



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 28 May 2025
at 4:00 PM**



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Local Planning Panel

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1 DA/85/2025 - DEMOLITION OF STRUCTURES AND CONSTRUCTION OF A DWELLING HOUSE - 316 & 318 MALTON ROAD, NORTH EPPING

DA No:	DA/85/2025 - PAN-508643 (Lodged on 24 February 2025)
Description:	Demolition of structures and construction of a dwelling house
Property:	Lots 6A & 7, DP 27021 & 21101, No. 316 & 318 Malton Road, North Epping
Applicant:	Ms Breanna Light
Owner:	Justin Chad Hales & Breanna Kate Hales
Estimated Value:	\$9,442,086
Ward:	C Ward
Clause 4.6 Request:	Clause 4.3 Height of Buildings
Submissions:	114
LPP Criteria:	10 or more unique submissions were received by way of objection
Author:	Sophie Valentine, Town Planner
COI Declaration:	No Council staff involved in the assessment of this application have declared a Conflict of Interest.

RECOMMENDATION

- A. THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, vary Clause 4.3 Height of Buildings Development Standard pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. THAT the Hornsby Local Planning Panel, exercising the functions of Council as the consent authority, approve Development Application No. DA/85/2025 for demolition of structure and construction of a dwelling house at Lot 6A DP 27021 and Lot 7 DP 21101, Nos. 316 & 318 Malton Road, North Epping subject to the conditions of consent in Schedule 1 of LPP Report No. LPP11/25.

EXECUTIVE SUMMARY

- The application involves demolition of structures and construction of a dwelling house.
- The proposal does not comply with the Hornsby Local Environmental Plan 2013 (HLEP) with respect to Clause 4.3 'Height of Buildings'. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the HLEP to contravene the maximum 8.5 metre height of building development standard. The submission is considered well founded and is supported.
- A total of 112 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 22 May 2023, advice was provided for Pre-Lodgement Application No. PL/25/2023 for demolition of existing structures, subdivision of the existing lot into two lots and construction of a new two storey dwelling on each new lot at No. 316 Malton Road.

On 8 November 2023, Development Application No. DA/880/2023 was approved for demolition of structures, subdivision of one allotment into two and construction of a swimming pool at No. 316 Malton Road, subject to conditions. This consent has not yet been acted upon.

APPLICATION HISTORY

On 24 February 2025, the subject application was lodged to Council.

On 25 March 2025, a meeting was held between the applicant, owners, architect, town planner and Council staff to discuss concerns raised with the application and matters raised in submissions.

On 28 March 2025, Council requested additional information to address concerns with regard to bulk and scale, height, site coverage, floor area, setbacks to Eastcote Road and the adjoining property at No.1 Eastcote Road, landscaped area, privacy, stormwater management and earthworks.

On 23 April 2025, the Applicant submitted amended architectural plans and supporting documents as follows:

- Amended plans that reduced the floor area from 1472m² to 1186.2m² to accommodate the increased setbacks. The changes in floor area comprise:
 - Deletion of a portion of the first floor towards No.1 Eastcote Road,
 - Deletion of the play room on the ground floor,
 - Reduction in the car parking area
- Site coverage reduced from 34.86% to 30%,
- Landscaped area increased from 861m² to 1029m²,
- Setback of the lower ground garage and ground floor above on the southern elevation adjoining No.1 Eastcote Road increased from 8m to 10.27m,

- First floor setback along the southern elevation adjoining No.1 Eastcote Road increased from 8m to 12.7m,
- Setback to the wrap around terrace along the Southern elevation adjoining No.1 Eastcote Road increased from 6m to 10m,
- Secondary setback increased along the Eastcote Road from predominately 3m to 3.7m along the entire length of the dwelling to 4.5m and 6m at the midway point and rear of the dwelling to provide a transition to adjoining properties along Eastcote Road,
- Change in roof profile and reduction in bulk with deletion of a void area on the first floor and introduction of attic areas instead of full height ceilings,
- Additionally, supporting documents were provided that included an amended landscape plan, stormwater plan, cut and fill plan, BASIX Certificate deleting gas, a Clause 4.6 written request, revised photomontage and a revised Statement of Environmental Effects.

SITE

The site is comprised of two rectangular allotments legally described as Lot 6A DP 27021 (No. 316 Malton Road) and Lot 7 DP 21101 (No. 318 Malton Road).

The 2213m² site is located on the south-eastern corner of Malton Road and Eastcote Road and contains two single-storey dwelling houses, an in-ground swimming pool and four detached outbuildings.

The surrounding developments consist of low-density residential development, comprising of dwelling houses and semi-detached dwelling houses. The site is also in close vicinity to All Saints Anglican Church to the south-west.

The sites experience a 4m fall from the Malton Road frontage towards the rear south-eastern boundary and is not mapped as containing a gradient of at least 20 percent.

The site is not mapped as bushfire or flood prone land.

The site does not contain a heritage listed item, is not within a Heritage Conservation Area (HCA) nor is in the immediate vicinity to a heritage listed item.

The sites are not burdened by easements or restrictions.

The site is not mapped as containing endangered ecological communities nor significant native vegetation communities.

The sites are serviced by the reticulated sewer system of Sydney Water.

PROPOSAL

The application proposes demolition of structures and construction of a dwelling house as follows:

- Demolition of two dwelling houses, four detached outbuildings, an in-ground swimming pool and two vehicular crossovers.
- Construction of a dwelling house containing a basement level, ground floor and upper level.
 - The dwelling house ground floor would comprise an entry foyer, formal living, formal dining room, guest sitting area, guest bedrooms (each with own ensuite), guest WC, kitchen with scullery, laundry, family living, bathroom, playroom, alfresco and terrace.

- The first floor would contain four bedrooms, three ensuites, one bathroom, one water-closet and a study/sitting area.
- The basement level would contain a two-car garage, storeroom, gym, multi-purpose room, bathroom and plant room.
- Exterior works comprise of internal driveways at the Malton Road and Eastcote Road frontage, retaining walls, water feature and various plantations.

A total of 26 trees are proposed to be removed to facilitate development. Two additional trees are proposed to be transplanted elsewhere within the site.

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.

The identified challenge for Hornsby Shire will be to deliver 97,000 additional dwellings in the North District by 2036. The following Planning Priorities are considered relevant to the proposal:

- Planning Priority N5 - Providing housing supply, choice and affordability, with access to jobs, services and public transport.
- Planning Priority N6 - Creating and renewing great places and local centres and respecting the District's heritage.
- Planning Priority N12 - Delivering integrated land use and transport planning and a 30-minute city.

In giving effect to A Metropolis of Three Cities, these Planning Priorities deliver on the below objective and the corresponding strategies:

- Objective 11 - Housing is more diverse and affordable.

The proposed demolition of structures and construction of a dwelling house have been thoughtfully considered and identified within this report. It is considered that the proposed dwelling house would provide a contemporary, residential dwelling house.

The proposal would meet objectives of these planning priorities and would be considered acceptable in the context of the Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan.

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 R2 Low Density Residential under the HLEP. The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Submissions received raised concerns regarding compatibility of the development with zoning objectives.

In response, the proposed development is defined as dwelling house and is permissible in the R2 zone with Council's consent. The proposal would meet the objectives of the zone by providing for the housing needs of the community within a low-density residential environment. The application is supported on merit, with detailed assessment of compliance against relevant planning controls detailed in the body of the report.

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 8.5m. The proposal has a maximum height of 8.82m and does not comply with this provision.

A Clause 4.6 written request is submitted with the proposal in support of the height contravention. A detailed discussion is provided under this section of the report below.

2.1.3 Exceptions to Development Standards

The application has been assessed against the requirements of Clause 4.6 of the HLEP. This clause provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tender to hinder the attainment of the objectives of the zone.

The proposal would exceed the 8.5m maximum building height development standard as the application seeks a proposed height of 8.82m, which contravenes the development standard by 320mm or 3.7%.

The objective of Clause 4.3 Height of Buildings of the HLEP is *“to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality”*.

The applicant has made a submission in support of the contravention to the development standard in accordance with Clause 4.6 of the HLEP. Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

In *Initial Action Pty Ltd v Woollahra Municipal Council [2008]* NSW LEC 118, Preston CJ clarified the correct approach to dealing with a written request under Clause 4.6 to justify the contravention of a development standard.

In relation to determining the matter under Clause 4.6(3)(a), the consent authority must be satisfied that the applicant's written request adequately addresses the matter as opposed to the determining authority making its own judgement regarding whether compliance is unreasonable or unnecessary. Additionally, the clause does not require that a non-compliant development should have a neutral or beneficial effect relative to a compliant development.

In relation to determining the matter under Clause 4.6(3)(b), the environmental planning grounds clause, non-compliant development is not required to result in a 'better environmental planning outcome for the site' relative to a compliant development. Instead, the requirement is only that there are sufficient environmental planning grounds to justify the development standard contravention.

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

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

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

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

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

This is supplemented by clarification from *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130* where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact sufficiently considered the matters required to be demonstrated by Clause 4.6.

The Clause 4.6 request states the proposed contravention is consistent with the objectives of the height of building development standard and has relied on Test 1 identified by Commissioner Preston in *Wehbe v Pittwater Council 2007* to demonstrate that compliance with the development standard is both unreasonable and unnecessary.

The written request prepared by Nolan Planning Consultants, (undated) provides a detailed assessment of the proposal with respect to the development standard sought to be contravened. The request argues how compliance with the development standard is both unreasonable and unnecessary as follows:

- The proposed new dwelling house has been designed to present predominantly as a two storey dwelling. The upper level provides for rooms within the roof form, with the dwelling presenting as a single storey building with attic rooms when viewed from Malton Road. The resultant dwelling is appropriate having regard to the size of the site, being 2,219m² which is significantly larger than the average allotment size in the locality and well in excess of the minimum allotment size specified in the Local Environmental Plan. It is therefore considered that the height of the building is appropriate for the site.
- The non-compliance with the height standard is minimal, being only 320mm. The area of non-compliance is confined to a small portion of the roof form located with ample setback to all boundaries. Amendment to the plan to require strict compliance would not be discernible from the public domain or the adjoining properties nor would it serve any benefit. The non-compliance is a direct result of the previous excavation of the site to accommodate the existing carport. When measured from natural ground level [ground level prior to excavation] the proposed dwelling would comply with the maximum building height control.
- The area of non-compliance does not result in any overshadowing to adjoining residential zoned land.
- The proposal provides for a single dwelling house on a large allotment of land and as such will not have any impact on the infrastructure capacity of the locality.
- The proposal achieves this objective.

With reference to the reasoning provided by the applicant above, Council does not object to the conclusion that the proposed dwelling house meet the objectives of Clause 4.3. In reaching this conclusion the following points are noted:

- The site has previously experienced excavation to accommodate car parking which deviates from the natural sloped topography that previously existed within the site. This height variation is confined to the existing car parking area within No. 316 Malton Road.
- Floor to ceiling height is not unreasonable, at 2.5m on the lower ground floor, 2.7m on the ground floor and 2.6m on the upper floor.

- Modifications to the roof form to comply would result in an outcome incompatible with the built forms of surrounding low-density developments.
- The height departure would not result in any detrimental amenity impact to surrounding neighbors due to the significant setback distances and would not result in significant overshadowing of adjoining and nearby premises.
- The overall appearance of the building, when viewed from both street frontages would present as a two-storey dwelling house which is characteristic of the immediate locality.
- The contravention has been reduced in size, limited to an area of a 13.3m² in the roof as shown in Figure 1 below:

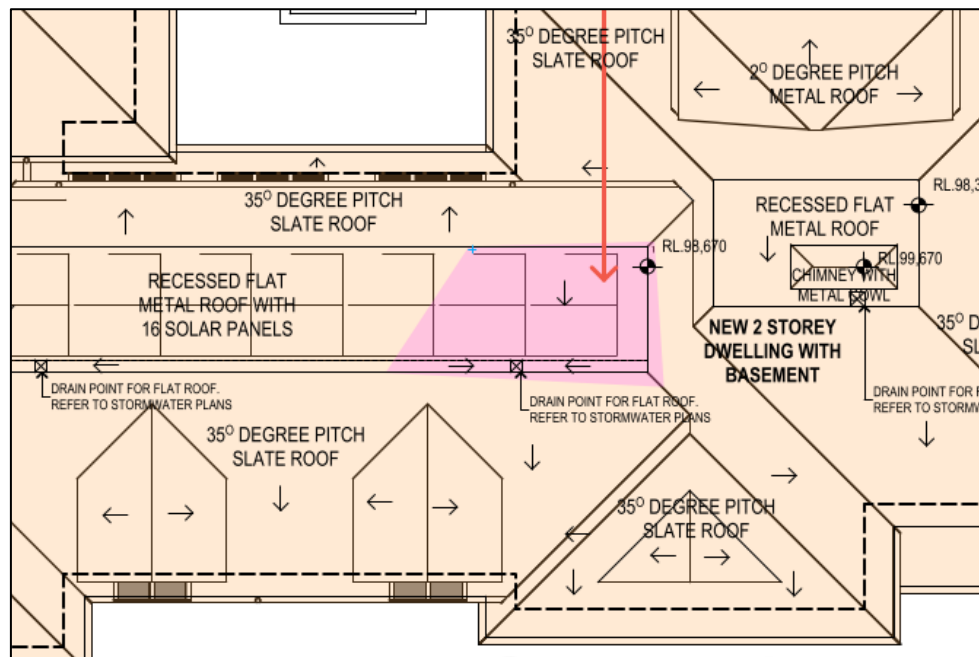


Figure 1: Area in roof subject to contravention of the height of building development standard

- The proposal as amended has confined the contravention to the maximum building height to a small roof area within the three-storey element as shown in Figure 2 below:

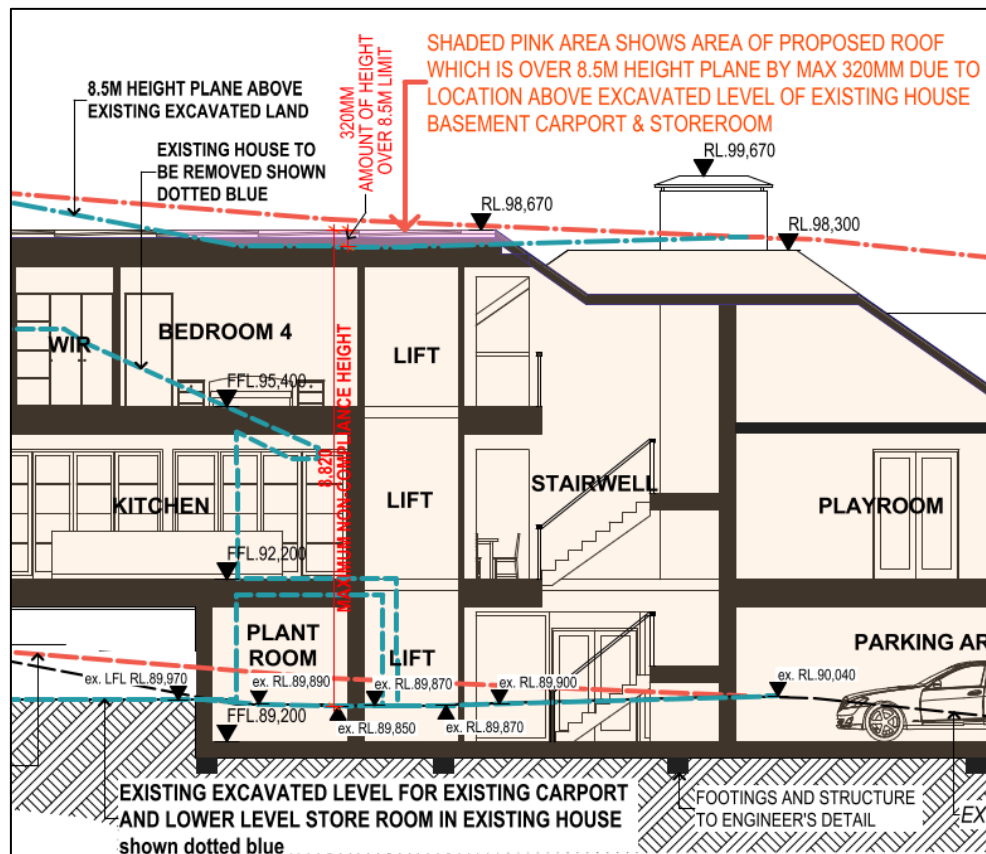


Figure 2: Shaded pink area of the height contravention over three-storey element proposed.

- The application provides for the orderly and economic development of land and maintains residential usage of the site.
- The proposed development generally meets the objectives of Clause 4.3 Height of Buildings of the HLEP by way of being appropriate with respect to the constraints of the site and with regard to the development potential of the site.

Based on this assessment, it is considered that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case.

2.1.3.2 Environmental Planning Grounds - Clause 4.6(3)(b)

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

The applicant provided the following planning grounds for the contravention of the development standard:

- *The area of non-compliance relates to only a small portion of the roof form of the new dwelling and is a direct result of the previous excavation on site. If measured from natural ground level the proposal would comply with the height controls. The area of non-compliance is provided with sufficient setback to all boundaries of the site and is designed to complement the character of the locality. The proposal incorporates rooms within the roof form and well-articulated facades. Therefore, the proposal will promote good design (cl 1.3(g)).*

- *The proposal provides for an appropriate bulk and scale when viewed from the public domain and surrounding properties and therefore strict compliance is therefore unreasonable.*
- *Further, the proposed works do not have any detrimental impact on the adjoining properties for the following reasons:*
 - *The proposed dwelling has been designed with appropriate setbacks to all boundaries of the site. The non-compliance relates to a small portion of the roof form which is a direct result of the previous excavation on site and which does not impact on privacy of the adjoining properties.*
 - *Shadow diagrams have been provided indicating that all adjoining properties receive appropriate solar access. The very minor non-compliance does not contribute to any shadowing to adjoining properties.*
 - *The non-compliance with the building height control does not result in any loss of privacy or amenity to the adjoining properties.*
 - *The resultant dwelling is compatible in terms of bulk and scale with the existing surrounding dwelling, particularly having regard to the large allotment size and well-articulated facades.*

Council considers that the environmental planning grounds stated within the written request are sufficient with respect to Clause 4.6(3)(b) and that the stated grounds are specific to the proposed development and the circumstances of the development site. Council is therefore satisfied that Clause 4.6(3)(b) of the HLEP is adequately addressed.

It is therefore considered that the written request adequately demonstrates sufficient environmental planning grounds exist to justify the contravention to maximum building height.

For the reasons outlined above, it is considered that the written request to contravene the height of building standard adequately demonstrates that the objectives of the height of building development standard contained within Clause 4.3 of the HLEP are achieved, notwithstanding non-compliance with the standard.

2.1.4 Heritage Conservation

Clause 5.10 of the HLEP sets out heritage conservation provisions for Hornsby Shire.

Submissions were received concerned of demolition of the dwelling house at No. 316 Malton Road due to heritage contribution and given it has been recently renovated.

The site does not include a heritage item and is not located in a heritage conservation area, nor is in the immediate vicinity to a heritage listed item. Accordingly, no further assessment regarding heritage is necessary nor concerns are raised regarding the proposed demolition of structures.

In response, neither allotment contains a heritage listed item, are not within or adjacent heritage conservation areas nor are in the vicinity to heritage listed items. Accordingly, heritage assessment is not required in this instance and no concerns are raised on heritage grounds.

Regarding recent renovations to No. 316, no objections are raised regarding historic use/renovations with respect to the subject development application.

2.1.5 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.

Include a 'subheading and paragraph' on any other relevant development standard e.g. Minimum lot size, floor space ratio etc.

Councils' consideration of Clause 6.2 of the HLEP is provided as follows:

- (a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development.*

Comment: The application is supported by a Geotechnical Report Ref: 37196Zrpt prepared by JK Geotechnics dated 5 December 2024 and Stormwater Management Plan Issue C prepared by Hydracor Consulting Engineers dated 7 May 2025.

Subject to conditions, proposed earthworks would unlikely result in any detrimental effect on the drainage patterns or soil stability in the locality. It is considered that this would allow stormwater drainage at an acceptable grade to dispose of water to the street via on-site detention and retention system to control stormwater disposal in extreme weather events. Conditions are imposed in the consent requiring construction in accordance with recommendations of the Geotechnical report and to manage stormwater as per the approved plans.

- (b) *The effect of the development on the likely future use or redevelopment of the land.*

Comment: The earthworks would not likely restrict future use or redevelopment of the land. The works would be to accommodate the residential use of the site, which is unchanged from the existing use.

- (c) *The quality of the fill or the soil to be excavated, or both.*

Comment: Conditions are recommended that all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility and that a construction management plan be provided prior to the issue of a construction certificate. Prior to fill material being imported to the site, a Waste Classification Certificate is required to be obtained from a suitably qualified environmental consultant confirming all fill material imported to the site must satisfy relevant criteria outlined in the consent.

- (d) *The effect of the development on the existing and likely amenity of adjoining properties.*

Comment: The level of earthworks is unlikely to have an effect on the amenity of any adjoining property given it would largely be constrained to the building envelope, which is sited sufficiently back from adjoining properties, including greater separation from the downhill property. Impacts to properties adjacent each property boundary would be negligible.

- (e) *The source of any fill material and the destination of any excavated material.*

Comment: Conditions are recommended that all excavated material removed from the site must be classified by a suitably qualified person and disposed of at an approved waste management facility. Prior to fill material being imported to the site, a Waste Classification Certificate is required to be obtained from a suitably qualified environmental consultant confirming all fill material imported to the site must satisfy relevant criteria outlined in the consent.

- (f) *The likelihood of disturbing relics.*

Comment: Council records do not indicate that any relics are likely to occur on site.

- (g) *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area.*

Comment: The site is not located in close proximity to any significant catchment or environmentally sensitive area.

- (h) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are recommended requiring sediment and erosion controls be in place prior to the commencement of any works and are to be managed appropriately on an ongoing basis during development works.

In summary, the proposal is regarded to be acceptable in consideration of Clause 6.2 of the HLEP.

Further assessment of earthworks against the HDCP controls is provided in Section 3.1.4 of this report.

2.2 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The application has been assessed against the requirements of Chapters 2 and 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

2.2.1 Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 of this policy aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 2.9 of the policy states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1.2.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Section 3.3 of this report provides an assessment in accordance with Part 1.2.6.1 of the HDCP.

2.2.2 Chapter 6 Water Catchments

The site is located within the catchment of Sydney Harbour. The aim of this chapter is to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained. This chapter provides general planning considerations and strategies to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained.

The plan addresses matters related to biodiversity, ecology and environment protection; public access to, and use of, foreshores and waterways; maintenance of a working harbour; 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 have minimal potential to impact on the Sydney Harbour Catchment and would comply with the requirements of Chapter 6 of the Biodiversity and Conservation SEPP.

2.3 State Environmental Planning Policy (Sustainable Buildings) 2022

The application has been assessed against the requirements of Chapter 2 of State Environmental Planning Policy (Sustainable Buildings) 2022 which seeks to encourage the design and delivery of more sustainable buildings.

Chapter 2 sets out the Standards for residential development. The proposal includes a BASIX certificate (No. 1781659S_04) in accordance with the requirements of the SEPP including the list of commitments to be complied with at the construction stage and during the use of the premises. The BASIX certificate achieves the minimum scores for energy and water use, and thermal performance.

The proposal is acceptable in this regard.

2.4 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.

2.4.1 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.

An examination of Council's records and aerial photography has determined that the site has been historically used for 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.

2.5 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 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 3.1 Dwelling Houses			
Control	Proposal	Requirement	Complies
Site Area	2213m ² (combined)	N/A	N/A
Building Height	8.82m	8.5m	No
No. storeys	3	max. 2 + attic	No
Site Coverage	30%	30%	Yes
Floor Area	1186.2m ²	430m ²	No
Setbacks			
- <i>Primary Frontage (Malton Road)</i>	13.3m	>7.6m	Yes
- <i>Secondary Frontage (Eastcote Road)</i>	3m	3m	Yes
- <i>North-Eastern Side</i>			
<i>Retaining wall</i>	2.1m	900mm	Yes
<i>Ground floor</i>	3m	900mm	Yes
<i>First floor</i>	3.2m	1.5m	Yes
- <i>South-Eastern Rear</i>			
<i>Retaining wall</i>	1.8m	3m	No
<i>Lower level</i>	10.2m	3m	Yes
<i>Ground floor</i>	10.2m	8m	Yes
<i>First floor</i>	12.6m	8m	Yes
Landscaped Area (45% of lot size)	1029.8m ²	996m ²	Yes
Private Open Space			
- <i>minimum area</i>	>24m ²	24m ²	Yes
- <i>minimum dimension</i>	>3m ²	3m	Yes
Car Parking	2 spaces	2 spaces	Yes

As detailed in the above table, the proposed development generally complies with the prescriptive measures within the HDCP with the exception of building height, number of storeys, floor area, and the retaining wall rear setback. A brief discussion on compliance with relevant performance requirements is provided below and Part 1.3 General Controls are addressed in Section 3 of the report.

2.6.1 Scale

The desired outcome for Part 3.1.1 Scale of the HDCP is to encourage *“development with a height, bulk and scale that is compatible with a low density residential environment”*.

The desired outcome is supported by the following prescriptive measures that state the following:

- *“Sites with the following maximum building heights under Clause 4.3 of the HLEP should comply with the maximum number of storeys in Table 3.1.1-a”* which prescribes a maximum building height of 8.5m.
- *“The maximum floor area for a dwelling house and ancillary outbuildings should comply with Table 3.1.1-c”* which prescribes a maximum floor area of 430m² applicable to the site.

Multiple submissions were received concerning bulk and scale impacts.

Following concerns raised by the proposal with respect to height, bulk and scale, amended plans were requested by Council and subsequently received that reduced the overall height, reduced the site coverage, increased setbacks to the adjoining property and street and reduced the total floor area.

With regards to the floor area non-compliance, the following is noted:

- The development site comprises two lots with a combined area of 2,213m² which is significantly larger than surrounding residential properties.
- The two allotments are capable of accommodating additional development should they be subdivided into four separate 500-550m² allotments, including accounting for an access-handle, resulting in an increased total site coverage/floor area over the subject site relative to that of the current proposal.
- The total floor area of the dwelling would be 1186.2m² which is considerably less than what would be permitted if the land were to be subdivided into four separate allotments and allows for an increased proportion of landscaping, being 45% instead of potentially 20%. In considering this, it is noted approval for Torrens title subdivision of No. 316 Malton Road has recently been granted by Council.
- No outbuildings are proposed as part of the application that would allow for an additional 100m² of floor area in accordance with Part 3.1.1 of the HDCP.
- The proposed dwelling house would have sufficient setbacks to all boundaries and the dwelling would be moderately screened from the street by existing and proposed plantations.
- The non-compliance to floor area would not result in unreasonable shadow impacts to adjoining properties which would continue to receive a minimum of 3 hours of unobstructed sunlight to their respective private open space areas in accordance with Part 3.1.4 of the HDCP.
- The dwelling house would not create unreasonable environmental impacts to adjoining developments with regard to visual bulk, solar access, amenity or privacy.

Regarding site coverage, the amended proposal has reduced the total site coverage from 35% to 30%, resulting in a compliant outcome.

Submissions were received concerning impacts of bulk and scale, particularly with regard to the following:

- Floor area, site coverage, number of storeys.

- If controls for floor area were willing to be doubled based on the two allotments, the site would still exceed permissible floor area.
- Associated concerns of the façade design and streetscape impacts along Eastcote Road were raised, as well as uncharacteristic development/subdivision pattern in locality, compatibility with rural setting, impacts to neighbourhood identity/ North Epping character.

One submission also referenced caselaw *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* that details compatibility of a proposal in the context of surrounding development.

Regarding the planning principle, the judgement of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, this assesses the appropriateness of scale of development within its context.

This case notes *"It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve"*.

This case outlines that buildings do not have to be the same height to be compatible, and landscaping is an important contributor to urban character, of which the proposal complies with total landscaped area.

To test whether a proposal is compatible with its context, two questions should be asked:

1. *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
2. *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

Councils' assessment of the above two questions are that the proposals physical impacts on surrounding development are on balance, acceptable, and would not result in unreasonable impacts to surrounding current and future development. The physical appearance, in the context of the site, would be compatible with the character of the surrounding buildings and street.

With regards to the height non-compliance, the application is supported by a submission pursuant to Clause 4.6 of the HLEP to contravene the maximum height of buildings development standard, which is discussed in detail under Section 2.1.3 of this report. The submission is considered well founded and is supported on its merits.

On balance, the proposal meets the desired outcomes of Part 3.1.1 Scale of the HDCP and is considered acceptable, subject to conditions.

2.6.2 Setbacks

The desired outcomes for Part 3.1.2 Setbacks of the HDCP is to encourage *"setbacks that are compatible with adjacent development and complement the streetscape"* and *"setbacks that allow for canopy trees to be retained and planted along the front and rear property boundaries"*.

These desired outcomes are supported by the prescriptive measures set out in Table 3.1.2-a Minimum boundary setbacks which prescribes a minimum rear boundary setback of 3m.

Submissions were received regarding setbacks.

It is noted that amended plans were provided on 23 April 2025 which made significant amendments to increase the Southern setback towards No.1 Eastcote Road and increase the secondary setback

along Eastcote Road to provide greater separation to the adjoining property and improved the setback transition to the Eastcote Road streetscape as follows:

- The setback of the lower ground garage and ground floor above on the Southern elevation adjoining No.1 Eastcote Road increased from 8m to 10.27m.
- The first floor setback along the southern elevation increased from 8m to 12.7m.
- The setback to the wrap around terrace along the southern elevation adjoining No.1 Eastcote Road increased from 6m to 10m.
- Secondary street frontage setbacks along Eastcote Road have been increased from predominately 3m to 3.7m along the entire length of the dwelling to 4.5m and 6m at the midway point and rear of the dwelling to provide a transition to adjoining properties along Eastcote Road.

The proposed dwelling house complies with all prescribed setbacks and amended plans have increased the setback along the Eastcote Road secondary frontage and increased the setback transition to the neighbouring property. The Malton Road primary frontage would exhibit a 13.2m to the front porch and be 16.2m from the front building line.

The application seeks to construct a retaining wall sited 1.8m from the rear boundary which does not meet the 3m rear setback control. Notwithstanding, considering that State Environmental Planning Policy (Exempt and Complying Development Code) 2008 (SEPP Codes) allows for retaining walls up to 600mm high at least 1m from any boundary line as exempt development, the retaining wall 600-700mm high sited 1.8m from the adjoining property to the south-east, would be relatively comparable with these controls.

On balance, the proposal meets the desired outcomes of Part 3.1.2 Setbacks of the HDCP and is considered acceptable, subject to conditions.

2.6.3 Landscaping

The desired outcomes of 3.1.3 Landscaping of the HDCP are to encourage *“landscaping that integrates the built form with soft landscaping and retains and enhances the tree canopy”* and *“development that retains existing landscape features”*.

The desired outcomes are supported by the prescriptive measures that state the following with respect to fencing:

- *“Within front setbacks, fences should not be higher than 1.2 metres.*
- *Front fencing should be constructed from predominately lightweight materials with the design allowing at least 50 percent openings.*
- *Side and rear boundary fences should be a maximum of 1.8 metres high, sited behind the front building line”.*

Submissions were received regarding landscaping and the fencing proposed.

Regarding the total landscaped area, amended plans increased the Landscaped area from 861m² to 1029m² and an additional landscaped buffer was provided to the neighbouring property along the southern boundary at No.1 Eastcote Road.

The amended proposal complies with the minimum 45% landscaped area with the Landscape Plan proposing 17 trees in addition to hedges and shrubs. The landscaping would include a mix of locally

indigenous and exotic trees in suitable locations that would contribute to the streetscape setting and the local tree canopy.

The submitted Landscape Plan is considered acceptable and would provide medium to large sized trees along the periphery of the development enhancing the tree canopy of the locality and providing privacy to adjoining development.

The proposed front fence/gate features and pillars proposed along the Malton Road frontage that would be a maximum of 2m in height. The height of the fence is not supported as it would be incompatible and uncharacteristic with the Malton Road streetscape which typically incorporates lower height fencing of 1.2m. Accordingly, an amended plan condition is recommended requiring the fence to be a maximum 1.2m along the Malton Road frontage.

The application also proposes a 1.8m to 2.2m tiered fence behind the building line along the Eastcote Road secondary frontage which does not meet the 1.2m prescriptive measure. Given that the site is a corner allotment which slopes towards the rear, no objections are raised to the taller fence in this location as it only occurs as a consequence of the sloping site.

On balance, the proposal meets the desired outcomes of Part 3.1.3 Landscaping of the HDCP and is considered acceptable, subject to conditions.

2.6.4 Sunlight Access

The desired outcomes of Part 3.1.5 Sunlight Access of the HDCP are to encourage *“dwelling houses designed to provide solar access to open areas”* and *“development designed to provide reasonable sunlight to adjacent properties”*.

These desired outcomes are supported by prescriptive measures that state *“On 22 June, 50 percent of the required principle private open space area [within the subject site and adjoining properties] should receive 3 hours of unobstructed sunlight access between 9am and 3pm”*.

Submissions were received regarding sunlight access impacts, including overshadowing impacts from trees/plantations proposed.

The application includes shadow diagrams prepared by David White Architects (Issue D) dated 28 April 2025 illustrating overshadowing impacts to the subject site and to adjoining properties. These shadow diagrams demonstrate that each property would continue to receive the minimum three hours of unobstructed sunlight access to 50 percent of the required principle private open space area.

Regarding shadow impacts attributed by vegetation and tree plantations, these are not considered in development assessment as this element of the proposal is not considered development.

The proposal meets the desired outcomes of Part 3.1.5 Sunlight Access of the HDCP and is considered acceptable.

2.6.5 Privacy

The desired outcome of Part 3.1.6 Privacy of the HDCP is to encourage *“development that is designed to provide reasonable privacy to adjacent properties”*.

The desired outcome is supported by the prescriptive measures that state the following:

- *“living and entertaining areas of dwelling houses should be located on the ground floor and orientated towards the private open space of the dwelling house and not side boundaries.”*
- *A proposed window in a dwelling house should have a privacy screen if:*

- *It is a window to a habitable room, other than a bedroom that has a floor level of more than 1 metre above existing ground level,*
- *The window is setback less than 3 metres from a side or rear boundary, and*
- *The window has a still height of less than 1.5m*
- *A deck, balcony, terrace or the like should be located within 600mm of existing ground level where possible to minimise potential visual and acoustic privacy conflicts.*
- *Decks and the like that need to be located more than 600mm of existing ground should not face a window of another habitable room, balcony or private open space of another dwelling within 9 metres of the proposed deck unless appropriately screened."*

Submissions were received with respect to privacy impacts.

The application proposes a study/sitting area on the upper floor, upper balcony, a formal living, formal living, kitchen, family living, playroom and alfresco orientated towards boundaries other than the rear private open space contrary to the above prescriptive measure. Areas such as the rear, southern verandah and alfresco/terrace would be elevated over 600mm which does not meet Councils controls detailed above.

Regarding the first floor study/sitting area, given this area would be orientated towards the Malton Road frontage and overlook the streetscape and front yard area, no concerns are raised on privacy grounds regarding this space. Regarding the upper balcony directly south of the master bedroom, given this balcony is ancillary to a bedroom, is 2.2m deep, limited to 13m² in area, is not a living space and is orientated towards the private open space of the site, no concerns of unreasonable privacy concerns are raised in this regard.

The formal living rooms and formal dining rooms on the ground floor which are sited 950mm and 1.1m above the existing ground level and are orientated towards the side boundary. Given these spaces contain windows orientated towards the north-eastern side boundary and not a rear boundary and this serves large living spaces which may result in overlooking impacts to the adjoining property to the north-east known as No. 320 Malton Road, a condition is recommended requiring amended plans to incorporate additional privacy measures to the side facing windows of the formal living and formal dining rooms to appropriately mitigate potential privacy impacts.

Additionally, given the verandah directly adjacent the formal dining room would be raised 1.1m from existing ground level and not achieve the 600mm prescriptive measure, installation of a privacy screen has been recommended along the side elevation of this verandah to screen views to the adjoining property known as No. 320 Malton Road.

Concerns were received regarding the raised upper lawn area and courtyard, which would be raised between 570mm and 1.18m from existing ground level. As this area would be setback 3m from the boundary and screened from the adjoining property at No. 320 Malton Road by an existing 3m-4m high Murraya evergreen hedging and 11 proposed camellia trees, privacy concerns would be negligible in this regard.

Regarding the scullery on the ground floor, this would be orientated towards the Eastcote Road frontage overlooking the public domain and no privacy concerns would be raised.

Regarding the family room and dining room on the ground floor towards the southern boundary, these rooms are orientated towards the dwelling's private open space with no window openings to the adjoining property.

Regarding the alfresco, terrace and playroom area, concerns were raised regarding privacy in the original architectural plans. Amended plans were subsequently provided which increased the setback of these areas and provided appropriate screening from the north-east and partial screening to the south-eastern rear boundary. Whilst the terrace includes an open iron balustrade area which is adjacent to the playroom, given the terrace would be 10.27m from the adjoining property and the playroom would be 12.7m from the side boundary which exceeds the 9m prescriptive measure, privacy concerns along this elevation are suitably addressed.

The lower lawn areas in closer proximity to No. 320 Malton Road would not be subject to non-compliance in earthworks with respect to the HDCP and marginal level changes are proposed in this area.

To ensure the stability of the site, structural details of all required retaining walls are required to be submitted with the application for a Construction Certificate.

On balance, the proposal meets the desired outcome of Part 3.1.6 Privacy of the HDCP and is considered acceptable, subject to conditions.

2.6.6 Open Space

The desired outcome of Part 3.1.4 – Open Space of the HDCP is to encourage *“private open space that functions as an extension to the dwelling house”*.

A submission was received concerning open space.

The proposal would exceed the minimum 24m² area and 3m dimension required for private open space areas behind the building line. Accordingly, no concerns are raised regarding the proposal on these grounds.

The proposal meets the desired outcome of Part 3.1.4 Open Space of the HDCP and is considered acceptable.

2.7 Domestic Solid Fuel Burning Appliances

As part of the application, the proposal includes the installation of five solid fuel burning fireplaces in the formal living room, formal dining room, guest sitting area, family living and outdoor alfresco area.

Council cannot approve a free-standing fireplace without a flue to control the smoke. A condition of consent has been recommend requiring the deletion of the fireplace in the rear yard as indicated on red on the approved plans.

As specified under Section 4.9 of the ‘AS/NZS 2918:2001 Domestic Solid Fuel Burning Appliances - Installation’ BCA standard, *“the flue exit shall be located outside the building in which the appliance is installed so that:*

- a) *The flue pipe shall extend not less than 4.6m above the top of the floor protector.*
- b) *The minimum height of the flue system within 3m distance from the highest point of the roof shall be 600mm above that point.*
- c) *The minimum height of a flue system further than 3m from the highest point of the roof shall be 1000mm above roof penetration.*
- d) *No part of the building lies in or above a circular area described by a horizontal radius of 3m about the flue system exit”.*

With respect to (a), the flue pipes extend greater than 4.6m above the top of the floor protector.

With respect to (b), it is noted that the flue systems within 3m distance from the height point of the roof would be at least 600mm above that point.

With respect to (c), it is noted that the flue system located more than 3m from the highest point of the roof would be at least 1000mm above roof penetration.

With respect to (d), it is noted that the proposed flue systems exits would be located at a distance greater than 3m circular radius from any other structure.

A condition is recommended in Attachment 1 of this report requiring the installation to be completed in accordance with Section 4.9 of AS/NZS 2918:2001 Domestic Solid Fuel Burning Appliances - Installation and the Protection of the Environment Operations (Clean Air) Amendment (Solid Fuel Heaters) Regulation 2016.

No concerns are raised regarding the domestic solid fuel burning appliances proposed, subject to conditions.

2.8 Section 7.12 Contributions Plans

Hornsby Shire Council Section 7.12 Contributions Plan 2019-2029 applies to the development as the estimated costs of works is greater than \$100,000. Should the application be approved, an appropriate condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

2.9 Housing and Productivity Contributions

Housing and Productivity Contributions (HPC) came into effect on 1 October 2023 to support housing and productivity in key growth areas of NSW.

The HPC does not apply to the proposal as the proposal would not result in a new dwelling lot nor relates to other applicable land uses (e.g. industrial, high-density residential).

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 prescriptive measures of Part 1.2.6.1 Tree Preservation of the HDCP state that:

- a) *“the prescribed trees that are protected by the Vegetation SEPP and/or Clause 5.10 of the HLEP and this section of the DCP include:*
 - *all trees except exempt tree species in Hornsby Shire as listed in Table 1.2.6-a or subject to a Biodiversity Offset Scheme,*
 - *all trees on land within a heritage conservation area described within the HLEP, and*
 - *all trees on land comprising heritage items listed within the HLEP.*
- b) *To damage or remove any tree protected under the HDCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading ‘Exempt Tree Work’).”*

Submissions were received regarding tree preservation and removal and why trees were included for assessment on adjoining lands.

The proposed development would necessitate the removal of 26 trees from the site.

The application is supported by an Arboricultural Impact Assessment (AIA) prepared by Selena Hannan Landscape Design dated 3 January 2025. The AIA seeks consent for removal of 26 trees within the site and transplantation of two trees (known as Tree Nos. 25A and 25B) elsewhere within the site and recommends protection of trees to be retained.

Trees proposed for removal all have a medium retention value, with the exception of tree No. 11, a Japanese Maple which is of high retention. Whilst the Maple tree would experience a 100% TPZ encroachment and would not be able to be retained, the AIA notes that transplantation of this tree is possible given there is sufficient space available in the front or rear yard. Accordingly, a condition is recommendation requiring the Maple tree to be transplanted as opposed to being removed.

Council raises no objections to the removal of the 26 trees on the site as the trees are not considered worthy of protection and are within the proposed building footprint and can be replaced with 10 replacement trees recommended as a condition of consent which is in addition to the 17 trees nominated on the landscape plan.

Conditions are recommended regarding use of tree sensitive construction techniques during construction, installation of tree protection measures, tree protection fencing and replacement planting.

Regarding the submission of why trees were included on adjoining lands, this is to appropriately assess the impacts of the proposed development of trees to be retained in the vicinity to works, irrespective of whether they are on the site or on a separate property.

On balance, the proposal meets the prescriptive measures of Part 1.2.6.1 Tree Preservation of the HDCP and is considered acceptable, subject to conditions.

3.1.2 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 *“development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species”*.

Submissions were received concerning adverse biodiversity impacts, including associated values and aesthetics.

In response, the site is not mapped as containing terrestrial biodiversity under the HLEP, is not mapped on the NSW Biodiversity Values Mapping, nor Councils significant native vegetation mapping. Accordingly, no concerns are raised with respect to the proposal on biodiversity grounds.

Tree impacts to individual trees are assessed on merit which is detailed under Section 3.1.1 of this report.

The proposal meets the desired outcomes of Part 1.3.1.1 Biodiversity of the HDCP and is considered acceptable.

3.1.3 Stormwater Management

The desired outcomes of Part 1.3.1.2 Stormwater Management of the HDCP are to encourage *“development that protects waterways from erosion, pollution and sedimentation, and maintains or improves water quality and aquatic habitats”* and *“water management systems that minimise the effects of flooding and maintains natural environmental flows”*.

Submissions were received with respect to stormwater management, including impacts of increased impervious area.

The original proposal sought to dispose of stormwater via two 10,000 litre tanks discharging to the kerb on Eastcote Road.

The application was referred to Councils development engineer who raised concerns of stormwater impacts as a result of the increase of impervious area across the two sites. Accordingly, an amended stormwater plan was requested that includes provision for an on-site detention system to reduce stormwater impacts and control the release of stormwater flow to Eastcote Road to minimise risks of inundation in extreme events.

An updated stormwater plan was received that includes an on-site retention (OSR) and a separate on-site-detention tank with a combined storage capacity of 42m³ beneath the internal driveway.

The application was re-referred to Council's development engineer and no objection is raised to the proposal, subject to conditions including ongoing use of an on-site detention system.

The proposal meets the desired outcomes of Part 1.3.1.2 Stormwater Management of the HDCP and is considered acceptable, subject to conditions.

3.1.4 Earthworks

Clause 6.2 of the HLEP is supplemented by Part 1.3.1.4 Earthworks and Slope of the HDCP.

The desired outcomes of Part 1.3.1.4 - Earthworks and Slope of the HDCP are to encourage *“development that is designed to respect the natural landform characteristics and protects the stability of the land”* and *“development that limits landform modification to maintain the amenity of adjoining properties and streetscape character”*.

This is supported by the prescriptive measures which state that *“earthworks involving filling should not exceed 1 metre in height from the existing ground level”* and *“excavation that extends outside of the building platform should be limited to a depth of 1 metre from the existing ground level, unless the excavation is required to:*

- *Achieve a high-quality built form.*
- *Provide for safe vehicular access to the site.*
- *It maintains the amenity of adjoining properties and the desired streetscape character.”*

Submissions were received regarding earthworks.

The proposed development seeks a maximum of 2m of cut and up to 1.4m of fill which does not achieve the above prescriptive measures.

The application is supplemented by a Geotechnical Report prepared by JK Geotechnics dated 5 December 2024 and a cut and fill plan prepared by David White Architects depicting the extent of cut and fill proposed within the site.

The geotechnical report provided details subsurface conditions and uses this to recommend appropriate conditions relating to excavation, shoring, footings, retaining walls, on-grade floor slabs and hydrogeological matters.

No concerns are raised regarding the extent of cut and fill as areas of non-compliance are largely confined towards the centre of the new dwelling, away from adjoining residential properties. The excavation would be to accommodate a lower-level parking area and fill to accommodate a residential area and landscape features.

As the total excavation volume would be 249.76m³ and fill would be 573.04m³, this requires the importation of 323.28m³. Given the extent of total earthworks, a Construction Management Plan is required to be submitted to Council for assessment and approval prior to issue of the Construction Certificate.

On balance, the proposal meets the desired outcomes of Part 1.3.1.4 Earthworks and Slope of the HDCP and is considered acceptable, subject to conditions.

3.1.5 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 *“development that balances the conservation of native vegetation and bushfire protection”*.

These desired outcomes are supported by the prescriptive measure that states *“development on land identified as bushfire prone on Council’s Bushfire Prone Land Map should address the bush fire protection measures in the publication ‘Planning for Bushfire Protection (2019)’”*.

Submissions were received of bushfire impacts to the proposed development, particularly due to the proximity to Lane Cove National Park.

As the site is not mapped as bushfire prone land, bushfire protection measures are not required in this instance.

Accordingly, the proposal meets the desired outcomes of Part 1.3.3.1 Bushfire of the HDCP and is considered acceptable.

3.1.6 Flooding

The desired outcome of Part 1.3.3.2 Flooding of the HDCP is to encourage *“development that is located and designed to minimise the risk to life, property and the environment from flooding”*.

The desired outcome is supported by prescriptive measures that states *“Where a development proposal is on land at or below the flood planning level, a comprehensive flood study should be prepared by a qualified hydraulic engineer and is to be submitted with any development application on land that demonstrates that the development addresses the provisions of Clause 5.21 of the HLEP, and the development complies with best practice.”*

A submission was received concerned of flooding impacts.

In response, the site is not mapped as flood prone land and is therefore further assessment of flooding impacts is not required. Impact of stormwater management, however, is assessed and is detailed under Section 3.1.3 of this report.

The proposal meets the desired outcomes of Part 1.3.3.2 Flooding of the HDCP and is considered acceptable.

3.1.7 Waste Management

The application is accompanied by a Waste Management plan detailing the extent of proposed waste generation. As the location of an appropriate registered waste disposal facility was not disclosed, a condition of consent is recommended requiring these details to be provided the principal certifier prior to the issue of a construction certificate.

3.2 Built Environment

3.2.1 Traffic

The desired outcomes of Part 1.3.2.1 Transport and Parking of the HDCP are to encourage *“development that manages transport demand around transit nodes to encourage public transport usage”, “car parking and bicycle facilities that meet the requirements of future occupants and their visitors”* and *“development with simple, safe and direct vehicular access”*.

The desired outcomes are supported by the prescriptive measures that state *“garages in low density residential development should be provided with a private EV [electric vehicle] connection”* and *“all EV charging infrastructure is to comply with the applicable Electric Vehicle safety and energy consumption data collection requirements of the National Construction Code*.

Regarding EV charging, to comply with the abovementioned prescriptive measure, a condition has been recommended requiring an EV charging facility in the new garage.

The proposal meets the desired outcomes of Part 1.3.2.1 Transport and Parking of the HDCP and is considered acceptable, subject to conditions.

Submissions were received concerning vehicular traffic and parking impacts associated with construction and the ongoing use of the development, and objections to the circular driveway along the Malton Road frontage.

In response to traffic concerns, as the proposal is for a dwelling house, this use is not considered a traffic generating development under the Transport and Infrastructure State Environmental Planning Policy and no concerns are raised regarding traffic generation.

The application was referred to Council's Development Engineer who raised no objections to the proposed transport and parking arrangement of the development, subject to conditions.

Regarding the driveway, whilst this departs from Council's Vehicular Specification requiring a maximum of one vehicle crossing, given the proposal is across two allotments and the total number of vehicle crossings to the allotments would be unchanged, no concerns are raised regarding the three vehicle crossings, including the driveway at the Malton Road frontage.

On balance, the proposal meets the desired outcomes of Part 1.3.2.1 Transport and Parking of the HDCP and is considered acceptable, subject to conditions.

3.2.2 Air Quality

The desired outcome of Part 1.3.2.6 Air Quality of the HDCP is to encourage *“Development designed and managed to minimise air quality impacts on the occupants of residential dwellings and other sensitive land uses”*

The desired outcome is supported by prescriptive measures that state *“to maintain indoor air quality and avoid the generation of harmful airborne byproducts, indoor gas should not be used in any new*

residential development” and “indoor cooktops, ovens and heaters should be electric and clearly marked on architectural plans”.

Submissions received regarding air quality and pollution from the firepit proposed.

The application proposes various electric cooking appliances following receipt of amended plans detailing this on plans and submission of a revised BASIX Certificate that removed gas appliances. This amendment was sought to demonstrate compliance to the DCP control to maintain indoor air quality.

Domestic solid fuel burning appliances proposed would be managed appropriately via a flue system and is discussed in Section 2.7 of this report.

Regarding the fire-pit. Council cannot approve a free-standing fireplace without a flue to control the smoke. A condition of consent has been recommend requiring the deletion of the fireplace in the rear yard (to be marked up on the approved landscape plan if consent is granted).

3.3 Social Impacts

The residential development would improve housing choice in the locality by providing a range of household types. This is consistent with Council’s Housing Strategy which identifies the need to provide a mix of housing options to meet future demographic needs in Hornsby Shire.

The location of the development is in close proximity to a local commercial centre, recreational, health and education facilities for future residents.

3.4 Economic Impacts

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

4. SITE SUITABILITY

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

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

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners for 14 days between 4 March 2025 and 18 March 2025 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 63 submissions.

Following receipt of amended plans and associated supporting documentation, the application was re-notified to adjoining and nearby landowners and to those who had previously made a submission for 14 days between 29 April 2025 and 13 May 2025 in accordance with the Hornsby Community

Engagement Plan. During the second notification period, an additional 51 submissions were received objecting of the proposal.

Accordingly, a total of 114 unique submissions were received during both notification periods.

The map below illustrates the location of those nearby properties who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X PROPERTIES THAT MADE A SUBMISSION		PROPERTY SUBJECT OF DEVELOPMENT	
73 Submissions received from out of map range.				

A total of 114 submissions objected to the development, generally on the grounds that the development would result in:

- Development that is excessive in bulk and scale, including floor area, site coverage and number of storeys
- Use of premises not consistent with a dwelling house
- Uncharacteristic in locality, dwelling house and allotment size
- Introduction of precedence
- Non-compliance in compliance to zoning objectives

- Parking and Traffic Impacts
- Impacts to Local services, infrastructure and public transport
- Introduction of precedence
- Adverse environmental impacts including biodiversity, tree removal, replacement planting and earthworks
- Privacy impacts
- Stormwater and flooding impacts
- Overshadowing
- Unacceptable noise
- Devaluation of nearby properties
- Integrity of supporting documentation
- Heritage impacts
- Air Quality
- Setbacks
- Landscaping and fencing
- Bushfire impacts
- Pedestrian impacts, security and safety
- Association with the Plymouth Brethren Church and proximity to other churches
- Light spillage
- Reduction of housing stock
- Council's previous refusal for a Church on Norfolk Road
- Intent to seek support from local representatives
- Cost of Works
- Consolidation of allotments
- Impacts to sewer; and
- Impacts to health, mental health and the like

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 Use of Premises

Submissions were received concerned that the use of the development would not be solely associated with a dwelling house and may be used for other purposes including a place of worship, commercial/industrial purposes, boarding house, short term residential facility, conference/training centre. This was raised following concerns of the bulk and scale, circular driveway, internal configuration and rooms proposed such as formal spaces, bar located near the foyer, size of scullery

and laundry including appliances etc. A requirement for use of premises condition was also recommended in submissions.

Comment: In response, further clarification was provided by the applicant detailing that the intended use of the development is a dwelling house as proposed in the application. Council is satisfied that the proposed use is consistent with a dwelling house only. An ongoing use of premises condition is recommended to be imposed to ensure the use of the development is for residential purposes only.

5.1.2 Pedestrian Impact, Security and Safety

Submissions were received concerning pedestrian impacts, safety and security, including implementation of traffic measures.

Comment: In response, no concerns are raised regarding pedestrian impacts, subject to compliance with conditions. The use of the allotments would be unchanged from the existing residential use.

Regarding safety, suitable conditions including installation of fencing are recommended to maintain residential amenity and safety during development. Additional requirements may be required for Councils approval of a construction management plan prior to the issue of the construction certificate, to assist with the protection of the public, the environment, and Council's assets during all stages of construction works. This includes provision for any necessary road closures/openings, work zones, crane permits, road occupancy licenses and traffic control.

Regarding security, crime prevention is not a matter of consideration for a proposed new dwelling house. A Crime Prevention Through Environmental Design (CPTED) report is required only for large scale or crime sensitive developments, such as developments with 20 or more dwellings, major commercial / retail developments etc.

5.1.3 Noise Impacts

Submissions were received concerning noise generation.

Comment: In response, low density development of this nature would not require additional assessment of noise and vibration in this instance. Suitable conditions have been recommended under Schedule 1 to reduce amenity impacts to surrounding properties, including restricting construction to prescribed hours and days.

5.1.4 Impacts to Traffic, Parking and Public Transport

Submissions were received concerning impacts to traffic, parking and public transport including bus routes.

Comment: In response, Councils assessment of transport and parking is discussed in detail in Section 3.2.1 of the report above.

Regarding impacts to public transport routes, the subject application does not propose any changes to public transport infrastructure and the proposed works would be solely within the subject allotments.

Concerns of traffic obstruction and illegal parking may be reported to Council to investigate, irrespective of the proposed development.

5.1.5 Non-Compliance with Zoning Regulation

Submissions were received concerning non-compliance of the development with zoning objective as low density residential development.

Comment: In response, Councils assessment against the R2 Low Density zoning objectives of the Hornsby Local Environmental Plan 2013 is detailed in Section 2.1.1 of this report.

5.1.6 Introduction of Precedence of Similar Developments

Submissions were received concerning establishing a precedence of similar developments.

Comment: In response, each Development Application is assessed on its merits against relevant planning controls in their own right within their own unique context and circumstances.

5.1.7 Adverse Natural Environmental Impacts

Submissions were received regarding adverse environmental impacts, including biodiversity, tree removal and preservation, earthworks, stormwater management, flooding and bushfire.

Comment: In response, the above matters are assessed and detailed in Section 3.1 of this report.

5.1.8 Air Quality

Submissions were received regarding air quality, including the use of a firepit in the rear yard.

Comment: In response, Councils assessment of air quality is detailed in Section 3.2.2 of the report. The outdoor firepit has been recommended for deletion on the landscape plan.

5.1.9 Association with the Plymouth Brethren Church and Proximity to other Churches

Submissions were received concerning association with the Plymouth Brethren Church, including conservative views, undesirable practices and leadership role of applicant in religious organisation allegedly using houses as a 'Place of worship'.

Comment: In response, religious faiths and proximity to churches is not a matter for consideration under *NSW Environmental Planning and Assessment Act 1979*. Concerns of non-compliances to use of premises in other instances may be reported to Council for investigation.

5.1.10 Impacts to Health, Mental Health and the Like

Submissions were received concerning impacts to health, mental health, wellbeing, quality of life, inconveniences etc.

Comment: In response, these are not matters of consideration for the purposes of development assessment.

5.1.11 Integrity of Statement of Environmental Effects (SEE) and other Supporting Documentation, including the Photomontage

Submissions were received concerning the integrity of the SEE concerned of incorrectly stating compliance to the Hornsby Development Control Plan 2024 and Hornsby Local Environmental Plan 2013.

Comment: In response, the SEE and photomontages are two of several documents used by the applicant to outline the proposed works, justify any non-compliances and supplement the proposal. These documents are used to inform both Council and the wider public of the development proposed,

however Council completes its own independent assessment of the supplied plans and supporting documents.

The two referenced documents were updated to reflect the amended design.

5.1.12 Sunlight Access Impacts

Submissions were received concerning impacts to sunlight access and overshadowing.

Comment: In response, Councils assessment of sunlight access is detailed in Section 2.6.4 of this report.

5.1.13 Privacy Impacts

Submissions were received concerning impacts to privacy.

Comment: In response, Councils assessment of privacy is detailed in Section 2.6.5 of this report.

5.1.14 Impacts to Local Infrastructure

Submissions were received concerning impacts to local infrastructure.

Comment: In response, the subject development application is for a dwelling house only and does not generate additional demand for infrastructure.

5.1.15 Setbacks

Submissions were received regarding proposed setbacks.

Comment: In response, Councils assessment of setbacks is detailed in Section 2.6.2 of this report. It is noted that the dwelling house complies with the HDCP 2024 prescribed setbacks.

5.1.16 Landscaping and fencing

Submissions were received in relation to landscaping and fencing.

Comment: In response, Councils assessment of landscaping is detailed in Section 2.6.3 of this report.

5.1.17 Reduction in Property Values

Submissions were received concerning impacts property values.

Comment: In response, this is not a matter for consideration under *NSW Environmental Planning and Assessment Act 1979*.

5.1.18 Heritage Impacts

Submissions were received regarding heritage impacts, particularly in relation to No. 318 Malton Road.

Comment: In response, Councils heritage assessment is detailed in Section 2.1.4 of this report.

5.1.19 Light Spillage

Submissions were received concerning impacts of light spillage.

Comment: In response, it is not considered that the proposed development as a residential dwelling would give rise to excessive light pollution.

5.1.20 Reduction of Housing Stock

Submissions were received concerned of a reduction of housing stock, as well as inconsistency with Councils housing target to supply 5,500 new dwellings by 2029.

Comment: In response, this policy is in respect to new dwellings and not the retention of existing housing stock. Council does not have any policies regarding the net reduction in dwelling stock.

5.1.21 Impacts to Sewer

Submissions were received concerning impacts to sewer.

Comment: In response, impacts to sewer and associated Sydney Water infrastructure is required to be assessed by Sydney Water prior issue of a Construction Certificate to ensure no unreasonable impacts to Sydney Water assets would occur. This is a separate matter from development assessment and these impacts are considered by Sydney Water and not Council.

5.1.22 Heating, Ventilation and Air Conditioning Noises

Submissions were received concerning impacts of heating, ventilation and air conditioning noises

Comment: In response, installation and ongoing use of the air-conditioner is to comply with the exempt provisions outlined within State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

5.1.23 Trees outside of the property included in the Arborist report for retention.

Submissions were received concerned regarding the integrity of the Arboricultural impact assessment (AIA), concerned regarding reference to multiple trees outside of the site to be retained and protected.

In response, it is a requirement for trees within the vicinity of proposed works, whether they are on the subject site or adjoining lands to have development impacts assessed.

5.1.24 Council's previous refusal for a Church on Norfolk Road

Submissions were received concerned of Councils previous approval for a church on Norfolk Road.

Comment: In response, this is not a matter of consideration for the assessment of a new dwelling house.

5.1.25 Intention to Seek Support from Local Councillors, State MP and Federal MP should approval be considered.

Submissions were received advising intent to seek support from local representatives should approval of the application be considered.

Comment: In response, all persons are within their rights to seek support from their local representatives.

5.1.26 Internal Layout Choice

Submissions were received regarding the internal layout choice, including the necessitation for some rooms such as the plant room.

In response, the final design layout submitted to Council as part of the assessment of the application is at the applicant's discretion.

5.1.27 Cost of Works

Submission was received relating to the cost of works.

Comment: In response, no concerns are raised regarding the cost of works. The cost estimate report is prepared by a registered quantity surveyor as required for development that exceeds three million dollars.

5.1.28 Consolidation of Allotments

A submission was received concerned of construction across more than one allotment prior to consolidation.

Comment: In response, a condition of consent has been recommended requiring consolidation of allotments prior to issue of an Occupation certificate and no concerns are raised in this regard.

5.1.29 Requirement for Replacement Planting

A submission was received regarding the requirement for replacement plantings.

In response, a condition is imposed requiring compensatory plantings to appropriately offset trees being removed to facilitate development. Each replacement tree is required to reach a mature height greater than 10m.

5.2 Public Agencies

The development application was not required to be 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.

Submissions were received in relation to public interest.

The application is considered to have satisfactorily addressed Council's criteria and would provide a development outcome that, on balance, would result in a positive impact for the community. Accordingly, it is recommended that the application be approved.

CONCLUSION

The application proposes demolition of structures and construction of a dwelling house.

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

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

The reasons for this decision are:

- The request under Clause 4.6 of Hornsby Local Environmental Plan 2013 to contravene the ‘Height of building’ development standard is well founded. Strict compliance with the

development standard is considered unreasonable and unnecessary in the circumstances of the case and sufficient environmental planning grounds have been submitted to justify the contravention to the development standard.




- The proposed development generally complies with the requirements of 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, 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.  Architectural Plans
2.  Clause 4.6 Variation Request
3.  Landscape Plan

File Reference: DA/85/2025
Document Number: D09086090

SCHEDULE 1

GENERAL CONDITIONS

ITEM 1

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

Plan No.	Issue No.	Plan Title	Drawn by	Dated	Council Reference
DA-0401	D	Existing & Proposed Site Plan	David White Architects Pty Ltd	28.04.2025	
DA-0300	D	Demolition & Tree Removal Plan	David White Architects Pty Ltd	28.04.2025	
DA-0100	D	Proposed Ground Floor Plan	David White Architects Pty Ltd	28.04.2025	
DA-0101	D	Proposed Upper Floor Plan	David White Architects Pty Ltd	28.04.2025	
DA-1102	D	Proposed Lower Floor Plan	David White Architects Pty Ltd	28.04.2025	
DA-1103	D	Proposed Roof Plan	David White Architects Pty Ltd	28.04.2025	
DA-1200	D	Proposed Elevations	David White Architects Pty Ltd	28.04.2025	
DA-1201	D	Proposed Street Elevations	David White Architects Pty Ltd	28.04.2025	
DA-1300	D	Proposed Sections	David White Architects Pty Ltd	28.04.2025	
DA-9010	D	Materials & Finishes Schedule	David White Architects Pty Ltd	28.04.2025	
LP01-B	B	Landscaped Plan	Selena Hannan Landscape Design	15.04.2025	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Survey Plan	Hill & Blume Consulting Surveyors	25.07.2024	D09063854
BASIX Certificate No. 1781659S_04	Bonnefin Consulting Pty Ltd	05.05.2025	D09121652
Geotechnical Report Ref: 37196Zrpt	JK Geotechnics	05.12.2024	D09063841
Arboricultural Impact Assessment	Selena Hannan Landscape Design	03.01.2025	D09063821

Document Title	Prepared by	Dated	Council Reference
Stormwater Management Plan (Issue C)	HYDRACOR Consulting Engineers Pty Ltd	24.04.2025	D09124265
Erosion and Sediment Control Plan (Issue B)	David White Architects Pty Ltd	04.02.2025	D09063838

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

2. Amendment of Plans

1. To maintain air quality, the approved plans are to be amended as follows:
 - a. Deletion of the firepit from Plan No. LP01-B Landscape Plan issue B, prepared by Selena Hannan Landscape Design dated 15 April 2025, as indicated in red in approved plans.
2. To comply with the HDCP prescriptive measures for fencing, the approved plans are to be amended as follows:
 - a. Amended fences, gates and pillars within the front setback along the Malton Road frontage are to be a maximum of 1.2 metre in height from existing ground level as indicated in red in approved plans.
3. To comply with the HDCP privacy requirements, the approved plans are to be amended as follows:
 - a. The windows W/33 and W/32 to the formal living and formal dining room, respectively, are to have privacy measures installed as follows:
 - i. A 1.5-1.8 metre high close-form lattice/louvre/solid privacy screen must be erected as indicated in red on the approved plans on these window faces.
 - ii. The sill heights of the north-eastern facing windows to the formal living and formal dining rooms facing to be increased to a minimum height of 1.5 metres above the finished floor level.
 - iii. Fixed frosted glazing must be installed in the north-eastern facing windows of the formal living and formal dining rooms and/or mechanically ventilated.
 - b. The north-eastern deck elevation of the verandah directly south-west of the formal dining room is to have a privacy screen as follows: to the formal living and formal dining room, respectively, are to have privacy measures installed as follows:
 - i. A 1.5-1.8 metre high close-form lattice/louvre/solid privacy screen must be erected as indicated in red on the approved plans along the north-eastern elevation of the verandah.
4. These amended plans must be submitted with the application for the Construction Certificate.

Reason: To require minor amendments to the approved plans and supporting documentation following assessment of the development.

3. Construction Certificate

1. A Construction Certificate is required 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.

4. No Clearing of Vegetation

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

Reason: To protect vegetation on the site.

5. Water Feature

The depth of the water feature is not to exceed 300mm at any point.

Reason: To comply with relevant pool safety requirements.

6. Section 7.12 Development Contributions

1. In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the Hornsby Shire Council Section 7.12 Development Contributions Plan 2019-2029, \$94,420.00 must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of \$9,442,086.
2. The value of this contribution is current as of 2 May 2025. If the contributions are not paid within the financial quarter that this consent is granted, the contributions payable will be adjusted in accordance with the provisions of the Hornsby Shire Council Section 7.12 Development Contributions Plan and the amount payable will be calculated at the time of payment in the following manner:

$$\text{\$C}_{PY} = \frac{\text{\$C}_{DC} \times \text{CPI}_{PY}}{\text{CPI}_{DC}}$$

Where:

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

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

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

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

3. The monetary contributions shall 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: Should the cost of works increase at Construction Certificate stage, a revised contribution amount will be calculated in accordance with the Hornsby Shire Council Section 7.12 Development Contributions Plan.

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: The Hornsby Shire Council Section 7.12 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 address the increased demand for community infrastructure resulting from the approved development.

7. Domestic Solid Fuel Burning Appliances

1. The fire place and chimney/flue must be installed accordance with the requirements of Part 12.4 National Construction Code - Building Code of Australia.

2. The domestic solid-fuel heater must comply with the Protection of the Environment Operations (Clean Air) Regulation 2021 and Australian Standard AS4013 Domestic solid fuel burning appliances - Method for determination of flue gas emission.

Reason: To ensure compliance with appropriate environmental standards to maintain air quality.

8. Retaining Walls

1. To ensure the stability of the site, structural details of all required retaining walls must be submitted with the application of the Construction Certificate.
2. The retaining wall along the rear south-east of the site is to be no higher than 700mm measured from existing ground level.

Reason: To ensure the stability of the site and adjoining properties.

9. Privacy Screens

All privacy screens must have no individual openings more than 30mm wide and have a total of all openings less than 30% of the surface area of the screen.

Reason: To ensure privacy screens provide appropriate visual separation from the development.

10. Surrender of Development Application DA/880/2023

Development Application No. DA/880/2023 is to be voluntarily surrendered pursuant to Clause 4.63 of the *Environmental Planning and Assessment Act 1979*.

Reason: To ensure the allotments are consistent with the approved plans.

11. Fencing along Eastcote Road

1. Fencing along Eastcote Road behind the building line that is required to be not more than 1.8 metres above ground level (existing), must not be more than 2.2 metres above ground level (existing) at each step.
2. This height is to include the masonry base and be measured from existing ground level.

Reason: To ensure fencing height is compatible with the low density residential setting.

12. Air Conditioner Unit

The air conditioning unit must be installed in accordance with the development standards contained within Subdivision 3, Subsection 2.6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Reason: To maintain residential amenity.

BUILDING WORK

BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

Condition

13. 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).

14. Contract of Insurance (Residential Building Work)

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

Reason: Prescribed condition EP&A Regulation section 69(2).

15. Contract of Insurance (Residential Building Work)

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

Reason: Prescribed condition EP&A Regulation section 69(2).

16. Notification of Home Building Act 1989 Requirements

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

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

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

Reason: Prescribed condition EP&A Regulation section 71(2) and (3).

17. Sydney Water Building Plan Approval

The plans must be approved by Sydney Water prior to demolition, excavation or construction works commencing. This allows Sydney Water to determine if sewer, water or stormwater

mains or easements will be affected by any part of your development. Any amendments to plans will require re-approval. Please go to [Sydney Water Tap in®](#) to apply.

Note: Sydney Water recommends developers apply for a Building Plan Approval early as to reduce unnecessary delays to further referrals or development timescales.

Reason: To ensure the development complies with the requirements of Sydney Water.

18. Stormwater Drainage

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

1. Connected directly to Council's street drainage system on Eastcote Road via an on-site detention basin.
2. Roof water must be connected to a rainwater tank having a minimum capacity in accordance with the approved BASIX Certificate requirements.
3. The stormwater drainage system must be designed by a qualified hydraulic engineer.

Reason: To ensure appropriate provision for management and disposal of stormwater.

19. On-Site Stormwater Detention

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

1. Have a capacity of not less than 22 cubic metres, and a maximum discharge (when full) of 66 litres per second.
2. Have a surcharge/inspection grate located directly above the outlet.
3. Discharge from the detention system must be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
4. Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs must be installed; and
5. Not be constructed in a location that would impact upon the visual or recreational amenity of residents.

Reason: To manage stormwater flows to minimise potential flooding.

20. Internal Driveway/Vehicular Areas

The driveway and parking areas on site must be designed, and a Construction Certificate issued in accordance with Australian Standards AS2890.1, AS3727 and the following requirements:

1. A Boundary Levels application must be obtained from Council for the design on the internal driveway.
2. The driveway be a rigid pavement.

3. The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.
4. Retaining walls required to support the carriageway and the compaction of all fill batters to be in accordance with the requirements of a chartered structural engineer.
5. The provision of safety rails where there is a level difference more than 0.3 metres and a 1:4 batter cannot be achieved.
6. Longitudinal sections along both sides of the access driveway shall be submitted to the Principal Certifier in accordance with the relevant sections of AS 2890.1. The maximum grade shall not exceed 1 in 4 (25%) with the maximum changes of grade of 1 in 8 (12.5%) for summit grades and 1 in 6.7 (15%) for sag grades. Any transition grades shall have a minimum length of 2 metres. The longitudinal sections shall incorporate the design levels obtained by Council.

Reason: To provide safe vehicle and pedestrian access.

21. Road Opening Permit

A Road Opening Permit shall be obtained from the Council to permit a person to dig into Council assets, such as roads, footpaths and nature strips. The fees payable for the restoration of any public asset damaged to be repaired by Council shall be at the applicant's full expense.

Note: The Road Opening Permit must be applied for via Council's Online Services Portal at: <https://www.hornsby.nsw.gov.au/property/build/apply-for-a-permit/road-openings>

Reason: To ensure public infrastructure and property is maintained.

22. Construction Management Plan

A Construction Management Plan (CMP) must be prepared by a suitably qualified consultant in consultation with a qualified traffic engineer and be approved by Council's Compliance Team via Council's Online Services Portal prior to issue of a Construction Certificate.

The CMP assists with the protection of the public, the environment, and Council's assets during all stages of construction works and must include the following:

1. General
 - a. A general description of the scope of works.
 - b. Details of the extent of earthworks including quantities of excavated and imported material to be transported to and from the site.
 - c. Details of any staging of works.
 - d. A statement confirming that no building materials, work sheds, vehicles, machines, or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - e. The CTMP plans shall be in accordance with the approved plans and documents forming under this consent, except as provided by the conditions of consent which shall prevail in the event of any inconsistencies.
2. Construction traffic and management

- a. The anticipated number and frequency of truck movements per day over the duration of the project (i.e. throughout demolition, earthworks, and construction phases) for fill importation and exportation. The number of trucks should correlate to the volume of fill material to be imported to/exported from the site.
- b. The vehicle traffic routes to and from the site, including any queuing locations. The vehicle routes should be identified on a plan attached to the PCMP.
- c. Size and types of construction vehicles to be used for importation and exportation of fill throughout the stages of works.
- d. The maximum number of trucks travelling to and from the site on any given day for each stage of works.
- e. The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
- f. Access and egress into the site, including any limitation on access for certain types of vehicles (determined via swept path analysis) due to site constraints.
- g. Any required road closures/openings, work zones, crane permits, road occupancy licences and traffic control.
- h. Management measures to be implemented to minimise disruption to, and maintain the safety, of all road users including restriction of inbound and outbound truck movements at the site during peak commuter periods, noting the site is located 100 metres from Epping North Public School.
3. Pedestrian management
 - a. Potential impacts on pedestrian movements. This includes consideration of locations or times where footpaths are heavily trafficked (e.g. school arrival and departure; commuter peaks).
 - b. Management measures to be implemented to minimise disruptions to pedestrians and maintain safety.
4. Car parking
 - a. Impacts on on-street parking (e.g. use of work zones, construction access implications).
 - b. Details of construction worker parking. Where limited car parking is available on site or nearby, details of alternative transport arrangements must be provided.
5. Tree management and protection
 - a. Trees to be removed and retained on site and tree protection measures, consistent with the approved plans and documents under this consent, except as provided by the conditions of consent which shall prevail in the event of any inconsistencies.
6. Stormwater Management

- a. Details of stormwater management and disposal during excavation and construction, consistent with other lodged Plans.
 - b. Identification of existing watercourses.
 - c. Sediment and erosion control measures.
7. Noise and Vibration
 - a. Expected sources of noise and vibration during demolition, earthworks, and construction at sensitive receiver locations.
 - b. Duration of works that are expected to emit higher than average levels of noise and vibration (e.g. rock breaking and rock sawing).
 - c. Details of mitigation measures to minimise noise and vibration impacts incorporating the recommendations of the Geotechnical Report Ref: 37196Zrpt, prepared by JKGeotechnics, dated 5 December 2024.
8. Waste Management
 - a. Detail the reuse, recycling and disposal methods for all demolition and construction waste on site.
9. Site plan
 - a. A site plan which identifies the following information at each stage of the development:
 - i. Existing and proposed buildings
 - ii. Site boundaries
 - iii. Extent of earthworks (i.e. excavation and fill importation locations, and cut and fill locations)
 - iv. Existing trees and vegetation to be removed and retained and tree protection measures
 - v. Vehicle access and egress
 - vi. On-site vehicle parking areas
 - vii. Proposed hard-stand areas for loading and unloading materials, including the location of cranes and concrete pumps
 - viii. Location of material storage on-site, stockpiles, site sheds, hoardings, waste storage
 - ix. Location of sediment control measures (consistent with Erosion and Sediment Control)
 - x. Potential Work Zone locations
10. An Erosion and Sediment Control Plan (ESCP) that describes all erosion and sediment controls to be implemented in accordance with the publication Managing Urban Stormwater: Soils & Construction (4th Edition), which includes:
 - a. A site survey which identifies contours and approximate grades and the direction(s) of fall.

- b. Locality of site and allotment boundaries.
 - c. Location of adjoining road(s) and all impervious surfaces.
 - d. Location of site access and stabilisation of site access.
 - e. Provision for the diversion of run off around disturbed areas.
 - f. Location of material stockpiles.
 - g. Maintenance program for erosion and sediment control measures.
 - h. Proposed site rehabilitation and landscaping; staging of construction works.
 - i. Provide a plan of how all construction works will be managed in a wet-weather events (i.e. storage of equipment, stabilisation of the Site)
 - j. A de-watering plan that describes all controls to be implemented for the disposal of water that accumulates within any site excavation areas.
11. The CMP must detail all responsible parties ensuring compliance with the document and include the contact information for developers, builder, Principal Certifier, and any emergency details during and outside work hours.

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

Reason: To document construction measures to protect the public and the surrounding environment.

23. Appointment of a Project Arborist

1. To ensure the trees that must be retained are protected, a project arborist with AQF Level 5 qualifications must be appointed to assist in ensuring compliance with the conditions of consent and provide monitoring reports as specified by the conditions of consent.
2. Details of the appointed project arborist must be submitted to Council and the Principal Certifier with the application for the construction certificate.

Reason: To ensure appropriate monitoring of trees to be retained.

24. Electric Vehicle (EV) Ready Connections [dwelling houses]

Prior to the issue of the relevant Construction Certificate, the following must be demonstrated to the satisfaction of the Principal Certifier:

1. The garage must be provided with a private Electric Vehicle (EV) connection.
2. All EV charging infrastructure is to comply with the applicable Electric Vehicle safety and energy consumption data collection requirements of the National Construction Code.

Note: Private EV connection is the provision of a minimum 15A circuit and power point to enable easy future EV connection in the garage connected to the main switch board.

Reason: To encourage and support the use of electric vehicles.

25. Appointment of a Project Geotechnical Engineer

1. A Geotechnical Report must be prepared by a suitably qualified geotechnical engineer and must include recommendations for the construction of the dwelling and retaining walls.
2. An appropriately qualified Geotechnical Engineer shall be appointed to ensure that all development works, inclusive of demolition, earthworks and construction is undertaken generally in accordance with the recommendations of the approved Geotechnical Report Ref: 37196Zrpt prepared by JK Geotechnics dated 3 January 2025 and any additional recommendations of the Project Geotechnical Engineer.

26. Waste Management Plan

1. A waste management plan prepared generally in accordance with Appendix 3 of Councils DA Submission Guideline for the work must be submitted to the principal certifier to their satisfaction.
2. The waste management plan must:
 - a. Identify all waste (including excavation, demolition and construction waste materials) that will be generated by the work on the site, and
 - b. Identify the quantity of waste material in tonnes and cubic metres to be
 - c. Reused on-site, and
 - d. Recycled on-site and off-site, and
 - e. Disposed of off-site, and
 - f. If waste materials are to be reused or recycled on-site - specify how the waste material will be reused or recycled on-site, and
 - g. If waste materials are to be disposed of or recycled off-site - specify the contractor who will be transporting the materials and the waste facility or recycling outlet to which the materials will be taken.

Reason: To ensure waste generated is appropriately disposed of.

BEFORE BUILDING AND DEMOLITION WORK COMMENCES

Condition

27. 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).

28. Asbestos Removal Signage

Before demolition or remediation work commences involving the removal of asbestos, a standard commercially manufactured sign containing the words 'DANGER: Asbestos removal in progress' (measuring not less than 400mm x 300mm) must be erected in a prominent position at the entry point/s of the site and maintained for the entire duration of the removal of the asbestos.

Reason: To alert the public to any danger arising from the removal of asbestos.

29. 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); and.
5. Council's separate written approval is required prior to the erection of any temporary hoarding, fence or awning on or over public land. The erection of a hoarding must be applied for via Council's Online Services Portal together with details showing the location and type of hoarding.

Note: The Hoarding/ Temporary Fencing application 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: My Applications > New Applications > Under 'Application Types': Hoarding/ Temporary Fencing Applications.

6. Where any part of the road or footpath is required to be occupied or closed during any stage of works, including demolition, excavation, construction or remediation, a temporary full / partial road or footpath closure permit must be approved by Council. The permit must be applied for via Council's Online Services Portal.

Note: A Temporary Road/ Footpath Closure application 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: Under 'Roads, Traffic and Parking': Temporary Full/ Partial Road Closure.

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

30. Notice of Commencement for Demolition

At least one week before demolition work commences, written notice must be provided to council and the occupiers of neighbouring premises of the work commencing. The notice must include:

1. Name.
2. Address.
3. Contact telephone number.
4. Licence type and license number of any demolition waste removal contractor and, if applicable, asbestos removal contractor.
5. The contact telephone number of council and
6. The contact telephone number of SafeWork NSW (4921 2900).

Note: The written notice to Council can be sent to devmail@hornsby.nsw.gov.au.

Reason: To advise neighbours about the commencement of demolition work and provide contact details for enquiries.

31. 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*.

Reason: To ensure adequate toilet facilities are provided.

32. Erosion and Sediment Control Measures

Install and maintain adequate sediment and erosion control measures for the duration of all works, until such a time that sediment, sediment laden water or any other material/substance can no longer migrate from the premises. The measures are to be installed and maintained in such a manner as to prevent sediment, sediment-laden water, or any other materials and substances migrating from the site onto neighbouring land, the roadway, waters and/or into the stormwater system, and in accordance with:

1. The publication *Managing Urban Stormwater: Soils and Construction 2004* (4th edition) - 'The Blue Book'.
2. *Protection of the Environment Operations Act 1997*; and
3. The approved plans.
4. Controls are to be monitored and adjusted where required throughout the works to ensure compliance with the above.

Note: On the spot penalties may be issued for any non-compliance with this requirement without any further notification or warning. If you are unsure in how to achieve compliance

with this condition during works, you may need to engage the services of a suitably qualified environmental, soil or geotechnical consultant to assist.

Reason: To minimise impacts on the water quality of the downstream environment.

33. Installation of Tree Protection Measures

1. Trees to be retained as identified on the Tree Location Plan within the Arboricultural Impact Assessment prepared by Selena Hannan Consulting Arborist dated 3 January 2025 must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:
 - a. For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by Selena Hannan Consulting Arborist dated 3 January 2025.
 - b. For the duration of construction works, in accordance with Tree Protection Plan prepared by Selena Hannan Consulting Arborist dated 3 January 2025.
2. Tree protection fencing for the trees to be retained must be installed by the engaged AQF 5 project arborist and consist of 1.8m high temporary fencing panels installed in accordance with Australian Standard AS4687-2007 Temporary fencing and hoardings.
3. The installation of all required tree protection fencing must include shade cloth attached to the fencing to reduce transport of dust, particulates, and liquids from entering the tree protection zone.
4. All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.

Reason: To protect trees during construction.

34. Waste Management Details

Prior to the commencement of any works, the on-going waste collection service must be cancelled for Nos. 316 and 318 Malton Road North Epping, and the bins retrieved by the waste collection service provider.

Note: For residential properties, Council is the waste collection service provider.

Reason: To ensure domestic waste bins are not used for demolition and construction waste.

35. Garbage Receptacle

1. A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed.
2. The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers.
3. The receptacle lid must be kept closed at all times, other than when garbage is being deposited.
4. Food scraps must be placed in the garbage receptacle and not in demolition and construction waste bins.

Reason: To maintain the site in a clean condition and protect local amenity.

DURING BUILDING AND DEMOLITION WORK

ITEM 1

Condition

36. 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.

37. Demolition

To protect the surrounding environment, all demolition work must be carried out in accordance with Australian Standard AS2601-2001 Demolition of structures and the following requirements:

1. Demolition material must be disposed of to an authorised recycling and/or waste disposal site and/or in accordance with an approved waste management plan; and
2. Demolition works, where asbestos material is being removed, must be undertaken by a contractor that holds an appropriate licence issued by SafeWork NSW in accordance with the Work Health and Safety Regulation 2017 and be appropriately transported and disposed of in accordance with the Protection of the Environment Operations (Waste) Regulation 2014; and
3. On construction sites where any building contains asbestos material, a standard commercially manufactured sign containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and measuring not less than 400mm x 300mm must be displayed in a prominent position visible from the street.

Reason: To ensure the appropriate removal and disposal of demolition materials.

38. Handling of Asbestos

While demolition or remediation work is being carried out, any work involving the removal of asbestos must comply with the following requirements:

1. Only an asbestos removal contractor who holds the required class of Asbestos Licence issued by SafeWork NSW must carry out the removal, handling, and disposal of any asbestos material.
2. Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW Environment Protection Authority to accept asbestos waste; and
3. Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA on-line reporting tool WasteLocate.

Reason: To ensure that the removal of asbestos is undertaken safely and professionally.

39. Environmental Management (Air Pollution)

The Applicant must take all reasonable steps to minimise dust generated during all works (including remediation, demolition, earthworks and construction) authorised by this consent. During works, the Applicant must ensure that:

1. Exposed surfaces and stockpiles are suppressed by regular watering.
2. All trucks entering or leaving the site with loads have their loads covered.
3. Trucks associated with the development do not track dirt onto the public road network.
4. Public roads used by these trucks are kept clean; and
5. Land stabilisation works are carried out progressively on site to minimise exposed surfaces.

Reason: To minimise impacts to the natural environment and public health.

40. Street Sweeping

1. During works (including remediation, demolition, earthworks and construction) and until exposed ground surfaces across the site have been stabilised, street sweeping must be undertaken following sediment tracking from the site.
2. The street cleaning service must utilise a 'scrub and dry' method and be undertaken for the full extent of any sediment tracking.

Note: The above Item does not permit for sediment and/or any other materials/substances to exit the site in a way that constitutes water pollution as defined in the Protection of the Environment Operations Act 1997 or in a manner that contravenes other conditions in this consent.

Reason: To minimise impacts to the natural environment.

41. Council Property

To ensure that the public reserve is kept in a clean, tidy, and safe condition during remediation, demolition, excavation and construction works:

1. No building materials, skip bins, concrete pumps, cranes, machinery, temporary traffic control, signs or vehicles associated with the development shall be stored or placed on Council's footpath, nature strip, roadway, park or reserve without the prior approval being issued by Council under section 138 of the *Roads Act 1993*.
2. All work, loading and unloading associated with the development are to occur entirely within the property boundaries, unless otherwise approved by Council under section 138 of the *Roads Act 1993*.

Reason: To protect public land.

42. Disturbance of Existing Site

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

Reason: To protect the natural features of the site.

43. Soil Management (Excavation and Fill)

While site work is being carried out, the Principal Certifier or Council (where a principal certifier is not required) must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:

1. All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification, and the volume of material removed must be reported to the Principal Certifier or Council (where a principal certifier is not required).
2. Tipping dockets for the total volume of excavated material that are received from the licensed waste management facility must be provided to the Principal Certifier prior to the issue of an Occupation Certificate.
3. Prior to fill material being imported to the site, a Waste Classification Certificate shall be obtained from a suitably qualified environmental consultant confirming all fill material imported to the site must be:
4. Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997, or
5. A material identified as being subject to a resource recovery exemption by the NSW EPA, or
6. A combination of Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 and a material identified as being subject to a resource recovery exemption by the NSW EPA.
7. The required Waste Classification Certificate must be provided to the Principal Contractor prior to fill being imported to the site and made available to Council at its request.

Reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.

44. Survey Report

A report(s) must be prepared by a registered surveyor and submitted to the Principal Certifier:

1. Prior to the pouring of concrete at each level of the building certifying that:
2. The building, retaining walls and the like have been correctly positioned on the site; and
3. The finished floor levels are in accordance with the approved plans.

Reason: To ensure buildings are positioned in the approved location and at the correct height.

45. Waste Management

All work must be carried out in accordance with the approved waste management plan.

Reason: To ensure the management of waste to protect the environment and local amenity during construction.

46. Maintenance of Public Footpaths

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

Reason: To maintain safe pedestrian movement.

47. Compliance with Construction Management Plan

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

Reason: To ensure implementation of construction measures to protect the public and the surrounding environment.

48. Compliance with Geotechnical Report

The recommendations of the Geotechnical Report and any other recommendations of the Project Geotechnical Engineer must be complied with for the duration of works.

Reason: To ensure recommendations of the geotechnical report and project geotechnical engineer are complied with.

49. Removal of Trees

1. This development consent permits the removal of trees numbered 1, 3, 4, 8, 22, 23, 27, 28A, 28B, 29, 30, 31, 32, 33, 35, 36, 40, 41, 42, 43, 44, 45, 46, 47 and 48 as identified on pages 39 and 40 in the Arboricultural Impact Assessment prepared by Selena Hannan Consulting Arborist dated 3 January 2025.
2. This development consent permits the transplantation of three (3) trees numbered 11, 25A and 25B elsewhere within the site located over 3-metres from the foundation of buildings as identified on pages 39 and 40 in the Arboricultural Impact Assessment prepared by Selena Hannan Consulting Arborist dated 3 January 2025.

Note: The removal of any other trees from the site requires separate approval by Council in accordance with Part 1.2.6 Tree and Vegetation Preservation of the Hornsby Development Control Plan, 2024.

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

50. 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:

1. Soil cutting or filling, including excavation and trenching.
2. Soil cultivation, disturbance, or compaction
3. Stockpiling storage or mixing of materials
4. The parking, storing, washing, and repairing of tools, equipment, and machinery.
5. The disposal of liquids and refuelling
6. The disposal of building materials
7. The siting of offices or sheds

8. Any action leading to the impact on tree health or structure.

Reason: To protect trees during construction.

51. 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 2, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 26, 34, 37, 38, 39 and 49 on the approved plans.

Reason: To ensure appropriate monitoring of trees to be retained.

52. Approved Works within Tree Protection Zone Incursions

1. Where tree root pruning is required for the installation of piers, driveway or underground services, the pruning must be overseen by the AQF 5 project arborist and must be undertaken as follows:
 - a. Using sharp secateurs, pruners, handsaws, or chainsaws with the final cut being clean.
 - b. The maximum diameter of roots permitted to be cut is 30mm.
2. The new driveway must be constructed using the following process:
 - a. To minimise soil compaction the proposed driveway must be built above grade using sensitive construction techniques in the form of piers or screw pilings.
 - b. To minimise soil compaction all imported material in the vicinity of the replacement driveway must be distributed by hand.
3. Approved excavations within the Tree Protection Zone of trees to be retained numbered 2, 5, 6, 7, 9, 10, 12, 14 and 21 not associated with installation of services must be undertaken as follows:
 - a. Excavations associated with the basement and building footprint and within the Tree Protection Zone of trees numbered 2, 5, 6, 7, 9, 10, 12, 14 and 21 must be overseen by the AQF 5 project arborist for the first 1m undertaken manually to a depth of 500mm to locate roots and allow for pruning.
4. To minimise impacts within the Tree Protection Zone (TPZ) of trees numbered 2, 5, 6, 7, 9, 10, 12, 14 and 21 on the approved plans, the installation of services must be undertaken as follows:
 - a. The installation of any underground services which either enter or transect the designated TPZ must be undertaken manually.
 - b. For manually excavated trenches the AQF 5 project arborist must designate roots to be retained. Manual excavation may include the use of pneumatic and hydraulic tools.
5. Where scaffolding is required, ground protection must be installed beneath the scaffolding in the following order:
 - a. Installation of a 100mm deep layer of woodchip; and
 - b. Installation of geotextile fabric ground covering; and

- c. Installation of scaffold boarding above the woodchip and geotextile fabric.

Reason: To protect trees during construction.

53. 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.

54. Unexpected Finds

Should the presence of asbestos or soil contamination, not recognised during the application process be identified during any stage of works, the applicant must immediately notify the Principal Certifier and Council (compliance@hornsby.nsw.gov.au).

Reason: To ensure the appropriate removal and disposal of contaminated materials.

55. De-watering of Excavated Sites

Water that accumulates within an excavation must be removed and disposed of in a manner that does not result in the pollution of waters, nuisance to neighbouring properties, or damage to neighbouring land and/or property.

Reason: To document the safe removal of water during work to protect the public and the surrounding environment.

56. Erosion and Sediment Control

1. Works are not to result in the discharge of sediment and or run-off onto the adjoining properties or public land.
2. The person having the benefit of this consent must ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the site.

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

Reason: To minimise impacts on neighbouring properties and public land.

57. Soil and Water Management (Stockpiles)

1. Stockpiles of topsoil, sand, aggregate, soil or other material shall be protected with adequate sediment controls and must not be located on any drainage line or easement, natural watercourse, footpath or roadway.
2. The storage of stockpiled topsoil, sand, aggregate, soil or other materials must not result in the discharge of sediment or run-off onto the adjoining properties or public land.

Reason: To minimise impacts on the water quality of the downstream environment.

58. 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.

59. Vehicular Crossing

1. A separate application under the *Local Government Act 1993* and the *Roads Act 1993* must be submitted to Council for the installation of two new vehicular crossings, the removal of two redundant crossings and replacement of one vehicular crossing. The vehicular crossing must be constructed in accordance with AUS-SPEC Specifications (www.hornsby.nsw.gov.au/property/build/aus-spec-terms-and-conditions) and the following requirements:
2. Any redundant crossings must be replaced with integral kerb and gutter.
3. The footway area must be restored by turfing.

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

Reason: To provide safe vehicle and pedestrian access.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition

60. Fulfilment of BASIX Commitments

The applicant must demonstrate the fulfilment of BASIX commitments pertaining to the development.

Reason: Prescribed condition under section 75. EP&A Regulation.

61. Domestic Solid Fuel Burning Appliance Installation

Certification must be submitted to Council prior to issue of the Occupation Certificate stating that the installation was completed by an appropriately experienced and qualified person in accordance with the Building Code of Australia and Australian Standard AS2918:2018 Domestic solid fuel burning appliances - Installation.

Reason: To ensure compliance with appropriate environmental standards to maintain air quality.

62. Replacement Tree Requirements

1. The trees approved for removal under this consent, being trees numbered 1, 3, 4, 8, 22, 23, 27, 28A, 28B, 29, 30, 31, 32, 33, 35, 36, 40, 41, 42, 43, 44, 45, 46, 47 and 48 must be offset through replacement planting of a minimum of 10 trees.
 - a. Trees numbered 11, 25a and 25b are to be transplanted as per the approved Arboricultural Impact Assessment prepared by Selena Hannan Consulting Arborist dated 3 January 2025 and under the supervision of the project arborist.
 - b. The location of the transplanted trees must be in either the front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.
2. All replacement plantings must be species selected from the 'Trees Indigenous to Hornsby Shire (as of 1 September 2011)' document available for viewing on the Hornsby Council's website <http://www.hornsby.nsw.gov.au/environment/flora-and-fauna/tree-management/indigenous-trees>
3. The location and size of tree replacement planting must comply with the following:
 - a. All replacement trees must be located in either the front or rear setbacks and planted 4 metres or greater from the foundation walls of the approved development.
 - b. The pot size of the replacement trees must be a minimum 45 litres.
 - c. All replacement trees must be a minimum of 3 metres in height.
 - d. All replacement trees must have the potential to reach a mature height greater than 10 metres.

Reason: To ensure replacement planting to maintain tree canopy.

63. Final Certification by Project Arborist

The AQF 5 Project arborist must submit to the Principal Certifier a certificate that includes the following:

1. All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works; and
2. All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans; and
3. Dates, times, and reasons for all site attendance; and
4. All works undertaken to maintain the health of retained trees; and
5. Details of tree protection zone maintenance for the duration of works.

Note: Copies of monitoring documentation may be requested throughout the development works.

Reason: To ensure compliance with tree protection commitments.

64. Asbestos Clearance Certificate

Should any asbestos be encountered during demolition or construction works, a licenced asbestos assessor is required to provide a Clearance Certificate to the Principal Certifier prior

to the issue of an Occupation Certificate, certifying that the asbestos has been removed and appropriately disposed of, and the site is now suitable for its approved use.

Reason: To ensure the appropriate removal and disposal of contaminated materials and the site is suitable for its approved use.

65. 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.

66. Creation of Easements

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

1. The creation of an appropriate "Positive Covenant" and "Restriction as to User" over the constructed on-site detention/retention systems and outlet works, within the lots in favour of Council in accordance with Council's prescribed wording. The position of the on-site detention system is to be clearly indicated on the title.
2. To register the OSD easement, the restriction on the use of land "works-as-executed" details of the on-site-detention system must be submitted verifying that the required storage and discharge rates have been constructed in accordance with the design requirements. The details must show the invert levels of the on-site system together with pipe sizes and grades. Any variations to the approved plans must be shown in red on the "works-as-executed" plan and supported by calculations.

Note: Council must be nominated as the authority to release, vary or modify any easement, restriction, or covenant.

Reason: To create legal entitlements to facilitate the proper use and management of land.

67. Retaining Walls

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

Reason: To ensure the stability of the site and adjoining land.

68. Boundary Fencing

The exact location, design and costing for the erection of boundary fencing are to be the subject of negotiation and agreement in accordance with the relevant requirements of the *Dividing Fences Act 1991*.

Note: Alternative fencing may be erected subject to the written consent of the adjoining property owner(s).

Reason: To provide amenity to the site and adjoining development.

69. Submission of Excavated Material Tipping Dockets to Principal Certifier

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

Reason: To confirm appropriate disposal of excavated material.

70. Construction of Engineering Works.

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

Reason: To ensure engineering works are completed.

71. Consolidation of Allotments

All allotments the subject of this consent must be consolidated into one allotment.

Note: The applicant is recommended to submit the plan of subdivision to consolidate allotments to the NSW Department of Lands at least 4-6 weeks prior to seeking an occupation certificate.

Reason: To ensure the orderly development of the site.

72. Certification of Geotechnical Requirements.

A Certificate prepared by an accredited Geotechnical Engineer Consultant is to be provided to the Principal Certifier (PC) certifying the completion of all works required by the approved Geotechnical Reports and all other recommendations provided by the appointed geotechnical engineer 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

73. Use of Premises

The development approved under this consent shall be used for a dwelling house and not for any other purpose without Council's separate written consent.

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

74. Air Condition Unit

The ongoing use of the air conditioning unit is to be in accordance with the development standards contained within Subdivision 3, Subsection 2.6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Reason: To maintain residential amenity.

- END OF CONDITIONS -