



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 2 October 2024
at 4:00pm**



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SUPPLEMENTARY AGENDA

1 DA/411/2023 - DEMOLITION AND CONSTRUCTION OF A MIXED USE DEVELOPMENT COMPRISING A SUPERMARKET, MEDICAL CENTRE AND FOUR RETAIL PREMISES, BASEMENT PARKING AND SIGNAGE - 350-352 GALSTON ROAD, GALSTON

DA No: DA/411/2023 (Lodged on 16 May 2023)

Description: Demolition of existing structures, construction of a part-two and part-three storey mixed use development comprising a neighbourhood supermarket, a medical centre, and four retail premises, part-one and part-two level basement car parking, display of a business identification sign, and associated landscaping

Property: Lot 1 DP 231874, No. 350-352 Galston Road, Galston

Applicant: Local Approvals

Owner: Chriss Holdings Pty Ltd

Estimated Value: \$13,424,925

Ward: A Ward

Clause 4.6 Request: HLEP Clause 4.3 Height of buildings and Clause 4.4 FSR

Submissions: 13

LPP Criteria: 10 or more unique submissions were received by way of objection; proposal contravenes a development standard by more than 10%, Council owned land and Planning Agreement

Author: Independent report prepared by Simon Smith, SJB Planning

COI Declaration: No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, refuse Development Application No. DA/411/2023 for demolition of existing structures, construction of a part-two and part-three storey mixed use development comprising a neighbourhood supermarket, a medical centre, and four retail premises, part-one and part-two level basement car parking, display of a business identification sign, and associated landscaping at Lot 1 DP 231874, No. 350-352 Galston Road, Galston for the reasons detailed in Schedule 1 of the consultant's assessment report attached to LPP Report No. LPP21/24.

EXECUTIVE SUMMARY

- The application involves the demolition of existing structures, construction of a part-two and part-three storey mixed use development comprising a neighbourhood supermarket, a medical centre, and four retail premises, part-one and part-two level basement car parking, display of a business identification sign, and associated landscaping.
- The proposal indicates the dedication of land to Council. In accordance with Council's adopted policy an independent assessment of the development application has been undertaken by SJB Planning.
- The proposal does not comply with the maximum height of building and floor space ratio (FSR) development standards under the Hornsby Local Environmental Plan 2013 (HLEP). The Applicant made a single submission to the original proposal in accordance with Clause 4.6 'Exceptions to development standards' of the HLEP to contravene these development standards. No amended submissions were provided in support of the amended proposal.
- A total of 13 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as the proposal contravenes a development standard by more than 10% and the application received more than 10 submissions.
- It is recommended that the application be refused.

ASSESSMENT

In accordance with the referral criteria and procedural requirements for Local Planning Panels, the assessment of the development application has been referred to an independent town planning consultant as the development includes Council owned land. The report by SJB Planning is held at Attachment 1 of this report.

CONCLUSION

The application proposes the construction of a part-two, part-three storey mixed use development comprising a neighbourhood supermarket, a medical centre, and four retail premises, demolition of existing structures, part-one, part-two levels of basement car parking, display of a business identification sign, and associated landscaping.

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

Council has received a total of 13 submissions.

Council has referred the application to an independent town planner to carry out an assessment of the application. The assessment concludes that the application should be refused.



It is recommended that the Hornsby Local Planning Panel refuse the application in accordance with the recommendations in the report prepared by SJB Planning and the reasons for refusal in Schedule 1 of the consultant's assessment report.

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.  Consultants Report
2.  Architectural Plans

File Reference: DA/411/2023
Document Number: D08956792

2 DA/1310/2023 - USE OF A MARQUEE IN ASSOCIATION WITH AN EXISTING FUNCTION CENTRE (WEDDING VENUE) - 245 NEW LINE ROAD, DURAL

DA No: DA/1310/2023 (Lodged on 1 December 2023)

Description: The use of a marquee in association with an existing function centre (wedding venue) - PAN-394182

Property: Lot 3 DP 553955, No. 245 New Line Road, Dural

Applicant: Mr Antony Anisse

Owner: Mrs Adele Anne Anisse & Mr Frank Raymond Anisse

Estimated Value: Nil

Ward: A Ward

Clause 4.6 Request: N/A

Submissions: 10

LPP Criteria: 10 or more unique submissions were received by way of objection

Author: George Papworth, Senior Town Planner

COI Declaration: No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

THAT Development Application No. DA/1310/2023 for the use of a marquee in association with an existing function centre (wedding venue) at Lot 3 DP 553955, No. 245 New Line Road, Dural be approved as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Attachment 2 of LPP Report No. LPP22/24.

EXECUTIVE SUMMARY

- The application proposes the use of a marquee in association with an existing function centre (wedding venue).
- A total of 10 unique 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.

BACKGROUND

On 19 April 1973, Hornsby Council granted development consent for the erection of a residence and wedding reception premises at 245 New Line Road pursuant to the County of Cumberland Planning Scheme Ordinance.

On 5 July 1979, Hornsby Council granted development consent for alterations and additions to the residence and reception centre.

SITE

The 2.1-hectare site is on the western side of New Line Road, Dural and contains an existing function centre known as Springfield House and a dwelling house. The two uses share the access handle driveway, and the function centre parking is located in an area between the function centre building and the dwelling.

The site experiences a fall of approximately 7m from the front boundary to the rear boundary.

The site is bushfire prone land. The site is not flood prone land.

The site is burdened by an Easement for Transmission Line 50ft Wide.

The site contains 'Biodiversity' as mapped on the Terrestrial Biodiversity Map, including Blackbutt Gully Forest classified as a Locally Significant Community.

PROPOSAL

The application proposes the use of a marquee in association with an existing function centre (wedding venue).

The marquee measures 15m by 30m with a maximum height of 4.88m.

The proposal includes minor construction works to replace the existing marquee walls from clear uPVC to clear glass panels to meet acoustic requirements.

No trees would be removed or impacted by the development.

No signage is proposed as part 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 the Northern District over the next 20 years.

The site is identified within the North District Plan as being part of the Metropolitan Rural Area under Planning Priority N18 'Better managing rural areas.'

Part 5 of the Metropolis of Three Cities relates to 'Productivity' and a key objective is that industrial and urban services land is planned, retained and managed as there is a need to grow and diversify local employment opportunities. The site is located in the Metropolitan Rural Area and the Strategy notes that the retention of local jobs for local communities of Metropolitan Rural Areas is an important outcome.

Part 6 of the Metropolis of Three Cities relates to 'Sustainability' and a key objective is that environmental, social and economic values in rural areas are protected and enhanced.

The proposed development is considered consistent with A Metropolis of Three Cities and the Northern District Plan, by retaining local jobs for local communities to protect and enhance economic values.

2. STATUTORY CONTROLS

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

2.1 Hornsby Local Environmental Plan 2013

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

2.1.1 Zoning of Land and Permissibility

The subject land is zoned RU2 Rural Landscape under the HLEP. The objectives of the RU2 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

- *To encourage land uses that support primary industry and align with the rural character of the area, including agritourism and tourist and visitor accommodation.*
- *To ensure that development does not unreasonably increase the demand for public infrastructure, services or facilities.*

The proposed development is defined as ‘*function centre*’ and is a prohibited land use in the RU2 in the zone.

The proposal satisfies the zone objectives by providing for a range of compatible land uses that does not unreasonably increase the demand for public infrastructure, services or facilities.

2.1.2 Existing Use Rights

The proposed development meets the definition of a *function centre* under the HLEP which is not a permissible use in the RU2 Rural Landscape Zone. Clause 4.66(1) Continuance of and limitations on existing use of the *Environmental Planning and Assessment Act 1979* (EP&A Act) states that “*Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*”

The proposal can rely upon the provision of Clause 4.66(1) so long as the use is not considered to have been abandoned and the existing *function centre* use extends to the area where the marquee has been constructed.

The use of the marquee is proposed in the area previously covered by bushland to the west of the function centre building. A review of aerial photographs confirms that works have been carried out to clear this area for that purpose, which is subject to a separate investigation outside of the parameters of the development application under consideration. The determination relevant for this development application is whether the ‘unit of land’ used for the purpose of the function centre extends to the area proposed for the marquee.

The applicant’s legal advice prepared by Chris Koikas concluded that the area of the property where the marquee is proposed enjoys the benefit of existing use rights as:

1. *There is a strong inference that use of the marquee area and remaining bushland were ancillary to the function centre as they could be walked in by guests as well as enjoy the surrounding bushland.*
2. *Guests entering the bushland would have meant the proprietors of the function centre would have committed an offence if that area did not enjoy existing use rights*
3. *If not used as function centre, what was the use of that area?*

Council’s legal review of the advice is that the primary fact in favour of the proposition that the area of the marquee enjoys existing use rights is its proximity to the function centre building.

It is noted from Council’s historical files that the reason a dwelling house and function centre were approved on the same parcel was that the function centre was operated by the members of the family residing in the dwelling house. Therefore, the two uses of the land would tend to overlap, and the areas could be used for both residential and function centre purposes.

On the balance of probabilities, Council agrees that the area was used for the purpose of the function centre, and it is likely that the existing use rights attach to the area where the marquee has been constructed.

As per Clause 4.66(3) of the act, a use is considered to be abandoned “*if it ceases to be actually so used for a continuous period of 12 months.*”

The applicant has provided a legal review of the existing use rights at the subject site, which summarised the following:

I am instructed that since opening, the longest the function centre has been out of operation was for a 6-month period from 25 March 2020 to September 2020 due to COVID-19 restrictions. It follows that the existing use rights have not been abandoned for the purpose of S4.66 of the EP&A Act.

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion that the site benefits from existing use rights. The use as a *function centre* has not been abandoned as there has not been a documented period exceeding 12 months in which the site has not been continually used since the approval in 1979.

2.1.3 Assessment of Existing Use Rights - Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71

Due to the proposed use not being permissible in the zone, an assessment of the suitability of the development cannot be undertaken in accordance with the prescriptive requirements of the HLEP or most of the Hornsby Development Control Plan (HDCP) (some assessment against the HDCP is possible, this is provided in Part 6.4 of this report). Consequently, a merit assessment is required.

The principles to be considered when undertaking a merit assessment of a proposed redevelopment of a site with existing use rights were dealt with by Roseth SC in Fodor Investments v Hornsby Shire Council [2005] NSWLEC 71. Roseth SC found that four questions usually arise in the assessment of existing use rights developments. These four questions comprise the Planning Principle for assessing such developments. An assessment of this application against this planning principle is provided below.

Planning principles: Assessment of proposals on land with existing use rights	
Question	Assessment
How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?	<p>The proposed use of the marquee would have an area of 450m² and a maximum height of 4.88m.</p> <p>The marquee complies with the maximum building height of 10.5m.</p> <p>The site coverage for lots 4000m² or larger is on merit, based on site constraints. The total site coverage would be less than 10% which would be considered acceptable.</p> <p>No floor space ratio has been adopted for the site under the HLEP.</p> <p>The marquee is not considered a rural outbuilding under prescriptive measure (i) Part 2.1 of the HDCP as it is not a Class 10a building.</p> <p>The setbacks of the marquee would be 5.8m to the south side boundary, 22.6m to the north side boundary and over 50m to the rear boundary.</p> <p>While the south side boundary does not comply with the 10m</p>

	<p>prescriptive measure, the proposed location of the marquee would not result in an unacceptable impact to neighbouring amenity with the dwelling on 241 New Line Road setback over 200m from the marquee location.</p> <p>The bulk and scale of the proposed development is consistent and acceptable with respect to the surrounding built environment.</p>
What is the relevance of the building in which the existing takes place?	<p>The building in which the existing use takes place will continue to be utilised as a function centre, with the extension taking place in separate 450m² marquee on the western side of the site.</p> <p>Events will be permitted to be held in either the existing function centre or the marquee, not concurrently.</p> <p>The bulk and scale of the structure is considered to be acceptable.</p>
What are the impacts on adjoining land?	<p>The use of the marquee as a function centre is likely to have a negligible impact on adjoining land. The main potential impact would be noise emanating from the use of the marquee.</p> <p>A thorough assessment of acoustic impacts from the use of the marquee has been undertaken and it has been determined that the use of the marquee with the implementation of proposed attenuation measures can comply with the noise criteria and additionally based on the proposed use being limited to one event per week on the days and hours, the use will not be considered offensive.</p> <p>While the south side boundary does not comply with the 10m prescriptive measure, the proposed location of the marquee would not result in an unacceptable impact to neighbouring amenity with the dwelling on 241 New Line Road setback over 200m from the marquee location.</p>
What is the internal amenity?	<p>The internal amenity of the proposed development would be to provide an area for functions to take place once per week.</p> <p>The marquee would use the facilities at the existing function centre, including parking, office, kitchens and bathrooms.</p>

2.1.4 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 10.5m. The proposal has a maximum height of 4.88m and complies with this provision.

2.1.5 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire. The site does not include a heritage item and is not located in a heritage conservation area. Furthermore, the site is not identified as a new heritage item in the draft Heritage and Housekeeping Planning Proposal.

Accordingly, no further assessment regarding heritage is necessary.

2.1.6 Earthworks

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

The proposed development is for a change of use only. The unauthorised construction and associated earthworks would be subject to a separate Building Information Certificate application.

2.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.2.1 Chapter 6 Waterways

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. This chapter 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.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; interrelationship of waterway and foreshore uses; foreshore and waterways scenic quality; maintenance, protection and enhancement of views and boat storage facilities.

Subject to the implementation of sediment and erosion control measures and stormwater management to protect water quality, the proposal would not impact on the water quality of the catchment and would comply with the requirements of chapter 6 of the Biodiversity and Conservation SEPP.

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.

The applicant submitted a Preliminary Site Investigation Report prepared by Qualtest Laboratory dated 26 February 2024 for the proposed development which concluded that no Areas of

Environmental Concern (AECs) were identified for the site. Based on the results of the assessment, it is considered that the site is suitable for the proposed use (marquee development) from a contamination perspective. No further assessment is considered to be required.

Council's environmental review of the submitted information raised no objection to the proposed development.

The development and the land are not otherwise mentioned in Section 4.6(4) and accordingly the provisions of Section 4.6(2) are not engaged by the proposal and consent may be granted. The proposal is considered consistent with the provisions of Chapter 4 of the Resilience and Hazards SEPP.

The Panel can be satisfied that the proposed development complies with the provisions of Chapter 4 Remediation of Land of the Resilience and Hazards SEPP.

2.4 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.

2.5 Hornsby Development Control Plan 2024

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the Hornsby Development Control Plan 2024 (HDCP). The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

HDCP - Part 2.1 Rural Buildings			
Control	Proposal	Requirement	Complies
Site Area	2.1Ha	N/A	N/A
Building Height	4.88m	10.5m	Yes
Site Coverage	<10%	On merit	Yes
Floor Area	450m ²	N/A	Yes
Setbacks			
- Front (New Line Road)	>300m	30m	Yes
- Side (north)	22.6m	10m	Yes
- Side (south)	5.6m	10m	No

- Rear (east)	>50m	15m	Yes
Car Parking	Existing 50 spaces - No changes proposed	Parking Study	Yes

As detailed in the above table, there is a side boundary non-compliance with the HDCP controls which is discussed below including a brief discussion on compliance with relevant performance requirements.

2.5.1 Scale

The desired outcome of Part 2.1 Scale of the HDCP is to encourage “*development with a height, bulk and scale that is compatible with the rural area.*”

The proposed 450m² marquee would be a single storey structure with the roof below the dominant tree canopy.

It is acknowledged that all rural outbuildings on lots 4000m² or larger should have a maximum area of 250m² for each outbuilding and a total maximum combined area of all outbuildings of 500m² unless demonstrated that they are required for an intensive rural activity.

The proposed marquee does not meet the definition of an outbuilding, which means any of the following Class 10a buildings under the Building Code of Australia:

- (a) *balcony, deck, patio, pergola, terrace or verandah that is detached from a dwelling house*
- (b) *cabana, cubby house, fernery, garden shed, gazebo or greenhouse*
- (c) *carport that is detached from a dwelling house*
- (d) *farm building*
- (e) *garage that is detached from a dwelling house*
- (f) *rainwater tank (above ground) that is detached from a dwelling house*
- (g) *shade structure that is detached from a dwelling house*
- (h) *shed*

On sites larger than 4,000m², the maximum site coverage is on merit, based on the site constraints. The proposed development seeks consent for the use only of the marquee and not the physical construction which is subject to a separate Building Information Certificate.

In support of the proposed development, it is noted that site coverage would remain below 10% which is considered acceptable on merit, based on the site constraints.

The proposal meets the desired outcome of Part 2.1 Scale of the HDCP and is considered acceptable.

2.5.2 Setbacks

The desired outcome of Part 2.1.2 Setbacks of the HDCP is to encourage “*Setbacks that complement the rural character and allow for separation between neighbouring rural developments*” and “*setbacks that retain natural landscape features.*”

Table 2.1.2-a: Minimum boundary setbacks requires development to be setback 10m from the side boundary for lots greater than 4,000m². The south side boundary of the marquee is 5.6m.

While the south side boundary does not comply with the 10m prescriptive measure, the proposed location of the marquee would not result in an unacceptable impact to neighbouring amenity with the dwelling on 241 New Line Road setback over 200m from the marquee location.

The proposal meets the desired outcome and prescriptive measures of Part 2.1.2 Setbacks of the HDCP and is considered acceptable.

2.5.3 Biodiversity

The desired outcomes of Part 1.3.1.1 Biodiversity of the HDCP are to encourage “*development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation*” and to encourage “*development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species.*”

This is supported by the prescriptive measure that states that “*development should seek to:*

- *avoid potential adverse impact on biodiversity,*
- *if that impact cannot be avoided, minimise that impact, or*
- *if the impact cannot be minimised, to mitigate the impact.”*

The property has been identified as containing a Locally Significant Community identified as Blackbutt Gully Forest.

It is noted that the Arboricultural Letter prepared by Creative Planning Solutions dated 21 July 2023 concluded that ‘*an analysis of historical aerial imagery indicates that approximately 0.15 hectares of vegetation was cleared between 2020-2022 to facilitate construction of the new building platform*’.

In support of this development application, it is noted that the subject development application is for the continued use of the unauthorised structure as a function centre, including the installation of glass panel walls and does not propose any building works or tree removal. A development application cannot retrospectively assess the impact on the Locally Significant Community, and this would be subject to a separate Environmental Compliance investigation.

The required APZs to the northwest for a distance of 20m and to the property boundary to the northeast, southeast and southwest would not require the removal of any additional trees.

The NSW *Biodiversity Conservation Regulation 2017* sets out thresholds for when the Biodiversity Offsets Scheme (BOS) would be triggered. The application does not trigger the BOS.

The proposal meets the prescriptive measures of Part 1.3.1.1 Biodiversity of the HDCP and is considered acceptable.

2.5.4 Bushfire

The desired outcomes of Part 1.3.3.1 Bushfire of the HDCP are to encourage “*development that is located and designed to minimise the risk to life and property from bushfires*” and to encourage “*development that balances the conservation of native vegetation and bushfire protection.*”

The site is mapped as designated bushfire prone land and is located within 100m of bushfire prone (hazardous) vegetation. The proposed development is not a form of Special Fire Protection Purpose as the footprint of the marquee is less than 500m².

The applicant submitted a Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions dated 29 February 2024.

The Bushfire Assessment Report states that:

'...when the proposed marquee is being used that the function centre component of the existing building (Manor) will not be available for use. It is intended that the office and kitchen components will be in use as they do not relate to a public use.'

To ensure this is the case the applicant is prepared to receive a condition of consent that the existing building (Manor) cannot be used for public assembly purposes (function centre) when the marquee is in use. The restriction on the use of the areas (marquee or Manor) will be re-enforced in the Plan of Management for the facility. The effective size of the area used for public assembly will therefore be less than 500m², and subsequently not trigger to be treated technically as Special Fire Protection Purpose development in accordance with 8.3.11 of Planning for Bush Fire Protection 2019.'

Accordingly, the application was referred to the NSW Rural Fire Service (RFS) in accordance with Section 4.14 of the EP&A Act.

The RFS raised no objections to the development and provided recommended conditions of consent including, the creation of a Bush Fire Emergency Management and Evacuation Plan, Asset Protection Zones (APZ), minimum construction standards and adequate water and utility services.

The required APZs would be to the northwest for a distance of 20m and to the property boundary to the northeast, southeast and southwest. The creation of the APZs would not require the removal of any additional trees.

The proposal meets the desired outcomes of Part 1.3.3.1 Bushfire of the HDCP and is considered acceptable, subject to conditions.

The proposed development complies with Section 4.14(1)(b) of the EP&A Act, as a certificate has been provided to the consent authority by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements of Planning for Bush Fire Protection.

2.5.5 Noise and Vibration

The desired outcomes of Part 1.3.2.5 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.'*

This is supported by prescriptive measure (f) that *'noise generating developments should be accompanied by an acoustic report that demonstrates the development is sited and designed to: minimise the effect of noise and vibration on surrounding sensitive land uses and comply with relevant State Government and Council guidelines.'*

It is noted that a number of submissions raised concerns in regard to the acoustic impacts on neighbouring properties. In response to these concerns, it is noted that Council's Environmental Protection Team carried out a detailed assessment of the acoustic impacts which resulted in numerous amendments to the supporting Acoustic Report and Plan of Management. Following this detailed review, a final version of the Acoustic Report, prepared by GHD Pty Ltd, dated 2 August 2024, reference 12609674, revision 3 and Plan of Management, prepared by Springfield House, dated August 2024 were used for the final assessment.

The development proposes the implementation of proposed attenuation measures, including upgrading of the clear uPVC walls of the marquee to glass panels on all elevations and all music operations are to be played through the amplified speakers fitted with a noise limiter device. The

noise limiter is to be installed in a lock box to prevent tampering to the unit, with access only granted to the General Manager.

Instruments that are high in noise levels without any amplification such as acoustic drum kits, multiple orchestral instruments are not permitted. An acoustic duet may be permitted. Electric drums may be used through the noise limiter system only.

The marquee would have a fixed floor plan with a maximum of two speakers that are directed to the north-east and inwards towards the centre of the marquee.

Appropriate conditions of consent have been recommended to ensure that a suitably qualified acoustic engineer should set and certify the appropriate location and trigger level for the sensor microphone. The level should be selected to achieve compliance with the octave band noise criteria and a certification letter be prepared and supplied to Council. During noise limiter certification, measurements should be conducted at the site boundary to the most affected residences to confirm that the noise limiter settings achieve compliance. In conclusion, the use of the marquee with the implementation of proposed attenuation measures can comply with the noise criteria and additionally based on the proposed use being limited to one event per week on the days and hours specified, the use would not be considered offensive under the *Protection of the Environment Operations Act 1997*.

The proposal meets the desired outcomes of Part 1.3.2.5 Noise and Vibration of the HDCP and is considered acceptable, subject to conditions.

2.5.6 Effluent Disposal

The desired outcome of Part 1.3.2.4 Effluent Disposal of the HDCP is to ensure that *“sewage is disposed of in a manner that minimises impacts on the natural and built environment and public health”*.

The application was referred to Council’s Environmental Protection team who noted that the amended On-site Wastewater Management Report has assessed all possible wastewater treatment and disposal methods and determined that the most appropriate wastewater treatment is through the existing 60L grease trap, the existing 4500L septic tank and installation of a new 10,000L collection tank with pump-out coupling device.

Appropriate conditions of consent are recommended to ensure that:

- The collection tank will be required to be completely pumped out at the end of every function.
- The collection tank is to be completely sealed so that once its full it does not spill or leak out.
- A high-water alarm/ light set at 9000L that triggers notice to servicing/ pump out contractors or business owners’ mobile phone.
- A backflow restriction device will be required to be installed to inhibit any wastewater flowing back into the commercial kitchen.

Accordingly, appropriate conditions are recommended should consent be granted for the use of the marquee/ function centre and a Council approved licence is required to be obtained for the wastewater system.

The proposal meets the desired outcomes of Part 1.3.2.4 Effluent Disposal of the HDCP and is considered acceptable, subject to the recommended conditions.

2.5.7 Vehicular Access and Parking

The desired outcome of Part 2.1.5 Vehicle Access and Parking of the HDCP is to ensure “*development that provides sufficient and convenient parking with vehicular access that is simple, safe and direct*”.

The existing function centre, Springfield House, would not be permitted to be in use for functions concurrently with the marquee at any time. The proposed use of the marquee would not increase the maximum number of guests permitted on site at any time, which would remain limited to a maximum of 250 guests.

Council’s Traffic and Road Safety Team assessed the proposed development and concluded that the parking provision is not considered an issue for the proposed development as the maximum number of guests would not change.

The proposal meets the desired outcomes of Part 2.1.5 of the HDCP and is considered acceptable.

2.6 Building Works

This development application seeks to regularise the use of the marquee and a separate Building Information Certificate (BC/27/2024) has been lodged regarding the physical works to construct the marquee.

The physical works proposed are limited to the upgrading of the clear uPVC walls of the marquee to glass panels on all elevations, in accordance with the attenuation measures recommended by the Acoustic Report prepared by GHD Pty Ltd, dated 2 August 2024.

2.7 Section 7.11 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020-2030 applies to the development as it would result in an 450m² of additional gross floor area for commercial development (function centre). Accordingly, the requirement for a monetary Section 7.11 contribution is recommended as a condition of consent.

2.8 Housing and Productivity Contribution

The Housing and Productivity Contribution applies to the development as it would result in an additional 450m² gross floor area for commercial development. Accordingly, the requirement for a monetary Housing and Productivity contribution is recommended as a condition of consent.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The proposed use would not necessitate the removal of any trees from the site.

3.1.2 Stormwater Management

The proposed development is for the use of the marquee only. A separate Building Information Certificate (BC/27/2024) has been lodged to assess the physical construction works to construct the marquee which includes an assessment of the stormwater management.

3.2 Built Environment

3.2.1 Built Form

The 450m² marquee would be a single storey structure with the roof below the dominant tree canopy which would be consistent with rural development within the locality.

The upgrading of the clear uPVC walls of the marquee to glass panels on all elevations, in accordance with the attenuation measures recommended by the Acoustic Report prepared by GHD Pty Ltd, dated 2 August 2024, would not result in any additional overshadowing or overlooking impacts to neighbouring properties. Appropriate conditions of consent have been recommended to minimise nuisance lighting.

3.2.2 Traffic

The existing function centre, Springfield House, would not be permitted to be in use for functions concurrently with the marquee at any time. The use of the marquee would not increase the maximum number of guests permitted on site at any time, which would remain limited to a maximum of 250 guests.

Council's Traffic and Road Safety Team assessed the proposed development and concluded that the parking provision is not considered an issue for the proposed development as the maximum number of guests would not change.

3.3 Social Impacts

The social impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the site.

Part 6 of the Metropolis of Three Cities relates to 'Sustainability' and a key objective is that environmental, social and economic values in rural areas are protected and enhanced.

The proposed development is considered consistent with A Metropolis of Three Cities and the Northern District Plan, by retaining local jobs for local communities to protect and enhance economic values.

3.4 Economic Impacts

The economic impacts of the development on the local and broader community have been considered with specific reference to the potential employment generation within the site. The proposed development is considered consistent with A Metropolis of Three Cities and the Northern District Plan, by retaining local jobs for local communities to protect and enhance economic values.

Part 5 of the Metropolis of Three Cities relates to 'Productivity' and a key objective is that industrial and urban services land is planned, retained and managed as there is a need to grow and diversify local employment opportunities. The site is located in the Metropolitan Rural Area and the Strategy notes that the retention of local jobs for local communities of Metropolitan Rural Areas is an important outcome.

There would be a number of multiplier effects that the development would provide throughout the local and regional economies. These multiplier effects would result from the sourcing of goods and services from local suppliers as well as the increased consumption generated by the increase of employment in the area. The proposed development is likely to provide employment opportunities to younger age groups, which typically have higher unemployment rates within the region.

4. SITE SUITABILITY

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

4.1 Flooding

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

4.2 Bushfire Risk

The land is identified as being subject to bushfire risk. As discussed in Section 5.4.3 of the report, the applicant submitted a Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions dated 29 February 2024 and the application was referred to NSW Rural Fire Service for concurrence.

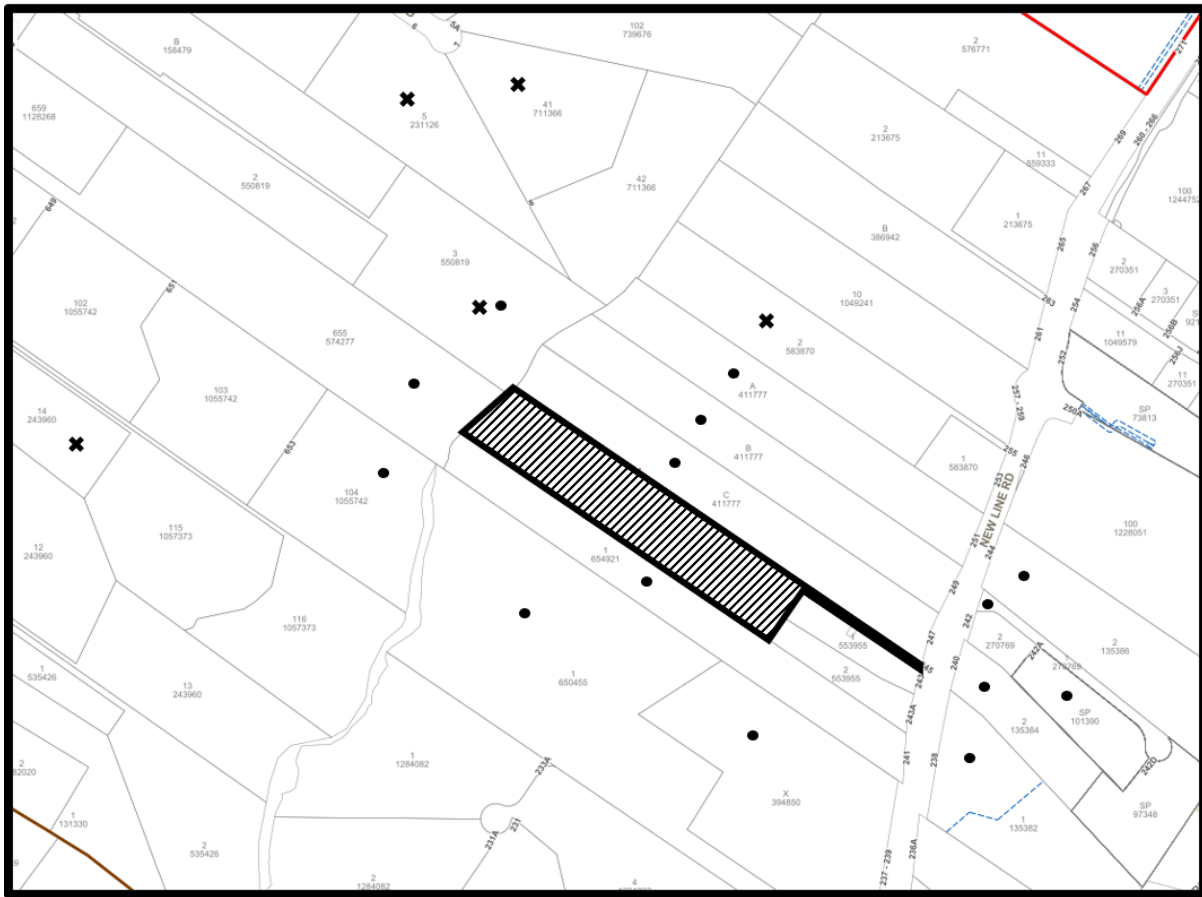
Accordingly, the Panel can be satisfied that the proposed development complies with Section 4.14(1)(b) of the EP&A Act, as a report has been provided to the consent authority by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements of Planning for Bush Fire Protection 2019.

5. PUBLIC PARTICIPATION


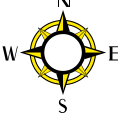
Section 4.15(1)(d) of the Act requires Council to consider *“any submissions made in accordance with this Act”*.

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 13 February 2024 and 6 March 2024 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 10 unique submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

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

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

- acoustic impacts on neighbouring properties.
- nuisance lighting from the marquee as the proposed marquee is fully glazed in a rural area
- size of the marquee
- alleged unauthorised tree removal.
- unauthorised construction and use of the marquee.
- bushfire and a lack of a 'fire break' from the marquee.
- site access

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

5.1.1 Acoustics

Seven submissions received all raised concerns regarding the acoustic impacts on neighbouring properties.

A submission sought clarification that the proposed use would not exceed 5dB above background noise when measured at the site boundary. In response to this concern, it is noted that a recommended condition of consent for operational noise clearly states that '*The LA10(15minute) noise level from the use of the marquee during functions (patrons and music) 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*'.

The development proposes appropriate attenuation measures, including upgrading the clear upvc walls of the marquee to glass panels on all elevations and that all music operations are to be played through the amplified speakers fitted with a noise limiter device. The noise limiter is to be installed in a lock box to prevent tampering to the unit, with access only granted to the General Manager.

Instruments that are high in noise levels without any amplification such as acoustic drum kits, multiple orchestral instruments are not permitted. An acoustic duet may be permitted. Electric drums may be used through the noise limiter system only.

The marquee would have a fixed floor plan with a maximum of two speakers that are directed to the north-east and inwards towards the centre of the marquee.

Appropriate conditions of consent have been recommended to ensure that a suitably qualified acoustic engineer should set and certify the appropriate location and trigger level for the sensor microphone. The level should be selected to achieve compliance with the octave band noise criteria and a certification letter will be prepared and supplied to Council. During noise limiter certification, measurements should be conducted at the site boundary to the most affected residences to confirm that the noise limiter settings achieve compliance.

In conclusion, Council's Environmental Protection Team carried out a thorough assessment of the acoustic impacts from the use of the marquee and it has been determined that the use of the marquee with the implementation of proposed attenuation measures can comply with the noise criteria and additionally based on the proposed use being limited to one event per week on the days and hours specified, the use would not be considered offensive under the *Protection of the Environment Operations Act 1997*.

5.1.2 Lighting

A submission raised a concern regarding nuisance lighting from the marquee as the proposed marquee is fully glazed in a rural area.

In response to these concerns, appropriate conditions of consent have been recommended to minimise nuisance lighting.

5.1.3 Size of Marquee

The submissions raised concerns regarding the size of the marquee. It is acknowledged that historically it has been erected to be a maximum of 40m by 15m, as can be seen on aerial imagery.

In response to these concerns, it is noted that the application seeks consent for a 30m by 15m marquee. This would be enforceable by relevant conditions of consent.

5.1.4 Tree removal

The submissions raised concerns regarding alleged unauthorised tree removal.

In response to these concerns, it is noted that this development application is for the use of the marquee only with no tree removal proposed. Any unauthorised tree removal would be subject to a separate investigation by Council.

5.1.5 Unauthorised Development

The submissions raised concerns regarding the unauthorised construction and use of the marquee.

In response to these concerns, this development application seeks to regularise the use of the marquee and a separate Building Information Certificate (BC/27/2024) has been lodged regarding the physical works to construct the marquee.

A Construction Certificate would be required for the installation of the glass panel walls.

5.1.6 Bushfire

A submission raised a concern regarding bushfire and a lack of a 'fire break' from the marquee.

In response to these concerns, it is noted that the application was referred to the NSW RFS and appropriate conditions have been recommended, including the provision of a 20 metre Asset Protection Zone (APZ).

The Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions dated 29 February 2024, confirms that the creation of the APZs would not require any vegetation modification or tree removal to implement the APZs.

5.1.7 Site Access

A submission raised a concern regarding the existing site access.

In response to these concerns, it is noted that the application is for the use of the marquee only. The proposal does not seek any changes to the access, parking or number of guests.

Council's Traffic and Road Safety Team assessed the proposed development and concluded that the parking provision is not considered an issue for the proposed development as the maximum number of guests would not change.

5.2 Public Agencies

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

5.2.1 Rural Fire Service

The consent authority has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.

The application was referred to the NSW Rural Fire Service (NSW RFS) under Section 4.14 of the *EP&A Act 1979*. The NSW RFS considered the information submitted and provided recommended conditions of concurrence dated 4 April 2024, including requirements for the implementation of a Bush Fire Emergency Management and Evacuation Plan.

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 use of a marquee in association with an existing function centre (wedding venue).

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 10 unique 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 as a deferred commencement of the application is recommended.

The reasons for this decision are:






- The proposed development complies with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2024.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, solar access, acoustics, amenity or privacy.

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

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

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

File Reference: DA/1310/2023

Document Number: D08957236

ITEM 2

SCHEDULE 1

GENERAL CONDITIONS

ITEM 2

Condition

1. Deferred Commencement

1. Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until Building Information Certificate No. BC/27/2024, for the marquee structure with associated footpath and sandstone block borders, has been determined for approval.
2. A copy of the approval must be submitted within 12 months of the date of this notice.

Reason: To ensure the safety of the occupants of the marquee.

2. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
Springfield House GZP-Curve-15.00 x 30.00 x 3.00m (Version 2)	Specification	HTS Tentiq	08/11/2021	
F529_LP_00 Revision F	Landscape Overall Site Plan	Creative Planning Solutions	28/06/2024	
F529_LP_02 Revision F	Landscape Plan	Creative Planning Solutions	28/06/2024	
F529_LP_01 Revision F	Landscape Site Plan	Creative Planning Solutions	28/06/2024	
F529_LP_03 Revision F	Marquee Plan	Creative Planning Solutions	28/06/2024	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Plan of Management	Springfield House	August 2024	D08953533
Bushfire Report (191317B)	Bushfire Code & Bushfire Hazard Solutions	29/02/2024	D08845148
Preliminary Site Investigation (NEW24P-0029-AA)	Qualtest Laboratory (NSW) Pty Ltd	26/02/2024	D08845154
On-Site Wastewater Management Report (AAWMR_00F_13-04-2024)	Roberts Resources	19/06/2024	D08908580

Document Title	Prepared by	Dated	Council Reference
Revision 00F			
Licensed Venue Noise Assessment (Revision 3)	GHD	02/08/2024	D08942562

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

3. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared. Details demonstrating compliance are to be submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect vegetation on the site.

4. Construction Certificate

1. A Construction Certificate is required for the installation of the glass panel walls to the existing marquee. The Construction Certificate is to be approved by Council or a Principal Certifier prior to the commencement of any construction works under this consent.
2. The Construction Certificate plans must be consistent with the Development Consent plans.

Reason: To ensure that detailed construction certificate plans are consistent with the approved plans and supporting documentation.

5. Section 7.11 Development Contributions

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

Description	Contribution (4)
Roads	\$19,814.40
Plan Preparation and Administration	\$99.10
TOTAL	\$19,913.50

being for 450m² of new gross floor area for commercial development (function centre).

2. The value of this contribution is current as at 21 August 2024. If the contribution is not paid within the financial quarter that this condition was generated, the contribution payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.11 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

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

Where:

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

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

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

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

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

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

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

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

Note: To arrange a Payment Advice for the monetary contributions, please contact Council's Customer Service Team on 9847 6666.

Reason: To ensure development contributions are paid to address the increased demand for community infrastructure resulting from the approved development.

6. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	Document Title/ Ref	Dated	Council Reference
NSW Rural Fire Service	DA20231204005502-CL55-1	04/04/2024	D08855735

(NOTE: For a copy of the above referenced document/s, please see Application Enquiry System on Council's website www.hornsby.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

7. Housing and Productivity Contribution

Before Occupation Certificate, the housing and productivity contribution (HPC) set out in the table below is required to be made.

Housing and productivity contribution	Amount

Housing and productivity contribution (base component)	\$14,165.70
Total housing and productivity contribution	\$14,165.70

The HPC must be paid using the NSW planning portal.

At the time of payment, the amount of the HPC is to be adjusted in accordance with the *Environmental Planning and Assessment (Housing and Productivity Contributions) Order 2024* (HPC Order).

The HPC may be made wholly or partly as a non-monetary contribution (apart from any transport project component) if the Minister administering the *Environmental Planning and Assessment Act 1979* agrees.

The HPC is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the *Environmental Planning and Assessment Act 1979* to the development, or the HPC Order exempts the development from the contribution.

The amount of the contribution may be reduced under the HPC Order, including if payment is made before 1 July 2025.

Reason: To require contributions towards the provision of regional infrastructure.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

8. Building Code of Australia

Detailed plans, specifications and supporting information is required to be submitted to the certifying authority detailing how the proposed building work achieves compliance with the National Construction Code - Building Code of Australia. All building work must be carried out in accordance with the requirements of the National Construction Code - Building Code of Australia.

Reason: Prescribed condition - EP&A Regulation section 69(1).

9. External Lighting

Before the issue of a construction certificate, plans detailing external lighting must be prepared by a suitably qualified person. The lighting plan must be consistent with the approved plans and documents, and the following requirements:

1. Comply with Australian Standard AS4282: Control of obtrusive effects of outdoor lighting.
2. Lighting must not give rise to obtrusive light or have adverse impacts on the amenity of surrounding properties; and
3. External lighting must not flash or intermittently illuminate unless required for safe ingress/egress of vehicles crossing a pedestrian footway or approved vehicle entrance.

The lighting plan must be submitted to the Principal Certifier:

Note: All above documents refer to the version in effect at the time the consent is granted.

Reason: To ensure external lighting is provided for safety reasons and to protect the amenity of the local area.

10. Fire Safety Schedule

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

Reason: To ensure all fire safety measures are identified to protect life and property.

BEFORE BUILDING WORK COMMENCES

Condition

11. Site Sign

1. A sign must be erected in a prominent position on any site on which any approved work involving excavation, erection or demolition of a building is being carried out detailing:
 - a. The name, address, and telephone number of the Principal Certifier.
 - b. The name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours; and
 - c. Unauthorised entry to the work site is prohibited.
2. The sign must be maintained during excavation, demolition and building work is being carried out and must be removed when the work has been completed.

Reason: Prescribed condition EP&A Regulation, section 70(2) and (3).

12. Protection of Adjoining Areas

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

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

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

Reason: To ensure public safety and protection of adjoining land.

13. Toilet Facilities

1. To provide a safe and hygienic workplace, toilet facilities must be available or be installed at the works site before works begin and must be maintained until the works are completed at a ratio of one toilet for every 20 persons employed at the site.
2. Each toilet must:

- a. Be a standard flushing toilet connected to a public sewer; or
- b. Be a temporary chemical closet approved under the *Local Government Act 1993*; or
- c. Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

Reason: To ensure adequate toilet facilities are provided.

DURING BUILDING WORK

Condition

14. Storage and Removal of Waste

1. All demolition and/or construction waste must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.
2. All garbage and recyclable materials generated during work must be stored in a waste receptacle and be removed from the site at frequent intervals. Materials are to be wholly contained within the waste receptacle and not overflowing.

Reason: To ensure the site is maintained to an appropriate standard cleanliness and prevent any nuisance or danger to health, safety or the environment.

15. Hours of Work

1. All work on site (including remediation, demolition, construction, earth works and removal of vegetation), must only occur between 7am and 5pm Monday to Saturday.
2. No work is to be undertaken on Sundays or public holidays.

Reason: To protect the amenity of neighbouring properties.

16. Landfill Not Permitted

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

Reason: To minimise environmental impacts from landform modification.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

17. Damage to Council Assets

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

Reason: To ensure public infrastructure and property is maintained.

18. Wastewater System Approval

1. Prior to the installation of an on-site sewage management system, Council approval must be obtained in the form of an 'Approval to Install' licence issued pursuant to the *Local Government Act 1993*.
2. 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).
3. Prior to the operation of the on-site sewage management system, 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 Principal Certifier prior to the issue of an Occupation Certificate.

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

19. Fire Safety Statement - Final

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

Reason: To ensure all fire safety measures are implemented to protect life and property.

20. Compliance with Acoustical Consultant's Report

1. All noise control measures nominated in the Acoustic Report Ref: 12609674, rev 3 prepared by GHD Pty Ltd, dated 2 August 2024, must be implemented.
2. Prior to the issue of an occupation certificate, a qualified acoustic engineer must assess and certify the installation of the noise limiter and acoustic controls in accordance with section 5.2 of the Acoustic Report Ref: 12609674, rev 3 prepared by GHD Pty Ltd, dated 2 August 2024.

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

21. Certification of RFS Requirements

A Certificate prepared by a BPAD accredited Bushfire Consultant is to be provided to the Principal Certifier (PC) certifying the completion of all works required by the NSW RFS conditions of concurrence prior to the issue of the Occupation Certificate.

Reason: To ensure all bushfire protection measures are implemented to protect life and property.

OCCUPATION AND ONGOING USE

Condition

22. Hours of Operation

The hours of operation of the marquee are restricted to the following:

1. Friday 7:00am to 11:00pm
- Saturday 7:00am to 11:30pm

Sunday 7:00am to 10.30pm

2. Use of the outdoor patron congregation area must cease at 10pm.
3. The marquee is not permitted for use on Monday to Thursday.

Reason: To protect the amenity of the local area.

23. Use of Premises

1. The development approved under this consent shall be used for a function centre and not for any other purpose without Council's separate written consent.
2. A maximum of one function is to be held within the marquee per week.
3. The existing function centre, Springfield House, is not permitted to be in use for functions concurrently with the marquee at any time.
4. The use of the marquee for any functions held on Sundays is limited to no more than 5 functions in a calendar year, within the approved hours of operation.

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

24. Number of Patrons

The premises is restricted to a maximum number of 250 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

1. All control measures and procedures nominated in the Plan of Management (prepared by Springfield House, dated August 2024) must be implemented.
2. 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

1. During functions within the marquee, live music must only be played through the certified speakers, with the attached noise limiter to control noise levels.
2. The LA10(15minute) noise level from the use of the marquee during functions (patrons and music) 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.
3. The emission of noise from any mechanical plant must not exceed the background noise level by more than 5dBA when measured at, or computed for, the most affected point, on or within the boundary of the most affected receiver. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the Noise Policy for Industry 2017.

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

27. External Lighting During Ongoing Use

During ongoing use of the premises, all lighting must be operated and maintained in accordance with the approved plans.

Reason: To ensure the safe operation of the premises and protect the amenity of the local area.

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 building.

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

29. Waste Management

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

1. All commercial tenant(s) must keep written evidence on site of a valid and current contract with a licensed waste contractor(s) for the regular collection and disposal of the waste and recyclables that are generated on site. The contract must include a detailed description of the collection process which aligns with the submitted Operational Plan of Management.
2. Waste collection services must not take place between 8PM and 6AM weekdays or 8PM and 8AM on weekends and public holidays.

Note: Time-of-day service restrictions apply to commercial developments located near residential areas.

3. The management plan for the site must specifically include the management of waste generated on site, litter and dumped rubbish. The site management must be responsible for the prompt removal of litter and dumped rubbish.

Note: In accordance with the Protection of the Environment Operations Act 1997, the definition of waste includes any unwanted substance, regardless of whether it is reused, recycled or disposed to landfill.

4. The residential component and non-residential component of the development must have separate and self-contained waste management systems, including separate bin storage rooms. Commercial tenants must be prevented (via signage, locked doors and other means) from using the residential waste/recycling bins and vice versa.
5. An Occupational Health & Safety (OHS) risk assessment is to be carried out by a suitably qualified person with qualifications in Occupational Health and Safety Legislation with specific regard to waste management. The recommendations of the OHS Risk Assessment are to be implemented as required.
6. All commercial tenant(s) must have a sufficient number of bins to contain the volume of waste and recycling expected to be generated between collection services.
7. The lid of each bin must be kept closed at all times, other than when waste is being deposited.
8. If the sum of meat, seafood and poultry waste generated per day is at least 50 litres, then waste collections must take place daily if the bin storage room is not refrigerated.
9. The land and adjoining areas are to be kept in clean and tidy conditions at all times.

10. Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin. Signage is also to be provided in locally appropriate culturally and linguistically diverse (CALD) community languages.
11. All surfaces trafficable by the waste collection vehicle must be kept in good and substantial repair.
12. Vegetation adjacent to the driveway/accessway/roadway must be regularly pruned to maintain a 4.5m vertical clearance over the driveway/accessway/roadway and to ensure the vegetation does not encroach on the vehicular travel path.

Reason: to ensure the efficient and effective on-going management of waste for the operational life of the development.

- END OF CONDITIONS -