



BUSINESS PAPER

LOCAL PLANNING PANEL MEETING

**Wednesday 30 March 2022
at 4:00pm**



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GENERAL BUSINESS

Local Planning Panel

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1 DA/131/2021 - CONSTRUCTION OF A 11 ROOM BOARDING HOUSE ON PROPOSED LOT B - 134 BURDETT STREET, WAHROONGA

EXECUTIVE SUMMARY

DA No: DA/131/2021 (Lodged on 9 February 2021)

Description: Construction of a boarding house consisting of 11 rooms and 6 parking spaces on proposed Lot B

Property: Lot 7 DP 263708, No. 134 Burdett Street, Wahroonga (Proposed Lot B)

Applicant: Mackenzie Architects

Owner: Mosam Pty Ltd

Estimated Value: \$1,107,000

Ward: B Ward

- The proposal generally complies with State Environmental Planning Policy (Affordable Rental Housing) 2009, the Hornsby Local Environmental Plan 2013, and the Hornsby Development Control Plan 2013.
- The applicant has submitted a Clause 4.6 request to contravene Clause 30AA of State Environmental Planning Policy (Affordable Rental Housing) 2009 which stipulates that a consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms. The submission is considered well founded and is supported.
- A total of 26 submissions have been received in respect of the application.
- The application is required to be determined by the Hornsby Council Local Planning Panel as 10 or more unique submissions were received by way of objection.
- It is recommended that the application be approved as a deferred commencement.

RECOMMENDATION

THAT Council assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 and approve Development Application No. DA/133/2021 for construction of a boarding house consisting of 11 rooms and 6 parking spaces on proposed Lot B at Lot 7 DP 263708, No. 134 Burdett Street, Wahroonga as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP2/22.

BACKGROUND

On 9 October 2019, Council approved DA/248/2019 for demolition of structures and Torrens title subdivision of one lot into two and construction of a driveway.

On 18 March 2020, Council approved DA/248/2019/A for modification to the approved subdivision plan and creation of easements.

On 25 January 2022, Council approved DA/248/2019/B for modification to the approved easements to accommodate an updated driveway design, easement for overhang, stormwater drainage system and garbage collection to facilitate DA/131/2021 and DA133/2021. The updated subdivision design facilitates the construction of the on-site detention system at subdivision stage.

The subdivision creating the 'proposed lots' is not yet registered.

SITE

Proposed Lot B would be located at the rear of the site approved under DA/248/2019. The site would be accessed via a future access-handle to the southern side of Burdett Street, Wahroonga and would have an area of 689.66m². The site adjoins the Sydney-Newcastle Freeway (M1) to the east.

The site currently contains an existing dilapidated two storey dwelling house which would be demolished as part of DA/248/2019/B.

Proposed Lot B experiences a fall of 10.7 metres towards the northern front boundary.

The site is bushfire prone. Vegetation on the site has been mapped as Narrow-leaved Scribbly Gum Woodland.

The site is not burdened by any easements or restrictions.

The site does not contain a heritage listed item, is not in the vicinity of a heritage listed item and is not located within a heritage conservation area.

PROPOSAL

The application proposes construction of a two-storey boarding house containing 11 boarding rooms (9x single rooms and 2x double rooms) for 13 lodgers, communal room and a basement car park for a total of 6 cars, 2 motorcycle spaces and 2 bicycle spaces.

The ground floor of the boarding house includes 4 single bedrooms and 1 double bedroom, each with its own kitchen and bathroom. A communal lounge room and outdoor terrace with BBQ area would be located on the ground level towards the front of the complex.

The first floor comprises 5 single bedrooms and 1 double bedroom with each room including a kitchen and bathroom.

An internal bin room is located on the ground floor level with access provided by a lift.

The application does not include a Managers residence and a Managing Agent would be employed to manage the boarding house.

No trees would be removed as part of this application.

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed

under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

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

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

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

The proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and the North District Plan, by providing affordable rental housing in the region.

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 site is zoned R2 Low Density Residential pursuant to the Land Use Table of the HLEP. The proposed development is defined as a boarding house and is permissible within the R2 Low density residential zone.

The objectives of the R2 zone are:

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

The Standard Instrument definition of a boarding house was amended on 26 November 2021 following the consolidation of State and Environmental Policy (Affordable Rental Housing) 2009 (SEPP ARH) within State Environmental Planning Policy (Housing) 2021. The amendment to the definition requires boarding houses to be either used to provide affordable housing, and if not, carried

out by or on behalf of the Land and Housing Corporation managed by a registered community housing provider.

Notwithstanding, Clause 1.8A Savings Provision of the HLEP applies as the development application was lodged prior to this amendment. Accordingly, the below definition applies in this instance.

‘boarding house’ means a building that:

- (a) *Is wholly or partly let in lodgings, and*
- (b) *Provides lodgers with a principal place of residence for 3 months or more, and*
- (c) *May have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) *Has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers’ accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Subject to a recommended operational condition requiring that lodgers reside within the rooms for a minimum of 3 months; and that the boarding house buildings be wholly or partly let in lodgings, the proposed development would meet the requirements of the definition of a ‘boarding house’ in the HLEP.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposed development would have a maximum height of 5.5m above the existing ground level and would comply with this requirement.

2.1.3 Boarding Houses in Zone R2 Low Density Residential

On 28 February 2019, amendments were made to SEPP ARH, with the inclusion of Clause 30AA which states that a consent authority must not grant development consent to a boarding house on land within the R2 Low density residential zone or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Council received legal advice from the Applicant's Barrister which confirmed that as the application proposes approval by deferred commencement subject to the registration of Lot A and Lot B approved as part of DA/248/2019/B, Council has certainty that both boarding houses would be located on separate lots and meet Clause 30AA of SEPP ARH. Council concurs with the applicant's legal advice.

The proposed development includes the provision of 11 boarding rooms and meets the provisions of Clause 30AA of SEPP ARH.

2.1.4 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 applicant has submitted a Clause 4.6 request to contravene the 12-room boarding house development standard contained in Clause 30AA of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH 2009).

Clause 30AA of the SEPP states that:

A consent authority must not grant development consent to a boarding house on land within the R2 Low density residential zone or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

2.1.4.1 Unreasonable or Unnecessary

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

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

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

The written request prepared by Chapman Planning provides justification for the exceedance in 12 bedrooms by attempting to demonstrate that the objectives of the development standard, and the objectives of the zone are achieved notwithstanding non-compliance with the development standard.

The written request provides justification as follows:

- Pursuant to clause 4.6(3)(a) of the LEP, the contravention of the boarding houses in R2 Low Density Residential zones is acceptable in the circumstances of this case and compliance with the development standard is considered both unreasonable and unnecessary because the proposed boarding house development, including the contravention, is consistent with the explanation of intended effect of Clause 30AA Boarding houses in Zone R2 Low Density Residential, notwithstanding non-compliance with the standard.
- *The primary intention of the boarding houses in R2 Low Density Residential zones is detailed in the Explanation of Indented Effect of the introduction of Clause 30AA as follows:*
 - *To ensure that the built form of boarding house development in the R2 zone is compatible with the built form of other development in the local area.*
- *The Explanation of Indented Effect also details the following secondary objective of the Clause:*
 - *A maximum room number for boarding houses is considered to assist in ensuring that the amenity impacts of boarding house development on adjoining And nearby properties, such as overlooking, overshadowing and car parking impacts, are able to be better managed.*
- *The development proposal achieves the above intention and objective of Clause 30AA of SEPP ARH 2009 based on the following:*
 - *The proposed boarding house development is consistent and compatible with the design, form and scale of development in the locality. The immediate locality contains a diversity of building forms with 1 – 2 storey dwellings and multi-dwelling housing developments within the vicinity of the site. The development proposal, being a 2-storey form with a pitched roof, will reflect the form and scale of development in the locality.*
- *The proposed materials and finishes and landscape works are consistent with adjoining development and compatible with the planning controls under SEPP ARH 2009, noting the proposal satisfies the Character Test of Clause 30A of SEPP ARH.*
- *The proposed built form of the boarding houses on Lots A and B is compatible with development in the immediate locality. The proposed built form - 2 storeys is compatible with the existing building character in the immediate locality. The boarding house presents to the street as a similar form and scale to surrounding 2 storey low density development within its visual catchment. Further, the form and scale of development is consistent with the streetscape and desired future character.*
- *The subject site is zoned R2 - Low Density Residential under the Hornsby Local Environmental Plan 2013 and boarding houses are a permissible land use. The planning controls allow 2-storey development of maximum 8.5m height and the overall scale and form of the proposed development complies with the density controls applying to the subject site pursuant to the Hornsby LEP 2013.*
- *The proposed design mitigates amenity impacts to adjoining properties in terms of overlooking, overshadowing and car parking based on the following assessment:*
 - *The built form has been located on the allotment in accordance the setback controls for dwelling houses contained in the Hornsby Development Control Plan.*

- *The boarding house provides adequate car, bicycle and motorcycle parking, and the orientation of the subject site and location adjacent to the M1 Motorway minimises the potential for unreasonable solar access impacts to neighbouring properties.*
- *The potential overlooking impacts resulting from the development are mitigated by the design of offset windows and the boarding house has communal areas at second floor level orientated to the north facing Burdett Street to mitigate privacy impacts to the adjoining property at 132 Burdett Street, Wahroonga.*
- *The development application is accompanied by shadow diagrams prepared by Mackenzie Architects International, which confirm that the proposal meets the solar access and overshadowing requirements contained in the Hornsby DCP.*
- *The traffic generated by the development proposal will be minimal given the level of parking provided and the site's location within an accessible area, being within 75m of regularly serviced public bus stops, and that bicycle and motorcade parking is provided. The traffic generation will not have any unacceptable or unreasonable traffic implications the surrounding road network and local road, being Burdett Street.*
- *It is unreasonable to require compliance with the development standard noting the non-compliance is the result of the approved subdivision of 134 Burdett Street (under DA/248/2019/B) not being registered. On registration of the approved plan of subdivision, the proposed boarding house development will comply with Clause 30AA of SEPP ARH 2009.*
- *Enforcing strict compliance with Clause 30AA in this instance will thwart the timely economic development of the land. The resulting development proposed under this application, when assessed in conjunction with that on Lot A, is compatible with the total impacts of development anticipated by Clause 30AA and therefore compatible with the low-density residential zone.*
- *Further, compliance with the development standard is unnecessary, noting the proposed boarding house is compatible with neighbouring and nearby built forms, and that the proposed variation will not result in unreasonable amenity impacts on adjoining properties with respect to overshadowing, overlooking or traffic and car parking.*
- *Furthermore, the proposal, including the variation to the boarding houses in the R2 Low Density Residential zone development standard meets the intention and objectives of the standard as contained in the Explanation of Intended Effects, notwithstanding the numerical contravention.*

Council considers that the applicant's written request sufficiently identifies that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard. The request adequately demonstrates that compliance with the maximum number of rooms development standard is unreasonable and unnecessary in this instance and subject to registration of the subdivision, compliance would be achieved.

2.1.4.2 Environmental Planning Grounds

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) of the HLEP requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist, it must

be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

In demonstrating the environmental planning grounds the written request states:

- *The proposed boarding house on Lot B has been designed with 11 boarding rooms in accordance with the numerical requirement contained in Clause 30AA of SEPP ARH 2009. The proposed variation is the result of the approved subdivision of Lot A and Lot B not yet being registered. The proposed boarding houses on both Lot A and Lot B individually are consistent with the density of the development envisaged under Clause 30AA.*
- *The variation is not the result of providing additional density on the site beyond that envisaged by clause 30AA but rather the timing of the development, noting the subdivision under DA/248/2019/B has not yet been registered. The proposed development on Lot B, when accompanied by the proposed development on Lot A, will provide 22 boarding rooms on a single lot. Following the registration of the subdivision both boarding house developments will comply with the numerical requirement.*
- *Despite the non-compliance with the boarding houses in Zone R2 Low Density Residential, the proposal is consistent with the following aims of the Hornsby LEP 2013 found at clause 1.2(2):*
 - *1.2(2)(b) - The proposed boarding house development represents an orderly and sustainable land use at the subject site and within the R2 Low Density Residential zone, noting the proposed built form is compatible with neighbouring and nearby development and that the proposal contributes to the provision of affordable housing to meet the housing needs of the community.*
 - *1.2(2)(c) - The proposed boarding house contributes to the range and availability of housing types within the locality and wider Hornsby local government area, providing affordable housing within an accessible area to meet current and future housing demand.*
- *Despite the non-compliance with the boarding houses in the R2 Low Density Residential zone the proposal is consistent with the following objects of the Environmental Planning and Assessment Act 1979 as follows:*
 - *1.3(c) - The proposal is an orderly and economic use of the subject site and the development is consistent with the intent and objectives of the boarding houses in Zone R2 Low Density residential standard, with a proposed built form that is compatible with the desired future character of the locality, on an allotment that is capable of accommodating a boarding house development. This clause 4.6 request facilitates the orderly and economic development of the land, allowing a built form on the site prior to its subdivision, which would otherwise comply with the development standard, if sites were developed individually.*
 - *1.3(g) - The design of the proposal is a good design outcome for the subject site and within the R2 Low Density Residential zone as the proposal has been designed in accordance with the controls and design requirements for dwelling houses contained in the Hornsby LEP 2013, and is therefore a compatible and consistent 2-storey built form in the locality.*

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.

As detailed in the request, the variation does not result in additional density on the site beyond that envisaged by clause 30AA but rather the timing of the development, noting the subdivision under DA/248/2019/B has not yet been registered. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

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

2.1.4.3 Public Interest and Clause 4.6(4)

Clause 4.6(4) states that development consent must not be granted for development that contravenes a development standard unless:

- (a) *The consent authority is satisfied that -*
 - (i) *The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).*
 - (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*
- (b) *The concurrence of the Planning Secretary has been obtained.*

With regard to (a)(i), the written requests are considered to adequately address the matters required to be demonstrated as outlined above.

With regard to (a)(ii), the proposed development is considered to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

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

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

Accordingly, it is considered that the Request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6 and that the Panel, as consent authority, may rely upon the Request and grant development consent to the DA. Should the Panel resolve to approve the DA, it should also provide a statement in the reasons for approval that it has satisfied itself of the matters in Clause 4.6(4).

2.1.5 Heritage Conservation

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

2.1.6 Earthworks

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

The development would require excavation of a maximum depth of 6 metres to accommodate the basement level at the rear of the boarding house. The amount of excavation at the rear of the basement is the greatest as a result of the significant slope of land towards the front of the site.

Council raises no objections to the proposed earthworks as it is considered that the adjoining properties access handle would be unaffected by the proposal with regard to stormwater flow and soil stability and the excavation would reduce the bulk and scale of the building at the rear to neighbouring properties.

Subject to a condition requiring a dilapidation report for the adjoining access handle at No. 132A Burdett Street, the proposal is considered acceptable in this regard.

2.2 State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) was repealed on 26 November 2021 and the provisions of SEPP ARH have been consolidated into Part 2 of State Environmental Planning Policy (Housing) 2021 (Housing SEPP). The Housing SEPP includes a savings provision as follows:

"1 Definitions

In this Schedule—

commencement date means the day on which this Policy commenced.

repealed instrument means an instrument repealed under Chapter 1, section 10.

2 General savings provision

The former provisions of a repealed instrument continue to apply to the following—

- (a) *A development application made, but not yet determined, on or before the commencement date.*
- (b) *A concept development application made, but not yet determined, on or before the commencement date.*
- (c) *A staged development application made subsequent to a concept development application approval granted on or before the commencement date.*
- (d) *A development consent granted on or before the commencement date.*
- (e) *An environmental impact statement prepared in compliance with an environmental assessment requirement that is—*
 - (i) *Issued by the Planning Secretary on or before the commencement date, and*

(ii) *In force when the statement is prepared.”*

Accordingly, as the development application was lodged before the commencement of the Housing SEPP, the provisions of SEPP ARH in force at the time of lodgement apply to this proposal.

Division 3 of Part 2 of SEPP ARH permits development for the purposes of “boarding house” on land in R2 Low density residential zone if the land is within an “accessible area”. Clause Nos. 29-30A provide the development standards for the assessment of a boarding house.

Accordingly, the application has been assessed against the requirements of the SEPP ARH. The Policy includes development standards and applies criteria for boarding house development.

The following table sets out the proposal’s compliance with the prescriptive standards of the Policy:

SEPP Affordable Rental Housing Clause 29: Standards that cannot be used to refuse consent			
Control	Proposal	Requirement	Compliance
Site Area	689.66m ²	N/A	N/A
Floor Space Ratio <i>A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</i> <ul style="list-style-type: none"> <i>The existing maximum floor space ratio for any form of residential accommodation permitted on the land.</i> 	N/A Floor area is 345.3m ² complies with Councils 380m ² control	<i>HLEP</i> does not incorporate any floor space ratio development standard for the R2 Low Density Residential zone	N/A
Building Height	5.5m	8.5m	Yes
Landscape Area	242m ² of the site is landscaped which equates to 33.5% of the site.	Landscape treatment of the front setback area is compatible with the streetscape	Yes
Private Open Space for Lodgers	36m ² with a minimum dimension of 3m	>20m ² with a minimum dimension of 3m	Yes
Car Parking	6 spaces	6 spaces (@ 0.5 spaces per room)	Yes
Min. size of boarding room (Gross Floor Area)			

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<i>Double lodger (Room 1)</i>	16m ²	Min. 16m ²	Yes
<i>Single lodger (Room 2)</i>	14m ²	Min. 12m ²	Yes
<i>Single lodger (Room 3)</i>	12.1m ²	Min. 12m ²	Yes
<i>Single lodger (Room 4)</i>	12.1m ²	Min. 12m ²	Yes
<i>Single lodger (Room 5)</i>	13.9m ²	Min. 12m ²	Yes
<i>Double lodger (Room 6)</i>	16.3m ²	Min. 16m ²	Yes
<i>Single lodger (Rooms 7)</i>	14m ²	Min. 12m ²	Yes
<i>Single lodger (Rooms 8)</i>	12.1m ²	Min. 12m ²	Yes
<i>Single lodger (Rooms 9)</i>	12.1m ²	Min. 12m ²	Yes
<i>Single lodger (Rooms 10)</i>	13.9m ²	Min. 12m ²	Yes
<i>Single lodger (Rooms 11)</i>	12.2m ²	Min. 12m ²	Yes
Max. size of boarding room excluding kitchen and bathroom (GFA)	16m ²	Max 25m ²	Yes
Private kitchen and bathroom facilities	All rooms contain private kitchens and bathroom facilities	A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room	Yes

SEPP Affordable Rental Housing Clause 30: Standards for boarding houses			
Control	Proposal	Requirement	Compliance
Communal Living area	A communal living room is proposed to the ground floor with an adjoining outdoor terrace	At least 1 communal living area if a boarding house has more than 5 boarding rooms	Yes
Number of Adult Lodgers Per Room	1 lodger per single room 2 lodgers per double room	Max. 2 lodgers per room	Yes

Bathroom and Kitchen Facilities	Each room is self-contained with a kitchen and bathroom	Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger	Yes
Boarding House Manager	Manager not required as max 13 lodgers	Boarding house manager for 20 or more lodgers	N/A
Bicycle and Motorcycle Parking	Adequate parking space for 2 bicycles and 2 motorcycles within the basement	1 bicycle space and 1 space for motorcycle, for every 5 boarding rooms	Yes

Hornsby Development Control Plan 2013			
Control	Proposal	Requirement	Compliance
Setbacks			
- <i>Front (battle-axe)</i>	7.9m	0.9m	Yes
- <i>Side (west)</i>			
<i>Ground floor</i>	1.5m - 2.4m	900mm	Yes
<i>First floor</i>	1.5m	1.5m	Yes
- <i>Side (east)</i>			
<i>Ground floor</i>	>4.5m	900mm	Yes
<i>First floor</i>	>4.5m	1.5m	Yes
- <i>Rear (split level)</i>			
<i>Ground floor</i>	8.55m	3m	Yes
<i>First floor</i>	8.55m	8m	Yes

As detailed in the above table, the proposed boarding house complies with the relevant prescriptive standards within SEPP ARH and meets Council's setback requirements. Below is a brief discussion concerning the proposal and the mandatory and prescriptive provisions of SEPP ARH.

2.2.1 Accessible Area

Clause 27 of SEPP ARH requires the subject site to be located within an accessible area. Clause 4 of SEPP ARH defines an "Accessible Area" as follows:

"accessible area" means land that is within:

1. 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or

2. *400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
3. *400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.*

The site is located approximately 75 metres to the '575' route bus stops on either side of Burdett Street, serviced by *Transport NSW* to and from Hornsby Railway Station and nearby shopping centres. A search of the *Transport NSW* website has revealed that at least \ one bus per hour would service the bus stops each hour between 6am-9pm Monday to Friday and 8am-6pm Saturday and Sunday.

The site would meet the accessible area criteria applicable for boarding house development in accordance with Clause 27 of SEPP ARH.

2.2.2 Density

SEPP ARH stipulates that the floor space ratio of any development for a boarding house should not exceed the maximum permissible floor space ratio for any form of residential accommodation in the zone.

The HLEP does not incorporate any floor space ratio development standard for the R2 Low density residential zone. The density of developments in the zone is guided by the height, maximum floor area of a dwelling house, landscaping and site coverage requirements within the HDCP.

The HDCP prescribed maximum site coverage of 50% for the site, maximum total floor area of 380m² for a dwelling house.

The proposed total floor area of the building would be 345m² which complies with the HDCP 380m² prescriptive measure for a 689m² site and the proposed site coverage would be 31%.

The bulk and scale of the boarding house is considered acceptable within the context of adjoining properties, has incorporated a 1m indentation along the western side boundary to break up the building mass and would sit comfortably within the site due to the excavation proposed at the rear which reduces the scale of the boarding house. Accordingly, the boarding house would be compatible within the low-density area.

Given the above, it is considered that the proposal generally complies with the density parameters within the R2 zone.

2.2.3 Building Height

A maximum building height of 8.5m is a prescriptive standard pursuant to SEPP ARH and the HLEP. The proposed development would have a maximum height of 5.5m above the existing ground level and would comply with this requirement.

2.2.4 Landscape Area

SEPP ARH requires that landscape treatment of the front setback should be compatible with the streetscape.

The proposal is located at the rear of the site with access via a access handle and would not be perceptible from the streetscape. Notwithstanding, As indicated on the Landscape Plan prepared by Paul Scrivener, the proposed front setback of 7.9m to 9.1m incorporates landscaping in-front of the building which would soften the building from surrounding properties and is consistent with the established streetscape of Burdett Street and acceptable in this regard.

2.2.5 Solar Access

SEPP ARH prescriptive measure for solar access requires 1 communal living room to receive a minimum of 3 hours of direct sunlight between 9am and 3pm in mid-winter. The first-floor level communal living area includes the provision of a window within the northern and eastern elevation which enable direct sunlight in accordance with the requirements of SEPP ARH.

2.2.6 Private Open Space

Clause 29(2)(d)(i) of SEPP ARH requires one area of private open space to be provided of at least 20m² with a minimum dimension of 3m for the use of the lodgers. As indicated on the submitted Architectural and Landscape Plans, the proposal includes a 44m² terrace adjoining the communal lounge room on the first-floor level at the front of the site with a minimum dimension of 3m.

The proposal would comply with the minimum private open space requirements.

2.2.7 Parking

Clause 29(2)(e) (iia) of SEPP ARH states that in the case where a boarding house development is not carried out by or on behalf of a social housing provider, at least 0.5 parking spaces are to be provided for each boarding room. Given the proposed development comprises a total of 11 rooms; the proposal requires the provision of 6 car parking spaces.

The proposal complies with SEPP ARH parking requirement and Council's Traffic and Parking assessment raised no objections to the number of parking spaces or the layout proposal. Notwithstanding, Council's Traffic assessment proposes a 20m 'No Stopping' restriction at the inner corner of Burdett Street with King Road to enhance road safety and a suitable condition is recommended in the consent requiring this be approved by the Local Traffic Committee prior to the issue of an Occupation Certificate.

It is anticipated that the lodgers would also make use of the nearby public transport, resulting in minimal impact to on-street parking.

It is considered that the proposal meets the parking requirements of SEPP ARH.

2.2.8 Accommodation Size

The proposal includes 9 single lodger rooms and 2 dual lodger room with bathroom, laundry and kitchen facilities in each room. Each boarding room includes a wardrobe providing storage facilities for the residents. The accommodation size complies with the room size requirements of SEPP ARH.

2.2.9 Character of Local Area

Clause 30A of SEPP ARH is as follows:

"A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area."

An assessment of the proposed development against the local character of the area is provided below:

- *The immediate locality contains a diversity of building forms with 1 – 2 storey dwellings and multi-dwelling housing developments within the vicinity of the site. The development proposal being a 2-storey form with a pitched roof, will reflect the form and scale of the locality and present an architectural uplift to the streetscape. The proposed materials and finishes and landscape works are consistent with adjoining development and compatible with the planning controls under the SEPP – Affordable Rental Housing;*
- *The proposed built form – 2 storeys is compatible with the existing building character in the immediate locality. The boarding house presents to the street as a similar form and scale to surrounding 2 storey low density development within its visual catchment. Further, the form and scale of development is consistent with the streetscape and desired future character;*
- *The subject site is zoned R2 – Low Density Residential under the Hornsby LEP 2013 and boarding houses are a permissible land use. The planning controls allow 2 storey development – 8.5m and the overall scale and form of the development is compatible with the density controls applying to the subject site under the Hornsby LEP 2013. The design of the boarding house is consistent with the future character of the area allowing for two storey buildings on each allotment of land; and*
- *The proposed design mitigates amenity impacts to adjoining properties in terms of privacy and overshadowing, noting the built form has been located on the allotment with regard to the setbacks of dwelling houses, and also noting the orientation of the subject site and location adjacent to the Pacific Motorway minimises the potential for unreasonable solar access impacts to neighbouring properties.*
- *The proposed 2 storey building incorporating 11 boarding rooms is compatible with the design of development in the locality, including anticipated future built forms, and meets the character test required under clause 30A of SEPP – Affordable Rental Housing.*
- *The planning principle in Project Venture Developments Pty Ltd v Pittwater Council can be used as a reference in determining the compatibility of the proposal against the character of the local area. The building form and character of the development is compatible with the form of development permissible under the R2 – Low Density Residential zone including the existing single and two storey residential development within the visual catchment of the site. In the Project Venture matter it was accepted that buildings can exist together in harmony without having the same density, scale or appearance.*

Council concurs with the Applicants justification as it is considered that the proposal has incorporated various design elements that reflect the style and appearance of adjoining dwellings and development in the nearby area whilst providing affordable housing. The proposed scale, density and appearance is compatible with the character of dwellings within Burdett Street and is considered acceptable.

2.3 Adopted State Environmental Planning Policies (Savings and Transitional Provisions)

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

- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Planning Systems) 2021.

- State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021.

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

As this development application was lodged on 21 January 2022, this development application is considered to have been made prior to the commencement date of the SEPPs. The aforementioned SEPPs have been considered as a matter for consideration under S4.15 of the Act.

Notwithstanding, the existing legislation in force at time of lodgement of the development application, prevails to be extent of any inconsistency; these policies are listed below:

- State Environmental Planning Policy No. 55 Remediation of Land.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
- Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River.

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

2.4 State Environmental Planning Policy No. 55 Remediation of Land

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

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes with no record of any site contamination. Given this, it is unlikely that the site has experienced any significant contamination, and further assessment under SEPP 55 is not required.

It is noted that due to the age of the existing dwelling house and associated outbuildings, there is potential for the existing structures to contain asbestos. Appropriate conditions are included in Schedule 1 to require all asbestos to be removed from the site.

2.5 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

The proposal includes a BASIX Certificate and Section J compliance assessment report for the proposed development which is considered to be satisfactory.

2.6 State Environmental Planning Policy (Infrastructure) 2007

With respect to Clause 101 Development with frontage to classified road, the site shares a common boundary with the Transport for NSW classified motorway however does not have direct frontage or access to the motorway.

Pursuant to Clause 102 of the Policy, Council is to consider the impacts in respect to road noise and vibration impacts from the operation of the M1 motorway.

The applicant submitted an Acoustic Assessment prepared by Acoustic Logic addressing noise level criteria pursuant to the Policy. The report recommends thicker glazing standards for glass doors and windows as well as the use of upgraded construction standards to reduce the noise of the adjoining motorway to future residents which is considered acceptable.

With regards to Clause 103 Excavation immediately adjacent to a corridor the eastern side boundary of the site adjoins the M1 motorway and land acquired for the NorthConnex tunnel.

The application was referred to the Transport for NSW who recommended that access to the subject property shall not be via the Pacific Motorway and conditions requiring noise mitigation for future residents.

Pursuant to Clause 102 of the Policy, Council is to consider the impacts in respect to road noise and vibration impacts from the operation of the Pacific Motorway.

The applicant submitted an Acoustic Assessment prepared by Acoustic Logic addressing noise level criteria pursuant to the Policy. The report recommends specified glazing for noise attenuation. The northern, eastern and southern façade of the proposed building would require mechanical ventilation in accordance with the Building Code of Australia requirements as the façade windows would be required to be closed to achieve compliance with noise abatement criteria.

2.7 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) commenced 25 August 2017 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) of the Vegetation SEPP states that a Development Control Plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Part 3.1.1 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

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

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

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

2.9 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.

2.10 Hornsby Development Control Plan 2013

As stated above, the Hornsby Development Control Plan requires that boarding houses comply with the planning controls within the SEPP ARH. The application has been assessed as satisfactory in this regard.

2.11 Section 7.12 Contributions

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. A condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The proposed development does not necessitate the removal of any trees from the site. Tree removal was considered under the subdivision application DA/248/2019/B.

Subject to implementation of tree protection conditions during construction and appointment of an arborist, no objections are raised to the proposal.

3.1.2 Stormwater Management

Stormwater would be directed to an on-site detention system located under the approved driveway as part of DA/248/2019/B.

Council's Engineering assessment did not raise objections to the proposed stormwater method subject to conditions requiring connection into the inter-allotment drainage system.

3.2 Built Environment

3.2.1 Built Form

Submissions were received raising concern over the scale and appearance of the boarding house being out of character with the streetscape.

The proposed split level two storey boarding house would be similar in-built form as a standard dwelling house, which is a permissible in the R2 zone. The proposed development would generally maintain the existing presentation of the site in respect to the low-density character of the locality.

3.2.2 Traffic

The proposed boarding house development is not categorised as a traffic generating development pursuant to the provisions of ISEPP.

It is determined that a total of 3 trips would be generated in the AM and 4 trips within the PM which are not expected to present any adverse traffic impacts.

Council's Traffic assessment used the RMS Guide to Traffic Generating Development for a motel (0.4 trips per room), which has determined that a total of 5 vehicle trips would be generated by the proposed development during AM and PM peak hours. Trip and traffic generation is not considered an issue with the proposed development.

Due to the proximity of the site to public transport and the expected number of occupants on the site, it is anticipated that the volume of vehicular traffic generated by the development would be minor and in keeping with the surrounding area.

3.2.3 Air Quality

Air Quality applies to the subject site, noting the proximity to the Pacific Motorway and that the proposed boarding house is an air quality sensitive land use. The subject site currently contains an existing dwelling house and has been approved for subdivision under DA/248/2019/B. The boarding house is a residential development with adequate separation achieved by the level difference between the subject site and the motorway, and the existing screening which mitigates potential air quality impacts on the existing and proposed development.

3.2.4 Noise impacts

The application was supported by an acoustic report prepared by Acoustic Logic.

The acoustic report provides modelling of the existing noise environment and provides recommendations to mitigate noise impacts to the proposed development and to adjoining properties.

Council's Environmental Protection Team raised no objections to the acoustic report, subject to operational conditions listed in Schedule 1.

3.2.5 Privacy impacts

The potential privacy impacts are mitigated by 1.5m high sill height windows along the western elevation and the design of the boarding house with communal areas at first floor level oriented towards the street and motorway.

3.2.5.1 Plan of Management

In support of the application, the applicant submitted a Plan of Management prepared by Chapman Planning which provides management policies with regard to the roles and responsibilities of the Managing agent, maximum number of lodgers, minimum lease period, minimising impacts on residents, display of house rules, fire safety, cleaning and maintenance, waste management, safety and security and dealing with complaints.

With regard to safety, disturbance and anti-social behaviour, a condition has been recommended requiring that the submitted Plan of Management be enforced which provides measures to reduce disturbance and improve safety to adjacent properties, including:

- *All noise generated by the development (excluding mechanical plant) shall not cause a sound pressure level measured as the $LA_{eq\ 15\ minute}$ that exceeds the background level (measured as the $LA_{90\ 15\ minute}$ in the absence of the noise under consideration) by more than 5dB(A) at any time.*

- *The external terrace must not be used between the hours of 10pm to 7am Monday to Saturday, and between 10pm and 8am on Sunday and Public Holidays.*
- *The doors between the indoor communal lounge and the ground floor external terrace on the northern elevation of the development must be locked at 10pm each day and remain locked until 7am Monday to Saturday, and until 8am on Sunday and Public Holidays.*
- *No more than 13 people may occupy the external terrace at any time within the permitted hours of use.*
- *No more than 13 people may occupy the indoor communal lounge at any time.*
- *Visitors and guests are not permitted on the premises prior to 7am Monday to Saturday, and prior to 8am on Sundays and Public Holidays. All visitors must vacate the premises by 10pm on any day.*
- *Amplified music must not be used within the external terrace at any time.*
- *Amplified music must be played through the in-house speaker system in the communal lounge. Speakers must not be oriented toward the external terrace at any time.*
- *Any complaints regarding the operation of the boarding house must be directed to the Boarding House managing agent who will be appointed and responsible for the operation and administration of the boarding house. The Managing agent must record details recorded in a log book with the date and time of the complaint, contact details of the person making the complaint and the nature of the complaint. This logbook must be readily available to Council; and*
- *Contact details for the Boarding House Managing agent must be permanently displayed at the front of the property and be visible from the road.*

An assessment against the Land and Environment Court's Planning Principle for 'Plan of Management' is provided below:

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

Comment: Yes, the plan of management relates to a boarding home and includes operational procedures including duties of the owner, maximum number of lodgers, noise restrictions, house rules, fire safety, cleaning, furniture, waste management, safety and management of complaints. An operational condition is recommended that the Plan of Management must be adhered to.

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

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

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

Comment: Yes, an operational condition is recommended in Schedule 1 requiring any complaints regarding the operation of the boarding house be directed to the Managing agent of the boarding house and a log book of the date and time of the complaint, contact details of the person making the complaint and the nature of the complaint to be documented. This logbook must be readily available

to Council and contact details must be provided on a website of relevant contact details of the owner/manager.

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

Comment: Yes, the Plan of Management's proposed procedures and operational limitations would ensure that the standard of the operation would achieve an acceptable amenity and environmental outcome.

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

Comment: Yes, the Plan of Management requires the display of 'house rules' in each room and the common areas. An operational condition is recommended in Schedule 1 requiring the submitted Plan of Management to be adhered to.

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

Comment: Yes, an operational condition is recommended in Schedule 1 requiring the submitted Plan of Management to be adhered to.

Does the Management Plan contain complaint management procedures?

Comment: Yes, complaints would be directed to the Managing agent who will investigate any complaints and keep a log book of the date and time of the complaint, contact details of the person making the complaint and any action taken. A condition has been recommended in Schedule 1 accordingly.

Is there a procedure for updating?

Comment: Yes, should complaints occur, the operational plan can be updated through a modification of the consent.

Conditions are recommended that the operational noise recommendations within the Acoustic Assessment report be implemented in addition to the operational requirements of the Plan of Management.

3.3 Social Impacts

The proposal is a form of affordable housing permissible within the R2 zone pursuant to the provisions of the HLEP and SEPP ARH. The development would provide housing choice in the locality and would result in affordable short-term residential accommodation in close proximity to public transport.

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".

4.1 Bushfire Risk

The site is identified as being subject to bushfire risk. The NSW Rural Fire Service provided General Terms of Approval under DA/248/2019 and stipulated that the 88B instrument shall ensure that future dwellings are located wholly within area marked 'indicative building' on the approved subdivision plans and that Hornsby Shire Council can modify the restriction.

The proposed building area is consistent with the building envelope indicated on the original subdivision plan.

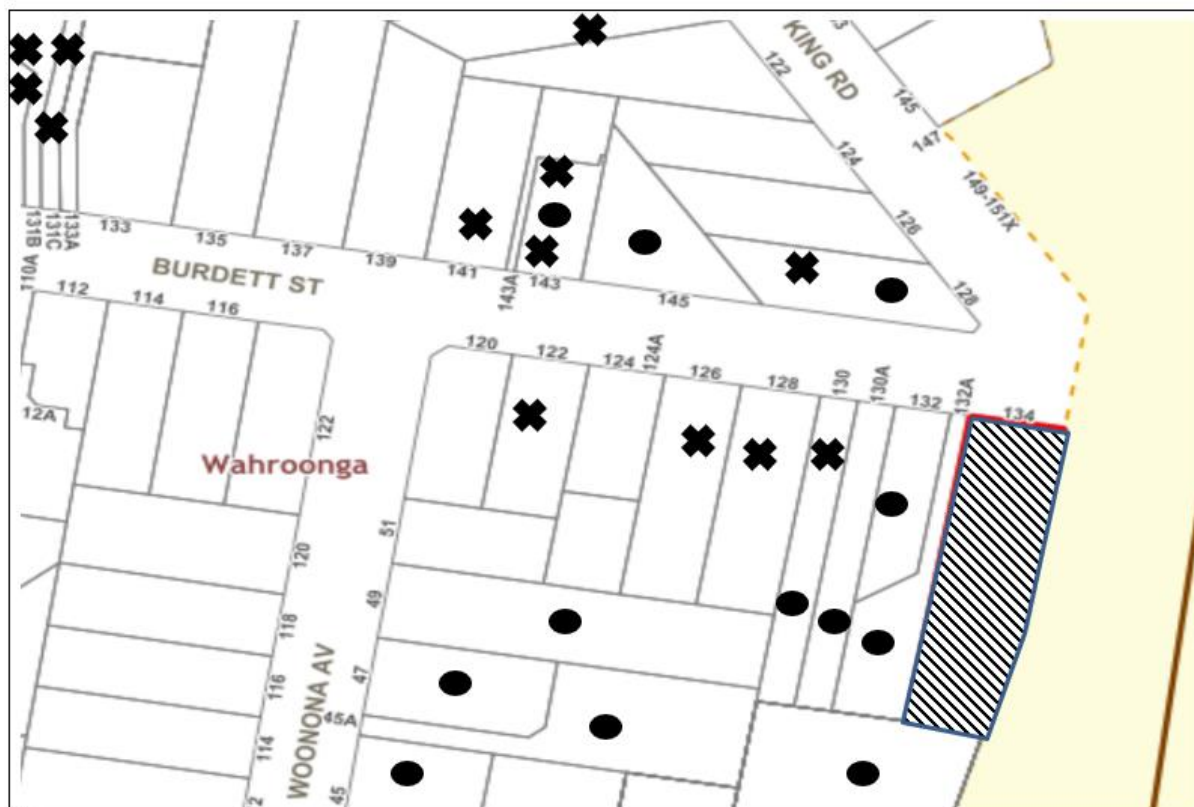
Conditions are recommended that the boarding house be built to BAL 19 Bushfire requirements.

5. PUBLIC PARTICIPATION

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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 February 2021 to 9 March 2021 and the amended plans were notified from 15 June 2021 to 29 June 2021 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 26 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
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13 SUBMISSIONS RECEIVED OUT OF MAP RANGE
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26 submissions objected to the development, generally on the grounds that the development would result in:

- Noise impacts.
- Traffic impacts.
- Traffic and parking impacts.
- Out of character.
- Safety concerns.
- Errors within Statement of Environmental Effects.
- Exceeds maximum number of rooms allowable by SEPP.
- Concerns with management of Boarding house.
- Issues with size of development.
- Development not suitable for area.
- Boarding house will reduce property values.
- Lack of consultation.
- General privacy concerns.

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

5.1.1 Management of Boarding house

Concerns were raised that a manager should be required for the boarding house given the size of the proposal, requirement for cleaning and general uses, that the proposal could exceed the number of lodgers sought and that the boarding house could be used for private accommodation and not social housing.

The proposal is not required to have a manager's residence in accordance with SEPP ARH as only 13 lodgers are proposed. SEPP ARH requires a manager if 20 lodgers are proposed.

With respect to the potential for private rental accommodation and number of lodgers, operational conditions are recommended that restrict the boarding house to the following requirements consistent with the HLEP:

- Is wholly or partly let in lodgings.
- Provides lodgers with a principal place of residence for 3 months or more.
- Includes 11 boarding rooms with kitchen and bathroom in each boarding room.
- Accommodates a maximum of 13 lodgers at any one time.

The operation of the boarding house is discussed in greater detail in the report above under plan of management in 3.2.5.1.

5.1.2 Development not suitable for area

The boarding house complies with the location requirements of the SEPP ARH which requires a bus stop to be located within 400m of a boarding house. Further, the proposal is located within walking distance to Hornsby Hospital and would provide additional accommodation to essential services.

5.1.3 No need for boarding house

Numerous submissions raise concerns that this particular area does not require a boarding house.

SEPP ARH and the Housing SEPP which mandates boarding houses in the R2 zone, are State Government Policies which override Council's LEP and DCP. Accordingly, refusal of the application is not warranted as it complies with the SEPP controls.

5.1.4 Poor Location Choice – Demographic Issues

Submissions raised concerns regarding the location of the boarding house being a poor choice due to the demographics of the area.

In terms of demographic issues, Council notes that this matter is not a matter for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. Further SEPP ARH does not contain any planning requirement for boarding houses to be located in a certain location and the character test under Clause 30A of SEPP ARH is not considered to extend to a study of local demographics.

Council considers the location of the boarding house to be well placed, with walkable access to public transport and Hornsby hospital in the locality.

5.1.5 Lack of consultation

The applicant is not required to consult the community regarding a development proposal. The application was notified to the community on two occasions and 18 submissions were received.

5.1.6 Privacy

As discussed in the report above, all first-floor level windows which adjoin the access handle of No.132A Burdett Street along the western elevation are highlight windows with a sill height of 1.5m above the finished floor level which would provide a reasonable level of privacy to the adjoining property.

5.1.7 Antisocial behaviour and Safety concerns

Submissions raised concerns that the development would attract criminals and encourage anti-social behaviour.

SEPP ARH does not provide any provisions that prohibit or restrict the type of residents at the premises. In this instance the boarding house would be managed by a private entity. The proposed development would rely on compliance with the Plan of Management and on-going monitoring by the on-site manager at the residence.

5.1.8 Property Values

In addressing this concern, Section 4.15 of the *Environmental Planning and Assessment Act 1979* and SEPP ARH does not require Council to take into consideration the impact of a development on the value of nearby properties. Nonetheless, Council acknowledges that the boarding house development complies with the development standards of SEPP ARH and is designed to maintain the low-density character of the area.

5.2 Public Agencies

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

5.2.1 Transport for NSW

The application was referred to Transport for NSW who raised no objections to the proposal, subject to conditions which are included in Schedule 1.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION AND STATEMENT OF REASONS

The application proposes construction of a two-storey boarding house containing 11 boarding rooms, accommodating 13 lodgers and basement car parking.

The development does not comply with the maximum number of rooms in accordance with State Environmental Planning Policy Affordable Rental Housing, however, would comply when subdivided and approval as a deferred commencement of the application is recommended for registration of the subdivision approved under DA/248/2019/B.

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

Council received 26 submissions during the public notification period. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, approval as a deferred commencement 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 Clause 30AA of State Environmental Planning Policy (Affordable Rental Housing) 2009 is well founded. Strict submission is considered well founded and is supported. Strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the proposal would comply when both approved lots A and B are registered under DA/248/2019/B.
- With the exception of Clause 30AA of State Environmental Planning Policy (Affordable Rental Housing) 2009, the proposed development generally complies with the requirements of the relevant environmental planning instruments including the State Environmental Planning Policy (Affordable Rental Housing) 2009 and the Hornsby Local Environmental Plan 2013.

- The proposed development is consistent with the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, 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.






RESPONSIBLE OFFICER

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

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Map
2.  Architectural Plans
3.  Landscape Plan
4.  Clause 4.6
5.  Plan of Management

File Reference: DA/131/2021
Document Number: D08296318

SCHEDULE 1**1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until a registered plan of subdivision from the NSW Land Registry Services (NSW LRS) creating the proposed lot must be submitted to Council.
- b) Such information must be submitted within **36 months** of the date of this notice.

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

GENERAL CONDITIONS

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

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

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

2. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
A0004, Rev C	Site roof plan	Mackenzie Architects	06.07.2021	
A1001, Rev D	Lower ground floor plan	Mackenzie Architects	06.07.2021	
A1002, Rev D	Ground floor plan	Mackenzie Architects	06.07.2021	
A1003, Rev D	First floor plan	Mackenzie Architects	11.05.2021	
A1004, Rev B	Roof plan	Mackenzie Architects	11.05.2021	
A2001, Rev B	North and East elevations	Mackenzie Architects	11.05.2021	
A2002, Rev B	South and west elevations	Mackenzie Architects	11.05.2021	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
A2101, Rev C	Sections	Mackenzie Architects	11.05.2021	
A3005, A	Sample board	Mackenzie Architects	11.05.2021	
2209-2 Rev C	Landscape plan	Paul Scrivener	1.6.21	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Boarding House Plan of Management Lot B	Chapman Planning	8.12.2021	D08313544
DA Acoustic Assessment, Reference 20211120.1/2409A/R1/RF	Acoustic Logic	24.9.2021	D08288546
Amended (Revision 2) Construction Management Plan	Dickens Solutions	September 2021	D08255543
Amended Waste Management Plan	Dickens Solutions	July 2021	D08208392
Traffic And Parking Report, Ref 20066	Terraffic pty ltd	4.06.2021	D08182679
Geotech report	Martins Engineering	31.05.2021	D08182653
Accessibility report	Obvius Access	02.06.2021	D08182647
BASIX Certificate 1163328M	Outsource Ideas P/I	23.12.2020	D08105744
TfNSW Concurrence letter, SYD21/00345/01	Transport for NSW	12.04.2021	D08143104
Addendum to Arboricultural Impact Assessment - Addendum Letter	Advanced Treescape Consulting	30/09/2019	D07737647
General Arrangement Plan – Tree Protection Zone fencing,	Gelder Architects – as amended by Council	30/09/2019	D07764856
Stormwater drainage plan	Greenview Consulting	25.05.2021	D08182656

3. Removal of Trees Not Permitted

No consent is granted for the removal of trees.

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

4. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

5. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions*

Plan 2019 - 2029, \$11,070 must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of \$1,107,000

- b) The value of this contribution is current as of 9 March 2022. 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.

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

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

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

Note: 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.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. Pre-commencement Dilapidation Report

A 'Dilapidation Report' is to be prepared by an engineer registered by the Australian Institute of Engineers detailing the structural condition of the adjoining properties access handle that directly adjoin the site:

- a) Lot 2 DP 1143130, No.132A Burdett Street, Wahroonga.

A Portable Document Format (pdf) copy of the Dilapidation Report must be submitted to the Principal Certifying Authority and Hornsby Council (devmail@hornsby.nsw.gov.au reference DA/133/2021) before approval of any Construction Certificate.

7. 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.

8. Fire Safety Schedule

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

9. 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.

10. Notification of Home Building Act 1989 Requirements

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

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

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

11. Sydney Water – Approval

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

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

12. Appointment of a Project Arborist

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

13. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan (CMP) must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist and submitted to Council's Compliance Team via Council's Online Services Portal for review and approval. The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
 - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall comply with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works.
 - b. Long term signage requirements.
 - c. Short term (during actual works) signage.
 - d. Vehicle Movement Plans, where applicable.
 - e. Traffic Management Plans.
 - f. Pedestrian and Cyclist access and safety.
 - v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must always be able to be facilitated.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not

- be permitted other than on the site and the plan must demonstrate this will be achieved.
- vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - x) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - xi) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xii) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
 - xiii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xiv) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xv) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xvi) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council to ensure the above.
 - xvii) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS 2601–2001 – *'The Demolition of Structures'*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.

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

The CMP must be lodged via Council's Online Services Portal at: <https://eservices.hornsby.nsw.gov.au/ePathway/Hornsby/Web/#> and by selecting the following menu options: Applications > New Application > (under 'Application Types') Management Plans.

14. Acoustic Design Certification

A Construction Certificate acoustic design report shall be prepared by an appropriately qualified acoustic consultant and be submitted to the Principal Certifying Authority (PCA) for their approval prior to the issue of a construction certificate. The acoustic design report must:

- a) Identify all heating, ventilation, air conditioning and other noise generating plant including the lift motor and pumps associated with water reuse systems proposed as part of the approved development.

- b) Confirm the acoustic design for the project and identify the required noise control measures and/or specifications to ensure that the operation of an individual piece of equipment or operation of equipment in combination will not exceed the following noise levels when measured at the boundary, balcony or external living area of the nearest potentially affected residential occupancies:
 - i) LAeq(15min) 53 dB(A) during the day (7am-6pm), LAeq(15min) 43 dB(A) during the evening (6pm-10pm) and LAeq(15min) 38 dB(A) during the night (10pm-7am) at the nearest residential receptors.
 - ii) The above emission limits include any corrections for audible characteristics as required by the *NSW Noise Policy for Industry* current at the time of this consent.
- c) The acoustic design report shall include certification from the acoustical consultant with the above acoustic criteria. A Construction Certificate shall not be issued until the Certifier has confirmed that the acoustic design report satisfies the requirements of this condition.

15. Waste Management Details

The following waste management requirements must be complied with:

- a) Should there be any conflict or confusion between approved plans and/or consent conditions related to the waste management system, then written clarification must be obtained from Council.
- b) The approved on-going waste management system must not be amended without the written consent of Council.
- c) There must be no steps along any bin carting route. Ramps and service lifts are acceptable.
- d) For all bin carting routes, the path must be smooth hard surface. (Concrete pavement for example is acceptable, but pebbles, stepping stones, grass etc is not acceptable).
- e) The bin carting route from the bin storage room for Lot B to the temporary bin holding bay for Lot B must be an accessible path of travel for persons with a disability in accordance with Australian Standard AS1428 Design and Access for Mobility.
- f) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the bin carting route from the ground level temporary bin holding bay to the parked waste collection vehicle has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - i) Must be smooth hard surface.
 - ii) Must be straight and no less than 2.0m wide (including through any gates or doors).
 - iii) Must be devoid of steps.
 - iv) Must have a gradient no steeper than 1:14 for 240L bins.
 - v) Must be no greater than 5m walking distance from the temporary bin holding bay to the property boundary.

- vi) The bin carting path from the temporary bin holding bay for Lot B must extend from the property front boundary to the road kerb and finish with a pram ramp.
- g) A dedicated bulky waste storage area of at least 8 square metres must be provided.
- h) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the bin storage room at the basement carpark level has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - i) The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting.
 - ii) The floor must be finished so that it is non-slip, sealed and impervious, and has a smooth and even surface coved at all intersections.
 - iii) The ceilings and walls must be finished with smooth faced non-absorbent material capable of being cleaned.
 - iv) The room is to be provided with artificial light controllable within the room and adequate ventilation.
 - v) The room is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
 - vi) The doors are to be robust and lockable, with a door width of no less than 960mm. The doors must be able to be opened from inside the room without a key.
- i) The bin storage room at the basement carpark level must:
 - i) Be accessible by persons with a disability (in accordance with *AS1428 Design and Access for Mobility*) after the garbage bins and recycling bins are installed.
 - ii) Comfortably house the required number of bins (7 of 240 L garbage bins and 7 of 240 L recycling bins and 2 of 240L green waste bins) with every bin being accessible (no stacking of bins 2 or more deep).
 - iii) Have door(s) wide enough and positioned so that the largest bin (240L) can fit through.
 - iv) Be located no more than 30 m walking distance from each boarding room. The walking path from each dwelling to the bin storage room must not include the public footpath, that is must be wholly within the site. The walking path from each accessible/adaptable dwelling to the bin storage room must be an accessible path of travel.

Note: 240 L bins are 600 mm wide by 750 mm deep; allow for ease around the bin – 75 mm is recommended. The door must be wide enough and positioned such that all the bins can fit through. Every bin must be able to be accessed (no stacking of bins two or more deep).
- j) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the temporary bin holding bay at the ground level

has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and specifically the following requirements:

- i) The bins are to be screened on three sides to a height of 1.5 metres. The side facing and adjoining the driveway/pedestrian footpath must not be screened.
- ii) There must be no step(s) between the bin bay(s) and the driveway/pedestrian footpath.
- iii) The bin carting route from the bin holding bay to the street must not exceed a gradient of 1:14 and must be no less than 2.0m wide and must not include any steps.
- iv) The temporary bin holding bays must be integrated into the overall design of the development and landscaping to minimise impact on the streetscape.
- v) The internal dimensions of each ground level bin holding bay must be no less than 1.0m x 4.1m. Internal dimensions do not include wall thickness, support columns, ventilation shafts etc for which additional space must be allowed with consideration of the bin layout.

Note: a 240 L recycling bin is 600 mm wide by 750 mm deep; allow for 75 mm ease around the bin to avoid damage to walls etc from scraping.

- k) A Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage, covering the scope of this project and including the following details, is required to be submitted to Council:
 - vi) An estimate of the types and volumes of waste and recyclables to be generated.
 - vii) A site plan showing sorting and storage areas for demolition and construction waste and the vehicle access to these areas.
 - viii) How excavation, demolition and construction waste materials will be reused or recycled and where residual wastes will be disposed.
 - ix) The total percentage (by weight) of demolition and construction waste that will be reused or recycled.

Note: the site(s) to which the waste materials are taken must be legally able to accept those wastes.

- l) At no time during construction is it to become necessary to discontinue, disrupt or interfere with the on-going waste management system of any occupied lot.

16. 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:

- a) Connected directly to Council's street drainage system and discharged via an on-site detention system & Easement C.

17. On Site Stormwater Detention

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

- a) Storage capacity to accommodate volume from up to 20 years ARI (average recurrence interval) and a maximum discharge (when full) limited to 5 years pre development rate.
- b) Have a surcharge/inspection grate located directly above the outlet.
- c) Discharge from the detention system to be controlled via 1 metre length of pipe, not less than 50 millimetres diameter or via a stainless plate with sharply drilled orifice bolted over the face of the outlet discharging into a larger diameter pipe capable of carrying the design flow to an approved Council system.
- d) Where above ground and the average depth is greater than 0.3 metres, a 'pool type' safety fence and warning signs to be installed.
- e) Not be constructed in a location that would impact upon the visual or recreational amenity of residents.
- f) Detail calculations are to be shown in construction certificate plan.

18. Internal Driveway/Vehicular Areas

The driveway on site must be designed, constructed and a Construction Certificate issued in accordance with Australian Standards AS2890.1, AS3727, AS2890.6 and the following requirements:

- a) The driveway be a rigid pavement & width at the boundary to match subdivision driveway (SWC/19/2020).
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.
- c) Longitudinal sections along the access driveway shall be submitted to the principal certifying authority in accordance with the relevant sections of AS 2890.1. The maximum grade shall not exceed 1 in 4 (25%) with the maximum changes of grade of 1 in 8 (12.5%) for summit grades and 1 in 6.7 (15%) for sag grades. Any transition grades shall have a minimum length of 2 metres. The longitudinal sections shall incorporate the design levels obtained by Council.

19. Design and Construction - Bushfire Attack Category

New construction must comply with the current Australian Standard AS3959 'Construction of Buildings in Bush Fire-prone Areas' Section 6 (BAL 19) and Planning for Bushfire Protection 2019.

Note: Further information concerning planning for bush fire protection can be found at: www.rfs.nsw.gov.au.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

20. Erection of Construction Sign

- a) A sign must be erected in a prominent position on any site on which any approved work is being carried out:

- i) Showing the name, address and telephone number of the principal certifying authority for the work.
- ii) Showing the name of the principal contractor (if any) for any demolition or building work and a telephone number on which that person may be contacted outside working hours.
- iii) Stating that unauthorised entry to the work site is prohibited.
- b) The sign is to be maintained while the approved work is being carried out and must be removed when the work has been completed.

21. Protection of Adjoining Areas

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

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

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

22. Toilet Facilities

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

23. Erosion and Sediment Control

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

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

24. Waste Management Details

Prior to the commencement of any works, the on-going waste collection service must be cancelled and the bins retrieved by the waste collection service provider.

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

25. Garbage receptacle

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

26. Installation of Tree Protection Measures

Trees to be retained and numbered 1, 6 and 7 as identified on the Tree Location Plan must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:

- i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by prepared by Tree Management, dated 30/9/2019 (TRIM: D07764856).
- ii) For the duration of construction works, in accordance with Tree Protection Plan prepared by prepared by Tree Management, dated 30/9/2019 (TRIM: D07764856).
- iii) Tree protection fencing for the trees to be retained numbered 1, 6 and 7 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.
- iv) 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.
- v) The installation of all required tree protection fencing must have a TPZ radius as listed in the Table below:

Tree number	TPZ radius from centre of tree
1	As indicated on TPP- 2.1m
6	3.5 x 5m
7	3.1 x4.9m

- vi) Tree crown protection measures are required and must be installed by the AQF 5 project arborist.
- vii) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.

- viii) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- ix) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- x) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

REQUIREMENTS DURING CONSTRUCTION**27. Construction Work Hours**

All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.

No work is to be undertaken on Sundays or public holidays.

28. Environmental Management

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

29. Street Sweeping

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

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

30. Council Property

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

Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.

31. 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.

32. Landfill

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

33. Excavated Material

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

34. 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.

35. Compliance with Construction Management Plan

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

36. Unexpected Finds

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

37. Waste Management Details

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

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

storage of any waste and must be kept clear of obstructions during all construction works.

- g) Additionally, written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:
- i) The identity of the person removing the waste.
 - ii) The waste carrier vehicle registration.
 - iii) Date and time of waste collection.
 - iv) A description of the waste (type of waste and estimated quantity).
 - v) Details of the site to which the waste is to be taken.
 - vi) The corresponding weighbridge tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
 - vii) Whether the waste is expected to be reused, recycled or go to landfill.

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

- h) Construction works must not cause or necessitate any discontinuance, disruption or interference with the on-going waste management system of any occupied lot.

38. Bushland Protection During Construction

To ensure the protection of the restricted development area during construction, the applicant must:

- a) Install 1.2-metre-high chain wire fencing (or similar) along the boundary of the restricted development area General Arrangement Plan in the Addendum to Advanced Treescape Consulting's Arboricultural Impact Assessment Report (dated 21/8/19).

Note: Actions such as tree removal, understorey slashing or mowing, removal of dead trees within the restricted development area would likely impact upon offset planting. Such action would qualify as illegally picking or disturbing vegetation and could render any person who carried out such action as LIABLE FOR PROSECUTION.

39. Prohibited actions within the fenced tree protection zone

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

- a) Soil cutting or filling, including excavation and trenching.
- b) Soil cultivation, disturbance or compaction.
- c) Stockpiling storage or mixing of materials.
- d) The parking, storing, washing and repairing of tools, equipment and machinery.
- e) The disposal of liquids and refuelling.

- f) The disposal of building materials.
- g) The siting of offices or sheds.
- h) Any action leading to the impact on tree health or structure.

40. 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 tree protection measures and condition for trees numbered 1, 6 and 7 on the approved plans.

41. Approved Works within Tree Protection Zone incursions

- a) 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:
 - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 50mm.
- b) The replacement driveway must be constructed using the following process:
 - i) Demolition must be done manually using small plant machinery only, no larger than a jackhammer.
 - ii) The sub-grade must be raised as indicated on page 4 of the amended plans provided by Acor consultants dated 12/9/2019 (TRIMD07737646) which ranges from 200mm-300mm between chainage 10.000-35.000 using gap-graded material in accordance with Australian Standards AS4419-2003 Soils for landscaping and garden use.
 - iii) A layer of geotextile or rubber underlay must be installed between the sub-grade and concrete.
- c) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained numbered 1 sensitive construction techniques in the form of screw pilings or piers, cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.
- d) Approved excavations within the Tree Protection Zone of trees to be retained numbered 1 not associated with installation of services must be undertaken as follows:
 - i) Excavations for the construction and/or installation of the driveway piers in the Tree Protection Zone of tree to be retained numbered 1 on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning.
- e) No changes of grade within the Restricted Development Area of Tree Protection Zone of trees to be retained numbered 1 on the approved plans, are permitted.
- f) To minimise impacts within the Tree Protection Zone (TPZ) of tree numbered 1 on the approved plans, the installation of services must be undertaken as follows:

- i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
- ii) The installation of any underground services which either enter or transect the designated TPZ must utilise directional drilling only

42. Building materials and Site Waste

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

43. Fulfilment of BASIX Commitments

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

44. No Stopping Signs (Local Traffic Committee approval)

"No Stopping" signs are to be installed at the inner corner of Burdett Street with King Road subject to approval from Hornsby Local Traffic Committee, before the issue of an Occupation Certificate. The no stopping zone shall be around 20 metres long in length.

45. External Lighting

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

46. Safety and Security

This site must include the following elements:

- a) Automatic lighting is to be provided to pathways, building entries, driveways and common external spaces.
- b) Security deadlocks are to be provided to the main entry door and the individual room doors.

47. Retaining Walls

All required retaining walls must be constructed as part of the development.

48. Fire Safety Statement – Final

In accordance with the Environmental Planning & Assessment Regulation 2000, upon completion of the building and where fire safety measures have been implemented, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building

49. Operational Signage

Prior to issue of the Occupation Certificate, the Principal Certifier shall be satisfied that appropriate signage has been erected as follows:

- a) Within the External Terrace clearly stating that use of the External Terrace area is prohibited between 10pm to 7am Monday to Saturday, and from 10pm to 8am on Sundays.
- b) Within the External Terrace clearly stating a maximum of 12 people are permitted to use the External Terrace any one time within the approved hours of use, excluding persons travelling directly between the boarding house and the lift/stairs leading to the basement carpark.
- c) Within the Internal Communal Lounge clearly specifying a maximum of 12 people are permitted within the Internal Communal Lounge at any one time.
- d) A sign no larger than a standard A3 sheet has been erected on the front, northern elevation of the building in a prominent location that is clearly visible at ground floor displaying the contact details for the registering of any complaints regarding noise or resident conduct.
- e) House rules regarding noise within the External Terrace and Internal Communal Lounge in a prominent position.
- f) Speed limited signage of 10km/hr at the entrance to the driveway and within the car park.

50. Acoustic Mitigation

Prior to the issue of the Occupation Certificate, the Principal Certifier shall be satisfied that the development has been designed and constructed in accordance with Section 5.2 of the DA Acoustic Assessment, prepared by Acoustic Logic, dated 28/10/21 reference 20211120.1/2810A/R1/RF (TRIM: D08288534) to mitigate potential noise intrusion from the Pacific Motorway and that the following LAeq levels are not exceeded:

- a) In any bedroom – 35dB(A) at any time between 10pm and 7am.
- b) Anywhere else in the building (other than a garage, kitchen, bathroom or hallway) – 40 dB(A) at any time.

51. Acoustic Treatments

Prior to the issue of the Occupation Certificate, the Principal Certifier shall be satisfied that the development has been constructed in accordance with the DA Acoustic Assessment, prepared by Acoustic Logic, dated 28/10/21 reference 20211120.1/2810A/R1/RF (TRIM: D08288534) and the following requirements:

- a) A solid imperforate 1.8m high fence has been installed along the western and southern boundaries of the development.
- b) External walls of the development are of masonry construction.
- c) Soft closure hinges have been fitted to all gates installed at the development.

- d) Fixed windows have been installed in the Communal Lounge on the Ground Floor northern elevation of the building to minimise noise breakout from the Communal Lounge.
- e) A noise limited audio system has been installed to the Communal Lounge which is connected to a supplied television providing the only amplified sound production source within that room and is appropriately limited to a uniform sound pressure level of 75dB(A) when measured 1 metre from the speaker/s.

52. Asbestos Clearance Certificate

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

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

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

54. 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.

55. Creation of Easements

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

- a) The creation of an appropriate *"Positive Covenant"* and *"Restriction as to User"* over the constructed on-site detention/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;
- b) 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;

56. 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.

57. Waste Management Details

The following waste management requirements must be complied with:

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

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

- b) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, all external works including but not limited to the vehicular crossover and footpath, must be completed. For staged occupation (where the Occupation Certificate will be limited to a portion of the development):

- i) Prior to the issue of the occupation certificate or the use commencing, whichever is earlier, for each stage of the development the waste management system (including but not limited to the bin storage room, temporary bin holding bay, all bin carting routes) for that stage, must be completed.
- ii) Once a stage has been occupied or the use has commenced, whichever is earlier, all facilities necessary for the on-going waste management for that stage, must be maintained in a condition acceptable to Council during all subsequent construction stages.

- c) A report must be prepared by an appropriately qualified person, certifying the following:

- i) A comparison of the estimated quantities of each demolition and construction waste type against the actual quantities of each waste type.

Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report

- ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.

Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.

- iii) All demolition and construction waste was taken to site(s) that were lawfully permitted to accept that waste.

- d) The bin carting routes must be devoid of any steps.

Note: Ramps between different levels are acceptable. The use of the public footpath is not acceptable.

- e) Each boarding room must be provided with two separate 10-20 litre containers (one each for general waste and recyclable materials) installed in a cupboard in the kitchen.
- f) There must be a dedicated communal bulky waste storage area of at least 8 square metres.
- g) Space must be provided for either individual compost containers for each unit or a communal compost container.

Note: The location of the compost containers should have regard for potential amenity impacts.

- h) All lockable doors and gates, both pedestrian and vehicular, that are required to be opened by Council's waste collection contractor in the provision of waste collection services, must be able to be opened using a pin code. That is, locks requiring keys, remote controls, key fobs etc are not acceptable.
- i) The bin storage room(s) at the basement carpark level must include water or a hose for cleaning, graded floors with drainage to sewer, sealed and impervious surfaces, robust door(s), adequate lighting and ventilation, and must be lockable.
- j) The bin storage room(s) at the basement level must be accessible by persons with a disability while comfortably housing all of the bins required to be stored there.
- k) The temporary bin holding bay(s) at the ground level must include sealed and impervious surfaces, robust door(s), adequate lighting and ventilation.

58. Final Certification

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

- a) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- c) Dates, times and reasons for all site attendance.
- d) All works undertaken to maintain the health of retained trees.
- e) Details of tree protection zone maintenance for the duration of works.

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

OPERATIONAL CONDITIONS

59. Use of Premises

The development approved under this consent shall be used for the purpose of a 'Boarding House' as defined by Hornsby Local Environmental Plan 2013 and not for any other purpose

without Council's separate written consent. The use of the premises must comply with the following requirements:

- a) Is wholly or partly let in lodgings.
- b) Provides lodgers with a principal place of residence for 3 months or more.
- c) Includes 11 boarding rooms with kitchen and bathroom in each boarding room.
- d) Accommodates a maximum of 13 lodgers at any one time.

Note: The premises must not be used as backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment as defined by Hornsby Local Environmental Plan 2013.

60. Boarding House Management

The use of the premise must be managed in accordance with the Plan of Management as approved under this development consent and the following:

- a) Any complaints regarding the operation of the boarding house must be directed to the Boarding House managing agent who will be appointed and responsible for the operation and administration of the boarding house. The Managing agent must record details recorded in a log book with the date and time of the complaint, contact details of the person making the complaint and the nature of the complaint. This logbook must be readily available to Council.
- b) Contact details for the Boarding House Managing agent must be permanently displayed at the front of the property and be visible from the road.

61. Boarding House Register

Within 6 months of the commencement of operation of the boarding house the proprietor of the boarding house must notify the Commissioner for Fair Trading, Department of Finance, Services and Innovation of the boarding house particulars in accordance with the department's guidelines.

62. Council Inspection

Following successful registration and within twelve months registration of the boarding house with the Commissioner, Fair Trading, Department of Finance, Services and Innovation, the proprietor of the boarding house must notify Council of the existence of the boarding house and arrange an initial inspection by Council's Building Certifications Team.

Note: Council's Building Certifications team can be contacted via customer service on 9847 6760.

63. Fire Safety Statement - Annual

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

64. Car Parking

All car parking must be constructed and operated in accordance with Australian Standard AS 2890.1-2004 Off Street Car Parking and Australian Standard 2890.2 - 2002 – Off Street Commercial vehicle facilities and the following requirements:

- a) All parking areas and driveways must be sealed to an all-weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas must be used solely for nominated purposes.
- c) All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- d) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.
- e) All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.
- f) Bicycle parking spaces are to be designed in accordance with AS 2890.3-2015 Bicycle parking facilities
- g) Motorcycle parking spaces are to be designed in accordance with AS/NZS 2890.1:2004.

65. Noise management – General

To ensure a reasonable level of acoustic amenity is provided to nearby residential premises, the operation of the development must be carried out in accordance with the Council approved Plan of Management as amended in accordance with the requirements of this consent and the following requirements:

- a) All noise generated by the development (excluding mechanical plant) shall not cause a sound pressure level measured as the $LA_{eq\ 15\ minute}$ that exceeds the background level (measured as the $LA_{90\ 15\ minute}$ in the absence of the noise under consideration) by more than 5dB(A) at any time.
- b) The external terrace must not be used between the hours of 10pm to 7am Monday to Saturday, and between 10pm and 8am on Sunday and Public Holidays.
- c) The doors between the indoor communal lounge and the ground floor external terrace on the northern elevation of the development must be locked at 10pm each day and remain locked until 7am Monday to Saturday, and until 8am on Sunday and Public Holidays.
- d) No more than 13 people may occupy the external terrace at any time within the permitted hours of use.
- e) No more than 13 people may occupy the indoor communal lounge at any time.
- f) Visitors and guests are not permitted on the premises prior to 7am Monday to Saturday, and prior to 8am on Sundays and Public Holidays. All visitors must vacate the premises by 10pm on any day.
- g) Amplified music must not be used within the external terrace at any time.

- h) Amplified music must be played through the in-house speaker system in the communal lounge. Speakers must not be oriented toward the external terrace at any time.

66. Noise – Mechanical Plant

- a) The cumulative noise generation from operation of mechanical plant, when assessed as a LA_{eq} 15 minute at any affected point on or within any residential premises, must not exceed the following Sound Pressure Levels:
 - i) 7am to 6pm, 53dB(A).
 - ii) 6pm to 10pm, 43dB(A).
 - iii) Between 10pm to 7am (8am on Sundays), 38dB(A).
- b) The above emission limits include any corrections for audible characteristics as required by the NSW Environment Protection Authority's *Noise Policy for Industry*, current at the time of this consent ("the EPA's *Noise Policy for Industry*").
- c) Within 90 days of occupying the development, an acoustic assessment is to be carried out by a suitably qualified acoustic consultant and an acoustic report submitted to the Council demonstrating that the combined noise levels from operation of all mechanical plant and all processes within the building, do not exceed 38dB(A) between 10pm and 7am when measured at the boundary of the closest residential receiver premises.
- d) Should the acoustic assessment find that noise levels exceed the above criteria, suitable recommendations for appropriate mitigation measures must be provided in the acoustic report and shall be implemented upon written approval of the Council.
- e) Terms used in this condition have the same meaning as in the EPA's *Noise Policy for Industry*

67. Maintenance of Acoustic Mitigation Measures

All acoustic mitigation measures, including boundary fencing and noise limited audio devices, must be maintained for the duration of the development. Responsibility for the maintenance of all acoustic mitigation measures, including acoustic fences, is the sole responsibility of the owner of the development, and shall continue into perpetuity should the premises be sold in the future, unless otherwise approved by Council.

68. Waste Management

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

- a) The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.
- b) The development must operate in full compliance with Council's waste management collection requirements.
- c) There must be a sufficient number of bins on site to contain the volume of waste and recycling expected to be generated between collection services.

- d) A site caretaker must be employed and be responsible for moving bins where and when necessary, washing bins and maintaining waste storage areas and signage, managing the communal composting area and worm farm, managing the bulky item storage area, managing the clothing/donation bins, arranging collections where the service is not provided by Council (e.g. clothing bins, e-waste), arranging the prompt removal of dumped rubbish, arranging for shopping trolleys to be promptly returned to the local shopping centre(s), ensuring the recycling bins are free of contamination (which includes but is not limited to garbage, plastic bags, clothing, etc.), addressing overflowing bins and pest infestations, liaising with Council on waste matters, and ensuring all residents are informed and kept up to date on the use of the waste management system. The site caretaker must be employed for a sufficient number of hours each week to allow all waste management responsibilities to be carried out to a satisfactory standard.
- e) Bins must not be permanently stored in the ground level temporary bin holding bay. All mobile garbage bins that are placed in the ground level temporary bin holding bay for collection must be taken back to their bin storage room on the same day of service
Note: bins are to be placed in the holding area the day before the collection day, then returned to the basement bin storage rooms promptly after servicing.
- f) No waste storage containers are to be located or placed outside of the approved waste storage area at any time except for collection purposes.
- g) The nominated kerbside collection point is to be utilised to facilitate the collection of green waste bins for the development. All bins that are left on the kerbside for collection must be taken back within the property boundary on the same day of service.
- h) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin. Signage is also to be provided in locally appropriate culturally and linguistically diverse (CALD) community languages.
- i) The Boarding House Plan of Management is to clearly set out the management responsibilities for the developments waste management system.

CONDITIONS OF CONCURRENCE – Transport for NSW

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

69. TfNSW 1

The subject property abuts a Declared Freeway (Pacific Motorway) as shown by blue colour on attached Aerial – “X”. All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Pacific Motorway boundary.

70. TfNSW 2

Access is denied across the boundary of the subject property to the Pacific Motorway.

71. TfNSW 3

The proposed traffic light system is to be designed and positioned so that it is not visible by motorists on the Pacific Motorway.

72. TfNSW 4

The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Documents should be submitted to Development.Sydney@rms.nsw.gov.au.

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

73. TfNSW 5

The proposed development should be designed such that road traffic noise from Pacific Motorway is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 (3) of State Environmental Planning Policy (Infrastructure).

74. TfNSW 6

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

75. TfNSW 7

All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.

76. TfNSW 8

A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with *the Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

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

Long Service Levy

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

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

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

Tree and Vegetation Preservation

A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation protected under the Hornsby Development Control Plan 2013 without the authority conferred by a development consent or a permit granted by Council.

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

Tree protection measures and distances are determined using the Australian Standard AS 4970:2009, "Protection of Trees on Development Sites".

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

Disability Discrimination Act 1992

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

Covenants

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

Dial Before You Dig

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

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

2 DA/133/2021 - CONSTRUCTION OF A 11 ROOM BOARDING HOUSE ON PROPOSED LOT A - 134 BURDETT STREET, WAHROONGA

EXECUTIVE SUMMARY

- DA No:** DA/133/2021 (9 February 2021)
- Description:** Construction of a boarding house consisting of 11 rooms and 6 parking spaces on proposed Lot A
- Property:** Lot 7 DP 263708, No. 134 Burdett Street, Wahroonga (Proposed Lot A)
- Applicant:** MacKenzie Architects International
- Owner:** Mosam Pty Ltd
- Estimated Value:** \$1,230,000
- Ward:** B Ward
- The proposal generally complies with State Environmental Planning Policy (Affordable Rental Housing) 2009, the Hornsby Local Environmental Plan 2013, and the Hornsby Development Control Plan 2013.
 - A total of 18 submissions have been received in respect of the application.
 - The applicant has submitted a Clause 4.6 request to contravene Clause 30AA of State Environmental Planning Policy (Affordable Rental Housing) 2009 which stipulates that a consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms. The submission is considered well founded and is supported.
 - 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 as a deferred commencement.

RECOMMENDATION

THAT Council assume the concurrence of the Secretary of the Department of Planning and Environment pursuant to Clause 4.6 of the Hornsby Local Environmental Plan 2013 and approve Development Application No. DA/133/2021 for construction of a boarding house consisting of 11 rooms and 6 parking spaces on proposed Lot A at Lot 7 DP 263708, No. 134 Burdett Street, Wahroonga as a deferred commencement pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent detailed in Schedule 1 of LPP Report No. LPP16/22.

BACKGROUND

On 9 October 2019, Council approved DA/248/2019 for demolition of structures and Torrens title subdivision of one lot into two and construction of a driveway.

On 18 March 2020, Council approved DA/248/2019/A for modification to the approved subdivision plan and creation of easements.

On 25 January 2022, Council approved DA/248/2019/B for modification to the approved easements to accommodate an updated driveway design, easement for overhang, stormwater drainage system and garbage collection to facilitate DA/131/2021 and DA133/2021. The updated subdivision design facilitates the construction of the on-site detention system at subdivision stage.

The subdivision creating the 'proposed lots' is not yet registered.

SITE

Proposed Lot A fronting the southern side of Burdett Street, Wahroonga would have an area of 533m² (excluding the access handle, garbage easement and reciprocal right-of-way). The site adjoins the Sydney-Newcastle Freeway (M1) to the east.

The site currently contains an existing dilapidated two storey dwelling house which would be demolished as part of DA/248/2019/B.

Proposed Lot A experiences a fall of 7.4 metres towards the northern front boundary.

The site is bushfire prone. Vegetation on the site has been mapped as Narrow-leaved Scribbly Gum Woodland.

The site is not burdened by any easements or restrictions.

The site does not contain a heritage listed item, is not in the vicinity of a heritage listed item and is not located within a heritage conservation area.

PROPOSAL

The application proposes construction of a two-storey boarding house containing 11 boarding rooms (10x single rooms and 1x double room) for 12 lodgers, communal room and a basement car park for a total of 6 cars, 3 motorcycle spaces and 3 bicycle spaces.

The ground floor of the boarding house includes 4 single bedrooms, each with its own kitchen and bathroom. An internal bin room and external temporary bin collection room is located on the ground floor level.

The first floor comprises 6 single bedrooms and 1 double bedroom with each room including a kitchen and bathroom. A communal lounge room and terrace with BBQ area would be located on the first-floor level towards the front of the complex.

The application does not include a Managers residence and a Managing Agent would be employed to manage the boarding house.

No trees would be removed as part of this application.

ASSESSMENT

The development application has been assessed having regard to the *Greater Sydney Region Plan – A Metropolis of Three Cities*, the *North District Plan* and the matters for consideration prescribed

under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

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

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

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

The proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and the North District Plan, by providing affordable rental housing in the region.

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 site is zoned R2 Low Density Residential pursuant to the Land Use Table of the HLEP. The proposed development is defined as a boarding house and is permissible within the R2 Low density residential zone.

The objectives of the R2 zone are:

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

The Standard Instrument definition of a boarding house was amended on 26 November 2021 following the consolidation of State and Environmental Policy (Affordable Rental Housing) 2009 (SEPP ARH) within State and Environmental Policy (Housing) 2021. The amendment to the definition requires boarding houses to be either used to provide affordable housing, and if not, carried out by or

on behalf of the Land and Housing Corporation managed by a registered community housing provider.

Notwithstanding, Clause 1.8A Savings Provision of the HLEP applies as the development application was lodged prior to this amendment. Accordingly, the below definition applies in this instance.

‘boarding house’ means a building that:

- (a) *Is wholly or partly let in lodgings, and*
- (b) *Provides lodgers with a principal place of residence for 3 months or more, and*
- (c) *May have shared facilities, such as a communal living room, bathroom, kitchen, or laundry, and*
- (d) *Has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers’ accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment’.

Subject to a recommended operational condition requiring that lodgers reside within the rooms for a minimum of 3 months; and that the boarding house buildings be wholly or partly let in lodgings, the proposed development would meet the requirements of the definition of a ‘boarding house’ in the HLEP.

2.1.2 Height of Buildings

Clause 4.3 of the HLEP provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings Map. The maximum permissible height for the subject site is 8.5m. The proposed development would have a maximum height of 6.5m above the existing ground level and would comply with this requirement.

2.1.3 Boarding Houses in Zone R2 Low Density Residential

On 28 February 2019, amendments were made to SEPP ARH, with the inclusion of Clause 30AA which states that a consent authority must not grant development consent to a boarding house on land within R2 Low density residential zone or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Council received legal advice from the Applicant's Barrister which confirmed that as the application proposes approval by deferred commencement subject to the registration of Lot A and Lot B approved as part of DA/248/2019/B, Council has certainty that both boarding houses would be located on separate lots and meet Clause 30AA of SEPP ARH. Council concurs with the applicant's legal advice.

The proposed development includes the provision of 11 boarding rooms and meets the provisions of Clause 30AA of SEPP ARH.

2.1.4 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 applicant has submitted a Clause 4.6 request to contravene the 12-room boarding house development standard contained in Clause 30AA of State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH 2009).

Clause 30AA of the SEPP states that:

A consent authority must not grant development consent to a boarding house on land within the R2 Low density residential zone or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

2.1.4.1 Unreasonable or Unnecessary

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

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

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

The written request prepared by Chapman Planning provides justification for the exceedance in 12 bedrooms by attempting to demonstrate that the objectives of the development standard, and the objectives of the zone are achieved notwithstanding non-compliance with the development standard.

The written request provides justification as follows:

- Pursuant to clause 4.6(3)(a) of the LEP, the contravention of the boarding houses in R2 Low Density Residential zones is acceptable in the circumstances of this case and compliance with the development standard is considered both unreasonable and unnecessary because the proposed boarding house development, including the contravention, is consistent with the explanation of intended effect of Clause 30AA Boarding houses in Zone R2 Low Density Residential, notwithstanding non-compliance with the standard.
- The primary intention of the boarding houses in R2 Low Density Residential zones is detailed in the Explanation of Indented Effect of the introduction of Clause 30AA as follows:
 - To ensure that the built form of boarding house development in the R2 zone is compatible with the built form of other development in the local area.
- The Explanation of Intended Effect also details the following secondary objective of the Clause:
 - A maximum room number for boarding houses is considered to assist in ensuring that the amenity impacts of boarding house development on adjoining And nearby properties, such as overlooking, overshadowing and car parking impacts, are able to be better managed.
- The development proposal achieves the above intention and objective of Clause 30AA of SEPP ARH 2009 based on the following:
 - The proposed boarding house development is consistent and compatible with the design, form and scale of development in the locality. The immediate locality contains a diversity of building forms with 1 – 2 storey dwellings and multi-dwelling housing developments within the vicinity of the site. The development proposal, being a 2-storey form with a pitched roof, will reflect the form and scale of development in the locality.
- The proposed materials and finishes and landscape works are consistent with adjoining development and compatible with the planning controls under SEPP ARH 2009, noting the proposal satisfies the Character Test of Clause 30A of SEPP ARH.
- The proposed built form of the boarding houses on Lots A and B is compatible with development in the immediate locality. The proposed built form - 2 storeys is compatible with the existing building character in the immediate locality. The boarding house presents to the street as a similar form and scale to surrounding 2 storey low density development within its visual catchment. Further, the form and scale of development is consistent with the streetscape and desired future character.
- The subject site is zoned R2 - Low Density Residential under the Hornsby Local Environmental Plan 2013 and boarding houses are a permissible land use. The planning controls allow 2-storey development of maximum 8.5m height and the overall scale and form of the proposed development complies with the density controls applying to the subject site pursuant to the Hornsby LEP 2013.
- The proposed design mitigates amenity impacts to adjoining properties in terms of overlooking, overshadowing and car parking based on the following assessment:
 - The built form has been located on the allotment in accordance the setback controls for dwelling houses contained in the Hornsby Development Control Plan,

- *The boarding house provides adequate car, bicycle and motorcycle parking, and the orientation of the subject site and location adjacent to the M1 Motorway minimises the potential for unreasonable solar access impacts to neighbouring properties.*
- *The potential overlooking impacts resulting from the development are mitigated by the design of offset windows and the boarding house has communal areas at second floor level orientated to the north facing Burdett Street to mitigate privacy impacts to the adjoining property at 132 Burdett Street, Wahroonga.*
- *The development application is accompanied by shadow diagrams prepared by Mackenzie Architects International, which confirm that the proposal meets the solar access and overshadowing requirements contained in the Hornsby DCP.*
- *The traffic generated by the development proposal will be minimal given the level of parking provided and the site's location within an accessible area, being within 75m of regularly serviced public bus stops, and that bicycle and motorcade parking is provided. The traffic generation will not have any unacceptable or unreasonable traffic implications the surrounding road network and local road, being Burdett Street.*
- *It is unreasonable to require compliance with the development standard noting the non-compliance is the result of the approved subdivision of 134 Burdett Street (under DA/248/2019/B) not being registered. On registration of the approved plan of subdivision, the proposed boarding house development will comply with Clause 30AA of SEPP ARH 2009.*
- *Enforcing strict compliance with Clause 30AA in this instance will thwart the timely economic development of the land. The resulting development proposed under this application, when assessed in conjunction with that on Lot B, is compatible with the total impacts of development anticipated by Clause 30AA and therefore compatible with the low-density residential zone.*
- *Further, compliance with the development standard is unnecessary, noting the proposed boarding house is compatible with neighbouring and nearby built forms, and that the proposed variation will not result in unreasonable amenity impacts on adjoining properties with respect to overshadowing, overlooking or traffic and car parking.*
- *Furthermore, the proposal, including the variation to the boarding houses in the R2 Low Density Residential zone development standard meets the intention and objectives of the standard as contained in the Explanation of Intended Effects, notwithstanding the numerical contravention.*

Council considers that the applicant's written request sufficiently identifies that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard. The request adequately demonstrates that compliance with the maximum number of rooms development standard is unreasonable and unnecessary in this instance and subject to registration of the subdivision, compliance would be achieved.

2.1.4.2 Environmental Planning Grounds

In addition to demonstrating that compliance is unreasonable or unnecessary, Clause 4.6(3)(b) of the HLEP requires that there are sufficient environmental planning grounds to justify contravening the development standard. In demonstrating that sufficient environmental planning grounds exist, it must

be demonstrated that the planning grounds are particular to the circumstances of the development on the subject site (summarised from *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 [60]).

In demonstrating the environmental planning grounds the written request states:

- *The proposed boarding house on Lot A has been designed with 11 boarding rooms in accordance with the numerical requirement contained in Clause 30AA of SEPP ARH 2009. The proposed variation is the result of the approved subdivision of Lot A and Lot B not yet being registered. The proposed boarding houses on both Lot A and Lot B individually are consistent with the density of the development envisaged under Clause 30AA.*
- *The variation is not the result of providing additional density on the site beyond that envisaged by clause 30AA but rather the timing of the development, noting the subdivision under DA/248/2019/B has not yet been registered. The proposed development on Lot A, when accompanied by the proposed development on Lot B, will provide 22 boarding rooms on a single lot. Following the registration of the subdivision both boarding house developments will comply with the numerical requirement.*
- *Despite the non-compliance with the boarding houses in Zone R2 Low Density Residential, the proposal is consistent with the following aims of the Hornsby LEP 2013 found at clause 1.2(2):*
 - *1.2(2)(b) - The proposed boarding house development represents an orderly and sustainable land use at the subject site and within the R2 Low Density Residential zone, noting the proposed built form is compatible with neighbouring and nearby development and that the proposal contributes to the provision of affordable housing to meet the housing needs of the community.*
 - *1.2(2)(c) - The proposed boarding house contributes to the range and availability of housing types within the locality and wider Hornsby local government area, providing affordable housing within an accessible area to meet current and future housing demand.*
- *Despite the non-compliance with the boarding houses in the R2 Low Density Residential zone the proposal is consistent with the following objects of the Environmental Planning and Assessment Act 1979 as follows:*
 - *1.3(c) - The proposal is an orderly and economic use of the subject site and the development is consistent with the intent and objectives of the boarding houses in Zone R2 Low Density residential standard, with a proposed built form that is compatible with the desired future character of the locality, on an allotment that is capable of accommodating a boarding house development. This clause 4.6 request facilitates the orderly and economic development of the land, allowing a built form on the site prior to its subdivision, which would otherwise comply with the development standard, if sites were developed individually.*
 - *1.3(g) - The design of the proposal is a good design outcome for the subject site and within the R2 Low Density Residential zone as the proposal has been designed in accordance with the controls and design requirements for dwelling houses contained in the Hornsby LEP 2013, and is therefore a compatible and consistent 2-storey built form in the locality.*

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.

As detailed in the request, the variation does not result in additional density on the site beyond that envisaged by clause 30AA but rather the timing of the development, noting the subdivision under DA/248/2019/B has not yet been registered. It is therefore considered that the written request adequately demonstrates compliance with the clause and is acceptable in this regard.

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

2.1.4.3 Public Interest and Clause 4.6(4)

Clause 4.6(4) states that development consent must not be granted for development that contravenes a development standard unless:

- (a) *The consent authority is satisfied that -*
 - (i) *The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).*
 - (ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*
- (b) *The concurrence of the Planning Secretary has been obtained.*

With regard to (a)(i), the written requests are considered to adequately address the matters required to be demonstrated as outlined above.

With regard to (a)(ii), the proposed development is considered to be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

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

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

Accordingly, it is considered that the Request satisfactorily responds to the relevant matters required to be addressed under Clause 4.6 and that the Panel, as consent authority, may rely upon the Request and grant development consent to the DA. Should the Panel resolve to approve the DA, it should also provide a statement in the reasons for approval that it has satisfied itself of the matters in Clause 4.6(4).

2.1.5 Heritage Conservation

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

2.1.6 Earthworks

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

The development would require excavation of a maximum depth of 6 metres to accommodate the basement level at the rear of the boarding house. The amount of excavation at the rear of the basement is the greatest as a result of the significant slope of land towards the front of the site.

Council raises no objections to the proposed earthworks as it is considered that the adjoining properties access handle would be unaffected by the proposal with regard to stormwater flow and soil stability and the excavation would reduce the bulk and scale of the building at the rear to neighbouring properties.

Subject to a condition requiring a dilapidation report for the adjoining access handle at No. 132A Burdett Street, the proposal is considered acceptable in this regard.

2.2 State Environmental Planning Policy (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) was repealed on 26 November 2021 and the provisions of SEPP ARH have been consolidated into Part 2 of the State Environmental Planning Policy (Housing) 2021 (Housing SEPP). The Housing SEPP includes a savings provision as follows:

"1 Definitions

In this Schedule—

commencement date means the day on which this Policy commenced.

repealed instrument means an instrument repealed under Chapter 1, section 10.

2 General savings provision

The former provisions of a repealed instrument continue to apply to the following—

- (a) *A development application made, but not yet determined, on or before the commencement date.*
- (b) *A concept development application made, but not yet determined, on or before the commencement date.*
- (c) *A staged development application made subsequent to a concept development application approval granted on or before the commencement date.*
- (d) *A development consent granted on or before the commencement date.*
- (e) *An environmental impact statement prepared in compliance with an environmental assessment requirement that is—*
 - (i) *Issued by the Planning Secretary on or before the commencement date.*

(ii) *In force when the statement is prepared.”*

Accordingly, as the development application was lodged before the commencement of the Housing SEPP, the provisions of SEPP ARH in force at the time of lodgement apply to this proposal.

Division 3 of Part 2 of SEPP ARH permits development for the purposes of “boarding houses” on land in R2 Low Density Residential zone if the land is within an “accessible area”. Clause Nos. 29-30A provide the development standards for the assessment of a boarding house.

Accordingly, the application has been assessed against the requirements of the SEPP ARH. The Policy includes development standards and applies criteria for boarding house development.

The following table sets out the proposal’s compliance with the prescriptive standards of the Policy:

SEPP Affordable Rental Housing Clause 29: Standards that cannot be used to refuse consent			
Control	Proposal	Requirement	Compliance
Site Area	533m ²	N/A	N/A
Floor Space Ratio <i>A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</i> <ul style="list-style-type: none"> <i>The existing maximum floor space ratio for any form of residential accommodation permitted on the land.</i> 	N/A Floor area is 338m ² which marginally does not comply with Councils 330m ² control	<i>HLEP</i> does not incorporate any floor space ratio development standard for the R2 Low Density Residential zone	N/A
Building Height	5.5m	8.5m	Yes
Landscape Area	218.5m ² of the site is landscaped which equates to 30% of the site.	Landscape treatment of the front setback area is compatible with the streetscape	Yes
Private Open Space for Lodgers	21m ² with a minimum dimension of 3m	>20m ² with a minimum dimension of 3m	Yes
Car Parking	6 spaces	6 spaces (@ 0.5 spaces per room)	Yes
Min. size of boarding room (Gross Floor Area)			

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<i>Single lodger (Room 1)</i>	12.1m ²	Min. 12m ²	Yes
<i>Single lodger (Room 2)</i>	12.1m ²	Min. 12m ²	Yes
<i>Single lodger (Room 3)</i>	12m ²	Min. 12m ²	Yes
<i>Single lodger (Room 4)</i>	12.3m ²	Min. 12m ²	Yes
<i>Single lodger (Room 5)</i>	12m ²	Min. 12m ²	Yes
<i>Single lodger (Room 6)</i>	123.5m ²	Min. 12m ²	Yes
<i>Single lodger (Rooms 7)</i>	12.5m ²	Min. 12m ²	Yes
<i>Single lodger (Rooms 8)</i>	12.1m ²	Min. 12m ²	Yes
<i>Single lodger (Rooms 9)</i>	12.1m ²	Min. 12m ²	Yes
<i>Single lodger (Rooms 10)</i>	12.1m ²	Min. 12m ²	Yes
<i>Double lodger (Rooms 11)</i>	16m ²	Min. 16m ²	Yes
Max. size of boarding room excluding kitchen and bathroom (GFA)	16m ²	25m ²	Yes
Private kitchen and bathroom facilities	All rooms contain private kitchens and bathroom facilities	A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room	Yes

SEPP Affordable Rental Housing Clause 30: Standards for boarding houses			
Control	Proposal	Requirement	Compliance
Communal Living area	A communal living room is proposed to the first floor with an adjoining outdoor terrace	At least 1 communal living area if a boarding house has more than 5 boarding rooms	Yes
Number of Adult Lodgers Per Room	1 lodger per single room 2 lodgers per double room	Max. 2 lodgers per room	Yes

Bathroom and Kitchen Facilities	Each room is self-contained with a kitchen and bathroom	Adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger	Yes
Boarding House Manager	Manager not required as max 12 lodgers	Boarding house manager for 20 or more lodgers	N/A
Bicycle and Motorcycle Parking	Adequate parking space for 3 bicycles and 3 motorcycles within the basement	1 bicycle space and 1 space for motorcycle, for every 5 boarding rooms	Yes

Hornsby Development Control Plan 2013			
Control	Proposal	Requirement	Compliance
Setbacks			
- <i>Front</i>	7.3m	6m	Yes
- <i>Side (west)</i>			
<i>Ground floor</i>	1.5m	900mm	Yes
<i>First floor</i>	1.5m	1.5m	Yes
- <i>Side (east)</i>			
<i>Ground floor</i>	6.7m	900mm	Yes
<i>First floor</i>	6.7m	1.5m	Yes
- <i>Rear (split level)</i>			
<i>Ground floor</i>	4m	3m	Yes
<i>First floor</i>	>8.5m	8m	Yes

As detailed in the above table, the proposed boarding house complies with the relevant prescriptive standards within the SEPP ARH and meets Council's setback requirements. Below is a brief discussion concerning the proposal and the mandatory and prescriptive provisions of SEPP ARH.

2.2.1 Accessible Area

Clause 27 of SEPP ARH requires the subject site to be located within an accessible area.

Clause 4 of the SEPP ARH defines an "Accessible Area" as follows:

accessible area means land that is within:

1. 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or

2. *400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or*
3. *400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.*

The site is located approximately 75 metres to the '575' route bus stops on either side of Burdett Street, serviced by *Transport NSW* to and from Hornsby Railway Station and nearby shopping centres. A search of the *Transport NSW* website has revealed that at least one bus per hour would service the bus stops each hour between 6am-9pm Monday to Friday and 8am-6pm Saturday and Sunday.

The site would meet the accessible area criteria applicable for boarding house development in accordance with Clause 27 of SEPP ARH.

2.2.2 Density

SEPP ARH stipulates that the floor space ratio of any development for a boarding house should not exceed the maximum permissible floor space ratio for any form of residential accommodation in the zone.

The HLEP does not incorporate any floor space ratio development standard for the R2 Low density residential zone. The density of developments in the zone is guided by the height, maximum floor area of a dwelling house, landscaping and site coverage requirements within the HDCP.

The HDCP prescribed maximum site coverage of 50% for the site, maximum total floor area of 330m² for a dwelling house.

The proposed total floor area of the building would be 338m² which marginally exceeds the HDCP 330m² prescriptive measure for a 533m² site and the proposed site coverage would be 56%.

The bulk and scale of the boarding house is considered acceptable when taken into consideration that the overall site area is 728m². Whilst the pedestrian right of way, garbage easement and access handle has been excluded from the total site area calculation, the building only marginally exceeds the floor area prescriptive measure, and it is noted that the proposed design would sit comfortably within the site due to the excavation proposed at the rear and would be compatible within the low-density area.

Given the above, it is considered that the proposal generally complies with the density parameters within the R2 zone.

2.2.3 Building Height

A maximum building height of 8.5m is a prescriptive standard pursuant to SEPP ARH and the HLEP. The proposed development would have a maximum height of 5.5m above the existing ground level and would comply with this requirement.

2.2.4 Landscape Area

SEPP ARH requires that landscape treatment of the front setback should be compatible with the streetscape. As indicated on the Landscape Plan prepared by Paul Scrivener, the proposed front setback of 7.3m to 10m incorporates dense landscaping in-front of the building with the bin enclosure

located perpendicular to the site alongside the driveway and pathway which is consistent with the established streetscape of Burdett Street and is considered acceptable in this regard.

2.2.5 Solar Access

SEPP ARH prescriptive measure for solar access requires 1 communal living room to receive a minimum of 3 hours of direct sunlight between 9am and 3pm in mid-winter. The first-floor level communal living area includes the provision of a window within the northern and eastern elevation which enable direct sunlight in accordance with the requirements of SEPP ARH.

2.2.6 Private Open Space

Clause 29(2)(d)(i) of SEPP ARH requires one area of private open space to be provided of at least 20m² with a minimum dimension of 3m for the use of the lodgers. As indicated on the submitted Architectural and Landscape Plans, the proposal includes a 21m² terrace adjoining the communal lounge room on the first-floor level at the front of the site with a minimum dimension of 3m.

The proposal would comply with the minimum private open space requirements.

2.2.7 Parking

Clause 29(2)(e) (iia) of SEPP ARH states that in the case where a boarding house development is not carried out by or on behalf of a social housing provider, at least 0.5 parking spaces are to be provided for each boarding room. Given the proposed development comprises a total of 11 rooms; the proposal requires the provision of 6 car parking spaces.

The proposal complies with SEPP ARH parking requirement and Council's Traffic and Parking assessment raised no objections to the number of parking spaces or the layout proposal. Notwithstanding, Council's Traffic assessment proposes a 20m no stopping restriction at the inner corner of Burdett Street with King Road to enhance road safety and a suitable condition is recommended in the consent requiring this be approved by the Local Traffic Committee prior to the issue of an Occupation Certificate.

It is anticipated that the lodgers would also make use of the nearby public transport, resulting in minimal impact to on-street parking.

It is considered that the proposal meets the parking requirements of SEPP ARH.

2.2.8 Accommodation Size

The proposal includes 10 single lodger rooms and 1 dual lodger room with bathroom, laundry and kitchen facilities in each room. Each boarding room includes a wardrobe providing storage facilities for the residents. The accommodation size complies with the room size requirements of SEPP ARH.

2.2.9 Character of Local Area

Clause 30A of SEPP ARH is as follows:

"A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area."

The Applicant's Planner has provided the following justification against the local character below:

- *The immediate locality contains a diversity of building forms with 1 - 2 storey dwellings and multi-dwelling housing developments within the vicinity of the site. The development proposal being a 2-storey form with a pitched roof, will reflect the form and scale of the locality and present an architectural uplift to the streetscape. The proposed materials and finishes and landscape works are consistent with adjoining development and compatible with the planning controls under the SEPP - Affordable Rental Housing.*
- *The proposed built form - 2 storeys is compatible with the existing building character in the immediate locality. The boarding house presents to the street as a similar form and scale to surrounding 2 storey low density development within its visual catchment. Further, the form and scale of development is consistent with the streetscape and desired future character.*
- *The subject site is zoned R2 - Low Density Residential under the Hornsby LEP 2013 and boarding houses are a permissible land use. The planning controls allow 2 storey development - 8.5m and the overall scale and form of the development is compatible with the density controls applying to the subject site under the Hornsby LEP 2013. The design of the boarding house is consistent with the future character of the area allowing for two storey buildings on each allotment of land.*
- *The proposed design mitigates amenity impacts to adjoining properties in terms of privacy and overshadowing, noting the built form has been located on the allotment with regard to the setbacks of dwelling houses, and also noting the orientation of the subject site and location adjacent to the M1 Motorway minimises the potential for unreasonable solar access impacts to neighbouring properties.*
- *The proposed 2 storey building incorporating 11 boarding rooms is compatible with the design of development in the locality, including anticipated future built forms, and meets the character test required under clause 30A of SEPP - Affordable Rental Housing.*

Council concurs with the Applicants justification as it is considered that the proposal has adopted the style and appearance of adjoining dwellings and development in the nearby area whilst providing affordable housing. The proposed scale, density and appearance is compatible with the character of dwellings within Burdett Street and is considered acceptable.

2.3 Adopted State Environmental Planning Policies (Savings and Transitional Provisions)

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

- State Environmental Planning Policy (Resilience and Hazards) 2021.
- State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- State Environmental Planning Policy (Planning Systems) 2021.
- State Environmental Planning Policy (Precincts - Eastern Harbour City) 2021.

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

As this development application was lodged on 21 January 2022, this development application is considered to have been made prior to the commencement date of the SEPPs. The aforementioned SEPPs have been considered as a matter for consideration under S4.15 of the Act.

Notwithstanding, the existing legislation in force at time of lodgement of the development application, prevails to be extent of any inconsistency; these policies are listed below:

- State Environmental Planning Policy No. 55 Remediation of Land.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.
- Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River.

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

2.4 State Environmental Planning Policy No. 55 Remediation of Land

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

An examination of Council's records and aerial photography has determined that the site has been historically used for residential purposes with no record of any site contamination. Given this, it is unlikely that the site has experienced any significant contamination, and further assessment under SEPP 55 is not required.

It is noted that due to the age of the existing dwelling house and associated outbuildings, there is potential for the existing structures to contain asbestos. Appropriate conditions are included in Schedule 1 to require all asbestos to be removed from the site.

2.5 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application has been assessed against the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

The proposal includes a BASIX Certificate and Section J compliance assessment report for the proposed development which is considered to be satisfactory.

2.6 State Environmental Planning Policy (Infrastructure) 2007

With respect to Clause 101 Development with frontage to classified road, the site shares a common boundary with the Transport for NSW classified motorway however does not have direct frontage or access to the motorway.

Pursuant to Clause 102 of the Policy, Council is to consider the impacts in respect to road noise and vibration impacts from the operation of the M1 motorway.

The applicant submitted an Acoustic Assessment prepared by Acoustic Logic addressing noise level criteria pursuant to the Policy. The report recommends thicker glazing standards for glass doors and windows as well as the use of upgraded construction standards to reduce the noise of the adjoining motorway to future residents which is considered acceptable.

With regards to Clause 103 Excavation immediately adjacent to a corridor the eastern side boundary of the site adjoins the M1 Motorway and land acquired for the NorthConnex tunnel.

The application was referred to the Transport for NSW who recommended that access to the subject property shall not be via the Pacific Motorway and conditions requiring noise mitigation for future residents.

Pursuant to Clause 102 of the Policy, Council is to consider the impacts in respect to road noise and vibration impacts from the operation of the motorway.

The applicant submitted an Acoustic Assessment prepared by Acoustic Logic addressing noise level criteria pursuant to the Policy. The report recommends specified glazing for noise attenuation. The northern, eastern and southern façade of the proposed building would require mechanical ventilation in accordance with the Building Code of Australia requirements as the façade windows would be required to be closed to achieve compliance with noise abatement criteria.

2.7 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) commenced 25 August 2017 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

Part 3, Clause 9(2) of the Vegetation SEPP states that a Development Control Plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the HDCP prescribes works that can be undertaken with or without consent to trees and objectives for tree preservation.

Part 3.1.1 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

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

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

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

2.9 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.

2.10 Hornsby Development Control Plan 2013

As stated above, the Hornsby Development Control Plan requires that boarding houses comply with the planning controls within the SEPP ARH. The application has been assessed as satisfactory in this regard.

2.11 Section 7.12 Contributions

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. A condition of consent is recommended requiring the payment of a contribution in accordance with the Plan.

3. ENVIRONMENTAL IMPACTS

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

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

The proposed development does not necessitate the removal of any trees from the site. Tree removal was considered under the subdivision application DA/248/2019/B.

Subject to implementation of tree protection conditions during construction and appointment of an arborist, no objections are raised to the proposal.

3.1.2 Stormwater Management

Stormwater would be directed to an on-site detention system located under the approved driveway as part of DA/248/2019/B.

Council's Engineering assessment did not raise objections to the proposed stormwater method subject to conditions requiring connection into the inter-allotment drainage system.

3.2 Built Environment

3.2.1 Built Form

The proposed design was amended from a previous four storey design to a two-storey design that responds to the site's topography. The design has attempted to minimise the visual impact by excavating into the site and would be viewed as a single storey structure at the very rear of the site. Accordingly, it is considered the design of the proposal sympathetically responds to the surrounding residential street character.

3.2.2 Traffic

The proposed boarding house development is not categorised as a traffic generating development pursuant to the provisions of ISEPP.

It is determined that a total of 3 trips would be generated in the AM and 4 trips within the PM which are not expected to present any adverse traffic impacts.

Council's Traffic assessment used the RMS Guide to Traffic Generating Development for a motel (0.4 trips per room), which has determined that a total of 5 vehicle trips would be generated by the

proposed development during AM and PM peak hours. Trip and traffic generation is not considered an issue with the proposed development.

Due to the proximity of the site to public transport and the expected number of occupants on the site, it is anticipated that the volume of vehicular traffic generated by the development would be minor and in keeping with the surrounding area.

3.2.3 Air Quality

Air Quality applies to the subject site, noting the proximity to the motorway and that the proposed boarding house is an air quality sensitive land use. The subject site currently contains an existing dwelling house and has been approved for subdivision under DA/248/2019/B. The boarding house is a residential development with adequate separation achieved by the level difference between the subject site and the motorway, and the existing screening which mitigates potential air quality impacts on the existing and proposed development.

3.2.4 Noise impacts

The application was supported by an acoustic report prepared by Acoustic Logic.

The acoustic report provides modelling of the existing noise environment and provides recommendations to mitigate noise impacts to the proposed development and to adjoining properties.

Council's Environmental Protection Team raised no objections to the acoustic report, subject to operational conditions listed in Schedule 1.

3.2.5 Privacy impacts

The potential privacy impacts are mitigated by 1.5m high sill height windows along the western elevation and the design of the boarding house with communal areas at first floor level oriented towards the street and highway.

3.2.5.1 Plan of Management

In support of the application, the applicant submitted a Plan of Management prepared by Chapman Planning which provides management policies with regard to the roles and responsibilities of the Managing agent, maximum number of lodgers, minimum lease period, minimising impacts on residents, display of house rules, fire safety, cleaning and maintenance, waste management, safety and security and dealing with complaints.

With regard to safety, disturbance and anti-social behaviour, a condition has been recommended requiring that the submitted Plan of Management be enforced which provides measures to reduce disturbance and improve safety to adjacent properties, including:

- *All noise generated by the development (excluding mechanical plant) shall not cause a sound pressure level measured as the $LA_{eq\ 15\ minute}$ that exceeds the background level (measured as the $LA_{90\ 15\ minute}$ in the absence of the noise under consideration) by more than 5dB(A) at any time.*
- *The external terrace must not be used between the hours of 10pm to 7am Monday to Saturday, and between 10pm and 8am on Sunday and Public Holidays.*

- *The doors between the indoor communal lounge and the ground floor external terrace on the northern elevation of the development must be locked at 10pm each day and remain locked until 7am Monday to Saturday, and until 8am on Sunday and Public Holidays.*
- *No more than 12 people may occupy the external terrace at any time within the permitted hours of use.*
- *No more than 12 people may occupy the indoor communal lounge at any time.*
- *Visitors and guests are not permitted on the premises prior to 7am Monday to Saturday, and prior to 8am on Sundays and Public Holidays. All visitors must vacate the premises by 10pm on any day.*
- *Amplified music must not be used within the external terrace at any time.*
- *Amplified music must be played through the in-house speaker system in the communal lounge. Speakers must not be oriented toward the external terrace at any time.*
- *Any complaints regarding the operation of the boarding house must be directed to the Boarding House managing agent who will be appointed and responsible for the operation and administration of the boarding house. The Managing agent must record details recorded in a log book with the date and time of the complaint, contact details of the person making the complaint and the nature of the complaint. This logbook must be readily available to Council; and*
- *Contact details for the Boarding House Managing agent must be permanently displayed at the front of the property and be visible from the road.*

An assessment against the Land and Environment Court's Planning Principle for 'Plan of Management' is provided below:

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

Comment: Yes, the plan of management relates to a boarding home and includes operational procedures including duties of the owner, maximum number of lodgers, noise restrictions, house rules, fire safety, cleaning, furniture, waste management, safety and management of complaints. An operational condition is recommended that the Plan of Management must be adhered to.

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

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

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

Comment: Yes, an operational condition is recommended in Schedule 1 requiring any complaints regarding the operation of the boarding house be directed to the Managing agent of the boarding house and a log book of the date and time of the complaint, contact details of the person making the complaint and the nature of the complaint to be documented. This logbook must be readily available to Council and contact details must be provided on a website of relevant contact details of the owner/manager.

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

Comment: Yes, the Plan of Management's proposed procedures and operational limitations would ensure that the standard of the operation would achieve an acceptable amenity and environmental outcome.

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

Comment: Yes, the Plan of Management requires the display of 'house rules' in each room and the common areas. An operational condition is recommended in Schedule 1 requiring the submitted Plan of Management to be adhered to.

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

Comment: Yes, an operational condition is recommended in Schedule 1 requiring the submitted Plan of Management to be adhered to.

Does the Management Plan contain complaint management procedures?

Comment: Yes, complaints would be directed to the Managing agent who will investigate any complaints and keep a log book of the date and time of the complaint, contact details of the person making the complaint and any action taken. A condition has been recommended in Schedule 1 accordingly.

Is there a procedure for updating?

Comment: Yes, should complaints occur, the operational plan can be updated through a modification of the consent.

Conditions are recommended that the operational noise recommendations within the Acoustic Assessment report be implemented in addition to the operational requirements of the Plan of Management.

3.3 Social Impacts

The proposal is a form of affordable housing permissible within the R2 zone pursuant to the provisions of the HLEP and SEPP ARH. The development would provide housing choice in the locality and would result in affordable short-term residential accommodation in close proximity to public transport.

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".

4.1 Bushfire Risk

The site is identified as being subject to bushfire risk. The NSW Rural Fire Service provided General Terms of Approval under DA/248/2019 and stipulated that the 88B instrument shall ensure that future

dwellings are located wholly within area marked 'indicative building' on the approved subdivision plans and that Hornsby Shire Council can modify the restriction.

The proposed building area is consistent with the building envelope indicated on the original subdivision plan.

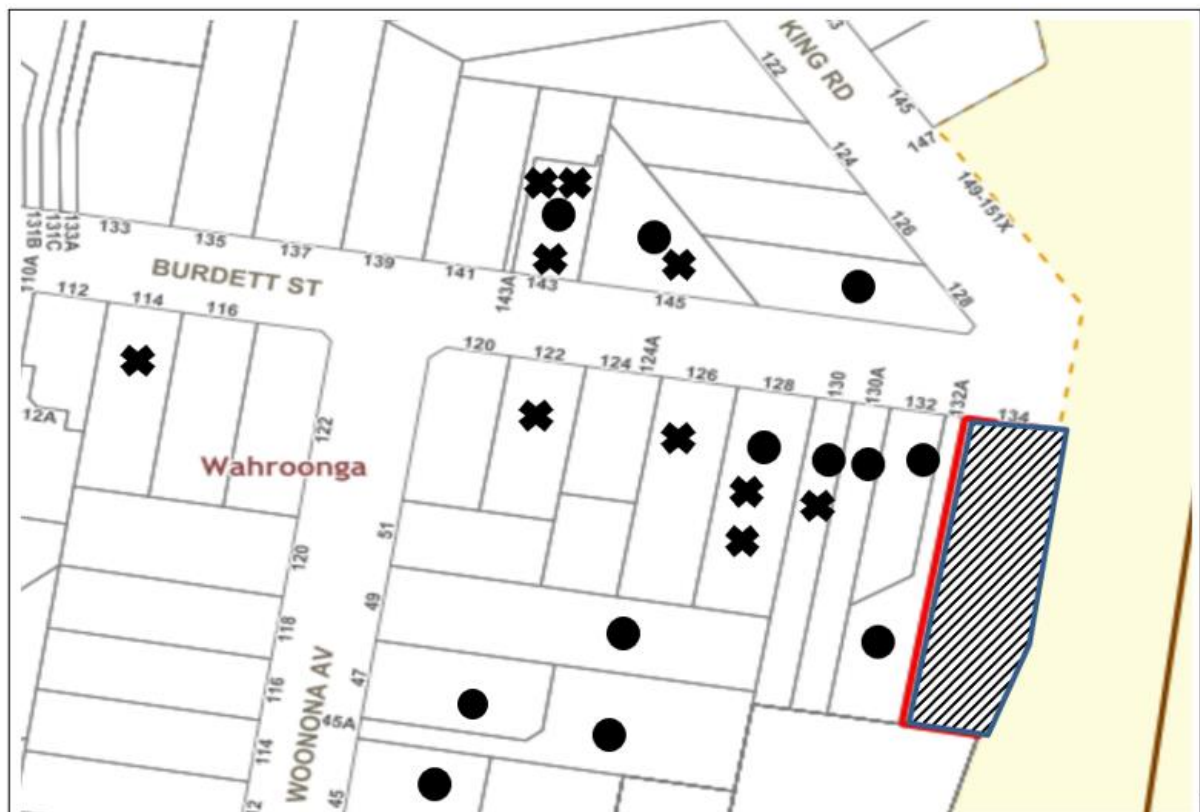
Conditions are recommended that the boarding house be built to BAL 19 Bushfire requirements.

5. PUBLIC PARTICIPATION



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

5.1 Community Consultation

The proposed development was placed on public exhibition and was notified to adjoining and nearby landowners between 18 February 2021 to 9 March 2021 and the amended plans were notified from 15 June 2021 to 29 June 2021 in accordance with the Hornsby Community Engagement Plan. During this period, Council received 18 submissions. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
8 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

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

- Noise impacts
- Traffic impacts
- Traffic and parking impacts
- Out of character with streetscape
- Safety concerns
- Errors within Statement of Environmental Effects
- Exceeds maximum number of rooms allowable by SEPP
- Concerns with management of Boarding house
- Issues with size of development
- Development not suitable for area
- Boarding house will reduce property values
- Lack of consultation
- General privacy concerns

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

5.1.1 Management of Boarding house

Concerns were raised that a manager should be required for the boarding house given the size of the proposal, requirement for cleaning and general uses, that the proposal could exceed the number of lodgers sought and that the boarding house could be used for private accommodation and not social housing.

The proposal is not required to have a manager's residence in accordance with SEPP ARH as only 12 lodgers are proposed. SEPP ARH requires a manager if 20 lodgers are proposed.

With respect to the potential for private rental accommodation and number of lodgers, operational conditions are recommended that restrict the boarding house to the following requirements consistent with the HLEP:

- Is wholly or partly let in lodgings
- Provides lodgers with a principal place of residence for 3 months or more
- Includes 11 boarding rooms with kitchen and bathroom in each boarding room
- Accommodates a maximum of 12 lodgers at any one time.

The operation of the boarding house is discussed in greater detail in the report above under plan of management in 3.2.5.1.

5.1.2 Development not suitable for area

The boarding house complies with the location requirements of the SEPP ARH which requires a bus stop to be located within 400m of a boarding house. Further, the proposal is located within walking distance to Hornsby Hospital and would provide additional accommodation to essential services.

5.1.3 No need for boarding house

Numerous submissions raise concerns that this particular area does not require a boarding house.

SEPP ARH and the Housing SEPP which mandates boarding houses in the R2 zone, are State Government Policies which override Council's LEP and DCP. Accordingly, refusal of the application is not warranted as it complies with the SEPP controls.

5.1.4 Lack of consultation

The applicant is not required to consult the community regarding a development proposal. The application was notified to the community on two occasions and 18 submissions were received.

5.1.5 Privacy

As discussed in the report above, all first-floor level windows which adjoin the access handle of No.132A Burdett Street along the western elevation are highlight windows with a sill height of 1.5m above the finished floor level which would provide a reasonable level of privacy to the adjoining property.

5.1.6 Antisocial behaviour and Safety concerns

Submissions raised concerns that the development would attract criminals and encourage anti-social behaviour.

SEPP ARH does not provide any provisions that prohibit or restrict the type of residents at the premises. In this instance the boarding house would be managed by a private entity. The proposed development would rely on compliance with the Plan of Management and on-going monitoring by the on-site manager at the residence.

5.1.7 Property Values

In addressing this concern, Section 4.15 of the *Environmental Planning and Assessment Act 1979* and SEPP ARH does not require Council to take into consideration the impact of a development on the value of nearby properties. Nonetheless, Council acknowledges that the boarding house development complies with the development standards of SEPP ARH and is designed to maintain the low-density character of the area.

5.2 Public Agencies

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

5.2.1 Transport for NSW

The application was referred to Transport for NSW who raised no objections to the proposal, subject to conditions which are included in Schedule 1.

6. THE PUBLIC INTEREST

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

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

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

CONCLUSION

The application proposes construction of a two-storey boarding house containing 11 boarding rooms, accommodating 12 lodgers and basement car parking.

The development does not comply with the maximum number of rooms in accordance with State Environmental Planning Policy Affordable Rental Housing, however, would comply when subdivided and approval as a deferred commencement of the application is recommended for registration of the subdivision approved under DA/248/2019/B.

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

Council received 26 submissions during the public notification period. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, approval as a deferred commencement 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 Clause 30AA of State Environmental Planning Policy (Affordable Rental Housing) 2009 is well founded. Strict submission is considered well founded and is supported. Strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case as the proposal would comply when both approved lots A and B are registered under DA/248/2019/B.
- With the exception of Clause 30AA of State Environmental Planning Policy (Affordable Rental Housing) 2009, the proposed development generally complies with the requirements of the relevant environmental planning instruments including the State Environmental Planning Policy (Affordable Rental Housing) 2009 and the Hornsby Local Environmental Plan 2013.
- The proposed development is consistent with the Hornsby Development Control Plan 2013.
- The proposed development does not create unreasonable environmental impacts to adjoining development with regard to visual bulk, overshadowing, 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.






RESPONSIBLE OFFICER

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

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

ROD PICKLES
Manager - Development Assessments
Planning and Compliance Division

Attachments:

1.  Locality Map
2.  Architectural Plans
3.  Landscape Plan
4.  Clause 4.6
5.  Plan of Management

File Reference: DA/133/2021
Document Number: D08358209

SCHEDULE 1**1. Deferred Commencement**

- a) Pursuant to Section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, this consent does not operate until a registered plan of subdivision from the NSW Land Registry Services (NSW LRS) creating the proposed lot must be submitted to Council.
- b) Such information must be submitted within **36 months** of the date of this notice.

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

GENERAL CONDITIONS

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

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

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

2. Approved Plans and Supporting Documentation

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

Approved Plans

Plan No.	Plan Title	Drawn by	Dated	Council Reference
A0004, Rev C	Site roof plan	Mackenzie Architects	06.07.2021	
A1001, Rev D	Ground floor plan	Mackenzie Architects	06.07.2021	
A1002, Rev C	First floor plan	Mackenzie Architects	11.05.2021	
A1003, Rev B	Roof plan	Mackenzie Architects	11.05.2021	
A2001, Rev C	North and East elevations	Mackenzie Architects	11.05.2021	
A2002, Rev B	South and west elevations	Mackenzie Architects	11.05.2021	
A2101, Rev C	Sections	Mackenzie Architects	11.05.2021	

Plan No.	Plan Title	Drawn by	Dated	Council Reference
A3005, A	Sample board	Mackenzie Architects	11.05.2021	
2209-1 Rev B	Landscape plan	Paul Scrivener	1.6.21	

Supporting Documentation

Document Title	Prepared by	Dated	Council Reference
Boarding House Plan Of Management Lot A	Chapman Planning	8.12.2021	D08313547
DA Acoustic Assessment, Reference 20211120.1/2409A/R0/RF	Acoustic Logic	24.9.2021	D08255551
Amended (Revision 2) Construction Management Plan	Dickens Solutions	September 2021	D08105766
Amended Waste Management Plan	Dickens Solutions	July 2021	D08255547
Traffic And Parking Report, Ref 20066	Terraffic Pty Ltd	4.06.2021	D08182585
Geotech Report	Martins Engineering	31.05.2021	D08182578
Accessibility Report	Obvious Access	02.06.2021	D08182565
BASIX Certificate 1163325M	Outsource Ideas P/L	23.12.2020	D08105762
TfNSW Concurrence letter, SYD21/00345/01	Transport for NSW	12.04.2021	D08143105
Addendum to Arboricultural Impact Assessment - Addendum Letter	Advanced Treescape Consulting	30/09/2019	D07737647
General Arrangement Plan – Tree Protection Zone fencing,	Gelder Architects – as amended by Council	30/09/2019	D07764856

3. Removal of Trees Not Permitted

No consent is granted for the removal of trees.

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

4. Construction Certificate

- a) A Construction Certificate is required to be approved by Council or a Private Certifying Authority prior to the commencement of any construction works under this consent.
- b) The Construction Certificate plans must be consistent with the Development Consent plans.

5. Section 7.12 Development Contributions

- a) In accordance with Section 4.17(1) of the *Environmental Planning and Assessment Act 1979* and the *Hornsby Shire Council Section 7.12 Development Contributions Plan 2019 - 2029*, **\$12,300** must be paid towards the provision, extension or augmentation of public amenities or public services, based on development costs of **\$1,230,000**

- b) The value of this contribution is current as of 4 March 2022. 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.

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

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

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

Note: 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.

REQUIREMENTS PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

6. Pre-commencement Dilapidation Report

Institute of Engineers detailing the structural condition of the adjoining properties access handle that directly adjoin the site: A 'Dilapidation Report' is to be prepared by an engineer registered by the Australian

- a) Lot 2 DP 1143130, No.132A Burdett Street, Wahroonga.

A Portable Document Format (.pdf) copy of the Dilapidation Report must be submitted to the Principal Certifying Authority and Hornsby Council (devmail@hornsby.nsw.gov.au reference DA/161/2021) before approval of any Construction Certificate.

7. 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.

8. Fire Safety Schedule

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

9. 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.

10. Notification of Home Building Act 1989 Requirements

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

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

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

11. Sydney Water – Approval

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

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

12. Appointment of a Project Arborist

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

13. Construction Management Plan (CMP)

To assist in the protection of the public, the environment and Council's assets, a separate Construction Management Plan (CMP) must be prepared by a suitably qualified environmental consultant in consultation with a qualified traffic engineer and AQF 5 arborist and submitted to Council's Compliance Team via Council's Online Services Portal for review and approval. The CMP must include the following details:

- a) A Construction Traffic Management Plan (CTMP) including the following:
 - i) The order of construction works and arrangement of all construction machines and vehicles being used during all stages.
 - ii) The CTMP plans shall be in accordance with all other plans submitted to Council as part of this development proposal.
 - iii) A statement confirming that no building materials, work sheds, vehicles, machines or the like shall be allowed to remain in the road reserve area without the written consent of Hornsby Shire Council.
 - iv) The Plan shall comply with the requirements of the Roads and Maritime Services *Traffic control at work sites Manual 2018* and detail:
 - a. Public notification of proposed works.
 - b. Long term signage requirements.
 - c. Short term (during actual works) signage.
 - d. Vehicle Movement Plans, where applicable.
 - e. Traffic Management Plans.
 - f. Pedestrian and Cyclist access and safety.
 - v) Traffic controls including those used during non-working hours. Pedestrian access and two-way traffic in the public road must always be able to be facilitated.
 - vi) Details of parking arrangements for all employees and contractors, including layover areas for large trucks during all stages of works. The parking or stopping of truck and dog vehicles associated with the development will not be permitted other than on the site and the plan must demonstrate this will be achieved.

- vii) Confirmation that a street 'scrub and dry' service will be in operation during all stages of works.
 - viii) Proposed truck routes to and from the site including details of the frequency of truck movements for all stages of the development.
 - ix) Swept path analysis for ingress and egress of the site for all stages of works.
 - i) Site plans for all stages of works including the location of site sheds, concrete pump and crane locations, unloading and loading areas, waste and storage areas, existing survey marks, vehicle entry, surrounding pedestrian footpaths and hoarding (fencing) locations.
 - x) The total quantity and size of trucks for all importation and exportation of fill on site throughout all stages of works, and a breakdown of total quantities of trucks for each stage of works.
 - xi) The number of weeks trucks will be accessing and leaving the site with excavated or imported fill material.
 - xii) The maximum number of trucks travelling to and from the site on any given day for each stage of works.
 - xiii) The maximum number of truck movements on any given day during peak commuting periods for all stages of works.
 - xiv) The source site location of any proposed fill to be imported to the site, for all stages of works.
 - xv) The Plan must state that the applicant and all employees of contractors on the site must obey any direction or notice from the Prescribed Certifying Authority or Hornsby Shire Council to ensure the above.
 - xvi) If there is a requirement to obtain a Work Zone, Out of Hours permit, partial Road Closure or Crane Permit, the Plan must detail these requirements and include a statement that an application to Hornsby Shire Council will be made to obtain such a permit.
- b) A Construction Waste Management Plan detailing the following:
- i) Details of the importation or excavation of soil and fill, the classification of the fill, disposal methods and authorised disposal depots that will be used for the fill.
 - ii) Asbestos management requirement and procedures for removal and disposal from the site in accordance with AS 2601–2001 – *'The Demolition of Structures'*, and the *Protection of the Environment Operations (Waste) Regulation 2005*.
 - iii) General construction waste details including construction waste skip bin locations and litter management for workers.
- c) A Tree Protection Plan (TPP) prepared by an AQF 5 Arborist in accordance with any approved Arboricultural Impact Assessment and tree location plans, detailing the following:

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

The CMP must be lodged via Council's Online Services Portal at: <https://eservices.hornsby.nsw.gov.au/ePathway/Hornsby/Web/#> and by selecting the following menu options: Applications > New Application > (under 'Application Types') Management Plans.

14. Acoustic Design Certification

A Construction Certificate acoustic design report shall be prepared by an appropriately qualified acoustic consultant and be submitted to the Principal Certifying Authority (PCA) for their approval prior to the issue of a construction certificate. The acoustic design report must:

- a) Identify all heating, ventilation, air conditioning and other noise generating plant including the lift motor and pumps associated with water reuse systems proposed as part of the approved development.
- b) Confirm the acoustic design for the project and identify the required noise control measures and/or specifications to ensure that the operation of an individual piece of equipment or operation of equipment in combination will not exceed the following

noise levels when measured at the boundary, balcony or external living area of the nearest potentially affected residential occupancies:

- i) LAeq(15min) 53 dB(A) during the day (7am-6pm), LAeq(15min) 43 dB(A) during the evening (6pm-10pm) and LAeq(15min) 38 dB(A) during the night (10pm-7am) at the nearest residential receptors.
- ii) The above emission limits include any corrections for audible characteristics as required by the *NSW Noise Policy for Industry* current at the time of this consent.
- c) The acoustic design report shall include certification from the acoustical consultant with the above acoustic criteria. A Construction Certificate shall not be issued until the Certifier has confirmed that the acoustic design report satisfies the requirements of this condition.

15. Waste Management Details

The following waste management requirements must be complied with:

- a) Should there be any conflict or confusion between approved plans and/or consent conditions related to the waste management system, then written clarification must be obtained from Council.
- b) The approved on-going waste management system must not be amended without the written consent of Council.
- c) There must be no steps along any bin carting route. Ramps and service lifts are acceptable.
- d) For all bin carting routes, the path must be smooth hard surface. (Concrete pavement for example is acceptable, but pebbles, stepping stones, grass etc is not acceptable).
- e) The bin carting route from the bin storage room for Lot A to the temporary bin holding bay for Lot A must be an accessible path of travel for persons with a disability in accordance with Australian Standard AS1428 Design and Access for Mobility.
- f) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the bin carting route from the ground level temporary bin holding bay to the parked waste collection vehicle has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - i) Must be smooth hard surface.
 - ii) Must be straight and no less than 2.0m wide (including through any gates or doors).
 - iii) Must be devoid of steps.
 - iv) Must have a gradient no steeper than 1:14 for 240L bins.
 - v) Must be no greater than 5m walking distance from the temporary bin holding bay to the property boundary.
 - vi) The bin carting path from the temporary bin holding bay for Lot B must extend from the property front boundary to the road kerb and finish with a pram ramp.

- g) A dedicated bulky waste storage area of at least 8 square metres must be provided.
- h) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the bin storage room at the basement carpark level has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and including the following requirements:
 - i) The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting.
 - ii) The floor must be finished so that it is non-slip, sealed and impervious, and has a smooth and even surface coved at all intersections.
 - iii) The ceilings and walls must be finished with smooth faced non-absorbent material capable of being cleaned.
 - iv) The room is to be provided with artificial light controllable within the room and adequate ventilation.
 - v) The room is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.
 - vi) The doors are to be robust and lockable, with a door width of no less than 960mm. The doors must be able to be opened from inside the room without a key.
- i) The bin storage room at the basement carpark level must:
 - i) Be accessible by persons with a disability (in accordance with *AS1428 Design and Access for Mobility*) after the garbage bins and recycling bins are installed; and
 - ii) Comfortably house the required number of bins (7 of 240 L garbage bins and 7 of 240 L recycling bins and 2 of 240L green waste bins) with every bin being accessible (no stacking of bins 2 or more deep); and
 - iii) Have door(s) wide enough and positioned so that the largest bin (240L) can fit through.
 - iv) Be located no more than 30 m walking distance from each boarding room. The walking path from each dwelling to the bin storage room must not include the public footpath, that is must be wholly within the site. The walking path from each accessible/adaptable dwelling to the bin storage room must be an accessible path of travel.

Note: 240 L bins are 600 mm wide by 750 mm deep; allow for ease around the bin – 75 mm is recommended. The door must be wide enough and positioned such that all the bins can fit through. Every bin must be able to be accessed (no stacking of bins two or more deep).
- j) A design certificate and detailed plans are to accompany any Construction Certificate application, which demonstrate that the temporary bin holding bay at the ground level has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines and specifically the following requirements:

- i) The bins are to be screened on three sides to a height of 1.5 metres. The side facing and adjoining the driveway/pedestrian footpath must not be screened.
- ii) There must be no step(s) between the bin bay(s) and the driveway/pedestrian footpath.
- iii) The bin carting route from the bin holding bay to the street must not exceed a gradient of 1:14 and must be no less than 2.0m wide and must not include any steps.
- iv) The temporary bin holding bays must be integrated into the overall design of the development and landscaping to minimise impact on the streetscape.
- v) The internal dimensions of each ground level bin holding bay must be no less than 1.0m x 4.1m. Internal dimensions do not include wall thickness, support columns, ventilation shafts etc for which additional space must be allowed with consideration of the bin layout.

Note: a 240 L recycling bin is 600 mm wide by 750 mm deep; allow for 75 mm ease around the bin to avoid damage to walls etc from scraping.

- k) A Waste Management Plan Section One – Demolition Stage and Section Three – Construction Stage, covering the scope of this project and including the following details, is required to be submitted to Council:
 - i) An estimate of the types and volumes of waste and recyclables to be generated.
 - ii) A site plan showing sorting and storage areas for demolition and construction waste and the vehicle access to these areas.
 - iii) How excavation, demolition and construction waste materials will be reused or recycled and where residual wastes will be disposed.
 - iv) The total percentage (by weight) of demolition and construction waste that will be reused or recycled.

Note: the site(s) to which the waste materials are taken must be legally able to accept those wastes.

- l) At no time during construction is it to become necessary to discontinue, disrupt or interfere with the on-going waste management system of any occupied lot.

16. 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:

- a) Connected to the existing internal drainage system created as part of SWC/19/2020 and discharged via an on-site detention system.

17. Internal Driveway/Vehicular Areas

The driveway on site must be designed, constructed and a Construction Certificate issued in accordance with Australian Standards AS2890.1, AS3727, AS2890.6 and the following requirements:

- a) The driveway be a rigid pavement.
- b) The driveway grade must not exceed 25 percent and changes in grade must not exceed 8 percent.

18. Design and Construction - Bushfire Attack Category

New construction *must* comply with the current Australian Standard AS3959 'Construction of Buildings in Bush Fire-prone Areas' Section 6 (BAL 19) and Planning for Bushfire Protection 2019.

Note: Further information concerning planning for bush fire protection can be found at: www.rfs.nsw.gov.au.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

19. Erection of Construction Sign

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

20. Protection of Adjoining Areas

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

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

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

21. Toilet Facilities

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

- i) Be a standard flushing toilet connected to a public sewer.
- ii) Be a temporary chemical closet approved under the *Local Government Act 1993*.
- iii) Have an on-site effluent disposal system approved under the *Local Government Act 1993*.

22. Erosion and Sediment Control

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

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

23. Waste Management Details

Prior to the commencement of any works, the on-going waste collection service must be cancelled and the bins retrieved by the waste collection service provider.

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

24. Garbage receptacle

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

25. Installation of Tree Protection Measures

Trees to be retained and numbered 1, 6 and 7 as identified on the Tree Location Plan must have tree protection measures for the ground, trunk and canopy installed by the project arborist as follows:

- i) For the duration of demolition works, in accordance with the Tree Protection Plan for prepared by prepared by Tree Management, dated 30/9/2019 (TRIM: D07764856).
- ii) For the duration of construction works, in accordance with Tree Protection Plan prepared by prepared by Tree Management, dated 30/9/2019 (TRIM: D07764856).
- iii) Tree protection fencing for the trees to be retained numbered 1, 6 and 7 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.

- iv) 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.
- v) The installation of all required tree protection fencing must have a TPZ radius as listed in the Table below:

Tree number	TPZ radius from centre of tree
1	As indicated on TPP- 2.1m
6	3.5 x 5m
7	3.1 x4.9m

- vi) Tree crown protection measures are required and must be installed by the AQF 5 project arborist.
- vii) The circumference of the trunk(s) must be wrapped in hessian material to provide cushioning for the installation of timber planks.
- viii) Timber planks (50 x100mm) must be spaced at 100mm intervals and must be attached using adjustable ratchet straps.
- ix) All tree protection zones must have a layer of wood-chip mulch at a depth of between 150mm and 300mm.
- x) Where wood-chip mulch is permitted by Council instead of tree protection fencing within the tree protection zones, the wood-chip must be covered with a layer of geotextile fabric and rumble boards.

REQUIREMENTS DURING CONSTRUCTION

26. Construction Work Hours

All works on site, including demolition and earth works, must only occur between 7am and 5pm Monday to Saturday.

No work is to be undertaken on Sundays or public holidays.

27. Environmental Management

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

28. Street Sweeping

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

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

29. Council Property

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

Note: This consent does not give right of access to the site via Council's park or reserve. Should such access be required, separate written approval is to be obtained from Council.

30. 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.

31. Landfill

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

32. Excavated Material

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

33. 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.

34. Compliance with Construction Management Plan

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

35. Unexpected Finds

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

36. Waste Management Details

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

- a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the *Protection of Environment Operations Act 1997*.

- b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the *Protection of Environment Operations Act 1997*.
- c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW.
- d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it.
- e) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the *Protection of Environment Operations Act 1997* must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses.
- f) The storage of waste and recycling containers must be within the boundaries of the development site at all times. Public footways and roads must not be used for the storage of any waste and must be kept clear of obstructions during all construction works.
- g) Additionally, written records of the following items must be maintained during the removal of any waste from the site and such information submitted to the Principal Certifying Authority within fourteen days of the date of completion of the works:
 - i) The identity of the person removing the waste.
 - ii) The waste carrier vehicle registration.
 - iii) Date and time of waste collection.
 - iv) A description of the waste (type of waste and estimated quantity).
 - v) Details of the site to which the waste is to be taken.
 - vi) The corresponding weighbridge tip docket/receipt from the site to which the waste is transferred (noting date and time of delivery, description (type and quantity) of waste).
 - vii) Whether the waste is expected to be reused, recycled or go to landfill.

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

- h) Construction works must not cause or necessitate any discontinuance, disruption or interference with the on-going waste management system of any occupied lot.

37. Bushland Protection During Construction

To ensure the protection of the restricted development area during construction, the applicant must:

- a) Install 1.2-metre-high chain wire fencing (or similar) along the boundary of the restricted development area General Arrangement Plan in the Addendum to Advanced Treescape Consulting's Arboricultural Impact Assessment Report (dated 21/8/19).

Note: Actions such as tree removal, understorey slashing or mowing, removal of dead trees within the restricted development area would likely impact upon offset planting. Such action would qualify as illegally picking or disturbing vegetation and could render any person who carried out such action as LIABLE FOR PROSECUTION.

38. Prohibited actions within the fenced tree protection zone

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

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

39. 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 tree protection measures and condition for trees numbered 1, 6 and 7 on the approved plans.

40. Approved Works within Tree Protection Zone incursions

- a) 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:
 - i) Using sharp secateurs, pruners, handsaws or chainsaws with the final cut being clean.
 - ii) The maximum diameter of roots permitted to be cut is 50mm.
- b) The replacement driveway must be constructed using the following process:
 - i) Demolition must be done manually using small plant machinery only, no larger than a jackhammer.
 - ii) The sub-grade must be raised as indicated on page 4 of the amended plans provided by Acor consultants dated 12/9/2019 (TRIMD07737646) which ranges from 200mm-300mm between chainage 10.000-35.000 using gap-graded material in accordance with Australian Standards AS4419-2003 Soils for landscaping and garden use.
 - iii) A layer of geotextile or rubber underlay must be installed between the sub-grade and concrete.
- c) Where the building footprint enters or transects the Tree Protection Zones of trees to be retained numbered 1 sensitive construction techniques in the form of screw pilings

or piers, cantilevered or suspended slab design must be employed to create a 100mm clearance above existing soil grade.

- d) Approved excavations within the Tree Protection Zone of trees to be retained numbered 1 not associated with installation of services must be undertaken as follows:
 - i) Excavations for the construction and/or installation of the driveway piers in the Tree Protection Zone of tree to be retained numbered 1 on the approved plans must be supervised by the project arborist for the first 1.000 meter undertaken manually to locate roots and allow for pruning.
- e) No changes of grade within the Restricted Development Area of Tree Protection Zone of trees to be retained numbered 1 on the approved plans, are permitted.
- f) To minimise impacts within the Tree Protection Zone (TPZ) of tree numbered 1 on the approved plans, the installation of services must be undertaken as follows:
 - i) The AQF 5 project arborist must be present to oversee the installation of any underground services which enter or transect the tree protection.
 - ii) The installation of any underground services which either enter or transect the designated TPZ must utilise directional drilling only.

41. Building materials and Site Waste

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

42. Fulfilment of BASIX Commitments

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

43. No Stopping Signs (Local Traffic Committee approval)

“No Stopping” signs are to be installed at the inner corner of Burdett Street with King Road subject to approval from Hornsby Local Traffic Committee, before the issue of an Occupation Certificate. The no stopping zone shall be around 20 metres long in length.

44. External Lighting

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

45. Safety and Security

This site must include the following elements:

- a) Automatic lighting is to be provided to pathways, building entries, driveways and common external spaces.
- b) Security deadlocks are to be provided to the main entry door and the individual room doors.

46. Retaining Walls

All required retaining walls must be constructed as part of the development.

47. Fire Safety Statement – Final

In accordance with the Environmental Planning & Assessment Regulation 2000, upon completion of the building and where fire safety measures have been implemented, the owner must provide Council with a certificate in relation to each fire safety measure implemented in the building.

48. Operational Signage

Prior to issue of the Occupation Certificate, the Principal Certifier shall be satisfied that appropriate signage has been erected as follows:

- a) Within the External Terrace clearly stating that use of the External Terrace area is prohibited between 10pm to 7am Monday to Saturday, and from 10pm to 8am on Sundays.
- b) Within the External Terrace clearly stating a maximum of 12 people are permitted to use the External Terrace any one time within the approved hours of use, excluding persons travelling directly between the boarding house and the lift/stairs leading to the basement carpark.
- c) Within the Internal Communal Lounge clearly specifying a maximum of 12 people are permitted within the Internal Communal Lounge at any one time.
- d) A sign no larger than a standard A3 sheet has been erected on the front, northern elevation of the building in a prominent location that is clearly visible at ground floor displaying the contact details for the registering of any complaints regarding noise or resident conduct.
- e) House rules regarding noise within the External Terrace and Internal Communal Lounge in a prominent position.
- f) Speed limited signage of 10km/hr at the entrance to the driveway and within the car park.

49. Acoustic Mitigation

Prior to the issue of the Occupation Certificate, the Principal Certifier shall be satisfied that the development has been designed and constructed in accordance with Section 5.2 of the DA Acoustic Assessment, prepared by Acoustic Logic, dated 28/10/21 reference 20211120.1/2810A/R1/RF (TRIM: D08288534) to mitigate potential noise intrusion from the motorway and that the following LAeq levels are not exceeded:

- a) In any bedroom – 35dB(A) at any time between 10pm and 7am.

- b) Anywhere else in the building (other than a garage, kitchen, bathroom or hallway) – 40 dB(A) at any time.

50. Acoustic Treatments

Prior to the issue of the Occupation Certificate, the Principal Certifier shall be satisfied that the development has been constructed in accordance with the DA Acoustic Assessment, prepared by Acoustic Logic, dated 28/10/21 reference 20211120.1/2810A/R1/RF (TRIM: D08288534) and the following requirements:

- a) A solid imperforate 1.8m high fence has been installed along the western and southern boundaries of the development.
- b) External walls of the development are of masonry construction.
- c) Soft closure hinges have been fitted to all gates installed at the development.
- d) Fixed windows have been installed in the Communal Lounge on the Ground Floor northern elevation of the building to minimise noise breakout from the Communal Lounge.
- e) A noise limited audio system has been installed to the Communal Lounge which is connected to a supplied television providing the only amplified sound production source within that room and is appropriately limited to a uniform sound pressure level of 75dB(A) when measured 1 metre from the speaker/s.

51. Asbestos Clearance Certificate

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

52. 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.

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

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

54. 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.

55. 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.

56. Waste Management Details

The following waste management requirements must be complied with:

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

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

- b) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, all external works including but not limited to the vehicular crossover and footpath, must be completed. For staged occupation (where the Occupation Certificate will be limited to a portion of the development):

- i) Prior to the issue of the occupation certificate or the use commencing, whichever is earlier, for each stage of the development the waste management system (including but not limited to the bin storage room, temporary bin holding bay, all bin carting routes) for that stage, must be completed.

- ii) Once a stage has been occupied or the use has commenced, whichever is earlier, all facilities necessary for the on-going waste management for that stage, must be maintained in a condition acceptable to Council during all subsequent construction stages.

- c) A report must be prepared by an appropriately qualified person, certifying the following:

- i) A comparison of the estimated quantities of each demolition and construction waste type against the actual quantities of each waste type.

Note: Explanations of any deviations to the approved Waste Management Plan is required to be included in this report.

- ii) That at least 60% of the waste generated during the demolition and construction phase of the development was reused or recycled.

Note: If the 60% diversion from landfill cannot be achieved in the Construction Stage, the Report is to include the reasons why this occurred and certify that appropriate work practices were employed to implement the approved Waste Management Plan. The Report must be based on documentary evidence such as tipping dockets/receipts from recycling depots, transfer stations and landfills, audits of procedures etc. which are to be attached to the report.

- iii) All demolition and construction waste was taken to site(s) that were lawfully permitted to accept that waste.
- d) The bin carting routes must be devoid of any steps.
Note: Ramps between different levels are acceptable. The use of the public footpath is not acceptable.
- e) Each boarding room must be provided with two separate 10-20 litre containers (one each for general waste and recyclable materials) installed in a cupboard in the kitchen.
- f) There must be a dedicated communal bulky waste storage area of at least 8 square metres.
- g) Space must be provided for either individual compost containers for each unit or a communal compost container.
Note: The location of the compost containers should have regard for potential amenity impacts.
- h) All lockable doors and gates, both pedestrian and vehicular, that are required to be opened by Council's waste collection contractor in the provision of waste collection services, must be able to be opened using a pin code. That is, locks requiring keys, remote controls, key fobs etc are not acceptable.
- i) The bin storage room(s) at the basement carpark level must include water or a hose for cleaning, graded floors with drainage to sewer, sealed and impervious surfaces, robust door(s), adequate lighting and ventilation, and must be lockable.
- j) The bin storage room(s) at the basement level must be accessible by persons with a disability while comfortably housing all of the bins required to be stored there.
- k) The temporary bin holding bay(s) at the ground level must include sealed and impervious surfaces, robust door(s), adequate lighting and ventilation.

57. Final Certification

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

- a) All tree protection requirements complied with the as approved tree protection plan for the duration of demolition and/or construction works.
- b) All completed works relating to tree protection and maintenance have been carried out in compliance with the conditions of consent and approved plans.
- c) Dates, times and reasons for all site attendance.
- d) All works undertaken to maintain the health of retained trees.
- e) Details of tree protection zone maintenance for the duration of works.

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

OPERATIONAL CONDITIONS

58. Use of Premises

The development approved under this consent shall be used for the purpose of a 'Boarding House' as defined by Hornsby Local Environmental Plan 2013 and not for any other purpose without Council's separate written consent. The use of the premises must comply with the following requirements:

- a) Is wholly or partly let in lodgings.
- b) Provides lodgers with a principal place of residence for 3 months or more.
- c) Includes 11 boarding rooms with kitchen and bathroom in each boarding room.
- d) Accommodates a maximum of 12 lodgers at any one time.

Note: The premises must not be used as backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment as defined by Hornsby Local Environmental Plan 2013.

59. Boarding House Management

The use of the premise must be managed in accordance with the Plan of Management as approved under this development consent and the following:

- a) Any complaints regarding the operation of the boarding house must be directed to the Boarding House managing agent who will be appointed and responsible for the operation and administration of the boarding house. The Managing agent must record details recorded in a log book with the date and time of the complaint, contact details of the person making the complaint and the nature of the complaint. This logbook must be readily available to Council.
- b) Contact details for the Boarding House Managing agent must be permanently displayed at the front of the property and be visible from the road.

60. Boarding House Register

Within 6 months of the commencement of operation of the boarding house the proprietor of the boarding house must notify the Commissioner for Fair Trading, Department of Finance, Services and Innovation of the boarding house particulars in accordance with the department's guidelines.

61. Council Inspection

Following successful registration and within twelve months registration of the boarding house with the Commissioner, Fair Trading, Department of Finance, Services and Innovation, the proprietor of the boarding house must notify Council of the existence of the boarding house and arrange an initial inspection by Council's Building Certifications Team.

Note: Council's Building Certifications team can be contacted via customer service on 9847 6760.

62. Fire Safety Statement - Annual

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

63. Car Parking

All car parking must be constructed and operated in accordance with *Australian Standard AS 2890.1-2004 Off Street Car Parking* and *Australian Standard 2890.2 - 2002 – Off Street Commercial vehicle facilities* and the following requirements:

- a) All parking areas and driveways must be sealed to an all-weather standard, line marked and signposted.
- b) Car parking, loading and manoeuvring areas must be used solely for nominated purposes.
- c) All vehicular entry on to the site and egress from the site shall be made in a forward direction.
- d) Any proposed landscaping and/or fencing must not restrict sight distance to pedestrians and cyclists travelling along the footpath.
- e) All parking for people with disabilities is to comply with AS/NZS 2890.6:2009 Off-street parking for people with disabilities.
- f) Bicycle parking spaces are to be designed in accordance with AS 2890.3-2015 Bicycle parking facilities.
- g) Motorcycle parking spaces are to be designed in accordance with AS/NZS 2890.1:2004.

64. Noise management – General

To ensure a reasonable level of acoustic amenity is provided to nearby residential premises, the operation of the development must be carried out in accordance with the Council approved Plan of Management as amended in accordance with the requirements of this consent and the following requirements:

- a) All noise generated by the development (excluding mechanical plant) shall not cause a sound pressure level measured as the $LA_{eq\ 15\ minute}$ that exceeds the background level (measured as the $LA_{90\ 15\ minute}$ in the absence of the noise under consideration) by more than 5dB(A) at any time.
- b) The external terrace must not be used between the hours of 10pm to 7am Monday to Saturday, and between 10pm and 8am on Sunday and Public Holidays.
- c) The doors between the indoor communal lounge and the ground floor external terrace on the northern elevation of the development must be locked at 10pm each day and remain locked until 7am Monday to Saturday, and until 8am on Sunday and Public Holidays.
- d) No more than 12 people may occupy the external terrace at any time within the permitted hours of use.
- e) No more than 12 people may occupy the indoor communal lounge at any time.
- f) Visitors and guests are not permitted on the premises prior to 7am Monday to Saturday, and prior to 8am on Sundays and Public Holidays. All visitors must vacate the premises by 10pm on any day.
- g) Amplified music must not be used within the external terrace at any time.

- h) Amplified music must be played through the in-house speaker system in the communal lounge. Speakers must not be oriented toward the external terrace at any time.

65. Noise – Mechanical Plant

- a) The cumulative noise generation from operation of mechanical plant, when assessed as a LA_{eq} 15 minute at any affected point on or within any residential premises, must not exceed the following Sound Pressure Levels:
 - i) 7am to 6pm, 53dB(A).
 - ii) 6pm to 10pm, 43dB(A).
 - iii) Between 10pm to 7am (8am on Sundays), 38dB(A).
- b) The above emission limits include any corrections for audible characteristics as required by the NSW Environment Protection Authority's *Noise Policy for Industry*, current at the time of this consent ("the EPA's *Noise Policy for Industry*").
- c) Within 90 days of occupying the development, an acoustic assessment is to be carried out by a suitably qualified acoustic consultant and an acoustic report submitted to the Council demonstrating that the combined noise levels from operation of all mechanical plant and all processes within the building, do not exceed 38dB(A) between 10pm and 7am when measured at the boundary of the closest residential receiver premises.
- d) Should the acoustic assessment find that noise levels exceed the above criteria, suitable recommendations for appropriate mitigation measures must be provided in the acoustic report and shall be implemented upon written approval of the Council.
- e) Terms used in this condition have the same meaning as in the EPA's *Noise Policy for Industry*.

66. Maintenance of Acoustic Mitigation Measures

All acoustic mitigation measures, including boundary fencing and noise limited audio devices, must be maintained for the duration of the development. Responsibility for the maintenance of all acoustic mitigation measures, including acoustic fences, is the sole responsibility of the owner of the development, and shall continue into perpetuity should the premises be sold in the future, unless otherwise approved by Council.

67. Waste Management

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

- a) The approved Waste Management Plan is to be implemented throughout the ongoing use of the development.
- b) The development must operate in full compliance with Council's waste management collection requirements.
- c) There must be a sufficient number of bins on site to contain the volume of waste and recycling expected to be generated between collection services.

- d) A site caretaker must be employed and be responsible for moving bins where and when necessary, washing bins and maintaining waste storage areas and signage, managing the communal composting area and worm farm, managing the bulky item storage area, managing the clothing/donation bins, arranging collections where the service is not provided by Council (e.g. clothing bins, e-waste), arranging the prompt removal of dumped rubbish, arranging for shopping trolleys to be promptly returned to the local shopping centre(s), ensuring the recycling bins are free of contamination (which includes but is not limited to garbage, plastic bags, clothing, etc.), addressing overflowing bins and pest infestations, liaising with Council on waste matters, and ensuring all residents are informed and kept up to date on the use of the waste management system. The site caretaker must be employed for a sufficient number of hours each week to allow all waste management responsibilities to be carried out to a satisfactory standard.
- e) Bins must not be permanently stored in the ground level temporary bin holding bay. All mobile garbage bins that are placed in the ground level temporary bin holding bay for collection must be taken back to their bin storage room on the same day of service
Note: bins are to be placed in the holding area the day before the collection day, then returned to the basement bin storage rooms promptly after servicing.
- f) No waste storage containers are to be located or placed outside of the approved waste storage area at any time except for collection purposes.
- g) The nominated kerbside collection point is to be utilised to facilitate the collection of green waste bins for the development. All bins that are left on the kerbside for collection must be taken back within the property boundary on the same day of service.
- h) Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin. Signage is also to be provided in locally appropriate culturally and linguistically diverse (CALD) community languages.
- i) The Boarding House Plan of Management is to clearly set out the management responsibilities for the developments waste management system.

CONDITIONS OF CONCURRENCE – Transport for NSW

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

68. TfNSW 1

The subject property abuts a Declared Freeway (Pacific Motorway) as shown by blue colour on attached Aerial – “X”. All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Pacific Motorway boundary.

69. TfNSW 2

Access is denied across the boundary of the subject property to the Pacific Motorway.

70. TfNSW 3

The proposed traffic light system is to be designed and positioned so that it is not visible by motorists on the Pacific Motorway.

71. TfNSW 4

The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Documents should be submitted to Development.Sydney@rms.nsw.gov.au.

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

72. TfNSW 5

The proposed development should be designed such that road traffic noise from Pacific Motorway is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 (3) of State Environmental Planning Policy (Infrastructure).

73. TfNSW 6

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

74. TfNSW 7

All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.

75. TfNSW 8

A Construction Pedestrian Traffic Management Plan (CPTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.

- END OF CONDITIONS -

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with *the Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, other relevant legislation and Council's policies and specifications. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

Environmental Planning and Assessment Act 1979 Requirements

The *Environmental Planning and Assessment Act 1979* requires:

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

Long Service Levy

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

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

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

Tree and Vegetation Preservation

A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation protected under the Hornsby Development Control Plan 2013 without the authority conferred by a development consent or a permit granted by Council.

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

Tree protection measures and distances are determined using the Australian Standard AS 4970:2009, "Protection of Trees on Development Sites".

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

Disability Discrimination Act 1992

The applicant's attention is drawn to the existence of the *Disability Discrimination Act 1992*. A construction certificate is required to be obtained for the proposed building/s, which will provide consideration under the *Building Code of Australia*, however, the development may not comply with the requirements of the *Disability Discrimination Act 1992*. This is the sole responsibility of the applicant.

Covenants

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

Dial Before You Dig

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

Asbestos Warning

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

www.environment.nsw.gov.au

www.adfa.org.au

www.safework.nsw.gov.au

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