



# **BUSINESS PAPER**

## **LOCAL PLANNING PANEL MEETING**

**Wednesday 31 May 2023  
at 4:00pm**



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**1 DA/1205/2022 - TEMPORARY USE OF THE SITE AS A FUNCTION CENTRE FOR A  
MAXIMUM OF 70 GUESTS - 4 HENSTOCK ROAD, ARCADIA**

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<b>DA No:</b>	DA/1205/2022 (Lodged on 17 November 2022)
<b>Description:</b>	Temporary use of the site as a function centre
<b>Property:</b>	Lot 3 DP 832940, No. 4 Henstock Road, Arcadia
<b>Applicant:</b>	Mr Peter Shipway & Mrs Grada Elizabeth Shipway
<b>Owner:</b>	Mr Peter Shipway & Mrs Grada Elizabeth Shipway
<b>Estimated Value:</b>	\$14,500
<b>Ward:</b>	A Ward
<b>Zoning:</b>	RU4 Primary production small lots
<b>Submissions:</b>	26
<b>LPP Criteria:</b>	10 or more unique submissions were received by way of objection
<b>Author:</b>	Charley Wells, Town Planner
<b>COI Declaration:</b>	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

**RECOMMENDATION**

THAT Development Application No. DA/1205/2022 for temporary use of the site as a function centre for a maximum of 70 guests at Lot 3 DP 832940, No. 4 Henstock Road, Arcadia be approved subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP2/23.

## EXECUTIVE SUMMARY

- The application proposes the temporary use of the site as a function centre in accordance with the provisions of Clause 2.8 of the Hornsby Local Environmental Plan 2013.
- The proposal generally complies with the requirements of the Hornsby Local Environmental Plan 2013 and the Hornsby Development Control Plan 2013.
- A total of 26 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved subject to a condition including limiting the consent to a period of 12 months to allow monitoring and assessment of the use to confirm it is operating satisfactorily.

## BACKGROUND

On 26 September 2018, Council approved DA/733/2018 for alterations and additions to an existing studio and the use of the additions as a secondary dwelling. The proposed temporary functions the subject of the current application would incorporate the use of the existing secondary dwelling structure on the site.

On 13 April 2021, DA/357/2021 was lodged for temporary use of the site as a function centre for up to 110 guests. The temporary use was proposed to be undertaken 28 days per year, Monday to Sunday - 9am to 8pm.

On 15 December 2021, the HLPP refused DA/357/2021 for temporary use as a function centre for the following reasons:

1. *The proposal is unsatisfactory with respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the development does not satisfy the provisions of Clause 2.8 Temporary use of land of the Hornsby Local Environmental Plan 2013. The proposal does not adequately demonstrate that the proposed 'temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood' as required by Clause 2.8(3)(b).*
2. *The proposal is unsatisfactory with respect to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the development is not consistent with the development objectives and provisions of the RU4 zone under the Hornsby Local Environmental Plan 2013. The proposal would not meet the objectives of the zone as it fails to demonstrate minimising conflicts between surrounding land uses and would unreasonably increase the demand for public infrastructure, services or facilities with the rural area.*
3. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal does not comply with the desired outcome and the prescriptive measures of Hornsby Development Control Plan 2013 (HDCP) as follows:*
  - a) *The proposal does not comply with 1C.2.5 Noise and Vibration of the HDCP as the development is not designed and managed to minimise noise and vibration impacts on the occupants of surrounding rural/residential dwellings and other noise sensitive land uses, due to a number of inconsistencies and uncertainties in the acoustic measures and plan of management proposed for the temporary function events.*

- b) *The proposal does not comply with 1C.2.4 Effluent Disposal of the HDCP as there are a number of inconsistencies with regards to the existing and proposed effluent disposal systems and whether they would be sufficient for the proposed development in conjunction with the existing effluent disposal management areas of the site.*
4. *Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, it is considered that the proposal would have significant environmental impacts on the natural, built, social and economic environment of the locality.*
5. *Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, it is considered that the site is not suitable for the proposed development.*
6. *Pursuant to the provisions of Section 4.15(1)(a)(d) and (e) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development would not be in the public interest.*
7. *The application fails to include sufficient information that adequately addresses the proposed temporary use would not adversely impact on any adjoining land or the amenity of the neighbourhood.*

On 17 November 2022, the subject development application was lodged reducing the proposed number of guests to 70 and with reduced hours of operation. The application is the subject of this report.

#### **APPLICATION HISTORY**

On 16 December 2022, Council requested a revised acoustic assessment and Plan of Management.

On 6 February 2023, the applicant submitted a revised acoustic assessment and Plan of Management.

On 27 February 2023, Council requested on site sewerage management details of the existing system locations.

On 28 February 2023, the applicant submitted the sewerage management details.

On 28 February 2023, Council requested amended plans indicating the existing wastewater disposal areas, a Plan of Management for the use of the site and clarification of works with respect to the wastewater disposal.

On 6 March 2023, the applicant submitted amended plans and Plan of Management.

On 21 March 2023, Council requested a site capability and system report, details of the existing system and proposed system locations.

On 26 April 2023, the applicant submitted an on-site sewerage management report.

On 27 April 2023, Council requested amended plans and Plan of Management with respect to the location of wastewater disposal areas.

On 2 May 2023, the applicant submitted amended plans and Plan of Management.

On 9 May 2023, the applicant submitted amended plans.

#### **SITE**

The 2.011-hectare site is located on the northern side of Henstock Road, Arcadia and contains a dwelling house, swimming pool, cabana, shed and a secondary dwelling. The site experiences a gradual fall of 10 metres to the south-western, front boundary.

The site is located adjacent to a heritage listed house (Item No. 10) of local significance at No. 3 Cobah Road listed within Schedule 5 of the Hornsby Local Environmental Plan 2013.

The surrounding area comprises rural and agricultural land uses.

The site is not subject to bushfire and is not flood prone land.

## PROPOSAL

The application proposes the temporary use of the site for a function centre in accordance with the provisions of Clause 2.8 of the Hornsby Local Environmental Plan 2013 (HLEP). Functions would be limited to a maximum period of 28 days (whether or not consecutive days) in any period of 12 months, excluding time required for set up and pack down.

The proposed operation parameters would be as follows:

- Max. 70 guests on the site for any function held.
- Max. 15 subcontractors to support the event/ function.
- Hours of Operation: Monday to Saturday - 10.30am to 6pm.
- Deliveries would be between 9am and 5pm.
- Max. 70 people in the 'Indoor Event Space' inclusive of the internal living areas and veranda of the second dwelling.
- Max. 30 people in the "Western informal spill out area" to be used as an informal space ancillary to the primary function room (i.e., "indoor function area").
- Max. 70 people in the 'Central Garden' located between the existing dwelling and secondary dwelling. One on-site speaker system and/or live unamplified music would occur.
- 2 staff would be employed on site to undertake the role of function manager, this is listed in the Plan of Management as the owners of the property.

The temporary use would require the installation of acoustic measures. These measures would not preclude the operation of the existing secondary dwelling when the temporary use ceases to be used on site.

All food service associated with the temporary functions/ events would be undertaken from temporary food trucks. All waste generated would be removed by the sub-contractors at the conclusion of each function.

All other structures associated with the temporary use would be either existing or temporary structures erected or brought onto the site for the various functions held.

The application proposes two car parking areas comprising 42 car spaces. The two parking areas would be located in front of the existing dwelling house and in the north-eastern, rear corner of the site.

Effluent waste management is proposed to be serviced by portable toilets, negating the use of the on-site wastewater system. Changes to the existing wastewater arrangement are proposed including the construction of a new reserve trench for the secondary dwelling and the relocation of the spray

irrigation area for disposal of effluent from the Aerated Wastewater Treatment System (AWTS) servicing the main dwelling.

No trees would be removed as a result of the proposed development.

## 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 over 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 over the next 20 years.

#### Planning Priority N18 - Better managing rural areas

In giving effect to A Metropolis of Three Cities, this Planning Priority delivers on the following objective and the corresponding strategies:

- Objective 29 - Environmental, social, and economic values in rural areas are protected and enhanced.

The proposed temporary use would not be inconsistent with this objective as the proposal would protect the environment and enhance the social and economic values of the rural area by retaining trees, providing employment opportunities and creating a destination location for functions.

#### 1.2 Hornsby Shire Rural Lands Strategy

The Rural Lands Study was adopted in May 2022. The Strategy provides key principles and recommendations for managing rural lands into the future and addresses obligations for rural lands prescribed by the State Government. It will set a strategic direction for rural areas and will inform amendments to the Local Strategic Planning Statement (LSPS) and planning controls including the HLEP and the Development Control Plan (DCP).

The proposed land use would be consistent with the principles and vision of the Rural Lands Strategy, specifically,

- *Hornsby Shire's rural area continues to grow as a visitor destination.*
- *Rural scenic landscape values are protected and enhanced.*
- *New development is designed and sited to support and enhance scenic values of the relevant landscape area.*

- *The character of rural villages is maintained as important local service and community nodes.*
- *Biodiversity and habitat areas are protected, and conservation measures are enhanced.*

The proposed land use would be consistent with these principles in that the proposal would:

- Promote the Hornsby LGA as a destination by the exposure of the site as a unique wedding/function destination location. The proposal would support local businesses and Tourist and Visitor Accommodation vendors.
- The gardens on site would be maintained and the gardens are consistent with the rural landscape character of surrounding properties.
- The operation of the proposed temporary function centre would not be visible from Henstock Road or adjoining properties, due to existing screen planting adjacent to the property boundaries. This protects the visual amenity of the site and preserves the landscape character of the locality.
- The proposed use would not compromise the biodiversity of this location.
- The scale of the proposed use would not undermine the rural village character of Arcadia.
- Appropriate setbacks are proposed to minimise potential land use conflict with rural practices in the vicinity of the site.

One of the recommendations provided in the Rural Lands Study is to:

*Retain RU1 (Primary Production) and RU4 (Primary Production, Small Lots) zoning extent and include opportunities for additional land uses including Garden Centres, Markets, Restaurants and Cafés, Function centres and Artisan Food and Drink premises on sites where agriculture occurs.*

The subject site is zoned RU4 pursuant to the HLEP 2013. While the site does not include the undertaking of primary production, the site would leverage the rural character of this location through the temporary function centre use.

The operation of the temporary function centre would generally be consistent with the objectives of the Strategy to enhance opportunities for supporting tourism activities that reinforce the character of the rural location. As the site is a small land holding, the scale of the development proposed complement the recommendations of the Strategy.

## **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 HLEP.

#### **2.1.1 Zoning of Land, Permissibility and Clause 2.8 Temporary Use of Land**

The subject land is zoned RU4 Primary Production Small Lots under the HLEP. The objectives of the RU4 zone are:

- *To enable sustainable primary industry and other compatible land uses.*



- *To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage land uses that support primary production, including low-scale and low-intensity tourist and visitor accommodation and the provision of farm produce direct to the public.*
- *To ensure that development does not unreasonably increase the demand for public infrastructure, services or facilities.*

The proposal is consistent with the RU4 zone objectives for the following reasons:

- The proposed land use would be small scale and complement the rural character and primary production activities of the locality.
- The small land holding of the subject site would not sustain primary production as a sole entity. The proposal does not promote a use that is in competition for primary production lands.
- The use of the site complements horticultural production in the locality, by promoting the rural character of this location.
- The proposed land use would not compromise the sustainability of these lands for use as primary production given the scale and temporary nature of the proposed use should the land tenure change in the future.
- The use of the site has been developed so as not to impact on the visual character or the amenity of the locality. This has been addressed in the acoustic assessment of the proposal and the mitigation measures employed both within the POM and the acoustic assessment such as the provision of generous screening and separation to these land uses.
- The proposed use of the site is of an intensity that complements the established rural character of Arcadia, and ultimately not compete with the surrounding primary production lands.
- The use of the site would not increase demand for local infrastructure due to the largely transient nature of facilities and services offered in the operation of the premises.

The proposed development is defined as a 'function centre' which is a prohibited land use within the zone.

Notwithstanding, Clause 2.8 of the HLEP permits a function centre as a temporary use on land if it can be demonstrated that *"the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land"* and the following:

- “(2) *Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 28 days (whether or not consecutive days) in any period of 12 months.*
- (3) *Development consent must not be granted unless the consent authority is satisfied that—*
  - (a) *The temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*

- (b) *The temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
- (c) *The temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*
- (d) *At the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use."*

With respect to (a) it is noted that minimal building works are proposed to facilitate the establishment of the temporary use of the site for functions. This includes the erection of screens and fencing that can ultimately be removed when the temporary use ceases to operate. The use of the site for a temporary use does not prejudice the carrying out of development in accordance with the provisions of the zone, and the HLEP more broadly.

With respect to (b), as established by *Marshall Rural Pty Ltd v Hawkesbury City Council and Ors* [2015] NSWLEC 197 case law, the test posed for consideration of the elements of Clause 2.8 differs from that which would conventionally apply to development applications for uses which, according to the Land Use Table, are not prohibited development. Therefore, in the case of the current application, the requirements of Clause 2.8(3)(b) establish a much higher test standard than would typically be imposed on an application for a 'function centre' on land where the relevant zoning permits this use.

On this basis, development consent must not be granted unless Council is satisfied that the application would satisfy the 'no adverse impact' test under cl. 2.8(3)(b).

The proposed development satisfies the 'no adverse impact' test for the following reasons:

- The applicant submitted an Amended Acoustic Report prepared by RWDI Group and concludes that the proposed temporary use as a function centre would not have adverse impacts on the acoustic amenity of the neighbourhood.
- The proposal has demonstrated that no adverse impact was measured at background noise level +0 and this test is consistent with the requirement for being a more stringent assessment required by Clause 2.8, as established by case law. This is in keeping with the decision of *Marshall Rural Pty Limited v Hawkesbury City Council* [2015] NSWLEC 197 in adopting a precautionary approach to the acoustic measurement commensurate with the nature of the temporary application that seeks consent for an otherwise prohibited use. Given the difficulties in defining 'no adverse impact' that exist, a definition for consideration of this application that meets both the test of Clause 2.8 of the HLEP of 'no adverse impact' along with adopting a more stringent approach as required by the case law has been applied. The amended acoustic report is therefore considered to be an appropriate means for resolving the difficulty in this regard.
- The site would have noise screens to mitigate noise from the event to achieve the no adverse impact criteria, as these are permanent, they are in place when the setup/ pack down of equipment occurs and therefore would mitigate noise associated within the set up and pack down of the site for the purpose of a function. It is considered that an assessment of staff and sub-contractors is not necessary as the personnel operating on site during the applicable trading hours would not generate an acoustic level beyond that which is anticipated by the function of the event. The event is measured at the greatest potential impact being maximum 70 people.

It is anticipated a maximum of up to 10-15 people on site for set up, operation and pack down of a function. Further, it is noted that the setup and pack down relate to small furniture items, including tables and chairs within the operating hours as identified. The on-site delivery of the porta-loo or catering trucks is the equivalent of vehicles arriving on site and therefore does not require further mitigation.

It is for these reasons that an assessment of the noise generated by staff and sub-contractors is unnecessary. This was similarly agreed in the pre-lodgement meeting as being the most appropriate approach to considering noise generated by staff/ sub-contractors.

- The acoustic report addresses noise attributed to truck movements and determined that this would not result in any adverse impact. The equipment used is in small time periods for delivery on site and not in a prolonged/ on-going basis. Similarly, these trucks and food truck trailers are unlikely to generate noise greater than those experienced by farming and production equipment (lawn mowers, harvesting tractors etc) used in the surrounding primary production lands. The supervision would ensure that parking is in accordance with the plans submitted, that vehicles do not idle on site, and that movement occurs on site in designated areas within the operation hours. Supervision of these sub-contractors by the proponents who are aware of the sensitivity of surrounding properties can ensure this is undertaken in a manner appropriate for the rural character of this location and within the hours of operation as identified.
- The noise control measures are embedded within the POM to give Council and the proponents suitable recourse where a breach is demonstrated. The language of the POM was written to ensure that future function holders were aware of their obligations to the proponents and to create a contractual obligation of same. The applicants of the subject application are the proponents of the function centre and are the only employees of the business. The onus and accountability would be on them for the on-going operation of a temporary function centre to ensure the compliance with the POM and respective acoustic mitigation measures.
- The formal aspects of functions held on site would be contained within the existing secondary dwelling as nominated on the plans. This includes eating, drinking, dancing, speeches etc, with the exception of ceremonies held in the central garden areas. The use of speakers is as identified on the plans submitted and includes 1 speaker in the existing dwelling and 1 speaker used for ceremonies in the central gardens. These speakers are to be fitted with noise control measures as identified in the acoustic report.

The Statement of Environmental Effects (SEE) outlines that *“it is impractical to provide a temporary function centre within the garden setting of the site and not expect some attendees to walk within the grounds to enjoy the setting”*. It notes that the movement of people within the gardens is typically in small groups, as identified by the proponents, and is unlikely to generate noise levels that would create an adverse impact.

A small outdoor area is provided to the west of the dwelling as shown on the plans for an informal spill out area. This is provided to direct visitors to a space that is located at the greatest distance to adjoining properties, that has been designed with noise mitigation measures employed, and as such will result in no adverse amenity impact. Additional acoustic screening is proposed to the western outdoor space to ensure potential acoustic impacts are mitigated.

- The primary function space would be contained within the dwelling and within this space acoustic measures would be installed to mitigate the potential acoustic impacts. Notwithstanding this, it is incomplete not to consider how potential impacts would be managed for visitors to the site mingling within the garden areas as an ancillary space to the formal function areas. The suggested mitigation measures were provided to assure Council and surrounding neighbours that these acoustic impacts can be managed to ensure no adverse impact occurs. The mitigation measures for the outdoor spaces rely in principles similar to those typically assessed in CPTED principles to discourage unsociable behaviour and include:
  - Service of food and alcohol only within the existing dwelling to encourage larger groups to congregate within the dwelling which benefits from the greatest acoustic mitigation measures.
  - Providing furnishing and seating to discourage smaller groups congregating in the outdoor areas.
  - Installation of screens along the southern extremity of the western outdoor space to mitigate adverse acoustic impacts.

- Question 3 of the Land and Environment Court of NSW 'Plan of Management' planning principal, requires consideration of 'whether the source of any breaches of the Management Plan can be readily identified to allow for any enforcement action?'

For clarity, the proponents of the temporary function centre are the applicants/ owners of the site and are aware of the compliance issues raised by Council and adjoining property owners. The proponents/ owners are responsible for the noise mitigation measures identified in the POM. Council would therefore have compliance functions to ensure that the on-going use of the temporary function centre is operated in accordance with the terms of the POM and the Acoustic Assessment, as would be the case for a typical function venue.

- It is acknowledged that the POM does incorporate a financial disincentive measure for non-compliance by the function-holder, which is stipulated in Section 4.7 as follows:

*As part of the function holder agreement to be signed stating "The bond will be forfeited if any reasonable complaint is received by Council, the police, or the NSW Office of Liquor, Gaming and Racing".*

The term 'reasonable complaint' is used to prevent nuisance complaints from adjoining landowners whereby complaints registered with either Council or the NSW OLGR are taken as those requiring action. The term 'justified complaint' has been amended to reasonable complaint and relies on the common understanding of this language as would be applied by the Court.

- It is considered that the amended POM is acceptable and has addressed previous deficiencies for the following reasons:

- Aims of POM

Section 3.1 identifies the aim of the POM, which seeks, 'To ensure no adverse impact results as a consequence of the temporary use'.

Section 3 has been amended to adopt the language of Clause 2.8 of the HLEP for consistency. Section 4 of the POM identifies management principles for the

temporary function centre. These principles ensure that the temporary function centre operates in a manner consistent with the provisions of Clause 2.8 of the LEP and the test for no adverse impact. The resulting development, consistent with the management principles of the POM, would result in no adverse impact on adjoining land or the amenity of the neighbourhood.

- Hours of Operation

Section 4.1 and 4.2 outlines that the proponents as the owners/ occupiers of the land, are the only two staff involved in the operation of the temporary function centre, are responsible for the management of sub-contractors and all visitors to the site, which includes all operations within the trading hours. The subject application has provided more specific wording and operating hours to confirm this arrangement.

- Responsible Service of Alcohol

Section 4.4 of the POM addresses the Responsible Service of Alcohol and has been revised to clarify the intention surrounding the RSA obligations. The function holder as the entity responsible for the booking is to present an RSA Card for any sub-contractor involved in the function prior to the event. However, it is noted that where an RSA Card is not presented then the booking would be terminated prior to the event.

- Transport and Parking

Section 4.5 of the POM addresses minimising impacts associated with transport and parking and outlines that the proponents as the owners/occupiers of the land, and the only two staff involved in the operation of the temporary function centre, are responsible for the management of sub-contractors and all visitors to the site. The proponents would undertake traffic management strategies both prior to the event and in the operation of the function, in accordance with the POM and as established on site. There is existing signage displayed on site limiting speed of vehicles and noise. The proponents therefore have responsibility for managing non-conformances and rectifying them during the function.

This includes managing the function-goers as they enter/ exit the site, including both traffic management and noise mitigation measures identified. Noting further, that the location of parking at the front of the site is located >60m from the external habitable areas of adjoining properties. The parking area in the northeastern corner of the site benefits from the acoustic barriers adjacent to the boundaries, and further accommodates a maximum of 7 parking spaces, including accessible parking.

- Complaint handling

According to the complaint handling and management procedures outlined in Section 4.10 of the POM, the proponents would provide contact details to the adjoining property owner that is an all hours contact.

- Control of Music and Loudspeakers

Section 4.5 of the POM and the RWDI Acoustic Report outlines that the central garden and function centre would have speakers fixed with noise limiters. The central garden area would have one loudspeaker set for a maximum level of 80 dBA at 1m with directionality. Live unamplified music at the central garden colonnade must be

limited to an acoustic duet (singer and accompanist) with no acoustic drums, wind or brass instruments.

With respect to (c) it is noted that the site is not constrained by any significant environmental features that would be impacted by the temporary use of the site for functions. The site is not bushfire or flood prone, does not contain NSW or local biodiversity values and the topography is relatively flat.

With respect to (d) it is noted that no significant building works are proposed to support the temporary use of the site for functions. The only building works required for this application are the acoustic screens and glazing to the existing dwelling proposed which can be readily removed from the site where the use changes.

In summary, as demonstrated above, the function centre incorporates noise control devices including acoustic screens, glazing, controlling devices on the speakers and behaviour management through the mechanism of the design of the function spaces, as well as the provisions of the POM.

Furthermore, a condition has been recommended in Schedule 1 of this report providing consent for a 12-month period to allow monitoring and assessment of the use so as to determine whether or not it is operating satisfactorily.

As outlined above, the documents provided adequately demonstrate that the proposed '*temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood*' as required by Clause 2.8(3)(b) of the HLEP.

### 2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 10.5 metres. With the exception of acoustic fencing ranging from 1.8-2.4 metres in height, no other building works are proposed under this development. Therefore, the proposal complies with this provision.

### 2.1.3 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not contain a heritage listed item and is not located within a heritage conservation area; however, the site is located adjacent to a heritage listed house (Item No. 10) of local significance at No. 3 Cobah Road listed within Schedule 5 of the HLEP.

A Heritage Impact Statement was not submitted with the development application. Notwithstanding, within the supporting SEE, consideration was made with regards to the impacts the proposal would have on the adjoining heritage item as follows:

- *The heritage item is located some 177m from the property boundary with the subject site.*
- *The curtilage of the property has been modified since the original subdivision of the land, and the erection of dwellings and ancillary structures on the property and 2 Henstock Road.*
- *The heritage item is well screened from the street (refer to Photograph 14 - 16 above) and surrounding properties and has been the subject of improvement works likely to include replacement roof materials and the external façade has been improved.*
- *The integrity of the heritage item is described as being 'Altered/extended sympathetically' on the heritage inventory.*

- *The proposed use and acoustic screening will not impact on the heritage value of this site for the following reasons:*
  - *The proposal is for the use in association with the existing residential property at the subject site and therefore will not alter the character of this location as rural residential landholdings.*
  - *With the exception of the proposed acoustic screens and glazing, the proposal does not include any physical works to the site.*
  - *The curtilage for this heritage item has been compromised in previous application and supports other single dwellings and detached ancillary structures between the subject property and the item.*
  - *The generous separation and vegetation screening provided to the subject site is not compromised by the erection of the proposed acoustic screens / fencing.*
  - *The impact of the heritage item was considered in the assessment of the DA/733/2018 for the construction of the secondary dwelling and was not considered by Council at that time to have an impact on the heritage value of the existing dwelling on No. 15 Cobah Road.*

In summary, the proposed development would not have a significant negative impact on the adjoining heritage items value and would meet the objectives of Clause 5.10 of the HLEP.

## **2.2 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008**

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 incorporates new exempt and complying development standards for agritourism in rural areas to diversify the uses of agricultural land without impacting the principal use of the land for primary production. Agritourism means the following— (a) farm gate premises, (b) farm experience premises.

A ‘farm experience premises’ means a building or place—

- (a) *On a commercial farm.*
- (b) *Ancillary to the farm.*
- (c) *Used to provide visitors to the farm, on a commercial basis, with small-scale and low-impact tourist or recreational activities, including the following, but not including motor sports—*
  - (i) *Horse riding.*
  - (ii) *Farm tours.*
  - (iii) *Functions or conferences.*
  - (iv) *Farm field days.*

Subdivision 16C outlines exempt development standards for farm experience premises. Which includes operating hours and total number of visitors. It is noted that the proposed development would not meet the exempt and complying development specified development as the function centre would not be on, or ancillary to, a commercial farm.

## **2.3 State Environmental Planning Policy (Resilience and Hazards) 2021**

The application has been assessed against the requirements of chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

### **2.3.1 Chapter 4 Remediation of Land**

Section 4.6 of the Resilience and Hazard SEPP states that 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.

A review of Council's records and aerial photography has determined that the site has been historically used for rural residential purposes. It is not likely that the site has experienced any significant contamination, and further assessment under chapter 4 of the Resilience and Hazards SEPP is not required.

### **2.4 State Environmental Planning Policy (Biodiversity and Conservation) 2021**

The application has been assessed against the requirements of chapter 9 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

#### **2.4.1 Chapter 9 Hawkesbury-Nepean River**

The site is located within the catchment of the Hawkesbury-Nepean River. The aim of this chapter is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of development are considered in the regional context. Part 9.2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, significant vegetation habitats, extraction, environmental heritage and scenic quality, recreation and tourism, and agriculture.

Subject to the implementation of wastewater management systems to protect water quality, the proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 9 of the Biodiversity and Conservation SEPP.

### **2.5 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.

### **2.6 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). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP - Part 2 Rural			
Control	Proposal	Requirement	Complies
Site Area	2.011ha	N/A	N/A
Site Coverage	No change to existing	On Merit	Yes
Setbacks			
- Side	Existing structures	10m	Yes
- Rear	Existing structures	15m	Yes
Landscaping/ Fencing height	1.8m - 2.4m	max. 1.8m	No
Private Open Space	>24m <sup>2</sup>	24m <sup>2</sup>	Yes
Car Parking	42 spaces	min. 20 spaces/ max. 70 guest	Yes

As detailed in the above table, with the exception of acoustic fencing height, the proposal would generally comply with the relevant numerical measures of the *HDCP*. The matters of non-compliance are detailed below, as well as a discussion on compliance with any relevant desired outcomes and/or prescriptive measures of the *HDCP*.

### 2.6.1 Landscaping

The desired outcome of Part 2.1.3 Landscaping of the *HDCP* encourages *"landscaping that integrates the built form with the locality and enhances the tree canopy"* and *"landscaping that is consistent with the visual landscape in the rural area"*.

This is supported by the prescriptive measures which state that *"fences should be open style and constructed of materials such as timber or post and wire, with a maximum height of 1.8 metres"* and *"high, solid fences constructed as sound barriers should be avoided"*.

The application proposes a 1.8-2.4m high acoustic screen to internal areas of the site and adjacent to common boundaries. The screens are proposed in combination with extensive screen planting that is existing on the site so would have negligible impact on the landscape character of the site and surrounding rural locality. The external and internal view lines to the screens and fencing would be set within the context of the site that is considered a highly landscaped setting, so as to preserve the rural character on and off site.

The proposal meets the desired outcomes of Part 2.1.3 Landscaping of the *HDCP* and is considered acceptable.

### 2.6.2 Transport and Parking

The desired outcomes of Part 1C.2.1 Transport and Parking of the *HDCP* are for *"development that manages transport demand around transit nodes to encourage public transport use"*, *"car parking and*

*bicycle facilities that meet the requirements of future occupants and their visitors” and for “development with simple, safe and direct vehicular access”.*

The supporting Traffic and Event Management Plan identifies that 42 car parking spaces are allocated for use. Council’s Traffic and Road Safety assessment requires a minimum 35 car parking spaces. As such, the parking provision would be acceptable.

The following recommendations have been included as conditions of consent in Schedule 1:

- *The supported POM must be implemented during the operation of the site.*
- *The maximum number of people permitted to be on site at any one time would be 70.*
- *All vehicles for attending and preparing events in the site would be required to be fully accommodated within the boundary of the site.*
- *The operational time for any event on the site would be restricted to 10.30am to 6pm.*
- *A separate Road Closure Permit would be required prior to any event if the site is to conduct any traffic control on public roads.*

The proposal meets the desired outcomes of Part 1C.2.1 Transport and Parking of the HDCP.

### **2.6.3 Waste Management**

The desired outcomes of Part 1C.2.3 Waste Management of the HDCP are for *“development that maximises re-use and recycling of building materials”* and *“waste storage and collection facilities that are designed to encourage recycling, located and designed to be compatible with the streetscape, accessible, clean and safe for users and collectors”.*

As outlined in the supporting Waste Management Plan, all waste generated throughout a function event would be required to be disposed of by the function holder and taken off the site at the conclusion of the event by subcontractors.

In additional, measures would be put in place to re-use, recycle and dispose of waste material during construction works associated with the acoustic fencing.

The proposal meets the desired outcomes of Part 1C.2.3 Waste Management of the HDCP and is considered acceptable.

### **2.6.4 Effluent Disposal**

The desired outcome of Part 1C.2.4 Effluent Disposal under the HDCP encourages that *“sewage is disposed of in a manner that minimise impacts on the natural and built environmental and public health”*

The wastewater report prepared by Whitehead and Associates Environmental, dated 29 April 2023 indicates the existing aerated wastewater treatment system (AWTS) for the primary dwelling is appropriate for continued used. The AWTS conflicted with the car parking layout and amended plans have been submitted indicating the relocation of car parking areas which is considered acceptable.

Secondary (disinfected) effluent is spray irrigated to a 155m<sup>2</sup> Land Application Area (LAA) installed within a landscaped (garden) area near the southern property boundary, east of the driveway access. The LAA is not consistent with the s.68 approval for the system, which requires 300m<sup>2</sup> of LAA and a reserve LAA of 300m<sup>2</sup>. The Wastewater Report recommends the relocation of the LAA. Council’s

wastewater assessment considers that that 6m buffer distance is suitable from the property boundary for spray irrigation disposal from an AWTS in accordance with the Australian Standard.

The secondary dwelling contains two bedrooms. The Wastewater report states that the DA proposes that (only) event support staff be allowed to use the bathroom facilities within the secondary dwelling, however this is not consistent with the plan of management. Based on a wastewater generation rate of 30L/staff/day, as per 'Non-resident staff', a wastewater generation rate of 300L/day has been assumed for 'event' use. It is noted that at no stage previously has the applicant advised that this system would be used in connection with the proposed temporary function use and this statement clarifies that only event staff would be permitted access. The existing (3,000L) septic tank is appropriate for continued use, considering both the residential and event uses proposed. The wastewater report recommends the existing 'reserve trench' should be abandoned-in-place and a new 'reserve area' is to be identified at the site.

Conditions are recommended in Schedule 1 of this report to ensure that upgrades to the current systems are implemented as recommended in the Wastewater Report prepared by Whitehead and Associates Environmental.

The SEE states that portable toilets would be used for all functions and would be temporarily placed on site for the duration of the function. These portable toilets are proposed at a rate of 1 double unit (containing 2 cubicles) per 100 guests. The toilets within the secondary dwelling would not be available for guest use during the function. These toilets would be closed off by installing temporary barricades that indicate that the toilets are unavailable and signs redirecting guests to the portable toilets.

The proposal meets the desired outcome of Part 1C.2.4 Effluent Disposal of the HDCP and is acceptable.

#### **2.6.5 Noise and Vibration**

The desired outcomes of Part 1C.2.5 Noise and Vibration of the HDCP are to encourage *"development designed and managed to minimise noise and vibration impacts on the occupants of residential dwellings and other noise sensitive land uses"*.

An amended Noise Impact Assessment prepared by RQDI dated 3 February 2023 has been submitted with the proposal. The report concludes that *"a "zero impact" approach of Background RBL + 0dB (31.5 Hz to 8 kHz inclusive) has been adopted consistent with the intent of the HLEP 2013 requirement in relation to temporary use of land. Assumed worst-case operational scenarios were modelled, including recommended mitigation measures. The predicted results have been assessed against the project specific "zero impact" target and applicable guidelines and regulatory requirements. Provided the recommended mitigation measures are adopted and the noise management recommendations implemented, operational noise, including levels generated by additional road traffic, will achieve the Hornsby LEP 2013 requirement relating to temporary use of land, being no adverse impact"*.

The revised report uses the LA10 descriptor for noise modelling and impact assessment as previously recommended.

Table 4-4 details the noise assessment criteria for daytime operations (11am-6pm) using the LA10 noise descriptor in each octave band 31.5-8000 Hz (inclusive).

The Plan of Management describes noise management control measures on pages 13 to 15 that are consistent with the noise impact assessment recommendations.

The proposed noise mitigation and management options are outlined on page 15 of the Noise Impact Assessment. These are:

- Number of patrons permitted on site at any one time is to be limited to 70.
- At the central garden colonnade music is proposed through one on-site speaker system and/or live unamplified music. The live unamplified music at the central garden colonnade must be limited to an acoustic duet (singer and accompanist) with no acoustic drums, wind or brass instruments. The central garden will have one loudspeaker set for a maximum level of 80dBA at 1m with directionality. Directionality of the loudspeaker is a critical element in achieving noise compliance, it is essential that the loudspeaker is suitably directional. The recommended type is a 300mm two-way system with a 60° horizontal x 40° dispersion pattern for the high frequency component (See Appendix B).
- Only pre-recorded music played through the fixed loudspeakers in the Function Centre should be presented for background music and wedding dance. The function holder is to be advised that only the on-site sound amplification equipment is to be used. The amplification in the function area can only occur through the fixed speakers on site. A noise limiter is to be applied to the speakers and their maximum operational levels set. The maximum reverberant noise level in the function centre should be limited to 77dBA. (See Figure 5-1 for the indicative speaker locations.)
- The western outdoor area adjacent the indoor event space is an informal spill out area and will only accommodate up to 30 guests due to limitations designed for the space including hedging, outdoor furniture, etc.
- Glazing to the south-western corner of the western elevation veranda (refer Figure 5-1).
- Glazing to northern and north-eastern elevation of veranda (refer Figure 5-1).
- Barriers as shown in Figure 5-2 and Figure 5-3.

Previous concerns regarding noise impacts from patrons accessing the temporary toilet facilities and food trucks have been addressed in the revised report. The temporary toilets have been relocated to the area shown in figure 5-2, adjacent to the proposed location for catering and within the proposed acoustic barrier. Noise impacts from food truck mechanical equipment have been incorporated into the noise modelling scenarios.

The Amended Acoustic Report prepared by RWDI Group adequately demonstrates that the proposed *'temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood'* as required by Clause 2.8(3)(b) of the *HLEP*.

The proposal meets the desired outcome of Part 1C.2.5 Noise and Vibration of the HDCP and is considered acceptable.

#### **2.6.6 Plan of Management**

The proposal has been assessed having regard to the Land and Environment Court's Planning Principle for plans of management, including the proposed complaints handling process.

The Land and Environmental Court's Planning Principles established in *Renaldo Plus 3 Pty Limited v Hurstville City Council* regarding the adequacy and appropriateness of a plan of management is assessed below.

The submitted plan of management includes sufficient information addressing the 8 planning principles established by the LEC as follows:

- *Do the requirements in the Management Plan relate to the proposed use and complement any conditions of approval?*

Comment: Yes, the plan of management relates to the temporary use of the site as a function centre and appropriate conditions are recommended restricting number of guest and staff, hours of operation, operational standards, noise minimisation, and management of complaints.

- *Do the requirements in the Management Plan require people to act in a manner that would be unlikely or unreasonable in the circumstances of the case?*

Comment: No, the plan of management is considered simple and easy to understand and would not place any unreasonable requirements on the proponent.

- *Can the source of any breaches of the Management Plan be readily identified to allow for any enforcement action?*

Comment: Yes, an operational condition is recommended in Schedule 1 requiring that any complaints regarding the operation of the facility to be directed to the proponent and a complaints register of the date and time of the complaint, contact details of the person making the complaint and the nature of the complaint to be documented. This complaints register must be readily available to Council and adjoining properties must be notified of relevant contact details of the proponent.

- *Do the requirements in the Management Plan require absolute compliance to achieve an acceptable outcome?*

Comment: No, the acoustic measures, existing screen planting, wastewater system and the central location of the function areas on the site system all assist in providing an acceptable environmental location for the proposed use. The Plan of Management's proposed procedures and operational limitations would ensure that the standard of the operation would achieve an acceptable environmental outcome.

- *Can the people the subject of the Management Plan be reasonably expected to know of its requirements?*

Comment: Yes, an operation condition is recommended in Schedule 1 requiring the submitted operational plan to be adhered to.

- *Is the Management Plan to be enforced as a condition of consent?*

Comment: Yes, an operation condition is recommended in Schedule 1 requiring the submitted operational plan to be adhered to.

- *Does the Management Plan contain complaint management procedures?*

Comment: Yes, complaints would be directed to the proponent who will investigate any complaints and keep a complaints register of the date and time of the complaint, contact details of the person making the complaint and any action taken.

- *Is there a procedure for updating?*

Comment: Yes, should complaints occur, the operational plan can be updated.

### 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 Natural Environment**

#### **3.1.1 Tree and Vegetation Preservation**

No trees would be removed by the proposed development. The application has been supported by an Arborist Report prepared by Urban Arbor dated 12 March 2021. Council's Tree Management Team raises no objections to the proposal in terms of its anticipated impact on trees, subject to the implementation of sensitive tree protection measures and ongoing management.

#### **3.1.2 Stormwater Management**

Given the only building works proposed on the site would be acoustic screens, the proposal would not generate any additional overland flow or demand for on-site retention and the existing stormwater management controls would be retained on the site.

### **3.2 Built Environment**

#### **3.2.1 Built Form**

The only building works proposed on the site would be acoustic screens ranging from 1.8-2.4 metres high which would have negligible visual impact on the rural locality due to effective tree and vegetation screening on the site.

#### **3.2.2 Traffic**

Vehicular access would be retained via Henstock Road, and the proposed parking demand associated with the use would be well within the service level of the road as identified in the supporting Traffic Management Plan prepared by Barker Ryan Stewart. Parking on site (42 vehicles, as marked) would be in excess of the demand required for the proposed use. Accessible parking could be provided on site as required and the proposed use was not identified as a Traffic Generating Development pursuant to SEPP (Transport and Infrastructure). Council's Traffic and Safety Assessment concurs with the submitted Traffic Management Plan.

### **3.3 Social and Economic Impacts**

The proposal would have a positive impact on the local economy in conjunction with other rural development in the locality, with the potential to generate an increase in demand for local services. Economic and employment opportunities would be generated during operation of the site, as well as provide secondary opportunities for business stimulation of local function service providers (caters etc) and also local cafes, restaurants and accommodation venues.

## **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 or flood prone.

It has been demonstrated that the temporary use would not adversely impact on any adjoining land or the amenity of the neighbourhood, the proposed development is considered suitable for the site.

## 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 21 November 2022 and 13 December 2022 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 26 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**

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
<p>No submissions were received out of map range.</p> <p>On behalf of 16 objectors, a Town Planners submission was prepared by Natalie Richter Planning.</p>				

All submissions objected to the development, as follows:

- Overall concerns relating to amenity impacts to the rural area and quality of life as a result of the proposed functions, mainly associated with noise and traffic. Many noting that they have

previously experienced the level of noise and poor management associated with various functions that have been held on the subject site.

Comment: The proposed use is to be limited to a maximum number of guests and acoustic measures implemented. A condition of consent is recommended in Schedule 1 limiting the consent to a period of 12 months to allow monitoring and assessment of the use including acoustic and traffic impacts to confirm it is operating satisfactorily.

- Concerns regarding access to the property for services noting that Henstock Road is a narrow road for passing and blocking of the road. Residents on Marrakesh Place rely on Henstock Road to access their sites – concerns regarding traffic and safety implications relating to emergency vehicle access and residents being able to vacate their sites in the event of an emergency such as bushfires.

Comment: This matter has been addressed in Part 4.1.2 of this report.

- Concerns regarding anti-social behaviour associated with alcohol consumption.

Comment: In response to this submission condition 25 of consent has been recommended in Schedule 1 requiring Compliance with Plan of Management which details guest safety and site rules.

- Concerns regarding the food truck and toilet location and associated noise.

Comment: This concern has been addressed in Part 2.6.5 of this report.

- Concerns that this type of development does not meet the RU4 zone objectives and 'functions centres' are prohibited in this zone under *the HLEP*.

Comment: This concern has been addressed in Part 2.1.1 of this report

- Many questioning the temporary use, concerned it would be used more regularly, for larger scale functions as a 'commercial enterprise'.

Comment: In response to this submission condition 19 limits the hours of operation and condition 21 limits the use as recommended in Schedule 1 of this report.

- Many were not confident in the proposed acoustic barriers and mitigation measures, concerned that sounds travel far in the semi-rural area and that the mitigation measures would not be adequate.

Comment: This concern has been addressed in Part 2.6.5 of this report. In addition, Council will require acoustic monitoring of the use to be undertaken and submitted to Council within the 6 months of operation.

- Concerns regarding additional traffic on existing road infrastructure, parking on the street and lack of public transport. Concerns regarding pedestrian safety during road use. Additional concerns relating to ongoing traffic issues on Cobah Road, and the cumulative traffic flow impacts associated with these types of developments in the area – many noting that that TMP does not address traffic to the streets surrounding, particularly during peak periods such as school pick up/drop off.

Ongoing traffic safety issues - An example was provided from an objector of a recent car fire that occurred on Henstock Road resulting in the road being blocked and traffic congestion up to Cobah Road – emphasising the traffic and road congestion issues and narrowness of



street. Concerns regarding vehicles passing through the dangerous intersection of Cobah Road, Arrunga Road and Henstock Rd.

Comment: In response to these concerns, it is noted that the proposed use was not identified as a Traffic Generating Development pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021*. It should also be noted that these additional traffic movements in the area for an event would not be considered excessive in terms of traffic generation. Condition 27 has been recommended in Schedule 1 requiring any traffic management on the public road shall be subject to 'temporary full and partial road closures' permit issued by Council and any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.

- Concerns regarding car parking location on grass stating it may not be possible if the land was waterlogged and after periods of heavy rain.

Comment: In response to these submissions, it is noted that condition 21 limits the use to 28 event days per calendar year and condition 2 limits the consent to a period of 12 months to allow monitoring and assessment of the use. Therefore, it is anticipated that there would be infrequent vehicle movements.

- Concerns regarding compliant handling and how this will be regulated.

Comment: In response to this submission condition 25 of consent has been recommended in Schedule 1 requiring Compliance with Plan of Management which details compliant handling. Furthermore, a condition of consent has been recommended in Schedule 1 limiting the consent to a period of 12 months to allow monitoring and assessment of the use including acoustic and traffic impacts to confirm it is operating satisfactorily.

Concerns regarding no RSA policy and concerns relating to sub-contractors holding licences for the premises and that there should be an on-premises liquor licence.

Comment: In response to these submissions condition 25 of consent has been recommended in Schedule 1 requiring Compliance with Plan of Management which details responsible service of alcohol. It is noted that Licensed premises are controlled by Liquor & Gaming NSW (L&GNSW).

- Many residents noting that if this development is approved, it would more than likely create disharmony and social unrest within the local community, resulting in many complaints to Council and the police.

Comment: In response to these concerns, it is noted that complaints made to Council will be investigated by Council's Compliance team.

- Concerns regarding the disturbance of vehicular headlights into adjoining properties.

Comment: In response to this concern, it is noted that this is not a matter listed for consideration under Section 4.15 of the *Environmental Planning and Assessment Act, 1979*. Furthermore, the hours of operation are in daylight hours between 10:30am and 6pm and therefore headlights are not anticipated to be a major concern.

- Concerns regarding no acoustic barrier along the front boundary where the carpark is.

Comment: In response to this concern, it is noted that the location of parking at the front of the site is located >60m from the external habitable areas of adjoining properties and therefore, acoustic screening is not required in this area.

- Concerns regarding horses in the area being distributed by the noise resulting in injuries.  
Comment: In response to this concern, it is noted that this is not a matter listed for consideration under Section 4.15 of the *Environmental Planning and Assessment Act, 1979*. Furthermore, an acoustic impact assessment report has been submitted and is considered satisfactory as outlined in Part 2.6.5 of this report
- Concerns that the hours of operation could result in more than one function being held on any individual day.  
Comment: In response to this submission condition 21 limits the use to 28 event days per calendar year as recommended in Schedule 1 of this report.
- Concerns regarding the number of food trucks not being specified and associated noise and smell.  
Comment: In response to this submission the number of food trucks are constrained by the number of guest and subcontractors outlined in the POM. It is not considered that there would be an excessive number of trucks.  
  
the odours associated with the food trucks are not likely to generate levels of air emissions exceeding the requirements of the Protection of the Environment Operations Act 1997. Furthermore, there is adequate buffer distances between the food trucks and adjoining dwellings.
- Concerns regarding noise relating to guests clapping and voices and congregation of people outside of the designated areas.  
Comment: This concern has been addressed in Part 2.1.1 and 2.6.5 of this report.
- Concerns regarding set up, next day cleaning, deliveries etc. associated with the various functions held and that this would result in the temporary use extending beyond the 28 day/year restriction.  
Comment: In response to this submission condition number 19 limits the hours of operation and condition 21 limits the use as recommended in Schedule 1 of this report.
- The visual impact of port-a-loo's to surrounding neighbours and associated odours.  
Comment: In response to this submission, it is noted that the temporary toilets would be screened by existing vegetation alongside and rear boundaries. Furthermore, the odours associated with the temporary toilets are not likely to generate levels of air emissions exceeding the requirements of the Protection of the Environment Operations Act 1997.
- Concerns regarding the noise monitoring methodology and inconsistencies of the Noise Impact Assessment.  
Comment: In response to this submission, it is noted that the submitted Acoustic Report has been prepared by a suitably qualified person and Council considers the methodology used to be sufficient as outlined in Part 2.6.5 of this report.
- Concerns regarding the height and location of acoustic fences and resulting in visual impacts. Concerns regarding the materials of the acoustic fencing.

Comment: The height and location concern has been addressed in Part 2.6.1 of this report. The material of the acoustic fencing is considered to be adequate as indicated in the Acoustic report.

- Concerns have been raised regarding the conflict between the function centre and primary production land. Many noting that proposal would create an adverse economic impact on the area, directly impacting farming activities including farmers patterns, damage to crops/trees due to trespassing, impact on local equine activities associated with the rehabilitation and equine therapy of horses.

Comment: This concern has been addressed in Part 2.1.1 of this report.

- Concerns regarding the proponent's qualification or experience to ensure effective management of functions. In response to these concerns, it is noted that this is not a matter listed for consideration under Section 4.15 of the *Environmental Planning and Assessment Act, 1979*.
- Concerns regarding the proposed use not addressing accessibility, an access report is not provided and concerns regarding accessibility issues and disabled people accessing the portable toilets.

Comment: In response to this submission condition 9 of consent has been recommended in Schedule 1 requiring the secondary dwelling and portable toilets to meet the *Disability (Access to Premises Buildings) Standards 2010*.

- Concerns regarding the use of the secondary dwelling as a function centre which was not the approved use, and this would lead to accessibility and BCA considerations.

Comment: In response to this submission condition 7, 8 and 21 are recommended requiring a Fire Safety Schedule, upgrade and an annual statement.

- Many noting that the DA should be refused by Council like many applications have been for function centres within the Berrilee and Arcadia area.

Comment: Each development application is required to be assessed on its merits and is not dependent on the previous decisions of Council or a Planning Panel.

- The proposal would set an undesirable precedent for the area for this type of development.

Comment: As detailed in Section 2.1.1 of this report, the proposed use may be undertaken as a temporary use of the land. Future development applications for similar uses would be considered on the merits of the application assessed in accordance with Council's Planning controls.

- The proposal does not demonstrate that it would "not adversely impact" upon adjoining land and the neighbourhood as outlined under the temporary use clause of the HLEP.

Comment: This concern has been addressed in Part 2.1.1 of this report.

- Some noted that the owner of this property previously objected alongside the local community to an early childhood centre at 1A Henstock Road for traffic and noise related issues, agreeing that it was an overdevelopment of the area, and this proposal contradicts their previous views/objections.
- Many concerned about the proposed plan of management and how this would be managed appropriately during an event. Concerns regarding the plan of management in relation to the

time people must leave and how it is enforceable, no security management, no detail of how communication with subcontractors will occur, no detailed instructions or protocols and how no high-powered vehicles in car park will be enforced.

Comment: As indicated in Part 2.6.6 of this report the Plan of Management (POM) addresses the above issues.

- Concerns regarding pack up and set up noise.

Comment: This concern has been addressed in Part 2.1.1 of this report.

- It was also noted that there would be no local employment opportunities due to food trucks likely coming from other Greater Sydney areas.

Comment: In response to this submission, it is noted that the application has not specified where the food trucks will come from and this is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

- Many noting that there are already enough function centres within the locality.

Comment: In response to this submission, it is noted that the number of function centres within the region is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act, 1979*.

- Concerns regarding the use of the secondary dwelling bathroom by staff as outlined in the wastewater report. Concerns regarding the use of the bathrooms by guests and the occupation rate used in the wastewater report. Concerns regarding the use of the portable toilets on a rainy day and potential overload on site sewerage system.

Comment: In response to these concerns, it is noted that the on-site sewerage system is not proposed to be used for the use. The toilet facilities in the secondary dwelling must not be used during functions, access must be restricted, and signage provided directing guests, visitors, sub-contractors and caterers to the temporary toilet facilities as recommended in condition 23 of Schedule 1.

The merits of the matters raised in community submissions have been addressed in the body of the report.

Notwithstanding, the following additional matters are noted with regards to the community submissions and concerns raised above.

### 5.1.1 Traffic

In response to the concerns relating to traffic generation of the proposed development and as outlined under Section 2.6.2 of this report; vehicle access would be retained via Henstock Road, and the proposed parking demand associated with the use would be well within the service level of the road as identified in the supporting Traffic Management Plan prepared by Barker Ryan Stewart. Parking on site (42 vehicles, as marked) would be in excess of the demand required for the proposed use. Accessible parking could be provided on site as required and the proposed use was not identified as a Traffic Generating Development pursuant to *ISEPP*.

In addition, Council's Traffic and Safety assessment of the proposal raised no objection to the application being approved on traffic and safety grounds, subject to the implementation of the plan of management, the maximum number of staff and visitors on site being 70 people, all vehicles attending and preparing events on the site be accommodated within the boundaries of the site, the

operational time for any event be 10.30am to 6pm and a separate road closure permit be required prior to any event if the site is to conduct any traffic control on public road.

### 5.1.2 Bushfires/ Emergencies

Given the site is not considered bushfire prone and the proposal is not considered a traffic generating development, no concern would be raised with regards to traffic and safety implications relating to emergency vehicle access and residents being able to vacate their sites in the event of an emergency such as bushfires.

Based off the supporting Traffic Management Plan and Council's assessment of the proposal, the roads surrounding the development should not be significantly impacted in the event of an emergency as a result of a temporary function being held on the subject site.

### 5.2 Public Agencies

The development application was not referred to any Public Agencies for comment.

## 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 the temporary use of the site as a function centre.

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 26 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 proposed development complies with the relevant requirements of the *Hornsby Local Environmental Plan 2013* and *Hornsby Development Control Plan 2013*.
- The proposed development would not create unreasonable amenity impacts to surrounding neighbours and adequately address acoustic, plan of management and effluent disposal requirements.

*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.*

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

ROD PICKLES  
Manager - Development Assessments  
Planning and Compliance Division

**Attachments:**

1.  Architectural Plans
2.  Acoustic Report
3.  Plan of Management
4.  Locality Plan
5.  On Site Wastewater Management Report

File Reference: DA/1205/2022

Document Number: D08569065

**SCHEDULE 1****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.*

**1. 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*

<b>Plan No.</b>	<b>Plan Title</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Council Reference</b>
200416-01-111	Site Plan – Sheet 1	Barker Ryan Stewart	09/05/2023	
200416-01-112	Site Plan – Sheet 2	Barker Ryan Stewart	09/05/2023	
200416-01-121	Secondary Dwelling Floor Plan	Barker Ryan Stewart	09/05/2023	
200416-01-131	Fencing Plan	Barker Ryan Stewart	09/05/2023	
200416-01-141	Acoustic Measures Plan	Barker Ryan Stewart	09/05/2023	
200416-01-142	Proposed Glazing for North Elevation and Eastern Elevation	Barker Ryan Stewart	09/05/2023	

*Supporting Documentation*

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Plan of Management Rev No. 0523	Barker Ryan Stewart	1/05/2023	D08640820
DA Noise Impact Assessment #2104326 Version B	RWDI Australia Pty Ltd	3/02/2023	D08582339
Arboricultural Impact Report Ref: 210312-4 Henstock-AIA	Urban Arbor	21/11/2022	D08538249
Waste Management Plan Rev No. 4	Barker Ryan Stewart	4/11/2022	D08538252
Traffic and Event Management Plan	Barker Ryan Stewart	4/11/2022	D08538252

<b>Document Title</b>	<b>Prepared by</b>	<b>Dated</b>	<b>Council Reference</b>
Rev No. 8			
Details of existing on-site sewage management Ref: 2959-RFI letter	Whitehead and Associates Environmental Consultants	24/04/2023	D08635596

*Reason: To ensure all parties are aware of the approved plans and supporting documentation that apply to the development.*

## 2. **Consent Limited to a Period of 12 months**

- a) This consent is limited to a trial period of twelve (12) months commencing from the issue of an Occupation Certificate.
- b) Despite (a) above, the use cannot occur until the recommendations within the Acoustic Report (Rev B, reference 2104326) prepared by prepared by (RWDI Australia) dated 3 February 2023, have been implemented. Certification must be provided by a qualified acoustic engineer that all works associated with the installation of the acoustic measures and noise attenuation has been completed in accordance with the recommendations within this report.
- c) At the expiration of the trial period the applicant may seek a review of this condition subject to a separate application being submitted to Council. A decision to make the use permanent may include (but not limited to) factors such as:
  - i) Evidence to be furnished by the applicant as to whether the trial has actually occurred.
  - ii) Any justified complaints received and investigated by the Council.
  - iii) The performance of the function centre during the trial period with respect to compliance with the recommendations set out in the acoustic report prepared by (Rev B, reference 2104326) prepared by prepared by (RWDI Australia) dated 3 February 2023.

*Reason: To ensure monitoring and assessment of the use to confirm it is operating satisfactorily.*

## 3. **Acoustic Verification**

An acoustic assessment is to be undertaken by a suitably qualified acoustical consultant within 6 months of commencement to verify that operational noise limits predicted in the Noise Impact Assessment No. (Rev B, reference 2104326), dated (3 February 2023), prepared by (RWDI Australia) have been satisfied.

The assessment shall be undertaken in accordance with the following criteria:

- a) Assess the project-related noise emissions modelled in Scenarios 1 – 5 of the Noise Impact Assessment.
- b) Assess the LA10(15minute) noise emitted from function noise (crowd, music and mechanical plant) against the background noise level (L90) in any octave band frequency (31.5Hz to 8 kHz inclusive), when measured at the boundary of any affected residence.



- c) Assess the LAeq(15minute) noise emitted from vehicular noise at the carpark against the background noise level (L90), when measured at the boundary of any affected residence.
- d) Where the assessment finds that operational noise does not meet the above criteria, noise reduction recommendations and acoustic controls or treatments shall be provided that ensures the use is capable of complying with the criteria.

The report must be submitted to Council's Compliance Team via Council's Online Services Portal for review.

*Reason: To ensure the use is operating in accordance with the acoustic criteria.*

#### 4. Removal of Trees

No consent is granted for the removal of any trees as these trees contribute to the established landscape amenity of the area/ streetscape.

*Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2013 (HDCP).*

*Reason: To identify only those trees permitted to be removed.*

#### 5. Tree Pruning

- a) This development consent only permits the pruning of trees as identified in the Tree Location Plan Pages 22 and 23 in the Arboricultural Impact Report prepared by Urban Arbor dated 21/11/2022 where required for the installation of the acoustic wall/fence by no more than 10%.
- b) Works can be undertaken in the form of canopy modification as follows:

Tree number	Work prescribed
Where required	Pruning by no more than 10%

- c) All pruning work must be undertaken by an arborist with minimum AQF3 qualifications.

*Note: The pruning of any other trees from the site requires separate approval by Council in accordance with Part 1B.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan 2013 (HDCP).*

*Reason: To minimise the impact on trees to be retained.*

#### 6. Appointment of a Project Arborist

- a) A project arborist with AQF Level 5 qualifications must be appointed.
- b) Details of the appointed project arborist must be submitted to Council and the PCA for registration with the application for the construction certificate.

*Reason: To ensure appropriate monitoring of tree(s) to be retained.*

#### REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

**7. Fire Safety Upgrade**

To ensure the protection of persons using the secondary dwelling and to facilitate egress from the building in the event of a fire, the application for a construction certificate must demonstrate that it would comply with the following Sections C, D and E of the Building Code of Australia.

*Reason: To ensure adequate provision is made for fire safety to protect future occupants.*

**8. Fire Safety Schedule**

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

*Reason: To ensure adequate provision is made for fire safety to protect future occupants.*

**9. Building Accessibility**

- a) The secondary dwelling and portable toilets are required to meet the requirements of the *Disability (Access to Premises Buildings) Standards 2010* for the proposed use.
- b) The secondary dwelling is required to be upgraded in accordance with the requirements of AS1428.1-2009 Design for access and mobility.
- c) Details of the building accessibility must be submitted with the application for the Construction Certificate.

*Reason: To ensure adequate provision is made for disabled access.*

**REQUIREMENTS DURING CONSTRUCTION****10. Prohibited actions within the fenced tree protection zone**

The following activities are prohibited within the approved fenced tree protection zones unless otherwise approved by Council:

- a) Soil cutting or filling, including excavation and trenching.
- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials.
- d) The parking, storing, washing and repairing of tools, equipment and machinery.
- e) The disposal of liquids and refuelling.
- f) The disposal of building materials.
- g) The siting of offices or sheds.
- h) Any action leading to the impact on tree health or structure.

*Reason: To protect trees during construction.*

**11. Maintaining the health of trees approved for retention**

The appointed project arborist must monitor and record any and all necessary actions required to maintain tree health and condition for trees numbered 1-117 on the approved plans.

*Reason: To ensure appropriate monitoring of tree(s) to be retained.*

**12. Approved Works within Tree Protection Zone incursions**

- a) Approved excavations within the Tree Protection Zone of trees to be retained numbered 1-117 must be undertaken as follows:
- b) Excavations for the installation of the acoustic fences in the Tree Protection Zone of trees to be retained numbered 1-117 on the approved plans must be supervised by the project arborist for the first 500mm undertaken manually to locate roots.
- c) No changes of grade within the Tree Protection Zone of trees to be retained numbered 1-117 on the approved plans, are permitted.

OR

- d) Grade changes in the form of filling, are permissible outside the Structural Root Zone in conjunction with piers.

*Reason: To protect trees during construction.*

**13. Building materials and Site Waste**

The stockpiling of building materials, the parking of vehicles or plant, the disposal of cement slurry, wastewater 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.

*Reason: To protect trees during construction.*

<b>REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE</b>
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**14. Final Certification**

- a) The AQF 5 Project arborist must submit to the Principal Certifying Authority a certificate that includes the following:
- b) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- c) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- d) Dates, times and reasons for all site attendance.
- e) All works undertaken to maintain the health of retained trees.
- f) Details of tree protection zone maintenance for the duration of works.

*Note: Copies of monitoring documentation may be requested throughout DA process.*

*Reason: To ensure compliance with tree protection commitments.*

**15. Wastewater System upgrade**

- a) The septic tank system servicing the secondary dwelling shall be fitted with an effluent outlet filter.
- b) The existing 'reserve trench' shall be abandoned in place and a new 'reserve area' constructed.

- c) The operating absorption trench and new 'reserve area' connected to the septic tank system servicing the secondary dwelling shall be staked out or otherwise marked.
- d) The spray irrigation area for disposal of effluent from the Aerated Wastewater Treatment System (AWTS) servicing the main dwelling must be relocated to the designated area shown on the site plans provided with this application.
- e) The Land Application Area for spray irrigation shall be a minimum of 300m<sup>2</sup>.
- f) The Land Application Area for spray irrigation shall be fenced or access restricted by other means.
- g) The Aerated Wastewater Treatment System (AWTS) must be fenced or access restricted by other means.
- h) A minimum of 2 warning signs, complying with Australian Standards AS1319:1994 Safety signs for the occupational environment, must be installed to inform patrons that effluent reuse is occurring.

*Reason: To ensure the appropriate disposal of wastewater.*

**16. Wastewater System Approval**

- a) The on-site sewage management system must be commissioned and certified by a licensed plumber in accordance with Australian Standard AS1547 Onsite domestic wastewater management (2012) and Environment & Health Protection Guidelines – Onsite Sewage Management for Single Households (1998).
- b) Following implementation of the wastewater system upgrades, Council approval must be obtained in the form of an 'Approval to Operate' licence issued pursuant to the *Local Government Act 1993*, and a copy submitted to the PCA prior to the issue of an Occupation Certificate.

*Reason: To ensure the required licences and approvals for the wastewater system are obtained.*

**17. Compliance with Acoustical Consultant's Report**

- a) All noise control measures nominated in the DA Noise Impact Assessment #2104326 Version B, prepared by RWDI Australia, dated 3 February 2023 must be implemented.
- b) Prior to the issue of an occupation certificate, a suitably qualified person must provide details to Council demonstrating that acoustic barriers and glazing have been installed in accordance with the site plans and acoustic report approved under this consent.

*Reason: To ensure implementation of acoustic measures to protect the amenity of the local area*

**18. Amended Plan of Management**

Prior to issue of the Occupation Certification, submit to Council an amended Plan of Management that includes:

- a) Emergency contact details of the proponent
- b) The Plan of Management must be amended to state all deliveries are restricted to Monday to Saturday, 10:30am to 6pm.

**OPERATIONAL CONDITIONS****ITEM 1****19. Hours of Operation**

- a) The hours of operation of the premise are restricted to Monday to Saturday, 10:30 am to 6 pm.
- b) There is no approval for any functions to be held on Sunday and Public Holidays.
- c) All persons including patrons and contractors must have left the premises by 6pm on days when an event occurs.

*Reason: To protect the amenity of the local area.*

**20. Deliveries and collection times**

All deliveries and collections associated to functions must only occur during the approved hours of operation.

*Reason: To protect the amenity of the local area.*

**21. Use of Premises**

- a) The development approved under this consent shall be used for a temporary function centre and not for any other purpose without Council's separate written consent.
- b) The premises is permitted to be used for a maximum of 28 event days per calendar year.

*Reason: To ensure the use is undertaken with the terms of this consent.*

**22. Function information**

The proponent will maintain the following information and details for each function, to be made available to Council upon request:

- a) A list of all functions held including date, time and number of guests.
- b) Details of all sub-contractors and caterers attending each function including name and phone number of the relevant contact people.
- c) Details of any liquor license and Responsible Service of Alcohol certification held by sub-contractors and caterers.

**23. Toilet Facilities**

- a) Temporary toilet facilities must be available at a ratio of one toilet for every 20 persons at each function.
- b) The toilet facilities in the secondary dwelling must not be used during functions, access must be restricted and signage provided directing guests, visitors, sub-contractors and caters to the temporary toilet facilities.

*Reason: To ensure adequate toilet facilities are provided and prevent impacts on the existing on-site effluent disposal system.*

**24. Number of patrons**

The premises is restricted to a maximum number of 70 guests attending an event at any time.

*Reason: To ensure the operational measures implemented protect the amenity of the local area.*

**25. Compliance with Plan of Management**

- a) All control measures and procedures nominated in the Plan of Management Rev No. 0523 prepared by Barker Ryan Stewart, dated 1 May 2023 must be implemented.
- b) Any amendments to the Plan of Management must be submitted to Council's Compliance Team via Council's Online Services Portal for review and written approval.

*Note: The Plan of Management 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.*

*Reason: To ensure the operational measures implemented protect the amenity of the local area*

**26. Operational noise**

- a) The LA10(15minute) noise emitted from function noise (crowd, music and mechanical plant) shall not exceed the background noise level (L90) in any octave band frequency (31.5Hz to 8 kHz inclusive), when measured at the boundary of any affected residence.
- b) The LAeq(15minute) noise emitted from vehicular noise at the carpark shall not exceed the background noise level (L90), when measured at the boundary of any affected residence.

*Reason: To maintain appropriate amenity to nearby occupants*

**27. Traffic**

- a) Any placement of traffic signs or traffic management on public road shall be subject to 'temporary full and partial road closures' permit issued by Council. Application can be made via Council's Website for a 'temporary full and partial road closures' permit.
- b) All parking associated with the function centre shall be contained within the site.
- c) Delivery vehicles shall be contained within the site.
- d) Vehicles shall enter and exit the site in forward direction.
- e) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the road.

**28. 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' to each essential service installed in the secondary dwelling.

*Reason: To ensure fire safety measures are maintained to protect life and property.*

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**- END OF CONDITIONS -**

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**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.

**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.

**Dial Before You Dig**

Prior to commencing any works, the applicant is encouraged to contact Before You Dig Australia (BYDA) at [www.byda.com.au](http://www.byda.com.au) for free information on potential underground pipes and cables within the vicinity of the development site.