

**ELECTRONIC REPORT TO THE GEORGES RIVER LOCAL PLANNING PANEL
FOLLOWING DEFERRAL FROM MEETING OF PANEL ON 17 DECEMBER 2019 and 7
MAY 2020**

LPP Report No.		Development Application No.	DA2018/0059
Site Address and Ward Locality	261-265 Princes Highway Carlton Kogarah Bay Ward		
Proposed Development	Demolition of existing building and construction of five (5) storey shop top housing development with basement carparking		
Owners	Kirshu Pty Ltd		
Applicant	MHN Design Urban		
Planner/Architect	MHN Design Urban		
Date of Lodgement	22 February 2018		
Submissions	Notification of the plans received following the LPP deferral were not renotified. Two (2) submissions were received as a result of the original notification of the application.		
Cost of Works	\$15,471,770.00		
Local Planning Panel Criteria	The proposed development is a shop top housing development where the residential component is subject to the provisions of State Environmental Planning Policy No 65.		
List of all relevant s4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX)2004, Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment, State Environmental Planning Policy No.55 – Remediation of Land, Draft State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, State Environmental Planning Policy (Infrastructure) 2007,		
List all documents submitted with this report for the Panel's consideration	LPP Report and minutes dated 17 December 2019 LPP Report and minutes dated 7 May 2020 Architectural Plans Stormwater Plans Flood Impact Assessment Reports		
Report prepared by	Senior Development Assessment Planner		
Recommendation	That the application be refused in accordance with the reasons stated in this report		

Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment Report?	Yes
Legislative clauses requiring consent authority satisfaction	Yes

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?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	Not applicable
Conditions Have draft conditions been provided to the applicant for comment?	No, as the application is being recommended for refusal.

Executive Summary

1. This report has been prepared following the deferral of the subject development application (DA) (DA2018/0059) by the Local Planning Panel on 7 May 2020.
2. The amended proposal the subject of this report, is for the demolition of existing structures, lot consolidation, tree removal and the construction of a five (5) storey shop top housing development comprising thirty four (34) units (12 x 1 bedroom, 20 x 2 bedroom and 2 x 3 bedroom units), one/part two levels of commercial/restaurant/café floor space, and two (2) levels of basement car parking for a total of ninety five (95) car parking spaces, new landscaping and associated site works. Commercial/business/retail tenancies totalling 1,438sqm accessed from Ecole Street and Princes Highway are to be located on the ground floor and first floor with vehicular access and a loading bay proposed from Ecole Street. Communal open space is provided on the podium level above the ground floor retail tenancy
3. The subject development application was previously considered by the Georges River Local Planning Panel on 17 December 2019. The Panel resolved to defer consideration of the DA to enable the applicant sixty (60) days in which to submit amended plans to address the matters identified in the assessment report. Once the information was provided the application was to be referred back to a public meeting with the majority of the same Panel members for consideration and determination of the application.
4. The applicant, following this deferral, submitted amended plans and supporting documentation in response to the Panel's deferral. In summary, although the information submitted by the applicant responded to the deferral reasons, the information provided does not adequately resolve all issues, in particular the overland flow and flood issues. The application was referred to the Local Planning Panel meeting of 7 May 2020. It was recommended that the application be determined by way of refusal in accordance with the reasons for refusal as recommended and referenced in the report.

5. The DA was considered by the Georges River Local Planning Panel (LPP) on 7 May 2020. The Panel resolved to defer consideration of the DA to enable the applicant two (2) months in which to allow the following:

1. *The stormwater experts to meet to discuss and resolve the reasons for refusal identified in the report to the Panel of 7 May 2020.*
2. *The meeting to identify any built form and design changes required to facilitate the agreed overland flow and any localised flooding issues and identify the solutions. That those changes if any, are to be to the satisfaction of Council's experts.*
3. *Council to arrange a meeting of relevant experts within fourteen (14) days.*
4. *A further report to be submitted to the Panel within two (2) months.*

Following receipt of this information, the Panel, as constituted on 7 May 2020 will determine the application electronically, unless the Chair determines that a further public meeting is required.

6. On 13 May 2020, in accordance with points 1, 2 and 3 of the LPP resolution, a meeting was conducted between the stormwater experts along with the applicant, architect and Council's Assessment Officers. Following this meeting an email was sent on 26 May 2020 to the applicant advising what was required to be provided to address the concerns in relation to flood control.

7. Given the time constraints and that the amended information would require a further review by Council's Drainage Engineer; the applicant was given fourteen (14) days until 9 June 2020 to provide this information. An email was received by the applicant on 11 June 2020 requesting further time until 24 July 2020 to provide the outstanding information for review by Council's Drainage Engineer. The applicant was advised this time frame was not in accordance with the Panel deferral reasons.

8. In response to Council's email, an email was received on 5 July 2020, advising that there had been a further delay in the preparation of the flooding information and this information, for review by Council's Drainage Engineer, would take an additional three (3) weeks and not be provided until approximately 14 August 2020.

9. In accordance with point 4 of the resolution, this application is now referred back to the Panel. The applicant, following this deferral, has failed to submit amended plans and supporting documentation to resolve the outstanding issues, in particular the overland flow and flood issues in response to the Panel's deferral reasons. It is recommended that the application be determined by way of refusal in accordance with the reasons for refusal as recommended and referenced at the end of this report.

BACKGROUND

10. At its meeting on 17 December 2019, the Local Planning Panel (LPP) considered the subject Development Application (DA) and resolved the following:

Deferral

*Pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979, as amended, Development Application No. DA2018/0059 for demolition of the existing building, lot consolidation, tree removal and construction of a new five (5) storey shop top housing development including two (2) levels of basement parking at 261 Princes Highway Carlton, be **deferred** and invites the applicant to submit an application under Clause 55 of the Environmental Planning and Assessment Regulation 2000 seeking to amend the development application with amended plans to address the matters identified in the assessment report. Such an application must be made within 60 days of the date of this determination.*

The application is to be referred back to a public meeting with the majority of the same Panel members.

The amendments are to include:

- 1. A revised stormwater drainage design that provides sufficient on-site flood storage to prevent channelization and thus concentration of stormwater flows beneath the site;*
 - 2. Revised architectural details to accommodate the amendments in "1" and that additionally relocates all waste area from the setbacks of the development to a screened area within the building footprint or basement; and*
 - 3. A Clause 4.6 variation request be submitted addressing the variation to Clause 6.9 – Development in Zone B6 of the Kogarah Local Environmental Plan.*
11. The applicant, following this deferral, submitted amended plans and supporting documentation in response to the Panel's deferral. In summary, although the information submitted by the applicant responded to the deferral reasons, the information provided did not adequately resolve all issues, in particular the overland flow and flood issues. The application was referred to the LPP meeting of 7 May 2020 and it was recommended that the application be determined by way of refusal in accordance with the reasons for refusal as recommended and referenced in the report.
12. At its meeting of 7 May 2020, the Local Planning Panel considered the subject Development Application (DA) and resolved the following:

"Deferral

*Pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979, as amended, Development Application No. DA2018/0059 for the demolition of existing building and construction of five (5) storey shop top housing development at 261-265 Princes Highway, Carlton, be **deferred** to allow:*

1. *The stormwater experts to meet to discuss and resolve the reasons for refusal identified in the report to the Panel of 7 May 2020.*
2. *The meeting to identify any built form and design changes required to facilitate the agreed overland flow and any localised flooding issues and identify the solutions. That those changes if any, are to be to the satisfaction of Council's experts.*
3. *Council to arrange a meeting of relevant experts within fourteen (14) days.*
4. *A further report to be submitted to the Panel within two (2) months.*

Following receipt of this information, the Panel, as constituted on 7 May 2020 will determine the application electronically, unless the Chair determines that a further public meeting is required."

13. In accordance with points 1 and 3 of the resolution, a meeting was held on 13 May 2020 between the stormwater experts, the applicant, architect and Council's Assessment Officers.
14. In accordance with point 2 of the resolution, an email was sent to applicant on 26 May 2020 advising what was required to be provided to address the concerns in relation to flood control. The applicant was given 14 days to provide this information in order to facilitate the timeframes of the deferral.
15. An email was received from the applicant requesting further time until the 24 July 2020 to provide the outstanding information for review by Council's Drainage Engineer. The applicant was informed that this could not be accommodated as it would not meet the timeframe of the deferral by the Panel.
16. In response to Council's email, an email was received on 5 July 2020, advising that there had been a further delay in the preparation of the flooding information and this information for review by Council's Drainage Engineer would not be provided until approximately 14 August 2020.

MEETINGS AND REQUEST FOR INFORMATION

17. Following the deferral, a zoom meeting was undertaken on 13 May 2020 stormwater experts along with the applicant, architect and Council's Assessment Officers, which was in accordance with the requirements of point 1 and 3 of the resolution of the LPP, which required the following:
 - The stormwater experts to meet to discuss and resolve the reasons for refusal identified in the report to the Panel of 7 May 2020.
 - Council to arrange a meeting of relevant experts within fourteen (14) days.
18. In response to this meeting correspondence was sent to the applicant on 26 May 2020. The applicant was advised that in respect to flood control, Council does not object to the proposal in principle, being to allow the overland flow path to be provided within two (2) channels as indicated or a similar proposal between the commercial floor level and basement 1 floor level. The following issues and/or additional/clarifying details were required addressed as listed below to determine if the proposal was viable:

1. *The modelling undertaken does not allow for blockage. It is considered that the most critical location of the proposed channels with respect to blockage would be the entrances to the channels at the south western side of the building due to the likelihood of debris collecting and being caught at the channel entries (proposed mesh/bars/louvres – details to be confirmed). Council considers that a blockage factor of 25% or more should be considered for these entry points. Updated modelling is to be undertaken to assess this. Details of the methodology, calculations undertaken and results are to be forwarded to Council with respect to this.*
2. *Similar updated modelling and details are to be provided at the exit point from the channels to the Princes Highway footway. The flood consultant is to nominate a design blockage factor at these locations.*
3. *With respect to the above full design details are to be provided of the proposed treatments (proposed mesh/bars/louvres, etc) that are to be used and submit supporting technical specifications of the products proposed (if available). The consulting flood consultant is to certify that the treatments are appropriate.*
4. *With reference to the Ground floor plan DA 2002 (D) additional detail will need to be provided of spot levels for the full extent of the 5.74 metre setback (proposed landscaped) area adjacent to the north western side of the building. **Design and existing spot levels** are to be provided at maximum 5 metre spacing and are to include levels along the boundary, adjacent to the proposed building, location of any significant change of grades or levels (eg. tops and bottom of steps), levels across the entries of both channels, levels at and surrounding existing trees that are required to be retained to allow for the trunk and root zones. All proposed features within this area including but not limited to proposed retaining walls, planters, steps, existing and proposed trees and other structures are to be detailed.*
5. *The modelling is to be amended to include the full design levels in point (4) above.*
6. *Council will not support a proposal that increases flood depths, flood velocities or their product ($V \times D$) in any adjoining property. An isolated and minor increase may be considered subject to it being definitively proven that there will be an overall benefit to the property. The same criteria will apply for affectation of roads and footways.*
7. *Evidence will also need to be provided that there will not be no areas, or minimal areas within the landscaped setback area that will have a $V \times D$ of greater than $0.4\text{m}^2/\text{s}$ during a 1% AEP event. Any locations with a $V \times D$ are to be clearly mapped. Preliminary details of design safety measures (for eg. signage, grab rails, fencing to isolate these areas) for these locations are to be submitted.*

8. *The applicant will need to provide evidence and design details to show that the channels will be able to be maintained and specifically address Council's concerns as listed below:*
 - a) *Detail is to be provided of the design and location of a safe access points to allow for a person to enter both channels if required to undertake maintenance. These access points are to be locked at all times aside from times of maintenance.*
 - b) *With respect to the proposed larger channel the current proposal has an indicated 20mm fall from upstream to downstream. It is noted with construction tolerances there would likely to isolated low points within the channel that would lead to ponding of water that could result in mosquito affectation.*
 - c) *The minimal grade of this larger channel and its size would make it difficult to flush effectively, especially considering that any high pressure jetting maintenance would likely need to be undertaken from the downstream end. The applicant will need to address this to Council's satisfaction. The applicant may need to consider the feasibility of a surface drainage system under the channel (or both channels) that allows for the channel floor and the surface drainage system to have a consistent minimum grade of 1%.*
 - d) *A statement would need to be submitted from a professional Drain cleaning company with a detailed Work Method statement to detail how both channels would be able to be cleaned effectively. This statement would need to include acknowledgement of the flatness of the channel. The statement would need to include detail including the equipment to be used and the setup locations. The Work Method statement would also need to include to details of how maintenance of any surface drainage system installed as described in (c) above would be undertaken.*
 - e) *Detail / comments would need to be included of design measures to prevent vermin within the channels.*
9. *Additional Modelling will need to be included to assess the effect of the south western building wall on flooding in neighbouring properties and include detail of any measures to mitigate this effect (and their modelled results).*
10. *Updated modelling as required under points (1), (2) and (5) above is to be undertaken and presented for both the 1% AEP and PMF floods. Mapping of both these floods is to be include but not be limited to flood depth, flood water level, flood velocity, $V \times D$ and provisional hazard. Mapping of difference (pre vs post) for water level is also to be mapped for flood water level, flood velocity and $V \times D$.*
11. *It will need to be proven with the updated modelling that the basements will be protected from flooding up to the 1 in 100 year flood levels at all locations.*
12. *The turntable is to be protected from damage due to flooding to all mechanical and electrical equipment in the 1 in 100 year event. Any*

proposal to raise the turntable would need to show that access for a B85 vehicle from off Ecole Street without scraping is achievable. The design profile is to be taken along the eastern side of the driveway access (the low edge) and would need to include evidence that the vehicle will not scape on the road.

13. Design details are to be provided of the local drainage within the landscaped setback area and evidence is to be provided that no overland flow will exit the channels above ground onto the footpath at the Princes Highway for storms up to and including the 50% AEP event.

14. Detail is to be provided of a dedicated shelter area within the building that is above the PMF level. The shelter area is to be shown to be large enough to allow for the number of people that could be expected to be in the commercial areas on the ground floor. It is to be also shown that safe access will be available for these people to travel to the shelter area.

15. If the above requirements being addressed to Council's satisfaction the proposal would need to be forwarded to RMS for their concurrence for:

- a) The proposed alterations to the overland flow onto the Princes Highway.*
- b) The proposed connection of the site's stormwater to their drainage system.*

All architectural, engineering and flood modelling reports should be attached to this referral.

Note RMS may require additional details to be provided above and beyond Council's requirements.

19. The applicant was advised that given that the resolution of the LPP, which required that a further report be submitted to the Panel within two (2) months (ie 7 July 2020), this information was required to be provided within fourteen (14) days (ie 9 June 2020) to enable a full and complete assessment of the revised details in order to enable adequate lead time to prepared the report for the Panel. This information was not provided by 9 June 2020 and remains outstanding as of 6 July 2020.

20. On 11 June 2020, the applicant submitted a letter to Council requesting Council's consideration to provide additional time to address the matters raised by Council's Drainage Engineer. The following timeline was proposed:

Proposed Timetable of works		
Stage	Works to be completed	Date to be finalised
1	Completion of Survey and 3D triangle mapping	19 June 2020
2	Completion of Architectural/Ramp Crest and Turntable Reviews/Flood Management and Civil Design/Evacuation Plans/Drainage	22 July 2020

	Maintenance Plans	
3	Submission to Georges River Council for Milner Review	24 July 2020
4	Respond/Complete any Q&A Review with Council's engineers and close out DA submissions.	14 August 2020
5	Probable date for Officers recommendation Report to LPP	10 September 2020

21. On 5 July, in response to Council's email, the applicant submitted a letter advising Council that there had been further delays in the preparation of the flooding information and that this information would not be provided by 24 July 2020 for review by Council's Drainage Engineer as per their original request. This information will now not be provided until 14 August 2020.

CONCLUSION

22. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans having due regard to the proposal, the following concerns with the application involve:

- flooding and overland flow management issues,
- pedestrian and vehicular concerns with the loading bay location,
- building form and access design issues,
- construction traffic, noise, dust, vibration concerns for Carlton South Public School; and

23. Although the applicant is aware of what is required to satisfactorily address the concerns of Council's Drainage Engineers, the flooding and overland flow issues still remain unresolved. Until these issues can be resolved to the satisfaction of Council, this proposal will not be able to be supported. As a result of the above the proposed development is considered to be an unacceptable planning outcome for this site.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

24. The reasons for this recommendation are:
- The subject land is identified as being flood prone and located within the 1 in 100 year ARI flow path from Carlton Station to Beverley Park. The flood mitigation and overland flow path management proposed are considered to be inadequate and are likely to result in adverse impacts on neighbouring properties and the public road services;
 - The proposed stormwater drainage concept is designed to drain by culverts/conduits from the rear of the site to the Princes Highway and connect into the Princes Highway infrastructure. Any modification to the drainage associated with the Princes Highway requires concurrence of the Roads and Maritime Services and the application is not supported by documentation of concurrence;

- The amended proposal still fails to comply with the standards and intent of the Apartment Design Guidelines provisions particularly in regard to Clause 4C – Ceiling Heights (recommends first 2 levels at 3.3m for flexibility of use), Clause 4V – Water Management (relating to provision of suitable stormwater services);
- In consideration of the aforementioned reasons, the proposed development is recommended for refusal.

Determination

25. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel refuse development consent to Development Application DA2018/0059 for demolition of the existing structures on site, lot consolidation, tree removal and the construction of a five (5) storey shop top housing development comprising of thirty four (34) residential units, (12 x 1 bedroom, 20 x 2 bedroom and 2 x 3 bedroom units), one/part two levels of commercial/restaurant/cafe floor space and two (2) levels of basement car parking for ninety five (95) vehicles and associated site works at Lot 33, 34, 35 and 36 of DP13023 and known as 261-265 Princes Highway, Carlton, for the following reasons:

1. **Environmental Planning Instrument** – Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the relevant environmental planning instrument in terms of the following:
 - (a) the provisions of Kogarah Local Environmental Plan 2012 as follows:
 - i. the objectives of Clause 6.3 Flood Planning as the documentation on flood and overland flow management is inadequate and many modifications may require building design modifications;
 - (b) the design quality principles under Clause 28 relating to the Apartment Design Guide and Schedule 1 of the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development, the flooding constraints affecting the land and the façade design fronting Ecole Street.
2. **Development Control Plan** - Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Kogarah Development Control Plan 2013:
 - (a) Part B4 Parking and Traffic relating to the suitable design for service vehicle access to the site, safe manoeuvring and façade design as the turntable sits below the flood level. As a result the driveway gradients and footpath levels are affected.
 - (b) Part B6 Water Management with regard to the inadequacy of documentation relied upon for the design dealing with flooding and overland flow management.

3. **Impacts on the environment** - Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:
 - (a) Create amenity impacts for neighbouring lands and public roads through the likely redirection of volume and velocity of overland flows during flood times and storm events;
 - (b) The submitted flood design plan provides for channelising the storm/flood events into two culverts and discharging to the Princes Highway which requires Roads and Maritime Services (RMS) concurrence and is generally contrary to standard RMS design procedures;
 - (c) Inadequate details have been provided on how water would be redirected to the proposed culverts proposed under the flood report, including any reshaping of the land to create swales or the like;
 - (d) Service vehicle access to Ecole Street and the development site generally will result in potential vehicle conflict due to turning path requirements for large rigid trucks requiring the use of two traffic lanes especially given the vicinity of the site to the school;
 - (e) The proposal is likely, if approved, to result in a precedent for developments that inappropriately design buildings within flood paths for the B6 zone;
 - (f) Overlooking issues for a public school have been raised and require due consideration.

4. **Suitability of site** - Pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development for the following reasons:
 - (a) The submitted development design is considered to be inappropriate for the subject land considering the flood management submissions are inadequate and requiring modification and hence the building design is likely to be modified accordingly;
 - (b) Ecole Street is a limited vehicle catchment local road and the management of public and service vehicles entering/exiting this location would require suitable management controls to be implemented to ensure vehicles do not approach the development from the northern approaches of Ecole Street which are constricted in nature.

5. **Public interest** - Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.