

**REPORT TO GEORGES RIVER COUNCIL  
LPP MEETING OF THURSDAY, 07 MAY 2020**

<b>LPP Report No</b>	<b>LPP018-20</b>	<b>Development Application No</b>	<b>DA2018/0059</b>
<b>Site Address &amp; Ward Locality</b>	261-265 Princes Highway Carlton Kogarah Bay Ward		
<b>Proposed Development</b>	Demolition of existing building and construction of five (5) storey shop top housing development		
<b>Owners</b>	Kirshu Pty Ltd		
<b>Applicant</b>	MHN Design Urban		
<b>Planner/Architect</b>	MHN Design Urban		
<b>Date Of Lodgement</b>	22/02/2018		
<b>Submissions</b>	N/A as the recent amended proposal did not require re-notification. Two (2) submissions received as a result of a previous notification of the application.		
<b>Cost of Works</b>	\$15,471,770.00		
<b>Local Planning Panel Criteria</b>	SEPP 65 Application under Ministers Direction of 23 February 2018		
<b>List of all relevant s.4.15 matters (formerly s79C(1)(a))</b>	State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, State Environmental Planning Policy (Building Sustainability Index: BASIX)2004, Greater Metropolitan Regional Environmental Plan No.2 – Georges River Catchment, State Environmental Planning Policy No.55 – Remediation of Land, Draft State Environmental Planning Policy, Draft State Environmental Planning Policy – Remediation of Land, Kogarah Local Environmental Plan 2012, Kogarah Development Control Plan 2013		
<b>List all documents submitted with this report for the Panel's consideration</b>	Amended Architectural Plans, Statement of Environmental Effects, Cardno Flood Report, Hydraulic Report Georges River Council Local Planning Panel reasons for deferral 17 December 2019 Georges River Council Local Planning Panel Report 17 December 2019		
<b>Report prepared by</b>	Senior Development Assessment Officer		

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

recommendations summarised, in the Executive Summary of the assessment report?	
<b>Clause 4.6 Exceptions to development standards</b> If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>Not Applicable</b>
<b>Special Infrastructure Contributions</b> Does the DA require Special Infrastructure Contributions conditions (under s7.24)?	<b>Not Applicable</b>
<b>Conditions</b> Have draft conditions been provided to the applicant for comment?	<b>No, as the application is being recommended for refusal. The refusal reasons will be available when the report is published.</b>

**Site Plan**



**Figure 1:** Aerial Photograph of the subject site and locality outlined in red

**Executive Summary**

1. This report has been prepared following the deferral of the subject development application (DA) (DA2018/0059) by the Local Planning Panel on 17 December 2019. The development proposed the demolition of existing structures, lot consolidation, tree removal and the construction of a five (5) storey shop top housing development comprising thirty six (36) units (13 x 1 bedroom, 21 x 2 bedroom and 2 x 3 bedroom units), one level of commercial/restaurant/café floor space, and two (2) levels of basement car parking for a total of ninety-seven (97) car parking spaces, new landscaping and associated site works. Two (2) business/retail tenancies totalling 1,289sqm, with dual access points off Ecole Street and Princes Highway, are to be

located on the ground floor with vehicular access and a loading bay proposed from Ecole Street. Communal open space is provided on the podium level above the retail tenancy

2. The DA was considered by the Georges River Local Planning Panel (LPP) on 17 December 2019. The Panel resolved to defer consideration of the DA to enable the applicant sixty (60) days in which to submit amended plans to address the matters identified in the assessment report. Once the information was provided the application was to be referred back to a public meeting with the majority of the same Panel members for consideration and determination of the application.
3. The applicant, following this deferral, has submitted amended plans and supporting documentation in response to the Panel's deferral. This report details the assessment of the amended plans to address the deferral reasons. In summary, although the information submitted by the applicant responds to the deferral reasons, the information provided does not adequately resolve all issues, in particular the overland flow and flood issues. It is recommended that the application be determined by way of refusal in accordance with the reasons for refusal as recommended and referenced at the end of this report.

## BACKGROUND

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

### Deferral

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

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

*The amendments are to include:*

1. *A revised stormwater drainage design that provides sufficient on-site flood storage to prevent channelization and thus concentration of stormwater flows beneath the site;*
2. *Revised architectural details to accommodate the amendments in "1" and that additionally relocates all waste area from the setbacks of the development to a screened area within the building footprint or basement; and*
3. *A Clause 4.6 variation request be submitted addressing the variation to Clause 6.9 – Development in Zone B6 of the Kogarah Local Environmental Plan.*

## AMENDED PLANS

5. The amended proposal is now be described as demolition of existing structures, lot consolidation, tree removal and the construction of a five (5) storey shop top housing development comprising thirty four (34) units (12 x 1 bedroom, 20 x 2 bedroom and 2 x 3 bedroom units), one/part two levels of commercial/restaurant/café floor space, and two

(2) levels of basement car parking for a total of ninety five (95) car parking spaces, new landscaping and associated site works. Commercial/business/retail tenancies totalling 1,438sqm accessed from Ecole Street and Princes Highway are to be located on the ground floor and first floor with vehicular access and a loading bay proposed from Ecole Street. Communal open space is provided on the podium level above the ground floor retail tenancy

6. The applicant has provided amended plans and information in response to the reasons for deferral which include the following changes.

#### Basement 2 Plan

- Fire stairs have been modified to reposition fire exit escape to Ecole Street and the Princes Highway so as to accommodate changes to the upper levels of the building.

#### Basement 1 Plan

- Fire stairs have been modified to reposition fire exit escape to Ecole Street and the Princes Highway so as to accommodate changes to the upper levels of the building.
- Connection of two of the garbage bin rooms to provide a bulky items waste storage area.

#### Ground Floor Plan

- Reconfiguration of the ground floor has reduced the length of the fire exit corridors to the street and consolidation of entry points and doors.
- Commercial bins have been relocated out of the ground floor level western garden to be within the loading dock area of the ground level commercial space.
- The car park and loading dock entries have been accommodated with visual splays.
- Reduction in commercial entry off the Princes Highway to a single entry.
- OSD tanks have been split to provide for a centralised outlook to the western garden.
- Ground floor west facing habitable windows now setback 6m from the western boundary.

#### Level 1 Floor Plan

- Conversion of apartments 1.09 and 1.10 to commercial floor space. The new commercial floor space is serviced by its own independent lift, a fire exit stair and is accessible from the basement car park and the pedestrian entry to the Princes Highway.
- First floor west facing habitable windows now setback 6m from the western boundary.

#### Level 2 Floor Plan

- Level 2 west facing habitable windows now setback 6m from the western boundary.

#### Level 3 Floor Plan

- Level 3 west facing habitable windows now setback 6m from the western boundary.

#### Level 4 Floor Plan

- Minor changes to entrances and materials for acoustics.

7. Aside from the amended architectural plans, the following documentation accompanied the amended proposal:

- A letter in response to the deferral prepared by George Batsakis.
- Civil concept stormwater plans prepared by Glenn Haig and Partners.

- Response to Council's comments on the Flood Impact Assessment Report prepared by Cardno.

## Assessment of Amended Plans

### 8. Deferral Reason 1

*A revised stormwater drainage design that provides sufficient on-site flood storage to prevent channelization and thus concentration of stormwater flows beneath the site*

9. Applicant's response: *"The flood and overland flow management design has been reconfigured and tested. Modelling results captured in the accompanying Cardno report now support an outcome that maintains pre-development conditions.*

*Additional test Flood and Overland Flow Management have been prepared to improve on the previous flood and overland flow management. Supplementary modelling documentation has been prepared by Cardno and is attached.*

*The Flood and Overland Flow Management proposes two conduits at RL's in keeping with the natural RL's along the western boundary of the site. (back of the building) and to footpath RL levels at the front of the site (Princes Highway).*

*The land to the west of the building has not been modified by way of changes to RL levels or introduction of structures to act in such a way to divert the flow of water. The conduits will be of concrete construction and part of the building's proposed concrete superstructure. The conduits will be fitted and connected with all required flood management alarm systems.*

*It is noted that:*

- *It is important to clarify that the conduits do not act to discharge to the Princes Highway. The conduits permit water to flow through the site on to the Princes Highway as it presently would in flood conditions.*
- *The conduits have been positioned to best mimic existing pre-development flows as they would occur around the surround building.*
- *The conduits at the Princes Highway interface do not present a free fall condition.*
- *Overland flow is not connected to typical utility stormwater drainage systems and thus particular RMS permission or concurrence to manage overland flow may not necessarily be required.*
- *Separately, typical stormwater management discharging to the street is captured in documents prepared by Glenn Haig. It is noted that a submission has been lodged with RMS and we are presently awaiting their determination of the application.*
- *The substation accessed from Ecole Street has been repositioned (as part of an reconfiguration of the ground floor) and has a floor level set at set at the 1:100 Flood Level of RL 10.420. The substation is of generous proportions and accommodates a floor to ceiling space that is in the order of 4.2m*
- *Pedestrian refuge has been provided as part of the landings at the top of each pedestrian building entry.*
- *While the residential ramp has been set to RL 9.92 (1:100 ARI flood Level), additional safety may be provided to the entries of both the basement car park ramp and loading dock areas with the installation of a flood barrier product such as those supplied by Flow Defence. ([flowdefence.com.au](http://flowdefence.com.au)).*
- *I have been informed, that an 10% AEP (10 yrARI) was not taken for Council's catchment wide flood study. If it is required to estimate and show on plan, the depth of the flow during a frequent flood event 1:10 year ARI event and its impact on the*

*pedestrian movement around the building. Where these details are deemed necessary they may form part of development application permit condition.*

- *Council's referral engineer, has put forward that that the development is to accommodate adequate flood warning systems, signage and exits shall be available to allow safe and orderly evacuation without increased reliance upon the SES services. The preparation of a Flood Emergency Management Plan may be a condition of a development application permit."*

10. Officer Comments: The amended plans and supporting documentation were referred to Councils Engineer to review. They have provided their previous comments in relation to the site conditions along with a review of the amended plans and supporting information and referenced below:

Previous comments on site conditions

11. *"The proposed development footprint obstructs the existing overland flow path and is likely to increase the risk of flooding to upstream and adjacent properties. It is noted that the proposal as indicated would block the flood path through the site.*

*Council's policy for flood affected properties prohibits any proposed works that will increase the quantity of flow through an adjoining property, concentrate or redirect flow or otherwise aggravate stormwater overland flow characteristics on adjoining properties. It is not suitable to redirect the flood flow path on to the adjoining roadways.*

*In this case the rear of the site is inundated by flooding up to 0.70m deep in the 1:100 year ARI event and 1.30m deep in the PMF event for the pre development scenario. The adopted flood levels for 1:100 year ARI event is RL9.90m AHD and RL10.35m AHD in the PMF events.*

*The proposed finish floor level is 10.40m AHD for the entire development which is acceptable. The driveway crest level shall be minimum RL 9.9m AHD."*

Review of amended architectural plans, flood assessment report and concept stormwater plan:

12. The Velocity and depth arrangement.
- *The velocity of the flow was not calculated as requested. If we suppose the velocity is (1m/s) and the depth of the flood as calculated (0.7m) therefore the product of (V x D) is 0.7m/s > 0.4m/s, which is classified a high hazard area, associated with high flood risk to life and evacuation difficulties and it is not safe for pedestrians or vehicle movement during the flood event.*
  - *If we suppose the velocity is less than (1m/s), so how much is less - is not mentioned in the submitted report. For example if we suppose the velocity is (0.7m/s) < 1.0m/s then the depth 0.7m, the product (V x D) is 0.49 > 0.4 which is still a high hazard area associated with high flood risk to life during the flood event. Under these flooding conditions, there would be a significant risk of flood damages without compliance with flood related engineering and planning controls.*
  - *The submitted flood report failed to comply and prove the safety of pedestrians on site.*
  - *It is part of Council's flood management that all the proposed developments shall improve the flood flow regime and provide a free flow through the designated flood zone, and this aim can be achieved gradually for the whole flood zone area, through*



*the approval of new developments, specifically to prevent any increase in the flood hazard category and potentially to lower it gradually. Therefore, it is the flood management practice and requirement for sites affected by flood to raise the proposed building floor on beams and columns for the subfloor area to remain open to allow the flood regime to flow undisturbed. It is only permitted to include enclosed staircases and an enclosed ramp with a high crest. With the current submitted design, the applicant has failed to amend the design and comply with this issue adequately as requested.*

- *The proposed Loading Zone turntable at FFL 9.53 is lower than the adopted 1:100 year ARI flood level (9.90), which means the Electrical Settings of the proposed turntable is under flood below the top of water level for 1:100 year ARI. The turntable is not supported under its current condition. The applicant failed to address this issue adequately as requested.*
- *The proposed top access/obvert level of the conduit entry is at (RL9.53) which is below (RL9.9) the adopted 1:100 year ARI level for the site. The area below the building must remain open, unobstructed at all times up to 1:100 year ARI plus 0.5m freeboard. The applicant failed to address this issue adequately as requested.*
- *The perimeter of the building within the flood flow shall not be enclosed by solid wall as it is shown on plan. The area below the building must remain open, unobstructed surrounded only with an open form fence to be shown on plan instead of a solid wall. The proposed two conduits have been previously refused. The applicant failed to address this issue adequately as requested.*
- *It was required to submit an adequate evacuation management report for assessment and comment. A dedicated shelter area within the building above the PMF level was not indicated on the architectural plans or any other plan of the flood impact report as requested.*
- *As requested, there was no plan submitted for assessment, showing the type and location of adequate flood warning systems and the proper signage to allow safe and orderly evacuation; as this matter can be ignored or made redundant at later stages if not approved by Council.*

*In conclusion, and based on the above issues, the applicant failed to comply with the previously requested flood management controls, as a result the proposed application is not supported.”*

13. **Deferral Reason 2**

*Revised architectural details to accommodate the amendments in “1” and that additionally relocates all waste area from the setbacks of the development to a screened area within the building footprint or basement; and*

14. Applicant’s response: *“The architectural plans have been amended to address key concerns namely:*
- *a reduction in the complexity of the ground floor layout,*
  - *a relocation of commercial waste bins in to the inside of the ground level,*
  - *a simplification or decluttering of building entry points,*
  - *a reduction in the quantum of shop top space to be no greater than 65%*
  - *the accommodation of two conduits set at appropriate entry and exit levels, permitting waters to naturally flow through the site and maintain pre-development flow depths.”*

15. Officer Comments: The applicant has amended the plans and has attempted to address the concerns of Council and the non-compliances with KLEP 2012 and SEPP 65 – ADG which was supported by the Panel deferral. An assessment of the amended proposal against the relevant State and Local planning controls is provided below.

### SEPP 65 – Apartment Design Guide

16. 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 the provisions relevant to the amended plans.

<b>ADG Compliance</b>			
<b>Clause</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
3F – Visual privacy	Separation between windows and balconies is provided to ensure visual privacy is achieved.	Ground to Level 4: South - Nil (blank wall) West – 6m	Yes the amended plans have increased the setback to 6m to the adjoining western residential boundary
	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <u>Up to 12m (4 storeys)</u> Habitable - 6m Non-habitable – 3m		
3G – Pedestrian Access and Entries	Building entries and pedestrian access connects to and addresses the public domain	The amended plans have reduced the number of entries from the Princes Highway.	Yes
	Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge		
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The residential bin stores are appropriately located within basement level 1.	Yes
		The commercial bin storage area has been relocated from adjacent to the deep	Yes



		soil area along the western side and in proximity to the flooding culverts to within the loading dock area on the ground floor area.	
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### Kogarah Local Environmental Plan 2012 (KLEP 2012)

17. The amended proposal now complies with the requirements of Clause 6.9 of KLEP 2012, through the reduction of residential floor space and the increase in the amount of commercial floor space. It is noted that the amended proposal still fails to meet the requirements and objectives of Clause 6.3 Flood Planning of KLEP 2012. An assessment with the KLEP 2012 provisions relevant to the amended plans is detailed within the following table.

Clause	Objectives/Provisions	Comment	Complies
2.2 Zone	B6 Enterprise Corridor	The proposal is defined as 'shop top housing' development which is a permissible land use in the zone.	Yes
2.3 Objectives	<p>Objectives of the zone To promote businesses along main roads and to encourage a mix of compatible uses. To provide a range of employment uses (including business, office, retail and light industrial uses). To maintain the economic strength of centres by limiting retailing activity.</p> <p>To provide for residential uses, but only as part of a mixed use development.</p>	<p>35.02% of the development is now proposed to be commercial.</p> <p>64.95% of the development is residential</p> <p>The percentage of floor space provided for commercial and residential uses is now consistent with the zone objectives and Clause 6.9 of KLEP2012.</p>	Yes
4.4 - Floor space ratio	The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. In this case, the relevant map limits the floor space ratio for buildings on the subject site to 2:1.	The proposal has a floor space ratio of 1.99:1.	Yes
4.5 –	FSR and site area	Calculated accordingly.	Yes

Calculation of floor space ratio and site area	calculated in accordance with CI 4.5		
4.6 Exceptions to Development Standards	The objectives of this clause are as follows: - <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i> (b) - <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i>	Not required as the amount of residential floor space has been reduced to be 64.95%.	N/A
6.3 - Flood planning	The objectives of this clause are as follows:  (a) to minimise the flood risk to life and property associated with the use of land, (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change, (c) to avoid significant adverse impacts on flood behaviour and the environment.	The subject land is classified as flood affected in the Beverley Park Overland Flow Risk Management Study and Plan 2007. The identified 1 in 100 ARI flooding level is RL 9.9m (AHD) and recommended finished floor level is 10.4m (AHD). A Flood Assessment was submitted with the application. However, this has been assessed as inadequate, as the building is located within the primary flow channel and will result in higher levels of flooding on neighbouring lands.	No. The amended plans provided for the development have been assessed as unsatisfactory with respect to flood levels and treatment of overland flow.
6.9 – Development in Zone B6	The objective of this clause is to provide viability of development and to maintain opportunities for business and retail development that is suited to high exposure locations.  No more than 65% of the gross floor area of the building will be used for shop top housing or tourist and visitor	The residential component of the shop top housing development is 2,667sqm (64.95%)	Yes

	accommodation.  Consent must not be granted for a land use other than shop top housing or tourist ad visitor accommodation with a gross floor area of less than 500sqm.	The area of commercial uses (other land use) is proposed to be 1,438sqm (35.02%).	Yes
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### Kogarah Development Control Plan 2013 (KDCP 2013)

18. The proposal is affected by the provisions of Part B – General Controls of KDCP 2013. The amended plans have addressed the Part B5 in relation to the location of the storage areas for the commercial bins; however Part B2 and B6 of KDCP 2013 remain unresolved.

Clause	Standard	Proposed	Complies
B2 - Tree Management and Green Web	<p>The objectives of this part include the following:</p> <ul style="list-style-type: none"> <li>Ensure the protection of existing trees which contribute to the visual amenity and environment of the City of Kogarah;</li> <li>Protect trees within and adjacent to development sites;</li> <li>Maximise healthy tree canopy coverage across the City of Kogarah.</li> </ul>	<p>The applicant has provided an Arborist Report, dated 29 January 2018, prepared by ELKE, which concludes two Yellow Gum White Ironbark trees should be removed due to poor condition or likely impacts from the proposed development. Seven (7) trees are to be retained and have been provided with adequate TPZ's and 4 replacement trees will be required should the application be approved.</p>	<p>No. Concern is raised at removal of T7 being a healthy tree that could be retained where a suitable redesign of the building footprint is pursued. No additional information has been provided to address this matter.</p>
B5 - Waste Management and Minimisation	<p>The objectives of this part are to:</p> <ul style="list-style-type: none"> <li>Encourage best practice in waste management that minimises waste generation, facilitates waste separation and maximises reuse and recycling;</li> <li>Ensure quality design of waste management facilities that complement the</li> </ul>	<p>A Waste Management Plan (WMP) was submitted with the application and was referred to Council's Waste Officer.</p> <p>The residential bin storage area is located within basement level 1.</p> <p>The commercial bin storage area has been relocated from adjacent</p>	<p>Yes</p> <p>The required residential bins have been provided.</p> <p>Commercial bin storage area is</p>

	<p>building design and minimise noise, odour and visual impacts on adjacent uses and the public domain;</p> <ul style="list-style-type: none"> <li>• Ensure suitable and efficient waste storage, recycling and collection in all development.</li> </ul>	to the deep soil area and in proximity to the flooding culverts to within the loading dock area on the ground floor area.	satisfactory.
B6 - Water Management	<p>The objectives of this part are to:</p> <ul style="list-style-type: none"> <li>• Reduce flooding and drainage impacts within and downstream of the development site;</li> <li>• Reduce pollutant loads exported to the waterways via the stormwater system;</li> <li>• Conserve water and reduce mains water consumption.</li> </ul>	<p>The development has been assessed as having design concerns in order to manage existing overland flood flows that impact the site. These impacts include the necessity to raise the floor level some 1.6m above street level, and also general management and redirecting of flows to the proposed culverts.</p> <p>The proposed method of stormwater management has been assessed by Council's Development Engineer and is unsatisfactory and requires further investigation and possible resultant design changes.</p>	No

19. **Deferral Reason 3**

*A Clause 4.6 variation request be submitted addressing the variation to Clause 6.9 – Development in Zone B6 of the Kogarah Local Environmental Plan*

20. Applicant's response: "As the Gross Floor Area allocated to shop-top housing has been reduced to less than 65%, on this occasion a Clause 4.6 variation request will not be submitted."
21. Officer Comments: The percentage of floor space provided for commercial and residential uses is now consistent with the zone objectives or Clause 6.9 of KLEP2012. The amended proposal has reduced the residential floor space from 2723sqm to 2667sqm and increased the commercial floor space from 1289sqm to 1438sqm. The change to the distribution of floor space between residential and commercial now equates to 64.95% of residential floor space and 35.02% of commercial floor space.
22. Accordingly, while the proposal previously required a Clause 4.6 variation to be submitted in relation to the non compliance to the development standard contained within

Clause 6.9 of KLEP 2012, this is no longer required as the development now complies with this control.

## **NEIGHBOUR NOTIFICATION**

23. The nature of the amendments did not require re-notification under the provisions contained within Kogarah Development Control Plan 2013. It is acknowledged that two (2) submissions were previously received.

## **REFERRALS**

### **Council Referrals**

#### Development Engineer

24. The revised information was referred to Council's Engineers for comment. The amended plans and supporting information still do not satisfy the requirements relating to the control and dispersal of drainage and the flooding impacts of the site. The detailed comments as to the areas of non-compliance are provided earlier in this report.

#### Traffic Engineer

25. The amended plans were referred to Council's Traffic Engineer for comment. The following concerns were raised:

*"There is one non-compliance in the aisle width in basement two. Aisle width between parallel spaces and perpendicular spaces are meant to be 6.3m minimum.*

*The grade for Property line/building alignment/pedestrian path should be no more than 1 in 20 (5%) between the edge of the frontage of the road and the property line, building alignment or pedestrian path for at least the first 6 m into the car park. This is not the case in the current proposal.*

*I checked for swept path diagram for MRV and they have provided them. The MRV exiting the site intrudes onto the oncoming traffic carriageway and while that is allowed, it is not preferable due to the close proximity to a school."*

### **External Referrals**

#### Ausgrid

26. The application was referred to Ausgrid for comment on 3 March 2020 in accordance with Clause 45 of the Infrastructure SEPP. A response was received on 19 March 2020 raising no objection to the proposal.

#### Transport for NSW (TfNSW) - formerly Roads and Maritime Services (RMS)

27. The application was referred to RMS in accordance with Clause 100, 101 and 102 of State Environmental Planning Policy (Infrastructure) 2007. A formal response was provided and concurrence was obtained subject to the imposition of conditions if the application was to be supported. The RMS response in previous correspondence noted that any stormwater design/hydraulic modifications to the existing system, in this instance the proposal includes diverted flows discharging to the street, this would need to be submitted to and approved by the RMS to ensure road functionality.

#### Sydney Airport

28. The proposed development was referred to Sydney Airport. The proposed development will not penetrate prescribed airspace for Sydney Airport and does not constitute the need for a 'controlled activity' within the meaning of Division 4 of Part 12 of the Airports Act 1996

## CONCLUSION

29. The application has been assessed having regard to the Matters for Consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Planning Policies, Local Environmental Plans and Development Control Plans having due regard to the proposal, the following concerns with the application involve:
- flooding and overland flow management issues,
  - pedestrian and vehicular concerns with the loading bay location,
  - building form and access design issues,
  - construction traffic, noise, dust, vibration concerns for Carlton South Public School; and
  - adverse impact upon trees on the subject site.
30. Although the applicant has made progress with the amended plans addressing some of the non-compliances with KLEP 2012 and SEPP 65 as detailed within this report, the underlying flooding and overland flow issues remain unresolved. Until these issues can be resolved to the satisfaction of Council, this proposal will not be able to be supported. As a result of the above the proposed development is considered to be an unacceptable planning outcome for this site.

## DETERMINATION AND STATEMENT OF REASONS

### Statement of Reasons

31. The reasons for this recommendation are:
- The subject land is identified as being flood prone and located within the 1 in 100 year ARI flow path from Carlton Station to Beverley Park. The flood mitigation and overland flow path management proposed are considered to be inadequate and are likely to result in adverse impacts on neighbouring properties and the public road services;
  - The proposed stormwater drainage concept is designed to drain by culverts/conduits from the rear of the site to the Princes Highway and connect into the Princes Highway infrastructure. Any modification to the drainage associated with the Princes Highway requires concurrence of the Roads and Maritime Services and the application is not supported by documentation of concurrence;
  - The proposed building design and siting, in particular the extent of excavation associated with the basement car park, will adversely affect the TPZ of the Yellow Gum White Ironbark Tree (T7) on the subject site and its longevity, hydrology and integrity will be severely impacted. The design and positioning of the proposed development is considered to be unacceptable due to its likely impact on T7. The amended plans have not provided any further information to address this concern;
  - The amended proposal still fails to comply with the standards and intent of the Apartment Design Guidelines provisions particularly in regard to Clause 4C – Ceiling Heights (recommends first 2 levels at 3.3m for flexibility of use), Clause 4V – Water Management (relating to provision of suitable stormwater services);
  - In consideration of the aforementioned reasons, the proposed development is recommended for refusal.

### Determination

32. THAT pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act 1979 (as amended) the Georges River Local Planning Panel refuse development consent to Development Application DA2018/0059 for demolition of the existing structures on site, lot consolidation, tree removal and the construction of a five (5) storey shop top housing development comprising of thirty four (34) residential units, (12 x 1

bedroom, 20 x 2 bedroom and 2 x 3 bedroom units), one/part two levels of commercial/restaurant/cafe floor space and two (2) levels of basement car parking for ninety five (95) vehicles and associated site works at Lot 33, 34, 35 and 36 of DP13023 and known as 261-265 Princes Highway, Carlton, for the following reasons:

1. **Environmental Planning Instrument** – Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the relevant environmental planning instrument in terms of the following:
  - (a) the provisions of Kogarah Local Environmental Plan 2012 as follows:
    - i. the objectives of Clause 6.3 Flood Planning as the documentation on flood and overland flow management is inadequate and many modifications may require building design modifications;
  - (b) the requirements of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 as the proposal has not adequately addressed the retention of trees on the land;
  - (c) the design quality principles under Clause 28 relating to the Apartment Design Guide and Schedule 1 of the State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development, the flooding constraints affecting the land and the façade design fronting Ecole Street.
2. **Development Control Plan** - Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Kogarah Development Control Plan 2013:
  - (a) Part B2 Tree Management and Greenweb as the proposal does not adequately justify removal of T7 tree which could be retained in an appropriate re-design;
  - (b) Part B4 Parking and Traffic relating to the suitable design for service vehicle access to the site, safe manoeuvring and façade design as the turntable sits below the flood level. As a result the driveway gradients and footpath levels are affected.
  - (c) Part B6 Water Management with regard to the inadequacy of documentation relied upon for the design dealing with flooding and overland flow management.
3. **Impacts on the environment** - Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse impact on the following aspects of the environment:
  - (a) Create amenity impacts for neighbouring lands and public roads through the likely redirection of volume and velocity of overland flows during flood times and storm events;
  - (b) The submitted flood design plan provides for channelising the storm/flood events into two culverts and discharging to the Princes Highway which requires Roads and Maritime Services (RMS) concurrence and is generally contrary to standard RMS design procedures;
  - (c) Inadequate details have been provided on how water would be redirected to the proposed culverts proposed under the flood report, including any reshaping of the land to create swales or the like;
  - (d) Unreasonably reduce the existing trees on site where inadequate justification is provided and a more appropriate design may safely retain tree T7;
  - (e) Service vehicle access to Ecole Street and the development site generally will result in potential vehicle conflict due to turning path requirements for large rigid



- trucks requiring the use of two traffic lanes especially given the vicinity of the site to the school;
- (f) The proposal is likely, if approved, to result in a precedent for developments that inappropriately design buildings within flood paths for the B6 zone;
  - (g) Overlooking issues for a public school have been raised and require due consideration.
4. **Suitability of site** - Pursuant to Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development for the following reasons:
- (a) The submitted development design is considered to be inappropriate for the subject land considering the flood management submissions are inadequate and requiring modification and hence the building design is likely to be modified accordingly;
  - (b) Ecole Street is a limited vehicle catchment local road and the management of public and service vehicles entering/exiting this location would require suitable management controls to be implemented to ensure vehicles do not approach the development from the northern approaches of Ecole Street which are constricted in nature.
5. **Public interest** - Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not considered to be in the public interest and is likely to set an undesirable precedent.

## **ATTACHMENTS**

- Attachment 1 Site Plan - 261-265 Princes Hwy Carlton
- Attachment 2 North Elevation - 261-265 Princes Hwy Carlton
- Attachment 3 South Elevation - 261-265 Princes Hwy Carlton
- Attachment 4 East Elevation - 261-265 Princes Hwy Carlton
- Attachment 5 West Elevation - 261-265 Princes Hwy Carlton