCA will then issue a Fire Safety Schedule for the building.
30. **Structural details** - Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns and other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works. A copy shall be forwarded to Council where Council is not the PCA.
31. **Access for Persons with a Disability** - Access for persons with disabilities must be provided throughout the site, including to all common rooms, lobby areas, commercial premises and sanitary facilities in accordance with the requirements of the Premises Standards, the Building Code of Australia and AS 1428.1. Details must be submitted with the Construction Certificate Application.

In regards to the above, pedestrian access throughout basement levels shall be highlighted/line marked and sign posted to safeguard egress.

32. **Geotechnical report** - Geotechnical Reports: The applicant must submit a Geotechnical Report, prepared by a suitably qualified Geotechnical Engineer who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted **before the issue of the Construction Certificate** and is to include:
- (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
 - (b) Dilapidation Reports on the adjoining properties prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the Certifying Authority and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
 - (c) On-site guidance by a vibration specialist during the early part of excavation.
 - (d) Rock breaking techniques. Rock excavation is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures.
 - (e) Sides of the excavation are to be pierced prior to any excavation occurring to reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.
33. **Vibration Damage** - To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical Engineer's report.

Alternatively where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) a report from a qualified geotechnical engineer detailing the maximum size of hammer to be used is to be obtained and the recommendations in that report implemented during work on the site. **The report shall be submitted with the Construction Certificate application.**

34. **Slip Resistance** - All pedestrian surfaces in areas such as foyers, public corridors/hallways, stairs and ramps as well as floor surfaces in the wet rooms in any commercial/retail/residential units must have slip resistance classifications, as determined using test methods in either wet or dry conditions, appropriate to their gradient and exposure to wetting. The classifications of the new pedestrian surface materials, in wet or dry conditions, must comply with AS/NZS4586:2004 - Slip Resistance Classifications of New Pedestrian Materials and must be detailed on the plans lodged with the application for the Construction Certificate. **The report shall be submitted with the Construction Certificate application.**

35. **Advise from FR NSW** - Prior to the issue of a Construction Certificate the applicant may be required, under Clause 144 of the Environmental Planning & Assessment Regulation, 2000 to seek written comment from FR NSW about the location of water storage tanks, construction of hydrant/booster pump and valve rooms, and any Fire Engineered Solution developed to meet the performance requirements under the Category 2 Fire Safety Provisions.

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

36. **Traffic Management - Compliance with AS2890** - All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standards, AS 2890.1 (for car parking facilities) and AS 2890.2 (for commercial vehicle facilities).
37. Parking spaces shall be clearly designated (sign posted and marked on ground) and line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with Australian Standards, AS1742, Manual of Uniform Traffic Control Devices and NSW Road Transport (Safety and Traffic Management) Regulations 1999.
38. Driveway access to comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway.
39. All allocated car parking spaces shall be freely available for the customers of the proposed development.
40. Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distance requirements stipulated in the Australian Standards AS2890.1.
41. All vehicles shall enter and exit the premises in a forward direction.
42. No deliveries to the premises shall be made direct from a public place or street inclusive of footpaths, nature strip, roadway and car parks.
43. All loading and unloading of vehicles in relation to the use of the premises shall take place wholly within the dedicated loading/unloading areas, which is wholly within the site.
44. **Construction Traffic Management Plan** - A Construction Traffic Management Plan detailing:
- a) construction vehicle routes;
 - b) anticipated number of trucks per day;
 - c) hours of construction;
 - d) Access arrangements; and

e) Proposed traffic measures to minimise impacts of construction vehicles

must be submitted for the approval of Council's Engineers. Council's Engineers must specify in writing that they are satisfied with the Traffic Management Plan prior to the issue of the Construction Certificate.

45. **Acoustic Requirements - Compliance with submitted Acoustic Report -** The Construction Certificate plans shall demonstrate compliance with the Acoustic Report submitted and approved by Council, titled "*Acoustic Assessment for development application at No. 80-84 Regent Street, Kogarah. Reference No. TK504-01F02 (R4)*", prepared by *Renzo Tonin & Associates* and dated 4 September 2018.
46. **Car Wash Bays -** Plans and specifications of the car washing system which has been approved by Sydney Water must be submitted with the application for the Construction Certificate.

All car washing bays shall be contained within a roofed and bunded car wash bay with pre-treatment approved by Sydney Water. The water from the car wash bay must be graded to a drainage point and connected to sewer.

If alternative water management and disposal options are proposed (i.e. where water is recycled, minimised or reused on the site), detailed plans and specifications of the water recycling system must be submitted with the application for the Construction Certificate for approval.

47. **Site Investigation Requirements - Detailed Site Investigation -** A detailed site contamination investigation of the deep soil zone only, proposed for onsite retention in the northern section of the development site, must be carried out by an appropriately qualified contamination consultant in accordance with the requirements of the relevant NSW EPA Guidelines approved under the Contaminated Land Management Act 1997 including the EPA Guidelines for Consultants Reporting on contaminated sites and shall certify the suitability of the site for the proposed development. If investigation finds that contamination makes the land unsuitable for the proposed development and remediation is required, a Remedial Action Plan (RAP) must be submitted to Council prior to Council making a determination. Council reserves the right to require a site audit of the RAP.

Site contamination – Additional information

Any new information that comes to light during demolition or construction which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately.

Remedial Action Plan (RAP)

The Remedial Action Plan (RAP) must be prepared by an suitably qualified consultant in accordance with NSW Department of Environment and Conservation (DEC) and NSW Environmental Protection Authority (EPA) Guidelines and shall document all the remedial works to be undertaken at the site and also contain an environmental management plan and occupational health and safety plan for the remedial works.

Remediation Works

All remediation work must be carried out in accordance with: -

- The Managing Land Contamination: Planning Guidelines SEPP 55 Remediation of Land; and
- The EPA Guidelines made under the Contaminated Land Management Act 1997.
- And in accordance with the proposed Remedial Action Plan.

Validation Report

After completion of all Remediation works, a copy of the Validation and Monitoring Report prepared by suitably qualified contaminated land consultant shall be submitted to Council. The Construction Certificate shall not be issued until Council approves this Report. The validation report shall be prepared in accordance with the Office Environment and Heritage Guidelines, *Consultants Reporting on Contaminated Sites*, and shall certify the suitability of the site for the proposed development.

- describe and document all works performed;
- include results of validation testing and monitoring;
- include validation results of any fill imported on to the site;
- show how the objectives of the Remedial Action Plan have been met;
- show how all agreed clean-up criteria and relevant regulations have been complied with; and
- include clear justification as to the suitability of the site for the proposed development and the potential for off-site migration of any residual contaminants.

48. **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.

49. **Waste Storage - Residential and Mixed Use Developments** - The plans shall include details of the waste storage area. The waste storage area shall not be visible from the street. The waste storage area shall be located within the lot/building in accordance with the approved plans.

- a) The waste storage area shall be large enough to accommodate the required number of bins for the development and located in an area to suitably facilitate servicing on waste collection day.
- b) The path to the bin room is to be at least 1.0 metres wide and kept clear and unobstructed at all times.

Residential Waste

- c) All bins must be taken to the kerb-side by the caretaker as per the waste management plan.
- d) The development requires a minimum of 5 x1100L bins, for a development of this size Council would suggest six (6), however material will be

transferred from a 240L chute to the 1100L bins which should accommodate for the difference in number.

- e) Recycling 240L bins shall be rotated from the floors by caretakers and therefore residents should not be access the bin rom and the recycling bins can remain stacked
- f) Bins must be returned to the development by the caretaker immediately after collection
- g) The waste room will contain the following to minimise odours, deter vermin, protect surrounding areas, and make it a user-friendly and safe area:
 - i. waste room floor to be sealed;
 - ii. waste room walls and floor surface is flat and even;
 - iii. all walls painted with light colour and washable paint;
 - iv. equipment electric outlets to be installed 1700mm above floor levels;
 - v. The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
 - vi. light switch installed at height of 1.6m;
 - vii. waste rooms must be well lit (sensor lighting recommended);
 - viii. optional automatic odour and pest control system installed to eliminate all pest
 - ix. types and assist with odour reduction - this process generally takes place at
 - x. building handover - building management make the decision to install;
 - xi. all personnel doors are hinged and self-closing;
 - xii. waste collection area must hold all bins - bin movements should be with ease of access;
 - xiii. Conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.
 - xiv. Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.
 - xv. Cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners.

50. **Landscape Plans** - All landscape works shall be carried out in accordance with the approved landscape plans drawn by – Site Image Landscape Architects reference numbers – SS18-3898-000-502. The landscaping shall be maintained in accordance with the approved plans in perpetuity.

General Landscape Requirements

- a) The proposed tree and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
- b) All twenty six (26) trees proposed upon the approved landscape plan shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003), and be planted and maintained in accordance with Councils standard specification

51. **Compliance with submitted Arborist Report** - The recommendations outlined in the Arborist's Report titled Arboricultural Impact Appraisal prepared by Naturally Trees Pty Ltd dated 9th August 2018, must be implemented throughout the relevant stages of construction. Details of tree protection measures to be implemented must be detailed and lodged with the Construction Certificate application for approval and shall be in accordance with Section 4 - *Australian Standard AS 4970-2009: Protection of trees on development sites*.

52. **Tree Removal & Replacement**

Tree removal

Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
T1 – <i>Plumeria rubra</i>	X1	Middle of site
T2 – <i>Mangifera indica</i>	X1	Street front within site
T3 – <i>Murraya paniculata</i>	X1	Street front within site
T4 – <i>Persea americana</i>	X1	Next to Regent lane
T5 – <i>Ceratopetalum gummiferum</i>	X1	Western fence line
T6 – <i>Plumeria rubra</i>	X1	Western fence line

General Tree Removal Requirements

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

Street Tree Removal / Replacement by Council

- a) Three (3) street trees of species *Cupaniopsis anacardioides* shall be provided in the road reserve fronting the site, Regent Street and in accordance with Kogarah Councils Street Tree Management Strategy and Masterplan.
- b) Council shall be appointed to remove all tree/s on public land. All costs associated with the removal of the tree/s and the planting of replacement trees shall be met by the applicant. Fees and charges outlined in the table below are subject to change and are set out in the current version of Council's 'Schedule of Fees and Charges', applicable at the time of payment.

Fee Type – Tree removal on public land	Amount
Administration Fee for Tree Removal	\$154.50
Replacement Tree Fee (per Tree)	\$185.40
Cost of tree removal	To be determined
Cost of Stump Grinding	To be determined

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

53. **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 advised by Georges River Council.

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

54. **Consolidation of Site** - The site shall be consolidated into one allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan shall be registered at the NSW Land and Property Information prior to the issue of a final occupation certificate.

Section E Prior to the Commencement of Work (Including Demolition & Excavation)

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

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

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

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

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

- (b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
- (c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.
57. **Demolition work involving asbestos removal** - Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under clause 458 of the Work Health and Safety Regulation 2011.
58. **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.
59. **Dilapidation Report on Public Land - Major Development Only** - Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site, including:

The report must include the following:

- (a) Photographs showing the existing condition of the road pavement fronting the site,
- (b) Photographs showing the existing condition of the kerb and gutter fronting the site,
- (c) Photographs showing the existing condition of the footpath pavement fronting the site,
- (d) Photographs showing the existing condition of any retaining walls within the footway or road, and
- (e) The full name and signature of the structural engineer.

The Dilapidation Report must be prepared by a professional engineer. The report must be provided to the PCA and a copy provided to the Council.

The report is to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

Note: Council will use this report to determine whether to refund the damage deposit after the completion of works.

60. **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.

61. **Utility Arrangements** - Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The cost associated with the provision or adjustment of services within the road and footway areas is to be at the applicant's expense.
62. **Structural Engineers Details - Supporting Council road/footway** - Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer's details relating to the method of supporting the excavation must be submitted.

Section F During Construction

63. **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.

64. **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.

65. **Ground levels and retaining walls** - The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.
66. **Physical connection of stormwater to site** - No work is permitted to proceed above the ground floor slab level of the building until there is physical connection of the approved stormwater drainage system from the land the subject of this consent to Council's public drainage system.
67. **Utility Services** - The applicant shall undertake and bear all costs associated with the liaison, approval and relocation of any utility services. All correspondence and approvals between the Applicant and utility authorities shall be provided to the Council in conjunction with engineering documentation for the stormwater drainage works.
68. **Drainage Works** - Construction inspections shall be required by Council's Asset Engineer for the Council stormwater drainage and connection works on public roads at the following hold points: -
- Upon excavation of trenches shown on the approved drainage drawings.
 - Upon installation of pipes and other drainage structures.
 - Upon backfilling of excavated areas and prior to the construction of the final pavement surface.

An inspection fee is applicable for each visit, and at least 24 hours' notice will be required for the inspections.

69. **Cost of work to be borne by the applicant** - The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.
70. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138 of the Roads Act 1993 and/or under Section 68 of the Local Government Act 1993. Penalty infringement Notices may be issued for any offences and severe penalties apply.

71. **Building - Structural Certificate During Construction** - The proposed building must be constructed in accordance with details designed and certified by the practising qualified structural engineer. All structural works associated with the foundations, piers, footings and slabs for the proposed building must be inspected and structurally certified for compliance by an independent practising geotechnical and structural engineer. In addition a Compliance or Structural Certificate, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority at each stage of Construction or prior issue of the Occupation Certificate.
72. **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.

73. **Excavation works near tree to be retained** - Excavation around the tree/s to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not be adversely affected.

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

Section G Prior to the issue of the Occupation Certificate

74. **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.
75. **BASIX Compliance Certificate** - A Compliance Certificate must be provided to the PCA regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.
76. **Completion of Landscape Works** - All landscape works must be completed before the issue of the Final Occupation Certificate in accordance with approved landscape plans and specifications, drawn by Site Image Landscape Architects, reference numbers - SS18 – 3898 / 000 - 502. The landscaping shall be maintained in accordance with the approved plans in perpetuity.

General Landscape Requirements

- a) The proposed plant species, pot/ bag size and quantities of plants shall

be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.

- b) All twenty six (26) proposed upon the approved landscape plan shall comply with NATSPEC Specifying Trees: a guide to assessment of tree quality (2003), and be planted and maintained in accordance with Councils standard specification.

77. **Post Construction Dilapidation report - Private Land** - At the completion of the construction works, a suitably qualified person is to be engaged to prepare a post-construction dilapidation report. This report is to ascertain whether the construction works associated with the subject development created any structural damage to the following adjoining premises - 78 Regent Street Kogarah.

The report is to be prepared at the expense of the applicant and submitted to the PCA prior to the issue of the Occupation Certificate. In ascertaining whether adverse structural damaged has occurred to the adjoining premises, the PCA, must compare the post-construction dilapidation report with the pre-construction dilapidation report required by conditions in this consent.

Evidence confirming that a copy of the post-construction dilapidation report was delivered to the adjoining properties subject of the dilapidation report must be provided to the PCA prior to the issue of any Occupation Certificate.

78. **Allocation of car parking spaces** - Car parking associated with the development is to be allocated as follows:

- (a) Residential dwellings: 60 car spaces (including 6 residential accessible spaces).
- (b) Accessible car spaces: 1 accessible car space per adaptable dwelling
- (c) Residential visitors: 9 car spaces which shall remain as common property including 1 accessible visitor space and 1 carwash bay.
- (d) Bicycle spaces: 21 spaces

79. **Major Development** - Internal driveways and parking spaces are to be adequately paved with concrete or bitumen, or interlocking pavers to provide a dust-free surface. All car parking spaces are to be line marked in accordance with AS1742, 'Australian Standard Manual of Uniform Traffic Control Devices' and the relevant guidelines published by the RMS.

80. **SEPP 65 Design Verification Statement** - The PCA must not issue an Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the PCA has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No 65 Design Quality of Residential Flat Development.

81. **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.

82. **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.
83. **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 (as applicable):

- (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 (if applicable);

84. 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

85. **Vehicular crossing & Frontage work - Major development** - The following road frontage works shall be constructed in accordance with Council's Specification for Vehicular Crossings and Associated Works together with the Vehicular Crossing Approval issued by Council's Engineering Services Division:

- (a) Construct footpath for the full length of the frontage of the site in accordance with Council's Specifications for footpaths.
- (b) Construct the vehicular crossing in accordance with Council's Specifications for vehicular crossings.
- (c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in accordance with Council's Specifications for kerb and guttering.
- (d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

The above works shall be carried out at the expense of the applicant and in accordance with Council's Specification for Vehicular Crossings and Associated Works.

The driveway and road frontage works are to be completed before the issue of the Occupation Certificate.

86. **Completion of Major Works** - Prior to the issue of a Final Occupation Certificate, the following works must be completed at the applicant's expense to the satisfaction of Council's Engineering Services section:

- (a) Driveways and vehicular crossings within the road related area;
- (b) Removal of redundant driveways and vehicular crossings;
- (c) New footpaths within the road related area;
- (d) Relocation of any existing above ground utility services
- (e) Relocation/provision of street signs
- (f) New or replacement street trees;
- (g) New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- (h) New or reinstated kerb and guttering within the road related area; and
- (i) New or reinstated road surface pavement within the road.

Council's Engineering Services Section must advise in writing that the works have been completed to their satisfaction prior to the issue of the Occupation Certificate.

Note: The damage deposit paid to Council will not be released until the works have been completed to Council's satisfaction.

87. **Dilapidation Report on Public Land for Major Development Only** - Upon completion of works, a follow up dilapidation report must be prepared for the items of Council infrastructure adjoining the development site including:

The dilapidation report must be prepared by a professional engineer specialising in structural engineering, and include:

- (a) Photographs showing the condition of the road pavement fronting the site
- (b) Photographs showing the condition of the kerb and gutter fronting the site
- (c) Photographs showing the condition of the footway including footpath pavement fronting the site

The report must be provided to the PCA and a copy provided to the Council. The reports are to be supplied in electronic format in Word or PDF. Photographs are to be in colour, digital and date stamped.

NOTE: Council will use this report to determine whether or not to refund the damage deposit.

Council's Engineering Services Division must advise in writing that the works have been completed to their satisfaction prior to the issue of an Occupation Certificate.

88. **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;

89. **Fire Safety Certificate before Occupation or Use** - In accordance with Clause 153 of the Environmental Planning and Assessment Regulation 2000, on completion of building works and prior to the issue of an Occupation Certificate, the owner must cause the issue of a Final Fire Safety Certificate in accordance with Clause 170 of the aforesaid Regulation. The Fire Safety Certificate must be in the form or to the effect of Clause 174 of the Environmental Planning and Assessment Regulation, 2000. In addition, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated, such a Certificate is to state:

(a) That the measure has been assessed by a person (chosen by the owner of the building) who is properly qualified to do so.

(b) That as at the date of the assessment the measure was found to be capable of functioning at a standard not less than that required by the attached Schedule.

A copy of the certificate is to be given by the applicant to the Commissioner of Fire & Rescue NSW and a further copy is to be displayed in a frame and fixed to a wall inside the building's main entrance.

90. **Slip Resistance** - At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.
91. **Building - Structural Certificates** - The proposed structure must be constructed in accordance with details designed and certified by the practising qualified structural engineer. In addition, Compliance or Structural Certificates, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifying Authority prior issue of the Occupation Certificate.
92. **Acoustic Compliance** - Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report titled "the acoustic report for Regent St Property Pty Ltd (TK504-01F02) by Renzo Tonin & Associates dated 4 September 2018".
93. **Electricity Supply** - Evidence shall be provided demonstrating that the development has been connected to the Ausgrid, if required.
94. **Allocation of street addresses** - Prior to issue of an Occupation Certificate, All house numbering are to be allocated in accordance 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. Council must be contacted in relation to all specific requirements for street numbering.

Section H Operational Conditions (Ongoing)

95. **Noise Control** - The use of the premises must not give rise to the transmission of offensive noise to any place of different occupancy. Offensive noise is defined in the Protection of the Environment Operations Act 1997 (as amended).
96. **Final Acoustic Report – Verification of Noise report** - Within three months

from the issue of an Occupation Certificate, an acoustic assessment is to be carried out by an appropriately qualified acoustic consultant, in accordance with the EPA's Industrial Noise Policy and submitted to Council for consideration. This report should include but not be limited to, details verifying that the noise control measures as recommended in the acoustic report titled "**Acoustic Assessment for development application at No. 80-84 Regent Street, Kogarah. Reference No. TK504-01F02 (R4)**", prepared by **Renzo Tonin & Associates and dated 4 September 2018** are effective in attenuating noise to an acceptable noise level and that the use is not calculated to give rise to 'offensive noise' as defined under the provision of the Protection of the Environment Operation Act 1997 (as amended).

97. **Lighting – General Nuisance** - Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill or glare. Flashing, moving or intermittent lights or signs are prohibited.
98. **Amenity of the neighbourhood** - The implementation of this development shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, dust, waste water, waste products, grit, oil or other harmful products.
99. **Activities and storage of goods outside buildings** - There shall be no activities including storing or depositing of any goods or maintenance to any machinery external to the building with the exception of waste receptacles.
100. **Use of Fifth Floor Communal Open Space** - A Plan of Management (POM) for use of rooftop open space must be submitted to and approved by Council prior to the issue of any Construction Certificate. The POM must outline the:
 - (i) hours of use of the fifth floor communal open space which shall be restricted from 8am to 10pm;
 - (ii) maximum number of users at any one time;
 - (iii) provisions for no amplified music to be played; and
 - (iv) identify other measures to ensure that the amenity of persons within the development and in nearby existing and future development is maintained.

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

101. **Annual Fire Safety Statement** - The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given:
 - (a) Within 12 months after the date on which the fire safety certificate was received.
 - (b) Subsequent annual fire safety statements are to be given within 12 months

after the last such statement was given.

- (c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.
- (d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.

Section I Operational Requirements Under the Environmental Planning & Assessment Act 1979

102. **Requirement for a Construction Certificate** - The erection of a building must not commence until a Construction Certificate has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited certifier.

An application form for a **Construction Certificate** is attached for your convenience.

103. **Appointment of a Principal Certifying Authority** - The erection of a building must not commence until the beneficiary of the development consent has:

- (a) appointed a Principal Certifying Authority (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, then the beneficiary of the consent must:

- (a) 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
- (b) notify the PCA of the details of any such appointment; and
- (c) 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 Principal Certifying Authority for your development.

104. **Notification of Critical Stage Inspections** - No later than two (2) 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 beneficiary of the development consent of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

105. **Notice of Commencement** - The beneficiary of the development consent

must give at least two (2) days notice to the Council and the PCA of their intention to commence the erection of a building.

A **Notice of Commencement Form** is attached for your convenience.

106. **Critical Stage Inspections** - The last critical stage inspection must be undertaken by the Principal Certifying Authority. 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.
107. **Notice to be given prior to critical stage inspections** - The principal contractor for a building site, or the owner-builder, must notify the principal certifying authority at least 48 hours before each required inspection needs to be carried out.

Where Georges River Council has been appointed PCA, forty eight (48) hours notice in writing, or alternatively twenty four (24) hours notice by facsimile or telephone, must be given to when specified work requiring inspection has been completed.

108. **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 Principal Certifying Authority appointed for the building work can issue the Occupation Certificate.

An **Occupation Certificate** Application Form is attached for your convenience.

Section J Prescribed Conditions

109. **Clause 97A – BASIX Commitments** - This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.
110. **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.
111. **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 Principal Certifying Authority and the Principal Contractor.
112. **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.

113. **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.

END CONDITIONS

NOTES/ADVICES

114. **Review of Determination** - Section 82A 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.

115. **Appeal Rights** - Division 8 (Appeals and Related matters) Part 4 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.
116. **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 95 of the Environmental Planning and Assessment Act 1979 as amended.
117. **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.

118. **Council as PCA - Total Conformity with BCA** - Should the Council be appointed as the Principal Certifying Authority, the Construction Certificate Application must be accompanied by the following details, with plans prepared

and certified by an appropriately qualified person demonstrating compliance with the BCA:

- Mechanical ventilation to bathroom, laundry and basement areas not afforded natural ventilation.
- Provision of natural light to all habitable areas.
- Fire-fighting services and equipment including hydrant and booster assembly systems, sprinkler and valve room systems, hose reels, portable fire extinguishers, smoke hazard management systems and sound & warning systems.
- Emergency lighting and exit signs throughout, including terrace areas, lobby and basement areas.
- Construction of all fire (smoke) doors including warning and operational signage to required exit and exit door areas.
- Egress, travel distance and the discharge from an exit including the swing of exit doors.
- The protection of openings including spandrel separation.
- Fire compartmentation and fire wall separation details including all stairway, lift and service shaft areas.
- Protection of openings including paths of travel from fire isolated exists
- Re-entry facilities from fire isolated exit stairways.
- Sound transmission and insulation details.
- Window schedule is to include the protection of openable windows.
- The location of sanitary facilities for employees in accordance with Table F2.1

In this regard, detailed construction plans and specifications that demonstrate compliance with the above requirements of the BCA must be submitted to the Principal Certifying Authority with the Construction Certificate Application. Should there be any non-compliance, an alternative method of fire protection and structural capacity must be submitted, with all supporting documents prepared by a suitably qualified person.

In the event that full compliance with the BCA cannot be achieved and the services of a fire engineer are obtained to determine an alternative method of compliance with the BCA, such report must be submitted to and endorsed by the Principal Certifying Authority prior to issue of the Construction Certificate.

119. **Principal Certifier** - Should the Council be appointed as the Principal Certifying Authority in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative 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.
120. **Energy Efficiency Provisions** - Should Council be appointed as the Principal

Certifying Authority, a report prepared and endorsed by an Energy Efficiency Engineer or other suitably qualified person must be submitted, detailing the measures that must be implemented in the building to comply with Section J of the BCA. The proposed measures and feature of the building that facilitate the efficient use of energy must be identified and detailed on the architectural plans. At completion of the building and before the issue of an Occupation Certificate, a certificate certifying that the building has been erected to comply with the energy efficiency provisions must be submitted to the Principal Certifying Authority.

121. **Compliance with Access, Mobility and AS4299** - Adaptable Housing - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.
122. **Site Safety Fencing** - Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of any work and maintained throughout any demolition and construction work.

A demolition licence and/or a high risk work license may be required from SafeWork NSW (see www.SafeWork.nsw.gov.au).

123. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.
124. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.
125. **Development Engineering** - Conditions relating to future Strata Subdivision of Buildings

No approval is expressed or implied for the subdivision of the subject building(s). For any future Strata subdivision, a separate Complying Development Certificate shall be approved by Council or an Accredited Certifier.

Prior to the issue of any Strata Certificate of the subject building(s) the following conditions shall be satisfied:

(a) Unit Numbering

Apartment type numbers shall be installed adjacent or to the front door of each unit.

The unit number shall coincide with the strata plan lot numbering.

(b) Car Parking Space Marking and Numbering

Each car space shall be line marked with paint and numbered in accordance with the strata plan lot numbering.

"Visitor Parking" signs shall be installed adjacent to any and all visitor car spaces prior to the issue of any Strata Certificate.

(c) Designation of Visitor Car Spaces on any Strata Plan

Any Visitor car spaces shall be designated on the final strata plan as "Visitor Parking - Common Property".

(d) Allocation of Car Parking Spaces, Storage Areas and Common Property on any Strata Plan

i. All car parking spaces shall be created as a part lot of the individual strata's unit lot in any Strata Plan of the subject building.

ii. All storage areas shall be created as a part lot of the individual strata's unit lot or a separate Utility Lot (if practical) in any Strata Plan of the subject building.

iii. The minimum number of parking spaces required to be allocated as a part lot to each individual strata's unit lot shall be in accordance with the car parking requirements of Council's Development Control Plan and as required by the relative development consent for the building construction.

iv. No parking spaces shall be created as an individual strata allotment on any Strata Plan of the subject building unless these spaces are surplus to the minimum number of parking spaces required.

If preferred the surplus car spaces shall be permitted to be created as separate Utility Lots, (instead as a part lot of the individual strata's unit lot), in accordance with section 39 of the Strata schemes (freehold development Act 1973).

The above requirements regarding car parking spaces and storage areas may only be varied with the conditions of a separate Development Application Approval for Strata Subdivision of the Building(s).

(e) On Site Detention Requirements

The location any on-site detention facility shall be shown on the strata plan and suitably denoted.

(f) Creation of Positive Covenant

A Positive Covenant shall be created over any on-site detention facility by an Instrument pursuant to Section 88B of the Conveyancing Act 1919, with the covenant including the following wording:

"It is the responsibility of the Owner's Corporation to keep the on-site detention facilities, together with any ancillary pumps, pipes, pits etc, clean at all times and maintained in an efficient working condition. The on-site detention facilities shall not be modified in any way without the prior approval of Georges River Council."

Georges River Council is to be nominated as the Authority to release, vary or modify this Covenant.

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

Council must cover administration and other costs incurred in the investment of these monies. The current charge is \$50.00 plus 2% of the bond amount per annum.

The interest rate applied to bonds is set at Council's business banking facility rate as at 1 July each year. Council will accept a bank guarantee in lieu of a deposit.

All interest earned on security deposits will be used to offset the Security Deposit Administration and Compliance fee. Where interest earned on a deposit is not sufficient to meet the fee, it will be accepted in full satisfaction of the fee.

127. **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. (eg. 2012/DA) and reference this condition number (e.g. Condition 23)

(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.

128. **Noise** - 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>) published by the Department of Environment and Conservation. Other state government authorities also regulate the [Protection of the Environment Operations Act 1997](#).

Useful links relating to Noise:

- (a) Community Justice Centres—free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
 - (b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
 - (c) New South Wales Government Legislation home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 (www.legislation.nsw.gov.au).
 - (d) Australian Acoustical Society—professional society of noise-related professionals ([www.acoustics.asn.au /index.php](http://www.acoustics.asn.au/index.php)).
 - (e) Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au).
 - (f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).
129. **Acoustic Engineer Contacts & Reference Material** - Further information including lists of Acoustic Engineers can be obtained from:
- (a) Australian Acoustical Society—professional society of noise-related professionals (www.acoustics.asn.au)
 - (b) Association of Australian Acoustical Consultants—professional society of noise related professionals (www.aaac.org.au)
 - (c) NSW Industrial Noise Policy – Office of Environment & Heritage (www.environment.nsw.gov.au)

These conditions comprise the operational and statutory conditions which must be satisfied under the Environmental Planning and Assessment Act 1979 and the Environmental Planning & Assessment Regulation 2000. Please refer to the full details of the Act and Regulations as in force, at www.legislation.nsw.gov.au. It is the responsibility of the beneficiary of this consent to determine which operational and statutory conditions apply.

130. **Stratum Subdivisions** - A Subdivision Certificate cannot be issued unless all relevant conditions of the development consent that are to be satisfied prior to the issue of the Subdivision Certificate have been complied with.
- (a) Council will check the consent conditions on the relevant subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision.
 - (b) Plans of subdivision, Administration Sheets, Section 88B Instruments and copies must not be folded.
 - (c) All Subdivision Plans, Deposited Plan Administration Sheets and Section 88B Instruments shall be submitted to Council enclosed in a protective cardboard tube (to prevent damage during transfer).
 - (d) Certification from the Registered Surveyor that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services.
131. **Strata Subdivision** - Council will check the consent conditions on the relevant Strata Subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision.

Council will undertake the required inspections to satisfy the requirements of the [Strata Schemes Development Regulation 2016](#) to determine the Strata Certificate.

Strata Plans, Administration Sheets, 88B Instruments and copies must not be folded.

132. All Strata Plans, Strata Plan Administration Sheets and 88B Instruments shall be submitted to Council enclosed in a protective cardboard tube (to prevent damage during transfer).
133. **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.