REPORT TO GEORGES RIVER COUNCIL
LPP MEETING OF THURSDAY, 03 OCTOBER 2019

LPP Report No	**LPP040-19**	**Development Application No**	**DA2017/0394**
Site Address & Ward Locality	506 - 508 Railway Parade, Allawah Kogarah Bay Ward		
Proposed Development	Demolition, lot consolidation, tree removal and construction of a 6 storey residential flat building containing 19 units over 2 levels of basement parking.		
Owners	Jomand Group		
Applicant	AB Works		
Planner/Architect	Architect: Architecture and Building Works; Planner: Andrew Robinson Planning Services Pty Ltd		
Date Of Lodgement	7/09/2017		
Submissions	Three (3)		
Cost of Works	$5,464,272		
Local Planning Panel Criteria	The application relates to development to which the State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development applies		
List of all relevant s.4.15 matters (formerly s79C(1)(a))	State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy No 55 - Remediation of Land, State Environmental Planning Policy (Infrastructure) 2007, Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment, State Environmental Planning Policy No 55 - Remediation of Land		
List all documents submitted with this report for the Panel's consideration	Statement of Environmental Effects Clause 4.6 Variation Architectural Plans Landscape Plans		
Report prepared by	Senior Development Assessment Planner		

Recommendation	That the application be approved subject to the conditions included in the report.

Summary of matters for consideration under Section 4.15 Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	**Yes**
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied	**Yes**

about a particular matter been listed and relevant recommendations summarised, in the Executive Summary of the assessment report?	
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	**Yes – Clause 4.1A Minimum subdivision lot size** **Yes - Clause 4.3 Height of buildings**
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	**Not Applicable**
Conditions Have draft conditions been provided to the applicant for comment?	**No, standard conditions have been attached with no design changes. The conditions can be viewed when the report is published.**

Site Plan

Site outlined in yellow

Executive Summary

Proposal

1. This development application (DA) seeks consent to construct a 6 – 8 storey residential flat building (RFB) containing 18 apartments. The building is primarily 6 storeys in height, but is 8 storeys at the rear where the "Basement 1" level protrudes above the existing ground level by more than 1m and where there sits an enclosed lobby at rooftop level that provides access to an area of rooftop communal open space.

2. The proposal has two (2) car parking levels (of which only one [1] is a true basement for its entirety) with 25 residential car parking spaces and four (4) residential visitor spaces. Vehicle access is provided via a new single lane driveway from Railway Parade in the western corner of the site.

3. Rooftop communal open space is provided.

Figure 1: Street elevation (northern) of the proposal

Figure 2: South-western elevation of the proposal

Site and Locality

4. The development site is located on the southern side of Railway Parade, approximately 18m west of its intersection with Noble Street and 53m east of its intersection with Woids

Avenue. It consists of two (2) existing allotments known as 506 and 508 Railway Parade, Allawah. These sites are legally identified as Lots B and C in DP323018.

5. The site is generally triangular in shape, though its front boundary along Railway Parade is slightly curved. It has a total frontage to Railway Parade of 61.67m. The south-western boundary length is 46.47m and the south-eastern corner is 39.63m. The total site area is 963.7sqm.

6. The land falls from Railway Parade to its rear (southern) corner by approximately 3m. There is a level difference of approximately 1.4m along the street frontage, with the eastern corner sitting higher than the western corner.

7. Presently situated on the site are two (2) dwelling houses, a detached garage, a detached shed and an in-ground swimming pool.

8. The site is situated amongst residential flat buildings (RFBs) of various sizes, heights and ages. Immediately to the west is a 2 storey RFB built prior to 1961. Immediately to the south-east is a 2 - 3 storey RFB constructed in the late 1990s. Beyond to the south and south-west are 4 storey RFBs that were constructed in the late 1960s to 1970s.

9. The site is located within an area that has been up-zoned under the Kogarah "New City Plan". The area is presently characterised by 2 – 4 storey RFBs of varying ages, the desired future character of the locality resulting from the up-zoning is 6 – 7 storey RFBs.

10. To the north on the opposite side of the railway corridor is B4 Mixed Use land known as "East Quarter" with buildings ranging in height from 13 to 20 storeys

Zoning and Permissibility

11. The subject site is zoned R3 Medium Density Residential under the provisions of Kogarah Local Environmental Plan 2012 (KLEP 2012). The proposal involves the construction of a *residential flat building* which is a permissible use in the zone with development consent.

Submissions

12. The DA was publicly notified to neighbours for a period of fourteen (14) days in accordance with the Kogarah Development Control Plan 2013 (KDCP 2013). The amended DA was renotified to the same neighbours for a further period of fourteen (14) days. One (1) submission (co-signed by 15 individuals) was received during the original notification period and two (2) further submissions were received during the re-notification period. The submissions raised concern in relation to height, overshadowing, privacy, traffic and parking and impact on property values.

Reason for Referral to the Local Planning Panel

13. This DA is referred to the Georges River Local Planning Panel for determination on the basis that the proposal relates to "sensitive development", being a residential flat building to which State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies and the application is seeking a variation of a development standard (height) which exceeds 10%.

Planning and Design Issues

14. The proposal is generally an appropriate response to the site when considered against the Design Quality Principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development. Its bulk and scale is consistent with the desired future character of the area.

15. The proposal involves some minor Apartment Design Guide (ADG) building separation "design criteria" non-compliances at the uppermost level. These are detailed within the ADG Compliance Table within this report. The variations are acceptable on merit on the basis that privacy impacts can be mitigated to an appropriate degree and therefore the proposal meets the objectives of the design criteria.

16. The proposal is 503sqm below the maximum gross floor area (GFA) permitted by the 2:1 Floor Space Ratio (FSR) development standard that applies to the site under KLEP 2012.

17. The site does not meet the minimum 1,000sqm lot size that is required under KLEP 2012 for the construction of an RFB in the R3 Medium Density Residential zone. The site has an area of 963.7sqm and is therefore 36.3sqm less than the required minimum size. This represents a variation of 3.63% to the development standard. The applicant has lodged a written Clause 4.6 objection to the lot size development standard of KLEP 2012. This proposed variation is assessed in further detail within this assessment report.

18. The proposal exceeds the maximum 21m building height development standard that applies to the site under KLEP 2012. The proposal has a maximum height of 24.44m to the top of the lift overrun, which is a 16.4% (3.44m) variation to the development standard. The applicant has lodged a written Clause 4.6 objection to the building height development standard of KLEP 2012. This proposed variation is assessed in further detail within this assessment 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 an appropriate response to the "up-zoning" of the land in an area that is undergoing a transition to medium density housing including RFBs. Bulk and scale of the building has satisfactorily been resolved via good articulation, appropriate building setbacks and a mix of materiality and textures. As a result the application is recommended for approval subject to suitable conditions and the issuing of a Deferred Commencement consent relating to stormwater drainage.

Report in Full

PROPOSAL

20. The DA seeks consent for the construction of a 6 storey residential flat building (RFB) containing 18 apartments. The building is modern in appearance and has been designed to work within the constraints that the development site offers in terms of topography and shape. The building sits on 2 basement car parking levels, with ramp access in the western corner of the site's frontage to Railway Parade. Refer to Figure 3 below for an artistic impression of the proposal.

Figure 3: Artist's impression of the proposal

21. Further details of the proposal are as follows;

Basement 2 Plan
- Nineteen (19) residential car parking spaces including two (2) accessible spaces. Fourteen (14) of those 19 spaces are achieved by the provision of seven (7) double car stackers.
- Five (5) bicycle parking spaces.
- Services and storage areas.
- Single lift core and two (2) egress staircases.

Basement 1 Plan
- Six (6) residential car parking spaces and four (4) visitor car parking spaces, of which one doubles as a car wash bay with an increased width.
- Three (3) motorcycle parking spaces.
- Five (5) bicycle parking spaces.
- Pump room and service/store room.
- Single lift core and two (2) egress staircases.

Ground Floor
- Three (3) apartments (2 x 2 beds and 1 study) with north-facing terraces at ground level, each with individual street access.
- Central residential access point and lobby.
- Driveway access ramp along the south-western boundary.
- Rear deep soil zone and OSD basin.
- Garbage room with path access (which also serves as a fire egress path of travel) along the south-eastern side of the building.
- Perimeter planting along the south-eastern boundary.

Levels 1 – 5
- Three (3) residential apartments per level (1br, 2br and 2br + study) including one (1) adaptable 1br apartment on Levels 1 and 2.

Level 6 (rooftop)
- Rooftop communal open space with an area of 230sqm, tables and seating, barbecue facilities, pergola and perimeter planting.

22. The building is of a contemporary design. It has a variety of external finishes including metal cladding (timber finish), concrete with applied finish, anodised aluminium louvres, sandstone, painted cement render and clear glass balustrades.

23. Natural ground levels will be retained within the south-eastern side setback and in the deep soil OSD basin area in the rear (southern) corner of the site, as shown in Figure 4 below. Generous landscaping will be provided in these areas, including two (2) new large Eucalyptus trees in the rear corner.

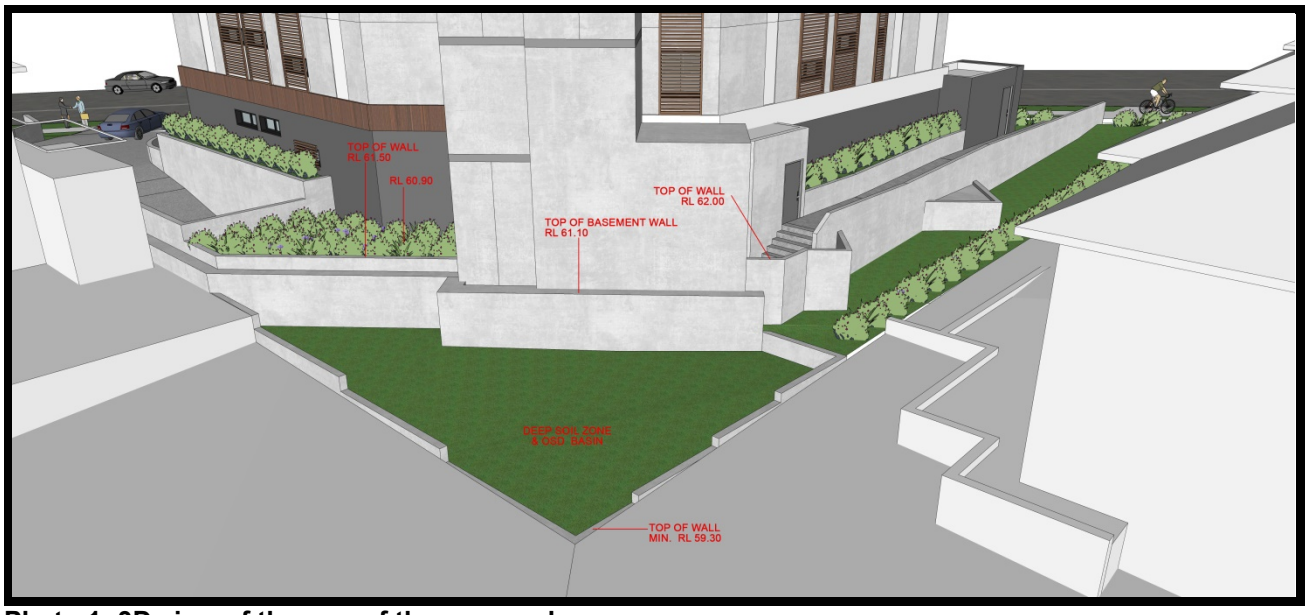


Photo 1: 3D view of the rear of the proposal

24. The proposal involves the removal of the following eleven (11) trees from the site, of which three (3) are an exempt species and may be removed without consent:

- 3 x *Ligustrum lucidum* – Broad-leaf Privet (exempt species)
- 2 x *Tibouchina Spp* – Tibouchina
- 2 x *Lagerstroemia indica* – Crepe Myrtle
- 1 x *Cinnamomum camphora* – Camphor Laurel
- 1 x *Hibiscus sinensis* – Hibiscus
- 1 x *Ficus benjamina* – Weeping Fig
- 1 x *Plumeria rubra* – Red Frangipani

25. The Landscape Plan shows nineteen (19) new trees to be planted around the perimeter of the site. Replacement tree species include Grey Gum (*Eucalyptus punctata)*, Dwarf Magnolia, Crepe Myrtle and Weeping Lilly Pilly.

26. There are no street trees existing in front of the site, and no new street trees are proposed on the Landscape Plans. A condition has been recommended requiring three (3) street trees to be planted in front of the site, of species to be determined by Council who are responsible for planting trees on public land at the applicant's cost.

THE SITE AND LOCALITY

27. The subject site consists of two (2) lots with the following legal descriptions;

- Lot B DP323018 (506 Railway Parade)
- Lot C DP323018 (508 Railway Parade)

28. The subject site is located on the southern side of Railway Parade and is relatively close to the half way point between Allawah and Hurstville railway stations.

29. The site sits about 18m west of its intersection with Noble Street and 53m east of its intersection with Woids Avenue.

30. The site is generally triangular in shape, though its front boundary along Railway Parade is slightly curved. It has a total frontage width to Railway Parade of 61.67m. The south-western boundary length is 46.47m and the south-eastern corner is 39.63m. The total site area is 963.7sqm.

31. The land falls from Railway Parade to its rear (southern) corner by about 3m. There is a level difference of about 1.4m along the street frontage, with the eastern corner sitting higher than the western corner.

32. 506 Railway Parade is currently occupied by a single storey brick and tile dwelling house constructed prior to 1961. There is a detached garage in the backyard of the property.

33. 508 Railway Parade is currently occupied by a 2-storey brick and tile dwelling house, also constructed prior to 1961 but renovated to include a second storey addition and the installation of an in-ground swimming pool. Refer to Photo 1 below.

Photo 1: The subject site with existing dwelling houses

34. Immediately adjoining the site to the south-east is a 2 – 3 storey Residential Flat Building (RFB) (*i.e.* 2 storeys at street level and 3 storeys at its rear) known as 504 Railway Parade. The top 2 storeys contain 10 apartments (5 per level, of which 3 face the subject site). The lowest storey contains car parking. The building has courtyards on its northern side adjacent to the subject site, elevated above natural ground level by up to 1.7m at its highest point towards the rear of the site due to the car parking level protruding above ground.

35. Immediately adjoining the site to the south-west are two (2) properties known as 510 Railway Parade and 6-8 Woids Avenue. The former is occupied by a 2 storey RFB that was constructed prior to 1961, whilst the latter is occupied by a 3 – 4 storey RFB (*i.e.* 4 storeys at street level and 3 storeys at its rear) constructed in the 1960s – 1970s.

36. The site is situated at the northern edge of an extensive corridor of R3 Medium Density Residential zoned land that stretches from Hurstville station in the west to St George Hospital in Kogarah to the east. This area has been up-zoned under the Kogarah "New City Plan". It is presently characterised by 2 – 4 storey RFBs of varying ages, however the up-zoning has a desired future character of 6 – 7 storey RFBs. The majority of this R3 zone has height and FSR limits of 15m (4-5 storeys) and 1.5:1, except along the railway corridor where the height and FSR limits increase to 21m (6-7 storeys) and 2:1. The subject site is subject to the latter.

37. To the north on the opposite side of the railway corridor is B4 Mixed Use land known as "East Quarter" with buildings ranging in height from 13 to 20 storeys.

State Environmental Planning Policies (SEPPs)

38. Compliance with the relevant SEPPs is summarised in the following table and discussed in further detail below it.

SEPP Title	Complies
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 No 55 - Remediation of Land	Yes
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	Yes
State Environmental Planning Policy (Infrastructure) 2007	Yes
State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development	Yes

Greater Metropolitan Regional Environmental Plan No 2 – Georges River Catchment

39. The primary relevant aims and objectives of this plan are:
    - *to maintain and improve the water quality and river flows of the Georges River and its tributaries and ensure that development is managed in a manner that is in keeping with the national, State, regional and local significance of the Catchment,*
    - *to protect and enhance the environmental quality of the Catchment for the benefit of all users through the management and use of the resources in the Catchment in an ecologically sustainable manner,*
    - *to ensure consistency with local environmental plans and also in the delivery of the principles of ecologically sustainable development in the assessment of development within the Catchment where there is potential to impact adversely on groundwater and on the water quality and river flows within the Georges River or its tributaries,*
    - *to establish a consistent and coordinated approach to environmental planning and assessment for land along the Georges River and its tributaries and to promote integrated catchment management policies and programs in the planning and management of the Catchment*

40. The DA includes a concept stormwater design prepared by United Consulting Engineers Pty Ltd. The building and surface run-off is proposed to be diverted to an OSD basin in the rear (southern) corner of the site and then into a drainage easement that extends along the north-western boundary of 6-8 Woids Avenue, within an existing landscaped strip adjacent to the fence line.

41. There is no local statutory requirement for water quality treatment devices in an RFB on a site of this size. Surface run-off diverted from the landscaped areas of the site to the OSD

basin and easement does not require water quality treatment. The proposal includes multi-purpose (Lysaght Maximesh Type RH3030) screens to filter rubbish.

42. In summary, the proposal will not contravene the aims, objectives or purpose of the Regional Plan subject to the imposition of those conditions recommended by the Development Engineer.

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

43. BASIX Certificate No. 822722M_02 dated 16 September 2019 has been issued for the proposal and demonstrates that it meets the provisions and minimum requirements of BASIX in terms of water, thermal comfort and Energy efficiency. The architectural plans include the commitments that are required to be shown at DA stage. The proposal satisfies the requirements of the BASIX SEPP.

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)

44. SEPP 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.

45. Clause 7 requires contamination and remediation to be considered in determining a DA. 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.

46. A review of the site history indicates that the site has been used for residential purposes since at least 1943. Residential usage is not typically associated with activities that would result in the contamination of land.

47. Though a Preliminary Investigation Assessment report was not submitted with the DA, a review of historic aerial photography indicates that the site has been used for residential purposes since at least 1943. Residential usage is not typically associated with activities that would result in the contamination of land. On this basis, the site is likely to be suitable in its current state for the development proposed with respect to contamination. In the abundance of caution, a “precautionary” condition has been recommended that specifies appropriate actions to be taken in the event that any unexpected contamination finds are made during demolition, excavation and/or construction.

State Environmental Planning Policy (Infrastructure) 2007

48. The aim of the Infrastructure SEPP is to facilitate the effective delivery of infrastructure across the State. The Infrastructure SEPP also examines and ensures that the acoustic performance of buildings adjoining the rail corridor or busy arterial roads is acceptable and internal amenity within apartments is reasonable given the impacts of adjoining infrastructure.

49. Clause 102 of the SEPP, “Impact of road noise or vibration on non-road development”, is relevant to this DA on the basis that the proposal involves the construction of residential accommodation on land that is generally adjacent to the road corridor of Princes Highway (having an annual average daily traffic volume exceeding 20,000 vehicles) and is likely to be adversely affected by road noise or vibration. As a result, the following provisions of Clause 102 of the SEPP are relevant:

    1. *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*

(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

50. An Acoustic Assessment was submitted with the DA, dated 6 June 2017 and prepared by Koikas Acoustics Pty Ltd. The report addresses the provisions of the Policy with respect to achieving acoustic compliance in the context of traffic noise from both Railway Parade and the adjacent railway line. The report recommends specific construction specifications to provide appropriate levels of internal amenity for the future occupants.

51. The report also states that compliant internal noise levels on the northern façade facing Railway Parade and the railway line are only achieved when windows are closed. The Apartment Design Guide states under Objective 4J-1 (Noise and Pollution) that achieving various design criteria (such as natural cross ventilation) may not be possible in some situations due to noise and pollution. In accordance with the NSW Department of Planning's "Development near Busy Roads and Rail Corridors – Interim Guidelines" and relevant ventilation requirements of the BCA, mechanical ventilation would be required for the affected apartments and would need to be acoustically designed to ensure that internal target acoustic levels are met and adjacent properties are not affected by the system. Appropriate conditions of consent have been included in the recommendation.

52. The DA was also referred to Ausgrid on 4 September 2019 in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. At the time of writing this report, no response had been received. The DA may be determined in the event that no response has been received from Ausgrid within twenty one (21) days, *i.e.* 25 September 2019.

53. In summary, the proposal if approved would be capable of achieving compliance with the Infrastructure SEPP subject to appropriate conditions relating to mechanical ventilation and compliance with the Traffic Noise Intrusion Assessment report, and no objection being received from Ausgrid.

Draft Remediation of Land SEPP

54. The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No 55—Remediation of Land.

55. 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.

56. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. The Draft SEPP will not alter or affect the findings in relation to contamination at the site.

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

57. The Vegetation SEPP aims to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

58. The Vegetation SEPP applies to clearing of:
    (a) *Native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the Local Land Services Amendment Act 2016; and*
    (b) *Vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).*

59. The Vegetation SEPP repeals clauses 5.9 and 5.9AA of the Standard Instrument - Principal Local Environmental Plan with regulation of the clearing of vegetation (including native vegetation) below the BOS threshold through any applicable DCP.

60. The proposal involves the removal of six (6) trees from the site. Council's consultant arborist has approved their removal, along with the removal of a further five (5) trees, of which three (3) are exempt from the tree protection provisions within Part B2 of Kogarah Development Control Plan 2013. The remaining eight (8) trees non-exempt trees are affected by the DCP provisions. The majority of them are non-natives. This DA constitutes an application for their removal as part of the proposed development works. Council's Tree Policy stipulates replacement tree planting at a rate of 2:1 for every non-exempt tree that is removed. As such, the policy requires sixteen (16) new replacement trees to offset the loss of the eight (8) trees.

61. The submitted landscape plan shows nineteen (19) new trees to be planted on site. A condition has been recommended requiring three (3) new street trees to be planted within the footpath adjacent to the site. These new trees will satisfactorily offset the loss of the existing trees with quality native replacement plantings.

62. On this basis, the proposal is consistent with relevant provisions of the Vegetation SEPP.

Draft Environment SEPP

63. The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

64. 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

65. The proposal is consistent with the provisions of this Draft Instrument.

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

66. SEPP 65 was gazetted on 26 July 2002 and applies to the assessment of DAs for RFBs of three (3) or more storeys in height (excluding car parking levels) 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.

67. The proposal involves the erection of a new 6 – 7 storey RFB (excluding basement car parking) containing 18 apartments and is therefore affected by the SEPP.

68. In determining DAs to which SEPP 65 relates, Clause 28(2) of the SEPP requires that the consent authority take into consideration:
    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.*

69. The current proposal was considered by the Georges River Design Review Panel (DRP) at a Pre-DA meeting on 1 September 2016 and during assessment of the current DA on 2 November 2017. The DRP assessed the merits of the development against each of the nine (9) Design Quality Principles and the provisions of the Apartment Design Guide (ADG). The DRP's comments from both meetings are included below, along with further comment from Council's Planner.

70. In addition to satisfying the Design Quality Principles, the proposal generally satisfies relevant requirements of the ADG pertaining to design quality and amenity of the apartments.

SEPP 65 Design Quality Principles

Principle 1 – Context and neighbourhood character

"Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.
Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change."

71. <u>DRP Comment (Pre-DA proposal):</u> "*The site is located on a busy road with RFB's on adjacent sites to the east and west. These have been built in accordance with former planning controls and are generally on 2-3 storeys in height. The railway line runs parallel with the site frontage and creates impacts. The site is triangular shaped and falls to the rear and there are a number of substantial trees located along the south western boundary. These trees are proposed to be removed in the current proposal.*

    The planning controls have been recently amended with the introduction of the New City Plan which permits substantial increases in height and density. The former is increased from 12m to 21m and the latter 0.9:1 (?) to 2:1. This change will permit new development which is potentially inconsistent and out of scale with the existing low scale strata residential buildings. On a triangular site like this issues of scale and impact are severe."

72. <u>DRP Comment (Current DA as-lodged):</u> *"The current proposal retains the trees on the south western boundary and south eastern boundary and marginally increases side setbacks."*

73. <u>Planner's Comment:</u> The site is located adjacent to both a busy arterial road and the rail corridor. Land along the rail corridor is primarily residential. On the opposite "East Quarter" which (due to its 20 storey scale) contributes to the streetscape and character of the site's context.

74. Whilst existing development along Railway Parade in this location is predominantly 2 – 3 stories in height, these buildings are a legacy of the previous planning strategy for the locality.

75. R3-zoned land along Railway Parade adjacent to the rail corridor has been granted a higher 21m height limit than the remainder of this R3 zone. As such, existing development along Railway Parade will over time be replaced with buildings of the same scale as the proposal.

76. Approximately 250m to the west adjacent to the Col Jones swimming pool is a recently constructed 6 – 7 storey RFB facing Railway Parade and known as at 4 St Georges Parade. Refer to Figure 5 below. The proposal's scale will be commensurate with this building.

Figure 5 – Recently constructed RFB at 4 St Georges Parade, viewed from Railway Parade

Principle 2 – Built form and scale
"Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.
Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook."

77. <u>DRP Comment (Pre-DA proposal):</u> "*The built form proposed is triangular shaped with inadequate setbacks along both side boundaries, non-complaint with both the ADG and Council DCP requirements. The height is slightly in excess of the 21m height control. As a result the built form impacts negatively on all surrounding properties some of which have side facing balconies and living rooms. As proposed, the built form is unacceptable. It would be preferable to establish an apparent datum at a much lower height in reference to the adjacent buildings and articulate higher levels differently. The location of the*

penthouse unit exacerbates the apparently over scaled massing of the building and should be setback or deleted.

The car park layout requires the removal of all trees along the south west boundary and the creation of a high podium setback a mere 1 metre from the south-west and south-east boundaries. This is an unacceptable outcome."

78. DRP Comment (Current DA as-lodged): *"The setbacks to south western and south eastern boundaries have been expanded from 3m to 4.5m. The height is still slightly in excess of the 21m height control due to part of the penthouse unit which is slightly over and the lift and stair, which are located at the lowest point of the building height plane. The Panel suggested that the impact of the lift could be improved by moving it further north and the stair height could be substantially reduced by its roof profile responding to the stair flight and landing.*

The 3D rendering submitted indicates a response to the comment about establishment of a datum and a distinguishable articulation of the upper levels of the building.

Overall the points in the previous meeting have been addressed. The car park has been redesigned to retain most of the existing trees along the south western boundary."

79. Planner's Comment: The proposal's scale, bulk and height are appropriate given the desired future character of the street as established by the 2:1 FSR and 21m height limit. The front elevation has a good level of articulation and modulation to its front façade, with north-east and north-west facing "wings" that emulate the orientation of building facades on adjacent and nearby sites.

80. All levels have setbacks of 5.5 – 6.1m (generally) from the south-western and south-eastern boundaries in order to minimise adverse impacts to adjacent properties. These setbacks have been increased from earlier design iterations of the proposal.

81. The amended proposal is 503sqm *below* the maximum gross floor area (GFA) permitted by the 2:1 FSR development standard of KLEP 2012. The penthouse apartment has been deleted.

82. The proposal's bulk and scale is an appropriate response to the up-zoning of the site under the New City Plan (KLEP 2012 Amendment No. 2). The scale and street edge proportions of the front façade are appropriate in the context of Railway Parade and the site's location opposite the rail corridor and East Quarter development.

83. The proposal responds well to a heavily constrained site in terms of shape and topography, with appropriate boundary setbacks and alignments that are respectful of existing development along Railway Parade and the amenity of adjoining properties.

84. The building is 21m deep along its south-eastern wall and 24m along its south-western wall. This compares to a 32m depth of 504 Railway Parade and a 38m depth of 512 Railway Parade. It is commensurate with the depth of the older, smaller RFB immediately adjacent to the site at 510 Railway Parade. Therefore the proposal is relatively small and does not present an unreasonable bulky when viewed from adjacent properties.

85. The amended proposal is consistent with Principle 2 of SEPP 65.

Principle 3 – Density
"Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment."

86. DRP Comment (Pre-DA proposal): *"Although it is proposed at well under the density allowable for the site both side setbacks do not comply with the ADG's separation requirements. In consideration of the adverse impacts the proposal creates along both side boundaries, it is clear its density will need to be significantly reduced."*

87. DRP Comment (Current DA as-lodged): *"The proposed FSR of 1.85:1 is within the 2:1 density control."*

88. Planner's Comment: The amended proposal has an FSR of 1.48:1 which is 503sqm below the maximum GFA permitted on the site. The reduced GFA is appropriate given the site's dimensional constraints. The proposal is considered to be of an appropriate density. An FSR of 2:1 could not be accommodated on the site without considerable amenity impacts to neighbouring properties in terms of visual intrusion.

Principle 4 – Sustainability
"Good design combines positive environmental, social and economic outcomes.
Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation."

89. DRP Comment (Pre-DA proposal): *"The apartments proposed high levels of solar access. Cross ventilation does not achieve the 60% required as proposed. The removal of the large trees is not supported as this compromises the sustainability of the site and its immediate context.*

There appears to be no rainwater tanks or other sustainability measures to support the requirements of a project of this scale. This should be reviewed.

90. DRP Comment (Current DA as-lodged): *"The revised submission retains the large trees in the southern corner.*
The rainwater tank should be located out of deep soil zones and within the building footprint.

The design of the southern corner is still problematic due to the proposed onsite detention. Alternate solutions to accommodate this should be developed. Furthermore this corner should provide additional large trees to supplement the existing tree plantings and to visually screen the lift core. Solar access and cross ventilation are satisfactory."

91. Planner's Comment: The DA is accompanied by a BASIX Certificate No. 822722M_02 dated 16 September 2019 and NatHERS Certificates which demonstrate that the proposal achieves the minimum water, thermal comfort and energy targets for a development of this type.

92. The amended proposal complies with the number of apartments that do not receive any direct sunlight at mid-winter as detailed in the ADG Compliance Table below.

93. The proposal fully satisfies the ADG with respect to natural cross ventilation and internal solar access requirements. These attributes will reduce the apartments' reliance on energy and will increase their internal residential amenity.

94. The submitted Waste Management Plan states that where possible, demolished materials will be sorted for reuse, recycling or resale as appropriate, to be determined by the main contractor.

Principle 5 – Landscape
"Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management."

95. DRP Comment (Pre-DA proposal): *"The site setback boundary planting of one metre is insufficient as a screening method for adjacent properties. The front area of the site has some good amenity tree planting that screens from the road edge. This area is also the deep soil zone. While community open space is proposed at roof level the ADG does require 25% of the site area; it may be best to delete the penthouse to ensure that this is achievable.*

The panel recommends increasing the south western setback to retain the existing trees. The panel also recommends reconfiguring the building envelope on the north eastern side to facilitate solar access to the adjoining property and landscaping.

While relaxation of the front setback was flagged it is crucial that deep soil is provided for large trees along this very noisy frontage."

96. DRP Comment (Current DA as-lodged): *"The revised proposal includes a roof top communal space of 140sqm. This appears to be still under the 25% requirement and could be expanded through redesign of the penthouse unit. The landscape design needs further refinements. These include:-*
- *Provide larger trees along the front deep soil zone. This should replace the proposed Magnolia plantings with a medium to large trees that supplement the existing street tree planting.*
- *The proposed turf areas in the front verge offer very limited landscape amenity. This should be replaced with planted gardens.*
- *The rear space (currently the OSD basin) should be redesigned to incorporate large trees and OSD relocated.*
- *The landscaping on the eastern boundary should be reconsidered in regards to tree planting as the proposed Crepe myrtles may not have sufficient sun to perform well.*

- *Feature tree planting at the roof top communal open space should be designed to ensure adequate soil and irrigation.*

97. Planner's Comment: The proposal will provide deep soil landscaped areas along the front, south-eastern side and rear of sufficient width to permit tree planting.

98. The OSD basin in the rear corner of the site is deep soil and will permit tree plantings. The existing 3 trees are shown to be retained but new stormwater drainage is proposed to be located in this location and the trees are not natives. Council's consultant arborist has approved their removal. It will prove a better outcome in the longer term to remove these trees and replace them with 2 new native canopy trees centrally located in the OSD basin area. A condition has been recommended requiring new pipes in this area to hug the south-western and south-eastern boundaries to maximise deep soil for the trees.

99. The communal open space area on the rooftop will have perimeter planting with trees to greatly improve the amenity of this area.

100. Three (3) new street trees will be required along the frontage of the site by condition of consent and will ameliorate the scale of the building.

101. In summary, the proposal's landscape design is consistent with Principle 5 on the basis that it will enhance the streetscape and native tree canopy and provide a high level of internal amenity for residents. New trees will serve to mitigate the bulk of the building and provide a landscaped setting consistent with the existing landscape character of the locality.

Principle 6 – Amenity
"Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.
Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility."

102. DRP Comment (Pre-DA proposal): *"As noted above in sustainability the apartments achieve high levels of amenity with good solar access and outlook. However, the adverse impact of the proposed layout on adjoining properties requires that is redesigned and significantly reduced in area.*

In the revised layout, the Panel recommends that;
The entry is relocated from its side position to a central street facing location.
The penthouse is either relocated or removed
That side setbacks are greatly increased to facilitate solar access to adjoining properties, maintain existing trees and reduce the over-whelming visual bulk.
Overlooking is minimized through the use of carefully designed screening.
That the carpark is greatly reduced in area and alternative vehicular access solutions be investigated.
The snorkel apartments proposed do not comply with the ADG's indentation requirement."

103. DRP Comment (Current DA as-lodged): *"The applicant has addressed the comments of the previous Panel as follows:-*
- *The entry is now relocated to a central street facing location*

- *The penthouse has not been relocated or removed. However this Panel recommends that it be reduced in size by making it a two (2) bedroom unit to enable the roof top open space to be increased and to provide toilet facilities to the roof top open space.*
- *The side setbacks have been increased from 3m to 4.5m and existing trees have been retained*
- *It appears that overlooking has been minimised by not having windows on the south east and south west elevations except for small openings and obscure glass. This has the result of presenting large areas of relatively blank wall to the neighbours. The application drawings show dark finishes to these walls which would be very oppressive. These finishes should be reconsidered.*
- *The car park has been reduced in area creating more deep soil planting and tree retention.*
- *The snorkel units have been eliminated.*

104. Planner's Comment: As stated by the DRP, the latest amended proposal is a significant improvement over earlier versions and now satisfies the Amenity design quality principle of SEPP 65.

Principle 7 – Safety
"Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose.
Opportunities to maximise passive surveillance of public and communal areas promote safety.
A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose."

105. DRP Comment (Pre-DA proposal): *"The current entry path is poorly located and potentially unsafe."*

106. DRP Comment (Current DA as-lodged): *"The entry path has been relocated and is now satisfactory."*

107. Planner's Comment: The lobby is accessed via a central security access door at ground level and conditions of consent can ensure appropriate lighting to this area.

108. A condition of consent has been recommended requiring a security gate to be located on the pedestrian pathway to the south-eastern side of the building, adjacent to the front egress staircase at the eastern corner of Unit G.03. This will assist in preventing entrapment in this passageway. The gate will need to satisfy BCA requirements for egress safety.

109. Subject to conditions of consent, the proposal will satisfy relevant CPTED principles and will provide a high level of safety to residents and passive surveillance to the public domain and ground level communal areas.

Principle 8 – Housing diversity and social interaction
"Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.
Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents."

110. DRP Comment (Pre-DA proposal): *"The revised proposal must comply with adaptable unit requirement of the DCP and the ADG. The communal open space will provide potentially excellent amenity provided that it is well sized, designed, accessed and equipped.*

111. DRP Comment (Current DA as-lodged): *"Acceptable on the proviso that the communal open space area is increased."*

112. Planner's Comment: The proposal includes a mix of studio, one (1) bedroom and two (2) bedroom apartments.

113. As recommended by the DRP, the rooftop communal open space area has now been maximised to the fullest extent possible. This area is provided with BBQ facilities and will provide opportunities for social interaction amongst residents. The site is also within an 8 minute walk from two (2) different parks (Meade Park and Empress Reserve) which both provide for both active and passive recreation.

Principle 9 – Aesthetics
"Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.
The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape."

114. DRP Comment (Pre-DA proposal): *"See comments above re: built form and its articulation of a lower more compatible part of the building being distinct from upper levels.*

While it is too big for the site and requires reduction in scale the principle of two expressed ends with an infill frame section is acknowledged by the panel as a sound approach to the site. However, the penthouse exacerbates the issue of scale and would be better significantly setback or removed."

115. DRP Comment (Current DA as-lodged): *"The building mass has been reduced by increased setbacks. The articulation has been improved. The penthouse will be acceptable if it is reduced in area. Further considerations should be given to the lift core rear elevation in conjunction with other elevational treatment of significant blank walls. The colour palette in general needs to be reviewed to be lighter."*

116. Planner's Comment: The penthouse has been deleted entirely and replaced with rooftop communal open space. The proposal has a pleasing aesthetic to Railway Parade and on its side elevations, with good proportions. There is an appropriate mix of materiality including both painted render and timber-look aluminum cladding to complement traditional building materials in the locality.

117. Clause 28 of SEPP 65 requires the consent authority to take into consideration the provisions of the ADG. The following ADG Compliance Table assesses the proposal against these provisions, with relevant assessment comments provided where non-compliances are proposed.

ADG Compliance Table		
Standard	**Proposal**	**Complies**
3D – Communal Open Space (COS)		
Provide COS at least 25% of the site area (ie 440.23sqm), located on a podium or roof if it can't be located on ground level	Rooftop: 244sqm = 25.3% of site area.	Yes
At least 50% direct sunlight to the principal usable part of the COS for at least 2 hours between 9 am and 3 pm on 21 June (mid-winter)	In excess of 50% of the rooftop COS will receive direct sunlight between 9am and 3pm due to its northerly aspect.	Yes
3E – Deep Soil Zones		
Site area is 650sqm - 1,500sqm = 3m min dimension	The majority of the deep soil areas have minimum 3m x 3m dimensions and will allow for tree planting.	Yes
Min deep soil area of 7% (67.5sqm)	34% (335sqm)	Yes
3F – Visual Privacy		
Minimum separation to side and rear boundaries: <u>Up to 12m (4 storeys)</u>: 3m non-habitable rooms 6m habitable rooms & balconies	<u>Levels G – 2</u> *SE elevation:* • At least 6.1m to all windows. *SW elevation:* • 5.6m to kitchen windows • 7m to lobby windows.	 Yes No (kitchen windows) – see below
Minimum separation to side and rear boundaries: <u>12m to 25m (5-8 storeys)</u>: 4.5m non-habitable rooms 9m habitable rooms and balconies	<u>Levels 3 – 5:</u> *SE elevation:* • 6.1m to kitchen windows and 6.3m to media/storage room on Levels 3 – 5 • 6.9m to rooftop COS *SW elevation:* • 5.6m to kitchen windows • 7m to lobby windows • 7.5m to rooftop COS	 No No No No No
<u>Comment on Visual Privacy</u> The proposal does not achieve strict numeric compliance with the ADG in relation to separation from the boundary for visual privacy purposes. The components that do not comply are kitchen, media/storage room and lobby windows on both the south-eastern and south-western elevations, and also the rooftop communal open space. Despite the numeric non-compliances, the underlying objective of this ADG design criteria (Objective 3F-1) has nonetheless been met because all of the aforementioned windows have been treated with frosted glazing and/or external screening, thereby achieving "reasonable levels of external and internal visual privacy".		

All balconies are oriented towards the street to maximise visual privacy to neighbouring properties (and achieve a high level of solar access). The rooftop communal open space has a 1.4m wide perimeter planter box along its south-eastern and south-western edges. This will keep users of this area away from the edge, thereby preventing views downwards. The additional bulk does note result in adverse shadow impacts.		
3G – Pedestrian Access and Entries		
Building entries and pedestrian access connects to and addresses the public domain Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge	Achieved The site is appropriately activated by the central pedestrian access point and three (3) additional pathways to the terraces of the ground floor apartments.	Yes Yes
3H – Vehicle Access		
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Achieved subject to conditions. Single driveway minimises visual impact in street.	Yes
3J – Bicycle and Car Parking		
Car parking provided in accordance with *RMS GTTGD (Sub-Regional Centres)* for sites located within 800m of a railway station or light rail stop in the Sydney Metropolitan Area: Residential spaces: 0.6 spaces per 1br unit = 3 spaces 0.9 spaces per 2br unit = 11 spaces 14 residential spaces total min. Visitor spaces: 1 space per 5 units = 4 spaces Total spaces: 18 min.	25 residential spaces provided within the basement levels. 4 visitor spaces provided within the basement levels. 29 spaces total.	Yes Yes Yes
4A – Solar and Daylight Access		
Living rooms and private open space receive 2 hours direct sunlight between 9am and 3pm in midwinter for 70% of apartments (*i.e.* 13 apartments) Max. 15% of apartments receive no direct sunlight between 9am	Two (2) hours sunlight achieved to all 18 (*i.e.* 100%) apartments. No (zero) apartments receive no direct sunlight.	Yes Yes

and 3pm in midwinter		
4B – Natural Ventilation		
At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building (i.e. 11 apartments) Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	66% (12 apartments) No cross-over apartments exceed 16m in depth.	Yes Yes
4C – Ceiling Heights		
Minimum ceiling heights measured from FFL to finished ceiling level: Habitable rooms = 2.7m Non-habitable rooms = 2.4m	All habitable and non-habitable rooms 2.7m min.	Yes
4D – Apartment Size and Layout		
Minimum internal areas: Studio: 35sqm 1br: 50sqm 2br: 70sqm (Add 5sqm if second bathroom proposed) Each habitable room must have a window in an external wall with a total minimum glass area of at least 10% of the floor area of the room.	All apartments meet minimum internal size requirements. Calculated accordingly. All apartments achieve compliance.	Yes Yes Yes
Habitable room depths are limited to a maximum of 2.5 x the ceiling height In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	All rooms (excluding open plan layouts) are compliant. All apartments with open plan layouts have a depth no greater than 8m.	Yes Yes
Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space) Bedrooms have a minimum dimension of 3m (excluding wardrobe space) Living rooms or combined living/dining rooms have a minimum width of:	All bedrooms are compliant. All bedrooms are compliant. All living and living/dining rooms achieve the minimum required widths.	Yes Yes Yes

- 3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments Internal width of cross-over or cross-through apartments are at least 4m	N/A – none proposed.	N/A
4E – Private Open Space and Balconies		
Minimum primary balcony sizes: Studio: 4sqm area 1br: 8sqm area, 2m depth 2br: 10sqm area, 2m depth 3+br: 12sqm area, 2.4m depth The minimum balcony depth to be counted as contributing to the balcony area is 1m 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	All balconies achieve the minimum area and depth requirements. Calculated accordingly. Minimum area and depth is achieved for both of the ground-level 2br apartments (17sqm and 20sqm) but not for the studio (10sqm). However, a 10sqm studio terrace is 150% larger than the minimum balcony size that would be require if the studio were situated on any of the levels above ground. It will therefore offer a high level of amenity to its future occupants relative to an upper level studio apartment.	Yes Yes Yes – acceptable on merit
4F – Common Circulation Areas		
Maximum 12 apartments off a circulation core on a single level	Three (3) apartments off the circulation core on each level.	Yes
4G – Storage		
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Studio: $4m^3$ 1br: $6m^3$ 2br: $8m^3$ At least 50% of storage is located within the apartment	All units have compliant total storage volumes as per the ADG volumes, as shown in the table on Drawing No. A-1000 (Ground Floor Plan). At least 50% of storage is located within the apartment.	Yes Yes
4H – Acoustic Privacy		
Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. Window and door openings are generally orientated away from noise sources	Refer Building Separation requirements in Part 3F. Acceptable on merit. The building is north facing achieving solar access, and away from adjoining properties for privacy. However this also has the	Yes No but acceptable in the circum-

	effect of orientating all dwellings towards the noise source (Railway Parade and the rail line).	stances
Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas	Circulation lobby located away from bedrooms on each level	Yes
Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources	Not practical in the context as the noise source (north of the site) is an optimum orientation for daylight access and streetscape presentation and is largely as a result of the allotment shape.	Acceptable on merit
4J – Noise and Pollution		
To minimise impacts the following design solutions may be used: • Physical separation between buildings and the noise or pollution source • Residential uses are located perpendicular to the noise source and where possible buffered by other uses • Buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • Landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry	In the circumstances of the site, being its orientation, location and shape, it is simply not possible to physically separate the noise source and the proposal. Doing so would adversely affect neighbouring properties by orientating more windows towards them. The acoustic report has addressed the salient issue of noise and notes that mechanical ventilation will be required in order to achieve compliant noise levels within the units, particularly at night.	Yes – acceptable on merit subject to conditions of consent.
4K – Apartment Mix		
A range of apartment types and sizes is provided to cater for different household types now and into the future.	The proposal includes a mix of studio, 1 and 2 bedroom apartments at an acceptable ratio.	Yes
The apartment mix is distributed to suitable locations within the building.	Achieved.	Yes
4L – Ground Floor Apartments		
Street frontage activity is maximised where ground floor apartments are located	A reasonable degree of street activation has been achieved.	Yes
Design of ground floor apartments	Ground floor apartment amenity	Yes

delivers amenity and safety for residents	and safety is satisfactory.	
4M – Facades		
Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale	See comment below.	Yes
Comment on Facades The facades are well resolved with an appropriate level of articulation including to the street. The proposal adequately satisfies Objective 4M-1 of the ADG, namely that *"Building facades provide visual interest along the street while respecting the character of the local area"*. There is an appropriate degree of expression of vertical scale and modulation within the facades to adequately respond to the streetscape, to nearby lower scale RFBs and to the human scale.		
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.	Clean, simple roof form with a lift overrun that is located at the rear to minimise its visual impact to Railway Parade. Open space achieved on Level 6 (rooftop).	Yes
4O – Landscape Design		
Landscape design is viable and sustainable, contributes to the streetscape and amenity	Good range of plants within the street setback to enhance the public domain. Deep soil zones well in excess of the ADG minimum requirement will provide a landscaped setting and compliant building setbacks will allow for the planting of canopy trees to ameliorate the scale of the building and provide a landscaped setting to the building, thereby improving both the internal and external amenity.	Yes
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	Planter boxes are of an appropriate depth.	Yes – Conditions included
4Q – Universal Design		
Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	No liveable apartments proposed.	No – Condition included to provide 4 liveable apartments
4R – Adaptive Reuse		
Adaptive reuse as apartment of existing buildings- new additions are contemporary and	N/A – not an adaptive reuse.	N/A

complementary, provide residential amenity while not precluding future adaptive reuse.		
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	Excellent building orientation, natural ventilation, passive solar design, exceeds BASIX target for energy efficiency.	Yes
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 the site design	Water treatment is not required under KDCP 2013 for sites less than 2,000sqm in area. The site is not flood prone.	Yes
4W – Waste Management		
Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	A bulky waste storage room is provided within the waste room on the Ground Level.	Yes
4X – Building Maintenance		
Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	A reasonable proportion of the building consists of materials that will require minimal maintenance and will weather well. Windows are generally accessible for residents within reason.	Yes

ENVIRONMENTAL PLANNING INSTRUMENTS
Kogarah Local Environmental Plan 2012 (KLEP 2012)

118. The subject site is zoned Zone R3 Medium Density Residential under the provisions of Kogarah Local Environmental Plan 2012. Refer to the zoning map extract at Figure 4 below. The proposal is defined as a *residential flat building* which is permitted in the R3 zone.

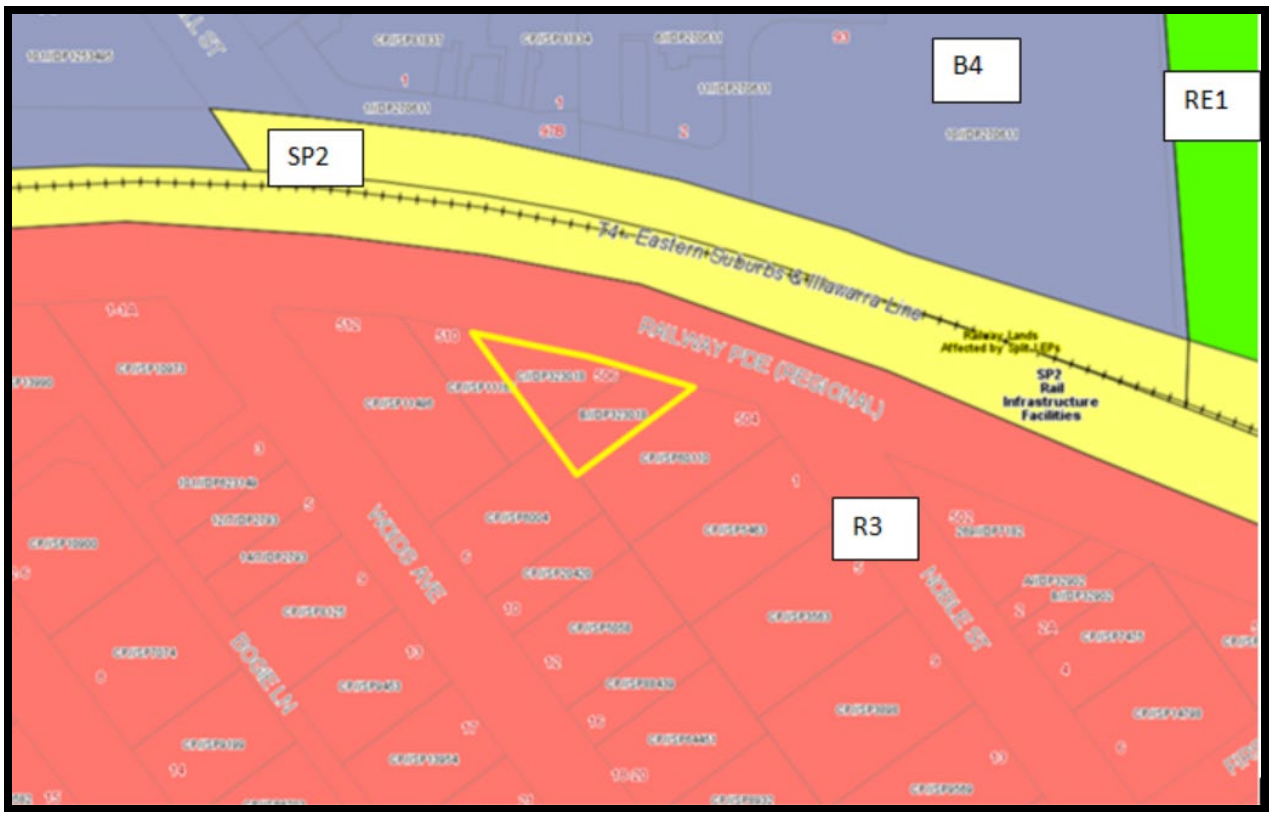


Figure 4: Zoning map – the site outlined in yellow

119. The objectives of the R3 zone are:
   - *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.*

120. The proposal satisfies the objectives of the R3 zone as it will provide for a variety of residential apartments in a medium density residential environment.

121. The proposal is fully compliant with the relevant provisions of KLEP 2012 as detailed within the following table.

KLEP 2012 Compliance Table		
Standard	**Proposed**	**Complies**
Clause 4.1A – Minimum subdivision lot size		
Minimum 1,000sqm for RFBs in the R3 Medium Density Residential zone	963.7sqm (*i.e.* 36.3sqm below the minimum lot size).	No (3.63% variation) Refer to the assessment below

Clause 4.3 – Height of buildings		
Maximum 21m	Lift overrun: 24.44m (*i.e.* 3.44m over the height limit). Lobby roof parapet: 22.84m (i.e. 1.84m above existing ground). Rooftop pergola: 22.34m (i.e. 1.34m over the height limit).	No (16.4% max.) Refer to the clause 4.6 assessment below
Clause 4.4 – Floor space ratio (FSR)		
Maximum 2:1 (1,927.4sqm)	1.48:1 (1,424.6sqm).	Yes – 502.8sqm *below* the maximum permitted GFA
Clause 4.5 – Calculation of floor space ratio and site area		
FSR and site area calculated in accordance with Cl.4.5	Calculated accordingly.	Yes
Clause 5.10 – Heritage Conservation		
The objectives of this clause are; (a) 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.	Proposal is not within the vicinity of any environmental heritage nominated under KLEP 2012.	Yes
Clause 6.1 – Acid Sulphate Soils (ASS)		
The objective of this clause is to ensure that development does not disturb, expose or drain ASS and cause environmental damage	The site is not affected by Acid Sulfate Soils under KLEP 2012.	N/A
Clause 6.2 – Earthworks		
To ensure that earthworks do not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land	Earthworks necessary to enable construction of the proposal will be acceptable subject to conditions of consent.	Yes
Clause 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 *Airports Act 1996* of the Commonwealth unless the applicant has obtained approval for the controlled activity under regulations made for the purposes of that Division	The proposal is not a controlled activity under the relevant Division 4. The proposal has a maximum height of RL 84.24m AHD which does not penetrate the Obstacle Limitation Surface (OLS).	N/A

Clause 4.6 Exceptions to KLEP 2012 development standards

<u>Lot Size</u>

122. The objectives of Clause 4.6 are as follows:
   (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
   (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Is the planning control in question a development standard?

123. The 1,000sqm minimum lot size requirement that applies to the site is a development standard contained within Clause 4.1A of KLEP 2012.

124. The proposal seeks a variation to the development standard as the site has an area of 963.7sqm, which falls short of the minimum 1,000sqm requirement by 36.3sqm. This represents a 3.63% variation to the development standard. A variation to the minimum lot size development standard can only be considered under Clause 4.6 – Exceptions to Development Standards of KLEP 2012.

125. Clause 4.6(3) stipulates that *"Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
   (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
   (b) that there are sufficient environmental planning grounds to justify contravening the development standard"

126. The applicant has submitted a written request for a variation to the minimum lot size development standard pursuant to Clause 4.6. A full copy of this request is on the DA file and the most relevant extracts are reproduced below. This written request is considered herein.

What are the underlying objectives of the development standard?

127. The singular objective of the minimum lot size development standard of KLEP 2012 is *"to achieve planned residential density in certain zones"*.

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

128. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.

129. Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation:

   1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
   2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
   3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

130. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.

131. The following is an extract of the Applicant's written request with respect to the proposal's consistency with the objectives of the standard:

"It is considered that the proposed development achieves the objectives of the standard for the following reasons:

- *the proposed scale and massing of the building is consistent with the desired future character of the locality;*
- *the redevelopment of Nos. 506 & 508 Railway Parade represents an appropriate site amalgamation to create a development site, having regard to the prevailing subdivision pattern, where Nos. 506 & 508 form a triangular shaped allotment wedged between the adjoining regular shaped allotments. As such, the opportunity for setting a precedent is minimised due to the particular circumstances of this subdivision pattern;*
- *the proposed development does not seek to exceed the allowable floor space ratio so as to achieve an overall density beyond the environmental capacity of the site. As such, there is no tangible nexus between the minimum lot size variation and the overall land use intensity; and*
- *the minor non-compliance will not result in any adverse impacts on the adjoining land uses with respect to overshadowing, loss of privacy, inappropriate scale etc."*

132. Officer Comment:
The Applicant's written justification adequately demonstrates that the proposal is consistent with the objective of the standard. The building's density is acceptable in the context of the desired future character of the area, being well under the maximum Gross Floor Area whilst providing acceptable separation from the street and side/rear boundaries.

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

133. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overshadowing, overlooking or view loss.

134. In this regard, the Applicant's written request states the following:

"…it is considered that there are sufficient environmental planning grounds to justify contravening the development standard. Key environmental planning grounds to support the variation include:

- *Despite the minor non-compliance to the minimum lot size, the redevelopment of Nos. 506 & 508 Railway Parade represents an appropriate site amalgamation to create a development site, having regard to the prevailing subdivision pattern, where Nos. 506 & 508 form a triangular shaped allotment wedged between the adjoining regular shaped allotments.*
- *Despite being slightly less than the required minimum lot size, the overall bulk and scale of the building that will be achieved is considered to be acceptable in terms of its scale and built form and the relationship of the building to the adjoining residential development;*
- *The opportunity for setting a precedent is minimised due to the particular circumstances of this subdivision pattern, where the amalgamation of these 2 sites is considered to be an appropriate solution having regard to the prevailing subdivision pattern."*

135. Officer Comment:
The environmental grounds cited by the Applicant within the written request are considered to be sufficient to justify varying the minimum lot size development standard in the particular circumstances of the case.

136. It is accepted that the proposed amalgamation of the two (2) allotments that form the subject site is an appropriate amalgamation to create a large triangular allotment located between more regularly shaped allotments. Achieving numerical compliance for the construction of an RFB (being the highest and best use of R3 zoned land) would most logically involve the acquisition of and amalgamation with 510 Railway Parade, assuming that was achievable. This would result in a rather odd "W"-shaped site that would be particularly atypical in the site's context. Such an amalgamation would potentially accommodate a building with an FSR much closer to the maximum 2:1 permitted, with the resulting built form being elongated towards the west to absorb the additional site. Such a built form would be visually intrusive to the property to the south (6 Woids Avenue) and would result in little to no tangible benefit to the adjoining property to the south-east (504 Railway Parade).

137. It is accepted, as detailed within the Applicant's written request, that approval of the proposal despite the numerical non-compliance would not cause an undesirable precedent due to the rather unique shape of the site. Whilst there are a small number of other triangular R3-zoned sites along Railway Parade within proximity to the subject site, those sites are considerably smaller, in the order of 780sqm to 820sqm.

138. The fact that the site's particular constraints and context mean that it can be developed for the purposes of a reasonable RFB without causing an undesirable precedent and whilst not contravening the objectives of the development standard adequately constitutes environmental planning grounds to justify varying the development standard in the circumstances.

139. The Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) and therefore there is no impediment to approval of the DA pursuant to Clause 4.6(4)(a)(i).

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

140. Clause 4.6(4) states that:

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

(a) the consent authority is satisfied that:

i. *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and"*

ii. *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,*

141. The proposed development is consistent with the objectives of the building height development standard for reasons detailed above.

142. The objectives of the R3 Medium Density Residential zone are:

- *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.*

143. The proposal will provide for additional housing needs within a built form commensurate with other approved RFBs within the R3 zone. The proposal will contribute towards a variety of housing types within the R3 zone and will in itself have a variety of apartment sizes. The proposal will not preclude other land uses that provide facilities or services to meet the day to day needs of residents.

144. The proposed development is therefore consistent with the objectives of the R3 Medium Density Residential zone.

145. As assumed concurrence has been issued on 21 February 2018 (ref: NSW Planning & Environment Planning Circular No. PS 18-003) the considerations listed under Clause 4.6(5) are irrelevant to this application.

146. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

147. In conclusion and as per the decision of *Initial Action Pty Ltd v Woollahra Municipal Council [2019] NSWLEC 1097*, the relevant tasks and tests under Clause 4.6 of KLEP 2012 have been satisfied and the proposed 3.63% variation to the minimum lot size development standard of KLEP 2012 is recommended for support.

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

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

149. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be

well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.1A, subdivision lot size control).

Building Height:

150. The objectives of Clause 4.6 are as follows:
   (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
   (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Is the planning control in question a development standard?

151. The 21m height of buildings limit that applies to the site is a development standard contained within Clause 4.3 of KLEP 2012.

152. The proposal seeks a variation to the development standard as it will exceed the height limit by up to 3.44m (*i.e.* 24.44m maximum).

153. The parts of the building that exceed the height limit are (lowest to highest) the rooftop pergola (22.34m above existing ground), the lobby roof parapet (22.84m above existing ground) and the lift overrun (24.44m above existing ground). The 3.44m exceedance of the lift overrun represents a 3.63% variation to the development standard. A variation to the height limit development standard can only be considered under Clause 4.6 – Exceptions to Development Standards of KLEP 2012.

154. Clause 4.6(3) stipulates that *"Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
   (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
   (b) *that there are sufficient environmental planning grounds to justify contravening the development standard"*

155. The applicant has submitted a written request for a variation to the building height development standard pursuant to Clause 4.6. A full copy of this request is on the DA file and the most relevant extracts are reproduced below. This written request is considered herein.

What are the underlying objectives of the development standard?

156. The objectives of the building height development standard of KLEP 2012 are:
   (a) to establish the maximum height for buildings,
   (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,
   (c) to provide appropriate scale and intensity of development through height controls.

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

157. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ set out ways of establishing that compliance with a development standard is unreasonable or unnecessary.

158. Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

159. The Clause 4.6 Statement was prepared in consideration of the recent court cases and their judgements.

160. The following is an extract of the Applicant's written request with respect to the proposal's consistency with the objectives of the standard:

"It is considered that the proposed development achieves the objectives of the standard for the following reasons:

- *the proposed scale and massing of the building is consistent with the desired future character of the locality;*
- *the non-compliance relates to the roof and lift overrun on the south-western side of the building and does not seek to increase the number of storeys or density of the development.*
- *As such, there is no tangible nexus between the height variation and the overall land use intensity;*
- *the area of non-compliance will not result in any adverse impacts on the adjoining land uses with respect to overshadowing, loss of privacy, inappropriate scale etc.*

In light of the above, it has been demonstrated that the first test under the Wehbe method has been met, such that the requirement to strictly adhere to the numerical development standard for building height is considered to be unreasonable and unnecessary in this instance."

161. <u>Officer Comment</u>:
The Applicant's full written justification that the proposal achieves the objectives of the development standard in spite of the non-compliance with the standard is upheld. As previously discussed under the SEPP 65 assessment above, the scale and massing of the proposal is consistent with the desired future character of the locality. The proposal presents as a 6 storey building to the street. The site falls to the rear, which is where the height variation is concentrated (*i.e.* at the rear of the building). The variation is caused by the lift and stairs that provide access to the rooftop communal open space, and the lobby roof and pergola roof over the BBQ area. The non-compliant portion of the building will not adversely impact nearby or adjacent properties in terms of overshadowing, visual impact or visual privacy to the extent that DCP non-compliance

would result. It is accepted that there is no nexus between the height variation and the intensity of the development, on the basis that the height variation merely facilitates the use of the rooftop for communal open space.

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

162. Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, it is considered that there is an absence of any negative impacts of the proposed non-compliance on the environmental quality of the locality and amenity of adjoining properties in terms of overshadowing, overlooking or view loss.

163. In this regard, the Applicant's written request states the following:
"…it is considered that there are sufficient environmental planning grounds to justify contravening the development standard. Key environmental planning grounds to support the variation include:
- *Despite a portion of the roof and the lift overrun exceeding the height of buildings principal development standard, the remainder of the building sits within the 21 m height limit. As such, the overall bulk and scale of the building is considered to be acceptable in terms of its scale and built form and the relationship of the building to the adjoining residential development;*
- *The additional height of the roof and lift overrun does not constitute an additional storey and maintains a building of a scale and form that is appropriate for the location, providing visual interest and a varied building profile; and*
- *Despite the increased height of the roof and lift overrun above the statutory height limit, the proposed development will not have an unreasonable impact on adjoining sites in terms of overshadowing, loss of privacy or views."*

164. <u>Officer Comment</u>:
The environmental grounds cited by the Applicant within the written request are considered to be sufficient to justify varying the building height development standard in the particular circumstances of the case. As correctly stated, the breach of the development occurs solely because of the provision of communal open space on the rooftop. Associated structures that exceed the 21m height include the passenger lift and small enclosed lobby, fire egress staircase, awning and pergola over the BBQ area. These structures would create a height exceedance regardless of where on the building they are located. Moving them forward towards the front of the building would have the effect of reducing the percentage extent of the height variation (currently 16.4%), but they would then be more noticeable from the public domain. As such, it is logical to locate them at the rear of the building despite the fact that the percentage variation is higher as a result.

165. It is accepted, as detailed within the Applicant's written request, that it is a positive environmental planning outcome to locate the communal open space on the rooftop. The only logical locations for meaningful communal open space at ground level are within the south-eastern side setback and within the rear (southern) corner of the building. However, communal open space in either of these locations would be compromised. There would be considerable privacy and acoustic implications in locating it within the side setback (due to its proximity to the open space areas of 504 Railway Parade). Locating it in the rear corner is undesirable on the basis that this location functions as an OSD basin, is the lowest point of the site and will not receive direct sunlight for a large portion of the day at mid-winter. As a result, the quality and amenity of communal open space in that location would be poor.

166. The fact that the communal open space area is located on the rooftop in order to provide optimal amenity to that area whilst not contravening the objectives of the development standard adequately constitutes environmental planning grounds to justify varying the development standard in the circumstances.

167. The Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) and therefore there is no impediment to approval of the DA pursuant to Clause 4.6(4)(a)(i).

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

168. Clause 4.6(4) states that:

"Development consent must not be granted for development that contravenes a development standard unless:
(a) the consent authority is satisfied that:
i. the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and"
ii. the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,

169. The proposed development is consistent with the objectives of the building height development standard for reasons detailed above.

170. The objectives of the R3 Medium Density Residential zone are:

- *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.*

171. The proposal will provide for additional housing needs within a built form commensurate with other approved RFBs within the R3 zone. The proposal will contribute towards a variety of housing types within the R3 zone and will in itself have a variety of apartment sizes. The proposal will not preclude other land uses that provide facilities or services to meet the day to day needs of residents.

172. The proposed development is therefore consistent with the objectives of the R3 Medium Density Residential zone.

173. As assumed concurrence has been issued on 21 February 2018 (ref: NSW Planning & Environment Planning Circular No. PS 18-003) the considerations listed under Clause 4.6(5) are irrelevant to this application.

174. The second matter was in cl 4.6(3)(b), where the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test.

The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

175. In conclusion and as per the decision of *Initial Action Pty Ltd v Woollahra Municipal Council [2019] NSWLEC 1097*, the relevant tasks and tests under Clause 4.6 of KLEP 2012 have been satisfied and the proposed 16.4% variation to the building height development standard of KLEP 2012 is recommended for support.

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

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

177. It is considered that the Clause 4.6 Statement lodged with the application addresses all the information required pursuant to Clause 4.6 and the statement is considered to be well founded as there are sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal satisfies the objectives of the zone and development standard (Clause 4.3, building height control).

DEVELOPMENT CONTROL PLANS

Kogarah Development Control Plan 2013 (KDCP 2013)

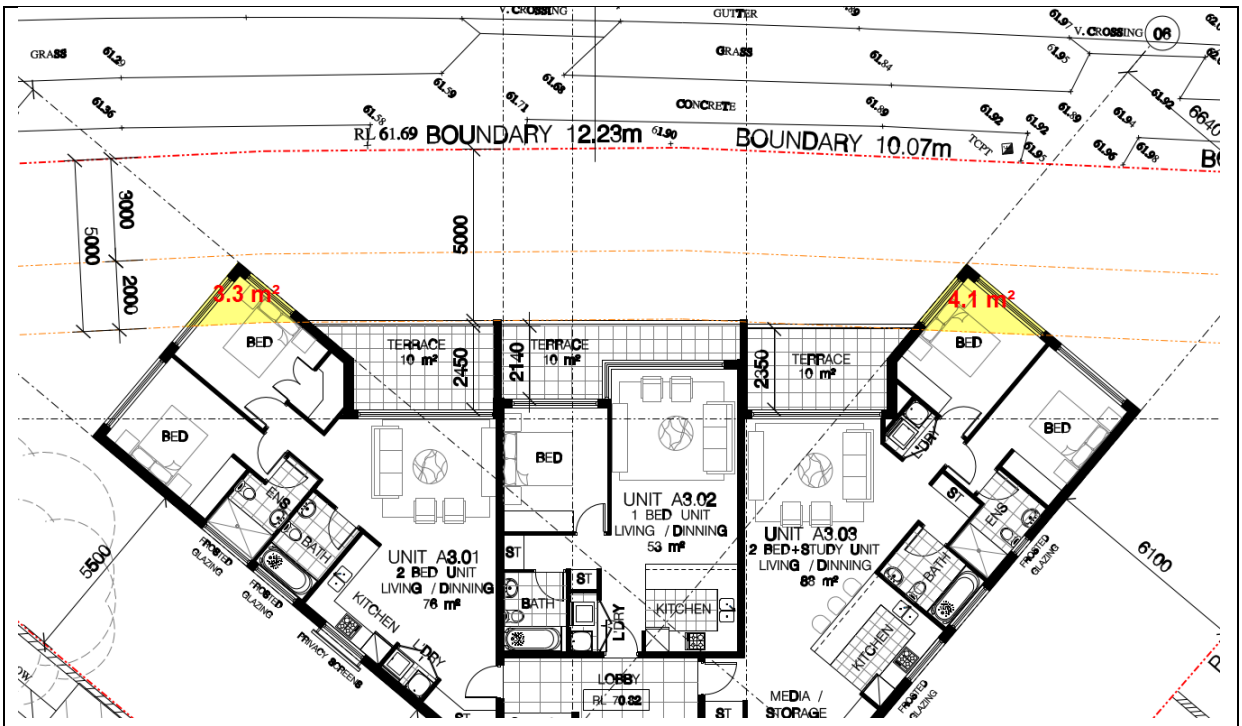
178. The proposal is affected by the provisions of Part B – General Controls and Part C2 – Medium Density Housing of KDCP 2013. These provisions are addressed in more detail within the following table.

KDCP 2013 Compliance Table		
Required	**Proposed**	**Complies**
PART B – GENERAL CONTROLS		
B2 Tree Management and Greenweb		
Compliance with provisions of Clause 5.9 Preservation of Trees or Vegetation of KLEP 2012 must be achieved.	Consent sought for removal of 6 trees affected by the DCP. Tree removal has been assessed by Council's consultant arborist and is considered satisfactory on the basis that sufficient replacement tree planting will be provided subject to a condition of consent. <u>Note:</u> An appropriate condition is imposed for landscaping in accordance with the submitted Landscape Plan and for 3 street trees to be planted in the public domain.	Yes
B3 – Development near busy roads and rail corridors		
Acoustic assessment for noise sensitive development may be required if located in the vicinity of a rail corridor or busy roads	Subject site is adjacent to Railway Parade and approximately 21m from the railway corridor. Acoustic report by Koikas Acoustics Pty Ltd has been submitted with the DA. This has been assessed as satisfactory by Council's Environmental Health	Yes

	Officer subject to conditions. Note: Appropriate conditions have been imposed to ensure the constructed building complies with the recommendations of the Acoustic Report.	
B4 Parking and Traffic		
Residential parking: 5 x 1br units @ 1 space per unit = 5 spaces required 12 x 2 br units @ 1.5 spaces per unit = 18 spaces required. Total required resident parking = 23 spaces	25 resident parking spaces provided, which exceeds the minimum number by 2 spaces.	Yes – 2 spaces in excess
Visitor parking: 18 total units @ 1 space per 5 units = 4 spaces required	4 visitor spaces provided.	Yes
Car wash bay: 1 bay, which can also function as a visitor space	1 shared car wash / visitor bay provided (Bay 4 in Basement 1).	Yes
Bicycle Parking: 1 space per 3 dwellings (6 spaces) + 1 space per 10 dwellings for visitors (2 spaces) = 8 spaces total	10 spaces total (5 in each basement).	Yes
Car park access and layout to comply with relevant Australian Standards	Complies with relevant Australian Standards. The design of the parking area has been assessed by Council's Traffic Engineers as being satisfactory.	Yes
B5 – Waste Management and Minimisation		
Submit waste management plan Provide a dedicated caged area within the bin room for the storage of discarded bulky items.	WMP submitted and is satisfactory. A bulk waste area has been provided within the garbage room on the Ground Floor.	Yes Yes
B6 – Water Management		
All developments require consideration of Council's Water Management Policy	See comment below.	Yes subject to Deferred Commencement condition.
Comment on Water Management: A concept drainage plan has been submitted with the application, prepared by United Consulting Engineers, which shows stormwater disposal via an easement through 6 Woids Avenue. The plan has been assessed by Council's Development Engineer. The applicant has not demonstrated that neighbouring property owners'		

consent has been provided in relation to the proposal. Though a long section of the proposed pipe in the easement has not been provided to Council (but was requested in February 2018), a site inspection has revealed that it is likely to be achievable in engineering terms. However, it will require (subject to separate approval) the removal of two (2) trees situated on the western boundary of 6 Woids Avenue, being *a Ficus benjamina* (Weeping Fig) and a *Viburnum tinus* (Laurustinus), along with hand digging under the supervision of an Arborist within the 12m Tree Protection Zone of a large Eucalyptus tree located within 512 Railway Parade near its rear boundary. A "Deferred Commencement" condition of consent has been recommended, which requires that the applicant must obtain an easement prior to the development consent becoming operative and also provide a long section with relevant surveyed data, prepared by a qualified engineer.		
B7 – Environmental Management		
Building to be designed to improve solar efficiency and are to use sustainable building materials and techniques	Design, materials, siting and orientation generally optimise solar efficiency, with high proportion of north-facing apartments. Glazing is minimised on the southern and western elevations. Development is BASIX-compliant. <u>Note:</u> Although amended plans were submitted, a revised BASIX Certificate was not provided as the design changes did not trigger the requirement for a new certificate.	Yes
PART C2 – MEDIUM DENSITY HOUSING		
1. Site isolation and amalgamation for medium density development		
Adjoining sites not to be left isolated. Site amalgamation requirements apply for specific sites.	The proposal does not cause any site isolation. The site is not subject to any amalgamation requirement.	Yes N/A
2. Specific precinct controls – residential flat buildings		
Specific precinct controls apply to various sites and locations	The site is not located in a specific precinct nominated in the DCP.	N/A
4. Medium site and density requirements		
20m minimum frontage for residential flat building	61.67m to Railway Parade	Yes
1.1sqm of site area per square metre of dwelling NOTE: The above DCP control is over-ridden by KLEP 2012 minimum lot size requirement which is 1000sqm.	Site Area = 963.7sqm which does not comply with the LEP requirement. This has been discussed in detail above under KLEP 2012 and is satisfactory in the circumstances.	Yes on merit
5. Height and building envelope requirements		
4-storey RFBs have a "H1" height control of 12m; and a "H2" height control of 14m.	Excluding the lift overrun and rooftop structures associated with the rooftop communal open space, the proposal has a height of 19.4m	No – see comment below

(method for calculating these heights are discussed in detail in KDCP 2013)	at the front of the building.	
Comment on Building Height: There is incongruence between the KLEP 2012 and the KDCP 2013 building height limits, and the KLEP 2012 heights prevail. The proposal is not compliant with the maximum LEP height but the variation relates to structures associated with the rooftop communal open space and is therefore acceptable on merit pursuant to Clause 4.6 of KLEP 2012. Refer to KLEP 2012 discussion on building height above.		
6. Building setbacks		
Front setbacks: Maximum 75% of width of building to be setback minimum 5m, remainder 25% being setback minimum 7m	• Proposed front setback to Railway Parade ranges from 3m to 8m. • The front boundary is slightly curved, and the outer "wings" on each side of the building do not sit square to the boundary. • The wings come within 3m of the front boundary. • The central portion of the building between the wings sits at 5m from the front boundary. The outer walls of the wings taper away from the front boundary and in doing so have a setback of up to 8m.	No
Comment on Front Setback: The proposal does not comply with the front setback requirement of the DCP as outlined above. Notwithstanding, it is recommended for support in the circumstances for the following reasons. Railway Parade in this location does not have overly generous street setbacks, and certainly not 7m as required by the DCP. The site is less than 400m from Allawah shops (zoned B2 Local Centre) adjacent to Allawah railway station, where commercial buildings have a nil setback from the street. In the R3-zoned residential land to both the east and west of the shops (and continuing west past the subject site), street setbacks are generally no more than 5m, including for relatively modern 5 and 6 storey RFBs to the east of the shops. Closer to the site, the adjoining RFBs at 504 and 510 Railway Parade have setbacks of 5m and 3m, respectively. The proposal is predominantly setback 5m from the street, measured to the balustrades of the central balconies. The glazing line behind the balconies is set back 6.2m – 7.6m. The outer wings (which comprise bedrooms) are angled outwards in such a way as to emulate the character of the built form on the adjacent properties, which is an appropriate response to the context of the site. The eastern wing is set back 3m – 7m and the western wing is setback 3m – 8m. The area of the portion of each outer wing that sits forward of the 5m setback line is 3.3sqm for the western wing and 4.1sqm for the eastern wing, as shown in the plan extract below. This is fairly diminutive in the context of the overall size of the building.		



The outer wings provide visual interest and articulation to the front façade. Squaring off the wings would achieve numeric compliance but would compromise the architectural merit in emulating the built form character of adjacent and nearby buildings, and likely result in a building that is bulkier by virtue of having a more one-dimensional façade. Similarly, the building cannot be pushed back into the site as that would compromise separation from the rear (side) boundaries.

The road and rail corridor that the site is situated on is approximately 50m wide. The site can accommodate a slightly non-compliant street setback without compromising the feeling of 'openness' in the public domain.

In the circumstances, the proposal is considered to be appropriate with the majority of the building being set back 5m from the street and the outer wings providing additional articulation up to 3m from the front boundary for a small portion on each level.

Side/rear setbacks: 3m + one quarter of the amount that the wall height exceeds 3m. [3m + (¼ x 12m)] = 7.5m required.	Achieving strict numeric compliance with the DCP on this site would render it undevelopable in terms of feasibility. The proposal has side setbacks of 5.5 – 6.1m which is commensurate with that of surrounding RFBs. Visual privacy impacts are addressed under Part 3F of the ADG compliance table above.	No but acceptable on merit given the constraints of the site
7. Site coverage		
Maximum 45% (434sqm)	37% (355sqm)	Yes
8. Open space		
Private open space (POS) – 35sqm with min. 3m dimension for ground level dwellings and 12sqm with min. 3m dimension for other dwellings	The 3 ground floor units have private open space with areas of 10sqm (for the studio), 17sqm and 20sqm, with widths exceeding 3m and depths of 2.4m to 3.9m.	No – but all units meet the ADG private open space requirements

(This control superseded by ADG Requirements)	All units above ground level have balconies 10sqm in area exceeding the criterion with widths exceeding 3m and depths 2.1m to 2.45m.	
Common open space – 30sqm per dwelling with min. overall area of 75sqm and min. dimension of 5m. *i.e.* 30sqm x 18 units = 540sqm (This control superseded by ADG Requirements)	244sqm on rooftop communal open space area.	No – but meets min. ADG COS requirements
Maximum 55% impervious area	Impervious area is 629sqm or 66%.	No – but exceeds ADG deep soil by 268sqm
9. Vehicular access, parking and circulation		
Car parking to be provided in accordance with Part B4	Compliant parking provided as detailed under Part B4 above.	Yes
Garages to be accessed from rear lane where available	Access off Railway Parade, no rear lane available	N/A
All residential flat buildings to provide car wash bay	1 car wash bay provided in Basement 1, shared with a visitor space – bay 4.	Yes
11. Solar access		
Primary open space to achieve 4 hours of direct sunlight between 9am and 3pm at mid-winter	This DCP control is over-ridden by the ADG control. The proposal performs strongly against the solar access provisions of the ADG that relate to direct sunlight to the principal useable area of COS	Yes – complies with ADG requirement
Neighbours' private open space and living areas to maintain 3 hours of direct sunlight between 9am and 3pm at mid-winter	• The north-west facing apartments at the rear of 504 Railway Parade will receive approximately 1.5 – 1.75 hours of direct sunlight between 9.30am and 11.15am mid-winter. • The north-east facing apartments at the rear of 510 Railway Parade will receive 3 hours of direct sunlight between 11am and 2pm at mid-winter. • The proposal will have negligible impact on 512 Railway Parade.	No, in relation to 504 Railway Parade – see comment below
<u>Comment on Solar Access</u> The proposal will result in non-compliant solar access to the two (2) rearmost north-west facing apartments at 504 Railway Parade. These apartments each have two (2)		

windows and one (1) balcony facing the subject site. The windows will receive approximately 1.5 – 1.75 hours of direct sunlight mid-winter and the balcony will receive approximately 2 hours. The four (4) apartments (*i.e.* 2 per level) closer to the street will each receive at least 3 hours of direct sunlight between 10am and 1pm mid-winter. The extent of non-compliance with this requirement results from the north-west to south-east alignment of Noble Street which has resulted in allotments having a north-east to south-west orientation, noting the topography of the locality. Redevelopment of any property on the western side of Noble Street (plus the subject site) would result in a fairly high degree of overshadowing to the adjacent property to the south east, primarily to any north-west facing windows on those properties and mostly to the apartments located towards the rear of the building. Land in Noble Street between Railway Parade and First Avenue has seen uplift in maximum building height to 21m (*i.e.* 7 storeys) under the "New City Plan" with a corresponding increase in maximum FSR to 2:1. As a result, whilst the area is in transition the existing two (2) storey RFBs will be prone to overshadowing by new 6 – 7 storey buildings, and particularly the apartments at the rear of each building. The future desired character of Noble Street, between Railway Parade and First Avenue, as defined in the planning controls will consist of 6 – 7 storey RFBs which should individually seek to achieve a high level of compliance with the solar access provisions of the ADG. As the precinct remains in transition, and given the local topography, the level of overshadowing to existing developments will not comply with the control until such time as they are redeveloped to their potential.		
12. Views and view sharing		
Provide for reasonable sharing of views	The location does not have significant views that will be impacted by the proposal.	Yes
13. Adaptable and accessible housing		
2 adaptable units required for developments with 11-20 units	2 adaptable dwellings nominated – Units 1.02 and 2.02	Yes

Interim Policy – Georges River Development Control Plan 2020

179. Council at its Environment and Planning Committee Meeting dated 11 June 2019 resolved to adopt the Georges River Interim Policy DCP.

180. The Interim Policy is a public policy that is to be used as a guide to set a consistent approach for the assessment of residential development within the LGA. It is a supplementary document, meaning that current DCP controls will prevail if they are considered best practice. The Interim Policy has no statutory recognition in the assessment of DAs pursuant to the Environmental Planning and Assessment Act, 1979 (EP&A Act).

181. An assessment of the proposal has been carried out against the provisions of the Interim Policy as set out in the following table.

Interim Policy – Georges River DCP 2020		
Standard	**Proposed**	**Complies**
Site Frontage		
20m	61.67m to Railway Parade	Yes
Building Height		
The relevant LEP controls relating to building height will prevail over DCP controls that relate to height in storeys	Though the proposal is not compliant with the 21m KLEP 2012 height limit, this has been assessed using Clause 4.6 of KLEP 2012 and is acceptable in the circumstances as it will provide for a rooftop communal open space area.	Yes
Private Open Space		
The ADG requirements prevail over the DCP controls for private open space	The proposal is fully compliant with the ADG's private open space requirements. Refer to "4E – Private Open Space and Balconies" within the ADG Compliance Table above.	Yes
Communal Open Space		
The ADG requirements prevail over the DCP controls for COS	The proposal is fully compliant with the requirements of the ADG with respect to COS. Refer to "3D – Communal Open Space" within the ADG Compliance Table above.	Yes
Parking		
In accordance with 'A Plan for Growing Sydney' (Department of Planning and Environment): • If located in a strategic centre (i.e. Kogarah CBD and Hurstville CBD) and within 800m of a Railway, the "Metropolitan Regional Centre (CBD)" rates apply. • If located within 800m of a railway and outside the strategic centres the "Metropolitan Subregional Centre" rates apply. • If located outside of 800m of a Railway, the relevant DCP applies.	The site is located within 800m of Allawah railway station. The proposal exceeds both the Metropolitan Subregional Centre parking rates and the DCP parking rates. Refer to the KDCP 2013 Compliance Table above.	Yes
Solar Access		
The ADG requirements prevail over the DCP controls for solar access	The proposal is fully compliant with the ADG Solar Access requirements as detailed within the ADG Compliance Table above. Refer to "4A – Solar and Daylight Access" within the ADG Compliance Table.	Yes

DEVELOPER CONTRIBUTIONS

182. The proposed development requires payment of developer contributions under Section 7.11 of the Environmental Planning and Assessment Act 1979. The proposal is affected by the following adopted Development Contribution Plans and the corresponding contributions are payable as shown, calculated on the basis of 18 new residential apartments with a concession of two existing dwelling houses. An appropriate condition of consent has been included in the recommendation below.

Kogarah Section 94 Contribution Plan No.1 – Road and Traffic Management – Residential	$1,400.83
Kogarah Section 94 Contribution Plan No.5 – Open Space 2007	$145,719.84
Kogarah Section 94 Contribution Plan No.9 – Kogarah Libraries – Buildings	$3,285.48
Kogarah Section 94 Contribution Plan No.9 – Kogarah Libraries – Books	$2,342.44
Total Development Contributions payable	**$152,748.60**

IMPACTS

Natural Environment

183. The proposal is unlikely to result in adverse impacts to the natural environment subject to the site being planted with replacement trees as shown on the approved landscape plan. The removal of existing trees has been reviewed by Council's Consultant Arborist and is deemed acceptable. The landscape plan demonstrates that nineteen (19) new native trees and additional shrubs will be planted. A condition will also require three (3) street trees to be planted along the frontage of the site.

184. The proposal includes excavation that has been assessed as being reasonable in the context of the site and consistent with the extent of excavation expected in an R3 Medium Density area that has seen uplift in building height and FSR, *i.e.* to permit construction of basement car parking. Excavation impacts will be managed with standard conditions of consent.

185. Appropriate stormwater conditions have been recommended including a deferred commencement condition requiring the applicant to obtain an easement and provide a long section along the pipeline.

Built Environment

186. The proposal represents an acceptable planning outcome for the site with respect to its bulk, scale and density, façade articulation and expression and is an appropriate response to the context of the site and its R3 Medium Density Residential zoning.

187. The amended proposal is well under the maximum FSR permitted under KLEP 2012. The resulting built form is therefore consistent with the desired future character of the locality and is also commensurate and compatible with nearby recently-approved development such as the 7-storey RFB at 4 St Georges Parade, which fronts Railway Parade approximately 250m west of the subject site.

188. The building's six (6) storey presentation to the street is appropriate in the context of the site, being located on a 50m wide road and rail corridor adjacent to East Quarter, with buildings up to 20 storeys in height.

Social Impact

189. No adverse social impacts have been identified as part of the assessment. The additional apartments will in principle cater for a cross-section of the community and will assist with providing additional housing in the area. The construction of residential apartments on the site is consistent with the residential zoning of the land.

Economic Impact

190. There is no apparent adverse economic impact that is likely to result within the locality due to the construction of additional apartments. The construction of these apartments was to be reasonably expected as a result of the New City Plan's gazettal. The impact of new development on nearby property values is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

Suitability of the site

191. The site is zoned R3 Medium Density Residential. The proposal is a permissible form of development in this zone. The site is suitable for the construction of an RFB within a medium density environment in an area that has been "up-zoned" for this purpose. The proposed built form is 503sqm below the maximum GFA permitted on the site under the FSR development standard of KLEP 2012. Though it does not comply with the maximum building height standard, this results from the provision of a high quality rooftop communal space area and is supported in the circumstances of the site. The site does not quite meet the KLEP 2012 minimum lot size requirement of 1,000sqm for construction of an RFB in the R3 zone; it falls short by 36.32sqm. However, for reasons detailed within this report, it is acceptable in the circumstances to vary this requirement under Clause 4.6 of the LEP. The building is satisfactory with respect to setbacks and achieves a high level of compliance with the ADG as discussed within this report. The site is considered suitable for the RFB proposed.

SUBMISSIONS AND THE PUBLIC INTEREST

192. The DA was neighbour notified in accordance with KDCP 2013 for a period of fourteen (14) days from 15/09/2017 to 29/09/2017. Following the submission of amended plans, the DA was renotified from 10/07/2018 to 24/07/2018.

193. One (1) submission (co-signed by 15 individuals) of objection was received during original notification period. Two (2) additional individual submissions were received during the re-notification period, equating to three (3) submissions of objection in total. The issues raised in the submissions have been grouped and summarised as follows, with a response provided to each.

194. <u>Overshadowing</u>

Concern is raised that the proposal will overshadow the apartments at 504 Railway Parade and 512 Railway Parade due to its excessive height, when other nearby buildings are three (3) stories maximum. This will make neighbouring apartments darker and colder inside, impacting residents' health and causing mould issues.

<u>Planner's Comment:</u> Overshadowing to the existing dwelling house is addressed under "11 Solar access" within the KDCP 2013 Compliance Table above. The proposal is a reasonable response to the constraints of the site. Negating all overshadowing to adjacent properties located to the south-west and south-east of the site is not feasible without unreasonably limiting the development potential of a site that was "up-zoned" under the Kogarah New City Plan with increased FSR and building height limits given relative site orientations and the existing topography in the locality.

195. Context Analysis
Concern is raised that the streetscape analysis submitted by the DA takes development on the other side of the railway ("East Quarter" – Jack Brabham Drive), when that development is irrelevant and should not be part of the analysis.

Planner's Comment: Whilst it is located on the opposite side of the railway line, the 13 – 20 storey buildings in Jack Brabham Drive nonetheless are highly visible from Railway Parade and do indeed contribute to the character of the area. They have therefore been taken into account as part of the context of the site in accordance with SEPP 65.

The submitted analysis is acceptable. This notwithstanding, although the East Quarter Buildings are contextually relevant, the character of the subject site is defined and is different in terms of height and scale to the identified site and has been assessed on this basis.

196. Building Height
Concern is raised that the considerable difference in building height between the proposal and surrounding buildings will adversely impact the amenity of those surrounding buildings in terms of solar access (including natural heating), views to the open sky, and loss of privacy.

Planner's Comment: Solar access has been addressed above. The building will be higher than the immediately buildings, but these were approved under former planning rules. The area will transition over time to buildings up to 21m in height (6 – 7 storeys), the applicable height under the Local Environmental Plan.

197. Parking and Traffic Congestion
Concern is raised that the additional dwellings will cause problems with street parking availability and result in further congestion of Railway Parade and the surrounding streets.

Planner's Comment: Following adoption of the current LEP, land along Railway Parade in the R3 zone has seen uplift in maximum FSR to 2:1 and uplift in maximum height to 21m. The area will over time increase in density in line with these parameters. The proposal has generous parking provision that exceeds the minimum requirements for the site, and in itself will not result in adverse impacts on the operation of the local road network.

198. Property Values
Concern is raised that the proposal will result in the devaluing of nearby properties due to the aforementioned adverse impacts.

Planner's Comment: The impact of a development proposal on localised property values is not a relevant planning consideration under the EP&A Act.

199. LEP Up-zoning of the Locality
Concern is raised that there is no justification for the up-zoning of the site and surrounds to a 21m height limit under the LEP.

Planner's Comment: This represents a broader strategic issue and is not a relevant matter for consideration of the current DA proposal. The subject application seeks consent to develop in accordance with the current controls.

REFERRALS

Council Referrals

Development Engineer

200. The DA was referred to Council's Development Engineer for review and comment in relation to the submitted stormwater plans, which propose stormwater discharge to Woids Avenue via an easement through 6 Woids Avenue. The engineer requested a long section through the drainage pipe from the subject site to Woids Avenue as well as neighbour's consent for the drainage easement. This was not subsequently provided but forms the basis for a Deferred Commencement condition of consent.

Traffic Engineer

201. The DA was referred to Council's Traffic Engineer for review in relation to traffic generation and parking impacts, basement layout, driveway design, traffic light control system operation and car stacker specifications. The Traffic Engineer has raised no objection to approval of the DA subject to a Traffic Management Plan for the traffic light system. These are included within the recommendation below.

Consultant Arborist

202. Council's Consultant Arborist reviewed the proposal and raised no objection to approval of the DA subject to appropriate conditions of consent. These have been included in the recommendation below.

Environmental Health Officer

203. Council's Environmental Health Officer raised no objection to approval of the DA subject to conditions of consent being attached if approval is granted. These are included within the recommendation below.

External Referrals

Sydney Trains

204. The DA was referred to Sydney Trains for concurrence under Clause 86 of State Environmental Planning Policy (Infrastructure) 2007. Sydney Airports has issued a letter of concurrence dated 14 November 2017, advising that no objection is raised to erection of the development to a maximum height of 84.3m AHD, inclusive of lift overruns, vents, chimneys, aerials, TV antennae, construction cranes (which are subject to separate approval) etc.

Ausgrid

205. The DA was referred to Ausgrid on 4 September 2019 in accordance with Clause 45 of State Environmental Planning Policy (Infrastructure) 2007. At the time of writing, no response has been received. The DA may be determined in the event that no response has been received from Ausgrid within twenty one (21) days, *i.e.* 25 September 2019.

CONCLUSION

206. The proposal has been assessed with regard to the matters for consideration listed in Section 4.15 of the Environmental Planning and Assessment Act 1979. The proposal is an appropriate response to the context and peculiar constraints of the site and will result in a good planning and urban design outcome in the locality, with its bulk and scale generally being consistent with that envisaged under the New City Plan (KLEP 2012 Amendment No. 2). The proposal also satisfies the design quality principles of SEPP 65 and is generally compliant with the ADG. The proposal is consistent with the desired future character of the R3 zoned land along Railway Parade.

207. The proposal has been assessed against the provisions of the KLEP 2012 and KDCP 2013. It is 503sqm below the maximum GFA permitted by the 2:1 FSR that applies to the site, in recognition of the constrained dimensions of the site and the need to provide appropriate separation from adjoining properties.

208. Though the proposal exceeds the maximum 21m height limit by 3.44m, this is a direct result of the provision of a rooftop communal open space area that will be of high quality. It is a significantly better outcome to provide a rooftop area than a ground level area. The variation is recommended for support pursuant to Clause 4.6 of KLEP 2012.

209. The site is 36.3sqm smaller than is required for the construction of an RFB under KLEP 2012. This 3.63% variation to the minimum lot size development standard has been discussed in detail in the body of this report and is recommended for support in the circumstances pursuant to Clause 4.6 of KLEP 2012.

210. The proposal will not result in unreasonable adverse impacts to the amenity of adjoining properties subject to the conditions of consent within the recommendation below.

211. For the above reasons, the proposal is recommended for approval subject to the conditions included within the recommendation below.

DETERMINATION AND STATEMENT OF REASONS

Statement of Reasons

212. The reasons for this recommendation are:
- The proposal is an appropriate response to the “up-zoning” of the site having regard to the allotment shape (including increased FSR and height limits) afforded by the Kogarah “New City Plan”. The predominantly six (6) building is consistent with the desired future character of the R3 zone along Railway Parade and is commensurate with nearby recent RFB development.
- The proposal is fully compliant with the maximum 2:1 FSR limit that applies to the site under KLEP 2012.
- The proposed variation to the 21m building height limit will allow for the provision of a high quality area of communal open space on the rooftop and is supported pursuant to Clause 4.6 of KLEP 2012.
- The site is suitable for the proposal despite the fact that it falls short of the minimum 1,000sqm lot size for the construction of an RFB by 36.3sqm. All relevant requirements and tests of Clause 4.6 of KLEP 2012 have been met in this regard.
- The proposal’s bulk and scale is appropriately contained within a generally compliant building envelope that is respectful of the established character of the area in relation to height, street setback and boundary setbacks.
- The proposal has sufficient façade modulation and wall articulation that will serve to provide visual interest and reduce the bulk of the building.
- The proposal exceeds the minimum deep soil zone requirements of the ADG and provides generous deep soil areas that will allow for new native tree planting to ameliorate the scale of the building.
- The proposal achieves compliance with the Apartment Design Guide with respect to both internal and external amenity. Building separation requirements in particular are for the most part compliant and, where numerically non-compliant, visual privacy impacts will be mitigated by the use of screening and other appropriate measures.

Determination

213. THAT pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979 (as amended) development consent is granted to Development Application

DA2018/0237 for demolition, lot consolidation, tree removal and construction of a 6 storey residential flat building containing 19 units over two (2) levels of basement parking at Lots B and C in DP323018, known as 506 and 508 Railway Parade, Allawah subject to the following conditions of consent:

214. **Deferred Commencement Conditions**
This Development Application is a Deferred Commencement Consent under Section 4.16(3) of the Environmental Planning and Assessment Act (as amended) 1979. Strict compliance is required with **all conditions appearing in Section A** within **three (3) years from the Determination Date of this consent.** Upon confirmation in writing from Georges River Council that the Section A Conditions have been satisfied, the consent shall commence to operate as a Development Consent for a period of five (5) years from the **Determination Date of this consent.**

Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, this consent will not operate until the following requirements are satisfied:

SECTION A – DEFERRED COMMENCEMENT CONDITIONS

1. **Deferred Commencement – Drainage - Pursuant to Section 4.16(3) of the** Environmental Planning and Assessment Act 1979**, this consent will not operate until such time as the following requirements are met to the satisfaction in writing of the Manager Development and Building.**

(a) The applicant must acquire an Easement to Drain Water of 1 metre (minimum) width. The easement must allow for a piped, gravity fed system of drainage of stormwater from the subject site with direct, underground connection to Council's kerb and gutter in Woids Avenue.

Evidence of registration of the easement to drain water benefitting the subject site and burdening the title of the properties listed below is to be provided to Council:

i. 6 Woids Avenue, Allawah

(b) The applicant must obtain separate Development Consent for all drainage works to be carried out within the Easement to Drain Water. The written consent of each of the owners of the property/ies burdened by the Easement will be required for each development application to carry out the drainage works on the burdened lot/s.

(c) The applicant must submit to Council a long section through the stormwater drainage pipe to be located in the aforementioned easement, with adequate surveyed spot levels along the full length of the pipe in the easement and to the kerb.

(d) A detailed design including a long section of the proposed pipe line within the easement shall be provided up to 6 Woids Avenue and to the street gutter. Surveyed detail of all existing features within the affected properties in the vicinity of the proposed easement are to be accurately detailed on the design including but not limited to structures, walls, retaining walls, pathways, stairs and finished ground surface types. It will be required to be proven that it is feasible to both construct and maintain a drainage line as is proposed.

Documentary evidence as requested or the above information must be submitted within **three (3) years** of the granting of this deferred commencement consent.

Commencement of the consent cannot occur until written approval of the submitted information has been given to Council.

Subject to the above being satisfied, development consent be issued, subject to the following conditions:

SECTION B – GENERAL DEVELOPMENT CONDITIONS
DEVELOPMENT DETAILS

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

Description	Reference No.	Date	Revision	Prepared by
Stormwater Plans as per Section A – Deferred Commencement Conditions				
Site Plan	A-0600	20/04/2018	D	Architecture & Building Works
Basement 2 Plan	A-0800	27/08/2019	E	Architecture & Building Works
Basement 1 Plan	A-0900	27/08/2019	E	Architecture & Building Works
Ground Floor Plan	A-1000	29/08/2019	E	Architecture & Building Works
First Floor Plan	A-1100	04/09/2019	E	Architecture & Building Works
Second Floor Plan	A-1200	04/09/2019	E	Architecture & Building Works
Third Floor Plan	A-1300	23/04/2018	D	Architecture & Building Works
Fourth Floor Plan	A-1400	23/04/2018	D	Architecture & Building Works
Fifth Floor Plan	A-1500	23/04/2018	D	Architecture & Building Works
Sixth Floor Plan	A-1600	23/04/2018	D	Architecture & Building Works
Roof Plan	A-1650	23/04/2018	D	Architecture & Building Works
Elevation	A-1700	27/08/2019	E	Architecture & Building Works
Elevation	A-1800	29/08/2019	E	Architecture & Building Works
Elevation	A-1900	29/08/2019	E	Architecture & Building Works
Section	A-2000	23/04/2018	D	Architecture & Building Works

Ramp/Direction	A-2060	23/04/2018	D	Architecture & Building Works
Shadow Diagram	A-2100	23/04/2018	D	Architecture & Building Works
Shadow Diagram	A-2200	23/04/2018	D	Architecture & Building Works
Shadow Diagram	A-2300	23/04/2018	D	Architecture & Building Works
Shadow Diagram	A-2400	23/04/2018	D	Architecture & Building Works
Shadow Diagram	A-2500	23/04/2018	D	Architecture & Building Works
Solar Analysis 01	A-2550	23/04/2018	D	Architecture & Building Works
Solar Analysis 02	A-2560	23/04/2018	D	Architecture & Building Works
Solar Access and Natural Ventilation	A-2600	23/04/2018	D	Architecture & Building Works
Gross Floor Area Calculations	A-2700	23/04/2018	D	Architecture & Building Works
Adaptability Details	A-3000	23/04/2018	D	Architecture & Building Works
Soil and Waste Management Plan	A-5000	23/04/2018	D	Architecture & Building Works
Landscape Plan – Cover Sheet	000	09/09/2019	C	Site Image
Landscape Plan – Ground	101	09/09/2019	C	Site Image
Landscape Plan – Level 6	102	09/09/2019	C	Site Image
Landscape Plan – Landscape Details	501	10/05/2017	B	Site Image
Acoustic Report		28/05/2018	-	Acoustic, Vibration & Noise Pty Ltd

SEPARATE APPROVALS REQUIRED UNDER OTHER LEGISLATION

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

(a) Construct a 1.2m wide footpath for the full length of the frontage of the site in accordance with Council's Specifications applying at the time construction approval is sought.

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

(c) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored

at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

4. **Below ground anchors –** Information to be submitted with S68 Application under LGA 1993 and S138 Application under Roads Act 1993 – In the event that the excavation associated with the basement carpark is to be supported by the use of below ground (cable) anchors that are constructed under Council's roadways/footways, an application must be lodged with Council under Section 68 of the Local Government Act 1993 and the Roads Act 1993 for approval, prior to commencement of those works. The following details must be submitted.

   a) That cable anchors will be stressed released when the building extends above ground level to the satisfaction of Council.
   b) The applicant has indemnified Council from all public liability claims arising from the proposed works, and provide adequate insurance cover to the satisfaction of council.
   c) Documentary evidence of such insurance cover to the value of $20 million.
   d) The applicant must register a non-terminating bank guarantee in favour of Council for the amount of $35,050.00. The guarantee will be released when the cables are stress released. In this regard it will be necessary for a certificate to be submitted to Council from a structural engineer at that time verifying that the cables have been stress released.
   e) That in the event of any works taking place on Council's roadways/footways adjoining the property while the anchors are still stressed, all costs associated with overcoming the difficulties caused by the presence of the 'live' anchors will be borne by the applicant.

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

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

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

   (a) Placing or storing materials or equipment;
   (b) Placing or storing waste containers or skip bins;
   (c) Erecting a structure or carrying out work
   (d) Swinging or hoisting goods over any part of a public road by means of a lift, crane or the like;
   (e) Pumping concrete from a public road;
   (f) Pumping water from the site into the public road;
   (g) Constructing a vehicular crossing or footpath;
   (h) Establishing a "works zone";
   (i) Digging up or disturbing the surface of a public road (eg Opening the road for the purpose of connections to utility providers);
   (j) Stormwater and ancillary works in the road reserve;
   (k) Stormwater and ancillary to public infrastructure on private land; and
   (l) If any excavation is to be supported by the use of below ground (cable) anchors that

are constructed under Council's roadways/footways.

These separate activity approvals must be obtained and evidence of the approval provided to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

REQUIREMENTS OF CONCURRENCE, INTEGRATED & OTHER GOVERNMENT AUTHORITIES

7. **Electricity Supply –** An application is required to be made to Ausgrid for a network connection. This may require the network to be extended or its capacity augmented. Evidence of this application being lodged with Ausgrid is required to be provided to the Certifying Authority prior to the issue of a Construction Certificate. For further details, you are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services).

8. **Electricity Supply to Development –** The electricity supply to the development must be underground.

9. **Sydney Water – Tap in ™ –** The approved plans must be submitted to a Sydney Water Tap inTM to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately endorsed. For details please refer to 'Plumbing, building and developing' section of Sydney Water's web site at www.sydneywater.com.au then see 'Building', or telephone 13000 TAP IN (1300 082 746). The Certifying Authority must ensure that a Tap inTM agent has appropriately stamped the plans prior to the issue of the Construction Certificate.

10. **Notice of Requirements for a Section 73 Certificate –** A Notice of Requirements of what will eventually be required when issuing a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the 'Plumbing, building and developing' section of the web site www.sydneywater.com.au then refer to 'Providers' under 'Developing' or telephone 13 20 92 for assistance.

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

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

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

11. **Pre-Construction Dilapidation Report – Private Land –** A professional engineer specialising in structural or geotechnical engineering shall prepare a Pre-Construction Dilapidation Report detailing the current structural condition of adjoining premises.

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

    A copy of the pre-construction dilapidation report is to be provided to the adjoining properties (subject of the dilapidation report), a minimum of 5 working days prior to the commencement of work. Evidence confirming that a copy of the pre-construction dilapidation report was delivered to the adjoining properties must be provided to the PCA. Should the owners of properties (or their agents) refuse access to carry out inspections, after being given reasonable written notice, this shall be reported to Council to obtain Council's agreement to complete the report without access. Reasonable notice is a request for access in no sooner than 14 days between 8.00am-6.00pm.

12. **Stormwater System –** The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate to the satisfaction of the PCA.

    (a) All stormwater shall drain by gravity to the easement to drain water in accordance with the Australian/New Zealand Standard AS/NZS 3500.3: 2015 (as amended).

13. **Stormwater Systems with Basement -** The underground basement car park must pump to and all other stormwater must drain by gravity to the proposed OSD system.

    The design of the proposed drainage system must be prepared by a professional engineer who specialises in hydraulic engineering and be submitted for approval with the Construction Certificate application.

    Protection of basement from inundation of stormwater waters

    The construction of the building shall be designed to conform to the recommendations and conclusions of [Insert author and date] in regards to the protection of the underground basement from possible inundation by surface waters.

    Evidence from a professional engineer who specialises in hydraulic engineering that this design requirement has been adhered to shall be submitted with the Construction Certificate application to the satisfaction of the PCA.

14. **Detailed Stormwater Drainage Design –** The submitted stormwater plan has been assessed as a concept plan only. A detailed drainage design supported by a catchment area plan and drainage calculations (including a Hydraulic Grade Line Analysis) must be submitted with the Construction Certificate application.

15. **On Site Detention –** The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

    The submitted stormwater plan has been assessed as a concept plan only. Final detailed plans of the drainage system, prepared by a professional engineer specialising in hydraulic engineering, shall be submitted for approval with the Construction Certificate.

    An on-site detention (OSD) facility designed by a professional engineer who specialises

in Hydraulic Engineering must be designed, approved and installed. The design must include the computations of the inlet and outlet hydrographs and stage/storage relationships of the proposed OSD using the following design parameters:

(a) peak flow rates from the site are to be restricted to a permissible site discharge (PSD) equivalent to the discharge when assuming the site contained a single dwelling, garage, lawn and garden,

(b) At Annual Recurrence Intervals of 2 years and 100 years.

Refer to Flow Controls in Council's Draft/Adopted Stormwater Drainage Policy.

The OSD facility shall be designed to meet all legislated safety requirements and childproof safety fencing around the facility must be provided where the OSD facility is open or above ground when the design peak storage depth is greater than 300mm. A durable metal plate or similar sign is to be placed at the OSD facility and must bear the words:

"BEWARE: This is an on-site detention basin/tank for rainwater which could overflow during heavy storms."

Full details shall accompany the application for the Construction Certificate to the satisfaction of the PCA.

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

a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one hour duration storm of the 1 in 20 year storm;
b) The pump system shall be regularly maintained and serviced, every six (6) months; and
c) Any drainage disposal to the street gutter from a pump system must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

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

17. **Driveway Construction Plan Details –** Detailed engineering plans for the driveway shall be submitted with the Construction Certificate application for approval that show the following to the satisfaction of the PCA:

a) Longitudinal and cross sections, gradients, access onto the proposed lots, type of construction materials designed in accordance with Council's Subdivision standards and AS/NZS2890.1-2004.
b) Suitable underground provision for the supply of all relevant services to the proposed lots (proposed position of pipes and conduits).
c) The full length of the driveway designed with a minimum 150mm thick reinforced concrete and minimum of 2.7m wide pavement/kerb face to kerb face width, and a non-slip surface.

18. **Stormwater Drainage Plan Details –** Stormwater drainage plans including pipe sizes,

type, grade, length, invert levels, dimensions and types of drainage pits prepared by a professional engineering specialising in hydraulic engineering shall be submitted with the Construction Certificate application to the satisfaction of the PCA.

These plans shall be prepared in accordance with the Australian Institute of Engineers Australian Rainfall and Runoff (1987) and Council's stormwater drainage guide lines.

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

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

Documentation in this regard must be submitted to the satisfaction of the PCA prior to the release of the construction certificate.

20. **Damage Deposit – Major Works –** In order to insure against damage to Council property the following is required:

a) Pay Council, before the issue of the Construction Certificate, a damage deposit for the cost of making good any damage caused to any Council property as a result of the development: **$76,224.12**

b) Pay Council, before the issue of the Construction Certificate, a non-refundable inspection fee to enable assessment of any damage and repairs where required: **$371.00**

c) Submit to Council, before the commencement of work, a dilapidation report of the condition of the Council nature strip, footpath and driveway crossing, or any area likely to be affected by the proposal.

At the completion of work Council will review the dilapidation report and the Works-As-Executed Drawings (if applicable) and inspect the public works.

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

Evidence of the payment of the above fees must be provided to the satisfaction of the PCA prior to the release of a Construction Certificate.

21. **Access for Persons with a Disability –** Access for persons with disabilities must be provided throughout the site, including to all common rooms, lobby areas and sanitary facilities in accordance with the requirements of the Premises Standards, the Building Code of Australia and AS 1428.1. Details must be submitted with the Construction Certificate Application to the satisfaction of the PCA.

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

22. **Vibration Damage –** To minimise vibration damage and loss of support to the buildings in close proximity to the development, any excavation is to be carried out by means of a rock saw and if available, in accordance with the guidelines of the Geotechnical Engineer's report.

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

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

24. **Geotechnical Reports**: The applicant must submit a Geotechnical Report, prepared by a professional engineer specialising in geotechnical engineering who holds the relevant Certificate of accreditation as required under the Building Professionals Act 2005 in relation to dilapidation reports, all site works and construction. This is to be submitted before the issue of the Construction Certificate to the satisfaction of the PCA and is to include:

    (a) Investigations certifying the stability of the site and specifying the design constraints to be placed on the foundation, any earthworks/stabilization works and any excavations.
    (b) Dilapidation Reports on the adjoining properties including, but not limited to (address) and (address) prior to any excavation of site works. The Dilapidation Report is to include assessments on, but not limited to, the dwellings at those addresses and any external paths, grounds etc. This must be submitted to the PCA and the adjoining residents as part of the application for the Construction Certificate. Adjoining residents are to be provided with the report five (5) working days prior to any works on the site.
    (c) On-site guidance by a vibration specialist during the early part of excavation.
    (d) Measures to minimise vibration damage and loss of support to other buildings. Where possible any excavation into rock is to be carried out with tools such as rock saws which reduce vibration to adjoining buildings and associated structures. Where a hydraulic hammer is to be used within 30 metres of any building (other than a path or a fence) the report shall detail the maximum size of hammer to be used and provide all reasonable recommendations to manage impacts.
    (e) Sides of the excavation are to be piered prior to any excavation occurring to

reinforce the walls of the excavation to prevent any subsidence to the required setbacks and neighbouring sites.

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

26. **Fire Safety Measures –** Prior to the issue of a construction certificate a list of the essential fire safety measures that are to be provided in relation to the land and any building on the land as a consequence of the building work must accompany an application for a construction certificate, which is required to be submitted to either Council or a PCA. Such list must also specify the minimum standard of performance for each essential fire safety measure included in the list. The Council or PCA will then issue a Fire Safety Schedule for the building.

27. **Structural details –** Engineer's details prepared by a practising Structural Engineer being used to construct all reinforced concrete work, structural beams, columns & other structural members. The details are to be submitted to the Principal Certifying Authority for approval prior to construction of the specified works. A copy shall be forwarded to Council where Council is not the PCA.

28. **Construction Traffic Management Plan –** A Construction Traffic Management Plan detailing:

    (a) construction vehicle routes;
    (b) anticipated number of trucks per day;
    (c) hours of construction;
    (d) Access arrangements; and
    (e) Proposed traffic measures to minimise impacts of construction vehicles

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

29. **Acoustic Requirements – Compliance with submitted Acoustic Report -** Road traffic noise criteria for sensitive developments – The building must be designed and constructed so that the road traffic noise levels inside the building comply with the noise criteria specified in Development Near Rail Corridors and Busy Roads – Interim Guideline (Department of Planning, 2008). This may require the installation of mechanically ducted air-conditioning / ventilation to each apartment to be determined and designed by the project acoustic consultant so as not to adversely impact the amenity of adjacent or nearby properties.

    The project Acoustic Consultant must provide certification in writing to the satisfaction of the PCA that the Construction Certificate plans are compliant with the recommendations of the Acoustic Report, titled Acoustic Report prepared by Acoustic, Vibration & Noise Pty Ltd and dated 28 May 2018.

30. **Car Wash Bays –** The visitor space/car wash bay (Space #4 in Basement 1) shall consist of a bunded bay with pre-treatment approved by Sydney Water. The water from the car wash bay must be graded to a drainage point and connected to sewer.

    If alternative water management and disposal options are proposed (i.e. where water is

recycled, minimised or reused on the site), detailed plans and specifications of the water recycling system must be submitted with the application for the Construction Certificate for approval.

31. **SEPP 65 Design Verification Statement –** A design verification statement, prepared by a qualified designer, shall be submitted to the satisfaction of the Certifying Authority verifying that the plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out under Schedule 1 of State Environmental Planning Policy No 65 –Design Quality of Residential Flat Development.

32. **Waste Storage – Residential and Mixed Use Developments –** The development must comply with all requirements of the Waste Management Plan Issue A prepared by Mackenzie Architects International and dated 5 June 2018, except where amended by the following:

Residential Waste
The development will require the provision of the following waste and recycling facilities:

(a) Domestic Waste – Eight (8) x 240L, collected once a week.
(b) Domestic Recycling – Six (6) x 240L recycling bins collected once a week.

The waste and recycling bins must be presented weekly for kerbside collections. All bins may only be taken to the kerb on the day immediately preceding Council collection and returned to the basement waste storage room within 24 hours following collection.

The waste room must contain the following to the satisfaction of the PCA, in order to minimise odours, deter vermin, protect surrounding areas, and make it a user-friendly and safe area:

- waste room floor to be sealed;
- waste room walls and floor surface is flat and even;
- all walls painted with light colour and washable paint;
- equipment electric outlets to be installed 1700mm above floor levels;
- The bin storage rooms will be mechanically exhausted as required by AS 1668.2;
- light switch installed at height of 1.6m;
- waste rooms must be well lit (sensor lighting recommended);
- optional automatic odour and pest control system installed to eliminate all pest
- types and assist with odour reduction – this process generally takes place at
- building handover – building management make the decision to install;
- all personnel doors are hinged and self-closing;
- waste collection area must hold all bins – bin movements should be with ease of access;
- conform to the Building Code of Australia, Australian Standards and local laws; and childproofing and public/operator safety shall be assessed and ensured.
- Occupational Health and Safety issues such as slippery floors in waste rooms and the weight of the waste and recycling receptacles will need to be monitored.
- Cleaners will monitor the bin storage area and all spills will be attended to immediately by cleaners.

The path to the basement waste storage rooms must be at least 1.0 metres wide and kept clear and unobstructed at all times.

33. **Waste Handling Systems –** All waste handling equipment and systems used in

conjunction with the provision of waste and recycling services shall be manufactured, installed and maintained in accordance with any applicable regulatory requirements, relevant Australian Standards, and relevant manufacturer's specifications.

34. **Fees to be paid –** The fees listed in the table below must be paid in accordance with the conditions of this consent and Council's adopted Fees and Charges applicable at the time of payment (available at www.georgesriver.nsw.gov.au).

Payments must be made prior to the issue of the Construction Certificate.

Please contact Council prior to the payment of Section 7.11 (Section 94) Contributions to determine whether the amounts have been indexed from that indicated below in this consent and the form of payment that will be accepted by Council.

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

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

Fee Type	**Fee**
GENERAL FEES	
Long Service Levy (to Long Service Corporation) Or, provide evidence of Payment direct to the Long Service Corporation. See https://portal.longservice.nsw.gov.au/bci/levy/	
Damage Deposit	$76,224.12
Inspection Fee of Major developments (min 2 inspections) – Non refundable	$371.00
Ground Anchor Deposit (where excavation is to be supported by the use of below ground cable anchors that are constructed under Council's roadways / footpaths)	$61,670.00
Driveway Design and Inspection Fee (Medium Density)	$745.45 (excl. GST)
DEVELOPMENT CONTRIBUTIONS	
Kogarah Section 94 Contribution Plan No.1 – Road and Traffic Management – Residential	$1,400.83
Kogarah Section 94 Contribution Plan No.5 – Open Space 2007	$145,719.84
Kogarah Section 94 Contribution Plan No.9 – Kogarah Libraries – Buildings	$3,285.48
Kogarah Section 94 Contribution Plan No.9 – Kogarah Libraries – Books	$2,342.44
Total Development Contributions payable:	**$152,748.60**

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

Development Contributions
The Section 7.11 (Section 94) contribution is imposed to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

Indexation
The above contributions will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant Section 7.11 (Section 94) Development Contributions Plan.

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

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

35. **Required design changes –** The following changes are required to be made and shown on the Construction Certificate plans to the satisfaction of the Principal Certifying Authority:

Allocation of car parking and storage spaces	A plan showing the allocation of each car space and storage area to each individual unit shall be prepared.
Landscaping – Maintenance Access	A door shall be provided within the exterior wall along the south-eastern side of the egress pathway located adjacent to the waste room on the Ground Floor. The door shall be located generally nearby the fire egress stairs and shall provide access to the rear OSD basin and south-eastern and south-western setback areas for the purposes of landscape maintenance.
Drainage pipes in the OSD basin	All new stormwater pipes located within the OSD basin in the rear (southern) corner of the site must be situated as close as practicable to the south-western and south-eastern boundaries in order to maximise deep soil available for the aforementioned 2 new trees in this location.
Retaining wall height	Any retaining wall located along or adjacent to any boundary (excluding the OSD basin in the southern corner) must not exceed 500mm in height and must be designed to allow for natural stormwater overland flow. Any filling of land associated with the retaining wall must not be used for any purpose other than landscaping.
Driveway design	Driveway access must comply with figure 3.3-Minimum Sight Lines for Pedestrian Safety as per AS 2890.1:2004 of the Australian Standard for off-street car parking. Figure 3.3 specifies the minimum sight lines for pedestrian safety along a circulation driveway or domestic driveway. Any wall or fence or solid object on either side of the driveway/vehicular crossing where it meets the Council's road reserve at the boundary must comply with sight distance requirements stipulated in the Australian Standards AS2890.1.
Traffic Light System on Driveway and Basement Ramps	The Construction Certificate plans must detail a traffic light system to be installed on the single lane driveway AND the ramp between Basement 1 and Basement 2 so that any motorist either entering or exiting the basement or moving from one basement level to another is warned of any other vehicle

	already using the single lane driveway. This will require at a minimum warning lights at the top and bottom of the driveway and basement ramps with appropriate sensors as recommended by a Traffic Engineer.
External Lighting	The Construction Certificate plans must detail the external lighting that will be provided at the central entry point of the building. The lighting should be sensor activated for the residents' security.
Podium Planting	All podium planter boxes must achieve the minimum soil depths specified in Table 5 in Part 4P of the Apartment Design Guide.

36. **Site Management Plan -** A Site Management Plan must be submitted with the application for a Construction Certificate, and include the following:

a) location of protective site fencing;
b) location of site storage areas/sheds/equipment;
c) location of building materials for construction, e.g. stockpiles
d) provisions for public safety;
e) dust control measures;
f) method used to provide site access location and materials used;
g) details of methods of disposal of demolition materials;
h) method used to provide protective measures for tree preservation;
i) provisions for temporary sanitary facilities;
j) location and size of waste containers/skip bins;
k) details of proposed sediment and erosion control measures;
l) method used to provide construction noise and vibration management;
m) construction and demolition traffic management details.

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

37. **Erosion & Sedimentation Control -** Erosion and sediment controls must be provided to ensure:

(a) Compliance with the approved Erosion & Sediment Control Plan
(b) Removal or disturbance of vegetation and top soil is confined to within 3m of the approved building area (no trees to be removed without approval)
(c) All clean water runoff is diverted around cleared or exposed areas
(d) Silt fences, stabilised entry/exit points or other devices are installed to prevent sediment from entering drainage systems or waterways
(e) All erosion and sediment controls are fully maintained for the duration of demolition, excavation and/or development works
(f) Controls are put into place to prevent tracking of sediment by vehicles onto adjoining roadway
(g) All disturbed areas are rendered erosion-resistant by turfing, mulching, paving or similar
(h) Compliance with Managing Urban Stormwater - Soils and Construction (Blue Book) produced by Landcom 2004.

These measures are to be implemented prior to the commencement of work (including

demolition and excavation) and must remain until works are completed and all exposed surfaces are landscaped/sealed.

38. **BASIX Commitments -** All energy efficiency measures as detailed in the BASIX Certificate No. 822722M_02 dated 16 September 2019 must be implemented on the plans lodged with the application for the Construction Certificate.

39. **Traffic Management - Compliance with AS2890 -** All driveways, access ramps, vehicular crossings and car parking spaces shall be designed and constructed in accordance with the current version of Australian Standard AS2890.1.

40. **Traffic Management Plan –** A suitably qualified Traffic Engineer must prepare a Traffic Management Plan and provide a copy to the Principal Certifying Authority prior to the issue of a Construction Certificate. The Traffic Management Plan must fully detail the operation of the traffic light system on both the driveway ramp and internal basement ramp to the extent that the Engineer is satisfied that it will permit satisfactory ingress and egress to the site and circulation within the basement levels.

41. **Landscape Plans –** All landscape works shall be carried out in accordance with the approved landscape plans and specifications, drawn by Site Image Landscape Architects, Ref No SS17 – 3520, 000B - 102B and dated 26/7/17. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following -

    a) The proposed nineteen (19) trees and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
    b) Three (3) street trees fronting Railway Parade shall form part of the landscape works and paid for by the applicant.
    c) All nineteen (19) trees proposed upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification.
    d) If the planted trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
    e) A certificate of compliance for the planting of all nineteen (19) trees and shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA – Principal Certifying Authority.

42. **Tree Protection and Retention -** The following trees shall be retained and protected:

Tree Species	**Location of Tree / Tree No.**	**Tree Protection Zone (metres)** **Fencing distance from trunk**
Elaeocarpus reticulatus x 2	504 Railway Parade, north corner fronting road	3.5 metres radially
Elaeocarpus	504 Railway Parade, back	2.0 metres radially

reticulatus x 1	south west corner	
Eucalyptus microcorys	Within back fence of No 512 Railway Parade	12.0 metres radially
All excavations within the easement, within the Tree Protection Zone of the *Eucalyptus microcorys* shall be completed by hand only, under the guidance of an AQF 5 Arborist and a letter of compliance forwarded to the PCA		

Details of the trees to be retained must be included on the Construction Certificate plans.

- *The client shall engage a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation.*
- *A certificate of compliance letter for tree protection measures shall be completed and forwarded to the PCA – Principal Certifying Authority, before works, during works and once all building works have been completed, that tree protection measures have been installed and maintained during the building process.*

General Tree Protection Measures

(a) All trees on Council property, subject site and adjacent sites, to be retained shall be protected before and maintained during demolition, excavation and construction of the site.
(b) The tree protection measures must be in undertaken in accordance AS4970 -2009 Protection of trees on development sites.
(c) Details of the tree protection measures to be implemented must be provided with the application for a Construction Certificate by a qualified Arborist who holds an AQF Level 5 or above in Arboriculture and who is a current practicing and financial member of an Arboricultural Association or Affiliation.
(d) The Project Arborist must be present on-site during the stages of excavation, demolition and construction when works are being undertaken that could impact on the tree canopy or root zone within the tree protection zone of each tree.
(e) Unless otherwise specified in AS 4970-2009 Protection of trees on development sites, a protective fence consisting of 2.4 x 1.8 metres high, fully supported chainmesh fence shall be used. The distance of the fence from the base of each tree is to be in accordance with the TPZ listed in the table above. A layer of organic mulch 100 millimetres thick shall be placed over the protected area and no soil or fill should be placed within the protection area.
(f) The Tree Protection Zone of each tree, to be protected, shall be watered thoroughly and regularly to minimise the effects of construction works.
(g) No building products/ materials or services shall be installed within the TPZ of the tree/s unless approved by Council. This fence shall be kept in place during demolition, construction and also have a sign displaying 'Tree Protection Zone – DO NOT ENTER' attached to the fence and must also include the name and contact details of the Project Arborist.

Excavation works near tree to be retained

(h) Excavations around the trees to be retained on site or the adjoining properties shall be supervised by the Project Arborist to ensure that the root system will not adversely be affected.
(i) Where the Tree Protection Zone (TPZ) of trees on site or adjoining sites become compromised by any excavation works, the Project arborist shall be consulted to establish the position of any major roots and determine the necessary measures to protect these roots. The recommendations of the Arborist shall be submitted to Council prior to any further demolition or construction works taking place.

(j) Tree Protection Zone around the trees to be retained are not to have soil level changes or services installed in this area. Any structures proposed to be built in this area of the trees are to utilise pier and beam or cantilevered slab construction.

Details satisfying this condition shall be shown on the Construction Certificate plans.

Removal or pruning of any other tree (that would require consent of Council) on the site is not approved. All pruning must be undertaken by a qualified Arborist in accordance with AS4373 -2007 *Pruning of Amenity Trees* and Amenity Tree Industry, Code of Practice (SafeWork NSW August 1998).

43. **Tree Removal & Replacement - Tree removal -** Permission is granted for the removal of the following trees:

Tree Species	Number of trees	Location
Ligustrum lucidum	X1	Within site, north eastern fence line
Ligustrum lucidum	X2	Within site, south east fence corner
Hibiscus sinensis	X1	North east fence line
Lagerstroemia indica	X1	Middle of site
Tibouchina Spp	X2	Middle of site
Plumeria rubra	X1	South fence line
Lagerstroemia indica	X1	South fence line
Cinnamomum camphora	X1	South east fence line
Ficus benjamina	X1	Within front corner of site north west
Ficus benjamina	X1	Within easement
Viburnum tinus	X1	Within easement

General Tree Removal Requirements

(a) All tree removal shall be carried out by a minimum certificate Level 3, Licenced and insured Tree Surgeon/Arborist to ensure that removal is undertaken in a safe manner and complies with the AS 4373-2007 - *Pruning of Amenity Trees* and Tree Works Industry Code of Practice (Work Cover NSW 1.8.98).

(b) No trees are to be removed on the site or neighbouring properties without the prior written approval of Council.

Street Tree Replacement by Council

(a) Three (3) street trees of species to be determined must be provided in the road reserve fronting the site.

(b) Council shall be appointed to plant all trees on public land. All costs associated with the planting of trees shall be met by the applicant.

(c) The fee payable is to ensure that the development makes adequate provision for the demand it generates for public amenities and public services within the area.

(d) The fees payable will be adjusted at the time of payment to reflect changes in the cost of delivering public amenities and public services, in accordance with the indices provided by the relevant conditions set out in this consent.

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

44. **Allocation of street addresses -** In order to comply with AS/NZS 4819:2011 Rural and Urban Addressing & the NSW Addressing User Manual (Geographical Names Board of NSW) and Georges River Council's requirements, the street address for the subject development is allocated as follows:

Primary Street Address

- 506 Railway Parade ALLAWAH NSW 2218

Apartment Addresses

- To be obtained from Council's GIS Unit

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

PRIOR TO THE COMMENCEMENT OF WORK (INCLUDING DEMOLITION & EXCAVATION)

45. **Dilapidation Report on Public Land - Major Development Only -** Prior to the commencement of works (including demolition and excavation), a dilapidation report must be prepared for the Council infrastructure adjoining the development site, including:

The report must include the following:

(a) Photographs showing the existing condition of the road pavement fronting the site,
(b) Photographs showing the existing condition of the kerb and gutter fronting the site,
(c) Photographs showing the existing condition of the footpath pavement fronting the site,
(d) Photographs showing the existing condition of any retaining walls within the footway or road, and
(e) The full name and signature of the structural engineer.
(f) The Dilapidation Report must be prepared by a qualified structural engineer. The report must be provided to the PCA and a copy provided to the Council.

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

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

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

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

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

A site and location plan of the hoarding with detailed elevation, dimensions, setbacks, heights, entry and exit points to/from the site, vehicle access points, location of public utilities, electrical overhead wire protection, site management plan and builders sheds location; and

Hoarding plan and details that are certified by an appropriately qualified engineer; and

The payment to Council of a footpath occupancy fee based on the area of footpath to be occupied and Council's Schedule of Fees and Charges (available on our website) before the commencement of work; and

A Public Risk Insurance Policy with a minimum cover of $10 million in relation to the occupation of and works within Council's road reserve, for the full duration of the proposed works, must be obtained a copy provided to Council. The Policy is to note Council as an interested party; and

The application must be endorsement by the Roads & Maritime Services (RMS) as the hoarding is located within 100m of an intersection with traffic lights. For assistance you should contact the DA unit at RMS and speak to Hans on 88492076. Or email hans.pilly.mootanah@rms.nsw.gov.au to obtain concurrence for the hoarding structure.

47. **Structural Engineers Details - Supporting excavations and adjoining land -** Prior to the commencement of work in connection with the excavation of the site associated with the basement car park, structural engineer's details relating to the method of supporting the excavation must be submitted.

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

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

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

Note: Copies of the Act, Regulation and Code of Practice can be downloaded free of

charge from the SafeWork NSW website: www.SafeWork.nsw.gov.au.

49. **Demolition Notification Requirements -** The following notification requirements apply to this consent:

(a) The developer /builder must notify adjoining residents five (5) working days prior to demolition. Such notification is to be a clearly written note giving the date demolition will commence, contact details of the developer/builder, licensed asbestos demolisher and the appropriate regulatory authority. Notification is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side and immediately at the rear of the demolition site.
(b) Five (5) working days prior to demolition, the developer/builder is to provide written notification to Council advising of the demolition date, details of the SafeWork licensed asbestos demolisher and the list of residents advised of the demolition.
(c) On demolition sites where buildings to be demolished contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position (from street frontage) on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos material has been removed from the site to an approved waste facility.

50. **Dial before you dig -** The applicant shall contact "Dial Before You Dig on 1100" to obtain a Service Diagram prior to the issuing of the Construction Certificate. The sequence number obtained from "Dial Before You Dig" shall be forwarded to the Principal Certifying Authority (PCA) and Council for their records.

51. **Registered Surveyors Report - During Development Work -** A report must be submitted to the PCA at each of the following applicable stages of construction:

a) Set out before commencing excavation.
b) Floor slabs or foundation wall, before formwork or commencing brickwork.
c) Completion of Foundation Walls - Before any construction of flooring, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans.
d) Completion of Floor Slab Formwork - Before pouring of concrete/walls construction, detailing the location of the structure relative to adjacent boundaries and floor levels relative to the datum shown on the approved plans. In multi-storey buildings a further survey must be provided at each subsequent storey.
e) Completion of any Pool Formwork - Before concreting of pool shell, detailing the location of the pool relative to the adjacent boundaries and its height relative to the datum shown on the approved plans.
f) Completion of any Roof Framing - Before roof covered detailing eaves/gutter setback from boundaries.
g) Completion of all Work - Detailing the location of the structure (including eaves/gutters) relative to adjacent boundaries and its height relative to the datum shown on the approved plans. A final Check Survey must indicate the reduced level of the main ridge.

Work must not proceed beyond each stage until the PCA is satisfied that the height and location of the building is proceeding in accordance with the approved plans.

52. **Utility Arrangements -** Arrangements are to be made with utility authorities in respect to the services supplied by those authorities to the development. The cost associated with the provision or adjustment of services within the road and footway areas is to be at

the applicant's expense.

DURING CONSTRUCTION

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

54. **Development Engineering - Damage within Road Reserve and Council Assets** - The owner shall bear the cost of restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site. This may include works by Public Utility Authorities in the course of providing services to the site.

55. **Development Engineering - Public Utility and Telecommunication Assets** - The owner shall bear the cost of any relocation or modification required to any Public Utility Authority assets including telecommunication lines and cables and restoring any footpath, roadway and any other Council assets damaged due to works at, near or associated with the site**.**

56. **Site sign - Soil & Erosion Control Measures -** Prior to the commencement of works (including demolition and excavation), a durable site sign, issued by Council in conjunction with this consent, must be erected in a prominent location on site. The site sign warns of the penalties which apply to pollution, storing materials on road or footpath and breaches of the conditions relating to erosion and sediment controls. The sign must remain in a prominent location on site up until the completion of all site and building works.

57. **Hours of construction for demolition and building work -** Any work activity or activity associated with the development consent that requires the use of any tools (including hand tools) or any power operated plant and machinery that creates noise on or adjacent to the site shall not be performed, or permitted to be performed, except between the hours of 7.00 am to 5.00 pm, Monday to Saturday inclusive. No work or ancillary activity is permitted on Sundays, or Public Holidays.

    Note: A penalty infringement notice may be issued for any offence.

58. **Ground levels and retaining walls -** The ground levels of the site shall not be excavated, raised or filled, or retaining walls constructed on the allotment boundary, except where indicated on approved plans or approved by Council.

59. **Cost of work to be borne by the applicant -** The applicant shall bear the cost of all works associated with the construction of the development that occurs on Council property. Care must be taken to protect Council's roads, including the made footway, kerbs, etc., and, where plant and vehicles enter the site, the footway shall be protected against damage by deep-sectioned timber members laid crosswise, held together by hoop iron straps and chamfered at their ends. This construction shall be maintained in a state of good repair and condition throughout the course of construction.

60. **Obstruction of Road or Footpath** - The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste or skip bins, or any other matter is not permitted unless separately approved by Council under Section 138

of the Roads Act 1993 and/or under Section 68 of the Local Government Act 1993. Penalty infringement Notices may be issued for any offences and severe penalties apply.

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

62. **Waste Management Facility -** All materials removed from the site as a result of demolition, site clearing, site preparation and, or excavation shall be disposed of at a suitable Waste Management Facility. No vegetation, article, building material, waste or the like shall be ignited or burnt.

    Copies of all receipts for the disposal, or processing of all such materials shall be submitted to the PCA and Council, where Council is not the Principal Certifying Authority.

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

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

PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

64. **Use Of Communal Rooftop Terrace –** A Plan of Management (POM) for use of the communal rooftop terrace on Level 3 must be submitted for approval of Council. The POM must include the following:

    (a) The hours of use of the rooftop terrace must be restricted from 8am until 10pm, 7 days a week.
    (b) The maximum number of users at any one time shall be specified (for this development a maximum of 20 is recommended).
    (c) Outline provisions to maximise the safety (fire safety and general safety) for users of this area.
    (d) Stipulate that no amplified music is to be played on the terrace.
    (e) Identify other measures to ensure that the amenity and safety of persons within the development and in nearby existing and future development is maintained.
    (f) Detail the location and type of signage to be installed in the building to notify residents and visitors in respect to the use of this space.

    The POM shall be submitted and approved in writing by Council's Manager of Building and Development.

    The approved POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision and a sign in the front entry of the building shall be included to ensure the use of this space is monitored and understood by all occupants.

65. **SEPP 65 Design Verification Statement -** The PCA must not issue an Occupation Certificate to authorise a person to commence occupation of the residential flat development unless the PCA has received a design verification from a qualified

designer, being a statement in which the qualified designer verifies that the residential flat development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No 65Design Quality of Residential Flat Development.

66. **Connection to the network will be required prior to the release of any Occupation Certificate –** Where works within the road reserve are to be carried out by the developer, a Road Opening Permit must be obtained from Council's Customer Service Centre before commencement of work.

67. **Section 73 Compliance Certificate –** A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be submitted to the PCA prior to the issue of the Occupation/Subdivision Certificate.

68. **Restriction to User and Positive Covenant for On-Site Detention Facility -** A Restriction on Use of the Land and Positive Covenant shall be created and registered on the title of the property, which places the responsibility for the maintenance of the on-site stormwater management system on the owners of the land. The terms of the instrument are to be in accordance with Council's standard terms and restrictions which are as follows;

69. **Restrictions on Use of Land -** *The registered proprietor shall not make or permit or suffer the making of any alterations to any on-site stormwater management system which is, or shall be, constructed on the lot(s) burdened without the prior consent in writing of Georges River Council. The expression "on-site stormwater management system" shall include all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to manage stormwater quantity or quality including the temporary detention or permanent retention of stormwater storages. Any on-site stormwater management system constructed on the lot(s) burdened is hereafter referred to as "the system".*

Name of Authority having the power to release, vary or modify the Restriction referred to is Georges River Council.

Positive Covenants

1. The registered proprietor of the lot(s) hereby burdened will in respect of the system:
   a) keep the system clean and free from silt, rubbish and debris
   b) maintain and repair at the sole expense of the registered proprietors the whole of the system so that if functions in a safe and efficient manner
   c) permit the Council or its authorised agents from time to time and upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the land for the compliance with the requirements of this covenant
   d) comply with the terms of any written notice issued by the Council in respect of the requirements of this covenant within the time stated in the notice.

2. Pursuant to Section 88F(3) of the Conveyancing Act 1919 the Council shall have the following additional powers:
   a) in the event that the registered proprietor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary materials and equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in part 1(d) above
   b) the Council may recover from the registered proprietor in a Court of competent

jurisdiction:

i. any expense reasonably incurred by it in exercising its powers under subparagraph (i) hereof. Such expense shall include reasonable wages for the Council's employees engaged in effecting the work referred to in (i) above, supervising and administering the said work together with costs, reasonably estimated by the Council, for the use of materials, machinery, tools and equipment in conjunction with the said work.

ii. legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act. Name of Authority having the power to release vary or modify the Positive Covenant referred to is Georges River Council.

70. **Maintenance Schedule -** On-site Stormwater Management - A Maintenance Schedule for the proposed on-site stormwater management measures is to be prepared and submitted to Council. The Maintenance Schedule shall outline the required maintenance works, how and when these will be done and who will be carrying out these maintenance works.

71. **Works as Executed and Certification of Stormwater works -** Prior to the issue of an Occupation Certificate, the PCA must ensure that the stormwater drainage system has been constructed in accordance with the approved design and relevant Australian Standards. A works-as-executed drainage plan and certification must be forwarded to the PCA and Council, from a professional engineer specialising in hydraulic engineering.

This Plan and Certification shall confirm that the design and construction of the stormwater drainage system satisfies the conditions of development consent and the Construction Certificate stormwater design details approved by the PCA.

The works-as-executed drainage plan must be prepared by a professional engineer specialising in hydraulic engineering in conjunction with a Registered Surveyor and must include the following details (as applicable):

(a) The location of any detention basin/s with finished surface levels;
(b) Finished site contours at 0.2 metre intervals (if applicable)
(c) Volume of storage available in any detention areas;
(d) The location, diameter, gradient and material (i.e. PVC, RC etc.) of all stormwater pipes;
(e) The orifice size/s (if applicable);
(f) Details of any infiltration/absorption systems; and (if applicable);
(g) Details of any pumping systems installed (including wet well volumes) (if applicable).

72. **Consolidation of Site -** The site shall be consolidated into one (1) allotment and by a Plan of Consolidation being prepared by a Registered Surveyor. This Plan shall be registered at the NSW Land and Property Information prior to the issue of a final occupation certificate.

73. **Requirements prior to the issue of the Occupation Certificate –** The following shall be completed and or submitted to the PCA prior to the issue of the Occupation Certificate:

(a) All the stormwater/drainage works shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
(b) The internal driveway construction works, together with the provision for all services (conduits and pipes laid) shall be completed in accordance with the approved Construction Certificate plans prior to the issue of the Occupation Certificate.
(c) Construct any new vehicle crossings required.
(d) Replace all redundant vehicle crossing laybacks with kerb and guttering, and replace redundant concrete with turf.
(e) A Section 73 (Sydney Water) Compliance Certificate for the Subdivision shall be issued and submitted to the PCA prior to the issue of the Occupation Certificate.
(f) Work as Executed Plans prepared by a Chartered Professional Engineer or a Registered Surveyor when all the site engineering works are complete shall be submitted to the PCA prior to the issue of the Occupation Certificate.

74. **Vehicular crossing & Frontage work - Major development –** The following vehicular crossing and road frontage works will be required to facilitate access to and from the proposed development site:

(a) Construct a 1.2 metre wide footpath for the full length of the frontage of the site in Railway Parade in accordance with Council's Specifications applying at the time construction approval is sought.
(b) The thickness and design of the driveway shall be in accordance with Council's Specifications applying at the time construction approval is sought.
(c) Construct a new 150mm high concrete kerb with 450mm wide gutter for the full frontage(s) of the site in Railway Parade, in accordance with Council's Specifications for kerb and guttering, applying at the time construction approval is sought.
(d) Any existing vehicular crossing and/or laybacks which are redundant must be removed. The kerb and gutter, any other footpath and turf areas shall be restored at the expense of the applicant. The work shall be carried out in accordance with Council's specification, applying at the time construction approval is sought.

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

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

- If applicable stormwater pipes, pits and connections to public stormwater systems within the road related area;
- Driveways and vehicular crossings within the road related area;
- Removal of redundant driveways and vehicular crossings;
- New footpaths within the road related area;
- Relocation of existing power/light pole if applicable

- Relocation/provision of street signs
- New footway verges, where a grass verge exists, the balance of the area between the footpath and the kerb or site boundary over the full frontage of the proposed development must be turfed. The grass verge must be constructed to contain a uniform minimum 75mm of friable growing medium and have a total cover of turf predominant within the street.
- New or reinstated kerb and guttering within the road related area and new or reinstated road surface pavement within the road where it is applicable.

Council's Engineering Services Section must advise in writing that the works have been completed to their satisfaction prior to the issue of the Occupation Certificate. Note: The damage deposit paid to Council will not be released until the works have been completed to Council's satisfaction.

76. **Traffic Control Devices -** The internal road network, pedestrian facilities and parking facilities (including visitor parking and employee parking) shall be designated and line marked in accordance with Australian Standard - AS1742, Manual of Uniform Traffic Control Devices.

A traffic light control system must be installed on the single lane driveway leading from Railway Parade into Basement 1 and on the internal ramp between Basement 1 and Basement 2, so that any motorist either entering or exiting the basement or travelling between basement levels is appropriately warned of any other vehicle already using the driveway or ramp. This will require at a minimum warning lights at the top and bottom of the driveway and basement ramp with appropriate sensors as recommended in writing by a suitably qualified Traffic Engineer and to the satisfaction of the Principal Certifying Authority.

If an exit from car park utilises a pedestrian footpath, then a warning system such as flashing light and/or 'alarm sound' must be installed on the subject property to alert pedestrians of vehicles exiting the car park. The Alarm System must be designed and installed in accordance with AS2890.1 -2004.

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

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

(a) Photographs showing the condition of the road pavement fronting the site
(b) Photographs showing the condition of the kerb and gutter fronting the site
(c) Photographs showing the condition of the footway including footpath pavement fronting the site
(d) Photographs showing the condition of retaining walls within the footway or road
(e) Closed circuit television/video inspection (in DVD format) of public stormwater drainage systems fronting, adjoining or within the site, and
(f) The full name and signature of the professional engineer.

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

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

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

78. **Stormwater drainage works - Works As Executed –** Prior to the issue of the Occupation Certificate, storm water drainage works are to be certified by a professional engineer specialising in hydraulic engineering, with Works-As-Executed drawings supplied to Council detailing:

(a) Compliance with conditions of development consent relating to stormwater;
(b) The structural adequacy of the On-Site Detention system (OSD);
(c) That the works have been constructed in accordance with the approved design and will provide the detention storage volume and attenuation in accordance with the submitted calculations;
(d) Pipe invert levels and surface levels to Australian Height Datum;
(e) Contours indicating the direction in which water will flow over land should the capacity of the pit be exceeded in a storm event exceeding design limits.

Council's Engineering Services section must advise in writing that they are satisfied with the Works-As-Executed prior to the issue of an Occupation Certificate.

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

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

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

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

80. **Slip Resistance -** At completion of work an in-situ (on-site) test, in wet and dry conditions, must be carried out on the pedestrian floor surfaces used in the foyers, public corridors/hallways, stairs and ramps as well as the floor surfaces in wet rooms in any commercial/retail/residential units to ascertain the actual slip resistance of such surfaces taking into consideration the effects of grout, the gradients of the surface and changes from one material to another. The in-situ test must be carried out in accordance with AS/NZS 4663:2002. Proof of compliance must be submitted with the application for the Occupation Certificate for approval.

81. **Structural Certificates -** The proposed structure must be constructed in accordance with details designed and certified by the practising qualified structural engineer. In addition, Compliance or Structural Certificates, to the effect that the building works have been carried in accordance with the structural design, must be submitted to the Principal Certifier prior issue of the Occupation Certificate.

82. **BASIX Certificate -** All energy efficiency measures as detailed in the approved BASIX

Certificate in the plans approved with the Development Consent, must be implemented before issue of any Occupation Certificate.

83. **Acoustic Compliance -** Prior to the issue of any Occupation Certificate, a report prepared by a suitably qualified acoustic consultant must be submitted to the satisfaction of the PCA certifying that the construction has incorporated the recommendations in the DA Acoustic Report Acoustic, Vibration & Noise Pty Ltd and dated 28 May 2018.

84. **Electricity Supply -** Evidence shall be provided demonstrating that the development has been connected to the Ausgrid, if required.

85. **Car Parking Signage and Line Marking –** All car parking spaces shall be clearly designated (sign posted and marked on ground) and line marked prior to the issuing of an Occupation Certificate. Signage, pavement symbols and line marking shall comply with Australian Standards, AS1742, Manual of Uniform Traffic Control Devices and NSW Road Transport (Safety and Traffic Management) Regulations 1999.

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

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

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

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

    (a) Residents' parking: 25 car spaces allocated to individual apartments
    (b) Residential visitor parking: 4 car spaces for visitors
    (c) Car wash bay: 1 bay, shared with a visitor space

88. **BASIX Compliance Certificate -** A Compliance Certificate must be provided to the PCA regarding the implementation of all energy efficiency measures as detailed in the approved BASIX Certificate before any Occupation Certificate is issued.

89. **Completion of Landscape Works -** All landscape works must be completed before the issue of the Final Occupation Certificate in accordance with approved landscape plans and specifications, drawn by Conzept Landscape Architects, reference numbers LPDA 20-007, Page Nos. 1 - 4, Rev. A, dated 09/07/2019.

90. **Completion of Landscape Works –** All landscape works must be completed before the issue of the Final Occupation Certificate. In accordance with approved landscape plans and specifications, drawn by Site Image Landscape Architects, Ref No SS17 – 3520, 000B - 102B and dated 26/7/17. The landscaping shall be maintained in accordance with the approved plans in perpetuity, subject to the following:

    a) The proposed nineteen (19) trees and plant species, pot/ bag size and quantities of plants shall be in accordance with the proposed plant schedule upon the landscape plan. If plant species, pot/ bag size and quantities cannot be sourced, Council shall be contacted for alternatives.
    b) Three (3) street trees fronting Railway Parade Shall form part of the landscape works and paid for by the applicant.
    c) All nineteen (19) trees proposed upon the approved landscape plan shall comply with AS 2303 – 2018, *Tree Stock for Landscape use* and *NATSPEC Specifying Trees: a guide to assessment of tree quality (2003)*, and be planted and maintained in accordance with Councils standard specification.
    d) If the planted trees and plants are found to be faulty, damaged, dying or dead within twelve (12) months of planting then they must be replaced with the same species. If the trees are found dead before they reach a height where they are protected by Councils Tree Management Controls, they must be replaced with the same species and pot/bag size.
    e) A certificate of compliance for the planting of all nineteen (19) trees and shrubs proposed for the site. An AQF 5 Horticulturist shall be engaged and in writing certify that all trees have been planted as per landscape plan and specifications and forwarded to the PCA – Principal Certifying Authority.

91. **Notice to Council - Allocation of street addresses -** Prior to the issue of any Occupation Certificate, 'as-built' drawings detailing the installed and allocated street/unit address and numbering must be submitted to the satisfaction of Council.

92. **Clearance Certificate -** Prior to the issue of any Occupation Certificate, a clearance certificate prepared by an appropriately qualified environmental consultant or similarly qualified and experienced practitioner must be submitted to Council.

OPERATIONAL CONDITIONS (ONGOING)

93. **Loading & Unloading of vehicles -** All loading and unloading of vehicles in relation to the use of the premises shall take place wholly within the site.

94. **Entering & Exiting of vehicles -** All vehicles shall enter and exit the premises in a forward direction.

95. **Annual Fire Safety Statement –** The owner of the building premises must ensure the Council is given an annual fire safety statement in relation to each essential fire safety measure implemented in the building. The annual fire safety statement must be given

    (a) Within 12 months after the date on which the fire safety certificate was received.

(b) Subsequent annual fire safety statements are to be given within 12 months after the last such statement was given.

(c) An annual fire safety statement is to be given in or to the effect of Clause 181 of the Environmental Planning and Assessment Regulation 2000.

(d) A copy of the statement is to be given to the Commissioner of Fire & Rescue NSW, and a further copy is to be prominently displayed in the building.

OPERATIONAL REQUIREMENTS UNDER THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

96. **Requirement for a Construction Certificate -** The erection of a building must not commence until a Construction Certificate has been issued.

97. **Appointment of a PCA -** The erection of a building must not commence until the applicant has:

(a) appointed a PCA for the building work; and
(b) if relevant, advised the PCA that the work will be undertaken as an Owner -Builder.

If the work is not going to be undertaken by an Owner - Builder, the applicant must:

(a) appoint a Principal Contractor to undertake the building work. If residential building work (within the meaning of the Home Building Act 1989) is to be undertaken, the Principal Contractor must be a holder of a contractor licence; and
(b) notify the PCA of the details of any such appointment; and
(c) notify the Principal Contractor of any critical stage inspections or other inspections that are required to be carried out in respect of the building work.

An Information Pack is attached for your convenience should you wish to appoint Georges River Council as the PCA for your development.

98. **Notification Requirements of PCA -** No later than two days before the building work commences, the PCA must notify:

(a) the consent authority and the Council (if not the consent authority) of his or her appointment; and
(b) the applicant of the critical stage inspections and other inspections that are to be carried out with respect to the building work.

99. **Notice of Commencement -** The applicant must give at least two days notice to the Council and the PCA of their intention to commence the erection of a building. A Notice of Commencement Form is attached for your convenience.

100. **Critical Stage Inspections -** The last critical stage inspection must be undertaken by the PCA. The critical stage inspections required to be carried out vary according to Building Class under the Building Code of Australia and are listed in Clause 162A of the Environmental Planning and Assessment Regulation 2000.

101. **Notice to be given prior to critical stage inspections -** The principal contractor for a building site, or the owner-builder, must notify the PCA at least 48 hours before each required inspection needs to be carried out.

Where Georges River Council has been appointed as the PCA, 48 hours notice in

writing, or alternatively 24 hours notice by facsimile or telephone, must be given when specified work requiring inspection has been completed.

102. **Occupation Certificate -** A person must not commence occupation or use of the whole or any part of a new building unless an Occupation Certificate has been issued in relation to the building or part.

Only the PCA appointed for the building work can issue the Occupation Certificate.
An Occupation Certificate Application Form is attached for your convenience.

PRESCRIBED CONDITIONS

103. **Clause 97A - BASIX Commitments -** This Clause requires the fulfilment of all BASIX Commitments as detailed in the BASIX Certificate to which the development relates.

104. **Clause 98 - Building Code of Australia & Home Building Act 1989 -** Requires all building work to be carried out in accordance with the Building Code of Australia. In the case of residential building work to which the Home Building Act 1989 relates, there is a requirement for a contract of insurance to be in force before any work commences.

105. **Clause 98A - Erection of Signs -** Requires the erection of signs on site and outlines the details which are to be included on the sign. The sign must be displayed in a prominent position on site and include the name and contact details of the PCA and the Principal Contractor.

106. **Clause 98B - Home Building Act 1989 -** If the development involves residential building work under the Home Building Act 1989, no work is permitted to commence unless certain details are provided in writing to Council. The name and licence/permit number of the Principal Contractor or Owner Builder and the name of the Insurer by which work is insured under Part 6 of the Home Building Act 1989.

107. **Clause 98E - Protection & support of adjoining premises -** If the development involves excavation that extends below the level of the base of the footings of a building on adjoining land, this prescribed condition requires the person who benefits from the development consent to protect and support the adjoining premises and where necessary underpin the adjoining premises to prevent any damage.

108. **Clause 98E - Site Excavation -** Excavation of the site is to extend only to that area required for building works depicted upon the approved plans. All excess excavated material shall be removed from the site.

All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
If the soil conditions require it, retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil shall be provided and adequate provision shall be made for drainage.

END OF CONDITIONS

NOTES/ADVICES

1. **Review of Determination -** Section 8.2 of the Environmental Planning and Assessment Act confers on an applicant who is dissatisfied with the determination of the application

the right to lodge an application with Council for a review of such determination. Any such review must however be completed within 6 months from its determination. Should a review be contemplated sufficient time should be allowed for Council to undertake public notification and other processes involved in the review of the determination.

Note: Review provisions do not apply to Complying Development, Designated Development, State Significant Development, Integrated Development or any application determined by the Sydney South Planning Panel or the Land & Environment Court.

2. **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.

3. **Lapsing of Consent -** This consent will lapse unless the development is physically commenced within 5 years from the Date of Operation of this consent, in accordance with Section 4.53 of the Environmental Planning and Assessment Act 1979 as amended.

4. **Access to NSW Legislations (Acts, Regulations and Planning Instruments)** - NSW legislation can be accessed free of charge at www.legislation.nsw.gov.au

5. **Principal Certifier -** Should the Council be appointed as the Principal Certifier in determining the Construction Certificate, the building must comply with all the applicable deemed to satisfy provision of the BCA. However, if an alternative solution is proposed it must comply with the performance requirements of the BCA, in which case, the alternative solution, prepared by an appropriately qualified fire consultant, accredited and having specialist qualifications in fire engineering, must justifying the non-compliances with a detailed report, suitable evidence and expert judgement. Council will also require if deemed necessary, for the alternative solution to undergo an independent peer review by either the CSIRO or other accredited organisation. In these circumstances, the applicant must pay all costs for the independent review.

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

7. **Compliance with Access, Mobility and AS4299 - Adaptable Housing** - Should the Council be appointment as the PCA, the Construction Certificate Application must be accompanied by detailed working plans and a report or a Certificate of Compliance from an Accredited Access Consultant certifying that the building design and access to the adaptable units complies with Council's DCP and AS 4299 Adaptable Housing.

8. **Noise** - Noise related conditions - Council will generally enforce noise related conditions in accordance with the Noise Guide for Local Government (http://www.environment.nsw.gov.au/noise/nglg.htm) and the Industrial Noise Guidelines (http://www.environment.nsw.gov.au/noise/industrial.htm) publish by the Department of Environment and Conservation. Other state government authorities also regulate the Protection of the Environment Operations Act 1997.

Useful links relating to Noise:

(a) Community Justice Centres - free mediation service provided by the NSW Government (www.cjc.nsw.gov.au).
(b) Department of Environment and Conservation NSW, Noise Policy Section web page (www.environment.nsw.gov.au/noise).
(c) New South Wales Government Legislation home page for access to all NSW legislation, including the Protection of the Environment Operations Act 1997 and the Protection of the Environment Noise Control Regulation 2000 (www.legislation.nsw.gov.au).
(d) Australian Acoustical Society - professional society of noise-related professionals (www.acoustics.asn.au/index.php).
(e) Association of Australian Acoustical Consultants - professional society of noise related professionals (www.aaac.org.au).
(f) Department of Gaming and Racing - (www.dgr.nsw.gov.au).

9. **Acoustical Engineer Contacts & Reference Material** - Further information including lists of Acoustic Engineers can be obtained from:

(a) Australian Acoustical Society - professional society of noise-related professionals (www.acoustics.asn.au)
(b) Association of Australian Acoustical Consultants - professional society of noise related professionals (www.aaac.org.au)

(c) NSW Industrial Noise Policy - Office of Environment & Heritage (www.environment.nsw.gov.au)

10. **Strata Subdivisions**
(a) Council will check the consent conditions on the relevant Strata Subdivision consent. Failure to submit the required information will delay endorsement of the plan of subdivision.
(b) Council will undertake the required inspections to satisfy the requirements of the Strata Schemes Development Regulation 2016 to determine the Strata Certificate.
(c) Strata Plans, Administration Sheets, 88B Instruments and copies must not be folded.
(d) All Strata Plans, Strata Plan Administration Sheets and 88B Instruments shall be submitted to Council enclosed in a protective cardboard tube (to prevent damage during transfer).

11. **Sydney Water Section 73 Certificates** - The Section 73 Certificate must be a separate certificate that relates specifically to this development consent. For example, if the development consent relates to the subdivision of the land, a Section 73 Certificate for the construction of the building that is subject to a different development consent will not suffice.

12. **Electricity Supply** - This development may need a connection to the Ausgrid network which may require the network to be extended or its capacity augmented. You are advised to contact Ausgrid on 13 13 65 or www.ausgrid.com.au (Business and Commercial Services) for further details and information on lodging your application to connect to the network.

13. **Disability Discrimination Act** - This application has been assessed in accordance with the Environmental Planning and Assessment Act 1979. No guarantee is given that the

proposal complies with the Disability Discrimination Act 1992. The applicant is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which refers to AS1428.1-Design for Access and Mobility.

14. **Council as PCA - Total Conformity with BCA** - **Accompanying Information -** Should the Council be appointed as the Principal Certifier, the Construction Certificate Application must be accompanied by the following details, with plans prepared and certified by an appropriately qualified person demonstrating compliance with the BCA:

a) Mechanical ventilation to bathroom, laundry and basement areas not afforded natural ventilation.
b) Fire-fighting services and equipment including hydrant systems and booster assembly location, sprinkler and valve room systems, hose reels, portable fire extinguishers, smoke hazard management systems, sound and warning systems.
c) Emergency lighting and exit signs throughout, including communal open space areas, lobby/foyer and basement areas.
d) Construction of all fire doors including warning and operational signage to required exit and exit door areas.
e) Egress travel distances to exits and the discharge from fire isolated exits including the swing of exit doors.
f) The spandrel protection of openings in external walls
g) The protection of paths of travel from a fire isolated exit when passing within 6m of an opening within the external wall of the building.
h) Fire compartmentation and fire wall separation details including all stairway, lift and service shaft areas.
i) The location and construction of an electricity substation, including the location and smoke separation of electrical distribution boards.
j) Sound transmission and insulation details.
k) Window schedule is to include the protection of openable windows.

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

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

15. **Long Service Levy** - The Long Service Corporation administers a scheme which provides a portable long service benefit for eligible workers in the building and construction industry in NSW. All benefits and requirements are determined by the Building and Construction Industry Long Service Payments Act 1986. More information about the scheme and the levy amount you are required to pay to satisfy a condition of your consent can be found at http://www.longservice.nsw.gov.au.

The required Long Service Levy payment can be direct to the Long Service Corporation via their web site https://online.longservice.nsw.gov.au/bci/levy. Payments can only be processed on-line for the full levy owing and where the value of work is between $25,000 and $6,000,000. Payments will be accepted for amounts up to $21,000, using either

MasterCard or Visa.

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

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

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

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

17. **Site Safety Fencing** - Site fencing must be erected in accordance with SafeWork Guidelines, to exclude public access to the site throughout the demolition and/or construction work, except in the case of alterations to an occupied dwelling. The fencing must be erected before the commencement of any work and maintained throughout any demolition and construction work.

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

18. **Stormwater & Ancillary Works - Applications under Section 138 Roads Act and/or Section 68 Local Government Act 1993** - To apply for approval under Section 138 of the Roads Act 1993 and/or Section 68 Local Government Act 1993:

    (a) Complete the Stormwater Drainage Application Form which can be downloaded from Georges River Council's website at www.georgesriver.nsw.gov.au.
    (b) In the Application Form, quote the Development Consent No. (eg DA2018/0***) and reference this condition number (eg Condition 23)
    (c) Lodge the application form, together with the associated fees at Council's Customer Service Centre, during business hours. Refer to Council's adopted Fees and Charges for the administrative and inspection charges associated with stormwater applications.

    The developer must meet all costs of the extension, relocation or reconstruction of any part of Council's drainage system (including design drawings and easements) required to carry out the approved development.

    The preparation of all engineering drawings (site layout plans, cross sections, longitudinal sections, elevation views together with a hydraulic grade analysis) and specifications for the new stormwater drainage system to be arranged by the applicant. The design plans must be lodged and approved by Council prior to the issue of a Construction Certificate.
    NOTE: A minimum of four weeks should be allowed for assessment.

ATTACHMENTS

Attachment 1 Amended- Site plan - 506-508 Railway Parade Allawah

Attachment 2 A-1900_Elevation
Attachment 3 A-1800_Elevation