

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 15 JULY 2021**

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| <b>LPP Report No</b>   | <b>LPP029-21</b>   | <b>Development Application No</b> | <b>DA2021/0078</b> |
| <b>Site Address &amp; Ward Locality</b>  | 165 Penshurst Street Beverly Hills<br>Mortdale Ward  |                                   |                    |
| <b>Proposed Development</b>  | Alterations and additions to an industrial building and use of the premises as a self-storage facility   |                                   |                    |
| <b>Owners</b>  | ME Property Holdings Pty Ltd   |                                   |                    |
| <b>Applicant</b>   | Turnball Planning International  |                                   |                    |
| <b>Planner/Architect</b>   | Turnball Planning International; Graeme Scott Architect  |                                   |                    |
| <b>Date Of Lodgement</b>   | 5/03/2021  |                                   |                    |
| <b>Submissions</b>   | Eleven (11)  |                                   |                    |
| <b>Cost of Works</b>   | \$930,000.00   |                                   |                    |
| <b>Local Planning Panel Criteria</b>   | The variation to the height of buildings standard is 20% and more than 10 submissions  |                                   |                    |
| <b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>                   | State Environmental Planning Policy No.55 – Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Draft Environmental State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Draft Georges River Local Environmental Plan 2020, Hurstville Local Environmental Plan 2012, Hurstville Development Control Plan No. 1 |                                   |                    |
| <b>List all documents submitted with this report for the Panel's consideration</b> | Architectural Plans, Statement of Environmental Effects, Clause 4.6 Variation Request, Stormwater Plans, Survey, Geotechnical Report, NCC Report, Structural Engineering Design, Traffic and Parking Report, Preliminary Site Investigation Report, Submissions  |                                   |                    |
| <b>Report prepared by</b>  | Senior Development Assessment Planner  |                                   |                    |

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| <b>Recommendation</b> | That the application be refused in accordance with the reasons in this report. |
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| <b>Summary of matters for consideration under Section 4.15</b><br>Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?  | <b>Yes</b>                                  |
| <b>Legislative clauses requiring consent authority satisfaction</b><br>Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? | <b>Yes</b>                                  |
| <b>Clause 4.6 Exceptions to development standards</b><br>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?  | <b>Yes - Clause 4.3 Height of buildings</b> |

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| <p><b>Special Infrastructure Contributions</b><br/>Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p> | <b>Not Applicable</b>                                 |
| <p><b>Conditions</b><br/>Have draft conditions been provided to the applicant for comment?</p>  | <b>No, the application is recommended for refusal</b> |

### Site Plan



### Executive Summary

#### Proposal

1. Development consent is sought for alterations and additions to the existing building and a change of use to a self-storage facility.
2. The proposal involves additions and alterations to increase the height of the buildings to 12m, internal works to provide staff and visitor amenities, loading bays in each building, office and administration space in each building and external works to provide three parking spaces in the front setback and four parking spaces at the rear of the site.

#### Site and Locality

3. The site is identified as Lot A in DP335941 and is known as 165 Penshurst Street, Beverly Hills. The lot is a rectangle shape and has a total site area of 2,826sqm (by title) and a 25m frontage to Penshurst Street. The site slopes gently from the rear to the street.
4. The site is currently occupied by two industrial buildings and hardstand areas and is currently used for manufacturing and warehousing operations.

5. In the wider context, the subject site is located in a pocket of land zoned Light Industrial surrounded by an established R2 Low Density Residential Area containing dwelling houses, villas, townhouses and dual occupancies.

### **Zoning and Permissibility**

6. The site is zoned IN2 Light Industrial under the provisions of Hurstville Local Environmental Plan 2012 (HLEP 2012). The proposed land use is an innominate land use and is permitted with consent.

### **Submissions**

7. A total of 11 public submissions were received. The issues raised in the submissions include permissibility, height non-compliance, car parking deficiency, asbestos management, delivery times and acoustic impacts.

### **Conclusion**

8. An assessment has been undertaken in accordance with the applicable assessment criterion as outlined in this report and the proposal is not considered worthy of support for a number of reasons.
9. Based upon the information submitted with the application, the proposal fails to demonstrate compliance with, or provide sufficient information to enable a proper assessment of, a number of issues including stormwater management, car parking, access and mobility, building design, acoustic impacts, energy efficiency and waste management.
10. The written Clause 4.6 variation request of the height of building standard is not well founded and the variation is not supported.
11. Having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979 and following a detailed assessment, the proposed Development Application (DA2021/0078) is recommended for refusal for the reasons in this report.

### **Report in Full PROPOSAL**

12. Development consent is sought for alterations and additions to the existing building and a change of use to a self-storage facility.
13. The proposal involves additions and alterations to increase the height of the buildings to 12m, internal works to provide staff and visitor amenities, loading bays in each building, office and administration space in each building and external works to provide three parking spaces in the front setback and four parking spaces at the rear of the site.

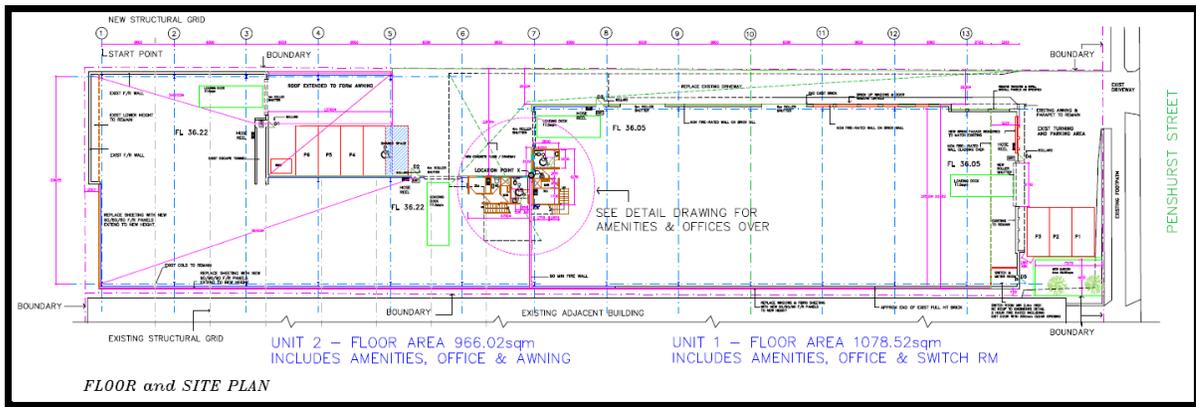


Figure 1: Proposed site plan

**BACKGROUND**

14. A Pre DA meeting was held with the applicant on 9 December 2019 and formal written advice provided on 10 February 2020. In relation to the key planning issues identified in this report, the following advice was provided:

| Pre DA Advice  | Applicant response/Council comment |
|--|------------------------------------|
| <p><u>1.1 Proposed use &amp; operational details</u><br/>                     Council’s records indicate that the most recent development consent issued for the subject site (1997/DA - 0016) is for a factory fit out for the purposes of metal work manufacture.</p> <p>During the pre – lodgement meeting it was discussed that the premises will be used for the purposes of “self-storage units”. The operational details involve;</p> <ul style="list-style-type: none"> <li>• The operator will deliver a timber crate (dimensions 1.8 x 2.4 x 2.6) to the customer;</li> <li>• The customer will store items with the supervision of the operator so that the items are recorded;</li> <li>• The timber crate will be transported by the operator to the warehouse;</li> <li>• The timber crate will be stacked on top of each other in the warehouse by the operator;</li> <li>• When customer wants to access the timber crate the operator will retrieve the storage unit and place it in a designated location for viewing;</li> </ul> <p>The operator indicated that the main users of this storage facility are people who are moving house or want to store items for long term.</p> |                                    |

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| <p>As discussed during the pre – lodgement meeting the submitted statement of environmental effects with the formal DA needs to detail the exact nature of use, operational details, transportation of crate and items that will be stored.</p> <p>Please also note that, the proposal is not considered to be alterations and additions to existing building as it involves significant amount of demolition works and reconstruction. As advised during the pre – lodgement meeting compliance with planning controls, including but not limited to, setbacks, landscaping, building height, FSR, overshadowing and amenity impacts must be considered.</p>  | <p>Operational details were provided with the DA.</p> <p>The DA was lodged as alterations and additions to the existing building and change of use.</p> <p>The proposal seeks variations to a number of controls in the LEP and DCP.</p> |
| <p><u>1.2 Building height</u></p> <p>The maximum permitted building height for the subject site is 10m pursuant to Clause 4.3 of the Hurstville Local Environmental Plan 2012 (HLEP 2012). The proposed scheme has an overall height of 12m exceeding the maximum allowable height limit. As discussed at the pre-lodgement meeting, variation to building height will not be supported. The only exception is that Council may consider a slight breach in height for lift over run. In this respect the proposal should be amended so that no part of the building (except lift overrun) exceeds the allowable 10m building height limit.</p> <p>Breach in the primary height controls will not be supported considering the local context. The height of the proposed built form exceeds the applicable controls, providing a built form outcome which is likely to be incompatible with the existing and the future character of the area. The proposal provides no valid justification for the variation and the outcome sets an undesirable precedence for future development in the area particularly considering that the subject site is in close proximity to established residential development.</p> | <p>The height of the proposal has not changed from the Pre DA design and still seeks a 2m variation to the 10m height limit.</p> <p>Refer to Clause 4.6 assessment in this report.</p>   |
| <p><u>1.3 Floor space ratio</u></p> <p>The maximum permitted floor space ratio for the site is 1:1 pursuant to Clause 4.4 of the HLEP 2012. The submitted scheme does not provide adequate information to assess the proposed floor space ratio.</p>   | <p>The proposed FSR is compliant and Drawing DA-04 Revision D provides a GFA breakdown.</p>  |

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| <p>The submission of a colour coded plan illustrating floor areas included vs excluded areas for the purposes of calculating FSR in accordance with the definition of gross floor area pursuant to HLEP 2012 is required to be submitted.</p>  |  |
| <p><u>2.1 Neighbourhood character</u><br/>The proposed built form has an excessive bulk and scale and does not reflect the dominant building rhythm of the locality which predominantly consists of low density residential dwellings. Whilst it is acknowledged that the subject site and the adjoining site to the North West is zoned IN2 – Light Industrial, the surrounding land uses are predominantly zoned R2 – Low Density Residential and as such the proposal in terms of its height, landscaping, setbacks and building mass is not sympathetic to the existing built form.</p> <p>It is suggested that a streetscape Character Analysis (SCA) be submitted with the DA. The SCA is to include an analysis of both the existing streetscape and the future desirable streetscape. It should consider the overall streetscape character and the potential impact of your development.</p> <p>Particularly the SCA should analyse the scale, height, built form character, setback treatment, architectural character and character of spaces between buildings including vehicular entries.</p> | <p>The built form of the proposal has not changed from the Pre DA.</p> <p>A Streetscape Character Analysis was not submitted with the DA.</p>        |
| <p><u>2.2 Front Façade Treatment</u><br/>The submitted scheme indicates that the proposed front façade:-</p> <p>Comprises of excessive bulk and scale that is not appropriately articulated which results in a built form that is not compatible with the existing built form and streetscape;<br/>Does not employ appropriate architectural features that will result in more visually interesting light industrial premises. Please note that the proposed architectural treatment should be more visually interesting compared to the existing built form.</p> <p>Consequently, the proposal does not comply with the Design Solution DS4.9 and DS4.10 which stipulates the following:</p>  | <p>The built form of the proposal has not changed from the Pre DA design.</p> <p>No schedule of materials or finishes was submitted with the DA.</p> |

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| <p>“DS4.9. Buildings must present a satisfactory facade to the street. Blank wall facades are not acceptable.</p> <p>DS4.10. Architectural features are to be included in the design of new buildings to provide for more visually interesting light industrial areas. Such features may include:</p> <ul style="list-style-type: none"> <li>• Distinctive parapets or roof forms</li> <li>• Articulated facades</li> <li>• Distinctive entries</li> <li>• A variety of window patterns</li> <li>• Balustrades</li> <li>• Pergolas and other sun shading devices; and</li> <li>• Selection of building materials”.</li> </ul> <p>Consideration should be made to amend the proposed front façade to create articulation and modulation whilst creating visually interesting light industrial premise that is compatible with the streetscape which is predominantly comprised by low density residential dwellings houses.</p>   | <p>The proposal does not address Penshurst Street through activation of the front façade. It contains a roller door and fire exit door.</p> <p>The front façade is not visually interesting and does not allow for casual surveillance of the street.</p>  |
| <p><u>Onsite car parking</u></p> <p>The required number of onsite car parking for the proposal cannot be determined due to inadequate information submitted with the pre-lodgement application. However, the submitted scheme suggests that the proposal provides six (6) onsite car park spaces located within the front setback area which is not supported.</p> <p>In this regard, revised plans are required to be submitted with the formal DA addressing the following:</p> <ul style="list-style-type: none"> <li>• Provide the required number of onsite car parking needed to service the proposed use;</li> <li>• Be located behind the front building setback;</li> <li>• Vehicles must enter and leave the site in a forward direction;</li> <li>• Provision of loading and unloading zone;</li> <li>• Not involve stacked parking: and</li> <li>• Adequate on-site manoeuvring be provided to enable all delivery vehicles, including large trucks to enter and leave the site in a forward direction.</li> </ul> | <p>The proposal includes 3 parking spaces in the front setback and 4 at the rear of the site, which are to be used as loading area as indicated on Page 28 of the SEE submitted with the DA.</p> <ul style="list-style-type: none"> <li>• Does not comply.</li> <li>• Does not comply.</li> <li>• Complies.</li> <li>• 4 loading bays are provided.</li> <li>• Not proposed.</li> <li>• Complies.</li> </ul> |

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| <p>During the pre – lodgement meeting it was advised that the proposed number of onsite car parking is considered to be inadequate to service the proposal. The applicant stated that as a result of the operation of the premises, onsite car parking is not required and the proposed “self-storage units” should be exempt from the provision of on-site car parking. The applicant claims that this is further supported by a study that was undertaken by Aurecon Australia Pty Ltd for Self-Storage Association of Australia Pty Ltd.</p> <p>Whilst Council does not encourage reduced onsite car parking, in the event a variation is sought, the applicant must provide a valid planning consideration for Council to consider the onsite car parking requirement. The submitted justification should be prepared by a qualified and experienced traffic consultant and take into account the location of the subject site being in close proximity to established residential area.</p> <p>In accordance with the DCP, the following onsite car parking is required:-</p> <p>Light industry<br/>Office area                      1 space per 40m2<br/>GFA; and<br/>Warehouse (storage)        1 space per 300m2<br/>GFA.</p> | <p>This position is retained in the SEE.</p> <p>The parking shortfall has not been adequately justified. Refer to assessment in this report.</p> |
| <p><u>2.3 Traffic Management</u><br/>The proposed development is required to provide a “Traffic Impact and Parking Management Plan” addressing the following:-</p> <ul style="list-style-type: none"> <li>• A swept path analysis using the AS2890.2:2018 Off Street Commercial Vehicles Facilities document for the largest expected vehicle to use the facility to ensure that all vehicles enter and exit the property in a forward direction. This swept path analysis shall show the movements from trucks entering at the street boundary, into the site, accessing the building to drop off the materials, then exiting the site on the street. Loss of street parking will not be permitted to cater for the entering and exiting movements;</li> <li>• Plan of management in regards to use</li> </ul>   | <p>Council’s Traffic Engineer has raised no concern with the proposal (car parking shortfall is addressed elsewhere in this report).</p>         |

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| <p>and hours of operation;</p> <ul style="list-style-type: none"> <li>• If the future development application comprises parking spaces that are within the existing structure must adhere to the AS2890.1:2004 requirement;</li> <li>• There shall be enough driveway width to allow two heavy vehicles to pass on the driveway at all times;</li> <li>• Measures to ensure that there will be no vehicles queuing on Penshurst Street or nearby streets whilst waiting to enter the facility;</li> <li>• Provision of Safe pedestrian movements to be indicated from the car parking to the storage units; and</li> <li>• The number of spaces shall comply with the DCP requirements.</li> </ul>  |  |
| <p><u>2.4 Landscaping</u></p> <p>The submitted scheme suggests that the proposal provides 26m<sup>2</sup> of landscaping within the front setback area. Providing adequate landscaping is particularly important as the subject site is located adjacent to R2 Low Density Residential zone.</p> <p>Furthermore, the submitted scheme suggests that the proposal provides six (6) car park spaces within the front setback area and does not provide landscaped open space in accordance with the Design Solution DS3.2, Section 5.2 of Hurstville Development Control Plan (HDCP) 2013 No. 1 which stipulates the following:</p> <p>“DS3.2. Within the front setback area, a minimum of 3 metres is to be landscaped and maintained as open area in order to enhance the streetscape. This area is not to consist of buildings, storage areas or car parking and manoeuvring areas”.</p> <p>In light of the above, a detailed landscape plan prepared by a qualified landscape architect is required proving the following information:-</p> <ul style="list-style-type: none"> <li>• A minimum of 10% of the site area is to comprise of “soft” landscaping including lawns, trees and shrubs. Car parking, paths and pedestrian walkways are to be excluded from the 10%;</li> <li>• A minimum of 3 metres is to be landscaped and maintained as open</li> </ul> | <p>An area of 29sqm in the front corner of the site is shown as landscaped area.</p> <p>Three parking spaces are proposed in the front setback but the landscaped area remains 29sqm.</p> <p>The landscaped area is 4m x 7.3m.</p> <p>A Landscape Plan was not submitted with the DA.</p> <p>1% of the site is landscaped area.</p> <p>4m x 7.3m area in the front setback</p> |

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| <p>area within the front setback area in order to enhance the streetscape; and</p> <ul style="list-style-type: none"> <li>Landscaped areas are to be provided to side boundaries adjoining residential properties.</li> </ul>   | <p>The site does not directly adjoin residential land.</p>   |
| <p><b>2.5 Signage</b><br/>No signage details were provided with the pre – lodgement application, however the following requirements should be achieved:-</p> <p>The provision of signage is to comply with the requirements of Section 5.5 of the Hurstville DCP 2013 No.1; and<br/>Advertising must be integrated into the overall development. In this regard, details are to be submitted with the Development Application.</p>  | <p>No signage details were submitted with the DA.</p>  |
| <p><b>3.0 Stormwater Management</b><br/>Council's Development Engineer has reviewed the submitted stormwater plans and provided the following comments:-</p> <p><u>Disposal of Stormwater</u><br/>The DA is to be accompanied by a report prepared by a qualified practising Hydraulic Engineer confirming that the existing drainage system has been thoroughly investigated and is fully functional. Further, the report is to advise on the sizing of the existing underground drainage system with regard to Council's current stormwater design policy.</p> <p><u>On Site Detention</u><br/>On Site Detention is to be provided for the site in accordance with the guidelines contained in Council's Hurstville Development Control Plan 2013 No. 1, Appendix 2, Section 1, Drainage and On Site Detention (OSD) Policy. A minimum of 80% of the site is to drain through the OSD system.</p> | <p>Council's Development Engineer review the DA and advised the stormwater management plans submitted with the DA fail to adequately address the relevant controls in the Stormwater Policy.</p> |

15. In relation to the current application, Council did not seek additional information or amended plans under Clause 55 of the Environmental Planning and Assessment Regulation as there was no prospect of a recommendation for approval being given the height variation issue.

#### THE SITE AND LOCALITY

16. The site is identified as Lot A in DP335941 and is known as No. 165 Penshurst Street, Beverly Hills. The lot is a rectangle shape and has a total site area of 2,826sqm (by title) and a 25m frontage to Penshurst Street. The site slopes gently from the rear to the street. The site is currently occupied by two industrial buildings and hardstand areas and is currently used for manufacturing and warehousing operations (Figure 2).

17. In the wider context, the subject site is located in a pocket of land zoned Light Industrial surrounded by an established R2 Low Density Residential Area containing dwelling houses, villas, townhouses and dual occupancies.
18. The property to the south-east is occupied by a 2-3 storey industrial building built to the shared boundary with the site (Figure 3), and to the north is a landscaped pedestrian pathway that connects Penshurst Street to the residential villa development on Mercury street to the rear of the subject site (Figure 4).
19. The land opposite the site is characterised by low density residential development as shown in Figure 6.



**Figure 2:** The existing building fronting Penshurst Street



**Figure 3:** The adjoining building at 159-163 Penshurst Street (south-east of the site)



**Figure 4:** Pedestrian connection (north of the site) to residential development on Mercury Street



**Figure 5:** Residential development on Mercury Street at the rear of the subject site



**Figure 6:** Residential development opposite the site on Penshurst Street

### **Compliance and Assessment**

20. The development has been assessed having regard to Matters for Consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

### **STATE ENVIRONMENTAL PLANNING INSTRUMENTS**

21. Compliance with the relevant State Environmental Planning Policies (SEPP) is detailed below.

### **STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDIATION OF LAND**

22. State Environmental Planning Policies 55 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Clause 7 requires contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.

23. A review of the site history indicates that the site has been used for industrial purposes for extended periods of time. A Preliminary Site Investigation Report was submitted with the DA which concluded:

*• Based on the findings of this PSI, the potential for exposure to CoPC at the Site is considered to be low. However, the following potentially complete SPR linkages are considered to exist at the Site:*

- Potential for site maintenance and construction workers to contact PACM and/or CoPC and/or hazardous materials in building materials during planned works.*
- Potential for site maintenance and construction workers to contact impacted soils.*
- Potential for site maintenance and construction workers to contact impacted groundwater (if encountered).*
- Potential for general environmental impacts to soil and/or groundwater.*

24. A Detailed Site Investigation Report is required to satisfy Council that the requirements of SEPP 55 are met.

## **STATE ENVIRONMENTAL PLANNING POLICY (VEGETATION IN NON-RURAL AREAS) 2017**

25. The Vegetation State Environmental Planning Policy regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.

The Vegetation State Environmental Planning Policy applies to clearing of:

- (a) Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and
  - (b) Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).
26. The objectives of the State Environmental Planning Policy are to protect the biodiversity values of trees and other vegetation in non-rural areas and preserve the amenity of non-rural areas through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 5(1) of the State Environmental Planning Policy as the site is within both Georges River Council and the R2 Low Density Residential zone.
27. Pursuant to Clause 8(1) of the State Environmental Planning Policy, clearing does not require authority under the policy as it is a type of clearing that is authorised under Section 600 of the Local Land Services Act 2013 (specifically, that associated with a development consent issued under Part 4 of the Environmental Planning and Assessment Act 1979).
28. As part of the proposal, no trees have been nominated for removal.

## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

### **Draft Environmental State Environmental Planning Policy**

29. The Draft Environment State Environmental Planning Policy was exhibited from 31 October 2017 to 31 January 2018. This consolidated State Environmental Planning Policy proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland and Willandra Lakes World Heritage Property. Changes proposed include consolidating the following seven existing State Environmental Planning Policies:
- State Environmental Planning Policy No. 19 – Bushland in Urban Areas;
  - State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011;
  - State Environmental Planning Policy No. 50 – Canal Estate Development;
  - Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment;
  - Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997);
  - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005;
  - Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.
30. The proposal is not inconsistent with the provisions of this Draft Instrument.

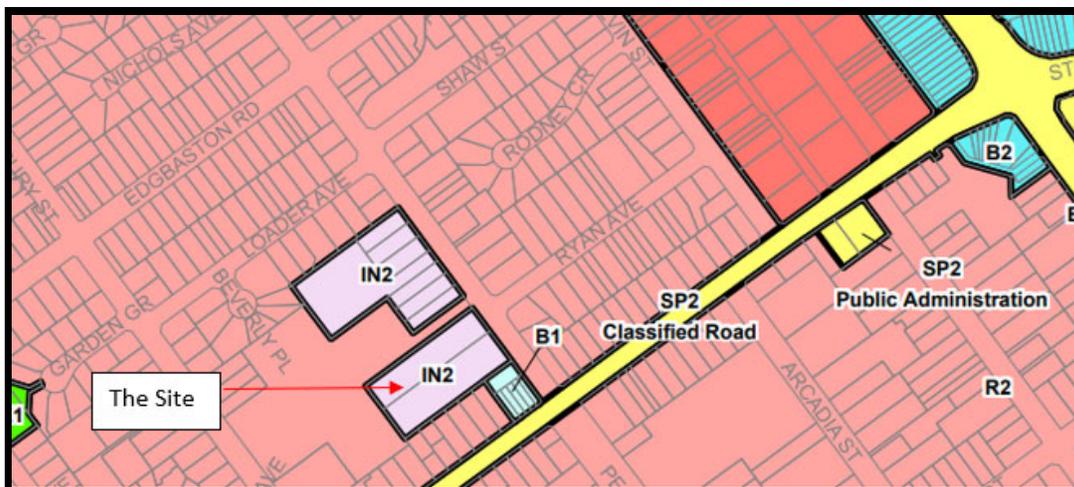
### **Draft Remediation of Land State Environmental Planning Policy**

31. The Draft Remediation of Land State Environmental Planning Policy was exhibited from 31 January 2018 to 13 April 2018. The proposed remediation of land State Environmental Planning Policy will:

- *Provide a state-wide planning framework for the remediation of land;*
  - *Maintain the objectives and reinforce those aspects of the existing framework that have worked well;*
  - *Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land;*
  - *Clearly list the remediation works that require development consent;*
  - *Introduce certification and operational requirements for remediation works that can be undertaken without development consent.*
32. A review of the site history indicates that the site has been used for industrial purposes for extended periods of time. A Preliminary Site Investigation Report was submitted with the DA which concluded:
- *Based on the findings of this PSI, the potential for exposure to CoPC at the Site is considered to be low. However, the following potentially complete SPR linkages are considered to exist at the Site:*
    - *Potential for site maintenance and construction workers to contact PACM and/or CoPC and/or hazardous materials in building materials during planned works.*
    - *Potential for site maintenance and construction workers to contact impacted soils.*
    - *Potential for site maintenance and construction workers to contact impacted groundwater (if encountered).*
    - *Potential for general environmental impacts to soil and/or groundwater.*
33. A Detailed Site Investigation Report is required to satisfy Council that the requirements of the Draft SPP are met.

### **HURSTVILLE LOCAL ENVIRONMENTAL PLAN 2012**

34. The subject site is zoned IN2 Light Industrial under the provisions of the Hurstville Local Environmental Plan 2012. The proposed development is for a self storage facility and which is an innominate permissible land use in the zone.



**Figure 7:** Zoning map

35. The objectives of the zone are:
- *To provide a wide range of light industrial, warehouse and related land uses.*
  - *To encourage employment opportunities and to support the viability of centres.*
  - *To minimise any adverse effect of industry on other land uses.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*
- *To enable industrial development which does not pollute or adversely affect adjoining land, air or water.*
- *To ensure industrial development creates areas that are pleasant to work in, safe and efficient in terms of transportation, land utilisation and service distribution.*

36. The proposed change of use is not inconsistent with the objectives of the zone.
37. The extent to which the proposed development complies with the Hurstville Local Environmental Plan 2012 is detailed and discussed in the table below.

| <b>Clause</b>  | <b>Standard</b>   | <b>Proposal</b>  | <b>Complies</b>               |
|--|---|--|-------------------------------|
| 2.2 Zoning   | IN2 Light Industrial Zone   | The development type proposed is a self storage facility.<br><br>The use is an innominate permissible use.   | Yes                           |
| 2.3 Zone objectives                                  | Objectives of the IN2 Zone.   | The proposed use of the site for self-storage is not inconsistent with the zone objectives.  | Yes                           |
| 4.3 – Height of Buildings                            | 10m as identified on Height of Buildings Map  | 12m  | No<br>Refer to 4.6 assessment |
| 4.4 – Floor Space Ratio                              | 1:1 (2,626sqm) as identified on Floor Space Ratio Map   | Proposed: 2,044.54sqm or 0.779:1   | Yes                           |
| 4.5 – Calculation of floor space ratio and site area | FSR and site area calculated in accordance with Cl4.5(b)  | The floor space of the dwelling has been calculated in accordance with Clause 4.5 and the “gross floor area” definition within the Hurstville Local Environmental Plan.                  | Yes                           |
| 6.7 – Essential Services                             | Development consent must not be granted to development unless services that are essential for the development are available | The specified essential services are currently available to the site and can be extended to service the development; conditions could be imposed if the application was to be supported. | Yes                           |

### **Exception to Development Standards**

#### **Detailed assessment of variation to Clause 4.3 Height of Buildings**

38. The objectives of Clause 4.6 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.*

39. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The Hurstville Local Environmental Plan 2012 (HLEP) identifies a maximum height of 10m for the site (refer to Figure 8 below) and the proposed development will exceed the height by 2m. This amounts to a 20% variation to the control.
40. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the Hurstville Local Environmental Plan. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.



Figure 8: Height of buildings map the site is outlined in blue

41. Clause 4.6(3) states that:  
*“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - *that there are sufficient environmental planning grounds to justify contravening the development standard”*
42. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of Hurstville Local Environmental Plan. The Clause 4.6 request for variation is assessed as follows.

***Is the planning control in question a development standard?***

43. Height of Buildings control under Clause 4.3 of the Hurstville Local Environmental Plan 2012 is a development standard. The maximum permissible height is 10m.

***What are the underlying objectives of the development standard?***

44. The objectives of Height of Buildings standard under Clause 4.3 of Hurstville Local Environmental Plan 2012 are:

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,*
- (c) *to minimise the adverse impact of development on heritage items,*
- (d) *to nominate heights that will provide a transition in built form and land use intensity,*
- (e) *to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,*
- (f) *to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (g) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

**Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))**

45. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.
46. Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation:
- 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
  - 2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
  - 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
  - 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;*
  - 5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*
47. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements. The complete submission is annexed to this report and has also been provided to Panel separately. Relevant sections are reproduced in the below assessment.
48. Applicants comment:  
**Objective 4.3(1)(a)**
49. *This objective seeks to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.*

**Comment:**

50. *The built form will be compatible with the height, bulk and scale of the existing character (in particular, nearby development) and also the desired future character of the locality.*
51. *Additionally, the desired future character for industrial lands, seeks an 'up zoning' in height as identified within the draft Georges River Local Environmental Plan 2020 (GRLEP), which will seek to increase the maximum permissible height of all IN2 zoned lands to achieve a height of 12m-16m depending on location. As such the proposal is consistent with the desired future character of industrial zoned lands.*
52. *The site is within the IN2 zone and the adjoining. The properties have a maximum height limit of 9m and 10m, respectively. However, further down Penshurst Street the maximum permissible heights are 12m, 15m and 19m.*
53. *It is also important to note the site is very close (some 2 streets away) to the King Georges Road business precinct, where the maximum permissible height limit is 12m and 15m respectively.*
54. *When all of the foregoing is taken into account, we submit that the proposal will be consistent with the surrounding similar type developments on Penshurst street.*

**Objective 4.3(1)(b)**

55. *This objective seeks to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes.*

**Comment:**

56. *The built form will not create significant additional overshadowing of neighbouring properties. See, in that regard, the shadow diagrams accompanying the development application.*
57. *In addition, the design of the building is such that there will be no loss of privacy, no disruption to views, and no loss of solar access to existing development or to public areas and the public domain, including parks, streets and lanes.*
58. *The overall appearance of the building, when viewed from the street front, will be improved as a result of the carrying out of the proposed alterations and additions due to the current decrepit state of the site.*

**Objective 4.3(1)(c)**

59. *This objective seeks to minimise the adverse impact of development on heritage items.*

**Comment:**

60. *The proposed development will have no adverse impact on heritage items.*

**Objective 4.3(1)(d)**

61. *This objective seeks to nominate heights that will provide a transition in built form and land use intensity.*

**Comment:**

- 62. *The height exceedance will not militate against there being a sought-after transition in built form and land use intensity. The GRLEP 2020, states that the current height controls on IN2 zoned lands do not allow appropriate development to occur as such the height increase will facilitate a height that provides a transition of built form when compared to the surrounding developments that will enable appropriate land use intensification, whilst protecting and enhancing industrial lands from being rezoned to residential.*
- 63. *Below please see confirmation of industrial height increase from Planning Proposal Report (PP2019/0004)- Georges River Local Environmental Plan 2020, PG 40-41*

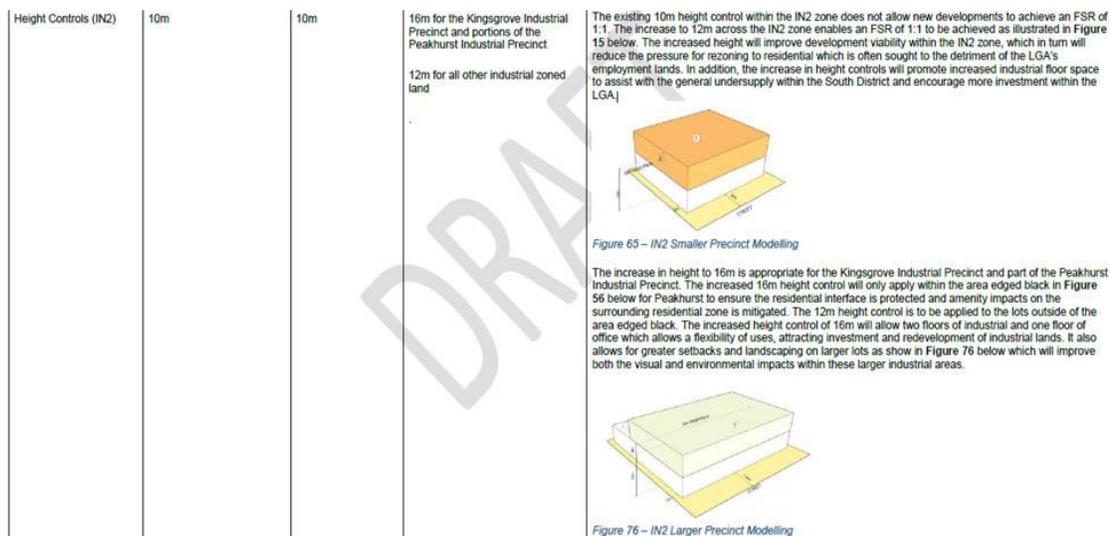
*It is also proposed to amend the height controls of the IN2 zone to 12m except for the Kingsgrove Industrial Precinct and part of Peakhurst Industrial Precinct where the height control will be increased to 16m. The increase in heights enables industrial lots to achieve an FSR of 1:1 and provide flexibility in built form for different land uses. Further justification for this amendment can be found in Appendix 3. The increase to 16m is appropriate at Kingsgrove as it has a limited interface with residential zones. Whilst the Peakhurst Industrial Precinct does have a residential interface, this Planning Proposal seeks to apply the lower height control of 12m to the perimeter of the Precinct.*

**Objective 4.3(1)(e)**

- 64. *This objective seeks to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre.*

**Comment:**

- 65. *Despite the height exceedance, the building as altered will nevertheless achieve an appropriate urban form consistent with the major centre status of the Hurstville City Centre. Additionally, the proposed height increase will be of a compatible built form when compared to the surrounding industrial and residential uses.*
- 66. *The below image from page 12 of APPENDIX 3 – Development Standards Justification of Planning Proposal (PP2019/0004) for the draft Georges River Local Environmental Plan 2020, shows Councils intentions to increase height for all IN2 zoned land ranging from 12m-16m depending on location to achieve an appropriate urban form.*



**Objective 4.3(1)(f)**

67. *This objective seeks to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation.*

**Comment:**

68. *The height exceedance will not militate against there being a sought-after appropriate transition of the kind described in the objective.*

**Objective 4.3(1)(g)**

69. *This objective seeks to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

**Comment:**

70. *As already mentioned, the carrying out of the proposed development will result in only minor overshadowing of neighbouring properties, and will not result in there being any loss of privacy or loss of solar access to either the existing development or public areas and the public domain, including parks, streets and lanes. In short, the development will not have any appreciable adverse effects on the use or enjoyment of adjoining properties.*

**5.3.1 Consistency with the aims of HLEP**

71. *In Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21 at 27 Pearlman CJ expressed the following opinion as respects the meaning of the word ‘consistent’:*

*The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor event that it is compatible.*

72. *Compliance with the height of buildings development standard is also considered to be unreasonable in the circumstances of the proposed development by reason of the fact that the proposed development supports the achievement of a number of the aims of HLEP.*
73. *HLEP aims to make local environmental planning provisions for land in the former local government area of Hurstville in accordance with the relevant standard environmental planning instrument: see clause 1.2(1), HLEP.*
74. *The particular aims of HLEP are as follows (refer clause 1.2(2), HLEP):*
- (a) *to encourage and co-ordinate the orderly and economic use and development of land that is compatible with local amenity,*
  - (b) *to provide a hierarchy of centres to cater for the retail, commercial, residential accommodation and service needs of the Hurstville community,*
  - (c) *to provide a range of housing choice that:*
    - (i) *accords with urban consolidation principles, and*
    - (ii) *is compatible with the existing environmental character of the locality, and*
    - (iii) *is sympathetic to adjoining development.*
  - (d) *to conserve, protect and enhance the environmental heritage, cultural heritage and aesthetic character of Hurstville,*
  - (e) *to maintain and enhance the existing amenity and quality of life of the Hurstville community,*
  - (f) *to ensure development embraces the principles of quality urban design,*

- (g) *to ensure development is carried out in such a way as to promote the efficient and equitable provision of public services, infrastructure and community facilities,*
  - (h) *to protect and enhance areas of remnant bushland, natural watercourses, wetlands and riparian habitats,*
  - (i) *to retain, and where possible extend, public access to foreshore areas and link existing open space areas for environmental benefit and public enjoyment,*
  - (j) *to ensure development embraces the principles of ecologically sustainable development,*
  - (k) *to strengthen the role of Hurstville City Centre as a major business, retail and cultural centre of southern Sydney,*
  - (l) *to encourage a range of employment, services, housing and recreation to meet the needs of existing and future residents of the Hurstville City Centre,*
  - (m) *to concentrate intensive land uses and trip-generating activities in locations most accessible to transport and centres,*
  - (n) *to foster economic, environmental and social well-being so that the Hurstville City Centre continues to develop as a sustainable and prosperous place to live, work and visit.*
75. *Not all of the above aims of HLEP are relevant to the proposed development (for example, those aims relating directly to the Hurstville City Centre). Be that as it may, we respectfully submit that the proposed development is consistent with such of the aims as are of relevance to the proposed development and is not inconsistent with any of the other aims.*
76. *Now, addressing those aims of HLEP that, in our opinion, are directly relevant to the nature and scope of the proposed development, we submit that the development will, in particular:*
- *encourage and co-ordinate the orderly and economic use and development of land that is compatible with local amenity (cf cl. 1.2(2)(a)) in that the proposed alterations and additions will significantly improve both the overall appearance and the functionality of the existing industrial building and its appearance from the surrounding streetscape;*
  - *not derogate from the environmental heritage, cultural heritage and aesthetic character of Hurstville (cf cl. 1.2(2)(d));*
  - *help to ensure development embraces the principles of quality urban design (cf cl. 1.2(2)(f); and*
  - *embrace the principles of ecologically sustainable development (cf cl. 1.2(2)(j)).*
  - *to encourage a range of employment, services, housing and recreation (cf cl. 1.2(2)(l) to meet the needs of existing and future residents of the Hurstville City Centre. This is achieved by providing a business ‘Use’ which is compatible with the community needs.*
  - *Will not impact on the biodiversity significant of the LGA, as such will protect and enhance areas of remnant bushland, natural watercourses, wetlands and riparian habitats. (cf cl. 1.2(2)(h)*
  - *It will provide a business, that is compatible with the LGA and strengthen the area as a*

*business Hub. (cf cl. 1.2(2)(k)*

- *Will achieve in creating a land use that foster economic growth whilst considerate of environmental considerations ill providing a benefit to the community with minimal social impacts to ensure the LGA develops into a sustainable area, by creating a safe environment to live, work and visit. (cf cl. 1.2(2)(n)*

77. *In short, we are of the opinion that the proposed development is consistent with such of the aims of HLEP as are of relevance to the development.*

78. Officer Comment: An assessment of the Applicant's written request against the requirements of Clause 4.6(3)(a) is as follows.

79. In relation to how the proposal meets the relevant zone objectives:

- The Applicant asserts the proposal is *compatible with the height, bulk and scale* of the existing and desired future character of the locality because the Draft Georges River LEP 2020 proposed to increase the height limit on all industrially zoned land to 12m-16m depending on location, and therefore the proposal is consistent with the desired future character of industrial zoned lands, references maximum permissible heights "further down Penshurst Street" of 12m, 15m and 19m, and notes the proximity of the site to the "King Georges Road business precinct" where the maximum heights are 12m and 15m.
- The Applicant fails to acknowledge the dominant character of the immediate locality is low density residential land which is characterised by one and two dwelling houses, villas and dual occupancies. No assessment of the character of the immediate area surrounding the site is provided, rather the permissible heights of land 550m away on King Georges Road and unknown land on Penshurst Street is provided as justification.
- With respect to *visual impact, views, privacy and solar access* the Applicant states there will be no impact and the proposal is an improvement of the building. It is agreed there will be no impact on privacy or views on adjoining land.
- The shadow diagrams provided to support the claim that there is no adverse impact on the solar access on neighbours are, at best, basic, and offer very little in the way of assessing the impact on neighbouring residential properties:

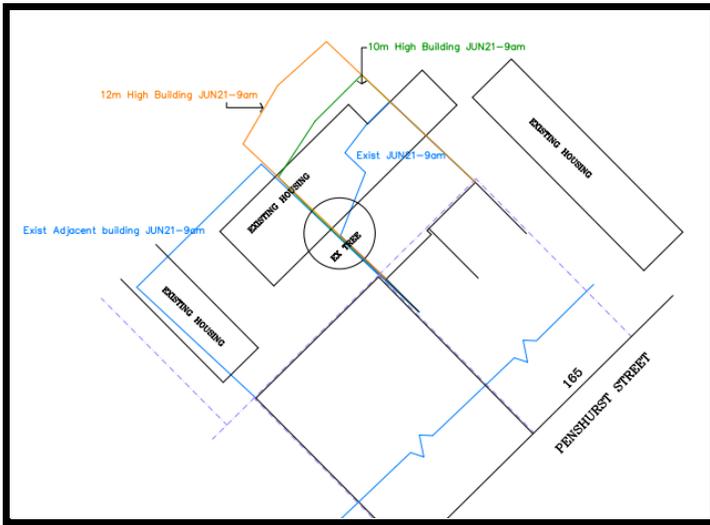


Figure 9: 9am Winter shadow analysis

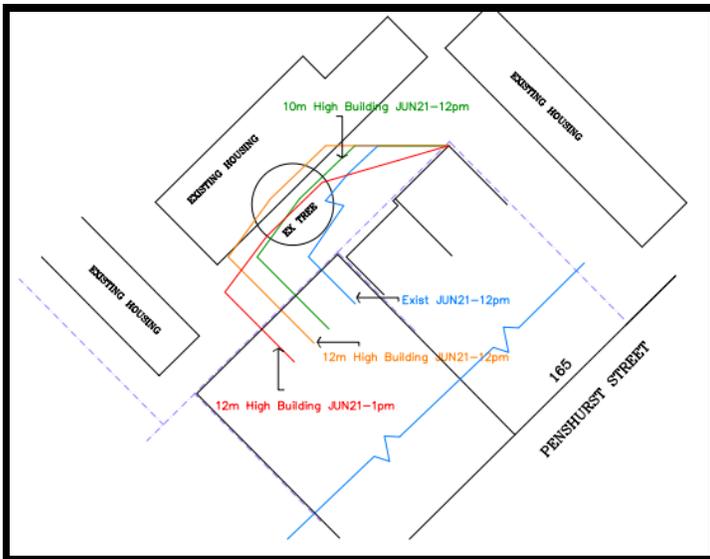


Figure 10: 12pm Winter shadow analysis

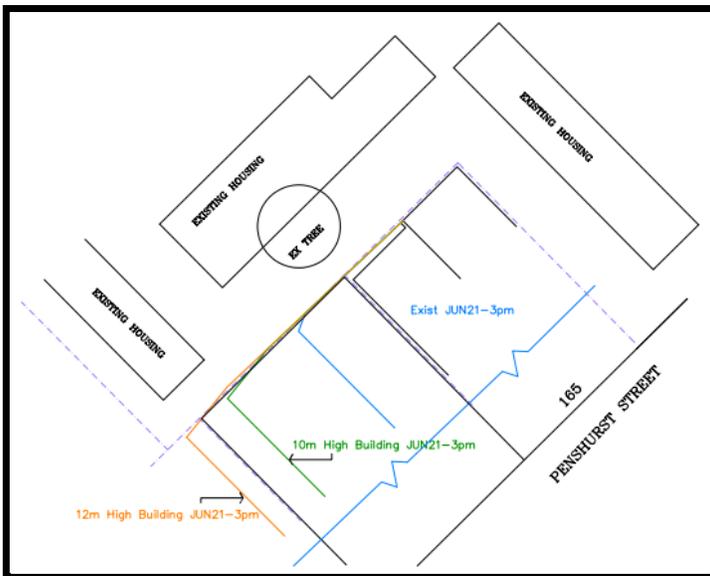


Figure 11: 3pm Winter shadow analysis

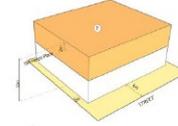
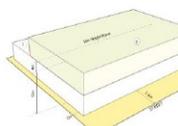
- The Applicant relies on the Draft LEP Planning Proposal to justify the height increase in relation to *transition in built form and land use intensity*. No assessment has been provided as to how the proposed increased height relates to surrounding built form or land use.
  - Objective (e) relates to development in the Hurstville City Centre and does not relate to the subject site. The Applicant however again repeats the Draft LEP Planning Proposal intention to increase height in industrial zones to 12m-16m.
80. Without an assessment of the impacts of the proposal on the immediate locality and an analysis of the site and its surrounds, the Applicant has failed to adequately demonstrate how the variation meets the relevant objectives of the height standard.

**Clause 4.6(3)(b) are there sufficient environmental planning grounds to justify contravening the standard**

81. Having regard to Clause 4.6(3)(b) the written 4.6 variation requires fails to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.
82. Applicants Comment:
- *The height departure will not appreciably additionally impact any adjoining or nearby development*
  - *The height departure will result in there being only minor additional overshadowing of adjoining and nearby premises.*
  - *The height departure will not result in there being any significant loss of privacy or loss of solar access to either the existing development or public areas and the public domain, including parks, streets and lanes.*
  - *The height departure will result in there being more internal ceiling height for additional storage area so facilitating an appropriate land use servicing the local area.*
  - *The height departure will not result in the built form of the development being incompatible with the height, bulk and scale of development in the existing locality (in particular, nearby development).*
  - *The overall appearance of the building, when viewed from the street front, will be improved as a result of the carrying out of the proposed alterations and additions.*
  - *The site is very close (some two streets away) to the King Georges Road business precinct, where the maximum permissible height limit is 12m and 15m respectively. As such business development of this height in the precinct is not unprecedented.*
  - *The proposed development will not overly dominate the natural environment or surrounding built elements.*
  - *The proposed height increase is consistent with the proposed GRLEP 2020, which is proposed to be made in December 2020 or January 2020.*
  - *The draft GRLEP 2020, states that the current height controls on IN2 zoned lands do not currently allow appropriate development to occur.*
  - *The existing 10m height control within the IN2 zone does not allow new developments to achieve an FSR of 1:1. The increase to 12m across the IN2 zone enables an FSR of 1:1 to be achieved.*
  - *The increased height will improve development viability within the IN2 zone, which in turn will reduce the pressure for rezoning to residential which is often sought to the detriment of the LGA's employment lands.*
  - *In addition, the increase in height controls will promote increased industrial floor space to assist with the general undersupply within the South District and encourage more*

investment within the LGA.

- The below image from page 12 of APPENDIX 3 – Development Standards Justification of Planning Proposal (PP2019/0004) for the new Georges River Local Environmental Plan 2020, shows Councils intentions to increase height for all IN2 zoned land ranging from 12m-16m depending on location.

|                       |     |     |  |   |
|-----------------------|-----|-----|--|---|
| Height Controls (IN2) | 10m | 10m | <p>16m for the Kingsgrove Industrial Precinct and portions of the Peakhurst Industrial Precinct</p> <p>12m for all other industrial zoned land</p> | <p>The existing 10m height control within the IN2 zone does not allow new developments to achieve an FSR of 1:1. The increase to 12m across the IN2 zone enables an FSR of 1:1 to be achieved as illustrated in Figure 15 below. The increased height will improve development viability within the IN2 zone, which in turn will reduce the pressure for rezoning to residential which is often sought to the detriment of the LGA's employment lands. In addition, the increase in height controls will promote increased industrial floor space to assist with the general undersupply within the South District and encourage more investment within the LGA.</p>  <p>Figure 65 – IN2 Smaller Precinct Modelling</p> <p>The increase in height to 16m is appropriate for the Kingsgrove Industrial Precinct and part of the Peakhurst Industrial Precinct. The increased 16m height control will only apply within the area edged black in Figure 56 below for Peakhurst to ensure the residential interface is protected and amenity impacts on the surrounding residential zone is mitigated. The 12m height control is to be applied to the lots outside of the area edged black. The increased height control of 16m will allow two floors of industrial and one floor of office which allows a flexibility of uses, attracting investment and redevelopment of industrial lands. It also allows for greater setbacks and landscaping on larger lots as show in Figure 76 below which will improve both the visual and environmental impacts within these larger industrial areas.</p>  <p>Figure 76 – IN2 Larger Precinct Modelling</p> |
|-----------------------|-----|-----|--|---|

- The proposal is consistent with Council future desired character for industrial lands, as it enables sustainable development to occur to encourage investment within the LGA.
  - The site is located within an IN2 zoning which under the 2020 GRLEP will permit a maximum 12m building height, with which the proposal inconsistent.
83. On its face, and looked at solely in numerical terms, the departure from, relevantly, the height of buildings development standard contained in clause 4.3A(2)(a) is not insignificant, particularly as respects the standard specified in clause 4.3A(2)(a)). However, when dealing with numerical non-compliances with development standards, each such non-compliance is a question of fact and degree and each case must be considered based on its own circumstances. In paragraph 3 of Circular B1 from the former Department of Planning, the Department stated:
- As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In manycases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of thestandard. [Emphasis added]*
84. We respectfully submit that the words of the Department quoted above are especially relevant to the numerical departures in this case. In this case, the departure from the control contained in clause 4.3(2) of HLEP could be seen to be 'numerically large' but, in and of itself, that is not a good reason, in planning terms or law, for rejecting a clause 4.6 written request.
85. Now, there is a common view abroad, namely, that any variation of a development standard greater than 10% cannot be approved under SEPP No 1 or clause 4.6. This view is not generally or ordinarily correct, although it does apply in respect of that category

*of clause 4.6 variation where subdivision into two or more lots is proposed in certain zones (refer clause 4.6(6) of HLEP).*

86. *The ‘10% opinion’ is also said to arise from the then Department of Planning and Infrastructure Circular PS 08-14 of November 2008, in which it was stated that all development applications with SEPP 1 variations [sic] greater than 10% must be determined by full council rather than by the General Manager or staff members. This was a response to the findings of an ICAC investigation into corruption allegations affecting Wollongong City Council. As is clear from a proper reading of the Circular, it mostly affects the process for approval of non-compliant development applications rather than the nature of SEPP No 1 objections that may be agreed to by a council or the Court on appeal.*
87. *In all the circumstances, we respectfully submit to Council that there are sufficient environmental planning grounds to justify contravening the height of buildings development standard in this particular instance.*

**5.3 Clause 4.6(4)(a)(i): Matters required to be addressed by clause 4.6(3)**

88. *As Preston CJ made clear in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [24], that which is to be tested against the requirements in cl 4.6(4)(a) and (b) is solely that element of the proposed development which exceeds the salient development standard. (See also Huajun Investments Pty Ltd v City of Canada Bay Council (No 3) [2019] NSWLEC 42 per Moore J at [154].)*
89. *The consent authority is to be satisfied (NOTE: that means ‘reasonably satisfied’, see R v Connell; Ex parte Hetton Bellbird Collieries Ltd (1944) 69 CLR 407) that the applicant’s written request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of HLEP, namely, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (refer clause 4.6(3)(a)), and that there are sufficient environmental planning grounds to justify contravening the development standard (refer clause 4.6(3)(b)).*

**Comment:**

90. *In light of the material contained in sections 5.3 and 5.4 of this written request, we respectfully submit that Council can be reasonably satisfied that the request has adequately addressed the matters required to be demonstrated by clause 4.6(3) of HLEP.*
91. *In summary, the Applicant states the following as environmental planning grounds to justify the numerical non-compliance:*
- a) No additional impacts on adjoining development;
  - b) Minor additional shadowing of adjoining premises
  - c) No significant loss of privacy or solar access to private or public land;
  - d) More ceiling height for additional storage area;
  - e) Compatible built form;
  - f) Improved appearance of the building from the street;
  - g) Close proximity of the site to King Georges Road and land with height limits of 12m and 15m;
  - h) No dominance of the natural or built environment;
  - i) Consistent with Draft LEP height limit;
  - j) 10m height does not permit FSR of 1:1 – a 12m height will permit 1:1 to be achieved;

- k) Increased height will improve development viability in IN2 zone and reduce pressure for rezoning to residential;
  - l) Increased height will promote increased industrial floor space to assist with undersupply; and
  - m) The proposal is consistent with desired future character for industrial lands, enables sustainable development to encourage investment.
92. Points (a) through (f) relate broadly to the proposal itself, however it is not agreed that the proposal will improve the appearance of the building to the street, or to adjoining properties for that matter, rather the ‘alterations and additions’ serve to increase the volume of the building to accommodate more storage space. No evidence is provided that the built form is improved visually, the street façade is not activated and no information is provided in the way of montages, materials or finishes. In any case, additional volume and appearance are not sufficient environmental planning grounds.
93. Specifically, additional height to create additional internal storage space promotes the development as a whole and does not address the breach, and it is not necessary to breach the height to improve the appearance of the built form.
94. Minor additional shadowing of neighbouring properties (based on very limited physical evidence by way of architectural drawings) is an outcome of the proposal but not a justification for the breach and is not a sufficient environmental planning ground.
95. Points (g) through (m) do not relate specifically to the height breach and are not sufficient environmental planning grounds to justify the breach.

***Clause 4.6(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out***

96. Clause 4.6(4) states that:

*“Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,”*

97. Applicants Comment:

***Objective 1***

98. *This objective seeks to minimise any adverse effect of industry on other landuses.*

***Comment:***

99. *The proposed development will not appreciably impact any adjoining or nearby development.*
100. *The height departure will result in there being only minor additional overshadowing of adjoining premises and will not result in there being any loss of privacy or loss of solar access to either the existing development or public areas and the public domain, including parks, streets and lanes.*

101. *In addition, the height departure will not result in the built form of the development being incompatible with the height, bulk and scale of the existing character (in particular, nearby development) and also the desired future character of the locality.*

102. *Accordingly, we submit that this objective is satisfied.*

**Objective 2**

103. *This objective seeks to encourage employment opportunities and to support the viability of centres.*

**Comment:**

104. *The carrying out of the proposed alterations and additions will make the proposed operation more efficient and effective, thus helping to lift the productiveness of the facility. This should assist in increasing employment opportunities.*

105. *Accordingly, this objective is satisfied.*

**Objective 3**

106. *This objective seeks to minimise any adverse effect of industry on other land uses.*

**Comment:**

107. *The site is zoned IN2 Light Industrial but interfaces other land zoned residential. This zone interface has the potential to create conflicts in land uses. However, the carrying out of the proposed alterations and additions is not expected to have any appreciable adverse impacts on the use and enjoyment of nearby residentially zoned land.*

108. *Furthermore, the site, involves adaptive reuse of an old, run down site which is in much need to improvement to facilitate a safe and pleasant environment particularly near to residential development. The proposed use will be low impact.*

109. *Accordingly, we submit that this objective is satisfied.*

**Objective 4**

110. *This objective seeks to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

**Comment:**

111. *In our opinion, this zone objective is not directly relevant to the proposed development, however the land use does provide services for local residents.*

**Objective 5**

112. *This objective seeks to support and protect industrial land for industrial uses.*

**Comment:**

113. *The carrying out of the proposed alterations and additions will make the existing operation more efficient and effective and will also create a more user friendly industrial facility, thus supporting this industrially zoned site for ongoing industrial uses.*

114. *Additionally, the proposal is consistent with the relevant Section 9.1 Ministerial directions, specifically 1.1 Business and Industrial Zones;*

**1.1 Business and Industrial Zones**

**Objectives:**

- (a) *encourage employment growth in suitable locations,*
- (b) *protect employment land in business and industrial zones, and*
- (c) *support the viability of identified centres.*

115. *The above objective has been identified in March 2020 within the Planning Proposal, APPENDIX 6 – Consistency with S9.1 Ministerial Directions for the proposed Georges River Local Environmental Plan 2020 (PP2019/0004). The objective is a key focus of Council’s strategic direction to maintain and enhance industrial lands and to protect industrial land from being rezoned to residential.*
116. *Accordingly, we submit that this objective is satisfied.*

**Objective 6**

117. *This objective seeks to enable industrial development which does not pollute or adversely affect adjoining land, air or water.*

**Comment:**

118. *In view of the nature of the existing and proposed development, there is little potential for the development to pollute or adversely affect adjoining land, air or water.*
119. *The proposal involves relevant upgrades to the sites current condition improving stormwater handling which will mitigate impacts on the surrounding lands. It is a low intensity use the is expected to create minimal amenity issues.*
120. *Accordingly, we submit that this objective is satisfied.*

**Objective 7**

121. *This objective seeks to ensure industrial development creates areas that are pleasant to work in, safe and efficient in terms of transportation, land utilisation and service distribution.*

**Comment:**

122. *The carrying out of the proposed alterations and additions will make the existing operations not only more efficient and effective, as well as safer and more secure, but also aesthetically pleasing and more pleasant to work in, and also more visually attractive. The resultant development will*

*also be more efficient in terms of transportation, land utilisation and service distribution, noting that the site is in close proximity to major roads such as King Georges Road, Canterbury Road and the M5 Motorway.*

123. *Accordingly, we submit that this objective is satisfied.*
124. Officers comment: The exceedance of the control is not inconsistent with the zone objectives.
125. The area of non-compliance is considered to be unreasonable and will establish an undesirable precedent given the current planning controls applicable to the site. The written request to vary the height standard is not well founded as it fails to provide sufficient environmental planning grounds to justify the breach. Rather it depends on the Draft George River LEP 2020 planning proposal.

126. Clause 1.8A of the draft LEP states:

*If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.*

127. Accordingly the development standards in the Draft LEP do not remove the need to comply with, or in the alternative, demonstrate the requirements of Clause 4.6 have been suitably addressed, neither of which have occurred in this instance. Accordingly, the variation is not well founded and cannot be supported.

**Clause 4.6(b) the concurrence of the Secretary has been obtained.**

128. Concurrence from the Secretary has been obtained and can be assumed in this case.

129. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 however the statement is considered to not be well founded as there are insufficient environmental planning grounds to justify contravening the standard.

**Draft Georges River Local Environmental Plan 2020**

130. The Local Planning Panel considered the report on the outcomes of the Public Exhibition and Finalisation of Georges River Local Environmental Plan 2020 (DLEP2020) on 25 and 26 June 2020. In relation to this development site the zoning and floor space ratio are unchanged, however the height limit increases from 10m to 12m.

131. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.

132. In this regard, the provisions have no determining weight as a result of proposed operation of Clause “1.8A Savings provisions relating to development applications” of the Draft Plan which provides “*If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.*”

**DEVELOPMENT CONTROL PLAN**

**Hurstville Development Control Plan**

133. The proposed development is subject to the provisions of the Hurstville Development Control Plan. The following comments are made with respect to the proposal considering the objectives and controls contained within the plan.

3.1 Vehicle Access, Parking and Manoeuvring

134. The proposal has been considered in accordance with the following controls.

| Applicable DCP Controls | Standards   | Proposal                                      | Complies |
|-------------------------|---|---|----------|
| PC1 General             | Layout, Circulation, Access and Egress<br><br>DS1.5 Compliance with AS2890.1 2004 and | Proposal to comply with Australian Standards. | Yes      |

|   |  |  |   |
|---|--|--|---|
|   | AS2890.2 for design and layout of parking facilities   |  |   |
|   | Stencilling of Driveways<br>DS1.7 Driveways are to be plain concrete.  | Driveway is to be plain concrete.  | Yes   |
|   | Ramps, Transitions and Driveway<br>Alignment levels to be obtained by engineering department   | A condition would be included if the application were to be approved.                    | Yes   |
| Discussion on parking   | Parking for People with a Disability<br>DS1.16 Parking complies with AS 1428 Design for access and mobility and AS/NZS 2890.6        | One (1) accessible space proposed at the rear of the site - refer to discussion below.   | No – refer to discussion below.                 |
| <p><u>Discussion on car parking</u><br/>In accordance with the Hurstville DCP No. 1, the use (warehouse) requires parking to be provided at a rate of 1 space per 300sqm floor area, which equates to 7 spaces for the proposal. The plans indicate 3 spaces at the front of the site and 4 spaces at the rear of the site.</p> <p>However the SEE submitted with the DA states “there is some space at the rear of the site which, although used and intended to be used for the most part as a loading zone, is used from time to time as space for informal parking....formal provision for onsite car parking is proposed at the front of the site in the form of car spaces for visitors and workers.”</p> <p>The parking at the rear of the site contains the only accessible parking space on the site. Relocation of that space to the front parking area would reduce the parking to two spaces.</p> <p>The formal parking provided on site is insufficient for the proposed use and this forms one of the reasons for refusal of the application.</p> |  |  |   |
|   | Car Washing Area<br>DS1.20 Car wash bays to collect waste water and discharge to sewer in accordance with Sydney Water requirements. | Car wash bay not required  | N/A   |
| PC2<br>Environmental Design   | DS2.1 Landscape plan to be provided  | Landscape plan not provided.   | No  |
|   | DS2.4 Parking areas to incorporate 150mm concrete kerb or edge treatment   | Details not provided   | No  |
|   | Drainage<br>DS2.5 All parking areas are to have adequate drainage  | Details not provided   | No  |
| Car parking rates – land located inside a business or industrial zone   | Industrial warehouse<br>1 space per 300m2<br>= 7 min   | 3 spaces at front<br>4 spaces at rear – however SEE states will not be used for parking, | No – refer to earlier discussion on car parking |

|  |  |                     |  |
|--|--|---------------------|--|
|  |  | rather loading area |  |
|--|--|---------------------|--|

### 3.3 Access and Mobility

135. One (1) accessible space has been provided on site however Access Report was not provided with the DA to confirm compliance with the relevant standards. It is also noted that the accessible space is located at the rear of the site where the applicant states in the SEE submitted with the DA will not be used as parking, but as a loading/unloading area.

### 3.4 Crime Prevention Through Environmental Design

136. The proposal is inconsistent with the principles contained within Crime Prevention Through Environmental Design. The proposal does not contain any opportunities for natural and passive surveillance of the public domain or the access driveway from the street to the loading areas at the rear of the site as the office spaces are located internally within each building.

### 3.5 Landscaping

137. The proposed landscaped area (29sqm or 1% of the site area) in the front setback does not meet the minimum DCP requirements for 10% landscaped area or a 3m wide strip (and no parking in the front setback). No Landscape Plan was submitted with the DA.

### 3.6 Public Domain

138. The proposal is consistent with the existing presentation of the building to the public domain, however no improvement has been made to activate the front façade or improve the presentation to Penshurst Street.

### 3.7 Stormwater

139. The proposal has been reviewed by Council's development engineer. The proposal fails to meet the requirements of Sections 3, 4 and 7 of the Georges River Stormwater Management Policy.

## 5.1 Light Industrial Areas

| <b>Applicable DCP Controls</b> | <b>Standards</b>  | <b>Proposal</b>   | <b>Complies</b>  |
|--------------------------------|---|---|--|
| PC1. Density                   | FSR 1:1   | 0.779:1   | Yes  |
| PC3. Setbacks                  | 4.5m  | 9m (existing)   | Yes  |
|                                | DS3.2 3m landscape strip in front setback                           | 4m x 7.3m provided in south-eastern corner  | No   |
| PC4. Building Design           | DS4.1 10m height of building  | 12m   | No – refer to height discussion under LEP section of this report |
|                                | DS4.2 Materials schedule to be provided                             | A schedule of materials and finishes has not been provided.   | No   |
|                                | DS4.3 Materials to include face brick, concrete, metal and cladding | The plans indicate a mix of metal sheeting and brick, however very little detail is provided on the plans and a materials | No detail provided   |

|                     |   |  |                    |
|---------------------|---|--|--------------------|
|                     |   | and finishes schedule was not provided to allow a proper assessment of the visual impact of the proposed increase in height and associated changes in external finishes of the building. |                    |
|                     | DS4.4 Non-reflective material not greater than 20% on wall  | Insufficient information has been provided to enable an assessment.  | No detail provided |
|                     | DS4.6 Fencing not in landscape setback area   | Fencing not proposed   | Yes                |
|                     | DS4.9 Buildings present satisfactory to street. No blank facades.   | The front façade is not blank and contains a roller door and fire exit door.   | Yes                |
|                     | DS4.10 Architectural cutes to be integrated into design.  | No architectural features are proposed.  | N/A                |
| PC5.<br>Landscaping | DS5.1 Landscape plan to be provided   | Landscape plan not provided – no additional landscaping proposed other than the existing in the front setback  | No                 |
|                     | DS5.2 Survey plan to identify location of trees   | Two trees shown on architectural plan; no Landscape Plan provided.   | No                 |
|                     | DS5.3 Compatible species  | Two trees shown on architectural plan; no Landscape Plan provided.   | No                 |
|                     | DS5.4 Landscaping in front setback area to soften entrance  | Two trees shown on architectural plan; no Landscape Plan provided.   | No                 |
|                     | DS5.6 Species to grow to a consistent height  | Two trees shown on architectural plan; no Landscape Plan provided.   | No                 |
|                     | DS5.7 Building and driveways are to be setback 4m from trees and groups of trees assessed as significant. | Two trees shown on architectural plan; no Landscape Plan provided.   | No                 |
|                     | DS5.8 Protective measures around trees to be provided with the development application.                   | Two trees shown on architectural plan; no Landscape Plan provided.   | No                 |
|                     | DS5.10 Outdoor eating and sitting area to be  | Not provided.  | No                 |

|                                 |  |  |                          |
|---------------------------------|--|--|--------------------------|
|                                 | provided at a rate of 1m2 per employee with a minimum of 10sqm.  |  |                          |
| PC6. Vehicle Access and Parking | DS6.1 Car parking and loading bays to comply with Section 3.1 Vehicle Access, Parking and Manoeuvring.                         | Does not comply – refer to earlier discussion at Section 3.1.                    | No                       |
|                                 | DS6.2 Access and Mobility provisions must comply with Section 3.3 Access and Mobility  | Insufficient information provided to assess compliance.                          | Inadequate information   |
|                                 | DS6.3 Parking is to be provided at the rear of buildings or below ground level where possible                                  | Car parking in front setback and at the rear of the site                         | No                       |
|                                 | DS6.4 Design and Layout of parking facilities in accordance with relevant Australian Standards                                 | Compliance with Standard.  | Yes                      |
| PC7 Acoustics                   | DS7.1 Noise levels are not to exceed specific limits at boundary   | No acoustic report provided  | Insufficient information |
|                                 | DS7.2 Acoustic report to be provided   | No acoustic report provided  | No                       |
|                                 | DS7.3 Hours operation not adjoining or opposite residential are limited to 7.00am – 7.00pm Monday to Saturdays. Closed Sunday. | 7.00am – 4.00pm Monday to Friday.<br>7.00am – 12.00pm Saturday<br>Closed Sunday. | Yes                      |
| PC8 Energy Efficiency           | DS8.1 Passive solar design to be incorporated into design  | Not proposed   | No                       |
|                                 | DS8.2 ceiling insulation to be provided  | Details not provided.  | Insufficient information |
|                                 | DS8.3 Use of solar hot water heaters and collectors  | Details not provided.  | Insufficient information |
|                                 | DS8.4 Windows to be appropriately sized and shaded for heat load   | Windows not proposed   | N/A                      |
|                                 | DS8.5 External shading devices   | One awning proposed at rear of the site in front of one of the loading bays.     | Yes                      |
|                                 | DS8.6 Low energy fittings and appliances to be used  | Details not provided.  | Insufficient information |
|                                 | DS8.7 minimisation of water consumption dual flushing toilets and indigenous planting of                                       | Details not provided.  | Insufficient information |

|                      |  |   |                          |
|----------------------|--|---|--------------------------|
|                      | species  |   |                          |
|                      | DS8.8 Position of service and metres   | Details not provided.   | Insufficient information |
|                      | DS8.9 Substation requirements to be satisfied.   | Details not provided.   | Insufficient information |
| PC9 Waste Management | DS9.1 Adequate storage area to be provided.  | One bin area shown on plan – no waste management plan submitted | Insufficient information |
|                      | DS9.2 Garbage area to be provided capable of accommodating trade waste                                   |   |                          |
|                      | DS9.3 Garbage areas and bulk waste to be shown on plans.   |   |                          |
|                      | DS9.4 Garbage areas constructed of concrete floors   |   |                          |
|                      | DS9.5 Garbage areas to have safe access.   |   |                          |
|                      | DS9.6 Collection of waste roadway curves a minimum 11m radius  |   |                          |
|                      | DS9.7 Sites of disposal of excavated material, demolition to be specified by the applicant within the DA |   |                          |
|                      | DS9.8 Proposal to comply with waste management policy  |   |                          |

### Georges River Development Control Plan 2020

140. The Georges River Development control Plan was made by the Georges River Local Planning Panel on 24 March 2021.
141. This does not come into effect until the Georges River Local Environmental Plan is gazetted.

### Interim Policy Georges River Development Control Plan 2020

142. The proposed development is not subject to the provisions of the Interim Policy Georges River Development Control Plan 2020.

### IMPACTS

#### *Natural Environment*

143. No trees are impacted by the proposal and no adverse impacts on the natural environment have been identified.

#### *Built Environment*

144. The proposal complies with the maximum FSR development standards of Hurstville Local Environmental Plan 2012, however proposed a 2m breach of the 10m height of building standard.

145. The request to vary the height standard is not well founded and not supported.

### ***Social Impact***

146. No adverse social impacts have been identified as part of the assessment. The proposed self storage use would provide a benefit for a cross-section of the community however, the built form is not an appropriate outcome for the site.

### ***Economic Impact***

147. The proposed development has no apparent adverse economic impact. There may be a small positive economic impact as a result of the construction of the development.

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

148. The site is zoned IN2 Light Industrial. The proposal is an innominate permissible land use within the zone, subject to development consent, however the request to vary the height standard is not well founded and not supported.

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

149. The application was advertised and adjoining residents were notified by letter and given fourteen (14) days in which to view the plans and submit any comments on the proposal. 11 submissions were received during the neighbour notification period.

### Self storage not being a permissible use in the zone

150. Comments: Self storage is an innominate permissible land in the IN2 Light Industrial zone. This means, as it is not listed as a prohibited land use in the Hurstville LEP 2012, the use is permissible with consent.

### Parking deficiency

151. Comments: In accordance with the Hurstville DCP No. 1, the use (warehouse) requires parking to be provided at a rate of 1 space per 300sqm floor area, which equates to 7 spaces for the proposal. The plans indicate 3 spaces at the front of the site and 4 spaces at the rear of the site, however the Statement of Environmental Effects submitted with the DA indicates the four spaces at the rear are 'informal' and will be used as a loading/unloading area. This forms one of the reasons for refusal of the application.

### Height non-compliance

152. Comments: The proposal seeks approval to vary the 10m height limit and proposes a height of 12m based on the proposed height limit for the site under the Draft Georges river LEP 2020. Council does not support the variation under the Hurstville LEP 2012 and this forms one of the reasons for refusal of the application.

### Delivery times

153. Comments: The proposed hours of operation are stated as 7am to 4pm (Mon to Fri), 7am to 12pm (Sat) and closed Sundays which are compliant with the maximum hours of operation for light industrial uses of 7am to 7pm (Monday to Saturday/Closed Sundays) in accordance with the Hurstville DCP No. 1.

### Asbestos contamination

154. Comments: Should the application be approved, conditions of consent would be included in relation to the management of asbestos in accordance with the relevant safety standards and guidelines.

### Acoustic impacts

155. Comments: The applicant failed to provide an acoustic assessment report with the application. As such Council is unable to provide an assessment of the potential impacts, which forms one of the reasons for refusal of the application.

### **Council Referrals**

#### Development Engineer

156. The proposal fails to meet Section 3, 4 and 7 of the Georges River Stormwater River Management Policy. This forms one of the reasons for refusal of the application.

#### Traffic Engineer

157. No objection raised, subject to conditions of consent should the application be approved.

#### Environmental Health Officer

158. A Detailed Site Investigation Report is required to satisfy the provision of SEPP 55. This forms one of the reasons for refusal of the application.

### **External Referrals**

#### Ausgrid

159. The application was referred to Ausgrid as per Clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007. No objection was raised and no conditions of consent required.

#### APA Group

160. No objection was raised and no conditions of consent required.

### **Contributions**

161. The development is subject to Section 7.12 (former Section 94A Contribution) contribution as the proposed cost of works exceed \$100,000.00. In accordance with Council's Section 94A Contributions Plan 2017, Section 7.12 – Fixed Development Consent Levies are applicable to the proposal. A condition of consent requiring payment of the contribution will be imposed should the application be supported.

### **CONCLUSION**

162. The proposal has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act. The proposal is found to be an unsuitable development of the site.
163. The proposal has been assessed against the provisions of both Hurstville Local Environmental Plan 2012 and Hurstville Development Control Plan No. 1. The 2m breach of the 10m maximum height of buildings standard is not well founded and not supported.
164. The proposal fails to comply with various controls of Hurstville Development Control Plan No. 1 including the stormwater management, car parking, access and mobility, building design, acoustic impacts, energy efficiency and waste management.
165. For the above reasons, the proposal is recommended for refusal.

### **DETERMINATION AND STATEMENT OF REASONS**

#### Statement of Reasons

166. The reasons for this recommendation are:

- The proposed development complies with the requirements of the relevant environmental planning instruments except the height of the development. The 2m breach of the 10m maximum height of buildings standard is not well founded and not supported.
- The proposed development is not considered to be an appropriate scale and form for the site and the character of the locality given the current planning controls applicable to the site and the proposal.
- The application fails to demonstrate compliance with stormwater and drainage controls.
- In consideration of the aforementioned reasons, the proposed development is not a suitable and planned use of the site and its approval is not in the public interest.

### Determination

167. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended), Georges River Council refuse development consent to Development Application DA2021/0078 for alterations and additions to an industrial building and use of the premises as a self-storage facility at Lot A in DP335941 known as 165 Penshurst Street, Beverly Hills, for the following reasons:

1. The proposed development fails to demonstrate compliance with State Environmental Planning Policy No. 55 – Remediation of Land as a detailed site contamination report was not submitted with the application.
2. The proposed development does not comply with the following sections of Hurstville Local Environmental Plan 2012:
  - a. Clause 1.2 – Aims of the Plan;
  - b. Clause 4.3 – Height of buildings and the Clause 4.6 request to vary the standard is not well founded.
3. The proposed development does not comply with the following sections of Hurstville Development Control Plan No. 1:
  - a. 3.1 – Vehicle Access and Parking;
  - b. 3.3 - Access
  - c. 3.6 – Public Domain;
  - d. 3.7 – Stormwater;
  - e. 5.1 – Building Design, Vehicle Access and Parking, Acoustics, Energy Efficiency and Waste Management.
4. The proposal is unsatisfactory having regard to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the development will cause adverse impacts upon the following aspects of the environment:
  - a. Built Environment: An adverse impact would result from the proposed development on the amenity of adjoining premises relating to building bulk, scale and form, and streetscape presentation. In addition, the proposed stormwater system fails to adequately drain the development.
  - b. Social Impacts: An adverse impact would result from the proposed development on the amenity of the locality and general expectations for development adjacent to a low density residential area.

5. The proposed development is unsatisfactory having regard to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be suitable for the site or its locality and is likely to set an undesirable precedent.
  
6. Approval of the development would not be in the public interest and contrary to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

## **ATTACHMENTS**

Attachment 1 Plans and Elevations - 165 Penshurst St Beverly Hills