

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 18 MARCH 2021**

<b>LPP Report No</b>	<b>LPP005-21</b>	<b>Development Application No</b>	<b>DA2020/0144</b>
<b>Site Address &amp; Ward Locality</b>	192 - 196 Princes Highway, Kogarah Bay Kogarah Bay Ward		
<b>Proposed Development</b>	Demolition works and construction of a residential flat building		
<b>Owners</b>	Kogarah Bay Property Pty Ltd		
<b>Applicant</b>	Anthony Charbel		
<b>Planner/Architect</b>	Architect: Bureau SRH, Planner: Planning Ingenuity		
<b>Date Of Lodgement</b>	23/04/2020		
<b>Submissions</b>	Nil		
<b>Cost of Works</b>	\$9,543,602		
<b>Local Planning Panel Criteria</b>	Ministerial Direction – Residential Flat Building		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, State Environmental Planning Policy No. 55 Remediation of Land, State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Infrastructure) 2007, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Draft Environmental State Environmental Planning Policy, Draft Remediation of Land State Environmental Planning Policy, Draft Georges River Local Environmental Plan 2020, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013, Georges River Interim Policy Development Control Plan 2020		
<b>List all documents submitted with this report for the Panel's consideration</b>	Site Plans and Elevations		
<b>Report prepared by</b>	Senior Development Assessment Officer		

<b>Recommendation</b>	Refusal
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<b>Summary of matters for consideration under Section 4.15</b>	
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>	<b>Yes</b>

<p>Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?</p>	
<p><b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?</p>	<p><b>No</b></p>
<p><b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?</p>	<p><b>Not Applicable</b></p>
<p><b>Conditions</b> Have draft conditions been provided to the applicant for comment?</p>	<p><b>No, as the application is recommended for refusal. The refusal reasons can be viewed when the report is published.</b></p>



**Executive Summary**

1. The development application seeks consent for demolition works and construction of a residential flat building on land known as 192-196 Princes Highway, Kogarah Bay.
2. A pre-lodgement meeting was held for a residential flat building (PRE2020/0084) on 22 January 2020 and minutes were provided to the applicant on 3 March 2020.
3. The development application (DA2020/0144) was received by Council on 23 April 2020. In detail, the development application seeks consent for demolition of existing structures and construction of a six (6) storey residential flat building with roof top communal open space with lift, stair access and pergola. The proposal comprises of thirty-six (36) residential apartments, two (2) levels of basement car parking containing sixty-three (63) car spaces and associated landscaping and site works.
4. On 15 October 2020, Council sent a request for additional information relating to; built form, traffic, landscaping and engineering issues. The applicant submitted subsequent information for Council's consideration which forms the basis of this assessment report.
5. On 2 March 2021, Council requested a revised Clause 4.6 Exception to Development Standard to reflect the amended reduced height. This was not received upon the finalisation of this assessment report and forms a reason for refusal.
6. On 5 March 2021, Council raised concerns with the proposed floor space ratio. In response the applicant provided a revised GFA calculation. Council's assessment indicates that the proposal is still over FSR and not Clause 4.6 Exception to Development Standard has been provided in support of this variation.
7. It is noted that Part C2 Medium Density Housing of the Kogarah Development Control Plan 2013 came into effect on 10 June 2020. This development application was lodged on 23 April 2020 being prior to this date. The development control plan does not contain a savings provision preserving the controls.
8. The application was notified between 11 May and 25 May 2020. In response, no submissions were received during the notification period or upon finalisation of this assessment report. The amendment made to the proposal did not require re-notification as the proposed built form is largely unchanged with in a minor decrease in height for the lift overrun, stair case and pergola on the communal rooftop level and minor internal and external changes.
9. On 15 October 2020, Council sent a request for additional information relating to; built form, traffic, landscaping and engineering issues. The applicant submitted subsequent information for Council's consideration which forms the basis of this assessment report.
10. An assessment of the amended proposal has been undertaken the proposal seeks variations to the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development regarding spatial separation (visual privacy, deep soil, amenity), Kogarah Local Environmental Plan 2012 (height of building, floor space ratio) and Kogarah Development Control Plan 2013 (deep soil, built form, basement setbacks, common open space and dwelling mix).
11. The original proposal sought the overall height of 23.57m resulting in a 12.23% variation to the maximum height control of 21m. The applicant provided amended plans which reduced the height of the lift overrun to 23.17m resulting in a 10.33m variation (reduction

of 400mm) and stair access and pergola to 20.5m (reduction of 1600mm) with the later now complying. A revised clause 4.6 exception to development standard was not submitted with the amended plans. This was requested however this was not provided upon finalisation of this assessment report.

### Site and Locality

12. The subject site is legally described as Lot 1 DP 655948, Lot 2 DP 658231 and Part 3 Section 17 DP 1963. The site is known as 192-196 Princes Highway Kogarah. The site is dimensioned as follows:

- Northern front boundary - 41.5m with a splay of 3.9m along the north-east corner of the site.
- Southern rear boundary - 43.85m.
- Western side boundary - 31.75m.

With a total site area of 1,520.60sqm.

The site has a fall of approximately 1.26m from the north-west corner) to the south-east corner. Three dwelling houses, a swimming pool and ancillary structures are located on development site.

13. The immediate surrounding area is undergoing transitional change from dwellings to residential flat buildings. Shop top housing is located further to the north on the western side of the Princes Highway. The closet heritage item is located at 186-188 Princes Highway, Kogarah Bay (two storey dwelling and gardens) which is located approximately 33.7m to the north-east of the site.



**Figure 3** - Aerial extract of subject site 192-196 Princes Highway, Kogarah Bay with the site outlined in red (Source: SEE prepared by Planning Ingenuity, 2020).

### Zoning and Permissibility

14. The subject site is zoned Zone R3 Medium Density Residential pursuant to the Kogarah Local Environmental Plan 2012 (KLEP2012). The proposed development is defined as a Residential Flat Building and is a permissible use in the zone with development consent.



**Figure 4** - Zoning extract of subject site 192-196 Princes Highway, Kogarah Bay with the site outlined in red (Source:Intramaps, 2020).

### Submissions

15. The application was notified between 11 May and 25 May 2020. In response, no submissions were received during the notification period or upon finalisation of this assessment report. The amendment made to the proposal did not require re-notification as the proposed built form is largely unchanged with in a minor decrease in height for the lift overrun, stair case and pergola on the communal rooftop level and minor internal and external changes.

### Reason for Referral to the Local Planning Panel

16. The application for is for a residential flat building and the consent authority is the Georges River Local Planning Panel via Ministerial Direction.

### Planning and Design Issues

17. Council's assessment has identified inconsistencies to State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development in regards to Visual Privacy and Separation, deep soil and apartment size and layout. The proposal does not adequately satisfy the Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment in relation to stormwater disposal. The proposal seeks a variation to the height of building and floor space ratio referenced within the Kogarah Local Environmental Plan 2012 whereby Clause 4.6 Exception to Development Standards have not been provided for the revised plans relating to height and no 4.6 variation statement has been proved for the floor space ratio breach.
18. The proposal is not considered to satisfy the R3 Medium Density Residential Development zone objectives as the proposal results in excessive bulk and scale for the proportions of the site. The proposal also does not comply with Part B: B4 and B5 Waste Management, Parking and Traffic and Section C2 Medium Density Housing of the Kogarah Development Control Plan 2013 relating to residential flat buildings regarding;

setbacks, corner setbacks, basement setbacks, landscaping, communal open space and dwelling mix. These issues are discussed in further detail within the body of the report.

## Conclusion

19. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. The proposal is considered unsatisfactory in its current form and is recommended for refusal.

## Report in Full

### Description of the Proposal

20. The DA seeks consent for the demolition of all existing structures on the subject site, and the construction of a six (6) storey residential flat building with roof top communal open space, comprising of thirty-six (36) residential apartments, two (2) levels of basement car parking containing sixty-three (63) car spaces and associated landscaping and site works on land known as 192-196 Princes Highway, Kogarah Bay.



**Figure 6** - Extract of originally proposed montage viewed from the corner of the Princes Highway and Lacey Street, Kogarah. It is noted that the amended proposal adopts a form which is similar to that of the amended proposal. (Source: Bureau SRH, 2020).

21. In detail, of the proposal is described as follows;

#### Demolition

Demolition of (3) dwelling houses, associated ancillary structures and outbuildings associated with the development site being 192-196 Princes Highway, Kogarah Bay.

- Basement Level 1

Thirty-five (35) car parking spaces, three (3) bicycle spaces, storage, lift core, access stairs and waste storage area.

- Basement Level 2  
Twenty-eight (28) car parking spaces, seven (7) bicycle spaces, storage, lift core, access stairs and waste storage area.
  
- Ground Floor  
Pedestrian entrance from Lacey Street.  
Access driveway from Lacey Street.  
6 x 1 bedroom, 1 x 2 bedroom and 1 x 3 bedroom units.  
Hydrant and services along Princes Highway.  
Communal open space along western side boundary.  
Bicycle parking.  
Protection of two *Phoenix canariensis* trees on site and removal of one *Dracaena marginata* tree.
  
- Level 1, 2 and 3  
5 x 2 bedroom units and 1 x 3 bedroom units.  
Lift core and access stairs.
  
- Level 4  
3 x 2 bedroom units and 2 x 3 bedroom units.  
Lift core and access stairs.
  
- Level 5  
3 x 2 bedroom units and 2 x 3 bedroom units.  
Lift core and access stairs,
  
- Rooftop Level  
Landscaped communal open space 380sqm with BBQ area, pergola structure, lift and stair access.

### **Description of the Site and Locality**

22. The subject site is legally described as Lot 1 DP 655948, Lot 2 DP 658231 and Part 3 Section 17 DP 1963. The site is known as 192-196 Princes Highway Kogarah Bay. The site is dimensioned as follows:

- Northern front boundary - 41.5m with a splay of 3.9m along the north-east corner of the site.
  - Southern rear boundary - 43.85m.
  - Western side boundary - 31.75m.
- With a total site area of 1,520.60sqm.

The site has a fall of approximately 1.26m from the north-west corner) to the south-east corner. Three dwelling houses, a swimming pool and ancillary structures are located on development site.



**Figure 7** - Photograph of subject site viewed from the corner of Princes Highway and Lacey Street, Kogarah Bay (Source: GRC, 2020).

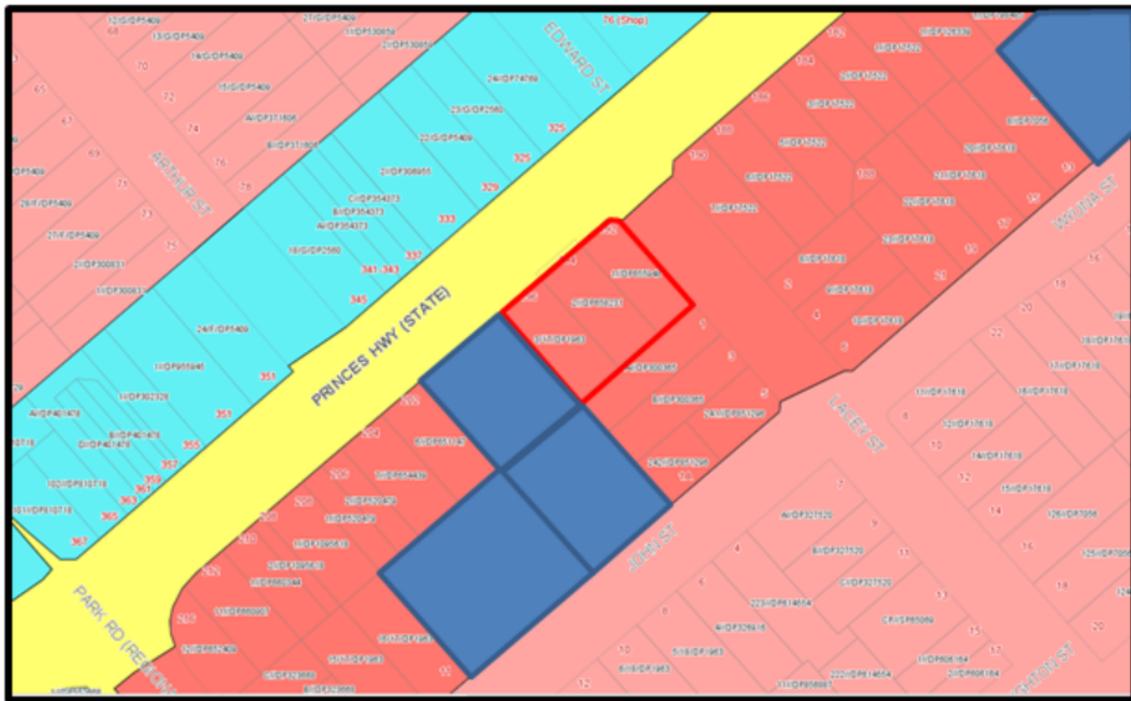
23. The immediate surrounding area is undergoing transitional change from dwellings to residential flat buildings. Shop top housing is located further to the north on the western side of the Princes Highway. The closest heritage item is located at 186-188 Princes Highway, Kogarah Bay (two storey dwelling and gardens) which is located approximately 33.7m to the north-east of the site.

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

24. The site is zoned R3 Medium Density Residential pursuant to the Kogarah Local Environmental Plan 2012. A “*residential flat building*” forms a permissible development subject to development consent.
25. The proposed development comprises of the amalgamation of the three (3) sites and the combined area and dimensions of the subject site are as follows:

Site Area	1,520.6sqm
Northern primary frontage to Princes Highway, Kogarah	41.47m, 3.915m (splay at north-eastern corner between Princes Highway and Lacey Street, Kogarah)
Eastern secondary frontage to Lacey Street, Kogarah Bay.	31.75m
Rear boundary (adjoining 1 Lacey Street, Kogarah Bay). This currently adjoins a dwelling house.	34.75m
Side boundary (adjoining 198 Princes Highway, Kogarah Bay) This currently adjoins a dwelling house.	34.84m

- 26. It is noted that the site area excludes the road widening (1.63m wide) along the Princes Highway, Kogarah Bay for Nos. 194 and 196. In total, these areas equate to 55.77sqm and have been excluded for the proposal and Council’s assessment.
- 27. The subject site is located on the south-eastern side of the Princes Highway, Kogarah Bay.
- 28. Currently to the west and the site are predominantly lower scale residential properties which are currently occupied by dwelling houses. Further to the north along the western side of the Princes Highway comprises of a mixture of commercial uses and shop top housing.
- 29. It is noted that that the built form adopts a similar bulk, form and scale as that of approved developments within the immediate vicinity being along the northern sides of John and Wyuna Streets where the up-zoning occurred.



**Figure 8** - Extract of Map indicating location of recent approvals and immediate location which indicates the subject site and immediate surrounding area The subject site is outlined in red and recent RFB approvals within the R3 Medium Density Residential Zone are marked in dark blue. (Source: GRC Intramaps, 2021)

Property	DA approval	Over height of Building (lift overrun, access and common open space)	Side setbacks	Rear setback
190-200 Princes Highway, Kogarah Bay (consent granted for a residential flat building however	DA2017/0655	Yes	<12m = 6m >12m = 6m	>12m = 6m <12m = 9m

construction works has not commenced)				
5-9 John Street, Kogarah Bay (currently under construction)	DA2017/0663	Yes	>12m = 6m <12m = 9m	>12m = 6m <12m = 9m
1-3 John Street, Kogarah Bay (currently under construction)	DA2017/0218	Yes	<12m = 6m >12m = 9m	<12m = 6m >12m = 9m
5- 11A Wyuna Street, Kogarah Bay (currently under construction)	DA2018/0516	Yes	>12m = 6m <12m = 9m	>12m = 6m <12m = 9m
192-196 Princes Highway, Kogarah Bay (subject site)	DA2020/0144	Yes	>12m = 6m <12m = 6-7.6m	>12m = 6m <12m = 9m



Figure 9 - Extract of north street facing elevation of approved residential flat building (198-200 Princes Highway, Kogarah Bay (DA2017/0655) (Source: Charles Tang Design, 2017).

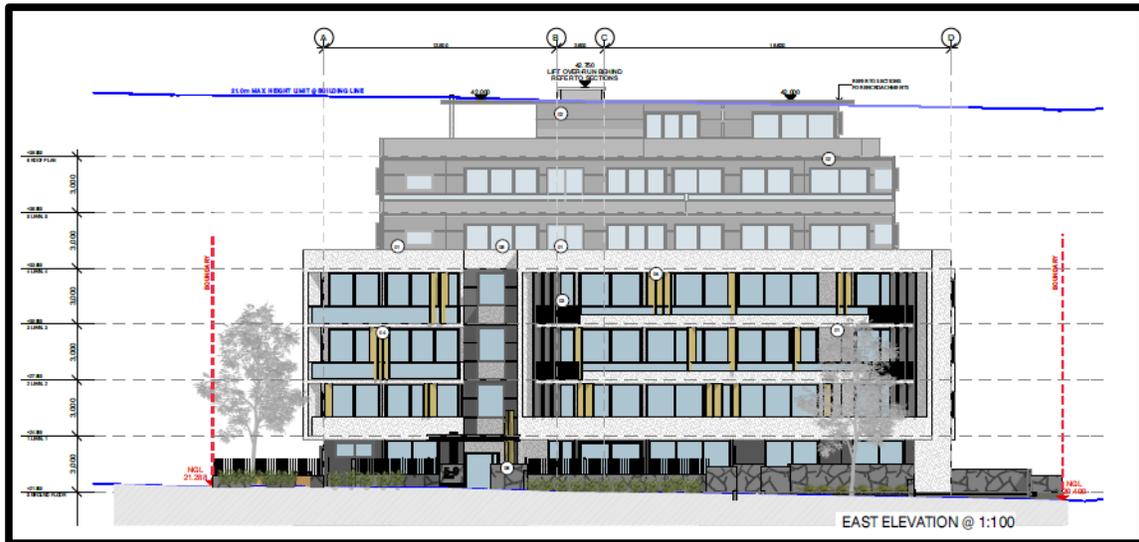


Figure 10 - Front elevation of approved residential flat building at 5-9 John Street, Kogarah Bay (DA2017/0663) (Source: UrbanLink).

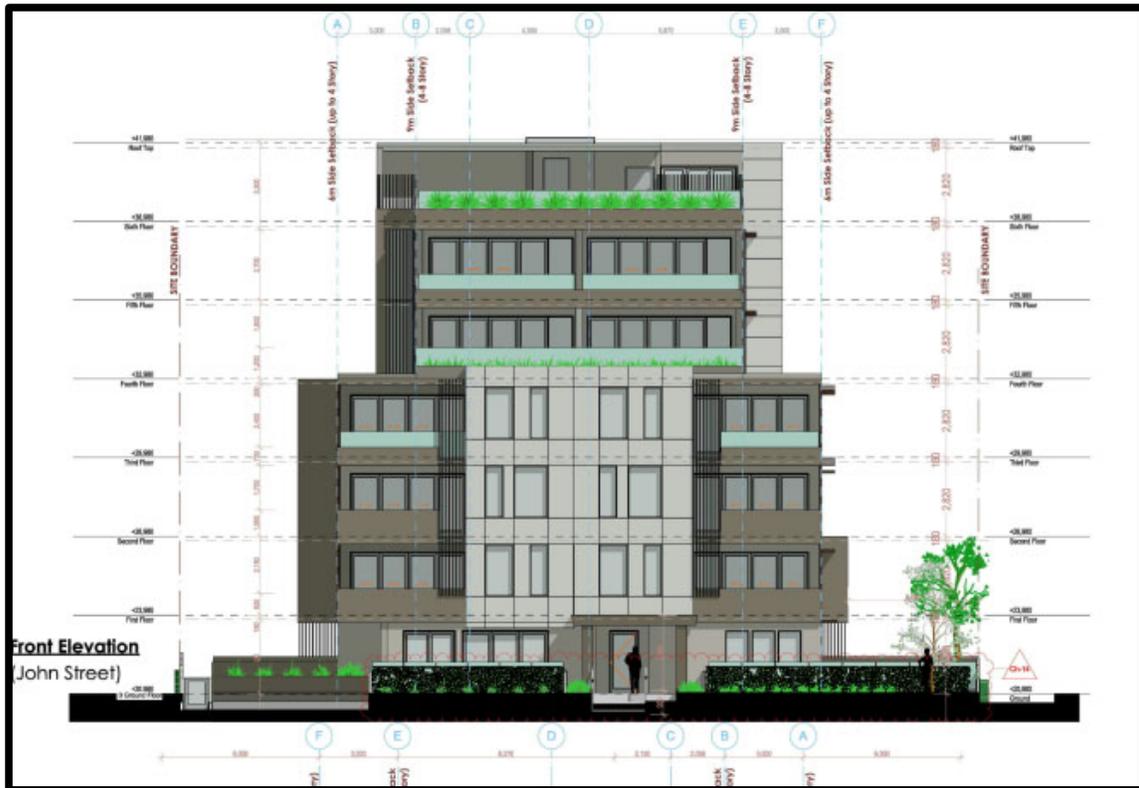


Figure 11 - Front elevation of approved 1-3 John Street, Kogarah Bay DA2017/0218 (Source: Tecton Group).



**Figure 12** - Front elevation of approved residential flat building at 5-11A Wyuna Street, Kogarah Bay (DA2018/0516) (Source: PBD Architects, 2020).

## HISTORY

30. A pre-lodgement (PRE2020/0084) meeting was held on 22 January 2020 for a similar scheme to that lodged under this application. The minutes were provided to the applicant on 3 March 2020.
31. The development application was received by Council on 23 April 2020. In specific detail, the development application seeks consent for the demolition of all existing structures on the subject development site, and the construction of a six (6) storey residential flat building with roof top communal open space, comprising of thirty-six (36) residential apartments, two (2) levels of basement car parking containing sixty-three (63) car spaces and associated landscaping and site works.
32. The application was notified between 11 May and 25 May 2020. In response, no submissions were received during the notification period or upon finalisation of this assessment report. The amendment made to the proposal did not require re-notification as the proposed built form is largely unchanged with in a minor decrease in height for the lift overrun, stair case and pergola on the communal rooftop level and minor internal and external changes.
33. On 15 October 2020, Council sent a request for additional information relating to; built form, traffic, landscaping and engineering issues. The applicant submitted subsequent information for Council's consideration which forms the basis of this assessment report.
34. On 2 March 2021, Council requested a revised Clause 4.6 Exception to Development Standard to reflect the amended reduced height. This was not received upon the finalisation of this assessment report and forms a reason for refusal.
35. On 5 March 2021, Council raised concerns with the proposed floor space ratio. In response the applicant provided a revised GFA calculation. Council's assessment indicates that the proposal is still over FSR and not Clause 4.6 Exception to Development Standard has been provided in support of this variation.

## State Environmental Planning Policies (SEPPs)

36. Compliance with the relevant State Environmental Planning Policies is summarised in the following table and discussed in further detail below.

<b>SEPP Title</b>	<b>Complies</b>
State Environmental Planning Policy No 55 - Remediation of Land	Yes
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	No
State Environmental Planning Policy (Infrastructure) 2007	Yes
Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment	Yes
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes

### **Environmental Planning and Assessment Regulations 2000**

37. The proposed development satisfies the relevant matters for consideration under the Regulations.

### **State Environmental Planning Policy No 55 - Remediation of Land**

38. State Environmental Planning Policy 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.
39. A review of the site history based on Council's records indicates that the site has been used for residential purposes for extended periods of time, and such uses and/or development are not typically associated with activities that would result in the contamination of the site. A Geotechnical report accompanies the application which was prepared by Geotechnique dated 20 March 2020 which contains recommendations for a dilapidation survey on adjoining properties. In this regard, the proposal has adequately satisfied the considerations of the State Environmental Planning Policy. If the application was to be supported this would be imposed as a condition of consent.

### **State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development**

40. State Environmental Planning Policy No.65 – Design Quality of Residential Flat Buildings (SEPP 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three or more storeys in height and containing at least four dwellings. Amendment 3 to SEPP 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, SEPP 65 applies.

Clause 28(2) of SEPP65 requires that the consent authority take into consideration the following as part of the determination of DAs to which SEPP 65 applies:

- a) *the advice (if any) obtained from the design review panel, and*
- b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
- c) *the Apartment Design Guide.*

41. In addition to satisfying the above nine (9) design principles, the proposal generally satisfies the Apartment Design Guidelines in respect to the design quality of the building and its apartments. An assessment against the principles, objectives and controls of SEPP 65 and the ADG have been provided below;

Application of SEPP 65

Clause	Standard	Proposal	Complies
3 - Definitions	Complies with definition of “Residential Apartment Development” (RAD)	The proposal complies with definition of a “ <i>residential apartment development</i> ” within the SEPP.	Yes
4 - Application of Policy	Development involves the erection of a new RFB, substantial redevelopment or refurbishment of a RFB or conversion of an existing building into a RFB. The definition of an RFB in the SEPP includes mixed use developments.	The proposal seeks the erection of an Residential Flat Building (RFB) which satisfies the SEPP’s definition of this residential land use.	Yes
50 – Development Applications	Design verification statement provided by qualified designer Registered Architect Name and Registration No.	Design Verification Statement provided by Registered Architect and practicing Simon Hanson (6739). However it is noted that a revised Design Verification did not accompany the amended application.	Yes

Part 2 Design Quality Principles under the State Environmental Planning Policy

42. The proposal has been considered in relation to the following design principles; context and neighbourhood character, build form and scale, density, sustainability, landscape, amenity, housing diversity and social interaction and aesthetics.

Council’s Strategic Planner/Urban Designer commented on the proposal as follows:

**“Strategic Considerations**

1. *The proposal provides a mix of 1, 2 and 3 bedroom dwellings within a high density residential development. The subject R3 Medium Density Residential zone is proposed to be translated into the R4 High Density Residential zone under the draft Georges River LEP 2020 to establish a clear hierarchy of residential zones. Accordingly, the proposal is consistent with the objectives of the existing R3 zone and the proposed R4 zone.*
2. *It is acknowledged that the proposal seeks to vary the existing maximum building height due to the built form occupied by the communal roof top area and the lift overruns. This is considered appropriate given that adequate building setbacks have been provided.*

*Urban Design Considerations*

**Basement setback and deep soil**

1. *There is only one issue raised with regards to this proposal which relates to the inadequate provision of deep soil area as result of the narrow basement setbacks.*
2. *The design criteria of Objective 3E-1 specifies a minimum 6m dimension for deep soil zones on sites with areas of greater than 1,500sqm. Accordingly, none of the deep soil areas provided are able to meet this requirement.*
3. *However, it should be recognised that the intent of the minimum dimensions for deep soil zones is to provide adequate opportunities for deep soil landscape planting like mature trees.*
4. *The draft Georges River Development Control Plan is exploring the implementation of a minimum basement setback of 3m so that a combined 6m wide deep soil zone can be established between adjoining high density developments.*
5. *It is recommended that the basement setback at the rear boundary be increased to a minimum of 3m to enable the creation of a 6m wide deep soil zone when the adjacent sites at No.1 Lacey Street is redevelopment.*

**Façade and materials**

6. *No issue is raised regarding the proposed façade finishes. The use of the continuous balustrades that wrap around the building in an undulating pattern provides a fluidity that softens the rectangular footprint.*
7. *The contrast provided by the vertical batten elements is also supported and should be retained in future iterations”.*

**Comment:** The proposal has been considered in relation to the design quality principles. No concerns are raised in relation to the lift overrun, communal stair access and pergola above the height of building control however a revised Clause 4.6 Exception to Development Standard did not accompany the amended proposal. This forms a reason for refusal. Deep soil areas have been improved. Whilst a 3m basement rear setback has not been provided, a basement setback of 1.2m – 2.65m is not considered to be unreasonable to provide suitable vehicular and pedestrian access and circulation. However the proposal seeks an excessive FSR which results in adverse bulk and scale impacts. This forms a key reason for refusal.

Clause 28 of SEPP65 requires the consent authority to take into consideration the provisions of the ADG. This consideration has been undertaken below:

**Part 3 and Part 4 – Consideration of Residential Flat Design Code Design Controls**

<b>Clause</b>	<b>Standard</b>	<b>Proposal</b>	<b>Complies</b>
Objective 3D- Communal and Open Space	<p>1. Communal open space has a minimum area equal to 25% of the site.</p> <p>-Where it cannot be provided on ground level it should be provided on a podium or roof = 380.15sqm (min)</p> <p>-Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones,</p>	<p>The proposal provides one area of common open space,</p> <p>1. Rooftop area to = 380sqm (usable area excluding planter box and lift and stair access) (25%).</p> <p>Every apartment includes a sizable and compliant balcony/terrace of which numerous balconies/terraces exceed the minimum requirements of the SEPP. It is noted that the calculations</p>	Yes

	<p>or in a dense urban area, they should:</p> <ul style="list-style-type: none"> <li>• provide communal spaces elsewhere such as a landscaped roof top terrace or a common room</li> <li>• provide larger balconies or increased private open space for apartments</li> <li>• demonstrate good proximity to public open space and facilities and/or provide contributions to public open space</li> </ul> <p>2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>	<p>exclude balcony areas that are under the minimum depth.</p> <p>The roof top area of common open space receives in excess of 2hours of solar access during the day midwinter due to its location orientation and dual street frontage aspect.</p>	<p>Yes</p>
<p>Objective 3E- Deep Soil Zones</p>	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>Where the site is less than 1500sqm = 6m min dimension</p> <p>Min deep soil area of 7% (106.44sqm min)</p>	<p>The site is 1,520.6sqm. This amounts to 0% with a minimum dimension of 6m due to the sitting of the building and basement location below. Despite this adequate landscaping has been provided equating to 307sqm, noting that the minimum dimensions are not achieved embellishing the site. Council’s consultant arborist has supported the landscaping component of this proposal. However the proposal is not supported for other reasons as contained within this report.</p>	<p>No</p>

Objective 3F-Visual Privacy	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved.</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys) Habitable - 6m Non-habitable – 3m (Levels: GF, L1, L2 and L3)</p> <p>Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m  (Levels: L4, L5 and L6 communal rooftop open space)</p>	<p>The balconies at upper levels are appropriately screened with privacy elements and blade walls etc.</p> <p>Southern rear boundary: 6m 6m</p> <p>Western side boundary: 6m 6m</p> <p>Southern rear boundary: 9m 9m</p> <p>Western side boundary: 6m 6m - 7.6m</p>	<p>Yes</p> <p>Yes Yes</p> <p>Yes Yes</p> <p>Yes N/A</p> <p>Yes No, refer to discussion (1)</p>
Objective 3G- Pedestrian Access and Entries	<p>Building entries and pedestrian access connects to and addresses the public domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>The development has a main central entry which is accessed from Lacey Street which provides direct access to the lift core. Ground floor units 1-5 contain front courtyards fronting the Princes Highway and unit 8 fronting Lacey Street. Secondary access via gates for each of these units would have been conditioned to provide improved access and better activate the streetscape presentation to the Princes Highway and Lacey Street however the proposal is not supported for other reasons.</p>	<p>Yes</p>
Objective 3H- Vehicle Access	<p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles</p>	<p>The development proposes a driveway along the eastern side of the site fronting Lacey Street. The driveway entry is recessed behind the front building line and is sufficient enough for two</p>	<p>Yes</p>

	and create high quality streetscapes	<p>vehicles to pass each other without any conflict. This is a safe and appropriate design feature. It is noted that Council's Senior Traffic Engineer raised concerns regarding inadequate internal aisle widths. This could be conditioned to comply, however the application is not supported for other planning reasons.</p> <p>The proposal was referred to Roads and Maritime Services (RMS) under the Roads Act 1993. In response, the RMS raised no objections to the proposed vehicle access arrangement subject to the imposition of conditions; however the application is not supported for other planning reasons.</p>	
Objective 3J- Bicycle and Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>- On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area;</li> <li>- The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant Council, whichever is less</li> </ul>	<p>These provisions are not applicable as the proposal is not within 800m of a railway station or light rail stop.</p> <p>Council's car parking provisions contained in the DCP are relevant, the proposal complies providing 63 car parking spaces within basement levels 1 and 2.</p>	<p>Yes</p> <p>Yes</p>
Objective 4A-Solar and daylight access	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area</p> <p>Daylight access is maximised where</p>	<p>72% of units (a total of 26/36 units) receive a minimum of 2 hours of solar access between 9am to 3pm in mid-winter.</p>	<p>Yes</p>

	sunlight is limited.		
Objective 4B-Natural Ventilation	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p> <p>The building should include dual aspect apartments, cross through apartments and corner apartments and limit apartment depths</p>	66.6% (24/36 units) of apartments are cross ventilated as they are corner apartments designed around a central linear core.	Yes
Objective 4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>If located in mixed use areas = 3.3m for ground and first floor to promote future flexibility of use. Habitable rooms = 2.7m Non-habitable rooms = 2.4m</p>	The minimum floor to ceiling height at all levels is 2.7m with slab to slab levels being 3.1m floor to floor.	Yes
Objective 4D- Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <p>1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm</p>	<p>All apartments comply with the minimum internal area requirements.</p> <p>1 bedroom apartments have minimum internal areas of 50-52sqm.</p>	<p>Yes</p> <p>Yes</p>

	<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</p>	<p>2 bedroom apartments have minimum internal areas of 75-76sqm.</p> <p>3 bedroom apartments have internal areas of 100sqm.</p> <p>Additional bathrooms within the 2 and 3 bedroom units with a minimum 5sqm added.</p> <p>Every habitable room has natural ventilation via windows with a minimum glass area of 10%.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>Complies and addressed as part of the design.</p> <p>Most rooms contain a maximum depth of 7.5m for the 1 and 2 bedroom units and 9.4m for the 3 bedroom units.</p>	<p>Yes</p> <p>No</p>
	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <p>-3.6m for studio and 1</p>	<p>Complies with the minimum room sizes. Master bedrooms have a minimum area of 10 - 13sqm whilst all other secondary bedrooms have areas of 9sqm (excluding the wardrobes).</p> <p>Bedrooms have a minimum dimension of 3m which exclude robes.</p> <p>3.6m min for 1 bedroom</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>bedroom - 4m for 2 and 3 bedroom apartments</p> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>4m min for 2 and 3 bedroom units.</p> <p>No cross-over or double loaded apartments are proposed.</p>	N/A
Objective 4E-Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth -2 bedroom = 10sqm/2m depth -3+ bedroom = 12sqm/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15sqm and a minimum depth of 3m</p>	<p>All balconies have a minimum depth. 2m for all 1-2 bedroom units. 2.4m for all 3 bedroom units.</p> <p>Balcony areas included.</p> <p>The seven (7) ground floor apartments have terraces with minimum areas of 36-57sqm exceeding the minimum requirements.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Objective 4F-Common circulation and spaces	The maximum number of apartments off a circulation core on a single level is eight	There is one lift core to service the following units on each level; GF = 8 L1-L3 = 6 (each level) L4-L5 = 5 (each level)	Yes
Objective 4K – Apartment mix	A variety of apartments to be provided	6 x 1 bedroom units, 22 x 2 bedroom units and 8 x 3 bedroom units are proposed.	Yes
Objective 4G-storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>1 bedroom = 6m<sup>3</sup> 2 bedroom – 8m<sup>3</sup> 3 bedroom – 10m<sup>3</sup></p>	<p>All units have storage areas that comply with these requirements. Separate storage areas for each apartment are provided in the basement parking levels.</p> <p>The apartments are generous in size and include internal laundries, closets and linen cupboards within each unit.</p>	Yes

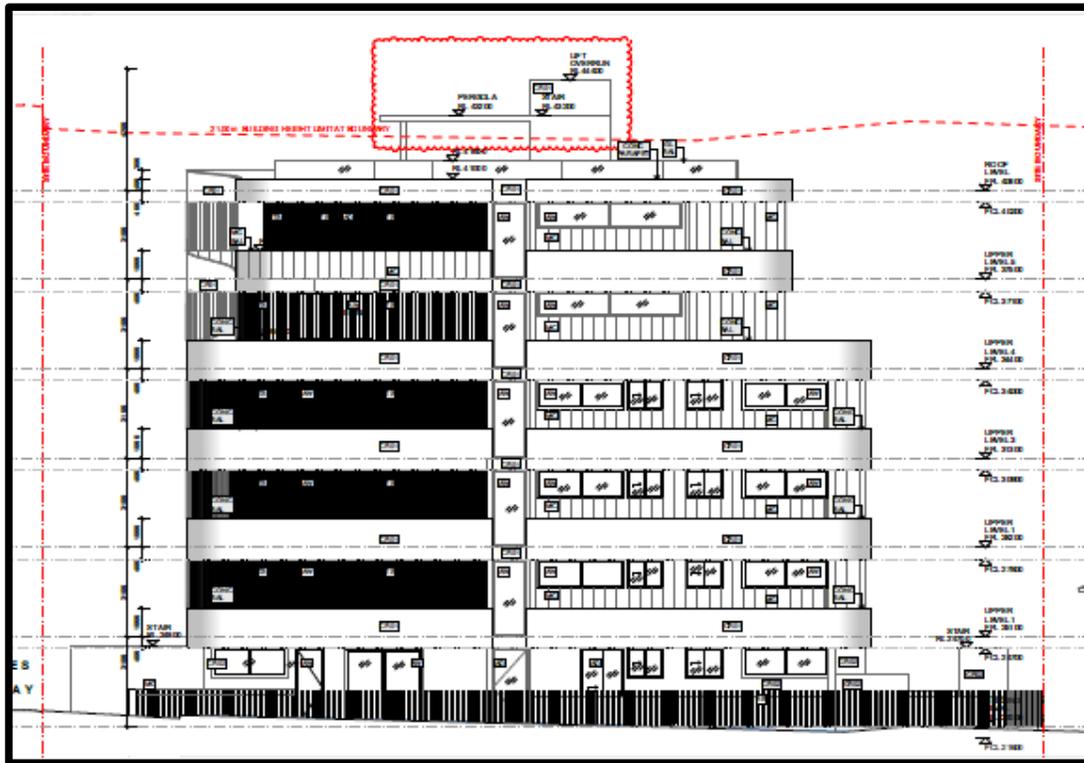
Objective 4M - Facades	Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.	<p>The design of the façade is modern and articulated. The design of the main entries and residential levels are differentiated by differing architectural treatments defining the spaces.</p> <p>The building is of a high architectural and design quality and includes a number of visually attractive architectural elements and features that enhance the overall appearance of the development when viewed from the streets and public domain.</p>	Yes
Objective 4N – Roof Design	Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.	The roof design is considered to be integrated with the design of the development. The communal roof terrace is centralised with landscaping planters along the edges to be embellish the rooftop and provide privacy to adjoining properties.	Yes
Objective 4O – Landscape Design	Landscape design is viable and sustainable, contributes to the streetscape and amenity	The amended landscape design is considered appropriate for a corner allotment and provides suitable communal and private open space areas and the planting of canopy trees which is supported by Council's Consulting arborist.	No
Objective 4P – Planting on Structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	<p>Planter boxes provide on the rooftop level.</p> <p>The development allows for substantial areas of deep soil planting around the periphery of the site which will permit the planting of mature trees and plants which will screen the lower levels of the building and create attractive areas of landscaping around the building as indicated on the landscape plan. The proposal is supported by Council's Consulting arborist.</p>	Yes
Objective 4Q – Universal	Universal design – design of apartments	The apartment design allows for use by different lifestyles.	Yes

Design	allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Internal layouts vary and provide flexible layouts. 4 adaptable units are also provided located on the ground floor being units 2, 3, 4 and 8.	
Objective 4R – Adaptive Use	Adaptive reuse as apartment of existing buildings - new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse.	N/A	N/A
Objective 4U – Energy Efficiency	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	The proposal is accompanied by a valid BASIX certificate. A condition of consent would have imposed to ensure the BASIX requirements were satisfied if the proposal was supported.	Yes
Objective 4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into site design	The development is supported by an appropriately detailed stormwater and drainage design which incorporates onsite detention tanks (OSD). The proposed method of stormwater and drainage management has been referred to Council's Engineer however the proposal has not provided a compliant OSD and stormwater design whereby an OSD should not be located beneath a habitable room due to amenity impacts.	Yes
Objective 4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling.	Waste facilities are provided which are accessible to all residents. The waste management and disposal design has been assessed by Council's Coordinator Environmental Sustainability. It is considered that adequate waste facilities have been provided to service the proposed thirty-six (36) units and the design is considered acceptable subject to conditions of consent if the proposal was to be supported.	Yes
Objective 4X – Building	Building maintenance – building design provides	The design incorporates a mix of contemporary external finishes	Yes

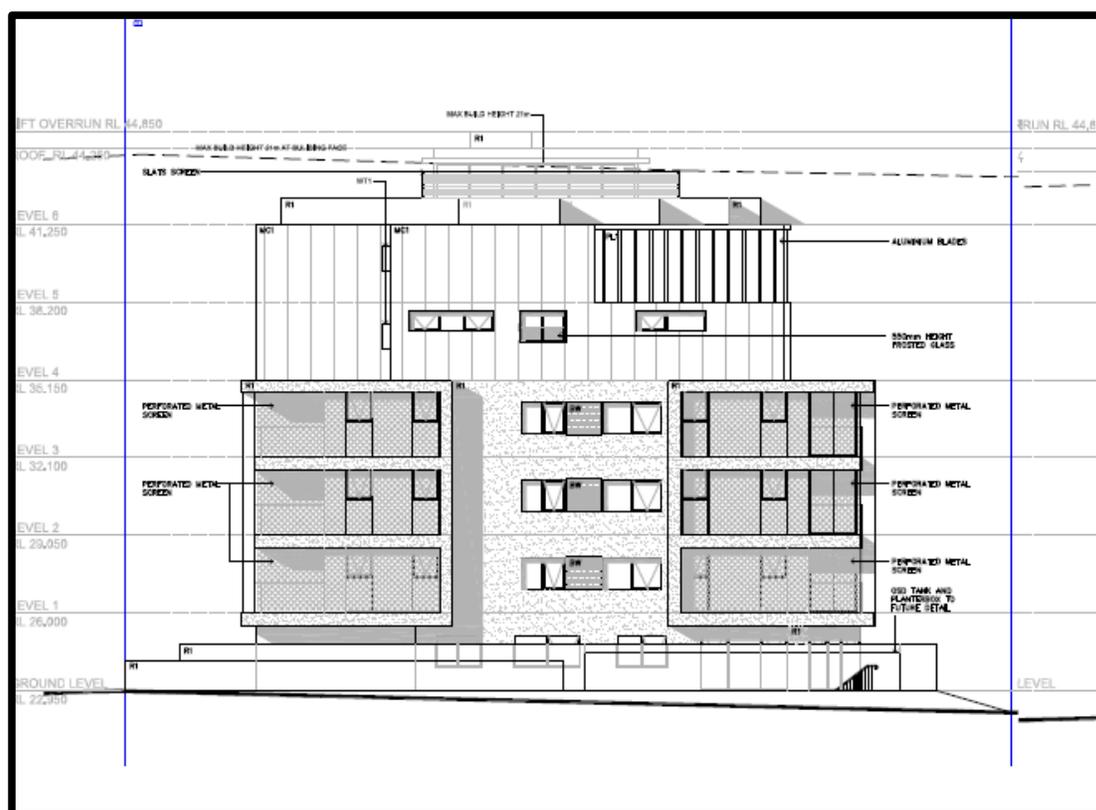
Maintenance	protection from weathering, enables ease of maintenance, material selection reduces ongoing maintenance cost	that require minimal maintenance such as render, privacy screens and in fill panels on the upper levels. Materials and finishes have been carefully considered to minimise longer term costs relating to long term maintenance. The materials proposed are considered to be appropriate for this location which is undergoing urban transformation.	
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(1) Separation Distances

43. The proposal seeks a variation to the minimum 9m side separation distances to the fourth, fifth and sixth levels as required by the ADG. The building has been designed to be modulated and articulated at every level; however levels 4, 5 and the rooftop level 6 are proposed to be setback 6m to 7.6m from the western side boundary. This achieves a spatial separation of 12m (min) between the site and the approved residential flat building at 198—200 Princes Highway, Kogarah Bay. 18m is the required separation distance for these levels.



**Figure 13** - Extract of western side elevation of the subject site which will face the northern side elevation of 198-200 Princes Highway, Kogarah Bay. Levels 4 and 5 comprise of living rooms and screened balconies (Source: Bureau SRH, 2020).



**Figure 14** - Extract of eastern side elevation which will face the western elevation of the subject site 192-196 Princes Highway, Kogarah Bay. Rooms on level 4 comprise of 2 bedrooms and one living room, level 5 comprises of a screened balcony. (Source: Charles Tang Designs, 2017).

44. This variation has been considered and is not supported for the following reasons:

The applicant has not sufficiently detailed the impacts and relationship between that of the proposed variation and that of 198-200 Princes Highway. There has been no sight line diagram analysis or vertical shadow diagrams in relation to the extent of the impact generated by the reduced side setback. Given this variation, in addition to the excessive FSR sought, the proposal results in unacceptable adverse bulk and scale impacts. This forms a key reason for refusal.

#### **Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment**

45. As the slope of the site is generally level the stormwater from the proposed development can be treated in accordance with Council's Water Management Policy and can drain to the street satisfying the relevant provisions of the Deemed State Environmental Planning Policy – Georges River Catchment. The method of stormwater detention has been reviewed by Council's Development Engineers, the proposal has not provided adequate OSD or an acceptable stormwater solution as the OSD should be not located beneath the height of building.

#### **State Environmental Planning Policy (Infrastructure) 2007**

46. The aim of the Infrastructure State Environmental Planning Policy is to facilitate the effective delivery of infrastructure across the State. The DA was referred to Ausgrid in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid advised there are no issues with the proposal subject to minimum clearance distances from Ausgrid's Infrastructure.

47. As the subject site is located on Princes Highway, Kogarah Bay this is a classified road which has a traffic volume of over 20,000 cars daily. An acoustic report has been provided in relation to considerations under Clause 102 Impact of road noise or vibration on non-road development and is supported by Council's Environmental Health Officer.
48. Given the above, the proposal has adequately satisfies the provisions of the State Environmental Planning Policy.

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

49. BASIX Certificate No. 1087636M dated 19 March 2020 prepared by Greenworld Architectural Drafting has been issued for the proposed development and the development meets the provisions and minimum requirements of BASIX in terms of water, thermal comfort and energy efficiency. The amended plans did not alter the internal arrangement and layout of the units nor does it affect the original density proposed, as such the original BASIX certificate is still relevant to the amended design.

#### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

50. 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 R3 Medium Density Residential zone.
51. 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 60O 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).
52. An arborist report was submitted with the development application. The proposal results in the protection of two *Phoenix canariensis* trees on site and removal of one *Dracaena marginata* tree on site. Council's consulting arborist supports the proposal subject to appropriate conditions imposed if the application was to be supported.

#### **Environmental Planning Instruments** **Kogarah Local Environmental Plan 2012**

##### **Zoning**

53. The subject site is zoned Zone R3 Medium Density Residential pursuant to Kogarah Local Environmental Plan 2012 (KLEP2012). The proposed development is defined as a Residential Flat Building and is a permissible use in the zone with development consent.
54. A strip across the front portion of No 194-196 Princes Highway, Kogarah Bay are zoned SP2 Infrastructure which is subject to road widening from Transport for New South Wales. This area does not form part of the subject site for the purposes of this application and its assessment.



**Figure 15** - Zoning extract of subject site 192-196 Princes Highway, Kogarah Bay with the site outlined in red (Source:Intramaps, 2020).

55. The objectives of the R3 Medium Density Residential zone are as follows:
- *To provide for the housing needs of the community within a medium density residential environment.*
  - *To provide a variety of housing types within a medium density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal does not satisfy the zone objectives as the proposal is excessive in bulk and scale and the design detracts from the amenity of future occupants as it is considered to impact adjoining properties.

The proposal has been considered against the relevant clauses of Kogarah Local Environmental Plan 2012 (KLEP2012) and is outlined in the table below.

Clause	Standard	Proposed	Complies
Part 2 – Permitted or Prohibited Development	R3 Medium Density Residential Zone.	The proposal is defined as a Residential Flat Building (RFB) which is a permissible use within the zone.	Yes
	SP2 Infrastructure (Front part of No. 194 Princes Highway, Kogarah Bay)	As previously stated, the SP2 zoned land is not proposed to be used as part of the site area for this proposal.	Yes
2.1 Objectives	Objectives of the Zone R3 Medium	The proposal is considered to be inconsistent with zone objectives for	No

	Density Residential  Objectives of SP2 Infrastructure satisfied	the reasons detailed within this report.  The front portion of 194 and 196 Princes Highway, Kogarah Bay is zoned SP2. This element does not form part of the development site.	Yes
4.1A Minimum lot sizes for Residential Flat Buildings	Clause 4.1A requires a minimum site area of 1,000sqm for the purpose of a residential flat building in the R3 zone.	The total combined site area is 1,520.6sqm. This area is adequate to accommodate a residential flat building. As previously stated within this report, this excludes the road widening along the Princes Highway, Kogarah Bay.	Yes
4.3 – Height of Buildings	21m as identified on Height of Building Map	The habitable area of the development is within the height limit however, the lift overrun and pergola structure on the roof top exceed the height control by 2.17m (10.33% variation). At its maximum, the structures on the roof reach a height of 23m (max)..	No (1)
4.4 – Floor Space Ratio	2:1 as identified on Floor Space Ratio Map Site area = 1,520.6sqm Total GFA = 3,041.2sqm (max)	FSR proposed by applicant at 1.99:1 however Council's assessment and scaling from plans indicates an area of 3,082sqm (2.02:1)	No (2)
4.5 – Calculation of floor space ratio and site area	FSR and site area calculated in accordance with Cl.4.5	The FSR has been calculated in accordance with this clause.	Yes
5.10 – Heritage Conservation	The objectives of this clause are; (i) to conserve the environmental heritage of Kogarah, (ii) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.	The site not identified as a heritage item or within a heritage conservation area. The closet heritage item is located at 186-188 Princes Highway, Kogarah Bay (two storey dwelling and gardens) which is located approximately 33.7m to the north-east of the site. Between the subject site and the heritage item is Lacey Street and No. 190 Princes Highway which is also zoned medium density residential which has a height limit of 21m and FSR of 2:1 being the same as the subject site.	Yes
6.2 Earthworks	To ensure that earthworks do not have a detrimental	The proposed earthworks are considered acceptable having regard to the provisions of this clause as the	Yes

	impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	works are not likely to have any unreasonable detrimental impact on environmental functions and processes, neighbouring properties for an area which is undergoing urban transition.  A condition would be recommended if the application was to be supported for a dilapidation report prepared for the immediately adjoining properties.	
6.5 Airspace Operations	The consent authority must not grant development consent to development that is a controlled activity within the meaning of Division 4 of Part 12 of the <i>Airports Act 1996</i> of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division.	The application was referred to the Civil Aviation Safety Authority (CASA) who raised no concerns with the proposal with the maximum lift overrun height of RL44.80. The height of the proposed development is below the Obstacle Limitation Surface (OLS).  The amended proposal was reduced in height. The maximum height of RL44.40 is sought for the top of the lift overrun. The fire stair and top of pergola proposes a height of RL.43.20. Given the reduction of the maximum height a re-referral to CASA was not required.  It is noted that any crane activities during construction would require further applications to CASA.	Yes

**56. Clause 4.6 Exceptions to Development Standards – Height of Building**

The Kogarah LEP 2012 prescribes a maximum building height of 21m for this site. The proposed development seeks a variation to the development standard relating to Clause 4.3 Height of Building. The original proposed development sought a maximum height of 23.57m (lift overrun) and fire stair rooftop and pergola at 22.1m. The applicant provided amended plans of which sought minor changes to reduce the height of the lift overrun to 23.17m being a 400mm reduction and the stair access and pergola reduced to 20.5m being a 1600mm reduction. The extent of the variation is lesser however a revised clause 4.6 exception to development standard was not submitted with the amended plans upon the finalisation of the assessment report. This was requested but not received upon finalisation of this assessment report. On this basis, the applicant has not provided a revised Clause 4.6 in support of the revised scheme.

**(2)Floor Space Ratio**

57. The permitted maximum floor space ratio is 2:1 (3,041.20sqm max). The applicant submission details the proposal seeks an FSR of 1.99:1
58. The FSR proposed by applicant at 1.99:1 however Council's assessment and scaling from plans indicates an area of 3,082sqm (2.02:1). A statement prepared by the

registered architect accompanied the development application which confirmed that the floor space and height had been calculated in accordance with the Kogarah Local Environmental Plan 2012.

59. No clause 4.6 Exception to Development Standard has been submitted for the additional floor space for Council's assessment.
60. In this instance it is considered that there are no material planning grounds to support a variation to floor space. A clause 4.6 Exception to Development Standard has not been provided in support of the proposal. This results in a jurisdictional whereby Council does not have the ability to consider a variation to a breach in a Development Standard.

## **DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

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

61. 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 SEPPs:

- 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.

62. The proposal is not inconsistent with the provisions of this Draft Instrument.

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

63. The Department of Planning and Environment has announced a Draft Remediation of Land State Environmental Planning Policy, which will repeal and replace the current State Environmental Planning Policy No 55 — Remediation of Land.
64. The main changes proposed include the expansion of categories of remediation work which requires development consent, a greater involvement of principal certifying authorities particularly in relation to remediation works that can be carried out without development consent, more comprehensive guidelines for Councils and certifiers and the clarification of the contamination information to be included on Section 149 Planning Certificates.
65. Whilst the proposed State Environmental Planning Policy will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. The Draft State Environmental Planning Policy will not alter or affect the findings in relation to contamination at the site.
66. The site has a history of residential uses and as such, site contamination is not suspected. In this regard, no further assessment is warranted with regard to site

contamination. The geotechnical support submitted did not identify any potential issues with contamination.

### Draft Georges River Local Environmental Plan 2020

67. Consideration is given to the provisions of Draft Georges River Local Environmental Plan 2020 in the assessment this application.
68. 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.*”
69. The proposal is considered inconsistent with this draft instrument given the variation in additional floor space sought.

### Development Control Plans

#### Kogarah Development Control Plan 2013

70. The proposed development is subject to the provisions of the Kogarah Development Control Plan No 2013. The following comments are made with respect to the proposal considering the objectives and controls contained within the Development Control Plans.

<b>Part B General Controls</b>		
<b>Control</b>	<b>Standard</b>	<b>Complies</b>
B1 Heritage Items and Heritage Conservation Areas	The subject site is not recognised as a Heritage Item or located within a Heritage Conservation Area.	N/A
B2 – Tree Preservation and Greenweb	Development approval is required to ringbark, remove, cut down or destroy any tree that has a height greater than 3.5m or branch spread exceeding 3m in diameter.  Must not be within a Green Web habitat.	The proposal involves the removal of two (2) trees and retention of one (1) tree. This aspect is supported by Council’s consulting arborist.
B3 – Developments near busy roads and rail corridors	Acoustic assessments for noise sensitive developments as defined in clauses 87 and 102 of the Infrastructure SEPP may be required if located in the vicinity of a rail corridor or busy roads.	Princes Highway is a classified road. An acoustic report was prepared given the location of this proposal. The acoustic report suggests a series of measures that will improve noise attenuation within the apartments and includes double glazing, better insulation and other construction methods that will buffer the development from the surrounds. The proposal

		<p>is supported by Council's Environmental Health Officer subject to the imposition of conditions which if recommended for approval ensure compliance with these recommendations if the application was to be supported.</p>
<p>B4 – Parking and Traffic</p>	<p>1 bedroom unit = 1 space/unit                  2 bedroom unit = 1.5 spaces/unit                  3 bedroom unit = 2 spaces/unit                  1 visitor space/5 units or part there of, and 1 designated car wash bay which may also be a visitor space.</p> <p>6 x 1 bedroom units = 6 spaces                  22 x 2 bedroom units = 33 spaces                  8 x 3 bedroom units = 16 spaces                  8 visitor spaces                  1 x car wash</p> <p>Total required spaces = 63</p> <p>Bicycle parking 1 space per 3 dwellings plus 1 space per 10 for visitors so 12 resident bike racks are required and 4 visitor bike parking                  Total = 16 bike parking spaces required</p> <p>Internal car park layouts, space dimensions, ramp grades, access driveways, internal circulation aisles and service vehicle areas shall be designed in accordance with the requirements set out in AS 2890.1 (2004) and AS 2890.2 (2002) for off street parking and commercial vehicles.</p>	<p>B2 Plan = 35 spaces (including 4 accessible spaces)</p> <p>B1 Plan = 28 spaces including 8 visitor spaces,</p> <p>Total = 63 car spaces                  Numerically compliant</p> <p>Should the application be supported a condition could require the provision of a car wash which can be shared as a visitor space.</p> <p>10 bicycle spaces have been provided however additional bike storage area can be accommodated within the basement. There are also some at grade on the western side of the building which can accommodate the remainder.</p> <p>The parking layout and arrangement does not satisfy Council's requirements and Australian Standards. The application was also referred to RMS who raised no concerns                  Should the application be supported conditions of</p>

		consent would be imposed.
B5 – Waste Management	Submit a Waste Management Plan (WMP).	The application was accompanied by a WMP.  The proposal does not provide a garbage chute or on interim bin storage areas on each level which is not supported by Councils Co-ordinator Environmental Sustainability.
B6 – Water Management	Detention storage is to be provided that is equal to or greater than the specified Site Storage Requirements (SSR). Rainwater tank installed to meet BASIX water conservation requirements will be given credit for SSR purpose.  Drainage easements servicing stormwater pipes and/or overland runoff from catchments upstream of the development site are to be managed according with Council's guidelines.  Discharge of stormwater runoff from a development site is to be undertaken in accordance with the design practice note, Site Drainage and Flood Management regarding direct discharge to kerb, discharge to a Council owned stormwater conduit, discharge to natural areas, discharge through private property and discharge within the development site.	The subject site is not located within Flood Prone land.  The application was referred to Council's development engineer who have assessed the proposed stormwater disposal, the proposal has not provided an adequate OSD and stormwater solution whereby the OSD should not be located beneath any habitable areas.
B7 – Environmental Management	Provisions relating to the siting and orientation of the building, use and promotion of sustainable building materials and standard provisions established for non-residential development.	The application is accompanied by a BASIX certificate which confirms compliance with the minimum requirements of the SEPP (thermal comfort and water usage).

Part C2 - Medium Density Development of Kogarah Development Control Plan 2013 DCP came into effect on 10 June 2020. The Development Control Plan does not contain a savings provision. These controls apply to the development.

Part C2 - Medium Density Development of Kogarah DCP 2013			
Control	Standard	Proposed	Complies
1. Minimum Lot size requirements	(1) Minimum lot size is 1,000sqm.	1,520.60sqm	Yes
	(2) Minimum lot width is	45.48m.	Yes

	<p>24m.</p> <p>(3) For sites which allow development greater than four storeys, greater site width may be necessary to accommodate the greater setbacks required by the Apartment Design Guide.</p>	The site contains a wide allotment width of 45.48m.	Yes
2.Site isolation and amalgamation	(1) Development for the purpose of residential flat buildings is not to result in the creation of an isolated site that could not be developed in compliance with the relevant planning controls, including the Kogarah LEP 2012 and this DCP.	The proposal does not result in the creation of an isolated site.	Yes
3.Building setbacks and street interface	<p>(1) Front setbacks:</p> <p>(i) Street setback: up to a building height of four storeys, a minimum setback of 5m is to be provided.</p> <p>(ii) Corner sites: up to a building height of four storeys, a minimum setback of 5m to both street frontages is to be provided.</p> <p>(iii) Above four storeys, the front setback of the upper building levels is to be increased to a minimum of 8m to the street, except in the circumstances addressed in (v) below. The minimum 8m setback also applies to balconies, terraces and balustrades and must be accommodated behind the setback.</p> <p>(iv) On a corner site, both frontages are to provide the increased setback above four storeys.</p> <p>(v) Above level four (ground plus 3 storeys); an increased setback of the upper levels/s may be required depending on the</p>	<p>5m.</p> <p>5m.</p> <p>5m sought, refer to clause below.</p> <p>5m – 6.6m to Princes Highway and 5m along Lacey Street.</p> <p>The road reserve along Lacey Street is 20m in width. No further additional setback required as the design reinforces the corner.</p>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>No</p> <p>Yes</p>



	<p>floor private open space, are to be landscaped and be retained as part of the common property of the development</p> <p>(7) For improved streetscape and reduction in visual clutter, powerlines in the street verge in front of new development to which this part applies will be undergrounded. This includes the connection of power supply from the road reservation into the development site</p> <p>(8) Sub-stations, fire booster valves and waste bin storage structures need to be integrated into the development and identified at the DA stage</p> <p>(9) Setbacks may need to be increased to maintain the required levels of solar access to adjoining development or where the site is in a Heritage Conservation Area or in the vicinity of a Heritage Item to provide an appropriate buffer or curtilage to the Heritage Conservation Area or Heritage Item.</p>	<p>Services such as hydrants and waste storage areas located on the plans.</p> <p>The site does not directly adjoin a heritage item.</p>	<p>Yes</p> <p>Yes</p>
<p>4. Basement setbacks</p>	<p>(1) Basements are to be set back a minimum of 3m from the site boundaries.</p> <p>(2) The basement setback areas are to be deep soil areas as defined in the Apartment Design Guide.</p> <p>(3) Driveways and driveway crossings are to be located a minimum of 1.5m from a side boundary.</p>	<p>The basement is setback at various points from 1200mm to 3200mm.</p> <p>Setback areas do not meet the deep soil requirements as required by the AGD, 6m is required.</p>	<p>No</p> <p>No</p>

	<p>(5) The 6m basement setback at a zone boundary is to be planted to provide a vegetated landscape buffer between the development and adjoining lower density development. Planting is to include trees that achieve a minimum mature height of 6.0m. Under canopy planting is to include lower scale planting that provides a visual buffer between developments and creates the desired landscape buffer.</p> <p>(6) Basements fronting the primary street address are not to project more than 500mm above ground level (existing) at the street setback alignment.</p>	<p>The basement is setback 17m from the Lacey Street being the secondary frontage with landscaping embellishing the vehicular entry.</p> <p>The basement is accessed from the secondary street and located fully below ground.</p>	<p>Yes</p> <p>Yes</p>
5.Facade Treatment and Street Corners	<p>(1) Building facades must be clearly articulated and employ high quality materials and finishes that enhance and complement the streetscape character.</p> <p>(2) Street corners must be given prominence by a change in building articulation, materials, colours, form or height.</p> <p>(3) Human scale at street level must be created through the use of scale, rhythm, materiality and/or landscaping.</p> <p>(4) Essential services such as substations and fire hydrants must be integrated</p>	<p>The building adopts a mixture of contemporary materials which positively contribute to the streetscape.</p> <p>The corner contains a variation of curved forms to accentuate the corner.</p> <p>The proposal is considered to be human scale at street level with the incorporation of fencing and landscaping embellishment.</p> <p>Hydrants have been incorporated</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>

	<p>into the design of the façade</p> <p>(5) Development must not rely solely on the use of two-dimensional colour and materials to create visual interest. Modulation and articulation in the building form must be explored.</p> <p>(6) Large areas of blank, minimally or poorly articulated walls are not acceptable. Façade treatments such as wall cladding and green walls should be considered as alternatives to blank walls.</p> <p>(7) Clear glazing balustrades are discouraged when visible from the public domain. Screening of balconies by way of adjustable or fixed panels or incorporation of solid upturns at the base of the balustrade should be included where there are issues of privacy when viewed from lower levels, and/or excessive exposure to solar impacts.</p> <p>(8) Noise mitigation treatments and design considerations for developments adjoining busy roads or rail corridors, that satisfy the requirements for habitable rooms in accordance with Department of Planning Industry and Environment's 'Development Near Rail Corridors and Busy Roads – Interim Guideline' and the requirements of Clause 102 (3) of State Environmental Planning Policy</p>	<p>within the front north-west corner.</p> <p>The proposal uses a mixture of modulation and forms such as render and rows of open timber privacy screens.</p> <p>No areas are left blank.</p> <p>No clear glazing proposed. Balustrades are generally rendered.</p> <p>An acoustic report accompanied the development application which seeks to include acoustic measures such as construction methods, window thickness and seals to minimise impacts.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
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	(Infrastructure) 2007 must be considered		
6. Landscape Treatment and Private Open Space	(1) Deep soil is to be provided within the setbacks areas as required in figures 3a, 3b, 4 and 5 and consistent with Part 3E of the NSW State Government's Apartment Design Guide. To be included as deep soil as required by Part 3E of the Apartment Design Guide, the deep soil area must have a minimum dimension of 3.0m on any axis. Planting in the deep soil areas is to include trees that achieve a minimum mature height of 6.0m.	Part 3m of deep soil provided however 6m dimension of the ADG not satisfied which prevails. There is not deep soil on the site which achieves the 6m dimension.	No
	(2) The visual appearance of developments is to be softened through the incorporation into the design planter boxes and similar design treatments that will support landscaping in a minimum soil depth of 800mm.	Planter boxes incorporated within the development to the communal rooftop level with a minimum soil depth of 800mm.	Yes
	(3) Where landscaping is included on balconies and terraces, the functional area of the private open space is not to be reduced to below the minimum requirements of Part 4E of the Apartment Design Guide.	This is not included within the calculation of rooftop communal open space.	Yes
	(4) Private open space should be adjacent to and visible from the main living and/or dining rooms and be accessible from those areas.	Private open space directly adjoins key habitable rooms.	Yes
	(5) Development should take advantage of opportunities to provide north facing private open space to achieve	Balconies maximised along the northern and eastern	Yes

	<p>comfortable year round use.</p> <p>(6) Unpaved or unsealed landscaped areas should be maximised and designed to facilitate on-site infiltration of stormwater.</p> <p>(7) Existing significant trees and vegetation must be incorporated into the proposed landscape treatment.</p> <p>(8) Private open space and balconies must comply with part 4E of the NSW State Government's Apartment Design Guide.</p> <p>(9) Planting of replacement trees is to be in accordance with Council's Tree Management Policy.</p>	<p>elevations.</p> <p>Minimal paved areas proposed on the ground level.</p> <p>Tree replacement and landscaping supported by Council's consulting arborist.</p> <p>Private Open Space requirements of the ADG are satisfied.</p> <p>Tree replacement and landscaping supported by Council's consulting arborist.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
7.Common Open Space	<p>(1) Common open space to a minimum area of 25% of the site area and with a minimum dimension of 5m is to be provided.</p> <p>(2) A maximum of 50% of common open space may be provided above ground level where:</p> <p>(i) a location at ground level is not possible due to site constraints;</p> <p>(ii) the proposed elevated common open space will provide a similar level of amenity as a common open space at ground level of the site; and</p> <p>(iii) there will be no significant impact on surrounding properties in</p>	<p>380sqm (min) required and provided on the rooftop (25%)</p> <p>This is all located within the communal rooftop as the location of this area will provide good levels of amenity for future occupants, this is not affected by overshadowing or overlooking impacts.</p>	<p>Yes</p> <p>No</p>

	<p>respect to the loss of privacy.</p> <p>(3) At least 50% of the required common open space area is to receive 2 hours of direct sunlight between 9am and 3pm on 21June.</p> <p>(4) A minimum of 50% of the total area of common open space provided at ground level is to comprise unpaved landscaped area</p> <p>(5) The useable and trafficable area of any rooftop common open space is to be set back a minimum of 2.5m from the edge of the roof of the floor immediately below with landscape planters provided to prevent close and direct views into adjoining properties.</p> <p>(6) Roof top common open space areas should include equitable access for all residents, and must be designed to ensure that noise and overlooking will be avoided, by way of screening and setbacks from boundaries as detailed in Figure 6.</p> <p>(8) Ancillary structures on the roof such as lift overruns and staircases should be centralised to reduce their visual dominance. Balustrades should be visually recessive.</p>	<p>More than 50% of the private open space achieves this criterion during the Winter Solstice between 9am – 3pm.</p> <p>No proposed common open space at ground level.</p> <p>Usable trafficable areas are less than 2.5m away from the roof edge.</p> <p>Equitable access is provided to the rooftop via the lift.</p> <p>The proposed lift overrun, staircase and pergola are centrally located. The balustrades to the communal open space are formwork which are considered</p>	<p>Yes</p> <p>No</p> <p>No</p> <p>Yes</p> <p>Yes</p>
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		to be well integrated into the building.	
8.Solar Access	<p>(1) Shadow diagrams are to be submitted for the winter solstice (21 June) to demonstrate impacts at a minimum of 9am, midday and 3pm.</p> <p>(2) Shadow diagrams should include elevational diagrams identifying the habitable rooms and private open space areas of the adjoining dwellings, and view from the sun diagrams, identifying solar access compliance to the proposed development.</p> <p>(3) Shadow diagrams are required to show the impact of the proposal on the sunlight to the open space of neighbouring properties. Existing overshadowing by fences, roof overhangs and changes in level should also be reflected in the diagrams. Note: Achieving compliance with this control may be difficult on steeply sloping sites, east west facing allotments, irregular allotments or sites with open space to the south of the built form. In this instance, compliance with the control will be considered on its merits.</p>	<p>Shadow diagrams provided for consideration which indicates impacts during winter solstice.</p> <p>Shadow diagrams provided for consideration.</p> <p>Shadow diagrams provided indicate the extent of shadow impact.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
9.Vehicular access, parking and circulation	<p>(1) Car parking is to be provided as a maximum in accordance with the requirements in Part B4 unless Objective 3J-1 of the Apartment Design Guide applies. Car access areas and garages doors do not visually dominate either the development or the</p>	<p>Car parking in accordance with the DCP and located in a basement.</p>	<p>Yes</p>

	<p>streetscape.</p> <p>(2) Vehicular access points should be clearly visible from the street with adequate sign posting or design cues to alert drivers to their availability.</p> <p>(3) On corner sites with two street frontages, vehicular access should be provided to the street with the lesser traffic volumes.</p> <p>(5) Crossings are to be positioned so that on-street parking and landscaping on the site are maximised, and removal or damage to existing street trees is avoided.</p> <p>(6) Driveways should be designed to avoid a straight, long “gun barrel” appearance by using appropriate landscaping and variations in alignment.</p> <p>(7) Car parking layout and vehicular access requirements and design are to be in accordance with the Australian Standards, in particular AS 2890.1-(latest edition).</p> <p>(8) Clearance above the general parking surface must be a minimum of 2.5m.</p> <p>(10) All residential flat developments must provide a car wash bay which:</p> <p>(i) is roofed and bunded to</p>	<p>Sign posting to be added by conditions if the application was to be supported.</p> <p>Single access point from Lacey street with clear sight lines. Driveway access from Lacey Street provided instead of Princes Highway given it is a classified road.</p> <p>No street trees removed to accommodate the driveway crossover.</p> <p>The driveway proposed is straight and direct to the basement levels.</p> <p>The does not comply with the Australian Standards in relation to aisle width.</p> <p>Clearance is at least 2.5m</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
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	<p>exclude rainwater.                  (ii) has clearly visible signs which indicate that no degreasing or mechanical work is to be undertaken in the car wash bay.                  (iii) has a fixed basket trap for floor waste.                  (iv) includes a 1000 litre general purpose pit.                  (11) Three options exist for the disposal of trade wastewater from residential car wash bays. They are:                  (i) removal off-site by an authorised liquid waste disposal contractor;                  (ii) reuse of treated wastewater for car washing or irrigation on landscaped areas. An appropriate method should be used to treat grease, oil and silt before reuse or irrigation; or                  (iii) discharge to the sewer via appropriate pre-treatment.                  (12) If the car wash bay discharges into the sewer, a 'Permission to Discharge Trade Wastewater' issued by Sydney Water must be obtained prior to approval of the development.                  (13) If the carwash bay is not discharged into the sewer, applicants must provide Council with details and evidence of how wastewater will be removed (e.g. removal by an authorised liquid waste disposal contractor)                  (14) Developments on Classified Roads are to:                  (i) minimise the number of access points or seek alternative access wherever possible.</p> <p>(ii) provide safe vehicle</p>	<p>Can be a visitors space and is located within the basement level and can satisfy criterion of this clause. A condition would be imposed if the application was to be approved.</p> <p>The proposal would be conditioned to drain into the sewer but is not supported for other reasons.</p>	<p>Yes</p> <p>Yes</p>
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	<p>access, adequate sight distances and make provision for vehicles to leave the site in a forward direction in accordance with AS2890.1 (latest edition)</p> <p>(iii) Sufficient space within the property boundary is to be provided to accommodate vehicles entering the property and waiting for security gates or booms to open. The queuing area is to be sufficient to ensure waiting vehicles are wholly within the property boundary.</p> <p>(iv) comply with any conditions imposed by Council to satisfy the requirements of TfNSW.</p> <p>(15) Basement car parking should be naturally ventilated where possible.</p> <p>(16) Separate pedestrian access to buildings should be provided which does not rely upon access from a basement as the sole pedestrian access location.</p> <p>(17) The use of mechanical parking devices such as car lifts, turn tables and car stackers for the provision of car parking should be avoided wherever possible.</p>	<p>The proposal seeks to provide a vehicular crossing on the secondary street which is Lacey Street.</p> <p>Sufficient passing is proposed for 2 vehicles.</p> <p>No boom gates proposed.</p> <p>The proposal can comply with TfNSW requirements.</p> <p>Basement parking is located below ground, natural ventilation cannot occur with the exception of the basement entrance.</p> <p>Separate access provided for vehicles and pedestrians.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
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		Not proposed to be used as part of the proposal.	Yes
10. Views and view sharing	<p>(1) Development shall provide for the reasonable sharing of views.</p> <p>(2) A view impact assessment or information to assist in determining the potential impact on views on a development will be required where a development proposal could adversely impact upon existing views enjoyed by surrounding properties.</p> <p>(3) Height poles may need to be constructed (with confirmation of heights by a Registered Surveyor provided) or a detailed view analysis including accurate photomontages may be required to be provided to assist in assessing view loss impacts.</p> <p>(4) Where a detailed view assessment is required to be undertaken to consider the potential impacts of a development proposal, the view impact statement is to be prepared in accordance with the four steps detailed in the view loss principles established by Tenacity vs. Warringah Council [2004] NSWLEC140 may be required to be lodged with the application to assist in analysing the potential view impacts.</p>	The proposal is not considered to result in any view loss impacts.	Yes
11. Dwelling Mix	<p>(1) Developments that propose more than 10 apartments are to provide a mix of dwellings consistent with the following percentage mix:</p> <p>(i) Studio and 1 bed apartments – Minimum of 20%</p> <p>(ii) 2 bed apartments –</p>	<p>36 units in total proposed.</p> <p>6 x 1 bed = 16.6%</p> <p>22 x 2 bed =</p>	<p>Yes</p> <p>No</p> <p>Yes</p>

	<p>Maximum of 30% (iii) 3+ bed apartments – Minimum of 15%</p> <p>(2) Any variations to the apartment mix are to take into consideration: (i) the distance to public transport, employment and education centres. (ii) the current market demands and projected future demographic trends. (iii) the demand for social and affordable housing. (iv) different cultural and socioeconomic groups. Apartment configurations are to support diverse household types and stages of life including single person households, families, multi-generational families and group households.</p>	<p>61.1% 8 x 3 bed = 22.2%</p> <p>Despite this, the proposal provides a reasonable mixture of units and a range of configurations.</p>	Yes
12. Adaptable and Accessible Housing	<p>(1) The minimum number of adaptable units designed in accordance with AS4299 - 1995 Adaptable Housing must be incorporated into the developments included in this section: (i) 5-10 units – 1 adaptable unit (ii) 11-20 units – 2 adaptable units (iii) 21-30 units – 3 adaptable units (iv) 31-40 units – 4 adaptable units (v) 41-50 units – 5 adaptable units (vi) 51+ units - 6 adaptable units + 10% of additional dwellings beyond 60 (rounded up to the nearest whole number). (2) The adaptable units must comply with the relevant Australian Standards and be certified as “adaptable housing units” and every adaptable unit needs to have an accessible</p>	<p>4 adaptable units have been proposed on the ground floor being units 2, 3, 4 and 8.</p> <p>Units are to comply with the relevant standards and 4</p>	<p>Yes</p> <p>Yes</p>

	<p>car space</p> <p>(3) Developments must be designed and constructed to comply with:</p> <p>(i) AS 1428.1 – 1993 Design for Access and Mobility Part 1</p> <p>(ii) AS 1428 – 1993 Design for Access and Mobility Part 2 Enhanced and Additional Requirements – Buildings and Facilities.</p> <p>(iii) Relevant provisions of the Building Code of Australia</p> <p>(4) Notwithstanding compliance with the above, the development is to be designed to meet the needs of people with disabilities, including:</p> <p>(i) The provision for a continuous accessible path of travel from all public roads and public spaces as well as unimpeded internal access;</p> <p>(ii) The provision in design for ease of use and comfort through appropriate gradients, rest areas, circulation space and user friendly entrances;</p> <p>(iii) Safety design measures, including contrasting colour for points of danger and slip resistant surfaces; and</p> <p>(iv) Legible design features such as signs and indicators to assist the location of handrails and guardrails.</p>	<p>accessible car parking spaces proposed on level B2.</p> <p>Development to be constructed to comply with the standards.</p> <p>Development to be constructed to comply with standards within clause (i)-(iv).</p>	<p>Yes</p> <p>Yes</p>
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### Interim Policy Georges River Development Control Plan 2020

71. The proposed development is subject to the provisions of the Interim Policy Georges River Development Control Plan 2020. Only the applicable aspects have been assessed with respect to the Interim Development Control Plan. All other aspects have been thoroughly assessed under Kogarah Development Control Plan. The aim of an Interim Policy is to set a consistent approach for the assessment of residential development within the Georges River Local Government Area, until such a time as a comprehensive

DCP is prepared and implemented. Comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.

<b>Control</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
Site frontage	20m Kogarah	45.48m	Yes
Height	The relevant LEP controls relating to maximum height will prevail over DCP controls relating to height in storeys	No revised clause 4.6 Exception to Development Standard provided for consideration.	Yes
Private Open Space	ADG (SEPP 65) controls prevail over the DCP	Compliance achieved with ADG.	Yes
Communal Open Space	ADG (SEPP 65) controls prevail over the DCP	Compliance achieved with ADG.	Yes
Parking	Located outside of 800m of a Railway Station, the relevant DCP applies	Compliance achieved with KDCP car parking rate.	Yes
Solar Access	ADG (SEPP 65) controls prevail over the DCP	Compliance achieved with ADG.	Yes

72. The proposal is not considered to be inconsistent with the Interim DCP 2020.

### **DEVELOPER CONTRIBUTIONS**

73. A residential flat building requires payment of developer contributions under Section 7.12 of the Environmental Planning and Assessment Act 1979. The proposal is not recommended for approval as a result contributions have not been levied.

### **IMPACTS**

#### ***Natural Environment***

74. The proposal provides inadequate deep soil planting dimensions which limits opportunity for substantial tree planting to further embellish the site.

#### ***Built Environment***

75. The proposed development results in an outcome which results in excessive FSR, height of building, insufficient deep soil, inadequate articulation and reduced amenity of the communal open space as a minor portion of this has been located on ground level. Primarily the proposal results in adverse bulk and scale impacts as a result of the extent of the floor space variation. Given this, the proposal results in adverse impacts to adjoining developments and the streetscape and is not compatible with the envisaged character of the area.

#### ***Social Impact***

76. The proposed development has no apparent adverse social impact given the residential nature of the proposal.

#### ***Economic Impact***

77. The proposed development will have no apparent adverse economic impact given the residential nature of the proposal.

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

78. It is considered that the proposed development is of a not of an appropriate scale and form for the subject site for the reasons contained within this report.

## **SUBMISSIONS AND THE PUBLIC INTEREST**

79. The application was notified and advertised to adjoining owners and occupiers in accordance with Council's requirements. The notification regarding the original scheme did not generate any submissions. The amended proposal did not require re-notification given the minor changes sought which did not result in an increase in building height or reduction of setbacks than originally proposed.

## **REFERRALS**

### **Council Referrals**

#### Development Engineer

80. Council's Development Engineering section does not support the proposal. The proposal has not provided an adequate OSD and stormwater design which seeks the location of the OSD below the living room of a unit which is not supported. It is noted that the application was referred to TFNSW, no concerns were raised in relation to stormwater disposal.

#### Traffic Engineer

81. Council's Traffic Engineer had raised concerns regarding non-compliant aisle widths to provide adequate vehicular manoeuvrability. These aisle widths have not been amended with the revised proposal, whilst these aspects could be conditioned to achieve compliance if the application was to be supported.

#### Environmental Health Officer

82. Council's Environmental Health Officer supports the proposal.

#### Infrastructure and Assets

83. Council's Infrastructure and Assets section supports the proposal.

#### GIS

84. Council's Geographical Information Systems Officer supports the proposal.

#### Consultant Arborist

85. Council's consultant arborist supports the proposal.

#### Waste

86. Council's Coordinator Environmental Sustainability and Waste has raised concerns with the proposal.

### **External Referrals**

#### Ausgrid

87. The application was referred to AUSGRID under Clause 45(2) of Statement Environmental Planning Policy (Infrastructure) 2007. In response, comments were received on 15 May 2020 of which did not raise any concerns with the proposal.

#### Roads and Maritime Services (RMS)

88. The application was referred to RMS in accordance with Section 138 of the Roads Act, 1993 as the Princes Highway is a classified State Road and falls within the jurisdiction of RMS. The RMS reviewed the proposal and provided formal concurrence on 21 May 2020 of which raised no objections to the proposal.

Civil Aviation Safety Authority

89. On 5 May 2020 Council received the following response;

*“CASA has reviewed the information provided and has no objections to the proposed development. According to the elevation drawing, the height of the proposed building including the lift overrun is RL 44.8m or approximately 23m above ground level. At this height the proposed building will not infringe any Obstacle Limitation Surface and will not be a controlled activity”*

In this regard, this is not considered to result in any issues in relation to aviation obstruction.

**CONCLUSION**

90. The development seeks approval for the demolition of existing structures and construction of a residential flat building. The application has been assessed having regard to the Matters of Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans. Following detailed assessment the proposal of which the proposal is considered to be unsatisfactory in its current form and results as an excessive built form for the subject site. It is considered that Development Application No DA2020/0144 should be refused.

**DETERMINATION AND STATEMENT OF REASONS**

91. Statement of Reasons

- No Clause 4.6 Exception to Development Standards to Clause 4.3 Height of Building and 4.4 Floor Space Ratio of the Kogarah Local Environmental Plan 2012 has been provided for consideration.
- The proposal does not satisfy Section 1.3 Objects of the Act of the Environmental Planning and Assessment Act 1979 whereby the proposal does not satisfy objective (g) *to promote good design and amenity of the built environment*. The proposed development significantly exceeds the floor space ratio and results in adverse bulk and scale in relation to the site.
- The proposed development results detract from the amenity on site and adjoining properties and results in an undesirable precedent in relation to desired future character of the area in relation to the C2 Medium Density Housing of the Kogarah Development Control Plan 2013.
- The proposed development will have unacceptable adverse impacts to the natural and built environment the scale of the development proposed.
- 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

92. THAT pursuant to Section 4.16 (1)(b) of the Environmental Planning and Assessment Act 1979, as amended, the Georges River Local Planning Panel refuse development consent to Development Application DA2020/0144 for demolition works and construction of a residential flat building include the description from above Lot 1 DP 655948, Lot 2 DP 658231 and Part 3 Section 17 DP 1963 and known as 192-196 Princes Highway, Kogarah for the following reasons;

1. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following Object of the Act:
  - (a) *To promote good design and amenity of the built environment.*
2. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development in terms of the following:
  - (a) 3F Visual privacy and separation - whereby the proposal has not provided sufficient spatial separation of levels 4-6 along the western side boundary.
  - (b) 3E Deep Soil whereby – no adequate deep soil planting with appropriate dimensions have been provided.
  - (c) 4D Apartment size and layout - whereby units exceed the maximum room depth.
3. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal does not satisfy the following;
  - (a) Clause 4.3 Height of Building. Further that no clause 4.6 Exception to Development Standard has been provided in support of Clause 4.4 Floor Space Ratio.
  - (b) Clause 4.4 Floor Space Ratio. Further that no clause 4.6 Exception to Development Standard has been provided in support of Clause 4.4 Floor Space Ratio.
4. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal does not satisfy the Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment.
  - (a) The proposal does not provide an adequate stormwater solution.
5. **Environmental Planning Instrument** - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the following objectives of the R3 Medium Density Residential Zone of the Kogarah Local Environmental Plan 2012.
  - *To provide for the housing needs of the community within a medium density residential environment.*
  - *To provide a variety of housing types within a medium density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
6. **Development Control Plan** - Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of the Kogarah Development Control Plan 2012;

- (a) B4 – Parking and Traffic
  - (b) B5 - Waste Management and Minimisation
7. **Development Control Plan** - Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Chapter C2 Medium Density Housing of the Kogarah Development Control Plan 2012;
- (a) Clause 3. Building Setbacks and Street Interface Clause (iii) above four storey setbacks.
  - (b) Clause 3. Building Setbacks and Street Interface Clause (iv) above four storey setbacks on corners.
  - (c) Clause 4. Basement setbacks (1) minimum basement setback to site boundaries.
  - (d) Clause 6. Landscape Treatment and Private Open Space (1) deep soil dimensions.
  - (e) Clause 7. Common open space (4) minimum common open space to be located on ground level.
  - (f) Clause 11. Dwelling mix (1) minimum number of studios and 1 bedroom apartments.
8. **Impacts on the Environment** - Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the natural environment:
- (a) The proposal due its design and building footprint has resulted in reduced opportunities to provide for meaningful deep soil planting.
9. **Impacts on the Environment** - Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the built environment:
- (a) The proposal results in adverse visual bulk and scale impacts.
  - (b) The proposal results in reduced amenity for future occupants on site.
10. **Suitability of Site** - Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development as:
- (a) The proposal results in an adverse bulk and scale which is not proportionate with the subject site.
11. **Public interest** - Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development in its current form is not considered to be in the public interest and is likely to set an undesirable precedent within the locality.

**Appeal Rights** - Part 8 (Reviews and appeals) of the Environmental Planning and Assessment Act 1979 confers on an applicant who is dissatisfied with the determination of the application a right of appeal to the Land and Environment Court of New South Wales.

**ATTACHMENTS**

Attachment 1 Elevations and Site Plan - 192-196 Princes Highway Kogarah