

4 DA/416/2020 - CONSTRUCTION OF A 10-12 STOREY MIXED USE DEVELOPMENT AND STRATA SUBDIVISION - 228-234 PACIFIC HIGHWAY, HORNSBY

EXECUTIVE SUMMARY

DA No: DA/416/2020 (Lodged on 2 June 2020)

Description: Construction of a 10-12 storey mixed use development comprising retail tenancies at the ground floor level, commercial tenancies at the first-floor level, a residential aged care facility at Levels 3-11, a residential apartment at Level 12 and strata subdivision

Property: Lot A DP 304557 and Lot B DP 304557, Nos. 228-234 Pacific Highway, Hornsby

Applicant: TBG Senior Living Services Pty Ltd

Owner: TBG Senior Living Services Pty Ltd

Estimated Value: \$26,950,000

Ward: B Ward

- The proposal does not comply with the Hornsby Shire Local Environmental Plan 2013 with regard to Clause 4.3 'Height of buildings'. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the Hornsby Local Environmental Plan 2013 to contravene the height of buildings development standard. The submission is considered well founded and is supported.
- A total of 6 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Local Planning Panel as the proposal would contravene the Hornsby Local Environmental Plan 2013 development standard for maximum height of buildings by more than 10 percent.
- It is recommended that the application be approved.

RECOMMENDATION

THAT the Hornsby Local Planning Panel assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 and approve Development Application No. DA/416/2020 for construction of a 10-12 storey mixed use development and strata subdivision at Lot A DP 304557, Lot B DP 304557, Nos. 228-234 Pacific Highway, Hornsby subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP20/22.

BACKGROUND

On 3 June 2009, Council approved DA/1564/2008 for construction of a seven storey development comprising one level of retail on the ground floor, two floors of commercial and four floors of residential. The residential component would comprise a total of 32 units. The approved development included the provision of four levels of basement car parking comprising a total of 108 car spaces with 7 bicycle racks and 4 motorcycle spaces.

The original consent has been through numerous approved modifications with the most recent modification (DA/1564/2008/E) approved on 12 August 2015 which included an additional storey and eight additional units with an approved height of 27.4m and a total combined floor space ratio of 4.7:1.

The approved development (as amended) comprises an 8-storey mixed-use building providing approximately 359m² of retail floor space, 1,651m² of commercial floor space, and 35 residential apartments. Off-street car parking was approved for 86 vehicles within a 3 level basement structure, accessed via a combined entry/exit driveway located along the Edgeworth David Avenue frontage of the site.

On 22 September 2014, Construction Certificate No. CC/566/2014 was approved. DA/1564/2008 has physical commencement as a result of demolition of the commercial building on the site.

In late May 2017, the subject site was sold to TBG Senior Living Services Pty Ltd, a social housing provider delivering home support services include nursing care, personal care, home help, social support, respite and recreational care, gardening and home maintenance.

Following the change in ownership, the Applicant held a pre-lodgement meeting with Council Officers on 3 May 2018 to discuss a new approach to the site. At the time, the design concept generally involved retaining the retail and commercial uses on the lower levels, and otherwise adjusting the approved building form above to accommodate the operational requirements associated with the change of use from residential apartments to a 'residential care facility'. Given the strategic location of the site, Council strongly recommended that the Applicant engage an Urban Designer prior to lodging the development application.

On 21 March 2019, following the pre-lodgement advice, the Applicant engaged GMU Urban Design and Architecture to review the original approval and concerns were raised in relation to the overall architectural merit of the approved development and an opportunity was identified to respond to the site context more appropriately, and the emerging form of development in the locality. Accordingly, it was recommended by the consultant urban designer that a new scheme be formulated for the site.

On 21 March 2019, the Applicant and its representatives attended a meeting of Council's Design Excellence Panel. The Panel generally supported the proposed development and indicated that: "*The Panel provided in principle support for the design concept and recommended that the proposal proceed to a future Development Application or Planning Proposal (should it be warranted)*".

APPLICATION HISTORY

On 2 June 2020, DA/416/2020 was lodged for construction of a 10-12 storey mixed use building accommodating retail tenancies at the ground floor level, commercial tenancies at the first-floor level, a residential care facility at Levels 3-11, a residential apartment at Level 12 and strata subdivision.

On 12 August 2020, a Design Excellence Panel meeting was held between the Applicant's representatives and Council's Design Excellence Panel (DEP). The DEP concluded that:

"This DA proposal is capable of satisfying the intentions of the Hornsby LEP, DCP and objectives for design excellence. Subject to addressing the issues raised, the development has the potential to create a high quality outcome that will generate much needed accommodation for the aged care sector, while also adding to the amenity and visual qualities of this gateway site."

Between 4 June 2021 and 16 June 2021, the applicant submitted amended architectural plans and a written response responding to the points raised by the DEP and Council's assessment request.

Between 21 September 2021 and 14 March 2022, the applicant provided additional information requested by Council to support the application including detailed contamination reports, acoustic reports, amended architectural plans, amended traffic report and a geotechnical report.

On 2 March 2022, the applicant submitted minutes from the Strata Plan 30399 meeting which benefits from the right of way, who unanimously resolved to enter into a deed of agreement for an amended right of way and requirements for access during construction of the building.

Between September 2020 to July 2022 the Applicant responded to numerous detailed requests for additional information from Sydney Trains and Transport for NSW.

On 5 May 2022, Transport for NSW provided concurrence to the application.

On 27 June 2022, Sydney Trains provided concurrence to the application.

SITE

The 1181.2m² site is located on the south-eastern corner of the Pacific Highway and Edgeworth David Avenue. The existing improvements on the site have been demolished and the site is currently vacant.

The site comprises an irregular shaped allotment with frontages of 19.68 metres to the Pacific Highway, 36.57 metres to Edgeworth David Avenue and 39 metres to the Northern Railway corridor.

The site falls approximately 2 metres from the north-western corner to the south-eastern corner.

The access to the site is provided via a 3.05 metre wide driveway located along the eastern boundary of the site with vehicular access provided from Edgeworth David Avenue. This driveway also acts as the right of carriageway providing access to No. 10 Edgeworth David Avenue, adjoining the site to the east.

The site is located in the Hornsby Town Centre, being within 1km of the Hornsby Railway Station and is surrounded by a mix of land uses including commercial, residential and educational establishments. The Westfield Shopping Centre is located to the north of the site on the opposite side of Edgeworth David Avenue. The adjoining building to the east includes a medical centre and retail premises. The development is located in close proximity to a number of high-density residential and mixed use developments. A ten storey high density residential development exists on the opposite side of the rail corridor to the south of the site.

PROPOSAL

The proposed development comprises the construction of a 10-12 storey mixed-use building accommodating retail tenancies at the ground floor level, commercial tenancies at the first floor level, a 'residential aged care facility' at Levels 3 -11, and a residential apartment at Level 12. Specific details of the proposed development is provided as follows:

- *Basement Levels*

Off-street car parking is proposed for 55 vehicles (including 4 accessible spaces) within a 3 level basement car park, accessed via a combined entry/exit driveway located along the Edgeworth David Avenue frontage of the site. The basement levels also accommodate six motorcycle spaces, multiple storage areas, a waste truck/delivery area, a water tank, plant rooms, and the kitchen and laundry facilities servicing the "residential care facility".

An ambulance bay is also located within the ground floor level basement area.

- *Retail/Commercial Levels*

The retail floor space along the ground floor would be divided into five tenancies ranging in size from 37.65-129.21m². The individual retail tenancies include entry/exit doors along the Pacific Highway and Edgeworth David Avenue frontages.

The commercial floor space at the first-floor level would be divided into five tenancies (plus the reception and administrative support for the “residential care facility”) ranging in size from 60-145.8m². The individual commercial tenancies extend around the perimeter of the floorplate, with internal access via the main entry foyer.

- *Residential Aged Care Facility*

The ‘residential aged care facility’ (RACF) accommodates 84 beds and associated facilities including kitchen, laundry, meeting rooms, reception, lounge and dining areas, nurses stations, cleaning store rooms and amenities. The “residential care facility” includes a dedicated dementia unit at Level 2, with the podium level utilised to provide a landscaped dementia garden. The RACF would be occupied in accordance with Clause 18 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The RACF would accommodate approximately 35 staff.

- *Residential Apartment*

The residential apartment would be ancillary to the RACF building and used by the Manager of the complex. The apartment would be located on Level 12, provides a floor area of 194.91m², and includes three bedrooms, a home office, living, dining and kitchen areas, garden beds and terraces.

No signage is proposed as part of this application.

ASSESSMENT

The development application has been assessed having regard to the Greater Sydney Region Plan - A Metropolis of Three Cities, the North District Plan and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan

The Greater Sydney Region Plan - A Metropolis of Three Cities has been prepared by the NSW State Government to guide land use planning decisions for the next 40 years (to 2056). The Plan sets a strategy and actions for accommodating Sydney’s future population growth and identifies dwelling targets to ensure supply meets demand. The Plan also identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the subregional planning process to define objectives and set goals for job creation, housing supply and choice in each subregion. Hornsby Shire has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde, Northern Beaches and Willoughby to form the North District. The Greater Sydney Commission has released the North District Plan which includes priorities and actions for Northern District for the next 20 years. The identified challenge for Hornsby Shire will be to provide an additional 4,350 dwellings by 2021 with further strategic supply targets to be identified to deliver 97,000 additional dwellings in the North District by 2036.

The proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan, by providing additional dwellings to support an aging population and would contribute to housing choice in the locality.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider “*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*”.

2.1 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the Hornsby Local Environmental Plan 2013 (HLEP).

2.1.1 Zoning of Land and Permissibility

The subject land is zoned B4 Mixed Use under the HLEP. The objectives of the B4 zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

The proposed development is defined as ‘seniors housing’ and ‘business premises’ and is permissible in the B4 zone with Council’s consent.

The residential accommodation on the top level is considered ancillary to the residential aged care facility as it would be used by the Manager/staff of the seniors housing development and is permissible in the B4 zone with Council’s consent.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the site is 23.5m. The proposal does not comply with this provision.

The proposed building has a maximum height of approximately 41.68 metres measured to the top of the feature screen, and 39.58 metres to the upper level roof which does not comply with this provision.

Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 does not specify a maximum building height, and there is no maximum building height control for a “*residential care facility*”. Further, Clause 5(3) of the SEPP specifies that the SEPP prevails to the extent of any inconsistency with any other environmental planning instrument (including the HLEP).

Notwithstanding, the applicant has submitted a precautionary Clause 4.6 request which is discussed in Section 2.1.5 of this report below.

2.1.3 Architectural Roof Features

The objectives of Clause 5.6 of the HLEP are as follows:

- To permit variations to maximum building height standards for roof features of visual interest,*
- To ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard.*

This provision permits development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limit set by Clause 4.3.

The proposal incorporates a feature screen along the top of the building which assists in the design of the building and reinforces the corner of Edgeworth David Avenue and Pacific Highway. The screen does not add to any floor space of the building and instead contributes to visual interest.

In accordance with Clause 5.6(3), the feature screen is excluded from the height of building provision as the screen is considered an architectural roof feature which comprises a decorative element on the uppermost portion of a building, is not an advertising structure, does not include floor space area, is not reasonably capable of modification to include floor space area, and will cause minimal overshadowing.

2.1.4 Floor Space Ratio

Clause 4.4(2) of the HLEP provides that the floor space ratio (FSR) on any land is not to exceed the maximum shown for the land on the Floor Space Ratio Map. The maximum permissible FSR for the precinct in accordance with the map is 5:1.

The proposed development provides a gross floor area of 5,883.78m², representing a FSR of 5:1 which complies with the overall FSR for the subject site.

Notwithstanding, Clause 4.4(2A) of the LEP states the following:

Despite subclause (2), the floor space ratio for residential accommodation in an area identified as "Area 1" on the Floor Space Ratio Map must not exceed 2:1.

The Dictionary of the HLEP defines 'residential accommodation' to include 'seniors housing', irrespective of whether the 'seniors housing' comprises a 'residential aged care facility', a 'hostel', or 'self-contained dwellings'.

On that basis, the proposed development provides a non-residential FSR of approximately 1.05:1, and a residential FSR of approximately 3.95:1 which exceeds the maximum residential accommodation permitted for the site.

The applicant has made a submission in support of a variation to the development standard in accordance with Clause 4.6 of the HLEP and this is discussed in Section 2.1.4 of this report.

2.1.5 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the HLEP. This clause provides flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary, and it can be demonstrated that sufficient environmental planning grounds are present to justify contravening a development standard.

The application seeks to contravene Clause 4.3 of the HLEP as the maximum height of building development standard as the roof pitch would be 39.58m which exceeds the development standard by 16.08m or 68% and does not comply with the 23.5m height of building development standard.

The objectives of Clause 4.3 Height of buildings are as follows:

- (a) *To permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*
- (b) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

In addition, the application seeks to contravene Clause 4.4(2A) of the HLEP which states that a maximum Floor Space Ratio of 2:1 applies for any residential accommodation for the subject site as the proposed development provides a residential FSR of 3:95:1.

The objectives of Clause 4.4 Floor Space Ratio are as follows:

- (a) *To permit development of a bulk and scale that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the HLEP. Clause 4.6 provides 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.*
- (b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

Council must be satisfied that the written request provided by the applicant under Clause 4.6 addresses both the unreasonable and unnecessary test and demonstrates sufficient environmental planning grounds to justify contravening the development standard. These matters are discussed below.

2.1.5.1 Unreasonable or Unnecessary Clause 4.6(3)(a)

There are five common methods by which an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary in the circumstances of the development. Initially proposed for objections under clause 6 of SEPP 1 in the decision of *Wehbe v Pittwater Council [2007]* NSWLEC 827 Pearson C summarised and applied these methods to written requests made under Clause 4.6 in *Four2Five Pty Ltd v Ashfield Council [2015]* NSWLEC 1009 [61-62]. These five methods are generally as follows:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The underlying objective or purpose is not relevant to the development.
- That the objective would be defeated or thwarted if compliance was required.
- That the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard.
- The zoning of the land is unreasonable or inappropriate.

It is not required to demonstrate that a development meets multiple methods as listed above, and the satisfaction of one can be adequate to demonstrate that the development standard is unreasonable or unnecessary.

The written request prepared by James Lovell and Associates, dated 13 April 2022 provides a detailed assessment of the proposal with respect to the development standards sought to be contravened. The request argues that:

Height of Building

What is the underlying object or purpose of the standard

- The locality surrounding the site is undergoing a transition towards a more intensified precinct, with the newer development characterised by multi-storey mixed-use buildings. Further, the site effectively functions as the southern gateway to the Hornsby Town Centre, providing an opportunity to construct a high-quality building to be perceived as an important built form marker.
- *The applicable building height and floor space ratio (FSR) controls incorporated in the LEP effectively generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site.*
- *Accordingly, the proposed development has been designed to comply with the FSR control, and has intentionally redistributed the floor space to provide a more appropriate, vertical building form, that extends above the current building height control.*
- *The proposed development does not involve exceeding the development capacity of the site in terms of overall floor space, and the site is serviced by all necessary infrastructure.*
- *Further, the proposed building form, including the variation to the building height control, has specifically been designed to achieve a building form that is more appropriate for the site having regard to its physical context, and the nature of surrounding development.*
- *In the circumstances, the proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.*

The objectives of the standard are achieved notwithstanding non-compliance with the standard

- *The proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation. In that regard, the Applicant relies upon ground 1 in Wehbe (i.e. the objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard) to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.*

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

- *The objectives and purpose of the building height control remain relevant, and the proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.*

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

- *The proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation. Further, strict compliance with the building height control would generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site.*

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

- *The building height control has not been abandoned or destroyed by the Council's actions. However, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations. Further, the*

objectives of Clause 4.6 of the LEP includes to provide “an appropriate degree of flexibility in applying certain development standards to particular development”.

Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

- *The zoning of the land remains relevant and appropriate.*

Floor Space Ratio

What is the underlying object or purpose of the standard

- *In relation to the expressed objective of the FSR control, the proposed development complies with the total FSR control, circumstances in which the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality.*
- *In relation to the assumed objective of the residential FSR control, the proposed “residential care facility” will generate employment for approximately 35 staff, with additional “flow on effects” arising due to the sites proximity to major retail and transport infrastructure, including Westfield Hornsby Shopping Centre and Hornsby Railway Station.*
- *Finally, the “residential care facility” (whilst technically a form of “residential accommodation”) will provide more employment than any other form of “residential accommodation”, and substantially more employment than the approved residential apartments on the site. In the circumstances, the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*

The objectives of the standard are achieved notwithstanding non-compliance with the standard

- *As noted above, the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*
- *In that regard, the Applicant relies upon ground 1 in Wehbe (i.e. that the objectives and purposes of the standard are achieved notwithstanding non-compliance with the development standard) to support its submission that compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.*

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

- *The objectives and purpose of the residential FSR control remain relevant, and the proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

- *The proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*
- *Further, strict compliance with the non-residential FSR control would require a not insignificant proportion of the “residential care facility” to be converted to an alternate use, and thereby the significant public, health and economic benefits arising from the inclusion of that important use would be unnecessarily lost.*

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.

- *The non-residential FSR control has not been abandoned or destroyed by the Council's actions. However, the Council has consistently adopted an orderly but flexible approach to the implementation of development standards in appropriate circumstances, including when the objectives of the standard are achieved, notwithstanding numerical variations.*
- *Further, the objectives of Clause 4.6 of the LEP includes to provide "an appropriate degree of flexibility in applying certain development standards to particular development".*

Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

- *The zoning of the land remains relevant and appropriate.*

Council considers that the applicant's written request sufficiently identifies that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The request makes a sufficient argument that the proposed FSR and increased height are appropriate for the site and consistent with the business zoning of the site and the objectives of the height and FSR development standards for the site. The contravention would not be out of character when viewed from the public domain and would not result in amenity impacts to adjoining properties in terms of overshadowing, views or outlook.

It is also noted that neither the Height of Building or non-residential FSR would not generate additional infrastructure demand and does not amount to an overdevelopment of the site noting that the proposal complies with the overall FSR for the site. The non-compliance could be avoided by strictly complying with the height of building standard or non-residential FSR, however this would not result in a slimline building, nor would it achieve residential aged care within the town centre and would not result in a good planning outcome.

Accordingly, it is considered that the proposal is consistent with the objectives of the B4 zone as the development provides for a mixture of compatible land uses which integrates business, office, retail and residential in an accessible location to maximise public transport patronage and satisfies the objective of the height of building and floor space ratio development standards.

It is considered that the development potential and infrastructure capacity of the locality are capable of accommodating a development of the kind proposed.

2.1.5.2 Environmental Planning Grounds

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) of the HLEP requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist, it must be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 [60]*).

In demonstrating the environmental planning grounds the written request states:

Height of Building

- *Clause 48 of SEPP (Housing for Seniors or People with a Disability) 2004 does not specify a maximum building height, and there is no maximum building height control for a “residential care facility”;*
- *The applicable building height and FSR controls incorporated in the LEP effectively generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site;*
- *The proposed development has been designed to comply with the FSR control, and has intentionally redistributed the floor space to provide a more appropriate, vertical building form, that extends above the current building height control;*
- *The proposed development does not involve exceeding the development capacity of the site in terms of overall floor space, and the site is serviced by all necessary infrastructure;*
- *The compliance with the total FSR control of 5:1 ensures the proposed development the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality;*
- *Strict compliance with the building height control would generate a “squat building form” which, in terms of design quality, is inherently inappropriate for a prominent gateway site;*
- *The proposed development is consistent with the objectives of the B4 - Mixed Use zone; and*
- *The proposed development is consistent with the objective of the building height control, notwithstanding the numerical variation.*

Floor Space Ratio

- *The LEP specifies a maximum FSR of 5:1, and the proposed development provides an FSR of 5:1;*
- *The compliance with the total FSR control of 5:1 ensures the proposed development the bulk and scale of the building is an appropriate response to the site constraints, development potential and infrastructure capacity of the locality;*
- *The proposed development complies with Clause 19 of the SEPP which species that development for the purposes of seniors housing should not include the use of any part of the ground floor level of a building that fronts a street for residential purposes if the building is located on land zoned primarily for commercial purposes;*
- *Clause 19 of the SEPP does not require any additional non-residential floor space to be located above the ground floor level, even on sites zoned primarily for commercial purposes;*
- *The proposed “residential care facility” will generate employment for approximately 35 staff, with additional “flow on effects” arising due to the sites proximity to major retail and transport infrastructure, including Westfield Hornsby Shopping Centre and Hornsby Railway Station;*
- *The “residential care facility” (whilst technically a form of “residential accommodation”) will provide more employment than any other form of “residential accommodation”, and substantially xxiii more employment than the approved residential apartments on the site;*
- *Strict compliance with the residential FSR control would require a not insignificant proportion of the “residential care facility” to be converted to an alternate use, and thereby the significant public, health and economic benefits arising from the inclusion of that important use would be unnecessarily lost;*

- *The variation to the residential FSR does not alter the proposed building forms, circumstances in which there are no consequences arising in terms of the physical relationship and/or amenity of surrounding properties;*
- *The proposed development is consistent with the objectives of the B4 - Mixed Use zone; and*
- *The proposed development is consistent with both the expressed and assumed objectives of the residential FSR control, notwithstanding the numerical variation.*

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

Council further notes that in demonstrating the unreasonable and unnecessary test, the applicant further established environmental planning grounds with respect to the site and the surrounding constraints.

2.1.5.3 Public Interest and Clause 4.6(4)

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, and*
- (b) *The concurrence of the Planning Secretary has been obtained.*

With regard to part (a)(i), the written request is considered to adequately address the matter required to be demonstrated as outlined above.

With regard to part (a)(ii), the proposed development is considered to 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.

With regard to (b), on 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice under cl. 64 of the Environmental Planning and Assessment Regulation 2000. The Secretary's concurrence may not be assumed by a delegate of council if:

- The development contravenes a numerical standard by greater than 10%.
- The variation is to a non-numerical standard.

Local Planning Panels constituted under the *Environmental Planning and Assessment Act 1979* exercise consent authority functions on behalf of a Council and are not delegates of Council. Therefore, Local Planning Panels may determine a development application notwithstanding, a numerical non-compliance in excess of 10%.

Accordingly, it is considered that the Request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6 and that the Panel, as consent authority, may rely upon the Request and grant development consent to the DA. Should the Panel resolve to approve the DA, it

should also provide a statement in the reasons for approval that it has satisfied itself of the matters in Clause 4.6(4).

2.1.6 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area. Accordingly, no further assessment regarding heritage is necessary.

2.1.7 Earthworks

Clause 6.2 of the HLEP states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

Council's assessment of the proposed works and excavation concludes that the proposal is acceptable, subject to a dilapidation report be prepared for the adjoining commercial property at No. 10 Edgeworth David Avenue and submitted to Council/PCA prior to the issue of a Construction Certificate.

2.1.8 Design Excellence

Clause 6.8 of the HLEP sets out matters for consideration to determine whether a proposed development exhibits a high standard of design. The Clause applies to development proposals on land with a permitted height limit over 29.5m (10 storeys or more) as well as attached dwellings, multi dwelling housing, residential flat buildings and shop top housing.

Clause 6.8 states that development consent must not be granted to development to which this Clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

To enable the implementation of 'Clause 6.8 Design Excellence' in the HLEP, Council has established a panel of suitably qualified architecture and urban design professionals to undertake a review of the design quality of relevant developments.

This Clause does not apply to the subject development application for a mixed-use building with commercial on the ground and first level and residential care facilities above. Notwithstanding, the Applicant agreed to engage an urban designer and the scheme was referred to Council's Design Excellence Panel on two separate occasions, during the pre-lodgement stage and during the development application stage to provide design guidance and improve amenity for both the neighbourhood and future residents of the development.

It is considered that the development has adequately responded to the amendments recommended by the Design Excellence Panel and achieves a design that is sympathetic to the Hornsby Town Centre, increasing amenity to future residents and facilitating a building of design excellence.

This is discussed in greater detail in Section 2.5.6 of the report below.

2.2 Adopted State Environmental Planning Policies

On 1 March 2022, the following State Environmental Planning Policies (SEPPS) were gazetted.

- State Environmental Planning Policy (Primary Production) 2021
- State Environmental Planning Policy (Resources and Energy) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021

- State Environmental Planning Policy (Industry and Employment) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021

These SEPPs now form matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. However general savings provisions apply to development applications that have been made but not yet determined, on or before the commencement date.

As this development application was lodged on 21 December 2021, this development application is considered to have been made prior to the commencement date of the SEPPs. The existing legislation in force at time of lodgement of the development application, prevails to be extent of any inconsistency.

Notwithstanding, the approval of the development application would not adversely affect the objectives of the newly adopted SEPPs and is considered to be consistent with this policy.

2.3 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55) under which consent must not be granted to the carrying out of any development on land unless the consent authority has considered whether the land is contaminated or requires remediation for the proposed use.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land will be remediated before the land is used for that purpose.

The site previously contained a commercial building which has since been demolished. Accordingly, a Remedial Action Plan, Asbestos Clearance Certificate, Environmental Compliance Report and Site Validation Report were submitted with the application that verified the remediation goals have been met from the demolition of previous structures on the site and the site is suitable for the proposed residential land use.

Subject to conditions that require compliance with an Environmental Management Plan which includes provisions for waste classification and unexpected finds, Council raises no objections to the proposal as it is not likely that the site has experienced any significant contamination, and further assessment under SEPP 55 is not required.

2.4 State Environmental Planning Policy (Infrastructure) 2007

The application has been assessed against the requirements of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). This Policy contains State-wide planning controls for developments adjoining rail-corridors and busy roads. The relevant clauses of the Policy are addressed below.

2.4.1 Excavation in, above, below or adjacent to railway corridors

The development is located immediately adjoining the Northern Rail Corridor and would require excavation within 25 metres (measured horizontally) of the corridor. The proposal was referred to Sydney Trains for concurrence.

On 27 June 2022, Sydney Trains raised no objections to the proposal and provided concurrence to the application, subject to conditions.

2.4.2 Development with Frontage to a Classified Road

The proposal has been assessed against the requirements of Clause 101 of the ISEPP as the site has a frontage to Pacific Highway which is a Classified Road and vehicular access is proposed from Edgeworth David Drive (a regional classified road).

The proposed development was referred to the Transport for NSW (TfNSW) for concurrence under Section 138 of the *Roads Act 1993*. No objections were raised regarding the driveway location or stormwater solution subject to conditions of consent. Council's engineering assessment concludes that the width of the driveway is satisfactory to enable vehicles to pass and enter and leave the site in a forward direction.

2.4.3 Impact of Road Noise and Noise from Train Corridor

Clauses 87 and 102 of the ISEPP applies to the development as it would be impacted upon by the noise and vibration from the rail corridor and the Pacific Highway. In accordance with the requirements of the SEPP, the application has been assessed against the noise related controls contained within the Department of Planning's publication 'Development near Rail Corridors and Busy Roads – Interim Guidelines'.

The applicant has addressed this requirement by submitting a detailed Rail Impact Report and Noise Assessment Report against the above guidelines. The report details the construction techniques to attenuate rail noise and vibration and concludes that the development would not exceed the specified noise criteria and Leq levels within Clauses 87 and 102 of the ISEPP.

Council's assessment of the application with regard to noise included a detailed examination of the Noise Assessment Report and is considered satisfactory. Sydney Trains has also reviewed the application with regard to noise and vibration and raised no objections subject to implementation of the recommended conditions.

A condition is recommended that the Construction Certificate plans are required to demonstrate compliance with the recommendations of the acoustic report and vibration measures.

2.4.4 Rail safety issues

The document '*Development near Rail Corridors and Busy Roads – Interim Guidelines*' prescribes guidelines and design elements to be incorporated into a development adjoining a rail corridor to reduce vandalism and improve safety of the infrastructure. Sydney Trains has recommended the following conditions in accordance with the guidelines:

- *'Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows, and other external features (e.g., roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of Sydney Trains (e.g., awning windows, louvres, enclosed balconies, window restrictors etc.) which prevent the throwing of objects onto the rail corridor.'*
- *No scaffolding is to be used facing the rail corridor and TAHE (Transport Asset Holding Entity) electrical assets unless prior written approval has been obtained from Sydney Trains. To obtain approval the Applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to*

be installed to prevent objects falling onto the rail corridor and TAHE (Transport Asset Holding Entity) electrical assets.

The design of the proposal includes anti-throw louvred glass windows louvers on all balcony levels facing the rail corridor and the terrace on Level 2 'dementia garden' includes a 1.88m high wall to prevent the throwing of structures onto the rail corridor. Accordingly the design of the proposal would not have an unacceptable impact on the streetscape and would protect the rail infrastructure. The proposal is acceptable in this regard.

2.4.5 Traffic Generating Development

The development is not classified as a Traffic Generating Development in accordance with Clause 104 and Schedule 3 of the ISEPP as it would not result in more than 75 dwellings fronting a classified road.

Further, the TfNSW Development Guidelines do not specify a generation rate for a RACF and the RMS Technical Direction TDT 2013-4 (Seniors Housing) is not relevant as that document is predominately based on Independent Living Units which generate a high demand for car parking.

No objections have been raised by TfNSW with regard to traffic generation.

2.5 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self-contained dwellings and multi-storey buildings.

SEPP HSPD is comprehensive in scope including land use planning provisions, design principles, development standards and standards specifically to meet the housing needs of aged and disabled people. SEPP HSPD also includes design guidelines for infill development. The assessment of the proposal in accordance with the relevant requirements of SEPP HSPD is provided as follows:

2.5.1 Clause 11 - Residential Care Facilities

SEPP HSPD includes the following definition for "residential care facility":

"In this Policy, a residential care facility is residential accommodation for seniors or people with a disability that includes -

- (a) meals and cleaning services, and*
- (b) personal care or nursing care, or both, and*
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care, not being a dwelling, hostel, hospital or psychiatric facility".*

For the purposes of assessment against SEPP HSPD, the proposed RACF development is defined as a "residential care facility" comprising 84 bedrooms.

It is noted that pursuant to clause 18 of the SEPP, recommended conditions shall only permit the following people to occupy any accommodation to which the application relates by way of imposing positive covenant pursuant to section 88E of the Conveyancing Act 1919:

- (a) seniors or people who have a disability,*
- (b) people who live within the same household with seniors or people who have a disability,*

- (c) *staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

2.5.2 Use of seniors housing in commercial zones

SEPP HSPD restricts seniors housing for any part of the ground floor of a building that fronts a street if the building is located on land that is zoned primarily for commercial purposes unless another environmental planning instrument permits the use of all of the building for residential purposes

The proposed ground and first floor level do not contain residential accommodation and these levels would be commercial.

2.5.3 Clause 26 - Location and Access to Facilities

The SEPP HSPD includes mandatory standards for accessibility and useability of Seniors Housing to ensure wheelchair accessibility throughout the development and to a public road.

Mandatory standards also apply for access to public transport, medical services and shops.

The application was supported by a disability Access Report prepared by Cheung Access which includes a detailed assessment of the subject site and the proposed development, with respect to compliance with the mandatory standards. The relevant matters are discussed below.

2.5.3.1 Local Shopping Centre Access

The site is located immediately opposite the main pedestrian entrance to Westfield Hornsby Shopping Centre, with a signalised pedestrian crossing in front of the site. The Centre provides a full range of shops, banks, retail, commercial and health services the future residents may reasonably require.

2.5.3.2 Public Transport Access

There are multiple bus stops located within 400 metres of the site (including immediately in front of the site) that service bus routes 587, 588, 589 and 591, providing regular connections throughout the surrounding area. Accordingly, the site location and access provisions of the SEPP are compliant pursuant to Clause 26(2).

2.5.4 Clause 30 - Site Analysis

The application includes a site analysis plan and accompanying information in accordance with the requirements of the SEPP HSPD. The proposal is assessed as satisfactory in this regard.

2.5.5 Clause 32 - Design of Residential Development

In determining a development application, a consent authority must not grant consent to a development unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 (Clauses 33 to 39).

The proposed development was accompanied by an Urban Design Report prepared by GMU under the guidance of Karla Castellanos. The proposal was referred to Council's Design Excellence Panel which concluded that:

"...this DA proposal is capable of satisfying the intentions of the Hornsby LEP, DCP and objectives for design excellence. Subject to addressing the issues raised, the development has the potential to create a high quality outcome that will generate much needed accommodation for the aged care sector, while also adding to the amenity and visual qualities of this gateway site."

As discussed below, Council is satisfied that the proposal demonstrates sufficient regard for the design principles.

2.5.6 Clause 33 - Neighbourhood Amenity and Streetscape

Council's assessment against the relevant requirements of Clause 33 is provided as follows:

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area.

The subject site is located in a mixed-use precinct of the Hornsby Town Centre with an applicable height limit 23.5m which equates to approximately 7 storeys.

The Hornsby Design Excellence Panel provided the following response which recognises that the proposed scheme is a preferred outcome to the existing approved DA for the site:

Desired Future Character

"Given the site location and context within Hornsby Town Centre, the contemporary expression and well modelled language was considered to be an appropriate character response. This was demonstrated with 3D streetscape visualisations from various locations in the public domain and provided a well-conceived approach to achieving a suitable redistribution of the massing and its enclosure for this transitional area. This is a preferable development outcome to the currently approved DA for this site.

Height

"The justification for the significant exceedance of the height limit is supported on the basis that a superior development outcome can be achieved within the permissible FSR, and that there will not be major detrimental environmental impacts to nearby sites. Based on Cl. 4.3 of the height of buildings 'To permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality' the Cl. 4.6 variation sought should be supported, subject to minor adjustments recommended on built form."

The Applicants Urban Designer states the following with regards to recognising the desirable character of the area:

"The existing scale of the surrounding buildings varies from large 2-3 storeys retail/commercial developments along Edgeworth David Avenue to 12 storey residential developments along Pacific Highway. The subject site presents as a transition site with a height of up to 23.5m given that the surrounding height for the residential dwellings is 8.5m towards the west and south and the maximum permissible height around the train station is 77.5m.

The controls envision a transition in height to the traditional surrounding residential dwellings. Therefore, a more sensitive and distinctive response is required, and this is what the proposal has attempted to do. The proposed height is 41.21m, which is higher than what is permissible on the subject site. However, the aim of this deliberate departure from the controls is to provide a more gradual transition between the two prevalent heights in the surrounding and to emphasise the corner as a built form marker at the entrance to the Town Centre.

The allowable FSR for the subject site is 5:1, which results in a GFA of approximately 5884.25sqm. The proposal has an approximate GFA of 5881.65sqm, which is equivalent to the allowance permitted by the controls. The real challenge presented by the current height control is how to utilise the GFA while providing a height that is contextually fitting as there is a discrepancy between the FSR and height controls. To meet and utilise the FSR provided by the built form would have to cover the entire site up to 7 storeys which leads to a stunted and bulky built form. To achieve a slender built form, additional height is required, thereby increasing the height beyond the height of building provision. The deliberate increase in height concentrated mainly at the corner will result in a better contextual response and built form outcome for the subject site.”

The proposed contemporary design results in a slender design for the site compared to the existing approval by achieving a slender built form which complies with the maximum Floor Space Ratio for the site.

The design concentrates additional height towards the corner of the site and complies with the HDCP objective of forming “a pair with another building to enhance the perception of entry”. The placement of height at the corner of Edgeworth David Avenue and Pacific Highway is a deliberate attempt to accentuate the corner and the proposed roof feature further enhances the proportions of the tower element without the addition of any additional lettable area.

- (c) maintain reasonable neighbourhood amenity and appropriate residential character by
- (i) providing building setbacks to reduce bulk and overshadowing,
 - (ii) using building form and siting that relates to the site’s land form, and
 - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development.

The prescriptive controls do not specify any setback controls, and the proposed building has been designed to extend to the boundaries, albeit with a setback to the southern boundary to accommodate the specific requirements of Sydney Trains.

The building height transitions down towards the east to provide an appropriate relationship with the future development along Edgeworth David Avenue contemplated by the planning controls that apply to that land.

The Hornsby Design Excellence Panel advised as follows with regard to building setbacks:

“It is stated in the Urban Design Report that the proposal complies with the allowable density and land use of the LEP, the general objectives of the DCP controls as well as the vision and strategies of the draft LSPS (Hornsby Local Strategic Planning Study). This supports the case for zero or minimal setbacks to the podium from Ground to Level 2, reinforcement of the vertical corner element above with further setback to the upper floors behind, and a more generous setback at the rear for the communal garden on top of the podium and communal areas on floors above.

While the podium expression in the north-eastern and south-western views does not continue around the corner to the Pacific Highway, the proposed setbacks and their correlation with built form distribution contribute adequately to meeting the intentions of the Hornsby DCP objectives.”

With regard to building form, the Design Excellence Panel advised the following:

“The analysis of an appropriate urban form for the site was appreciated, and the proposed material and finishes palette was considered acceptable in relation to the built form and façade modulation. While the Applicant’s case for reinforcement of the ‘landmark’ corner was understood, discussion on the merits of protection to the public domain around the footpath indicated there was scope for some improvement that is noted under Public Domain below.

With regard to the floor plan configuration, it was assessed that there was also potential for further improvements:

- *The main foyer entry off Edgeworth David Ave is a direct corridor to the lifts, and scope for some softening of this space with inclusion of casual seating or ‘bump’ space for residents and visitors could improve its quality, and the same applies to Level 1 foyer.*
- *On Level 2 it was noted that there was provision for a walking path that connected through the communal and dining space to the dementia garden, and some more thought should be given to how this would operate, giving more clarity and purpose to how residents would access and use this route and what would improve their roaming experience.*
- *Above Level 2 it was noted that only resident rooms had the benefit of solar access, so it was recommended some consideration be given to the swap of one of the rooms with a communal and/or visitor terrace - similar to that proposed on L10.*
- *Another such modification could be extension of the foyer corridor and balcony in the vertical slot between Grids F and G, and small reduction of the adjacent room balcony to create a small breakout visiting space with access to sun and fresh air.*
- *On Level 11 the Applicant indicated that the apartment and adjacent office were intended for management use only, and this was considered to be an unfortunate loss of potential for the residents, staff and their families to have access to a larger communal roof terrace for regular group activities and with benefits of solar access and landscape treatment.*

Provision of these recommended improvements would further add to the qualities of the vertical village environment and enhance the operating potential for the aged care facility.

On 16 June 2021, the applicant provided amended plans and a supporting letter in response to the Design Excellence Panel’s recommendations. It is considered that the Applicant has adequately responded to the Panels recommended design improvements and the proposal is acceptable in respect to the requirements of the SEPP HSPD for neighbourhood and streetscape.

2.5.7 Clause 34 - Visual and Acoustic Privacy

Clause 34 states that development should consider the visual and acoustic privacy of neighbours in the vicinity and the proposed residents by appropriate design of windows, balconies and landscaping, as well as ensuring acceptable noise levels.

Due to the unique location of the proposed development, the proposal does not have any immediate residential properties that would be impacted by the proposed development as the site is abuts a road, a carriageway and a railway corridor as well as the adjacent shopping centre providing separation distances of approximately 20 metres to the north, 50 metres to the south, and 65 metres to the west. The openings along the eastern elevation adjoining the two-storey commercial building at No.10 Edgeworth David Avenue have been limited and treated with appropriate privacy measures where required.

2.5.8 Clause 35 - Solar Access and Design for Climate

Clause 35 requires seniors living developments to provide adequate daylight to the main living areas of neighbouring properties and adequate sunlight to areas of private open space.

The site is currently vacant, and the shadows cast by the proposed development will extend to some of the surrounding properties to the south-east, south and southwest. Irrespective, the impacts on any individual properties are generally limited to relatively short periods of the day, and in most instances, for approximately 2 hours (or less) between 9am and 3pm in mid-winter. Accordingly, the majority of the surrounding properties will continue to receive sunlight in mid-winter for more than 3 hours. Further, the residential accommodation is generally orientated towards the north and north-west, ensuring at least 3 hours of sunlight between 9am and 3pm in mid-winter.

2.5.9 Clause 36 - Stormwater

Clause 36 requires development to minimise the disturbance and impacts of stormwater runoff on adjoining properties and include, wherever practical on-site stormwater detention or stormwater re-use.

The development would be connected to an on-site detention system which would drain via gravity to the street drainage system in Edgeworth David Avenue. Council's engineering assessment raised no objections to the stormwater system.

2.5.10 Clause 37 - Crime Prevention

The proposed development promotes casual surveillance of the public domain by providing active retail uses at the ground floor level, and multiple window openings orientated towards the public domain. Further, the proposed building provides a defined point of entry, and access to the basement will be controlled and monitored. The application is assessed as generally satisfactory in this regard.

2.5.11 Clause 38 - Accessibility

The accessibility report submitted with the proposal indicates that the development is capable of compliance with internal and outdoor accessibility provisions within relevant Australian Standards, the Building Code of Australia, and the *Disability Discrimination Act 1992*. Further, the vehicular access and pedestrian links are considered safe and functional.

2.5.12 Clause 39 - Waste Management

The application proposes two separate waste garbage storage rooms within the ground level basement for the RACF and for the commercial facilities. In addition, each level of the RACF includes a 'dirty room' with provision for a waste bin for general rubbish during the day which would be transported via lift to the basement.

Waste would be collected via a private contractor given the proposal is a commercial facility and Council does not service RACF facilities.

The waste truck would enter the site from Edgeworth David Avenue and park within the basement while the waste is loaded. Truck turning areas were provided during the assessment of the application that indicated waste vehicles would be able to enter and leave the site in a forward direction. Provision has also been provided to enable a private waste vehicle to enter the rear of No.10 Edgeworth David Avenue which would be in a similar arrangement to existing.

2.5.13 Clause 40 - Development Standards

The site has an area of 1,176.85m² and complies with the standard in respect to the site area being greater than the minimum 1,000m².

The site frontage is approximately 36.57m to Edgeworth David Avenue which complies with the minimum frontage of 20m at the building line.

2.5.14 Clause 48 - Standards That Cannot be Used to Refuse Development Consent for Residential Care Facilities

Clause 48 of SEPP HSPD includes non-discretionary development standards and states “a consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds”. A discussion is provided below in this regard.

(a) building height: if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys)

The proposed building has a maximum height of approximately 41.68 metres measured to the top of the feature screen, and 39.58 metres to the upper-level roof. Clause 48 does not impose any limitations on the grounds on which a consent authority may grant development consent. That is, there is no maximum building height for a ‘residential aged care facility’ pursuant to the SEPP. This element is has been discussed in Section 2.1.4 of the report above.

(b) density and scale: if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less

The proposed development has an FSR of 5:1. Clause 48 does not impose any limitations on the grounds on which a consent authority may grant development consent. That is, there is no maximum FSR control for a ‘residential aged care facility’ pursuant to the SEPP.

Landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided

The proposed development provides a total landscaped area (above structures) of approximately 913.52m² (excluding the roof level) representing approximately 11.01m² per residential care facility bed which is considered acceptable given the location of the proposal within the Hornsby Town Centre.

Clause 48 does not impose any limitations on the grounds on which a consent authority may grant development consent. That is, there is no minimum landscaped area control for a ‘residential aged care facility’ pursuant to the SEPP.

(d) parking for residents and visitors: if at least the following is provided:

- i 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and
- ii 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
- iii 1 parking space suitable for an ambulance”.

In addition to the above parking requirements, the HDCP has a parking requirement of 1 space per 29m² of Gross Leasable Floor Area (GLFA) for shops, 1 space per 48 m² GFA for Office and business premises and 1.2 spaces per 3-bedroom apartment where the development is <800 metres from a railway station.

The proposed development provides off-street car parking for 59 vehicles within a 3 level basement structure, including a dedicated ambulance space.

In accordance with SEPP HSPD and HDCP, the retail component (0.75x305.9m² GLFA) requires 8 car spaces, the commercial component (591.2m² GFA) requires 12 car spaces, and the residential component requires 1 car space. In total, the development is required to provide 47 car spaces.

The proposal is compliant with regard to the number of car parking spaces to be provided.

2.6 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the modified proposal would comply with the requirements of the Policy.

2.7 Section 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Section 3.42 of the *Environmental Planning and Assessment Act 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.8 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2013 (HDCP). Council notes that the proposal has been assessed predominantly against the requirements of SEPP HSPD which prevails over inconsistencies with the HDCP and accordingly the merits of the proposal are discussed in the report above.

2.9 Section 7.11 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in an additional retail, commercial and residential development.

Accordingly, the requirement for a monetary Section 7.11 contribution is recommended as a condition of consent.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider “*the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*”.

3.1 Built Environment

3.1.1 Built Form

As discussed in the report above, the proposed building is located within a precinct identified for future high density mixed use developments of varying heights with a network of open spaces, continuous podiums and underground car parking.

As discussed in this report, the resultant built-form would be consistent with the desired future character of the precinct. The proposal is assessed as satisfactory with regard to its impact on the built environment of the locality

3.1.2 Traffic Impacts

The application was supported by a Traffic report and SIDRA modelling.

The TfNSW Development Guidelines do not specify a generation rate for the RACF use and the sites surveyed for RMS Technical Direction TDT 2013-4 (Seniors Housing) are not relevant because they were predominately for Independent Living Units.

TPIA states that TTPA have undertaken surveys at a number of existing RACF sites in assisting with development schemes and the results of recent surveys at the Anglicare Kingswood RACF which has 102 beds indicates the following traffic generation during the morning and afternoon peak periods.

AM: 0.17 vtpm per bed

PM: 0.22 vtpm per bed

Using the traffic generation rate above, the proposed 85 beds will generate 14 vehicles and 19 vehicles in AM and PM peak hours respectively.

TfNSW Guide to Traffic Generating Development (GTGD) gives traffic generation rate for Commercial office use: evening peak hour vehicle trips = 2 per 100 m², using this rate, 12 trips will be generated by Commercial Office use in both AM and PM peak hours.

TfNSW GTGD gives traffic generation rate for retail under 10,000m² GLFA: 12.5 vehicle trips per hour per 100m². Using this rate, 38 trips will be generated by Retail use in both AM and PM peak hours.

The three-bedroom units generate less than 1 trip in both AM and PM peak hours.

In total, the proposed development generates 64 trips and 69 trips in the AM and PM peak hours respectively.

The original traffic report argued that because the proposed trips are less than the previous approved proposal, traffic generation would be acceptable. Council's traffic assessment did not support this rationale given the site's location within the core area of the Hornsby Town Centre and traffic conditions are changing constantly and requested that the traffic report be amended to include:

- SIDRA model of the intersection of Edgeworth David Avenue with Pacific Highway, before the development and after the development.
- The existing queue length at the east leg of intersection of Edgeworth David Avenue with Pacific Highway, and the impact on property access and egress.
- A discussion regarding conflict between vehicles using the driveway and pedestrians walking across the driveway.

Council's review of the amended traffic information concluded that the proposal would have an acceptable traffic impact on the road network and raised no objections on traffic and safety grounds.

3.2 Social Impacts

The development would make a positive social contribution to the local community by providing housing for older persons and persons with disabilities.

3.3 Economic Impacts

The proposal would have a minor positive impact on the local economy in conjunction with other residential type development in the locality by generating an increase in demand for local services.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider “the suitability of the site for the development”.

The subject site has not been identified as bushfire prone or flood prone land. The site is considered to be capable of accommodating the proposed development. The scale of the proposed development is consistent with the capability of the site and is considered acceptable.

5. PUBLIC PARTICIPATION


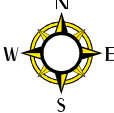
Section 4.15(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 17 June 2020 and 9 July 2020 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 6 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

<ul style="list-style-type: none"> • PROPERTIES NOTIFIED 	<ul style="list-style-type: none"> X SUBMISSIONS RECEIVED 		PROPERTY SUBJECT OF DEVELOPMENT	
4 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

6 submissions objected to the development, generally on the grounds that the development would result in:

- Unacceptable impact to right of way to No.10 Edgeworth David Road.
- Questions regarding construction impacts.
- Unacceptable parking impacts.
- Lack of information on website.
- Egress issues to site.

The merits of the matters raised in community submissions have been addressed in the body of the report with the exception of the following:

5.1.1 Right of Way

During the assessment of the application, Council required amended plans to indicate that vehicle access would be maintained to the rear of No.10 Edgeworth David Avenue and that agreement must be provided from the owners' corporation of No.10 Edgeworth David Avenue that they are acceptable to the amended right of way.

Minutes from a Strata Committee meeting for SP 30399 held on 2 March 2022 were provided indicating support for a deed of agreement for a revised right of way.

The amended plans indicate vehicular access including waste truck access would be provided to No.10 Edgeworth David Avenue via the rear of the ground floor basement level of the subject development.

5.1.2 Questions regarding construction impacts

A submission raised numerous questions regarding the construction process, however no specific objections were raised. No further assessment is required in this regard.

5.1.3 Lack of information on website

The submitter's email claims that no information was available on Council's website. It is noted that Council was in the progress of uploading DA documents for public advertising at the time the submitter wrote to Council. Accordingly all documents are available on Council's website and were available during the notification period.

5.1.4 Parking

The proposed development complies with the parking requirements of SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD).

5.1.5 Egress to site

Vehicles will have a combined access and egress driveway to the proposed development from Edgeworth David Avenue. The access to the development will be limited to left in and left due to the existing median on Edgeworth David Avenue.

Council's traffic and road safety assessment raised no objections to the location of the driveway as it is located in the most practical and safe location for the subject site.

5.2 Public Agencies

The development application was referred to the following Agencies for comment:

5.2.1 Transport for NSW

As detailed in Section 2.4 of the report, the application was referred to Transport for NSW (TfNSW) for concurrence under Clauses 102, 104 and Schedule 3 of the ISEPP. No objections were raised to the proposed development, subject to the imposition of the conditions of concurrence.

5.2.2 Sydney Trains

As detailed in Section 2.4 of the report, the application was referred to Sydney Trains) for concurrence under Clauses 85, 86 and 87 of the ISEPP. No objections were raised to the proposed development, subject to the imposition of the conditions of concurrence.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider "*the public interest*".

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application is considered to have satisfactorily addressed Council's and relevant agencies' criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is considered that the approval of the proposed development would be in the public interest.

CONCLUSION

The application proposes construction of a 10-12 storey mixed use development comprising retail tenancies at the ground floor level, commercial tenancies at the first-floor level, a residential aged care facility at Levels 3-11, a residential apartment at Level 12 and strata subdivision.

The development generally meets the desired outcomes of Council's planning controls and is satisfactory having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

Council received 6 submissions during the public notification period. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, approval of the application is recommended.

The reasons for this decision are:

- The request under Clause 4.6 of Hornsby Local Environmental Plan 2013 to contravene the 'Height of buildings' development standard is well founded. Strict compliance with the development standard is considered unreasonable and unnecessary in the circumstances of

the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.

- The proposed development generally complies with the requirements of SEPP (Housing for Seniors or People with a Disability) 2004 and the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, amenity or privacy.

Note: At the time of the completion of this planning report, no persons have made a Political Donations Disclosure Statement pursuant to Section 10.4 of the Environmental Planning and Assessment Act 1979 in respect of the subject planning application.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is Matthew Miles.

CASSANDRA WILLIAMS
Major Development Manager - Development
Assessments
Planning and Compliance Division

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1. Locality Map
2. Clause 4.6 Variation
3. Architectural Plans
4. Landscape Plans

File Reference: DA/416/2020

Document Number: D08368581

SCHEDULE 1

1. Deferred Commencement

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until a signed deed of agreement between the subject property owner and adjoining property at Strata Scheme No. 30399, situated at No. 10-12 Edgeworth David Avenue, Hornsby for the closure of access area during construction and restriction of access has been created.
- b) Such information must be submitted within **36 months** of the date of this notice.

Upon Council's written satisfaction of the above information, the following conditions of development consent apply:

GENERAL CONDITIONS

The conditions of consent within this notice of determination have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the relevant legislation, planning instruments and Council policies affecting the land and does not disrupt the amenity of the neighbourhood or impact upon the environment.

Note: For the purpose of this consent, the term 'applicant' means any person who has the authority to act on or the benefit of the development consent.

Note: For the purpose of this consent, any reference to an Act, Regulation, Australian Standard or publication by a public authority shall be taken to mean the gazetted Act or Regulation, or adopted Australian Standard or publication as in force on the date that the application for a construction certificate is made.

2. Approved Plans and Supporting Documentation

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp, except where amended by Council and/or other conditions of this consent:

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA-01R, R	Site location plan	Coble Stephens Architects	07.02.2022	
DA-38R, Q	Detail Section	Coble Stephens Architects	21.07.2021	
DA-44R, R	Detail Section	Coble Stephens Architects	07.02.2022	
DA-41R, R	Site plan - 11KV Blowout	Coble Stephens Architects	07.02.2022	
DA-32R, Q	Railway corridor elevations	Coble Stephens Architects	21.07.2021	
DA-37R, R	Site plan - ground floor	Coble Stephens Architects	07.02.2022	
DA-39R, R	Garbage enclosure	Coble Stephens Architects	07.02.2022	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA-34R, Q	Detail plans - loading dock	Coble Stephens Architects	21.07.2021	
DA-40R, R	Site plan - 33KV Blowout	Coble Stephens Architects	07.02.2022	
DA-19R, R	North elevation	Coble Stephens Architects	07.02.2022	
DA-20R, R	South elevation	Coble Stephens Architects	07.02.2022	
DA-22R, R	West elevation	Coble Stephens Architects	07.02.2022	
DA-26R, R	Section D-D	Coble Stephens Architects	07.02.2022	
DA-25R, R	Section C-C	Coble Stephens Architects	07.02.2022	
DA-21R, R	East elevation	Coble Stephens Architects	07.02.2022	
DA-24R, R	Section B-B	Coble Stephens Architects	07.02.2022	
DA-23R, R	Section A-A	Coble Stephens Architects	07.02.2022	
DA-14R, R	Level 11 floor plan	Coble Stephens Architects	07.02.2022	
DA-15R, R	Roof plan	Coble Stephens Architects	07.02.2022	
DA-16R, R	Basement 1	Coble Stephens Architects	07.02.2022	
DA-18R, R	Basement 03	Coble Stephens Architects	07.02.2022	
DA-17R, R	Basement 02	Coble Stephens Architects	07.02.2022	
DA-08R, R	Fifth floor plan	Coble Stephens Architects	07.02.2022	
DA-09R, R	Level 6 floor plan	Coble Stephens Architects	07.02.2022	
DA-10R, R	Level 7 floor plan	Coble Stephens Architects	07.02.2022	
DA-11R, R	Level 8 floor plan	Coble Stephens Architects	07.02.2022	
DA-12R, R	Level 9 floor plan	Coble Stephens Architects	07.02.2022	
DA-13R, R	Level 10 floor plan	Coble Stephens Architects	07.02.2022	
DA-05R, R	Level 2 floor plan	Coble Stephens Architects	07.02.2022	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
DA-07R, R	Level 4 floor plan	Coble Stephens Architects	07.02.2022	
DA-06R, R	Level 3 floor plan	Coble Stephens Architects	07.02.2022	
DA-03R, R	Ground floor plan	Coble Stephens Architects	07.02.2022	
DA-04R, R	Level 1 floor plan	Coble Stephens Architects	07.02.2022	
DA-02R, R	Site plan	Coble Stephens Architects	07.02.2022	
L-01, Rev D	Landscape plan Ground floor	Space Landscape Designs	22/3/2022	
L-02, Rev D	Landscape plan Level 1	Space Landscape Designs	22/3/2022	
L-03, Rev E	Landscape plan Level 2	Space Landscape Designs	22/3/2022	
L-04, Rev D	Landscape plan Level 3-9	Space Landscape Designs	22/3/2022	
L-05, Rev D	Landscape plan Level 10	Space Landscape Designs	22/3/2022	
L-06, Rev E	Landscape plan Level 11	Space Landscape Designs	22/3/2022	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Sydney Trains Concurrence Conditions	Sydney Trains	27/06/2022	D08441310
TfNSW Concurrence Conditions	TfNSW	5/05/2022	D08402145
TfNSW Concurrence Conditions for CTMP	TfNSW	27/04/2022	D08396831
Disability Access Report	Cheung Access	6/04/2022	D08398418
Acoustic Report	Acoustic works	28/04/2022	D08398632
Geotech report	Douglas Partners	April 2022	D08395490
Rail impact Assessment	Douglas Partners	April 2022	D08395495
Stormwater plans, basement 2 and 3, SW001, Rev 8	Majcon	23/03/2022	D08377775
Stormwater plans, basement 1 and ground floor, SW002, Rev 8	Majcon	23/03/2022	D08377775
Stormwater plans, level 1, SW003, Rev 8	Majcon	23/03/2022	D08377775
Sediment erosion plans, ER001, ER002, ER003, Rev 07	Majcon	23/03/2022	D08377774
Sediment erosion plan ER004, Rev 02	Majcon	23/03/2022	D08377774
Survey plan, 122-02, Rev 03	Craig and Rhodes	11/03/2022	D08369631
Construction Traffic Management Plan, Rev I	Transport and traffic planning	March 2022	D08365757
Detailed Site Investigation, Ref 99895.01	Douglas Partners	17/12/21	D08367320

Document Title	Prepared by	Dated	Council Reference
BCA Report, Rev 2	Custom Development Certifications	29/05/2022	D08418718
BCA Letter	Holmes Fire	19/05/2022	D08418718
Traffic and parking impact assessment, Issue J	Transport and traffic planning	May 2022	D08416252
Survey, Sheet 1 to 2, Rev 03	Craig and Rhodes	11/03/2022	D08369631
Site retention design report	Majcon Consulting	20/05/2022	D08443588
Civil and structural design plans, SR0 rev E, SR1 rev B, SR2 rev B, SR 3 rev B, SR 4, rev B, SR 5 rev F, SR6 rev C	Majcon Consulting	June 2021	D08443632
Electrical Blowout Design Report	ECL Power Services	30 July 2021	D08390336
Electrical Blowout Plan	ECL Power Services	30 July 2021	D08390335
Plans prepared and certified by Craig & Rhodes sheets 1, 3, 4	Craig & Rhodes	23/03/2022	D08443594
Plans prepared and certified by Craig & Rhodes sheets 5, 6, 7, 8	Craig & Rhodes	23/03/2022	D08443598

3. Section 7.11 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the Hornsby Shire Council Section 7.11 Development Contributions Plan 2020-2030, the following monetary contributions must be paid to Council to cater for the increased demand for community infrastructure resulting from the development:

Description	Contribution (\$)
Roads	\$135,355.75
Open Space and Recreation	\$11,537.35
Community Facilities	\$7,105.95
Plan Preparation and Administration	\$769.95
TOTAL	\$154,769.00

being for 1 x 3+ bedroom unit, 306m² of retail floor space and 520m² of business floor space.

- b) The value of this contribution is current as at 12 July 2022. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.11 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\mathbf{\$C_{PY} = \$C_{DC} \times CPI_{PY}}$$

CPI_{DC}

Where:

$\$C_{PY}$ is the amount of the contribution at the date of Payment

$\$C_{DC}$ is the amount of the contribution as set out in this Development Consent

CPI_{PY} is the latest release of the Consumer Price Index (Sydney - All Groups) at the date of Payment as published by the ABS.

CPI_{DC} is the Consumer Price Index (Sydney - All Groups) for the financial quarter at the date applicable in this Development Consent Condition.

- c) The monetary contribution must be paid to Council:
- i) Prior to the issue of the Subdivision Certificate where the development is for subdivision; or
 - ii) Prior to the issue of the first Construction Certificate where the development is for building work; or
 - iii) Prior to issue of the Subdivision Certificate or first Construction Certificate, whichever occurs first, where the development involves both subdivision and building work; or
 - iv) Prior to the works commencing where the development does not require a Construction Certificate or Subdivision Certificate.

Note: It is the professional responsibility of the Principal Certifying Authority to ensure that the monetary contributions have been paid to Council in accordance with the above timeframes.

Note: In accordance with Ministerial Directions, the payment of contribution fees for development with a cost of works of over \$10 million can be deferred to prior to Occupation Certificate.

Note: Council's Development Contributions Plan may be viewed at www.hornsby.nsw.gov.au or a copy may be inspected at Council's Administration Centre during normal business hours.

4. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) A separate Works Certificate must be obtained from Council for all works within the public road reserve under S138 of the *Roads Act 1993*.
- c) The Construction Certificates plans must be consistent with the Development Consent plans.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE**5. Building Code of Australia**

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the

National Construction Code - Building Code of Australia. All building work must be carried out in accordance with the requirements of the National Construction Code - Building Code of Australia.

6. Contract of Insurance (Residential Building Work)

Where residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, this contract of insurance must be in force before any building work authorised to be carried out by the consent commences.

7. Notification of Home Building Act 1989 Requirements

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notice of the following information:

- a) In the case of work for which a principal contractor is required to be appointed:
 - i) The name and licence number of the principal contractor.
 - ii) The name of the insurer by which the work is insured under Part 6 of that Act.
- b) In the case of work to be done by an owner-builder:
 - i) The name of the owner-builder.
 - ii) If the owner-builder is required to hold an owner-builder's permit under that Act, the number of the owner-builder's permit.

Note: If arrangements for doing the residential building work are changed while the work is in progress so that the information notified becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being Council) has given Council written notification of the updated information.

8. Utility Services

The applicant must submit written evidence of the following service provider requirements:

- a) *Ausgrid (formerly Energy Australia)* - a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.
- b) *Telstra/NBN* - a letter of consent demonstrating that satisfactory arrangements have been made to service the proposed development.

9. Sydney Water - Approval

This application must be submitted to *Sydney Water* for approval to determine whether the development would affect any *Sydney Water* infrastructure, and whether further requirements are to be met.

Note: Building plan approvals can be obtained online via Sydney Water Tap in™ through www.sydneywater.com.au under the Building and Development tab.

10. Dilapidation Report

- a) Prior to the commencement of any works on site, the applicant must submit for approval by the Principal Certifying Authority (with a copy forwarded to Council) a 'Dilapidation Report' detailing the structural condition of the adjoining properties:
 - i) 10 Edgeworth David Avenue (SP 30399)
- b) The report must include a photographic survey of the adjoining properties detailing their physical condition, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items. The report must be completed by a chartered structural/geotechnical engineer. A copy of the dilapidation report must be submitted to Council.
- c) In the event access to adjoining allotments for the completion of a dilapidation survey is denied, the applicant must demonstrate in writing that all reasonable steps have been taken to advise the adjoining allotment owners of the benefit of this survey and details of failure to gain consent for access to the satisfaction of the Principle Certifying Authority.

Note: This documentation is for record keeping purposes only and can be made available to an applicant or affected property owner should it be requested to resolve any dispute over damage to adjoining properties arising from works. It is in the applicant's and adjoining owner's interest for it to be as detailed as possible

11. Fire Safety Schedule

A schedule of all proposed essential fire safety measures to be installed in the building (e.g. hydrants, hose reels, emergency warning systems etc.) shall be submitted with the construction certificate application.

12. Identification of Survey Marks

A registered surveyor must identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development shall be undertaken by a registered surveyor in accordance with Section 24 (1) of the *Surveying and Spatial Information Act 2002* and following the Surveyor General's Directions No.11 - "Preservation of Survey Infrastructure".

13. Stormwater

The stormwater drainage system for the development must be designed for an average recurrence interval (ARI) of 20 years and be gravity drained in accordance with the following requirements:

- a) Connected directly to Council's drainage system/ street gutter
- b) Discharge to Council gutter must be limited to 50 litres per second at any point. For more than 1 discharge point, separation is to be minimum 1m.
- c) Be designed by a Chartered Professional Civil/ Hydraulic Engineer of the Institution of Engineers, Australia

14. On Site Stormwater Detention

An on-site stormwater detention system must be designed by a chartered civil engineer and constructed in accordance with the following requirements:

- a) Storage capacity to accommodate volume from up to 50 years ARI (average recurrence interval) storms and a maximum discharge (when full) limited to 5 years pre development rate.
- b) Have a surcharge/inspection grate located directly above the outlet. Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- c) Where above ground system is proposed and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.
- d) Not be constructed in a location that would impact upon the visual or recreational amenity of residents.
- e) Detail calculations are to be shown in construction certificate plan.
- f) An overflow/escape path shall be incorporated in the design.

15. Water Quality/Bio Retention System

- a) A Water Sensitive Urban Design is to be done and constructed. The stormwater leaving the premises must achieve the quality as specified in Council's Development Control Plan 2012 (table 1C.1.2(b) Urban Stormwater Quality Targets) or utilise one of the deemed to comply solutions. The design shall be based on Hornsby Council parameters as contained in the MUSIC Model. The design is to be carried out by a Chartered Professional Civil/ Hydraulic Engineer of the institution of Engineers, Australia.
- b) Prior to occupation of the premises, a Chartered Civil/Hydraulic Engineer of the Institution of Engineers, Australia is to certify that works have been completed in accordance with the approved construction plan and the design will achieve the targets specified in the condition.

16. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed, constructed and a Construction Certificate issued in accordance with Australian Standards 2890.1, 2890.2, 3727 and the following requirements:

- a) Design levels at the front boundary shall be obtained from Council if a private accredited certifier is engaged to obtain a construction certificate for these works.
- b) The driveway be a rigid pavement.
- c) Conduit for utility services including electricity, water, gas and telephone be provided. All existing overhead assets including electricity and telecommunications cabling shall be relocated underground at no cost to Council. A certificate from an appropriately licensed contractor shall be submitted to the principal certifying authority certifying that the service conduits have been installed in accordance with the relevant utility provider and Australian Standards.
- d) Longitudinal sections along both sides of the access driveway shall be submitted to the principal certifying authority in accordance with the relevant sections of AS 2890.1. The maximum grade shall not exceed 1 in 4 (25%) with the maximum

changes of grade of 1 in 8 (12.5%) for summit grades and 1 in 6.7 (15%) for sag grades. Any transition grades shall have a minimum length of 2 metres. The longitudinal sections shall incorporate the design levels obtained by Council.

17. Road Works

All road works approved under this consent must be designed in accordance with Council's AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:

- a) Replace the existing Kerb and gutter and footpath in front of the development site along Edgeworth David Road.
- b) Kerb and gutter along Pacific Highway frontage shall be replaced in accordance with RMS's requirements.
- c) Existing footpath along Pacific Highway shall be replaced.
- d) No work is to commence within the road reserve until approval under Section 138 of the *Roads Act 1993* is obtained from Hornsby Shire Council. In this regard a construction certificate application is to be submitted to Council.

18. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan must be prepared by a suitably qualified environmental consultant in consultation with Transport for New South Wales, a qualified traffic engineer and AQF 5 arborist and submitted to Council via Council's Online Services Portal for review and written approval.

The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
 - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall be in compliance with the requirements of the *Roads and Maritime Services Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works.
 - b. Long term signage requirements.
 - c. Short term (during actual works) signage.
 - d. Vehicle Movement Plans, where applicable.
 - e. Traffic Management Plans.
 - f. Pedestrian and Cyclist access and safety.

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- v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must be able to be facilitated at all times.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved.
 - vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
 - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council in order to ensure the above.
 - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with *AS 2601-2001 - 'The Demolition of Structures'*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.

- iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:
 - i) A site plan showing tree protection zones (TPZ) and structural root zones (SRZ) of trees to be retained and specific details of tree protection measures inclusive of distances (in metres) measured from tree trunks.
 - ii) Construction methodology to avoid damage to trees proposed to be retained during construction works.
 - iii) Specifications on tree protection materials used and methods within the TPZ or SRZ.
 - iv) Location of dedicated material storage space on site outside of TPZ's and SRZ's for retained trees.
- d) A Construction Noise and Vibration Management Plan (CNMP) which includes:
 - i) Existing noise and vibration levels within the proximity of the proposed development site.
 - ii) Details of the extent of rock breaking or rock sawing works forming part of the proposed development works.
 - iii) The maximum level of noise and vibration predicted to be emitted during each stage of construction.
 - iv) The duration of each stage of works where the maximum level of noise and vibration are predicted to be emitted for.
 - v) Details of mitigation measures, inclusive of respite periods, that will meet acoustic standards and guidelines at each stage of works.
 - vi) Details of a complaints handling process for the surrounding neighbourhood for each stage of works.
- e) Identification of approved sediment and erosion control measures.
- f) The CMP must detail the contact information for developers, builder, private certifier and any emergency details during and outside work hours.

Note: The CMP must be lodged via Council's Online Services Portal at: <https://hornsbyprd-pwy-epw.cloud.infor.com/ePathway/Production/Web/Default.aspx> and by selecting the following menu options: Applications > New Applications > Under 'Application Types': Management Plans.

19. Environmental Management Plan (EMP)

An Environmental Management Plan (EMP) is to be submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval, prior to the issue of a Construction Certificate. The EMP is to be prepared by a suitably qualified Environmental Consultant detailing the actions that will be taken to protect the environment for the duration of works, and all responsible parties ensuring compliance with the document. The Plan is to be in accordance with the publication 'Managing Urban Stormwater - Landcom (March 2004)',

the *Protection of the Environment Operations Act 1997* and relevant Council guidelines, and should include but not be limited to:

- a) Water quality and soil management, including but not limited to sediment and erosion control measures and stormwater management.
- b) Air quality.
- c) Noise management, including excavation noise mitigation measures to be implemented.
- d) Waste Management.
- e) Tree Protection Management inclusive of tree protection measures.
- f) Unexpected finds protocol to manage contamination finds.

Note: The EMP must be lodged via Council's Online Services Portal at: <https://hornsbyprd-pwy-epw.cloud.infor.com/ePathway/Production/Web/Default.aspx> and by selecting the following menu options: Applications > New Applications > Under 'Application Types': Management Plans.

20. Noise - Rail Corridor

- a) Prior to the issue of a Construction Certificate, an Acoustic Report prepared by a suitably qualified environmental consultant in accordance with the requirements of the Department of Planning's *Development Near Rail Corridors and Busy Roads - Interim Guideline* and RailCorp's *Interim Guidelines for Applicants* must be submitted to the Principal Certifying Authority. The Acoustic Report must demonstrate that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:
 - i) In any bedroom in the residential accommodation - 35dB(A) at any time between 10:00pm and 7:00am, and
 - ii) Anywhere else in the residential accommodation (other than a garage, kitchen bathroom or hallway) - 40dB(A) at any time.
- b) The development must be carried out in accordance with the recommendations contained within the Acoustic Report submitted with the Construction Certificate application.

Note: The Department of Planning's document is available at www.planning.nsw.gov.au (development assessments).

Note: The RailCorp document is available at www.railcorp.nsw.gov.au/publications.

21. Waste Management Details

The following waste management requirements must be complied with:

- a) No steps/ bin and waste carting routes
 - i) There must be no steps along any bin carting route. Ramps and service lifts are acceptable.

Note: bin carting routes include, but are not limited to, from the bin storage rooms to the ground level temporary bin holding bay, from the ground level bin storage/holding bay to the kerbside.

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- ii) For all bin carting routes, the path must be smooth hard surface. (Concrete pavement for example is acceptable, but pebbles, stepping stones, grass etc is not acceptable).
 - iii) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the bin carting route from the ground level bin temporary bin holding bay to the parked waste collection vehicle has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - a. Must be smooth hard surface.
 - b. Must be sufficiently wide to hold all serviceable bins and provide aisle space for manoeuvring bins out and in (including through any gates or doors).
 - c. Must be devoid of steps.
 - d. Must have a gradient no steeper than 1:14 for 240L bins and 1:20 for 660L or 1100L bins.
 - iv) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the waste carting route from each dwelling to the bulky waste storage area has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - a. The route is direct, does not cross into a private lot, and is wholly within property boundaries (does not include the public footpath or road).
 - b. The route is as short as possible and does not exceed 30m walking distance.
 - c. The route is an accessible path of travel for persons with a disability in accordance with AS1428 Design and Access for Mobility.
- b) Bin storage rooms at ground level
- i) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that all waste storage room(s) at ground level have been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - a. The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting.
 - b. The floor must be finished so that it is non-slip, sealed and impervious, and has a smooth and even surface coved at all intersections.
 - c. The ceilings and walls must be finished with smooth faced non-absorbent material capable of being cleaned.

- d. The room is to be provided with artificial light controllable within the room and adequate forced ventilation.
 - e. The room is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
 - f. The doors are to be robust and lockable, with door openings suitable for manoeuvring the required bins through. The doors must be able to be opened from inside the room without a key.
 - g. The doors to the bin rooms must be wide enough to fit a 1100L bin through ,double doors should be provided.
- ii) If the 240L bins are to be decanted into 1100L bins at ground level, provision needs to be made for a bin lifter.
- c) Waste facilities in FACF dirty utility rooms
- i) The dirty utility rooms on each level must include space for a garbage and recycling bin.
 - ii) must be a waste facility (a garbage chute, plus 1 x 240L recycling bin & 1 x 240L future FOGO bin in a cupboard or small room) on each residential level of each lift core of each building. Each waste facility must:
 - a. Be accessible by persons with a disability after the garbage chute, recycling bin and FOGO bin are installed.
 - b. Comfortably house the required garbage chute and 240 L recycling bin and 240L FOGO bin.
 - c. Have door(s) wide enough and positioned so that the 240 L recycling bin and 240L FOGO bin can fit through with ease.

Note: 240L bins are 600mm wide, 750mm deep, 1100mm high. To allow for ease around the bin an additional 75mm is recommended. These dimensions do not include wall thickness, door thickness, ventilation ducting etc, which must be added. The chute system supplier must be consulted for chute space requirements. AS1428.1 requires at least 800mm clear doorway opening for wheelchair access.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

22. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:
 - i) Showing the name, address and telephone number of the principal certifying authority for the work.
 - ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.
 - iii) Stating that unauthorised entry to the work site is prohibited.

- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

23. Protection of Adjoining Areas

A temporary hoarding, fence or awning must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- a) Could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic.
- b) Could cause damage to adjoining lands by falling objects.
- c) Involve the enclosure of a public place or part of a public place.
- d) Have been identified as requiring a temporary hoarding, fence or awning within the Council approved Construction Management Plan (CMP).

Note: Notwithstanding the above, Council's separate written approval is required prior to the erection of any structure or other obstruction on public land.

24. Toilet Facilities

- a) To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
- b) Each toilet must:
 - i) Be a standard flushing toilet connected to a public sewer.
 - ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.
 - iii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

25. Erosion and Sediment Control

To protect the water quality of the downstream environment, erosion and sediment control measures must be provided and maintained throughout the construction period in accordance with the manual '*Soils and Construction 2004 (Bluebook)*', the approved plans, Council specifications and to the satisfaction of the principal certifying authority. The erosion and sediment control devices must remain in place until the site has been stabilised and revegetated.

Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning.

26. Garbage receptacle

- a) A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
- b) The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
- c) The receptacle lid must be kept closed at all times, other than when garbage is being deposited.

- d) Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

REQUIREMENTS DURING CONSTRUCTION

27. Construction Work Hours

All work on site (including demolition and earth works) must only occur between 7am and 5pm Monday to Saturday (unless otherwise approved in writing by Council due to extenuating circumstances). No work is to be undertaken on Sundays or public holidays.

28. Environmental Management

To prevent sediment run-off, excessive dust, noise or odour emanating from the site during the construction, the site must be managed in accordance with the publication *'Managing Urban Stormwater - Landcom (March 2004)* and the *Protection of the Environment Operations Act 1997*.

29. Street Sweeping

During works and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.

The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

30. Compliance with Environmental Management Plan (EMP)

The Council approved Environmental Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

31. Council Property

To ensure that the public reserve is kept in a clean, tidy and safe condition during construction works, no building materials, waste, machinery or related matter is to be stored on the road or footpath.

32. Disturbance of Existing Site

During construction works, the existing ground levels of open space areas and natural landscape features, including natural rock-outcrops, vegetation, soil and watercourses must not be altered unless otherwise nominated on the approved plans.

33. Landfill not Permitted

The importation of fill material associated with earthworks, or structural or engineering works, is not permitted as part of this consent.

34. Excavated Material

All excavated material removed from the site must be classified by a suitably qualified environmental consultant in accordance with the NSW Environment Protection Authority's *Waste Classification Guidelines* and *Protection of the Environment Operations (Waste) Regulation 2014* prior to disposal to a licensed waste management facility. Tipping dockets for the total volume of excavated material that are received from the licensed waste

management facility must be provided to the principal certifying authority prior to the issue of an Occupation Certificate.

35. Maintenance of public footpaths

Public footpaths must be maintained for the duration of works to ensure they are free of trip hazards, displacements, breaks or debris to enable pedestrians to travel along the footpath safely.

36. Compliance with Construction Management Plan

The Council approved Construction Management Plan must be complied with for the duration of works, unless otherwise approved by Council.

37. Building Materials and Site Waste

The stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, waste water or other contaminants must be located outside the tree protection zones as prescribed in the conditions of this consent of any tree to be retained.

38. Unexpected Finds

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the PCA and Council.

39. Waste Management Details

Requirements of the approved Waste Management Plan shall be complied with during all site preparation works, demolition and throughout all construction works. When implementing the Waste Management Plan, the developer is to ensure:

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the *Protection of Environment Operations Act 1997*
- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the *Protection of Environment Operations Act 1997*
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it
- e) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the *Protection of Environment Operations Act 1997* must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses
- f) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works

- g) Additionally, written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:
- i) The identity of the person removing the waste.
 - ii) The waste carrier vehicle registration.
 - iii) Date and time of waste collection.
 - iv) A description of the waste (type of waste and estimated quantity).
 - v) Details of the site to which the waste is to be taken.
 - vi) The corresponding weighbridge tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
 - vii) Whether the waste is expected to be reused, recycled or go to landfill.
- Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.*
- h) A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:
- i) Prior to the pouring of the concrete on the ground level, certifying that: the ground level bin storage/holding bay rooms are at the same level as the driveway (no steps).

40. Vehicular Crossing

A separate application under the *Local Government Act, 1993* and the *Roads Act 1993* must be submitted to Council for the installation of a new vehicular crossing and the removal of the redundant crossing. The vehicular crossing must be constructed in accordance with Council's *Civil Works Design 2005* and the following requirements

- a) Design levels at the front boundary must be obtained from Council for the design on the internal driveway.
- b) Any redundant crossings must be replaced with integral kerb and gutter.
- c) The footway area must be restored by turfing.
- d) Approval must be obtained from all relevant utility providers that all necessary conduits be provided and protected under the crossing.

Note: An application for a vehicular crossing can only be made to one of Council's Authorised Vehicular Crossing Contractors. You are advised to contact Council on 02 9847 6940 to obtain a list of contractors.

41. Survey Report

A report(s) must be prepared by a registered surveyor and submitted to the principal certifying authority:

- a) Prior to the pouring of concrete at each level of the building certifying that:

- ii) The building, retaining walls and the like have been correctly positioned on the site; and
- iii) The finished floor level(s) are in accordance with the approved plans.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

42. Damage to Council Assets

To protect public property and infrastructure, any damage caused to Council's assets as a result of the construction or demolition of the development must be rectified by the applicant in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions). Rectification works must be undertaken prior to the issue of an Occupation Certificate, or sooner, as directed by Council.

43. Streetscape paving

- a) Streetscape pavement works are to be provided within the Edgeworth David Avenue and Pacific Highway road verge.
- b) Paving works are to include a fully paved verge using Claypave 'Monarch Tan' 230 x 110 x 60mm unit paving laid in a 45degree herringbone pattern with header course.
- c) Pavers are to be laid on bedding sand over a 100mm thick concrete base slab. A 90 degree Header is to be provide around all the paving areas including to the tree planter pits.

44. Street Tree Plantings

- a) Street tree plantings along the frontage to Edgeworth David Avenue shall include:
 - i) Street tree planting is to consist of three (3) *Leptospermum conferta* (Brushbox) planted at a minimum pot size of 75 litres.
- b) Street tree plantings along the frontage to Pacific highway should include:
 - i) Street tree planting is to consist of two (2) *Corymbia maculata* (spotted gum) planted at a minimum pot size of 75 litres.
- c) Trees are to be placed in sufficient soil area and have the following specifications:
 - i) Be 2m x 4m x 0.5m deep per tree creating a minimum volume of structural soils of 4m³ per tree. Imported tree pit soil is to be structural soils such as 40mm aggregate free draining granular material similar to that provided by Benedicts Pty Ltd to create an adequate lateral growing volume below the pavement.
 - ii) Tree pit areas are to have surface area opening of 2m x 1m with the finished surface mulch in the tree pit to be compacted decomposed granite similar to that supplied by ANL Pty Ltd. 50mm thick.

Note: Applicants are advised to pre-order plant material required in pot sizes 45 litre or larger to ensure Nurseries have stock available at the time of install.

45. Planter Pots

Planter Pots must include automatic irrigation, sufficient soil depth and adequate drainage to ensure sustainable landscape is achieved.

46. Completion of Landscaping

A certificate must be provided by a practicing landscape architect, horticulturalist or person with similar qualifications and experience certifying that all required landscaping works have been satisfactorily completed in accordance with the approved landscape plans.

47. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, a licenced asbestos assessor is required to provide a Clearance Certificate to the Certifier prior to the issue of an Occupation Certificate, certifying that the asbestos has been removed and appropriately disposed of, and the site is now suitable for its approved use.

48. Works as Executed Plan

A works-as-executed plan(s) must be prepared by a registered surveyor and submitted to Council for completed diversion of Council pipe, overland flow path, footpath, driveway, on-site detention and water sensitive urban design systems. The plan(s) must be accompanied by a certificate from a registered surveyor certifying that all pipelines and associated structures lie wholly within any relevant easements.

49. Creation of Easements

The following matter(s) must be nominated on the plan of subdivision under s88B of the *Conveyancing Act 1919*:

- a) The creation of an appropriate "*Positive Covenant*" and "*Restriction as to User*" over the constructed on-site detention and water sensitive urban design systems/ rain water tanks and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The positions of the on-site detention system and water sensitive urban design systems/ rainwater are to be clearly indicated on the title.
- b) To register the positive covenant and the restriction on the use of land, "*works-as-executed*" details of the on-site-detention and water sensitive urban design systems must be submitted verifying that the required storage and discharge pipes of the on-site detention system and the water sensitive urban system/ rain water tank have been constructed in accordance with the design requirements. The details must show the invert levels of pipes, pipe sizes and grades and filters/bio retention basin. Any variations to the approved plans must be shown in red on the "*works-as-executed*" plan and supported by calculations

50. Preservation of Survey Infrastructure

Prior to the issue of a construction certificate, a registered surveyor shall identify all survey marks in the vicinity of the proposed development. Any survey marks required to be removed or displaced as a result of the proposed development shall be undertaken by a registered surveyor in accordance with Section 24 (1) of the Surveying and Spatial Information Act 2002 and following the Surveyor General's Directions No.11 - Preservation of Survey Infrastructure.

51. Completion of Works and Compliance Certificate

All engineering works identified in this consent are to be completed and a Compliance Certificate issued prior to the release of occupation permit.

52. Fire Safety Statement - Final

In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, upon completion of the building, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

53. Submission of Excavated Material Tipping Dockets to Principal Certifying Authority

Tipping dockets for the total volume of excavated material that are received from the licensed waste facility must be provided to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

54. Traffic Signage

A 'left turn into the kerb side lane only' sign is to be installed within the boundary of the property facing exit side of the driveway.

55. Provision for National Broadband Network (NBN)

Provision must be made for fibre ready passive infrastructure (pits and pipes) generally in accordance with NBN Co's pit and pipe installation guidelines to service the proposed development. A certificate from NBN Co or Telstra must be submitted to the PCA that the fibre optic cabling provided for the development complies with MDU Building Design Guides for Development.

56. External Lighting

- a) To protect the amenity of adjacent premises, all external lighting must be designed and installed in accordance with Australian Standard AS4282 Control of the obtrusive effects of outdoor lighting.
- b) Certification of compliance with this Standard must be obtained from a suitably qualified person and submitted to the PCA with the application for the Occupation Certificate.

57. Retaining Walls

All retaining walls must be constructed as part of the development and prior to the issue of an Occupation Certificate.

58. Waste Management Details

The following waste management requirements must be complied with:

- a) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifying Authority must obtain Council's approval of the waste and recycling management facilities provided in the development and ensure arrangements are in place for domestic waste collection by Council.

Note: Waste and recycling management facilities includes everything required for on-going waste management on the site. For example the bin storage areas, bulky waste storage area, bin collection area, waste collection vehicle access, doors wide enough to fit the bin through, accessibility, bin carting routes etc.

- b) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, all external works including but not limited to the vehicular crossover and footpath, must be completed. For staged occupation (where the Occupation Certificate will be limited to a portion of the development):
- i) Prior to the issue of the occupation certificate or the use commencing, whichever is earlier, for each stage of the development the waste management system (including but not limited to the bin storage room, bin holding bay, the road/accessway and vehicular crossover, loading bay and truck turning area) for that stage, must be completed.
- c) A report must be prepared by an appropriately qualified person, certifying the following:
- i) A comparison of the estimated quantities of each demolition and construction waste type against the actual quantities of each waste type.
- Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report*
- ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.
- Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.*
- iii) All demolition and construction waste was taken to site(s) that were lawfully permitted to accept that waste.
- d) The bin carting routes must be devoid of any steps and must be wholly within the site.
- Note: Ramps between different levels are acceptable. The use of the public footpath is not acceptable.*
- e) All lockable doors and gates, both pedestrian and vehicular, that are required to be opened by Council's waste collection contractor in the provision of waste collection services, must be able to be opened using a pin code. That is, locks requiring keys, remote controls, key fobs etc are not acceptable.
- f) The bin storage rooms at the ground level must comfortably house all of the bins required to be stored there.
- g) The temporary bin holding bay at the ground level must include sealed and impervious surfaces, robust door(s), adequate lighting and ventilation, and must be lockable. The walls must be finished with smooth faced non-absorbent material capable of being cleaned. The temporary bin holding bay must include water or a hose for cleaning, and graded floors draining to sewer.

59. Garbage Collection Easement

For the purpose of waste collection, an easement entitling Council, its servants and agents and persons authorised by it to enter upon the subject land and to operate thereon, vehicles

and other equipment for the purposes of waste collection must be granted to Council by the owner of the land. The waste collection easement must be registered with the NSW Land Registry Services prior to issue of the occupation certificate.

Note: The easement must be in a form prescribed by Council and must include covenants to the effect that parties will not be liable for any damage caused to the subject land or any part thereof or to any property located therein or thereon by reason of the operation thereon of any vehicle or other equipment used in connection with the collection of garbage and to the effect that the owner for the time being of the subject land shall indemnify the Council, its servants, agents and persons authorised by it to collect garbage against liability in respect of any such claims made by any person whomsoever.

60. Restriction on Occupation - Housing for Seniors or People with a Disability

A restriction as to user must be created under s88E of the *Conveyancing Act 1919* and registered, requiring all residential dwellings approved under this consent to be solely used for the accommodation of:

- a) Seniors (55+ age) or people who have a disability, or
- b) People who live within the same household as seniors or people with a disability, or
- c) Staff employed to assist the administration and provision of services to housing provided under State Environmental Planning Policy (Housing) 2021.

Note: The restriction must nominate Council as the authority to release, vary or modify the restriction.

OPERATIONAL CONDITIONS

61. Hours of Operation

- a) The hours of operation of the commercial tenancies are restricted to those times listed below unless otherwise approved in writing by Council:

Monday to Saturday 7 am to 6 pm

Sunday & Public Holidays 8am to 6pm

- b) All deliveries must take place within the approved hours of operation.

62. Fire Safety Statement - Annual

On at least one occasion in every 12 month period following the date of the first 'Fire Safety Certificate' issued for the property, the owner must provide Council with an annual 'Fire Safety Certificate' certifying each essential service installed in the building.

63. Landscape establishment

The landscape works must be maintained into the future to ensure the establishment and successful growth of plant material to meet the intent of the landscape design. This must include but not be limited to watering, weeding, replacement of failed plant material and promoting the growth of plants through standard industry practices.

64. Noise - Operational

- a) All noise generated by the proposed development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).
- b) An acoustic assessment is to be undertaken by a suitably qualified environmental consultant within 60 days of occupying the site in accordance with the Environment Protection Authority's *Noise Policy for Industry (2017)*, *Council's Policy and Guidelines for Noise and Vibration Generating Development (Acoustic Guidelines V.5, 2000)* and the *DECC's Noise Guide for Local Government (2004)*. The assessment must be held on site for review by Council if necessary. Should the assessment find that noise from the premises exceeds 5dB(A) above background noise levels, appropriate measures must be employed to rectify excessive noise.

65. Waste Management

The waste management on site must be in accordance with the following requirements:

- a) The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.
- b) There must be a sufficient number of bins on site to contain the volume of waste and recycling expected to be generated between collection services. There must be a sufficient number of rotational bins on site for there to be a garbage bin under each chute and a recycling bin in each bin cupboard on each residential level on collection days.
- c) A site caretaker must be employed and be responsible for:
 - i) moving bins where and when necessary, washing bins and maintaining waste storage areas and signage, ensuring the chute systems and related devices are regularly checked and maintained in effective and efficient working order. Maintaining and checking all waste management equipment (e.g. bin cart/tug), managing the bulky item storage area, arranging the prompt removal of dumped rubbish, arranging for shopping trolleys to be promptly returned to the local shopping centre(s), ensuring recycling bins are free of contamination (which includes but is not limited to garbage, plastic bags, clothing, etc.), addressing overflowing bins and pest infestations, liaising with Council on waste matters and ensuring all residents are informed and kept up to date on the use of the waste management system. The site caretaker must be employed for a sufficient number of hours each week to allow all waste management responsibilities to be carried out to a satisfactory standard.

Note: bins are to be placed in the holding area the day before the collection day, then returned to the basement bin storage rooms promptly after servicing.

- d) No waste storage containers are to be located or placed outside of the approved waste storage area at any time except for collection purposes.
- e) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste

and recycling and what materials can be placed in each bin. Signage is also to be provided in locally appropriate culturally and linguistically diverse (CALD) community languages.

Note: Council may be able to assist with signage.

- f) Where the development incorporates strata title subdivision, the by-laws are to clearly set out the management responsibilities for the developments waste management system.
- g) Where the waste management system includes a chute system, there needs to be a contingency plan to allow for the continual disposal and collection of waste if the chute cannot be operated.
- h) All equipment required in the operation of the approved waste management system must be regularly checked and maintained in effective and efficient working order in accordance with the manufacturers instructions by trained service technicians.

66. Car Parking

All car parking must be constructed and operated in accordance with Australian Standard AS/NZS 2890.1:2004 - Off-street car parking and Australian Standard AS 2890.2:2002 - Off-street commercial vehicle facilities.

- a) All parking areas and driveways are to be sealed to an all weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas to be used solely for nominated purposes.
- c) Vehicles awaiting loading, unloading or servicing shall be parked on site and not on adjacent or nearby public roads.
- d) All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- e) Visitors must be able to access the visitor parking spaces at all times. These spaces are not to be used by residents as storage or parking spaces
- f) Motorcycle parking spaces are to be designed in accordance with AS/NZS 2890.1:2004 Figure 2.7.
- g) Bicycle parking spaces are to be designed in accordance with AS 2890.3-1993 Bicycle parking facilities.

CONDITIONS OF CONCURRENCE - TRANSPORT FOR NSW

The following conditions of consent are from the nominated State Agency pursuant to Section 4.13 of the Environmental Planning and Assessment Act 1979 and must be complied with to the satisfaction of that Agency.

67. TfNSW 1

The awning is to be setback a minimum of 600mm from the face of kerb to protect the structure from vehicle overhang.

68. TfNSW 2

The awning is not to hinder driver sight distances to the traffic signal lanterns.

69. TfNSW 3

The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

70. TfNSW 3

The proposed development, noting its use, should be designed, as per the requirements of clause 101 (2)(c) of State Environmental Planning Policy (Infrastructure) 2007 such that it includes measures to ameliorate potential traffic noise or vehicle emissions noise within the site of the development arising from the Pacific Highway. These measures shall be certified by an appropriately qualified noise and air quality expert and noted on the plans prior to issue of a Construction Certificate.

71. TfNSW 4

All demolition and construction vehicles are to access the site via Edgeworth David Avenue. A construction zone will not be permitted on the Pacific Highway.

CONDITIONS OF CONCURRENCE - Sydney Trains

The following conditions of consent are from the nominated State Agency pursuant to Section 4.13 of the *Environmental Planning and Assessment Act 1979* and must be complied with to the satisfaction of that Agency.

72. A1

Unless amendments are required in order to obtain approval/certification/compliance from Sydney Trains in relation to any of the Sydney Trains related conditions of consent, all excavation and construction works are to be undertaken in accordance with the details, methodology, advice, undertakings, and recommendations as detailed in the following documents:

- a) Geotechnical Investigation Report prepared by Douglas Partners, reference 99895.00, revision 1, dated 19 April 2022.
- b) Civil & Structural Design Plans prepared by MAJCON Consulting:
 - i) Site Retention Works Construction Notes & Drawing Index, reference 20190057-SRO, revision E, dated 10 May 2022;
 - ii) Site Retention Works Ground Floor Plan Showing Shoring, reference 20190057-SR1, revision B, dated 4 March 2022;

- iii) Site Retention Works Basement-1 Floor Plan Showing Shoring, reference 20190057-SR2, revision B, dated 4 March 2022;
 - iv) Site Retention Works Basement-2 Floor Plan Showing Shoring, reference 20190057-SR3, revision B, dated 4 March 2022;
 - v) Site Retention Works Basement-3 Floor Plan Showing Shoring, reference 20190057-SR4, revision B, dated 4 March 2022;
 - vi) Site Retention Works, Site Cross Sections & Construction Sequence, reference 20190057-SR5, revision F, dated 20 May 2022; and
 - vii) Site Retention Works- Cross Section Z-Z Showing Bridge Abutment, reference 20190057-SR6, revision C, dated 20 May 2022.
- c) Site Retention Design Report prepared by MAJCON Consulting, reference MAJ20190057-REP 01 REV 06 20 05 2022, revision 6, dated 20 May 2022.
- d) Detailed Survey Plans prepared by Craig & Rhodes, reference 122-02, Drawings 122-02 T06 [03] Sheet 1 of 2 & 2 of 2, revision 03, dated 11 March 2022.
- e) Architectural Plans prepared by Coble Stephens Architects (CSA), reference 610- 17-458, revision R, dated 7 February 2022:
- i) Detail Plan - Blowout 33kV Line, Sheet 40 of 47 DA-40R;
 - ii) Detail Plan - Blowout 11kV Line, Sheet 41 of 47 DA-41R;
 - iii) Blowout Sections - Option A - Crane/Precast Panels, Revision R, Reference 610-17-458, Sheet 42 of 47 DA-42R;
 - iv) Blowout Sections - Option B - Scaffolding, Reference 610-17-458, Revision R, Sheet 43 of 47 DA-43R;
 - v) Blowout Sections - Option C - Maintenance, Sheet 44 of 47 DA-44R; and
 - vi) Blowout/Crane Section Through Lift Shaft, Sheet 45 of 47 DA-45R.
- f) Ground Floor Plan - Retail prepared by Coble Stephens Architects (CSA), Reference 610-17-458, Revision R, Sheet 3 of 46 DA-03R, dated 16 September 2021.
- g) First Floor Plan - Commercial prepared by Coble Stephens Architects (CSA), Reference 610-17-458, Revision M, Sheet 5 of 32 DA-04L, dated 20 August 2020.
- h) Electrical Blowout Design Report prepared by ECL Power Services (No Reference) dated 30 July 2021;
- i) Electrical Blowout Plan prepared by ECL Power Services, reference Hornsby 01, Sheet 1, revision A, dated 30 July 2021.
- j) Plans prepared and certified by Craig & Rhodes, reference 122-02, dated 23 March 2022:
- i) Craneage Plan/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 8;
 - ii) Scaffolding Plan/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 7; iii. Pre-Cast Panel/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 6;

- iii) Detail Survey Plan/Electrical Blowout 33kV Plans Survey, Drawing 122- 02G T09 [06] - Plan 5;
 - iv) Detail Survey Plan/Electrical Blowout 11kV Plans Survey, Drawing 122- 02G T09 [06] - Plan 4;
 - v) Crane Cross-Sectional Plan/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 3;
 - vi) Craneage Survey Plan/Electrical Blowout Survey, Drawing 122-02G T09 [06] - Plan 2; and
 - vii) Craneage Survey Plan/Electrical Blowout Plans Survey, Drawing 122-02G T09 [06] - Plan 1.
- k) TBG Senior Living Services Pty Ltd email (Signed by Matthew Blissett) dated 3 March 2022.

The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming which of the documentation listed in this condition are to now apply or are superseded as a result of the compliance with the Sydney Trains related conditions of consent. The measures detailed in the documents approved/ certified by Sydney Trains under this Condition are to be incorporated into the construction drawings and specifications prior to the issuing of the Construction Certificate. Prior to the commencement of works the Principal Certifying Authority is to provide verification to Sydney Trains that this condition has been complied with.

73. B1.

Prior to the issue of a Construction Certificate, the Applicant is to consult with Sydney Trains and provide details as agreed upon for unfettered access to Sydney Trains access gates and TAHE (Transport Asset Holding Entity) owned land and assets, during and postconstruction. The Applicant should ensure provision for easy and ongoing 24/7 access by rail vehicles, plant, and equipment to support maintenance and emergency activities. The Principal Certifying Authority is not to issue any Construction Certificate, until written confirmation has been received from Sydney Trains confirming this condition has been satisfied.

74. B2.

If required, prior to the commencement of works, the Applicant shall enter into a Licence Agreement with Sydney Trains/TAHE (Transport Asset Holding Entity) for the formalisation of access to Sydney Trains access gates/TAHE (Transport Asset Holding Entity) owned land and assets.

75. B3.

Prior to the issue of a Construction Certificate, the applicant is to consult with Sydney Trains/TAHE (Transport Asset Holding Entity), and provide documentation of registration of the Easement on Title as agreed upon for the provision of a Right of Carriageway Easement under c88B of the Conveyancing Act 1919, as part of the proposed development to allow for continued access to Sydney Trains access gates and TAHE (Transport Asset Holding Entity) owned land and assets for maintenance and emergency purposes.

76. B4.

A Plan of Survey and associated easement terms defining the extent of the easement is required to be submitted to Sydney Trains/TAHE (Transport Asset Holding Entity) for endorsement. The location of the new easement (including easement terms) will be in accordance with Sydney Trains/TAHE (Transport Asset Holding Entity) requirements. The responsibility of creating and registering the new easement shall be the Applicant's and at their cost. The Principal Certifying Authority is not to issue any Occupation Certificate until written confirmation has been received from Sydney Trains confirming its endorsement of the new easement (including easement terms), and confirmation that the Applicant has registered the new easement on Title.

77. B5.

Prior to the commencement of any works, the applicant is to prepare and provide to Sydney Trains for review and endorsement a Hydrologic Assessment report demonstrating that the dewatering during construction will not have any adverse settlement impacts on the rail corridor. No works are to commence until this report has been endorsed by Sydney Trains.

78. B6.

Prior to the commencement of any works, a Registered Surveyor shall peg-out the common property boundary between the development site and TAHE (Transport Asset Holding Entity) land and easements. A copy of the survey report indicating the location of pegs must be provided to Sydney Trains prior to the commencement of works.

79. B7.

Prior to the issuing of a Construction Certificate, the Applicant shall prepare and provide to Sydney Trains for review, comment, and written endorsement the following final version rail specific items in compliance with Sydney Trains' requirements and the relevant ASA Standards (<https://www.transport.nsw.gov.au/industry/assetmanagement-branch>):

- a) Geotechnical Engineering Report demonstrating that the development has no negative impact on the rail corridor, embankment, or the integrity of the infrastructure.
- b) Excavation and Construction Methodology (including staging) with construction details pertaining to machinery to be used and structural support during excavation.
 - iii. Cross Sectional Drawings showing the rail corridor, sub soil profile, proposed basement excavation and/or structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.
 - iv. Detailed Survey Plan showing the relationship of the proposed development with respect to the rail corridor and assets.
- c) If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

80. B8.

Prior to the issue of a Construction Certificate, the Applicant shall include in their Construction Management Plan and Safe Working Method Statements (SWMS) adherence to the load restriction set in place for the Pacific Highway Rail Bridge, or as per the applicable structural

requirements. The Principal Certifying Authority shall not issue a Construction Certificate until these requirements have been met.

81. B9.

If required by Sydney Trains, a Track Monitoring Plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate. The Principal Certifying Authority is not to issue a Construction Certificate until written confirmation has been received from Sydney Trains advising of the need to undertake the track monitoring plan, and if required, that it has been endorsed.

82. B10.

No work is permitted within the rail corridor (including airspace) or any easements which benefit Sydney Trains/TAHE (Transport Asset Holding Entity), at any time, unless the prior approval of, or an Agreement with, Sydney Trains/TAHE (Transport Asset Holding Entity) has been obtained by the Applicant. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

83. B11.

A risk analysis, which shall determine the required level of derailment protection (if any), shall be carried out in consultation with Sydney Trains. This risk analysis will determine the redundancy requirements or the minimum collision loads specified in Australian Standard AS5100 that needs to be complied with. The risk assessment is to be prepared in accordance with the Sydney Trains Safety Management System. The Principal Certifying Authority shall not issue the Construction Certificate until it has received written confirmation from Sydney Trains that the risk analysis has been prepared and the Principal Certifying Authority has also confirmed that the measures recommended in this risk analysis have been indicated on the Construction Drawings.

84. B12.

The Applicant shall prepare an acoustic assessment demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines". The Applicant must incorporate in the development all the measures recommended in the report. A copy of the report is to be provided to the Principal Certifying Authority and Council prior to the issuing of a Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the acoustic assessment are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.

85. B13.

Prior to the issue of an Occupation Certificate (whether an interim or final Occupation Certificate), a report must be prepared and submitted to the Certifying Authority, Council and Sydney Trains certifying that the completed development meets the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021 and with the Department of Planning and Infrastructure's Development Assessment Guideline titled "Development Near Rail Corridors and Busy Roads - Interim Guidelines" as set down in the subject condition of this consent. Such a report must include external and internal noise levels to ensure that

the external noise levels during the test are representative of the typical maximum levels that may occur at this development, and that internal noise levels meet the required dB(A) levels. Where it is found that internal noise levels are greater than the required dB(A) level, necessary corrective measures must be carried out to ensure that internal noise levels are compliant with the requirements of this consent.

86. B14.

Prior to the issue of a Construction Certificate, the Applicant shall undertake a services search to establish the existence and location of any rail services. Persons performing the service search shall use equipment that will not have any impact on rail services and signalling. Should rail services be identified within the subject development site, the Applicant must discuss with Sydney Trains as to whether these services are to be relocated or incorporated within the development site.

87. B15.

Prior to the issuing of a Construction Certificate, the Applicant must submit to Sydney Trains a final plan showing all craneage and other aerial operations for the development and must comply with all standards and Sydney Trains' requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains' requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

88. B16.

Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate. The Principal Certifying Authority must ensure that the recommendations of the electrolysis report are incorporated in the construction drawings and documentation prior to the issuing of the relevant Construction Certificate.

B17.

No scaffolding is to be used facing the rail corridor and TAHE (Transport Asset Holding Entity) electrical assets unless prior written approval has been obtained from Sydney Trains. To obtain approval the Applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor and TAHE (Transport Asset Holding Entity) electrical assets. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.

89. B18.

Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows, and other external features (e.g., roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of Sydney Trains (e.g., awning windows, louvres, enclosed balconies, window restrictors etc.) which prevent the throwing of objects onto the rail corridor.

The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

90. B19.

The design, installation and use of lights, signs, and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare, reflectivity, and illumination to the satisfaction of the rail operator. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

91. B20.

Prior to the commencement of any works appropriate fencing must be in place along the rail corridor to prevent unauthorised access to the rail corridor during construction works. Details of the type of fencing and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

92. B21.

The development shall have appropriate fencing fit for the future usage of the development site to prevent unauthorised access to the rail corridor by future occupants of the development. Prior to the issuing of an Occupation Certificate the Applicant shall liaise with Sydney Trains regarding the adequacy of any existing fencing along the rail corridor boundary or design and construction of new fencing. Details of the type of new fencing to be installed and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

93. B22.

The Applicant is to ensure that the development incorporates appropriate anti-graffiti measures, to the satisfaction of Sydney Trains.

94. B23.

The Applicant must ensure that all drainage from the development is adequately disposed of and managed and not allowed to be discharged into the rail corridor unless prior written approval has been obtained from Sydney Trains.

95. B24.

Rainwater from the roof must not be projected and/or falling into the rail corridor and must be piped down the face of the building which faces the rail corridor.

96. B25.

During all stages of the development the Applicant must take extreme care to prevent any form of pollution entering the rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.

97. B26.

Excess soil is not allowed to enter, be spread, or stockpiled within the rail corridor (and its easements) and must be adequately managed/disposed of.

98. B27.

Sydney Trains advises there are 11kV & 33kV High Voltage Aerial Transmission Lines in close proximity to the proposed works. All works within 6 metres of the nearest transmission line conductor must comply with:

- a) ISSC 20 - Guideline for the Management of Activities within Electricity Easements and Close to Electricity Infrastructure.
- b) The Safe Approach Distances (SADs) in the Sydney Trains Document titled "SMS06-GD-0268 - Working Around Electrical Equipment".
- c) "WorkCover Code of Practice - Work near Overhead Power Lines (The Code)" B28. There is a need to ensure that the roots and foliage of trees being planted beside the rail corridor and High Voltage Aerial Transmission Line(s) do not have an impact on the rail corridor, rail operations, or infrastructure assets. All Landscaping shall be in accordance with the Sydney Trains High Voltage Powerline Tree Management Plan. A final landscaping and planting plan demonstrating measures to ensure compliance with this condition must be prepared to the satisfaction of Sydney Trains. No construction certificate can be issued until written confirmation has been received from Sydney Trains confirming that this condition has been complied with.

99. B29.

No metal ladders, tapes, and plant, machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and catenary, contact and pull-off wires of the adjacent tracks, and to any aerial power supplies within or adjacent to the rail corridor.

100. B30.

If required by Sydney Trains, prior to the issue of a Construction Certificate, a Risk Assessment/Management Plan, and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

101. B31.

No metal ladders, tapes, and plant, machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment. This applies to the train pantographs and catenary, contact and pull-off wires of the adjacent tracks, and to any aerial power supplies within or adjacent to the rail corridor.

102. B32.

Prior to the issuing of any Occupation Certificate, the Applicant must provide to Sydney Trains for review and endorsement a plan of how future maintenance of the development facing the rail corridor is to be undertaken. The Principal Certifying Authority is not to issue any Occupation Certificate until written confirmation has been received from Sydney Trains

confirming that this condition has been satisfied. The maintenance plan must be implemented for the life of the approved development.

103. B33.

Prior to the issuing of any Occupation Certificate, the Applicant is to submit as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into TAHE (Transport Asset Holding Entity) property or easements, unless agreed to by TAHE (Transport Asset Holding Entity). The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

104. B34.

If required by Sydney Trains, prior to the commencement of works or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required within 10 days following the undertaking of the inspection, unless otherwise notified by Sydney Trains.

105. B35.

If required by Sydney Trains, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

106. B36.

If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains External Interface Management team to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.

107. B37.

If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains External Interface Management team to determine the need for public liability insurance cover. If insurance cover is deemed necessary, this insurance must be for a sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor and rail infrastructure, and must be maintained for the duration specified by Sydney Trains. The Applicant is to contact Sydney Trains External Interface Management team to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this

insurance in conjunction with Sydney Trains' written advice to the Applicant on the level of insurance required.

108. B38.

Sydney Trains or Transport for NSW, and persons authorised by those entities for the purpose of this condition, must be permitted to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and the requirements of this consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.

109. B39.

The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:

- a) oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
- b) acts as the authorised representative of the Applicant; and
- c) is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.

110. B40.

Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition, excavation and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.

111. B41.

Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains External Interface Management team. In this instance the relevant interface team is North Interface, and they can be contacted via email on North_Interface@transport.nsw.gov.au.

112. B42.

Copies of any certificates, drawings, approvals/certification, or documents endorsed by, given to, or issued by Sydney Trains or TAHE (Transport Asset Holding Entity) must be submitted to Council for its records prior to the issuing of the applicable Construction Certificate or Occupation Certificate.

113. B43.

Where a condition of consent requires Sydney Trains or Transport for NSW endorsement the Principal Certifying Authority is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged

Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

- The issue of a construction certificate prior to the commencement of any works. Enquiries can be made to Council's Customer Services Branch on 9847 6760.
- A principal certifying authority to be nominated and Council notified of that appointment prior to the commencement of any works.
- Council to be given at least two days written notice prior to the commencement of any works.
- Mandatory inspections of nominated stages of the construction inspected.
- An occupation certificate to be issued before occupying any building or commencing the use of the land.

Long Service Levy

In accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986*, a 'Long Service Levy' must be paid to the Long Service Payments Corporation or Hornsby Council.

Note: The rate of the Long Service Levy is 0.35% of the total cost of the work.

Note: Hornsby Council requires the payment of the Long Service Levy prior to the issue of a construction certificate.

Tree and Vegetation Preservation

Hornsby Development Control Plan 2013 Tree and Vegetation Preservation provisions have been developed under Council's authorities contained in State Environmental Planning Policy (Biodiversity and Conservation) 2021 and the *Environmental Planning and Assessment Act 1979*.

In accordance with these provisions a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, lop or otherwise remove a substantial part of the trees or vegetation to which any such development control plan applies without the authority conferred by a development consent or a permit granted by Council.

Fines may be imposed for non-compliance with the Hornsby Development Control Plan 2013.

Note: A tree is defined as a long lived, woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than three metres (3m). (HDCP 1B.6.1.c).

Disability Discrimination Act

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide

consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

Covenants

The land upon which the subject building is to be constructed may be affected by restrictive covenants. Council issues this approval without enquiry as to whether any restrictive covenant affecting the land would be breached by the construction of the building, the subject of this consent. Applicants must rely on their own enquiries as to whether or not the building breaches any such covenant.

Tenancy Fit-Out - Separate DA Required

This consent does not permit the fit-out of individual tenancies. A separate development application is required for the fit-out of individual tenancies prior to the occupation of the building.

Use of Building - Separate DA Required

This consent does not permit the use of the premises for any purpose. Separate development consent is required for the use of the premises prior to the occupation of the building.

Advertising Signage - Separate DA Required

This consent does not permit the erection or display of any advertising signs. Most advertising signs or structures require development consent. Applicants should make separate enquiries with Council prior to erecting or displaying any advertising signage.

Dial Before You Dig

Prior to commencing any works, the applicant is encouraged to contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au for free information on potential underground pipes and cables within the vicinity of the development site.

Telecommunications Act 1997 (Commonwealth)

If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800810443.

Asbestos Warning

Should asbestos or asbestos products be encountered during demolition or construction works, you are advised to seek advice and information prior to disturbing this material. It is recommended that a contractor holding an asbestos-handling permit (issued by *SafeWork NSW*) be engaged to manage the proper handling of this material. Further information regarding the safe handling and removal of asbestos can be found at:

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

Alternatively, telephone the *SafeWork NSW* on 13 10 50.

Construction Traffic Management Plan Advisory Note (TfNSW)

- Any bus seating readjustments will require approval from the relevant assets owner (council and/or Rail) and must comply to TfNSW and Bus operator guidelines.

- For the class B hoarding, they will need to ensure that along the Pacific Hwy it is a minimum 600mm from the kerb, preferably 800mm from the kerb to ensure safety clearance for buses is met.
- Any Traffic Guidance Schemes (TGS) prepared are to comply with AS1742.3 and Transport for NSW's "Traffic Control at Worksites" manual and be signed by a person with TfNSW certification to prepare a TGS.
- Proponent must apply and obtain approval from the Transport Management Centre for a Road Occupancy Licence (ROL) for any required lane closures and/or Speed Zone Authorisations as part of the ROL that impact the state road network or is within 100m of traffic signals.
- Proponent must submit a site specific traffic management plan for any Road closures required to Road occupancy unit for endorsement.
- No marshalling or queuing of construction vehicles is to occur on public roads. Arriving vehicles that are not able to use parking bay/work zone must continue to a holding point until space becomes available.
- When heavy vehicles are entering or leaving the site a traffic controller is to be provided to manage any conflicts between pedestrians and heavy vehicles.
- Transport for New South Wales reserve the right to alter the CTMP Conditions at any time to maintain safe and efficient traffic and pedestrian movements in this area
- Any approved Works Zone should only be used for work activities. No infrastructure, including bins, tanks or traffic control equipment should be left on the road when the works zone is not in use by a vehicle. All non-vehicular items must be contained with the work area and not on the carriageway. When a work zone is not in use, the area/lane must be opened up to allow for normal trafficable conditions
- Should TfNSW Network and Asset Management, Network Operations, CJP Operations, Network and Safety or other TfNSW business area determine that that more information is to be provided for review and acceptance, including other TCS locations, this information must be submitted prior to the CTMP being implemented, or otherwise agreed upon.
- Endorsement of the CTMP is not an approval to the type of traffic management or delineation devices used, nor is it an approval to any traffic guidance schemes depicted within the CTMP. It is assumed that the proponent has used type approved devices and has developed its traffic guidance schemes in accordance with the relevant Australian Standards and Guidelines.
- The proponent is to ensure local residents, businesses, schools and other stakeholders in the affected area as well as emergency service organisations are notified of the changes associated with the CTMP, prior to its implementation.
- Please ensure this CTMP is shared and adhered to by all contractors. If the CTMP changes, please forward a copy to Developments.CJP@transport.nsw.gov.au or further review and endorsement.